



## 2012 GOVERNOR-GENERAL'S UNDERGRADUATE ESSAY COMPETITION QUESTIONS

### Legal Questions

1. "It is doubtful that constitutional text alone could ever provide a sufficient basis for constitutional interpretation ... Whether it likes it or not, the [High] Court seems set for a continuing struggle between the competing claims of certainty and democratic legitimacy on the one hand, and flexibility and adjustment to changing circumstances on the other." (A. Stone, "Constitutional Interpretation", in *The Oxford Companion to the High Court of Australia* (2001), 137, 139.) Do you agree? To what extent is this comment borne out by the judicial record of the High Court since appointment of the Hon. Robert French as Chief Justice of the High Court?
2. Referring to the decisions of the Supreme Court of the United States in *Heart of Atlanta Motel, Inc v United States* 379 US 241 (1964); *Katzenbach v McClung* 379 US 294 (1964) and *Daniel v Paul* 395 US 298 (1969), Professor George Winterton opined: "These cases suggest that the Australian commerce power [s 51(i)] may offer a potential (but presently completely untapped) source of legislative power regarding civil rights." (Winterton, Lee et al, *Australian Federal Constitutional Law*, 2nd ed, p.173) By reference to High Court decisions on s 51(i) of the Constitution and recent United States cases on the commerce clause, to what extent do you agree with Professor Winterton's statement? Why?
3. "Uniform taxation is the glue that holds the federation together. It is the reason we are one nation with one economy." (Paul Keating, *The Australian*, 24 February 1994, 9.) Do you agree? Why?
4. "Asking the question, 'How well has the High Court safeguarded the interests of the States?' is a little like posing the query, 'What was the contribution of Attila the Hun to Western Civilisation?'" (Prof. Greg Craven, "The High Court and the States, in *Proceedings of the Sixth Conference of The Samuel Griffith Society* (Melbourne, 1995), 65, 73.) Do you agree? Why?
5. The majority of the High Court in *Workchoices* (2006) 229 CLR 1 adopted the position of Gaudron J in *Re Pacific Coal* (2000) 203 CLR 346 (at 375) as opposed to the position of McHugh J in *Re Dingjan* (1995) 183 CLR 323 (at 368ff). The reasoning of McHugh J did provide some limit to the ambit of the corporations power whereas now there is no limit on what activities the Commonwealth can regulate pursuant to s 51(xx)." Do you agree? Why?
6. One criticism of the recommendations of the 2012 Report of the Expert Panel, *Recognising Aboriginal and Torres Strait Islander Peoples in the Constitution* and presented to the Prime Minister, is that, if implemented, these will entrench the legislative competence of the Commonwealth to enact racially discriminatory laws whether or not these are actually for the "benefit" of a particular race; whereas by removing all reference to race in the Constitution (excepting the Preamble) it will no longer be possible to enact laws on the basis of race alone: the best insurance against laws which disadvantage members of a particular race. Do you agree? Why?

### Non-legal Essay Questions

1. What should be the size of Australia's aid budget and how should aid funding be directed? Justify your answers.
2. Assess Australia's bilateral and multilateral engagement in the Asian region over the past five years and identify how it could be improved for the future.
3. Under Sharia law, a woman can be prosecuted for leaving her marriage. How does this work within the context of Australian laws?
4. What reforms to the Australian tax system would you recommend making and why?
5. Zakaria defined democracy as “a political system marked not only by free and fair elections, but also by the rule of law, a separation of powers, and the protection of basic liberties of speech, assembly, religion, and property” (1997, p. 22). The final part of this definition refers to what has been termed *constitutional liberalism*. Can a nation claim to be democratic if it has free and fair elections, but does not practice constitutional liberalism?  
  
Zakaria, F. (1997). The Rise of Illiberal Democracy. *Foreign Affairs* , 76 (6), 22-43.
6. Discuss the current push for recognition of the Aboriginal and Torres Strait Islanders in the Australian Constitution which would need to be put to the Australian people as a referendum question. Discuss your reasons in favour or against this constitutional change.
7. Some Australians claim that the current Federal Government is weakened through the control of the House of Representatives being through the vote of the independents and that the political situation is such that it is unworkable for good government. Discuss and include options for reform if you feel they are necessary.