



Examiner's Comments

06 AUSTRALIAN CONSTITUTIONAL LAW

September 2025 Examinations

The exam contained four questions. Candidates were required to answer all four questions. The questions were not of equal value.

Question 1

This question was worth 20 marks and required analysis of the scope of federal legislative power when framed against the implied freedom of political communication. Students also had to interpret the outline of a fictional statutory scheme.

Question 2

This question was worth 30 marks and required students to explore the scope of the defence power (section 51(vi)) as well as the limitations imposed on Commonwealth power by Chapter III of the Constitution.

Question 3

This question was worth 15 marks and required students to explore the limitations on state legislative power imposed by the freedom of interstate trade and commerce clause found in the Constitution (section 92).

Question 4

This question was worth 15 marks and required students to explore the scope of the corporations power under the Australian Constitution (section 51(xx)).

Characteristics of poor or average responses

Responses in this category were characterised by an inability to consistently apply legal doctrine to a hypothetical scenario and, thereafter, engage in good quality constitutional reasoning. Such answers typically had some grasp of relevant case law but did not understand the significance of those reasons or how to apply the rules and principles to a hypothetical set of facts. Responses at the lowest end of this category had little to no grasp of relevant doctrine.

Characteristics of very good or excellent responses

Responses in this category were, at the outset, able to offer a lucid account of the constitutional doctrine most relevant to the questions posed as well as identify the scenario's

facts that introduced the greatest degree of uncertainty. Such answers were typically then able to confidently apply strong doctrinal knowledge to shape an analysis of the legal position.

Common mistakes

The most common material error was, in response to Question 3, engagement in discussion of the taxation power (s 51(ii)) either at length or exclusively instead of the freedom of interstate trade and commerce. The most common mistake besides that was recitation of the content of decisions from key cases but little to no attempt to contextualise those reasons and, in turn, apply that knowledge as the basis of legal reasoning.

Areas for improvement

The cohort performed reasonably well overall. Knowledge of the function of, and limitations on power arising from, section 92 of the Constitution could have been much stronger. There were no other obvious or common gaps in knowledge of constitutional doctrine. Papers that passed, but did not achieve a particularly high mark, were characterised by a lack of effort to engage in robust constitutional reasoning.