

Exam

Name _____

MULTIPLE CHOICE. Choose the one alternative that best completes the statement or answers the question.

1) At the time of settlement, the Australian colonies were classified as:

- A) Territory that belonged to no one.
- B) Territory that belonged to the Aboriginal people.
- C) Territory that belonged to the Crown.
- D) Territory that existed as part of the British Empire.

Diff: 1

Learning Obj.: 2.1 Explain the factors leading to English settlement and the application of doctrine of reception in Australia

AACSB: Application of knowledge

2) The reason *Terra Nullius* is important to the doctrine of reception is because:

- A) English law could apply from the date of settlement.
- B) The occupants had no land rights.
- C) There was nobody to negotiate a treaty with.
- D) All of the above.

Diff: 2

Learning Obj.: 2.1 Explain the factors leading to English settlement and the application of doctrine of reception in Australia

AACSB: Reflective thinking

3) The case of *Mabo v Queensland (No. 2)* (1992) 175 CLR 1 is significant because it:

- A) Determined that Australia had been peacefully settled.
- B) Established the *Native Title Act* (1993) (Cth).
- C) Granted native title rights to the Aboriginal people.
- D) Recognised the pre-existing rights of the Aboriginal people.

Diff: 3

Learning Obj.: 2.1 Explain the factors leading to English settlement and the application of doctrine of reception in Australia

AACSB: Application of knowledge

4) Which of the following cases was the beginning of a watershed for Indigenous peoples in Australia in respect to native land holdings?

- A) *The Wik People v Queensland; The Thayorre People v Queensland* (1996) 187 CLR 1.
- B) *Mabo v Queensland (No. 2)* (1992) 175 CLR 1.
- C) *Millirrpum v Nabalco Pty Ltd* (1971) 17 FLR 141.
- D) *Cooper v Stuart* (1889) 14 App Cas 286.

Diff: 1

Learning Obj.: 2.1 Explain the factors leading to English settlement and the application of doctrine of reception in Australia

AACSB: Application of knowledge

5) The first case to recognise that the Aboriginal people had a sophisticated set of customs and rules capable of recognition as a legal system was:

- A) *The Wik People v Queensland; The Thayorre People v Queensland* (1996) 187 CLR 1.
- B) *Walker v New South Wales* (1994) 182 CLR 45.
- C) *Mabo v Queensland (No. 2)* (1992) 175 CLR 1.
- D) *Millirrpum v Nabalco Pty Ltd* (1971) 17 FLR 141.

Diff: 2

Learning Obj.: 2.1 Explain the factors leading to English settlement and the application of doctrine of reception in Australia

AACSB: Application of knowledge

6) The effect of the decision in the Mabo Case was to lay to rest the idea that Australia was *terra nullius*.

- A) True

B) False

Diff: 1

Learning Obj.: 2.1 Explain the factors leading to English settlement and the application of doctrine of reception in Australia

AACSB: Application of knowledge

7) Native title is a grant or right created by government.

A) True

B) False

Diff: 2

Learning Obj.: 2.1 Explain the factors leading to English settlement and the application of doctrine of reception in Australia

AACSB: Analytical thinking

8) Which principle was effectively laid to rest by the High Court in the case of *Mabo v Queensland (No. 2)* (1992) 175 CLR 1?

A) The settlement of Australia.

B) The doctrine of precedent.

C) The separation of powers.

D) *Terra nullius*.

Diff: 1

Learning Obj.: 2.2 Discuss the development of Australian law

AACSB: Application of knowledge

9) Which High Court case held that Criminal Laws do not apply to Aboriginal people?

A) *The Wik People v The State of Queensland and Others* (1996) 187 CLR 1.

B) *Mabo v Queensland (No 2)* (1992) 175 CLR 1.

C) *Walker v New South Wales* (1994) 182 CLR 45.

D) None of the above.

Diff: 2

Learning Obj.: 2.2 Discuss the development of Australian law

AACSB: Analytical thinking

10) Which British law gave the Australian colonies the right to amend their own constitutions?

A) The *Statute of Westminster 1931* (Imp).

B) The *Commonwealth of Australia Constitution Act 1900* (Imp).

C) The *Australian Colonies Government Act 1850* (Imp).

D) The *Colonial Laws Validity Act 1865* (Imp).

Diff: 1

Learning Obj.: 2.2 Discuss the development of Australian law

AACSB: Application of knowledge

11) Which British law transformed the six Australian colonies into states at federation?

A) The *Statute of Westminster 1931* (Imp).

B) The *Commonwealth of Australia Constitution Act 1900* (Imp).

C) The *Australian Colonies Government Act 1850* (Imp).

D) The *Colonial Laws Validity Act 1865* (Imp).

Diff: 1

Learning Obj.: 2.2 Discuss the development of Australian law

AACSB: Application of knowledge

12) Which significant Australian law abolished appeals from the State Supreme Courts to the Privy Council in London?

A) The *Privy Council (Limitation of Appeals) Act 1968* (Cth).

B) The *Privy Council (Appeals) Act 1980* (Cth).

C) The *Australia Act 1986* (Cth).

D) The *Privy Council (Appeals from the High Court) Act 1975* (Cth).

Diff: 2

Learning Obj.: 2.2 Discuss the development of Australian law

AACSB: Application of knowledge

13) The *Colonial Laws Validity Act* 1865 (Imp) gave the colonies the right to amend their constitutions.

A) True

B) False

Diff: 1

Learning Obj.: 2.2 Discuss the development of Australian law

AACSB: Application of knowledge

14) The *Statute of Westminster (1931)* (Imp) made Australia a federation.

A) True

B) False

Diff: 1

Learning Obj.: 2.2 Discuss the development of Australian law

AACSB: Application of knowledge

ESSAY. Write your answer in the space provided or on a separate sheet of paper.

15) Explain the meaning of *terra nullius* and whether it still applies to Australia today.

Diff: 1

Learning Obj.: 2.2 Discuss the development of Australian law

AACSB: Reflective thinking

16) What significant changes were brought about by the *Australia Act* 1986 (Cth)?

Diff: 1

Learning Obj.: 2.2 Discuss the development of Australian law

AACSB: Reflective thinking

17) Describe and explain fully what you consider to be the most important outcomes for Australia of the passing of the *Australia Acts* 1985 and 1986. Where possible, provide examples to support your answer.

Diff: 2

Learning Obj.: 2.2 Discuss the development of Australian law

AACSB: Reflective thinking

MULTIPLE CHOICE. Choose the one alternative that best completes the statement or answers the question.

18) Section 109 of the Commonwealth *Constitution* provides that where there is an inconsistency between a Commonwealth law and a State law:

A) The law which was made first shall prevail.

B) The Commonwealth law shall prevail.

C) The State law shall prevail.

D) The law which was made most recently shall prevail.

Diff: 1

Learning Obj.: 2.3 Explain the significance and structure of the federal constitutional system

AACSB: Application of knowledge

19) The decision of the High Court in the case *Commonwealth v Tasmania* (1983) 158 CLR 1, was based upon which head of constitutional power?

A) The reserve power.

B) The external affairs power.

C) The environmental power.

D) The conciliation and arbitration power.

Diff: 1

Learning Obj.: 2.3 Explain the significance and structure of the federal constitutional system

AACSB: Application of knowledge

20) The 'concurrent' powers of the Commonwealth are those powers which are:

- A) Able to be exercised only by the States.
- B) Able to be exercised only by the Commonwealth.
- C) Able to be exercised by neither the Commonwealth nor the States.
- D) Shared by the Commonwealth and the States.

Diff: 1

Learning Obj.: 2.3 Explain the significance and structure of the federal constitutional system

AACSB: Application of knowledge

21) Which of the following is NOT a concurrent power of the Commonwealth under s 51 of the Commonwealth *Constitution*?

- A) Taxation.
- B) Customs.
- C) Marriage.
- D) Banking.

Diff: 2

Learning Obj.: 2.3 Explain the significance and structure of the federal constitutional system

AACSB: Application of knowledge

22) In order to amend the Commonwealth *Constitution* which of the following is NOT one of the requirements which must be satisfied?

- A) The amendment must be approved by an absolute majority of members in both Houses of Parliament or be passed twice in either the House of Representatives or the Senate.
- B) The amendment must be approved by a majority of voters in a majority of the States and by the Governor General.
- C) The amendment must be approved by a majority of Australian voters.
- D) The amendment must be approved by the High Court of Australia.

Diff: 2

Learning Obj.: 2.3 Explain the significance and structure of the federal constitutional system

AACSB: Application of knowledge

23) Since Federation, very few proposed amendments to the Australia *Constitution* have been successfully passed. This is because of the requirement that:

- A) The proposed amendments must be approved by a majority of voters in a majority of States.
- B) The proposed amendments must be passed by a majority of voters or a majority of States.
- C) The approval of the Governor-General on behalf of the Queen is required.
- D) The proposed amendments must be passed by an absolute majority of all elected members in both Houses of Parliament.

Diff: 2

Learning Obj.: 2.3 Explain the significance and structure of the federal constitutional system

AACSB: Application of knowledge

24) Since Federation in 1901, there have been 44 proposals to amend the Commonwealth *Constitution*. How many have been successful?

- A) Only 35 of the proposals.
- B) All of the proposals.
- C) Only 8 of the proposals.
- D) None of them.

Diff: 2

Learning Obj.: 2.3 Explain the significance and structure of the federal constitutional system

AACSB: Application of knowledge

25) In the Australian context, the division of power refers to:

- A) The division of power between the Commonwealth and the States.
- B) The division of power between Britain and Australia.
- C) The division of power between the legislature and the executive.
- D) The division of power between the courts and the government.

Diff: 1

Learning Obj.: 2.3 Explain the significance and structure of the federal constitutional system

AACSB: Application of knowledge

26) Which of the following statements is correct?

- A) The Commonwealth of Australia has exclusive powers in respect of some aspects of government.
- B) The Commonwealth of Australia has all those powers with regard to government in Australia which are not exercised by the States.
- C) The Commonwealth of Australia has overriding powers in all aspects of Australian government.
- D) The Commonwealth of Australia has reserve powers which override all aspects of Australian government.

Diff: 2

Learning Obj.: 2.3 Explain the significance and structure of the federal constitutional system

AACSB: Application of knowledge

27) When a Commonwealth act clashes with a State act, the State act must be followed.

- A) True
- B) False

Diff: 1

Learning Obj.: 2.3 Explain the significance and structure of the federal constitutional system

AACSB: Application of knowledge

28) The attitude of the High Court of Australia to the interpretation of the *Constitution* has been to expand the power of the Commonwealth Government.

- A) True
- B) False

Diff: 2

Learning Obj.: 2.3 Explain the significance and structure of the federal constitutional system

AACSB: Application of knowledge

ESSAY. Write your answer in the space provided or on a separate sheet of paper.

29) In a number of constitutional cases that have been heard by the High Court, the powers of the Federal Government have been expanded at the expense of the States. Explain fully why the High Court has taken this approach, and in your answer provide one case example to support your argument and discussion.

Diff: 3

Learning Obj.: 2.3 Explain the significance and structure of the federal constitutional system

AACSB: Reflective thinking

MULTIPLE CHOICE. Choose the one alternative that best completes the statement or answers the question.

30) According to the doctrine of the separation of powers, which branch or arm of government actually makes the law?

- A) The Legislature.
- B) The Judiciary.
- C) The Executive.
- D) All of the above.

Diff: 1

Learning Obj.: 2.4 Define the doctrine of the separation of powers and discuss its theoretical and practical functions

AACSB: Application of knowledge

31) Which of the following statements supports the philosophy of the doctrine of separation of powers?

- A) The power to interpret law is exercised by the Judiciary.
- B) One limb of Government should not exercise the functions of another limb.
- C) The Legislature and the Executive must remain separate.
- D) All of the above.

Diff: 3

Learning Obj.: 2.4 Define the doctrine of the separation of powers and discuss its theoretical and practical functions

AACSB: Application of knowledge

32) The doctrine of separation of powers:

- A) Is a constitutional requirement of federalism in Australia.
- B) Is based on the idea that no one person or body should exercise more than one power.
- C) Requires that there is a separation of power between the state and federal governments.
- D) Refers to the division of power between the House of Representatives and the Senate.

Diff: 3

Learning Obj.: 2.4 Define the doctrine of the separation of powers and discuss its theoretical and practical functions

AACSB: Application of knowledge

33) The doctrine of separation of powers was formulated by:

- A) A Phillip.
- B) J Montiesquieu.
- C) J Cook.
- D) A B Dicey.

Diff: 3

Learning Obj.: 2.4 Define the doctrine of the separation of powers and discuss its theoretical and practical functions

AACSB: Application of knowledge

34) Which section of the Australian *Constitution* vests Judicial Power in the High Court of Australia?

- A) Section 71 of the *Constitution*.
- B) Section 51 of the *Constitution*.
- C) Section 1 of the *Constitution*.
- D) Section 61 of the *Constitution*.

Diff: 1

Learning Obj.: 2.4 Define the doctrine of the separation of powers and discuss its theoretical and practical functions

AACSB: Application of knowledge

35) The supreme law making power in Australia is exercised by:

- A) The Parliament.
- B) The High Court.
- C) The Government.
- D) The Ministers in the Cabinet.

Diff: 2

Learning Obj.: 2.4 Define the doctrine of the separation of powers and discuss its theoretical and practical functions

AACSB: Analytical thinking

36) Separation of powers is a reference to the division of powers between the Commonwealth and the states.

- A) True
- B) False

Diff: 1

Learning Obj.: 2.4 Define the doctrine of the separation of powers and discuss its theoretical and practical functions

AACSB: Application of knowledge

37) Executive power in Australia is vested in the Queen.

- A) True

B) False

Diff: 2

Learning Obj.: 2.4 Define the doctrine of the separation of powers and discuss its theoretical and practical functions

AACSB: Application of knowledge

ESSAY. Write your answer in the space provided or on a separate sheet of paper.

38) Describe the three arms or functions of government, who they are held by and whether the separation is real or artificial.

Diff: 2

Learning Obj.: 2.4 Define the doctrine of the separation of powers and discuss its theoretical and practical functions

AACSB: Reflective thinking

- 1) A
- 2) D
- 3) D
- 4) B
- 5) D
- 6) A
- 7) B
- 8) D
- 9) D
- 10) D
- 11) B
- 12) C
- 13) A
- 14) B
- 15) *Terra nullius* means land that belonged to no-one. At the time of colonisation, territory was classified as either:
 - Acquired by treaty or military victory, in which case the territory was administered according to the original laws of the inhabitants until they were replaced by the laws of the colonising power.
 - Territory that was unoccupied or in which the inhabitants had not created an organised society with a recognisable legal system. Under the Doctrine of Reception this meant that the English legal system would apply from occupation.

New South Wales was described as a colony which was 'practically unoccupied and without settled inhabitants or settled law.' As a convict settlement in what was considered an unoccupied land, English law was to apply under the Doctrine of Reception, and while the English government had given orders to negotiate treaties with the local inhabitants, by the mid-nineteenth century the legal view was that Australia at that time was not owned by any group or state.

From 1788 until 1992 Australia was considered to have been acquired by settlement until, in *Mabo v Queensland (No 2)*, the High Court decided that Australia was not *terra nullius* at the time of settlement and that Indigenous peoples had rights to native title under the common law.

This case marked a watershed for Indigenous peoples in Australia. The Doctrine of Reception or the principle of *terra nullius* was effectively laid to rest and no longer applies to Australia.

16) The *Australia Act* 1986 (Cth), was one of the Acts that repealed the *Colonial Laws Validity Act* 1865, and abolished what was known as the 'repugnancy rule' which meant that a state law which was inconsistent with an English Law was invalid. Since 1986, no statutes passed by the English Parliament have any effect on the Commonwealth or the States. The legislation also abolished the right of appeal to the Privy Council from the State Supreme Courts, thus breaking the last direct link with the English legal system and completed the process of constitutional development.

17) *The question seeks personal opinion.*

- 18) B
- 19) B
- 20) D
- 21) B
- 22) D
- 23) A
- 24) C
- 25) A
- 26) A
- 27) B
- 28) A
- 29) *The question seeks personal opinion.*
- 30) A
- 31) D

32) B

33) B

34) A

35) A

36) B

37) A

38) Three arms or functions of government are:

- Legislative power, to enact or make law, which is held by Parliament
- Executive power, formulation of policy and administration, which is held by the federal Executive Council or Cabinet
- Judicial power, for interpretation application and enforcement of the law, which is held by the Courts

The Australian Constitution provides for the separation between the legislative, executive and judicial powers of the Commonwealth. This gives effect to the doctrine of separation of powers.

In theory the doctrine of the separation of powers means that no one person or body shall exercise more than one power and is a limitation on the powers of the Commonwealth Parliament. However, in reality, there is no separation between the executive and legislative functions of federal or state government in Australia. This is because members of the executive must also be elected members of Parliament.

However, the separation between the judicature on the one hand and the executive and legislature is strict. Judges are not allowed to be members of either the executive or legislative arms of government. There is then a clear separation of the judicial power from both the executive and legislative powers.