

COMMONWEALTH OF AUSTRALIA

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Family Name	
Given Names	
Student Number	
Teaching Period	Semester 1, 2016

FINAL EXAMINATION	DURATION				
LWZ304 – Administrative Law	<table border="1"> <tr> <td>Reading Time:</td> <td>20 minutes</td> </tr> <tr> <td>Writing Time:</td> <td>120 minutes</td> </tr> </table>	Reading Time:	20 minutes	Writing Time:	120 minutes
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INSTRUCTIONS TO CANDIDATES

1. There are two parts to this exam: Part A (problem questions) and Part B (essay question). Students must answer **ANY TWO (2) of the three questions in Part A. There is only a single compulsory question in Part B.** In other words, you must answer 3 questions in total, two from Part A and the compulsory question in Part B.
2. All questions are worth equal marks.
3. Answer each question in a separate booklet.
4. This examination is worth 60% of the total mark.
5. Writing is permitted on the exam question paper or scrap paper during reading time.
6. Recommended time for each question is 40-45 minutes.
7. Enter the number of each question attempted in the appropriate column on the front page of the exam answer booklet.

EXAM CONDITIONS

You may begin writing from the commencement of the examination session. The reading time indicated above is provided as a guide only.

This is an OPEN BOOK examination

Any calculator is permitted

Any handwritten material is permitted

Any hard copy, English dictionary is permitted (annotated allowed)

ADDITIONAL AUTHORISED MATERIALS	EXAMINATION MATERIALS TO BE SUPPLIED
Any printed material with the exception of CDU Library books	2 x 8 Page Book 1 x 16 Page Book 2 x Scrap Paper

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DOUBLE-SIDED.**

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PART A

There are three problem-style questions in Part A. Students must answer ANY TWO (2) of those questions.

QUESTION 1

The Northern Territory government enacted the *Government Contracting (Sexual Harassment) Act 2007* (NT) ("the Act") with the object of addressing sexual harassment in companies that contract for government funded projects. The Act provides that the government will not contract with companies unless they are first registered under the Act. The Act includes the following sections:

14. If an applicant company satisfies the Minister that it complies with the regulations made under this Act, the Minister may register the company under this Act.

15. (1) The Administrator may make regulations necessary or convenient for carrying the Act into effect.

(2) Without limiting the generality of subsection (1), the Administrator may make regulations:

(i) regulating the types of grievance procedures a company must have in place in order to qualify for registration;

(ii) relating to the development and implementation of workplace training against sexual harassment required to qualify for registration.

After the Act came into effect the Government Contracting (Sexual Harassment) Registration Regulations were made and duly published in the NT Gazette. These regulations included:

Reg. 5 A company registered under the Act must ensure that no sexual harassment occurs at its workplace.

Reg. 6 In relation to existing contracts with the government, the Minister may terminate the contract if the Minister is not satisfied that the company has a good reputation with respect to sexual harassment.

Security Software Pty Ltd, which holds a current NT government IT contract (and has a long history of performing such contracts), seeks registration under the Act. The company has never had a complaint of sexual harassment against it, although it has recently received publicity about a number of racial discrimination and disability discrimination actions proven against it. In fact, the company has highly developed policies and training programs relating to sexual harassment. Under some pressure to improve workplace behaviour and diversity in the workplace, the Minister refuses to register the company and cancels the company's contract.

Advise Security Software concerning any action it might be able to take to challenge the regulations, the Minister's cancellation of the contract, and the Minister's refusal to register the company under the Act.

(20 marks]

QUESTION 2

The Childcare Association (NT) ("the Association") is a non-statutory body that controls the grant, renewal and revocation of licences to run what have become the most popular childcare centres in this state. It maintains a register of "Association approved" childcare centres. Its rules provide that the Association may grant or cancel licences upon considering the recommendations of its Licensing Sub-committee (the Committee). The rules provide further that no person or company may operate an "Association approved" childcare centre in the Northern Territory without a licence from the Association.

Andre and Betty held a licence to operate an "Association approved" childcare centre between 2009 and 2012, when they opened a private school in a suburb of Darwin. Betty is an experienced educator with post-graduate qualifications and many years of experience running educational institutions throughout Australia, but Andre is a Brazilian migrant who only arrived in Australia in 2008 and still has to attend remedial migrant English classes every week. The parents of the school have approached the couple about care for the younger siblings of the school children. Accordingly, Andre and Betty apply for renewal of their old licence which has now lapsed.

Their application goes before the Committee which places a notice in the newspaper publication "Darwin's Child" to the effect that the Association will consider Andre and Betty's application at a specified time and place. Prior to the meeting, a former employee of the couple, Will Tell, sends the Committee a brochure in confidence which he alleges was written by Betty. The brochure is entitled "Squeezing the Lemon: How to maximise your entitlement to Childcare Rebates".

Andre attends the Committee's advertised meeting. The Committee informs him that it has questions about the fitness of himself and Betty to run a childcare centre. Andre then asks the Committee to specify the allegations made and requests an adjournment so that Betty can attend in person, and so that they can obtain the services of a lawyer to advise them and appear on their behalf in order to effectively question any witness that has evidence against them and make appropriate legal submissions. The Committee refuses his request and retires to consider the application. As the new minute taker for the Committee, Will Tell attends but does not contribute directly to the deliberations of the Committee. On the recommendation of the Committee, the Association refuses Andre and Betty's application.

Andre and Betty wish to challenge the refusal to grant a licence on the grounds of denial of procedural fairness. Advise them.

(20 marks)

QUESTION 3

A Northern Territory liquor licensing tribunal is empowered by statute to hear and determine applications for licences to sell liquor on premises provided that such premises are not in the immediate vicinity of a church, hospital or school. The statute further provides that the tribunal may grant such an application if, in its opinion, the “quiet and good order of the neighbourhood” will not be disturbed by the granting of a licence.

The statute further provides that the decision of the tribunal on such an application shall be final and shall not be challenged in any court on any ground.

Jim applies to the tribunal for a liquor licence in respect of his premises, which are situated opposite a technical college on the other side of a six-lane freeway, and have a panel beating workshop and a surfboard manufacturer as the nearest neighbours. Jim intends to operate his premises if licensed as a nightclub specialising in live thrash metal music.

The tribunal conducts an inquiry into Jim’s application, at which all interested parties are allowed to be represented. At the inquiry, three town planning experts give evidence to the effect that the grant of a licence to Jim would be likely to result in a disturbance of the quiet and good order of the neighbourhood, while a local council officer gives evidence to the contrary.

At the conclusion of the inquiry the tribunal makes an oral decision refusing Jim’s application on the ground that the granting of additional liquor licences in the district would be detrimental to the moral and religious welfare of the residents. A transcript is made of the tribunal’s proceedings and decision.

Advise Jim as to any grounds he may have to seek judicial review of the tribunal's decision, including assessing his prospects of success on each ground you identify.

(20 marks)

PART B

There is a single compulsory essay-style question in Part B. Students must answer that question i.e. there is no internal choice.

QUESTION 4

"Development of the common law concerning the prerogative remedies of certiorari and prohibition over the last 30 years or so together with the equitable principles governing declaratory relief now mean that there is no longer any particular procedural advantage (apart from the statutory right to reasons for decision) in the formerly much more flexible remedy available under the *Administrative Decisions (Judicial Review) Act 1977* (Cth) or its various state equivalents."

Discuss by reference to relevant case law.

(20 marks)

END EXAM QUESTIONS