

LAWS7420 – Advanced Legal Research

Take-home Examination

For Session 2 2009

Friday, Aug 21, 2009 – Wednesday, Aug 26, 2009

Course Teachers:

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Time allowed:	100% Take-home Exam: 6 days
	Exam available on Aug 21, 2009 around noon at http://www2.austlii.edu.au/alr
	Due on Wednesday, Aug 26 by 5:00 pm. To be handed in to Student Services, Level 2, with signed cover sheet.
	Late examinations: marks will be deducted at 5% each day, up to a total of 50%.
Examination conditions:	You are permitted to use any materials (See note 4 below: of subscription-restricted materials, only those available via UNSW are needed.)
Total number of questions:	Part A: Research Table & Legal Memorandum Part B: Research Strategy
Value of questions:	Part A: 80% Part B: 20%

PLEASE READ THE EXAMINATION INSTRUCTIONS CAREFULLY.

Other Instructions:

1. Please ensure that your full name and student number are included on ***EACH*** page of your exam.
2. Your take-home answer is to be type-written in 12 point Times Roman font with typical default settings.

For example, top and bottom margins should be 2.54 cm/1 inch while left and right margins should be set at 3.17 cm/1.5 inches.

Your whole exam must not exceed 6 pages in total.

The LEGAL MEMORANDUM for part A must not exceed 3 pages total.

Any pages exceeding the limit will not be considered for evaluation!

3. You may retain the examination paper.
4. You should assume that the only online resources available to you are those available to all students at the University of New South Wales. For instance, it is not appropriate to refer to services only available under licence elsewhere.
5. For the online course Guides, remember the login is:

Username: **alr**
Password: **1students**

For proprietary databases accessed via SIRIUS, remember login is:

Username: **<your student ID>**
Password: **<your UniPass>**

BEST OF LUCK!!!

- Part A -

Research Table and Legal Memorandum (worth 80% of total)

The following set of questions refers to **real** source documents which you must retrieve. You will require access to a computer and the online databases studied in class to complete this section, and possibly hard copy materials in a library.

While you will be assessed on your research strategy in part B, emphasis in Part A is on actually finding the specific correct materials, and your ability to effectively analyze and communicate how they affect the issues uncovered by your research.

You are a junior lawyer assisting a senior solicitor. Below is an extract from your own notes of a conversation with your clients, Nina Jones and Sally Mah, which you attended with your supervising solicitor, Jane Malonowski; and a note from the latter. You have to produce:

- **an explanatory Legal Memorandum** which succinctly addresses the issues raised, and references all important legal materials (maximum 3 pages).
- **a Research Table** setting out the key materials (maximum of 1-2 pages)

Specific instructions are attached below.

YOUR NOTES:

Nina Jones and Sally Mah are the parents of Shirley Mah, 3 years, and Jamie Jones (forthcoming). Shirley was born February 10, 2006 while Jamie is unborn (conceived May 3 2009 in a fertility clinic, likely to be born around January/February 2010). Both children's birthplace and place of conception is/will be Cardigan, Wales. Nina and Sally are lesbians who have been in a relationship together for 11 years. Both have been committed to equal parenting for Shirley and Jamie since conception.

Nina is the genetic mother of Shirley, having had her fertilized ova planted into Sally. Sally will be the genetic mother of Jamie, having had her fertilized ova planted into Nina. An anonymous donor was used for the sperm.

The couple are deeply offended that only one of them appears on the birth registration of Shirley, and probably of Jamie. In Shirley's situation, Sally Mah appears on the registration. In Jamie's case, if they proceed as before, only Nina Jones will appear on the birth certificate. This is because they were told by the relevant authority that only the birth mother may appear on the birth registration, or an adoptive parent. Nina and Sally refuse to 'lie' and go along with this game. They believe that both mothers' names should appear on both the birth registrations.

Likewise, they have so far been unwilling to contemplate adopting their children. They do not feel that they should have to adopt "their own" children. They feel discriminated against, demoralized and vulnerable.

In any event, because they are Australian citizens originally from Sydney, they are not certain that adoption would alleviate the problem. They remain uncertain if Australia (their home town is in Victoria) recognizes the validity of adoptions by same-sex couples, and, if they do, whether or not they would have to be legally married under the law in order to qualify for the benefit.

Nina and Sally have lived in Wales for 10 years and are permanent residents since 2000. Although they intend to stay in the UK, they do not know what the future holds.

The Applicants, Nina and Sally, want to protect their children in the event of death, incapacity or separation. This is especially important to them as Nina is battling cancer. They want presumptive proof of parentage. In short, they wish to both be named on the birth registrations as parents of both Shirley and the expected Jamie.

If this is not possible, they wish to know if they can legally adopt both children under UK and Australian law, and if there are any impediments to this process such as being married (not).

NOTE FROM SUPERVISING SOLICITOR:

In preparation for my meeting with our client, please do the necessary research and provide me with a brief explanatory legal memorandum covering pertinent issues in relation to co-mother birth registration and adoption. This will require investigation of domestic and international principles.

I would specifically like you to address the legal position of the matter in all relevant jurisdictions (in the locations Wales/UK and Victoria/Australia).

Would you please have this information by Wednesday, August 26 at 5:00 pm. (This time is critical, so ideally have it ready before 5.)

There is no need yet to research and discuss any issues about jurisdiction or choice of law. Likewise, there is no need to address issues in civil liability or criminal liability, or, if it is possible, the procedural steps required to file an application for adoption or birth registration change, or the ability of the court to exercise jurisdiction in the matter.

I am **only** after the legal position regarding how best to protect the children in the event of a parent's death, incapacity or separation.

By this, I wish to know if they are entitled under the law to change or otherwise achieve the desired status for the birth registrations, and whether they are able to adopt either or both children under UK and Australian law.

In the latter case, are there any impediments to the adoption, such as marriage?

Thank you,
Jane Malonowski

1. Research Table

Prepare a research table organizing your materials in *an efficient manner*. Samples of table are available in the document “Samples of High Distinction Examinations” found on <http://www2.austlii.edu.au/alr/>. There is no set format for the table other than a suggested length of 1-2 pages. We leave you to creatively display your research in an effective, clear and clean manner.

For the purpose of the **Table only**, you may change the page format parameters a little (eg. wider margins, landscape orientation, or smaller font say 10 point). NB: you may not need to put everything all in *one* table, it may be more effective to split it into several tables. In any case, try to keep it as simple and consistent as material permits.

The following aspects are required in your Table(s), and should also be reflected in your Legal Memorandum:

(a) Information Divisions

Break-up the information in an organized manner (*information division*). Start by listing the applicable jurisdictions. Further break-up the information into relevant actions and dates (Eg. July 12, 2003 children abducted from home) for each jurisdiction. List this information, separately or preferably as part of the main table.

(b) Legislative Provisions

List up to 3 of the most relevant legislative provisions which would apply in *each* information division (Eg. NSW, s. 42(A)(1) *Family Law Act*).

(c) Delegated Legislation or Interpretative Materials etc.

List up to 3 of the most relevant delegated legislation or interpretative materials (other than case law) for *each* information division which may be applicable. Please indicate which provisions within those materials are relevant.

(d) Case Law

List up to 3 of the most relevant cases for *each* information division. You may or may not find a case is relevant for more than one information division. If you break matters down into very small divisions, there may not be a case on every point.

(e) International Agreements

List up to 2 of the most relevant bilateral and multilateral agreements (eg. treaties, international agreements or conventions) that may be relevant on the topic. Please indicate which particular provisions within those materials are relevant.

(f) Journal Articles, Reports and Other Commentaries

List 5 of the most relevant law journal articles, reports or other commentaries on the topic, from any relevant jurisdiction or perspective.

2. Explanatory Memorandum to Supervising Solicitor

Referencing **only the most relevant materials** from your research file (above), prepare a brief and succinct memorandum addressed to your supervising solicitor. The memorandum should address all aspects of the instructions from your supervising solicitor's request. In doing so, you will need to highlight relevant issues, point to contentious areas of law (Eg. relevancy of the interpretation of a term), and reference any materials which would aid you in answering points and issues. The aim is not for you to provide actual advice to a client, but to **clearly outline the position in law** with appropriate references to relevant material for the supervising solicitor. In doing so, good legal researchers will dissect the problem into issues, and contentious points of law within the issue with the use of appropriate references.

This memorandum, including any notes, should not exceed 3 single-spaced pages in 12 point Times Roman font with typical default settings.

For example, top and bottom margins should be 2.54 cm / 1 inch while left and right margins should be set at 3.17 cm / 1.5 inches.

Any reference to legal materials may be done within the document itself (Kerr, "Law Reform in the Copyright Act" [2005] 1 OTR 2 at 47), as a footnote, or endnote. Whichever method you choose, the total length limit including all notes must be respected. Please be consistent in your citation style.

- Part B -

Research Strategy (worth 20% of total marks)

Please outline your research strategy, in whatever manner or form you best see fit.

In doing so, be sure to include which databases or sources you used, in what order, and **WHY**; as well as what search terms you used.

You may wish to highlight which searches were problematic, and which approaches worked well.

Please indicate where your initial research on an issue or point needed to be supplemented.

Your research strategy should not exceed 1 single-spaced page in 12 point font. It should touch on all the main aspects of your table and memo.

END OF EXAM PAPER