How to Use this Script:
These sample exam answers are based on problems done in past years. Since these answers were written, the law has changed and the subject may have changed. Additionally, the student may have made some mistakes in their answer, despite their good mark.

Therefore DO NOT use this script by copying or simplifying part of it directly for use in your exam or to supplement your summary. If you do so YOUR MARK WILL PROBABLY END UP BEING WORSE! The LSS is providing this script to give you an idea as to the depth of analysis required in exams and examples of possible structures and hence to provide direction for your own learning.

Please do not use them for any other purposes - otherwise you are putting your academic future at risk.

This paper is provided solely for use by ANU Law Students. This paper may not be redistributed, resold, republished, uploaded, posted or transmitted in any manner.
An Act will come into operation on the 28th day after receiving the Royal Assent unless the contrary intention appears (s 5(1A) in the Acts Interpretation Act (‘AIA’)). The contrary intention appears in the BPSCP Act (‘the Act’) which states the Act is to commence on the date of Royal Assent. Thus the Act will commence on 15 January 2009. [✓]

Patrice (‘P’) applied for financial assistance in early June 2009, so the Act was in operation. Duncan (‘D’) applied for financial assistance on 16 January 2009, so the Act was in operation. The officers searched and charged Duncan sometime after 16 January 2009, so the Act was in operation. [✓]

a) Can P obtain financial assistance under s 4 of the Act?
In order for P to be eligible for financial assistance, it will be necessary that she is a ‘small business person’ and she ‘earned less than $50,000 profit from the retail business from 1 January 2008 – 31 December 2008’ and she ‘made an application in person’ at the ‘Office of Small Business Persons.’ It is clear that P earned less than $50,000 during the specified time, and that she made an application in person to the office. The elements that require discussion is whether she is a ‘small business person’. If this is satisfied, P will be eligible for financial assistance under the Act.

Is P a ‘business person’?
‘The modern approach to statutory interpretation… insists that context be considered in the first instance’ (CIC Insurance). It is necessary to determine the ordinary and natural meaning of ‘business person.’ Section 3 of the Act defines ‘business person’ as meaning a person who operates a retail business which sells groceries, fruit and vegetables or other items for household consumption.’ This is a ‘closed’ definition and therefore exclusive. [✓] The issue is whether petrol is regarded as an ‘other item for household consumption.’ It may be as petrol is used to fuel the household car.

Applying the maxim ejusdem generis – general words following particular words are limited to the same kind as the particular words (DCT v Clark) – would suggest that other items for household consumption are limited to food items. [✓] Thus, this would not include petrol, which is not a source of human nourishment. However, maxims must be treated with caution as they are “valuable servants but dangerous masters” (Colquohoun). We should cross-check this meaning with the purpose of the Act.

‘In the interpretation of a provision… a construction that would promote the purpose or object underlying the Act shall be preferred to a construction that would not promote that purpose or
object’ (s 15AA in AIA). The purpose of the Act is to protect small business persons by providing financial assistance in a time of global financial crisis. This does not give further insight into the interpretation of ‘business person’ but suggests that any small business that is struggling in the financial crisis may obtain assistance. Thus, P, whose income is less than $50,000 over the past year, may be able to obtain financial assistance.

If the ordinary meaning of the words and the purposive meaning are different, then ‘give preference to the interpretation that is consistent with the purpose.’ Thus, P would be considered a business person.

Therefore, P would be a ‘business person’ for the purposes of s 4. [extrinsic material?]

Is P a “small” business person?
Commencing with interpretation in context (CIC Insurance), it is necessary to determine the ordinary meaning of ‘small.’ In the absence of a definition in the statute, a dictionary may be used (State Chamber of Commerce). ‘Small’ is ‘of limited size; not big; little.’ In application to the issue, this may either suggest that P must be a business person of little stature; or that P’s business must be of a limited size. Throughout the rest of the Act, such as in ss 5, 6, 1, it also refers to ‘small business person’ which does not give any insight into the meaning of small.

Taking a purposive approach pursuant to s 15AA in AIA, the purpose aims to protect “small business persons” from financial crisis. It remains unclear as to whether the Act aims to protect short people who run a business, or small business owners. [✓]

This phrase is therefore ambiguous; it has two different meanings (s 15AB(1)(b)(i)). [✓] Furthermore, it would be unreasonable to award financial assistance to a struggling business based upon the height of the owner (s 15AB(1)(b)(ii)). [✓] Therefore, regard may be had to a second reading speech (s 15AB(2)(f)). In the speech, the Minister for Business and Commerce stated that the government is not concerned about “big business”, rather the “small businesses in our society that have been and will be doing it tough.” This clearly shows that ‘small’ is meant in relation to the business, not the person. Therefore, s 4 should apply to owners of small businesses. [Other words in speech?]

As P’s petrol station is ‘suburban’ in Canberra, it is likely that it will be considered a ‘small business’. Overall, P’s petrol station is likely to be considered small and she a business person. She can obtain financial assistance under the Act.

b) Has Duncan committed an offence under s 5?
In order for D to be convicted of an offence under s 5, it is necessary that he is a ‘small business person’ and he provided ‘false financial records’ in order to gain financial assistance.

Clearly, D provided financial records to gain financial assistance. Also, as he owns a newsagency [needs separate analysis] he would be considered a small business person (as explained above). In any case, his height would likely qualify him as a ‘small’ business person. The element that needs to be discussed is whether D provided ‘false’ financial records, as he simply omitted to supply his complete records.

**Did D provide ‘false’ records?**

Commencing with a contextual interpretation (CIC Insurance) it is necessary to determine the ordinary meaning of ‘false.’ A dictionary may be consulted (Statute Chamber of Commerce). ‘False is ‘1) not true or correct; erroneous, 2) deceptive; used to deceive or mislead.’ Clearly, while the records D did provide were correct, but by not providing his complete records D was deceiving and misleading the office of his true financial situation and income. Thus, on a contextual basis, D supplied false information.

Purpose (s 15AA) is not relevant here, except in that the Act is aiming to provide assistance to struggling small businesses. Larger businesses, which are not suffering as a result of the financial crisis, are not the target of the Act.

To confirm the ordinary meaning of the provision, extrinsic materials may be referred to (s 15AB(1)(a)).

D could argue the common law presumption that penal provisions should be strictly construed in favour of the defendant (Beckwith v R) such that ‘false’ would be afforded a narrow interpretation to exclude D’s omission. However, this is a weak presumption so may be rebutted easily.

Conclusion: On balance, on the basis of a contextual and purposive interpretation, it is likely that D will be considered to have provided ‘false’ records. Therefore, he may be convicted of an offence under s 5.

c) **Did the APF officers have authority under s 6?**

‘An APF officer’ ‘may search’ a ‘small business person’ or ‘premises’ at ‘any time’ in order to ‘ascertain whether an offence under s 5 has been committed’ and ‘does not require a warrant.’ Clearly, the APF officers suspected an offence had been committed, did not need a warrant, and searched. The issue is whether the search was of ‘premises’ for the purposes of s 6 as it is
unclear whether this is referring to any premises generally, or the premises of a small business. If this is established, the officers will have authority.

*Is D’s home ‘premises’?*

Commencing with contextual interpretation (CIC Insurance), a dictionary may be consulted to determine the ordinary meaning of ‘premises’. ‘Premise’ is ‘a house or building with the grounds, etc. belonging to it.’ Thus, D’s house would be considered a premise.

Taking a purposive approach (s 15AA)…

D may argue the presumption that parliament does not interfere with fundamental rights [Al-Kateb] (Coco v R) [✓ which right?]. Arguably, Parliament must have used “unmistakeable and unambiguous language” before a court will override the fundamental right to private property. However, the law does clearly state the APF may search [✓], without a warrant, the person or premises. This implies that Parliament may have intentionally curtailed this right. [✓] This is a strong presumption however, so may need stronger, express words to rebut it.

Very good! At times your analysis is incisive and you show a comprehensive knowledge of relevant law. There are some oversights noted throughout.