

LEGAL STUDIES

Units 3 & 4 – Written Examination



2013 Trial Examination

SOLUTIONS

Question 1

The court that would determine the outcome of the case is the Supreme Court. The Supreme Court has the criminal jurisdiction to hear the most serious criminal indictable offences such as murder, murder related crimes and treason. The Supreme Court also has the jurisdiction to hear appeals from the Magistrates' Court based on a point of law.

2 marks

Question 2

The following are the key reasons why bail may be refused this case:

- one reason bail might be refused is because the accused was charged with trafficking or cultivating a drug of dependence, or with importing or trafficking large quantities of drugs
- another reason is if the accused was already in custody serving a sentence for another crime

*To achieve **two** marks for this question, students will need to explain another reason why bail might be refused in the case of the international drug smuggling syndicate.*

2 marks

Question 3

- a. Residual powers refers to the law-making powers that were left over at the time of federation and as a result these powers remain with the states. In other words, these powers are not listed in the Constitution. An example of a residual power is criminal law. On the other hand, concurrent powers refers to the law-making powers that are shared between the states and Commonwealth Parliament. However, s109 of the Constitution states that if there is a clash between state and Commonwealth Parliament, then the Commonwealth will prevail to the extent of the inconsistency. An example of a concurrent power is taxation.

b. Restrictions placed on state parliament include:

- the states cannot raise an army
- the states cannot coin currency

Restrictions placed on Commonwealth Parliament include:

- the Commonwealth cannot make a law that establishes a religion
- the Commonwealth cannot discriminate against someone because of the state they live in

2 + 2 = 4 marks

Question 4

The principles of responsible and representative government refers to a government that is elected by the people and as a result of this it has the responsibility of representing the views of the people that voted it into office. The bicameral structure of parliament also contributes to a representative government because the lower house is meant to represent the interests of its constituents based on population size. The upper house of the Commonwealth parliament is also referred to as the states' house. Each state has equal representation, therefore in theory representing the interests of their particular state.

A responsible government means that government must answer to parliament and to the people. Some of the ways that government is responsible includes:

- ministers are responsible to parliament
- members of government are responsible to parliament
- members of parliament form government which is responsible for fiscal policy

*To achieve **four** marks for this question, students will need to explain the significance of a responsible and representative government and provide examples.*

4 marks

Question 5

Mediation is an informal way of resolving a dispute. It involves two parties attempting to settle their differences in a cooperative manner. A trained mediator is there to help the parties negotiate by listening to the parties and directing the parties. The mediator does not give suggestions as to the best way to resolve the dispute. The parties are responsible for controlling their own dispute and for exploring different ways of reaching an agreement. The key weakness of mediation is that any decision reached by the parties is not legally binding.

The traditional way of resolving a dispute is via the courts and the use of judicial determination. This method involves the parties presenting their arguments and any evidence to a judge/magistrate who will then make a binding decision for them. It is a far more formal, intimidating, time consuming and an expensive process.

4 marks

Question 6

a. The main roles of the VLRC include:

- to make suggestions relating to law reform on matters that have been referred to it by the Attorney General
- to educate and inform the community regarding areas of law relevant to the commission's work
- to monitor and coordinate law reform activity in Victoria
- to make recommendations on minor legal issues of general community concern

*To achieve **two** marks for this question, students will need to briefly explain **two** functions performed by the VLRC.*

b. The key reasons why the law relating to mental impairment and culpability may need to be changed include:

- the changing values and attitudes in society regarding mental impairment and culpability
- changes in what the community expects from the law, in other words an expectation that the law will regulate behaviour in order to protect the community or to act in a paternalist fashion.
- changes in community awareness

*To achieve **two** marks for this question **two** of the above need to be stated and explained*

2 + 2 = 4 marks

Question 7

The following are the **three** errors in the scenario:

1. Mary's case will be heard in the Magistrates' Court, as her claim is for \$35,000. The Magistrates' Court has the civil jurisdiction to hear cases of up to \$100,000.
2. Mary's case will not be heard before a jury, as there is no jury used in the Magistrates' Court. In the County and Supreme Court if a jury is used it will comprise of six jurors not 12.
3. Mary's employer is not the plaintiff - they are the defendant. Mary is the plaintiff as she is the person suing.

6 marks

Question 8

The five aims of criminal sanctions are:

- to punish
- to denunciate
- to rehabilitate
- to deter
- to protect

*To achieve **six** marks for this question, students will need to:*

- *state the five aims of criminal sanctions*
- *discuss each of these aims*
- *discuss how each aim is fulfilled by the sanction given to Justin Michael Hare*

6 marks

Question 9

This question is asking students to demonstrate how the decision of the High Court can impact on the division of law-making powers between the Commonwealth and State parliament.

Example:

The Tasmanian government wanted to dam the Franklin River and the Commonwealth was opposed to this decision. The Franklin River was a heritage wilderness area. This led to a challenge in the High Court by the Commonwealth. The High Court decided that the Commonwealth had the power to stop the construction because Australia was a signatory to an international convention protecting world culture and natural heritage. The Commonwealth then listed Franklin River on the World Heritage List as a world heritage site. The Commonwealth was able to do this as it has external affairs powers under section 51 (xxix) of the Commonwealth Constitution. This means that it has the power to bind the states to any international treaties Australia was a part of. The Franklin dam decision meant the Commonwealth was granted the power to make laws in areas that were previously governed by state law.

Other cases that could be discussed include:

- *R v Brislan*
- *The Koowarta Case*
- *War Crimes Case*
- *any other case studied in class*

6 marks

Question 10

- a. The method used by the Coast mothers is a petition. This involves gathering as many signatures as possible and presenting the petition to their local member of parliament to try and bring about a change in the law.
- b. Petitions are more effective in influencing a change in the law if they gain the attention of the media. This is because the actions of a group can be broadcast to thousands of people. It is public opinion that politicians listen to especially if they wish to be re-elected.
If the petition/cause is supported by a high profile personality it will also be more likely to be successful.

A recent change, which has occurred in relation to petitions, is the introduction of a Petition's Committee, which makes sure that all petitions that are brought before parliament receive a response.

2 + 4 = 6 marks

Question 11

- a. *For this question students need to discuss **two** strengths and **two** weakness of the adversary system of trial.*

The following are some of the strengths of the adversary system of trial:

- the parties are given the same chance to present their own case and as a result are treated fairly
- the adversary system has stood the test of time
- a judge's knowledge and expertise is used to make sure that both sides are treated equally and fairly
- some evidence is not admissible in court and this protects both parties
- all parties are treated equally – the same rules apply to both parties

The following are some of the weaknesses of the adversary system of trial:

- the judge's expertise is underutilised
- the complexity of the rules of evidence and procedure may lead to delays
- if one party is in a better financial position they might employ the services of a legal counsel with greater or more in-depth knowledge
- the parties may leave out relevant information/evidence as they are responsible for presenting their own case
- if one of the parties cannot afford legal representation, it means that one's right to defend oneself is not upheld.

- b. ***Two** possible reforms to the adversary system need to be discussed and an explanation of how these reforms would enhance its operation.*

Possible reforms to the adversary system to enhance its operation include:

- greater involvement of the judge
- increased funding for the legal system
- offering more assistance to parties who decide to represent themselves
- simplifying the rules of evidence and procedure
- greater use of alternative methods of resolving disputes.

4 + 4 = 8 marks

Question 12

- a. The statement the Crown wanted a representative jury refers to the notion of the jury being made up of members of the community from different backgrounds and different walks of life. Having a diverse jury means that there should be a broader discussion when they deliberate and this should result in a fairer trial, than if one person tried the case.
- b. *This question is asking students to discuss the extent the jury contributes to the effectiveness of the legal system.*

The following are some of the points that can be discussed:

- using a jury means that we have a fair and unbiased decision maker
- the decision-making process is spread across many shoulders
- it ensures that any person being tried for an indictable offence is being tried by their peers
- juries are also a way of making sure that community views are represented in the court

However:

- juries can add to the length and the cost of a trial – having to explain points of law or clarifying issues relating to the case

It is important that students do not simply list – they will need to state why the jury system can be effective and then state the degree to which it prevents the legal system from being effective.

2 + 6 = 8 marks

Question 13

The first part of this question is asking students to discuss the strengths and weakness of parliament as law-makers. It is important that students do not just list the strengths and weaknesses.

Strengths include:

- one of the advantages of parliament as a law-maker is that submissions can be made in relation to a proposed law.
- parliament is also able to respond quickly to any changes in the law that may be required
- it is also parliament's main role to make laws for the benefit of all Australians
- parliament is elected by the people and therefore one of its key roles is to represent the needs of the people in the law-making process
- law making by parliament provides a forum for debate to occur
- parliament can delegate some of its law-making power

Weaknesses include:

- if members of parliament vote along party lines this means that they may not be representing the views of their electorate
- parliament may be hesitant to change a controversial law, for fear of voter backlash
- the Constitution places limitations on the power of parliament to make laws in some areas
- parliament can only change a law when it is sitting
- parliament has the power to delegate law-making power to subordinate authority, which means that at times these bodies may not be adequately supervised.

*The second part of the question is asking students to discuss **one** of the relationships that exists between parliament and courts.*

The following are some of the relationships that exist:

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- courts interpret laws made by parliament
- parliament can pass acts to codify common law
- parliament can create or abolish courts

10 marks