

LEGAL STUDIES

Unit 1 - Written Examination



2015 Trial Examination

SOLUTIONS

SECTION A : Definitions (10 marks)

Question 1

- a) Indictable offence - A serious criminal offence tried by a judge and jury of 12 before the County or Supreme Court Trial Division e.g. murder is an indictable offence tried in the Supreme Court.
- b) Government - The political party with the majority seats in the lower house of parliament e.g. the Coalition Liberal party has won the right to form government at the Federal level as it has the majority of seats in the lower house of parliament.
- c) Sanction - The punishment handed down by a court for breach of criminal offences e.g. fines for a minor offence, imprisonment for an indictable offence.
- d) Statute - An Act of Parliament e.g. The Crimes Act 1958 Vic.
- e) Warrant - A Court order to search or arrest someone e.g. a warrant issued by the Magistrates' Court to search for stolen goods.

1 mark for each definition. (x 5)

1 mark for each example. (x 5)

10 marks

SECTION B: Short Answer Questions (60 marks)

Question 1

The role of the Magistrates' Court is to hear and determine small civil disputes and less serious criminal offences as well as committal hearings. In its original criminal jurisdiction it hears and determines all summary offences, indictable offences tried summarily, committal hearings for all other indictable offences, issues warrants and determines bail applications. An example of a summary offence is drink driving. A single Magistrate presides over this court.

Examples:

- Original criminal jurisdiction consists of committal hearings for indictable offences such as murder
- Minor crimes or summary offences such as drink driving offences
- Indictable offences tried summarily such as unlawful assault and theft under \$100,000
- Issues search warrants and determine bail applications.

1 mark for the role.

2 marks for the criminal jurisdiction.

1 mark for the example.

4 marks

Question 2

- a) Federal Parliament has a bicameral structure. The Lower House is known as the House of Representatives, and has 150 seats. The Upper House is known as the Senate and has 76 seats, 12 from each state and 2 from each territory. Parliament also consists of the Queen's representative - the Governor-General.

1 mark is allocated for the structure of Federal Parliament.

2 marks are allocated for the composition.

- b) One of the roles of the Legislative Council is that it acts as a house of review which means it scrutinises all bills passed through the lower house i.e. the Legislative Assembly.

- c) The second reading stage of the bill would comprise of the compatibility statement being tabled and the minister or person responsible for the bill outlining the purpose of the Bill before debate commences.

Other steps in the legislative process can be used to answer this question. (except royal assent)

3 + 2 + 2 = 7 marks

Question 3

- VOCAT
- Individual law suits for compensation
- Application to Court for Compensation

Sample answer:

VOCAT:

VOCAT or the Victims of Crime Assistance Tribunal was established in 1996 to allocate financial assistance to eligible victims of crime for expenses incurred to assist in their recovery such as medical costs and counselling. Crime compensation in Victoria can be up to \$100,000. Victims of crime may have been injured in a violent attack, experienced a sexual assault or subjected to a robbery.

Individual law suits for compensation:

Civil law is another option for the victim to try to get compensation from the offender. This is a separate court process to a criminal court case and the victim should seek legal advice before commencing any action because of the associated legal costs.

Application to the Court for Compensation:

If the accused is found guilty of the crime committed against a victim, then victim may be able to claim compensation for injuries, pain and suffering the crime caused, or for the return of stolen property, or to pay for lost, damaged or sold property that belonged to the victim.

2 marks are allocated for the identification and description of each avenue. (x3)

6 marks

Question 4

- a) The elements of murder are: the killing was unlawful, malice aforethought existed, accused was responsible for the victim's death, victim was a human being, accused was of sound mind, the accused was over the age of 10.

2 marks

- b) Either one of the following could be argued by students with sufficient justification: Self-defence, defensive homicide, intoxication. The answer should relate back to the case study for full marks.

2 marks for an explanation of the defence.

2 marks for relating it back to the case study.

4 marks

- c) Fines - this is a monetary penalty unit and is stipulated as levels under the Sentencing Act 1991 Vic.

2 marks

- d) Fines aim to act as both a general and specific deterrence, to stop the wrongdoer from reoffending and to make an example of the offender to discourage others in the community from committing a similar offence.

Fines also aim to punish the offender through monetary penalties leading to a loss of disposable income.

2 marks are allocated for the explanation of each aim. (x2)

4 marks

Question 5

The characteristics of an effective law are:

- the law must be understood and well known
- the law must reflect community values and be accepted
- the law must be able to adapt to change
- the law must be stable and consistent
- the law must be enforceable

Example:

An example of an effective law relates to use of mobile phones whilst driving.

Since 25 November 2013, those caught using mobile phones whilst driving will be fined \$433 up from \$289 and loss of 4 demerit points, up from 3 demerit points. This illustrates how this particular law is enforceable, because a driver distracted by a mobile for even a couple of minutes can cause an accident. It also illustrates how the law is adaptable to change because of technology can be clearly understood by the drivers of motor vehicles.

3 marks for the characteristics of an effective law.

3 marks for the link and explanation to the example.

6 marks

Question 6

- a. The Victorian court hierarchy consists of the Magistrates' Court, the County Court (intermediate court), the Supreme Court Trial Division followed by the Court of Appeal.

This case would be tried in the Supreme Court - Trial Division. Its original criminal jurisdiction is to hear and determine the most serious indictable offences such as murder, before a judge and jury of 12. Its appellate criminal jurisdiction is to hear and determine all appeals on a point of law from the Magistrates' Court. This occurs before a single judge.

1 mark for listing all the courts in the Victorian court hierarchy.

1 mark for identifying the court in which this case would be heard.

1 mark for the outline of its original jurisdiction.

1 mark for the outline of its appellate jurisdiction.

4 marks

b. Students could refer to any one of the following criminal pre-trial procedures with a brief explanation:

- Committal hearings
- Police investigations (police powers and individual rights)
- Bail application and remand

1 mark for identifying the procedure.

1 mark for the explanation.

2 marks

c. i. The victim and their family: The victim would experience physical and psychological issues such as anxiety, physical injuries, guilt and self-blame. The victim's family would have to cope with the consequential care and expenses of the victim depending on the nature of the crime.

ii. The community: The impact on the community is that a crime may raise concerns about public safety. There may be an increasing need to have more resources such as police to cope with the rising crime rate. There could also be a strain on hospitals who need to provide ongoing care to victims of crime etc.

2 marks are allocated for each impact explained with examples. (x2)

4 marks

d. Students should choose any **TWO** of the following aspects or features of our adversarial system of trial and relate these back to the case in terms of their significance:

- independent umpire
- rules of evidence and procedure
- the role of parties
- burden and standard of proof
- the need for legal representation

Example:

The feature of an independent umpire/arbitrator is critical in this case as it is important that the judge or magistrate ensures that there is no preconceived bias towards any of the parties. Also the rules of evidence and procedures are applied equally to both parties in order to attain a just outcome.

2 marks for each feature or aspect of the adversarial system identified and explained.(x2)

4 marks

Question 7

The three reasons for the existence of a court hierarchy can include:

- Specialisation,
- Appeals, and
- Administrative Convenience.
- Doctrine of Precedent

Students will need to explain each reason briefly. (x3)

3 marks

Question 8

The errors in the paragraph are:

1. Cases involving murder and other serious indictable offences are heard and determined before a judge and jury of 12 in the Supreme Court -Trial Division, if the accused pleads not guilty.
2. A single magistrate presides over the Magistrates' Court.
3. If consent is not given, then reasonable force may be used in the case of fingerprints. In the case of a blood sample a Magistrates' Court order would be required.
4. Tyra's lawyer is the defence counsel not the prosecutor.
5. The crime of attempted murder carries the possibility of life imprisonment and NOT a short term of imprisonment as STIPULATED in the scenario.

1 mark for each error identified and corrected. (x4)

4 marks

Question 9

Students can outline the circumstances of an offence with or without a warrant e.g. in a situation where an offender is committing an offence or if the police are trying to apprehend a known offender. The individual's right in relation to this is that the person arrested is entitled to know the reason for the arrest and to be cautioned of his/her rights in relation to any questioning.

Body searches can now be conducted under new laws in The Summary Offences and Control of Weapons Acts Amendment Act(2009 Vic). Students can describe the new laws in terms of individual rights, when they are personally body searched. A person should be free to go about their daily business without interference from the police. A balance must be struck between protecting the community and allowing people to retain their civil liberties.

2 marks for each police power explained with the corresponding individual rights. (x2)

4 marks