

YEAR 12 *Trial Exam Paper*

2016

LEGAL STUDIES

Written examination

Sample responses

This book presents:

- high-level sample responses
- mark allocations
- tips & guidelines

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Question 1**Sample response**

One restriction on the law-making powers of the Commonwealth Parliament is that the Commonwealth can only acquire property from any state or individual if the acquisition is on just terms and for a purpose for which the Commonwealth has the power to make law.

Mark allocation: 1 mark

- 1 mark for outlining one restriction placed on the law-making powers of the Commonwealth Parliament

**Tip**

- *Other sections of the Commonwealth Constitution that could be addressed in this response include s. 80, s. 92, s. 116, s. 117 and s. 128.*

Question 2**Sample response**

Victorian parliament consists of the Crown, with the Queen represented by the Governor; an upper house, known as the Legislative Council; and a lower house, known as the Legislative Assembly.

Mark allocation: 2 marks

- The response will be marked globally. If one aspect of the Victorian parliament is not addressed, the maximum number of marks achievable will be 1 mark.

**Tip**

- *Students must refer to the Crown, the upper house and the lower house in order to gain full marks. A detailed response is not required.*

Question 3a.**Sample response**

One reason why law needs to change is shifting societal values; as the values of the majority of society change, so too must the law. This has been seen in recent times with the establishment of anti-bullying legislation, known as *Brodie's Law*, by Victorian parliament. The majority of society believed that stronger sanctions were necessary to deal with workplace bullying, following the suicide of 19-year-old Brodie Panlock after she was subjected to relentless bullying in her workplace. As a result, Victorian parliament passed a law introducing harsher sanctions for serious bullying, including prison terms.

Mark allocation: 2 marks

- 1 mark for the identification and subsequent explanation of the reasons for change to law
- 1 mark for the provision of an example

**Tip**

- *There are other reasons why law needs to change. Some of these include changing expectations of the legal system, changes in technology, the occurrence of a significant event and changing international relationships.*
- *The example provided must be an actual verifiable example, rather than a hypothetical.*

Question 3b.**Sample response**

Demonstrations can be effective in that they can illustrate the desires of a large group for law reform. Media attention can assist in generating publicity for the cause of a group or a number of groups. However, if a demonstration turns violent or the law is breached, it is less likely that law-makers will respond positively to the demands made.

Mark allocation: 2 marks

- 1 mark for identifying a strength of demonstrations as a means for influencing legislative change
- 1 mark for identifying a weakness of demonstrations as a means for influencing legislative change

Question 4a.**Sample response**

One reason why the Victorian court system is arranged in the form of a hierarchy is specialisation. As particular cases are directed to particular courts, courts have the personnel and resources to handle such cases. Magistrates and judges develop expertise in relation to law, procedures and clientele. For example, magistrates gain expertise in relation to minor offences, and in how to deal with these offenders and with the local community.

Another reason as to why the Victorian court system is arranged in the form of a hierarchy is that it allows for appeals. A party dissatisfied with a court's decision can appeal to a superior court to have the original decision reviewed. For example, a party may appeal to the County Court from the Magistrates' Court on the grounds of conviction and sentence.

Mark allocation: 4 marks

- 1 mark for each correct reason for a court hierarchy (maximum 2 marks)
- 1 mark for providing details associated with the reason (maximum 2 marks)
- Two reasons are required to gain maximum marks

**Tip**

- *There are additional reasons for a court hierarchy that are not addressed in the sample response, such as allowing for the operation of the doctrine of precedent.*

Question 4b.**Sample response**

The Supreme Court of Victoria (Trial Division) has original criminal jurisdiction, in which it deals with the most serious indictable offences, such as murder and manslaughter. In relation to its original civil jurisdiction, it can hear claims for unlimited amounts.

The Supreme Court of Victoria (Trial Division) also has appellate jurisdiction, in which it can hear appeals on the grounds of a point of law from the Magistrates' Court.

Mark allocation: 2 marks

- 1 mark for addressing the court's original jurisdiction
- 1 mark for addressing the court's appellate jurisdiction

**Tip**

- *If a question does not specify 'original' or 'appellate' jurisdiction, the student must address both areas.*

Question 5a.**Sample response**

Bail involves releasing the accused from custody on the provision that the accused will reappear in court when required. Bail can be granted by police, a bail justice, a magistrate or a judge. The accused may be required to deposit a sum of money or other security to ensure that he or she will attend court; the individual may also have to surrender his or her passport, or may have to stay away from witnesses. On occasion, a surety will be required.

In relation to the purpose of bail, it allows the accused to resume his or her daily life and assist in the preparation of their case – thorough preparation leading to a more efficient trial. Bail also upholds the presumption of innocence in that the accused is ‘innocent until proven guilty’.

A committal proceeding will be held in the Magistrates’ Court. All those accused of a serious indictable offence will go through a committal proceeding. At the close of proceedings, the magistrate will either commit the accused to trial or dismiss the matter.

The purpose of a committal hearing is to determine whether the prosecution possesses a *prima facie* case; that is, the prosecution must have enough evidence to gain a conviction at trial. Theoretically, weaker prosecution cases are weeded out and will not proceed to trial. This means that the County and Supreme courts are not burdened with such cases, reducing delays.

Mark allocation: 4 marks

- 2 marks for thorough and accurate details in relation to each process (maximum 4 marks). If there is no reference to purpose, the maximum amount of marks achievable is 2 marks.
- Students are to provide an explanation of each process, incorporating a number of precise details. In addition, there must also be reference to the purpose of each process.

Question 5b.**Sample response**

One other criminal sanction is a community corrections order (CCO). Such an order can be handed down in the Magistrates', County and Supreme courts. It is a flexible order that can be served in the community. A CCO can be handed down if the offence is punishable by five penalty units or more, a fine is not appropriate and the offender has agreed to the order. Distinct terms will be attached to the order, including that the offender must not commit further offences during the order. Also, the order will have at least one condition attached. Conditions can include up to 600 hours of community service work, and treatment for drug and alcohol use.

Mark allocation: 2 marks

- The response will be marked globally. To receive 2 marks, there is an expectation that at least four distinct, precise and accurate details are provided, such as the title of the sanction, the court or courts that can hand down the sanction, and what the sanction actually entails.

Question 5c.**Sample response**

The purpose of civil remedies is to restore the individual to the position he or she was in prior to the infringement of rights. The civil remedy of awarding specific compensatory damages, which address areas such as medical bills and loss of wages, goes some way toward achieving this restoration. However, in some instances, it will be impossible for the infringed party to be fully restored to his or her original position. General compensatory damages, for example, address areas such as pain and suffering, which cannot be accurately calculated.

Mark allocation: 2 marks

- 1 mark for discussing the ability of the civil remedy to achieve its purpose
- 1 mark for discussing the inability of the civil remedy to achieve its purpose

**Tips**

- *For the response to each sub-question, precise detail will distinguish superior answers from inferior answers. However, the student must be aware of time restrictions and should not spend too long on each response.*
- *In response to Question 5b., other sanctions, such as fines, could be addressed.*
- *In response to Question 5c., other remedies, such as injunctions, could be addressed.*

Question 6**Sample response**

When the Commonwealth challenges Victoria's legislation in the High Court, reference will be made to s. 109, as this is an instance of state law clashing with Commonwealth law.

Specifically, the state law would most likely be declared invalid due to it being inconsistent with the Commonwealth's law on marriage. Section 109 states that if a state law is inconsistent with a Commonwealth law, the latter shall prevail and the former, to the extent of the inconsistency, shall be deemed invalid.

Mark allocation: 2 marks

- 1 mark for outlining what s. 109 entails
- 1 mark for applying s. 109 to the hypothetical case

**Tip**

- *Merely outlining what s. 109 entails will be insufficient for full marks. The applicability of s. 109 to the hypothetical case is required.*

Question 7a.**Sample response**

When a new situation comes before a court for which there is no existing legislation or court-made law, the court must make a decision on the matter. The *ratio decidendi* (the reasoning behind the decision) then becomes binding on all lower courts in the same hierarchy.

Similarly, when a court engages in statutory interpretation, the meaning given to the ambiguous terms in the relevant Act will form precedent to be followed in the future by all lower courts in the same hierarchy.

The doctrine of precedent dictates that lower courts are bound by the decisions of higher courts in the same hierarchy (based on the principle of *stare decisis* – ‘to stand by what has been decided’). Decisions of courts at the same level are not binding, but persuasive; only the *ratio decidendi* is binding.

Precedent can also be persuasive in nature. Persuasive precedent can stem from an *obiter dictum* (a statement of the court made by the way), a lower court, or a court from another hierarchy.

Mark allocation: 3 marks

- 3 marks for at least three distinct precise points about the operation of the doctrine of precedent. Students must make reference to ‘statutory interpretation’ to attain the full 3 marks.

**Tip**

- *Content of responses is likely to vary, but strong responses will contain reference to when precedent is created and the ramifications of precedent being created. Excellent answers will contain precise terms such as ‘binding precedent’, ‘persuasive precedent’, ‘ratio decidendi’ and ‘stare decisis’.*

Question 7b.**Sample response**

The doctrine of precedent is somewhat inflexible because lower courts are bound to follow the precedent of superior courts in the same hierarchy. In addition, some judges have shown an unwillingness to move away from established precedent, even if the opportunity exists to do so, as they are conservative in nature and do not see themselves as law-makers.

However, flexibility does exist with the doctrine of precedent. The process of overruling allows for a higher court to override a precedent established by a lower court in a previous case. In addition, courts are able to distinguish cases if they can identify a difference between the facts of the current case and the precedent-setting case. In this situation, the original precedent can be avoided and a new precedent created.

Mark allocation: 3 marks

- The response will be marked globally. Students must discuss how the doctrine of precedent can be both flexible and inflexible.

**Tip**

- *Given the mark allocation, the provision of two processes relating to flexibility will be sufficient. However, the processes will need to be explained in addition to being identified.*

Question 8a.**Sample response**

The role of the jury in a criminal case is to listen to the arguments of the parties, take notes and ask questions of the judge, deliberate in the jury room and ultimately reach a decision regarding the guilt of the accused. In a criminal matter, the jury is given six hours to deliberate, although this time can be extended. In terms of the standard of proof, a criminal jury must be convinced of the guilt of the accused beyond reasonable doubt. In most criminal matters, a majority decision is acceptable. This consists of eleven of the twelve jurors agreeing. However, in matters involving murder, manslaughter, treason and offences against the Commonwealth, a unanimous decision is required. A criminal jury does not determine the sentence of the offender.

Mark allocation: 3 marks

- Multiple precise details on the role of the jury in a criminal case are required. Students will need to provide more than three distinct points in order to achieve the maximum of 3 marks.

**Tip**

- *Distinct and precise points should be provided. The response should go beyond general discussion about the jury's role.*

Question 8b.**Sample response**

One alternative to the jury system that could be introduced is trial by judge alone or by a panel of judges. Judges already operate alone in the Magistrates' Court, and a panel of judges oversee cases in the Court of Appeal.

This alternative, however, would eliminate the involvement of members of the community in the legal system. This would be disadvantageous as citizens would not be educated about judicial processes through their jury duty. Additionally, cases would not be assessed according to the values of the common person, and a range of perspectives would not exist within the courtroom.

Mark allocation: 3 marks

- 1 mark for outlining an alternative to the jury system
- 2 marks for discussing negative ramifications that could stem from it

**Tip**

- *As the question asks for an explanation of the negative effects, greater emphasis must be given to the negative ramifications of the alternative than to the description of the alternative.*

Question 9

Sample response

An advantage of parliament as a law-maker is that it is representative of the community. MPs are elected by the people for the people, and laws are intended to reflect the values of the majority of society. For example, former Victorian premier Ted Baillieu promised to address the criminal sanction of suspended sentences by passing legislation through the state parliament. This was a direct response to the view of many in the community that the sanction was a soft option.

However, parliament will often not legislate on controversial issues due to fear of political backlash, as MPs are concerned about the possibility of losing their seats. Up until 2008, this had historically been the case with abortion in Victoria, with abortion only possible due to the Menhennitt ruling of 1969. Same-sex marriage and the decriminalisation of marijuana are similarly controversial issues that legislators are loath to touch.

Another advantage of parliament as a law-maker is that it can thoroughly investigate issues. Parliament is able to use formal law-reform bodies to undertake research into areas of possible change and to make recommendations. In the past, the Victorian Law Reform Commission (VLRC) has investigated defences to homicide (and ultimately recommended the abolition of provocation) and the directions given to juries, among other issues.

Unfortunately, such investigations can be time-consuming, and many years may pass before the legislation is actually implemented. The VLRC was given its reference to investigate assisted-reproduction technology in 2002; however, law addressing same-sex couples' access to IVF treatment was not passed by Victorian parliament until 2008.

Despite being wary of legislating on controversial issues, and the time-consuming nature of investigation and implementation of legislation, parliament's ability to act in a representative way and thoroughly investigate entire areas is a significant advantage.

Mark allocation: 6 marks

- 3 marks for the evaluation of each strength provided in the stimulus statement
- A concluding statement is also required; if there is not an overall comment at the conclusion of the response, 5 marks is the maximum that will be awarded.



Tip

- *This question requires an **evaluation** of both advantages of parliament provided in the stimulus statement. This means that both the strengths and the weakness of these particular aspects of parliament must be addressed, followed by a brief conclusion.*

Question 10

Sample response

One feature of the inquisitorial system that could potentially enhance the adversary or adversarial system of trial is the more active role of the judge. The judge could have a greater role in proceedings, as is the case in France, where the *juge d'instruction* is heavily involved in the field, working with police during their investigations. In addition, the judge could ask questions and call witnesses during trial. While some argue that the judge would no longer be an uninvolved observer, and this could lead to the judge being seen as biased towards one side, greater judge involvement has already been seen in directions hearings and judge-led mediation. It is likely that the truth of the matter would be revealed with a more active judge.

Another feature of the inquisitorial system that could be incorporated into the Australian legal system is less stringent rules of evidence and procedure. This possible reform could involve greater use of written statements, with less emphasis on oral testimony. For example, medical evidence could be tendered in written documents. Therefore, a medical expert would not need to attend trial. Written statements are already often used during committal proceedings with the hand-up brief approach. The greater use of written statements could save time at trial, and subsequently money.

Mark allocation: 5 marks

- This response will be marked globally. Each paragraph requires discussion of a feature of the inquisitorial system, an explanation of how that feature would operate within the Australian legal system, and a focus on the advantages that would ensue from the incorporation of that feature.



Tips

- *Students must ensure that they provide reference to the **advantages** that would stem from the incorporation of the particular features of the inquisitorial system that they choose to discuss. Identifying features alone will not be enough to attain full marks.*
- *This question has been allocated an odd, rather than even, number of marks. In recent VCAA examinations, an odd number of marks (such as 3 marks, 5 marks or 7 marks) has been allocated to certain questions. In order to address these questions, it is recommended that the student mentally round the mark allocation up to an even number to make answering the question easier.*

Question 11**Sample response**

VCAT holds a number of advantages over the courts in the way it operates to resolve disputes.

VCAT provides a service that is accessible, compared to that provided by the courts. Legal representation is not necessary and the application fee for many disputes is minimal: \$55.60 for small civil claims under \$500. Disputes are generally resolved in a timely manner, with the extensive pre-trial procedures associated with court action not required, and many hearings completed within a day. In addition, VCAT is based in Melbourne (at 55 King Street), accessible by public transport, and it can sit throughout Victoria, including in regional centres such as Ballarat.

However, concerns have been expressed in recent times that VCAT is becoming increasingly expensive and could ultimately become inaccessible to the common citizen. The use of lawyers is becoming more frequent within VCAT and has been particularly evident in the Planning and Environment List. This increased presence comes at a financial cost. Additionally, VCAT fees increased markedly in 2015, with a claim to the Residential Tenancies List involving an amount up to \$500 costing \$55.60; in 2012, a claim of up to \$10,000 cost only \$37.90.

Another advantage of VCAT in resolving disputes is that it has a significant degree of expertise. VCAT possesses distinct lists that address particular matters. For example, the Civil Claims List deals with consumer disputes, the Residential Tenancies List deals with disputes between landlords and tenants, and the Anti-Discrimination List deals with disputes between individuals over alleged discriminatory practices.

That said, VCAT is limited in the types of cases it can hear. It cannot resolve criminal disputes and it is not recommended for cases involving substantial claims.

Finally, the informality of VCAT is a strength. There is an absence of the strict rules of evidence and procedure associated with the courts and the VCAT member does not wear a wig or robes. The hearing is conducted in a manner that is respectful, but clear for all parties concerned. During the matter, the VCAT member actively engages with the parties in dispute and there is the hope that the parties will settle the matter between themselves.

However, if there is animosity between the parties, VCAT may not be the ideal institution to resolve a civil dispute. In this case, the formality of a court, with stricter rules of evidence and procedure, and the presence of a magistrate or judge, is more likely to ensure that both parties are treated fairly and have equal opportunity to present their cases.

Despite rising costs and restrictions to the kinds of cases VCAT is able to hear, it still provides an accessible and relatively informal alternative to the courts for disputing parties – in particular, for those requiring the degree of expertise offered by VCAT's distinct lists.

Mark allocation: 6 marks

- A range of structures could be established to respond to this question. Students may analyse either two strengths of VCAT in depth or three strengths of VCAT in lesser detail.
- If two strengths are assessed, a maximum of 3 marks will be allocated to each.
- If three strengths are assessed, a maximum of 2 marks will be allocated to each.

**Tip**

- *The question asks students to analyse the extent to which VCAT holds advantages over the courts in the way it operates to resolve disputes, strong responses will therefore also address some of VCAT's limitations.*

Question 12

Sample response

Delays have an enormous impact on individuals using the legal system, jeopardising the possibility of a fair and unbiased hearing and preventing the timely resolution of disputes. Witnesses may forget events, or even die, prior to the case coming to trial; jurors may also forget crucial pieces of evidence due to the extended duration of the trial. Moreover, access to dispute-resolution mechanisms are restricted as a result of delays, and the legal system's inability to resolve disputes efficiently has contributed to a backlog of cases. According to Chief Justice Marilyn Warren, some years ago there were 500 appeals waiting to come before the Court of Appeal due to this backlog.

High costs also have a significant impact on individuals using the legal system. If an individual is unable to afford adequate legal representation, they will not be in a position to enforce their rights. High costs can also restrict the timely resolution of disputes; parties who are unrepresented due to high costs may be unfamiliar with the law and court processes, and this unfamiliarity could cause delays. Finally, an unrepresented party will risk not having a fair and unbiased hearing due to their lack of expertise and may plead guilty in a criminal matter in order to expedite proceedings.

A reform that has been recently recommended by a number of sources is the abolition of committal proceedings. The abolition of committal hearings would eliminate much of the delay between when an accused was charged and when the trial was heard, allowing for criminal disputes to be resolved in a timely manner. This would enable the Magistrates' Courts to carry out their other work, resulting in increased access to dispute-resolution mechanisms.

Another recent reform that will enhance the operation of the legal system is extended hours for VCAT. A four-week pilot program was undertaken in late 2010 involving twilight sessions, held between 4.30 p.m. and 7.00 p.m. on Thursday evenings at the Neighbourhood Justice Centre in Collingwood. Civil claims and residential tenancy claims were heard during these sessions.

Twilight sessions are user-friendly for workers, creating opportunities for parties in dispute to resolve matters without having to take time off work. Due to the efficient nature of VCAT hearings, which have less emphasis on strict rules of evidence and procedure, more disputes can be resolved in a timely manner. These sessions have enhanced access to dispute-resolution mechanisms, creating greater opportunities for hearings to be held.

Mark allocation: 8 marks

- 2 marks for each detailed explanation of the impact of a problem faced by individuals in using the legal system (maximum 4 marks)
- 2 marks for each detailed explanation of a reform that aims to address the stated problems (maximum 4 marks)

**Tips**

- *When discussing the impact of particular difficulties, students are advised to incorporate key terms associated with the elements of an effective legal system, such as 'fair and unbiased hearing'.*
- *When discussing recent and/or recommended reforms, students must reference an actual recent or recommended reform; students are not to propose their own reform.*
- *Multiple precise details regarding the reform will be rewarded.*

Question 13

Sample response

The High Court has been important in changing the division of law-making powers and, to some extent, in clarifying the rights of Australians.

Undoubtedly, the High Court has had an impact on the division of law-making powers. One case in which the Commonwealth's powers were increased by the High Court was *R v Brislan* (1935). The Commonwealth had passed the *Wireless Telegraphy Act 1905* and, as a result, Dulcie Williams was charged with owning a wireless without a licence. When the Commonwealth's ability to pass such a law was subsequently challenged in the High Court, it was ruled that under s. 51 (v) – 'postal, telegraphic, telephonic and other like services' – the Commonwealth could make laws on wireless sets, thus increasing the Commonwealth's law-making power.

Another case in which the Commonwealth's powers were increased by the High Court was the Tasmanian Dam Case of 1983. The Commonwealth had entered into an environmental protection treaty and, as a result, the Franklin and Gordon Rivers area of Tasmania had been placed on the World Heritage List. The Tasmanian Government wished to build a dam in the area, but the Commonwealth acted to prevent this by passing the *World Heritage Properties Conservation Act 1983* (Cth) under the external affairs power, outlined under Section 51 (xxix) of the Constitution. The Tasmanian Government challenged the validity of this law in the High Court, arguing that the Commonwealth was interfering with a residual area. The High Court ruled that the Commonwealth law was valid, as it was acting to fulfil a treaty obligation. Therefore, the Commonwealth's powers increased – it could legislate in residual areas if fulfilling treaty terms.

However, it should be noted that the High Court can only change the division of powers when a relevant case is brought before it. This requires parties who are willing to spend the time and money to take the matter to court.

The High Court has also played a role in clarifying the rights of Australians. Specifically, the High Court has shown the capacity to develop implied rights that exist within the Commonwealth Constitution. These are not explicitly outlined in the Constitution, but are developed as a result of High Court interpretation: the High Court justices giving consideration to the intentions of the founding fathers when they drafted the document. One implied right has been developed in Australia: the right to freedom of political communication.

The Political Advertising Case (1992) established the right to freedom of communication on political matters. In this case, the validity of the *Political Broadcasts and Political Disclosures Act 1991* was challenged by a television broadcaster. This law banned political advertising on television and radio during Commonwealth, state and local elections. The High Court had to determine whether the law was valid. In doing so, it had to decide whether there was an implied right to freedom of speech on political matters and, if so, whether the new law infringed upon this implied right. The High Court ruled that the law was invalid and that there was an implied right to freedom of political communication in the Constitution, stemming from the principle of representative government. In order to make an informed vote, freedom of political communication was deemed essential.

Roach v Electoral Commissioner (2007) was another case that clarified the rights of Australians. Prisoner Vickie Lee Roach was involved in a legal challenge against Commonwealth law that prohibited all prisoners from voting in elections. It was argued that the Constitution provided a right to vote in s. 7 and 24, which related to members of the Senate and the House of Representatives being elected by the people. Subsequently, it was argued that any law that took away the ability to vote was unconstitutional. The High Court

ruled that the Commonwealth's prohibition on all prisoners voting was invalid. However, it ruled that previous law, which prevented prisoners serving more than three years in jail from voting, was valid. Therefore, a limited right to vote was established.

However, as with the division of law-making powers, a matter must be brought before the High Court in order for rights to be developed.

Mark allocation: 10 marks

There are multiple approaches to addressing this question. That said, equal weight is to be given to addressing the High Court's role in relation to the division of law-making powers and the High Court's role in relation to rights.

- 5 marks for a detailed discussion of the High Court's role in relation to the division of law-making powers
- 5 marks for a detailed discussion of the High Court's role in relation to rights



Tips

- *Multiple approaches could be utilised in addressing the question. Students must ensure that all demands of the question are addressed, a clear structure is established and precise detail is incorporated.*
- *The task word 'discuss' requires that two sides to an issue or concept be addressed; students should keep this in mind when formulating their response.*

END OF SAMPLE RESPONSES