



Legal Studies 2018

Assessment Guide

Section A

VCAA Key Knowledge

Question

Answer guide

Determining a criminal case

The role of institutions available to assist an accused, including Victoria Legal Aid and Victorian community legal centres.

Question 1 (1 mark)
Outline the role of Victorian Legal Aid.

Answer:

- *Role ensures that socially and economically disadvantaged Victorians are provided with legal assistance on an equitable basis including legal advice and representation to people charged with offences.*

Marking protocol:

One mark for the above point.

Key concepts in the Victorian criminal justice system, including:

The presumption of innocence.

Question 2 (2 marks)
Explain how the presumption of innocence achieves one of the principles of justice.

Answer:

- *The presumption of innocence is the notion that a person accused of committing a crime is presumed innocent until proven guilty in a court of law. This is an essential right outlined in Victorian Charter of Human Rights and Responsibilities.*
 - *Innocent until proven guilty, reinforces the key principle of fairness, where each person has the right to procedural fairness and a lawful hearing. This is where the burden of proof lies with the prosecution to prove the charge to the standard of proof, beyond all reasonable doubt.*
- OR
- *Presumption of innocence reinforces principle of fairness: where each person has the right to time out of custody on bail so they can better prepare their case as they are presumed innocent until proven guilty. This allows the charged person to return home, unless denied with good reason, to return to their normal lives ensuring procedural fairness.*

Marking protocol:

One mark for defining presumption of innocence, as per the first dot point.

One mark for explanation of how presumption achieves stated principle, as per the second or third dot point.

Robert Cavallo, a farmer, has successfully sued his neighbour in the Supreme Court for losses caused by negligent spraying. A mix of toxic chemicals flew across Robert's vineyard and destroyed his crops in Northern Victoria.

The reasons for a Victorian court hierarchy in determining civil cases, including administrative convenience and appeals.

Question 3a

(2 marks)

Explain how a court hierarchy allows for administrative convenience when determining civil disputes.

Answer:

- *Using a court hierarchy allows cases to be distributed according to their seriousness and complexity. By courts allocating their resources they can achieve an efficient resolution. This is known as administrative convenience.*
- *This results in reduced delays in courts, as less serious, minor cases do not have to wait for lengthier civil cases. Higher courts can allocate time to longer, complicated cases as seen in above scenario that would most likely be heard in the Supreme Court.*

Marking protocol:

One mark for defining administrative convenience, as per the first dot point.

One mark for explanation/ purpose of administrative convenience, as per the second point.

The purposes of civil pre-trial procedures

Question 3b

(2 marks)

Explain **one** pre-trial procedure that would have assisted in the preparation of this case for trial.

Answer:

- *Pleadings*
- *These are fundamental in providing the court and Mr. Cavallo with details of the legal and factual claims. It involves Mr. Cavallo and the defendant filing and exchanging a series of documents (such as a writ and statement of claim) which set out and clarifies the claims and defences of the parties, as well as the exact issues that are being disputed.*

Other possible answers could include:

- *Directions hearings*
- *These are conferences conducted by the trial judge with the aim of speeding up the process of getting to trial by giving the Mr. Cavallo and his neighbour with instructions and time limits regarding the future conduct of the case. Parties also have an opportunity to clarify any legal issues whilst courts get a clearer picture of the state of the dispute and can allocate resources more efficiently.*
- *Discovery*
- *This is concerned with raising questions of fact and allowing Mr. Cavallo and the defendant to obtain further information about the dispute from the other party thereby speeding up the resolution of the dispute. Each party makes educated choices about conduct and dispute resolution based on the strength of evidence.*
- *Mediation*
- *This is generally a compulsory civil pre-trial procedure. It would involve Mr. Cavallo and the defendant coming together to cooperatively try to resolve their dispute and reach a decision themselves, with the support of an independent third-party facilitator (called a mediator).*

Marking protocol:

One mark for identification of pre-trial procedure.

One mark for explaining the purpose of pre-trial procedure that would have assisted Mr. Cavallo's preparation for court.

Question 3c

(2 marks)

Discuss **one** possible
remedy for Mr.

Cavallo that may
have been awarded
by the court and its
purpose.

Answer:

- *Mr. Cavallo may be awarded compensatory damages which is a sum of money with the purpose of compensating the plaintiff for harm or damage suffered (equivalent to the value of their loss).*
- *This will include specific compensatory damages that can be easily calculated to an exact amount. For example, Mr. Cavallo's loss of income.*

OR

- *Mr. Cavallo may be awarded general compensatory damages for his pain and suffering.*
- *This is not as easily calculated, but awarded for losses that the court will assess. For example, Mr Cavallo's lifestyle changes and loss of enjoyment of life.*

OR

- *Mr. Cavallo could take his matter to court to seek a court injunction to force the defendant to stop causing harm (restrictive injunction) or to do something to rectify the harm caused (mandatory injunction).*
- *In Mr. Cavallo's case, this can serve the purpose of ordering the defendant to perform concrete actions to rectify the crop damage or prevent the harm from continuing or occurring again.*

Marking protocol:

One mark for definition of remedy.

One mark for an explanation of the purpose of the remedy.

The responsibilities of key personnel in a civil trial, including the judge, jury, the parties and legal practitioners

The responsibilities of key personnel in a criminal trial, including the judge, jury, parties and legal practitioners

Question 3d

(4 marks)

Compare the role of a civil jury with that of a criminal jury.

Answer:

- *In a Victorian criminal trial, a jury of twelve people (only empanelled for serious indictable offences) are summoned to court to decide on the evidence in a case and reach a verdict (guilty/ not guilty) to the standard of proof beyond all reasonable doubt.*
- *In Victorian civil trials (as in Mr. Cavallo's trial), the jury is made up of six people who are summoned to court and empanelled to decide on the evidence in a case and reach a verdict (liable/not liable) on the balance of probabilities.*
- *Importantly, the jury in both civil and criminal trials are required to put aside any personal prejudices or pre- conceived ideas so that they can return an unbiased and impartial decision in favour of the plaintiff or defendant in a civil case or the prosecution or defence in a criminal case.*
- *Juries will take part in deliberations and attempt to reach a unanimous verdict of guilty or not guilty in criminal trials. If it is not possible after six hours of deliberation, a majority verdict (11 out of 12 jurors) can be accepted in most instances (other than murder, treason and drug trafficking of commercial quantities).*
- *The civil jury will also partake in deliberations and is responsible for deciding the outcome of the case. In doing this, the jury must also first try to reach a unanimous verdict. (However, if this is not possible after three hours of deliberation, a majority verdict (5 out of 6 jurors) can be accepted).*
- *Significantly, different to a criminal jury, where the judge will sentence the accused as the most experienced person in the room, if a civil jury has reached a decision in favour of the plaintiff the jury is responsible for deciding the amount of damages to be awarded to the plaintiff and paid by the defendant (unless the case concerns defamation law or the plaintiff requested a remedy other than damages).*

Marking protocol:

Two marks for identification and explanation of role of criminal jury, as per any of the first three points, to a maximum of two.

Two marks for identification and explanation of role of civil jury, as per any of the last three dot points, to a maximum of two.

Note: The task word should be taken into consideration. Comparison words such as 'similarly', 'in differentiation to', 'in contrast to' should be used to show the examiner you have addressed the question.

The means by which the Australian Constitution acts as a check on parliament in law-making, including:

The requirement for a double majority in a referendum

Question 4 (2 marks)

Explain how the double majority provision in a referendum acts as a check on parliament in law-making.

Answer:

- *Section 128 requires that the majority of voters (more than half), plus the majority of voters in the majority of states (four of six) say 'yes' to the referendum proposal. (This requirement is very difficult to achieve).*
- *A referendum proposal requires the people to approve any change to the constitution and thereby the provision acts to check parliament's powers. It requires the public to be convinced of any amendment that may increase the Commonwealth's powers or decrease legislative restrictions or protection of rights.*
- *(In Australia's history only 8 successful referendums out of 44 proposals has occurred, demonstrating that the people can stop the legislature from receiving the power it desires).*

Marking protocol:

One mark for a definition of double majority provision, as per the first dot point.

One mark for explaining how the provision acts as a limitation on parliament's law making powers, as per the second point.

The significance of section 109 of the Australian Constitution

Question 5 (4 marks)

The Marriage Amendment (Definition and Religious Freedoms) Act 2017 has recently been passed by parliament which redefines marriage as 'the union of two people to the exclusion of all others, voluntarily entered into for life'.

Explain to what extent s.109 of the Commonwealth Constitution acts as a restriction upon this Act. In your answer, reference the Marriage Amendment Act.

Answer:

- *The Marriage Amendment Act 2017 is an example of a concurrent law-making power. That is, specific powers that have been given to the Commonwealth parliament to legislate upon, but have not been made exclusive. Hence, Concurrent powers are shared powers, where both the commonwealth and state parliaments both have the authority to pass laws.*
- *s.109 is the mechanism which resolves disputes between areas of inconsistent law, made by Commonwealth and state parliament and restricts states to a certain extent.*
- *In relation to the Marriage Amendment Act, if a state makes a law that is inconsistent with the Commonwealth law e.g.: attempts to criminalise same sex marriage, and that law is challenged in the High Court, those parts of the state law that are inconsistent will be invalid or declared void. This may act as a restriction because it means that in areas of concurrent power, the state may not make laws where the Commonwealth has already established a law, as it will risk being declared invalid. Furthermore, if the law is challenged in the High Court, and those sections of the state Act are declared void, the state will no longer be able to expand on those sections of the Act.*
- *However, s.109 only impacts those laws in areas of concurrent powers. s.109 has no impact or restriction upon laws made in areas of residual powers; therefore, the states are free to make laws freely within their residual law-making ability. s.109 will only act as a restriction if the law is challenged and thus the states are free to make laws even if the Commonwealth has a law already in place.*

Marking protocol:

One mark for each of the above points.

The significance of one High Court case interpreting sections 7 and 24 of the Australian Constitution.

Question 6 (5 marks)

Using **one** High Court case, discuss the significance of the court's interpretation of section 7 and 24 of the Commonwealth Constitution.

In your answer, discuss the extent to which the High Court can change the Commonwealth Constitution.

Answer:

- *Section 7 of the Constitution states that "the Senate shall be composed of senators for each State, directly chosen by the people of the State..." Section 24 of the Constitution states that "the House of Representatives shall be composed of members directly chosen by the people of the Commonwealth..."*
- *Vicki Lee Roach, convicted on numerous offences and sentenced to six years imprisonment, questioned the validity of amendments made to the Electoral Act. These changes prohibited all prisoners who were serving a sentence of imprisonment from voting in federal elections.*
- *The High Court decision was influential in its impact in protecting Australians' rights as it held that the complete ban on voting for all prisoners was invalid and unconstitutional, as it was inconsistent with the principle of representative government (that representatives must be directly chosen by the people as per section 7 and section 24). However, the court recognised that the right to vote could be restricted in limited circumstances to preserve representative government, such as for prisoners serving more than three years.*
- *Thus, the 2006 amendment was declared invalid, however, the High Court declared that the right to vote **could be** removed for serious criminal misconduct, but not for minor offenders. Vicki Lee Roach, serving more than three years, was still unable to vote in the 2007 election.*
- *The decision of the High Court impacted rights protection as it affirmed the constitutional right to vote for adult members of the Australian community, protected by the structure of representative government. Whilst the court did not go so far as to call the right to vote an implied right, this right is a reflection of structural protection.*

Marking protocol:

One mark for each of the points made above.

Question 7 (6 marks)

A legal writer recently commented:

“The Victorian Civil and Administrative Tribunal (VCAT) is a far better means of resolving civil disputes in comparison to Consumer Affairs Victoria (CAV).”

Discuss the extent to which you agree or disagree with this statement.

Answer:

- CAV is a Victorian Government body responsible for regulating Victorian consumer affairs. It aims to educate consumers and business on consumer protection legislation, investigate complaints for consumers, and can take enforcement action in courts against traders and landlords for breaches. CAV's other responsibilities include taking compliance action against traders who engage in misleading or deceptive conduct or breach safety legislation. Also, the body is responsible for regulating the real estate industry in Victoria and for investigating building compliance.
- CAV resolves disputes via conciliation and tries to preserve ongoing relationships between parties, despite the dispute. The provision of advice and processes to consumers and tenants for contacting traders and landlords assists less-educated consumers to achieve equality in their attempts to resolve disputes independently.
- On the contrary, there are a number of matters where CAV may be an inappropriate avenue of civil dispute resolution (as it would lack the knowledge and resources to do so). Additionally, CAV is likely to be inappropriate in civil cases where there is already great hostility between the parties. In such civil matters, conciliation is unlikely to be successful and an adversarial approach used by another dispute resolution body is likely to be more effective in resolving the dispute.
- VCAT is an independent tribunal established as an avenue of dispute resolution that is easily accessible to people in the community, using informal processes that are easy to understand and accessible. The tribunal aims to provide low cost proceedings and timely resolution of disputes. The decisions of the tribunal are binding on the parties and can be enforced through the courts.
- In many civil cases, VCAT is an appropriate avenue for dispute resolution, including those regarding discrimination and equal opportunity, residential tenancies and retail tenancies, building and construction, credit and consumer affairs. It is also generally appropriate for VCAT to hear civil disputes where the parties to the case require the dispute to be resolved promptly and cheaply, given the fact that VCAT tends to provide for more cost effective and timely civil dispute resolution in comparison to the courts. Furthermore, the informality of VCAT makes it appropriate to hear civil disputes where the parties to the matter may be especially prone to being intimidated by court proceedings.
- Nevertheless, it is inappropriate for VCAT to hear certain types of cases. Due to its jurisdiction, VCAT cannot hear any criminal law matters. Arguably, VCAT may be inappropriate in hearing matters involving lengthy and complex evidences and questions of law, as these matters are more likely to be appropriately handled by the courts, which have the legal expertise and time to hear such cases.

Marking protocol:

One mark for each of the points made above.

Reasons for law reform

The ability and means by which individuals can influence law reform including through petitions, demonstrations and the use of the courts

The role of the Victorian Law Reform Commission and its ability to influence law reform

One recent example of the Victorian Law Reform Commission recommending law reform

The ability of parliament and the courts to respond to the need for law reform.

Question 8

(10 marks)

"Pressures to change the law can come from formal and informal means. Sometimes parliament does not act efficiently and effectively."

Discuss this comment. In your discussion, explain how **one** formal law reform body can attempt to respond to the need for change.

Suggested answer:

- Pressures to influence a change in the law come from formal law reform bodies such as the Victorian Law Reform Commission (VLRC), as well as individuals and groups that attempt to influence legislative change through means such as petitions and the media.
- The VLRC is crucial in gauging society's values and recommending a need for change in the law, however, the Victorian Parliament can function without the VLRC as its main role is to effectively respond to the need for change, protect society and to make laws for and on behalf of the people to keep it functioning.
- Law making on behalf of the community is the primary role of parliament. Changes within the law occur for different reasons, such as advances in technology, changing values in society, or for greater need for protection of the community. For example, changing values and attitudes in the community have been reflected in laws. An example of this is the Marriage Amendment Act 2017.
- Sometimes parliament fails to respond adequately to a need for a change to a law and may require the assistance of a formal body such as the VLRC, however, ultimately parliament is a very effective law-maker.
- One strength of parliament is that it is able to involve the public in law-making. Individuals and groups may use petitions, demonstrations and the media to alert parliament to a need or desire for legislative change. For example, advocacy groups such as GetUP use e-petitions to enable people to express their views on an issue. Parliament has a standing committee, which ensures that all valid petitions are addressed by parliament.
- As parliament is democratically elected, it is expected that parliament will legislate to reflect the majority of the people because if it doesn't, those in power risk being voted out in the next election.
- However, it is not always possible for parliament's actions to reflect the views of the community because there may be conflicting values over contentious issues (such as assisted dying) and in this way, parliament may not adequately respond to a need for change in the law.
- Parliament can make a comprehensive law on a whole legal issue and this can be seen as a strength of parliament as a law maker. Parliament is well-resourced to investigate the need for changes in the law through its government departments and formal law reform bodies (such as the VLRC).
- Once parliament becomes aware of a need for legislative change, it may via the attorney-general refer a legal issue to the VLRC for investigation. The VLRC will then consult experts in the relevant area and seek submissions from interested parties in the community to gauge their needs, and report their recommendations to parliament. Parliament is then well-positioned to make a comprehensive law.
- One such comprehensive law was the Access to Medicinal Cannabis Bill which was introduced into parliament in December 2015 and was passed in April 2016, where parliament acted on the advice of the VLRC and accepted all 40 of the VLRC's recommendations on legalising medicinal cannabis. However, it is important to note that parliament is not required to implement the recommendations of formal law reform bodies, and in this way, the Victorian Parliament could function without the assistance of the VLRC (although its recommendations can be vital in assessing the need for change).
- While parliament is a supreme law-making body, in that its primary role is to make or amend laws whenever the need arises, it is sometimes impossible for parliament to legislate to keep up with changes in society.

Parliament is not always in session, and investigations of legal issues and the legislative process is time consuming. However, these lengthy processes provide the opportunity for debate, which lessens the chances of unjust, or inadequate laws being passed, and in this way, increases parliament's effectiveness in assessing the need for change in the law.

- *There are numerous reasons why laws may need to change. Parliament effectively responds to this need however there are also numerous weaknesses which hinder change in the law. In these instances, the VLRC and individuals using informal means is a valuable method to investigate community opinion and to make recommendations to parliament.*

Marking protocol:

This answer is globally marked (i.e. an overall mark is awarded for the entire answer). The following criteria could be used to assess a response:

9-10 High	• All elements of the question addressed. • A very high-level evaluation of parliament as a lawmaker including both formal and informal methods of influencing change in the law. • Response makes reference to an example from the past four years.
5- 8 Medium	• Some elements of the question addressed, which shows a good understanding of concepts. • Evaluation of parliament and formal and informal methods is good, but may lack clear links to examples or how these bodies influence a change in the law.
1-4 Low	• Few elements of the question addressed, which shows only basic understanding of concepts. • Little to no evaluation of either parliament or formal or informal methods of influencing change to the law. Student lists basic ideas in relation to this, without linking to examples from past four years.
0 No score	• Response does not demonstrate any understanding of the concepts.

Section B

Use the following information to answer Questions 1-4.

John Walsh has been charged with intentionally reducing a person to slavery. He told his wife that one of his friends had killed their partner and assured her that he could do the same, the Melbourne Magistrates' Court heard in pre-trial proceedings. This cautioning prompted John's wife to flee to her neighbour's house and use their phone to call the police.

John is accused of mistreating his wife from the day they met, with police alleging he immediately instructed his wife to cook and clean. He is also accused of physically, verbally and sexually abusing his wife, who allegedly survived on little more than bread and butter. She was not allowed any money and was provided little food. John's wife quickly learnt that her husband, with no prior convictions, suffered from untreated bipolar mood disorder and was deprived from proper education. On the advice of his lawyer and showing some remorse for his actions, John pleaded guilty to his offence. Under the Sentencing Act 1991 (Vic) the judge considered multiple factors when deciding an appropriate sanction.

The purposes of committal proceedings

Question 1a

(4 marks)

Explain the purposes of committal proceedings and how they assist the courts and the accused.

Answer:

- *The main purpose of committal proceedings is to determine whether there is a prima facie case. In John's case the Magistrate would need to determine if there was sufficient evidence to support a conviction in a superior court by a properly instructed jury at trial.*
- *Committal proceedings also act to inform John (the accused) of the case against him. In proceedings, he is given all evidence collected by the police (witness statements and exhibits). The accused can then make a decision about the strength of the case and can consider the prospects of defending charges or pleading guilty at an early stage (discounted sentence).*

Committal proceedings improve efficiency of the courts and benefit the accused as:

- *Weak cases do not proceed as they are eliminated at the committal stage.*
- *John avoids delays and the expense of defending a weak case if there is insufficient evidence to proceed.*
- *The Magistrate may simplify John's charges or dismiss charges that do not have sufficient evidence to support a conviction.*
- *If there is insufficient evidence in John's case the police have an opportunity to investigate further, and bring new charges if better evidence emerges, rather than having a not guilty verdict and having limited opportunity to bring charges again (double jeopardy).*
- *John's committal proceedings will require the prosecution to prepare and assess evidence in a timely manner. This ensures the speedy preparation of the prosecution's case while evidence is fresh and reliable, reducing delays for John and ensuring witness testimony is accurate. This contributes to a fair hearing for the accused.*

Marking protocol:

Two marks for description of two purposes of committal hearings, as per the first two dot points.

Two marks for two dot points on how committal proceedings improve efficiency of the courts and benefit the accused.

Note: Responses should relate directly to the stimulus material. Ensure that the answer incorporates the particulars of the case study.

The purposes and appropriateness of plea negotiations and sentence indications in determining criminal cases

Question 1b

(2 marks)

Distinguish between a plea negotiation and a sentence indication, in relation to John's case.

Answer:

- *Plea negotiations are private conversations between John (the accused) and the prosecution, discussing the appropriate charges, the reliability of evidence and the likely sentencing consequences if John pleads guilty. John may find that the number of charges are reduced if he is willing to enter a guilty plea.*
- *While both are pre-trial procedures, a sentence indication from the Magistrate will provide John with information about the likely sentence he will face if he decides to plead guilty. In John's case, the court must take into account at what stage a guilty plea is entered. Similar to plea negotiations, sentence indications save time and resources and can assist the accused.*

Marking protocol:

One mark for each of the above points.

Factors considered in sentencing, including aggravating factors, mitigating factors, guilty pleas and victim impact statements

Question 1c

(3 marks)

Explain the desirability of entering a guilty plea for both the accused and for the criminal justice system.

Answer:

- *After looking at the facts of the case, the evidence and the outcome of similar cases, John's lawyer may have concluded that John is highly likely to be found guilty of the offence. In this scenario, John has pleaded guilty, showing signs of remorse and taking ownership of his actions. This may result in a less severe sentence by the judge.*
- *John benefits because they are entitled to a greater discount from the sentence they would have otherwise received, and also benefit by reducing their legal costs of defending a charge.*
- *The courts benefit because time and resources are freed for other contested matters.*

Other possible answers could include:

- *Office of Public Prosecutions (OPP) benefit, by reducing the amount of time and expense of preparing a prosecution case.*
- *Witnesses and victims benefit by not having to appear and give evidence under cross examination at a contested trial.*

Marking protocol:

One mark for each of the three dot points above.

Factors considered in sentencing, including aggravating factors, mitigating factors, guilty pleas and victim impact statements

Question 1d

(2 marks)

In determining an appropriate sentence to be imposed on the offender, a court must consider a number of factors. Outline **one** factor that can mitigate a sentence and **one** that can aggravate a sentence in John's case.

Answer:

- *One aggravating factor in John's case, that increases the seriousness of the crime and his culpability is his pre-meditation or pre-planning of his crime.*
- *One mitigating circumstance, which lessens the gravity of John's offence and will be taken into consideration in sentencing is John's upbringing, such as his lack of education.*

Other possible answers could include:

Aggravating factors:

- *Committing the crime as part of a group against an outnumbered victim.*
- *Use of a weapon.*
- *A breach of trust by the offender towards the victim.*
- *Cruelty of the crime.*

Mitigating circumstances:

- *The age of the offender.*
- *Previous good character of the offender.*
- *The remorse shown by the offender for the crime.*
- *Whether imprisonment would be particularly hard on the offender.*
- *Mental Illness.*

Marking protocol:

One mark for identification of aggravating factor.

One mark for identification of mitigating factor.

The rights of victims, including the right to give evidence as a vulnerable witness, the right to be informed about the proceedings, and the right to be informed of the likely release date of the accused

Question 2 (2 marks)

Describe how being a vulnerable witness might assist an individual during a trial, such as John's.

Answer:

- *Special provisions can be made for John's wife who is a vulnerable witness (she may have difficulty understanding court processes, expressing testimony, difficulty remembering information or have social constraints such as low confidence).*
- *John's wife can apply to the court to give evidence behind a screen, to have the court closed to the public, or to give evidence from another room in the courthouse/via video link. All provisions are an attempt to reduce the possible trauma that can arise through court processes and encourage witnesses to feel safe.*

Marking protocol:

One mark for each of the points above.

Fines, community corrections orders and imprisonment, and their specific purposes.

Question 3 (4 marks)

A legal critic recently expressed her concern regarding Community Corrections Orders and how thousands of dangerous Victorian criminals are consequently evading imprisonment. Outline how Community Corrections Orders (CCOs) address the purposes of criminal sanctions in relation to this case.

Answer:

- A *Community Correction Order (CCO)* is a flexible non-custodial sentencing order served in the community. Courts may apply conditions to the order. For example, John may need to report to a specified community corrections centre within two days of the order coming into effect. Unlike prison, there must be at least one additional condition that relates specifically to the offender and their circumstances. For example, John may need to undergo drug or alcohol treatment.
- CCOs are recognised as an appropriate alternative to imprisonment because of the flexibility they offer. They are suitable for a wide range of offending behaviours but also consider, and attempt to address, the circumstances of the offender.

The Purpose of CCO's as a criminal sanction include:

- *Punishment* – CCOs will place demands on John in terms of time, supervision and conditions.
- *Protection* – engages John in meaningful community work, decreasing the opportunity for reoffending (however, some critics may argue that the offender is still within the community).
- *Deterrence* – the offender (specific) and others (general) may not wish to be subject to a CCO in the future.
- *Rehabilitation* – programs provided can assist John to overcome issues causing his criminal behaviour.

Marking protocol:

One mark for definition of CCOs, as per the first dot point.

One mark for brief link to imprisonment, as per the second dot point.

Two marks for identification of two purposes of CCO's as a criminal sanction, as per any two of the last four dot points.

Note: Denouncement as a purpose of CCO's does not really apply unless the court has ordered an extended period of community work for John.

Factors that affect the ability of the criminal justice system to achieve the principles of justice including in relation to costs, time and cultural differences

Recent reforms and recommended reforms to enhance the ability of the criminal justice system to achieve the principles of justice.

Question 4 (8 marks)

Explain how delays can act as a barrier to the achievement of criminal justice. In your response, evaluate the extent to which **one** recent reform and **one** recommendation has attempted to overcome this barrier.

Answer:

- *Time delays can substantially hinder the achievement of justice in John's case. A key issue for people wanting to have a dispute resolved is the length of time. Delays can be unfair on John as this may place him under emotional strain, may cause him to lose employment and/or can disrupt family life, particularly if the accused is held on remand.*
- *Delays also affect the accuracy of witnesses' long-term memory, including John's wife and may affect her ability to give accurate evidence. However, pressuring parties to meet unachievable deadlines may prevent them from being able to prepare their best.*
- *Delays can be caused by many factors, including backlogged courts, lengthy pre-trial procedures, and the discussion and presentation of complex and lengthy evidence.*
- *Fairness may be compromised because delays may have a significant impact on the life and physical and mental health of parties and their families. The quality of evidence degrades over time.*
- *Equality may be compromised because delays will not impact every person the same way. For example, more disadvantaged defendants are also often the ones who do not have the workplace flexibility to attend hearings and meetings even if they are released on bail.*
- *Access is compromised because delays can encourage parties, and in this case John in his criminal trial, to plead guilty; parties may also exhaust their funds before the end of the case, and lose their ability to properly represent themselves.*
- *One recent reform aimed at addressing the issue of delays in our court system includes an increase in the use of court technology. The County Court and the Supreme Court are increasingly aiming to use digital processes to ensure they are more efficient when dealing with cases. In February 2017, the County Court required particular documents to be filed electronically. The County Court is also now recording evidence in a format that allows it to be played if there is a retrial to avoid the cost, time, trauma and inconvenience of witnesses having to give evidence again, thereby reducing delays.*
- *The removal of committal hearings is one such recommended reform aimed at reducing delays. In 2012 the Baillieu state Liberal Government consulted with the courts, the Director of Public Prosecutions (DPP) and Legal Aid regarding "the unnecessary examination of cases" at committal stage and the associated costs and delays. Removing committals would save the accused money in representation, giving them better access to justice at the trial stage because more funds would remain for trial representation. Removing committals would give other matters increased access to justice because it would decrease court backlog, primarily the Magistrates Court. However, this recommendation was not pursued as it has been argued that removing the committal stage could actually increase costs and delays at higher levels. This would decrease access for the accused.*

Marking protocol on the next page...

Marking protocol:

This answer is globally marked (i.e. an overall mark is awarded for the entire answer). The following criteria could be used to assess a response:

7-8 High	• All elements of the question addressed. • A very high-level evaluation of delays and the effect on the principles of justice: fairness, equality and accessibility. • Response makes reference to a recent reform and one recent recommendation for change with examples from the past four years. • Reform and recommendation, addresses the issue of delays and appropriate reference to the case study on how the improvement or suggested change enhances the principles of justice.
4-6 Medium	• Some elements of the question are addressed, which shows a good understanding of concepts. • Evaluation of delays and barriers to justice is good, but may lack clear links to examples or the case study. • Brief outline of one recommendation for change and one recent reform but does not address in depth how these changes have created greater fairness, accessibility and equality.
1-3 Low	• Few elements of the question addressed, which shows only basic understanding of concepts. • Little to no evaluation of delays and how they can be a barrier to justice. Student lists basic ideas without linking to examples from past four years. • Little or no mention of recent reforms and/or recommendations for change to overcome barrier of delays in relation to the case study.
0 No score	• Response does not demonstrate any understanding of the concepts.

Use the following information to answer Questions 5 & 6.

Mr. William Murray's property was destroyed when one of the St Patrick's Day fires ravaged through South-West Victoria. Mr. Murray has been told that the fire started when a power pole snapped in high winds, fell to the ground and ignited vegetation. He wants to initiate legal action against the electricity distributor, for property loss, damage, failing to distribute electricity adequately and for lack of maintenance of power poles. Mr. Murray quickly hears that between 40 and 50 homes were affected and countless livestock were lost, with an estimated damage of \$20 million dollars.

The principles of justice: fairness, equality and access
Only' under
Paste Options.

Question 5a

(2 marks)

Define the term 'equality' in relation to the case study.

Answer:

- *As the plaintiff is initiating a civil dispute, Mr. Murray's trial will attempt to achieve the principle of justice - equality. The principle of equality requires that all individuals (Mr. Murray), groups and organisations of civil disputes be treated as equal in presenting their respective cases and that their disputes are resolved equally in the eyes of the law, regardless of age, race, gender or disability.*
- *Various forms of disadvantage are recognised, and given targeted assistance, such as Victoria Legal Aid can provide a duty lawyer to assist with a range of civil claims where the plaintiff is socially and economically disadvantaged.*

Marking protocol:

One mark for description of equality, as per the first dot point.

One mark for an example in the civil justice system, as per the second dot point.

Key concepts in the Victorian civil justice system, including:

The burden of proof

The standard of proof

Question 5b

(2 marks)

Distinguish between the standard and burden of proof in this matter.

Answer:

- *The burden of proof lies with the party bringing the lawsuit, the plaintiff (Mr. Murray), who has the burden or onus of bringing evidence to prove his case.*
- *Whereas the standard of proof entails the plaintiff demonstrating evidence to show liability of the defendant on the balance of probabilities – that is Mr. Murray must demonstrate that his version of events, on balance, is most probable and that the defendant is liable for the plaintiff's infringement of rights.*

Marking protocol:

One mark for each of the above points.

Factors to consider when initiating a civil claim, including negotiation options, costs, limitation of actions, the scope of liability and enforcement issues

Question 5c

(2 marks)

Discuss two factors that Mr. Murray should consider before deciding to pursue a civil action.

Answer:

- *Before initiating a claim, Mr. Murray should consider what negotiation options are available to him such as non-legal ways of resolving a dispute, and legal options such as mediation and conciliation that may be successful in resolving his dispute.*
- *As the plaintiff, Mr. Murray must consider the costs associated with initiating a civil action such as hearing fees, the cost of filing documents, etc. Mr. Murray should also consider the time away from employment or other loss of income and the hardship that is associated with undertaking court proceedings.*

Other possible answers could include:

- *Limitation of actions requires certain civil claims be filed by certain dates and potential plaintiffs must be aware of time constraints.*
- *The scope of liability which applies in civil cases regarding negligence is an important consideration. For a negligence claim to be successful, the pain, loss and suffering of the plaintiff needs to have been caused by the defendant.*
- *Enforcement issues must be considered by Mr. Murray as he must take into account any complications that could occur when enforcing a court order. Such as the power company in this civil dispute being unable to fulfil the judgement against them because they lack the assets or financial resources. In this case Mr, Murray may not see any financial compensation.*

Marking protocol:

One mark for any of the above points, to a maximum of two.

Key concepts in the Victorian civil justice system, including:

Representative proceedings

Question 5d

(4 marks)

Evaluate how class actions can enhance accessibility to the civil justice system, in relation to Mr. Murray's case.

Answer:

- *Representative proceedings or class actions are brought on behalf of seven or more people who have been injured or suffered loss. In Mr. Murray's case, residents in South- West Victoria who have suffered from the power distributors negligence can join together to bring legal proceedings. The action is commenced by one person (the lead plaintiff who is this case would be Mr. Murray) who litigates on behalf of the group.*
- *All people affected by the actions are considered part of the action (even if they are not aware of it). As the lead plaintiff, Mr. Murray does not need the consent of group members. Once the group is described, every person in that group is assumed to be a part of the representative proceedings unless they decide to 'opt out' by filing notice with the court. If a person 'opts out', then they are not bound by the decision or settlement and they may be able to pursue the defendants in separate legal proceedings if they wish. Any remedy that is won, such as damages, is divided between all members of the group.*
- *Group members are not required to instruct lawyers or pay legal fees; they are not required to take an active role in the case at all. Group members are insulated from adverse costs and legal fees, giving people the opportunity to assert their legal rights even if they do not have the time, money or knowledge to actively pursue a case. This increases accessibility to the civil justice system to those who have been effectively denied justice because of the high costs of taking civil action in courts.*
- *Class actions aim to promote efficiency in the use of court resources, and increase consistency in the determination of common issues. The goal of a class action is to treat different parties more equally when they have similar cases, and to assist the legal system in becoming more effective and efficient and therefore more accessible.*

Marking protocol:

Two marks for a definition and explanation of class action, as per the first and second dot point.

Two marks for a discussion of how class actions carry out the principle of accessibility in the civil justice system, as per the third and fourth dot points.

Factors that affect the ability of the civil justice system to achieve the principles of justice, including in relation to costs, time and accessibility

Recent and recommended reforms to enhance the ability of the civil justice system to achieve the principles of justice.

Question 6 (5 marks)

Referring to Mr. Murray's case, critically examine accessibility in the civil justice system.

Provide one recent or recommended reform that addresses the principle of justice: accessibility.

Answer:

- *For Mr. Murray, having access to dispute resolution bodies is a vital component of achieving justice. This is particularly important for vulnerable people who may need extra assistance in having their disputes resolved. Lack of access can lead to valid civil claims being abandoned, withdrawn or settled for much less than what a party may be entitled to.*
- *Barriers in communication can prevent a person from understanding the legal system, reduce a person's understanding of the method and bodies used to resolve disputes, and reduce a person's understanding of the processes involved in pursuing their rights. Mr. Murray may have low legal literacy and may not understand his legal rights and therefore, this reduces his ability to access procedures and engage in a trial or hearing which is fair.*
- *People who experience communication barriers may struggle to tell their side of the story and therefore could make them unequal before the law and could reduce the opportunity of presenting their best case. A person, such as Mr. Murray, with little understanding of the legal system and their rights also has compromised accessibility to pursue a case and achieve justice.*
- *One recent reform addressing accessibility includes Code for Australia and Victoria Legal Aid releasing a prototype online tool in early 2017. This would allow Mr. Murray who has a legal problem to determine whether he is eligible for legal aid. The tool would advise Mr. Murray where he can go for assistance and can answer simple legal questions, thereby increasing Mr. Murray's accessibility to pursue his civil claim.*
- *A recommendation for change which addresses accessibility factors includes the publication of plain language guides and information that could assist Mr. Murray in understanding his legal rights and responsibilities in pursuing a civil claim. The Productivity commission in 2014 recommended that all government agencies in Australia publish plain language guides that summarise legislation in areas of law regularly encountered, with a particular focus on engaging those that are in disadvantaged groups. The commission also recommended that websites and information materials become more accessible and ensure information is presented in multiple languages.*

Marking protocol:

One mark defining accessibility in the civil justice system, as per the first dot point.

Two marks examining accessibility in the civil justice system, as per dot point two and three.

Two marks for one recent change and recommendation for change that examines the principles of justice, as per dot point four and five.