



Trial Examination 2018

VCE Legal Studies Units 3&4

Written Examination

Suggested Solutions

SECTION A**Question 1 (5 marks)**

a. *Outlines any one of:*

- trial by jury
- the right to a fair hearing
- to be tried without unreasonable delay

Sample response (using trial by jury):

Victorian legislation states that a person who has pleaded not guilty to an indictable offence has the right to have the matter determined by a jury.

1 mark

A variety of other points could be made when outlining any of the above rights of the accused.

b. *For example (for victim):*

- treated as a vulnerable witness

For example (for accused):

- if heard in the County Court
- the right to a jury/due to low financial status
- the providing of legal aid

3 marks

While there could be a variety of accepted responses, the key would be that the response links back to the principle of equality.

c. The statement refers to the responsibility of one party to prove the facts of the case; normally this will be the prosecution in a criminal case.

1 mark

Question 2 (3 marks)

Prior to initiating a claim, the plaintiff to a civil action needs to consider who might be the possible defendants and the extent which they might be liable.

1 mark

Most of the time the defendant will be the person who has directly infringed the rights of the plaintiff by causing them harm; however, there may be occasions where more than one person has infringed the rights.

1 mark

Another factor would be costs. A party to a civil dispute is most likely going to have to meet a range of costs, which could include legal representation, court fees – including the cost if requesting to use a jury, or costs that may need to be met on behalf of the other party should one party lose the case. This factor may lead to a person not pursuing a civil action.

1 mark

For the second mark, an example of where more than one party has infringed would be an acceptable alternative.

For the third mark, any of negotiation, costs, limitation of actions OR enforcement issues could be outlined.

Question 3 (3 marks)

Legislative Assembly

1 mark

Any one of:

- The Legislative Assembly acts as the 'house of review' on the rare occasion where a bill is first introduced into the Legislative Council.
- The Legislative Assembly is the only house that can pass a bill relating to government spending

2 marks

A number of roles could be the one described; it is important to note that two marks are allocated to the description.

Question 4 (4 marks)

Judicial conservatism occurs when, in a matter before the courts, judges adopt a narrow interpretation of the law as it stands. It is an approach that is showing caution as to making a decision that could lead to a change in how the law is interpreted on a matter in the future.

1 mark

Conversely, judicial activism is when judges, in making their decision, take into account factors such as changes in society that may have taken place subsequent to when the pertinent legislation was written.

1 mark

It can be viewed as judges taking on the role as lawmaker.

1 mark

When a judge takes the judicial conservatism approach, they are not going beyond what the law currently says on the issue (the law remains as it was). However, if a judge takes the judicial activism approach, it is possible that the meaning of the legislation on the matter will be expanded as a result of their approach.

1 mark

Question 5 (5 marks)

The Senate is the upper house of Commonwealth Parliament and, because most bills commence in the lower house, the Senate is viewed as the house of review.

1 mark

It can greatly assist in the effective operation of parliament as a law-maker in its capacity as the house of review. While most bills will be passed by the lower house without difficulty due to the government having the numbers in that house, this may not be the case in the Senate.

1 mark

The Senate provides the opportunity for extensive debate and scrutiny of the bill before it moves on for royal assent.

1 mark

This means that the bill may be improved, resulting in better quality legislation being passed than was the case before the amendments.

1 mark

However, the effectiveness of the Senate may be lost if the government has the majority of seats in that house, where no matter how much debate takes place, the government members of the Senate are likely to support the bill; it then acts as a 'rubber stamp'.

1 mark

A student may also answer in term of the Senate being 'The States House'; however, it may be difficult to provide a response that would meet the five mark allocation.

Question 6 (4 marks)

The Supreme Court has the power to refer all civil matters to mediation. One aim in doing so is to achieve an out-of-court settlement.

1 mark

This option allows for a party to use a method for resolving the dispute that may better allow for resolution to occur without the need for a lengthy and costly trial.

1 mark

However, there is no certainty that mediation will work, which means time can be wasted accessing this option when a trial would be necessary anyway.

1 mark

While juries are rare in civil disputes, if they are used they have the responsibility to:

Any one of:

- listen to and assess the evidence presented
- determine questions of fact, having had the law on the matter explained to them by the judge
- decide fault and, in some cases, the damages to be awarded
- be unbiased, arriving at their decision based only on evidence

1 mark

Question 7 (6 marks)

Sample response:

The High Court of Australia was given the jurisdiction through the Commonwealth Constitution to hear disputes that come about involving its interpretation.

While the High Court cannot change the wording of the Constitution – this can only be done through the referendum process – it can change how the words of the Constitution are viewed in terms of their meaning. The High Court interpretation can add meaning to the Constitution.

The Tasmanian Dam case where The Tasmanian Government proposed to construct a dam on the Franklin River, which was part of a World Heritage Site. The Federal Government passed legislation prohibiting the damming of the Franklin River, implementing the Commonwealth's obligations under a signed international treaty protecting World Heritage Sites. The Tasmanian Government challenged this legislation, arguing the Federal Government had no power to pass it, and the power to legislate on the Franklin River was part of their residual power over the environment.

The High Court found in favour of Commonwealth Parliament – the legislation was valid – that the Federal Government had the power to make laws under its 'external affairs' power (listed in section 51 of the Constitution).

The case was significant in that it banned the construction of the dam, broadening the meaning of 'external affairs', that is the High Court gave a broader meaning/added meaning to the words 'external affairs'.

6 marks

This question should be marked globally.

Three marks for the explanation of the role played by the High Court.

Three marks for the High Court case reference used.

There are numerous cases that could be used to answer the second part of this question (providing they relate to 'impact on the division of constitutional powers'.

Question 8 (10 marks)

Pre-trial procedures are important in both the criminal and civil justice systems.

Committal proceedings take place in the Magistrate's Court to determine whether the matter contains sufficient evidence to support a conviction at trial in a higher court.

Examples of principles include, any two of:

- access
- fairness

Sample response (access):

This is an important aspect, in that cases that are unlikely to succeed at trial are 'filtered out' in pre-trial procedures to allow other matters to be heard earlier. However, victims may find it stressful or traumatic to go through this process before a trial, leading to them not wanting to give evidence. This can therefore lead to justice not occurring.

Sample response (fairness):

In pre-trial procedures, the accused is provided with the opportunity to hear the evidence to be presented by the prosecution and can make a decision to either contest or plead guilty. However, fairness could be questioned as the defence do not have to disclose their case to the prosecution at the committal.

Examples of civil pre-trial procedures include, any two of:

- pleadings
- discovery of documents
- disclosure of evidence

Sample response (discovery of documents):

Discovery of documents is the exchange of documents when one party requested documents from the other party, providing they are relevant to the case. This promotes equality in that both parties have the same rights in terms of requesting documents in the hope that the information they provide will give them a better indication as to the strength of their case; however, in using this pre-trial procedure, one party may try to drag out the case in the hope that the other party will choose to settle, suggesting fairness is not present.

10 marks

This question should be marked globally. It is important to commence with a response to the statement/question in relation to the procedures and how they 'promote justice'.

SECTION B**Question 1** (16 marks)

- a. The two extracts highlight two of the three ways individuals can influence law reform.

The first involved a demonstration, which is where a group of people gather to express a common concern/dissatisfaction with a current law. In this case, they demonstrated to bring matters in relation to the killer of Jill Meagher to the public's attention.

Demonstrations are viewed as an effective way in which to bring the need to change the law to the attention of the community and the law-makers. When there are large numbers taking part (over 8000) and it has subsequently been reported extensively in the media, as was the case here, this method is going to be more effective in influencing change in the law.

However, a problem with this method being effective is where a demonstration leads to violence. The media attention it gains may be negative and the law makers will not be supportive of the use of violence as a way of bringing attention to a law to be changed. This was not the case in this example.

Petitions are another way of individuals influencing law reform. A petition is a formal, written request for law-makers to act in relation to a particular law that needs reform. Signatures are gathered from people who support reform to the law. It is then sent to the local Member of Parliament who can in turn present it to parliament during Question Time.

A strength of this method is that a petition can be completed online, as was the case in this particular example, making it easier for people to express their support rather than having to physically sign a petition. The number of signatures is also going to be important, as only a few signatures would suggest that community support is not present.

A further strength is that a large number of names on the petition suggests that it has significant support, representing a cross section of the community.

However, once passed on to the Member of Parliament, there is no guarantee that it will be tabled in parliament, and even if it is the particular Member of Parliament may not be one of great influence.

8 marks

Many other points in relation to the effectiveness of each of these methods could be used.

This question should be marked globally.

- b. *Sample response:*

Society's attitudes and values change over time, and it is important that laws keep up with and thus reflect these changed attitudes.

1 mark

The advent of the mobile phone has led to the need for changes to the law in many areas, such as retaining a person's privacy or laws related to driving vehicles.

1 mark

Multiple reasons could be chosen for this question, such as changing beliefs/values/attitudes or a change in need for community protection.

- c. Both the traditional media and social media have a role to play in influencing changes in the law.

In both of the sources, the print media have reported on the matter, highlighting both the large numbers of people in attendance at the demonstration and the large number of signatures obtained on the petition.

1 mark

In addition, the use of social media by those involved in organising the demonstration may have been a means of communicating with many people that led to the massive numbers attending.

1 mark

d. Sample response:

Given the nature of the crime being murder, the judge would have given greater consideration to punishment as reflected in a 35-year prison term. On the other hand, rehabilitation may not have been regarded as a priority, given that the crime was the most serious that a person can commit.

4 marks

While it is possible for a broad range of answers, the justification would be important to gaining more marks.

Question 2 (12 marks)**a. Sample response:**

A plea negotiation is an informal process that takes place between the lawyer for the accused and the prosecution. The outcome may result in the accused agreeing to a guilty plea, and in return being charged with a lesser crime or being charged with fewer offences.

1 mark

Given that a guilty plea results in no trial, greater fairness can be present as the prosecution witnesses are no longer required to attend court to give evidence, and what is a very traumatic experience to many people is now avoided.

1 mark

However, given that the accused has been required to plead guilty to certain charges seems unfair, in that they have forfeited their right to plead not guilty and require the prosecution to prove their case.

1 mark

While the response would need to show an understanding of the term 'plea negotiation', a range of points could have been used to indicate the extent to which it reflects justice.

b. Any one of (mitigating factors):

- eventual guilty plea
- the woman was young

1 mark

Any one of (aggravating factors):

- use of a weapon – armed robbery charge
- the victim was elderly (walking frame)

1 mark

It is important to note that you are asked to use the information provided, so not any factor may necessarily be an accepted answer.

c. Any three of:

- be unbiased and bring an open mind and no preconceived ideas to the case
- arrive at their verdict based on the evidence presented at trial
- listen to and recall all evidence
- listen to and understand all judge directions and summing up of the evidence
- deliver the verdict
- any other reasonable response

3 marks

Note: All responses must align with a criminal trial to be awarded marks.

- d. Residual powers are those law-making powers that were retained by the states at Federation. They were not given to the Commonwealth Parliament (unlike concurrent/exclusive powers).

They are protected through various sections of the Constitution that prevent Commonwealth Parliament accessing those powers without with state approval.

4 marks

While any exclusive power could be used, full marks should be given if the exclusive power is clearly outlined.

Question 3 (12 marks)

- a. Any one of:

- pleadings
- discovery of documents
- exchange of evidence

1 mark

Sample response (discovery of documents):

Discovery of documents allows for each party to get copies of documents that are relevant to the issues in dispute.

Access to such documents may alert a party to the fact that their case is a strong one, or it may alert them to the fact that they might be better to settle before going to trial.

2 marks

Two marks for describing the purpose of the named pre-trial procedure.

- b. *Sample response:*

Conciliation involves the two parties meeting with an independent third party who is skilled in the type of dispute involved.

The conciliator will hear the story from both parties perspective and suggest ways in which they might arrive at a mutually agreeable resolution. The parties may or may not agree to the suggestion as it is not legally binding, although they may sign not to go back on what they have agreed to.

A strength of conciliation is the fact that the parties have been willing to agree to follow what has been suggested by the third party; it has not been enforced upon them, providing a win-win situation.

However, unless they sign an agreement to the contrary, because conciliation is not binding one of the parties may later go back on what they had agreed to, meaning the dispute has not been resolved.

4 marks

Either conciliation or arbitration are appropriate to write on, with both strengths and weaknesses being discussed.

- c. An injunction is a remedy that could be sought by a plaintiff to a civil dispute. This is where the court orders a party to either do something or refrain from doing something.

1 mark

Any one of the following points should be made:

- a type of injunction: restrictive or mandatory
- a remedy that enables something to be stopped from occurring when there is the need for immediate/urgent decision
- an example of a matter that may lead to that being the remedy sought

1 mark

- d.** The primary role of the courts is to resolve disputes and, in doing so, apply the legislation applicable in the particular case. However, judges must interpret the words of an act when the case comes before them. In this role, judges possibly become involved in clarifying what the law is by giving meaning to the words in the legislation.

1 mark

Any one of the following reasons:

- the intention of the Act is not clearly expressed
- the Act may not cover new technology
- the meaning of words change over time
- the inconsistent use of the same word in a particular Act
- the Act did not foresee possible future applications
- mistakes were made in the drafting of the bill

1 mark

Sample response (the Act may not cover new technology):

In a society that is rapidly changing in terms of advances in technology, it is impossible for legislation to always predict and allow for these changes that will occur.

1 mark