



Trial Examination 2019

VCE Legal Studies Units 3&4

Written Examination

Suggested Solutions

SECTION A**Question 1** (4 marks)

- a. Parliament is able to make new laws or change existing laws as it sees fit in response to the changing needs of society. 1 mark
- This is restricted to the law-making powers it has been given in the Australian Constitution. 1 mark
- b. *For example:*
- setting a new precedent through a court decision where there was no legislation to follow
 - giving meaning to words in legislation

Sample response (setting a new precedent):

In handing down its decision in a case, the court may suggest that parliament make law on the matter. 1 mark

They recognise that, while their decision is applying a relevant precedent, they feel it is appropriate that parliament, as the supreme law-maker, introduce legislation to override the precedent being applied. 1 mark

That is, the court encourages parliament to abrogate the precedent.

Question 2 (2 marks)

Residual powers are those that remained with the states at Federation and are matters that only states can legislate on. 1 mark

Exclusive powers are some of those powers given to the new Commonwealth Parliament at Federation that only Commonwealth Parliament can legislate on. 1 mark

Question 3 (5 marks)

While a referendum first requires the matter to have the support of parliament, it must then go to a compulsory vote of the people. For the referendum to succeed, it must achieve majority support from all voters; the majority support must be from at least four states.

Sample response (The 1967 Australian referendum):

The 1967 Australian referendum relating to Aboriginal and Torres Strait Islander peoples was successful through the vote of the people. This referendum gave Aboriginal Australians rights they previously did not have, such as the right to be counted in the national census and for Commonwealth Parliament to legislate for them. Previously all legislation for Aboriginal Australians was made by the states. In this case, all six states had well over 80% of voters supporting the change and thus the wording of the Constitution was changed. This highlights the power of the people in determining whether the Constitution should change with changing human rights issues.

5 marks

Note: Responses should incorporate a clear link to a referendum that either did or did not succeed. An alternative response could have referred to the 1999 referendum relating to Australia becoming a republic. In this case, the ability of the Australian people to protect the Australian Constitution is highlighted; large numbers across each state voted against the change.

Question 4 (4 marks)*Sample response:*

The three-tier fee system for those wishing to use VCAT was introduced in 2016. This means that for those more financially disadvantaged in the community, specifically individuals with a Health Care Card, the maximum fee for a case to be heard before VCAT is \$150.

The aim of the three levels of fees was to make VCAT more accessible to financially disadvantaged individuals who otherwise may not be able to take their dispute to VCAT.

However, the three-tier system does not apply to all VCAT lists, meaning that those lists may still be inaccessible to those with limited financial resources.

4 marks

Note: A range of recent reforms are acceptable. Reforms chosen must be from the last four years in order to meet the 'recent' criteria in the question. Responses should include a link between the chosen reform and a principle of justice.

Question 5 (9 marks)**a.** *Any one of:*

- removing the possibility of surprise, that is, 'ambush at trial'
- providing the court with a record of what each party is stating, which may assist in the management of any subsequent trial
- reaching an early out-of-court settlement – either party may become more aware of the strength or lack of strength of their case

Sample response (providing the court with a record):

By requiring both parties to state their main claims in relation to the matter, procedural fairness is achieved by ensuring that one side is aware of what the other side is stating as their claim or defence. Each party is required to disclose to the other party the facts they rely on to support their claim or defence.

2 marks

Note: A pre-trial procedure that is not mentioned in the question information can be accepted provided that it is linked back to the case.

b. *Any one of:*

- mediation
- conciliation
- arbitration

Sample response (conciliation):

Conciliation involves the participation of a third party who will give each of the parties a voice and listen to their respective side of the events. This person will be trained in presiding over these sorts of disputes, possibly increasing the likelihood of achieving a resolution that is agreeable to both parties.

However, conciliation is a method that is generally non-binding. Parties may sign an agreement to uphold the arrangement reached during conciliation in some cases. The fact that one of the parties may go back on what they originally agreed to would mean that the time spent using this method has been wasted.

4 marks

Note: Responses should cover the upside and downside of the method and relate back to the case.

- c. In this case Tess, the plaintiff, is seeking damages. If successful, this will mean that she is awarded an amount of money to be paid by the defendant. Its purpose is to compensate Tess for the harm suffered, returning her to the position she was in before the harm to her occurred.

While damages can be quite specific where there are clearly identifiable costs that have resulted from the injury and, as such, Tess can be compensated for these, it is not as easy to compensate her for her pain and suffering, including the ongoing pain. While she may be awarded general damages, it is difficult to quantify in dollars.

3 marks

Note: The stimulus word is 'analyse' and the question is allocated three marks. Students should note the mark allocation in determining the depth of their response.

Question 6 (6 marks)

The doctrine of precedent is the process whereby courts refer to legal principles that have been established over time by higher courts in reaching their decision, applying those legal principles to current cases that come before them.

Should a matter come before a court where there is an existing legal principle in place that applies to the current case, that legal principle must be followed providing it has been set in a court higher in the same hierarchy and with the same material facts as the current case. The fact that this principle must be followed restricts the ability of the court in the current case to make law.

However, if there is no legal principle (precedent) in place that is applicable to the current case, or if there is a legal principle in place but not from a higher court in the same hierarchy, there are techniques available to the court that allow it to avoid following that legal principle.

Any one of:

- judicial conservatism
- judicial activism
- costs and time in bringing a case to court
- the requirement for standing

Sample response (judicial conservatism):

One other factor that could affect the ability of courts to make law is judicial conservatism. This is where judges, in arriving at their decision, take a narrow interpretation of the law when considering the relevant act of parliament in the matter before them. They attempt to avoid controversial change in the law, preferring to leave it with parliament to make such changes. An example of this was in *Trigwell's* case.

6 marks

This question should be marked globally.

Question 7 (10 marks)

The VLRC was created through an act of parliament and is the state's major independent law reform organisation. It reviews, researches and makes recommendations to State Parliament about possible changes to Victoria's laws.

While it can investigate some matters of its own choosing, its major role is to examine and report back on matters of concern referred to it by the Attorney-General. In the course of its investigations into the matter it will research and consult widely with interested parties in the community, finally reporting back to the Attorney-General with its recommendations.

VCAT, on the other hand, is a tribunal that will preside over a wide range of civil disputes that fall under its jurisdiction. It has the role of giving the community the opportunity to have their disputes heard by a low-cost, accessible, efficient and independent body as an alternative to the courts. It will hear matters that come before it using a range of alternative methods of settling disputes.

For example (evaluating the ability of the VLRC to influence change in the law):

- The VLRC was created by the Parliament of Victoria to fulfil the role already mentioned. This suggests that parliament would therefore take careful note of its recommendations for change.
- As part of its responsibilities, the VLRC is required to seek out the community's views on the matter and report these views back to the Attorney-General. Laws that are in place should reflect the views of the community
- Based on past matters handed to the VLRC from parliament to investigate, often all or most of the VLRC's ultimate recommendations are adopted by parliament.
- While the VLRC does have the power to investigate matters of law that the Attorney-General requests of it, it can only make recommendations back to the Attorney-General – it cannot change the law itself.
- An investigation of a matter handed to it by the Attorney-General can be very time-consuming from when it is given its terms of reference to when its final report is passed on to the Attorney-General. By this time, the recommended changes may no longer be 'topical' in terms of an area of law needing change.
- The VLRC is limited by the terms of reference that will indicate what it has the power to investigate. While it may see that there is the need for other reforms, it can only consult with the community and make its ultimate recommendations on the matters within its terms of reference.

For example, any one of (recent example):

- adoption laws
- community law reform project on funeral and burial instructions
- legalising medicinal cannabis

Sample response (legalising medicinal cannabis):

In December 2014, the Attorney-General asked the Commission to report on options for 'changes to the law to allow people to be treated with medicinal cannabis in exceptional circumstances'.

In March 2015, the Commission published an issues paper that identified two areas of investigation covering the key issues. As a result of public consultations, the VLRC received 99 submissions, highlighting the public interest in the matter.

The final report of the VLRC was delivered to the Attorney-General and when tabled before parliament, most of its recommendations were implemented, announcing that from 2017 it would legalise access to medicinal cannabis in exceptional circumstances.

10 marks

This question should be marked globally.

Note: The question requires students to link the recent example to the evaluation of the VLRC.

SECTION B**Question 1** (13 marks)

- a. The fact that it is the Office of Public Prosecutions (OPP) who takes responsibility for the prosecution of a person accused of a crime, rather than the victim of the crime themselves, provides for immediate and easier access to the criminal justice system for the community/victim of the crime.

Fairness is also present through the role of the OPP as members of the community who have been victims of crime do not have the responsibility for providing legal representation. Again, it is the OPP who provide the lawyers who effectively represent the community in court.

However, because the matter is taken out of the hands of the community/victim, it could be said that they may not get their 'day in court'. Available options to the accused such as a sentence indication or plea negotiation may lead to the accused pleading guilty, possibly to a lesser crime than the original charge indicated.

6 marks

- b. *For example, any one of:*

- managing the trial
- determining which evidence is admissible
- addressing the jury

Sample response (determining which evidence is admissible):

As the person who acts as the 'umpire' in the case, it is a responsibility of the judge to enforce the rules that must be followed by the parties to the case. One aspect of the rules that the judge will enforce are those in relation to what evidence can be brought out in court. The judge will determine what can and cannot be included in the evidence presented by the parties. While some evidence will be allowed at trial, evidence such as hearsay evidence, where the witness is relying on what someone else has said, will not be allowed.

3 marks

Note: While there are a number of responsibilities of the judge in the criminal justice system, it is important to note that the response options are narrowed because of the words 'prior to the jury's conviction'. That is, the responsibility of 'sentencing' gains no marks.

- c. *For example:*

- Victims have the opportunity to tell the judge how they have been affected.
- Victim impact statements allow for a broad meaning as to who constitutes a 'victim', as many may have been indirectly affected.
- Victim impact statements can be presented to the court by various means; they do not have to be read out by the victim, although they may choose to do so.
- Victims may feel that the statement has influenced the final sentence handed down.

Sample response (presented to the court by various means):

Through being able to tell the court, in particular the judge or magistrate who is going to pass sentence on the offender, the victim is given the opportunity to directly influence the final sentence. As the victim impact statement may be read out, the judge can hear directly from the victim about the suffering they have experienced. This may in turn lead to the judge adding time to any prison sentence handed down.

4 marks

Question 2 (13 marks)

a. *For example, any one of:*

- the right to give evidence as a vulnerable witness
- the right to be informed about the proceedings
- the right to be informed about the likely release date of the accused

Sample response (the right to be informed about the release date):

The right to be provided with information in relation to the likely date of release of the accused is available to those who have been the victim of a violent crime. The likely date of release is one piece of information communicated to the victim provided that they have registered to be included on the Victims Register.

2 marks

Note: While each of the three rights above are specifically mentioned in the study design under 'key knowledge', a wide range of rights are acceptable. Students should note the mark allocation in determining the depth of their response.

b. *Any two of:*

- rehabilitation
- denunciation
- punishment
- protection
- deterrence

Sample response (punishment):

This sanction requires the offender to pay an amount of money to the state. In doing so it punishes the offender through the person having to forfeit what might be a significant amount of money. The offender may have worked hard to have money behind them and forfeiting that money to the state will certainly be a punishment.

However, having avoided something like having to carry out community work or being sentenced to prison, a person with significant wealth might not see this punishment as leading to any real suffering on their part.

Sample response (deterrence):

A fine may have the desired effect of greatly discouraging the offender from carrying out the same behaviours that led to them being found guilty of the crime committed (specific deterrence). Additionally, members of the community may take careful note of the significant monetary penalty imposed (general deterrence), knowing that they do not want to suffer the same financial loss.

However, whether it be the offender themselves or members of the general community, deterrence may only be achieved in relation to those people with limited monetary resources.

5 marks

Note: Some purposes are more appropriate than others, as the question requires a discussion. While not necessarily given equal weighting, the response needs to reflect the chosen sanction both achieving and not achieving the purposes. Deterrence, for example, can be a good purpose to discuss in that it can be broken up into 'specific' and 'general'.

- c. Representative proceedings are legal proceedings in which a group of people who have a claim (the nature of which is the same for all) bring that action to court under the name of one person. That person is referred to as the 'lead plaintiff'.

It would not be appropriate in the type of matter in the extract because it was a criminal matter and representative proceedings only apply in certain civil matters.

3 marks

- d. Where there is some basis to challenge, a party who is dissatisfied with the decision handed down in their case, whether it be a criminal or civil matter, has the right to take the matter to a higher authority in the court hierarchy for review.

For an appeal to occur, it is required to be reviewed before a higher level of court. This indicates that if our justice system did not operate with a hierarchy of courts, there could be no system of appeals.

3 marks

Question 3 (14 marks)

- a. Any two of:

- political pressures
- role of the houses
- representative nature of parliament
- restrictions on law-making powers of parliament

Sample response (political pressures and representative nature):

For the particular bill/proposed bill in the question, there appears to be internal political pressures from within the cabinet of the government. While the Prime Minister is in support of the required legislation to relocate the embassy, some of his senior cabinet ministers are opposed to it. The fact that there are differing views of whether the change in the law should go ahead may restrict the ability of parliament to make law in this case. It may not even get past cabinet, who must first support the bill for it to have a good chance of becoming legislation.

A second factor that can impact on the effectiveness of parliament as a law-maker is that parliament is 'representative' in nature. They have been elected by the people to make laws on behalf of the people. If they fail to make laws on behalf of those who voted them into parliament, they may put their chances of re-election at risk. In the case of the matter in this question, the view of those in cabinet may be influenced by the fact that they know what the people that elected want them to do on this matter, which may not be in line with the proposed bill.

5 marks

Note: Some factors are more appropriate than others, as the question requires the discussion to be in reference to the case.

b. *For example:*

A key role of the lower house is to form government. The party with the majority of seats in the lower house will determine who forms government.

A key role of the upper house is acting as the house of review. Most bills are introduced initially into the lower house where government holds a majority. This is often not the case in the upper house, which means that there is the opportunity for the bill to be further scrutinised and debated prior to it being voted on.

A key role of the Crown is granting royal assent, which is where the Queen's representative gives their approval of the bill, making it an Act of Parliament.

3 marks

Note: A range of roles are acceptable for each of the houses and the Crown (particularly the lower house). Students should note the mark allocation in determining the depth of their response; one role for each of the dot points is awarded one mark.

c. *For example:*

There are times when, as the guardian of the Australian Constitution, the High Court of Australia is required to consider the text of the Constitution (the words) and give meaning to various words to assist in deciding the case before it at the time.

Some such cases have involved giving meaning to Sections 7 and 24. The case of *Australian Capital Television v Commonwealth* (1992) was one such case that required interpretation of these two sections.

Here, the matter in dispute that had been brought to the High Court was in relation to freedom of political communication. Changes to the Broadcasting Act (Commonwealth Parliament legislation) placed certain bans on the broadcasting of politically related material through electronic media (TV and radio) leading up to elections, such as restrictions on political advertising. It was argued that the legislation was in conflict with the Constitutional right allowing people to freely express their views on political matters.

It was argued by the High Court that, given that we operate under a system of representative government according to Sections 7 and 24 of the Constitution, to not allow freedom of the people to comment on political matters would be in conflict with the Constitution. The High Court held that the legislation banning political comment was invalid because it was in conflict with the implied constitutional right to freedom of political communication.

While later cases have subsequently confirmed this interpretation by the High Court (existence of 'freedom of political communication'), there is nothing to stop the same issue being taken to the High Court in the future. On that occasion the High Court may have a different interpretation of the matter. The make-up of the High Court changes over time and different judges at different times may interpret matters differently to those who have gone before them.

6 marks