



Trial Examination 2020

VCE Legal Studies Units 3&4

Written Examination

Suggested Solutions

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SECTION A

Question 1 (5 marks)

a. *For example, any one of:*

- has expertise in resolving such matters
- is inexpensive for matters of this type
- provides an informal environment
- deals with matters quickly
- has the potential to resolve through conciliation or arbitration

Sample response (has expertise in resolving such matters):

VCAT operates with a number of different 'lists' (divisions that deal with specific types of cases). One such list has been set up to resolve disputes between tenants and landlords, thus providing personnel with an expertise in resolving such matters.

2 marks

b. Consumer Affairs Victoria (CAV) is another appropriate avenue.

1 mark

For example, any one of:

- CAV has the power to assist in the resolution of matters where a tenant has a complaint such as Mary's against the landlord. 1 mark
Mary should choose to use CAV because, unlike the Victorian Civil and Administrative Tribunal (VCAT), the service it provides would be free of charge for Mary. 1 mark
- While CAV has the power to assist in the resolution of matters where a tenant has a complaint such as Mary's against her landlord, it only offers the conciliation process. 1 mark
Mary should choose to use VCAT because, if Mary and her landlord cannot reach an agreed resolution, CAV cannot enforce any decision. That is, arbitration is not available to CAV. 1 mark

Note: A range of responses are acceptable. Responses should be clearly framed in terms of why the selected avenue either is or is not preferable to VCAT in this case.

Question 2 (5 marks)

A bicameral structure is where parliament operates with two houses. 1 mark

In the case of the Commonwealth Parliament, the two houses are the House of Representatives and the Senate, through which bills must pass to become law. 1 mark

At the time of the writing of the Australian Constitution, the High Court was created under section 71. 1 mark

One of the roles it was given was the interpretation of the Australian Constitution. 1 mark

Thus, the High Court was given the power to decide whether legislation made by the Commonwealth Parliament was outside the powers given to it under section 51. 1 mark

Note: A range of responses are acceptable. Other ways that the Australian Constitution acts as a check on parliament in law-making include: express protection of rights, separation of powers, and the requirement for a double majority in a referendum.

Question 3 (4 marks)

Standard of proof refers to the strength of the evidence required to prove a case. In criminal matters, the strength of evidence required is 'beyond all reasonable doubt'. 1 mark

Burden of proof refers to the responsibility of a party to prove their case's facts. This burden lies with the State in criminal matters, as they are the party bringing the matter to court. 1 mark

Any one of:

- Equality is achieved through the standard of proof in the criminal justice system because, for an accused party to be found guilty, the prosecution must convince the magistrate or jury beyond reasonable doubt, which is a very high standard. 1 mark
Therefore, no accused party is treated advantageously or disadvantageously. 1 mark
- Equality is achieved through the burden of proof in the criminal justice system because, regardless of the charges against an accused party, once the matter goes to court, it is the obligation of the prosecution to produce the evidence and establish the facts that prove the accused committed the crime. 1 mark
There is no obligation on the accused to prove anything. 1 mark

Question 4 (9 marks)

- a. A Community Corrections Order (CCO) achieves punishment through certain key conditions attached to any such order, meaning society will look at the extent that the conditions imposed on the offender detract from their normal life and how these conditions inconvenience and thus punish them. The offender's day-to-day life will be restricted in various ways. For example, they may not be able to leave the state without first getting permission, or their passport may be cancelled.

However, while there are various restrictions in place under such an order, the offender can nevertheless continue to have many basic freedoms that society may feel should be taken away as a result of the crime committed. Society may see that this can only be achieved through imprisonment.

Similarly, a CCO will be viewed as a deterrence to others who may be contemplating similar illegal behaviours. Being aware of the impact a CCO would have on their lives, these people may choose to steer away from criminal activity. In addition, once on a CCO, a person contemplating committing a crime faces imprisonment should they break the conditions attached. They will thus view such an order as being powerful.

However, there are questions raised as to how stringently any conditions attached to a CCO are followed up on in terms of adherence, making other potential offenders may be less likely to be deterred by such a sanction.

5 marks

This question should be marked globally.

Note: A range of other points are appropriate. High-scoring responses should refer to the positives and negatives of such a sanction in terms of both punishment and deterrence.

b. *For example, any one of:*

- At no stage does a victim know the effect of their statement on the sentencing; it is one of many factors the court may take into account at that time. The victim may therefore view the process as a waste of time and effort.
- The term ‘victim’ has a very broad meaning and may thus include a large number of people. This can make the process very time consuming and potentially delay the criminal justice system.

2 marks

c. Any person who fits the definition of ‘victim’ has the right to provide a victim impact statement. The person can present their statement in a range of ways, including reading it out before the court, or having the judge read it.

1 mark

This upholds the principle of fairness as victims are treated impartially – there is no favouritism or discrimination reflected in the legal system, as any victim has this right.

1 mark

Question 5 (2 marks)

Any one of:

- domestic political pressure
- internal political pressure
- international political pressure

Sample response (domestic political pressure):

When elected, parliamentarians are in power to represent the views of the people who voted for them and their policies. It is important that parliament responds to the needs and views that are present in the community.

1 mark

Through organising/taking part in petitions or demonstrations, members of the community may pressure parliament into either proceeding or not proceeding with a particular change to the law. In this way, parliament’s ability to make law is affected as parliamentarians will not want to lose popularity with voters.

1 mark

Sample response (internal political pressure):

While government is more readily able to instigate changes in the law through their policies being introduced to the lower house, where they hold the majority of numbers, there will nevertheless be different factions within government. Within these factions, some members may take a different view on a particular party policy, and the pressure applied may inhibit the ability for the law to change.

1 mark

While this may be most common on matters involving a ‘conscience’ vote, it can also restrict parliament in law-making on other matters where the factions come into play.

1 mark

Question 6 (5 marks)

While some areas of law-making are entirely within the power of either Commonwealth Parliament or the state parliaments alone, there are a number of areas of law-making listed in section 51 of the Australian Constitution where both the Commonwealth and state parliaments can legislate.

1 mark

I agree with Lior's statement to the extent that one or more states may have legislation in an area of concurrent power that differs to legislation on that same area made by the Commonwealth Parliament.

1 mark

Unless this inconsistency is detected, both pieces of legislation continue to operate.

1 mark

However, I disagree with Lior because the Australian Constitution does recognise this possibility. Section 109 of the Australian Constitution states that when a state law is inconsistent with Commonwealth law in an area of concurrent power, Commonwealth law will prevail and the state law will be invalid to the extent of the inconsistency.

1 mark

Section 109 was used in *McBain v State of Victoria* (2000), where Victorian legislation contradicted parts of the Commonwealth sex discrimination legislation.

1 mark

This question should be marked globally.

Note: High-scoring responses must address the accuracy of the statement and should clearly reference section 109 of the Australian Constitution.

Question 7 (10 marks)

For example (parliament's ability to respond):

- As the supreme law-making body, parliament is able to respond quickly.
- Parliament can abrogate precedents that are not in line with society's needs.

For example (limitations of parliament's ability to respond):

- As an elected body, decisions may be influenced by fear of losing voter support.
- The law-making process is time consuming – there are several steps through the two houses.
- A 'hostile' upper house may resist reform.

For example (the courts' ability to respond):

- Judges make comments in their judgments that lead to parliament acting on reform.
- Judges are not elected, so their decisions are not influenced by fear of losing voter support.
- Judges make decisions that highlight problems in the community.
- Judges can determine that parliament has acted '*ultra vires*' (beyond its legal power).

For example (limitations of the courts' ability to respond):

- Courts can only make law on a matter where a case comes before them.

Sample response:

While both parliament and the courts have the ability to respond to the need for law reform, each nevertheless has its limitations, with the result being that they work together to better ensure that the changing needs of the community are met through law reform.

Parliament has extensive resources at its disposal that allow it to more effectively respond to the need for law reform, thus allowing it to more comprehensively investigate the need for change. One example of such a resource is the creation of the Victorian Law Reform Commission (VLRC), which was created by the Victorian Parliament specifically to inform parliament of changes in society that may require legislative changes. The VLRC can thoroughly investigate the matter and report back to parliament with their recommendations.

However, matters that are handed to the VLRC can be very time-consuming. The time required to handle matters spans from when matters are given their terms of reference to when any of the VLRC's recommendations are legislated on. This slows parliament in responding to the need for law reform.

Courts are able to make law where none exists on a matter that comes before the courts or where they are required to interpret the meaning of the legislation that applies to a matter before them. The court's interpretation will give clearer meaning to the legislation and would in future be read in conjunction with the legislation on the matter. However, there are times when judges will take a judicially conservative approach in a case brought before them, adopting a narrow interpretation when deciding a case where there is the need to interpret legislation, thus reducing their effectiveness in responding to the need for law reform.

When a case comes before the courts where there is no legislation or where the legislation needed interpretation, the courts must wait until a party takes the matter to the courts before they can create a precedent. For a party to take a matter to court they must be a person of standing, meaning they must be a person who has been directly affected by the matter involved in the case. If a person is not determined to be a party directly affected, they have no right to commence legal proceedings in the court. For it to be determined that a person has standing means that person must be more affected by the matter before the courts than a member of the general public. For example, a person of standing may be awarded an amount of money should the decision of the case be found in their favour.

10 marks

This question should be marked globally.

Note: High-scoring responses should display knowledge that addresses the ability and limitations of parliament and courts in responding to the need for law reform. The range of such points given in the sample response is more comprehensive than one expected from a student.

SECTION B**Question 1 (15 marks)**

- a. The statement of claim is a document included in the pre-trial procedure known as pleadings. 1 mark
- Pleadings is seen to assist parties in reaching an out-of-court settlement. 1 mark
- When each party completes its statement of claim and statement of defence respectively, it may lead one party to take the view that the other party's case is particularly strong. 1 mark
- This may lead to a settlement before the matter goes any further. 1 mark

Note: High-scoring responses should include an appropriate level of detail and must relate to the pre-trial procedure of pleadings. There are a range of acceptable purposes of pleadings that can be described.

- b. The two methods used in Folau's case were mediation and conciliation.

Mediation is a dispute resolution method where a third party, the mediator, allows the parties, in this case Folau and Rugby Australia, to discuss the issues involved in the hope that the parties themselves come up with a way of resolving the dispute that is agreeable to both. The mediator does not actively recommend ways to resolve the dispute.

In comparison, when using the dispute resolution method of conciliation, the independent third party is the conciliator, who will firstly listen to both parties' versions of the matter. The conciliator then actively recommends one or more options for resolving the dispute.

Mediation could be viewed as a more appropriate method than conciliation for this case, because the suggestions put forward for resolving the matter will have come from the parties themselves, giving each party significant input into the resolution. On the other hand, given that the mediator will not actively recommend ways to resolve the matter under mediation, the parties may find that they are not be able to arrive at a resolution agreeable to themselves.

In conciliation, the conciliator is in a position to recommend a resolution that is acceptable to both parties – one that the parties may not have considered themselves. This method still allows for a resolution to be reached without an enforced decision being imposed.

In Folau's case, mediation proved to be the successful method, with the parties arriving at a resolution after spending 12 hours in private mediation. This followed an earlier attempt at using conciliation, which had failed to resolve the matter.

8 marks

This question should be marked globally.

Note: High-scoring responses must address each aspect of the question to earn full marks; that is, responses must distinguish between the two dispute resolution methods, discuss the appropriateness of each method and identify the successful method. A range of other points both for and against the two methods are appropriate as part of a comprehensive response.

- c. The Crown is a component of parliament 1 mark
- and would need to give its approval (royal assent) of the bill that has passed through the two houses of parliament before the Religious Discrimination Act could become legislation. 1 mark
- In this case, the title of the person representing the Crown would be the Governor-General. 1 mark

Question 2 (12 marks)**a.** *For example:*

Over time, values and attitudes in society change.

1 mark

If the law does not reflect these changes, it is not likely to remain up to date with society and its needs.

1 mark

Note: A range of reasons are acceptable. Responses must develop the reason identified to earn full marks.

b. *Sample response (parliamentary committee):*

Parliamentary committees are able to provide significant support to parliament in its role of changing laws.

There is a wide range of committees that are part of the committee system, both at federal and state level, and they are able to investigate a broad range of areas that may be seen as in need of law reform. Other points of strength may include the small number of people involved, which allows a more efficient consideration of the issue. Another strength is that, once ultimately going before either house as a bill, the house is likely to be informed on the matter already, knowing whether or not to support the matter.

However, such parliamentary committees do have their limitations. These committees are made up of members of parliament and thus their operation is in line with representative government. This means that members of these committees who look into the need for law change have been elected by the people and are representing those who elected them. The processes followed by committees are both time-consuming and costly; this may be a deterrent for some members of parliament to willingly be involved in the committee system. While extensive time may be spent by members of a committee investigating the matter, and ultimately recommending it be put to the houses as a bill, parliament is not required to follow the committee recommendations. On the other hand, given the members are themselves part of parliament, it is probably more likely to see house support. Other limitations may include the limited resources available to a committee, which may impact the depth of investigations. Depending on the party representation in a committee, one party, such as government, may dominate the views on the matter.

An example of a parliamentary committee is the Legal and Social Issues Committee, who conducted the 'Inquiry into end of life choices'. They were allocated one year to investigate whether, in certain circumstances, some individuals should be given the power to make their own decisions about ending their lives. In this case, the committee received many submissions from various interested groups, each giving their view on the proposed law changes on the issue. Both the time the issue was given and the wide-ranging views suggest that the committee system is effective in supporting parliament in changing and making laws. Some of the interested groups may have been more powerful than others in influencing the final recommendations of the committee. It is possible that some views may not have been given the consideration deserved.

From this, we can see that parliamentary committees do offer support to parliament, enhancing parliament's ability to operate effectively in making and changing the law. At the same time, parliamentary committees do have their limitations in providing this support.

7 marks

This question should be marked globally.

Note: It is important that students only respond to this question in terms of either parliamentary committees or Royal Commissions. High-scoring responses should include an introductory and closing statement, and should consider both strengths and weaknesses. Note that the question requires students to 'refer to one example'. Students are required to study an example as stipulated in Unit 4 Area of Study 2.

c. *For example, any one of:*

- influence of court decisions
- courts interpreting statutes
- parliament codifying common law
- parliament abrogating common law
- parliament legislating to establish, abolish, or change the jurisdiction of courts

Sample response (influence of court decisions):

While a court's main role is to reach its decision based on case facts and the applicable law, 1 mark

it may nevertheless, in the course of deciding a case before it, make comments that may influence parliament to make or change law on the matter. 1 mark

This occurred in *Trigwell's* case in relation to the responsibility of a land owner for their animals straying from unfenced property. The High Court of Australia's determination followed an outdated precedent, leading to an injustice occurring. At the same time, the court encouraged parliament, as the supreme lawmaker, to introduce legislation that would extinguish the precedent the court followed. Parliament did, in turn, introduce the relevant legislation. 1 mark

Note: Responses do not require an example to earn full marks. An example may be appropriate, depending on the topic chosen. For an example to earn marks, students must provide sufficient detail and link the case back to the question.

Question 3 (13 marks)

a. *For example:*

'Presumption of innocence' has not been reflected in this case; both the two accused have now had their charges dropped, and David Warne still faces armed robbery charges. All have at some stage been held in remand, even though they had not been found guilty of any crime. 1 mark

Presumption of innocence says that any person accused of a crime is assumed to be innocent until they have been found guilty before the courts. While there was the option of placing each of the accused on bail, thus maintaining their freedom, each was held in remand. 1 mark

One right of the accused is to be tried without unreasonable delay. 1 mark

In the case of David Warne, there has been no trial date set because he is still to face committal proceedings. 1 mark

The committal is set down for 'next month', thus, while he is being held in remand, it suggests that such a delay is reasonable. 1 mark

Both the presumption of innocence and the right to be tried without unreasonable delay are supported in the Victorian Charter of Human Rights and Responsibilities.

Note: A range of other points are appropriate. High-scoring responses should address the 'to what extent' requirement of the question.

b. *For example, any one of:*

- determines whether the State has provided enough evidence to support a conviction at trial in a higher court
- ensures that the prosecution discloses the evidence that they believe will lead to a guilty verdict
- allows the accused to consider whether they will change their plea to guilty, once hearing the evidence presented

Sample response (whether State has provided enough evidence to support a conviction):

Committal proceedings are a pre-trial procedure where a person has pleaded not guilty to determine whether the State has provided enough evidence to support a conviction at trial in a higher court. 1 mark

In this case, the prosecution must convince the magistrate that David Warne should stand trial on the charges of armed robbery in the County Court. 1 mark

*Note: A range of other points are appropriate.
Responses should refer to the case outlined in the question.*

- c.** Both the staff on duty and customers in the store at the time of the armed robberies may consider joining together in representative proceedings, 1 mark
given that they have suffered severe trauma from the events and it is suggested that no form of security was in place at the time of the robberies. 1 mark

Representative proceedings are available to them if there were more than the required seven people to commence such an action that would have claims against Electronics-R-Us given that no security was in place. In each case, the trauma has resulted from the armed robberies involving the members of the gang. 1 mark

d. *For example, any one of:*

- The relevant statute may be more easily applied in future cases.
- The meaning of the legislation may be narrowed or broadened.
- Given the interpretation will come from a judge in the Supreme Court, a precedent will be set for future cases to follow.

Sample response (relevant statute more easily applied):

The words 'armed robbery' may be given a clearer meaning. 1 mark

A future case may come before the courts where it is unclear whether the matter before the courts and the legislation being applied match. 1 mark

This will result in the statute related to the criminal offence of armed robbery being more easily applied. 1 mark