



Trial Examination 2022

VCE Legal Studies Units 3&4

Written Examination

Suggested Solutions

SECTION A**Question 1** (2 marks)*For example:*

One way that the presumption of innocence is protected is through the standard of proof required in a criminal case.

1 mark

The prosecution has the responsibility to prove that the accused is guilty of the crime beyond reasonable doubt in a court of law. The accused does not have to prove their innocence.

1 mark

Note: A range of responses are acceptable, including bail, the right to silence and prior convictions only being considered during sentencing if the accused is found guilty.

Question 2 (3 marks)*For example:*

If an indictable offence was committed against them, the victim is entitled to be informed of the likely release of the accused from prison.

1 mark

The victim can apply to be placed on the Victim's Register.

1 mark

This will entitle them to receive information about the length of the sentence of the accused, the likely date of their release, if there is a supervision order in place and if the offender will be released on parole.

1 mark

Note: A range of responses are acceptable, including a response that explains the right of the victim to be informed about the proceedings. The response must refer to an indictable offence.

Question 3 (4 marks)

The Governor-General represents the Queen as the head of state at the Commonwealth level of parliament. The role of the Governor-General is to ensure that the current democratic government operates effectively. This means that they can grant royal assent by formally approving bills that have passed both houses of parliament to then become law.

1 mark

The Governor-General also has the power to withhold assent or suggest amendments to bills; however, this has never occurred as they work on the advice of the Prime Minister.

1 mark

Another role of the Governor-General is appointing the executive council, which includes the leader of the current government and senior ministers. The executive council then gives advice on government matters and approves delegated legislation.

1 mark

However, while the Governor-General presides or oversees the executive council, they are not a member. This means their role is more of a figurehead rather than a proactive member of the law-making process.

1 mark

Note: A range of responses are acceptable. Other roles of the Crown include dissolving the house of representatives and calling for an election. Responses must consider both strengths and limitations of the role of the Crown as part of the discussion. To obtain full marks, the response must refer to the Governor-General or make some other reference to the Commonwealth.

Question 4 (8 marks)

For example:

Parliament and the courts can both respond to the need for law reform and complement each other to be able to deal with a rapidly changing society.

Parliament is the supreme law-making body and can make new laws or change existing ones to respond to the changing needs of society. However, it must do so within its jurisdiction; otherwise, the High Court will declare the law to be *ultra vires*. Parliament is an elected body that is voted in by the majority of the people and has the ability to override or codify laws that come from the courts. While parliament does have the capacity to be more controversial, it is reluctant to make laws in areas where there are conflicting interests as it focuses on winning voter support.

Parliament can refer potential areas of law-making that require further investigation to law reform bodies like the Victorian Law Reform Commission or establish a royal commission or parliamentary committee to determine whether there is need for change in the law. However, these processes can be time consuming and expensive.

The courts can make laws where there are gaps in current legislation or where the meaning of the law is unclear. However, the courts can be reluctant to change precedents, preferring to leave the law-making to parliament. Some decisions and comment made by judges can influence and lead to law reform, such as *Mabo v Queensland (No 2)* and the *Native Title Act 1993*, but judges can only make laws when a case is brought before them. Even in these cases, the law must relate to the issues of that case.

Judges are appointed rather than voted-in, which means that they are not subject to the same political influence or pressure as members of parliament. While this may mean that they can assess the need for law reform more objectively, this law reform may not be representative of the views and values of the people in society.

Overall, this means that the limitations of one institution can be addressed by the capabilities of the other. Together, they can help law evolve and change to meet the dynamic needs of society.

8 marks

This question should be marked globally.

Note: To obtain full marks, the response must respond to the word 'together' and ensure the answer incorporates a reference to the relationship between parliament and the courts. High-level responses must address both strengths and weaknesses of parliament and courts and should provide a concluding statement. While the question should be marked globally, the following sample marking scheme may be used.

2–3 marks for the discussion of parliament's ability to respond to the need for law reform.

2–3 marks for the discussion for the courts' ability to respond to the need for law reform.

1–2 marks for the overall comment or conclusion.

Question 5 (13 marks)

- a.** The principle of access involves individuals like Sam understanding their legal rights and having the ability to pursue their case, regardless of their background or financial situation. 1 mark
- Access refers to Sam being able to use a range of dispute settlement methods like mediation and binding hearings through institutions like the Victorian Civil and Administrative Tribunal (VCAT) to resolve his civil dispute rather than abandoning it. 1 mark
- VCAT offers a more affordable option than pursuing this civil dispute through the court system; if Sam went through the court system, he would have to undergo lengthy pre-trial procedures and pay much higher costs to settle the matter. 1 mark
- VCAT also provides a more timely resolution to civil disputes as the time between the lodgement of all necessary documentation and the hearing is less than a court trial. Most cases are resolved within a day. This also supports the principle of access, as it would encourage Sam to pursue the civil matter given that there is an efficient way of resolving his grievance. 1 mark
- b.** VCAT would be appropriate to hear this case as it provides individuals like Sam with access to a cost-effective, efficient and independent tribunal that can hear and settle his civil dispute with the home renovation business. 1 mark
- VCAT's level of specialisation and delivery of a high-quality dispute resolution process would ensure that Sam does not abandon the case. Going through the court system would involve costly pre-trial procedures, the need for legal representation and long delays to have the matter resolved. 1 mark
- VCAT is a less formal dispute resolution body that does not need the complex rules of evidence and procedure that Sam would encounter if he were to go through the court system. 1 mark
- However, VCAT's appropriateness can be affected by its limited right to appeal. Decisions made by VCAT are usually final, but parties may appeal to the Supreme Court (Trial Division) on a point of law. 1 mark
- There may be a backlog of cases to be heard through VCAT, which could delay the resolution of the civil matter. 1 mark
- Sam may also elect to represent himself at VCAT rather than use legal personnel, so he may struggle with the complexities of the case and be at a disadvantage if the home renovation business hires legal representation to fight the dispute. 1 mark
- c.** The main purpose of a civil remedy like an injunction is to protect or correct the injury or harm caused by the defendant to the plaintiff. 1 mark
- If VCAT orders, on a mandatory basis, that the home renovation business redoes the work that Sam was not happy with, this ensures the matter is settled and enables the remedy to fulfil its intended purpose to the full extent. 1 mark
- However, for VCAT to rule in favour of Sam, he would need to prove that the work done was substandard or of a poor quality. 1 mark

Question 6 (10 marks)

For example:

There is a constant need to review and reform the criminal justice system to ensure that the principles of justice are upheld and laws reflect the changing needs of society.

There are high costs associated with sustaining the criminal justice system. There is limited funding available to Victoria Legal Aid, which supports low-income individuals who have been accused of a crime with preparing and presenting their defence. This can affect the principles of access and fairness. The high cost of legal fees and representation means that some people struggle to obtain legal advice and have difficulty in understanding their legal rights, which undermines the principle of access. The limited amount of funding provided to Victoria Legal Aid also impacts the principle of equality as it can prevent the organisation from providing proper legal advice and representation. In this case, the accused is not treated with the same status and rights or given the same opportunities to present their case as someone who can afford legal representation.

Time delays and a backlog of cases in the criminal justice system impacts both the principle of access and the principle of fairness. There are limited court resources for the increased criminal cases, resulting in significant time delays for cases to go to court. There are also lengthy pre-trial procedures (for example, committal hearings) for an indictable offence, which hinders the ability of the accused to achieve a timely resolution to their case and, thus, affects their capacity to work and deal with family issues. If the accused does not have time to properly prepare their defence, this affects the principle of fairness as they are not afforded the same opportunities to present their case in court as someone who does have time.

Cultural differences can create significant barriers for individuals who have difficulty understanding and navigating the complex legal process of our criminal justice system. The principle of fairness can be hampered by racial bias and discrimination. All parties to a criminal case need to receive impartial treatment under the law without fear or favour. A jury is used when someone is charged with an indictable offence and pleads not guilty. It is possible for jury members to have a personal bias, which may affect their judgement when deciding on the guilt or innocence of the accused.

Cultural differences can impact the principle of access if there is a lack of intercultural understanding or language barriers preventing the accused from understanding their legal rights and legal processes (such as the rules of evidence and procedure). Australia's First Nations peoples are an example of a marginalised group in the community whose lack of access to legal resources like translators and legal representatives with a good understanding of cultural differences. This reinforces inequality for those who are overrepresented in Australia's criminal courts and prisons.

One recent reform to address this issue has been the extension of the jurisdiction of the Koori Court and Koori County Court to include offences where there is an alleged threat of the defendant contravening a family violence intervention order. This came into effect on 1 May 2019 and promotes the principles of fairness and equality as it allows the accused to participate in the hearing process because the process is conducted informally and in a manner that is non-threatening to all parties. Koori elders or respected persons in the community participate in the sentencing process.

A recommended reform relates to the implementation of a National Justice Interpreter Scheme to ensure that professional, appropriate and skilled interpreters are freely available to people from culturally and linguistically diverse backgrounds, including First Nations peoples and people seeking asylum. Improving access to interpreters will promote the principles of fairness and equality as it ensures that people can understand the claims made against them. This will assist with presenting their own case and understanding criminal legal procedures. This will then help overcome unjust outcomes that can result from not having such supports in place. An effective criminal justice system involves the continual need to review and reform the legal system to promote fairness, equality and accessibility when protecting the rights of individuals.

10 marks

This question should be marked globally.

Note: A range of responses are acceptable. High-scoring responses should include an opening and closing paragraph and must address all the elements of the question, linking each of the factors to at least one principle of justice. One recent and one recommended reform must be included and linked to one of the three factors (cost, delays or lack of access).

While the question should be marked globally, the following sample marking scheme may be used.

Award 1–2 marks for a response that refers to one element of the question: a recent reform, recommended reform or principle of justice.

Award 3–4 marks for a response that explains a recent or recommended reform with some reference to one of the principles of justice.

Award 5–6 marks for a response that attempts to address all the elements of the question: an explanation of both a recent and a recommended reform with a link to one of the principles of justice.

Award 7–8 marks for a response that analyses both a recent and a recommended reform and links to at least one principle of justice and one factor.

Award 9–10 marks for a response that analyses, in detail, both a recent and a recommended reform and links each reform to at least one principle of justice and the factors.

SECTION B**Question 1** (12 marks)**a.** *For example:*

Committal proceedings are presided over by a magistrate in the Magistrates' Court when the accused has been charged with an indictable offence and has pleaded 'not guilty'. 1 mark

The purpose of committal proceedings is to create the test for committal, which, in Source 1, the Victorian Law Reform Commission (VLRC) has recommended abolishing. The test for committal establishes whether there is enough evidence for the case to go to trial in either the County or Supreme Court, depending on the nature of the crime. 1 mark

The magistrate will determine the strength of the evidence presented by the prosecution and whether it is sufficient to support a jury conviction in a superior court. 1 mark

Note: A range of responses are acceptable, including determining the future direction of the case, determining how the accused will plead, providing the opportunity for the accused to hear or read the evidence and having witnesses cross-examined.

b. *For example:*

Committal proceedings can affect the principle of fairness by allowing the accused to fully test the case before them prior to the trial. 1 mark

They can test the evidence presented by the prosecution and cross-examine witnesses. A just result is more likely to be gained if the case does not proceed to trial due to insufficient evidence, allowing the matter to be dealt with more quickly. 1 mark

However, as the Hon. Anthony North QC indicated in Source 1, this process can impact fairness for the victim because it can add to the delay in settlement of this matter. 1 mark

Note: Responses may refer to the principle of fairness or equality, but the principle must be linked to committal hearings and the source material for full marks.

c. *For example:*

The VLRC plays an important role in reviewing Victorian law as it has the capacity to seek public opinion on law reform issues through public submissions and seminars. It is an independent and expert body that examines, monitors and coordinates law reform activity. It makes recommendations to the Victorian Parliament such as the 51 recommendations referred to in Source 1. Its terms of reference usually come from the Attorney-General, and it has the time to research the legal issue in detail before formulating a report on its findings.

However, the VLRC has a limited ability to investigate major legal issues other than those referred to it by the Attorney-General. It also has limited resources, and each investigation is costly and time consuming. The Victorian government is under no obligation to accept and implement the recommendations made by the VLRC.

Overall, the VLRC has a significant role to play in law-reform. Its report on pre-trial procedures has been tabled in Parliament and will be considered in due course, which may result in the implementation of some, if not all, of the 51 recommended reforms.

6 marks

Award 1–2 marks for a response that provides one strength or one weakness of the VLRC with no concluding statement or links to the source material.

Award 3–4 marks for a response that provides at least one strength and one weakness of the VLRC with no concluding statement or links to the source material.

Award 5–6 marks for a response that provides both strengths and limitations of the VLRC with a concluding statement and links to the source material.

Question 2 (16 marks)

- a.** The Australian Constitution acts as a check on the Commonwealth Parliament in law-making through the requirement of a double majority in a referendum. 1 mark
- This means that the majority of voters in Australia (at least 51%) must vote in favour of the change to the wording of the Constitution. The majority of states (four out of the six states) must also vote in favour of the change. 1 mark
- As shown in the table in Source 2, all six states voted in favour of the change in the 1967 referendum, along with the majority of voters in each state. In total, 90.77% of voters were in favour of the change, which is why the 1967 referendum successfully led to a change in the wording of the Australian Constitution. 1 mark
- In the case of the 1999 referendum, all six states and one territory voted against the change, so the double majority rule was not achieved. This meant that the wording of the Australian Constitution did not change, and Australia remained a constitutional monarchy and not a republic. 1 mark
- b.** *For example:*
- Section 128 of the Australian Constitution clearly outlines that the only way that the wording of the Australian Constitution can be changed is through a direct 'yes or no' vote by all eligible Australian voters. 1 mark
- This means that the Australian people, not the Commonwealth Parliament, decide if words or phrases in the Constitution will be added or removed. This upholds the democratic process. 1 mark
- In the case of the 1967 referendum, people voted overwhelmingly to amend the Constitution to allow the Commonwealth Parliament to make laws for Australia's First Nations peoples, including them in the census. This increased the law-making powers of the Commonwealth Parliament, making Indigenous Affairs a concurrent power. 1 mark
- The limited number of referendums that have been held (44), given the amount of time that has passed since the Constitution was enacted, is a restriction on the Australian people being able to change the Constitution. The Australian people are only able to make a change to the wording of the Constitution if a Bill for the proposed referendum is passed by the Houses of Parliament. Parliament is often discouraged from altering the Constitution due to the high cost of holding a referendum and the low rate of success to date. 1 mark
- In addition, the strict double majority rule prevents the alteration of the Australian Constitution without the consent of the Australian people. 1 mark
- Only eight referendums have been successful to date; without the support of the Australian people, suggested changes to the Constitution will not pass the double majority test and the Australian Constitution will, therefore, remain unchanged. 1 mark

Note: An alternative acceptable response may analyse the 1999 referendum.

c. *For example:*

Amending Section 51 of the Australian Constitution to allow the Commonwealth to make laws for Australia's First Nations peoples is significant for Section 109 because it resulted in Indigenous Affairs becoming a concurrent law-making power, rather than a residual power. It effectively increased the law-making powers of the Commonwealth and reduced the law-making powers of the states.

Section 109 is also significant as it provides a method of resolving inconsistencies between the Commonwealth and state laws, which can arise when both parliaments make laws in the same area. If the Commonwealth and states do pass laws that contradict each other, the Commonwealth law will always prevail, making the state law invalid to the extent of the inconsistency. Having Section 109 in place can also mean that states will avoid interfering with Commonwealth laws to prevent challenges in the High Court.

The 1967 referendum resulted in the Commonwealth obtaining these law-making powers by an overwhelming majority. However, if the Commonwealth Parliament passed no future legislation in relation to First Nations peoples, Section 109 would not be significant as the state laws would continue to apply.

Additionally, only a person with standing can challenge a law in the High Court. This means that, should an inconsistency arise in the law, the Commonwealth must challenge the state(s) in the federal court. If this does not happen, both laws will remain in place, creating confusion for the citizens of that state.

6 marks

This question should be marked globally.

Note: High level responses must provide both strengths and limitations of Section 109 and link these to the source material.

While the question should be marked globally, the following sample marking scheme may be used.

Award 1–2 marks for a response that provides a strength or a limitation of Section 109 without any reference to the source material.

Award 3–4 marks for a response that provides at least one strength and one limitation of Section 109 without any reference to the source material.

Award 5–6 marks for a response that provides both strengths and limitations of Section 109 with reference to the source material.

Question 3 (12 marks)**a.** *For example:*

A court hierarchy provides administrative convenience as cases are distributed according to their level of seriousness and complexity.

1 mark

This means that more complex civil cases go to the higher courts and minor civil cases are heard quickly and at less cost to the parties in the lower courts. The court hierarchy provides more effective case management to reduce delays.

1 mark

In this negligence case, the Hallam beautician would have sought to have her matter heard in the County Court due to the amount of damages she was seeking. As the County Court has unlimited jurisdiction, she may have thought she was entitled to more than the \$100 000 that the judge awarded her.

1 mark

Note: Responses must refer to the scenario to be awarded full marks. Alternative responses are acceptable, including a response that describes appeals.

b. *For example:*

One pre-trial procedure that would be relevant in this case is pleadings, which enables both parties to be informed of the details of the legal action. This would include an outline of the nature of the claim in the writ. This is where the plaintiff would state the pain and injuries she suffered in the fruit and vegetable shop after she slipped on a grape and the remedy she is seeking as a result. It would also include the evidence each party (the beautician and the shop owner) would present to support their version of the events.

1 mark

This pre-trial procedure would also provide the court with all necessary information before the civil trial begins, which could lead to a quicker trial and help the court allocate the necessary time and resources to enable the matter to be heard in the County Court.

1 mark

Pleadings, like all pre-trial procedures, could also encourage an out of court settlement. The defendant may be willing to accept responsibility for the injuries the plaintiff sustained while shopping and potentially offer some monetary compensation to avoid a costly trial.

1 mark

Note: Alternative pre-trial procedures are acceptable, including the discovery stage or a directions hearing.

c. *For example:*

This negligence case was tried in the County Court, which is a lower court than a superior court of record, so the judge would be restricted by precedent to some extent. As a lower court, the County Court is bound by the decisions of a higher court (the Court of Appeal) in the same hierarchy when the facts in cases are similar. This promotes consistency, predictability and fairness.

The judge in this case would also need to consider the legislation in relation to negligence. If there is no binding precedent or relevant legislation, the court could create a new legal principle and apply this to the civil case to determine the outcome and damages if applicable. Judges in higher courts do have the ability to change, modify or avoid precedent by reversing the decision of a lower court; overruling the decision that involves two separate cases; distinguishing the material facts; or disapproving the decision.

The judge could reach a different decision in this case if they were able to distinguish from the previous precedent because the facts differ, allowing them to then reach a decision without being bound by precedent. By identifying substantial differences between the material facts, the judge can avoid being bound by existing precedent when determining whether the plaintiff's rights were infringed by the actions or omissions of the fruit shop owner.

The judge would also not need to follow the amount of damages awarded to the plaintiff in previous similar cases. The judge only needs to follow the binding part or the *ratio decidendi* of a precedent to determine the outcome of this case.

6 marks

This question should be marked globally.

Note: A high-scoring response must provide an answer to address the question ('to what extent...') and provide reasons to justify the answer. Responses should be clearly linked to the scenario.

While the question should be marked globally, the following sample marking scheme may be used.

Award 1–2 marks for a response that provides a very limited justification without addressing 'to what extent' or referring to the source material.

Award 3–4 marks for a response that provides a moderate justification without addressing 'to what extent' or referring to the source material.

Award 5–6 marks for a response that provides a detailed justification addressing 'to what extent' and referring to the source material.