

The Legal Studies Hub – Legal studies UNITS 3 & 4 2024
Written examination (Version B)

SECTION A

Question 1 (3 marks)

Describe **one** factor that may affect the ability of a fine to punish an offender

Question 2 (7 marks)

The Victorian Parliament passes statutes in areas such as crime, schools, hospitals, and public transport. Sometimes, a statute needs to be interpreted by the courts when resolving a case.

- [illegible]

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Question 3 (4 marks)

Referring to **one** recent inquiry recent inquiry, describe the role of Royal Commissions or parliamentary committees in law reform

Question 4 (4 marks)

‘If a law made by the Commonwealth Parliament is inconsistent with a law already made by the Victorian Parliament, the Commonwealth law will become invalid’.

Is this statement true? Justify your response.

Question 5 (12 marks)

On 30 March 2023, the Constitution Alteration (Aboriginal and Torres Strait Islander Voice) 2023 was introduced in the House of Representatives. The bill proposed a change to the Australian Constitution to recognise the First Peoples of Australia. As part of the change, an Aboriginal and Torres Strait Islander Voice would be established. The Voice would give non-binding advice to the legislature and the executive about matters relating to Aboriginal and Torres Strait Islander peoples.

After the bill passed the Commonwealth Parliament, the proposed change was presented to voters on 14 October 2023. The proposal was not approved by voters on that day. Factors such as the lack of bipartisan support, confusion about the proposed change, and misinformation were considered to be relevant to how people voted.

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- [illegible]

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Question 6 (10 marks)

‘Plea negotiations and mediations do not achieve the principle of fairness. They do not occur in the open, and should never be used’.

Discuss the extent to which you agree with this statement.

SECTION B

Question 1 (12 marks)

The following is a hypothetical scenario

Clayton owns a legal business, which has over 5,000 clients. In 2023, Clayton terminated one of his employees, Prakash, because he felt that Prakash had made many mistakes and was not performing well.

Two weeks later, Clayton was contacted by four clients. The clients said they had each received an email from Prakash, who claimed that Clayton was a 'criminal', and did work for 'crime gangs'. After some investigating, Clayton discovered that Prakash had downloaded the contact details of all of his clients. Clayton is not sure how many clients Prakash has contacted.

Clayton engaged a lawyer, who commenced Supreme Court proceeding on his behalf. In the case, Clayton sought an urgent injunction to stop Prakash from contacting Clayton's clients.

At a preliminary hearing, Prakash denied he had stolen Clayton's information. He said he was friends with the people he emailed. He insisted that what he had written about Clayton was 'true'. Prakash also said that he would continue to email people to inform them that Clayton is a 'criminal'.

The Supreme Court decided there was evidence that Prakash had wrongfully obtained the contact details of clients whilst working for Clayton. The Supreme Court judge decided that if an injunction was not granted, Prakash may continue to contact clients and cause damage to Clayton and his business. A temporary injunction was therefore ordered, stopping Prakash from contacting the plaintiff's clients.

The judge then used her case management powers to order the parties to take certain steps before trial. The injunction will remain in place until trial, when the judge will decide whether to make the injunction final

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- a. Explain how the Victorian court Hierarchy achieves administrative convenience (**3 marks**)
- b. How could the use of case management powers reduce the time it takes to resolve this dispute? (**4 marks**)
- c. Discuss the ability of an injunction to achieve **one** of its purposes in this dispute (**5 marks**)

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Question 2 (28 marks)

Source 1

In March 2024, three protestors parked a truck on the West Gate Bridge in Melbourne to protest about climate change. The truck blocked several lanes, causing inconvenience to several thousand people trying to get into the city on a Tuesday morning. The protest received significant media attention. The protestors said they wanted to raise attention about a lack of government action to address climate change. One of the protestors said they had tried all other methods of campaigning, and none of them had worked to force government to address climate change.

Two of the protestors were charged with offences, including public nuisance. Their case was heard in the Magistrates' Court. They pleaded guilty and were sentenced to 21 days in prison by the magistrate. The offenders appealed their sentence in the County Court. The prosecution also appealed to increase the sentences.

One of the offenders was self-represented at the appeal. On appeal in the County Court, the sentences were increased to two months in jail. The appeal judge said the offenders had significant criminal histories for similar offending, and expressed doubt about whether they would stop offending in the future unless a significant penalty was imposed. ABC News reported that the appeal judge said that a message must be sent to like-minded people not to engage in this type of illegal conduct.

Source 2

The following are extracts from an article by Jacqueline Peel, Director, Melbourne Climate Futures, The University of Melbourne, and published in The Conversation on 27 July 2023.

Climate litigation is on the rise around the world and Australia is the head of the pack. Australians relish being at the top of international league tables in sport. But few would know we're a global champion when it comes to using the courts to hold governments and companies to account on climate change.

A new report from the United Nations Environment Programme found a staggering 127 climate lawsuits in Australia. We're second only to the United States on the number of cases and slightly ahead on a per capita basis. The count started in the 1990s and runs through to December 2022....

... What is climate litigation?

Climate litigation describes a broad range of legal interventions brought to address climate change... These cases have become more common as the climate crisis has worsened and the gap grows between needed action and what governments and companies are actually delivering

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As the report states: Climate change litigation provides civil society, individuals and others with one possible avenue to address inadequate responses by governments and the private sector to the climate crisis.

It's an avenue that's widely available. It can be accessed by many different groups including some of the most vulnerable...this could make climate litigation a powerful tool for those disproportionately affected to demand and secure climate justice.

- a. Define the term 'aggravating factor'. **(2 marks)**
- b. The appeal judge said a message must be sent to like-minded people not to engage in this type of illegal conduct. Describe the purpose of the sanction this referring to. **(3 marks)**
- c. Outline **two** rights of the protestors in their criminal case. **(4 marks)**

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- d. Analyse the role of the media in law reform. **(5 marks)**
- e. Explain how legal practitioners can help achieve the principle of equality in criminal and civil cases. **(6 marks)**
- f. Discuss **two** factors that affect the ability of courts to make laws about climate change. **(8 marks)**