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Trial Exam Paper

2008

LEGAL STUDIES

Written examination

Sample responses

This book presents:

- full and partial sample responses
- mark allocations
- tips and guidelines

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Question 1

What is the role of the Governor-General in relation to the legislative process?

2 marks

Full sample response

The final step in the passage of a bill through the Commonwealth Parliament occurs when the Queen's representative at the federal level, the Governor-General, gives royal assent to a bill that has been passed by both houses of the federal parliament. In giving royal assent, the Governor-General signs the bill while acting as part of the Federal Executive Council. This is a formal procedure which shows that all necessary processes leading up to royal assent have taken place and that the Crown, on the advice of its Ministers, has approved of the bill, which becomes a law following royal assent.

Mark allocation

This answer is globally marked in that the quality of the answer as a whole will determine if full marks awarded. Thus, even though there is only one particular issue that this question is focussed on, students must explain the issue in as much detail as possible in order to earn both marks allocated to this question. The greater the detail and the greater the scope of the explanation, the greater the possibility of full marks being awarded. This approach is to be used for all questions which clearly do not lead students to answering particular points to address the demands of the question. For example, a typical point-for-mark question is found in Q5; each part of the question is tied to a particular mark.

Tips

Many students find it difficult to provide sufficient detail for such a straightforward question, despite the fact that it touches upon two distinct components of the *VCE Legal Studies Study Design*. If the reason for this is a textbook which lacks depth, then students should make good use of the many excellent Australian websites which, although not aimed at VCE students, have much appropriate information. A search via a search engine will provide an array of suitable sites. Students who equate royal assent with a signature should realise that their knowledge is far too superficial for a Unit 3/4 subject.

Question 2

We have a federal constitution. Why is it possible for there to be different laws on the same topic in every Australian state?

2 marks

Full sample response

The Commonwealth Constitution allows both the Commonwealth Parliament and State Parliaments to make laws on certain topics, e.g. tax. These concurrent powers lead to differences in laws on the same topic around Australia, subject to the operation of Section 109 if Commonwealth and State laws are inconsistent. Furthermore, State Parliaments are free to make laws on any topic which is not a specific power of the Commonwealth Parliament; the existence of these residual powers is guaranteed by Sections 106, 107, and 108 of the Constitution. For example, each State has its own set of criminal laws which can differ widely.

Mark allocation

This answer is globally marked though a balance between the two reasons for differing laws should be kept in mind.

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Tips

- *This question requires students to apply their knowledge about the division of legislative power created by Commonwealth Constitution.*
- *Students must take care to think more deeply about each question; too little reflection on this question may lead to students writing about residual powers only, even though there is much variety in laws, such as the tax example given, which actually fall into the concurrent powers bracket.*

Question 3

Last week, a Supreme Court judge made a decision on the meaning of a word in a Victorian Act following an appeal on a point of law from the Magistrates' Court. What is the effect of this?

2 marks

Full sample response

The definition is now part of Victorian law and is subject to the concept of *stare decisis*. The Act will now need to be read in conjunction with this definition. When giving advice, lawyers will need to use the definition whenever referring to the Act in question. Judges in Victoria's lower courts (and most likely, in the Trial Division of the Supreme Court itself) will use this definition in any case in which this word is in issue. The definition will be subject to change by the Victorian Court of Appeal, the High Court, or the Victorian Parliament.

Mark allocation

This answer is globally marked.

Tips

- *Many students limit their understanding of stare decisis to precedent only. However, whenever judges make law, whether by creating a precedent or by annunciating a new meaning of a word or a phrase in legislation (or delegated legislation), the definition is subject to the usual rules of precedent.*

Question 4

Explain the jurisdiction of the Family Court of Australia.

2 marks

Full sample response

In exercising the court's original jurisdiction, a single judge of the Family Court can hear disputes arising under the *Family Law Act* and the *Marriage Act*. S/he can determine the validity of marriages and hear applications for divorce, property settlement, and spousal maintenance following separation of a married couple. The court also determines issues relating to residence of and contact with children of both married and unmarried parents. The Full Court of the Family Court – three judges – can hear appeals from a single Family Court judge or from the Federal Magistrates Court on family law issues.

Mark allocation

This answer is globally marked. Students should practise using exam-style lined paper to see if their knowledge will fill up all the lines allocated with worthwhile – that is, not repetitive, long-winded, or incorrect – responses (generally 5 lines per 1 mark in questions which are worth 1-5 marks).

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Tips

- *Many students are able to successfully rote-learn a great deal of the factual information required by this course. However, with just a quick visit to the Family Court website, students will become far more exposed to the workings of this body.*
- *In fact, a quick look at the website of each of the courts listed in the Study Design will do wonders to improve students' grasp of the nature of each court.*
- *This question does not focus on the original or the appellate jurisdiction of the Family Court; students must not overlook the appellate jurisdiction of any court they are asked to write about unless the question provides a focus.*

Question 5

All methods of dispute resolution involve some drawbacks.

Identify and explain **two** disadvantages of conciliation.

2 marks

Full sample response

One weakness of conciliation is that it may not bring about any solution. The outcome reached through conciliation is supposed to be mutually acceptable to and mutually satisfactory for the parties. However, if one of the parties disagrees with a proposed solution, the process will not deliver any resolution at all.

Furthermore, any solution which is agreed upon is not legally binding or enforceable. Neither party is under any legal obligation to carry out the terms of the outcome; only goodwill is involved. The courts and their enforcement procedures, e.g. the Sheriff's Office, cannot be used to enforce the outcome.

Mark allocation

This answer requires two distinct disadvantages for two marks (a point-for-mark approach).

Tips

- *Often students have insufficient depth of knowledge to be able to explain each point they learn, whether positive or negative, for longer than one sentence. Completing practice exam questions throughout the year will give students an idea of the extent of their knowledge and the amount of material they still need to acquire.*
- *There are many ways to express the "good" side and "bad" side of anything: words such as "advantage", "drawback", "strength", and "limitation" should be used in order to improve the written expression of each answer and to avoid formulaic responses which tend to suggest a lack of familiarity with, and control of, the content.*
- *Other issues students could look at include:*
  - *the voluntary nature of attending at a conciliation*
  - *the need for each party to be able to put their views across well (not a problem if a party is using legal representation during the conciliation)*
  - *the inability for conciliation to resolve disputes where there is a significant power imbalance or other external issues affecting the parties at the conciliation.*

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Question 6

What needs to take place for the Constitution to be changed? Given the history of referenda in Australia, what issues can impact on their success?

3 marks + 3 marks

Full sample response

Section 128 of the Constitution states that the process to change the Constitution begins when a Constitution Amendment Bill is presented to either house of the Commonwealth Parliament. The bill must gain absolute majority in the first house and then be put to the second house. Should the second house not pass the bill within three months, then the first house can pass it again. Within 2-6 months, the Governor-General must put the proposed change contained in the bill to the Australian voters. Voters will be asked to write Yes or No on the referendum ballot paper. The change will occur if more than half of all Australian voters approve the change and more than half of the voters in at least four out of the six States also approve it. If this is the outcome of the referendum vote, then the Governor-General will give royal assent to the bill and the Constitution will be changed.

The referendum will struggle if it is not supported by one of Australia's two main political parties. After all, each party has a vast voter support base, and these voters are likely to vote against the referendum question if that is the view of their preferred party. Furthermore, if the referendum is about a complex matter, many voters will be unlikely to change the status quo. When people find it difficult to understand the proposed change, they err on the side of caution and vote No at referenda. Lastly, many voters distrust a referendum proposed by politicians (reflecting a general distrust of politicians in our society). They may vote No simply because they believe that the change will give politicians more power over voters' lives.

Mark allocation

The first part of the answer requires a solid overview of the referendum process and is globally marked.

The second part of the question could be answered with three distinct issues for three marks, or as an overview of a variety of reasons (globally marked, using an example of a past referendum).

Tips

- *Section 128 of the Commonwealth Constitution is one of its most elaborate sections. Students must learn this process and be able to write about it at length.*
- *There is a plethora of reasons why referenda do not succeed. When summarising these reasons, students should include sufficient depth of understanding in their notes. It is simply not sufficient to say "referenda usually fail without bipartisan support". What does this mean, exactly? How will this issue be played out at the ballot box? Greater thinking and studying will provide the answers required.*
- *Students need to take great care when trying to explain many issues briefly, a tactic some could adopt for the second part of this question. Listing, however, is not a skill useful to students attempting this subject. A useful rule of thumb is that every point raised should be explained over at least two sentences.*
- *The use of an example here, such as the 1967 Aboriginal issues referendum or the 1999 referendum on the republic, would allow students to get their points across much more effectively.*

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Question 7

a. Describe the consequences if **two** of the constitutional rights Australians now enjoy were to be removed.

b. Compare **one** way in which democratic and/or human rights are constitutionally protected in Australia with that of another country that you have studied this year.

2 marks + 2 marks

Full sample response

a. One of the rights stated in the Commonwealth Constitution (in Section 80) is the right to trial by jury for Commonwealth indictable offences. Without this right, many serious crimes could be tried by a judge or magistrate sitting alone. This would most likely create a negative view of the criminal justice system in relation to Commonwealth offences because our society generally approves of the jury trying serious criminal matters. Without the right to receive "just terms" compensation when the Commonwealth Government acquires our property compulsorily, we would be unable to prevent unfair land grabs by the Government. This would create a great deal of uncertainty and concern in relation to real estate ownership.

b. Australians can challenge the constitutional validity of any Act in the High Court. If the High Court rules that the Act somehow contravenes the Commonwealth Constitution, the court's decision invalidates the Act and, if the Act denied the citizen their rights, protects the rights according to the Constitution. The New Zealand *Bill of Rights Act 1990* (BORA) does not give any NZ court power to invalidate Acts inconsistent with BORA. Nevertheless, BORA instructs NZ courts to interpret legislation according to the rights spelt out in BORA (unless the Act in question clearly contradicts BORA).

Mark allocation

- Each right described correctly will attract one mark (a point-for-mark approach).
- This answer is globally marked.

Tips

- *The first part of this question relies on students knowing their course content from many perspectives. Students should learn to think about issues arising out of the course in a variety of ways so that they are not caught out by a novel question.*
- *The second part of this question requires students to pick only one particular aspect for comparison. This could deal with the nature of the rights, the scope of rights, the ease with which rights can be changed or taken away, or the ways in which citizens can enforce their rights using the courts. Students should be sufficiently prepared to deliver a brief comparison on each of these points using their chosen country's constitutional framework.*

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Question 8

Evaluate **two** alternatives and/or reforms to the present jury system in Victoria.

4 marks

Full sample response

One proposed alternative to the jury is to allow judges to act as determiners of fact in all cases and to take on the same role as magistrates already have. It would save the taxpayers a great deal of money as jurors are paid $36 per day for the first six days (most trials last only a few days). Proceedings would run faster as the parties would need to convince only one judge instead of twelve/six jurors. However, it would deny ordinary citizens from taking part in the justice system. Furthermore, having only one view of the facts in serious criminal trials could lead to the wrong verdict and potentially devastating consequences for the accused, i.e. imprisonment.

Mark allocation

- Globally marked for each of the two issues discussed.

Tips

- *Although this question does not ask for the alternative/reform to be explained, the answer must commence with a clear statement as to the issue at hand.*
- *Students must keep in mind that "reforms" are changes to the current jury system, such as the further reduction/expansion of the range of people who can be ineligible or disqualified, whereas "alternatives" are options for replacing the jury as the determiners of fact in the courtroom (which include the empanelling of specialist jurors, such as a group of accountants for a fraud case, or a panel of expert assessors, such as doctors, for a medical injury case in which the amount of damages is the sole reason for the dispute.)*
- *The relative pros and cons of each idea should be presented with some detail in order to achieve a rounded response.*

Question 9

Dan has been charged with a range of serious offences following a fight in which he nearly killed Tom.

a. Describe **one** right Dan could exercise during the police investigation of this offence.

b. Describe **one** power that the police could exercise during their investigation of this incident.

c. Outline the original criminal jurisdiction of the court which is most likely to hear this case.

d. Who has the burden of proof in Dan's trial?

e. Compare the role of the judge in Dan's trial, given the adversarial nature of our system, with the role of the judge in the inquisitorial system.

f. Identify **one** aim of sentencing that the judge may consider if Dan is found guilty, and illustrate this aim through **two** sentencing options available to her.

1 + 1 + 1 + 1 + 4 + 2 = 10 marks

a. Full sample response

Dan must be reminded by the investigating police of his right to silence. The police must caution Dan that he is under no obligation to help the police with their enquiries, though if he does answer their questions, Dan's words can be used as evidence against him at trial.

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a. Tips

- *Students must take care to study the content as prescribed in the Study Design. The words "the rights of individuals" during pre-trial criminal procedures cover a variety of issues. Apart from being cautioned by the police on his right to silence, Dan has other rights including:*
    - *the right to communicate with a friend or family member prior to questioning*
    - *the right to communicate with a lawyer prior to questioning*
    - *the right to not take part in an identification parade*
    - *the right to not have a photograph taken*

b. Full sample response

Investigating police can take Dan's fingerprints and/or toe prints, palm prints and sole prints. They can do so only if they believe, on reasonable grounds, than Dan has committed the offences or after charging him with the crimes. The police may use reasonable force to obtain Dan's prints.

b. Tips

- *In our society, the police cannot do things that normal citizens cannot simply because of their status as police. Police need legal authority to act in ways other citizens cannot. For example, without a law which gives them the power to take fingerprints, the police could be sued for battery by aggrieved citizens. Nowadays, almost all of the powers police exercise are codified in relevant legislation (in Victoria, this is the Crimes Act 1958).*
- *Other possible police powers for this question include:*
    - *the power to carry out searches of premises (with or without a warrant)*
    - *the power to question a suspect*
    - *the power to detain a suspect for a reasonable time in order to question that person*
    - *the power to collect intimate and non-intimate DNA samples (with or without the person's consent)*
    - *the power to carry out electronic surveillance*

c. Full sample response

This offence will probably be tried in the County Court. It has a wide original jurisdiction to hear all indictable offences other than treason, murder, and attempted murder. Assaults which cause significant injury would be considered serious indictable offences and would be tried by one judge and twelve jurors.

c. Tips

- *Note that this question is particular in its focus: original criminal jurisdiction. It is easy for students to overlook the specifics and rush off to write about the jurisdiction of the court in general terms.*
- *Students must practice reading and dissecting questions by annotating or marking the question words during writing time on the exam. Putting a box around a key word, such as original, or circling limiting words, such as criminal, is of great help on the exam by allowing students to match their answers to the requirements of the question.*
- *While worth only one mark, it is clear that this question requires both the court and a brief overview of its jurisdiction. Again, students should know a range of offences which every court can hear; for this question, they must appreciate the variety of crimes that the County Court can hear.*

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d. Full sample response

The prosecution has the burden of proof: the Crown prosecutor has the responsibility of proving the facts that indicate Dan's guilt according to law. Dan is under no obligation to show that he did not commit the offences. At Dan's trial, the prosecution must prove its case beyond reasonable doubt.

d. Tips

- *Many students have the tendency to omit portions of the Study Design which they somehow see to be less significant or "easier". Yet the Study Design does not attribute any weight to different portions of the course. Each element of the course is important and must be learned and revised.*
- *Constructing revision notes by using the Study Design entries as subheadings will lead to a full and complete set of notes.*

e. Full sample response

The adversary trial relies on the parties fighting each other using evidence. Thus there needs to be an impartial third party to ensure that the contest runs fairly. This is the role of the trial judge. In Dan's trial, it will be the judge who determines whether questions that counsel ask of witnesses are permitted or not and whether pieces of real evidence can be put to the jury. The judge will determine all objections to questions as part of his job to enforce the rules of evidence and procedure. Judges may not ask any questions of witnesses themselves; they can only ask questions to clarify answers witnesses have already given.

In the inquisitorial system, the judge is the main party who examines witnesses, not the parties. Prior to the trial, the judge gains a good deal of knowledge about the case after reading the dossier, the collection of witness statements prepared by the investigating magistrate. Dan would be the first and most important witness the judge would question and Dan would be expected to comment on the allegations against him. There are few rules of evidence for the judge to enforce as the parties play a secondary role in adducing evidence (and there is no jury).

e. Tips

- *The question seems to require a brief overview of the role of the judge alone, but this sort of approach denies the reasons why judges in the two systems play such contrasting roles.*
- *In fact, the five key features of the adversary system as presented in the VCE Legal Studies course are closely interrelated.*
- *Were it not for the adversarial role we assign the parties, there would be no need for such strict rules of evidence and procedure at trial.*
- *It would be impossible to answer this question without mentioning the role of the parties and the rules of evidence and procedure (or even the need for legal representation).*

f. Full sample response

The judge might decide that Dan should be punished for his behaviour. Through our courts, society metes out retribution for illegal behaviour which hurts individual victims and society as a whole. Dan might therefore be sentenced to a term of imprisonment. We value personal liberty greatly, and depriving Dan of this is seen to be a severe punishment. The judge may also decide to impose a fine on Dan. A monetary penalty hurts the offender because in our society, money represents time and effort. Being deprived of money can be especially painful for less well-off defendants.

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f. Tips

- *The Victorian Sentencing Act 1991 lists five aims of sentencing for the judge/magistrate to consider: punishment, protection, deterrence, denunciation, and rehabilitation. Each aim is brought to life by a wide variety of sanctions for students to explore.*
- *Students can therefore learn about things that capture their interest keeping in mind that they must be able to move from aims to specific sanctions and vice versa.*

Mark allocation

a. This answer is marked globally.

b. This answer is marked globally.

c. This answer is marked globally.

d. This answer is marked globally.

e. This answer is marked globally. Balance, however, is important when comparisons are sought, and students would do well to try to write two marks' worth for each system of trial.

f. Given that each sentencing option explains the particular aim of sentencing, this answer is marked point-for-mark.

Question 10

"In Victoria, civil disputes can be resolved at a tribunal or in the courts."

Evaluate key aspects of each method and indicate which you think is better to resolve civil disputes.

6 marks

Partial sample response for two marks

One positive aspect of tribunals is that they offer people a cheap way to resolve disputes. Some VCAT lists, such as the Anti-Discrimination List, are free to applicants while others incur nominal application costs (around $35 for most other lists). In contrast, courts are much more expensive for the parties, and the higher the court, the greater the costs. For example, a Supreme Court writ costs around $700, and this is just the first document of many documents which will need to be created and filed with the court prior to a trial taking place. In this regard, tribunals are clearly the better option to resolve suitable civil disputes.

Mark allocation

Although this answer can be globally marked, students may feel more comfortable choosing three distinct issues to discuss and thus present an answer of three issues, each being worth two marks. Either method requires the last part of the question – "indicate which…" – to be addressed in the body of the answer.

Tips

- *The sample answer focuses on a particular type of cost – the cost of initiating a matter. Students must take care not to include broad comparisons as they are generally weaker than comparisons of specific issues.*
- *Other points of comparison possible for this answer include:*
    - *the necessity for preliminary documentation (e.g. pleadings and discovery documents)*

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  - *the degrees of formality at the hearing*
  - *the need for lawyers prior to and during the hearing*
  - *the ability of the disputing parties to take part in the dispute resolution process*
  - *the manner in which the dispute is resolved at the hearing*
  - *the possibility and scope of an appeal of the original decision.*
- *Given the question requires students to indicate which method is better, it is a good idea to provide a summary for every point of comparison made. This allows for a simple overall conclusion at the end of the answer which would address the final part of the question. It is not necessary for the conclusion to state whether either of the methods is to be preferred; students are free to state that "it depends on the case in issue".*
- *The best way to study for this type of question is to create a table which includes courts, tribunals, and ADR methods and to organise the information in the cells according to the key features listed above as well as the positives and negatives of these key features for each dispute resolution body and method. Learning this table should provide for effective discussion on the exam.*

Question 11

Discuss **two** perceived advantages and **two** perceived disadvantages of parliament as a law-making body.

8 marks

Partial sample response for two marks

Parliament is often lauded as the best lawmaker because it is composed of the voters' representatives and operates for their benefit. We value representative democracy and in theory, MPs should listen to their constituents and act according to the views and values of those people. However, our modern parliamentary system is plagued by the party discipline inherent in the two major parties, and MPs generally vote according to the party's views rather than the views of their constituents. Only rarely do MPs cross the floor as a direct consequence of their voters' views (e.g. Barnaby Joyce in 2006 in relation to the new media ownership laws).

Tips

- *The textbooks are full of tables and other meaningful comparisons of the strengths and weaknesses of parliament as a lawmaker. Students must ensure that they appreciate the longer explanations as well as the brief table entries for all the pros and cons.*
- *Solid examples may take a bit of time and even further research, but they clearly enrich such discussion-type answers. "Discuss" here indicates that the chosen strength/weakness of parliament should have some sort of counter-argument to it.*
- *Students should therefore avoid strengths which lack discernible negatives and vice versa, e.g. parliament is a worthwhile lawmaker because it can inform itself of problems in society via parliamentary committees. This sort of strength does not seem to permit an exploration of a meaningful counter-argument.*

Mark allocation

The answer should be broken up into four distinct issues, each of which will be marked globally for a maximum of two marks. Students must know how to structure this sort of answer in order to achieve balance and to increase the quality of their discussion.

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Question 12

12a. "Courts are really quite weak lawmakers. No matter what they do, their laws are always subject to change."

Do you agree? Evaluate our courts as law-making bodies and reach a conclusion.

12 marks

Partial sample response for three marks

It is not the case that courts are somehow weak lawmakers. While the primary role of courts is to resolve disputes, making law is a secondary yet significant function which flows from their role as dispute resolution bodies.

On one hand, judges are free from political pressure and this is a clear advantage in their role as lawmakers. Because judges are appointed and not elected, and because they enjoy the security of tenure, they can decide on questions of law according to what they deem is fair and just as opposed to what is seen to be politically beneficial. For example, the decisions in the *Mabo* and *Wik* cases caused an outcry amongst many of Australia's politicians, and had the judges who made those decisions been MPs expressing similar views, they would have likely suffered a voter backlash.

On the other hand, a lack of political pressure on judges means that some case law survives well past its use-by date, e.g. the rape-in-marriage precedent remained effective law in some parts of Australia until 1991. Hence it is unfortunate that conservative judges fail to realise the views of society or deem it acceptable to wait for parliament to make the necessary changes.

Mark allocation

This is a globally marked essay with three distinct issues which need to be addressed:

- are courts really weak lawmakers?
- are their laws always subject to change
- does the student agree with the stimulus statement as a whole?

Tips

- *The main issue for students tackling such a question is depth of knowledge of the lawmaker matched with a clear understanding of the focus of the question. "Do you agree"-style questions do not always need a yes/no response. Quality answers will explain the complexity of the issue at hand and may indeed come to a conclusion which simply says "it depends". There is really no right answer here – but there are many ideas which, when combined appropriately, would lead to full marks.*
- *Students tackling such a question need to think carefully about the views expressed in both the first and the second statement of the stimulus material. The second sentence implies that court-made law can be changed easily, whether by parliament or other courts. This aspect of the stimulus material needs to be addressed at an appropriate juncture in the essay.*
- *Each paragraph should commence with a strong topic sentence and paragraphs should be separated by at least one line. The final question on the VCAA question-and-answer booklet offers plenty of lined pages to the student, as does the booklet for this exam paper.*

OR

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12b. “Criminal and civil procedure is never free of problems.”

Explain **one** recent/current problem with criminal procedure and **one** recent/current problem with civil procedure.

Identify recent/proposed changes to reduce/remove each of these problems.

What will be the implications of each change for the effective operation of our legal system?

12 marks

Full sample response for the first part of the question for six marks (criminal procedure)

The committal procedure is undertaken if the accused is to be tried in the County and Supreme courts. There are a few administrative-style mention hearings in the Magistrates’ Court which lead to a contested committal hearing or a committal by hand-up brief. Committal hearings require a great deal of preparation by the police and the solicitors in the Office of Public Prosecutions. They also demand the time and effort of magistrates and use up courtrooms in the Magistrates’ Court. Many prosecution witnesses have to come to court to give evidence not once, but twice: once at committal and once at trial. This is a major imposition on many people. Even a hand-up brief committal – which is essentially the magistrate poring over a collection of witness statements – takes up time and money. Police also dislike the fact that the accused learn of the extent of the prosecution case against them while the committal process does not give the prosecution any ideas of the nature of the defence case.

Many legal experts, and especially some senior police officers, are suggesting that we abolish the contested committal hearing. This would free up the Magistrates’ Court and allow a more timely resolution of other matters in that court. It would also reduce the amount of time and effort that prosecutors put into a case destined for the County or Supreme courts. Witnesses would be required only once, reflecting the value that our society puts on people’s time and energy.

There is also a push to abolish the idea of committals even via hand-up brief. The argument is that we now have such a high quality prosecutorial service that they are more than capable of determining if there is sufficient evidence to take a particular case to trial. This would streamline the criminal process for the higher courts and reduce the lengthy wait for trial that some accused face while remanded in custody, thus recognising their human right for a speedy determination of guilt (or lack of it).

However, some defence lawyers believe that given the vast resources of the state in gathering information, the committal process leads to a necessary evaluation of the strength of the prosecution case while offering much-needed help to defendants who lack any other avenue to determine the quality of prosecution witnesses. All in all, the removal of committals would lead to less-informed defence lawyers and a reduction in the fairness of the eventual trial.

Mark allocation

The answer is split up into two distinct portions – criminal and civil procedure issues:

- 2 marks for a problem with criminal procedure;
- 2 marks for a solution to the problem;
- 2 marks for reference to the relevant element/s of an effective legal system affected by the solution;
- 2 marks for a problem with civil procedure;
- 2 marks for a solution to the problem;
- 2 marks for reference to the relevant element/s of an effective legal system affected by the solution.

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Seen in this light, the question becomes much more manageable. It is not the case that wordy questions are always the most challenging ones.

Tips

- *This question focuses on particular issues in criminal and civil procedure. Solutions offered should reflect one or more of the elements of an effective legal system, but it is possible for a solution to make our system less effective.*
- *Criminal problems and solutions include:*
    - *The inconsistent approach to bail; proposed solutions include rewriting the entire Bail Act to make the process simpler and more fair.*
    - *The perennial problem of delays in the criminal justice system; a recent solution is to increase the jurisdiction of the court in which matters run the quickest – the Magistrates' Court – in order to relieve pressure on the County Court, while a proposed solution is to reduce the pressure on the Magistrates' Court by increasing the number of crimes subject to on-the-spot penalties.*
    - *The traumatic nature of the adversarial court process for child victims/witnesses and victims/witnesses with cognitive impairment; a recent solution is to allow for evidence to be given in a variety of ways which shield the victim/witness from the accused and from the public gallery, such as the victim/witness giving live evidence from a remote location via CCTV or even showing the jury pre-recorded testimony.*
- *Civil problems and solutions include:*
    - *The high cost of initiating civil action, such as the cost of a writ; recent solutions include the increase in the number of firms offering "no-win, no-pay" legal services.*
    - *Inconsistent awards of general damages given by juries; recent solutions include the legislative limit on the types of injuries which lead to plaintiffs seeking general damages (recent changes to the Wrongs Act) and a ceiling on the general damages awarded (around $380,000).*
    - *The amount of time it takes for a case to come to court; recent solutions include a greater push by courts to ensure parties attempt to resolve the dispute by ADR methods first.*

END OF SAMPLE RESPONSES

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