



Trial Examination 2011

VCE Legal Studies Units 3 & 4

Written Examination

Suggested Solutions

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Question 1

Commonwealth Parliament operates under a bicameral system (two house) with a lower (House of Representatives) and upper house (Senate) and includes the Governor-General as the Queen's Representative (Head of State).

1 mark

Question 2

Proclamation is the final stage of a bill becoming law. Once royal assent is given, a law needs to have a date from which it becomes effective – this is the date it is proclaimed to commence, normally 28 days from royal assent.

1 mark

Question 3

It refers to the responsibility of government members to those who elected them. They are accountable to the people for their actions. This is in particular applicable to government ministers who are responsible to parliament, and thus the people, and they can be questioned as to their department's actions/decisions.

2 marks

Question 4

Hinch may start a petition and get signatures from the public in support of the change he wants. He would then need to send the signatures of support to a Member of Parliament in the hope that the Member of Parliament will table the request during a sitting of parliament.

A brief outline of another point (any one of the following) is required for the second mark:

- take part in a demonstration
- use the media
- defy existing laws
- others

2 marks

Question 5

The values of society are always changing and so, over time, we find that the existing legislation is no longer an accurate reflection of society's current values. The law should change so that it reflects the current values held by the majority of the community, otherwise the community as a whole will not follow the law. For example, Sunday trading of businesses was not allowed due to the more prominent religious followings of society as a whole. However, once this became less supported there was a strong push to allow businesses to trade on a Sunday.

Alternatively, a detailed explanation of any one of the following:

- advances in technology
- one-off event
- need to protect the society from itself
- changes in society

2 marks

Question 6

There may be the occasion where a state (or states) willingly hand over a residual power to the Commonwealth Parliament. This would occur when they feel it is better under the Commonwealth Parliament's jurisdiction.

1 mark

In passing legislation accepting those powers, the Commonwealth Parliament's powers have expanded.

1 mark

Question 7

In our legal system our system of appeals is based on the fact that, where a person is dissatisfied with the decision of a court, there is the right to have the matter re-assessed by a higher court, allowing mistakes to be rectified. If we were to operate without courts of different levels, such a system of appeals could not operate.

Students could also comment on any ONE of the following:

- administrative convenience
- specialisation (of personnel etc.)
- other

2 marks

1 mark for explaining the reason (e.g. how the system of appeal works)

1 mark for linking this to the fact that court hierarchy allows the system of appeals to operate

Question 8

Handed to the Commonwealth Parliament at federation, exclusive powers are powers which only the Commonwealth Parliament has to make laws in certain areas. They are often made exclusive in other sections of the Constitution, for example, coining money. In contrast concurrent powers are those that are shared between the Commonwealth and state parliaments – both can make laws in those areas, for example, taxation. However, should there be conflict in the laws made, the Commonwealth laws will prevail to the extent of the conflict.

3 marks

1 mark for describing concurrent powers

1 mark for describing exclusive powers

1 mark (total) for providing appropriate examples for each

Question 9

One successful referendum was that in 1967 when it was put to the people to include Indigenous people in the census and remove Indigenous people as a restriction on Commonwealth powers. Prior to the referendum being held on this matter, all issues to do with these people were left with the individual states. As a result of getting the required support for the referendum to succeed, such powers were transferred to be with the Commonwealth. One impact of the change was that no longer would Indigenous people not fall under the power of Commonwealth Parliament.

Any two of the following factors could be used as those contributing to its success:

- *strong community support for the change*
- *bipartisan support*
- *issue easy to understand*
- *state government support*

Example

If the matter put to the people was one that appeared to have the general support of the community, it is naturally more likely to pass. One such as that mentioned above, concerning Indigenous people, clearly did have that support, in that many previously-held prejudices were no longer present and it was understood that they should be treated just like the remainder of the population.

Note: the challenge in answering the ‘factors’ part of this question is that generally the ‘factors’ are looked at in terms of why a referendum does NOT succeed.

4 marks

Question 10

Structural protections are the result of the layout and words of the Constitution where there are mechanisms for the indirect protection of our rights when dealing with Commonwealth Parliament, and in doing so, avoiding the abuse of power by parliament.

The Constitution describes our system of representative government; that is, a government that represents the people. This is reflected in s7 and s24 which indicate that members of each house must be selected by a vote of the people.

Implied rights are those not directly referred to in the Constitution, but rather read into it.

The ACTV case in 1992 resulted in the High Court finding an implied right. Commonwealth Parliament had banned most political advertising in the months before the federal election. However, the High Court found that this was in conflict with the implied right of political communication. Sections 7 and 24 of the Commonwealth Constitution set up an elected parliament and political communication/advertising was necessary for people to decide who they should vote for.

4 marks

Students could also address the second part of the question by referring to the ‘right to vote’ case (structural protection).

Question 11

Parliament has extensive resources at its disposal that allow it to fully investigate the need to change a particular law. The Victorian Law Reform Commission was created to have the role of investigating the need for change in a particular area e.g. 'Defences to Homicide'.

However, while a resource like the VLRC can thoroughly investigate the appropriateness of change, it is time consuming, making change in the law through parliament a slow process.

While there are many possible strengths that could be used in the answer, it is important that neither of those mentioned in the question are chosen.

Strengths of parliament could include:

- elected by the people to that role
- can delegate its powers
- thorough debate through two houses
- extensive resources to investigate the need for change

Strengths of the courts could include:

- interpreting the meaning of words in legislation
- flexibility/predictability
- can change the law quickly
- judges not subjected to political influence

Example

Courts can make a quick decision on a matter once a case comes before them. This may also create a precedent to be followed in the future. However, the process of change with courts as law-makers can be slow. First of all, an appropriate case must come before the courts in order for them to make law. Secondly, as can be highlighted through the law related to negligence, developing the law in such an area can be slow unless parliament introduce legislation on the matter.

4 marks

Important that whatever strength is chosen that the 'evaluation' occurs i.e. looking at the 'downside'.

Question 12

When a matter is determined using judicial determination, the decision is fully binding on the parties and a failure to abide by the decision will be punished by the courts. Whereas, a feature of conciliation is that the resolution is not binding on the parties and this means one party may go back on what they have agreed to earlier. A more just outcome results from judicial determination in that the party who does win the case can be sure that the decision is final; on the other hand, the losing party may still appeal. It would not seem fair to the winning party, as could be the case with conciliation, that an agreement is reached only for the other party to go back on it.

However, a matter dealt with using conciliation may not involve legal representation and the party presiding over the case can assist either party in the running of their case, making the hearing more just for both parties. With legal representation being a key part of a matter heard through judicial determination, the judge cannot assist and one legal representative may be more experienced than the other. This may make the hearing unfair for the party with the less experienced lawyer.

4 marks

Other relevant points may be raised.

Students must link their response back to 'fair and unbiased hearing' for full marks.

Question 13

- a. The amount being claimed in damages must be above \$100 000, which is the limit for cases being heard in the Magistrate's Court.

1 mark

- b. Pleadings are a number of documents that are exchanged between parties when a civil case is possibly heading for trial in the County or Supreme Courts. The main document issued by the plaintiff is the Writ, which will contain the Statement of Claim; and the Notice of Appearance from the defendant, which will contain the Statement of Defence.

Their purpose is so parties clearly indicate their main claims and defences respectively. This may assist in reaching an early settlement so as to avoid the matter going to trial. However, if the matter does go to trial, it clarifies exactly what matters are in dispute and time is not wasted at trial determining what is being disputed.

Other procedures that could be used by students in their response include discovery and directions hearings.

2 marks

- c. A injunction is an order of the court either directing someone to do something or stop doing something.

1 mark

Question 14

The role of VCAT is to offer Victorians an alternative to the courts where certain smaller, civil disputes can be resolved. This is done in an efficient, cost effective and informal way.

One advantage of the way VCAT resolve disputes is the informal nature of the hearing relative to courts. Parties feel more at ease without the need to follow a range of strict rules relating to evidence and procedure that courts will apply in a trial. Not only are hearings easier for parties to understand, but they assist in them being settled in a speedier fashion.

However, when a matter is heard before VCAT, a party who is dissatisfied with the outcome is quite limited in terms of appealing the decision. It can only be on a point of law. The losing party in a court hearing or trial has an automatic right to appeal on a range of bases. This can be seen as an advantage in having the dispute settled by the courts. A party who feels there has been an injustice can have the matter re-considered more easily by a higher authority.

This question requires students to show knowledge of strengths and weaknesses of both VCAT and courts in resolving disputes. It is important that somewhere in the answer there is a sentence indicating the role of VCAT.

A mixture of the following could be included in the answer:

Courts – Strengths	Courts – Weaknesses
hears all types of disputes	expensive
adversary system rules and legal representation means parties treated the same	time-consuming
binding decision	formal
judged by peers	adversarial – winner/loser
VCAT – Strengths	VCAT – Weaknesses
informal	not binding
speedier resolution	limited in jurisdiction to hear
less expensive	no legal representation (in some cases)
specialised jurisdictions	
agreed to by parties – win/win	

As the above table indicates, in some cases a strength of one can be matched against a weakness of the other. Also, at times what is seen as a strength of one could also be argued as a weakness of it.

5 marks

Question 15

- a. A committal hearing is held prior to a matter going to trial in either the County or Supreme Court. It is conducted in the Magistrate's Court to determine whether the matter offers sufficient evidence to support a conviction. It offers a more timely resolution in that, if it is determined at the committal hearing that the Crown evidence is not of sufficient evidence to make a conviction possible at trial, it will not proceed and does not waste court time on a case going to trial which will not succeed. This would also take up court time that could be used for other more worthy cases.

However, given that most committal hearings do proceed to trial, it is argued that such a procedure is unnecessary and it would be better that the matter be sent directly to trial. By holding a committal stage, time is wasted and a timely resolution to the dispute is not achieved.

It is important that students recognise the need to only address ONE of the procedures and it is an important part of the question that students link the procedure to at least one feature of an effective legal system.

3 marks

- b. While Victim Impact Statements have provided people with the opportunity to tell the judge how their life has been affected by a crime for many years, in recent years, legislation has provided for their extended use in the courts to better reflect fairness in our legal system. Even greater emphasis has been placed on ensuring that the victims of crimes are provided with the chance to provide input into sentencing, for example, a victim can now nominate another person to read the statement on their behalf. This appears to add fairness to the process. A person may be so affected by the crime that they cannot read it to the court themselves.

While a wide range of changes/recommended changes could be used, it is important to note that the guideline for 'recent' should be around the last five years, with the exception of jury changes that can be taken back further.

This question does not need to link back to the procedure covered in part a., i.e. it could relate to Adversary system, Jury system etc., but must relate to CRIMINAL trials. There is NOT the requirement to evaluate the 'change or recommended change'.

2 marks

Question 16

a.	First court: Magistrate's Court	Person presiding: Magistrate
	Second court: Supreme Court	Person presiding: Judge (Justice)

2 marks

*1 mark for each correct row (i.e. court and person presiding)
or 1 mark for each correct column*

- b. The jury will hear the facts of the case and the judge explaining the law as it applies to the case and arrive at a verdict of guilty or not guilty.

The judge will ensure the rules related to evidence and procedure are followed, explain the law as it applies in the case and, if it is a guilty verdict, determine the sanction.

2 marks

Students only need to address one differences to receive full marks.

- c. A number of prospective jurors will be placed in a pool and required to attend a courtroom where a trial is about to commence. They will be called one at a time to head towards the jury seating area and there is the opportunity for either legal counsel to challenge them being on the jury.

Each party can make unlimited 'for cause' challenges, where they give reason for the challenge, or up to six 'peremptory' challenges, where no reason needs to be given. From the pool of jurors, the final jury will be made up of 12, or up to 15 for murder/lengthy cases.

3 marks

1 mark for each of: dealing with excuse applications; peremptory challenges; for cause challenges.

Question 17

Under the adversary system the judge takes a limited role in proceedings due to the fact that the parties will each have their respective legal representatives running the case on their behalf. The judge cannot offer assistance to the parties – that is the role of the legal representative. This is seen as a strength of the adversary system as the judge cannot be seen as favouring either party, remaining unbiased and independent. However, this is also seen as a weakness as the judge, with all his/her experience and knowledge, cannot use these talents where a party may have a less experienced or less capable lawyer representing them.

Under the inquisitorial system the judge can take a more active role in their investigation to find the truth. They are able to get involved with all aspects of the case in an attempt to arrive at the truth. However, the fact that they may become more involved in the case may lead to the view that they are no longer impartial, assisting parties in the case and bringing forward evidence as they wish.

A range of the major features of each system need to be covered in this question, including a discussion of strengths and weaknesses of each of the features covered in the answer.

Adversary system features	Inquisitorial system features
active role of parties	parties do not control their case
role of judge	extensive role of the judge
strict adherence to rules of evidence/procedures	less adherence to rules of evidence/procedure
need for legal representation	legal representation not essential
standard/burden of proof	

8 marks

Question 18

For a range of reasons there will be times when a case comes before the courts when there is argument as to whether the case fits the legislation. In such circumstances the judge will need to give meaning to words within the legislation. Their meaning will then be read in conjunction with the act in the future.

For many reasons, legislation written at the time cannot anticipate the future. This may be due to technology not available at the time of the legislation being written. This was the case with the Australian Constitution, where the new Commonwealth Parliament was given the power to make laws in relation to 'naval and military'. There is no mention of 'air force' because at the time such technology did not exist. However, this part of Section 51 has been interpreted to include 'air force'.

Students could also discuss any of the following:

- ambiguous wording
- mistake made during drafting
- act is framed in general terms
- loopholes found

In answering the 'to what extent' part of the question, students need to consider 'both sides' i.e. yes, they are limited to some extent, but in other ways they are not.

The following points could be made in saying they ARE limited:

- case needs to come before the courts – they cannot be pro-active in making change without a case coming before them
- adherence to the Doctrine of Precedent where, if a precedent has been set by a court higher in the same hierarchy, containing the same material facts as the current case, then the current case is bound to follow
- parliament can legislate to abrogate a precedent if it does not like the precedent

The following points could be made in saying they CAN make law:

- sometimes a precedent may only be persuasive due it being set in a different hierarchy or, while in the same hierarchy, not in a higher court
- a discussion of the various techniques, that is: Distinguish; Disapprove; Reverse; Overrule.

10 marks