



Units 3 and 4 Legal Studies

Practice Exam Solutions

Stop!

Don't look at these solutions until you have attempted the exam.

Any questions?

Check that you're using the most recent version of these solutions, then email practiceexams@ee.org.au.

Solutions

Marks allocated are indicated by a number in square brackets, for example, [1] indicates that the line is worth one mark.

For some questions a range of answers could be possible – for these questions your notes/teacher/tutor should be consulted to see if your answer is appropriate.

Question 1a

- The term precedent refers to the decision of a case, which becomes standard and should be followed by other courts in all similar cases [1].

Question 1b

- The defendant should win this case [1].
- This is because their case used a precedent from a superior court, the High Court, which forms binding precedent, [1] whereas the opposing side argued using a persuasive precedent.

Question 1c

- The judge may avoid following this persuasive precedent by overruling it [1].
- This is where a judge in a superior court makes a decision contradicting the original precedent, and the new decision takes the place of the previous precedent [1].

Note: other answers are also acceptable for this question.

Question 2a

- Laws may need to change due to changes in technology, as these may create new expertise to be used in society which needs to be regulated – regulation of the internet for example [1].
- Additionally, laws may need to change because of a change in community values. For example, changing attitudes towards marriage and divorce led to the Family Law Act 1975, which allowed for more accessible divorce [1].

Note: other answers are also acceptable for this question.

Question 2b

- One formal pressure for change is the Victorian Law Reform Commission (VLRC) [1].
- Its role is to research into an advised area of law, consult with the community and experts in the area, and present suggestions for change in the law to parliament [1].

Note: other answers are also acceptable for this question.

Question 2c

- One informal pressure for change is a petition. A petition is a formal, written request to parliament for a change in the law, often accompanied by a collection of signatures [1].
- Petitions are seldom effective unless they have a very large collection of signatures, as a large collection shows that there is much community support for this proposed change in the law [1].

Note: other answers are also acceptable for this question.

Question 2d

- The Legislative Assembly is the lower house, meaning that it sits below the upper house and the Crown in Victorian Parliament's legislative process [1].
- One main role of the Legislative Assembly is that it determines and houses government [1].

Note: other answers are also acceptable for this question.

Question 2e

- The County Court [1].

Question 2f

- The County Court has no civil appellate jurisdiction [1].
- The County Court's criminal appellate jurisdiction includes hearing appeals from the Magistrates' Court on basis of conviction or sentence [1].

Question 3a

- One pre-trial procedure is the pleadings stage. This stage includes the exchange of documents, including the writ and statement of claim and defence [1].
- The purpose of this stage is to set out the nature of the claims of both sides of the dispute [1].
- Another civil pre-trial procedure is the discoveries stage. This includes interrogatories and the discovery and production of documents, [1] and aims to clear up any uncertainties, as well as provide both parties that access to all information and evidence [1].
- Both of these pre-trial procedures support the timely resolution of disputes, as they allow for the trial procedure to go quickly with both parties fully aware of the claims and evidence, as well as allowing either party the opportunity to settle the dispute outside of court [1].

Note: other answers are also acceptable for this question, and students were able to pick the level of specificity they went into – for example, they could talk about pleadings as a whole, or specifically about one document in the pleadings stage.

Question 3b

- The burden of proof lies with the plaintiff [1].
- The standard of proof is on the balance of probabilities [1].

Question 4a

- Responsible government is a principle stating that a government must be answerable and accountable to the parliament, and therefore to the people [1].
- Governments are kept responsible through scrutiny from other Members of Parliament (MPs) and the public, and must resign if they are not acting with responsibility [1].

Question 4b

- The separation of powers divides the ruling powers of the country into three branches of power.
- Legislative power, law-making power, is held by parliament [1].
- Executive power, the power to administer the law, is theoretically held by the Queen's representative, but in practice is held mainly by government [1].
- Judicial power, the power to enforce the law, is held by the courts [1].
- These three branches of power are kept separate so that no one body may hold supreme power, and so that each body can act as a 'check and balance' upon the others [1].

Question 4c

- Commonwealth parliament is restricted from making laws in areas of residual powers, which extend to any area not mentioned in the Constitution [1].
- Additionally, s116 restricts federal parliament from establishing a state religion or from restricting an individual's right to practice religion [1].

Note: other answers are also acceptable for this question.

Question 5a

- Twelve [1].

Question 5b

- One reform could be to provide more assistance to jurors [1].
- This may be in the form of education in the area of law that their case will likely be on, or general advice on how to best reach an impartial decision on a case [1].
- Another possible reform is introducing a "not proven" verdict, as well as the current "guilty" or "not guilty" (or in civil, "liable" or "not liable") [1].
- This would allow for jurors who are not completely convinced either way to not make a decision either way, reducing the chance of a mistake and also allowing for retrials in the future if more evidence were to be found [1].

Note: other answers are also acceptable for this question; however students must discuss reforms to the jury system rather than alternatives.

Question 6a

- A referendum is a compulsory vote on a proposed change to the wording of the Constitution [1]
- This starts with a Bill being introduced into parliament, where it must be passed by both houses (or at least by one house twice, and then brought through by the Governor-General) [1].
- Then the referendum is put to the people, where a double majority must be achieved. This involves the referendum receiving a majority of votes in all of Australia (50% + 1), as well as a majority of votes in a majority of states (four out of six) [1].
- After this double majority has been satisfied, the bill must receive Royal Assent [1].

Question 6b

- Referenda are generally unsuccessful [1].
- This is may be due to a lack of bipartisan support for the referendum, as many people will vote along party lines, therefore splitting the vote [1].
- Additionally, voter ignorance may contribute to the failure of a referendum. If the people are confused or ill informed regarding the proposed change to the Constitution, they are likely to act conservatively and vote 'no' [1].

Note: other answers are also acceptable for this question.

Question 7a

- Parliament is able to change the law when the need arises. A bill may be brought forward at any time, and debate may follow this, and this is positive as the law can theoretically change as soon as society needs it to [1].
- On the other hand, as parliament is not always in session (the House of Representatives only sat for 72 days in 2014) and due to lengthy debates, laws may take a long time to pass, leading to a slow progression of the law [1].
- Similarly, parliament can make laws “in future” – for the future. This means that if they can anticipate an issue needing to be regulated, they can produce the legislation for it before the issue has arisen [1].
- Conversely, legislation may often become outdated, as the law-changing process can be slow, and so can be unreflective of society’s values [1].
- Additionally, parliament is an elected body. This ensures that the laws that they create are representative of the views of the community as a whole [1].
- However, due to parliamentarians often trying to please the majority of the community, they may be unwilling to act in certain necessary, controversial areas, for fear of losing their seats [1].

Note: other answers are also acceptable for this question.

Question 7b

- Royal Assent is the signature of the Queen’s representative on the Bill, signifying the Crown’s approval of it becoming legislation [1].

Question 7c

- The Bill must go through the second reading stage [1].
- In this stage, the relevant Member of Parliament (MP) will speak about the purpose of the Bill, and substantial debate is had before a vote is had for continuation of the Bill [1].

Note: other answers are also acceptable for this question.

Question 7d

- The Senate acts as the “States’ House”, meaning that it gives equal consideration to each state regardless of population [1].

Note: other answers are also acceptable for this question.

Question 8

- One method of alternative dispute resolution (ADR) used in VCAT is mediation [1].
- This process involves discussion between the two parties with the help of an impartial third party who does not offer suggestions, but merely facilitates conversation [1].
- One advantage of ADR is that it is much less formal than courts. This allows parties to feel comfortable expressing themselves and reaching a compromise that suits both parties [1].
- However, this may lead to one party, due to a possible imbalance of power (e.g. in an employer vs. employee scenario), manipulating the other and leaving the other party feeling alienated [1].
- Another advantage of ADR is that it is voluntary and flexible. This allows parties to reach more supported decisions [1], although as the parties are not obliged to attend, one party may refuse to take part. This may lead to the two groups needing to go to court in the end, after wasting time attempting mediation [1].
- Furthermore, the decisions made in mediation sessions are not technically binding. This is due to the parties reaching their own decisions, which means that they are generally happier with what they have decided – as it is their own decision (although the parties often sign a legal agreement after coming to a decision) [1].
- However, one party may not follow the decision reached. Again, this may lead to the dispute eventuating in a court case after both parties spent time and money on mediation [1].

Note: other answers are also acceptable for this question.

Question 9

- One advantage is that the parties are the ones in control in the case. This allows them to fight their own battles and, on the whole, feel more content with the final decision made [1].
- However due to both parties' biases they may not bring up vital evidence in the case. Also the party control may lead to further animosity and breakdown of relationships between parties [1].
- This amount of party control displays a difference with the inquisitorial system. Party control in the adversary system makes the objective of each party in the case to "win", [1] whereas the main objective of an inquisitorial trial is to uncover the truth [1].
- As the parties have control, the judge is left as merely an umpire. This may be disadvantageous, as it may waste the great legal expertise of the judge in the case [1].
- Conversely, as it keeps the decision-maker as an impartial third party, the fairness of the outcome of the case is maintained, and this independency also encourages public confidence in the courts [1].
- This use of the judge displays another difference between the two systems of trial. In the adversary system, the judge's role is as an impartial umpire [1], whereas in the inquisitorial system of trial, the judge adopts a more active role in sorting through evidence and precedents, making use of their legal expertise [1].
- Furthermore, legal representation can be advantageous to use for each party. Representation allows each side of the dispute to present their case in the best light possible, gathering and displaying what they judge as the most crucial pieces of evidence [1].
- On the other hand, due to financial inequities, the level of legal representation may be unequal, leading to an unfair outcome of the case [1].

Note: other answers are also acceptable for this question.