LEGAL STUDIES UNITS 3&4

Edrolo

2020 Practice Exam

(including fully-worked answers for every question!)

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Our VCE Legal Studies Practice Exam is written by our experienced textbook authors and VCE teachers.

- The exam consists of questions worth 80 marks, in exactly the same format as the VCE exam.
- The questions have been designed and written to simulate the experience of sitting a VCAA-style exam.
- Included is a full answer section with exemplar answers and checklists to guide students on how to produce a high-scoring answer.
- All questions are tailored to the study design updates for 2020.

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DATE: _____

STUDENT NAME: _____

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LEGAL STUDIES

Practice written examination

Duration: 15 minutes reading time, 2 hours writing time

QUESTION AND ANSWER BOOK

Structure of book

Section	Number of questions	Number of marks
A	7	40
B	3	40
		Total 80

SECTION A

Instructions for Section A

Answer **all** questions in the spaces provided.

Question 1 (6 MARKS)

John has been charged with murder, an indictable offence. He has pleaded not guilty. The victim's family members are worried about giving evidence at the upcoming trial, which is expected to last for six weeks. John's lawyer has advised him that the prosecution is willing to withdraw the murder charge, if he is prepared to plead guilty to manslaughter.

a Explain **one** reason why a plea negotiation may be appropriate in this case. (3 MARKS)

b Describe **one** impact that a guilty plea may have on John's criminal case. (3 MARKS)

Question 2 (6 MARKS)

Evaluate the extent to which the express protection of rights acts as a check on parliament in law-making.

Question 3 (5 MARKS)

Zena bought a car from Mysterious Motors for $20,000. Given Zena is concerned about her impact on the environment, she purchased the car following reassurances the car was very fuel-efficient. After driving the car for 3 months Zena was concerned that she was in fact now using much more fuel than she used with her previous car and feels she was misled by Mysterious Motors. Zena shared her story on Instagram and has been contacted by 23 other people who have similar stories about purchasing cars from Mysterious Motors. Zena wants to claim the full cost of her car from Mysterious Motors.

Discuss whether the Victorian Civil and Administrative Tribunal (VCAT) or the courts are the most appropriate body to resolve the dispute between Zena and Mysterious Motors.

Question 4 (3 MARKS)

Distinguish between the impact of judicial activism and judicial conservatism on courts' ability to make law.

Question 5 (5 MARKS)

Evaluate the ability of Royal Commissions or parliamentary committees to influence changes to the law.

Question 6 (5 MARKS)

Kylie is a nurse. She has commenced a civil proceeding in the County Court of Victoria against her former employer for breach of contract. Her former employer has engaged legal practitioners to defend the claim.

a Describe **one** responsibility of the parties in Kylie's case. (2 MARKS)

b Explain **one** way in which the judge's use of case management powers in this dispute could achieve the principle of fairness. (3 MARKS)

Question 7 (10 MARKS)

Discuss the extent to which the use of a jury and legal practitioners in criminal and civil trials helps the justice system achieve the principles of fairness and access.

SECTION B

Instructions for Section B

Use stimulus material, where provided, to answer the questions in this section. It is not intended that this material will provide you with all the information to fully answer the questions.

Answer **all** questions in the spaces provided.

Question 1 (19 MARKS)

Source 1

The following is a summary of the case *DPP v Arpaci* [2018] VCC 285

On 27 January 2016, Adem Arpaci (21) and Harley Churchill (19) had both (separately) attended illegal car events in Melbourne. Arpaci admitted attending Northern Skids, a street drag-racing event. There was evidence from other drivers that, while driving along the Western Ring Road, Arpaci was attempting to challenge several other vehicles to a race. Churchill's vehicle then drove past at high speed and Arpaci decided to begin racing him. Witnesses described the two cars as:

- Being side-by-side at high speed.
- Quickly putting distance on other vehicles.
- Weaving in and out between cars.
- Overtaking at high speed, as though they were in a race.

Expert evidence suggests the cars were travelling at approximately 180km/h (80km/h above the speed limit) when Churchill attempted to overtake a truck on the EJ Whitten Bridge and the rear tyre of his car blew. Churchill's vehicle collided with a barrier, became airborne and burst into flames as it crashed into the valley below the bridge. Churchill and his passenger Ivana Clonaridis (18) were killed in the collision. Arpaci fled the scene.

On 3 February 2016, police attended Arpaci's home in a routine investigation searching for the other drag racer that had been seen by witnesses. Arpaci signed a false statement claiming that he had no involvement in the incident, although he did provide police with the contact details of his passenger; his dishonesty did not impact upon the police investigation. After making this statement, Arpaci attempted to contact police that evening and the following day to admit his involvement. He spoke to police and identified himself as the other driver on 4 February. Arpaci was charged with two counts of culpable driving causing death and one count of perjury (for the false statement). In December 2016, the Magistrates' Court conducted a committal proceeding for Arpaci's charges.

He pleaded guilty to the charge of perjury but not guilty to the charges of culpable driving.

Whilst he did not contest that he was driving his vehicle, Arpaci (through his legal representatives) did challenge aspects of the evidence presented by witnesses regarding his driving before the collision. In his first trial, the jury could not reach a unanimous verdict; due to this hung jury he was tried again in the County Court. At the second trial, the jury found him guilty on both counts of culpable driving causing death.

cont'd

Source 1 - Continued

Judge Hogan's sentencing remarks included the following summary of the suffering endured by Ivana's sister (Cassandra) and Cassandra's husband (Jake Cachia):

> Mr Cachia describes how he and Cassandra were to have been married one month after Ivana died. Instead of celebrating that event, with Ivana as a bridesmaid, they ended up having to identify Ivana using dental records, and view her remains in the most horrific way, which has emotionally scarred both of them. They suffered financial loss through cancelling their wedding and also through funding Ivana's funeral. Mr Cachia states that, apart from missing Ivana, he suffers deep sadness seeing his wife's distress going through life without her only sister. He states that the hurt is like having the air taken out of their lungs.

On 16 March 2018, he was sentenced to a maximum term of imprisonment of 14 years (with a non-parole period of 9 ½ years).

Source: Edrolo Units 1&2 Legal Studies Textbook, 2020 Edition

Source 2

The following is an extract of section 318 of the *Crimes Act 1958* (Vic)

318 Culpable driving causing death

(1) Any person who by the culpable driving of a motor vehicle causes the death of another person shall be guilty of an indictable offence and shall be liable to level 3 imprisonment (20 years maximum) or a level 3 fine or both.

Source: austlii.edu.au

Source 3

The following is a summary of data presented by the Sentencing Advisory Council in *Sentencing Snapshot 225*.

From 2013/14 to 2017/18, 59 people were sentenced for culpable driving causing death in the Victorian courts. 37 of the offenders sentenced during this period were sanctioned to a term of imprisonment of between 5 to 8 years. In 2017/18 the average prison term imposed for culpable driving causing death was 7 years, 8 months.

Source: www.sentencingcouncil.vic.gov.au/snapshots/225-culpable-driving-causing-death

a Was *DPP v Arpaci* a criminal case or a civil case? Justify your answer. (2 MARKS)

b Is the power to make laws regarding culpable driving a residual power or an exclusive power? Justify your answer. (2 MARKS)

c Provide **one** reason for the existence of a court hierarchy. Refer to Mr Arpaci's case in your answer. (2 MARKS)

d Describe **one** purpose of Mr Arpaci's committal proceeding. (2 MARKS)

e Discuss the principle of fairness in relation to Mr Arpaci's case. (5 MARKS)

f Discuss the extent to which the sanction imposed in Mr Arpaci's case achieves deterrence and protection. (6 MARKS)

Question 2 (10 MARKS)

Source 1

The following is an extract of section 9 of the *Voluntary Assisted Dying Act 2017* (Vic).

9 Eligibility criteria for access to voluntary assisted dying

(1) For a person to be eligible for access to voluntary assisted dying—

(a) the person must be aged 18 years or more; and

(b) the person must—

(i) be an Australian citizen or permanent resident; and

(ii) be ordinarily resident in Victoria; and

(iii) at the time of making a first request, have been ordinarily resident in Victoria for at least 12 months; and

(c) the person must have decision-making capacity in relation to voluntary assisted dying; and

(d) the person must be diagnosed with a disease, illness or medical condition that—

(i) is incurable; and

(ii) is advanced, progressive and will cause death; and

(iii) is expected to cause death within weeks or months, not exceeding 6 months; and

(iv) is causing suffering to the person that cannot be relieved in a manner that the person considers tolerable.

Source: austlii.edu.au

Source 2

The following is a hypothetical scenario.

Person X was enduring a significant illness and sought a permit to access voluntary assisted dying. Person X's application was rejected, so she initiated legal action in VCAT to have the decision reviewed. This application was unsuccessful and she is intending to lodge an appeal in the courts.

a Describe **one** reason why a court may need to interpret the phrases 'incurable' and 'advanced, progressive and will cause death' in section 9 of the *Voluntary Assisted Dying Act 2017* (Vic). (3 MARKS)

b Assume Person X's appeal reached the Supreme Court – Court of Appeal. In a 2-1 majority judgement, the Court of Appeal prevented Person X from accessing voluntary assisted dying, by defining 'incurable' and 'advanced, progressive and will cause death' very narrowly and excluding the illness she was suffering. Describe **one** way the Parliament of Victoria may legislate in response to this interpretation. (3 MARKS)

c If the Commonwealth Parliament were to pass legislation banning access to voluntary assisted dying, how might section 109 of the Australian Constitution be relevant? (4 MARKS)

Question 3 (11 MARKS)

Source 1

The following is a hypothetical scenario.

Bradley is an Australian celebrity who has appeared in major films and television series. He has retired from acting and is seeking election as a member of the Victorian Parliament.

Stefani is a journalist for a major newspaper. On social media, Stefani wrote the following comment about Bradley: 'Another brainless celebrity trying to make his way into parliament, thinking he knows better than everybody else. This is the last thing the state needs. Bradley should go back to acting in bad films.'

Stefani repeated her comments in an article published by her employer. Stefani's comments and the article were shared widely on the internet and have been published by various websites. Bradley has sued Stefani and her employer in the Supreme Court of Victoria.

Bradley claims that Stefani has published defamatory comments about him that have damaged his reputation.

Bradley has elected for his trial to be heard by a jury. The judge in the Supreme Court of Victoria has ordered that the parties attend mediation to try to resolve the dispute.

Source: VCAA Units 3&4 Legal Studies Exam, 2019

a Discuss the extent to which an injunction would achieve the purpose of civil remedies in this case. (5 MARKS)

b In your view, should this matter be determined by a jury at trial or through mediation? Give reasons for your answer. (6 MARKS)

END OF QUESTION BOOK

Extra space for responses

Clearly number all responses in this space.

How to check your answers

CHECKLISTS AND EXEMPLAR ANSWERS

This answer section includes exemplar responses with checklists to help students work towards a full-mark answer:

- The checklists demonstrate how students can structure a high-quality response – how to describe legal concepts, how to link responses to the stimulus material and how to signpost a response.
- Review your own response against each of the checklist items, asking yourself (for example):
  - Did I identify the purpose being referred to in the sentencing remarks as protection? ✓or ✗
  - Did I refer explicitly to the scenario in my answer? ✓ or ✗
  - And so on...
- Each exemplar answer demonstrates one way to answer each question, but this is not necessarily the only acceptable way to respond. Do not aim to memorise these sample responses – writing pre-prepared, rote-learned answers in the Legal Studies exam is not appropriate.

These checklists and answers are similarly structured to those in Edrolo VCE textbooks.

Question 1 (2 MARKS)

Kylie is a nurse. She has commenced a civil proceeding in the County Court of Victoria against her former employer for breach of contract. Her former employer has engaged legal practitioners to defend the claim.

Describe **one** responsibility of the parties in Kylie's case.

1 [One responsibility of the parties in Kylie's case is to prepare and present all evidence and legal arguments to the judge (and jury) throughout the trial.[1]][However, in this case and many other cases, parties such as Kylie's employer hire legal representation to do this on their behalf.[2]]

- ✓ ✗ I have identified one responsibility of the parties in Kylie's case.[1]
- ✓ ✗ I have described this responsibility in further detail.[2]
- ✓ ✗ I have used key Legal Studies terminology effectively such as: 'judge', 'jury', 'evidence', etc.

Possible points to include

- Another responsibility of the parties is to provide opening and closing addresses. This requires parties to outline their case at the beginning and end of the trial.
- Parties must adhere to the obligations of the *Civil Procedure Act*, including (but not limited to) acting honestly, only making claims that have a proper basis and using reasonable endeavours to resolve the dispute with minimal cost and delay.

Superscript figures show students how each checklist element can be included in their response.

'Possible points to include' demonstrate other legal concepts and examples that could also be acceptable parts of a response (in addition to those in the exemplar answer).

Bonus questions

Underneath each exemplar answer, there is a coloured box that contains another exam–style question and the corresponding exemplar answer and checklist. These extra questions are from the Edrolo Year 12 Legal Studies textbook, which contains hundreds of exam–style questions, answers and checklists. The bonus question aims to provide students with some additional revision and an example of how a similar Legal Studies concept may be examined in a slightly different way.

WANT MORE?

Here's another exam–style question to show the theory from a different perspective:

- Study Design dot-point: factors that affect the ability of courts to make law, including: the doctrine of precedent; judicial conservatism; judicial activism; costs and time in bringing a case to court; the requirement for standing
- Related Edrolo Textbook Lesson: 4.2.4 – Page 291

Question 7. The Trigwells were injured when a vehicle struck their car after swerving to avoid colliding with some sheep that had strayed onto the highway. The couple sued both the vehicle driver and the owner of the sheep for damages but were unsuccessful.

According to outdated common law, landowners did not owe any duty of care for their stock straying onto the highway. It was therefore decided by the High Court that despite changes in community views over time the precedent would be followed, as such law-making should be left to Parliament.

Explain in relation to the *Trigwell* case the effect of judicial conservatism on the common law. (3 MARKS)

[Judicial conservatism occurs when judges are reluctant to develop precedent and hence create common law, preferring to leave this law-making role up to parliamentarians.[1]][In this case, the court demonstrated conservatism as an outdated precedent was followed rather than creating a new precedent that reflects current community standards on duty of care.[2]]

[The implication of this is that the common law did not change, despite the High Court's ability to overrule old precedents and create new law.[3]]

- ✓ ✗ I have defined judicial conservatism using key terms such as 'reluctance', 'see their role as secondary law-makers' or similar.[1]
- ✓ ✗ I have detailed how judicial conservatism is reflected in the *Trigwell* case by stating the court chose to follow a previous precedent rather than create a precedent that is more up to date (or similar).[2]
- ✓ ✗ I have detailed how this judicially conservative decision limited development of the common law.[3]
- ✓ ✗ I have made explicit reference to the facts of the *Trigwell* case.
- ✓ ✗ I have used key Legal Studies terminology effectively such as: 'common law', 'conservatism' etc.

SECTION A – ANSWERS

1 a [One reason why a plea negotiation would be appropriate in this case is because the victim's family members are worried about giving evidence in the trial.[1]]

[If the victim's relatives in this case do not want to attend the trial or give evidence, it would be more desirable to resolve the case through a plea negotiation. Considering the expected length of the trial and John's not guilty plea, watching the trial and giving evidence throughout the trial may cause further trauma for these individuals. This makes a plea negotiation a more favourable outcome for both the victim's family and John, who could plead guilty to a lesser charge.[2]]

- ✓ ✗ I have stated one reason why a plea negotiation may be appropriate in this case.[1]
- ✓ ✗ I have explained this reason in detail.[2]
- ✓ ✗ I have referred to John's case in my response.
- ✓ ✗ I have used key Legal Studies terminology effectively such as: 'plea negotiation', 'victim', etc.

Possible points to include

Other reasons why a plea negotiation may be appropriate:

- The prosecution is willing to withdraw the murder charge if John pleads guilty to manslaughter. (Compared with cases in which a plea negotiation is not appropriate if the prosecution is unwilling to accept a plea of guilty to a lesser charge.)

WANT MORE?

Here's another exam-style question to show the theory from a different perspective:

- Study Design dot-point: the purposes and appropriateness of plea negotiations and sentence indications in determining criminal cases
- Related Edrolo Textbook Lesson: 3.1.7 – Page 40

Question 10. Sarah has been charged with culpable driving, having been in a car accident that caused the death of Liam. The prosecution know Liam's family are devastated and want to see Sarah punished severely. Senior Constable Rosie who attended the horrific scene of the accident and interviewed Sarah has since taken stress leave. The backlog of cases in the County Court means the trial will be more than 14 months away, Sarah's boyfriend is reluctant to give evidence about her drinking alcohol prior to the accident. Sarah's barrister approaches the DPP indicating she'll plead guilty to the lesser charge of dangerous driving causing death.

Do you believe resolution by plea negotiation is appropriate in this instance? Justify your response. (5 MARKS)

[I believe a plea negotiation is appropriate in this case.[1]]

[Firstly, the delay in the County Court will amplify the stress and suffering of Liam's family, Sarah and her family; resolution by plea negotiation will avoid such stress.[2]][In addition, the trauma of giving evidence will be avoided for the clearly-impacted Rosie. The avoidance of a trial reduces the workload of the County Court, meaning other matters are resolved more quickly.[3]]

[Further, Sarah's criminal behaviour will result in a sanction if she pleads guilty to this charge. If the matter instead goes to trial, given the unwillingness of her boyfriend to provide crucial evidence, she may be acquitted, which is not in society's best interests.[4]]

[However, while Liam's family will be consulted by the prosecution in considering the plea negotiation, the prosecution may make such a deal even if they oppose it. This may leave them feeling hurt that Sarah has got off too lightly, given they 'want to see justice done'.[5]]

[Given the significant benefits of accepting such a deal, overall I conclude such a plea negotiation is appropriate.[6]]

- ✓ ✗ I have stated whether resolution by plea negotiation is appropriate in this case.[1]
- ✓ ✗ I have stated the first reason a plea negotiation is appropriate in this case – avoiding delay in final resolution given backlog in County Court.[2]
- ✓ ✗ I have stated the second reason a plea negotiation is appropriate in this case – avoiding stress for family, accused, witnesses.[3]
- ✓ ✗ I have stated the third reason a plea negotiation is appropriate in this case – ensures conviction where it may be difficult due to unwilling witness (Sarah's boyfriend).[4]
- ✓ ✗ I have stated the reason why a plea negotiation is not appropriate in this case – concerns of victim's family about leniency.[5]
- ✓ ✗ I have weighed arguments for and against resolution by plea negotiation in this case and reached a conclusion.[6]
- ✓ ✗ I have used key Legal Studies terminology effectively such as: 'prosecution', 'accused', 'trial' etc.

1 b [A guilty plea will impact John's case by acting as a mitigating factor, reducing John's culpability and the sentence imposed.[1]]

[When an accused person pleads guilty in a criminal case, this mitigating factor reduces the culpability of the offender and results in a less severe sentence. Guilty pleas act as mitigating factors because they provide a number of benefits, such as preventing the victim's family and other witnesses from having to give evidence at trial.[2]]

- ✓ ✗ I have described one impact that a guilty plea may have on John's case.[1]
- ✓ ✗ I have explained this impact in further detail, linking the cause (the guilty plea) to the effect (its impact on John's case).[2]
- ✓ ✗ I have referred to John's case in my response.
- ✓ ✗ I have used key Legal Studies terminology effectively such as: 'guilty plea', 'mitigating factor', 'victims', etc.

Possible points to include

Other impacts of a guilty plea in this case:

- There will be no need for a jury trial, saving the court's time and money.
- Victims and witnesses will not need to give evidence, preventing further stress and trauma for witnesses and family members.

WANT MORE?

Here's another exam-style question to show the theory from a different perspective:

- Study Design dot-point: factors considered in sentencing, including aggravating factors, mitigating factors, guilty pleas and victim impact statements
- Related Edrolo Textbook Lesson: 3.1.12 – Page 81

Question 10. Greg, 50, is convicted of kidnapping his former neighbour Leah after taking her for a walk in a heavily wooded area to an isolated cabin for three days. We know the following information:

- Greg pleaded guilty at the committal hearing for this crime.
- Greg has a history of mental illness with his mental age diagnosed as that of an 8 year old.
- A doctor presented evidence that Leah showed signs of physical assault.
- Greg had no criminal history prior to this conviction.
- The victim (Leah) is only 12 years old.

Explain the likely impact of Greg's plea on his sentence and why his guilty plea has this impact. Beyond his guilty plea, identify the aggravating and mitigating factors considered when Greg is sentenced in this case. Justify your response. (5 MARKS)

[Greg's guilty plea is likely to serve him favourably during sentencing – his guilty plea would result in the court imposing a lower sentence than if he'd been convicted at a trial.[1]][His plea has this impact because the courts reward (with a reduced sentence) offenders such as Greg who save valuable court time and resources, and also avoid the need for the victim (Leah) to give evidence and the trauma associated with doing so.[2]]

[The mitigating factors in this case would include the fact that Greg suffers a mental illness. His mental age may have impeded his ability to determine that his actions were unlawful in the same way that a healthy adult could which is likely to diminish his culpability from the court's perspective.[3]][Further, that he has no criminal history is likely to reduce the severity of his sentence, as he has not demonstrated a pattern of criminality.[4]]

[Finally, the aggravating factors in this case would include the fact that the victim showed signs of physical assault. The use of violence would increase Greg's culpability.[5]][In addition, the fact that the victim is so young and therefore vulnerable is an aggravating factor and would serve to increase Greg's culpability.[6]]

- ✓ ✗ I have stated that Greg's plea would serve him favourably through a reduction in his sentence.[1]
- ✓ ✗ I have stated why guilty pleas are rewarded with a sentence discount, stating they avoid the cost, time and trauma associated with a trial (or similar).[2]
- ✓ ✗ I have described the first mitigating factor in Greg's case – his mental illness.[3]
- ✓ ✗ I have described the second mitigating factor in Greg's case – his lack of prior convictions.[4]
- ✓ ✗ I have described the first aggravating factor in Greg's case – the use of violence in the offending.[5]
- ✓ ✗ I have described the second aggravating factor in Greg's case – the vulnerability of the victim.[6]
- ✓ ✗ I have used key Legal Studies terminology effectively such as: 'culpability', 'victim', 'mitigating', 'plea', etc.

2 [Overall, the express protection of rights provides only a limited check on the law-making of state and Commonwealth parliaments.[1]]

[The first reason for this assessment is that there are so few rights protected,[2]][with only five express rights limiting parliamentary power.[3]] [A further reason I feel the express rights provide a limited check on parliamentary power is these five express rights are very narrow in their operation.[4]][For example, s.116 provides for freedom of religion but only at the Commonwealth level, it does not limit the law-making powers of the states. In addition, s.80 provides jury trials for Commonwealth indictable offences, but the Commonwealth decides which offences are indictable or summary, and most criminal law is made by the states.[5]][Thirdly, state and Commonwealth parliaments are able to pass laws that seem to violate the express rights, and they will impact upon society until they are successfully challenged in the courts by a party with standing,[6]][which is both expensive and time-consuming. This means such laws may continue to operate for an extended period and the parliament's law-making power goes 'unchecked'.[7]]

[On the other hand,[8]][a reason why I believe the express rights provide some form of a check on parliamentary power is because they are entrenched in the Constitution,[9]][meaning they can only be removed or changed with the voters' consent in a referendum, and a successful referendum to alter or remove express rights is very difficult to achieve.[10]][Further, the express rights are fully enforceable,[11]][so any legislation breaching such rights will be declared invalid by the High Court when challenged.[12]]

[For these reasons, the express rights act as a check on parliaments in law-making to a quite limited extent.[13]]

- ✓ ✗ I have stated how much of a limitation the express protection of rights provides upon parliamentary law-making.[1]
- ✓ ✗ I have identified one reason the check on parliamentary law-making is limited – few express rights.[2]
- ✓ ✗ I have described this reason in further detail.[3]
- ✓ ✗ I have identified a second reason the check on parliamentary law-making is limited – express rights are narrow in operation.[4]
- ✓ ✗ I have described this reason in further detail.[5]
- ✓ ✗ I have identified a third reason the check on parliamentary law-making is limited – time and cost in challenging laws.[6]
- ✓ ✗ I have described this reason in further detail.[7]
- ✓ ✗ I have used signposting such as: 'however', 'on the other hand' (or similar) to show I am discussing 'both sides'.[8]
- ✓ ✗ I have identified one reason the check on parliamentary law-making is impactful – express rights are entrenched.[9]
- ✓ ✗ I have described this reason in further detail.[10]
- ✓ ✗ I have identified a second reason the check on parliamentary law-making is impactful – express rights are fully enforceable.[11]
- ✓ ✗ I have described this reason in further detail.[12]
- ✓ ✗ I have concluded by re-stating my overall assessment of the extent to which express protection of rights is a check on parliamentary law-making.[13]
- ✓ ✗ I have signposted my discussion of ways express rights do/don't limit parliamentary power by stating these as reasons for overall value-statement about the extent of the check on law-making.
- ✓ ✗ I have used key Legal Studies terminology effectively such as: 'express rights', 'parliament', 'Commonwealth' etc.

Possible points to include

Students could alternatively state the express protection of rights does provide a significant check on parliamentary power if this was justified appropriately. No matter the conclusion reached, students must weigh up ways the express rights do and don't limit parliamentary law-making and tie these back to the overall conclusion reached about the extent of the check on parliamentary power.

WANT MORE?

Here's another exam-style question to show the theory from a different perspective:

- Study Design dot-point: the means by which the Australian Constitution acts as a check on parliament in law-making, including the express protection of rights
- Related Edrolo Textbook Lesson: 4.1.3 and Unit 4 AoS 1 Level 5 Questions – Page 251

Question 1. *'The Australian Constitution works to limit the powers of the Commonwealth, but not the states.'*
Do you agree with this statement? Justify your answer. (8 MARKS)

[I agree partially with the above statement, because while the Constitution does limit the power of the Commonwealth, it also limits the powers of the states.[1]][The Commonwealth Parliament does not have unlimited law-making power and faces restrictions, such as in areas of residual power.[2]][The Commonwealth Parliament is not able to make law in areas of residual power, such as education, as only state parliaments can make laws in such areas.[3]]

[Further, the law-making powers of the Commonwealth Parliament are restricted by the express rights.[4]][For example, the Commonwealth Parliament may not make laws restrict the free practice of religion (s. 116). Commonwealth laws that breach the express rights will be declared invalid.[5]]

[However,[6]][the Australian Constitution also places limits on the powers of the states, who are restricted from making law in areas of exclusive power.[7]][Exclusive law-making powers such as the power to impose custom and excise duties (s. 90) may only be exercised by the Commonwealth Parliament.[8]]

[Secondly, despite the ability of states to make law in areas of concurrent power they are restricted by the operation of s.109 of the Constitution.[9]][Section 109 states in the event that state and Commonwealth laws are inconsistent the Commonwealth law prevails and the State law is invalidated to the extent that it conflicts with a Commonwealth law, limiting the ability of state to make law in areas of concurrent power.[10]][Therefore, whilst it is correct to say the Commonwealth Parliament is restricted, the Constitution also limits the powers of the states.[11]]

- ✓ ✗ I have indicated 'how much' I agree with the statement i.e. to a large/certain/limited extent.[1]
- ✓ ✗ I have identified a check on the power of the Commonwealth Parliament.[2]
- ✓ ✗ I have described this first check on the power of the Commonwealth Parliament.[3]
- ✓ ✗ I have identified a second check on the power of the Commonwealth Parliament.[4]
- ✓ ✗ I have described this second check on the power of the Commonwealth Parliament.[5]
- ✓ ✗ I have used a term such as 'however' or 'yet' or similar, to show contrast and moving to the other side of the discussion.[6]
- ✓ ✗ I have identified one check on the power of the states.[7]
- ✓ ✗ I have described this first check on the power of the states.[8]
- ✓ ✗ I have identified a second check on the power of the states.[9]
- ✓ ✗ I have described this second check on the power of the states.[10]
- ✓ ✗ I have concluded the discussion by linking back to the prompt.[11]
- ✓ ✗ I have signposted my response appropriately using terms such as: 'firstly', 'this is because', 'secondly','however', 'further', 'therefore', etc.
- ✓ ✗ I have used key Legal Studies terminology effectively such as: 'exclusive', 'concurrent', 'residual', 'express rights', 'Commonwealth Parliament', etc.

Possible points to include

Other limits on Commonwealth power (created by the Constitution) that could be discussed are

- The bicameral structure of the Commonwealth parliament
- The double-majority provision
- The separation of powers principle
- The High Court's ability to interpret the legislation and declare invalid legislation that is unconstitutional

Other limits on state power (created by the Constitution) that could be discussed are

- The High Court's ability to interpret the legislation and declare invalid legislation that is unconstitutional
- Some express rights apply to the states (ss. 92 and 117)

3 [I think that VCAT would be the most appropriate body to resolve the dispute between Zena and Mysterious Motors.[1]][VCAT would be more appropriate as it is less costly than the courts due to its low fees, especially considering the matter is for a smaller amount than the type of claims usually taken to court.[2]][However,[3]][VCAT is less appropriate where parties prefer legal representation to conduct their case, which is likely to be the case for Zena if she is unaware of her legal rights and the law concerning misleading or deceptive conduct – yet parties to some VCAT hearings do not have legal representation.[4]][On the other hand, the courts could be appropriate to hear this case between Zena and Mysterious Motors if the dispute was initiated as a representative proceeding, which is an efficient way to conduct civil cases with many plaintiffs claiming relatively small amounts as in this case. As Zena and 23 others have been affected in similar circumstances, she and the other injured parties could commence a representative proceeding in court – this cannot be done in VCAT.[5]][However,[6]][taking a case to court is very costly and time-consuming, and if a representative proceeding is not initiated in the Supreme Court it may be too expensive for Zena to initiate a civil claim in the courts on her own.[7]]

- ✓ ✗ I have stated whether I think VCAT or the courts would be the most appropriate body to resolve this dispute.[1]
- ✓ ✗ I have provided one reason why VCAT could be appropriate to resolve this dispute.[2]
- ✓ ✗ I have used a distinguishing word such as 'whereas', 'however', 'on the other hand' or similar.[3]
- ✓ ✗ I have provided one reason why VCAT may not be appropriate to resolve this dispute.[4]
- ✓ ✗ I have provided one reason why the courts could be appropriate to resolve this dispute.[5]
- ✓ ✗ I have used a distinguishing word such as 'whereas', 'however', 'on the other hand' or similar.[6]
- ✓ ✗ I have provided one reason why the courts may not be appropriate to resolve this dispute.[7]
- ✓ ✗ I have used key Legal Studies terminology effectively such as: 'representative proceeding', 'dispute','legal representation' etc.

Possible points to include

Students could alternatively conclude the courts are more appropriate in this case, so long as that conclusion is justified (weighing more heavily the reasons regarding representative proceedings and preferring to have legal representation). No matter the conclusion reached, students must weigh up ways each of VCAT and the courts are more or less appropriate in this case.

WANT MORE?

Here's another exam-style question to show the theory from a different perspective:

- Study Design dot-point: the purposes and appropriateness of Consumer Affairs Victoria (CAV) and the Victorian Civil and Administrative Tribunal (VCAT) in resolving civil disputes
- Related Edrolo Textbook Lesson: 3.2.4 – Page 133

Question 8. Describe one instance in which VCAT is an appropriate dispute resolution body for a civil case and one instance in which VCAT is not an appropriate dispute resolution body. (3 MARKS)

[VCAT is an appropriate dispute resolution body for civil cases within its jurisdiction.[1]][Specifically, civil claims about residential tenancies, disputes about the provision of goods and services and discrimination cases are all resolved at VCAT.[2]][VCAT is not an appropriate dispute resolution body in cases where parties do not feel comfortable self-representing.[3]][VCAT often requires parties to prepare and present their own case, and for the very young, elderly or those from a non-English speaking background this may be difficult, and such parties may prefer to use legal representation which is common in the courts.[4]]

- ✓ ✗ I have identified an instance in which VCAT is an appropriate body to resolve a civil dispute.[1]
- ✓ ✗ I have described this factor in detail.[2]
- ✓ ✗ I have identified an instance in which VCAT is not an appropriate body to resolve a civil dispute.[3]
- ✓ ✗ I have described this factor in detail.[4]
- ✓ ✗ I have used key Legal Studies terminology effectively such as: 'parties', 'VCAT' etc.

Possible points to include

VCAT is appropriate when:

- Parties are unable to negotiate resolution themselves.
- Parties are willing to prepare and present their own claim.

VCAT not appropriate when:

- The dispute is outside VCAT's jurisdiction (such as personal injury claims, representative proceedings, etc.)
- Having more appeal options is preferred.
- Parties would prefer a jury to be present.

4 [Judicial conservatism occurs when judges are reluctant to develop precedent and change the common law, preferring to leave this law-making role up to the parliament. It refers to judges' tendency to not change the law radically,[1]][and therefore limits the extent to which courts are able to change the law.[2]][An example is the High Court's unwillingness to change an outdated common law principle in *Trigwell*.[3]][In contrast,[4]][judicial activism is an approach to law-making in which courts are prepared to make significant changes to the law to reflect changes in social values.[5]][Although such activism isn't common, it can lead to big changes in the law,[6]][such as when the High Court developed native title in *Mabo*.[7]]

- ✓ ✗ I have defined judicial conservatism as courts being 'reluctant to change the law significantly' (or similar).[1]
- ✓ ✗ I have described how judicial conservatism can limit the courts' ability to change the law.[2]
- ✓ ✗ I have used an example to illustrate the impact of judicial conservatism.[3]
- ✓ ✗ I have used a linking word to show differences, such as 'however', 'on the other hand', 'whereas' (or similar).[4]
- ✓ ✗ I have defined judicial activism as 'courts altering the common law significantly in response to changing societal attitudes and conditions' (or similar).[5]
- ✓ ✗ I have described how judicial activism can enhance the courts' ability to change the law.[6]
- ✓ ✗ I have used an example to illustrate the impact of judicial activism.[7]
- ✓ ✗ I have used key Legal Studies terminology effectively such as: 'parliament', 'courts', 'precedent', etc.

WANT MORE?

Here's another exam-style question to show the theory from a different perspective:

- Study Design dot-point: factors that affect the ability of courts to make law, including: the doctrine of precedent; judicial conservatism; judicial activism; costs and time in bringing a case to court; the requirement for standing
- Related Edrolo Textbook Lesson: 4.2.4 – Page 291

Question 7. The Trigwells were injured when a vehicle struck their car after swerving to avoid colliding with some sheep that had strayed onto the highway. The couple sued both the vehicle driver and the owner of the sheep for damages but were unsuccessful.

According to outdated common law, landowners did not owe any duty of care for their stock straying onto the highway. It was therefore decided by the High Court that despite changes in community views over time the precedent would be followed, as such law-making should be left to Parliament.

Explain in relation to the *Trigwell* case the effect of judicial conservatism on the common law. (3 MARKS)

[Judicial conservatism occurs when judges are reluctant to develop precedent and hence create common law, preferring to leave this law-making role up to parliamentarians.[1]][In this case, the court demonstrated conservatism as an outdated precedent was followed rather than creating a new precedent that reflects current community standards on duty of care.[2]]

[The implication of this is that the common law did not change, despite the High Court's ability to overrule old precedents and create new law.[3]]

- ✓ ✗ I have defined judicial conservatism using key terms such as 'reluctance', 'see their role as secondary law-makers' or similar.[1]
- ✓ ✗ I have detailed how judicial conservatism is reflected in the *Trigwell* case by stating the court chose to follow a previous precedent than create a precedent that is more up to date (or similar).[2]
- ✓ ✗ I have detailed how this judicially conservative decision limited development of the common law.[3]
- ✓ ✗ I have made explicit reference to the facts of the *Trigwell* case.
- ✓ ✗ I have used key Legal Studies terminology effectively such as: 'common law', 'conservatism' etc.

5 [Royal Commissions have the ability to effectively influence changes in law reform, but have some limitations in doing so.[1]]

[Royal Commissions have coercive powers of investigation. They are able to summon a person to appear before the Commission, give evidence under oath and produce documentation.[2]] [This focuses the inquiry on finding the truth and provides expert opinions on how to resolve social issues, which enables the issue to be better understood and ensures that proposed changes are likely to be effective.[3]]

[Furthermore, the public can be involved in a Royal Commission as hearings are usually held in public and submissions can be made by members of the community,[4]] [meaning recommended changes to the law made by such a Commission will reflect the community's values and expectations.[5]]

[However,[6]] [the government of the day may not adopt any or all of the law reform recommendations made following a Royal Commission.[7]] [Even if such recommendations are adopted by the government and introduced into the parliament, such a bill must also gather the support of other law-makers through the legislative process. Thus, the time taken to conduct a Royal Commission and decide which recommendations to implement may mean such Commissions will not result in immediate changes to the law and social issues will remain unresolved for some time.[8]]

[Therefore, Royal Commissions can be effective in placing pressure on law reform, but this may be a time consuming process.[9]]

- ✓ ✗ I have stated the extent to which Royal Commissions or parliamentary committees can influence law reform.[1]
- ✓ ✗ I have identified a strength of Royal Commissions or parliamentary committees in influencing law reform.[2]
- ✓ ✗ I have described this in further detail.[3]
- ✓ ✗ I have identified a second strength of Royal Commissions or parliamentary committees in influencing law reform.[4]
- ✓ ✗ I have described this in further detail.[5]
- ✓ ✗ I used used a distinguishing word such as 'whereas', 'however', 'on the other hand', or similar.[6]
- ✓ ✗ I have identified a limitation of Royal Commissions or parliamentary committees in influencing law reform.[7]
- ✓ ✗ I have described this limitation in further detail.[8]
- ✓ ✗ I have included a concluding statement, weighing up the strengths against the weaknesses.[9]
- ✓ ✗ I have used key Legal Studies terminology effectively such as: 'hearing', 'evidence', etc.

Possible points to include

Royal Commissions

Other strengths include:

- Royal Commissions can influence law reform as they comprehensively investigate a particular incident or legal/social issue.
- The report developed by the Royal Commission is tabled in parliament which brings the attention to members and this generally becomes public to the wider community.
- Royal Commissions have the power to investigate a broad range of issues depending on the terms of reference provided by the government.
- Royal Commissions are independent which means the investigations are not influenced by political pressures and the truth can emerge.

Other weaknesses include:

- Royal Commissions can be very expensive because of the considerable staff required and the use of experts. Therefore only some social issues or law reform priorities can be the subject of a Royal Commission.
- While Royal Commissions are independent, they are still dependent on the government to be willing to initially send the issue to Royal Commissions for investigation and then adopt any recommendations.

Parliamentary committees

Strengths include:

- Parliamentary committees can investigate a broad range of issues as they arise. For example, from investigating the use of electric cars (in the Commonwealth Parliament) to voluntary assisted dying (in Victoria).
- Parliamentary committees can have access to expert opinions which means parliament may be more likely to adopt the recommendations for new laws (as they are based on expert opinion) and new laws are more likely to be effective.

Weaknesses include:

- Unlike Royal Commissions and the VLRC, parliamentary committees may not be independent. The composition of the committee can impact on its ability to perform the role.
- Parliamentary committees can be very costly as they seek to use experts in their field. Remuneration to these experts for their time can be costly.

WANT MORE?

Here's another exam-style question to show the theory from a different perspective:

- Study Design dot-point: the role of one parliamentary committee or one Royal Commission, and its ability to influence law reform
- Related Edrolo Textbook Lesson: 4.2.10 & 4.2.11 – Page 328

Question 3. Describe one limitation of Royal Commissions in influencing a change in the law. (3 MARKS)

[A limitation of Royal Commissions in influencing a change in the law is that the government of the day doesn't have to follow the suggested recommendations[1]][which can mean the inquiry could be considered a waste of time/money, as it ultimately the responsibility of the parliament to change the law and some proposals could be too politically controversial.[2]]

✓ ✗ I have identified a limitation of Royal Commissions in influencing law reform.[1]

✓ ✗ I have described this weakness of Royal Commissions in influencing law reform.[2]

✓ ✗ I have used key Legal Studies terminology effectively such as: 'Royal Commission', 'parliament', law reform' etc.

Possible points to include

- Royal Commissions can be very expensive because of the considerable staff required and the use of experts. As a result the government isn't able to establish a Royal Commission to propose law reform for all social issues.
- Royal Commissions can be time consuming due to the extensive use of experts, hearings, examination of witnesses and consulting with the community (and the time taken to finalise all evidence presented and make recommendations). As such, law reform can be slow to respond to issues in society.

WANT MORE?

Here's another exam-style question to show the theory from a different perspective:

- Study Design dot-point: the role of one parliamentary committee or one Royal Commission, and its ability to influence law reform
- Related Edrolo Textbook Lesson: 4.2.10 & 4.2.11 – Page 335

Question 6. Recommendations to change the law that come from parliamentary committees demonstrate an appreciation of the community's values and expectations. Using one recent example, explain why this is correct. (3 MARKS)

[Parliamentary committees have the ability to accept submissions from individuals in society and community groups such as religious organisations or trade unions. Therefore, recommendations for change in the law will reflect community opinions on the issue.[1]]

[For example, the recent inquiry into end of life choices by a Victorian parliamentary committee[2]][included taking written submissions from the public and public hearings being conducted in Melbourne and rural parts of Victoria.[3]]

✓ ✗ I have described how parliamentary committees can be informed about community opinions and expectations.[1]

✓ ✗ I have identified an appropriate example from within the last four years.[2]

✓ ✗ I have included specific details of the public consultation the committee conducted in this example.[3]

✓ ✗ I have used key Legal Studies terminology effectively, such as 'Parliamentary Committee, 'community values' etc.

6 a [One responsibility of the parties in Kylie's case is to prepare and present all evidence and legal arguments to the judge (and jury) throughout the trial.[1]][However, in this case and many other cases, parties such as Kylie's employer hire legal representation to do this on their behalf.[2]]

✓ ✗ I have identified one responsibility of the parties in Kylie's case.[1]

✓ ✗ I have described this responsibility in further detail.[2]

✓ ✗ I have used key Legal Studies terminology effectively such as: 'judge', 'jury', 'evidence', etc.

Possible points to include

- Another responsibility of the parties is to provide opening and closing addresses. This requires parties to outline their case at the beginning and end of the trial.
- Kylie and her former employer must adhere to the obligations of the *Civil Procedure Act*, including (but not limited to) acting honestly, only making claims that have a proper basis and using reasonable endeavours to resolve the dispute with minimal cost and delay.

WANT MORE?

Here's another exam-style question to show the theory from a different perspective:

- Study Design dot-point: the responsibilities of key personnel in a civil trial, including the judge, jury, the parties and legal practitioners
- Related Edrolo Textbook Lesson: 3.2.7 – Page 153

Question 7. Your friend Sarah made the following errors in her last SAC:

- The burden of proof rests with the prosecution in civil proceedings
- The plaintiff in a civil case hopes to secure a conviction
- The defendant must ensure they comply with the *Limitation of Actions Act 1958* when initiating a civil claim

Outline why each of the above statements are incorrect. (3 MARKS)

[The first statement is incorrect because the burden of proof does not rest with the prosecution in civil proceedings but with the plaintiff.[1]]

[The second statement is also incorrect because 'convictions' do not exist in civil cases – instead, the plaintiff would be hoping that the judge/jury finds in their favour, and not in favour of the defendant.[2]]

[Lastly, compliance with the *Limitations of Actions Act* is not a responsibility of the defendant but rather is a responsibility of the plaintiff (the party who initiates a civil claim), to ensure they begin their claim within the relevant time limit.[3]]

- ✓ ✗ I have described why the first statement is incorrect: that the burden of proof rests with the plaintiff in civil proceedings not the prosecution.[1]
- ✓ ✗ I have described why the second statement is incorrect: that convictions don't exist in civil proceedings (only criminal cases) and a plaintiff would instead hope that they are 'found for'.[2]
- ✓ ✗ I have described why the third statement is incorrect: that compliance with the *Limitation of Actions Act* is the responsibility of the party initiating, not defending against, the action.[3]
- ✓ ✗ I have signposted my answer appropriately by using terms such as: 'also incorrect', 'lastly' etc.
- ✓ ✗ I have used key Legal Studies terminology effectively such as: 'burden of proof', 'plaintiff' etc.

6 b [One of a judge's case management powers is the ability to order mediation.[1]] [This power promotes the principle of fairness as it saves the parties time and money, and gives parties greater control of the outcome reached in their dispute. Many civil disputes settle at mediation, which would save Kylie and her employer the trouble and stress of having to go to a trial in the courts, involving legal representation and court fees.[2]]

- ✓ ✗ I have identified one of a judge's case management powers.[1]
- ✓ ✗ I have explained how this power can promote the principle of fairness.[2]
- ✓ ✗ I have referred to Kylie's case in my response.
- ✓ ✗ I have used key Legal Studies terminology effectively such as: judge, 'fairness, 'mediation', etc.

Possible points to include

Students could describe how the power to give directions promotes fairness.

Ways the power to give directions promotes fairness:

- It minimises delays as Kylie and her employer will be forced to comply with deadlines regarding the completion of pre-trial legal documentation and production of evidence, and time limits when evidence and argument are presented in court. Judges' directions pre-trial and during the trial minimise delays associated with a trial, which is fair for the parties seeking compensation (and those defending a claim) by minimising the stress and inconvenience associated with such proceedings.
- Kylie and her former employer are aware of the case against them. A judge has the power to order the parties to disclose all documents which will be used as evidence (such as her employment contract or workplace policies), or to limit what type of evidence may be used at trial. This ensures that both parties are aware of the case against them and promotes fairness by allowing them to prepare their claim and/or defence in its best light.

WANT MORE?

Here's another exam-style question to show the theory from a different perspective:

- Study Design dot-point: judicial powers of case management, including the power to order mediation and give directions
- Related Edrolo Textbook Lesson: 3.2.8 – Page 160

Question 8.

> 'Without effective judicial control the adversarial process is likely to...degenerate into an environment in which the litigation process is too often seen as a battlefield where no rules apply.'
>
> *Source: Lord Woolf, Access to Justice report, UK*

Do you think judicial powers of case management contribute to achieving fairness in our civil justice system? (5 MARKS)

[I do think that judicial powers of case management enhance fairness in the civil justice system[1]][because they provide a clear legislative confirmation that judges can and should manage cases proactively to promote the timely resolution of disputes. Delays can make a plaintiff's suffering worse, which is unfair. Judges can also impose sanctions on any party to litigation who does not meet the standards and obligations imposed by the *Civil Procedure Act*.[2]]

[These powers of case management are a clear restatement and clarification of the standard of conduct expected of parties to civil litigation, including to avoid delays and to ensure the other side has a comprehensive understanding of the case against them and every opportunity to respond to it. This promotes fairness because parties are better able to prepare and present their own case.[3]]

[The powers of judicial officers also contribute to achieving fairness because they do not require the judge to actively manage every case by narrowing the issues in dispute, or order every case to participate in alternative dispute resolution such as mediation, but they have powers to do this only where it is in the interests of justice to do so. This means judges can manage a case based on the specifics of each case, including the specific parties. It is fair to have individual circumstances taken into consideration in this way. Parties can still access judicial determination and have a final trial and binding determination made by a judge if appropriate in the circumstances, which promotes fairness.[4]]

- ✓ ✗ I have addressed the task word requirements by providing a statement of opinion early in my response.[1]
- ✓ ✗ I have explained one reason why judicial powers of case management contribute to achieving fairness.[2]
- ✓ ✗ I have explained a second reason why judicial powers of case management contribute to achieving fairness.[3]
- ✓ ✗ I have explained a third reason why judicial powers of case management contribute to achieving fairness.[4]
- ✓ ✗ I have used ley legal terminology effectively such as: 'civil justice system', 'legislative', 'sanctions', 'litigation', 'case', 'dispute', 'alternative dispute resolution', 'mediation', 'parties', 'judicial determination', 'fairness', etc.

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7 [The use of a jury and legal practitioners in criminal and civil trials can promote fairness and access in the justice system to a significant extent, though this may be limited in some instances.[1]]

[The role of the jury achieves fairness to some extent by providing for trial-by-peers.[2]][Using a cross-section of the community as the decision-maker allows parties to criminal and civil disputes to feel that their case has been decided by their equals. This prevents parties from feeling as though they have been oppressed by the state, which promotes fairness.[3]][However,[4]][juries are only used in a small proportion of criminal trials, and hardly ever used in civil trials;[5]][thus, they are only able to promote the achievement of fairness in relatively few cases.[6]]

[Juries also promote access to the criminal and civil justice systems by ensuring that plain English is used in the court and less legal jargon is used (to ensure that the jury understands the legal procedures and evidence they are being asked to make a decision upon).[7]][This promotes access for plaintiffs, defendants and accused persons – especially parties who are not represented – by allowing them to better understand court processes, legal principles and the facts presented in court.[8]][On the other hand,[9]][the use of juries can lead to delays and added costs (in civil trials), limiting access to the justice system.[10]][In civil trials, additional fees are required for jury trials, which may make it not financially accessible for some parties to request them (and in many cases, parties to civil trials elect not to have a jury at least in part due to the cost). The use of juries also creates delays in both criminal and civil trials due to the time taken for empanelling the jury, explaining evidence and waiting for a decision to be made. In these ways, juries do not always make the justice system more accessible.[11]]

[The role of legal practitioners promotes fairness to a large extent by ensuring that a case is presented in the best possible light.[12]][The use of legal practitioners can increase a party's chance of success as their case is presented by an expert. For example, in criminal trials, a legal practitioner is better able to test the accuracy of the prosecution's evidence than an unrepresented accused person which promotes fairness. For those charged with serious crimes who cannot afford legal representation, VLA may provide funds for a barrister to ensure this benefit is achieved in such circumstances.[13]][However,[14]][unequal (or a lack of) legal representation can limit fairness in the justice system.[15]][Unequal legal representation or only one party being represented can lead to an unfair outcome, as each party cannot prepare and present a case of equal quality. This may lead to an outcome which is not based solely on the facts of the case, which is unfair for the unrepresented/poorly represented party.[16]]

[Legal practitioners promote access to the justice system by allowing accused persons or parties to a civil dispute to gain a better understanding of legal processes.[17]][Represented parties have their legal practitioners to help explain the complex pre-trial steps and courts' proceedings, rules of evidence and legal terminology, thus making the trial more accessible for the party.[18]][And yet,[19]][not all parties can afford or acquire the assistance of a legal practitioner, which limits access in the justice system.[20]][Access to justice includes understanding one's legal rights; unrepresented accused persons and defendants in civil matters may not understand court proceedings, lawful defences they can raise and legal arguments that may reduce their culpability during sentencing or liability for damages in a civil matter, undermining how 'accessible' the courts are for these individuals.[21]]

- ✓ ✗ I have stated the extent to which juries and legal practitioners can promote these principles of justice.[1]
- ✓ ✗ I have identified one strength of the role of a jury.[2]
- ✓ ✗ I have described how this strength is linked to the principle of fairness.[3]
- ✓ ✗ I have used signposting such as: 'however', 'on the other hand' (or similar) to show I am discussing 'both sides'.[4]
- ✓ ✗ I have identified one weakness of the role of a jury.[5]
- ✓ ✗ I have described how this weakness is linked to the principle of fairness.[6]
- ✓ ✗ I have identified a second strength of the role of the jury.[7]
- ✓ ✗ I have described how this strength is linked to the principle of access.[8]
- ✓ ✗ I have used signposting such as: 'however', 'on the other hand' (or similar) to show I am discussing 'both sides'.[9]
- ✓ ✗ I have identified a second weakness of the role of the jury.[10]
- ✓ ✗ I have described how this weakness is linked to the principle of access.[11]
- ✓ ✗ I have identified one strength of the role of legal practitioners.[12]
- ✓ ✗ I have described how this strength is linked to the principle of fairness.[13]
- ✓ ✗ I have used signposting such as: 'however', 'on the other hand' (or similar) to show I am discussing 'both sides'.[14]
- ✓ ✗ I have identified one weakness of the role of legal practitioners.[15]
- ✓ ✗ I have described how this weakness is linked to the principle of fairness.[16]
- ✓ ✗ I have identified a second strength of the role of legal practitioners.[17]
- ✓ ✗ I have described how this strength is linked to the principle of access.[18]
- ✓ ✗ I have used signposting such as: 'however', 'on the other hand' (or similar) to show I am discussing 'both sides'.[19]
- ✓ ✗ I have identified a second weakness of the role of legal practitioners.[20]
- ✓ ✗ I have described how this weakness is linked to the principle of access.[21]
- ✓ ✗ I have included examples specific to criminal and civil trials in my response.
- ✓ ✗ I have used key Legal Studies terminology effectively such as: 'jury', 'legal practitioner', 'trial', etc.

Possible points to include

Other strengths of the role of the jury that achieve fairness:

- Juries are independent of all parties to a dispute – they are randomly selected from the community, have no connection to the accused, plaintiff, defendant, witnesses, etc. Further, they cannot seek additional information about the case beyond the courtroom. They can therefore be completely impartial which promotes fairness.

Other weaknesses of the jury that limit fairness:

- Juries may be influenced by what they hear about a party to a case in the media, and may therefore make a decision based on preconceived ideas about the case, not just the evidence heard in court. This is not fair on the parties in civil matters, accused persons, and victims of crime.
- Making decisions in legal cases is a complex task undertaken by people with no legal training, creating the risk of an incorrect verdict. In addition, because juries do not need to provide reasons for their decisions there is no certainty that they have actually applied the law to the facts correctly. This could be unfair on accused persons and victims of crime.

Other weaknesses of the role of the jury that limit access:

- Very few matters are tried by jury as most criminal offences are summary offences resolved by the Magistrates' Court and many civil disputes are resolved in VCAT or the Magistrates' Court, so access to jury trial is further limited by the way cases are distributed in the court hierarchy.

Other strengths of the role of legal practitioners that achieve access:

- Cost options – some firms using a 'no win, no fee' arrangement and litigation funders do provide assistance for those with limited funds to engage legal representation in civil matters. VLA will often provide legal assistance to those who cannot afford a lawyer in serious criminal matters and duty lawyers may also promote access for those attending the Magistrates' Court without legal representation.

WANT MORE?

Here's another exam-style question to show the theory from a different perspective:

- Study Design dot-point: the responsibilities of key personnel in a civil trial, including the judge, jury, the parties and legal practitioners; the responsibilities of key personnel in a criminal trial, including the judge, jury, parties and legal practitioners
- Related Edrolo Textbook Lesson: 3.1.9 & 3.2.7 and Unit 3 AoS 2 Level 5 Questions – Page 199

Question 5. Discuss the extent to which the use of a judge and jury in criminal and civil trials helps the justice system achieve the principles of fairness and access. (10 MARKS)

[The use of a judge and jury in criminal and civil trials can promote fairness and access in the justice system to a significant extent, though this may be limited in some instances.[1]]

[The role of the judge promotes fairness by acting as an impartial and independent decision-maker.[2]] [This achieves fairness by ensuring that a trial is conducted without bias, according to the rules of evidence and procedure; this means that decisions made at trial are based on law and reliable facts alone, promoting a fair outcome for all parties.[3]] [However, even though judges are impartial adjudicators and skilled at applying the law, they may still be subject to personal bias,[4]] [perhaps causing them to unconsciously discriminate against certain parties, which would limit fairness in a trial if it occurred.[5]]

[The role of the judge also promotes access in criminal and civil trials by ensuring that the legal principles and terminology used are understood by all parties.[6]] [For example, in criminal trials, judges' explanation of the law to the jury ensures the accused person also understands the criminal proceedings they are a party to, thus making the entire trial process more accessible for those accused persons who are not familiar with the law.[7]] [On the other hand, judges must remain impartial.[8]] [They cannot assist accused persons or parties without legal representation by explaining any lawful defences or advising them how to prepare and present their case; in this respect the judge's independence in criminal and civil trials does not promote access to the justice system for unrepresented parties.[9]]

[The role of the jury in criminal and civil trials achieves fairness by providing for trial-by-peers.[10]] [A cross-section of the community is used as the decision-maker, so the parties to criminal or civil disputes should feel that their case has been decided by their equals; this prevents parties from feeling as though they have been oppressed by the state, which promotes fairness.[11]] [However, juries are only used in a small proportion of criminal trials, and hardly ever used in civil trials;[12]] [thus they are able to promote the achievement of fairness in relatively few cases.[13]]

[Juries also promote access in the criminal and civil justice systems by ensuring that plain English is used in court and less legal jargon is used (to ensure that the jury understand the court's procedures and the evidence they are being asked to make a decision upon);[14]] [this promotes access for unrepresented parties by allowing them to better understand court processes and rules of evidence.[15]] [On the other hand, the use of juries can lead to delays and added costs (in civil trials), limiting access to the justice system.[16]] [In civil trials, additional fees are required for jury trials, which may make it not financially accessible for some parties to request them. The use of juries also creates delays in both criminal and civil trials due to the time taken for empanelling the jury, explaining evidence, and waiting for a decision to be made. Thus, juries do not always make the justice system more accessible.[17]]

- ✓ ✗ I have stated the extent to which I agree with the prompt.[1]
- ✓ ✗ I have identified one strength of the role of the judge.[2]
- ✓ ✗ I have described how this strength is linked to the principle of fairness.[3]
- ✓ ✗ I have identified one weakness of the role of the judge.[4]
- ✓ ✗ I have described how this weakness is linked to the principle of fairness.[5]
- ✓ ✗ I have identified a second strength of the role of the judge.[6]
- ✓ ✗ I have described how this strength is linked to the principle of access.[7]
- ✓ ✗ I have identified a second weakness of the role of the judge.[8]
- ✓ ✗ I have described how this weakness is linked to the principle of access.[9]
- ✓ ✗ I have identified one strength of the role of the jury.[10]
- ✓ ✗ I have described how this strength is linked to the principle of fairness.[11]

cont'd

✓ ✗	I have identified one weakness of the role of the jury.[12]
✓ ✗	I have described how this weakness is linked to the principle of fairness.[13]
✓ ✗	I have identified a second strength of the role of the jury.[14]
✓ ✗	I have described how this strength is linked to the principle of access.[15]
✓ ✗	I have identified a second weakness of the role of the jury.[16]
✓ ✗	I have described how this weakness is linked to the principle of access.[17]
✓ ✗	I have included examples specific to criminal and civil trials in my response.
✓ ✗	I have used key Legal Studies terminology effectively such as: 'judge', 'jury', 'parties', 'accused', etc.

Possible points to include

Other weaknesses of the role of the judge that limit fairness:

- Judges rely on the parties to present all relevant evidence during a trial; if parties have no legal representation this may prevent all relevant facts being presented to the court, as judges cannot actively seek out evidence they may need to deliver a verdict. If this occurs, it may prevent a decision based on all relevant facts, which can lead to an unfair result and/or award of damages.

Other strengths of the role of the judge that achieve access:

- Judges' ability in trials to actively manage proceedings (setting time limits for examination of witnesses, limiting the number of witnesses, etc) minimises costs in civil trials and thereby ensures the justice system remains more accessible.

Other strengths of the role of the jury that achieve fairness:

- Juries are independent of all parties to a dispute. They are randomly selected from the community, have no connection to the plaintiff, defendant, witnesses, etc. Further, they cannot seek additional information about the case beyond the courtroom. They can therefore be completely impartial which promotes fairness.

Other weaknesses of the role of the jury that limit fairness:

- Jurors may be influenced by what they hear about a party to a case in the media, and may therefore make a decision based on preconceived ideas about the case, not just the evidence heard in court. This is not fair on the parties in civil matters, accused persons and victims of crime.
- Making decisions in legal cases is a complex task undertaken by people with no legal training, creating the risk of an incorrect verdict. In addition, because juries do not need to provide reasons for their decisions there is no certainty they have actually applied the law to the facts correctly. This could be unfair on accused persons and victims of crime.
- The use of juries creates delays, because time is taken to empanel the jury, to explain court procedures and jurors' roles, to slowly explain evidence, to remove juries from courtrooms for legal arguments and the time taken for the jury to reach a decision. These delays add to the stress and suffering of all parties to criminal and civil cases.

Other weaknesses of the role of the jury that limit access:

- Very few matters are tried by jury as most criminal offences are summary offences resolved in the Magistrates' Court and many civil disputes are resolved in VCAT or the Magistrates' Court, so access to jury trial is further limited by the way cases are distributed in the court hierarchy.

SECTION B – ANSWERS

1 a [The case of *DPP v Arpaci* is a criminal case.[1]][This is clear because, according to Source 1, he was sentenced to a term of imprisonment of 14 years. Imprisonment is a sanction that can only be imposed on someone who has committed a criminal offence.[2]]

- ✓ ✗ I have stated that the case was a criminal matter.[1]
- ✓ ✗ I have justified my answer.[2]
- ✓ ✗ I have referred to the source(s) in my answer.
- ✓ ✗ I have used key Legal Studies terminology effectively such as: 'criminal', 'sanction', 'indictable' etc.

Possible points to include

Other reasons why this case is a criminal matter:

- Arpaci was charged with the indictable offence of culpable driving.
- Apraci pleaded guilty to one charge and not guilty to other charges. Only a criminal case is spoken of in terms of guilt, while civil cases speak of liability.
- Arpaci attended a committal proceeding in the Magistrates' Court. Committal proceedings only take place in criminal cases.

WANT MORE?

Here's another exam-style question to show the theory from a different perspective:

- Study Design dot-point: key concepts in the Victorian criminal justice system, including: the distinction between summary offences and indictable offences; the burden of proof; the standard of proof; the presumption of innocence
- Related Edrolo Textbook Lesson: 3.1.3.2 – Page 10

Question 11. Your friend Steve has been charged with an indictable offence and is awaiting trial. He thinks that:

- His case must be heard in the County or Supreme Court
- He should pressure his lawyers to prove he is innocent
- A jury will only acquit him if they know he is definitely innocent.

Outline why each of these statements is incorrect. (4 MARKS)

[Steve is incorrect in thinking that his case must be heard in the County or Supreme Court. Although indictable offences are heard in these courts,[1]][some indictable offences are triable summarily and thus may be heard in the Magistrate's Court.[2]]

[Further, Steve need not pressure his lawyers to prove his innocence as accused persons are innocent until proven guilty pursuant to the presumption of innocence[3]][with the burden of proof resting on the prosecution, not the defence (Steve's representatives) in criminal proceedings.[4]]

[Lastly, a jury need not be certain that an accused person is innocent in order to acquit them,[5]][rather they must deliver a 'not guilty' verdict unless satisfied beyond reasonable doubt he is guilty. The accused does not need to prove they are innocent.[6]]

- ✓ ✗ I have described why the first statement is incorrect: that Steve's case may not be tried in the County or Supreme Court if the offence he has been charged with is triable summarily.[1]
- ✓ ✗ I have corrected this error by saying that as some indictable offences are triable summarily his case may be heard in the Magistrates' Court.[2]
- ✓ ✗ I have described why the second statement is incorrect: Steve need not pressure his lawyers to prove his innocence as he is innocent until proven guilty due to the presumption of innocence.[3]
- ✓ ✗ I have corrected this error by saying that the burden of proof rests with the prosecution, not the defence in criminal proceedings.[4]
- ✓ ✗ I have described why the third statement is incorrect: that a jury does not need to be positive an accused is innocent to acquit him.[5]
- ✓ ✗ I have corrected this error by saying that the jury must deliver a 'not guilty' verdict unless they are satisfied beyond reasonable doubt, they do not need to be persuaded he is innocent.[6]
- ✓ ✗ I have referred explicitly to the scenario in my response.
- ✓ ✗ I have signposted my response appropriately: 'Further', 'Lastly' etc.
- ✓ ✗ I have used key Legal Studies terminology effectively such as: 'accused', 'triable summarily', 'innocent until proven guilty', 'prosecution', 'beyond reasonable doubt' etc.

1 b [The power to make laws regarding culpable driving is a residual power.[1]][This is clear because the power to legislate in areas of criminal law rests only with the states. For example, the extract relating to culpable driving in Source 2 comes from the *Crimes Act 1958* (Vic), which is a Victorian Act.[2]]

- ✓ ✗ I have stated this is a residual power.[1]
- ✓ ✗ I have given a reason for this conclusion.[2]
- ✓ ✗ I have referred to the source(s) in my answer.
- ✓ ✗ I have used key Legal Studies terminology effectively such as: 'residual power', 'criminal law', etc.

Possible points to include

One other reason to justify the conclusion that this is a residual power is that law-making regarding driving and/or criminal offences are not stated in the Australian Constitution (and is therefore a power of the states). Students providing this justification must also refer to the stimulus material, as this is required in Section B.

WANT MORE?

Here's another exam-style question to show the theory from a different perspective:

- Study Design dot-point: the division of law-making powers of the state and Commonwealth parliaments, including exclusive, concurrent and residual powers
- Related Edrolo Textbook Lesson: 4.1.2 – Page 217

Question 7. A legal critic once said 'residual powers are those specifically listed in the Constitution. Both state parliaments and the Commonwealth Parliament can make laws in areas of residual power'. Is this statement correct? Explain your answer. (3 MARKS)

[No, the above statement is incorrect.[1]][Residual powers are not specifically listed in the Constitution as they were left with the states at time of federation.[2]][As such, only state parliaments have jurisdiction to make laws in areas of residual powers. Therefore, the Commonwealth Parliament cannot make laws in areas of residual powers.[3]]

- ✓ ✗ I have explicitly stated that the statement is incorrect.[1]
- ✓ ✗ I have stated that residual powers are not specifically listed in the Constitution.[2]
- ✓ ✗ I have stated that only state parliaments have jurisdiction to make laws in areas of residual powers, and therefore the Commonwealth cannot make laws in those areas.[3]
- ✓ ✗ I have used key Legal Studies terminology effectively, such as 'Constitution', 'residual', etc.

1 c [One reason for the existence of the court hierarchy is specialisation.[1]][Specialisation refers to the courts' judges and staff developing expertise in particular criminal disputes and criminal procedures by regularly hearing specific types of criminal disputes within the court's jurisdiction. For example, the judge in Arpaci's case would be experienced in hearing and sentencing indictable offences such as culpable driving, as these are the types of offences tried in the County Court.[2]]

- ✓ ✗ I have stated one reason for the existence of the court hierarchy.[1]
- ✓ ✗ I have described this reason in further detail.[2]
- ✓ ✗ I have referred the case *DPP v Arpaci* in my response.
- ✓ ✗ I have used key Legal Studies terminology effectively such as: 'specialisation', 'indictable offence', etc.

Possible points to include

Other reasons for the existence of the court hierarchy:

- Appeals – an appeal is when a matter is heard for a second (or third) time. For example, the court hierarchy allows Arpaci to apply to have his case heard again in a higher court if he was dissatisfied with the decision and has grounds to appeal, or if the prosecution is dissatisfied with the severity of the sanction imposed. If the courts were not organised into a hierarchy, there would be no superior authority to which Arpaci or the prosecution could appeal.

WANT MORE?

Here's another exam-style question to show the theory from a different perspective:

- Study Design dot-point: the reasons for a Victorian court hierarchy in determining criminal cases, including specialisation and appeals
- Related Edrolo Textbook Lesson: 3.1.8 – Page 45

Question 5. In *Fernando v The Queen* [2017] VSCA 208 the Court of Appeal allowed a review of Mr. Fernando's sentence on the grounds that it was 'manifestly excessive' and that the sentencing judge had committed an error.

Mr. Fernando was convicted of one charge of trafficking in a commercial quantity of methylamphetamine and three charges of trafficking in other drugs of dependence.

Based on the information provided, identify in which court the original decision is most likely to have been made. Justify your answer. There are many reasons for the existence of a court hierarchy. Describe the reason for a court hierarchy that this case highlights.
(4 MARKS)

[The court in which this case was most likely heard originally is the County Court.[1]][As Mr. Fernando was convicted of an indictable offence that was not one of the most serious indictable offences such as murder, the original decision would likely have been made in the County Court within its original criminal jurisdiction.[2]]

[The reason for a court hierarchy highlighted in this case is the provision of an appeals process.[3]][The court hierarchy enables the appeals process by facilitating a passage for review of judicial decisions by superior courts where legal grounds for an appeal exist, a process that would not be possible without courts organised into a hierarchy from lower to higher courts.[4]]

- ✓ ✗ I have stated that the original decision would most likely have been made in the County Court.[1]
- ✓ ✗ I have justified this determination by stating that as Mr. Fernando was convicted of an indictable offence that was not one of the most serious (such as murder, which is tried in the Supreme Court) the decision would have been made in the County Court.[2]
- ✓ ✗ I have stated that the reason for a court hierarchy that this case highlights is the appeals process.[3]
- ✓ ✗ I have detailed how a court hierarchy facilitates the appeals process.[4]
- ✓ ✗ I have referred explicitly to the scenario in my response.
- ✓ ✗ I have used key Legal Studies terminology effectively such as: 'indictable', 'original criminal jurisdiction', etc.

Possible points to include

- As stated above it is most likely the trial was conducted in the County Court, however the Supreme Court (Trial Division) has unlimited criminal jurisdiction and therefore could have conducted this trial.
- The appeal being heard in the Court of Appeal confirms that the original sentence was imposed in the County Court or the Supreme Court (Trial Division); the Court of Appeal only hears appeals from these two courts, so this could also justify the conclusion the trial was conducted in either the County or Supreme Courts.

1 d [One purpose of a committal proceeding is to determine whether the accused intends to plead guilty or not guilty.[1]][For example, as noted in Source 1, Arpaci attended a committal hearing at the Magistrates' Court where he pleaded guilty to the charge of perjury and not guilty to the charge of culpable driving.[2]]

- ✓ ✗ I have stated one purpose of committal proceedings.[1]
- ✓ ✗ I have described this purpose with reference to Arpaci's case.[2]
- ✓ ✗ I have used key Legal Studies terminology effectively such as: 'accused', 'committal hearing', etc.

Possible points to include

Other purposes of a committal proceeding in Arpaci's case:

- To determine whether there was evidence of sufficient weight to support a conviction at the conclusion of a trial. This would be based on the hand-up brief outlining the prosecution's evidence against Arpaci.
- To ensure a fair trial by making sure that Arpaci was fully informed of the prosecution's case against him, which enabled Arpaci to then prepare his defence prior to his trial.

WANT MORE?

Here's another exam-style question to show the theory from a different perspective:

- Study Design dot-point: the purposes of committal proceedings
- Related Edrolo Textbook Lesson: 3.1.6 – Page 33

Question 3. Alfred has been charged with the summary offence of driving without a licence and Sylvia is pleading 'not guilty' to a manslaughter charge.

Which of these parties will need to attend committal proceedings? Justify your conclusions. Describe two purposes of these proceedings. (4 MARKS)

[Alfred will not need to attend committal proceedings,[1]][as he has been charged with a summary offence and committal proceedings are only required prior to a trial for indictable offences.[2]]

[Sylvia will need to attend committal proceedings.[3]][This is because she has been charged with an indictable offence, and before a jury trial is conducted in a higher court,[4]][the Magistrates' Court will conduct a committal proceeding.[5]]

[One purpose of a committal proceeding is to determine whether the prosecution's evidence is of sufficient weight to support a conviction.[6]]

[A second purpose of a committal is to assist the accused to receive a fair trial by allowing him or her to see the prosecution's evidence and better prepare their own defence.[7]]

- ✓ ✗ I have stated that Alfred will not attend a committal proceeding.[1]
- ✓ ✗ I have given a reason for this conclusion.[2]
- ✓ ✗ I have stated that Sylvia will attend a committal proceeding.[3]
- ✓ ✗ I have given a reason for this conclusion.[4]
- ✓ ✗ I have identified the Magistrates' Court as holding committal proceedings.[5]
- ✓ ✗ I have described one purpose of a committal.[6]
- ✓ ✗ I have described a second purpose of a committal.[7]
- ✓ ✗ I have used key Legal Studies terminology effectively, such as: 'conviction', 'Magistrates' Court', etc.

Possible points to include

According to Section 97 of the *Criminal Procedure Act 2009* (Vic.) students can include the following.

The purposes of committal proceedings are:

(a) to determine whether a charge for an offence is appropriate to be heard and determined summarily;

(b) to determine whether there is evidence of sufficient weight to support a conviction for the offence charged;

(c) to determine how the accused proposes to plead to the charge;

(d) to ensure a fair trial, if the matter proceeds to trial, by

(i) ensuring that the prosecution case against the accused is adequately disclosed in the form of depositions;

(ii) enabling the accused to hear or read the evidence against the accused and to cross-examine prosecution witnesses;

(iii) enabling the accused to put forward a case at an early stage if the accused wishes to do so;

(iv) enabling the accused to adequately prepare and present a case;

(v) enabling the issues in contention to be adequately defined

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1 e [One way in which fairness was upheld in Arpaci's case was through the use of fair processes.[1]][Arpaci was made aware of the charges being brought against him and the evidence that police had gathered at the committal hearing. In addition, he had the opportunity to defend the accusations in a public hearing by questioning the evidence presented by the prosecution's witnesses.[2]][Fairness was also upheld in this case through the use of a jury.[3]][Arpaci was tried by a jury of his peers who would have made their decision based on the evidence presented in court. This promotes fairness as his guilt was determined by an independent and unbiased decision-maker.[4]]

[On the other hand,[5]][Arpaci did face substantial delays in his trial which may have impacted his mental health and limited the achievement of fairness.[6]][Arpaci committed the offence in January 2016 and was not sentenced until March 2018. While this is not unreasonably long for a serious indictable offence, Arpaci was forced to undergo two separate trials due to a hung jury in the first trial, causing him additional stress and anxiety.[7]][The substantial costs involved in Arpaci's case also undermine fairness to some extent.[8]][Arpaci was tried in a higher, and therefore more expensive, court and was forced to undergo two separate trials, requiring legal representation for both. The fees to be paid to his legal representative hinder the achievement of fairness in Arpaci's case.[9]]

- ✓ ✗ I have stated one way in which fairness was upheld in Arpaci's case.[1]
- ✓ ✗ I have explained this in further detail.[2]
- ✓ ✗ I have stated a second way in which fairness was upheld in Arpaci's case.[3]
- ✓ ✗ I have explained this in further detail.[4]
- ✓ ✗ I have used a distinguishing word, such as 'however, 'on the other hand', to show that I am addressing 'both sides'.[5]
- ✓ ✗ I have stated one way in which fairness was not upheld in Arpaci's case.[6]
- ✓ ✗ I have explained this in further detail.[7]
- ✓ ✗ I have stated a second way in which fairness was not upheld in Arpaci's case.[8]
- ✓ ✗ I have explained this in further detail.[9]
- ✓ ✗ I have used key Legal Studies terminology effectively such as: 'committal hearing', 'prosecution', 'jury', 'witnesses', etc.

WANT MORE?

Here's another exam-style question to show the theory from a different perspective:

- Study Design dot-point: the principles of justice: fairness, equality and access
- Related Edrolo Textbook Lesson: 3.1.6 – Page 33

Question 4. *'Advocacy for the abolition of committals is not new. Every few years the role and utility of committal proceedings provokes discussion. Almost without fail, those favouring the abolition of committals point to apparent delays caused by committals in the finalisation of criminal proceedings. While delay in a criminal prosecution is undesirable, the reduction of delay is now pursued almost single-mindedly at the expense of ensuring justice. Underpinning that rationale is the notion that swift justice is sound justice.'* - Tim Freeman, LIV Journal, 1/7/17

Source: https://www.liv.asn.au/Staying-Informed/LIJ/LIJ/July-2017/Why-we-need-committal

With reference to fairness as a principle of justice, justify retaining committal proceedings. (5 MARKS)

[A reason committal proceedings should be retained is because they prevent unnecessary trials,[1]][preventing an accused person from going through the trauma and expense of a jury trial when there is limited evidence against them, which promotes fairness in the criminal justice system.[2]]

[A second reason is that committals actually minimise delays in the County and Supreme Courts, by preventing jury trials in cases where there is little or no evidence.[3]][Delays can make worse the stress experienced by witnesses, accused persons and victims which is unfair on these parties, so retaining committals as a way to reduce delays in higher courts promotes fairness.[4]]

[Lastly, committals should be retained as they allow the accused person to see the prosecution's evidence,[5]][which allows them to prepare their defence in its best light, including how they plan to test the accuracy of prosecution evidence, promoting fairness also.[6]]

- ✓ ✗ I have described a strength of committal proceedings.[1]
- ✓ ✗ I have linked this strength of committals to the principle of fairness.[2]
- ✓ ✗ I have described a strength of committal proceedings.[3]
- ✓ ✗ I have linked this strength of committals to the principle of fairness.[4]
- ✓ ✗ I have described a strength of committal proceedings.[5]
- ✓ ✗ I have linked this strength of committals to the principle of fairness.[6]
- ✓ ✗ I have rebutted the argument in the prompt that committals create delays.
- ✓ ✗ I have used key Legal Studies terminology effectively such as: 'trial', 'evidence', etc.

1 f [Imprisonment does achieve the purposes of deterrence and protection to a large extent in this case.[1]]

[Imprisonment achieves deterrence in Arpaci's case as it is such a harsh punishment.[2]][As the most severe sanction available, this long term of imprisonment achieves specific deterrence by discouraging Arpaci from reoffending in the future, as well as general deterrence because the harsh term imposed on Arpaci should discourage other people in the community from committing crimes of a similar nature.
As noted by Source 3, Arpaci's sanction was particularly harsh compared to other culpable driving cases, thus heightening the potential to achieve deterrence.[3]]

[On the other hand,[4]][imprisonment is not always successful at achieving specific deterrence, as evidenced by the high rate of recidivism in Victoria.[5]][Approximately 40% of those released from Victorian prisons reoffend to such a serious extent that they are in prison again within 2 years. This suggests that prison may not be an effective deterrent for Arpaci.[6]]

[Imprisonment will achieve protection in this case by removing Arpaci from the community and ensuring that he does not commit any crimes during the term of imprisonment.[7]][Arpaci will not pose any threat to society for at least 9.5 years, and in particular cannot commit any more driving offences.[8]][However,[9]][imprisonment only achieves protection to a limited extent as there is still the chance that Arpaci may reoffend once he is released from prison.[10]][Arpaci may drive dangerously after his release from prison; furthermore, a term of imprisonment will often have a negative impact on offenders, and can lead to them being more likely to commit a crime after release if he is unemployed and socially disconnected after his release.[11]]

- ✓ ✗ I have stated the extent to which these purposes of sanctions are achieved in this case.[1]
- ✓ ✗ I have described one way in which imprisonment achieves deterrence in this case.[2]
- ✓ ✗ I have explained this reason in further detail.[3]
- ✓ ✗ I have used a distinguishing word, such as 'however', 'on the other hand', etc. to show that I am addressing 'both sides'.[4]
- ✓ ✗ I have described one way in which imprisonment does not achieve deterrence in this case.[5]
- ✓ ✗ I have explained this reason in further detail.[6]
- ✓ ✗ I have described one way in which imprisonment achieves protection in this case.[7]
- ✓ ✗ I have explained this reason in further detail.[8]
- ✓ ✗ I have used a distinguishing word, such as 'however', 'on the other hand', etc. to show that I am addressing 'both sides'.[9]
- ✓ ✗ I have described one way in which imprisonment does not achieve protection in this case.[10]
- ✓ ✗ I have explained this reason in further detail.[11]
- ✓ ✗ I have explicitly referred to the source material throughout my response.
- ✓ ✗ I have used key Legal Studies terminology effectively such as: 'deterrence', 'sanction', 'protection', 'recidivism', etc.

WANT MORE?

Here's another exam-style question to show the theory from a different perspective:

- Study Design dot-point: the purposes of sanctions: rehabilitation, punishment, deterrence, denunciation and protection
- Related Edrolo Textbook Lesson: 3.1.10 – Page 64

Question 11. Riyaz Khoja pleaded guilty to culpable driving in the County Court in 2012; he was sentenced to 8 years, 6 months imprisonment. He appealed (unsuccessfully) against the sentence. The Court of Appeal's judgement included the following comment:

> 'Put simply, at the time of this terrible accident Mr Khoja was suffering from no impairment of mental functioning. He was fully aware of his responsibilities as a driver, not least because his companions were urging him to drive safely. As a young man who was driving under the influence of alcohol, and with a complete lack of care, when he caused the death and the serious injuries, Mr Khoja is precisely the kind of person who may properly be treated as a vehicle for general deterrence in sentencing for this offence. Punishment of offenders is, of course, only one aspect of public education about the dangers of driving under the influence of alcohol. But courts have for many years emphasised the central importance of general deterrence in sentencing for offences of this kind.' *Khoja v R* [2014] VSCA 9

Define 'general deterrence' and distinguish this purpose of criminal sanctions from denunciation. Identify the impact of the court's desire to achieve general deterrence upon Khoja's sentence. (4 MARKS)

[The sentencing purpose 'general deterrence' means the imposition of a more severe sanction, to discourage others in the community from similar offending.[1]][On the other hand,[2]][the purpose 'denunciation' refers to the court imposing a more severe sanction to demonstrate the court's condemnation/disapproval of the offender's behaviour.[3]]

[To achieve the 'general deterrence' purpose of criminal sanctions and discourage members of the wider community from offending as Khoja did, the sentencing court would have made his prison term longer than would otherwise be the case.[4]]

- ✓ ✗ I have described 'general deterrence' as the imposition of a more severe sanction, to discourage others in the community from similar offending (or similar).[1]
- ✓ ✗ I used linking words to distinguish, such as: 'however', 'whereas', 'on the other hand', etc.[2]

cont'd

- ✓ ✗ I have described 'denunciation' as the imposition of a more severe sanction to demonstrate the court's condemnation or disapproval of the offender's behaviour (or similar).[3]
- ✓ ✗ I have stated that the court's attempt to achieve general deterrence would result in Khoja's sentence being longer.[4]
- ✓ ✗ I have used key Legal Studies terminology effectively such as: 'deterrence', 'sanction', etc.

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2 a [One reason why a court needs to interpret the phrases in legislation is because parliament has drafted the law in broad, general terms,[1]][that need to be applied to very specific circumstances.[2]][For instance, the words 'advanced' and 'incurable' are very broad[3]][and the courts will need to assess whether Person X's particular illness falls within such broad terms to determine whether she is able to access voluntary assisted dying.[4]]

- ✓ ✗ I have identified one reason for statutory interpretation.[1]
- ✓ ✗ I have described this reason for statutory interpretation in further detail.[2]
- ✓ ✗ I have explicitly linked this reason to the phrases 'incurable' and 'advanced, progressive and will cause death'.[3]
- ✓ ✗ I have linked my description of the need for statutory interpretation to the resolution of the dispute Person X has brought to the courts.[4]
- ✓ ✗ I have used key Legal Studies terminology effectively such as: 'legislation', 'parliament', 'courts', etc.

Possible points to include

- An alternative reason for statutory interpretation may include new, unforeseen circumstances – here, new and incurable illnesses – arising in society.
- Changes to technology could only be described as a reason for statutory interpretation in this question if such technological changes alter which diseases are and are not curable.

WANT MORE?

Here's another exam-style question to show the theory from a different perspective:

- Study Design dot-point: the reasons for, and effects of, statutory interpretation
- Related Edrolo Textbook Lesson: 4.2.3 – Page 282

Question 11. In 2003 Attorney-General for the *Commonwealth v 'Kevin and Jennifer' and Human Rights and Equal Opportunity Commission* [2003] FamCA 94 required the Family Court to determine the validity of a marriage for a transgender man. The *Kevin and Jennifer* case is an example of the need for statutory interpretation.

Discuss the extent to which you believe statutory interpretation is an effective way to make law. (4 MARKS)

[I agree to a large extent that statutory interpretation is effective.[1]][One of the benefits of statutory interpretation is the ability for the courts to fill gaps in the legislation. Sometimes when legislation is drafted the writers may not anticipate particular situations – for example, it wasn't predicted that the *Marriage Act 1961* would need to consider whether transgender men could be considered man within the definition of the legislation as occurred in the Kevin and Jennifer case.[2]][Although a weakness of judges being able to fill gaps in the legislation is that through statutory interpretation they may broaden or restrict the intended meaning of the legislation.[3]]

[A second benefit of statutory interpretation is that it enables the courts to keep the legislation relevant and up to date as evident in the case of Kevin and Jennifer. In the 60s when the *Marriage Act* was written it unlikely the drafters would have considered transgender people while the recent interpretation ensures the legislation is up to date with current social standards and medical procedures.[4]]

[However, a weaknesses of the judges being able to keep the legislation up to date is that it is undertaken by the judiciary who are not elected representatives and it could be argued this is a job better left with Parliament.[5]]

- ✓ ✗ I have stated how effective statutory interpretation can be.[1]
- ✓ ✗ I have described a first benefit of statutory interpretation.[2]
- ✓ ✗ I have described a matching limitation of statutory interpretation.[3]
- ✓ ✗ I have described a second benefit of statutory interpretation.[4]
- ✓ ✗ I have described a matching limitation of statutory interpretation.[5]
- ✓ ✗ I have referred to the case in the question (the Kevin and Jennifer case) in my answer.
- ✓ ✗ I have used key Legal Studies terminology effectively such as: 'legislation' etc.

2 b [One possible response is for the Parliament of Victoria to abrogate the Court's decision,[1]][passing legislation that abolishes the precedent set and replaces it with a different principle of law.[2]][In this instance, such a law would cancel the Court of Appeal's narrow interpretation of the words 'advanced' and 'incurable' in Person X's case and provide a wider definition of the illnesses covered by the law.[3]]

- ✓ ✗ I have identified one possible response of the parliament.[1]
- ✓ ✗ I have described this response of the parliament in further detail.[2]
- ✓ ✗ I have referred explicitly to the judgement of the Court of Appeal in this case and described the legislation that may follow.[3]
- ✓ ✗ I have used key Legal Studies terminology effectively such as: 'codify', 'abrogate', 'statute', etc.

Possible points to include

- An alternative response of the Parliament of Victoria is to pass legislation to codify the judgement of the Court of Appeal, adopting the narrow definition of 'incurable' and 'advanced, progressive and will cause death' in the statute itself.

WANT MORE?

Here's another exam-style question to show the theory from a different perspective:

- Study Design dot-point: features of the relationship between courts and parliament in law-making, including: the supremacy of parliament; the ability of courts to influence parliament; the interpretation of statutes by courts; the codification of common law; the abrogation of common law
- Related Edrolo Textbook Lesson: 4.2.5 – Page 300

Question 11. The *Mabo* decision prompted the Commonwealth Parliament to codify the High Court decision, creating the *Native Title Act 1993* (Cth).

Using examples, explain the difference between codification and abrogation. (4 MARKS)

[The difference between codification and abrogation is the impact they can have on the law.[1]]

[Codification is the process that involves parliament passing legislation that incorporates common law principles.[2]][This occured in the 1992 *Mabo* decision where the High Court established the principle of Native Title. In 1993 the Commonwealth Parliament passed the *Native Title Act* which not only confirmed the principles of Native Title in the legislation but also established the Native Title Tribunal, providing a process whereby Aboriginal Australians could pursue land claims.[3]]

[Abrogation, on the other hand,[4]][is a process where parliament passes legislation to override judge made law.[5]][An example of this was in *De Sales v Ingrilli* [2002] where the High Court upheld a reduced amount of damages De Sales was awarded for the negligent death of her husband as she may have a good chance of remarriage. The Victorian government felt the law was discriminatory and consequently enacted the *Wrongs (Remarriage Discount) Act 2004* to prevent reduced awards of damages based on any prospect of marriage.[6]]

- ✓ ✗ I have stated the difference between codification and abrogation.[1]
- ✓ ✗ I have described codification.[2]
- ✓ ✗ I have included an example of codification.[3]
- ✓ ✗ I have included a contrasting word such as 'on the other hand', 'however' or 'although'.[4]
- ✓ ✗ I have described abrogation.[5]
- ✓ ✗ I have included an example of abrogation.[6]
- ✓ ✗ I have used key Legal Studies terminology effectively such as: 'codification', 'abrogation', 'legislation', 'common law', etc.

2 c [Section 109 provides that, in the event of an inconsistency between Commonwealth and state laws, the Commonwealth law will prevail and the state law will be rendered invalid (to the extent of the inconsistency).[1]]

[In this instance, a Commonwealth law banning access to voluntary assisted dying would be in conflict with Victorian law allowing the practice – doctors approached by Victorians seeking such assistance cannot follow both laws.[2]][Therefore, the impact of section 109 would be that the Victorian law permitting voluntary assisted dying would be declared invalid,[3]][once its validity is challenged by a party with standing, such as a doctor, in the High Court of Australia.[4]]

- ✓ ✗ I have described the impact of s. 109 of the Constitution (in general).[1]
- ✓ ✗ I have described the nature of the conflict (or inconsistency) created by the proposed Commonwealth law in this scenario.[2]

- ✓ ✗ I have stated the Commonwealth law would prevail and the state law would be declared invalid in this situation.[3]
- ✓ ✗ I have stated that the Victorian law is only declared invalid after its validity has been challenged in the High Court.[4]
- ✓ ✗ I have used key Legal Studies terminology effectively such as: 'to the extent of the inconsistency', 'High Court', etc.

WANT MORE?

Here's another exam-style question to show the theory from a different perspective:

- Study Design dot-point: the significance of section 109 of the Australian Constitution
- Related Edrolo Textbook Lesson: 4.1.2 – Page 217

Question 10. Assume the Commonwealth challenges the validity of Victorian legislation, and the High Court of Australia declares some sections of this Victorian law invalid.

Based on your knowledge of the division of powers, identify and explain two possible reasons why the High Court may declare sections of Victorian law invalid in this instance. (4 MARKS)

[One reason the Victorian law may be declared invalid in this case is because it enters into the exclusive powers.[1]][The division of powers allows the Commonwealth to be the sole law-maker on some matters (called 'exclusive powers')[2]][such as currency.[3]][A Victorian law that enters the exclusive powers is outside its law-making authority and therefore invalid.[4]][A second reason the Victorian law would be declared invalid is because it's inconsistent with Commonwealth law.[5]][Under section 109, sections of state law that are inconsistent with Commonwealth law will be declared invalid and the Commonwealth law will be followed instead.[6]][Therefore, in this case the High Court may decide some sections of Victorian law are invalid if they are inconsistent with Federal law.[7]]

- ✓ ✗ I have identified the first reason Victorian law may be declared invalid as entering into the exclusive powers.[1]
- ✓ ✗ I have described an 'exclusive power' as a law-making power only the Commonwealth may exercise (or similar).[2]
- ✓ ✗ When defining 'exclusive power' I have included an example (such as defence or currency).[3]
- ✓ ✗ I have linked the description of exclusive powers to a conclusion about the validity of the Victorian law in the question.[4]
- ✓ ✗ I have identified the second reason Victorian law may be declared invalid as being inconsistent with Commonwealth law.[5]
- ✓ ✗ I have described the operation of section 109 as parts of state law inconsistent with federal law being invalid (or similar).[6]
- ✓ ✗ I have linked the description of section 109 to a conclusion about the validity of the Victorian law in the question.[7]
- ✓ ✗ I have been careful not to simply reuse the word 'exclusive' when defining 'exclusive power'.
- ✓ ✗ I have signposted my answer appropriately with 'One reason the Victorian law would be invalid is...' (or similar).
- ✓ ✗ I have used key Legal Studies terminology effectively, such as 'inconsistent', 'parliament', 'invalid', etc

3 a [An injunction would, to some extent, achieve the purposes of civil remedies in this case and return Bradley to his original position, however this is limited.[1]]

[A restrictive injunction requiring Stefani to remove her comments from all online sources and desist from publishing similar comments in the future would help restore Bradley to his former position.[2]][If Stefani is forced to remove the comments, this will help restore Bradley's reputation and thus return him to the position he was in prior to the defamatory material being published to an extent.[3]][An injunction will also ensure that no further harm is caused to Bradley as a result of Stefani's comments.[4]][A restrictive injunction ordering Stefani not to publish further comments about Bradley will prevent any future injury to Bradley's reputation.[5]]

[However, the comments made by Stefani may have already caused significant damage to Bradley's reputation, making it impossible for an injunction to entirely restore him to his prior position.[6]][The defamatory comments have likely already been seen by a lot of people and could continue to be shared online even after Stefani removes the initial comments, undermining the ability of the injunction to achieve its purpose.[7]] [Even a mandatory injunction, requiring Stefani and the newspaper to publish an apology is limited in restoring Bradley to his original position,[8]] [if too much harm has already occurred due to the original comments being shared online.[9]]

- ✓ ✗ I have stated the extent to which the purpose of remedies is achieved by an injunction in this case.[1]
- ✓ ✗ I have described one way in which an injunction achieves the purpose of remedies in this case.[2]
- ✓ ✗ I have explained this in further detail.[3]
- ✓ ✗ I have described a second way in which an injunction achieves the purpose of remedies in this case.[4]

- ✓ ✗ I have explained this in further detail.[5]
- ✓ ✗ I have described one way in which an injunction does not achieve the purpose of remedies in this case.[6]
- ✓ ✗ I have explained this in further detail.[7]
- ✓ ✗ I have described a second way in which an injunction does not achieve the purpose of remedies in this case.[8]
- ✓ ✗ I have explained this in further detail.[9]
- ✓ ✗ I have explicitly referred to the source material throughout my response.
- ✓ ✗ I have used key Legal Studies terminology effectively such as: 'injunction', 'remedy', etc.

WANT MORE?

Here's another exam-style question to show the theory from a different perspective:

- Study Design dot-point: damages and injunctions, and their specific purposes
- Related Edrolo Textbook Lesson: 3.2.10 – Page 175

Question 6. *'Sometimes a plaintiff may need to seek a variety of remedies in order for the overall purpose of civil law remedies to be achieved.'* Do you agree? Justify your response. (6 MARKS)

[I agree that sometimes a plaintiff may require the court to award them more than one category of civil remedy to properly and completely address the loss they have suffered.[1]][Typically, courts are empowered to award any one or more of a range of remedies—monetary and non-monetary—to plaintiffs who successfully bring proceedings under a civil law cause of action. Breaches of civil law rights may have diverse consequences for plaintiffs. The range of remedies that a plaintiff may claim are necessary and which a court may award are therefore dependent on the different objectives, experiences and circumstances of plaintiffs and the loss they have suffered.[2]]

[All civil remedies aim to restore loss that has been suffered by a plaintiff in an attempt to restore them as closely as possible to the position they were in before they suffered loss.[3]][In some instances they even aim to prevent loss that is about to be suffered, in the case of an interlocutory injunction. Injunctions broadly are an order from the court directing a defendant to do something (mandatory injunction) or not do something (restrictive injunction). An interlocutory injunction aims to preserve the status quo by preventing one party from committing, repeating or continuing a wrongful act prior to trial. This may be appropriate where the plaintiff successfully argues that it is necessary to restrain or prohibit another party from doing a certain thing, such as, for example, to restrain a publishing house from publishing a book, or to restrain the publication of confidential information, or the demolition of an important structure.[4]]

[Civil damages are the most commonly awarded civil remedy. It may be appropriate for a plaintiff to seek specific damages where they have suffered financial loss such as medical bills, or general loss, such as pain and suffering.[5]]

[It is not necessarily always possible for all the loss that a plaintiff has suffered to be restored through a financial payment. An example may be where progress at a building site has been delayed due to ongoing protests. This requires an order from the court that the trespass ceases, as well as a payment to compensate the building site owners from the delays experienced in the course of construction. As such, in some instances, only an injunction or only damages alone will not achieve the aim of fully restoring all relevant loss, and more than one remedy may be required.[6]]

- ✓ ✗ I have provided a statement that addresses the extent to which I agree with the contention.[1]
- ✓ ✗ I have established that courts are able to award the remedies they identify as necessary and appropriate.[2]
- ✓ ✗ I have identified that the overall purpose of civil law remedies is to restore the plaintiff to the position they were in before they suffered the loss.[3]
- ✓ ✗ I have explained the role and purpose of injunctions.[4]
- ✓ ✗ I have explained the role and purpose of damages.[5]
- ✓ ✗ I have provided an explanation in support of my initial opinion statement that addresses the extent to which I agree with the contention.[6]
- ✓ ✗ I have used key Legal Studies terminology effectively such as: 'plaintiff', 'award', 'remedy', 'loss', 'claim', proceedings', 'civil law cause of action', 'breach', 'restore', 'interlocutory', 'restrictive injunction', 'mandatory injunction', 'specific damages', 'general damages', 'restrain', etc.

3 b [I believe this matter should be determined through mediation rather than a trial by jury.[1]][Mediation would be appropriate to hear this dispute as it is more cost-effective than a trial by jury.[2]][The costs involved in mediation are much less than those associated with a trial by jury, as at a trial, the parties must pay barristers' fees, court fees and the costs of using a jury for days or weeks – compared with paying a mediator for a short period. Stefani and her publisher will most likely wish to minimise costs in defending the claim, and Bradley has retired from acting, so a cheaper alternative may be desirable for all parties.[3]]

[Mediation is also less time-consuming compared to a trial by jury.[4]][It is likely that Bradley would want the comments and article removed quickly, and a trial by jury is a much lengthier process, prolonging the damage to his reputation.[5]]

[Furthermore, mediation offers a more private resolution than a trial in the courts.[6]][As the defendant in this case is a large media corporation and Bradley is an actor, it may be beneficial for both parties if the matter is not decided in a large public trial which would likely draw a lot of media attention and potentially have a further negative impact on their reputations.[7]]

- ✓ ✗ I have stated whether I think this should be determined by a jury or through mediation.[1]
- ✓ ✗ I have provided one reason for my stance.[2]
- ✓ ✗ I have explained this reason in further detail, referring to the facts of the case.[3]
- ✓ ✗ I have provided a second reason for my stance.[4]
- ✓ ✗ I have explained this reason in further detail, referring to the facts of the case.[5]
- ✓ ✗ I have provided a third reason for my stance.[6]
- ✓ ✗ I have explained this reason in further detail, referring to the facts of the case.[7]
- ✓ ✗ I have used key Legal Studies terminology effectively such as: 'mediation, jury', 'dispute', etc.

Possible points to include

Students could alternatively conclude a trial by jury is more appropriate than mediation in this case, so long as that conclusion is justified (weighing more heavily the reasons for a jury trial, such as being judged by one's peers). No matter the conclusion reached, students must weigh up how one method is more appropriate than the other.

Other benefits of mediation vs a jury trial:

- In mediation parties are not restricted to what is in the statement of claim as to what remedy they may agree on.
- Parties can negotiate a mutually agreeable outcome in mediation, which may repair the relationship between these parties more than an outcome imposed at the end of an adversarial process.

Benefits of a jury trial vs mediation:

- A jury trial enables the parties to feel their conduct (and whether the comments are damaging) has been judged by their peers, reflecting the values and expectations of the community.
- Juries are an independent, impartial decision-maker, helping Stefani, Bradley and the newspaper to feel the decision is fair and based solely on the facts and law alone.
- The use of a jury will ensure plain English is used in the trial, meaning Stefani and Bradley in particular have a better understanding of proceedings; this is a limited benefit in this scenario however, as mediation is an informal and supportive process.
- A jury trial would provide finality for the parties, as a binding decision is reached; however this can also be achieved following a successful mediation, if the parties' resolution is ratified in court orders (made by consent).
- The plaintiff may prefer a jury trial because it is public, as a way to deter other newspapers from publishing defamatory comments.

WANT MORE?

Here's another exam-style question to show the theory from a different perspective:

- Study Design dot-point: the methods used to resolve civil disputes, including mediation, conciliation and arbitration, and their appropriateness
- Related Edrolo Textbook Lesson: 3.2.9 – Page 170

Question 7. Madeleine had been working at Baking Deelight for two years when she was injured in an accident using the automatic bread slicer. She cut her hand and couldn't sit her upcoming SACs at school. She wants compensation but her employer is reluctant to pay. Would this case be appropriate for mediation? Justify your response. (4 MARKS)

[This dispute between Madeleine and her employer may be appropriate for mediation.[1]]

[Mediation is an alternative dispute resolution process which may be used by courts or tribunals as part of pre-trial attempts to resolve the dispute, or may be attempted separately to the court process, through engaging a private mediator.[2]]

[One key factor that would impact whether or not this dispute between Madeleine and her employer is appropriate for mediation is how willing both parties are to cooperate and reach a mutually beneficial solution or compromise to the dispute.[3]][If Baking Deelight are not willing to admit liability or agree to pay any compensation then mediation is not likely to be appropriate because the mediator is a neutral third party who will not make suggestions for resolution of the dispute nor make a binding decision. Mediation may be appropriate if Madeleine's employer are willing to admit liability and the amount of compensation is the only issue.[4]]

✓ ✗ I have addressed the task word by explaining this case may be appropriate for mediation.[1]

✓ ✗ I have provided a brief explanation of mediation as an alternative method of dispute resolution.[2]

✓ ✗ I have identified one reason why mediation may/may not be appropriate in this case.[3]

✓ ✗ I have explained the identified reason why mediation may/may not be appropriate in this case.[4]

✓ ✗ I have used key Legal Studies terminology effectively such as: 'dispute resolution', 'courts', 'tribunals', 'dispute', 'binding decision', 'compensation', etc.

Possible points to include

- If Madeleine wishes to continue working at her place of employment, in order to maintain an ongoing relationship, mediation may be more appropriate than the court system as it is less adversarial.
- It may be inappropriate due to the age differences between the employer and a young person.