**2021**

#### VCE

**Legal Studies**

**Trial Examination**

**Suggested Answers**

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**SECTION A**

**Question 1**

While students may include an example of each type of power in the response, it was not required information.

Sample solution

*Residual powers are those powers that were retained by the states at the time of federation and only states can make laws in those areas. (1 mark) Whereas concurrent powers are those areas of power that both the states and Commonwealth parliament can make laws on. (1 mark)*

**Study Design Reference:** Unit 4 AOS 1 dot point 2

**Question 2**

**a.**

While the Governor-General has many other roles, the key to the question is the role in relation to law making. While a role is that the Governor General may withhold royal assent, this is not required to earn full marks in the question.

Sample solution

*The main role of the Governor-General (Crown representative) is the granting of royal assent*

*(1 mark). This is where the Governor-General will sign his or her approval of a bill that has successfully passed through the two houses (1 mark)*

**Study Design Reference:** Unit 4 AOS 1 dot point 1

**SECTION A**

**Question 2 (continued)**

**b.**

Being a ‘discuss’ question it requires a consideration of point/points both in support of and against the fact that the upper house in its role, may limit law-making being effective.

While marked globally, there would need to be a balanced response to earn high marks.

Sample solution

*The role of the Senate is to scrutinize/review bills that have come before it, having been passed by the House of Representatives. Further, it has the role of itself introducing bills to parliament (1 mark)*

*The composition of the Senate will be a significant factor in determining whether it may limit parliament in its ability to make laws. (1 mark)*

*Where the government of the day holds a majority of seats in the Senate (1 mark), a bill that has already been passed by the House of Representatives will most likely be supported by all government members in the Senate and thus gain a majority vote, taking significant step towards the law being passed.. (1 mark)*

*However, its effectiveness in law making may be questionable if there is a hostile upper house (1 mark), where the government does not hold the majority in the Senate. (1 mark)*

*Not having a majority may be due to minor parties and independents preventing there being a majority of government members or it may be because the major opposition party holds the majority. Either way, bills are going to be harder to get through the upper house, with more extensive debate being required (1 mark)*

**SECTION A**

**Question 3**

**a.**

A range of purposes are behind both plea negotiations and sentence indications. Using the same purpose for each in the answer, while possible, would not earn both marks. Given the question is asked prior to the scenario, there is no need for the purpose to link to the case.

Sample solution

*One dot point for each would be required*

*Plea negotiations*

* *Ensure a guilty plea to a charge that is in line with the crime committed*
* *Ensure a timely resolution to the case, avoiding unnecessary stress/cost/time for defendant/victim*

*Sentence indications*

* *Provides clarity as to the likely sentence*
* *Reduction in time/cost/stress that would have accompanied a trial e.g. not guilty plea – this can apply to both defendant and victim*

**Study Design Reference:** Unit 3 AOS 1 dot point 7

**SECTION A**

**Question 3 (continued)**

**b.**

This is a ‘discuss’ question and so requires a consideration of point/points both in support of and against whether a sentence indication was appropriate in the case. Using information from the case to support the points made in the response would help earn high marks in this question.

While it would be marked globally, there is the need to be a balanced response for it to earn high marks.

Sample solution

*To some degree a sentence indication given by the judge in this case is appropriate, however there are also reasons that it may not be appropriate. (1 mark)*

*The defendant John Weegink is seeking a sentence indication from the judge (1 mark), and if the judge does agree to do so, it will result in the victim, who had allegedly been violently attacked by the accused, will not be required to go through the process of giving evidence.*

*(1 mark). This would remove the stress and trauma that she may have to relive by giving evidence (1 mark).*

*However, should Weegink agree to any sentence indication given by the judge, he is putting himself in a position of pleading guilty to the offence, (1 mark) removing the opportunity for his lawyer to present evidence that may lead to a not guilty verdict. (1 mark) There may be facts that could have been presented in evidence that resulted in a not guilty verdict at trial (1 mark)*

*Some further points that could have been presented in a student response:*

*Note that for any point mentioned, it would need to be shown how it fits as being appropriate or not appropriate to this case.*

|  |  |
| --- | --- |
| ***Appropriate*** | ***Not appropriate*** |
| *Early conclusion to the case* | *Former never has her ‘day in court’* |
| *Accused does not have to accept the sentence indication* | *Accused gives up the opportunity/right to defend the charges* |

**Study Design Reference:** Unit 3 AOS 1 dot point 7

**SECTION A**

**Question 4**

**a.**

While the study design considers three rights each for the victim and the accused, there may be others a student uses that would be acceptable as a response. Those mentioned in the study design are as follow:

Sample response

|  |  |
| --- | --- |
| ***Accused*** | ***Victim*** |
| *To a trial by jury* | *To give evidence as a vulnerable witness* |
| *To be tried without unreasonable delay* | *To be informed about proceedings* |
| *To a fair hearing* | *To be informed of the likely released date of the accused* |

**Study Design Reference:** Unit 3 AOS 1 dot points 3 & 4

**b.**

The question limits students as the principle of ‘fairness’ is stipulated. To score well, the link between the right and the principle of ‘fairness’ would need to be clearly displayed.

Students should also note a further limitation to their response in b., in that it asks in relation to the accused, so if the answer linked back to the victim, no marks would be awarded.

Sample response

*One right of the accused is ‘to be tried without unreasonable delay’, indicating the accused should have the matter heard in a timely manner, where any delays that do occur are considered reasonable in that case. (1 mark)*

*The principle of fairness is reflected through this right as if only those delays considered reasonable occur it suggests all accused are being treated the same in terms of no accused being treated more favorably or being discriminated against. However, this does not necessarily mean all are treated the same as some hearings/trials may need to take longer in their preparation than others. (2 marks)*

*The Victorian Director of Public Prosecutions states that the average time of 18 months is too long and thus puts fairness at risk of being achieved. (1 mark)*

**Study Design Reference:** Unit 3 AOS 1 dot points 1 & 3

**SECTION A**

**Question 5**

**a.**

Students should not use ‘Cost’ as a factor in answering this question. The question states ‘one other factor’ – ‘cost’ is already contained in the scenario information. The scenario also mentions’ not long been operating as a small family business’, suggesting that ‘enforcement issues’ may be a factor should the civil action go ahead. While it is up to teacher discretion whether to accept other ‘factors to be considered’, through a student choosing ‘enforcement issues’ suggests they have more carefully read the scenario.

Sample response

*The business potentially facing the civil action is a small and recently commenced family business, (1 mark) suggesting that even if the court does find in favour of the plaintiff and award damages, the defendant may not be in a position to pay the compensation awarded*

*(1 mark)*

**Study Design Reference:** Unit 3 AOS 2 dot point 2

**b.**

Students need to understand when ‘representative proceedings’ can be used and thus identify that it could not be used in this case. The question states they could not be used so no marks would be awarded for stating ‘representative proceedings could not be used’. All marks would be allocated to displaying an understanding of ‘representative proceedings’ by explaining why they could not be used.

Sample response

*Where a group of people are making a civil claim against the same party, they may choose to join together in commencing that civil action. (1 mark)*

*While it would be brought before the court in the name of one person, known as the lead plaintiff, they would be doing so on behalf of the other people who feel they have a case against the same party as the lead plaintiff (1 mark).*

*In this case there is only the one person, Eleanor, who has been harmed (1 mark)*

**Study Design Reference:** Unit 3 AOS 2 dot point 3

**SECTION A**

**Question 5 (continued)**

**c.**

The study design considers two forms of ‘case management power’ students are required to know. This question allows for students to use either – ‘order mediation’ **or** ‘give directions’, the only limiting factor being that it must be a power that occurs during trial.

While a wide variety of appropriate responses may be given, to achieve high marks the response would need to clearly indicate that the response provided would talk place during the trial.

Sample response

*A direction is an order given by the judge on either one or both of the parties. (1 mark). It may oblige either Eleanor of the owners of the gym to have done something within a deadline specified or even placing limits on what a party can do. (1 mark) There may be a limit placed on the number of witnesses a party can call. (1 mark)*

**Study Design Reference:** Unit 3 AOS 2 dot point 8

**SECTION A**

**Question 6**

Being a 10 mark question, to better ensure high marks are earned, it is advised that students use both an opening and closing sentence. Further, with this sort of question, paragraphing becomes more important.

The question here requires students to show their understanding of the ‘separation of powers’ principle in terms of the extent to which there is a clear distinction between legislative and judicial powers. While it does not specifically require definitions for each of the two branches of power, the answer should bring out their respective meanings.

The question also requires students to display a knowledge of the various ways in which parliament and courts work together in law making (the ways in which they ‘relate’)

In addressing both parts of the question there is the need for students to show the ability to both agree and disagree ‘to an extent’ with the statements.

While a ‘sample response’ is provided, the structure may vary from the format below.

Sample response

*Both in relation to the separation of powers distinguishing the roles of parliament and courts, and the way in which parliament and courts relation to in lawmaking, the statement is true to some extent.*

*It is true that the doctrine of the separation of powers does show that the roles of both parliament and the courts are different so as to ensure their powers are different and do not overlap. However, at the same time, this distinction as to their respective powers is not always clear cut. The legislative arm of the separation of powers refers to the powers given to parliament to make laws, whereas the judicial arm refers to the powers given to the courts/judges, that power being to enforce the laws made by parliament and settle disputes.*

*However, when it comes to appointing judges to the courts, (those with the power to enforce the law through settling disputes), it is done so by representatives of the government of the day, being the executive arm; these government representatives are also members of the legislature and thus there is a lack of distinction and some overlap resulting between the judiciary and legislature, where members of parliament are involved in choosing the judges.*

*There is certainly an interconnection between parliament and the courts when it comes to law-making. While parliament is the supreme lawmaker, as can be seen through the separation of powers, the courts, nevertheless, do compliment parliament in this role. In their role as supreme lawmaker, parliament can at any time introduce legislation that gives courts the power to do something or similarly prevents courts from acting in a certain way. However, courts, in the process of enforcing the law may hand down a decision, and through their reasoning behind the decision, encourage parliament to put new laws in place.*

**SECTION A**

**Question 6 (continued)**

*An example of the courts influencing parliament was through the High Court decision in the Mabo Case, where, as a result, parliament passed the Native Title Act which legislated what the courts decided in Mabo. Here was an example of parliament codifying the common law.*

*A further way in which parliament and the courts work together in lawmaking is that while parliament may pass legislation on a matter, there is sometimes the need for the courts to interpret that legislation. They may need to give meaning to the legislation on occasions for a range of reasons such as the legislation lacking clarity. Providing the matter was heard by a Superior Court of Record, the meaning the court gives to the legislation will in future be read in conjunction with the legislation. This occurred in the Studded Belt case in relation to the meaning of a regulated weapon. When the case was heard on appeal, it was clarified that an item not in common use as a weapon could not be classified as a weapon.*

*(an alternative case that could be used to highlight how parliament and courts work together is Kevin & Jennifer)*

*There will be occasions where there is no legislation on a matter, and it is the common law that is relied upon to determine a decision in a case. However, parliament, as the supreme lawmaker does have the power to pass legislation to abrogate (cancel out) the common law that exists in the matter. This may occur where parliament believes the common law is no longer appropriate to be applied in the matter. An example of this was Trigwell’s Case, where the courts had continued to apply English common law that was clearly no longer in line with the times. Parliament put in place legislation on the matter in the Wrongs Act.*

*There are many ways in which parliament and the courts work together to ensure the flexibility of the law and to allow for law-making to occur.*

**Study Design Reference:** Unit 4 AOS 1 dot point 2 & AOS 2 dot point 5

**SECTION B**

**Question 1**

**a.**

Sample response

*The matter was being heard in the Magistrates’ Court (as a committal) (1 mark)*

*The Magistrates’ Court does not have juries/Committal hearings do not have juries (1 mark)*

*Criminal juries are only empaneled in the County or Supreme Courts where the accused pleads not guilty (1 mark)*

**Study Design Reference:** Unit 3 AOS 1 dot point 9

**SECTION B**

**Question 1 (continued)**

**b.**

A prison sentence was handed down, and the question required students link the sanction of imprisonment to **two** purposes, bringing out in the response the fact that the chosen purposes were/were not achieved through imprisonment. Any two of the following purposes listed as key knowledge in the study design in could be used:

* Rehabilitation
* Punishment
* Denunciation
* Deterrence – if used it must be clear in the response if it is ‘general’ or ‘specific’ being used in the response
* Protection

It is important that students use the stimulus material in their response and, how well they linked the stimulus material to their answers would be a discriminating factor in the marks awarded.

The marking below is just a guide.

Sample response

*A number of purposes are trying to be achieved through the judge handing down a prison* *sentence to the offender Pussy. (1 mark)*

*Given the nature of the crime, the aim of punishment should be a high priority in determining the sanction handed down. Pusey, by filming a dying person needs to be punished for such actions, and through him being sent to prison, thus removing him from general society, does tend to achieve this purpose (1 mark)*

*However, the length of the sentence handed down is just 10 months in prison, after which time Pusey gets his freedom back and is returned to be part of the general community. Many would argue that the length of prison sentence is not nearly sufficient punishment for what he did.*

*(1 mark)*

*There was the opportunity in this case for the court to show the community of its strong disapproval of the crime. The purpose of denunciation is reflected in the sanction given in that the most severe sanction possible, that of imprisonment, has been handed down by the judge.*

*(1 mark)*

*However, given the sentence handed down was 10 months, many in the community might feel that the judge has not reflected a sufficient level of disapproval of the crime. This may suggest the purpose of denunciation has not been achieved. (1 mark)*

**Study Design Reference:** Unit 3 AOS 1 dot points 10 & 11

**SECTION B**

**Question 1(continued)**

**c.**

The role of the media in law reform is the key knowledge assessed in this question. To achieve high marks, a student would need to incorporate both social media and traditional media in the response, given the information provided in Sources 3 & 4. Better responses would need to reflect the ‘analyse’ requirement of the question. Global marking would apply.

Sample response

*The media plays an important role through having the potential to influence change in the law occurring. This can be reflected through both traditional media methods such as newspapers, but also social media platforms such as twitter. (1 mark)*

*In Source 3 the Herald Sun has included in its story, quotes from members of the community expressing their concerns/views as to the suitability of the sentence handed down by the court in this case. These reports may attract the attention of parliament, leading to concerns being raised by our primary lawmaker as to the need for reform to be introduced. (1 mark) Nevertheless, a variety of views expressed may reduce the likelihood of parliament responding, should some be supporting change, however others content with the sanction delivered.*

*(1 mark)*

*Source 4 documented a twitter by a Member of the Victorian parliament, David Southwick. He was critical of the sentence, suggesting that the role of the victim in the criminal justice system needs to be made more paramount. (1 mark)*

*In both the traditional media such as newspaper reports, and the social media of twitter, the comments will be read by many in the community. That may, in turn, pressure parliament to reform the laws in this area. (1 mark) It is important that parliament listen to the community when considering law reform. However, they may be faced with a wide range of views held by the community. In this case some, as those quoted in the article say the laws should be more stringent, but others may not hold that view. Further, this newspaper article only expresses views of those advocating for harsher penalties, not the opposite views. (1 mark)*

*The twitter coming from a Member of Parliament himself, highlights the speed with which views can be expressed via social media and communicated to many in the community very quickly, generating greater awareness. However, this twitter from David Southwick may not be representative of the views of others and therefore not be influential on parliament initiating law reform in that area. (1 mark)*

**Study Design Reference:** Unit 4 AOS 2 dot point 8

**SECTION B**

**Question 1 (continued)**

**d.**

A wide range of points could be incorporated in student responses here, however there is the need to ensure the response can be linked to the Source material provided. This may mean some points of ‘ability to respond’ may fit better than others in being used.

Sample response

*Both parliament and the courts have the ability to respond to the need for law reform. In this case, it has been brought to light that the relevant law relating to the charges faced may not be clear/may need clarification. (1 mark)*

*Parliament is the elected supreme lawmaker, placing it in a position to make change to the law at any time provided it falls within its jurisdiction. This criminal law matter certainly does fall within Victorian parliaments jurisdiction. (1 mark)*

*As it stands, the matter before the courts is relying on the common law which has been passed on from England, but parliament is able to legislate on the matter, either overriding that common law or clarifying it through legislation. (1 mark)*

*However, while parliament does have the ability to legislate on this matter, for various reasons it may choose not to, allowing the common law principle being followed to remain in place.*

*(1 mark)*

*While parliament is normally in a better position to respond to the need for law reform quickly relative to the courts, given that in this case the matter is already before the courts, they are in the position to respond quickly. (1 mark) Nevertheless, it is only in superior courts that judges can change law which may delay its ability to respond to the need for change in this matter.*

 *(1 mark)*

*Judges can make a ruling on a matter without fearing a loss of community support. This is not the case with parliamentarians, who are elected and may lose popularity with voters as a result of their actions. Judges are appointed to their position. (1 mark)*

*While it is evident with what has been said above that both parliament and the courts are capable of responding to the need for law reform, one of either parliament or courts may be better able to respond in the particular circumstances and the matter in issue at the time.*

*(part of the mark already allocated to the ‘opening’ sentence/statement)*

**Study Design Reference:** Unit 4 AOS 2 dot point 13

**SECTION B**

**Question 2**

**a.**

The fact that students are asked to ‘explain’ requires depth in the response, focussing on why CAV **is** more appropriate than VCAT. Just the one reason should be the basis of the answer.

Students would need to ensure that they brought out in the response what it was that made VCAT less appropriate i.e. ‘conciliation’ (which is used at CAV) is also available to use as a method by VCAT, thus does NOT make VCAT less appropriate in this question.

Sample response

*One reason why Consumer Affairs Victoria (CAV) is the most appropriate body to be used by Tess to resolve the dispute is that there is no cost to Tess in accessing CAV (1 mark).*

*Tess’ ability to pay is not needing to be considered prior to her proceeding. (1 mark).*

*Had Tess pursued the matter with another body such as The Victorian Civil and Administrative Appeals Tribunal (VCAT), there would have been some costs involved for Tess regardless of whether she won the dispute or not. (1 mark)*

**Study Design Reference:** Unit 3 AOS 2 dot point 4

**b.**

An important limitation on the response was that it relates to a civil case; students who bring in criminal terminology to the response should be penalised.

Sample response

*There will be the requirement for witnesses for both parties to the case to give evidence and the legal practitioner for Tess would be responsible for asking the questions/examining those witnesses (1 mark)*

*This may occur during examination in chief/cross examination and re-examination; (1 mark)*

*In the course of the examination of witnesses, the legal practitioner for Tess, would try to present Tess’ case in the best possible light i.e. making her case appear the more likely.*

*(1 mark)*

**Study Design Reference:** Unit 3 AOS 2 dot point 7

**SECTION B**

**Question 2 (continued)**

**c.**

While you are provided with one ‘sample response’ below that would be suited to the question, there are a range of ‘strengths’ and ‘weaknesses’ of arbitration as a method of resolving civil disputes that could be used e.g. the matters of ‘cost’ or ‘confidentiality’ could be used as the focus of the discussion.

It would be advisable to provide depth of discussion with fewer key ‘strengths’ and ‘weaknesses’ rather than a brief mention of multiple points.

Sample response

*Arbitration is one method aimed at resolving a civil dispute, without requiring the formal court processes. (1 mark)*

*The arbitrator, as the independent third party presiding, will allow both parties to have their say in relation to the matter, without the demands of the formal court process and procedures needing to be followed. (1mark).*

*Under arbitration it is the parties who have control as to how the process will be conducted and this may in turn lead to a more timely resolution due to the flexibility with the processes.*

*(1 mark)*

*However, the parties to the case do not have any control as to the eventual outcome as it is the arbitrator who will make a decision that is binding on the two parties. (1 mark)*

 *A difference with arbitration when compared to conciliation, is that where conciliation is used, for there to be a successful resolution, both parties would need to agree to the resolution that has been suggested by the third party presiding over the matter. On the other hand, with arbitration, the third party makes an order that is* *binding on the parties, whether they accept it or not.* (*1 mark*)

**Study Design Reference:** Unit 3 AOS 2 dot point 9

**SECTION B**

**Question 3**

**a.**

The question requires students to bring out the downside of ‘judicial activism’ by the courts. It is not stipulating how many points should be made.

Sample response

*Judicial activism is where judges, during the process of arriving at a decision in the matter before them, consider current community views/values and the rights of people. (1 mark)*

*In this case, the High Court judges were required to determine whether indigenous people fitted the definition of ‘aliens’ according to the Australian Constitution. (1 mark)*

*By acting in an activist way, it is a concern in that judges are acting beyond their legislative and constitutional powers where they are tending to expand on the meaning of the words in this case, rather than as they were intended when the Constitution was written. (1 mark)*

**Study Design Reference:** Unit 4 AOS 2 dot point 4

**b.**

Students are required to display knowledge as to the ‘significance of one High court case which has had an impact on the division of the Constitutional lawmaking powers. While there are various cases that could be used to address this point in the Study Design, it is important that a relevant case is used – the key words in the question being ‘… impact on the division of Constitutional lawmaking powers’.

The ‘sample response’ provided below includes one of a number of cases that could have been used. In the ‘suggested solution’ for the division of Constitutional lawmaking powers to be determined, there was the need to ‘interpret the Australian Constitution’. The question would be marked globally i.e. it is not appropriate to suggest a mark-by-mark allocation.

Further, there is the need to address the other part of the question, as to ‘the role of the High Court in interpreting the Australian Constitution’.

**SECTION B**

**Question 3b. (continued)**

Sample response

*One case that required The High Court of Australia to carry out its role of interpreting the Commonwealth Constitution was Brislan’s Case. Here, a check was made as to whether the defendant did have a licence for a wireless set she owned. At the time, licences were required for such devices and it was found that she did not have a current licence. (1 mark)*

*The defendant challenged the verdict, arguing that the wireless did not constitute being a ‘service’, consistent with the wording under Section 51 of the Australian Constitution i.e. the defendant said it was invalid and the Commonwealth was acting outside its jurisdiction. The key words in dispute, were whether the wireless fitted within the meaning of ‘other like services’ in S51 (v) of the Constitution. (1 mark)*

*In arriving at their decision, the High Court judges determined the wireless set did in fact fit under the meaning of ‘other like services’, thus clarifying and extending the powers of the Commonwealth parliament. (1 mark)*

*The case was significant in that the decision of the High Court lead to a shift in the division of lawmaking powers, extending those of the Commonwealth and reducing those of the States.*

*(1 mark) In the future, the Commonwealth had the power to make laws with respect to wireless sets as they fell under ‘other like services’. (1 mark)*

*When the High Court of Australia was established, a major responsibility it was given was to hear a range of disputes that could be expected to arise in relation to the interpretation of the Australian Constitution. (1 mark)*

*As a result of the High Court being called upon to decide on the dispute, it does have the power to override what Commonwealth parliament has determined in the matter. (1 mark)*

*While Commonwealth parliament may have determined the matter in a way that extended its powers, The High Court is given the authority through the Constitution to override the decision/interpretation, thus keeping check on those powers given the Commonwealth parliament. (1 mark).*

**Study Design Reference:** Unit 4 Area of Study 1 dot points 4 & 7

**End of 2021 Kilbaha VCE Legal Studies Trial Examination Units 3 and 4**

**Suggested Answers**

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