



Trial Examination 2023

VCE Legal Studies Units 3&4

Written Examination

Suggested Solutions

SECTION A

Question 1 (3 marks)

The principle of access refers to every individual having the capacity to use the resources, procedures and institutions that are available through the legal system. To achieve the principle of access, every individual should understand how the court system works. Individuals who have been found guilty of a crime, for example, should know what their right to appeal is when a conviction has been imposed.

1 mark

Access also means that the accused should understand criminal law and the legal defences available to them when a criminal matter is taken to court.

1 mark

Furthermore, victims of crime should understand the justice system and their legal entitlements.

1 mark

Question 2 (4 marks)

For example:

One reason for the Victorian court hierarchy in determining criminal cases is to allow for a system of appeals. A dissatisfied party in a criminal case can request an appeal to be made; if the appeal is approved, a superior court reviews a decision from a lower court based on a point of law, the conviction or the sanction imposed.

1 mark

A court hierarchy is needed for appeals to occur as the courts are ranked in order of importance from lowest to highest; without the hierarchy, it would not be possible to have a decision reviewed and any mistakes corrected by a superior court.

1 mark

One reason for the Victorian court hierarchy in determining civil cases is for administrative convenience. This means that civil cases can be distributed to specific courts according to their seriousness and complexity.

1 mark

More serious and complex cases go to the higher courts such as the County Court and the Supreme Court, which has unlimited jurisdiction. Less serious and complex cases for amounts up to \$100 000 go to the Magistrates' Court where they can be dealt with quickly and for lower costs.

1 mark

Note: A range of responses are acceptable. Other reasons could include doctrine of precedent and specialisation.

Question 3 (5 marks)

The Australian Constitution requires that the three powers in the parliamentary system – legislative, executive and judicial – be held by three separate bodies. Thus, the legislature is the body that makes and amends laws (that is, the Commonwealth Parliament); the executive is the body that administers and enforces the law; and the judiciary is the body that interprets and applies the law to individual cases. No single body has absolute power to perform all the functions of the legal system. 1 mark

Hence, the separation of powers provides a system of checks where each body of the government can review, criticise or override the actions of the other two bodies. This limits any one body of government from becoming too powerful or exceeding its specific powers. 1 mark

Power is also balanced between the three bodies of government by each body having its own functions and responsibilities. When power is balanced, no body has enough authority or power to override the checks, which ensures stability. This also means that ministers are subject to the scrutiny of parliament during question time and the judiciary is independent. 1 mark

However, there is an overlap between the legislative and executive powers as the administration of law is carried out by the Cabinet, who are also part of parliament. The executive powers are exercised by the Governor-General but, in reality, this is done on the advice of the current Prime Minister and the ministers who have the day-to-day responsibility of governing Australia. 1 mark

Overall, the separation of powers does link neatly to the idea of checks and balances as judges can decide whether legislation breaches the Australian Constitution based on the law as they are independent of politics. The separation of powers is also enshrined in the Australian Constitution and cannot be changed without a referendum as outlined in Section 128. 1 mark

Question 4 (8 marks)

For example:

Parliament is the supreme law-making body; however, its powers are not unlimited as there are jurisdictional limitations in place. Thus, parliament can only make laws according to the law-making powers that are outlined in the Australian Constitution.

These limitations improve parliament's ability to make laws by providing a system of checks. This increases the accountability of parliament to voters as it allows an individual, group, organisation or the government to challenge the validity of a law in court if they believe the Victorian or Commonwealth parliaments have acted outside their legislative powers. Such challenges can also clarify the law-making powers of parliament. Parliament cannot abrogate decisions made by the High Court in relation to the declaration of invalid laws. This provides certainty and predictability as the authority of the High Court is final.

However, these challenges are very expensive and time consuming because of ongoing legal and court costs, and there is no guarantee of a successful outcome for the party mounting the challenge.

Another factor that affects parliament's ability to make law is the representative nature of parliament. The Australian Constitution states that both the House of Representatives and the Senate will be directly chosen by the people (Sections 7 and 24).

In theory, members of parliament will usually try to reflect the needs and values of the majority; if voters are unhappy with the performance and decisions of members of parliament, they can vote members out of office at the next election. This promotes accountability and a greater responsiveness to the needs of the community.

However, parliament is influenced by the needs and values of all the constituents it represents in the law-making process. Therefore, it is almost impossible to make laws that match the needs and values of all members of the voting community. Voters have a diverse range of beliefs, backgrounds and experiences that can rarely be encompassed by laws. Parliament can in fact feel confined and unable to legislate effectively because members of parliament do not necessarily know the best course of action to take.

8 marks

2 marks for discussing the strengths of the first factor.

2 marks for discussing the weaknesses of the first factor.

2 marks for discussing the strengths of the second factor.

2 marks for discussing the weaknesses of the second factor.

Note: A range of responses are acceptable. Other factors include the roles of the houses of parliament and political pressures.

Question 5 (10 marks)

- a.** One factor that affected the ability of the High Court to change the law in this case was the doctrine of precedent. While the High Court is the highest court in Australia, it is not bound by its own decisions. Judges in lower courts are expected to follow the legal reasoning behind the decisions of higher courts when resolving a dispute. The application of past precedents to current cases where the facts are similar promotes predictability and consistency. 1 mark
- The judges in the *State Government Insurance Commission v. Trigwell* (1979) case relied on an outdated precedent to settle the case, which resulted in an unjust outcome and indicated the difficulties associated with the application of past precedents. 1 mark
- Another factor that affected the ability of the High Court to change the law in this case was judicial conservatism. This refers to the notion that courts should demonstrate restraint when making decisions and rulings that could lead to significant changes in the law. Their primary role is as adjudicators rather than law-makers; law-making is the role of parliament. 1 mark
- Judges such as Justice Mason see their role as adjudicators rather than law-makers, preferring to leave law reform to the Victorian Parliament. 1 mark
- b.** Parliament and the courts are two separate institutions; however, they do have a connection with each other when it comes to the law-making process. 1 mark
- There is a complementary relationship between the two institutions, with parliament being the supreme law-making body. 1 mark
- In the *State Government Insurance Commission v. Trigwell* (1979) case, the Victorian Parliament did show they were a distinct institution by abrogating the common law. Parliament can override common law if they believe it to be irrelevant or out of date. 1 mark
- In the Trigwell case, Justice Mason stated in his judgment that he was reluctant to create a new precedent to reflect the changing community needs, preferring to leave the law-making to the Victorian Parliament. 1 mark
- Courts and parliament also connect in other ways; for example, through statutory interpretation. Courts interpret laws made by parliament, giving meaning to unclear or ambiguous terms to resolve a case. 1 mark
- Parliament can also codify decisions made by courts by incorporating precedent into legislation. However, this process relies on cases coming before a superior court of record that can set a precedent; this tends to occur when cases are heard on appeal. 1 mark

Question 6 (10 marks)

This statement is accurate to some extent. Government funding is directed more towards supporting Victoria Legal Aid and community legal centres (CLCs), which assist those accused of a crime. However, funding is still limited and only accessible to individuals who meet the means test and are likely to be found guilty with the possibility of doing prison time. Duty lawyers are provided for those who go to court for minor criminal matters and cannot afford a lawyer. Duty lawyers can provide information that is case-specific to these individuals, who must also meet a means test. This promotes the principle of access as free information offered by Victoria Legal Aid provides details about criminal processing, the court system and helps the accused gain a better understanding of the legal system. However, the information provided is general and limited to some types of disputes. Additionally, a lot of information is provided online, making it difficult for those on low incomes or who are homeless to have access if they do not have a computer and an internet connection.

CLCs are community-based organisations that provide free legal advice, casework and information to individuals accused of a crime who cannot afford legal representation and do not meet the strict conditions for legal assistance through Victoria Legal Aid. CLCs do have the ability to provide information, legal advice and minor assistance to the accused and, in a small number of cases, some legal representation. They also promote the principle of access by offering their services for free, which increases accessibility, especially for those who are unrepresented. However, assistance is restricted to minor criminal cases and the service is only available in some locations, limiting the achievement of access.

For civil disputes, individuals can seek advice from Consumer Affairs Victoria (CAV), which is a civil complaints body that hears disputes between specific groups such as consumers and businesses. Its main purpose is to provide the public with information about consumer laws and to help resolve disputes that may arise under these laws. It also provides advice to the Victorian Government regarding consumer laws and can take legal action against businesses that violate consumer protection laws in Victoria. CAV resolves civil disputes using conciliation after the parties involved have tried to settle the dispute themselves. While it is a free service, the civil dispute must fall within its jurisdiction and both parties need to be willing participants in the conciliation process. CAV promotes the principle of access as it is a free service for members of the Victorian public. It also provides an informal process for settling disputes through conciliation to help maintain the relationship between the two disputing parties. However, it has limited jurisdiction and not all civil disputes can be resolved using the conciliation process.

Individuals can also have their civil dispute heard in the Victorian Civil and Administrative Tribunal (VCAT), which provides a low-cost, accessible and efficient way to resolve particular types of civil disputes that come under its four divisions. VCAT enables parties to have their dispute resolved if there is no other option and provides a more informal process than taking the matter to court. There is a cost involved but it is tiered according to the income of the disputing parties. This promotes the principle of access as it is cheaper than pursuing the matter through the courts. However, it may be inaccessible to the more vulnerable members of the community. VCAT also provides information and support to parties when they submit an application and prepare for the hearing. However, it does have limited jurisdiction and a limited right of appeal if one party is dissatisfied with the ruling. Increasing costs in some VCAT lists can also make VCAT inaccessible for some people.

The Victorian Government has limited funds to help support the justice system and thus prioritises those accused of a crime over civil disputes. This is due to the potential consequences of criminal cases for the community and the ongoing costs to taxpayers who fund the institutions and bodies that support the implementation of criminal law, such as the police, courts or prisons.

10 marks

The question should be marked globally.

Note: High-level responses should address all the elements of the question with clarity and detail. The student needs to address the extent to which they agree with the statement and then support this with their discussion of the institutions available to assist the accused and the institutions available to help resolve a civil dispute.

The extent to which each institution achieves the principle of access must also be discussed.

The following sample marking scheme may be used:

Award 1–2 marks for a response that refers to only one element of the question: one institution that assists the accused, one institution that helps resolve civil disputes or the principle of access.

Award 3–4 marks for a response that discusses two institutions that assist the accused, two institutions that help resolve civil disputes, or one of each.

Award 5–6 marks for a response that attempts to discuss all the elements of the question but lacks detail and clarity.

Award 7–8 marks for a response that discusses two institutions that assist the accused, two institutions that help resolve civil disputes and briefly discusses how each institution achieves the principle of access.

Award 9–10 marks for a response that discusses, in detail, two institutions that assist the accused, two institutions that help resolve civil disputes, and how each institution achieves the principle of access.

SECTION B**Question 1** (21 marks)

- a.** The role of the upper house, which is the Legislative Council, in the Victorian Parliament includes initiating legislation or the introduction of new bills, 1 mark
 such as the bill to change the age of criminal responsibility from 10 years to 14 years, 1 mark
 which will be debated and voted on by both Victorian houses of parliament.
- The upper house also reviews legislation that has been initiated and passed by the lower house of the Victorian Parliament. This involves scrutinising new bills to ensure that they are appropriate for their intended purpose. 1 mark
- b.** The proposed bill for the reform is unlikely to be successful in the upper house. 1 mark
- As seen in source 3, the Australian Greens only hold 4 of the 40 seats in the upper house and would need to rally support from the other political parties for the bill to proceed to the lower house for further debate and a vote. 1 mark
- Source 3 also indicates that the Australian Labor Party – Victorian Branch holds 15 seats. Even if the Greens gained the support of the Labor Party, the total number of seats (19) would not be sufficient to get the bill through the upper house. 1 mark
- However, if the public favours the reform, this may influence the other parties in the upper house to vote in favour of the proposed bill, which could result in it proceeding to the lower house. 1 mark
- c.** Residual powers are the law-making powers that are not referred to in the Australian Constitution. These powers were left to the states at the time of Federation. They include law-making powers that relate to health, education and criminal law. 1 mark
- Concurrent powers are the law-making powers shared by the Commonwealth and the states. They can both pass laws in areas such as taxation and marriage. 1 mark
- Residual powers are specific to the states, and the Commonwealth cannot make laws in these areas. In contrast, concurrent powers are shared and, in accordance with Section 109 of the Australian Constitution, if there is a conflict between the Commonwealth and the states, the Commonwealth law shall always prevail to the extent of the inconsistency. 1 mark
- This means that in relation to the criminal age of responsibility, each state has or will have different laws, as outlined in source 2. For example, in 2022, the Northern Territory Government raised the criminal age of responsibility to 12 years. 1 mark
- d.** Within the Victorian criminal justice system, there are laws that protect the rights of the victims of crime. These include the right of the victim to give evidence as a vulnerable witness if they are considered impressionable or at risk (for example, victims of domestic violence). These witnesses are provided with various means to give evidence (for example, through closed-circuit television), which prevents them from experiencing further trauma during the trial. 1 mark
- Victims of crime are also entitled to receive certain information about the proceedings and the criminal justice system (for example, details of the offence the accused has been charged with, and the date and time set for the trial). 1 mark
- They can also be placed on the Victims Register so that they can receive information about the likely release date of the accused if the accused is imprisoned. 1 mark
- Considering the statement by Terry Goldsworthy, there does in fact need to be a balance between the rights of victims and the age of criminal responsibility to ensure that those who break the law are held accountable for their actions and receive an appropriate consequence. 1 mark

- e. To be found guilty and sentenced for committing the crime of culpable driving causing the death of the victim, the prosecution needed to show that Dustin was not *doli incapax* and understood that he was acting wrongfully. This allowed the judge to sentence Dustin to detention in a youth residential centre.

It is possible that rehabilitation could be achieved in this case if Dustin participated in the various rehabilitation programs offered at the youth residential centre where he is serving his sentence. These programs include drug and alcohol services and driving education. Compulsory rehabilitation programs and dedicated schooling could allow Dustin to see the error of his ways and ensure he does not repeat such behaviour in the future. Interventions at this point in Dustin's life could potentially lead to him becoming a law-abiding member of society in the future. This, along with how rigid and disciplined a youth residential centre can be, could lead to positive outcomes for both Dustin and the community.

However, rehabilitation is generally only effective for an offender who is willing to receive assistance. Dustin was found guilty in this case, suggesting that he did not take responsibility for his actions and may not have shown any remorse for the offence he committed. This could indicate that he is rebellious and disengaged from the community. Thus, he may not willingly participate in the rehabilitation programs at the youth residential centre, which could prevent Dustin's long-term rehabilitation.

Additionally, Dustin's four-year term of imprisonment will likely be reduced as the judge may impose a minimum term of detention; if this occurs, any time he has already spent in custody will be taken into consideration. Therefore, he could be in the youth residential centre for a relatively short period of time. Due to potential overcrowding of youth offenders in facilities, it is also possible that there could be a waiting list for rehabilitation services. This means that, even though he is eligible, Dustin may not obtain the services he needs during his term of detention. Dustin's supportive parents may be more likely to obtain the rehabilitation services that Dustin requires outside of state-funded youth detention facilities.

In terms of protection of the community, Dustin's term of detention will protect the community as he will be placed in a youth residential centre for a period of time. During his term of detention, Dustin will be unable to engage in any illegal driving or other offences, which will reassure the community that they are safe and protected.

However, Dustin may still pose a threat to the community when he is released from the youth residential centre if he has not participated in any rehabilitation programs and instead associates with others who have committed serious offences. Without the support of his family, the influence of these young offenders could lead Dustin to potentially reoffend and pose a greater threat to the community when he is released from detention than when he entered the centre.

Given that the rate of recidivism is almost 44%, the chances of Dustin being further influenced by the negative aspects of a youth residential centre is very high. It is also likely that the legal, medical and social justice organisations that campaigned for the increase in the age of responsibility, as referred to in source 2, believe that a term of imprisonment for young offenders such as Dustin could lead to a future of offending, posing further safety risks to the community.

6 marks

2 marks for discussing whether Dustin's sentence will achieve rehabilitation.

2 marks for discussing whether Dustin's sentence will achieve protection of the community.

2 marks for referring to the source material.

Note: The opening paragraph is not required to obtain full marks but could be used by the student to refer to the source material. The discussion of each purpose of detention (imprisonment) does not have to be equal, but discussion of both is required to obtain full marks.

Question 2 (13 marks)

a. *For example:*

One factor that the plaintiff Dr Angela Livingstone would have needed to consider was the cost of taking the matter to the County Court. 1 mark

It is expensive to take legal action as legal fees are based on the hours of work a legal team (that is, a solicitor and barrister) put in to prepare and present a case in court. Examples of other costs that the plaintiff may have incurred are filing fees and expert witness fees. 1 mark

Dr Livingstone would have needed to weigh the costs she would incur against any potential compensation she would receive if she won the case in order to make an informed decision about whether to proceed with the legal dispute. 1 mark

Note: A range of responses are acceptable. Other factors include negotiation options, limitation of actions, the scope of liability and enforcement issues.

b. The remedy that was awarded was damages in the amount of more than \$400 000. Specific damages were suitable as the plaintiff, Dr Livingstone, would have sought advice from a builder to determine a quantifiable monetary value for the house to be demolished and rebuilt. 1 mark

This would rectify the damage caused by the tree that was planted by the Melbourne City Council, compensating the plaintiff and restoring her to her original position before the harm was caused. 1 mark

However, the remedy required the house to be torn down and rebuilt, which would have inconvenienced the plaintiff as she needed to move out of the house and then move back in when it was rebuilt. There would have been a time frame involved in rebuilding the house and if there were delays this would have further inconvenienced her. 1 mark

Additionally, there may have been sentimental value attached to the house, which was not considered in the final amount of damages issued to the plaintiff. 1 mark

- c. The principles of justice were achieved as Dr Livingstone received enough monetary compensation in the form of damages to restore her to the position she was in before the harm occurred.

Any two of:

- The principle of fairness was upheld through a legal, binding decision made by the judge that both parties are legally obliged to accept. This means that Melbourne City Council was obligated to pay damages to Dr Livingstone for the harm caused and to enable her to rebuild her house. The judge was independent, unbiased and did not favour either party; instead, they based their decision on the facts brought before them in the County Court. Both parties had the opportunity to present evidence and legal argument to persuade the judge that their version of the events was the most accurate. Based on her occupation and ownership of the house, Dr Livingstone had the financial means to initiate legal proceedings, which would have been very costly. Both parties were able to engage their own legal representation that had the expertise necessary to prepare and present their evidence and legal argument before the judge. The outcome and remedy provided was based on law and the facts of the case focused on whether the tree caused the cracks in the house, with the judge ruling in favour of the plaintiff.
- The principle of equality was upheld as both the plaintiff and the defendant were treated in the same manner regardless of who they were; thus, there was no imbalance of power, even though the City of Melbourne was involved. The case was dealt with in a similar way to other cases where the facts were comparable, and the damages were of a like amount; the judge would have considered other cases where the Melbourne City Council or other councils were sued for damages caused to private property. Court procedures were applied equally to both the plaintiff and the defendant when they were presenting their evidence in the County Court.
- The principle of access was achieved as the plaintiff knew her legal rights to seek a suitable remedy for the damages caused to her house by the actions of the council. Her capacity to access the civil justice system was not affected; for example, she did not face any language barriers and was able to understand the legal processes involved, such as lodging a statement of claim. The plaintiff was able to afford the legal fees and costs associated with taking this matter to court and pursuing a remedy, rather than going through a less formal resolution process or body. The Melbourne City Council and its legal team were aware of their right to appeal the outcome based on the amount of damages awarded if they thought it was excessive.

6 marks

Note: Responses must analyse two principles of justice in order to obtain full marks. This question should be marked globally. The following marking scheme may be used.

Award 1–2 marks for a response that explains one principle of justice without any links to the source material.

Award 3–4 marks for a response that explains two principles of justice without any links to the source material.

Award 5–6 marks for a response that provides a detailed analysis of two principles of justice with reference to the source material.

Question 3 (6 marks)

The VLRC is an independent government body that plays a significant role in law reform. It ensures that the Victorian Parliament is provided with independent advice and recommendations, as seen in source 1 in relation to the definition of recklessness in Victorian criminal law.

As the need for a uniform definition of the term recklessness, described in source 1, has come from the Victorian Attorney-General, the Victorian Government is more likely to change the law in response to the VLRC report once it has been tabled in parliament. However, the Victorian Government is not obligated to enact any VLRC recommendations as they are only recommendations for change.

The VLRC will consult broadly with the community, so any recommendations that it makes about changes to the definition of recklessness will reflect community values and therefore be more likely to be accepted and followed. Consultation may involve the courts, the Office of Public Prosecutions, the police and other parties such as the accused and victims who will be affected by any changes to the definition. However, seeking opinion from relevant expert bodies and individuals is time-consuming and costly, so the law could be slow to change. The due date for the report to be delivered to the Attorney-General, 29 February 2024, indicates this.

The VLRC is independent of parliament and political parties, so it will remain unbiased and objective when formulating its report to the Attorney-General about how the concept of recklessness is understood in the *Crimes Act 1958* (Vic). However, the VLRC cannot change the law as this remains the role of the elected Victorian Parliament.

Overall, the VLRC is an important body that plays a key role in law reform in Victoria. While it does not have the capacity to change the law, it does have the time and resources to undertake extensive research through consultation. Its final report will influence the Victorian Government to draft legislation to address the issue of inconsistent definitions of the meaning of recklessness and the reliance on common law to define it, even if the government chooses not to implement all the recommendations.

6 marks

This question should be marked globally. The following marking scheme may be used.

Award 1–2 marks for a response that provides one strength or one limitation of the VLRC with no concluding statement or links to the source material provided.

Award 3–4 marks for a response that provides at least one strength and one limitation of the VLRC with no concluding statement or links to the source material provided.

Award 5–6 marks for a response that provides at least one strength and one limitation of the VLRC with a strong concluding statement and links to the source material provided.