

Trial Examination 2023

VCE Legal Studies Units 3&4

Written Examination

Question and Answer Booklet

Reading time: 15 minutes Writing time: 2 hours

Student's Name:	
Teacher's Name:	

Structure of booklet

Section	Number of questions	Number of questions to be answered	Number of marks
А	6	6	40
В	3	3	40
			Total 80

Students are permitted to bring into the examination room: pens, pencils, highlighters, erasers, sharpeners and rulers.

Students are NOT permitted to bring into the examination room: blank sheets of paper and/or correction fluid/tape.

No calculator is allowed in this examination.

Materials supplied

Question and answer booklet of 26 pages

Additional space is available at the end of the booklet if you need extra paper to complete an answer.

Instructions

Write your **name** and your **teacher's name** in the space provided above on this page.

All written responses must be in English.

Students are NOT permitted to bring mobile phones and/or any other unauthorised electronic devices into the examination room.

Students are advised that this is a trial examination only and cannot in any way guarantee the content or the format of the 2023 VCE Legal Studies Units 3&4 Written Examination.

SECTION A

Instructions for Section A				
Answer all questions in the spaces provided.				
Question 1 (3 marks)				
Explain how the principle of access can be achieved in a criminal case.				

Question 2 (4 marks) Outline one reason for the Victorian court hierarchy in determining criminal cases and one other reason for the Victorian court hierarchy in determining civil cases.

Question 3 (5 marks) 'The principle of the separation of powers links neatly to the idea of checks and balances.'			
Evaluate this statement.			

Question 4 (8 marks) Discuss two factors that affect parliament's ability to make law.			

Question 5 (10 marks)

In the *State Government Insurance Commission v. Trigwell* (1979) case, the High Court decided to follow the old common law principles set in the British *Searle v. Wallbank* (1947) case where landowners did not owe a duty of care to road users for damage caused by their livestock. At the time, Justice Mason stated that even though there were changes in conditions and circumstances such law-making should be left to parliament. Five years later, the Victorian Parliament passed the *Wrongs (Animals Straying on Highways) Act 1984* (Vic), which abolished the existing common law.

Explain two factors that affected the ability of the High Court to change the law in the <i>State Government Insurance Commission v. Trigwell</i> (1979) case.	4

when it comes to law-making.' Analyse this statement with reference to the State Government Insurance Commission	
v. Trigwell (1979) case.	6 r

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Question 6 (10 marks)
'Priority is always given to allocating legal assistance resources to individuals facing serious criminal
charges, especially if there is a possibility of severe penalties such as imprisonment. Civil justice tends

charges, especially if there is a possibility of severe penalties such as imprisonment. (to be treated less favourably when it comes to the offer of legal assistance or advice.) To what extent do you agree with this statement? In your response, discuss the institutions available to assist the accused in a criminal case, the institutions available to help resolve civil disputes and how each institution achieves the principle of access.

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END OF SECTION A

SECTION B

Instructions for Section B

Use the 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 (21 marks)

There has been ongoing debate in Victoria about raising the age of criminal responsibility to 14 years. The Australian Greens reintroduced a bill in the Victorian Parliament to facilitate this change, given that they increased their number of seats in the upper house in the November 2022 state election. It was announced in April 2023 that the age would be raised to 12 years by late 2024.

Source 1

The current law is as follows.

Children, Youth and Families Act 2005

344 Children under 10 years of age

It is conclusively presumed that a child under the age of 10 years cannot commit an offence.

Source: State Government of Victoria (2023) *Children, Youth and Families Act 2005*, Victorian Legislation website. Accessed 12 June 2023. https://www.legislation.vic.gov.au/.

Source 2

Raising the age of criminal responsibility has been debated in Australia for years. As it stands in Victoria, under some circumstances, children as young as 10 can be charged with a crime, brought before the courts, sentenced, and imprisoned in juvenile detention. A national campaign to increase this age to 14 has been backed by a coalition of legal, medical and social justice organisations including the Law Council of Australia, the Australian Medical Association and Indigenous-led groups. But governments have been slow to act.

Children between the ages of 10 and 14 are subject to the criminal law but are also covered by a rebuttable presumption, known as *doli incapax*. This means a child in that age range is not criminally responsible for any offence unless it can be shown they had the capacity to know they ought not to commit the offence. The onus of proving this lies with the prosecution, but it still subjects the child to the stress and trauma of the criminal justice system.

Federal, state and territory attorneys-general this month released a draft report they commissioned in 2020 recommending raising the age of criminal responsibility to 14 without exception. Some governments have already moved. The Northern Territory government will raise the age to 12 from next year, the ACT will gradually increase it to 14 by 2027, and the Tasmanian government says it will lift the minimum age on incarcerating youth to 14, while leaving the age of criminal responsibility at 10.

Source: *The Age* (21 December 2022) 'Victoria should raise the age of criminal responsibility now', *The Age* website. Accessed 12 June 2023. https://www.theage.com.au/politics/victoria/victoria-should-raise-the-age-of-criminal-responsibility-now-20221221-p5c7y9.html.

Source 3

Party elected to the Legislative Council	Seats won
Animal Justice Party	1
Australian Greens	4
Australian Labor Party – Victorian Branch	15
Labour DLP	1
Legalise Cannabis Victoria	2
Liberal	8
Liberal/The Nationals	6
Liberal Democrats	1
Pauline Hanson's One Nation	1
Shooters, Fishers & Farmers Vic	1
TOTAL	40

Source: Modified from VEC (Victorian Electoral Commission) (2022). 2022 State election results — Overall upper house results, VEC website. Accessed 12 June 2023. https://www.vec.vic.gov.au/results/state-election-results/2022-state-election-results. First preference votes counted, percentage first preference votes counted and parties that did not win an upper house seat have been removed.

Outline the role of the upper house in the Victorian Parliament.	3	

iven the current make-up of the upper house, would the proposed bill for the reform successful? Justify your response.				

Distinguish between residual and concurrent powers.	4 marks

In an article published in <i>The Conversation</i> in 2022, Terry Goldsworthy wrote that the victin of crime should be considered in the debate of raising the age of criminal responsibility as raising the age does not prevent a crime being carried out, nor the cause of it; instead, it will mean that no one is held accountable (Goldsworthy 2022).	ıs	
Explain the rights of victims in the Victorian criminal justice system. In your answer, refer to the statement above.	4 marks	

e.	The following	is a	hypothetical	scenario
e.	The following	, 18 a	. nypomencai	scenario.

In April 2023, 14-year-old Dustin was found guilty of culpable driving causing death in the County Court of Victoria. The incident occurred in April 2022, when he was only 13 years of age. The County Court judge sentenced Dustin to detention (imprisonment) in a youth residential centre for a maximum term of four years. Dustin's parents were devastated by the sentence and vowed to the Court that they were willing and able to provide support to their son once his sentence was completed.

Discuss the ability of Dustin's sentence to achieve both rehabilitation and protection of the community.				

Question 2 (13 marks)

In 2018, Dr Angela Livingstone initiated court proceedings against the Melbourne City Council. In 2012, she had noticed cracks in her house caused by a tree that the council planted in 2009.

Source 1

A court ... ordered a council to pay [Dr Livingstone] more than \$400 000 to demolish and rebuild her home after a tree it planted caused the house to crack ...

... a County Court of Victoria judge found that the tree was the sole cause of the cracks and awarded Dr Livingstone \$435 510.08 in damages [in November 2020].

Source: Booker C (16 November 2022) 'Melbourne Council ordered to pay woman \$400,000 after tree cracks house', *The Age* website. Accessed 12 June 2023. https://www.theage.com.au/national/victoria/melbourne-council-ordered-to-pay-woman-400-000-after-tree-cracks-house-20201112-p56e0z.html.

Describe one factor that the plaintiff would have needed to consider before taking this case to the County Court.	3 mark

Discuss the ability of the remedy imposed on the Melbourne City Council to achieve as purposes.			

Describe the ability of the civil justice system to achieve two principles of justice in this case.	6	

Question 3 (6 marks)

Referrals to the Victorian Law Reform Commission (VLRC) come through the Attorney-General of Victoria.

Source 1

Referral to the Victorian Law Reform Commission pursuant to section 5(1)(a) of the Victorian Law Reform Commission Act 2000

The meaning of 'recklessness' in Victorian criminal law

Recklessness is an element in many Victorian offences and relevant to the application of the criminal law in other ways. However, it is not consistently defined in Victorian legislation and in most instances takes its meaning from the common law.

Since the decision of the Victorian Court of Appeal in *R v. Campbell*, an accused is reckless if they know that a particular harmful consequence will *probably* result from their action but they proceed regardless.

This definition applies to murder, and to those 'offences against the person' in Part I, Division 1(4) of the *Crimes Act 1958* (Vic) ('Crimes Act') that include recklessness as an element ('the Victorian Offences').

In some Australian jurisdictions, for most offences against the person involving recklessness other than murder, the accused need only foresee the *possibility* that harm might occur for recklessness to be established.

The Victorian Law Reform Commission (VLRC) is asked to review and report on how the concept of 'recklessness' is understood in the Crimes Act...

The Commission is asked to deliver its report to the Attorney-General by 29 February 2024.

Source: VLRC (2023) Recklessness: Issues Paper, VLRC website. Accessed 12 June 2023.
https://www.lawreform.vic.gov.au/.
Evaluate the VLRC's ability to influence change in the law in relation to the definition of recklessness.

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END OF QUESTION AND ANSWER BOOKLET

REFERENCES

Goldsworthy T (1 September 2022) 'Why we should not rush to raise the age of criminal responsibility in Australia', *The Conversation* website. Accessed 12 June 2023. https://theconversation.com/why-we-should-not-rush-to-raise-the-age-of-criminal-responsibility-in-australia-189463.

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Extra space for responses			
Clearly number all responses in this space.			

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