



Units 3 and 4 Legal Studies

Practice Exam Solutions

Stop!

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

Any questions?

Check the Engage website for updated solutions, then email practiceexams@ee.org.au.

Note: Answers provided for this exam are *possible* solutions, as a range of responses are acceptable. For most questions, the main points needed are given as dot points before the sample answer. Ask your teacher or tutor to look over your work and suggest improvements if unsure of your answer.

Question 1a

Possible answers include:

- Legal representatives have a better understanding of the strict rules of evidence and procedure
- Legal representatives will present a more logical and structured argument, presenting the case in the best possible way
- Both parties being represented tends to lead to greater fairness, as both parties are on equal ground

Sample response:

In the adversary system, the burden of researching and presenting the case lies with the parties. However, they must do so in a way that fits in with the strict rules of evidence and procedure, and therefore possessing legal representation allows a party to 'translate' their case into a legal format that a judge expects and therefore have a higher chance of winning.

Question 1b

Possible answers include:

- The high costs involved in hiring legal representation mean less wealthy parties cannot afford to bring their cases to court, or defend them adequately.
- Wealthier parties can continue to appeal decisions, meaning less wealthy parties can no longer afford to continue the dispute.
- Trials may be considered unfair due to the different quality of the legal representatives

Sample response:

The importance placed on legal representation can be detrimental in the fact that if one party has significantly greater quality representation than another, due to factors such as wealth and connections, a fair outcome may be skewed due to rhetoric skill of a barrister.

Question 2

- House of Review- reviews bills which originate in the House of Representatives, allowing for a system of checks and balances
- State's House- protecting the interests of the states, as each state has equal representation (12 members)
- Bringing forth bills (not money bills)

Sample response:

The senate can be called both the 'State's House' and the 'House of Review'. The first title refers to the fact that the senate consists of equal numbers of members from each state (12) and from each territory (2), and therefore the Senate acts to equally represent the views of each state in the legislative process. The second title, the 'House of Review', refers to the role of the Senate in reviewing bills passed by the lower house – the House of Representatives. Although the Senate is capable of introducing bills of its own (except for appropriation bills), most bills begin in the lower house and then, if passed, are reviewed by the upper.

Question 3a

County Court

Sample response:

Since this is a less serious indictable offence, Jane's trial would be heard by the County Court of Victoria.

Question 3b

- Unlimited original jurisdiction
- No appellate jurisdiction

Sample response:

The County Court has unlimited original civil jurisdiction, in that it can hear cases for unlimited amounts (though cases for under \$100,000 are heard in the Magistrates' Court). It does not have any civil appellate jurisdiction.

Question 3c

Students needed to talk about two of the following:

- Role of the parties
- Role of the judge
- Legal representation
- Rules of evidence and procedure
- Standard and burden of proof

Sample response:

In the County Court, the adversary system of trial is used. One major difference between the two systems is the role of the parties. In the adversarial, the parties have a great role and it is their job to investigate proceedings, collect evidence, prepare their case, hire legal representation, and in a civil case, choose whether or not to use a jury. However in the inquisitorial system, the role of the parties is greatly reduced where they generally do not have to do most of these things. This is because of the next major difference: the role of the judge. In the inquisitorial system, it is the role of the judge to investigate and present the case, as well as make a decision, and this therefore reduces the role of the parties. Whereas in the adversarial system, the role of the judge is lesser – it is mainly to ensure the rules of evidence and procedure are followed and to decide on issues of law.

Question 3d i

The High Court

Sample response:

Jane would take this case to the High Court, as it hears all cases dealing with constitutional matters.

Question 3d ii

Possible answers include:

- Interpret the Constitution
- Ensure that parliaments stay within their law-making power
- Hear cases related to international treaties
- Hear cases related to Commonwealth law
- Hear appeals from the Supreme Court (Court of Appeal)
- Hear appeals from federal courts
- Decide on matters of public importance

Sample response:

One of the High Court's roles is to interpret the Constitution – that is, to give meaning to the words of the Constitution and decide how broadly they apply.

Question 4a

- Speech by minister presenting the Bill on the purpose of the Bill
- Debate on the purpose of the Bill, and the need for the Bill
- Statement of Compatibility presented

Sample response:

In the second reading stage, the Member of Parliament who brought forward the Bill will make a speech that outlines the purpose of the Bill. Debate about the purpose and need for the Bill generally follows this, as this is the first chance in the progress of a Bill for other MPs to discuss it. Also, in Victoria the responsible MP must present a Statement of Compatibility at the second reading stage, outlining how the Bill is compatible with the Victorian Charter of Human Rights and Responsibilities.

Question 4b

Consideration in detail / committee of the whole

Sample response:

Amendments to the Bill usually occur at the 'consideration in detail' stage (also known as the 'committee of the whole house' when conducted in the senate). This is when the house goes through the Bill clause by clause and discusses it in detail.

Question 5a

Many answers could be given for this question. Examples are:

- Petitions
- Demonstrations
- Use of the media

Sample response:

One informal pressure for change is the use of petitions. Petitions are written requests to parliament for a change in the law, often accompanied by a collection of signatures showing community support for the change. The success of a petition is generally dependent on the amount of signatures gathered. This is because parliament, being representative, aims to make laws representing the majority community opinion, and thus if a petition can gather a large amount of signatures, demonstrating that the change in law is commonly accepted amongst the community as needed, then parliament is more likely to respond positively to it. However, if the petition does not give evidence for strong community support, it will likely be ignored.

Question 5b i

Sample response:

The main role of the VLRC is to develop, monitor, and coordinate law reform activity in Victoria.

Question 5b ii

- Invite community and expert opinions
- Publish issues and discussion papers
- Interview and consult with interested parties
- File a report to the Attorney-General with recommendations for change

Sample response:

The VLRC will undertake research, publish issues papers, invite community opinions, consult with experts, and consider written submissions in order to come up with a list of recommendations for parliament in the given area of law. They structure this in a report that the Attorney-General tables with parliament. Due to its ability to gauge community opinion and undertake extensive research, the findings of the VLRC are generally given high importance in parliament, thus allowing it to achieve its advisory role.

Question 6

- The element of effective legal access means every person should have equal and relatively easy access to dispute resolution
- Possible ways this can be achieved (other answers also acceptable)
 - Availability of alternative dispute resolution (ADR) methods
 - Availability of Legal Aid
 - Right to appeal
 - Interpreters can be provided

Sample response:

This element of an effective legal system simply means that every person should be afforded the same opportunities in dealing with disputes they may have. Therefore, no matter a person's socioeconomic status, race, gender, or other features, they should be able to gain access to avenues of working through problems they may have with another person or party.

One way in which the Australian legal system provides for this is the availability of alternative dispute resolution (ADR) methods. These include processes such as mediation and conciliation. Due to the availability of these methods, small civil claims in which one party may not have enough funds to take it to court can still be resolved in a cheaper and quicker fashion.

Additionally, the accessibility of interpreters allows for those who cannot communicate adequately in English to still be afforded the same benefits of the dispute resolution process. They may be able have their case translated and therefore dealt with fairly, whereas, without an interpreter, they would not have this opportunity.

Question 7

Students must highlight the interpretive nature of High Court dealings with the Constitution, while using an example of High Court interpretation learnt in class, such as *Brislan's Case* or the *Franklin Dam Case*, and explaining how interpretation of the High Court in that chosen case changed the law making powers of the state and Commonwealth Parliaments.

Sample response:

The High Court is unable to change the wording of the Constitution. The only method by which this can be done is through a referendum (S.128). However, the High Court is able to give meaning to the words of the Constitution. Such an example was seen in the Franklin Dam case, where there was a dispute between the Tasmanian and Commonwealth government over the meaning of the 'external affairs' section of the Constitution (S. 51(xxix)). In this case, the High Court decided that because the Constitution gave the Commonwealth the power to legislate in areas of law covered by international treaties, they were able to legislate in an area of, previously, residual power in order to implement and enforce international treaties. Therefore, although the wording of the Constitution did not change, the precedent given by this decision gives additional meaning to S. 51(xxix), extending the law-making powers of the Commonwealth at the expense of the states. Therefore, it changes the way the Constitution will be read in future, similar, circumstances.

Question 8

Examples of criminal sanctions include:

- Imprisonment
- Home detention order
- Community corrections order
- Drug treatment order

While purposes of criminal sanctions include:

- Deterrence
- Rehabilitation
- Retribution
- Denunciation
- Community protection

Sample response:

One criminal sanction is imprisonment. This is where a person is held in confinement for a set period of time, and is considered the most severe sanction as it involves the taking away of one's right to freedom. Imprisonment fulfils the purpose of community protection. By physically removing the offender from society, he or she is unable to reoffend outside of prison, and therefore, the community is in less danger.

Question 9

The following points needed to be discussed:

- That the division of powers are set out in the Constitution
- Exclusive powers, with an example
- Concurrent powers, with an example
- S109 and its effect on the law making powers of the Commonwealth and State parliaments
- Residual powers, with an example

Sample response:

The division of power is set out in the Constitution, and it outlines the sharing of law-making powers between Federal and State parliaments. The first group of powers are the specific powers, and these include exclusive and concurrent powers. Exclusive powers are the legislative powers given solely to the Commonwealth, and include areas of law such as coining money (S. 115) and raising an army (S. 114). Concurrent powers are those that are shared between the states and the Commonwealth, where both parliaments may make laws regarding the same areas of law. These include areas such as taxation and family law. However, S. 109 of the Constitution states that where there is an inconsistency between Commonwealth and State law in an area of Concurrent power, Federal law shall prevail to the extent of the inconsistency. The last area of power is residual power, and these are the law-making powers left with the states at the time of federation. These powers are not written into the Constitution, but include areas such as education and public transport.

Question 10a

Some pre-trial procedures:

- Letter of demand
- Pleadings
- Discovery
- Directions hearing(s)

Sample response:

One pre-trial procedure that this civil case would undergo is a directions hearing. This is where both parties would meet with the judge to identify the main issues of the case in order to see which issues are in dispute and which are agreed upon by both parties. Furthermore, in this hearing the judge is able to give directions to the parties in regards to what additional information they should gather, or what else they would need, for the trial. Also, a timeline for the case, outlining facilities needed and time to be spent is laid forth. The purpose of this procedure is to ensure that the case flows at maximum efficiency through the court, as, after a directions hearing, both parties should be clear on what it is that they should be presenting in court. This speeding up of the trial aims to, in turn, reduce pressure on the court system.

Question 10b

One of the following types of damages needed to be discussed:

- Specific damages
- General damages
- Compensatory damages
- Exemplary damages
- Contemptuous damages

Sample response:

One type of damages that Sally may be awarded is specific damages. These damages are ones that can be easily calculated as there is a specific monetary figure that they relate to: in Sally's case, her medical fees and wages lost from missing shifts at work. Additionally, Sally may be awarded general damages. In the case of these damages, a specific figure cannot be generated, as they are a sum given to compensate for suffering, pain or loss, but a judge may award her general damages for the pain in her broken arm.

Question 10c i

One of the following ADR methods needed to be discussed:

- Mediation
- Conciliation
- Arbitration

Sample response:

One method of ADR that could have been used by Harry and Sally is conciliation. In conciliation, the two parties gather together informally in the presence of an unbiased third party (the conciliator) to discuss possible resolutions to the case. The conciliator is able to offer suggestions to the two parties, and aims to help the flow of discussion. In this ADR method, the decision reached by the parties is not binding.

Question 10c ii

Students needed to highlight some of the following points:

Courts

- Strengths
 - Can hear all types of cases
 - Can use legal representation
 - There is a formality to proceedings due to the strict rules of evidence and procedure, meaning greater fairness
 - Where a jury is used, community values can be represented
 - The decision made by a court is binding
 - There is a right to appeal a decision by the courts
- Weaknesses
 - The formal nature of the court can be intimidating, particularly to witnesses
 - The competitive nature of the adversarial system can result in animosity between the parties
 - When a jury is used, the decision may be based on biases and prejudices, as juries do not need to give reasons for their decisions
 - Legal representation, which is usually used in court trials, can be costly
 - The right to appeal is limited due to the costly nature of the courts

Alternative Dispute Resolution methods

- Strengths
 - Less competitive than the courts, and therefore suitable for parties who need to maintain a relationship, such as parents in a custody dispute
 - Legal representation is often not allowed or required, lessening costs
 - The less formal atmosphere means parties are often more comfortable
 - Collaborative law
 - As the parties are involved in the outcome of the dispute, they are more likely to follow the decision
 - ADR is less costly to access than the courts
 - Disputes are resolved more quickly than in the courts
- Weaknesses
 - Restricted to civil cases
 - Parties may be unaware of their rights and make a deal that is unfair
 - Parties may feel pressured to compromise, leading to unfair outcomes
 - Not suitable when parties have unequal bargaining skills
 - Except for arbitration, the decisions are not binding and a party may decide not to follow them
 - There is an unpredictability to the outcome, as there is no doctrine of precedent
 - Attendance is voluntary, and one party may not attend

Sample response:

In accessing dispute resolution, parties have the option of going through courts or alternative dispute resolution (ADR). Although courts are most commonly thought of, they can be disadvantageous due to their costly and time-consuming nature. On the other hand, ADR methods are relatively cheap and quick.

However, one advantage of the court system is their level of formality. This provides for strict rules of evidence and procedure that help to bring out the truth and maintain order. On the other hand, this can act as a weakness as it can make some parties feel uncomfortable and unwilling to share their stories.

ADR methods compensate for this by providing a less formal nature, however this informality can often lead to an imbalance of power between parties stopping one from achieving their idea of justice.

Due to this more casual nature, legal representation is optional in ADR, and usually not used. Although this may be advantageous as it allows parties to express themselves in a way that they wish, as well as keeping costs low, the parties may not be able to translate their story into legal terms that may be more applicable. This use of legal representation can therefore be a positive aspect of court cases.

ADR methods may also be beneficial in preserving the relationship between the two parties. The parties are often urged to come to a mutually beneficial solution. This is not often the case in courts as the adversarial (win/lose) nature of the trial may lead to degradation in this relationship. On the other hand, in ADR the decisions are generally not binding, and this may encourage one party to not follow it, and further costly dispute resolution could follow, negating the need for the original ADR.

Furthermore, ADR methods are only applicable in civil cases, whereas courts can be used for both civil and criminal cases. Due to this, and their formality allowing them to hear much larger cases, courts can hear a much more diverse range of disputes and can be more useful in this way.

Question 11a

Two of following points needed to be discussed:

- Consistency of decisions
- System of appeals
- Specificity in courts
- Administrative ease

Sample response:

One purpose of the court hierarchy is to provide for consistent decisions in similar cases. In maintaining a structure where each court is judged inferior or superior to others, this allows ease in understanding which precedents are binding, and which are merely persuasive, judged by the relative importance of the court, and therefore which need to be followed. Another purpose is to provide for a system of appeals. If the outcome of a case is not accepted by one or both parties, they may appeal it to a superior court with assumedly superior time and resources that should be able to ascertain whether or not the original court's decision was legally right.

Question 11b

Many answers could be given for this question.

Sample response:

Courts and parliament have different roles as law-makers, which, while having their own strengths and weaknesses, are necessary in order for the legal system to operate effectively.

The main role of parliament is to function as a law-making body. Because of this, they are able to devote the majority of their time, money and resources into researching and debating changes of the law. Therefore, any changes made by parliament are generally well thought through and cover an extensive area of law. On the other hand, as law-making is merely a secondary function of courts – a by-product of their initial function of dispute resolution – common law may not be extensive or applicable to many circumstances.

On the other hand, judges are not subject to the same political influence as members of parliament. Therefore, common law may have an ease in law-making that parliament does not, as most MPs may be hesitant in voting for a controversial bill that they believe in. However, in this way judge-made law may be deemed undemocratic, as judges are elected by the government, not by the people, whereas parliament is. Therefore, parliamentary legislation should reflect the views of the community, whereas common law may not, and this may cause problems.

Additionally, parliament is able to make laws 'in futuro', that is, for the future. This means that they are able to speculate as to what legal issues may arise with changes in the community, and legislate in these areas to ensure that the community maintains law and order. Conversely, courts can only make laws after the crime or incident has arisen, as they are only able to make decisions on cases that come before them. Thus, common law may be constrained somewhat in its ability to regulate the community.

Question 12

Some advantages:

- Cross-section of the community
- Reflects community values
- Encourages community involvement and therefore boosts confidence in the judicial system
- Spreads the responsibility
- Safeguards against the misuse of power
- Ensures less legal jargon is used in the courtroom
- Juries generally get it right and take their responsibilities seriously
- Helps protect democracy

Some disadvantages:

- Not true cross-section due to those who are ineligible, excused or disqualified
- Increase delays and costs
- Jurors could be biased
- Counsel could influence a jury with, for example, rhetoric or appeals to emotion
- Unfamiliar with legal procedure
- It is a difficult task and may be beyond the capabilities of those not specialised to deal with it
- Higher rate of acquittals
- Not required to give a decision, so appealing a jury's decision can be difficult

Sample response:

Although the jury system has its disadvantages, it has some great advantages to it. One such advantage is that it provides a cross-section of the community in the decision-making process of a court. This is due to the fact that names are picked at random from the electoral roll to attend jury service. Therefore, this cross-section of the community should, in theory, provide an adequate reflection of general community values, and the implementation of these into the decision-making of a court process is positive, as the law should reflect community standards. However, because of the amount of people who may be excused, ineligible or disqualified for jury service, it could be argued that a jury does not provide a true community cross-section.

Furthermore, the process of jury selection is a long, and therefore costly, one, in comparison to if it were only a judge alone deciding on the case. This can lead to congestion in the court system, and superfluous delays in the legal process. On the other hand, the selection of jurors means that everyday citizens are encouraged to take part in the legal process. As well as increasing the democratic nature of our society in this way, increased participation often leads to an increased confidence in the judicial system.

Moreover, in having a panel of 12 jurors in a criminal case, or 6 jurors in a civil case, leads to a spreading of power. In the case of the jury system, the decision-making is not left to a single person – the judge – but is given to a collective, who must reach a decision together. This therefore decreases the chances of a 'wrong' or unfair decision, and also safeguards against the misuse of power. Conversely, a panel of jurors who aren't trained in the legal profession may be easily influenced by the media, personal biases, or the rhetorical flourish of a clever barrister, rather than looking simply at the facts of a case, and this may bring a negative impact on what is meant to be an 'unbiased' case.

Another property of the jury system is that the jury does not need to give a reason for their decision, and this can be both advantageous and disadvantageous. Firstly, if a juror is not very articulate or enthusiastic to participate in discussion, needing to give reasoning for their decision could lead them to take the easier option of agreeing with the other jurors. However this can be a positive feature of the system as it protects an individual's opinion. On the other hand, factors that are meant to be ignored by

jurors, such as biases and inadmissible evidence, could be taken into account as they do not need to explain themselves. Further, the lack of reasoning for the decision can make it extremely difficult to appeal a decision to a higher court.

One suggested alternative to the jury system is employing a panel of professional jurors. These jurors would be employed by the state and be trained in the rules of evidence and procedure of the courtroom, ensuring that the spreading of responsibility is still evident in decision-making. However, professional jurors may not provide the same community cross-section as a normal jury and may not feel as independent due to their being employed by the state.