



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 1

Students need to mention the following points:

- House of Representatives (lower house)
- Senate (upper house)
- The Governor-General (representing the Crown)

Sample answer:

Australia's bicameral Commonwealth Parliament consists of the House of Representatives, the Senate, and the Crown, currently represented by Governor General Quentin Bryce QC.

Question 2

Students need to mention the following points:

- Act coming into operation
- On a day proclaimed by the governor or governor-general, or
- 28 days after royal assent has been given, or
- On a day stated in the act

Sample answer:

The proclamation stage specifies when the act comes into operation after it has been passed. The act will either be in effect on a day stated in the act, on a day proclaimed by the governor at state level or governor-general at federal level, or 28 days after royal assent has been given, if not otherwise stated.

Question 3a

Students need to mention the following points:

- Accused person goes free until the hearing/trial
- Upholds the presumption of innocence

Sample answer:

Bail is given when an accused person is allowed to go free and is not detained in custody awaiting their hearing or trial. The purpose of bail is to ensure fairness via upholding the presumption of innocence balanced against the protection of society as a whole.

Question 3b

Imprisonment

Sample answer:

The sanction most likely to be imposed by a court after a conviction for murder is imprisonment.

Question 3c

Possible sanctions include:

- Fine
- Community-based order
- Wholly or partially suspended sentence

Sample answer:

A sanction commonly imposed in the Magistrate's Court is a fine for a summary offence. The purpose of a fine is to act as a general deterrence to the public as one would not want to pay a fee imposed upon them, and if the threat of a fine is both present and made known, members of the public are thus deterred from committing that offence. Further, a fine may also act as a specific deterrent in that the offender is less likely to commit another crime in fear of paying a similar fine.

Question 4

Possible restrictions include:

- S.116 – the Commonwealth cannot legislate imposing, establishing, or prohibiting any religion
- S. 117 – the Commonwealth cannot discriminate against citizens based upon their state of residence
- S.128 – the Commonwealth cannot alter the words of the Constitution
- S. 92 – the Commonwealth cannot restrict free trade between states

Sample answer:

Section 128 of the Constitution allows only the Australian people to alter the words of the Constitution thereby preventing, via a restriction, the Commonwealth from changing the Constitution. Also, Section 116 prohibits the Commonwealth from legislating with respect to religion, hence allowing a freedom of religion for citizens.

Question 5

Students need to mention the following points:

- Monitor and coordinate law reform activity across Victoria
- Make recommendations in areas referred to it by the Attorney-General

Sample answer:

The role of the Victorian Law Reform Commission is to monitor and coordinate law reform activity across Victoria. After receiving a referral from the attorney-general, the Victorian Law Reform Commission works closely with the community in its research, consulting experts in the issue and inviting the public and interest groups to be involved through submissions and discussion forums.

Question 6

Sample answer:

Compensatory damages can be specific, where a precise monetary value is given such as damages for medical expenses incurred and loss of wages. However, general damages are assessed by the court and take into consideration the magnitude of the wrong done and includes pain and suffering. Unlike specific damages, general damages are an estimate and are not readily quantifiable.

Question 7

Students need to mention the following point:

- Both state and Commonwealth parliaments can legislate in areas of concurrent power but only the Commonwealth may legislate in areas of exclusive power

Sample answer:

Exclusive powers are the areas of law-making which only the Commonwealth is able to legislate upon. The specific powers given to the Commonwealth in Section 51 of the Constitution are made exclusive in other sections, such as Section 51(vi) which gives power to the Commonwealth to make laws relating to naval and military forces, a power which is made exclusive by way of restricting state power to raise forces in Section 114. S52 also lists specific exclusive powers in any department of public service. Concurrent powers are powers that both state and Commonwealth parliaments have the power to legislate upon, such as marriage in Section 51(xxj). However, Section 109 states that, should a state law be inconsistent with Commonwealth law, the Commonwealth act shall prevail, and the state act be made invalid to the extent of the inconsistency. Thus, this section renders concurrent powers of the states somewhat weaker since, if tested in court, the Commonwealth's law would prevail.

Question 8

Students need to mention and explain two of the following points:

- Facilitating the operation of the doctrine of precedent
- Allowing an appeals process
- Administration
- Specialization

Sample answer:

The facilitation of appeals and thus the enhancing of fairness is a reason for the establishment of a court hierarchy, whereby if a party is unsatisfied with a decision, they may appeal to a higher court whose jurisdiction allows it. For example, if a person wished to appeal a conviction from the Magistrate's Court, they could appeal to the County Court's appellate jurisdiction. Further, a court hierarchy allows for administrative convenience and saves time as it allows higher courts to hear more complex, lengthy cases while lower courts hear shorter cases. This helps to reduce delays in the lower courts by allowing minor cases to be dealt with quickly without having to wait for more lengthy cases to be resolved.

Question 9

Possible successful referendums include:

- 1946 Social services referendum
- 1967 Indigenous people referendum

Sample answer:

The successful referendum in 1967 regarding the indigenous population of Australia saw law-making powers flow to the Commonwealth. Prior to this referendum, the Commonwealth was specifically denied the power to legislate for Indigenous people or include them in national censuses, which was perceived as both unjust and a barrier to effective policy-making. After the passing of this referendum, the Commonwealth received the power to be more involved in dealing with Indigenous Australians and was also able to direct government spending towards Indigenous affairs. Bipartisan support was obtained for this referendum which is a likely factor of success, as well as the fact that this referendum was not held at the same time as a federal election which would result in voters being preoccupied with which party to vote for rather than the referendum itself.

Question 10

Many possible responses could be given for this question.

Sample answer:

Unlike Australia, the South African Constitution contains an extensive list of economic, social, political, and cultural rights entrenched in the Bill of Rights. Where Australians are protected through structural protections such as the implementation of the Westminster principles of responsible government, representative government, and the separation of powers between the judiciary and the legislative/executive, South Africans are expressly guaranteed the right to vote in Section 19(ii). Another difference is that the South African Bill of Rights contains a limitations clause where some rights may be limited if the parliament declares a 'state of emergency'. However, non-derogable rights such as the right to equality are not able to be limited. This differs from Australia's system whereby Parliament cannot limit any rights of Australians, even if it were to declare a 'state of emergency'.

Question 11

Many possible responses could be given for this question.

Sample answer:

A possible reform to our jury system in Victoria would be to implement Scotland's system whereby jurors have an additional verdict option, 'not proven'. This is not a full acquittal and allows the state to bring the accused to stand trial again, should new evidence come to light. This additional verdict choice would alleviate, to an extent, the high rate of acquittals due to a lack of evidence proving 'beyond reasonable doubt', thus ensuring that an offender may be punished for their crime, albeit at a later point in time. It would also lessen the number of hung juries which ensures a more cost-effective, timely resolution of trial. An alternative, as suggested by ex-judge Ian Turnbull QC, would be to use a judge and a panel of two or more judicial officers rather than a jury in order to ensure reliability, consistency, and an in-depth understanding of the law since the panel would bring years of experience to their decision.

Question 12

Many possible responses could be given for this question.

Sample answer:

The high cost of taking a case, particularly a civil action, can restrict individuals' abilities to defend their innocence and/or rights. The added costs of court fees and legal representation can deter individuals from taking a civil case and remedying an infringement of rights, as well as undermining the potential benefits of winning. Also, criminal cases sometimes result in unrepresented parties as they simply cannot afford legal counsel. This can impact upon the presentation of their case in an adversarial system of trial and negatively impact the outcome. Though Legal Aid services do exist in Victoria, strict means and merit testing limits those eligible to a severely disadvantaged few.

Further, the general public's unawareness in terms of options available to resolve disputes can impact upon their access to the legal system. An overwhelming percentage of society remains unaware of services such as neighborhood justice centers, legal aid services, and alternative dispute resolution methods and tribunals. This potentially undermines the element of effective access as these methods provide cheaper dispute resolution options, yet are not fully utilized which could potentially result in individuals opting to forego civil claims where the cost is too high.

Question 13

Students need to mention the following points:

- Reversal of a decision
- Overruling a decision
- Disapproval
- Distinguishing

Many possible answers exist for this question.

Sample answer:

The doctrine of precedent is a system whereby the ratio decidendi (reason for the decision) of a case becomes a statement of law that is binding on all courts lower in the hierarchy. This is limiting in that inferior courts must follow the precedent of the superior court which promotes consistency due to stare decisis (standing by a decision) where like cases should be decided in a like manner. However, not all precedents are binding; some are merely persuasive. For example, precedents from cases of foreign court hierarchies as well as judges' obiter dicta provide guidance to other judges while offering a degree of flexibility.

There are several ways judges can avoid following a precedent and thus change the law. Firstly, a case taken on appeal may be reversed by a higher court such as in the case of Tomas Klamo where his conviction of manslaughter was reversed by the Court of Appeal due to a lack of sufficient evidence for a conviction. Also, a precedent may be overruled by a superior court, such as where the High Court overruled the long-established land law principle, terra nullius (empty land), in the Mabo case. If a case comes before a court at the same level as its precedent, the court is not bound by the decision and can act as it sees fit, though a third case must be brought before a higher court to determine the new precedent if conflicting precedents occur at the same level within the court hierarchy. Judges may also express disapproval of a precedent through obiter such as in the State Government Insurance Commission v Trigwell & Ors case where Justice Mason expressed disapproval via obiter for the common law principle of allowing animals to roam onto roads. Lastly, a case may be distinguished from its precedent if a judge finds some material fact to be different to the facts of the precedent. For example, Davies v Wauldron was distinguished from its precedent Gillard v Wenborn since an intoxicated accused over the limit sitting in the front seat was deemed to be 'starting to drive' whereas an accused sleeping in the backseat was not deemed to be 'starting to drive'.

Through these methods, the tort of negligence has been able to evolve through both expansion and restriction. The case of Donoghue v Stevenson first established the law of negligence which was then established in Australia through Grant v Australian Knitting Mills. In obiter in the Hedley Byrne v Heller case, a duty of care was found to exist for negligent advice, though this was restricted to negligent advice given by an expert in the case of Norris v Siberas.

Once a statute has been interpreted by a judge presiding over a case, the new meaning acts as a precedent for future cases, and is read alongside the statute. In this way, judges also change the law.

Since the doctrine of precedent allows higher courts flexibility in changing the law, this leaves the High Court with the inherent ability to overturn any decision as it is bound merely by its need to be seen as consistent. This allows cases that come before the High Court ultimate flexibility in a decision.

Question 14a

Many possible responses could be given for this question.

Sample answer:

The pleadings stage serves the purpose of setting out the nature of the claim, remedies sought, the defense, and counter-claim (if any). It allows the parties to determine each other's claims and determine whether or not the claim is worthwhile proceeding. Directions hearings set the timetable for a quick, efficient pre-trial stage and trial, and allows the parties to sort through issues, thus reducing time at trial. The discovery stage involves the exchanging of all documents relevant to the case between the two parties, thus allowing the parties to gather the strengths and weaknesses of the other's case and reducing the element of surprise at trial.

However, whilst the discovery stage potentially reduces the length of trial, it increases the length of time pre-trial as the discovery stage can take time due to the number of documents and complexity of the case. It can also be incredibly costly.

Further, from the pleadings stage the opportunity for settlement out of court is provided, thus reducing costs and shortening the time of the case. The Supreme Court Rules state that the court can order for the parties to undergo mediation at any time. According to a report by the Department of Justice in 2007, mediation has seen between 50% and 60% of cases resolved. This opens up court time for more complex cases.

The quicker resolution of cases through mediation also allows remedies to be more quickly provided, thus providing for a quicker restoration of justice. However, the high costs often induced by the discovery stage acted as a deterrent for people with a genuine claim but limited funds as well as undermining the benefits of potential damages won.

Question 14b

Many possible responses could be given for this question.

Sample answer:

In order to reduce the discovery stage in time and cost, the Civil Procedures Act was introduced in 2010 to set a timeline. It includes a restriction of the discovery stage to ten weeks after the close of hearings, thus shortening the length of time pre-trial and enhancing the effectiveness element of timeliness.

In order to address costs involved, particularly with court fees when filing documents such as a writ and statement of claim, a recent change to the civil jurisdiction of the Magistrate's and County Courts allows more cases to be heard in the lower, cheaper courts. For example, all claims less than \$100,000 can be heard in the Magistrate's Court, and the County Court's civil jurisdiction was increased to an unlimited amount.

Question 15

Many possible responses could be given for this question.

Sample answer:

The adversarial nature of our court system usually results in a win-lose outcome. Though this may be acceptable where there is animosity between the two parties, if an ongoing relationship exists (such as that of neighbors), a win-lose scenario may not be desirable. As such, VCAT operates with the aim of achieving a win-win scenario between the parties through the use of alternative dispute resolution methods whereby an agreement is reached by the parties with the assistance of a mediator or conciliator. This can be a more appealing method of dispute resolution as a win-win agreement is likely to be reached and thus more likely to be executed as both parties are happy with the outcome.

The formality within the court system through the use of legal representation and the existing strict rules of evidence and procedure can be construed as both weakness and strength. Though the rules of evidence and procedure provide for a fair trial, it required legal representation which is expensive. On the other hand, VCAT operates less formally, without legal representation in most cases. The absence of strict rules and procedure allow for the parties to express themselves freely. Also, a wider range of solutions are then available. This may be more appealing as the outcome is a more flexible, informal option than the courts.

The possibility of appeals within the court system is a strength. If a party is unsatisfied with the outcome of a case, there is generally an option to appeal to a higher court. This increases the incentive for a party to take a case to court since there is the knowledge that they may have a right to appeal. This increases the chances of achieving an outcome which the party is happy with, though it does increase the amount of time taken to have a case resolved. The lack of an appeals system in VCAT, though it appears to be a weakness, is effective since it lessens the amount of administrative personnel required and thus, less taxpayers' money is spent. Appeals are generally not required through VCAT since generally; win-win outcomes are generated. However, post-tribunal, an appeal on a point of law may be made to the Trial Division of the Supreme Court. If the tribunal was presided over by the president or vice-president of VCAT, the appeal would be heard in the Court of Appeal.

VCAT is generally timelier than the courts. The average delay between application and hearing in VCAT's busiest list, the Residential Tenancies List, is two weeks. The actual hearing usually takes less than a day. However, the courts can take weeks, months, or even years to resolve a case. The comparative time-efficiency of VCAT is effective in that it increases the incentive to have a dispute resolved. A lengthy case is likely to act as a deterrent and thus, some disputes may not be taken to court at all. With the quicker method of resolving civil disputes VCAT provides, more disputes are likely to be taken and resolved and thus, a fairer society is created.

Though both VCAT and each of the courts have a permanent location situated in Melbourne's central business district, the Magistrate's Court has 51 other permanent locations within Victoria. This means that accessibility for the Magistrate's Court is increased. However, both the County Court and Supreme Court merely go on circuit to 12 regional centers once each year. This means that though rural citizens will have the possibility of having their dispute heard locally, a wait of up to a year is possible. This lessens the likelihood of a timely resolution. VCAT also goes on circuit to 10 metropolitan and 33 regional areas once a year. Again, rural citizens are forced to either wait for VCAT to arrive or travel into the city. The lack of accessibility could potentially act as a deterrent for parties wishing to have their dispute resolved.

The use of ADR within the courts and VCAT has been effective. With both mediation and conciliation, parties reach an agreement themselves. This increases the likelihood of the parties meeting the agreement since they chose a solution and did not have one imposed upon them. ADR methods are also

conducted in an informal environment in VCAT which helps ensure the parties feel at ease and say exactly what they want to achieve. Mediators, conciliators, and arbitrators are trained professionals which ensure a successful resolution. If a successful outcome is achieved, a court hearing or trial is avoided and thus the resolution of the dispute is more time-effective. This ensures the smooth operation of the courts and reduces the possibility of a backlog of cases, benefiting others as well as the two parties.