



Free Exam
for 2011-17 VCE study design



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

Any two of the four main dot-points would suffice for two marks:

- Government is answerable/accountable to parliament for their actions, and parliament is answerable to the people.
- Ministers are answerable for their areas of responsibility. They may be asked questions in question time and committees may be formed to investigate government action.
- Public scrutiny exists to ensure MPs are held accountable for their actions:
 - Parliamentary proceedings are televised, streamed live on the internet and open to the public
 - Proceedings are transcribed in “Hansard” – available online the following day or in hard copy.
- If a government loses confidence of the people it must resign. MPs must act with integrity and propriety or they must resign.

Question 2

Having all of these points along with a short explanation (including information from the subpoints) will guarantee a student full marks:

- Crown: Governor
 - Queen’s representative
 - Royal assent
 - Appoints ministers and sitting times
 - Dissolves lower house at election time
- Upper House: Legislative Council
 - 5 members from 8 regions of Victoria
 - 40 members
 - Ensures regional interests are considered
 - House of review
 - Can initiate bills
- Lower House: Legislative Assembly
 - Initiates most bills
 - Represents the majority of people
 - Houses government
 - 4 year terms
 - 88 members from 88 districts

Question 3a

The three methods for influencing legislative change specifically mentioned in the study design are:

- Petitions
 - A written document addressed to parliament
 - Requests action on a matter of importance to the signatories
 - Tabled in parliament: details of demands and number of signatures read to parliament
- Demonstrations
 - Often large numbers of people physically coming together to put pressure on politicians to change the law
 - Examples: street marches, rallies, sit-ins, street theatre
- Using the media
 - Contacting radio, television, newspapers, **or**
 - Using the internet, blogs, twitter etc. to
 - Publicise a particular cause to influence public opinion and get the attention of parliament

Any two of these answers are ideal, but other potential methods that students may discuss are:

- Other:
 - Civil disobedience
 - Lobbying politicians
 - Using a test case

Note that to gain the full 2 marks for this question, students must not only name a method of influencing change, but also give a detailed explanation of it.

Question 3b

Students should discuss at least one positive and one negative of the two methods they just discussed and come to a conclusion about when each method would be most effective, e.g.

- Petitions
 - Effective because it is a peaceful way of showing that there is a support for a particular issue
 - Ineffective if there are not many signatures, therefore showing a lack of widespread support
- Demonstrations
 - May be effective when they are peaceful, in large numbers and attract media attention
 - Ineffective if the demonstrations become violent, which sometimes happens, as politicians do not want to support a cause associated with violence

Question 4a

Sample answer (answers should not greatly deviate from this):

According to s.109 of the Constitution, should Federal and State Parliament produce conflicting legislation over a concurrent issue, the state legislation, to the extent of the inconsistency, will be deemed void. Therefore this section gives greater law-making power to Federal Parliament.

Question 4b

Acceptable topics include: changing the words of the Constitution (referendum); High Court interpretation of the Constitution; referral of power. Students must outline what their chosen method is.

Question 5

It is the only body which can give meaning to the Constitution. Students must justify their contention about its significance.

Ideal examples to use are: Franklin Dams case (external affairs power); and Brislan's case (communications power)

Question 6a

- Original criminal jurisdiction: all summary (generally minor) offences, e.g. traffic offences; some indictable offences can be heard summarily e.g. theft/burglary; committal hearings
- Appellate criminal jurisdiction: none
- Original civil jurisdiction: Can hear claims up to \$100,000; if the claim is for less than \$10,000, it will go to arbitration
- Appellate civil jurisdiction: none

Question 6b

- Original criminal jurisdiction: all indictable offences except the very most serious
- Appellate criminal jurisdiction: appeals from Magistrates' Court on verdict/sentence
- Original civil jurisdiction: claims of an unlimited amount, generally over \$100,000
- Appellate civil jurisdiction: appeals from the Magistrates' Court

Question 7

Potential reasons:

- The meaning of words may be ambiguous – courts must therefore give meaning to the words to determine what circumstances the act was intended to cover
 - A good example here would be *Mansfield v Kelly*: the court had to determine whether “public place” included being in a car
- Parliament's intention may be unclear
 - If the minister responsible for the bill did not give clear instructions to the parliamentary counsel (those writing the bill), it could result in confusion as to what situations the statute now covers
- Changes in technology
 - Existing legislation may not cover new technology
- Meaning of words change over time

Question 8

Ideally two strengths and two weaknesses from the following should be discussed:

Strengths:

- The party's basic democratic right to defend itself is upheld
- Legal representation: expertise is provided to each party
- Role of the judge: impartial third party ensures rules of evidence and procedure are upheld, thus ensuring equality
- Rules of evidence and procedure: inadmissible evidence ensures that unreliable evidence is not heard
- Rules of evidence and procedure ensure all parties are treated equally

Weaknesses:

- Unfavourable evidence may be omitted and therefore the truth may not be revealed
- High costs may discourage a party from pursuing legal action
- Legal representation: the outcome may be more of a reflection on who has the best legal representation
- Role of the judge: impartial role sees a judge's expertise not fully utilised
- Rules of evidence and procedure: delays often occur, therefore problems arise
 - Juries and witnesses may forget information
- Rules of evidence and procedure: complex rules make legal representation necessary
- Can be intimidating for those facing cultural barriers

Question 9

- Judge takes a more active role in the case, investigating it and gathering evidence with police
- Legal representation plays a minor part. They question witnesses and address court
- Less emphasis on strict rules of evidence and procedure
 - Hearsay evidence is acceptable
- Potential examples: France or Germany, Coroner's court + brief explanation

Question 10

Damages [3]:

- Compensatory damages
 - Specific damages
 - General damages
 - Aggravated damages
- Nominal damages
- Contemptuous damages
- Exemplary (punitive) damages

Purpose: to restore the plaintiff to the position they would have been in had the infringement never occurred/prior to the infringement [1]

Question 11

Civil remedies: restore the plaintiff (the infringed party) to the position he/she was in prior to the infringement/had the infringement never occurred; compensate for physical pain, loss or humiliation

Criminal sanctions: punish the defendant; deter individuals/community; rehabilitate defendant; protect community; denounce behaviour

Question 12a

It would be more appropriate for Peter to take this matter to VCAT rather than court due to the dispute is relatively minor. Discuss differences between VCAT and courts as reasons why VCAT is generally the better option

VCAT pros:

- Cheaper
- Quick process
- Informal
- An amicable resolution is usually sought and therefore it is good for the parties' relationship

VCAT cons:

- If using conciliation or mediation the decision is not legally binding

Court pros:

- The decision is legally binding

Court cons:

- Expensive
- Extensive delays
- Adversary system: the two parties become rivals which can be damaging to a relationship

Students should discuss 6 of the above points in relation to each other in order to achieve full marks.

Question 12b

Two of:

- Conciliation
- Mediation
- Arbitration
- Collaborative law (negotiation)

Note: to obtain full marks, students need to *explain* rather than simply *identify* the method of ADR.

Question 13a

The role of the jury is to:

- Find the verdict
- In murder, manslaughter, Commonwealth offences, treason: a unanimous decision is required
 - All other offences, a majority 11/12 decision is required
- Jury must uphold the standard of beyond reasonable doubt when finding a verdict

Question 13b

Answer must include discussion of:

- Initial jury list
- Questionnaire
- Final Jury list
- Jury pool
- Jury panel
- Challenges

Question 14a

To obtain full marks, students must list at least four strengths and four weaknesses and explain each. Some of these aspects can be either a strength or a weakness, which will depend on the student's opinion and explanation. Examples:

- Pros:
 - Judges are experts in the law
 - Judges are independent and not subject to populist political pressure
 - Mistakes made by judges can be overturned on appeal
 - Courts are best equipped to interpret statutes
 - Precedent makes the law consistent and certain
 - Some flexibility of precedent allows for outdated law to be changed
 - Disputes can arise where no law exists
 - Areas of common law can grow
 - Courts can change the law quickly when an appropriate case comes before it
- Cons:
 - The court's primary role is to resolve disputes
 - Judges are appointed, not elected
 - Judges are independent and not subject to populist political pressure
 - Being mostly middle aged, private school educated men, they may not reflect values of the whole community
 - Courts are reactionary: a case must first come before the court before law can be made
 - Sometimes out of date precedents have to be followed
 - Courts cannot delegate their law-making power
 - 'Test cases' are an expensive way to change the law
 - Case law is hard to locate and follow
 - Parliament may override court rulings

Question 14b

Four of:

- Courts apply legislation
- Courts interpret Acts of Parliament (statutory interpretation) e.g. Studded Belt case
- Parliament may abrogate common law
- Parliament can codify common law
- The High Court can increase the Commonwealth's law-making powers
- Courts can hear challenges to statutory law
- Court decisions can influence parliament when making legislation

Question 15

The best answers will address a roughly even number of reasons agreeing and reasons disagreeing with the statement, using examples of parliament's strengths/weaknesses in use if available.

- Sovereignty
 - Parliament is the ultimate law-maker
 - Legislation will overrule any subordinate authority regulations and all common law
 - No executive act of government (e.g. a regulation) can override legislation
 - A future parliament is not bound by past parliament
 - However, there are Constitutional restrictions on the sovereignty of parliament (e.g. s.116)
- Effective
 - Parliament is the ultimate law-making body (sovereign) and law-making is its primary role
 - It can make laws at any time, and can do so quickly when necessary
 - There is opportunity for debate, and amendments can be made to eradicate the weaknesses of the bill
 - Parliament is elected to represent the people
 - Parliamentarians are accountable to the people for their actions. If they are making bad laws they will not be re-elected
 - Public can pressure parliament to pass legislation on matters of public concern
 - Parliament can appoint expert committees on controversial issues, and can accept the advice given by such experts
 - Can delegate law-making to subordinate authorities who may have greater time and expertise on particular issues
- Ineffective
 - Parliament is not in session for the majority of the year. Therefore it cannot always make law
 - The process of passing legislation can be arduous
 - If the government holds a majority in both houses of parliament, the upper house may fail to act as a house of review
 - Where the government does not control the upper house, the opposition and minor parties may have more influence than what they should for the amount of people that they represent
 - Parliament may be unwilling to make laws on controversial issues for fear of voter backlash
 - Parliament may be influenced by pressure groups who do not represent the majority of society
 - Expert committees can take a long time to come to a conclusion about an issue and this costs a lot of money
 - 90% of laws are made by unelected officials due to parliament's willingness to delegate law-making