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Free Exam
for 2011-17 VCE study design

Engage Education Foundation

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

The Senate has several roles.

Bills can start off in the Senate (with the exception of money bills).The Senate also acts as a 'house of review' and as a 'states house'. Most bills are passed by the House of Representatives first and then go to the Senate where they are reviewed, which means they could be referred to a committee. Bills are then passed, amended or rejected.

Senators are elected to represent the interest of their state or territory. When reviewing bills senators are supposed to consider the impact of proposed legislation on their state or territory; which explains why the Senate is referred to as the states house.

Question 2

Individuals may become involved in the law-making process through the use of a petition. A petition is a written request to parliament asking it to take action in relation to a particular issue or law. A petition is a collection of signatures that shows concern for the issue. The petition is tabled in parliament.

Question 3a

A specific power is a law-making power that is actually written in the Constitution. The Commonwealth only has power to legislate in those areas specifically listed in the Constitution, such as s.51 (xii), the power legislate on currency. Many of these specific powers are shared concurrently with the States which means that both the States and the Commonwealth can make laws in these areas. However, some of these specific powers may be made exclusive by another section of the Constitution. In this case, s115 gives the power of printing money exclusively to the Commonwealth.

Question 3b

The Crown's role in law-making is to give Royal Assent to Bills passed by Parliament, thereby creating an Act of Parliament.

Question 4

In answering this question students should use the items that are often seen as weaknesses of the referendum process and discuss them in a positive light.

Some items students can discuss include:

- Bipartisan support – if both parties believe the proposed change is valuable or will improve our legal system then both major parties will support the proposal and so supporters of both parties are likely to vote yes.
- States support the proposal – if the proposal doesn't remove too much power from the States or the States believe the area is better addressed by the Commonwealth then they will support the proposal increasing the likelihood of success.
- Ease of understanding – if the proposal is presented in a positive, easy to understand language, then ordinary people will be less confused by the proposal and may support the change. Many referendum questions are often confusing and voters will vote no if not sure of the impact.

When referendums are successful it often means that the Commonwealth Parliament gains more power at the expense of the States – that is a power that may have been concurrent or residual is now made exclusive and held by the Commonwealth.

Question 5a

- Supreme Court of Victoria (Trial Division): A single judge hears criminal appeals from the Magistrates' Court on points of law.
- Court of Appeal of the Supreme Court of Victoria: It hears criminal appeals from the County Court and the Supreme Court (Trial Division) on the following grounds: against conviction, severity or leniency of sentence and on points of law.

Question 5b

Students must identify two other reasons for a court hierarchy first and then describe how they operate. Students receive 2 marks for each reason identified and explained. Only two marks should be awarded if no explanation is provided.

Possible reasons include:

- Allows for specialisation
- Allows for the Doctrine of Precedent to operate
- Allows for administrative convenience

Another reason for a court hierarchy is that it provides for specialisation. The hierarchy enables the workload of the courts to be divided with each court having a limited jurisdiction allowing it to develop expertise. Court processes and personnel are streamlined and the judge or magistrate can develop a specialised understanding of the law relating to the cases determined in that court. Thus, each case is heard quickly and proficiently.

Another reason for a court hierarchy is that it allows for the doctrine of precedent to operate. Without a hierarchy the doctrine could not operate as it relies on decisions being made by superior courts of record. These decisions are then binding on all lower courts in the same hierarchy. The doctrine provides for consistency and fairness for similar cases.

Question 6

There are a number of cases that students could refer to.

Possible cases include:

- Australian Capital Television and Ors v. Commonwealth [1992] HCA 45; (1992) 177 CLR 106
- David Russell Lange v. Australian Broadcasting Corporation [1997] HCA 25; (1997) 189 CLR 520
- Albert Langer v. Commonwealth of Australia [1996] HCA 43; (1996) 186 CLR 302
- Theophanous v Herald and Weekly Times Ltd (1994) 182 CLR 104
- Roach v. Electoral Commissioner [2007] HCA 43

The Theophanous Case of 1994 required the High Court to interpret the Constitution when determining a defamation case. Theophanous claimed he had been defamed by an article published in the Herald-Sun newspaper. The article questioned his ‘fitness’ to hold political office.

The High Court ruled that no defamation occurred as the comment was part of a political communication given Theophanous was an elected politician at the time.

The case was significant as it helped create the right to freedom of political communication – the only implied right at the time.

Question 7

Students are required to explain two strengths of courts as law-makers and then discuss the corresponding weaknesses of those strengths. Thus, the strengths and weaknesses must be related. Students that merely describe strengths and no weaknesses, or who do not link the strengths and weaknesses can only receive half of the available marks. Further, students must mention the strength before the weakness, if the weakness is discussed first; no marks can be awarded as they are not answering the question.

Possible strengths include:

- A decision about the law must be made
- Courts determine the day-to-day application of the law
- Courts are flexible
- Courts are independent of the political process
- Courts provide access to change
- Courts can fill in gaps in legislation and develop areas of law as a whole.

Possible corresponding weaknesses include:

- Can only make a decision when a case is before them
- Courts act retrospectively
- Courts are rigid
- The process is undemocratic
- Time consuming, costly process
- Law can be slow to change through the courts.

Question 8

Student responses must refer to a contemporary change, usually within the previous 10 years.

Recent changes include:

- Extended use of the Koori Court in the County Court (fair and unbiased hearing)
- Introduction of the Assessment and Referral Court List of the Magistrates' Court (fair and unbiased hearing and effective access to the legal system)
- Introduction of the Family Violence Court Division of the Magistrates' Court (effective access to the legal system)
- Opening of a second multi-jurisdictional court in Moorabbin (effective access to the legal system)
- Time limits on criminal procedures (timely resolution)
- Changes to evidence laws in relation to Aboriginal and Torres Strait Islanders (fair and unbiased hearing)
- Increase to County Court and Magistrates' Court civil jurisdictions (effective access to the legal system)
- Introduction of e-discovery (timely access)

Recommendations for change include:

- Changes to jury directions in criminal procedures (fair and unbiased hearing)
- Extended court sitting times (timely access)
- Increase legal aid to more civil cases (effective access, fair and unbiased hearing)

Question 9

The process of law-making used by courts in our legal system is known as the doctrine of precedent. Precedent is based on the principle of stare decisis, which means 'to stand by what has been decided'. Precedent operates by judges in lower courts following previous decisions of higher courts in the same court hierarchy, in similar cases, when they are deciding cases. The reason for the decision (the ratio decidendi) becomes the precedent which may be followed in later cases.

There are two types of precedent, binding precedent and persuasive precedent. Previous decisions of higher courts are binding on lower courts in the same court hierarchy in similar cases; this means they must be followed. Whereas, previous decisions of courts on the same level in the same hierarchy are only persuasive; this means they may be followed or they may be disregarded.

The operation of binding precedent can lead to a degree of inflexibility, and to overcome this, the courts have developed techniques to help prevent binding precedent from becoming too rigid. Higher courts can reverse and overrule previous decisions of lower courts. Courts can also decline to follow what might appear to be a binding precedent if the court can distinguish the facts of the present case from those of the precedent. If a court is unable to distinguish a binding precedent it must follow it even if doing so results in an unjust outcome. However, the court can record its disapproval of the precedent in its judgment.

Question 10

The adversary system does work well, but it is not without its problems.

The adversary system of trial relies on the parties to prepare and present their case in court. Each side interviews witnesses, gathers evidence and prepares questions that will allow them to present their case in the best possible light and challenge the opposing side's case. This gives the parties a feeling of control over the case and because of their thoroughness and desire to win, helps to ensure the adversary system works well by producing just results.

Trials in the adversary system are regulated by strict rules of evidence and procedure which ensure the trial is fair and that both sides have an equal opportunity to present their case. The judge does not take an active part in the trial and her/his role is to be impartial and make sure the parties follow the rules of evidence and procedure. These aspects of the adversary system work well for people who have legal representation, because solicitors have the skills necessary to prepare cases well, and barristers know the rules of evidence and procedure and are skilled in advocacy. The complexities of rules of evidence and procedure mean that it is not practical for most people to prepare and argue their own case. However, the fees lawyers charge are too expensive for many people, and this may result in some people not suing to recover loss, or some people pleading guilty to criminal charges, because they can't afford a lawyer. Legal aid funds are limited which means many people who apply miss out.

The adversary system of trial requires witnesses to give oral evidence in court and be cross-examined. This has the advantage of allowing the court to assess the truthfulness of a witness by observing how they behave in the witness box. However, problems can also arise. A witness may appear to be evasive, or reluctant to answer questions, but this could be due to nervousness or a lack of confidence, rather than untruthfulness.

Once a trial starts in the adversary system it continues as a continuous event until the end. There may be minor interruptions, for example, if the judge was sick for a day or two, but there are no major adjournments. This has the advantage of allowing evidence to be presented in a logical and coherent way, and in jury trials, makes it easier for the jury to remember evidence. However, if a trial has begun and a key witness becomes unavailable, the trial will continue without that person's evidence being heard and that could affect the outcome of the trial

Question 11

Students must show the differences between conciliation and judicial determination. They do not need to discuss any of the similarities. Students must show a clear difference in the points they are discussing, so the use of words such as 'however' or 'whereas' must be included. If students fail to use such words, they cannot receive full marks. 3 marks should be awarded for the first part of this question. The final 3 marks should be awarded for identifying the most effective method and then stating why they have chosen this method. Students can choose either as the most effective, however they must be able to justify why they have chosen the one they did, in order to receive the full 3 marks.

Possible points to distinguish include:

- Role of the third party
- Role of the parties
- Nature of the decision
- Costs

Conciliation and judicial determination are two methods of dispute resolution that may be used in the courts or at VCAT to resolve civil disputes

Conciliation is a process involving an independent third party known as the conciliator who assists disputing parties to reach a decision. The conciliator listens to all of the evidence as presented by the parties and then may suggest a resolution to the dispute. Ultimately, the resolution is decided between the two parties which may or may not be what the conciliator suggested. The conciliator cannot force a decision onto the parties.

On the other hand, judicial determination involves an independent arbitrator that will make an order to resolve the dispute – parties to a dispute accept this as the resolution method when selecting judicial determination. Judicial determination occurs in both VCAT and the courts.

Conciliation is not widely used by the courts but is used largely to settle disputes in VCAT. Unlike conciliation, the decision in judicial determination is made by the third party and not the parties involved and the final decision is legally binding on the parties. The decision in judicial determination is made in favour of one party, whereas in conciliation the decision may benefit both parties.

Judicial determination is an effective dispute resolution method as it is the most likely method that will see the dispute resolved completely and finally. This is because the decision is binding (unless there are grounds for an appeal) and thus the parties are more likely to abide by the decision. Further, judicial determination follows a more formalised process than conciliation, so it is suitable for a wide range of disputes, including more serious disputes, and thus emphasises the seriousness of the situation for the parties. Therefore, judicial determination can be regarded as being the more effective of the two methods of dispute resolution in most situations.

Question 12

This question requires an evaluation of the strengths of the jury system.

Students should outline those strengths and then analyse how effective each strength is. When conducting that analysis they must link their response to the concept of a fair and unbiased hearing.

Some possible strengths are:

- Cross-section of the community – jury is selected at random from a group of people drawn from the electoral roll. This allows the jury to act as a barometer of social norms and values and thus the verdict is decided by ordinary citizens based on these considerations. This also ensures that the decision of the jury is more likely to be accepted by the accused and the community at large. However, it could be argued that the jury is not a true cross-section of the community as there are a large number of people who are ineligible or excused from service. For example, those who are self-employed or who live far away from the court are often excused from serving on the jury. Further, people with legal knowledge such as police officers or lawyers are not eligible to serve on a jury. These categories of ineligibility or excuses are quite broad and thus it could be argued that the jury does not truly represent the wider community.
- The jury acts as an independent, fact-finding body – the jury should be free from bias and political influence. As the jury consists of ordinary men and women, they are not prejudiced by past dealings with the legal system and not bound by the doctrine of precedent. Further, as the jury is not elected by parliament it is not subject to any pressure from the community or political parties to come to a certain decision. Thus only the values of the community at large are applied, rather than a political agenda. However, as jurors are only ordinary citizens, they are likely to be influenced by the skill and eloquence of experienced barristers or from media reports of the case prior to and during the trial. While asked to remain unbiased it is not possible to determine if such bias occurs
- Safeguards freedom
- Allows for public scrutiny

Question 13

Students are required to discuss two pre-trial procedures for both criminal and civil disputes – in total this is four pre-trial procedures.

The Study Design identifies limited pre-trial procedures:

Criminal:

- Bail
- Remand
- Committal Hearings for criminal disputes

Civil:

- Pleadings
- Discovery
- Directions hearings for civil disputes

Students would be awarded 2 marks for each pre-trial procedure they were able to identify and adequately explain and the final two marks would be for linking those procedures to the elements of an effective legal system identified in the question.

Part of a possible answer:

Bail is a written promise given by an accused that if released from custody s/he will turn up to court to answer the charges/s against him/her. Granting bail allows an accused to continue their everyday life and enables them to assist in the preparation of their case – gather evidence, question witnesses, appoint and meet with a legal representative, all of which help ensure that the accused has a fair and unbiased hearing.

A directions hearings in a civil dispute is a hearing, usually presided over by a judge, in which the parties are given instructions or orders by the court to undertake certain actions that are necessary to prepare the parties for trial. For example, parties may be given time restraints and dates by which they must complete specific pre-trial tasks, including filing and serving defences and witness statements. Similarly, it is also standard practice for the Supreme Court to order parties to attend compulsory mediation prior to trial in an attempt to achieve an early settlement. The court may also order one party to make certain information, such as electronic documents, available to the other, or order parties to engage in discussion to clarify legal issues prior to trial. This assists in achieving a timely resolution of disputes as many facts are agreed to in advance, saving time at trial and they also encourage out-of-court settlements – saving time and allowing other cases to be heard in court sooner.