



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](mailto: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:

- Prevent any branch from having too much power
- Legislature (parliament)
- Executive (government)
- Judiciary (courts)

Sample answer:

*The separation of powers in Australia is made up of the legislature (parliament), which makes law, the executive (government), which administers the law, and the judiciary (courts), which applies the law. These powers are separated in order to prevent one body from having unlimited power over the legal system.*

### Question 2

Students need to mention the following points:

- Mentioned in the Constitution
- Exclusive powers
- Concurrent powers

Sample answer:

*Specific powers (enumerated powers) are legislative powers, which are mentioned in the Constitution. They may be exclusive powers (solely belonging to Commonwealth Parliament), such as naturalization and aliens, or concurrent powers (belonging to both Commonwealth and the states), such as family law. Section 109 provides that in concurrent areas, should Commonwealth and state law be inconsistent, the Commonwealth law will prevail. All specific powers are outlined in s.51 and s.52 of the Constitution.*

**Question 3a**

Possible reasons include:

- Changes in technology
- Values in society are always changing
- More informed society
- Changes in economic conditions
- Changes in political circumstances

Sample answer:

*Laws may need to change to reflect a change in community values. For instance, the "Family Law Act 1975" was enacted in response to changing attitudes towards the accessibility of divorce.*

**Question 3b**

Possible answers include:

- Demonstrations
- Media

Sample answer: Lyla could have organized a demonstration. Demonstrations include a large group of people congregating to display concern over an issue. It is a very effective method if there is a large presence at the demonstration. It will be ineffective if there are too few people or if the demonstration turns violent.

**Question 3c**

Sample answer:

*The Second Reading stage is when the responsible minister gives a speech to the house about the Bill's purpose. The majority of debate occurs here, wherein the opposition will present its views, and finally, a vote for continuation will occur. The consideration-in-detail stage (the committee stage if in the upper house) is an optional process which occurs for controversial Bills. The speaker steps down and each clause is considered in detail. Discussion occurs and amendments may be suggested.*

**Question 4a**

Possible referenda include:

- 1920: state debts
- 1928: state debts
- 1946: social security referendum
- 1967: equal citizen rights to Aborigines

Sample answer:

*Prior to 1946, the Commonwealth's power on social security was limited to invalid and old age pensions. The 1946 social security referendum extended their power to create pensions and allowances, such as unemployment benefits, pharmaceutical benefits and maternity allowances. Its impact was that the states lost law-making power in the area of social security while the Commonwealth's power was extended. Greater Commonwealth control also led to uniformity of benefits to Australians.*

**Question 4b**

Students could mention the following points:

- 'Double majority' is difficult to achieve
- Bipartisan support is difficult
- Complex proposals

Sample answer:

*Referenda may fail because the double majority provision is difficult to achieve, calling for a majority of 'yes' votes among the Australian people and in at least four out of six states. For instance, the 1977 referendum on simultaneous elections gained 'yes' votes from 62.25% of voters but only three out of six states. Secondly, complex referendum proposals affect the success of a referendum. Difficulty in understanding has led to voter conservatism and hence a 'no' vote, while simple, non-contentious issues generally pass, such as the 1967 Aboriginal Affairs referendum.*

**Question 5**

Students need to mention the following points

- Doctrine of precedent
- Statutory interpretation

Sample answer:

*Judges can make common law through precedent. Precedent is created when a situation comes before the court for which there is no legislation and no previously made common law. A new situation exists and a resolution is required. When a decision is made, precedent is created and must be followed in some future, similar cases. For instance, Grant v Australian Knitting Mills set precedent relating to the law of negligence in Australia. Secondly, judges make law through statutory interpretation. This means that judges interpret an Act where there is a dispute about the intention or meaning of the words used. Judges clarify the statute. An example of statutory interpretation is Deing v Tarola, which clarified whether a studded belt was a 'regulated weapon'.*

**Question 6**

Many possible responses could be given for this question

Sample answer:

*Parliament and courts as law-makers are necessarily interdependent. Each body has flaws in making the law that the other body generally does make up for.*

*For instance, courts are able to fill in gaps in legislation. If legislation does not cover every aspect of an issue, or is unclear when legislating on an issue, courts can utilize the doctrine of precedent and statutory interpretation procedures. However, a key weakness of the courts is that they are reactionary, meaning that they are limited to making law on cases that come before them. Parliament can make up for this weakness because it can legislate on any issue within their jurisdiction.*

*A further weakness of parliament is that MPs show conservatism – an unwillingness to make law – on contentious issues because they fear not being re-elected. Judges are not elected and thus are exempt from political pressure and therefore can make laws on important issues. For instance, courts were instrumental in reforming abortion law in Australia.*

**Question 7a**

Sample answer:

*Committal hearings are designed to ensure that the prosecution has sufficient evidence to gain a conviction at trial. It involves prosecution witnesses giving oral evidence and a deposition of evidence being forwarded to the DPP.*

**Question 7b**

Sample answer:

*Directions hearings involve matters of fact, law, evidence and procedure being discussed in an attempt to reduce time at trial and to increase efficiency. They are designed to allow judges to manage the conduct of a trial and identify the main issues of a case.*

**Question 8**

Possible High Court cases include

- Roach's case
- Political advertising case

Sample answer:

*Roach's case involved Vicki Lee Roach, a prisoner, challenging the constitutional validity of an Act which banned all prisoners from voting in elections. The High Court decided that the legislation was unconstitutional, as it was inconsistent with the principle representative government. This decision therefore protects the structural right of representative government. However, the High Court did decide that there were circumstances – in which an adult Australia was not being representative - where one should be excluded from this right. For instance, prisoners serving terms of longer than three years would be excluded, and thus, Vicki Lee Roach was still unable to vote.*

*Structural protections are just one way in which rights are protected in Australia. Within the Commonwealth Constitution, there are five express rights (such as the right to trial by jury for Commonwealth indictable offences) and one implied right (freedom of speech in political matters), as well as structural protections. To complement these limited Constitutional rights, additional rights are guaranteed through legislation.*

**Question 9**

Many possible responses could be given for this question.

Sample answer:

*Imprisonment is a criminal sanction which involves placing the offender in prison and therefore taking away their liberty. Its aim is to prevent people from re-offending and to punish the individual. A fine, by contrast, is the most common form of criminal sanction involving the offender having to pay money to the state. It also serves the purpose of deterring and punishing offenders. Damages are the most common civil remedy. Damages is where the defendant pays a monetary amount to the aggrieved party. These damages may be specific, general, nominal, contemptuous or exemplary. Injunctions are another type of civil remedy which comprise a court order prohibiting or compelling an action. The aim of these civil remedies are to protect the aggrieved party's rights and restore the infringed party to the position they were in prior to the infringement. This focus on assisting the victim, who has had their rights infringed, is markedly different to criminal sanctions, which overwhelmingly focus on the offender. For instance, many criminal sanctions aim to deter, punish, or rehabilitate offenders.*

**Question 10**

Many possible responses could be given for this question.

Sample answer:

*The most significant criticism of the adversary system is that its intention is not to get to the truth, rather it allows each party to put their best case forward. Unfavourable evidence may be omitted, leading to the truth not being revealed. Similarly, the outcome may be more of a reflection on who has the best legal representation. Furthermore, there are significant, sometimes unavoidable delays in the adversary system which prevents trials from being 'single and continuous', which is set out as being a rule of procedure. For example, complex rules and minor issues such as juries or witnesses forgetting details can contribute to delays. Finally, the impartial role of the judge sees that their expertise is not fully utilized, as they merely preside over a case and have limited control over it.*

*The inquisitorial system, which is used in France and Germany, has been suggested as an alternative to the adversary system. Its purpose is to get to the truth, and as such the judge takes a more active role in the case, investigating it, defining issues and gathering evidence. Due to the emphasis on the truth, rules of evidence and procedure are less strict and therefore there is some flexibility (e.g. hearsay evidence is acceptable). However, this system has its own set of problems, as the active role of the judge has led some to question their impartiality and the relaxed rules of evidence and procedure may lead to unreliable evidence being put forth.*

**Question 11a**

Many possible responses could be given for this question.

Sample answer:

*One relationship is that parliament can confirm common law principles by passing a "codifying Act". For instance, the Mabo decision led to the Native Title Act in Australia. Parliament can also abrogate (override) court made law if it deems that law to be inappropriate. For example, parliament abrogated a 1985 decision which stated that rape-in-marriage was legal. A third relationship is that parliament can pass Acts establishing courts and their jurisdictions, for instance, the Magistrates' Court Act 1989 and established the Magistrates' Court*

**Question 11b**

Sample answer:

*The original civil jurisdiction of the Supreme Court (Trial Division) is to hear claims for an unlimited amount (generally over \$200,000) whereas its criminal jurisdiction encapsulates the most serious indictable offences (e.g. murder, treason). It can hear appeals from the Magistrates' Court on points of law. The Supreme Court (Court of Appeal), by nature, has no original jurisdiction. Its appellate jurisdiction includes hearing all appeals (both criminal and civil) from the County and Supreme (Trial Division) courts.*

**Question 12**

Many possible answers exist for this question.

*Sample answer:*

*While there is some merit to this statement, it is not necessary to eradicate the jury system. By involving the community, it ensures that the people still have a close connection to the law and therefore that it reflects community's values. Furthermore, juries ideally represent a random cross-section of the community. However, due to ineligibility, disqualification, and excused status, it is not a true cross-section, as people from certain professions or in certain age brackets or circumstances are often not involved in the jury process.*

*Another key strength is that juries spread the responsibility of decision-making and therefore theoretically provide a safeguard against misuse of power. Many legal scholars argue that collaborative decision-making means that a decision is fully considered and therefore more likely to be right before it is handed down. A corresponding weakness, however, is that jurors may be steered away from the truth due to bias that they brought in to the case or to the influence of charismatic lawyers. One cannot rely on a jury to be fully impartial.*

*One suggested reform to the jury system is that jurors be made to give reasons for their decision in court. Some argue that this would reduce the likelihood of a jury agreeing on a verdict to reduce time spent on the jury or agreeing on dubious grounds. This would give the court an indication as to the extent to which jurors understood the law and evidence. A further reform is adopting the Scottish model, which includes a 'not proven' verdict where there is insufficient evidence to convict but a likelihood that the accused is guilty. A 'not proven' verdict means that the accused could be tried again if further evidence is found.*

*Alternatives to the jury system include trial by a panel of judges. This means that the burden of making a decision would still be shared amongst multiple people, but these people would be experts in the law. Another alternative is trial with a judge and a specialist jury, for instance, a jury consisting of doctors for a medical malpractice case. Again, this would ensure that the burden of decision-making is shared and that those making decisions have expertise.*

**Question 13**

Many possible responses could be given for this question.

Sample answer:

*While VCAT and alternative dispute resolution methods (ADR) have multiple strengths, they are not more effective than judicial determination, merely they are more appropriate for certain circumstances.*

*The available methods of dispute resolution include mediation, conciliation, arbitration and judicial determination, where the latter method is the one used in court settings. Mediation is used at VCAT and involves an impartial third party who does not offer suggestions to the parties but instead encourages the parties to come up with their own solutions. The atmosphere is informal, which makes it appropriate for parties who wish to co-operate and maintain a relationship after the process. The decision is not legally-binding, which can be seen as a weakness because the decision reached is not enforceable.*

*Conciliation, similarly, is not legally binding and involves an impartial third party. However, the conciliator is able to suggest possible outcomes. While the decision reached is not binding, it is generally followed as parties realize they are best-served avoiding formal court costs and delays. However, the informal nature of mediation and conciliation will be completely inappropriate if there is a power imbalance between parties where one will dominate another and thus no true compromise will be reached.*

*Arbitration, another VCAT method, also involves an independent third party and is slightly more formal than mediation or conciliation but is less formal than judicial determination. It involves an impartial third party (arbitrator) who can order a resolution to a dispute by making a legally binding decision. The third party will seek a mutually acceptable resolution, but an enforceable decision will be made if this is not possible. This is a quick process compared to the courts, but the increased formality may be intimidating to parties.*

*Judicial determination is the method used in the court system, whereby an impartial third party (judge) listens to both sides of the case and hands down a legally binding decision. There is no attempt between the parties to compromise. Therefore, it is appropriate for sensitive cases which involve power imbalances (e.g. a civil case involving sexual assault). However, it is a lengthy and costly process, particularly when taking into account the cost of legal representation as well as court costs.*

*There are more minor claims that are appropriate for VCAT, and as such VCAT is generally a quicker and cheaper method than the courts. For example, VCAT hearings generally take under a day. The efficiency of VCAT means that parties will be more willing to have their dispute resolved, as a court case can take months and cost much more in court fees and legal representation. Thus, VCAT helps to compensate for the long trial process of courts, which often acts as a deterrent for parties in a dispute.*

*Furthermore, ADR and VCAT trials are appropriate for parties who want to maintain a relationship because they endeavour to find a resolution which is acceptable to both parties. For instance, the job of the mediator is to guide parties towards a mutually beneficial resolution. This exposes a key weakness of the court system, which is adversarial in nature. In the adversary system, there is a clear winner and loser and thus no compromise. While this is generally seen as less agreeable than ADR, it is highly appropriate for sensitive cases where the parties do not desire to maintain a relationship or where there would be a power imbalance in ADR and one party feels forced to compromise too much.*

*A key strength of the court system is the availability of appeals. If a party is unhappy with the outcome of a case, the option exists to appeal to a higher court with a new judge and possibly jury. This increases a party's chance of achieving the desired outcome. There is a very limited appeals process in VCAT, where an appeal is the exception rather than a norm. However, as VCAT aims to find a decision that is mutually*



*beneficial to parties, this may not be seen as a weakness, as it simply increases time efficiency in the VCAT system.*

*It is clear, therefore, that courts and VCAT both have their merits and disadvantages. Neither is stronger but rather the availability of each avenue shows the diversity of cases which come before the legal system.*