



Units 3 and 4 Legal Studies

Practice Exam Solutions

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Any questions?

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Section A – Multiple-choice questions

Question 1a

Answers should not deviate greatly from the sample answer.

Below is an example of a high-scoring response:

Original jurisdiction refers to matters heard by a court at first instance, whereas appellate jurisdiction refers to matters heard on appeal – a case heard for the second time after one party has appealed the original decision.

Question 1b

Questions on jurisdiction must always include discussion of the following points:

- Original civil jurisdiction
- Appellate civil jurisdiction
- Original criminal jurisdiction
- Appellate criminal jurisdiction

Even if a court has no jurisdiction over one of these areas, this must be noted.

Below is an example of a high-scoring response:

The Supreme Court: Court of Appeal is purely an appeals court, which means it has no original civil or criminal jurisdiction. Its appellate criminal jurisdiction includes the ability to hear appeals on points of law, conviction or sentence from the County and Supreme: Trial Division Courts. Its appellate civil jurisdiction includes the ability to hear appeals on points of law.

Question 2

The following points should be included:

- Bail involves releasing the accused from custody until the date of his or her trial
- Remand involves holding the accused in custody until the date of his or her trial

One point should be made for each of bail and remand:

- Bail upholds the presumption of innocence, however
- Bail ensures the freedom of the accused
- Remand restrains the accused's freedom
- Remand protects society from the accused

Below is an example of a high-scoring response:

When a person who has been charged with a crime is granted bail, he or she is released from custody on the undertaking that he or she will appear in court at a later date. Conversely, remand refers to when bail is refused, and the accused is held in custody until his or her trial, where freedom is temporarily restrained. Remand serves the purpose of ensuring the accused's appearance in court and protecting society from a potential offender, while bail serves the purpose of guaranteeing the accused's temporary freedom and upholding the presumption of innocence.

Question 3

Answers should not deviate greatly from the sample answer.

Below is an example of a high-scoring response:

Section 109 states that, if state and Commonwealth legislation conflict in a concurrent law-making area, the Commonwealth law will prevail, and the state law, to the extent of the inconsistency, will be made invalid. This means that Commonwealth Parliament legally has a greater ability to make law in concurrent areas.

Question 4

Students could discuss any of the following cases:

- Koowarta v Bjelke-Petersen
- Tasmanian Dam Case
- Roads Case
- First Uniform Taxation Case

Below is an example of a high-scoring response:

In the Tasmanian Dam Case, the High Court decided that the Commonwealth had acted within its power, and that it could make law to protect Tasmania's Franklin River from the building of a dam because it related to an international treaty (the UN's World Heritage List) to which Australia was a signatory.

The broader impact was that the Commonwealth now clearly has extensive 'external affairs' power (an exclusive power in the Constitution). The Court stated that 'external affairs' power grants the Commonwealth the ability to legislate in any area in which Australia is a signatory to an international treaty, including residual law-making areas. It extended the Commonwealth's power at the expense of the states.

Question 5a

A range of responses are acceptable for this question.

Below is an example of a high-scoring response:

Statutory interpretation also occurs because the meaning of words can change over time, as society changes. Judges will clarify the meaning of words, giving them their current meaning while keeping in mind the legislators' intentions. For example, in the 'Kevin and Jennifer' case, the court clarified that the definition of 'man' includes a person born female who has undergone sex reassignment surgery, keeping in line with changing social values.

A second reason why statutes need interpretation is because the Act may not account for future circumstances. Legislators cannot accurately predict social, economic and technological changes that may alter the applicability of statutes.

Question 5b

A range of responses are acceptable for this question.

Below is an example of a high-scoring response:

*Court interpretation may also restrict the applicability of an Act. A narrow interpretation of the law may restrict the law so that it only covers a limited set of situations, unlike *Deing v Tarola*.*

Additionally, court interpretation affects statutes in that it creates law. Interpretation becomes precedent which is applied when future court situations arise.

Question 5c

A range of responses are acceptable for this question. These could include:

- Courts apply laws made by parliament
- Parliament can abrogate court-made law
- Parliament can codify court-made law
- The High Court can increase Commonwealth Parliament's law-making power
- Courts can hear challenges to parliament-made laws
- Parliament can pass Acts establishing courts
- Courts can fill in gaps left by parliament
- Court decisions can influence parliament-made law

Below is an example of a high-scoring response:

One other relationship between courts and parliament is that parliament can abrogate court-made law. This means that, if a court makes a law deemed to be inappropriate, parliament may pass law overriding this law. For example, in 1985, a Victorian court was bound to uphold an old precedent stating that a husband could legally rape his wife. Parliament immediately afterward changed the law to make rape in marriage an offence.

A second relationship between courts and parliament is that parliament can establish courts and their jurisdictions. For a court to be created, parliament must pass legislation. For example, Commonwealth Parliament passed the Family Law Act in 1975, which led to the establishment of the Family Court.

Question 6

Answers may vary, but should not deviate too much from the sample answer.

Below is an example of a high-scoring response:

Damages are the most common civil remedy, in which the plaintiff receives payment from the defendant when the defendant is found to have done a civil wrong. There are many types of damages, and plaintiff may be awarded one or more types. These include – most commonly – compensatory damages, which aim to compensate the plaintiff for the infringement of their rights. These compensatory damages could be specific (calculated exactly, e.g. loss of wages), general (an inexact calculation based on the long term consequences) or aggravated (when the plaintiff has been humiliated or insulted).

The overall aim of damages is to, by way of payment, restore the plaintiff to the position he, she or they were in prior to the infringement of their rights. A minor exception is punitive damages, which – by ordering the defendant to pay an extra amount – aims to punish the defendant.

Question 7

A range of responses are acceptable for this question. These could be:

- Changing expectations of the legal system
- Changes in technology
- Changes in community awareness of legal rights
- Changes in international relations

Below is an example of a high-scoring response:

One reason why laws may need to change is that society has changed its expectations of the legal system. One could argue that society has expanded its expectation – at first, the law was simply expected to regulate behaviour and protect people from social wrongs done by others; now, society expects the law to protect people from themselves. This is shown through the introduction of compulsory bike helmets and mandatory seatbelts in cars.

A second reason is changes in technology. Old laws cannot properly anticipate technological developments, and thus the law needs to change to meet demands made by the emergence of new technology. For example, the development of digital cameras led to Victoria's "Upskirting Amendment Act", which legally prevented people from taking unsolicited photographs up others' skirts.

Question 8

Answers should not deviate greatly from the sample answer.

Below is an example of a high-scoring response:

Structural protections are mechanisms and broad principles included in the Constitution that, by preventing parliament from abusing its power, protect the rights of the people. The three structural protections are, firstly, separation of powers, which establishes the three functions of the legal system (legislative, executive and judicial) which prevents any one body from having total power over the law. Therefore, the people can always have some influence over the Australian legal system.

Secondly, representative government is a broad principle stating that the government must act on behalf of the people that it governs, or it will not be re-elected. Roach v Electoral Commissioner clarified this section, with the court deciding that the representative government implied a right to vote, for governments could not truly be representative if the people did not have a right to vote.

The third structural protection is responsible government. It states that members of government will be kept accountable to the people for their actions.

Question 9

Answers should not deviate greatly from the sample answer:

Below is an example of a high-scoring response:

Separation of powers is a Constitutional principle outlining that no one body should have complete control over the legal system, and therefore that control should be separated between three bodies. These bodies act as checks and balances on each other so as to prevent corruption. These three bodies are, firstly, the legislative. The legislative function – the power to make law – belongs to parliament, as the sole body with the power to pass legislation. Secondly, there is the executive function, which refers to the ability to administer the law. In theory this power is held by the Crown (Governor-General at federal level), but in reality the Crown acts on the advice of the government of the day. The executive may, for example, ensure that law-enforcement bodies (like police) are resourced. Thirdly, there is the judicial function, which refers to applying the law. This power is held by the courts.

In practice, the powers are not totally separated. The executive is made up of members of the legislative (the Crown and the government). Additionally, there is some potential overlap between the judiciary and the executive. The Crown (a member of the legislative and the executive) appoints justices to some courts, acting on the advice of the Attorney-General (a member of the government, and therefore of the legislative and the executive). Therefore, some people can have influence over all three arms of the separation of powers, despite the theory that these arms should not overlap.

Question 10a

A range of responses are acceptable for this question. Check with your teacher for specific feedback.

Below is an example of a high-scoring response:

A recommendation for change is to loosen the rules of evidence and procedure. At present, these are very strict, and allowing more use of written evidence, for example, could reduce the time of a trial. This would contribute to the timely resolution of disputes. This time reduction has a flow on effect. It reduces the cost of trial and reduces the backlog on the courts, also allowing for effective access to the legal system.

One recent implemented change was 'Court View'. This is a system introduced to the Supreme Court that allows legal counsel to file documents electronically. The use of technology has led to more effective and quick time management, and therefore positively contributed to the timely resolution of disputes.

Question 10b

To get full marks on this question, students need to discuss two weaknesses of the jury system (look at two weaknesses and their corresponding strengths), which could get them four marks, and mention two recommended reforms, which could get students the final two marks.

Below is an example of a high-scoring response:

One weakness of juries is that they may contain biased jurors. Jurors may be influenced by their own prejudices, or by public perception of the case, and therefore might not decide based on the facts at hand. However, one could argue that this is mitigated by the fact that juries spread the decision-making responsibility between many people. The more people deciding on the case, the less likely it is that individual bias will have an impact.

A possible reform that could address this is greater training for jurors. Courts could provide juries with information booklets which summarise case facts, evidence, and the relevant law to apply. This reform would better equip jurors for the job, and make clear that their job was to decide on the facts. However, it would be a costly reform that would not guarantee a change in jurors' reasons for decisions.

Another weakness is that juries do not give reasons for their verdict, and as such, parties may never understand how the case was decided. Additionally, this creates uncertainty about how to apply the law in future circumstances. However, this aspect of the system could be of some benefit. There is no indication that jurors decided purely on the facts, meaning that they may have also factored broad community values into their decision.

This system could be reformed if jurors were required to give reasons for their decisions, which could lead to greater understanding of how juries operate. However, this may also be confusing to the court, as jurors may come to the same decision for different reasons.

Question 11

Answers will vary based on your opinion and your chosen country. Check with your teacher for specific feedback.

Below is an example of a high-scoring response:

The Constitution does not adequately protect the rights of Australians. Australia does not have a Bill of Rights, nor are the rights protected extensive or fundamental. There are only five express rights and one implied right in the Commonwealth Constitution. Furthermore, many of these are obscure. For example, section 80 guarantees the right to trial but only for indictable offences against the Commonwealth.

However, there are some positives to the Australian Constitution. The rights are entrenched, which means that they are more highly protected than other pieces of legislation. They are fully enforceable, meaning that no legislation can override these rights. The Constitution also does afford Australians one fundamental right – freedom of religion (section 116).

Australia protects its citizens' rights in other ways, for example, through common law, specific legislation (e.g. Racial Discrimination Act), the establishment of the Human Rights Commission, and through state or territory-based charters of human rights (in Victoria and the ACT).

These rights could be better consolidated and better protected if they were included in the Constitution. This is something that Australia could learn from Canada's Constitution. In 1982, Canada added a Charter of Rights to its Constitution, containing an extensive list of rights (including the right to 'life, liberty and security') that are all fully enforceable.

Question 12

A range of responses are acceptable for this question. Check with your teacher for specific feedback.

Below is an example of a high-scoring response:

While VCAT is very effective, its methods are not the most effective for every civil dispute, and they should not replace judicial determination.

As Dee Fendant noted, VCAT resolves over 90,000 disputes per year, which shows that VCAT methods help parties to resolve matters in a timely fashion and that it allows parties access to the legal system. In mediation, conciliation, and arbitration, parties are urged to seek a mutually acceptable resolution and may converse with each other. Indeed, in mediation parties come to a decision without suggestions from the third party present (the mediator). This process is significantly less formal. Because parties work together, there are no strict rules of evidence and procedure, which has the potential to reduce the time of the hearing.

However, an ostensibly weak aspect to this informal process is that the decision made technically isn't legally binding. The understanding is that parties will fulfil the duties they agreed to during the VCAT hearing, because they agreed to it. This does not always happen in practice. However, to counter this, parties often sign a legally binding agreement after the hearing.

In VCAT processes (mediation, conciliation, arbitration), parties are more likely to be willing to adhere to the terms of the agreement, unlike in a court situation. Courts use an adversarial system, where one party wins and the other loses, and the decision is not agreed upon by the parties but imposed by the judge. This may lead to unnecessary animosity between parties.

However, an imposed judicial decision may be necessary where parties cannot agree. Furthermore, it may be necessary when there is no need or desire for the parties to maintain an ongoing relationship. For example, a sexual assault victim in a civil claim with her or his perpetrator may struggle in a VCAT situation, where she or he would be forced to talk to the perpetrator and seek a resolution.

Judicial determination, used in the courts, may also be better able to ensure a fair and unbiased hearing. In mediation, conciliation and arbitration one party may lose out because of a power imbalance among the disputing parties. A judge would be able to ignore the influence of the more powerful party while deciding.

Therefore, both VCAT and the courts and their respective methods should be maintained to ensure the most effective operation of the legal system.

Question 13

A range of responses are acceptable for this question. Check with your teacher for specific feedback.

Below is an example of a high-scoring response:

The Australian court system could be improved if it followed a system with both adversarial and inquisitorial aspects. The adversarial system empowers each party to a dispute to present their best case in order to win. This system carries with it the assumption that the truth will arise out of the parties' work. However, each party may choose to omit unfavourable evidence in an attempt to win their case, and as such the truth may not be revealed.

In the inquisitorial system, the judge collects evidence and seeks the truth, and as an impartial third party can be trusted to find it. Yet the heavy involvement of judges may compromise their impartiality as they become heavily involved in cases.

While the Australian system doesn't need to increase the judge's role to the level of the inquisitorial system, it could still increase this role, keeping in mind that the judge's impartiality should be maintained. In the inquisitorial system the judge's legal knowledge, expertise and decision-making ability is utilized, whereas this is not fully utilized in the Australian system, where the judge simply listens to facts, deciding on the sentence and sometimes on the verdict.

In the adversary system, rules of evidence and procedure are very strict, protecting parties from unreliable evidence, such as hearsay, and from a fragmented, unclear trial, both of which may curtail justice (although, delays in procedure inevitably do occur). Rules of evidence in the adversarial system may be so strict, however, that they not only protect parties from unreliable evidence but they shut out potentially vital evidence. In some inquisitorial systems, hearsay may be admissible, and there is a greater reliance on written evidence, which would allow witnesses to tell their stories uninterrupted. However, advocates of oral evidence will argue that interruption of witness testimony is necessary to see if the witness is being truthful. Relaxation of rules of evidence would, however, allow for more timely resolution of disputes.

Finally, the burden of proof in the adversary system is on the prosecution or the plaintiff, which upholds the presumption of innocence in criminal cases and empowers the party bringing the matter to court. However, the biased nature of the prosecution or plaintiff may lead them to omit evidence that could otherwise exonerate the defendant. As such, shifting the burden of proof to the judge, like in the inquisitorial system, could enhance the idea of a fair and unbiased hearing.

Therefore, the Australian court system as it is could be reformed to adopt some features of the inquisitorial system to increase fairness and timely resolution of disputes. However, the current adversarial system works relatively effectively and should be maintained, as it contributes greatly to the fairness and lack of bias in the legal system.