INSIGHT

YEAR 12 *Trial Exam Paper*

2011
LEGAL STUDIES
Written examination

Sample responses

This book presents:

- correct sample responses
- mark allocations
- tips and guidelines

Instructions

Answer **all** questions in the spaces provided.

Question 1

Describe the role of the Victorian Law Reform Commission.

Sample response

The role of the Victorian Law Reform Commission (VLRC) is to research and investigate areas of law reform and recommend changes in the law to the Attorney-General, who tables the recommendations in Parliament. The VLRC develops, monitors and coordinates law reform activity in Victoria.

1 mark

Mark allocation

- 1 mark awarded for an explanation of the role of the VLRC.

Tips

- *Students can include an example to support their answer (as above), but the use of examples is not a compulsory requirement for Area of Study 1 (Unit 3).*
- *All students must study the VLRC as a formal law reform body (as per the new Study Design).*

Question 2

The following scenario contains errors.

The prosecutor charged John, the accused, with culpable driving. He pleaded not guilty at his trial, which could be heard in either the Magistrates' Court or using arbitration at VCAT. The jury of 12 sentenced John to twenty years of imprisonment. John wants to appeal this decision.

Identify **one** error in this scenario and explain the correct definition, process or procedure which should have occurred.

Sample response

There are a number of errors in this scenario, but students only need to identify and correct one error.

ERROR 1: 'The prosecutor charged John with culpable driving.'
CORRECTION: Police charge offenders, prosecutors do not. The prosecution has the burden of proof in a criminal case to prove the accused committed the crime beyond reasonable doubt, which is the criminal standard of proof.

OR

ERROR 2: 'Trial could be heard in either the Magistrates' Court or using arbitration at VCAT.'
CORRECTION: Culpable driving does not fall within the jurisdiction of the Magistrates' Court. Criminal cases are not heard at VCAT and the dispute resolution method of arbitration is not used for criminal cases. VCAT and arbitration are only appropriate for the resolution of civil disputes. Culpable driving is a serious indictable offence and would therefore be heard in the criminal jurisdiction of the County Court, and may also be heard in the Supreme Court.

OR

ERROR 3: 'The jury sentenced John to twenty years' imprisonment.'
CORRECTION: A jury does not sentence the accused. The jury only decides the verdict, while the judge is in charge of sentencing the accused by imposing an appropriate criminal sanction.

2 marks

Mark allocation

- 1 mark awarded for identifying one error in this scenario.
- 1 mark awarded for explaining the correct definition, process or procedure.

Tips

- *This 'errors question' combines key knowledge and key skills from both Area of Study 1 and Area of Study 2 in Unit 4.*
- *This question assesses the key skill of applying legal principles to relevant cases and issues. This question allows for the application of course content and theory, rather than simply providing memorised information. Students who have difficulty applying their knowledge will benefit from practising how to answer these types of questions.*

End of Question 2

Question 3

Discuss **two** relationships between courts and Parliament in law-making.

Sample response

Any two of the following relationships:

The relationship between courts and Parliament in law-making is lively, and sometimes strained. The laws of Parliament (statutes) are interpreted by the courts in their judgments (forming the 'common law'). Often, courts make decisions that Parliament is unhappy with, or did not intend for the statute to allow. In such situations, the Parliament may change the law to prevent future decisions of that nature from being made by courts. For example, in *State Government Insurance Commission v Trigwell (1979) [Trigwell's case]*, the Victorian Parliament disagreed with the High Court ruling and passed legislation [*Wrongs (Animals Straying on Highways) Act 1984* (Vic)] to prevent future cases from following the established common law relating to stray animals. It is important to note that Parliament cannot undo the effects of past court decisions; it can only change the law for future application. There have also been rare situations where a court decides to interpret a law in a manner that may be inconsistent with the statute. This is sometimes referred to as 'judicial creativity', and can be a source of enormous tension between the courts and the Parliament. In Australia, there have not been significant problems with judicial creativity, but there have been incidents where judges have pushed the boundaries of the statute, often when they believe that doing so is in the interests of justice.

OR

Another relationship between courts and Parliament in law-making is that Parliament is empowered by Chapter III of the Constitution to pass legislation to create courts and tribunals, setting out their jurisdictions, structures and procedures. For example, the *Magistrates' Court Act 1989* (Vic) was legislation passed by the Victorian Parliament that established the jurisdiction and structure of the Magistrates' Court of Victoria.

OR

One relationship between courts and Parliament in law-making is that the courts can interpret the wording in legislation or statutes. This is known as statutory interpretation. An example of this is *Deing v Tarola* (1993) – also referred to as the *Studded Belt Case* (1993). In this case Justice Beach (Supreme Court) interpreted the meaning of 'regulated weapon' in the *Control of Weapons Act 1990* (Vic).

OR

Another relationship between courts and Parliament in law-making is that Parliament can codify principles that have become common law. This is done by Parliament passing legislation that incorporates common law principles, therefore making common law into statute law. An example of this relationship is when the Federal Parliament codified common law principles in the Mabo Case (1992) into legislation – *Native Title Act 1993* (Cth).

2 marks

Mark allocation

- 2 marks awarded for an explanation of two relationships between courts and Parliament. Award only 1 mark if only one relationship is provided.

Tips

- *The Study Design stipulates that relationships (plural) between law-making bodies need to be discussed, so students should be able to discuss more than one relationship.*
- *Although using an example is not required, discussing a corresponding example (as in the responses above) is one way to demonstrate an understanding of the relationships between courts and Parliament.*

Question 4

Identify the difference between exclusive powers and concurrent powers.

Sample response

The difference between exclusive powers and concurrent powers is that exclusive powers are law-making powers held only by the Commonwealth. Examples of exclusive powers are section 114 (defence), section 115 (coining money/currency) and section 90 (customs and excise). Concurrent powers, on the other hand, are law-making powers shared between both the Commonwealth and State parliaments, such as taxation [section 51(ii)] and marriage [section 51 (xxi)].

2 marks

Mark allocation

- 2 marks for identifying and explaining the difference between the two powers. Award only 1 mark if the student defines the two powers without explaining the difference.

Question 5

Explain the impact of section 109 on exclusive powers and concurrent powers.

Sample response

Section 109 of the Constitution states that if both the Commonwealth and a state parliament make a law in an area of concurrent power and there is an inconsistency between the two, then the Commonwealth law prevails over the state law to the extent of the inconsistency.

1 mark

Mark allocation

- 1 mark for including an explanation of section 109.

Question 5 – continued

Tips

- *Section 109 is specifically listed in the Study Design so students must know it (section 128 regarding referendum procedure is the other section specifically listed in the Study Design). Students must also learn and be able to define specific and residual powers (although this question only concerns exclusive and concurrent powers). A question could be asked about any of the four law-making powers specifically listed in the Study Design, as a way to assess the key skill of identifying the types of law-making powers.*
- *Students may provide examples (as above), although this is not a compulsory key skill in Area of Study 2 (Unit 3).*

Question 6

Explain what 'referral of powers' is, and analyse the impact of the referral of powers on the division of law-making powers.

Sample response

Referral of powers is when states give (or refer) some of their law-making powers to the Commonwealth, enabling the Commonwealth Parliament to make laws in that area of law. Section 51(xxxvii) of the Constitution gives the Commonwealth Parliament power to legislate on matters that have been referred to the Commonwealth by any state. Since the Commonwealth Parliament has the power to make laws that apply to the whole of Australia, the states may believe that some areas of law-making would be best dealt with by the Commonwealth Parliament. Therefore, the states can choose to refer a particular power to the Commonwealth Parliament. Examples of law-making powers that the states have referred to the Commonwealth Parliament include custody, maintenance and access of ex-nuptial children; workplace/ industrial relations and terrorism.

The impact of referral of powers on the division of law-making powers is that it will result in a shift of power from the states to the Commonwealth Parliament. The Commonwealth Parliament's law-making powers will increase, and the states' law-making powers will be reduced. A decision by the states to refer one of their law-making powers to the Commonwealth Parliament must be considered to be in the best interests of the country and Australians. Some matters that are unclear regarding the impact of referral of powers are first, whether or not a referral of power from the states to the Commonwealth Parliament can be cancelled by the particular state; second, what the effect would be if the states decided to reverse their referral of power; and third, once a law-making power is referred by a state to the Commonwealth Parliament, whether or not it becomes an exclusive power of the Commonwealth Parliament or a concurrent power shared with the states.

4 marks

Mark allocation

- 1 mark awarded for an explanation of what the referral of powers is.
- 3 marks awarded for analysing the impact of the referral of powers on the division of law-making powers.

Tips

- *This question assesses the key skill of analysing the impact of the referral of powers on the division of law-making powers.*
- *Students may include examples to illustrate their points, but examples are not required.*

End of Question 6

Question 7

Compare mediation and arbitration as types of dispute resolution methods used by courts. Give an example of when each method is used.

Sample response

One similarity between mediation and arbitration is that they are both alternative dispute resolution (ADR) methods used by courts and tribunals, such as the Victorian Civil and Administrative Tribunal (VCAT), to assist the parties involved to resolve civil disputes before an unbiased, impartial and independent third party. Both methods are less formal, less time-consuming and less expensive ways of resolving civil disputes compared with traditional litigation in court.

One difference between mediation and arbitration is the role of the third party. The role of a mediator (impartial third party) is to listen to the parties and facilitate discussion encouraging the parties to co-operate and negotiate to make their own decision in settling the dispute. However, a decision made in mediation is not legally binding, which means that parties do not have to follow the decision made. Also, a mediator does not suggest outcomes or give advice to the disputing parties. In contrast, the role of an arbitrator (impartial third party in arbitration) is to listen to the disputing parties and actually decide the outcome by imposing a legally binding decision that the parties must follow.

One example of when mediation is used is court-annexed mediation in the Magistrates' Court, which is a pilot program for all defended civil disputes under $10,000 in Sunshine, Werribee and Latrobe Valley Magistrates' Courts. This mediation program resolves issues in a cost-effective and timely manner. The Supreme Court also uses mediation to resolve civil cases in the Supreme Court Mediation Centre, which opened in March 2008. In addition, both the County Court and Supreme Court have judge-led mediation programs, which were set up in 2010.

An example of when arbitration is used is when the Magistrates' Court refers a civil claim involving less than $10,000 to arbitration, resulting in parties having their dispute resolved in a less formal atmosphere without the strict courtroom rules of evidence and procedure. In 2010, the Supreme Court also established an Arbitration List in the Supreme Court's Commercial Court, encouraging parties to resolve commercial/ business disputes in a timelier manner by using arbitration.

4 marks

Mark allocation

- 2 marks awarded for comparing mediation and arbitration by discussing how they are similar and how they are different.
- 1 mark awarded for an example of when mediation is used in courts (students can use specific cases/examples to support their answer, but this is not a compulsory key skill).
- 1 mark awarded for an example of when arbitration is used in courts (students can use specific cases/examples to support their answer, but this is not a compulsory key skill).

Question 7 – continued

Tips

- *Students need to be aware that the task word 'compare' (which is mentioned in the Study Design as a key skill) requires discussion of both similarities and differences in their answer.*
- *As per the Study Design, students must learn all dispute resolution methods used by courts and VCAT, including mediation, conciliation, arbitration and judicial determination.*

Question 8

Explain what a petition is and evaluate the effectiveness of petitions as a method used by individuals to influence a change in the law.

Sample response

A petition is a formal, written request (usually in the form of a list of signatures) to Parliament or government to take action on a particular issue or a suggested change in the law. Individuals can present petitions to their local MP to pressure the government to change the law.

One strength of petitions as a method used by individuals to influence a change in the law is that it allows people to have a say in law-making decisions. Obviously, a large number of signatures on the petition indicates greater support for the suggested change in the law. Petitions can also draw Parliament's attention to a particular issue or law, therefore possibly influencing Parliament to change this particular law.

However, a weakness associated with petitions as a method to influence a change in the law is that there is no guarantee that Parliament will take any action to change the law. In fact, Parliament may simply ignore the petition and the process of collecting signatures would have been a waste of time.

4 marks

Mark allocation

- 1 mark awarded for an explanation of what a petition is.
- 3 marks awarded for a detailed evaluation of the effectiveness of petitions, including discussing the strengths and weaknesses of petitions as a method for legal change.

Tips

- *This question assesses the key skill of evaluating the effectiveness of methods used by individuals and groups to influence change in the law.*
- *It is important that students are aware that all methods used to influence change in the law will only be effective if they gain Parliament's attention.*
- *In addition to petitions, students should also learn about demonstrations and the use of the media to influence a change in the law (as per the Study Design).*
- *Note: the following task words all mean the same thing:* evaluate, critically evaluate, *and* critically examine. *To gain full marks, students must discuss both strengths (advantages) and corresponding weaknesses (disadvantages) in their answer. Students often do not address these task words correctly.*

End of Question 8

Question 9

a. Explain what is meant by structural protection of rights, providing at least **one** example to support your answer.

Sample response

Structural protection of rights means the systems, structures or mechanisms in the Commonwealth Constitution that indirectly protect rights and reflect the checks and balances built into the Commonwealth Constitution to prevent misuse or abuse of power by the Commonwealth Parliament.

Examples include representative government, responsible government and separation of powers, all of which operate to provide structural protection of rights and prevent the misuse or abuse of power.

2 marks

Mark allocation

- 1 mark awarded for an explanation of what structural protection of rights means.
- 1 mark awarded for providing at least one example of structural protection of rights.

Tips

- *Regarding the means by which the Commonwealth Constitution protects rights, students could be asked a question about express rights and implied rights, as well as about structural protection of rights (as per the Study Design).*

b. Discuss the facts and the significance of **one** High Court case relating to the constitutional protection of rights in Australia.

Sample response

One High Court case relating to the constitutional protection of rights in Australia is *Lange v. Australian Broadcasting Corporation (1997).* This case involved former New Zealand Prime Minister David Lange, who sued the Australian Broadcasting Corporation (ABC) for defamation because of comments and allegations made about him on the ABC's *Four Corners* current affairs program. David Lange insisted that the comments made about him and his time in office as Prime Minister on *Four Corners* were untrue and defamatory. The ABC, in its defence, argued that the Commonwealth Constitution protects an implied right to freedom of political speech, also referred to as an implied right to freedom of political communication. In deciding the Lange case, the High Court held in favour of the ABC, agreeing that an implied right to freedom of political speech does exist and is therefore protected by the Constitution.

The significance of the *Lange v. ABC* case is that the High Court confirmed that the Commonwealth Constitution does protect the implied right to freedom of political communication, by placing limitations on laws that can be made to curtail political communication. This means Australians cannot be prevented from communicating political information or ideas that affect the people of Australia. In interpreting the Constitution, the High Court concluded that the right to freedom of political speech—speech regarding political matters that affect the people of Australia—is implied in the Constitution. This case also

Question 9 – continued

established that, depending on the circumstances, matters outside of Australia (such as matters relating to New Zealand or even the United Nations) may fall within the scope of political matters that affect the people of Australia.

The High Court also extended the defence of qualified privilege, which is a defence to defamation, to cover circumstances where it was reasonable to publish information in relation to the implied right to freedom of political speech or communication.

4 marks

Mark allocation

- 2 marks awarded for discussing the facts and decision of one High Court case regarding constitutional protection of rights in Australia.
- 2 marks awarded for an explanation of the significance of one High Court case regarding constitutional protection of rights in Australia.

Tips

- *Students only need to briefly explain the facts of the case, as the main focus of answer should be on its significance.*
- *Appropriate cases that students may discuss, as listed on page 36 of the VCE Legal Studies Study Design, are:*
    - *Cole v. Whitfield (1988)*
    - *Nationwide News Pty Ltd v. Wills (1992)*
    - *AMS v. AIF (1999)*
    - *Attorney General (Vic); ex rel Black v. Commonwealth (1981)*
    - *Re Loubie (1986)*
    - *Australian Capital Television Pty Ltd v. Commonwealth [No. 2] (1992) – Political Advertising Case*
    - *Lange v. Australian Broadcasting Corporation (1997)*
    - *Roach v. Electoral Commissioner (2007)*

2 + 4 = 6 marks

Question 10

India-Rose attempted to resolve her legal dispute using alternative dispute resolution methods, but was unsuccessful. She then proceeded to trial and was awarded $600,000 for injuries she received in a car accident.

a. This case would have gone through a number of pre-trial procedures before being heard in the Supreme Court. Compare the purpose of civil pre-trial procedures with the purpose of criminal pre-trial procedures.

Sample response

The purpose of civil pre-trial procedures is to ask both parties to reveal what they know about the civil case in order to clarify the nature of the claim and what remedy is being sought, as well as encourage an out-of-court settlement before going to trial.

The purpose of criminal pre-trial procedures is to allow police to investigate and gather evidence relating to a crime so they can correctly identify the offender (whilst upholding the presumption of innocence), protecting the rights of suspects and protecting the community from potential crimes being committed by the suspect(s).

The purpose of civil pre-trial procedures is different from the purpose of criminal pre-trial procedures because criminal pre-trial procedures do not encourage out-of-court settlements, as trials must be decided in a courtroom. Also, civil pre-trial procedures do not require police to investigate or gather evidence because the parties involved gather their own documentary evidence.

2 marks

Mark allocation

- 1 mark awarded for describing the purpose of civil pre-trial procedures and the purpose of criminal pre-trial procedures.
- 1 mark awarded for comparing the purpose of civil pre-trial procedures with the purpose of criminal pre-trial procedures.

Tips

- *This question addresses a key knowledge requirement in the Study Design, as well as assessing the key skill of comparing the purposes of criminal and civil pre-trial procedures.*

b. Identify one other court that could have heard this case and explain why it could do so. Then describe the entire criminal jurisdiction of that particular court.

Sample response

One other court that could have heard this civil case is the County Court because it has unlimited civil jurisdiction, which means it can hear civil claims for any amount. The original criminal jurisdiction of the County Court is to hear serious indictable offences, such as rape, drug trafficking, and armed robbery. The appellate criminal jurisdiction of the County Court is to hear criminal appeals from the Magistrates' Court against a conviction or sentence (severity or leniency of sentence).

4 marks

Mark allocation

- 2 marks awarded for correctly identifying the County Court and explaining why it is the one other court that could have heard this trial.
- 2 marks awarded for describing both the original and appellate criminal jurisdiction of the County Court. Award only 1 mark if part of the jurisdiction is not included.

Tips

- *This question assesses the key skill of describing the jurisdiction of specific courts within the Victorian court hierarchy.*
- *Students must learn the original and appellate jurisdictions of the Victorian Magistrates' Court, County Court, and Supreme Court (Trial Division and Court of Appeal), as per the Study Design.*

c. Identify and define the type of civil remedy awarded to India-Rose. Discuss the purpose of this type of civil remedy.

Sample response

The civil remedy was that India-Rose was awarded $600,000 in damages for injuries she received in a car accident.

'Damages' is a civil remedy where a sum of money is awarded to a successful plaintiff in a civil case and paid by the defendant to compensate the plaintiff. Different types of damages are available as forms of compensation. There are compensatory damages (specific damages and general damages), exemplary damages, aggravated damages, nominal damages and contemptuous damages.

The purpose of damages is to compensate the plaintiff for an injury or loss that resulted from the defendant's actions, and to return the wronged party (plaintiff) to the original position he or she was in before the civil wrong occurred.

3 marks

Mark allocation

- 1 mark for correctly identifying damages as the civil remedy awarded.
- 1 mark awarded for defining damages.
- 1 mark awarded for discussing the purpose of damages.

Tips

- *This question assesses a key knowledge requirement listed in the Study Design: knowing the purpose of civil remedies.*
- *This question assesses two key skills under Area of Study 2 (Unit 4) in the Study Design: the key skill of defining key legal terminology (and using it appropriately), and the key skill of discussing the purpose of civil remedies.*
- *Students should note that the purpose of civil remedies is to restore the plaintiff, as the wronged party, back to their original position before the wrong by the defendant occurred. Students often make the mistake of stating that the purpose of civil remedies is to compensate the plaintiff. This is incorrect because compensatory damages are the only civil remedy with the purpose of compensation.*
- *Students should refer to the stimulus material in their answer by incorporating the names of parties mentioned in the case study.*

2 + 4 + 3 = 9 marks

Question 11

a. Explain the role of a jury in Victoria and describe **one** factor that influences their composition.

Sample response

The jury system is a fact-finding body of twelve (in criminal trials) or six (in civil trials) people who are Australian citizens over the age of 18, randomly selected from the community to determine the outcome of a case in court. The role of a jury in Victoria is to listen to all the facts of a case and evidence presented in the courtroom, apply the law and decide a verdict of guilty or not guilty in a criminal trial, or liable or not liable in a civil trial.

One factor that influences the composition of a jury is the *Juries Act 2000* (Vic), which states that some potential jurors can be disqualified, ineligible or excused for a good reason from serving on a jury. For example, people who have been convicted of a criminal offence, people with a disability, people who cannot speak or understand English adequately. People who work in the legal profession such as lawyers, judges and police officers must also be excluded. Others can be excused for a good reason such as pregnancy, living too far away from the court, advanced age or illness.

4 marks

Mark allocation

- 2 marks awarded for explaining the role of a jury in Victoria.
- 2 marks awarded for describing one factor that influences the composition of a jury.

Tips

- *This question assesses a key knowledge requirement in the Study Design: knowing the role of juries and the factors that influence their composition.*
- *When describing a factor that influences the composition of a jury it is a good idea for students to include an example to support their answer, even though the question does not specifically ask for one.*

b. Critically evaluate **one** reason for retaining juries in criminal trials in Victoria and discuss **one** reform and **one** alternative to the jury system.

Sample response

One reason for retaining the jury system in criminal trials in Victoria is that it is considered a 'trial by one's peers', meaning juries are made up of ordinary people from society who reflect community values. This is beneficial because it provides an opportunity to involve average citizens in the legal system. However, one weakness of the jury system is that serving on a jury may be too difficult for some people who may have problems understanding the law, legal terminology and complex or technical evidence, could be distracted by irrelevant matters or could get caught up in the way lawyers present their evidence, particularly if they are easily influenced by a lawyer's performance in the courtroom.

One reform that could be made to improve the current jury system is to provide further training to jurors so they have a better understanding of what jury service involves and what specific legal terminology used in court means. Courts could also appoint a specialist foreperson who is trained on legal matters with the ability of being able to advise the jury on court processes and procedures as well as the strict rules of evidence and procedure.

One alternative that could replace the jury system that currently exists in Victoria is to have a judge alone or bench of judges who would be able to decide cases more efficiently, as they

would have a better understanding of court processes and rules, and could utilise their legal knowledge, skills, expertise and years of experience working in the legal profession.

OR

One reason for retaining the jury system in criminal trials in Victoria is that it has been around for many years without major problems, so it has stood the test of time. It also upholds our constitutional right: Section 80 of the Commonwealth Constitution states our right to have a trial by jury for indictable offences. However, it can be argued that one weakness of the jury system is that jury decisions are not really final because appeals can be made that result in a change to the verdict. Some critics of the jury system argue that there is no point having a jury if its decision to convict an offender can be so easily appealed and then overturned by a judge in a higher court. Also, juries add to the cost and length of a trial, due to the selection and empanelment process, the time spent in explaining facts and evidence, lengthy jury deliberations, the judge's need to direct the jury and the possibility of a hung jury, which often results in a retrial.

One reform to the jury system would be to make juries provide reasons for their verdict, so that the parties involved in a case know exactly how the case was decided and the reason(s) behind the verdict reached by the jury.

One alternative to the jury system would be to have a specialist jury who are experts in their field to decide court cases. This would ensure cases are decided by jurors who have specialised knowledge and expertise in a specific area of law.

OR

One reason for retaining the jury system in criminal trials in Victoria is that the decision-making is shared among 12 people (in a criminal trial) or 6 people (in a civil trial) who are unbiased and impartial when deciding the outcome of a case, rather than just one judge deciding the outcome of the case. This allows for different views to be considered before a verdict of guilty or not guilty is reached, instead of only one judge making the decision on their own. However, a weakness of the jury system is that juries may not actually be impartial or unbiased and could bring their own personal biases or prejudices into a courtroom. Also, the fact that juries do not have to provide reasons for their verdict is another weakness because the parties involved in the case do not know how the jury actually reached their verdict or why they won or lost their case.

One reform to the jury system would be to provide better pay to jurors so that people have an incentive to participate in jury duty and not try and get out of serving on a jury if randomly selected.

One alternative to the jury system would be to employ professional jurors who have a stronger understanding of legal terms, rules of evidence and procedure used in court.

OR

One reason for retaining the jury system in criminal trials in Victoria is that it can be argued that juries are a cross-section of the community. Potential jurors are randomly selected from different ages, genders, occupations, levels of education, and cultural and social backgrounds within the community. However, a weakness of juries is that jurors may not represent a true cross-section of the community because not all people are allowed to serve on a jury. Some

people are disqualified or ineligible, whilst other people may be eligible but temporarily or permanently excused for a valid reason. Also, some people may be challenged by a lawyer during the empanelling process, which lessens the element of random selection and suggests that a jury is somewhat handpicked by the lawyers.

One reform to the jury system would be to reduce the number of people who are disqualified or ineligible to serve on a jury. This would ensure more people are available and eligible to serve on a jury as well as ensure a more representative cross-section of society is empanelled.

One alternative to the jury system would be to appoint assessors with relevant education, training and experience.

5 marks

Mark allocation

- 3 marks awarded for critically evaluating one reason for retaining juries in Victoria. This means 1 mark for stating a reason, and 2 marks for a critical evaluation of that reason, including a discussion of the strengths/advantages and weaknesses/disadvantages of the jury system.
- 1 mark awarded for discussing one reform to the jury system.
- 1 mark awarded for discussing an alternative to the jury system.

Tips

- *This is a broad question with a range of reasons, strengths (advantages), weaknesses (disadvantages), reforms and alternatives that students can choose to discuss.*
- *This question assesses two key skills: critically evaluating the effectiveness of juries; and suggesting and discussing reforms and alternatives to the jury system.*
- *The task words* critically evaluate *mean it is necessary to discuss both the strengths and corresponding weaknesses.*
- *During reading time, students should plan the content and structure of their answer so they understand what relevant information is required in order to gain full marks.*
- *Note that students often confuse reforms and alternatives to the jury system. Reforms are changes or improvements made to the current jury system, whereas alternatives are when the existing jury system would be abolished and replaced with a new system.*

4 + 5 = 9 marks

Question 12

Timothy was charged with rape and committed to stand trial by a magistrate. He was remanded in custody until his trial, where he will plead not guilty of committing this crime.

a. Describe the purpose of a committal hearing.

Sample response

The purpose of a committal hearing is to determine whether there is sufficient evidence against the accused to support a conviction at trial in a higher court – either the County Court or Supreme Court, depending on the crime. This criminal pre-trial procedure held in the Magistrates' Court ensures that the trial is not a waste of time and money.

1 mark

Mark allocation

- 1 mark awarded for an explanation of the purpose of a committal hearing.

Tips

- *Students need to ensure they can describe the purpose of committal hearings, and not just explain what committal hearings are.*
- *This question assesses a key knowledge requirement in the Study Design and also addresses the key skill of describing the pre-trial procedures for the resolution of criminal cases.*
- *Students must ensure they know the difference between criminal and civil cases, so that if a case scenario is provided in a question, students can correctly identify whether the case is a criminal or civil case. Key words indicating a criminal case are: crime, charged, accused, offender, prosecution, sanction, punishment, guilty/ not guilty. Key words indicating a civil case are: sue, plaintiff, damages, compensation, remedy.*

b. Define bail and remand, and compare them.

Sample response

Bail is a criminal pre-trial procedure that upholds the accused's right to presumption of innocence, whereby an accused person is free to be released from custody into the community while awaiting their hearing or trial to commence in court, allowing the accused time to prepare their case before being heard in court.

Remand is a criminal pre-trial procedure that involves the holding of an accused in custody while awaiting their trial, during their trial and when awaiting sentencing by a judge after being found guilty of committing a crime.

The difference between bail and remand is that bail occurs when an accused is released from custody into society before their trial date on the condition that he or she returns to court for the hearing or trial. Other conditions may be set for an accused person to be released on bail, such as surety, a guarantee to pay a sum of money, reporting to a police station and surrendering one's passport. In comparison, remand occurs when bail is denied (refused) or when bail is granted but the accused cannot pay the necessary payments themselves or locate a surety. Hence, the accused person must instead remain in custody until their trial.

3 marks

Mark allocation

- 2 marks awarded for defining both bail and remand.
- 1 mark awarded for an explanation of the difference between bail and remand, including using a term that indicates the student is making a comparison. Award only 2 marks if definitions are provided without a comparison.

Tips

This question assesses a key knowledge requirement in the Study Design as well as the key skill of defining key legal terminology and using it appropriately.

- *When distinguishing between two terms, students should use a term such as 'whereas', 'however', 'in comparison' or 'on the other hand' to indicate they are distinguishing between two terms.*

c. Identify and critically examine **one** criminal sanction the judge could impose if Timothy is found guilty in his rape trial, and discuss the ability of the criminal sanction you identified to achieve **one** purpose of criminal sanctions.

Sample response

One criminal sanction the judge could impose if Timothy is found guilty in his trial is imprisonment. Imprisonment occurs when an offender loses their freedom for a period of time because they have been convicted of committing a crime and hence sentenced to serve time in jail. Judges impose a minimum and maximum imprisonment sentence, unless the convicted criminal is sentenced to serve life imprisonment with no minimum term.

One strength of imprisonment is that it punishes the offender for breaking the law. They lose their freedom and are removed from society. They must remain in jail until they serve out their sentence, whilst people in the community are protected and kept safe from the offender who has committed the crime.

However, one weakness of imprisonment is that the offender may not be rehabilitated. In fact, offenders may come out of prison worse criminals than when they went in, particularly if while in jail they have mixed with other criminals who have committed serious crimes and perhaps picked up new ways of committing offences. Therefore, imprisonment can result in more crimes because of the bad influence of other prisoners, as well as the fact that after having served time in jail it is difficult to reassimilate into society.

Deterrence is one purpose of criminal sanctions that imprisonment effectively achieves. Imprisonment should prevent offenders from committing further offences once they are released, as the offender would not want to go to jail again. Imprisonment also achieves the purpose of deterrence not only for the offender who committed the crime, but to also deter other people in society who will fear the punishment given to offenders and therefore not want to go to jail themselves.

4 marks

Mark allocation

- 1 mark awarded for identifying what the criminal sanction of imprisonment is.
- 2 marks awarded for critically examining imprisonment.
- 1 mark awarded for discussing the ability of the criminal sanction identified to achieve one purpose of criminal sanctions.
- Students should refer to the stimulus material in their answer by incorporating the names of parties mentioned in the case study.

Tips

- *This question assesses a key knowledge requirement in the Study Design as well as the key skill of discussing the ability of criminal sanctions to achieve their purposes.*
- *Apart from punishment and deterrence (used in this sample response), other appropriate purposes of criminal sanctions are protection, rehabilitation, denunciation and retribution.*
- *The task words* critically examine *require students to discuss at least one strength and one weakness of the criminal sanction they identify. Students often address this task incorrectly.*
  Remember: critically examine, critically evaluate *and* evaluate *are all task words that require students to discuss both strengths (advantages) and weaknesses (disadvantages) in order to gain full marks.*

1 + 3 + 4 = 8 marks

End of Question 12

Question 13

Compare **two** major features of the adversary system of trial with the corresponding **two** major features of the inquisitorial system of trial, and suggest and discuss **two** reforms to the adversary system that would make it more effective.

Sample response

One feature of the adversary system of trial is the role of the judge. The judge does not have a very active role in the adversary system. Instead, the judge is an impartial and independent adjudicator who oversees court proceedings without favouring either party, ensures court processes are followed, ensures both parties follow court rules and are treated fairly, ensures the strict rules of evidence and procedure are followed, decides questions of law, asks questions only to clarify issues, directs the jury (if a jury is empanelled), sentences a guilty person by imposing a criminal sanction or decides on a civil remedy in civil cases that do not have a jury. In comparison, the judge in the inquisitorial system has a more active role in the examination of a case and is involved in investigating the facts, determining what evidence is presented, questioning both the plaintiff, the defendant, and witnesses, applying the law to the facts and making a decision.

Another feature of the adversary system of trial is the need for legal representation. A lawyer represents their client (the parties involved in the case) by preparing and presenting their client's case to the court and questioning witnesses under oath. Legal representation is necessary because lawyers are experts in articulating legal arguments, presenting evidence and asking witnesses relevant questions to present the best possible case on behalf of their client. Legal representatives also know and understand the strict rules of evidence and procedure required to be followed in court. In the inquisitorial system, on the other hand, the legal representative assists the judge to determine issues for investigation and also assists the judge in determining the truth. Sometimes legal representatives ask witnesses questions, but only after examination by a judge. Therefore, legal representation is not really essential in the inquisitorial system because lawyers mainly act as the judge's assistant.

One reform to the adversary system would be to give the judge a more active role, particularly in calling witnesses and asking questions, more like a judge in the inquisitorial system. This would enable judges to ensure cases are decided correctly, resulting in justice being served and a fair outcome for the parties involved in the case. Revising the role of the judge would also allow them to utilise more of their legal education, knowledge, skills, expertise and years of experience working in the legal profession, rather than just overseeing court proceedings with little involvement. This reform would make the adversary system more effective.

Another reform to the adversary system would be to allow witnesses to tell their own story or version of events in their own way, rather than being constantly interrupted by the lawyer's questions. This would assist witnesses in giving their evidence in a more relaxed environment, as opposed to the current situation, where witnesses may feel intimidated by only being able to answer questions asked by lawyers. Witnesses under pressure or feeling nervous or stressed may leave out crucial points of evidence, which does not help in determining the truth. Witnesses would likely feel more comfortable giving evidence in their own words rather than just responding to questions. The judge could direct them to keep to the relevant points only, resulting in a more effective adversary system.

8 marks

Question 13 – continued

Mark allocation

- 4 marks (2 marks for each comparison) for comparing two major features of the adversary system with the corresponding two features of the inquisitorial system (if only one feature is compared, award only 2 marks).
- 2 marks for suggesting two reforms.
- 2 marks for discussing how the reforms would make the adversary system more effective.

Tips

- *This question assesses two key skills: comparing the major features of the adversary system with the inquisitorial system, and suggesting and discussing reforms to the adversary system.*
- *A range of possible reforms should have been discussed in class.*
- *Students could be asked a question relating to any of the five major features of the adversary system of trial, as listed in the Study Design: the role of the parties, the role of the judge, the need for the rules of evidence and procedure, standard and burden of proof and the need for legal representation.*

Question 14

'Parliament is more effective than courts when it comes to making laws. Therefore, law-making should be left to Parliament only and courts should focus on resolving disputes, not making laws.'

Discuss the statement above, indicating the extent to which you agree or disagree. In your answer include a critical evaluation of the law-making processes of Parliament and courts.

Sample response

I partially agree with this statement because even though Parliament is effective when it comes to making laws, so are the courts, as both of these law-making bodies have a role to play in shaping the law. Therefore, law-making should not be left only to parliament – both bodies have numerous strengths and weaknesses when it comes to law-making and are therefore equally necessary.

One strength of the law-making processes of Parliament is how quickly it can change the law when the need arises. It is the supreme law-making body, meaning Parliament can make laws that impact or change the way courts can interpret statute. However, a weakness of Parliament's law-making processes is that it can only pass laws when it is sitting. Therefore, when Parliament is not in session, laws cannot be made.

Another strength of the law-making processes of Parliament is that it discusses bills (proposed laws) in detail via the various steps involved in passing a bill through the lower and upper houses of Parliament. This ensures thorough discussion has taken place before the bill becomes law. Legislation is not passed without proper discussion and debate, allowing consideration of all opinions of political parties and MPs. However, a weakness of the law-making processes of Parliament is that this detailed discussion and debate results in the bill process being very time-consuming. It may take a long time for a law to be made, especially if changes are made to the original bill or MPs cannot agree and the bill has to be passed back and forth between the upper and lower houses.

Question 14 – continued

Another strength of these law-making processes is that Parliament is an elected and representative body, so if new laws do not represent the views of the majority of people they will be voted out at the next election. However, a weakness is that Parliament may not be able to represent the views of all people, as well as the fact that MPs are subject to party politics and so may pass laws that their party wants, rather than laws the majority of people want.

Another strength is that Parliament can delegate law-making powers to subordinate authorities to ease its workload, as well as access experts in specialised areas. However, a weakness of delegating is that subordinate authorities (except local councils) are not elected representatives, resulting in laws being made by bodies not voted in by the people.

Parliament's access to resources and experts when researching the need for change in the law is another strength of its law-making processes. Parliament is able to investigate issues and consult with formal law reform bodies, such as the Victorian Law Reform Commission. However, a weakness of Parliament's law-making processes is that such investigations are expensive and time-consuming.

As with Parliament, courts also have numerous strengths and weaknesses when it comes to shaping the law.

One strength of courts is that judges are appointed, rather than elected like politicians. This means courts are not subject to views of the community or party politics when making decisions. However, a weakness of judges being appointed and not elected is that they are not directly accountable to the population for the decisions they make.

Another strength of the processes of courts is that the doctrine of precedent allows for a degree of consistency when interpreting the law, because previous decisions are applied to current cases with similar facts. It also ensures flexibility in the law, since courts can avoid following precedent by using one of the four techniques available (reversing, overruling, distinguishing, and disapproving). However, a weakness of the law-making processes of courts is that because some judges are conservative or traditional and may not want to depart from following precedent, inflexibility may result.

Another strength of the law-making processes of courts is that once a case is brought before them, courts can quickly resolve the dispute by making a decision. This decision can then form binding legal precedent that lower courts in the same hierarchy must follow, or persuasive precedent that higher courts or courts from a different hierarchy (overseas or interstate) can choose to follow. However, a weakness of the law-making processes of courts is that in order for courts to have a say on a statute, they must wait for a relevant case to be brought before them, otherwise the law cannot be shaped, interpreted or changed.

Courts' involvement in statutory interpretation is another strength of their law-making processes because it allows courts to clarify the meaning of wording in legislation passed by Parliament, filling in any gaps or loopholes. However, a weakness of the law-making processes of courts is that Parliament has the power to override court-made law because it is the supreme law-maker.

In conclusion, both Parliament and courts have numerous strengths regarding their law-making processes, making them effective law-makers. However, they both have weaknesses too. Therefore, law-making should not be left only to Parliament, but shared with the courts.

10 marks

Mark allocation

- Mark globally as this is a broad question with a range of strengths (advantages) and weaknesses (disadvantages) that can be discussed. Generally, students can earn one mark for each relevant/correct point discussed, but to gain full marks responses must address all parts of the question – indicating the extent to which they agree or disagree with the statement, and discussing strengths and weaknesses of the law-making processes of Parliament and the courts.
- Points must be sufficiently discussed in order to gain full marks. Do not award full marks if students only list strengths and weaknesses without detailed discussion and critical evaluation.

Tips

- *The 2011 VCAA end-of-year exam for VCE Legal Studies will have only one 10-mark extended response question that all students must answer. There is no choice between two options.*
- *This question assesses two key skills: critically evaluating the law-making processes of Parliament, and critically evaluating the law-making processes of courts.*
- *Since there are many possible points for discussion, students are advised to learn the strengths and weaknesses studied in class.*
- *Students often do not understand that* critically evaluate *means to discuss both the strengths (advantages) and corresponding weaknesses (disadvantages). Students should practice providing corresponding weaknesses with their chosen strengths.*
- *During reading time, students should plan the content and structure of their answer so they understand what information is required in order to gain full marks.*

END OF SAMPLE RESPONSES BOOK