

Legal Studies Unit 2 exam 2019 and suggested answers

The following exam covers the three areas of study in Unit 2 of the *VCE Legal Studies Study Design (2018–2022)*.

The exam consists of two sections comprising 10 questions presented in the form of a question and answer book. All questions are compulsory. The total marks available are 80.

The exam is divided into two sections:

- Section A: seven short-answer questions, including questions with multiple parts, and extended-response questions covering all areas of study in Unit 2
- Section B: three short-answer questions with multiple parts, each covering a different area of study in Unit 2.

Some questions are introduced with stimulus material.

Additional space is provided at the end of the question and answer book.

The exam and suggested answers are based on the authors' interpretation of the *VCE Legal Studies Study Design*.

Teachers are advised to preview and evaluate all exam material before distributing it to students.

Name: _____ Teacher: _____

LEGAL STUDIES UNIT 2

Written examination 2019

Reading time: 15 minutes

Writing time: 2 hours

QUESTION AND ANSWER BOOK

Structure of book

<i>Number of questions</i>	<i>Number of questions to be answered</i>	<i>Number of marks</i>
Section A	7	40
Section B	3	40

- Students are to write in blue or black pen.
- Students are permitted to bring into the examination room: pens, pencils, highlighters, erasers, sharpeners and rulers.
- Students are NOT permitted to bring into the examination room: blank sheets of paper and/or white-out liquid/tape.
- No calculator is allowed in this examination.

Materials supplied

- Question and answer book.
- Additional space is available at the end of the book if you need extra paper to complete an answer. Clearly label all answers with the appropriate section and question number.

Instructions

- Write your name and your teacher's name in the spaces provided above on this page.
- All written responses must be in English.

Students are NOT permitted to bring mobile phones and/or any other unauthorised electronic devices into the examination room.

Question 3 (8 marks)

Ben and Kim, who are newly married, cancelled a booking at a wedding reception venue in a Victorian country town because of a dispute about the quality of the menu and the chosen dishes. At a tan sting of the wedding menu, Ben and Kim were not served the dishes they had requested. Although the couple had signed a booking agreement and paid a \$5000 deposit, they rebooked their reception with another venue and the wedding went ahead. The initial wedding reception venue took legal action, stating that the couple did not give them enough notice to find another booking, and demanded they pay 60% of their planned \$20 000 reception as a cancellation fee. The case was resolved through mediation in a Victorian tribunal.

a. Is this a criminal case or a civil case? Justify your answer. 2 marks

b. Identify and describe **one** other method of alternative dispute resolution the parties in this case could have used to resolve their dispute. 3 marks

Error 2 and correction

Error 3 and correction

Question 2 (13 marks)

Sally, a former shire councillor, sued the proprietor of a local newspaper following the publication of a defamatory article that incorrectly claimed that she had pushed a political rival, Simon, out of a photo opportunity with the shire mayor.

Sally initially asked for an apology to be published in the newspaper but this was refused. She later commenced legal proceedings against the owner of the newspaper, seeking up to \$300 000 in damages to compensate her for the emotional stress she and her family suffered and for loss of wages, as she had to take time off work for an extended period. Lawyers acting for the owner of the newspaper argued for a lesser amount in the County Court.

A six-person jury found that Sally had been defamed and the incorrect portrayal of the photo incident had damaged both her reputation and standing in the community.

The judge in the case awarded Sally \$170 000 in damages, which included an amount of \$20 000 for loss of wages. The owner of the newspaper was also ordered to pay her legal fees, which were \$55 000.

a. Using an example in relation to this case, define the term 'remedy'. 2 marks

b. Describe **one** of the purposes of the remedy awarded to Sally in this case and discuss the extent to which the remedy could achieve this purpose. 5 marks

Question 3 (12 marks)

In October 2017, anti-abortion activist, Kathleen Clubb, became the first person to be found guilty of breaching the Victorian *Public Health and Wellbeing Amendment (Safe Access Zones) Act 2015*, which bans individuals and groups from protesting directly outside premises that provide services for the termination of pregnancies. Ms Clubb was arrested after ignoring police warnings that it was unlawful for her to hand out anti-abortion pamphlets within a 150-metre 'safe zone' around an East Melbourne fertility clinic. Ms Clubb was ultimately fined \$5000 for her actions. The maximum penalty for breaching the Safe Access Zones law is 12 months' imprisonment.

In 2018, Ms Clubb and another anti-abortion protester, Graham Preston (who had been charged with breaching similar Safe Access Zones laws in Tasmania), challenged the validity of the Safe Access Zones laws in the High Court, claiming the laws breached their right to freedom of political communication, that is, their right to publicly express their views on political issues. In April 2019, the High Court dismissed Ms Clubb and Mr Preston's appeal and ordered them to pay the opposing parties' costs. In ruling against the activists, the court confirmed that while Australians do have the right to freedom of political communication, this does not give individuals and groups the right to force a political message on another person if that message is 'inconsistent with the human dignity of that person'.

References

Public Health and Wellbeing Amendment (Safe Access Zones) Act 2015,
http://www5.austlii.edu.au/au/legis/vic/num_act/phawaaza201566o2015493/s5.html
Clubb v. Edwards & Anor; Preston v. Avery & Anor (2019),
<http://eresources.hcourt.gov.au/downloadPdf/2019/HCA/11>

- a. Ms Clubb was originally found guilty and fined for her breach of the law in the Magistrates' Court.

Describe the main role of the Magistrates' Court in relation to this case. 2 marks

Suggested answers

Note: The answers below are suggestions only. For some questions, more than one answer is possible.

When making judgements about the quality of student answers to questions, teachers could be guided by some or all of the following factors (depending on the question): accuracy, relevance, completeness, breadth/depth of treatment, logic of connections, clarity, substantiation of claims, level of coherence. These factors are particularly useful to consider when marking answers to questions that require a global marking approach. These types of questions are multifaceted as they involve determining mark ranges for different aspects of a question. The factors listed above will provide useful reference points for discrimination within a marking range.

SECTION A (40 MARKS)

Question 1 (4 marks)

A range of institutions and bodies enforce criminal law in Victoria.

Identify and describe the law enforcement role of *one* institution or body that enforces criminal law in Victoria. **4 marks**

Note: Two alternative answers to this question are provided.

Victoria Police is the main law enforcement institution in Victoria and is responsible for enforcing much of the criminal law relating to summary and indictable offences. In order to enforce criminal law, Victoria Police has the power to undertake a range of activities, including detecting and investigating criminal offences and arresting offenders and laying criminal charges. The detection and investigation of criminal law involves questioning witnesses, victims and suspects, examining crime scenes and gathering evidence.

Victoria Police also has the power to prosecute summary offences in the Magistrates' Court, that is, Victoria Police will prepare a case against the accused and a member of its Prosecutions Division will act as prosecutor on behalf of the Crown in the case.

Alternative answer:

WorkSafe Victoria is a law enforcement institution in Victoria that has the responsibility of ensuring that all workplaces in Victoria are safe and healthy. If WorkSafe Victoria discovers that an employer or company has not provided a safe and healthy workplace, as required under legislation such as the Victorian *Occupational Health and Safety Act 2004*, it has the power to prosecute or issue a formal letter of caution informing the employer or company of its criminal breach and warning that future offences might result in prosecution.

In addition, in prosecuting employers or companies that breach safe and healthy workplace standards, WorkSafe Victoria can accept a commitment, in writing, from the accused to undertake action to comply with the standards within a reasonable amount of time.

Other possible institutions that enforce criminal law in Victoria:

- Local councils
- Environment Protection Authority Victoria
- Public Transport Victoria
- State Revenue Office Victoria

Marking guide:

1 mark for identifying one institution that enforces criminal law in Victoria

3 marks for describing how the selected institution enforces criminal law

Question 2 (6 marks)

Amelia, who is a 17-year-old secondary student, was caught stealing a mobile phone valued at \$200 from a retail store at her local shopping centre. Police were called to the centre and issued her an on-the-spot fine of two penalty units (\$330.44) for shoplifting as it was her first offence and the stolen property was valued at under \$600.

Discuss the extent to which the sanction imposed on Amelia is likely to achieve two of its purposes in this case.

One purpose of imposing a fine in this case would be to punish Amelia for her actions. Imposing a monetary penalty might adequately penalise Amelia for her actions, especially as she is a secondary student who could find the requirement to pay over \$300 to the court quite onerous. However, the effectiveness of the fine in achieving the purpose of punishment could depend on Amelia's ability to pay as the fine might not adequately punish her if her parents pay the fine for her or if she has a significant amount of savings.

Punishment by a court also involves removing the desire of victims and members of society for revenge and gives them a sense of satisfaction that 'justice has been served'. Given the relatively minor nature of Amelia's offence, her young age and the value of the stolen property (under \$600), issuing a \$330 fine appears to be proportional to the offence she committed.

Another likely purpose of imposing a fine in this case would be to specifically deter Amelia from recommitting a similar crime in the future and act as a general deterrence to discourage other members of society from committing a similar crime. Being a student who might have limited financial means, the imposition of a fine should achieve specific deterrence by minimising the chance that Amelia will reoffend due to the burden of the financial penalty on her. A fine might also achieve general deterrence as it could discourage other individuals in society, particularly young people who know Amelia, from committing similar offences. However, as mentioned previously, if Amelia is wealthy a fine might not be a sufficient deterrent as it might have little impact on her financial position.

Another purpose:

- Denunciation

Note: Protection and rehabilitation are also purposes of sanctions, but are not relevant in relation to this scenario.

Marking guide (global):

1–3 marks for discussing each purpose, noting the strength(s) and weakness(es) of the penalty in achieving its objective, taking into account the accuracy and relevance of the content, the level of coherence, and the substantiation of claims (**x two = 6 marks**)

Question 3 (8 marks)

Ben and Kim, who are newly married, cancelled a booking at a wedding reception venue in a Victorian country town because of a dispute about the quality of the menu and the chosen dishes. At a tasting of the wedding menu, Ben and Kim were not served the dishes they had requested. Although the couple had signed a booking agreement and paid a \$5000 deposit, they rebooked their reception with another venue and the wedding went ahead. The initial wedding reception venue took legal action, stating that the couple did not give them enough notice to find another booking, and demanded they pay 60% of their planned \$20 000 reception as a cancellation fee. The case was resolved through mediation in a Victorian tribunal.

- a. Is this a criminal case or a civil case? Justify your answer. 2 marks**

This is a civil case as it does not involve a crime but rather a dispute over a contract between two consumers (Ben and Kim) and a supplier of goods and services (the wedding reception venue), which is a civil matter. In other words, it is a dispute between two private parties over an alleged breach of rights that caused one party, the plaintiff, to suffer loss.

Marking guide:

1 mark for stating that this is a civil case

1 mark for providing a reason to justify why it is a civil case

- b. Identify and describe one other method of alternative dispute resolution the parties in this case could have used to resolve their dispute. 3 marks**

One method that could have been used to resolve this dispute, other than mediation, is conciliation, which is a process in which the parties to a dispute use the services of a trained, independent and impartial third party (referred to as a 'conciliator') to help them discuss their issues and reach their own mutually acceptable agreement to resolve the dispute. Where appropriate, the conciliator may also offer advice and suggestions about possible outcomes, or even a possible solution to settle the dispute.

Marking guide:

1 mark for identifying the method

2 marks for defining the method and describing its features

- c. Identify one tribunal or complaints body that could have been used to resolve this dispute and explain one way using this institution could promote access to justice. 3 marks**

This case could have been resolved at the Victorian Civil and Administrative Tribunal (VCAT) because it has the jurisdiction to hear disputes about the purchase or supply of goods and services in its Civil Claims List. This includes disputes between consumers and contractors over contracts.

Using VCAT to resolve this dispute could promote access to justice because of the relatively low cost, which means the parties might be more willing to use the tribunal, rather than a court, to help them resolve the dispute. The application fees at VCAT are significantly lower than court fees (for example, approximately \$500 for this case) and the informality of a VCAT hearing should help the parties to feel comfortable enough to present their own case and hence save the expense of obtaining legal representation.

Alternative answer:

VCAT provides a faster, simpler, less complex and less threatening way of resolving civil disputes compared to the court system. This can improve access because the parties to a case should be able to understand the processes and procedures and be more willing to use the tribunal instead of a court to resolve their dispute.

Note: Consumer Affairs Victoria could also be an appropriate body to resolve this dispute because it offers a free dispute settlement service to help people settle consumer disputes involving amounts of \$40 000 or less.

Marking guide:

1 mark for identifying an appropriate institution to resolve the dispute in this case

2 marks for explaining one way the use of the identified institution helps to promote access to justice

Question 4 (6 marks)

Carla, 35, drove at 100 km/h in a 60 km/hour area with a blood alcohol content of 0.22% (well over the legal limit) and hit a cyclist who suffered head injuries and died two days later. A judge in the Magistrates' Court found Carla guilty of culpable driving causing death and imposed a fine of \$500.

Identify the *three* errors in the scenario above and provide the correct outcome or process that should have occurred for each error.

Error 1 and correction:

This case would not have been heard in the Magistrates' Court.

Culpable driving causing death is an indictable offence that is heard in the County Court and not the Magistrates' Court.

Error 2 and correction:

A judge hearing a culpable driving case does not determine the guilt of the accused.

A jury of 12 is empanelled in the County Court to determine if a person charged with culpable driving causing death is guilty.

Error 3 and correction:

A fine, particularly a light fine of \$500, is unlikely to be imposed for the offence of culpable driving.

Culpable driving causing death carries a maximum penalty of up to 20 years' imprisonment and/or a fine of 2400 penalty units. As Carla was intoxicated and speeding at the time of the crash and is 35 years of age, a term of imprisonment is the most likely type of sentence to be imposed in this case, especially given standard sentencing laws, which state that the baseline standard sentence for the most serious offences (including culpable driving causing death) is set at 40% of the maximum sentence. The most common sentence for culpable driving imposed by Victorian courts is a term of imprisonment.

Marking guide:

1 mark for each error identified ((x three = 3 marks)

1 mark for providing the correct outcome or process that should have occurred for each error (x three = 3 marks)

Question 5 (5 marks)

Marco, a farmer who owns a vineyard in eastern Victoria, sued a neighbour for causing chemicals sprayed on his crops to drift onto Marco's grapevines and destroy them. The Supreme Court awarded Marco \$5 million in damages for losses caused by his neighbour's negligent spraying.

Identify and describe the role and civil jurisdiction of the court that resolved this case.

The court that resolved this case is the Supreme Court of Victoria (Trial Division), which has the power to hear civil disputes for unlimited monetary amounts. It also has the jurisdiction to hear civil appeals from the Magistrates' Court on a point of law.

The role of the Supreme Court of Victoria (Trial Division) was to decide if Marco, who was the plaintiff in this case, had established his claim and determine the amount of damages to be awarded if the claim was established. The liability and remedy in a civil case will generally be determined by either a judge sitting alone or by a jury comprising six ordinary citizens.

Marking guide:

1 mark for naming the correct court

2 marks for describing the original and appellate civil jurisdiction of the Supreme Court (Trial Division)

2 marks for describing the role of the Supreme Court (Trial Division) in this case—to determine if the plaintiff has established his claim and, if so, the amount of damages to be awarded

Question 6 (7 marks)

Using examples, evaluate two ways in which rights are protected in Australia.

Note: This is one of a number of possible answers to this question.

Two ways in which rights are protected in Australia are through the **Australian Constitution** and **statutes**.

The Australian Constitution recognises and protects the rights of the Australian people in a number of ways, including through the inclusion of five express (explicit) individual rights, which means that rights can only be removed by changing the Constitution via a referendum (or public vote). For example, the Australian Constitution expressly protects a limited right to freedom of religion, that is, the Commonwealth parliament cannot establish and impose or prohibit religion (Section 116) and the right to a trial by jury for a Commonwealth indictable offence. In addition, as a result of High Court interpretations, the Australian Constitution also protects the implied right of freedom of political communication.

However, one problem associated with the constitutional protection of rights in Australia is that this protection is very limited. For example, the Constitution only protects five rather narrow express rights rather than protecting a broad range of fundamental rights, such as the right to life, freedom from torture or the right to equality before the law.

Similarly, while the High Court can declare any Commonwealth legislation that infringes an express or implied constitutional right invalid, the court cannot make such a ruling until a relevant case has been before it for resolution, which is reliant on a party being willing to pursue a costly and time-consuming action.

Rights are also protected in Australia through statutory law passed by the Commonwealth, state and territory parliaments. The Commonwealth parliament has passed many pieces of legislation that apply to and protect the basic rights of all Australians, while the state and territory parliaments have legislated to protect the rights of the residents of that state or territory. For example, the Commonwealth parliament has passed the *Age Discrimination Act 2004*, the *Disability Discrimination Act 1992* and the *Racial Discrimination Act 1975*, which protect individuals from discrimination on the basis of attributes such as age, disability, race, gender and gender identity, while the Victorian parliament has passed the *Equal Opportunity Act 2010* to ban unlawful discrimination in the areas of employment, the provision of goods, services and accommodation, and membership of social clubs. This legislation also protects people against bullying and harassment in the workplace. However, there are exceptions that allow discrimination in certain circumstances. For example, religious organisations such as churches and religious schools can discriminate on the basis of a number of grounds, including a person's religious belief or activity, gender, sexual orientation and gender identity, in situations where the discrimination conforms to the general beliefs or principles of the religion or is reasonably necessary to avoid harming the religious sensitivities of parishioners.

In summary, while the Constitution does contain some express rights and implied rights, these rights are limited in their number and scope. Similarly, while many rights can be found in different federal, state and territory statutes, the approach is fragmented as Australia does not have a national charter of rights that applies to the entire country. Australians' understanding of their rights and those who tend to experience rights violations would be better served if rights were set out in a single document such as a bill of rights.

Other ways rights are protected:

- Victorian Charter of Human Rights and Responsibilities—legislation that requires the Victorian Government, local councils and other public authorities to act consistently with the rights listed in the Charter. However, complaints regarding breaches of the Charter can only be lodged with the Victorian Ombudsman and the Charter does not apply to the private sector (<https://www.humanrightscommission.vic.gov.au/human-rights/the-charter>).
- Common law—made through the decisions of judges in superior courts when deciding cases, and including the right against self-incrimination, the right to sue for false imprisonment, the presumption of innocence in criminal trials, freedom of speech, the presumption that the standard of proof in criminal cases is that of 'beyond reasonable doubt', and recognition of Native Title rights (Mabo case, 1992). However, governments are able to pass new legislation that overrides the common law.

Reference:

Human rights—what do I need to know, Australian Human Rights Commission, <https://www.humanrights.gov.au/our-work/human-rights-what-do-i-need-know-2008>

Marking guide (global):

1–3 marks for determining how well rights are protected in Australia through each possible way, taking into account the accuracy, relevance and completeness of the content, the level of coherence, and the logic of the arguments (**x two = 6 marks**)

1 mark for making an overall judgement that is consistent with the evaluation findings

Question 7 (4 marks)

Explain how **one** international declaration or treaty influences the protection of rights in Australia.

Note: This is one of a number of possible answers to this question.

There are a number of international declarations and treaties that support and protect the rights of individuals. One treaty that has had an influence on the rights of children in Australia is the United Nations Convention on the Rights of the Child (CRC). In 1990 the Australian Government ratified (that is, agreed to uphold and incorporate into law the rights set out in) this treaty. Every five years, since 1990, the Australian Government reports to the United Nations Committee on the Rights of the Child on how children are progressing in Australia and what the government is doing to protect children's rights.

As children are considered vulnerable, the CRC sets out special rights that apply to children (in addition to general rights set out in other treaties), such as the right to protection from abuse, the right to be cared for and have a home, and the right to have a say in decisions that affect them. The CRC recognises that children have special needs to help them develop to their full potential and have rights to protection from vulnerability, exploitation and abuse. The CRC covers a range of specific civil, political, cultural and social rights. Examples include the right to be treated fairly, the right to live and grow up healthy, the right to be safe, the right to get an education, and the right to play and have fun.

Many of the principles of the CRC are included in Australia's child protection laws. In Australia, the states and territories are responsible for child protection legislation and services. For example, the principal Act relating to child wellbeing and protection in Victoria is the *Children, Youth and Families Act 2005*, which encompasses specific legislation such as the *Adoption Act*, *Family Violence Act*, *Working with Children Act*, *Child Wellbeing and Safety Act* and *Child Employment Act*. Human rights guidance for child protection is also included in the Victorian *Charter of Human Rights and Responsibilities Act 2006*. Federally, key pieces of Commonwealth legislation provide guidance to the states and territories, particularly the *Family Law Act 1975* and the *Australian Human Rights Commission Act 1986*.

References:

What are children's rights?, Australian Human Rights Commission,
<https://www.humanrights.gov.au/our-work/education/what-are-childrens-rights>

Human rights in Australia, Australian Human Rights Commission,
<https://www.humanrights.gov.au/our-work/education/human-rights-australia>

Australian child protection legislation, Australian Institute of Family Studies, Australian Government, <https://aifs.gov.au/cfca/publications/australian-child-protection-legislation>

Marking guide:

1 mark for identifying the declaration or treaty

3 marks for explaining how it influences rights protection in Australia, including the main rights covered, and how these rights are included in Australian laws

SECTION B (40 MARKS)

Question 1 (15 marks)

Jimmy, 38 and unemployed, drove a stolen car into a group of pedestrians who were waiting to cross a major intersection to enter a sporting arena, killing four people, including a young boy, and injuring several others. He was sentenced to life imprisonment with a non-parole period of 35 years, after being found guilty of four counts of murder and 10 counts of reckless conduct endangering life. Jimmy was on bail at the time of the attack after being released from custody following an unrelated assault charge.

In a letter submitted to the court, Jimmy insisted that he was not a bad person and blamed his actions on his difficult childhood. He said he had been the victim of physical abuse as child, which had contributed to an addiction to drugs and alcohol for most of his adult life.

a. Which court would have heard the initial charges against Jimmy prior to his trial?

Justify your answer.

3 marks

The Magistrates' Court would have heard the initial charges against Jimmy. This is because before a trial for an indictable offence can proceed to the County Court or the Supreme Court (in this case the Trial Division of the Supreme Court because Jimmy was charged with murder), a magistrate must hear the charges against the accused and determine whether the prosecution has sufficient evidence to support a conviction in a higher court.

Marking guide:

1 mark for identifying the correct court

2 marks for the justification, noting the basic purpose of committal proceedings

b. Describe two factors the judge would have considered in sentencing Jimmy. 4 marks

One factor the judge in this case would have considered in sentencing Jimmy is the nature and gravity of the offences he committed. The offences Jimmy committed were extremely serious (four counts of murder and 10 counts of reckless conduct endangering life) and this is reflected in the severity of the sentence he received (that is, viewed as an aggravating factor).

Another factor the judge would have considered is that Jimmy was on bail at the time he killed and injured innocent pedestrians. This factor would have most likely increased the severity of the sentence (that is, viewed as an aggravating factor).

Other possible factors:

- Jimmy's background (difficult childhood and drug and alcohol addiction)
- The degree to which Jimmy should be held responsible for the offence
- Any past criminal record
- Victim impact statements

Marking guide:

1 mark for stating each factor (**x two = 2 marks**)

1 mark for stating how the factor could have influenced the sentence (**x two = 2 marks**)

c. Jimmy could appeal the sentence.

Identify a possible avenue of appeal open to him. Justify your answer. 2 marks

As Jimmy's case would have been heard in the Supreme Court (Trial Division), he would be able, with grounds, to lodge an appeal against the verdict, the severity of his sentence and/or on an error in law in the Court of Appeal (Supreme Court). This is because Victoria's courts are arranged in a hierarchy and appeals are made from lower courts to higher courts. The appropriate avenue of appeal in this case is from the Supreme Court (Trial Division) to the Court of Appeal (Supreme Court).

Marking guide:

1 mark for identifying the correct court

1 mark for the justification

d. **Discuss the extent to which a jury trial would have helped the criminal justice system achieve the principles of equality and fairness in this case. 6 marks**

One way a jury trial could have ensured the achievement of equality in Jimmy's case would have been by spreading the burden or responsibility of decision-making across 12 people rather than just one judge, so that there was a greater likelihood that any individual biases and prejudices against Jimmy, based on his personal characteristics (such as his gender, race, religion, age and sexual orientation) or his economic and social circumstances, would be counteracted. However, this cannot be guaranteed as jury deliberations are conducted in private and jurors do not give reasons for their decisions. Similarly, there is no guarantee that jurors will openly discuss or display any personal biases and preconceived thoughts about an accused.

A jury trial in this case would also help to achieve fairness by ensuring Jimmy's guilt was unanimously determined by a randomly selected group of independent and unbiased ordinary people who had no connection to him or any of the other parties involved in the case, such as the victims or witnesses. However, despite being illegal, there is no way of preventing jurors from conducting online research into the facts of the case and Jimmy's background, which could prevent him from receiving a fair hearing.

Similarly, while a jury, in theory, should comprise a cross-section of society so that general community views and values can be reflected in its deliberations, this might not have been the case as some people are disqualified, ineligible or excused from jury service. However, Jimmy would have been able to challenge up to three potential jurors, without cause, during the jury empanelment process, which allowed him to eliminate jurors he felt might have had a potential bias against him. The right to use three peremptory challenges would have assisted the ability of the jury to achieve fairness and equality in Jimmy's case.

Marking guide (global):

1–3 marks for discussing the extent to which the principle of equality was achieved by having a jury trial in this case, identifying at least one point that demonstrates how the principle could be achieved and one point that demonstrates how it might not have been achieved, taking into account the accuracy and relevance of the content, the depth of treatment, the logic of the connection between a jury trial helping the criminal justice system achieve the principle of equality

1–3 marks for discussing the extent to which the principle of fairness was achieved by having a jury trial in this case, identifying at least one point that demonstrates how the principle could apply and one point that demonstrates how it might not have been achieved, taking into account the accuracy and relevance of the content, the depth of treatment, the logic of the connection between a jury trial helping the criminal justice system achieve the principle of fairness

Question 2 (13 marks)

Sally, a former shire councillor, sued the proprietor of a local newspaper following the publication of a defamatory article that incorrectly claimed that she had pushed a political rival, Simon, out of a photo opportunity with the shire mayor.

Sally initially asked for an apology to be published in the newspaper but this was refused. She later commenced legal proceedings against the owner of the newspaper, seeking up to \$300 000 in damages to compensate her for the emotional stress she and her family suffered and for loss of wages, as she had to take time off work for an extended period. Lawyers acting for the owner of the newspaper argued for a lesser amount in the County Court.

A six-person jury found that Sally had been defamed and the incorrect portrayal of the photo incident had damaged both her reputation and standing in the community.

The judge in the case awarded Sally \$170 000 in damages, which included an amount of \$20 000 for loss of wages. The owner of the newspaper was also ordered to pay her legal fees, which were \$55 000.

a. Using an example in relation to this case, define the term ‘remedy’. **2 marks**

A remedy refers to a form of court enforcement of a legal right to redress a wrongful action resulting in loss or damage to a plaintiff in a civil case. A remedy is the means by which a civil court recognises and enforces the legal right that has been breached. For example, in this case, one remedy that could have been awarded is an injunction, which is a court order requiring or prohibiting the newspaper proprietor (the defendant) to undertake (or not undertake) an action, such as printing a correction and apology, in an attempt to restore Sally (the plaintiff), to the position she was in prior to the breach of her rights.

Another remedy:

- Damages—monetary amounts payable to a plaintiff (damages are divided into different categories, such as compensatory damages—specific and general, aggravated damages and nominal damages)

Marking guide:

1 mark for defining the term correctly

1 mark for providing an example of a remedy

b. Describe one of the purposes of the remedy awarded to Sally in this case and discuss the extent to which the remedy could achieve this purpose. **5 marks**

Note: Two alternative answers to this question are provided.

One purpose of awarding Sally damages in this case was to restore her to the position she was in prior to the publication of the defamatory article. However, the extent to which this purpose can be achieved is debatable. For example, while the court could award specific damages to compensate Sally for any losses that can be precisely calculated, such as the lost wages or the cost of any professional counselling or medication, awarding an amount of money might not be an adequate way to compensate Sally for the emotional pain and suffering she sustained, and for the damage to her reputation.

Similarly, while the awarding of general damages aims to provide compensation for pain and suffering that cannot be precisely calculated in monetary terms, if Sally’s mental health and reputation have been severely or permanently damaged, no amount of money will restore her to the position she was in prior to the defamatory statements being published.

Alternative answer:

One purpose of awarding damages in this case was to compensate Sally for the infringement of her rights and for the emotional pain, suffering and loss she suffered. This means giving her monetary compensation of similar value to what she has lost.

A number of different types of damages can be awarded in civil cases, depending on the type of loss or injury. In this case, specific damages were awarded to compensate Sally for the loss of wages and general damages were awarded for the emotional pain and suffering she sustained, and for the damage to her reputation. The award for lost wages will fully compensate her for this loss. However, money might not be adequate as compensation for the pain and suffering she experienced and the loss of reputation, as this damage could be permanent and affect her future life and job prospects. Such impacts are difficult to measure in financial terms only.

Marking guide:

2 marks for correctly describing one purpose

2 marks for providing one point for and one point against the ability of the remedy to achieve the identified purpose

1 mark for linking the discussion to the scenario

c. Compare the role of the jury in this civil trial with that of a jury in a criminal trial.

6 marks

The role of juries in both civil and criminal trials is to determine questions of fact and to apply the law, as stated by the judge, to those facts and to reach a verdict. In a civil trial, the jury's role is to decide whether the plaintiff has established their claim, whereas the jury's role in a criminal trial is to determine if the accused is guilty of committing the crime for which they have been charged. In some civil trials the jury also decides on a remedy (compensation), whereas in criminal cases the jury only decides on the guilt of the accused, not the sentence, which is a decision for the judge.

A civil jury trial in the County Court listens to the evidence presented by both the plaintiff and defendant and determines on the 'balance of probabilities' which version is likely to be true. A civil trial jury will find in favour of the plaintiff or defendant. This is different from the role of a jury in a criminal trial where the standard of proof is much higher, that is, 'beyond reasonable doubt'. In a criminal trial in the County Court or the Supreme Court in which the accused pleads 'not guilty', the case is heard and determined by a jury of 12, compared with six jurors in a civil trial. The role of a jury in a criminal trial is to listen to the evidence presented and then decide on a verdict of either 'guilty' or 'not guilty'.

Marking guide (global):

1–3 marks for providing features of the role of a civil trial jury, noting similarities and differences between the two types of juries, and taking into account the accuracy and relevance of the content and the logic of the comparison between the two roles

1–3 marks for providing features of the role of a criminal trial jury, noting similarities and differences between the two types of juries, and taking into account the accuracy and relevance of the content and the logic of the comparison between the different roles

Question 3 (12 marks)

In October 2017, anti-abortion activist, Kathleen Clubb, became the first person to be found guilty of breaching the Victorian *Public Health and Wellbeing Amendment (Safe Access Zones) Act 2015*, which bans individuals and groups from protesting directly outside premises that provide services for the termination of pregnancies. Ms Clubb was arrested after ignoring police warnings that it was unlawful for her to hand out anti-abortion pamphlets within a 150-metre 'safe zone' around an East Melbourne fertility clinic. Ms Clubb was ultimately fined \$5000 for her actions. The maximum penalty for breaching the Safe Access Zones law is 12 months' imprisonment.

In 2018, Ms Clubb and another anti-abortion protester, Graham Preston (who had been charged with breaching similar Safe Access Zones laws in Tasmania), challenged the validity of the Safe Access Zones laws in the High Court, claiming the laws breached their right to freedom of political communication, that is, their right to publicly express their views on political issues. In April 2019, the High Court dismissed Ms Clubb and Mr Preston's appeal and ordered them to pay the opposing parties' costs. In ruling against the activists, the court confirmed that while Australians do have the right to freedom of political communication, this does not give individuals and groups the right to force a political message on another person if that message is 'inconsistent with the human dignity of that person'.

References

Public Health and Wellbeing Amendment (Safe Access Zones) Act 2015,
http://www5.austlii.edu.au/au/legis/vic/num_act/phawaaza201566o2015493/s5.html

Clubb v. Edwards & Anor; Preston v. Avery & Anor (2019),
<http://eresources.hcourt.gov.au/downloadPdf/2019/HCA/11>

- a. Ms Clubb was originally found guilty and fined for her breach of the law in the Magistrates' Court.

Describe the main role of the Magistrates' Court in relation to this case. 2 marks

The main role of the Magistrates' Court in Ms Clubb's original case was to listen to the facts of the case as presented by the parties (that is, Ms Clubb and the police prosecutor) and determine whether Ms Clubb was guilty of breaching the Safe Access Zones laws. On finding Ms Clubb guilty, the magistrate had to decide on an appropriate sanction. Ms Clubb received a \$5000 fine.

Marking guide:

1 mark for stating that the court's role is to listen to the evidence and reach a verdict

1 mark for stating that after finding the accused guilty the magistrate had to decide on an appropriate sanction

- b. With reference to Ms Clubb’s court actions, explain one reason why the Victorian courts are ranked in a hierarchy. 3 marks**

The Victorian courts are ranked in a hierarchy from lowest (that is, the Magistrates’ Court) to highest (that is, the High Court) according to the seriousness and complexity of cases they can hear in order to allow for the operation of a system of appeals. This means that a party who is dissatisfied with the outcome of a lower court can, with grounds, have their case reviewed by a higher court with more authority and expertise. In this case, Ms Clubb was dissatisfied with the decision of the magistrate (lower court) which saw her convicted of and fined for breaching the Safe Access Zones law, and was able to have her case, including the validity of the Safe Access Zones law, reviewed by a higher court (the High Court).

Alternative answer:

The Victorian courts are ranked in a hierarchy from lowest (that is, Magistrates’ Court) to highest (that is, High Court) according to the seriousness and complexity of cases they can hear in order to allow for the specialisation of the courts. Allowing courts to specialise in hearing certain types of cases enables legal personnel (including magistrates and judges) to develop their expertise and deal with matters in a more efficient and timely manner. For example, in Ms Clubb’s case, the Magistrates’ Court was an appropriate court to hear her initial case and determine whether or not she had breached the Safe Access Zones law, as it specialises in hearing summary offences. By contrast, Ms Clubb’s appeal, which involved more complex issues in law, was heard by the High Court, which consists of Australia’s most experienced justices who specialise in hearing the most complex legal issues.

Marking guide:

2 marks for providing a reason why courts are ranked in a hierarchy

1 mark for linking the reason to the case

- c. Analyse the impact of one Australian case you have studied this year on the rights of individuals and on the legal system in Australia. 7 marks**

Name of case studied:

Eatock v. Bolt (2011)

Eatock v. Bolt (2011) is a case that has impacted on the protection of rights in Australia. In this case the defendant, prominent journalist and media presenter, Andrew Bolt, was sued by Ms Pat Eatock, acting on behalf of herself and a group of other Indigenous Australians, after he wrote a series of newspaper columns (published by The Herald and Weekly Times Pty Ltd) and an online blog expressing the view that some ‘fair-skinned Aboriginal people’ were not ‘genuinely Aboriginal’ but rather identified themselves as such to access benefits available to Aboriginal people. Ms Eatock pursued court action against Mr Bolt claiming his comments were offensive and in breach of Section 18C of the *Racial Discrimination Act 1975* (Cwlth) which, in simple terms, bans individuals from making comments that offend, insult, humiliate or intimidate other people on the grounds of their race.

While, in his defence, Mr Bolt (and The Herald and Weekly Times) argued that the columns and blog were published in an attempt to generate discussion and as a matter of ‘public interest’, the Federal Court did not agree and found the publications were in breach of the *Racial Discrimination Act* because they were reasonably likely to offend, insult, humiliate or intimidate some or all ‘fair-skinned’ Aboriginal people. Ms Eatock won the case.

The immediate impact of the court's decision was that The Herald and Weekly Times was required to publish a notice (in print and online) outlining the court's ruling and stating that they published in breach of the *Racial Discrimination Act*. The aim of this 'corrective notice' was to ensure the public, especially those who may have read the offensive articles, would be aware of the breach of rights and restore the reputation and honour of the Indigenous people who had been offended, insulted and/or humiliated.

In the longer term, the case had a significant impact on Australia's political and legal systems due to the controversial public debate it ignited over freedom of speech in Australia. For example, in addition to Mr Bolt and The Herald and Weekly Times being very dissatisfied with the court's ruling, viewing it as a restriction on freedom of speech, the Liberal–National government announced it would introduce a Bill into the federal parliament to change the law in an attempt to protect freedom of speech and prevent similar rulings in the future.

In simple terms, the government wanted to repeal (that is, cancel) various provisions of the *Racial Discrimination Act*, including two of the provisions that Mr Bolt breached, which banned individuals from 'offending and insulting' other people on the grounds of their race, claiming these provisions restrict the basic right to freedom of speech and could potentially lead to a situation where simply 'expressing an opinion might be rendered unlawful'. This proposal, however, created great controversy as many legal and political organisations, such as the Human Rights Commission, the Australian Labor Party and various multicultural and Aboriginal communities, claimed it would allow individuals to make racially offensive and insulting comments that would undermine the ability of the legal system to protect minority groups from racial vilification and promote racial tolerance.

While the government's proposal to alter the *Racial Discrimination Act* was abandoned, a similar Bill was introduced into the Commonwealth parliament in 2017, although it failed to pass the upper house. It may only be a matter of time until another Bill is introduced, as the issue of freedom of speech remains controversial.

Reference:

Eatock v. Bolt (2011) FCA 1103,
<https://www.judgments.fedcourt.gov.au/judgments/Judgments/fca/single/2011/2011fca1103>

Marking guide (global):

1 mark for stating the law(s) that applied in this case

2 marks for describing the rights in question in this case

1–4 marks for two points on the outcome of the case and how it has impacted on the rights of individuals and on the legal system, taking into account the accuracy, clarity, completeness and relevance of the content, the breadth/depth of treatment, and the logic of connections between the outcome of the case and the impact on rights protection

Teacher note

Over the years there have been many significant legal cases in Australia that involve the protection of rights in Australia. Cases include:

- *Mabo v. Queensland (No. 2)* (Mabo) (1992) 175 CLR 1
- *Wik Peoples v. State of Queensland* (1996) 187 CLR 1
- *Dietrich v. The Queen* (1992) 177 CLR 292
- *Roach v. Electoral Commissioner* (2007) 233 CLR 162
- *Lange v. Australian Broadcasting Corporation* (1997) 189 CLR 520
- *Tuckiar v. R.* (1934) 52 CLR 335

- *Croome v. State of Tasmania* (1997) 191 CLR 119
- *R. v. L.* (1992) 174 CLR 379
- *Commonwealth of Australia v. Australian Capital Territory* (2013) HCA 55
- *R. v. Chaouk* (2013) VSCA 99
- *CPCF v. Minister for Immigration and Border Protection* (2015) HCA 1
- *Woods v. DPP* (2014) VSC 1
- *DPP v. Kaba* (2014) VSC 52
- *Minister for Immigration and Border Protection v. WZAPN* (2015) HCA 22
- *Kuczborski v. State of Queensland* (2014) HCA 46
- *Brown .v Tasmania* (2017) HCA 43
- *Comcare v. Banerji* (2019) HCA 23
- *Masson v. Parsons* (2019) HCA 21

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