COMPAK

LEGAL STUDIES UNITS 3 AND 4

Legal Studies Units 3 and 4 practice exam and suggested answers

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The following practice exam for VCE Legal Studies Units 3 and 4 consists of two sections with a total of nine questions worth 80 marks. Students are required to answer all questions in the spaces provided.

The command/task words in each question, the corresponding number of marks allocated and the number of lines provided after each question give a guide to the appropriate length of responses. Additional space is provided at the end of the question and answer book. Suggested answers to this practice exam follow the question and answer book.

Please note that the questions and answers have no official status. Teachers are advised to preview and evaluate all practice exam material before distributing it to students.

Name: _____ Teacher: _____

LEGAL STUDIES UNITS 3 AND 4

Practice written examination 2019

Reading time: 15 minutes
Writing time: 2 hours

QUESTION AND ANSWER BOOK

Structure of book

Section	*Number of questions*	*Number of questions to be answered*	*Number of marks*
A	6	6	40
B	3	3	40
			TOTAL 80

- 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 of 24 pages.
- 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 question number.

Instructions

- Write your name and your teacher's name in the spaces provided above on this page.
- You should make use of stimulus material where it is included. However, it is not intended that this material will provide you with all the information to fully answer the question.
- 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.

SECTION A

Instructions for Section A

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

Question 1 (9 marks)

Ethan, aged 31 years, became frustrated while driving in heavy traffic and began verbally abusing another driver, Chen, while stopped at traffic lights. When Chen answered back, Ethan got out of his car and punched him several times through the car window. In addition to suffering a broken jaw and bruising, the incident caused Chen great stress and he now suffers from anxiety. After negotiations with the prosecution, Ethan pleaded guilty to recklessly causing injury and unlawful assault, and was placed on a community correction order (CCO).

a. Describe **one** benefit associated with the use of plea negotiations in this case. 2 marks

b. Outline **two** key features of the sanction imposed on Ethan. 2 marks

c. Explain **one** way how the sanction imposed upon Ethan could achieve its purpose of protecting the community in this case. 3 marks

d. Describe **two** rights belonging to Chen as a victim of this incident. 2 marks

Question 2 (3 marks)

In a 2017 ruling by the Victorian Civil and Administrative Tribunal (VCAT), a Melbourne school was found to have unlawfully discriminated against a student when it banned the young boy from wearing a traditional Indian (Sikh) headwear (a patka or turban), on the basis that it was against the school's uniform policy.

Explain **one** way how the parties might have benefitted from having this dispute resolved at VCAT.

Question 3 (4 marks)

When explaining to a friend the relevance of the Australian Constitution to the state parliaments, Angie, a Legal Studies student, commented that the state parliaments are able to legislate in exclusive, concurrent and residual areas of law-making power. She also suggested that section 109 expands the law-making powers of the states.

Explain why Angie's comments are incorrect.

Question 4 (6 marks)

Discuss the extent to which the bicameral structure of the Commonwealth parliament can act as a check on its ability to make law.

Question 5 (8 marks)

Explain why sections 7 and 24 of the Australian Constitution are important to the Australian parliamentary system. Support your response by referring to **one** relevant High Court case.

Question 6 (10 marks)

After losing a case, Bryan, a dissatisfied plaintiff, posted the following comment on his Facebook page:

> 'The courts are not effective law-makers. They are limited by so many factors including the doctrine of precedent and judicial conservatism.'

Discuss the extent to which you agree with Bryan's comment.

SECTION B

Instructions for Section B

Use stimulus material, where provided, to answer the questions in this section. It is not intended that this material will provide you with all of the information to fully answer the questions.

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

Question 1 (17 marks)

Azrad is a farmer who has established a successful business producing mushrooms and tomatoes. A few months ago, Azrad's property, including some farming sheds and equipment, and a number of other surrounding properties, were destroyed in a bushfire. The fire was started by Azrad's neighbour, Conrad, while he was using a large chainsaw to cut down trees on his property on an extremely hot day. Sparks discharged from the chainsaw and ignited a fire, which quickly spread in the strong winds and dry conditions.

Azrad has commenced a representative proceeding on his own behalf and the behalf of the other persons who suffered damage to their properties as a result of the bushfire. He is seeking damages for the loss of his property and income, the cost of re-establishing the farm and the stress and anxiety he suffered as a result of losing his business. Azrad claims that Conrad, as an experienced farmer, should have reasonably foreseen that using a chainsaw on a very hot and windy day would cause a fire that could spread over a large geographic area.

Source 1

The following is an extract from the writ filed by Azrad in the Supreme Court of Victoria.

TO THE DEFENDANT

TAKE NOTICE that this proceeding has been brought against you by the plaintiff for the claim set out in this writ.

IF YOU INTEND TO DEFEND the proceeding, or if you have a claim against the plaintiff which you wish to have taken into account at the trial, YOU MUST GIVE NOTICE of your intention by filing an appearance within the proper time for appearances stated below.

YOU OR YOUR SOLICITOR may file the appearance. An appearance is filed by-

(a) filing a "Notice of Appearance" in the prothonotary's office, 436 Lonsdale Street, Melbourne, or, where the writ has been filed in the office of a Deputy Prothonotary, in the office of that Deputy Prothonotary; and

(b) on the day you file the Notice, serving a copy, sealed by the Court, at the plaintiff's address for service, which is set out at the end of this writ.

IF YOU FAIL to file an appearance within the proper time, the plaintiff may OBTAIN JUDGMENT AGAINST YOU on the claim without further notice.

Source: 'Writ form 5A', Supreme Court of Victoria, March 2019, https://www.supremecourt.vic.gov.au/forms-fees-and-services/forms/writ-form-5a

a. Describe **one** accessibility factor that might limit the ability of Azrad to achieve justice in this case. 2 marks

b. Explain how undertaking a representative proceeding could assist the achievement of **one** principle of justice in this case. 3 marks

c. As indicated by Source 1, Azrad has commenced pre-trial proceedings against Conrad.

Briefly explain why pre-trial procedures can assist with the resolution of civil disputes. Support your response with reference to **one** example of a civil pre-trial procedure that would take place in this case. 3 marks

d. Discuss the responsibilities of the parties should this case proceed to trial. 5 marks

e. Discuss the ability of the remedy being sought in this case to achieve its purpose. 4 marks

Question 2 (9 marks)

In early 2019, animal-rights activists undertook a number of protests and demonstrations throughout Australia in an attempt to draw attention to animal cruelty. For example, in early April, approximately 150 activists significantly disrupted peak-hour traffic in the Melbourne city centre by blocking a major intersection outside Flinders Street Station. Other demonstrations involved protesters unlawfully trespassing onto a number of privately-owned farms. In one protest, approximately 150 protesters marched, uninvited, onto a Queensland farmer's property wearing T-shirts with 'Meat the victims' written on them, and attempted to take photos of cattle. The protests prompted the Prime Minister, Scott Morrison, to call the activists 'green-collared criminals' and described their actions as 'shameful and un-Australian'.

In July 2019, the federal government introduced the Criminal Code Amendment (Agricultural Protection) Bill into the lower house of the Commonwealth parliament. Its intention is to make it an offence for an individual to publish or distribute material that encourages another person to trespass or commit property offences, such as theft and the destruction of property, on agricultural (or farm) land. A number of petitions have also been established by farm owners, including one that requests the Victorian Government to introduce a mandatory 6-month term of imprisonment for any individual who unlawfully trespasses onto a farm or associated animal business.

Source 1

The following is an extract from the Parliament of Australia's website.

CRIMINAL CODE AMENDMENT (AGRICULTURAL PROTECTION) BILL 2019

GENERAL OUTLINE

1. This Bill would amend the Criminal Code Act 1995 (Criminal Code) to introduce two new offences relating to the incitement of trespass or property offences on agricultural land.
2. The first offence would apply where a person uses a carriage service to transmit, make available, publish or otherwise distribute material with the intent to incite another person to trespass on agricultural land. This offence would require that the person is reckless as to whether the other person's trespass or related conduct could cause detriment to a primary production business being carried on the land. A person found guilty of this offence could face up to 12 months' imprisonment.
3. The second offence would apply where a person uses a carriage service to transmit, make available, publish or otherwise distribute material with the intent to incite another person to unlawfully damage or destroy property, or commit theft, on agricultural land. A person found guilty of this offence could face up to five years' imprisonment, to reflect the more serious nature of the incited conduct.

Source: Criminal Code Amendment (Agricultural Protection) Bill 2019, Explanatory memorandum, page 2, Parliament of Australia, July 2019, https://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/Bills_Search_Results/Result?bId=r6351

a. Propose **one** reason why the federal government might have introduced the Criminal Code Amendment (Agricultural Protection) Bill 2019. 2 marks

b. Describe **one** right belonging to any individual who might be arrested for committing a criminal offence while being involved in the animal-activist demonstrations or protests. 2 marks

c. Outline **one** advantage and **one** disadvantage of the farmers using petitions to influence legislative change. 2 marks

d. With reference to the stimulus material, explain how **one** factor can limit the ability of parliament to respond effectively to the need for law reform. 3 marks

Question 3 (14 marks)

Natasha, aged 25 years, has been charged with kidnapping after she took a 3-year-old child from a playground area in a Melbourne shopping centre, and later demanded $50 000 from the parents for the safe return of their child. Natasha, who suffers from mental health conditions, took the child in an attempt to gain money to repay a gambling debt. Within 12 hours of committing the crime, she contacted the police to confess to her crime and the child was returned, happy and unharmed, to his parents. Natasha fully cooperated with the police and was very remorseful for her actions. She has been granted bail, on strict conditions, and is now awaiting the commencement of committal proceedings. Under section 63A of the *Crimes Act 1958* (Vic.) the maximum penalty for kidnapping is 25 years imprisonment.

Source 1

The following is an extract from the Victorian Law Reform Commission (VLRC) website.

The Victorian Law Reform Commission has been asked to report on Victoria's committal system. The Commission is asked to consider whether Victoria should maintain, abolish, replace or reform the present committal system, as well as best practice for supporting victims and means of reducing trauma to victims and witnesses.

The Commission published an issues paper on 24 June 2019, including a call for submissions. Submissions are invited by 16 August 2019.

Download the issues paper from the link below.

The due date for the Commission to deliver its report is 31 March 2020.

Source: 'Committals', Victorian Law Reform Commission, 30 July 2019, https://www.lawreform.vic.gov.au/all-projects/committals

a. Identify **one** feature of Natasha's case that indicates she has been charged with an indictable offence. 1 mark

b. Natasha is unsure whether she should seek a sentence indication.

Define the term 'sentence indication' and explain **one** reason why it might be advantageous for Natasha to seek a sentence indication. 3 marks

Definition

Explanation

c. While the Victorian Law Reform Commission (VLRC) is currently examining possible ways to improve Victoria's committal procedure, the practice of committal proceedings remains.

Discuss the extent to which committal proceedings can achieve **one** principle of justice.

4 marks

d. Discuss the role of the VLRC in influencing reform of Victoria's committal procedure.

6 marks

END OF QUESTION AND ANSWER BOOK

Extra space for responses

Clearly number all responses in this space.

Suggested answers

***Note**: 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

Question 1 (9 marks)

a. Describe *one* benefit associated with the use of plea negotiations in this case.

2 marks

***Note**: Following are two possible answers to this question.*

The use of plea negotiations in this case allowed the prosecution to secure a conviction against Ethan, which reflected the criminality of his offending. For example, Ethan pleaded guilty to the charges of recklessly causing injury and lawful assault. This conviction might have been particularly beneficial if the case against Ethan was not strong and the prosecution had concerns about its ability to secure a successful conviction at trial. For example, there might have been no witnesses, other than Chen, to the offending, and no CCTV footage to use as evidence against Ethan. Similarly, should Chen have been called as a witness, the stress and anxiety he suffered might have affected the credibility of testimony.

Alternative answer:

The use of plea negotiations to secure a conviction in this case might have saved Chen, the victim, and any other witnesses, the stress, trauma and inconvenience associated with having a trial. This might be especially significant, as being required to give evidence at a trial might have added to the stress and anxiety already suffered by Chen. This could lead to challenges about the credibility of his testimony at a trial.

Marking guide:

***1 mark** for providing the characteristics and features of one benefit*

***1 mark** for relating this benefit to the specific facts of the case*

b. Outline *two* key features of the sanction imposed on Ethan. **2 marks**

One key feature of a community correction order (CCO) is that it is a flexible sentencing order that allows the offender, in this case Ethan, to remain in the community but requires them to comply with certain basic conditions. This would mean for Ethan not reoffending, not leaving Victoria without permission, and reporting to and complying with directions given by community correction officers.

In addition, a CCO requires the offender to comply with at least one other optional condition, such as undertaking treatment for substance abuse or anger management, performing unpaid community work, or being subject to restrictions on residence or association. Examples of these include offenders being banned from entering or consuming alcohol in licensed premises.

Marking guide:

1 mark** for providing a key feature of a community correction order **(x two = 2 marks)

c. Explain *one* way how the sanction imposed upon Ethan could achieve its purpose of protecting the community in this case. 3 marks

***Note**: Following are two possible answers to this question.*

The imposition of the community correction order (CCO) upon Ethan could protect the community by promoting his rehabilitation. More specifically, the sentencing judge (or magistrate) could attach at least one condition to Ethan's CCO that addresses his specific needs and circumstances, and encourages him to 'change his ways' so he is less likely to reoffend in the future. For example, the likelihood of Ethan being involved in future road-rage incidents might be reduced if the conditions of his CCO required him to undertake unpaid community work and attend an anger management and/or road trauma awareness course.

Alternative answer:

The imposition of the community correction order (CCO) upon Ethan could protect the community from Ethan reoffending because he might face possible imprisonment if he does not adhere to the conditions of the CCO. The imposition of an CCO, which requires Ethan to undertake onerous activities, such as the completion of unpaid community work and/or a treatment order, might also protect the community by discouraging him from reoffending upon the completion of the CCO.

Marking guide:

***2 marks** for linking a feature of the CCO (cause) with its ability to impact on the protection and safety of the community (effect)*

***1 mark** for applying the explanation to the case*

d. Describe *two* rights belonging to Chen as a victim of this incident. 2 marks

***Note**: Following are two possible answers to this question.*

In this case, in accordance with the *Victims' Charter Act 2006* (Vic.), which outlines the rights and services available to victims of crime within the criminal justice system, Chen has the right to be informed about the criminal proceedings involved in Ethan's case. For example, Chen has the right to be kept informed about the charges laid against Ethan, the outcome of any bail application, the dates and times of Ethan's court appearances and whether he will be needed as a witness.

Alternative answer:

As a victim of a criminal offence, and in accordance with the *Sentencing Act 1991* (Vic.), Chen has the right to provide the court with a victim impact statement for the judge (or magistrate) to consider when determining Ethan's sentence. The presentation of a victim impact statement aims to give Chen the opportunity to tell the court how being a victim of Ethan's road rage has affected him, including any physical, emotional, financial and social harm he may have suffered.

***Note:** In accordance with the* Victims' Charter Act 2006 *(Vic.), victims of crime also have other rights including the right to be:*

- *treated with courtesy, respect and dignity by everyone involved in their case, including the police, prosecutors and any victim services that are used.*
- *informed by the police about any services available for their use and connected with these services. These include victim support services and entitlements, such as compensation for any injuries, pain and suffering and property damage incurred as a result of being a victim of the crime.*

Marking guide:

1 mark** for providing a key feature of a right **(x two = 2 marks)

Question 2 (3 marks)

Explain *one* way how the parties might have benefitted from having this dispute resolved at VCAT.

***Note**: Following are two possible answers to this question.*

The parties might have benefitted from having the dispute resolved at VCAT because it has the ability to resolve disputes in a relatively timely manner. This would have been important if the student was unable to attend school until the dispute had been resolved. Typically, a standard discrimination case in the Human Rights List takes approximately four weeks until the first appearance where a VCAT decision-maker is present (for example, mediation or compulsory conference), and cases resolved at a legally binding final hearing, as in this case, take approximately 15 weeks.

Similarly, appeals against VCAT decisions are only permitted on a question of law, which helps increase finality in the case.

Alternative answer:

The parties might have benefitted from having this dispute resolved at VCAT because it is a relatively cost–effective dispute resolution body due to the application fees being relatively low. For example, while VCAT fees vary according to the type of dispute being resolved, there is generally no application or hearing fees for standard equal opportunity and discrimination cases. In this case, being able to pursue the case and challenge the school's uniform policy without incurring any application or hearing fees, might have increased the ability of the boy's parents to access to the legal system.

Having a case resolved at VCAT is also cost–effective because the methods of dispute resolution used, namely mediations, compulsory conferences and, as in this case, final hearings, are relatively informal, which can encourage the parties (in this case the boy's parents and the school) to feel more confident and comfortable to present their own case without the use of costly legal representatives. In 2017, approximately 80% of people who brought a matter to VCAT represented themselves.

Marking guide:

***2 marks** for linking directly an operation or feature of VCAT (cause) with benefits to the parties in resolving disputes (effect)*

***1 mark** for relating this benefit to the case*

Question 3 (4 marks)

Explain why Angie's comments are incorrect.

Angie's first comment regarding the ability of the state parliaments to legislate in exclusive, concurrent and residual areas of law-making power is incorrect because while the state parliament can legislate (or make law) in residual powers and concurrent areas of law-making power, it cannot legislate in exclusive areas of law-making power. This is because exclusive powers are areas in which only the Commonwealth parliament has the power to make law, such as in the areas of currency and defence. By contrast, residual powers are areas of law-making power that are not stated in the Australian Constitution as being specific powers in which the Commonwealth can legislate, and as such solely belong to the states i.e. only the states can make law in these areas. Concurrent powers are areas in which both the Commonwealth and state parliaments can make law.

Angie's second suggestion that section 109 expands the law-making powers of the states is also incorrect because section 109 specifies that when the Commonwealth and the states pass legislation within the same area of law that is inconsistent or conflicting, the Commonwealth law will prevail to the extent of the inconsistency. While this section provides a means of resolving the disputes involving constitutionally valid, conflicting state and Commonwealth legislation, it effectively restricts the law-making powers of the state parliaments and expands the law-making power of the Commonwealth. Furthermore, section 109 might discourage the states from making laws in a concurrent area of power, in the realisation that in the event the law conflicts with the Commonwealth, the conflicting part of the legislation will be declared invalid.

Marking guide:

***2 marks** for providing valid reasons why Angie's comment about the ability of the state parliaments to legislate in exclusive, concurrent and residual areas of law-making power is incorrect*

***2 marks** for providing valid reasons why Angie's comment that section 109 expands the law-making powers of the states is incorrect*

Question 4 (6 marks)

Discuss the extent to which the bicameral structure of the Commonwealth parliament can act as a check on its ability to make law.

The bicameral structure of the Commonwealth parliament acts as a check on its ability to make law because all Bills must be discussed, debated and passed by both houses before they can become law, which allows the houses to check that Bills reflect the needs, views and values of the community. It also provides an opportunity to check for errors and loopholes in the proposed law.

Furthermore, although all Bills (except appropriation Bills that must commence in the lower house) can be initiated in either house, and both houses can discuss and debate Bills, most Bills are initiated in the lower house (the House of Representatives) by members of the government. This means the upper house (the Senate) can act as a house of review and help ensure that Bills, which have been passed by the House of Representatives, are thoroughly debated and scrutinised. This is particularly the case if the Senate is hostile (i.e. the government does not hold a majority of seats) as the opposition, minority parties and independents will have the ability to force amendments or even block potential legislation. However, such an action can obstruct the ability of the democratically elected government to implement its policy agenda.

The ability of the Senate to act as a house of review and scrutinise Bills will be limited if the government has a majority in the upper house, as Senators generally vote in accordance with their party. This means the Senate might act more as a 'rubber stamp', merely confirming the decisions of the lower house.

The Senate can also act as a check on the Commonwealth in law-making through its ability to act as a states' house and protect the interests of the less populous states because it is composed of 12 representatives from each state and two from each territory, regardless of their population size. However, it can be argued that in reality Senators vote along party lines rather than in the interests of their state, nullifying the benefits of this role.

Marking guide (global):

***1–4 marks** for deliberating and considering how the bicameral structure supports and negates the parliament's ability to make laws, taking into account depth of treatment/understanding, levels of substantiation, accuracy of content*

***1–2 marks** for judging the overall ability of the bicameral structure to make laws, taking into account the consistency of conclusion with the evidence (extent of agreement)*

Question 5 (8 marks)

Explain why sections 7 and 24 of the Australian Constitution are important to the Australian parliamentary system. Support your response by referring to *one* relevant High Court case.

Sections 7 and 24 are important sections in the Australian Constitution because they ensure the houses of the Commonwealth parliament, i.e. the Senate and the House of Representatives, are 'directly chosen by the people' and, in doing so, establish (or set up) one of the main principles upon which the Australian parliamentary system is based—the principle of representative government.

This principle of representative government is important because it provides a check on parliament in the law-making process by ensuring that members of parliament make decisions on behalf of their constituents, which reflect the views and values of the majority of them, otherwise the members of parliament will risk their re-election. It also helps minimise the risk of the parliament and government misusing its power as they are accountable to the people at regular elections.

One High Court case that demonstrates the importance of sections 7 and 24 is *Australian Capital Television Pty Ltd v. Commonwealth* (1992). In this case, the High Court was called to determine whether Commonwealth legislation restricting political broadcasts on radio and television during election campaigns, breached the constitutional concept of representative government and was therefore unconstitutional and invalid. The High Court ruled against the Commonwealth by deciding the legislation breached the constitutional principle of representative government, as established in sections 7 and 24 of the Constitution.

More specifically, the High Court decided that, given sections 7 and 24 established a system of representative government in which members of parliament are directly elected by the people, political broadcasts are necessary during an election period (and cannot be restricted) to ensure voters can make an informed decision. The impact of this decision was that the High Court reinforced the principle of representative government (as outlined in sections 7 and 24) and also confirmed the Australian Constitution protects the implied right to freedom of political communication. The case also demonstrated the ability of the High Court to interpret the Constitution to resolve disputes over *its meaning and declare any legislation that infringes a protected right to be invalid.*

Interestingly; however, the right to freedom of political communication, as interpreted to exist by the High Court in this case, and other subsequent cases, is limited. For example, it does not mean individuals have an absolute right to freedom of speech, and it only exists to the extent where the political communication or comment upholds the principle of representative government and responsible government. Furthermore, in the recent High Court case of *Clubb v. Edwards & Anor; Preston v. Avery & Anor* (2019), in which two anti-abortion activists unsuccessfully challenged the validity of Victorian and Tasmania state legislation, which banned individuals and groups from protesting outside fertility clinics that provide services for the termination of pregnancies, the High Court limited the right to freedom of communication by stating that forcing a political message upon another person, is 'generally speaking … inconsistent with the human dignity of that person'.

Similarly, the High Court cannot make any ruling on constitutional disputes, including those involving the interpretation of sections 7 and 24, unless the matter is brought before the court, which relies on an aggrieved party having sufficient legal standing in the case and being willing to pursue the dispute through the courts—this can be costly, time-consuming and stressful.

***Note:** In the case of Clubb v. Edwards & Anor; Preston v. Avery & Anor (2019), the High Court justices drew on and quoted the thoughts of Aharon Barak, a highly regarded international Professor in Law, who stated 'Generally speaking, to force upon another person a political message is inconsistent with the human dignity of that person'.*

Marking guide (global):

1–5 marks *for explaining how and why sections 7 and 24 of the Australian Constitution are important as they relate to the principle of representative government, taking into account the depth of treatment/understanding of the sections and their relationship to the parliamentary system, the accuracy of content and completeness of coverage*

1–3 marks *for discussing the impact of one relevant High Court case on the principle of representative government as established in sections 7 and 24 of the Australian Constitution, taking into account the relevance of the case, accuracy of facts and depth of understanding of why the case is significant*

Question 6 (10 marks)

After losing a case, Bryan, a dissatisfied plaintiff, posted the following comment on his Facebook page:

> **'The courts are not effective law-makers. They are limited by so many factors including the doctrine of precedent and judicial conservatism.'**

Discuss the extent to which you agree with Bryan's comment.

Note: *When responding to high-mark questions, students should write in paragraphs.*

While Bryan is correct in his observation that a range of factors limit the ability of the courts to make law, I strongly disagree with his suggestion that the courts are 'not effective law-makers'. Also, while having some limitations, the doctrine of precedent enables and enhances the ability of the courts to make law. More specifically, the doctrine of precedent enables judges in superior courts to make law by establishing legal principles that must be followed by lower courts in the same hierarchy, in cases where the material facts are similar. In this way, the doctrine of precedent helps ensure judge-made laws (or common law) are consistent because similar cases are resolved in a similar manner. Furthermore, the doctrine of precedent ensures a level of predictability in common law by allowing parties to look to previous cases to anticipate the outcome of their case.

Another key strength associated with judges making law through the doctrine of precedent, which Bryan appears to have overlooked, is that the doctrine of precedent enables the courts to have flexibility when making law. Judges in superior courts, who have greater expertise in dealing with more serious and complex matters, are able to change existing precedents by either reversing an existing precedent in the same case on appeal or overruling an existing precedent in a later and different case. Likewise, the ability of judges to distinguish between cases allows for flexibility by enabling judges to avoid following a precedent, and hence an unjust outcome. This would occur in situations where there is a difference between the material facts of the case in which the precedent was set, and the case before the court. However, one limitation associated with the doctrine of precedent, is that judges might be reluctant to reverse or overrule an existing precedent, preferring to leave the law-making to parliament, which, as an elected body, should strive to make laws that reflect the views and values of the electorate. Such reluctance might lead to an unjust outcome. For example, in the *Trigwell Case (1979)*, the High Court was reluctant, and did not overrule an earlier precedent set by the Supreme Court of Appeal in *Brisbane V Cross* (1978), stating that landowners were not responsible for damage caused by their stray animals, preferring parliament to legislate in this area.

Similarly, with the exception of the High Court, judges in courts of the same-standing, by convention, consider their own court's previous decisions to be highly persuasive and rarely overrule them, which in effect limits its ability to make law. As the highest court in Australia, the High Court will however, overrule its own decisions to allow the law to develop over time.

Despite disagreeing with Bryan's general comment that the courts are not effective law-makers, he is correct in noting that a range of factors do limit the ability of the courts to make law. One particular limitation is that judges must wait for a relevant case to be brought before them before being able to make a ruling and establish law. Furthermore, only superior courts, namely the Supreme Court of Victoria (Trial division) or higher, are able to establish precedents. This means the ability of judges to make law is reliant on parties being willing and able to afford to bring a case before the courts and being determined to see the action through the appeals process (both of which can be costly and time-consuming). Waiting for a case to be challenged in the courts also means judges can only interpret legislation and clarify the law after a dispute has arisen (*ex post facto*).

Another factor that can limit the ability of the courts to make law is the requirement of a party to have standing (referred to as *locus standi*) in a case before the party can bring their dispute before the courts. This means the party initiating the case must be directly affected by the issues or matters involved in the case, rather than just being a member of the general community, to have the right to commence a legal proceeding in court. For example, the party initiating the action must stand to gain a calculable advantage, such as standing to gain money or property, rather than just the satisfaction of winning, if they succeed in the action.

Finally, as Bryan indicated, the ability of the courts to make law can be influenced by the approach adopted by judges when resolving disputes, although Bryan fails to mention that while some judges might be more conservative in their approach, others are more activists, which might lead to significant changes in the law. For example, judges who adopt a more activist approach and consider social and political views, including the views and values of the community when interpreting legislation and making decisions, can make judgements that lead to significant changes in the law, especially in situations where their rulings have the potential to recognise the rights of the people and address community concerns on a given matter. Furthermore, while judges who adopt a more conservative approach generally show restraint or caution when making decisions and establishing legal principles (precedents) that could lead to significant changes in the law, such restraint might be beneficial as it allows the parliament, which is elected by the people, to establish legislation that will best reflect the prevailing views and values of the community.

In conclusion, while Bryan is correct to point out that a range of factors limit the ability of judges to make law, including the willingness and financial ability of parties to pursue their case through the courts, the requirement for standing, judicial conservatism and the fact that, with the exception of High Court decisions in constitutional matters, the parliament, as the supreme law-making body, can legislate to abrogate (or cancel) court-made law, the courts are still vital and effective law-makers. For example, the doctrine of precedent enables the most experienced judges to make consistent yet flexible law and allows for the establishment of legal principles, which can be used in conjunction with legislation to form one body of law. The willingness of judges to adopt an activist approach can also enhance the ability of the courts to create and change the law to protect the rights of individuals.

Note: *This sample response contains more points than students need to include in their answers.*

Marking guide (global):

1–2 marks *for judging the overall effectiveness of courts as law-makers (weighing up the strengths and limitations), taking into account the consistency of the conclusion with the evidence*

1–8 marks *for deliberating and considering the strengths and limitations of the courts as law-makers, specifically addressing the doctrine of precedent and judicial conservatism, taking into account breadth and depth of treatment, accuracy of content, relevance of examples and levels of substantiation*

SECTION B

Question 1 (17 marks)

a. Describe *one* accessibility factor that might limit the ability of Azrad to achieve justice in this case. 2 marks

As Azrad lives in a regional location, his ability to achieve justice in this case might be limited by his inability to easily access legal services. For example, the ability to access free or low-cost legal advice and assistance might reduce Azrad's ability and willingness to pursue his rights. This is particularly so for him as his source of income from the property has been destroyed. Being required to travel long distances to gain legal advice and access courts and tribunals can discourage individuals who live in rural or remote locations from pursuing their rights.

Marking guide:

***1 mark** for providing key features of an accessibility factor*

***1 mark** for linking the factor to the scenario*

b. Explain how undertaking a representative proceeding could assist the achievement of *one* principle of justice in this case. 3 marks

***Note**: Following are three possible answers to this question.*

A representative proceeding means one claimant, namely Azrad in this case, can bring an action in court on behalf of a group of people. Undertaking a representative proceeding against Conrad might assist the achievement of justice in this case by increasing the ability of Azrad and his neighbours, who have allegedly all had their rights breached in the same manner, to access or use the civil justice system to resolve their dispute. For example, by joining together in a representative proceeding, Azrad and his neighbours will be able to share the costs associated with undertaking the civil action, such as the cost of legal representation, obtaining evidence and expert witnesses and court fees. The sharing of costs by the group members might allow those individuals, who otherwise could not financially afford to pursue a civil action against Conrad on their own, to join the action.

Alternative answer:

A representative proceeding means one claimant, namely Azrad in this case, can bring an action in court on behalf of a group of people. Undertaking a representative proceeding against Conrad might assist the achievement of fairness in this case because it will allow Azrad and his neighbours, each of whom have individual cases that relate to the same circumstances and require the same issues to be decided, to have their cases resolved in a consistent manner. For example, a representative proceeding will allow for the legal arguments surrounding Conrad's alleged negligence to be presented and assessed in the same way and for a consistent outcome to be applied to all those members of the group who were affected by the fire.

A representative proceeding means one claimant, namely Azrad in this case, can bring an action in court on behalf of a group of people. Undertaking a representative proceeding against Conrad might assist the achievement of equality because it can enable Azrad and any his neighbours, who have suffered a loss due to Conrad's alleged negligence, to pursue a legal action as a member of the group. This helps eliminate the ability of one of the neighbours to be placed at a disadvantage based on their personal characteristics and/or social and economic circumstances.

Marking guide:

2 marks *for linking a strength of representative proceeding (cause) to the achievement of one principle of justice, namely fairness, equality or access (effect)*

1 mark *for relating the response to the scenario*

c. As indicated by Source 1, Azrad has commenced pre-trial proceedings against Conrad.

Briefly explain why pre-trial procedures can assist with the resolution of civil disputes. Support your response with reference to *one* example of a civil pre-trial procedure that would take place in this case. 3 marks

Note*: Following are two possible answers to this question.*

Pre-trial procedures, which are designed to efficiently and effectively resolve disputes before they get to court, can achieve this by encouraging the parties to exchange information about their dispute. This allows them to consider whether it is worthwhile to pursue and defend the case and, if so, encourage a timely resolution of their dispute. For example, during this dispute Azrad, the plaintiff, and Conrad, the defendant, will engage in the process of discovery so both parties have the opportunity to request additional information from the opposing party about the facts of the case, such as medical records, photos, receipts, maps and the like. This enables both parties to see the evidence against them and then consider the merits of their case and whether it is worth pursuing. Azrad might request maps of Conrad's property and information regarding the chain saw equipment that sparked the fire, such as the size of the equipment and its maintenance history. Conrad might seek photographs of the property, sheds and equipment that Azrad claims were destroyed in the fire and any receipts to validate the value of the property lost.

Having the opportunity to discover the other party's evidence can also prompt the parties to engage in discussion and compromise, which might encourage an 'out of court' or early settlement. Discovery can also assist with the clarification of facts and issues involved in the case, which can save time and expense should the case proceed to trial.

Alternative answer:

Pre-trial procedures, which are designed to efficiently and effectively resolve disputes before they get to court, can assist with the resolution of a civil dispute by encouraging the parties to exchange information about their dispute. This allows them to consider whether it is worthwhile to pursue and defend the case, and if so, encourage a timely resolution of the dispute. For example, during the pre-trial process in this case, a number of directions hearings would likely take place to encourage a prompt and timely resolution of the dispute. This would save time should the case proceed to trial, by allowing the judge to give any instructions to Azrad and Conrad, and requiring them to undertake any actions to assist in an efficient settlement. For example, the judge might direct Azrad and Conrad to file and disclose particular documents by a certain date and to encourage them to discuss key issues, make admissions and provide each other with a summary of witnesses' evidence. The judge might also require the parties to attend mediation in an attempt to resolve the dispute via discussion and compromise.

Other pre-trial procedures include pleadings and mediation.

Marking guide:

1 mark *for referencing a civil pre-trial procedure example relevant to this case*

2 marks *for linking a feature of pre-trial procedures (cause) to the achievement of dispute resolution (effect)*

d. Discuss the responsibilities of the parties should this case proceed to trial. 5 marks

Should this case proceed to trial, the parties (i.e. Azrad as the plaintiff and Conrad as the defendant) would be responsible for controlling the preparation and presentation of their case to the court. For example, each party would be responsible for investigating the relevant law appropriate to the case and their argument, gathering evidence, determining which witnesses to call and question, and determining whether they will engage legal representation.

More specifically, Azrad would be responsible for presenting evidence to prove, on the balance of probabilities, that Conrad was liable for the damage caused by the fire. By contrast, Conrad would have the opportunity to present evidence in his defence to dispute Azrad's claims.

One strength associated with Azrad and Conrad being in control of the preparation and presentation of their individual cases is that by having a direct interest in the outcome of the case, both should seek to present the strongest arguments to win. Being in control of presenting and preparing their case should also increase their satisfaction with the outcome. However, Azrad and Conrad must bear the costs associated with preparing and presenting their case, including the costs of gathering evidence, expert witnesses and legal representation. The losing party might also be ordered to pay the costs incurred by the opposing party. The high costs involved with undertaking a civil action might specifically disadvantage a party who is not financially able to afford high quality legal representation and other civil costs. Also being in control of preparing the case might lead to either party inadvertently missing or deliberately omitting vital evidence and argument, which might lead to an unjust outcome.

Although unlikely, if either Azrad or Conrad self-represent, they will also have the responsibility of ensuring their respective cases are presented to the court in accordance with the strict rules of evidence and procedure. They, or their legal representatives, will also be required to comply with overarching obligations, including the requirement to act honestly, narrow the issues in dispute, minimise delay and undertake reasonable efforts and/or actions to resolve the dispute. Both parties must also abide by the any directions of the judge.

Marking guide (global):

***1–2 marks** for identifying the responsibilities of the parties, taking into account completeness and accuracy*

***1–3 marks** for considering the different viewpoints (strengths and weaknesses) associated with parties proceeding to trial, taking into account relevance to this scenario, accuracy of content and depth/breadth of treatment of discussion*

e. Discuss the ability of the remedy being sought in this case to achieve its purpose. 4 marks

Azrad is seeking compensatory damages from Conrad to reimburse him for the loss of his property (including sheds and equipment), the loss of income derived from the farm and the cost of re-establishing the farm. In this case, the awarding of specific damages has the potential to be able to reimburse Azrad for the loss he has suffered and restore him to the position he was in prior to the alleged breach of rights. This is possible because the courts should be confident in estimating accurately the cost of the damaged property, including the farming sheds and equipment, and the amount of income Azrad has lost as result of the fire. However, it might be more difficult to calculate a precise amount of damages that will accurately reimburse Azrad for the cost of re-establishing the farm, and the time and energy it will take him to restore the farm to its previous earning capacity. Re-establishment costs might increase over time and unforeseeable costs might arise after the case has been settled.

Similarly, it might be difficult to estimate accurately the severity of the stress and anxiety suffered by Azrad as a result of having his business destroyed, and therefore determining an appropriate level of general damages to compensate for his pain and suffering.

Marking guide (global):

***1 mark** for identifying the purposes of awarding damages in this case*

***1–3 marks** for considering the benefits and limitations of different remedies in achieving their purposes, taking into account the depth of treatment and relevance of remedies*

Question 2 (9 marks)

a. Propose *one* reason why the federal government might have introduced the Criminal Code Amendment (Agricultural Protection) Bill 2019. 2 marks

***Note**: Following are two possible answers to this question.*

One reason why the federal government might have implemented the Criminal Code Amendment (Agricultural Protection) Bill is to provide greater protection to Australia farmers against the protests undertaken by animal activists. Making it an offence for an individual to publish or distribute material that encourages another person trespass or commit property offences (like theft and the destruction of property) on agricultural (or farm) land, can increase the protection and safety of Australian farmers.

Alternative answer:

The federal government might have implemented the Criminal Code Amendment (Agricultural Protection) Bill to ensure the law keeps pace with, and reflects, changing community views and values. For example, as members of the community became more aware of the trespass, damage and inconvenience caused by a few of the animal activist protestors, the government might have believed that the majority of the community would support the introduction of legislation. This legislation would make it an offence for an individual to publish or distribute material that encourages another person to trespass or commit property offences, such as theft and the destruction of property on agricultural (or farm) land.

Marking guide:

***1 mark** for putting forward a valid idea or point of view as to why the Bill was introduced*

***1 mark** for linking the proposal to the scenario*

b. Describe *one* right belonging to any individual who might be arrested for committing a criminal offence while being involved in the animal-activist demonstrations or protests. 2 marks

***Note**: Following are two possible answers to this question.*

Any individual who might be arrested for committing an offence while being involved in the animal activist demonstrations or protests would have the right to be tried without reasonable delay. This means the demonstrator has the right to have the charges against them heard in a timely manner, i.e. within a realistic or practicable time period given the complexity of the case. This would be especially important in the unlikely event that the demonstrator is denied bail and held in custody prior to their committal hearing or trial. However, it is important that procedures and processes are not rushed, resulting in justice being denied. While some delays might be inevitable, excessive and preventable delays should be avoided.

Alternative answer:

Any individual who might be arrested for committing an offence while being involved in the animal activist demonstrations or protests would have the right to a fair hearing, which in accordance with the *Victorian Charter of Human Rights and Responsibilities* (i.e. the Human Rights Charter), means they have the right to a fair and public hearing before a competent, independent and impartial (unbiased) adjudicator, for example a magistrate or judge.

Any individual who might be arrested for committing an indicatable offence while being involved in a demonstration or protest would have the right to a trial by jury. The means the individuals would have the right to have their guilt determined by a group of 12 independent ordinary citizens who can reflect the prevailing views and values of society in their verdict. This could suit demonstrators who believe their actions reflect society's current views and values about animal cruelty.

Marking guide:

***1 mark** for providing a key characteristic of an individual's right when arrested*

***1 mark** for linking the right to the scenario*

c. Outline *one* advantage and *one* disadvantage of the farmers using petitions to influence legislative change. 2 marks

***Note**: Following are two possible answers to this question.*

One advantage of the farmers using petitions is that they are a relatively simple, convenient and inexpensive way for individuals to express their desire for law reform to members of parliament. Any individual can set up a petition (either a paper petition or e-petition) and to support a petition, an individual just needs to provide their name and signature (or email address) on the petition.

One disadvantage of the farmers using petitions is that their effectiveness is largely influenced by the number of signatures gathered—the more signatures, the more likely members of parliament are going to take note of the cause because they reflect the views and values of the majority of the people. The farmers might find it more difficult to generate wide community support for their cause given an increasing community awareness of animal welfare issues, such as support for banning live exports, implementing anti-animal cruelty labelling on products and protecting native species.

Alternative answer:

One advantage of farmers preparing and presenting petitions is that even if their petitions are unsuccessful, the process of gathering signatures in itself can generate public awareness of, and support for, their proposed legislative change. For example, the Victorian farmers who started the petition calling for a mandatory 6-month term of imprisonment for those who trespass onto farms, might gain media attention during the process of collecting signatures and when the petition is presented to the parliament. While the petition might be unsuccessful it might help generate greater community support and support from other members of parliament who are sympathetic to their cause.

One disadvantage of farmers preparing and presenting petitions to influence changes is that the state and federal parliaments receive hundreds of petitions each year and the influence of any petition might depend upon which member of parliament tables the petition and their influence within the parliament. Similarly, there is no obligation upon the parliament to adopt the suggested law reform. In fact, the introduction of a mandatory minimum 6-month term of imprisonment for unlawful trespassers is a relatively severe penalty and would most likely be considered too controversial to gain the support of members of parliament.

Note: *Students should be aware that the* VCE Legal Studies Study Design *requires them to discuss the ability and means by which individuals can influence law reform including through petitions, demonstrations and the use of the courts, using examples. Students could be asked a question focusing on one or more means.*

Marking guide:

1 mark *for summarising one advantage of farmers using petitions*

1 mark *for summarising one disadvantage of farmers using petitions*

d. With reference to the stimulus material, explain how *one* factor can limit the ability of parliament to respond effectively to the need for law reform. 3 marks

Note*: Following are two possible answers to this question.*

The representative nature of parliament might restrict the parliament in its ability to respond to the need for legislative change. For example, in an attempt to maintain and even increase voter support, governments and members of parliament might at times initiate and support law reform which reflects a popularist view, rather than risk losing voter support by introducing more necessary but politically sensitive or controversial laws. For example, the federal government might have been more willing to initiate the Criminal Code Amendment (Agricultural Protection) Bill after the demonstrations by the animal rights activists caused disruption and inconvenience and attracted negative media attention—the government might believe the timing could be right as more members of the community would support the Bill.

Alternative answer:

The ability of the government to gauge or measure prevailing community views about potential changes in the law, especially in controversial areas of law reform, can also limit the capacity of the parliament to effectively respond to the need for legislative change. Indeed, it would have been unlikely that the federal government would have initiated the Criminal Code Amendment (Agricultural Protection) Bill if it did not feel it had the support of the majority of the community. The fact that the demonstrations by the animal-rights activists caused disruption and inconvenience to members of the public and attracted negative media attention might have given the government reason to believe the majority of its voters would support their implementation of the bill.

By contrast, in 2017, despite various opinion polls indicating the majority of Australians supported the introduction of marriage equality, the federal Liberal Party was unwilling to support same-sex marriage until majority community support was confirmed by a national postal vote. The difficulty in measuring community views in controversial areas of law reform, such as implementing 'voluntary assisted dying' and 'safe injecting rooms', might have also contributed to relatively slow law reform in these areas.

Note: *Following are some other factors that might limit the ability of parliament to respond to the need for law change.*

- Having federal elections every three years (and state every 4 years) might discourage members of parliament from initiating law change in areas where the benefits of such change will not be seen by voters for many years.
- While parliament has the ability to establish committees and Royal Commissions to investigate the need for a change in the law, such investigation, can be very time-consuming, and parliament is ultimately not compelled to adopt any recommendations from such bodies.
- Proposals for law reform must pass through several stages of discussion and debate in both houses of parliament before becoming law, which can slow the law reform process.

- Parliament only sits for a limited number of days each year, which restricts the time available for discussing, debating and implementing law change.

Marking guide:

2 marks *for relating how one factor (cause) can negatively influence parliament's ability for law reform (effect)*

1 mark *for linking the explanation to the stimulus material*

Question 3 (14 marks)

a. Identify *one* feature of Natasha's case that indicates she has been charged with an indictable offence. 1 mark

Note*: Following are two possible answers to this question.*

Natasha has been charged with an indictable offence because she is awaiting the commencement of committal proceedings, which takes place in cases where the accused has been charged with one or more indictable offences. Committal proceedings are not used in summary offences.

Alternative answer:

Natasha has also been charged under the *Crimes Act 1958* (Vic.) and offences under this Act are deemed to be indictable.

Marking guide:

1 mark *for providing a feature of Natasha's case that indicates she has been charged with an indictable offence.*

b. Natasha is unsure whether she should seek a sentence indication.

Define the term 'sentence indication' and explain *one* reason why it might be advantageous for Natasha to seek a sentence indication. 3 marks

Note*: More than one possible answer is provided for this question*.

A sentence indication is a statement from the court giving the accused, Natasha, an indication of the sanction she would most likely receive if she pleaded guilty to the charges against her. As Natasha has been charged with an indictable offence, she will be able to apply to the County Court for a sentence indication any time after the indictment has been filed. One advantage of Natasha applying for a sentence indication (should she be successful), is the judge will indicate whether or not she will be likely to receive an immediate custodial sentence if she pleads guilty at that time. Such an indication would enable her to make an informed decision about whether or not she should plead guilty.

Alternative advantages:

Other advantages of Natasha applying for a sentence indication include:

- should she be successful in gaining a sentence indication, she will not be bound by the indication although, if she choose to accept the indication within a reasonable time period, the court will be bound by its offer.
- the possibility of an early resolution of a criminal case. This can minimise the financial cost and emotional stress incurred by Natasha should the case proceed to trial. It could also alleviate potential stress and anxiety for victims if the case proceeded to trial (e.g. anxiety associated with giving testimony in court).

Additional information:

Part 5.6, section 207–209 of the Criminal Procedure Act 2009 *(Vic.) outlines the law relating to the application for, and effect of, sentence indication in the County and Supreme courts.*

Marking guide:

***1 mark** for stating the meaning of the term sentence indication*

***2 marks** for linking a feature of a sentence indication (cause) with a benefit to Natasha (effect)*

c. While the Victorian Law Reform Commission (VLRC) is currently examining possible ways to improve Victoria's committal procedure, the practice of committal proceedings remains.

Discuss the extent to which committal proceedings can achieve *one* principle of justice. 4 marks

***Note**: Following are two possible answers to this question.*

Committal proceedings can help achieve access to the criminal justice system by promoting a timely resolution of a dispute. This is done by determining whether or not it is appropriate to hear an indictable offence summarily in the Magistrates' Court. Also it can be achieved by ensuring the case against a person accused of an indictable offence will only proceed to trial if the prosecution can show the court that it has sufficient evidence against the accused to support a conviction in a higher court. For example, if Natasha's case can be heard summarily it might reduce the time, financial cost and stress associated with the resolution of the case compared to a County Court trial. Similarly, having committal proceedings to act as a filtering system can potentially save Natasha the time, financial cost and emotional stress associated with a trial that is unlikely to succeed.

However, committal hearings might not act as an effective filtering system, as the Director of Public Prosecutions can overrule the magistrate's decisions to not proceed to trial. Furthermore, some of the stages and hearings that take place during committal proceedings, such as contested committal hearings, can be complex and confusing for an accused, particularly if they do not have legal representation. This disadvantages the accused, as it limits their ability to understand criminal processes and therefore limits their access to the criminal justice system.

Alternative answer:

Committal proceedings can promote fairness in the criminal justice system by giving the accused the opportunity to prepare their case adequately and as early as possible. For example, in this case committal proceedings would enable Natasha to hear or read the evidence against her, cross-examine the prosecution's witnesses, and if she so chooses, make an early submission of her case. However, defended committal proceedings are rare due to the high cost of legal representation and the high cost of preparing written submissions. This is unfair for the accused as there is likely to be an imbalance between the financial resources of an accused and those available to the prosecution. In addition, the majority of committal hearings result in the accused being committed to stand trial.

Committal proceedings also promote fairness by serving the purpose of enabling the issues in contention to be adequately defined, which saves time and ensures that weak cases are eliminated. However, committal hearings can be unfair for the accused and a waste of time if the Director of Public Prosecutions uses their power to overrule a magistrate's decision to not proceed to trial.

Marking guide (global):

1–3 marks *for providing evidence that considers how committal hearings both support and negate the achievement of one principle of justice, taking into account depth of treatment/understanding of committal hearings and a principle of justice, and the accuracy of content*

1 mark *for judging the overall effectiveness of committal proceedings in achieving one principle of justice, taking into account taking into account the consistency of the conclusion with the evidence*

Note: *The* VCE Legal Studies Study Design *requires students to discuss the purposes of committal proceedings rather than simply focus on committal hearings. Students should be aware that committal proceedings are the pre-trial processes and hearings that take place in the Magistrates' Court for indictable offences, in which the accused does not make an early guilty plea. Committal proceedings generally include a committal hearing, which is held to determine whether or not the prosecution has sufficient evidence against the accused to secure a conviction at trial.*

d. Discuss the role of the VLRC in influencing reform of Victoria's committal procedure.
6 marks

The Victorian Law Reform Commission (VLRC) is well placed to influence reform of Victoria's committal procedure because it has been requested to investigate the need for law reform in this area and make recommendations for law reform by the Victorian Attorney-General. This means the government has recognised the need for possible reform to the present committal system and as such should be more likely to be receptive to any recommendations to abolish, replace or reform the present system made by the VLRC.

While being government-funded, the VRLC is also an independent law reform body, which enables it to conduct its investigations objectively and make unbiased recommendations for law reform. This can increase the likelihood of all members of parliament (including the opposition and crossbench) supporting its recommendations. However, its ability to investigate and make recommendations for law reform is restricted to the terms of the inquiry's reference. For example, the VLRC has been asked to consider whether Victoria should maintain, abolish, replace or reform the present committal system, as well as investigate best practice for supporting victims, including reducing trauma to victims and witnesses. It cannot investigate beyond the scope of this reference; however, the VLRC can make suggestions for new references to the Attorney-General, as a part of its role in monitoring and coordinating law reform in Victoria.

The VLRC also has the ability to consult with the public when conducting its investigations into a designated area of law reform, which allows community views and values to be reflected in its recommendations. For example, after receiving the reference from the Attorney-General to investigate Victoria's committal system, the VLRC would have commenced preliminary research of the area of law reform and prepared a consultation paper (or issues paper as referred to in Source 1) to use as the basis for community discussion. Members of the community, including individuals, groups and interested parties, such as police, magistrates, legal practitioners, the Office of Public Prosecutions and experts in fields of interest, would have then been invited to make submissions via public meetings, surveys, forums, written submissions etc. This would support the gathering of a wide range of views and suggestions regarding possible changes to the committal system.

By undertaking broad community consultation, the VRLC will be able to ensure any recommendations to amend committal processes, or even abolish committal hearings, which are contained in its final report (the Attorney-General tables this in the Victorian parliament), reflect prevailing community attitudes. This should increase the likelihood of any recommendations being accepted by the parliament as, in an attempt to win voter support, elected members are more likely to support law reform that reflects the views and values of the community. However, ultimately, the VLRC's ability to influence reform of the committal system will be limited because parliament is under no obligation to implement any of its recommendations.

Marking guide (global):

***1–6 marks** for deliberating and considering how the VLRC can support and negate the achievement of reforming Victoria's committal procedure, taking into account the depth/breadth of treatment of VLRC's capacities and the nature of committal procedures, the accuracy of content and the coherence between VLRC's influences and likely outcomes*