



Trial Examination 2021

VCE Legal Studies Units 3&4

Written Examination

Suggested Solutions

SECTION A**Question 1** (2 marks)*For example:*

Consumer Affairs Victoria (CAV) would be an appropriate body to resolve a civil dispute because it is likely to be a far cheaper option than using the courts. 1 mark

As CAV would be a cheaper option, this would make it more accessible to someone regardless of their financial situation. 1 mark

Note: A range of responses are acceptable. Acceptable responses may outline timeliness, informality, privacy or that the matter fits within the jurisdiction of CAV.

Question 2 (4 marks)*For example:*

Judicial conservatism and judicial activism are two different approaches that a court may take when resolving a dispute.

Judicial conservatism occurs when the courts strictly apply the law to the case before it. Acting in this manner, the courts display caution when making their rulings. 1 mark

Judicial activism is the opposite approach, occurring when the courts go beyond the written law on the matter. 1 mark

Judicial conservatism and judicial activism also have different goals. In a matter of judicial conservatism, courts act with restraint to avoid potential change to the law. 1 mark

This approach can be seen in *State Government Insurance Commission v Trigwell* (1979), where the courts followed what was viewed as an outdated precedent.

While judicial activism also takes into consideration the implications of the decision, it acts in favor of change, often in matters that address social issues of the time. 1 mark

This approach can be seen in *Mabo and Others v Queensland (No. 2)* (1992), where the courts made a ruling that recognised Indigenous peoples' land rights.

Note: Examples are not required to earn full marks, but may be used to support a high-level response.

Question 3 (5 marks)**a.** *For example:*

A judge may give directions (make orders) that are considered appropriate at any stage of the civil proceedings. 1 mark

A direction is a command given by the judge that requires a party to follow a specific timeline or to follow instructions about how to proceed. 1 mark

For example, a direction may instruct a party to respond to a request for a particular document from the other party by a certain date. 1 mark

Note: A range of responses are acceptable, including stages before and during the trial. Responses that explain mediation are not acceptable, as specified in the question.

b. *For example:*

Where there has been a jury empanelled, the judge is required to sum up the case to the jury, explaining key aspects of the case.

1 mark

This includes matters such as burden of proof, standard of proof and balance of probabilities.

1 mark

Note: A range of responses are acceptable, including determining liability and remedy. Responses that outline a responsibility of the judge before or during the presentation of evidence are not acceptable.

Question 4 (6 marks)

a. *For example, any two of:*

- the right to be tried without unreasonable delay
- the right to a fair hearing
- the right to trial by jury

2 marks

*1 mark for each correct right identified.
Note: A range of responses are acceptable.*

b. *For example (the right to a fair hearing and the right to be tried without unreasonable delay):*

Equality states that everyone should be treated equally regardless of differing characteristics (such as age) or beliefs (such as religion). No person should be either advantaged or disadvantaged due to characteristics or beliefs.

1 mark

This principle is reflected in the right of the accused to receive a fair hearing. As hearings and trials are open to the public, this ensures transparency, so the public knows that the law has been applied correctly.

1 mark

Further, the accused has the right to be tried without unreasonable delay. This right ensures the matter is heard in a timely manner, with delays only occurring where the court considers they are reasonable.

1 mark

Both rights are supported by the Human Rights Charter. As these rights apply equally to all accused, they support the principle of equality.

1 mark

*Note: A range of responses are acceptable. Responses must relate to the rights identified in **part a.** and clearly explain how each right links to the principle of equality.*

Question 5 (6 marks)*For example:*

The plaintiff should consider the limitations of actions. While it varies depending on the area of civil law the dispute involves, the plaintiff has limits on the period of time before which they must commence the civil action. 1 mark

The judge may prevent the plaintiff from pursuing the matter due to the time limitation. In this case, where the plaintiff claims to have been defamed, the limitation is one year. 1 mark

While there is the ability for the court to extend the normal time period of a particular matter, this is less likely in the case of defamation. 1 mark

The plaintiff should also consider enforcement issues. 1 mark

It is one thing to be successful in the civil action you commence, but there may be circumstances that mean the defendant cannot pay the amount awarded by the court in favour of the plaintiff. In this case, the judge has noted that the defendant is currently going through bankruptcy proceedings, meaning the defendant may not have the money to pay even if the matter is found in favour of the plaintiff. 1 mark

Nevertheless, if the defendant does not have the money at the end of the civil claim, this does not prevent it being paid to the plaintiff at some later date when the defendant is no longer bankrupt. 1 mark

Note: The factors analysed must be relevant to the scenario.

Question 6 (7 marks)*For example (recent reform):*

Despite efforts being made to reduce costs for parties in the civil justice system, many who come before the civil justice system may be required to pay a large sum of money if they are to have the dispute resolved. These high costs lead some people to not pursue or defend a matter.

The Victorian Access to Justice Review recommended expanding the use of various dispute resolution methods to resolve disputes outside the courtroom. It was recommended that the Fast Track Mediation and Hearing program should be expanded into regional areas, thus granting the wider community the opportunity to access the program.

By offering this program in regional areas, people who otherwise may not have enforced their rights due to the costs involved will have their costs reduced. The fact that no final hearing would be required reduces those costs.

However, there will be some disputes that are not suited to methods such as mediation, so the attempt to reduce the cost of those disputes cannot be achieved through this program. Further, some people may choose to pursue their 'day in court', meaning the earlier settlement through the Fast Track Mediation and Hearing program would no longer be available.

7 marks

This question should be marked globally.

Note: Depending on how the response is structured, it is suggested that 2–3 marks are awarded for describing the reform in relation to one or more of the factors in the statement (costs, time and accessibility), and 4–5 marks are awarded for considering the extent to which the reform has enhanced the ability of the civil justice system to achieve justice.

Question 7 (10 marks)

Both the High Court of Australia and the people can act as a check on parliament in law-making. The High Court's role is guardian to the Australian Constitution, and the people, through the Constitution, have the power to vote on a referendum issue.

When the Australian Constitution was written, it both created the High Court of Australia and gave that court the responsibility of watching over the Commonwealth parliament's application of the Constitution. An individual or State may question the Commonwealth parliament's application of the Constitution. They are able to bring the matter before the High Court of Australia, who will rule on whether a law set down by the Commonwealth is constitutional. Should the High Court rule that the Commonwealth parliament was not acting within its constitutional powers, it is effectively using its power to act as a check on the Commonwealth parliament. However, for this check to occur, it does rely on an individual or State to bring the matter to the attention of the High Court and take that matter to court. Further, that person must have standing to bring the matter, meaning they must have been directly affected by the law being challenged.

The Commonwealth of Australia v State of Tasmania (1983) illustrates how a High Court decision can affect the division of powers. In this case, the State of Tasmania planned to dam the Franklin River. As the dam would destroy the area involved, protests were held Australia-wide. The Commonwealth government declared the area to be World Heritage listed, which effectively meant the building of the dam could not proceed. While the building of the dam was a State matter, the Commonwealth argued before the High Court that, now that the area was covered by an international treaty, it fell under Section 51 (xxix) of the Australian Constitution, which gives federal parliament the power to make laws with respect to external affairs. The High Court found in favour of the Commonwealth. The Tasmanian legislation conflicted with the Commonwealth legislation and was thus declared invalid. This interpretation by the High Court was significant and would be applied to any relevant future cases.

When the Australian Constitution was written, it was recognised that, over the years, the wording of the Constitution would need to be changed to keep up with changes in society. Section 128 of the Constitution states that the only way the words can be changed is through a referendum. This requires a compulsory vote of the people where the matter will go before both houses of parliament before being put to the people. For a referendum to be successful, it is required to achieve a double majority. Not only do a majority of voters across Australia need to support the referendum, but there needs to be a majority of voters from at least four of the six states supporting the change to the wording. A referendum may reflect the people either voting to change or not change (protect) the wording of the Constitution.

The 1967 Australian referendum proposed to remove certain words that discriminated against Indigenous Australians from Section 51 and elsewhere of the Australian Constitution. This proposal achieved the double majority; the people in every state voted to support the change. Indigenous Australians would subsequently be counted as part of the population, and the Commonwealth parliament would have the power to make laws for Indigenous Australians rather than those powers being entirely with the individual states. While this does highlight the ability of the people to keep check on parliament in law-making, not all referendums are particularly successful as a means of changing the Constitution. They are rare (42 over 120 years), with only eight successfully achieving a double majority.

Both the High Court, through interpretation of the Constitution, and the people, through voting on a referendum issue, can act as a check on parliament in law-making. However, both are limited in successfully carrying out that role.

10 marks

This question should be marked globally.

Note: High-scoring responses should include an opening and closing paragraph. A range of responses are acceptable, including a response that responds to the 'protect the Australian Constitution' element of the question using the example of the 1999 Australian republic referendum.

SECTION B**Question 1** (16 marks)

- a. Either one or two courts will be involved in this case, given that the charge is murder. Should Luay Sako plead guilty to the charge of murder, the matter would go directly to the Supreme Court to determine sentence. 1 mark
- The judge would determine the sanction after hearing from the State in relation to matters such as aggravating circumstances and, possibly, hearing victim impact statements. The defence may put forward any mitigating circumstances. 1 mark
- However, if Sako was to plead not guilty, the Magistrates Court would be involved, holding committal proceedings to determine whether there was sufficient evidence for the matter to go to trial in the Supreme Court. 1 mark
- The Supreme Court would then use a jury to determine the verdict. 1 mark
- b. *For example:*
- Individuals have various ways to influence law reform. Source 2 outlines a petition, which over 8000 people signed in support of harsher penalties being imposed by the courts for stalking and violent crimes. 1 mark
- While 8000 signatures is a large number to obtain, petitions can be signed online, making it far more accessible to those in support of harsher penalties for stalking. This enhances the effectiveness of individuals to influence law reform. 1 mark
- Further enhancing the effectiveness of individuals is the fact that petitions tabled before parliament by the relevant member are brought to the attention of that entire house, which increases its chances of success. 1 mark
- Petitions also have the ability to gain extensive media attention and bring awareness of the issue to the wider community, which may further increase their effectiveness. This factor may have, in part, led to the Victorian Law Reform Commission (VLRC) review outlined in Source 3. 1 mark
- However, many petitions are used to bring concerns with current laws to the attention of parliament, and not all will be tabled before parliament. While in this case it was, many others will not reach that point. This illustrates how the effectiveness of individuals to influence law reform is limited. 1 mark

Note: A range of responses are acceptable.

c. *For example:*

Due to a lack of time and resources, members of parliament may not be able to thoroughly investigate every issue that comes to their attention. For this reason, they will sometimes pass on responsibility for the investigation to another body, such as the VLRC.

In this case, Source 3 outlines that the VLRC have been asked by the Attorney-General to review how intervention orders in relation to stalking are handled. The VLRC will investigate in line with the terms of reference. They will do this through community-wide consultation and debate, involving interested groups. Ultimately, having been given a timeline for their investigations, the VLRC will report back to the Attorney-General with their recommendations for any changes to the law in relation to stalking.

One recent example is in relation to considering law change allowing access to the use of medicinal cannabis for certain individuals in exceptional circumstances. The investigation was thorough; the VLRC conducted nine community-based consultations and received around 100 submissions from a wide variety of interested groups. This highlights the Commission's ability to gain extensive insight into the issue before reporting back their findings to Victorian parliament.

The VLRC acts independently of Victorian parliament and parliament are under no obligation to follow their recommendations. In the case of the medicinal cannabis issue, parliament accepted 40 of the 42 recommendations that were put forward by the VLRC at the end of their investigation. This illustrates the ability of the VLRC to influence law reform.

However, the process of the investigation was both time-consuming and costly – while asked to carry out the investigation in 2014, it was not finalised and put into legislation until 2017. Further, we have those elected to parliament to make the laws on behalf of society. To then use a separate body (the VLRC) to take on that role results in additional expense.

7 marks

This question should be marked globally.

Note: High-level responses must address the two requirements of the question: explaining the role of the VLRC and evaluating a recent example.

Question 2 (12 marks)**a.** *For example:*

In this case, the Bill has gained the level of support needed from the Legislative Council, where more than half of the 40 members have voted to support the Bill.

1 mark

Parliament did not have sufficient numbers to pass the Bill without getting support from 'the crossbench' – those not aligned to either of the main parties – meaning the house was able to effectively carry out its role as the House of Review.

1 mark

The Legislative Assembly has carried out its role of initiating and passing the Bill in relation to terminally ill patients and their rights.

1 mark

While the Bill is returning to the Lower House to ratify some amendments made in the Upper House, the Legislative Assembly had earlier carried out its role through initiating the Bill and passing it onto the Legislative Council.

1 mark

Note: A range of responses are acceptable. High-scoring responses should link any mentioned roles of the Houses back to the Bill being discussed.

b. For this Bill to become law, it will need to be granted royal assent by the Crown.

1 mark

This will require the Governor to sign the Bill, as part of their role as the Queen's representative for Victoria.

1 mark

- c.** Many people will have strong views about proposed legislation that allows terminally ill patients to make life-ending decisions, which will be reflected in the media coverage of the issue. 1 mark

Whether through using social media platforms or through news reports and articles, a matter such as this is going to be widely discussed and communicated. 1 mark

The issue was likely circulated heavily via social media and reflected in news reports and articles, which brought the attention of the wider community to this issue. This may have contributed to the Bill reaching parliament. 1 mark

Note: Referring to both traditional and social media is not required to earn full marks, but may be used to develop a high-level response.

- d.** *For example:*

At the time of Federation, it was determined that some areas of law-making should, in the future, be taken out of the hands of the states and given to the newly created Commonwealth parliament. 1 mark

However, it was recognised that other areas of law-making should continue to be determined on a state-by-state basis or, in future, shared with the Commonwealth parliament. 1 mark

While only the Commonwealth parliament can make laws in areas of exclusive power, only the states could make laws in areas of residual power. However, states may still make laws in areas of concurrent power. Given the matter in this case is a Bill before Victorian parliament, it must fall under either residual or concurrent powers. 1 mark

Note: A sufficiently developed response that does not refer to all three constitutional law-making powers may still be awarded full marks.

Question 3 (12 marks)

a. For example, any one of:

- punishment
- rehabilitation
- deterrence
- denunciation
- community protection

Sample response (punishment):

One purpose of a Community Corrections Order (CCO) is to punish the offender, James Haberfield, for the crime he committed. This allows the community and the victims of his assault a degree of punishment or retribution against him.

The CCO handed down to Haberfield achieves the aim of punishment through the key conditions attached to the CCO. For example, Haberfield's day-to-day life may be restricted in various ways: he may not be able to leave the state without first getting permission, or his passport may need to be surrendered.

However, while there may be various restrictions in place under the orders and conditions attached to the CCO, Haberfield's basic freedoms remain. The community and victims may feel that the CCO does not effectively achieve the aim of punishment as these basic freedoms are not restricted.

Sample response (deterrence):

One of the purposes of a CCO is to deter people from performing similar illegal activities. Being aware of the impact a CCO will have on their lives through the conditions placed on the offender, James Haberfield, individuals may be less willing to attack emergency services workers in the future. Haberfield will also be deterred from further criminal activity as he is aware that he faces imprisonment should he break the conditions attached to the CCO. In this way, the offender would view the order as powerful, and the aim of deterrence would be achieved.

However, regardless of the various conditions that may be attached to a CCO, it is unlikely to hold the same level of deterrence as a prison sentence. Potential offenders may be aware that Haberfield has retained many aspects of his freedom, and thus they may be deterred to a lesser extent. Further, it may be questionable as to how stringently any conditions attached to a CCO are enforced, which may less effectively deter the offender from re-offending.

5 marks

This question should be marked globally.

Note: High-scoring responses should discuss both the strengths and weaknesses of a CCO to achieve the chosen purpose. Responses should link clearly to the extract.

b. *For example:*

Mitigating factor: One mitigating factor that may have reduced the culpability of James Haberfield was the fact that he ‘admitted to attacking the paramedics’. That is, he has cooperated with the police, making full admissions. 1 mark

This would be beneficial to the police, and the victims would not need to give evidence, given there has been a guilty plea. 1 mark

Aggravating factor: One aggravating factor that may have increased culpability was the fact that Haberfield has carried out this assault on paramedics acting in the course of their duty. 1 mark

Assaulting emergency service workers doing their job results in a mandatory prison sentence. 1 mark

Note: A range of responses are acceptable. High-scoring responses that link other appropriate mitigating or aggravating factors to this case may achieve full marks.

Mitigating factors include the offender displaying remorse, holding no prior convictions, or if the offender is under personal stress at the time. Aggravating factors include the offender acting in front of children or the nature/gravity of the offense. Any chosen factors must be justified by linking back to the case.

c. *For example:*

A key role of the courts is statutory interpretation. This is the process whereby judges give meaning to words or phrases that are part of an Act of Parliament. 1 mark

In this case, courts may need to give clearer meaning to the phrase ‘special reasons’. 1 mark

It would not be possible for parliament to write legislation that can comprehensively cover every possible situation where ‘special reasons’ would apply, nor anticipate every future circumstance. 1 mark

Note: A range of responses are acceptable, including another suitable word or phrase in the legislation that may be ambiguous. High-scoring responses should show the link between the legislation and the possible problem that leads to the need for interpretation by the courts.