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Legal Studies Units 3 and 4 practice exam 2009 and suggested answers

Supplement to Compak, Issue 4, October 2009

The following Units 3 and 4 Legal Studies practice exam and suggested answers are based on the author's interpretation of the VCE Legal Studies Study Design.

Students can also refer to the 2007 and 2008 VCTA practice exam papers (download these from <http://www.vcta.asn.au> > Compak (located in each Issue 4 edition for 2007 and 2008) and the 2008 Victorian Curriculum and Assessment Authority (VCAA) examination paper, which can be downloaded from <http://www.vcaa.vic.edu.au/vce/studies/legalstudies/exams.html>).

The 2009 VCAA examination will be in the form of a question-and-answer book. All parts of VCE Legal Studies Units 3 and 4 as published in the study design are examinable.

Please note that the following questions and suggested answers have no official status.

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

LEGAL STUDIES UNITS 3 AND 4

Practice written examination 2009

Reading time: 15 minutes

Writing time: 2 hours

QUESTION AND ANSWER BOOK**Structure of book**

<i>Number of questions</i>	<i>Number of questions to be answered</i>	<i>Number of marks</i>
10	10	60

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

Materials supplied

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

Instructions

- 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.

Instructions

Answer **all** questions in the spaces provided. In Question 10 answer either part **a.** or part **b.** Indicate which part, **a.** or **b.**, of Question 10 you have answered.

Question 1

a. Define the term 'representative government'.

1 mark

b. Explain **one** difference between the role of the House of Representatives and the role of the Senate when passing legislation in the Commonwealth Parliament.

2 marks

c. Explain **one** advantage and **one** disadvantage of parliament being representative during the legislative process. Comment on whether parliament is an effective law-maker.

4 marks

Question 2

Explain the purpose of a directions hearing in a civil matter in the Supreme Court of Victoria.

2 marks

Question 3

Explain how **one** recent change *or* **one** proposal for change to the legal system will help to ensure effective access to dispute resolution mechanisms by overcoming problems in the legal system.

3 marks

Question 4

a. Explain **one** reason why a formal law reform body might consult with experts or the general public when investigating the need for change in the law.

2 marks

b. Referring to **one** example of an area of law that has recently changed or could change, explain **one** reason why the law may need to be changed.

2 marks

Question 5

In 2005, each state parliament in Australia passed identical pieces of legislation to ensure that the laws about defamation were the same throughout Australia.

a. **Name** the type of legislative power used by the state parliaments to pass these pieces of legislation. (Choose **one** of: specific powers, concurrent powers, exclusive powers or residual powers.)

Type of legislative power: _____

1 mark

6 marks

Question 7

In 2012 the Commonwealth Parliament passes an Act to abolish jury trials for Commonwealth indictable offences. A concerned group of Australian citizens sues the Commonwealth in the High Court, arguing that the Act is invalid because it breaches the Commonwealth Constitution.

a. Explain the term 'indictable offence'.

2 marks

b. Explain **one** right protected by the Commonwealth Constitution, and comment on the effectiveness of the protection given.

4 marks

c. Explain the High Court's role in relation to determining the validity of this Act.

1 mark

d. Explain **two** other aspects of the jurisdiction of the High Court of Australia.

2 marks

Question 8

‘The adversary system is designed to ensure a fair and unbiased hearing for all.’

Discuss this statement. In your answer, explain at least **two** major features of the adversary system, and how these features contribute to achieving a fair and unbiased hearing. Also comment on **one** weakness of the adversary system, and how it might be improved.

8 marks

Question 10

Answer either the part (a. or b.) of this question

EITHER

- a. A Commonwealth Parliament inquiry is presently considering whether to adopt a comprehensive Bill of Rights in Australia.
 - i. This year you have learnt about how one country (apart from Australia) protects democratic and human rights. Explain how *your selected country* achieves this protection. Explain **one** strength and **one** weakness of the system used in that country. Comment on whether you think the system would improve the effectiveness of protection of human rights in Australia, giving reasons for your opinion. (The countries you may choose from are: the United Kingdom, the United States of America, Canada, New Zealand or South Africa.)
 - ii. Explain **one** informal method that an individual or group might use to influence the Commonwealth Parliament in changing this law.

8 + 2 = 10 marks

OR

- b. **Critically evaluate** the strengths and weaknesses of having a court resolve a civil dispute. In your answer, you should contrast the strengths and weaknesses of courts with those of **one** alternative means of dispute resolution.

10 marks

Either a. or b.

Suggested answers to Units 3 and 4 practice exam 2009

Important: The dot points below do not represent the only possible solutions, and remember that you must not write in dot-point form in the examination, since that would incur a marking penalty. Consult your teacher if you have any questions about these suggested answers.

Question 1

a. Define the term 'representative government'.**1 mark**

- Representative government refers to the fact that members of parliament (who form governments) are voted into power at democratic elections.
- In return for being voted in, members of parliament must act as advocates for the views of those who they govern.

b. Explain one difference between the role of the House of Representatives and the role of the Senate when passing legislation in the Commonwealth Parliament.**2 marks**

Possible differences:

- The House of Representatives may pass, amend and reject any Bill, including money Bills, while the Senate has restricted powers in relation to money Bills, which it cannot amend.
- The House of Representatives initiates most Bills (about 90 per cent), while the Senate is more traditionally a house of review.
- The House of Representatives has a national perspective, the Senate theoretically a state perspective.

c. Explain one advantage and one disadvantage of parliament being representative during the legislative process. Comment on whether parliament is an effective law-maker.**4 marks**

- Advantages:
 - representative processes ensure that legislation reflects community values
 - the representative nature of parliament will ensure that it is concerned with addressing the current needs of society, such as changing technology
 - the representative nature of the parliament ensures that it will act quickly and responsibly.
- Disadvantages:
 - members of parliament can be paralysed by democratic pressure when an issue is controversial, such as abortion (and here you might briefly refer to the *Abortion Law Reform Act 2008* (Vic.), a long-delayed change in the law)
 - vital legislation may be compromised and amended in order to get all political parties to support it
 - members of parliament become more concerned with getting re-elected than enacting good legislation.
- Comment: Parliament is overwhelmingly an effective law-maker, primarily because of its representative nature during the legislative process. While it does have its weaknesses, and they should not be overlooked, the democratic nature of parliament generally ensures that laws reflect community values, making it effective.

Question 2

Explain the purpose of a directions hearing in a civil matter in the Supreme Court of Victoria.

2 marks

- The purpose of a directions hearing is to reduce delays as a result of increased court supervision of civil matters.
- This is achieved by the parties attending a directions hearing supervised by the court, which may order the parties to speed up the pre-trial process by clarifying the pleadings or discovery, or following other directions.

Question 3

Explain how *one* recent change or *one* proposal for change to the legal system will help to ensure effective access to dispute resolution mechanisms by overcoming problems in the legal system.

3 marks

- *Effective access* refers to the idea that a person needs to have an *actual* ability to commence a legal action about a dispute and to resolve the dispute, as well as to be able to find their way into a court. A person might bring a court action against someone, but if he/she cannot afford a lawyer, he/she does not have truly effective access.
- A few examples of recent reforms that help to ensure effective access include:
 - the Koori County Court (promotes effective access by allowing cultural differences to be recognised)
 - the *Evidence Act 2008* (Vic.) (promotes effective access by reducing the need for expensive legal advice about the law of evidence, which the Act clarifies)
 - the *Criminal Procedure Act 2008* (Vic.) (promotes effective access by simplifying and hopefully speeding up the laws on criminal procedure).

Question 4

a. Explain *one* reason why a formal law reform body might consult with experts or the general public when investigating the need for change in the law.

2 marks

Possible reasons include:

- to identify areas of law that need to be altered
- to ensure that proposals for reform meet with community expectations
- to take advantage of expert knowledge of a particular area
- to comply with legislative requirements to consult.

b. Referring to *one* example of an area of law that has recently changed or could change, explain one reason why the law may need to be changed.

2 marks

Some possible reasons for change include:

- to keep up with community values (for example, the *Abortion Law Reform Act 2008* (Vic.), and laws recognising the need for equality of treatment of same-sex relationships)
- to deal with changing needs in society (for example, anti-terrorism legislation)
- to deal with changes in technology (for example, recent copyright law amendments that allow for legitimately owned CD music to be copied to the iPods of owners).

Question 5

In 2005, each state parliament in Australia passed identical pieces of legislation to ensure that the laws about defamation were the same throughout Australia.

- a. Name the type of legislative power used by the state parliaments to pass these pieces of legislation. (Choose one of: specific powers, concurrent powers, exclusive powers or residual powers.)

Type of legislative power: residual

1 mark

- b. Explain why all state parliaments had to pass legislation in order to make sure the law of defamation was the same throughout Australia.

2 marks

The jurisdiction of each state parliament typically ends at the boundaries of the relevant state, and so each Parliament had to pass identical legislation (using residual legislative powers) in order to ensure that the entire geographical area of Australia was subject to the same law about defamation (since tort law is generally a residual power).

Question 6

Critically evaluate the effectiveness of juries in criminal trials, and state your conclusion as to the need for jury trials in our legal system.

6 marks

- Possible advantages and disadvantages that you could refer to include:

Advantages	Disadvantages
<ul style="list-style-type: none"> - Decisions reflect common person's view - Less chance of wrong decision - Independent/impartial - Involves community - Social conscience - Tried and true 	<ul style="list-style-type: none"> - Excessive exemptions - Cannot understand or remember evidence - Easily influenced by expert lawyers - Increase in cost and length of trials - Acquit guilty parties too easily - Excessive damages - Secret deliberations; no reasons given

- Remember though that you need to be providing a *critical evaluation* of juries in *criminal* trials, and so it is not enough to simply *list* strengths and weaknesses.
- A good way of structuring each paragraph in a critical evaluation is by using the 'two handed approach' to writing answers to questions, for example:

One strength of juries in criminal trials is that it helps to ensure that the views of the community are reflected in the court system, since ... [explain this point]. On the other hand, a weakness of the jury system is that exemptions from jury service may prevent a jury from truly representing the community ... [explain this point]. On balance, and particularly after the 2002 amendments to the Juries Act 2000, the better view is that juries are more representative of the community ... [explain this point].

Question 7

In 2012 the Commonwealth Parliament passes an Act to abolish jury trials for Commonwealth indictable offences. A concerned group of Australian citizens sues the Commonwealth in the High Court, arguing that the Act is invalid because it breaches the Commonwealth Constitution.

a. Explain the term 'indictable offence'.

2 marks

An indictable offence is a serious criminal offence that entitles/requires an accused person to a trial by judge and jury.

b. Explain *one* right protected by the Commonwealth Constitution, and comment on the effectiveness of the protection given.

4 marks

Possible rights include:

- the right to free trade, commerce and interstate intercourse (this right effectively prevents a state or the Commonwealth from taxing interstate trade)
- the right to just compensation when the Commonwealth Parliament compulsorily acquires property (once again, an effective right)
- the right to trial by jury for Commonwealth *indictable* offences (this right is not very effective since the Commonwealth Parliament can remove the right to trial by jury by making the relevant offence a *summary* offence)
- the right to not be discriminated against on the basis of one's state of residence (an effective right that has been used to ensure that, for example, qualifications gained in one state are recognised in another)
- the right to freedom of religion, and preventing the Commonwealth from establishing a state religion (this right provides a real, although somewhat limited, protection)
- the right to political freedom of speech (this right allows members of the public to comment freely, without fear of a suit for defamation, on the effectiveness of their government)
- the right to vote (which the High Court recognised in *Roach vs Australian Electoral Commissioner* as being a constitutionally protected right that prevented the Commonwealth from arbitrarily taking voting rights away).

c. Explain the High Court's role in relation to determining the validity of this Act.

1 mark

- The High Court has original jurisdiction in any dispute in which the interpretation of the Constitution is in question.
- The High Court's role is to determine whether the fictional piece of legislation (that abolishes jury trials) breaches Section 80 of the Constitution (which gives the right to a trial by jury in a Commonwealth indictable offence).

d. Explain *two* other aspects of the jurisdiction of the High Court of Australia.

2 marks

- The High Court has jurisdiction in any action where the Commonwealth sues or is being sued.
- The court has jurisdiction in any case involving a treaty.
- The court has jurisdiction in any dispute between states or between a state and another party.

Question 8

'The adversary system is designed to ensure a fair and unbiased hearing for all.'

Discuss this statement. In your answer, explain at least *two* major features of the adversary system, and how these features contribute to achieving a fair and unbiased hearing. Also comment on *one* weakness of the adversary system, and how it might be improved.

8 marks

- Possible major features can be drawn from:
 - the role of the parties (to determine the evidence and legal argument that will be placed before the court)
 - the role of the judge (to remain a passive, unbiased and independent arbiter)
 - the need for strict rules of evidence and procedure (to ensure that the evidence and argument in a case remains fair)
 - the need for legal representation (because of the rules of evidence and procedure)
 - the burden and standard of proof.
- Some possible ways that you could explain how the major features help to ensure a fair and unbiased hearing:
 - because the parties are able to determine the evidence and legal argument that best suits their cause
 - because the judge remains passive, unbiased and independent, and thus makes certain that the parties in a dispute fight fairly and on an equal footing
 - the strict rules of evidence and procedure help to ensure fairness by making certain that unfair types of the evidence (such as hearsay) are not led, and unfair tactics are not used
 - the availability of expert lawyers helps to ensure that parties are able to present their case on an equal, and thus fair and unbiased footing
 - the fact that the prosecution (in a criminal case) and the plaintiff (in a civil case) bears the burden of proof helps to ensure that the accused or defendant has an opportunity to respond, thus ensuring a fair and unbiased hearing
 - the standard of proof in both criminal and civil matters can also be linked to a fair and unbiased hearing.
- Possible weaknesses and related reforms include:
 - the investigative experience of a judge goes unused, which could be corrected by giving judges a more inquisitorial role
 - the adversary system is frequently described as a battle of proof, rather than a search for the truth, since the parties get to determine the evidence and argument in a case; this could be corrected by having a more inquisitorial system
 - rules of evidence and procedure are frequently very complex, a situation that could be remedied by the inquisitorial system, which allows all types of evidence on the basis that judges decide the weight to be given to a particular piece of evidence
 - the cost of legal representation can be prohibitively high, and the inquisitorial system could reduce this since there is less need for legal representation.

Question 9

'The system of precedent allows for consistency and flexibility in the law.'

Discuss this statement. In your answer, explain how courts make law via precedent, and also explain the steps that a parliament may take when it agrees with a precedent set by a court.

8 marks

- The primary role of courts is to resolve disputes, but in so doing they are frequently called upon to determine questions of law, especially when there is no relevant legislation or other law governing a dispute.
- The *doctrine of precedent* requires that judgements of *courts of superior record* be recorded, and applied to future cases with similar facts, heard in courts in the same hierarchy.
- To put this another way, the principle of *stare decisis* requires that a court must stand by *precedents* set by higher courts in previous cases with similar facts.
- So, in a case where there is no applicable legislation or previous case law, a court may be called upon to create new law in its ruling
- The rule that the court applies in order to resolve a case is called the *ratio decidendi*, meaning reasons for deciding. The doctrine of precedent ensures that cases are *consistent* by applying the same *ratio decidendi* to future cases with similar facts. For example, the rule in *Donoghue v. Stevenson* (that a manufacturer must take care to avoid injuring a consumer) was also applied to the similar case of *Grant v. Australian Knitting Mills*.
- Precedent also allows flexibility, in that courts can distinguish, reverse or overrule legal precedents—*Donoghue v. Stevenson* was an example of a court overruling previous case law that said that a plaintiff had to have a contract with a defendant in order to be able to sue a defendant for negligence.
- If a parliament agrees with a precedent set by a court, it can choose to codify the precedent (that is, restate the precedent as part of a comprehensive legislative statement of the law on a topic), such as when the Commonwealth Parliament codified the *Mabo* case in the *Native Title Act 1993* (Cwlth).

Question 10

Answer **either** part a. **or** part b.

a. A Commonwealth Parliament inquiry is presently considering whether to adopt a comprehensive Bill of Rights in Australia.

- i, This year you have learnt about how one country (apart from Australia) protects democratic and human rights. Explain how *your selected country* achieves this protection. Explain *one* strength and *one* weakness of the system used in that country. Comment on whether you think the system would improve the effectiveness of protection of human rights in Australia, giving reasons for your opinion. (The countries you may choose from are: the United Kingdom, the United States of America, Canada, New Zealand or South Africa.)**

8 marks

Remember that you can use any of the selected countries, but the following suggested answer is based on the United States of America.

Remember that you need to begin your answer by clearly identifying the country that you will be using.

- The United States of America has a Constitution that sets out many of the same structures as Australia's Constitution, such as the separation of powers and representative government, and these structures help to ensure protection of human rights.
- But the main method the USA's Constitution employs is a *constitutionally entrenched* Bill of Rights, which is located in several amendments to the United States Constitution.

- The Bill contains a *comprehensive* list of rights, giving protection on such things as freedom of religion, freedom of speech, the right to due process during legal proceedings, the right to legal counsel in criminal matters, protection against cruel and unusual punishment in criminal proceedings, to name only some of the protections.
- There has also been recognised an implied right to privacy.
- These rights bind all levels of government in the US, and since they are *constitutionally entrenched* they cannot be removed without a constitutional amendment, which is a difficult process.
- A citizen who feels that their rights have been infringed may go to the Supreme Court of the United States to have their rights enforced.
- Possible strengths of the United States system include: a *comprehensive* list of rights is protected, the rights are *entrenched* and cannot be easily ignored, and the rights can be actively *enforced* through the courts.
- Possible weaknesses include: the meaning of the rights can be unclear (for example, cruel and unusual punishment has an unclear meaning), the rights can have an unwanted and inflexible impact on society (for example, the right to freedom of speech protects the publication of material that many find objectionable or harmful), and the content of rights can change over time.
- Many would argue that Australia would benefit from a comprehensive statement of human rights, unlike the current protection that is given to only a few rights.
- On the other hand, some would argue that the unwanted and inflexible impact of a comprehensive list of rights may be detrimental to Australia.

ii. Explain *one* informal method that an individual or group might use to influence the Commonwealth Parliament in changing this law.

2 marks

Possible informal methods a group may use to influence parliament include:

- demonstrations/protests
- media campaigns
- defiance of the law
- affiliation with a political party
- lobbying.

b. Critically evaluate the strengths and weaknesses of having a court resolve a civil dispute. In your answer, contrast the strengths and weaknesses of courts with those of one alternative means of dispute resolution.

10 marks

- Possible strengths and weaknesses that you could include in an answer to this question include:

Strengths and weaknesses of courts

Strengths	Weaknesses
<ul style="list-style-type: none"> – Judges are independent – The Doctrine of Precedent ensures a predictable, consistent result – Parties may engage lawyers to present their case in the best way – Strict rules of evidence and procedure ensure a fair outcome. – Judges are experts – Specialised courts resolve disputes expertly and quickly – Appeals on points of law or fact 	<ul style="list-style-type: none"> – High cost (including court costs, and the cost of legal representation) – High stress (due to formality) – Long delays due to court processes – Destroys working relationships between litigants – Rules of evidence or procedure may be unfair – A party that can afford a better lawyer will be at an advantage

Strengths and weaknesses of ADR

Strengths	Weaknesses
<ul style="list-style-type: none"> – Cost – Less formal / complicated – Encourages building of <i>working relationships</i>—e.g. the use of conciliation in equal opportunity cases – Less stressful/threatening – No need for lawyers – Less time consuming – Avoids publicity – No problems of proof 	<ul style="list-style-type: none"> – <i>Weaker parties</i> (who lack the ability to negotiate from strength) <i>may settle for less</i> than a court would award—e.g. an unsophisticated consumer who mediates with a high-powered proprietor of a large business – Can be just as time consuming and stressful as court action – <i>Very high cost</i>—mediators are often expensive lawyers! – No guarantee of any outcome – No guarantee of lack of bias – Most outcomes are <i>not legally binding</i> – ADR is often used as a delaying tactic

- The question asks for a critical evaluation, and so it is not enough to simply list strengths and weaknesses.
- You should write a couple of sentences briefly identifying and explaining the method of alternative dispute resolution that you refer to.
- You need to weigh up the strengths and weaknesses and come to a judgment about the effectiveness of courts and your method of alternative dispute resolution.

An effective way of doing this is by using the two-handed approach to answering questions, for example:

In order to critically evaluate the effectiveness of courts and mediation as a means to resolve civil disputes, we need to consider the strengths and weaknesses of each method.

On the one hand, a strength of mediation is that it helps to build the working relationships between the parties ... [explain this point]. On the other hand, the dispute resolution process of courts is seen as adversarial and counter-productive to working relationships ... [explain this point]. It can be seen that mediation may be a more appropriate method where working relationships need to be maintained.

A further strength of dispute resolution through courts is that it will ensure a binding outcome ... [explain this point]. On the other hand, mediation may not achieve a binding result ... [explain this point].

A relevant weakness of the process of mediation is that it may advantage a party that has better negotiation skills ... [explain this point]. While on the other hand, the presence of an independent judge may help to ensure that the judgement of the court is fair to both parties ... [explain this point].

Overall, it can be seen that courts and mediation have their strengths and weaknesses, with each type of dispute resolution being more appropriate in some situations than others.