

**LEGAL STUDIES**

**UNITS 3 & 4**

2019

**TRIAL EXAM A**

**SUGGESTED SOLUTIONS/RESPONSES**

**Section A**

**Question 1** (2 marks)

Explain one reason for the Victorian court hierarchy when determining criminal cases.

***Advice***

To receive full marks, the response must refer to Unit 3 AOS 1 Key Knowledge dot point 8; responding with **one** reason for the Victorian court hierarchy when determining criminal cases**: specialisation or appeals**.

**Suggested solution**

One reason for the Victorian court hierarchy is to allow cases to be appealed **(1 mark)**. Under circumstances where either the accused or the prosecution is dissatisfied with the application of the law or the outcome of the case, the court hierarchy allows for a superior court to review the case **(1 mark)**

**Marking Guide**

1 mark for identifying one reason for the Victorian court hierarchy

1 mark for elaborating on how the court hierarchy supports the reason.

**Question 2 (6 marks)**

Veronica, a ‘P-Plate’ driver, has received a summons to appear before the Magistrates’ Court for ‘drink driving’. She registered a blood alcohol concentration of 0.07 when tested by officers. Tony, Veronica’s brother, advised his sister that she will be presumed innocent and will receive a fair hearing.

1. Has Veronica been charged with summary or indictable offence? Justify your answer. (2 marks)

***Advice***

Answer needs to respond to Unit 3 AOS 1 Key Knowledge dot point 2, sub-section 1; distinction between summary offences and indictable offences. Justification requires a legal reason based on the criminal procedure, legislation or seriousness of the offence and is based on the information in the case study and/or relevant theory beyond the case study.

**Suggested solution**

Veronica has been charged with a summary offence **(1 mark).** Summary offences original jurisdiction is the Magistrates Court and Veronica has received a summons to attend the Magistrates’ Court to have her ‘drink driving’ case heard **(1 mark).**

**Marking Guide**

1 mark for stating a summary offence

1 mark for justifying why it is summary offence

**Other reasons why Veronica’s offence is summary offence:**

* Road Safety Act 1986 s.49 that can impose a fine or a short-term of imprisonment for the ‘drink driving’ offence.

1. Discuss how the presumption of innocence may affect the level of fairness achieved in a criminal proceeding. (4 marks)

***Advice***

* The answer relates to Unit 3 AOS 1 Key Knowledge dot point 2, sub-section 4; the presumption of innocence and what this means for the accused
* According to VCAA examiners report 2018 ‘**discuss** involves a consideration of points for and against the idea’. To attain full marks, the discussion about ‘fairness’ needs to suggest how the presumption of innocence can support fairness or undermine fairness.

**Suggested solution**

The presumption of innocence is the right of the person accused of a crime to be treated by the officers of the law and the legal system as innocent, until they have been proven guilty beyond reasonable doubt **(1 mark).** The presumption of innocence ensures procedural fairness is upheld through the rule of law. As such, all alleged offenders are read their rights and entitled to the ‘right to silence’ to avoid the prospect of self-incrimination **(1.5 marks)** However, the procedural fairness which protects the offender can undermine the justice afforded to other parties to a crime and their experience. In instances where it is a straightforward murder or sexual assault case, the accused is entitled to the presumption of innocence and the ‘right to plead not guilty’. As a consequence, the case may be drawn out, taking many months to resolve. Increasing the amount of stress and trauma experienced by the victim or victim’s family, undermining the justice achieved by these parties before the law **(1.5 marks).**

**Marking Guide**

1 mark articulating the meaning of the presumption of innocence

1.5 marks for discussing a positive effect on fairness

1.5 marks for discussing a negative effect on fairness

**Question 3** (4 marks)

Discuss two factors that limit the parliaments ability to make laws.

***Advice***

* The response needs to address Unit 4 AOS 2 Key Knowledge dot point 1: roles of the house of parliament, representative nature, political pressure, restrictions on law-making powers.
* According to VCAA examiners report 2018 ‘**discuss** involves a consideration of points for and against the idea’. To attain full marks, each limitation will need a corresponding way the idea can assist parliament with its law-making responsibility.

**Suggested solution**

One limitation on parliament in pursuing its main function of initiating bills and making laws is a ‘hung parliament’, where the government rules with a minority government. When the government has to rely on support of independent MPs or minor parties to pass bills it invariably leads to legislation being ‘watered-down’ (a weaker or less effective set of laws) or possibly a general stalemate where law-making is continually blocked **(1 mark).** Although, when the government holds a majority in the lower house it gives the government the political mandate to introduce policies they campaigned with before being elected **(1 mark).**

A second limitation are the specific constitutional prohibitions to legislate in particular areas. For instance, Section 116 of the constitution prohibits the parliament from imposing a religion or establishing a religious state **(1 mark)**. However, even with specific prohibitions uniform laws can be passed that work effectively across all the states. Take Section 117 for instance, which deems that no person can be discriminated against based on their state of residence. This prohibition does not impede or limit the Commonwealths ability to make laws for the entire nation. For example, the GST legislation which is applied without discrimination in all states at a rate of 10% **(1 mark).**

**Marking Guide**

1 mark discussing one limitation on parliament law-making

1 mark discussing one factor that supports parliament in its roles as a law-maker

1 mark discussing a second limitation on parliament law-making

1 mark discussing a second factor that supports parliament in its roles as a law-maker

**Question 4 (6 marks)**

“Justice delayed is justice denied”

Evaluate how time factors may affect the ability of the justice system to achieve one of the principles of justice (6 marks)

***Advice***

* The answer relates to Unit 3 AOS 1 Key Knowledge dot point 13 and AOS 2 Key Knowledge dot point 12; time as a factor that affects the ability of the justice systems (either criminal or civil) to achieve the principles of justice.
* According to VCAA examiners report 2017 ‘**evaluate** requires students to explore strengths (positives) and weaknesses (negatives) and requires a conclusion that is meaningful not just merely that the strengths outweigh the weaknesses’.
* To gain full marks at least two factors need to be evaluated and is a high quality response or 3 factors could be evaluated, but are not extensive in detail.

**Suggested solution**

Increasingly criminal pre-trial processes like plea negotiations or sentence indications are producing a quicker resolution to cases. Plea negotiations where the accused, in pre-trial discussions with the prosecution, pleads guilty to fewer or a lesser charge, allowing for a prompt resolution to the case, alleviating the pressure on the backlog of cases to be heard before the Courts. As a result, these pre-trial measures are improving the degree of access experienced by parties before the law, reducing delays for cases where a trial is necessary. Improving the ability of the parties to access the institutions where the case can be pursued and resolved **(1.25 marks).**

Although, court delays due to backlog of cases before the criminal and civil justice system still provide a significant barrier to accessing the law. County Court reports show that drawn-out trials take up to 12 months to get to Court, and some hearings before the Magistrates’ Court are adjourned for up to 10-12 months because of congested court lists. The increase in wait times making the courts less accessible for the accused and undermines the right of the accused to be tried without an unreasonable delay **(1.25 marks).**

VCAT waiting times have increased in many of the lists since the beginning of VCAT in 1998, reducing access to the civil justice system. In particular, the list for Planning and Environment has ballooned out to nearly six months which can deter some people from pursuing claims or force some to withdraw their claim early because of the time taken to get an outcome **(1.25 marks).**

On the other hand, VCAT waiting time for the residential tenancies list is 2 weeks; meaning a tenant or landlord disputing payments for rent can be resolved swiftly and limits the amount of small civil claims left unresolved within the wider community. Moreover, VCAT has also alleviated the backlog of cases before the courts providing an alternative means of resolving disputes **(1.25 marks).**

Some measures have improved the ability of people to pursue their case and decreased the backlog of cases. But the Victorian legal system still has a problem of cases and disputes taking too long to be resolved. Too many people remain in ‘limbo’ unable ‘to move on’, with waiting times upwards of 12 months for criminal and civil cases **(1 mark).**

**Marking Guide**

1.25 marks for one explanation of how the time factor supports(strength) the principle of justice chosen

1.25 marks for first explanation of how the time factor undermines(weakness) the principle of justice chosen

1.25 marks for second explanation of how the time factor supports(strength) the principle of justice chosen

1.25 marks for second explanation of how the time factor undermines(weakness) the principle of justice chosen

1 mark for meaningful conclusion

**Question 5 (4 marks)**

Section 128 of the Constitution provides the Commonwealth parliament with the authority to legislate for a referendum.

Describe the significance of **one** referendum that changed or protected the Australian Constitution. (4 marks)

***Advice***

* The answer needs to address Unit 4 AOS 1 Key Knowledge dot point 6; significance of one referendum in which the people have protected or changed the Australian Constitution.
* According to VCAA examiners report 2014, to attain full marks for a ‘**describe’** question “students need to provide some depth to their response” and in the VCAA examiner report 2018 a ‘describe’ question required students to make clear ‘how the case demonstrated the relationship’ – that is how the referendum succeeding or failing led to a significant outcome.

The 1951 referendum presented one proposed change to the wording of the constitution **(1 mark)**. It proposed that the constitution be changed and power be given to the Commonwealth to legislate against ‘Communism and Communist Parties’, effectively providing the government with the power to ban a communist party running for government **(1 mark**). The referendum was unsuccessful, with a stalemate between the states, with 3 states in favour and 3 states voting against, albeit the referendum did secure 50.5% of the national vote **(1 mark)**. The 1951 referendum is an example of how the people of Australia can use their yes or no votes to protect the constitution. The people were able ensure the constitution remained unchanged and prohibited the Commonwealth government banning the communist party, as it had previously attempted to do when passing the Communist Party Dissolution Act of 1950 (which was subsequently deemed ultra vires by the High Court) **(1 mark)**

**Marking Scheme**

1 mark for identifying one referendum.

1 marks for outlining the details of the proposed change to the Constitution.

1 mark for stating if the referendum was successful or unsuccessful in bringing about a change to the wording of the Constitution.

1 mark for explaining how individuals either changed or protected the constitution.

**Question 6 (8 marks)**

Tanya has an on-going dispute with her landlord over a faulty hot-water system. Tanya is considering taking the dispute to the Victorian Civil and Administrative Tribunal(VCAT) to be resolved. Tanya’s friend Anna said she really should take the matter to court and initiate a lawsuit against her landlord.

1. Advise Tanya of the advantages and disadvantages of seeking to resolve her dispute through the Victorian Civil and Administrative Tribunal (VCAT). (6 marks)

***Advice***

* The answer relates to Unit 3 AOS 2 Key Knowledge dot point 4; purposes and appropriateness of VCAT
* According to VCAA examiners report 2017, it is not necessary to define legal terms before answering questions. It’s not necessary to define VCAT then articulate the advantages and disadvantages, rather it’s better to simply start with the advantages and disadvantages.
* To gain full marks the advantage or disadvantage **must be relevant to Tanya’s dispute and issues she is facing**. For instance; further delays is a relevant disadvantage but the fact that VCAT cannot hear representative proceedings (although a disadvantage of VCAT) will not be awarded marks.

**Suggested solution**

One advantage of Tanya using VCAT is its low-cost fee structure, with civil claims under $15,000 having no hearing fees, and to fix or replace a faulty hot-water system is likely to be less than $15,000 **(1 mark).** However, should VCAT find in favour of the landlord, Tanya has a limited right of appeal, she is unable to challenge an unsatisfactory outcome and can only appeal her hearing on a point of law **(1 mark).**

A second advantage of Tanya taking the matter to VCAT is, it’s a quicker method of resolution than going to court, as the residential tenancies lists has a 2 week waiting period before being heard **(1 mark).** Although, another disadvantage of Tanya taking the dispute to VCAT and having her case resolved through a final hearing, will be her loss of ‘party control’ – that is her ability to influence the terms of the resolution **(1 mark).**

Another advantage of going to VCAT is the decision made at the final hearing is binding and therefore Tanya’s landlord if found to be liable will be legally bound to fix or replace the hot-water system **(1 mark).** However, a final disadvantage is that if Tanya ‘self-represents’ she may face a power imbalance with her landlord. This power imbalance could be due to differences in legal skill and experience and cause Tanya to be intimidated into compromising too early or withdrawing her claim **(1 mark).**

**Marking Guide**

1 mark for articulating **each** advantage of Tanya resolving her dispute through VCAT (X 3)

1 mark for articulating **each** disadvantage of Tanya resolving her dispute through VCAT (X 3)

1. Explain how one pre-trial procedure supports the principle of fairness in a civil dispute.

(4 marks)

***Advice***

* The answer relates to Unit 3 AOS 2 Key Knowledge dot point 1 & 5; principles of justice and purposes of civil pre-trial procedures.

**Suggested solution**

Pleadings which involves the preliminary exchange of documents between the plaintiff and the defendant; including the writ and a statement of claim and a defence **(1 mark)**. Pleadings sets the limits of the dispute stating each parties main claims or defences. This pre-trial procedure of pleadings upholds procedural fairness and each party will know what the key issues in dispute are before proceeding **(1 marks).**

**Marking Guide**

2 marks for explaining (with some detail) how the civil pre-trial procedure supports the principle of fairness

**Other possible civil pre-trial procedures**

* Discovery of documents
* Exchange of evidence

**Question 7 (10 marks)**

A High Court Judge recently said “…except for the express protection of rights the Australian Constitution is **not** an effective check on parliament’s law-making powers”

Examine the extent to which you agree with the statement made by the High Court Judge. (10 marks)

***Advice***

* The answer relates to Unit 4 AOS 1 Key Knowledge dot point 4; means by which Australian Constitution acts as a check on parliament as a law maker
* According to VCAA examiners report 2018 Question 7 where students were asked to “discuss the extent to which you agree with this statement” the following feedback was provided: to achieve full marks a contention was needed stating the extent they agreed and discuss points for and against. This question requires an examination of the points for and against the ways express rights as well as, the bicameral system, the separation of powers and the double majority act as a check on parliament as a law maker.

**Suggested solution**

Mostly I disagree with the comment as there are other protections in the Australian Constitution that check parliament in its primary role of law-making in Australia. The bicameral structure of parliament operates to scrutinise the law-making process by the lower house where government is formed, being held to account by the upper house where the bills can be scrutinized and provides checks and balances against any abuse of power.

In the case where there is a hostile senate (government does not hold the majority in the upper house) it can ensure the bills passed through the lower house are more carefully reviewed. However, should the upper house be providing a ’rubber stamp’ – given the government holds a majority in the upper house – it weakens the degree to which bills are scrutinised by parliament.

Established in the constitution is the separation of powers that ensures the no single authority has complete control over the political and legal systems. By separating the judiciary, the executive and the legislature, it ensures that parliament’s law-making power is checked. A strength of the separation of powers is that the judiciary is independent of the legislature and thus can scrutinise parliaments law-making, ruling laws that are challenged and made by parliament outside their law-making authority, as invalid (ultra vires).

However, a weakness of the separation of powers is the overlap between the legislature and the executive. The prime minister and the cabinet who make up the executive are also part of the legislature, decreasing the effectiveness of each of the bodies to check on each other’s’ powers.

Section 128 and the requirement for double majority at a referendum ensure parliaments’ law-making powers are kept in check. The constitution wording cannot be changed unless a proposal for change is approved by the Australian people. The requirement for a double majority means firstly the majority of voters in Australia vote ‘yes’ and that 4 out of 6 states vote in favour of the referenda. The strictness of the double majority has proven difficult to achieve, and ensured Parliament has not easily (with only 8 of the 44 referendums being successful) strengthened their law making powers in an arbitrary manner.

On the other hand, the double majority has proven so difficult to achieve that even changes with merit have been rejected, simply because the voting public did not understand the meaning of the change or were convinced the change was too controversial in nature.

In accord with the judge’s comment is the suggestion that express rights written into the constitution do provide a good safeguard against parliament overstepping in their law-making role. For instance, Section 117 bans the commonwealth Parliament from making laws that discriminate against residents from an individual state.

But overwhelmingly the number of these express rights is small and the scope of protection provided by these express rights is limited. The express rights protect a narrow field of law making; Section 80 protecting the trial by jury or Section 51 xxxi requiring land be acquired on ‘just terms’. Additionally, with there being only 5 express rights recognised in the constitution, it is an inadequate check given the vast amounts of law making areas available to the parliament.

In conclusion, it is untrue to suggest that the express rights in the constitution form a ’good check’ on parliament as a law maker. Other measures such as bicameral parliament, separation of powers and referendums, established by the constitution establish a far more robust set of checks and balances on parliament as a lawmaker.

**Marking Guide**

**###This question will be marked globally and a range of answers could achieve full marks####**

**Possible Marking Scheme**

1 mark for stating the degree of agreement and why

3 marks for examining in detail (strengths and weaknesses) the bicameral system of parliament, the separation of powers and the double majority

**SECTION B**

**SECTION B SPECIAL NOTICE**

In the VCAA examination in Section B it states “Use stimulus material, where provided, to answer questions in this section”

This means: **YOU MUST USE STIMULUS MATERIAL IN EVERY QUESTION IN THIS SECTION.**

**Question 1** (17 marks)

**Source 1**

The following is an extract from the Victorian Law Reform Terms of Reference for reviewing committal proceedings

Recognising legislative reforms, public consultation on an early case management model, and other efforts in recent years to address challenges in the committal system, which forms part of pre-trial criminal procedure, the VLRC is asked to review and report on Victoria's committal system

 In particular, the Commission should consider:

* whether Victoria should maintain, abolish, replace or reform the present committal system
* opportunities for reform that enable early identification of cases that can be determined summarily, encourage appropriate early guilty pleas, facilitate efficient use of court time and encourage parties' proper preparation for trial
* ways of improving early disclosure processes in criminal prosecutions brought in the indictable stream
* if, when and in what circumstances witnesses or classes of witnesses should be examined prior to trial, including consideration of ways to minimise the need for victims and other vulnerable witnesses to give evidence multiple times
* whether a magistrate should determine if there is sufficient evidence to commit an accused to stand trial and, if so, what test to apply, having regard to the Director of Public Prosecutions' power to directly indict, and
* the impacts of any recommended changes on all parts of the criminal justice system, and what will be needed to ensure the successful implementation and operation of those changes, including resource implications.

<https://www.lawreform.vic.gov.au/projects/committals/terms-reference-committals>

**Source 2**

The following is an extract from an article published in The Age newspaper on the 19th January 2019 and is written by Farrah Tomazin.

**Court committals could be abolished to reduce victims' trauma**

In a move that could shake-up the way serious offences are dealt with, the Andrews government has commissioned a review of the committals system to make the courts more efficient and reduce the trauma victims face.

In essence, they give the accused a chance to test the case against them, and ensure prosecutors only push for charges that have a reasonable prospect of success, rather than a broad suite.

However, committals can be traumatic for victims, forcing them to recount their experiences multiple times, which can often be overwhelming.

<https://www.theage.com.au/national/victoria/court-committals-could-be-abolished-to-reduce-victims-trauma-20190119-p50sci.html>

**Question 1**

1. Analyse the way the media can influence a possible reform to the committal proceedings laws in Victoria. (4 marks)

***Advice***

* The answer needs to address Unit 4 AOS 2 Key Knowledge dot point 8; role of the media in law reform
* To gain full marks students will need to explore the strengths and weaknesses of media influencing reform to committal proceedings.
* An ‘analyse’ question requires a **conclusion** that is meaningful and doesn’t merely state that the strengths outweigh the weaknesses’

**Suggested solution**

Traditional media such as ‘The Age’ newspaper has a wide readership with millions of viewers and readers accessing the media in print or on-line, each week. One strength is its ability to inform and create debate about legal issues such as abolishing committal proceedings for serious criminal offences. However, some media reporting can be biased and based on the political leanings of the owners of the media outlets **(1.5 marks).**

Furthermore, traditional media outlets like ‘The Age’ have a wide range of resources to investigate issue thoroughly and adhere to high set of journalistic standards to protect the integrity and name of the media outlet. Traditional media should ‘on balance’ be more reliable in terms of the facts used to debate the merits of abolishing ‘committal proceedings’. However, traditional forms of media like newspapers are generally not popular among younger generations and therefore less relevant to a large majority of the younger voters [digital natives] **(1.5 marks).**

Media, in terms of traditional media, plays a significant role in raising awareness about issues, sparking discussion and furthering debate. Hence the media can be very influential in affecting the way Parliament performs their primary role of law-making. **(1 mark).**

**Marking Guide**

1.5 marks for providing a strength & weakness of media to influence the reform of committal proceedings

1.5 marks for providing a strengths & weakness of media to influence the reform of committal proceedings

1 mark for concluding statement

1. Discuss the ability of the Victorian Law Reform Commission(VLRC) to influence a change to committal proceedings in the Criminal Justice System. (4 marks)

***Advice***

* The answer relates to Unit 4 AOS 2 Key Knowledge dot point 9; role of the VLRC in recommending law reform
* To gain full marks students will discuss both points for and against the ability of the VLRC to influence change to the laws. With a concluding statement that suggests it is either effective or ineffective.
* According to VCAA examiners report 2017 suggested it is not necessary to define legal terms before answering questions. It is not necessary to define VLRC to gain full marks.

**Suggested solution**

The Victorian Law Reform Commission(VLRC) has a direct link to parliament through the Attorney General. This has a positive influence on the ability of the VLRC to influence law reform relating to committal proceedings. The Attorney General sets the terms of reference for the investigation, and the Attorney General will table the final recommendations before parliament - making parliament more likely to accept some or all of these recommendations. Although, the VLRC is limited in its influence to enforce law reform, because parliament is under no obligation to implement any of these recommendations **(2 marks).**

A further strength of the VLRC to influence changes to the legal procedures surrounding committal procedures is its ability to measure community views on the issues being investigated. Public forums allow community members to actively contribute to the debate, by asking questions, sharing stories and by taking written submission relating to the issue of committal proceedings **(2 marks).**

**Other possible discussion point…**

*While the VLRC cannot change laws directly and only recommend the committal system be reformed, it is likely that all or at least some of the recommendations from the inquiry are taken up by parliament. Currently, around 70% of VLRC reports tabled before parliament result in some degree of law reform. Whilst, it should be stated that the VLRC are limited to terms of reference outlined by the Attorney General* ***(2 marks).***

**Marking Guide**

2 marks for discussing one positive and one negative of the ability of VLRC to influence law reform.

2 marks for discussing one positive and one negative of the ability of VLRC to influence law reform.

Justice Hay said “…. If the VLRC does recommend that committal hearings should be abolished it will be easy for the courts to abolish the committal system from the Criminal Procedures Act”

1. Do you agree with Justice Hay? Justify your answer. (3 marks)

***Advice***

* The answer needs to address Unit 4 AOS 2 Key Knowledge dot point 13; ability of parliament and courts to respond to the need for law reform.

**Suggested solution**

Justice Hay is wrong and I do not agree with the comment **(1 mark).** Justice Hay mistakenly referred to the courts being able to abolish a piece of legislation. The courts do not have the authority to amend or abolish the Criminal Procedures Act, the supremacy of parliament enabling parliament to introduce, amend or abolish Acts of parliament. **(2 marks)**

**Marking Guide**

1 mark for stating Justice Hay is incorrect

2 marks for elaborating on the nature of the supremacy of parliament

The Victorian law Reform Commission could make recommendations to Parliament to reform Victoria’s Committal System.

1. Evaluate the ability of parliament to respond to any recommendations made by the Victorian Law Reform Commission. (6 marks)

***Advice***

* The answer relates to Unit 4 AOS 2 Key Knowledge dot point 13; ability of parliament and courts to respond to the need for law reform.
* According to VCAA examiners report 2017 ‘**evaluate** requires students to explore strengths (positives) and weaknesses (negatives) and requires a conclusion that is meaningful not just merely that the strengths outweigh the weaknesses’.

**Suggested solution**

One strength of Parliament to respond to any recommendation put forward by the Victorian Law Reform Commission (VLRC) is the supremacy of parliament. As such any recommendation from VLRC to amend or abolish committal proceedings where the State parliament has jurisdiction (Criminal matters) the parliament has the power make or change these laws. **(1.25 marks)**. However, the parliament lacks the ability to respond quickly to any recommended changes if the parliament is not sitting. Given that in 2018 both house of Victorian parliament sat for 51 days, this is a likely prospect **(1.25 marks)**.

However, the speed of passing legislation when sitting is a strength of parliament. The government of the day, with bi-partisan support can quickly and easily implement the recommendations, bringing about reform to the committal justice system in a very prompt fashion **(1.25 marks)**.

Although, should the recommendations be too controversial or too sensitive it may deter the government from initiating any law reform. Politicians seeking re-election generally avoid unnecessary law reform that could jeopardise their popularity within their electorates **(1.25 marks).**

Overall, the supremacy of parliament gives the parliament a wide range of legislative powers and the overriding authority to change or amend existing law when the need arises **(1 mark).**

**Marking Guide**

1.25 mark for providing a strength of the ability of parliament to respond to the VLRC recommendations

1.25 mark for providing a weakness of the ability of parliament to respond to the VLRC recommendations

1 mark for concluding statement

**Question 2**

Tina celebrated her newly announced pregnancy with a dinner at the local chicken restaurant. The chicken she ate contained salmonella, causing Tina to be hospitalised and suffer a miscarriage (premature loss of her baby). Tina is considering suing the restaurant for her personal loss.

1. Explain one factor Tina should consider before initiating a civil claim. (2 marks)

***Advice***

* The answer relates to Unit 3 AOS 2 Key Knowledge dot point 3; factors to consider when initiating a civil claim: negotiation, costs, limitation of action, scope of liability and enforcement issues

**Suggested solution**

Tina needs to consider the scope of liability **(1 mark).** It is important to determine who is liable for her loss, so that she takes action against the person responsible for her becoming ill, or that she sues the restaurant who are vicariously responsible for the careless actions or omissions of their staff **(1 mark).**

**Marking Guide**

1 mark for identifying **one** of the following factors to be considered: **negotiation,** **costs,** **limitation of action**, **scope of liability** and **enforcement issues**.

1 mark for outlining how it is relevant to Tina given the facts of the case.

1. To what extent could the responsibilities of the parties affect justice being upheld should Tina’s case go to trial. (6 marks)

***Advice***

* The answer needs to address Unit 3 AOS 2 Key Knowledge dot point 1 and 7; the principles of justice and the responsibilities of the parties in a civil case.

**Suggested solution**

Tina as the plaintiff of the case, holds the burden of proof to prove the facts of the case. One of the key responsibilities of Tina is to present the case before the judge and possibly a jury. Tina and her legal representative have autonomy (party control) of how her case will be presented; but if the ability and legal knowledge of Tina’s party is poor, vital evidence can be missed. Should Tina’s party fail to present the best case possible it undermines the fairness achieved by Tina before the courts **(2 marks)**

Secondly, should Tina choose or be forced to self-represent, it will compromise her ability to uphold her access to the civil justice system. Tina will lack the experience and legal knowledge to best pursue her legal rights before the courts and it will be difficult for Tina to know whether she is complying with the overarching obligations outlined in the Civil Procedure Act 2010 **(2 marks)**

For both parties to effectively participate in an objective manner, legal representation may be required. Should either party be unable to effectively participate it creates a serious risk of an injustice being done, eventuating in an unfair outcome. To a large degree the level of justice achieved by Tina and the defendant is dependent on the quality of legal representation, and their parties ability to present their case in the best light possible **(2 marks).**

**Marking Guide**

2 marks for explaining the positive and negative effect of party control on the outcome of a trial

2 marks for discussing the problems associated with self-representation

2 marks for discussing the positive and negative effects of the level of experience and quality each party has representing them

**SOURCE 1: Commonwealth Constitution Section 51**

## **Legislative powers of the Parliament**

The Parliament shall, subject to this Constitution, have power to make laws for the peace, order, and good government of the Commonwealth with respect to:

1. trade and commerce with other countries, and among the States;
2. taxation; but so as not to discriminate between States or parts of States;
3. bounties on the production or export of goods, but so that such bounties shall be uniform throughout the Commonwealth;
4. borrowing money on the public credit of the Commonwealth;
5. postal, telegraphic, telephonic, and other like services;
6. the naval and military defence of the Commonwealth and of the several States, and the control of the forces to execute and maintain the laws of the Commonwealth;
7. lighthouses, lightships, beacons and buoys;
8. astronomical and meteorological observations;
9. quarantine;
10. fisheries in Australian waters beyond territorial limits;
11. census and statistics;
12. currency, coinage, and legal tender;
13. banking, other than State banking; also State banking extending beyond the limits of the State concerned, the incorporation of banks, and the issue of paper money;
14. insurance, other than State insurance; also State insurance extending beyond the limits of the State concerned;
15. weights and measures;

Commonwealth of Australia Constitution Act 1900 (excerpt Section 51)

**Source 2: Commonwealth Constitution: Section 114 and 115**

## 114. States may not raise forces. Taxation of property of Commonwealth or State

A State shall not, without the consent of the Parliament of the Commonwealth, raise or maintain any naval or military force, or impose any tax on property of any kind belonging to the Commonwealth, nor shall the Commonwealth impose any tax on property of any kind belonging to a State.

## 115. States not to coin money

A State shall not coin money, nor make anything but gold and silver coin a legal tender in payment of debts.

Commonwealth of Australia Constitution Act 1900 (excerpt Section 114 &115)

**Question 3 (15 marks)**

1. In relation to the Australian Constitution, using examples, comment on the division of law making powers of the State and Commonwealth parliaments. (6 marks)

***Advice***

* The answer relates to Unit 4 AOS 1 Key Knowledge dot point 2; division of constitutional law-making powers – **exclusive, concurrent and residual powers**
* For students to attain full marks each of the three powers must be commented on. The examples used must use the sources provided or the students wider legal knowledge.

**Suggested solution**

Specific powers listed in Section 51 of the Constitution encompass both exclusive and concurrent law-making powers **(1 mark).** Exclusive powers are held solely by the Commonwealth, either expressly in the Constitution or through the interpretation of it. For example, S. 51 XII currency, coinage, and legal tender is a Commonwealth exclusive power **(1 mark).** Concurrent law making powers listed in the Constitution that are shared between the Commonwealth and the States **(1 mark)**. For example, S.51 II powers to impose taxes on the people is shared by the Commonwealth and the States **(1 mark)**. Residual law-making powers that were left out of the Constitution, the Commonwealth has no authority to make laws in this areas (1 mark). For instance, criminal law is not mentioned in the constitution and therefore remains an area of residual power, belonging to the states **(1 marks).**

**Marking Guide**

1 mark for describing each law-making power (exclusive, concurrent, residual)

1 mark for providing an example for each law-making power

1. Sections 114 and 115 of the Australian Constitution, means section 109 does not apply when considering law making issues surrounding raising an army or issuing currency.

Do you agree or Disagree with this statement? Justify your answer. (3 marks)

[NOTE: S114 indicates it is possible for states to raise an army ONLY with the consent of the Commonwealth – **since Federation no such consent has been granted by the Commonwealth]**

***Advice***

* The answer relates to Unit 4 AOS 2 Key Knowledge dot point 13; ability of parliament and courts to respond to the need for law reform.

**Suggested solution**

The statement is correct **(1 mark),** Section 109 relates to concurrent areas of law-making where State laws are inconsistent with a Commonwealth law, the latter shall prevail, and the former, to the extent of the inconsistency be invalid **(1 mark).** Section 114 and Section 115 specifically prohibits the States from making laws that relate to raising an army or issuing currency. Therefore, the states have no legal authority to legislate in these areas and makes S119 not relevant, when considering laws surrounding printing currency and raising an army **(1 mark).**

**Marking Guide**

1 mark for stating the statement is correct

1 mark for outlining the meaning of section 109

1 mark for elaborating on why section 109 has no effect when exclusive law-making powers are being considered

1. What is one reason why the High Court may need to interpret the phrase ‘*nor shall the Commonwealth impose any tax on property of any kind belonging to a State*’ from section 114? (2 marks)

***Advice***

* The answer needs to address Unit 4 AOS 2 Key Knowledge dot point 13; HC role of interpreting the Constitution and courts role of statutory interpretation.

**Suggested solution**

One reason statutory interpretation may be required is that new types of ‘property’ may exist to ones that existed when the Constitution was first written **(1 mark).** Applying the Act in cases where State governments develop revenue streams from new technology or other advancements in society and the Commonwealth attempt to tax the state government. In such cases, if a dispute did arise between the states and the Commonwealth the High Court’s authority to give meaning to the word ‘property’ could be used to resolve the dispute.

**(1 marks)**

**Marking Guide**

1 mark for stating why statutory interpretation could be needed (**new technology**, **ambiguous wording**, **poorly drafted**)

1 marks for outlining why there may be a need for the High Court to interpret *nor shall the Commonwealth impose any tax on property of any kind belonging to a State*’.

1. Discuss the significance of one High Court case involving the interpretation of the Australian constitution. (4 marks)

***Advice***

The answer needs to address Unit 4 AOS 1 Key Knowledge dot point 7; the significance of one High Court case which has had an impact on the division of constitutional law-making powers

**Suggested solution**

The Brislan case involved the High Court **(1 mark)** being asked to interpret the validity of The Wireless Telegraphy Act 1905 (Cwlth), which stated that all owners of wireless sets (radios) were required to hold a licence. The defendant challenged the validity of the Act claiming that the Commonwealth did not have the power to make the Act under the Constitution **(1 mark).** The High Court interpreted the wording in S51(v) ‘other like services’ in the Constitution to include broadcasting to wireless sets. The impact of this interpretation on the division of law making powers is that the Commonwealth has moved into an area of law making that was a residual power as broadcasting to a wireless set was not mentioned in the Constitution. Therefore, by ruling ‘other like services’ to include wireless sets, the High Court gave the power to make laws about broadcasting to wireless sets to the Commonwealth. This decision has had a lasting impact through time, with the Commonwealth being responsible for licencing laws in relation to the development of new technology. **(2 marks).**

**Marking Scheme**

1 mark for correctly identifying a relevant case.

1 mark for outlining the general facts of the case.

2 marks for using the section of the Constitution and explaining the impact of the case

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