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**LEGAL STUDIES  
  
Units 3 & 4 – Written examination**

# 2013 Trial Examination 2

## Reading Time: 15 minutes Writing Time: 2 hours

**QUESTION & ANSWER BOOK**

### 

### Structure of book

|  |  |  |
| --- | --- | --- |
| *Number of questions* | *Number of questions to be answered* | *Number of marks* |
| 10 | 10 | 70 |

* Students are permitted to bring into the examination room: pens, pencils, highlighters, erasers, sharpeners, rulers, and a scientific calculator.
* Students are not permitted to bring into the examination room: blank sheets of paper and/or white out liquid/tape.

**Materials supplied**

* Question and Answer Book of 22 pages.

**Instructions**

* Answer all questions in the answer book.
* All written responses must be in English.

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

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| **Instructions**  Answer **all** questions in the spaces provided |

***The following is an extract from the proceedings in the Legislative Assembly. This extract is referred to in Questions 1 and 2.***

**LEGISLATIVE ASSEMBLY OF VICTORIA**

**VOTES AND PROCEEDINGS**

No 115 — Thursday 7 February 2013

**3.** PETITIONS — The Clerk announced that the following petitions had been lodged for presentation:

**Taxi Licences** — Requesting that the Legislative Assembly urges the Government to act decisively to reject any proposed unlimited release of taxi licences and calls on the Government to provide the industry with the fare increase it needs, bearing 989 signatures *(Ms Miller)*

16. CO-OPERATIVES NATIONAL LAW APPLICATION BILL 2013 — *Mr O'Brien tabled a statement of compatibility in accordance with the Charter of Human Rights and Responsibilities Act 2006.*

Motion made and question proposed — That this Bill be now read a second time *(Mr O'Brien)*.

**Question 1**

1. Outline the structure of the Victorian Parliament.

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2 marks

1. Explain the stage in the legislative process identified in the extract.

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1. Explain the role of the upper house in the law-making process.

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2 marks

**Question 4**

*‘Courts rarely make laws because Parliament leaves them little scope to do so as legislation covers most situations’.*

Discuss this statement explaining why it is necessary for courts to make laws.

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6 marks

**Question 6**

In March 2013 the cost of taking a civil dispute to the Victorian Civil and Administrative Tribunal (VCAT) increased dramatically - the cost of lodging a basic small claim against a trader over faulty goods will more than triple - from $38 to $160.

1. Explain the role of VCAT

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2 marks

1. Explain how the changes mentioned above will impact the effectiveness of VCAT.

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**Question 10**

*‘The individual rights of Australian citizens are protected in numerous ways.*

Discuss this statement detailing how rights are protected in the Commonwealth Constitution Australia. In your response compare Australia’s protection of rights with the protection of rights in one other country you have studied this year.

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10 marks

**END OF QUESTIONAND ANSWER BOOK**

**LEGAL STUDIES  
  
Units 3 & 4 – Written examination**

2013 Trial Examination 2

***Suggested Solution***

**General information for teachers and students:**

* Students are encouraged to write full sentences and explain concepts fully.
* They should not list or dot point answers
* When asked for advantages/disadvantages or similarities or differences, students should indicate which is the advantage and which is the disadvantage etc
* As a general guide students should be writing 2-3 lines per allocated mark
* Whilst examples, unless specified, are not necessarily required, they can help to make an answer clearer for the reader.
* If there is a question requiring a specified number of answers, Eg Outline 2 advantages. Students should not supply more than the specified number as only the first two responses will be considered.
* If asked to justify an answer, students should supply the positive reasons to support their answer and not introduce negatives. Contrast, evaluate, argue, discuss and analyse will require students to argue both sides.

The responses below are only suggested answers as each question *may* have other answers that would be acceptable. If you are unsure about your answer, you should check with your teacher or tutor. The main points that are required in each question can be found in the dot points that precede the written sample answer.

**Question 1a**

**Outline the structure of the Victorian Parliament. 2 marks**

Students must identify the three branches of the Victorian Parliament, i.e. that there is an upper house, lower house and the Crown.

*Sample answer: The Victorian Parliament is a bicameral parliament which means that there is an upper house, known as the Legislative Council, a lower house, the Legislative Assembly. There is also the Crown, represented by the Governor.*

**Question 1b**

**Explain the stage in the legislative process identified in the extract. 2 marks**

Students should identify the stage as the ‘Statement of Compatibility’ and then outline what occurs during the stage of the process. Students that only identify without any explanation should receive 1 mark.

*Sample answer: The stage referred to in the extract is the tabling of the Statement of Compatibility. This Statement is required under the Victorian Charter of Rights and Responsibilities. The Statement must be presented to the Legislative Assembly prior to the second reading speech. The Statement must state either that, the Bill is compatible with the Charter, or that parts of the Bill are incompatible with the Charter. If parts are incompatible, the Statement must explain the nature and the extent of the incompatibility.*

**Question 1c**

**Explain the role of the upper house in the law-making process 2 marks**

Students should do more than simply identify the role, some explanation must be given. Students may choose to discuss more than one role, however this is not necessary, provided their answer is detailed. The roles should focus on law-making rather than government.

**Possible answers:**

* Making laws
* Reviewing laws

*Sample answer: The role of the upper house in the law-making process is to make and review laws. Whilst most laws are initiated in the lower house, the upper house can begin the process of introducing a Bill, provided it is not an appropriation Bill. The Bill would follow the same steps as if it had originated in the lower house. The upper house also reviews any laws that were initiated in the lower house. During the review process, the upper house can amend or reject the proposed law.*

**Question 4**

*‘Courts rarely make laws because Parliament leaves them little scope to do so as legislation covers most situations’.*

**Discuss this statement explaining why it is necessary for courts to make laws. 6 marks**

This is a discuss question, so students need to talk about the pros/cons, strengths/weaknesses or advantages/disadvantages of this statement, whilst explaining the reasons courts make laws. If students do not make reference to the statement, they cannot receive full marks.

This question should be marked globally, but students should discuss at least three reasons why courts need to make laws and why they may not.

**Possible reasons for courts making laws include:**

* No current law in existence
* Need to extend legislation to fit the situation
* Interpretation of a statute/s is necessary to resolve the dispute/case
* Parliament is unwilling/unable to make a law in a particular area

**Possible reasons for courts not making laws include:**

* No case before them requiring a law
* Not a superior court of record
* Law is adequate in the area
* Judge is unwilling to make a new law

*Sample answer: Although it is not the primary role of courts to make laws, they are called upon regularly to make a new law or alter an existing law. Parliament, as supreme law-maker does create the majority of laws in Australia, however, this does not stop the courts from playing a role.*

*Courts are able to make a law when an issue is brought before them that has not yet been legislated, or adequately legislated on. For example, prior to the Donoghue v Stevenson case of 1932, parliament had not legislated in regards to manufacturers’ liability for negligent products. This meant that the courts had to step in and create an entire new area of law, as parliament had failed to do so. Thus, the courts provide citizens with an avenue of creating law when their parliament has been unwilling or unable to do so.*

*Further, courts have the ability to make laws quickly, once a relevant case comes before them. This is why it is necessary for courts to make laws. Unlike parliament, courts are not burdened with long processes and procedures when it comes to making laws. Judges are required to rule on cases before them and must come to a final decision; they do not have to take voter views and values into consideration and do not need to conduct in-depth debate. Therefore, judges can create an immediate law that applies directly to the case before them, as well as creating a binding precedent that applies to similar cases being heard in lower courts in the same court hierarchy. This creates efficiency in operation as well as the ability to create laws as soon as the need arises. This is something that parliaments are not able to do. Parliament must wait until they are sitting and then conduct the lengthy legislative process, before a law can be made.*

*However, courts must wait for an appropriate test case to come before them before they can create or change the law. This relies on there being a party with standing willing to bring a case to court. This can mean changes in the law are slow and done so in an ad hoc manner. Further, judges are limited to only being able to rule on points of law at issue before them, and often this can be of quite narrow scope. Parliament, on the other hand, can create laws in a more consistent manner, planning for the future, and therefore can create a much more comprehensive legislative program.*

*Despite this, courts play a necessary role in the legislative process, particularly when parliament is unwilling, or unable to legislate or alter existing legislation.*

**Question 6a**

**Explain the role of VCAT. 2 marks**

Students should mention the following roles in their answer: accessible, informal, low-cost, timely method.

*Sample answer: The role of VCAT is to provide a dispute resolution avenue that is easily accessible to members of the community by providing informal, low-cost dispute resolution in a timely manner. It does this by providing expert dispute resolution in certain areas of law, such as tenant and landlord disputes.*

**Question 6b**

**Explain how the changes mentioned above will impact the effectiveness of VCAT.**

**4 marks**

Student answers must refer to the case material. That is, it must explain how the increase in lodging fees for a small claim will impact on the ability of VCAT to perform its role as outlined in question 6a.

Mark globally, however students should refer to at least two of VCAT’s roles when answering this question – low-cost and accessibility would be the most obvious choices.

*Sample answer: VCAT’s ability to remain effective as a cheap and accessible method of dispute resolution, will be greatly impacted by the increase in lodging fees mentioned above. With fees tripling, many people will no longer be able to afford to initiate a claim in the Tribunal. A fee of $38 is extremely cheap and encourages people to take a claim to VCAT, as the outlay is only minimal should they be unsuccessful. However, with fees increasing to over $150, fewer people will be either able to pay the fee, or willing to make the commitment as it means there is more at stake should they be unsuccessful.*

*Despite this, VCAT still remains relatively cheap, compared to taking a case through the courts, where legal fees are extremely high, even before the trial occurs. Further, the ability for a case to be resolved quickly is not impaired by the increased fee, thus a matter once filed will still be heard and hopefully settled, within a few weeks.*

*Thus, whilst the increase may discourage few people from initiating a case, the general role of VCAT is not compromised and it is still an effective body.*

**Question 10**

*‘The individual rights of Australian citizens are protected in numerous ways.*

**Discuss this statement detailing how rights are protected in the Commonwealth Constitution Australia. In your response compare Australia’s protection of rights with the protection of rights in one other country you have studied this year. 10 marks**

Students should approach this answer like an essay. Thus there should be a brief introduction and conclusion.

There are two parts to this question. The first requires students to explain how rights are protected in Australia, namely via structural protection, express rights and implied rights. Students should identify each of the three methods of protection and briefly explain how these protect rights in Australia. The second part requires students to compare rights protection in Australia with that in another country. Compare requires students to show similarities and differences between the two approaches. Better answers will combine the two parts of the question. This question should be marked globally.

Students should choose from the following countries to compare:

* South Africa
* Canada
* United States
* New Zealand

*Sample answer: Australia’s approach to the protection of rights is significantly different from that of the South African constitutional approach to protecting the rights of its citizens.*

*The differences in the two approaches can be clearly illustrated in the extent to of protection that each country’s constitution offers. Australia’s constitution only has five express rights – that is, rights explicitly mentioned in the constitution which can only be removed or amended via a successful referendum. They include the ‘freedom or religion s.116’, the ‘right to freedom from discrimination on basis of state residence s.117’, the ‘right to trial by jury on commonwealth indictable offences s.80’, the right to ‘freedom of interstate trade and commerce movement s.92, and the ‘acquisition of property on just terms s.51xxxi’. These five express rights are considerably limited in their application. For example, the right to not be discriminated against based on the state in which you live does not provide a general protection from discrimination eg. on race, gender or age.*

*Australia also has one implied right, that is, a right that the High Court has interpreted from the words of the Constitution. This right was established in the 1992 “Political Advertising Case”, and is the implied right to ‘freedom of political communication. It was interpreted on the basis of the notion of ‘representative government’ under s.7 and s.24 for the Constitution. The court found that in order for representative government to be effective voters need to be ‘informed’ and thus citizens have the right to discuss or debate political affairs. This right too however is subject to limitation. It only protects the freedom of communication on ‘political matters’ and does not provide an absolute protection to freedom of communication.*

*Australian’s rights are also indirectly protected in a number of ways via structural protections found within the structure and text of the Constitution. The ideas of representative and responsible government, the separation of powers as well as the process of referendum all indirectly protect the democratic rights of Australians, by ensuring that parliament is prevented from abusing its power. Australia’s rights are therefore few and limited.*

*South Africa on the other hand, provides its citizens with a comprehensive and entrenched Bill of Rights in Chapter Two of their Constitution. It provides considerable protection of the rights of its citizens under four main categories. South Africans rights cover ‘equality’, for example the right to freedom or religion, thought and body; ‘civil and political rights’ such as the right to vote; ‘social and economic rights’ , that is the right to basic education; and finally ‘legal process rights’ such as the right to be presumed innocent until proven guilty. Further, the South African Bill of Rights specifically recognises the rights of children such as the right to basic nutrition, shelter, health care and social services, a category of rights that currently are not protected in Australia.*

*Australia’s constitution does not contain a limitation clause. So whilst parliament can attempt to limit rights through legislation or the process of referendum, the High Court can disallow this should it find that the parliament has acted outside its power ultra vires. South Africa’s Bill of Rights however, contains a limitation clause. This clause allows parliament to limit some rights if it can be argued that it is ‘reasonable and justifiable in an open and democratic society based on dignity, equality and freedom’. However, some rights such as children’s rights and equality rights which cannot be limited.*

*In Australia the High Court is considered the ‘guardian’ of the Constitution. If the Commonwealth parliament makes a law that violates a constitutionally protected right, then the High Court can declare it ‘ultra vires’ beyond their power and therefore unconstitutional and invalid. The Commonwealth parliament cannot override a decision by the High Court. In declaring a law invalid, the High Court cannot offer any remedy. In South Africa, courts have the overall responsibility for the interpretation and enforcement of the Bill of Rights. The court must interpret the law in order to ‘promote the spirit of the Bill of Rights’. In South Africa the High Court and Supreme Court of Appeal can both make an order as to the extent that a law is unconstitutional and then provide ‘temporary relief’ until the Constitutional Court declares a law officially invalid. It may also award damages or grant an order to cease the unconstitutional conduct.*

*Thus, whilst Australia has protected the rights of citizens in numerous ways, the approach taken to protect these rights is different to that in other countries.*