**2021**

#### VCE

**Legal Studies**

**Trial Examination**

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|  | **VICTORIAN CERTIFICATE OF EDUCATION**  **Year 2021** |

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| STUDENT NUMBER Letter | | | | | | | | | | | | |
| Figures |  |  |  |  |  |  |  |  |  |  |  |
| Words |  |  |  |  |  |  |  |  |  |  |  | |

###### LEGAL STUDIES

**Trial Written Examination**

Reading time: 15 minutes

Writing time: 2 hours

**QUESTION AND ANSWER BOOK**

## Structure of book

|  |  |  |  |
| --- | --- | --- | --- |
| *Section* | *Number of*  *questions* | *Number of questions*  *to be answered* | *Number of*  *marks* |
| A | 6 | 6 | 40 |
| B | 3 | 3 | 40 |
|  |  |  | Total 80 |

* Students are permitted to bring into the examination room: pens, pencils, highlighters, erasers,

sharpeners and rulers.

* Students are NOT permitted to bring into the examination room: blank sheets of paper and/or

white out liquid/tape.

* No calculator is allowed in this examination.

**Materials supplied**

* Question and answer book of 25 pages.
* Additional space is available at the end of the book if you need extra paper to complete an answer

**Instructions**

* Write your **student number** in the space provided above on this page.
* 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.**

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**SECTION A**

**Instructions for Section A**

Answer all questions in the spaces provided

**Question 1** (2 marks)

*The Victorian parliament holds both residual and concurrent law-making powers.*

Distinguish between the two types of power.

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**Question 2** (7 marks)

*The Commonwealth Parliament of Australia is made up of two houses and The Crown, with each having its role to play in law making.*

1. Outline the role of The Crown in law-making. 2 marks

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**Question 2** (continued)

1. Discuss whether the role of the upper house may limit the ability of parliament to make law.

5 marks

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**Question 3** (7 marks)

1. Identifying **one** purpose for each, distinguish between *plea negotiations* and

*sentence indications* in a criminal case.

2 marks

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***Read the following and then answer Question 3 b. on the next page.***

*Herald Sun September 3 2020 (extract): Jon Andrews -- reporter*

A Cranbourne man accused of violently attacking his ex-girlfriend and throwing her dog around a room could learn his fate next week. Jayson Weegink is alleged to have threatened to smash his former partner’s head into the ground before allegedly turning on her pet pooch after a fight at her Narre Warren home.

Mr Weegink, 27, appeared briefly at Dandenong Magistrates’ Court by video link on Thursday, with his lawyer asking for a week’s adjournment. She said she was hopeful the case could return next Wednesday for a sentence indication if discussions with police prosecution were fruitful.

She said even though some of the matters are being contested, she had been given instructions by Mr Weegink to seek a sentence indication to try and resolve the matters. Any (sentence) indication would not be binding and if rejected by the defendant the case will be adjourned, and he would likely be remanded again for a contested hearing.

**Question 3** (continued)

1. Discuss whether a sentence indication is appropriate. 5 marks

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**Question 4** (6 marks)

“Director of Public Prosecutions (Victoria) Kerri Judd, QC, warned it took an average of 18 months to wrap up a criminal prosecution, an excessive length of time considering the profound negative effect a prosecution has on victims and accused persons”.

*Herald Sun January 18 2020 (extract): Tom Minear State Political Editor*

1. Identify **one** right of the victim and **one** right of the accused. 2 marks

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**Question 4** (continued)

1. Describe how the right of the accused you have identified above aims to uphold the principle of fairness.

4 marks

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**Question 5** (8 marks)

Eleanor was training in preparation for the Tokyo Olympic Games, having already been selected in the team. Four months out from the Games she was thrown from a faulty treadmill, severely injuring her knee. She was unable to take her place in the team and lost a $100 000 sponsorship deal with a large Australian company. While recognising it to be a costly process, Eleanor is considering initiating legal action against the gymnasium, a not long been operating small family business.

1. Outline **one** other factor Eleanor should consider before commencing legal action. 2 marks

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1. Explain why representative proceedings are not possible in this case. 3 marks

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**Question 5** (continued)

1. The civil action commenced by Eleanor has reached trial stage where the judge has the power to speed up the trial process. Explain how this could occur with reference to **one** type of case management power. 3 marks

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**Question 6 (10 marks)**

'While the separation of powers ensures the existence of the different roles of courts and parliament under the Australian legal system, both the courts and parliament nevertheless maintain an important relationship in law-making’.

Discuss the extent to which you agree with the above statement.

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**Question 6** (continued)

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**END OF SECTION A**

**SECTION B**

**Instructions for Section B**

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

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

**Question 1** (19 marks)

**Source 1**

**Outraging public decency an 'ill-fitting' charge for Pusey, court told.**

[**Simone Fox Koob**](https://www.theage.com.au/by/simone-fox-koob-h0ynfa)**:** August 26, 2020 Herald Sun

Richard Pusey, 42, was charged with a total of 15 offences following a crash on Melbourne's Eastern Freeway on April 22. The mortgage broker had been pulled over for allegedly speeding when a truck swerved into the emergency lane, killing four Victoria Police officers.

The charge of outraging public decency relates to Mr Pusey's behaviour following the incident. He is accused of using his phone to film the scene, including the bodies of the officers, for several minutes while making a commentary.

Lawyers for Mr Pusey have argued that the charge of outraging public decency does not exist in Australia.

However, in the Melbourne Magistrates Court on Wednesday, prosecutor Robyn Harper said the offence had been dealt with once before in that court, in August 2014, when an offender was jailed for one month on the charge.

Ms Harper (went on to say) the offence existed in Britain, dating back to 1663 …………….. "The Australian common law is, of course, inherited from England and survives till it is abolished or superseded … neither of those things happened here," she said.

"This (remains) a common law offence in the Australian jurisdiction, having not been abolished or superseded by statute."

**Question 1** (continued)

**Source 2**

**Judge astounded by ‘puzzling’ Pusey call**

[*Rebekah Cavanagh*](https://www.heraldsun.com.au/journalists/rebekah-cavanagh)*: April 27, 2021 Herald-Sun*

County Court judge ­Trevor Wraight will sentence Eastern Freeway Porsche driver Richard Pusey on Wednesday, a day after Corrections (Victoria) told the court the millionaire menace who filmed a dying police-woman in the Eastern Freeway tragedy crash last year was “beyond rehabilitation” and unsuitable for a community correction order. “I am just astounded by the attitude of Corrections (Victoria),” Judge Wraight said. “It is really an attitude that says because of the media attention he has received, that somehow that is going to be a problem for them.

**Source 3**

**Pusey sentence divides readers**

**Olivia Jenkins *April 29, 2021 - Herald Sun***

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The 10-month jail term handed down to Porsche driver Richard Pusey has sparked debate among the public over whether his sentence was appropriate. Pusey was on Tuesday [convicted](https://www.heraldsun.com.au/truecrimeaustralia/police-courts-victoria/eastern-freeway-porsche-driver-richard-pusey-sentenced-to-10-months-jail/news-story/06317c30b7c4b361ef0a2403492a85ba)for filming and mocking Victoria Police officers ………… as they lay dying after the [Eastern Freeway crash](https://www.heraldsun.com.au/news/victoria/eastern-freeway-the-curse-of-fate-that-led-to-a-drugfuelled-truck-driver-killing-four-police-officers/news-story/aea6c4aedca62883a53e8b87002999aa).

Hundreds of readers debated over the sentence, with some in disbelief over what they believed was a slap on the wrist for Pusey’s “disgusting” behaviour on the Freeway.

“If he hadn’t performed the unlawful speeding on the freeway the 4 police would still be alive. Another example of society starting to break down with poor judiciary judgment and a lack of empathy for the community!” one reader said.

“I feel for the families of these police officers. 10 months is not justice or closure for these families. How is it fair?” another reader said.

Yet another reader wrote: “Why do we get surprised when the judicial system lets us down again and again. Shame judges shame.”

**Question 1** (continued)

**Source 4**

[11:50 AM · Apr 28, 2021](https://twitter.com/SouthwickMP/status/1387222587894231041)·[Twitter Web App](https://help.twitter.com/using-twitter/how-to-tweet#source-labels)

**The following was a tweet by David Southwick Member of Parliament (Liberal).**

The sentencing of Richard Pusey will come as a devastating disappointment to the families of the fallen officers, Victoria Police and broader Victorian community. The justice system has failed and shows the need for an overhaul that places victims at its core.

1. With reference to **Source 1**, indicate whether a jury was involved. Justify your answer.

3 marks

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**Question 1** (continued)

1. Discuss to what extent the sanction handed down achieves **two** of itspurposes.

5 marks

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**Question 1** (continued)

1. Using the sources provided, analyse the role the media plays in law reform.

5 marks

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**Question 1** (continued)

There is disagreement between the parties as to whether the criminal charge of *’outraging public* *decency’* exists in Australia, indicating reform to the law may be needed to clarify this situation.

1. Evaluate the ability of parliament and the courts to respond to the need for law reform.

6 marks

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**Question 2 (11 marks)**

**University student, Tess,** signed up for a two-week gym trial of the understanding that the up- front $1 000 membership fee would be refunded providing she notified management within two weeks if she did not intend taking up the offer. After notifying them of this decision within the two weeks, Tess was initially refused the refund, with gym management claiming the trial period was for one week. The gym refunded the fee after Tess contacted Consumer Affairs Victoria (CAV).

1. Explain **one** reason why Consumer Affairs Victoria (CAV) was more appropriate to resolve this dispute than The Victorian Civil and Administrative Tribunal (VCAT).

3 marks

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**Question 2** (continued)

A friend told Tess how fortunate it was that the dispute did not fall under the jurisdiction the County Court. She went on to say, ‘you would have needed to engage a legal practitioner’.

1. Describe **one** responsibility of the legal practitioner for Tess had the matter been under the jurisdiction of the County Court.

3 marks

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**Question 2** (continued)

One method that is available to settle a civil dispute is arbitration.

1. Discuss the appropriateness of this method. In your response outline **one** reason arbitration would be preferred to conciliation as the method used to resolve a civil dispute. 5 marks

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**Question 3 (10 marks)**

The recent High Court decision that found Aboriginal Australians are not ‘aliens’ for the purpose of the Australian Constitution and cannot be deported is a ‘concerning’ example of ‘judicial activism’, according to Liberal senator Amanda Stoker.

1. Explain why ‘judicial activism’ may be viewed as ‘concerning’. 3 marks

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**Question 3** (continued)

1. Discuss the significance of **one** High Court case that has involved the interpretation of the Australian Constitution. In your answer, explain the role of the High Court in law making.

7 marks

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**Question 3 b.** (continued)

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**END OF QUESTION AND ANSWER BOOKLET**

**Extra space for responses**

**Clearly number all responses in this space.**

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**Extra space for responses**

**Clearly number all responses in this space.**

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**Extra space for responses**

**Clearly number all responses in this space.**

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##### **End of Question and Answer Booklet**

##### **2021 Kilbaha VCE Legal Studies Trial Examination Units 3 and 4**

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