**PLEAWA Semester One Examination**



**POLITICS AND LAW**

**ATAR UNIT 1**

**SUGGESTED ANSWER GUIDE**

**This is a suggested answer guide only.**

**Alternative answers to questions may be possible.**

**Assessment key words used include:**

Analyse Identify components and the relations between them; draw out and relate implications

Assess Make a judgement of value, quality, outcomes results or size

Compare Show how things are similar and / or different

Define State meaning and identify essential qualities

Describe Provide characteristics or features

Discuss Identify issues and provide points for and/or against

Distinguish Recognise or note/indicate as being distinct or different from; note differences between

Explain Relate cause and effect; make the relationships between things evident; provide why and /or how

Evaluate Make a judgement based on criteria; determine the value of;

Identify Recognise and name

Outline Sketch in general terms; indicate the main features of

**Section One: Short response 30% (30 Marks)**

**Question 1 (10 marks)**

(a) Outline the purpose of the ‘division of powers’ as it operates within the Australian political and legal system. (2 marks)

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| **Description** | **Marks** |
| Outlines the purpose of the ‘division of powers’ as it operates within the Australian political and legal system. | 2 |
| Makes a general statement about the ‘division of powers’ as it operates within the Australian political and legal system. | 1 |
| **Total** | **2** |
| **Answers could include information such as this:**   * The division of powers within a federation refers to the way that law making power is divided between the federal government and the state or local governments. * In Australia law-making powers that are designated as exclusive belong to the Commonwealth government and apply to the whole nation e.g. Section 52. Concurrent powers are shared by the Commonwealth and the states as outlined in Section 51. Residual powers are powers not listed in the Constitution but fall to the states e.g. policing and education. * The purpose of the division of powers in Australia is to limit the power of the Commonwealth government and to preserve the lawmaking powers of the states. | |

(b) Distinguish between the ‘legislature’ and the ‘executive’ within the Australian parliamentary system. (3 marks)

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| **Description** | **Marks** |
| Distinguishes between the ‘legislature’ and ‘executive’ within the Australian parliamentary system. | 3 |
| Outlines what is meant by the ‘legislature’ and ‘executive’ within the Australian parliamentary system. | 2 |
| Makes a general statement about the ‘legislature’ and ‘executive’ within the Australian parliamentary system. | 1 |
| **Total** | **3** |
| **Answers could include but not limited to:**   * The legislature refers to the lawmaking body of a sovereign state. Section 1 of the Australian Constitution vests legislative power in a federal parliament that shall consist of the Queen and the House of Representatives and the Senate. * Executive power refers to the body responsible for administering the law within a sovereign state. Section 61 vests executive power in the Queen represented by the Governor-General who is to be advised by a Federal Executive Council (EXCO). * In reality, the executive consists of the Prime Minister (currently Scott Morrison) and the Cabinet made up of the key ministers of government. * A key difference between the two is that members of the executive must also be members of the legislature; however, the executive is formed from the the party that holds the majority of seats in the lower house of the parliament. | |

(c) Discuss the significance of **two** Westminster conventions as they operate within the Australian political system. (5 marks)

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| **Description** | **Marks** |
| Discusses the significance of **two** Westminster conventions as they operate within the Australian political system.  Refers to examples of how chosen conventions have been applied within Australia’s political and legal system. | 5 |
| Describes the significance of **two** Westminster conventions as they operate within the Australian political system.  Makes reference to an example of how chosen conventions have been applied.  **or**  Discusses the significance of **one** Westminster convention as it operates within the Australian political system.  Refers to an example of how chosen convention has been applied within Australia’s political and legal system | 3-4 |
| Makes general statements about Westminster conventions in Australia’s political system. | 1-2 |
| **Total** | **5** |
| **Answers could include, but are not limited to:**   * Conventions are unwritten rules by which the parliament runs. These were inherited from the British Westminster system and are necessary for making sense of the Commonwealth Constitution.   **Conventions include:**   * The Governor-General must act on the advice of the EXCO or his ministers; * Government is formed in the lower house from the party/ies that hold the majority of seats; * The Prime Minister and Treasurer must be members of the lower house and all ministers must be members of parliament; * The PM and ministry must have majority support in the lower house, ie. confidence of the lower house, if not then the govt must resign; * Ministers are collectively and individually responsible to the parliament.   **Significance:**   * The power vested in the Governor-General by the Commonwealth Constitution is significantly limited. The use of reserve power by Governor-General Kerr to dismiss Prime Minister Whitlam in 1975 was an exception. The most commonly used reserve power in Australia is the power to refuse a double dissolution which has occurred six times since federation. * The formation of government in the lower house from the party/ies that hold the majority of seats has resulted in a chamber in which the executive is dominant. It can be argued that this results in the inability of the lower house to fulfill many of its other functions including the legislative and responsibility function. * Executive dominance in the lower house ensures that government is able to employ tactics such as gags, guillotines and floodgating in order to push legislation through the lower house of parliament. For example, the government made use of gags to ensure passage of the controversial *Fair Work (Registered Organisations) Amendment (Ensuring Integrity No. 2) Bill 2019* in the final week of the parliamentary sitting in 2019. In May 2020 the Bill was shelved by the government due to concerns it would not pass the Senate. * Executive dominance in the lower house makes it difficult for the parliament to fulfil its responsibility function. Censure motions against the government and motions of no-confidence against individual members fail due to government holding a majority in the chamber. In 2020, a significant motion of no-confidence was made against Premier Daniel Andrews in the NSW parliament regarding his government’s handling of hotel quarantine. Premier Gladys Berijiklian also faced a motion of no-confidence within the Victorian parliament for her relationship with a disgraced former minister in her government. | |

**Question 2 (10 marks)**

(a) What is meant by the term ‘delegated legislation’? (2 marks)

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| **Description** | **Marks** |
| Clearly explains what is meant by the term ‘delegated legislation’. | 2 |
| Makes a general statement about ‘delegated legislation’. | 1 |
| **Total** | **2** |
| **Answers could include information such as this:**   * Delegated legislation refers to statutes that allow the executive to authorise the public service or other lawful authorities to create legally binding regulations or by-laws. * For example, the *Local Government Act 1975* in Western Australia establishes the system of local government within the state. | |

(b) Outline the purpose of a ‘private member’s bill’ with reference to a specific example in the Australian political and legal system. (3 marks)

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| **Description** | **Marks** |
| Outlines the purpose of a PMB with reference to a specific example in the Australian political and legal system. | 3 |
| Identifies the purpose of a PMB with limited reference to an example in the Australian political and legal system. | 2 |
| Makes a general statement about ‘private member’s bills. | 1 |
| **Total** | **3** |
| **Answers could include but not limited to:**   * A private member's bill refers to a proposed law introduced into a parliament by a member who is acting independently of the executive. A private member may refer to backbenchers, members of the opposition and the cross benches. * The purpose of private member’s bills are to enable non-executive members of the parliament to represent the interests of their electorate through the legislative process. * One example of a private member’s bill introduced into the House of Representatives by Linda Burney in December 2020 was the *Fair Work Amendment (Ten Days Paid Domestic and Family Violence Leave) Bill 2020*. | |

(c)

Provide **one** argument for and **one** argument against the proposition that ‘the second reading debate is the most significant stage of the legislative process’. (5 marks)

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| **Description** | **Marks** |
| Discusses one argument for and one argument against the proposition that ‘the second reading debate is the most significant stage of the legislative process.’  Refers to rich content and examples. | 5 |
| Answer includes a discussion of one argument for the proposition that ‘the second reading debate is the most significant stage of the legislative process.’  **or**  Answer includes a discussion of one argument against the proposition that ‘the second reading debate is the most significant stage of the legislative process.’  **or**  Answer includes a general discussion of the proposition that ‘the second reading debate is the most significant stage of the legislative process.’ | 3-4 |
| Makes general statements about the second stage of the legislative process. | 1-2 |
| **Total** | **5** |
| **Answers could include, but are not limited to:**   * The second reading stage of the legislative process is where the minister responsible for the introduction of the bill explains to the House its importance, relevance, costing. Following this, other members from all parties in the House can ‘speak to the bill’, this is where comments are made as to the feasibility of the bill, how it will impact on human rights, how much it will cost to implement, etc. A vote is taken at the end of this stage, if the bill fails at this vote, it will progress no further.   **Arguments for the proposition:**   * The second reading phase enables the parliament to effectively fulfil its legislative function. * During this phase in the House of Representatives, members are able to debate and vote on the main idea of the bill. If further scrutiny of the bill is required it can move to the the optional stages of Consideration in Detail and the House Committee stage. * The House Committee is a specialist committee which can do a public inquiry into the bill and report back to the House of Representatives, possibly with amendments. * Consideration in detail provides MPs with the opportunity to discuss the bill in detail, including any proposed/carried out amendments to the bill. * During this phase in the Senate, senators are able to scrutinise bills through Senate Committees and the Committee of the Whole. * Likewise in the Senate, bills can be referred to a Senate Committee so that experts can inquire into the bill further. * During the Committee of the Whole Stage the Senate is able to discuss the bill in detail and make amendments as required. * As the government is usually in the minority in the Senate it means the upper house is able to effectively fulfil its function as a House of Review. The Lib/National Coalition government currently holds 36 seats forcing them to rely upon the crossbenchers to pass legislation. In October 2020, the crossbenchers led by Jaqui Lambie, blocked government legislation to ban access to mobile phones in immigration detention.   **Arguments against the proposition**   * Executive dominance in the lower house of parliament ensures the passage of legislation despite concerns that may be raised during the second reading phase of the legislative process. For example, the controversial *Fair Work (Registered Organisations) Amendment (Ensuring Integrity No. 2) Bill 2019* passed through the parliament in the final sitting of 2019 despite considerable opposition from the Labor oppposition and the crossbenchers. * The second reading phase is completely ineffective when the government manages to secure a majority in both Houses of parliament. The Howard led Coalition Government held both houses after the 2004 election and managed to pass controversial legislation such as WorkChoices (2006) and the *Northern Territory National Emergency Response Act* 2007. | |

**Question 3 (10 marks)**

1. Outline the purpose of the ‘ratio decidendi’ in the judicial trial process. (2 marks)

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| **Description** | **Marks** |
| Outlines the meaning of ‘ratio decidendi’.  Outlines the purpose of this principle in the judicial trial process. | 2 |
| Makes a general statement about ‘ratio decidendi’. | 1 |
| **Total** | **2** |
| **Answers could include information such as this:**   * *Ratio decidendi* isLatin for ‘reason for decision’. It is the judge/judges’ reasoning that is the critical component of precedent. A judge must decide if the reasoning of a judge in a past case applies in their present case. If it does, then *stare decisis* requires ‘standing by’ the *ratio decidendi* of the past case. * The purpose is that it creates precedent. A new ratio decidendi is a new common law. Ratio decidendi may provide either a binding or persuasive precedent. | |

(b) Distinguish between the ‘golden rule’ and the ‘mischief rule’ in the interpretation of statutes in the Western Australian legal system. (3 marks)

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| **Description** | **Marks** |
| Clearly distinguishes between the ‘golden rule’ and the ‘mischief rule’ in the interpretation of statutes in the Western Australian legal system. | 3 |
| Makes limited dinstinction between the ‘golden rule’ and the ‘mischief rule’ in the interpretation of statutes in the Western Australian legal system. | 2 |
| Makes a general statement about the rules of judicial interpretation in the WA legal system. | 1 |
| **Total** | **3** |
| **Answers could include but not limited to:**   * Not to be confused with legal maxims which are ‘methods of reading statutes’ such as *ejusdem generis; noscitur a sociis.* * Rules of judicial interpretation include: * Golden rule *–*   Occasionally a literal reading can result in an unjust or nonsense interpretation. More likely to occur with older Acts. ‘Taxicab’ once meant ‘a one horse vehicle for hire’. If courts used a literal interpretation of this word, there would be no taxis or Ubers on our roads despite there being thousands of motorised vehicles for hire. This definition is no longer relevant. Courts interpret a word or phrase using the golden rule in order to prevent an unjust/absurd outcome.   * Purpose rule (mischief rule) –   If both previous rules fail to result in a just outcome or to prevent absurd interpretations, courts will seek the ‘purpose’ of the Act that is ‘what was parliament’s purpose in passing this Act?’ or ‘what mischief (wrong) was parliament intending to prevent by passing this Act?’ Courts may refer to sources, such as Hansard or second reading debates, outside the Act itself for guidance. | |

(c) Discuss the extent to which laws made in the parliament are superior to laws made through the courts. (5 marks)

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| **Description** | **Marks** |
| Defines sovereignty of parliament.  Discusses the extent to which laws made in the parliament are sovereign to laws made through the courts.  Refers to rich content and examples. | 5 |
| Outlines sovereignty of parliament.  Discusses how laws made in the parliament are sovereign to laws made through the courts.  Refers to examples. | 3-4 |
| Makes general statements about the way laws are made in parliament and through the courts. | 1-2 |
| **Total** | **5** |
| **Answers could include, but are not limited to:**   * Sovereignty of parliament refers to the principle that supreme authority lies with the parliament and that the laws made by our parliaments have sovereignty over all other laws, including common law. * Statute law is superior as the electoral process that compels all Australian citizens to cast a vote for members in either house of parliament and thus are reflective of the ‘will of the people’. Statute laws can be enforced through the police and the judiciary. * State and court made law (common law) are complementary in the sense that the judiciary is able to act as a check and balance on the parliament. Parliament makes statutes in broad terms and leaves the courts to interpret gaps as they become evident e.g. *Thoms vs Commonwealth* *(2020) HCA 3*  in which the definition of ‘aliens’ (Section 51xix) under the Migration Act (1958) was determined to exclude people who meet the tripartite test for indigenous heritage set as per the Mabo decision (1992) irrespective of whether or not an individual has Australian citizenship. * Despite the ability of the courts to interpret statutes, the parliament has the ultimate power to either codify or abrogate common law, thus confirming the superiority of parliament made law. * For example, the principle of native title discovered in the HCA decision in Mabo (1992) was codified in 1993 through the passage of the *Native Title Act.* * For example, following a review by the Law Reform Commission of Western Australia in 1980, the WA Parliament moved to abrogate the precedent of *Searle v Wallbank (1947)* later reinforced the judgment in *SGIC v Trigwell HCA (1979*. the Western Australian Parliament passed the *West Australian Highways (Liability for Straying Animals) Act 1983* (WA) to ensure that farmers were liable for their animals straying onto highways, effectively allowing farmers to be sued for negligence. All other states in Australia passed similar legislation to overcome the precedent by the High Court. | |

**Question 4 (10 marks)**

1. What is meant by the concept of ‘rule of law’? (2 marks)

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| **Description** | **Marks** |
| Explains what is meant by the ‘rule of law’. | 2 |
| Makes a general statement about the ‘rule of law’. | 1 |
| **Total** | **2** |
| **Answers could include information such as this:**   * Rule of law refers to “the rule of laws, not of men”, i.e. an action is allowed or not allowed because of the law, not because of the whim or power of goverments, large corporataions or powerful individuals. The law binds all arms of government. * Essential features include: * law applies to all actions of all citizens regardless of their status or power, those who make the laws and those who enforce them; * there must be effective ways of holding government and officials accountable, i.e. the separation of powers such that legislators don't have power to enforce and ajdudicate the law, and the judiciary must be independent of both the legislature and the executive; * citizens are equal before the law. * the law must be clearly understandable so people can easily comply with it. It must not be retrospective: a new law should set standards for future actions and not make illegal a past action that was within the law when it occurred. | |

1. Outline **three** rules of evidence used within the Western Australian trial process. (3 marks)

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| **Description** | **Marks** |
| Outlines **three** rules of evidence used within the WA trial process. | 3 |
| Outlines **two** rules of evidence used within the WA trial process. | 2 |
| Makes a general statement about rules of evidence used in the WA trial process. | 1 |
| **Total** | **3** |
| **Answers could include but not limited to:**   * Relevance –   Evidence must be applicable to the case. It must bear relevance to establishing the act or inaction alleged and, in some cases, the intent to commit the act. All evidence presented must be able to be tested and relate to the matters of fact in contention. Irrelevant evidence is excluded. It has no value in finding the truth.   * Hearsay –   Witnesses can only give evidence on what they have witnessed themselves. What they saw, heard, etc. the evidence must be first hand.   * Opinion –   Witnesses can’t express their opinions. The exception is with ‘expert’ witnesses.   * Circumstantial –   Circumstances may allow a particular conclusion to be drawn by a reasonable person. | |

(c) For **one** specific court decision, discuss how precedent can be changed in the Australian legal system. (5 marks)

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| **Description** | **Marks** |
| Defines ‘precedent’.  Discusses how precedent can be changed in the Australian legal system.  Refers to rich content and examples. | 5 |
| Outlines ‘precedent’.  Explains how precedent can be changed in the Australian legal system.  Refers to examples. | 3-4 |
| Makes general statements about precedent in the Australian legal system | 1-2 |
| **Total** | **5** |
| **Answers could include, but are not limited to:**   * Precedent - A judge made decision that stands as an example or guide for future decisions in cases of similar factual circumstances. They can be ‘binding’ or ‘persuasive’. * Precedents can be changed through: * overruling previous legal principles, e.g. *Mabo 1992* – Eddie Mabo seeking to claim his father’s land on the island of Mer in the Torres Straits. The Qld Government said there was no such land claim. He appealed all the way to the HCA who eventually overturned the legal precedent of ‘terra nullius’ meaning ‘vacant land’ and created the new legal principle/precedent of ‘native title’. This then allowed indigenous peoples to claim land that they could prove they had a continuous spiritual or physical connection with. * distinguishing a case from previous cases, e.g. *Donoghue v Stevenson 1932* – [UK - House of Lords] Donoghue had been out to a café for a drink, her friend purchased her a ginger beer in an opaque bottle, she drank some from the bottle, then poured some onto her ice cream. Upon doing this, a decomposed snail poured out of the contents. This made Donoghue sick, she took the manufacturer (Stevenson) to court. The judge found in favour of Donoghue creating the ‘neighbor principle’ which led to the tort of negligence. Lord Atkin applied a new rule of law to this case: ”The duty of care”. * through the interpretation of the Constitution, e.g. *Commonwealth of Australia & Anor v. State of Tasmania & Ors (1983)* , The Franklin Dam Case, often referred to as the ‘Dams Case’. In this case the HCA had to interpret the words ‘external affairs’ in s51(xxix) of the Constitution. The Tasmanian government wanted to build a hydro-electricty station on the Gordon below Franklin river, this would provide much needed jobs and a source of power. The Commonwealth government didn’t wish for this to go ahead and so signed a treaty where it could nominate lands as ‘World Heritage’ listed. The Commonwealth Parliament was, therefore, able to pass a law that stopped the damming of the Franklin River in Tasmania because the area was covered by an international convention. The HCA interpreted s51(xxix), to mean, that if the Commonwealth signed a treaty on ‘anything’, this would give it the power to legislate on that ‘anything’, this virtually gave the Commonwealth the power to sign treaties just so it could legislate in areas that might be residual powers of the states. * reversing precedent. The result of a higher court substituting its *ratio* in place of a lower court’s *ratio* is to reverse the original decision. The effect of reversing a *ratio* is to abolish the original *ratio* and remove it from any further consideration in future similar cases. Therefore, reversing a *ratio* changes the common law by preventing a future court from standing by the original incorrect decision. It is as if the original decision never existed, e*.g. Wilson v Bauer Media Pty Ltd & Anor (2017 VSC521 and Bauer Media Aust Pty Leg v Rebel Melanie Elizabeht Wilson (No2) (2018) VSCA 154.* | |

**End of Section One**

**Section Two: Source analysis 20% (20 Marks)**

(a) What is meant by the term ‘liberal democracy’? (2 marks)

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| **Description** | **Marks** |
| Explains what is meant by the term ‘liberal democracy’. | 2 |
| Makes a general statement about ‘liberal democracy’. | 1 |
| **Total** | **2** |
| **Answers could include information such as this:**   * Liberal democracy refers to a system of government characterised by respect for the will of the majority and respect for human rights. * Within such systems the exercise of political power is limited by the rule of law. | |

(b) With reference to **Source 1**, explain in your own words, **two** arguments against the idea that ‘liberal democracies and free societies cannot cope’ with challenges such as COVID-19. (4 marks)

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| **Description** | **Marks** |
| Explains **two** arguments against the idea that ‘liberal democracies and free societies cannot cope’ with challenges such as COVID-19.  Explains in their own words with direct reference to the source | 4 |
| Explains **one** argument and identifies another against the idea that ‘liberal democracies and free societies cannot cope’ with challenges such as COVID-19.  Attempts to answer in their own words with some reference to the source. | 3 |
| Identifies **two** arguments against the idea that ‘liberal democracies and free societies cannot cope’ with challenges such as COVID-19;.  **or**  Identifies and explains **one** argument against the idea that ‘liberal democracies and free societies cannot cope’ with challenges such as COVID-19. Answer is mostly in their own words. | 2 |
| One or two arguments are cited verbatim from the source. | 1 |
| **Total** | 4 |
| **Answers could include but not limited to:**   * At this point it is difficult to determine the long term effects of COVID-19 on liberal democracies as it is still too early in the pandemic. * Liberal democracies such as Australia have been amongst the most successful “in containing and nearly eliminating COVID-19”. * The argument that liberal democracies have been unsuccessful in coping with the challenge presented by COVID-19 “depends upon the reliability of reported case numbers” which are not necessarily accurately reported by all governments. | |

1. Discuss how liberal democratic nations, such as Australia, are protected through the separation of powers. (6 marks)

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| **Description** | **Marks** |
| Discusses how liberal democratic nations, such as Australia, are protected through the separation of powers.  Reference made to detailed examples. | 5 - 6 |
| Describes how liberal democratic nations, such as Australia, are protected through the separation of powers.  Reference made to examples. | 3 - 4 |
| Makes general statements about how liberal democratic nations, such as Australia, are protected through the separation of powers.  Limited reference made to examples. | 1 - 2 |
| **Total** | 6 |
| **Answers could include but not limited to:**   * The principle of the separation of powers originated from French philosopher Charles D’Montesquieu who determined that for good government there needed to be a separation of power between the three arms so that government was not arbitrary. * These 3 arms include: * Legislature (parliament) –   + Consists of House of Representatives and Senate at federal level; Legislative Assembly and Legislative Council at state level. * Executive –   + Consists of the Prime Minister (currently Scott Morrison) and key ministers (e.g. Peter Dutton, Minister for Home Affairs) make up the political executive. * Judiciary (the courts) –   + High Court of Australia is the highest court in Australia and deals with constitutional matters and also acts as the final court of appeal.   **Liberal democratic nations, such as Australia, are protected through the SOP by:**   * The operation of responsible government within Australia means that there is a fusion between the executive and judiciary in Australia. * Within Australia the judiciary is independent of the other two arms of government so it is free from political interference and can operate under the rule of law and principle of natural justice. * The independence of the judiciary is ensured by Section 72 of the Constitution under which judges have security of tenure to serve until the day they turn 70 yrs and their pay can not be reduced by the government of the day. * Decisions made in courts are based solely on the evidence that is presented by the two parties to the case and is not clouded by political interference. * Examples of decisions that have limited the power of the legislative arm of government; Williams (2011), Citizenship seven (2017) * Examples of decisions that have limited the power of the executive arm of government; Williams (2014), Robodebt (2019)   **Limitations of the SOP**   * The fact that the legislature and executive are fused is a clear indication that there is not a complete separation of powers in Australia. * The Prime Minister and his executive members all must be elected into either house of parliament according to the Constitution and this results in executive dominance which it can be argued has its limitations on the delivery of democracy in our nation. * Without this complete separation of powers the ‘checks and balances’ between the 3 arms are more limited than in a system where there is a complete separation. * The Judiciary is also not completely separate due to the appointment process of the justices especially in the HCA, these are appointed by the Governor-General on the advice of the Prime Minister, hence can be said to be political appointments. | |

(d) Evaluate the extent to which Australian governments upheld **two** liberal democratic principles during the COVID-19 crisis. (8 marks)

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| **Description** | **Marks** |
| Evaluate the extent to which the Australian Government upheld **two** liberal democratic principles during the COVID-19 crisis.  Relevant and in-depth examples. | 7 - 8 |
| Discusses the extent to which the Australian Government upheld **two** liberal democratic principles during the COVID-19 crisis.  Relevant examples. | 5 - 6 |
| Discusses the extent to which the Australian Government upheld **one** liberal democratic principles during the COVID-19 crisis.  Limited if any examples. | 3 - 4 |
| Makes a general statement about how the Australian Government upheld liberal democratic principles during the COVID-19 crisis. | 1 - 2 |
| **Total** | 8 |
| **Answers could include, but are not limited to:**   * Liberal democratic principles include (students choose two): * equality of political rights * majority rule * political participation * political freedom   **Operation of liberal democratic principles in Australia during COVID-19**   * Equality of political rights: * No matter your race, age, ethnicity or gender all Australian citizens (>18yrs) have the right to vote and the right to run for office (no dual citizenship). * At the federal level by-elections were held for the electorates of Eden-Monaro and Groom whereby citizens were able to run as candidates and voters were able to exercise their franchise either in person or by postal vote. * Majority rule: * Based on the idea of popular sovereignty and the expression of the will of the majority in government and lawmaking. * Limitations to parliamentary sessions reduced the number sitting days for both Houses to 46 days restricting the capacity for debate on extraordinary measures relevant to the Government’s handling of COVID-19 such as the JobKeeper and JobSeeker packages. * Measures taken by the Commonwealth Government and limited scrutiny of a bipartisan Opposition resulted in a lack of effective expression of the majority will by the Australian people. * Political participation: * refers to the right of citizens to openly participate/be involved in the political decision making process through: * voting; * peaceful protest; * signing petitions ; * joining pressure groups, which represent minority interests (e.g. Greenpeace Australia, Getup) or political parties (e.g. Greens). * The enforcement of lock downs and social distancing regulations by Commonwealth and state governments have limited the right of the Australian people to engage in various forms of political participation in person. However, social media platforms such as Twitter and Instagram have provided an online mechanism for political participation such as the Black Lives Matter protest. * For example, police have been used to enforce lockdown measures e.g. over 400 people were arrested in Melbourne on 3/11/2020 at a rally to protest lock down measures. * Political Freedom: * are entitlements enjoyed by all citizens that enable political participation. These include the freedoms of conscience, speech, association and assembly, media and the press. * For example, restrictions on freedom of movement limited the ability of the media to report effectively on matters of public importance such as the Sports Rorts scandal, the purchase of the Leppington triangle by the Commonwealth and the overestimation of the of JobKeeper Scheme by $60m. | |

**Question 6 (20 marks)**

1. What is meant by ‘judicial independence’ in the Australian legal system? (2 marks)

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| **Description** | **Marks** |
| Explains what is meant by ‘judicial independence’ in the Australian legal system. | 2 |
| Makes a general statement about ‘judicial independence’ in the Australian legal system. | 1 |
| **Total** | **2** |
| **Answers could include information such as this:**   * A key democratic principle. The judiciary must be completely free from interference and influence from the parliament, the government or any other institution or person. It is a vital component of the rule of law. | |

1. With reference to **Source 2**, explain in your own words, **two** challenges to the achievement of open justice within Australia as a result of COVID-19. (4 marks)

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| **Description** | **Marks** |
| Explains **two** challenges to the achievement of open justice within Australia as a result of COVID-19.  Explains in their own words with direct reference to the source. | 4 |
| Identifies **two** challenges to the achievement of open justice within Australia as a result of COVID-19.  **or**  Explains **one** challenge and outlines the other.  Attempts to answer in their own words with some reference to the source. | 3 |
| Identifies **two** challenges to the achievement of open justice within Australia as a result of COVID-19.  **or**  Identifies and explains one challenge to the achievement of open justice within Australia as a result of COVID-19.  Answer is mostly in their own words. | 2 |
| One or two challenges are cited verbatim from the source | 1 |
| **Total** | 4 |
| **Answers could include but not limited to:**   * Physical distancing measures introduced due to COVID-19 resulted in a “rapid shift to online courts” which interfered with the openness of the judicial process. * Online court proceedings limited the exposure of the public to the public gallery and jury duty. While some Australian courts have the stated intention of maintaining open justice; however, “their statements have been sparse on detail”. * For example, the Supreme Court of Victoria has only committed to the achievement of open justice “on a case by case basis”.   Answer must be reworded in student’s own language. | |

1. Discuss **two** key differences in the pre-trial phase of both the civil and criminal trial process.

(6 marks)

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| **Description** | **Marks** |
| Discusses **two** key differences in the pre-trial phase of both the civil and criminal trial process.  Refers to rich and detailed examples. | 5 - 6 |
| Outlines **two** differences in the pre-trial phase of both the civil and criminal trial process.  Refers to examples. | 3 - 4 |
| Makes general statements about thepre-trial phase of both civil and criminal trials. | 1 - 2 |
| **Total** | 6 |
| **Answers could include but not limited to:**   * Distinguishes between: * Civil – dispute between two private parties; * Criminal – dispute against society. * **Civil Pre-trial Stage:** * A very lengthy process through which all documentation is gathered by both parties to the dispute. * There is much exchange of documents between the parties to ensure they have fully covered the points and so that if the case does proceed to trial, it will not drag on for too long.   The 1st part is the ‘Pleadings’ -  Writ  Statement of Claim  Statement of Defence Pleadings  Counterclaim  Memorandum of Appearance  The 2nd part is the ‘Further & Better Particulars’  Interrogatories  Notices of Discovery Further and better particulars  Certificate of Readiness for trial   * Gives both sides plenty of time to prepare their case so that when they go to trial they are completely ready. * Resolution before going to trial * Provides many opportunities for the two parties to resolve the issue before going to trial. * Judge/Court are assured that both parties have fully prepared for the case. Enables the judge to ascertain that both parties have tried very hard to resolve the issue and that a civil trial is the only option left to them. * **Criminal Pre-trial stage** – because a crime has been committed the police will have an accused that has already been charged with the offence, they will appear before a magistrate to determine a plea of guilt/innocence; to set a time for trial; to determine bail options if necessary. The police will then have to continue gathering evidence to mount their prosecution of the case. If it is a summary offence and the accused enters a plea of guilty, the matter may be dealt with immediately; however, if it is an indictable offence, the magistrate will set a time for a future date for a trial to be conducted in the appropriate court, according to the seriousness of the crime.   Note: Must discuss the differences between the two pre-trial phases. | |

1. Evaluate the significance of the court hierarchy in the Western Australian legal system.

(8 marks)

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| **Description** | **Marks** |
| Explains what is meant the court hierarchy.  Evaluates the significance of the court hierarchy in the WA legal system.  Rich, relevant and in-depth examples. | 7 - 8 |
| Outlines what is meant by the court hierarchy.  Discusses the significance of the court hierarchy in the WA legal system.  Relevant and detailed examples. | 5 - 6 |
| Defines what is meant by the court hierarchy.  Describes the significance of the court hierarchy in the WA legal system.  Relevants example/s provided. | 3 - 4 |
| Makes a general statement about the court hierarchy in the WA legal system. | 1 - 2 |
| **Total** | 8 |
| **Answers could include, but are not limited to:**   * Court hierarchy refers to theranked order of courts. Courts are arranged in order (lowest to highest) of inferior, intermediate and superior courts. Each level has original jurisdictions granted by various judiciary Acts or, in the case of the HCA, by the Constitution. Minor civil, criminal and administrative law matters are heard at lower levels. Serious and complex matters are heard at higher levels. Intermediate and superior courts have appellate jurisdiction. In Western Australia, the lowest court in the hierarchy is the Magistrates Court, an intermediate court is the District Court, and a superior court is the Supreme Court of Western Australia.   The significance of court hierarchy:   * it provides for the existence of a court structure that can allocate cases between courts according to: * the legal basis of the dispute; * the complexity and/or seriousness of the criminal case; and * the amount claimed in a civil dispute. * It ensures greater consistency in judgments because lower courts must follow binding precedents set by higher courts. A competent lawyer can consult case law and give sound advice to clients. However, it is still possible for the law to be modified, for example to reflect changed community values, through a decision of a higher court. * It provides for the right of appeal against court decisions. The right of individuals to appeal against the decision of a court is a fundamental feature of the operation of the open court system. If one party wishes to appeal a decision made in a court, they may avail themselves of the right to appeal to a higher court in the court hierarchy. If they have already been heard in the highest court of their state, they may seek leave to appear before the HCA. This is the point at which the right to appeal is no longer a right; there is no higher court in Australia. * Appeals fulfil several vital requirements of natural justice and the rule of law. They: * allow parties to have a case reviewed by a superior court; * check judgments are fair and legal; * keep lower courts accountable to higher courts; and * allow higher courts to review and, if necessary, replace *the ratio decidendi* from lower courts. * Many convicted persons continue to claim innocence and there have been numerous ‘miscarriages of justice’ in the WA legal system. An offender may seek to appeal the verdict and/or the sentence they received. In 2017–2018 there were 34 appeals by the accused from the District Court to the Supreme Court. 59% (or 20) of these were regarding the sentence — presumably thought to be too severe — whereas 29.4% (or 10 appeals) were regarding the conviction. None of these appeals were resolved in the same year. | |

**End of Section Two**

**Section Three: Essay 50% (50 Marks)**

**Marking guide to essay answers**

**Questions 7 – 10**

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| **Description** | **Marks** |
| **Explains relevant terms and outlines parameters of discussion** | |
| Explains all relevant terms and outlines parameters of discussion | 5 |
| Explains some of the terms and outlines parameters of discussion | 4 |
| Indicates what will be addressed in the discussion | 3 |
| Attempts to provide a focus for discussion | 2 |
| Makes a general statement concerning the topic / claim | 1 |
| **Subtotal** | **5** |
| **Discussion of relevant issues including pertinent examples** | |
| Discusses comprehensively relevant issues using a well-structured format & supportive examples in a cohesive, logical sequence and using relevant political and legal terminology | 9-10 |
| Discusses some relevant issues incorporating some examples in a cohesive, logical sequence and using relevant political and legal terminology | 7-8 |
| Limited discussion with limited examples in a logical sequence & some relevant political & legal terminology | 5-6 |
| Limited discussion of the issues with limited political and legal terminology | 3-4 |
| Makes a general statement concerning the topic | 1-2 |
| **Subtotal** | **10** |
| **Evaluation / Assessment / Analysis** | |
| Evaluates/Assesses/Analyses the claim using specific evidence which demonstrates a comprehensive understanding of the topic | 7 |
| Evaluates/Assesses/Analyses the claim using appropriate evidence which demonstrates an understanding of the topic | 6 |
| Evaluates/Assesses/Analyses the claim using some evidence which demonstrates some understanding of the topic | 5 |
| Constructs a relevant but weak evaluation / assessment / analysis | 4 |
| Constructs a weak evaluation / assessment / analysis | 3 |
| Limited evaluation / assessment / analysis | 2 |
| No relevant evaluation / assessment / analysis  A statement only | 1 |
| **Subtotal** | **7** |
| **Conclusion** | |
| Draws together the argument linking evidence | 3 |
| Summarises the argument | 2 |
| Makes general / superficial statements | 1 |
| **Subtotal** | **3** |
| **TOTAL** | **25** |

**Question 7 (25 marks)**

Evaluate the extent to which the Australian political and legal system is a hybrid of other key western liberal democracies.

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| **Relevant terms and parameters of discussion**  British Westminster model  US federal model  Canada’s hybrid model  The Swiss influence  Australia’s hybrid Washminster system  **Discussion of relevant issues including pertinent examples**   * Set the scenefor federation**:** * Provide a brief examination of the state of the nation in the 1890s – self-governing colonies + the fear of invasion + issues of trade and immigration + rising sense of nationalism + the desire of colonial politicians to unite the colonies for mutually significant benefits. * The Westminster political and legal system already operating in the colonies so there was already one level of government. Federation would add another layer of government leading the constitutional framers to look at the federal model that had been employed in the US since the late 1780s which catered for a national level of government.   **British Westminster model:**   * One of the earliest parliamentary systems in the world, separation of powers to a limited extent * Monarch – hereditary head of state but limited by unwritten constitutional conventions. * Constitutionalism – that power of government is limited through a written or unwritten constitution, UK’s is unwritten. * Responsible Parliamentary Democracy – * Bicameral parliament:   + House of Commons made up of elected representatives each with their own electorate proportional to population;   + House of Lords made up of hereditary members based on peerage;   + The lower chamber being the House of government due to being elected and that the political party that won the most seats in that house got to form government, their leader becoming the Prime Minister who would then select special members to form an executive, in this way the British executive was chosen from within the legislature – fusing the two together. * Conventions – unwritten rules by which the parliament functions. * Electoral process – fixed 5yr terms for elections to the House of Commons; the upper House of Lords have appointed members. * Separate and independent judiciary that follows the rule of law – English common law with the adversarial system of trial.   **US Federal model:**   * The founding fathers of the US created a maximalist Constitution to provide the context of the federation that was created as a result of the War of Independence from Britain. * Written Constitution to outline the powers of each level of government and institutions for co-operation between the levels. * Complete separation of powers: * Executive – directly elected President serving a 4yr term with a maximum of 2 terms only, so as to limit the chances of power remaining with one person for too long. Only a US citizen can become the President. They can not sit in the Congress. President selects secretaries to form a Cabinet, they can not sit in the Congress. * Legislature – Congress: bicameral with both houses being elected. * HoR: a peoples’ house representing electorates of ~750 000 voters (435MHR) serving 2yr terms and * Senate: a states’ house with 2 senators from each state (100). Serving fixed 6yr terms. * Judicature – strictly separate from the other arms of government. Nominated judges must be confirmed by the Senate (check and balance on executive power); English common law provides the basis for fair trials using the adversarial system, with the presumption of innocence & right to silence for the accused, the accuser bearing the burden of proof. * Electoral process – Congress: 2yr cycle for HoR and 1/3 of senators being up for election every 2yrs; voting is voluntary and secret; voter registration can be strictly limited in some states. Presidential: 4yr cycle with a 2 term limit.   **The Canadian ‘Washminster’ model:**   * Was a working example of a hybrid of the Westminster and Federal systems of govt, this illustrated to the founding fathers that this was a feasible system already working successfully in a Commonwealth colony. This only offered limited appeal to the founding fathers because: * despite both the central and regional (provincial) governments being given specified powers, there were extensive areas of residual power allocated to the central government. Australian states did not wish to lose too many of their existing powers. * the Canadian Senate (upper house) was created and composed of ‘leading citizens’ appointed by the central government. The Australian states didn’t like this idea as it would give the central government unlimited power over the states. * the central government was given unlimited taxing powers and the power to disallow any provincial legislation. The Australian states certainly didn’t want a central government that could disallow their legislation. * the Australian founding fathers did not wish for the central government to become too powerful, rather to have specified ‘exclusive’ powers that were confined to ‘whole of nation’ policy areas.   **The Swiss model:**   * Based on the belief of the ‘sovereignty of the people’ provided a way the Constitution could be formally amended through a successful referendum that would be approved by a majority of the citizens nationally as well as a majority of the states. * This was a minor input to the Australian political and legal system.   **Australia’s hybrid Washminster model:**   * In 1788, Britain had settled and started a penal colony in Australia, bringing an ‘autocratic’ system of government to deal with the harsh circumstances of the colony. * Colonies gained self-government up till 1890 (WA, the last colony to attain this) * Issues had arisen that drove the desire to unite the 6 colonies into one united federal system which would be a blend of systems based on the Westminster system of responsible and representative parliamentary democracy with the US federal system which catered for a national level of government to deal with the ‘big-ticket’ issues of defence, immigration, trade, and nationalism. * UK had a ‘unitary’ system of government that would not cater for the new ideas of the FF’s whereas the US had a ‘divided’ system – this became the basis for the Australian federal system.   **Evaluation**  Make a statement as to the extent to which the Australian political and legal system is a hybrid of other key western liberal democracies.  Evaluate the impact other nations have had on the Australian system? Major, minor, great, extensive, significant, minimal. |

**Question 8 (25 marks)**

Evaluate key strengths and weaknesses of one non-democratic system you have studied in comparison to Australia’s democratic system.

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| **Relevant terms and parameters of discussion**  Define democracy  Define non-democracy  Outline the Australian political & legal system  **Discussion of relevant issues including pertinent examples**  Either deal with the Australian political and legal system initially & then do comparison (lower level) or try to integrate your discussion of each element of the Australian political and legal system with your compared non-democratic nation.  **Key strengths of Australia’s democratic system**  Written Constituion = based on the USA  Head of State = Queen represented by GG: powers & responsibilities are outlined in the Constitution  Head of Government = PM: Westminster convention & so his powers are not outlined clearly  Separation of powers:   * Executive – PM selects ministers who must be MPs from either house, they are responsible to parliament directly and to the people of the nation, indirectly. Ministers head different portfolios/depts. which cover the key areas of the C/w govts authority. * Legislature – is fused with the executive   + 150 MHRs (lower house) which is controlled by the govt – ie. the political party that won a majority of seats at the last election, they form govt, their leader becomes the PM (Westminister convention of responsible govt)   + 76 Senators (upper house) which is the States’ house & doubles as a House of Review to keep a check on the govt   + major function is to pass legislation – generally introduced in lower house by a member of the govt 🡪 1st 🡪2nd 🡪committee stage 🡪 3rd reading 🡪 Transition to other house for the same stages. Must transition both houses in identical format 🡪 sent to GG for Royal Assent 🡪 proclaimed. * Judiciary – separate from the other 2 arms of govt and independent of them. This ensures that justice can be done and is not at the mercy of the govt of the day. However, the PM appoints justices to the HCA and the Parliament does have the ability to create new federal courts as it sees fit…as well as dissolving federal courts it deems no longer necessary.   Federal system – there are two levels of govt in the Aust political and legal system: a national level (Commonwealth) and 6 States + 2 Territories, each level have their own powers and responsibilities as outlined/enumerated in the Constitution.   * Division of powers:   + Exclusive – belong to the C/w level eg: s115 coin money; s51vi defence   + Concurrent – shared between the C/w & states but if they make legislation on the same area & it is in conflict, then the C/w law will override that of the state (s109). These powers are listed in s51 – the ‘heads of power’ section   + Residual – these powers reside with the states and are not listed in the constitution.   **Non-democratic country**   * Examples might include: * North Korea, China, Saudi Arabia, Russia, Cuba   **Evaluation**  Students must make and evaluation as to the key strengths and weaknesses of one non-democratic system in comparison to Australia’s democratic system. |

**Question 9**

Discuss the key features of the adversarial system which are said to enable it to find the truth.

**(25 marks)**

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| **Relevant terms and parameters of discussion**  Adversarial system of trial  Finding the truth  **Discussion of relevant issues including pertinent examples**  For chosen issue essay should:   * introduce relevant background; * identify key features of adversarial system * burden and standard of proof * role of the parties * role of the judge * presentation of evidence * rules of evidence * rights of the accused * role of the jury * role of legal representatives   Discuss the significance of each feature in finding the truth  **Analysis**  Demonstrates a comprehensive analysis of the significance of the key features of the adversarial system in truth finding, with the use of examples. |

End of questions