



# **Law Talks**

**VCE Legal Studies Units 3 & 4**

## Maximising your performance

# Helping Victorians understand the law

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## What should I be doing now?

Aside from the obvious advice about attending classes and completing set tasks, there are a few steps that can be taken right now which will pay off when it comes to the VCE Legal Studies examination in November:

- Obtain a copy of the VCE Legal Studies Study Design. This can be downloaded from [www.vcaa.vic.edu.au](http://www.vcaa.vic.edu.au) and sets out EXACTLY what the course requires you to study and what you can be examined on in November.  
THIS SHOULD BE YOUR REVISION GUIDE.
- Obtain a copy of the *Commonwealth of Australia Constitution Act 1900*.
- Make your topic notes NOW so that you are ready to use them for revision when Unit 4 classes end. Cover ALL sections of Units 3 and 4. Do NOT leave gaps and do NOT specialise in your favourite topics.
- Develop case notes setting out **FIDS: FACTS, ISSUES, DECISION, SIGNIFICANCE**. **Note:** *Significance includes where the case example may be used as an example, what impact the decision had on existing law and the extent to which the case supports the principles of justice.* [www.austlii.edu.au](http://www.austlii.edu.au) is an excellent source of case reports and legislation from all Australian jurisdictions.
- Develop notes on key pieces of legislation and key sections of the Constitution discussed during class or in your text reading.
- Familiarise yourself with primary source materials. A great website is [www.courts.vic.gov.au](http://www.courts.vic.gov.au), which is a portal site for all Victorian courts and tribunals.
- Obtain copies of past papers and the examiners' reports. These can be downloaded from [www.vcaa.vic.edu.au](http://www.vcaa.vic.edu.au) and are a very valuable guide to the kinds of questions that are set and the way the examiners expect them to be answered. **Note:** *You are using a new Study Design for 2018 to 2022 so past papers may contain material **not** covered in the new Study Design.*
- Look and listen! Read newspapers and watch TV news programs to keep up to date about changes or proposed changes to laws and the legal system.

**REVISION STARTS TODAY!**

## The examination

1. The paper consists of **compulsory** questions. Your teacher will provide you with information about the examination as it is released by VCAA.
2. The paper will be designed to assess a large portion of the Study Design. Do not omit any part of the course in your examination preparation. As indicated earlier, do NOT ignore difficult parts of the course and do NOT specialise.
3. Read the questions CAREFULLY in the 15 minutes of reading time allocated to the examination. You cannot write or mark the paper in any way during this time. Ask yourself two questions in relation to each question on the paper:
  - **WHAT IS THE CONTENT?** (What is the subject matter I am being asked to write about?)
  - **WHAT IS THE TASK?** (What am I being asked to do with the subject matter?)
4. Make sure you get to the examination centre a few minutes before the start time – not too early or too late.
5. Bring enough blue or black pens and a ruler. If you cross out any of your writing, do it **NEATLY**.
6. Allocate writing time appropriately. Success in the examination will depend partly on how you utilise the available time.
7. Numbers in questions: if you are asked to provide ONE example, do NOT give two as you will receive no extra marks.
8. Where to start? Wherever you wish to or where you feel most comfortable! **Suggestion:** start at the beginning because
  - you are less likely to miss a question
  - you might gain time as a short answer may not require ‘double time’ – i.e. it may not require 4 minutes to answer a 2 mark question
  - questions tend to require more detailed answers as you work your way through the paper
  - it gives you the opportunity to ‘warm up.’
9. How much do I write? As indicated earlier, this will partly be determined by what you are being asked and the marks allocated. You do NOT need to use all the space provided. You will be given ample room to respond, ‘and the lines (might) only be fully utilised by students who have larger handwriting’ (2006 Assessment Report). This does NOT mean that you cannot use more than the lines provided, even if you have small handwriting. However, be sure you indicate clearly that your answer continues on the extra lines provided at the end of the examination booklet.
10. Do NOT leave the examination room early. Stay until the end. Attempt ALL questions as marks are not deducted for incorrect answers. Read over your responses and make NEAT additions or amendments where needed.

## Tackling examination questions

'Examination questions generally have two components, that is, they ask for particular information AND they require that the information be presented in a particular way – the "task" word.' (2003 and 2007 Assessment Reports)

### How to answer exam questions

1. Understand the question. 'Students need to ensure that they do not answer questions that they expect to see or they hope to see, rather than what is actually asked.' (2006 Assessment Report)
  - (a) Identify task words as soon as writing time commences. Highlight them.\*
  - (b) Identify key content terms. Circle them.\*
  - (c) Identify any limitations. Under line them. \*  
(\* or use a code of your own)

### Practice

Writing time has commenced! Mark up the following questions:

#### Question 1

Outline one role of the upper house of the Commonwealth Parliament. [1 mark]

#### Question 2

Describe the criminal jurisdiction of the County Court. [2 marks]

#### 2. Presentation

- (a) Set out your answers in a logical fashion and get straight to the point. As a general rule, there is no need for an introduction (it is time consuming) or a conclusion – UNLESS IT IS ASKED FOR. An appropriate response to Question 1 (above) would be:

*A role played by the Senate, the upper house of the Commonwealth Parliament, is that of a house of review. Most legislation is introduced into the lower house and it is the role of the Senate to check it, resulting in the legislation being passed, amended or rejected by the Senate.*

- (b) In a 'compare,' 'contrast,' 'to what extent' or 'evaluate' question, to save time, each point could be made in the following fashion. This is preferable to simply listing one set of points then another.

### Question 3

Compare and contrast the effectiveness of parliament and the courts as law-making bodies. [6 marks]

(Part answer only)

*As an elected body, parliament is likely to respond to the wishes and demands of the electorate and thus pass appropriate legislation. On the other hand, the judiciary is not elected and may create precedents which do not reflect the values of society.*

*In creating law, the courts are limited to the facts of the case before them. Parliament, however, is able to investigate an issue, using a wide range of resources.*

- (c) **Do NOT use dot points to answer a question.** There is a chance that detail will be missed and you are expected to respond in extended form.
- (d) Made a small error? Neatly cross it out (using a ruler) and continue your answer. If you have made a large error, cross out the unwanted section and refer the marker to the 'new location.' Use a similar approach if you need to add material.
- (e) Remain relevant to the question asked. No question will ask you to write everything you know about a particular aspect of the legal system!
- (f) Examples are useful, provided they are relevant. It is best to avoid examples drawn from TV programs and local places and events.

## Common task words used in examination questions

<b>Analyse</b>	A critical examination identifying the essential elements of features and principles
<b>Apply</b>	Use the information to illustrate meaning: makes links or connections, shows relationships
<b>Assess</b>	Weigh up the value of
<b>Comment on</b>	Make relevant remarks about (that show an understanding of)
<b>Compare and contrast</b>	Compare means to show points of similarity; contrast means to show points of difference
<b>Critically examine</b>	To scrutinise carefully by detailed description
<b>Define</b>	Give exact meaning of
<b>Describe</b>	To give a factual account. If the question refers to a process, you may be expected to describe the process in sequential order
<b>Discuss</b>	To present a reasoned argument for and against a particular issue. You may add your opinion as part of a balanced argument.
<b>Distinguish</b>	To recognise or note differences, or to note the distinctive characteristics
<b>Establish</b>	Prove the point beyond dispute
<b>Evaluate</b>	Set out the strengths and weaknesses of, give your opinion of the value of the arguments
<b>Explain</b>	Provide details to give the reader an understanding of
<b>Identify</b>	To determine the key characteristics or features
<b>Illustrate</b>	Use examples to demonstrate and explain
<b>Indicate</b>	Point out, show
<b>Interpret</b>	To explain an understanding of something
<b>Justify</b>	Demonstrate by giving evidence
<b>List</b>	Make point briefly in order of importance
<b>Outline</b>	A general account indicating only the key features – used by examiners to indicate that a brief factual account is expected
<b>Suggest</b>	Put forward ideas, proposals, recommendations explaining why the ideas are suitable
<b>To what extent</b>	The degree to which an intuition, procedure, or law fulfills a purpose or principle

## Knowledge audit

Are the following aspects of the course familiar to you? Could you write about each of them?

Aspect	Yes	No	Action
<b><i>Unit 3 Area of Study 1</i></b>			
<b><i>The Victorian criminal justice system</i></b>			
Principles of justice: fairness, equality, access			
Distinction between summary and indictable offences			
Burden of proof in criminal matters			
Standard of proof in criminal matters			
Presumption of innocence			
Rights of accused persons			
Rights of victims			
Institutions available to assist accused persons including Victoria Legal Aid and community legal centres			
Purposes of committal proceedings			
Plea negotiations and sentence indications			
Reasons for a Victorian court hierarchy including specialization and appeals			
Responsibilities of key personnel in a criminal trial including the judge, jury, parties and legal practitioners			
The purposes of sanctions: rehabilitation, punishment, deterrence, denunciation and protection			
Fines, community corrections orders and imprisonment and their specific purposes			
Factors considered in sentencing, including aggravating factors, mitigating factors, guilty pleas and victim impact statements			
Factors that affect the ability of the criminal justice system to achieve the principles of justice			



including in relation to costs, time and cultural differences			
Recent reforms and recommended reforms to enhance the ability of the criminal justice system to achieve the principles of justice			
<b>Unit 3 Area of Study 2</b>			
<b><i>The Victorian civil justice system</i></b>			
Burden of proof in civil matters			
Standard of proof in civil matters			
Representative proceedings			
Factors to consider in initiating civil claim including negotiation options, costs, limitation of actions, scope of liability and enforcement issues			
Purposes and appropriateness of Consumer Affairs Victoria and VCAT in resolving disputes			
Purposes of civil pre-trial procedures			
Reasons for a court hierarchy in determining civil matters including administrative convenience and appeals			
Responsibilities of key personnel in a civil trial including the judge, jury, parties and legal practitioners			
Judicial powers of case management including mediation orders and directions			
Mediation, conciliation and arbitration and their appropriateness			
Purposes of remedies			
Damages and injunctions and their specific purposes			
Factors that affect the ability of the civil justice system to achieve the principles of justice including in relation to costs, time and accessibility			
Recent reforms and recommended reforms to enhance the ability of the civil			

justice system to achieve the principles of justice			
<b>Unit 4 Area of Study 1</b>			
<b>The people and the Australian Constitution</b>			
Roles of the Crown and Parliament in law making			
Division of constitutional law-making powers of state and Commonwealth parliaments			
Significance of Section 109 of the Australian Constitution			
Constitutional checks on parliament in law-making			
Bicameral structure of Commonwealth Parliament			
Separation of legislative, executive and judicial powers			
Express constitutional protection of rights			
Role of the High Court in constitutional interpretation			
Requirement for double majority in a referendum			
Significance of one High Court case interpreting Sections 7 and 24 of the Constitution			
Significance of one referendum by which the Constitution was protected or changed			
Significance of one High Court case which impacted on the division of constitutional law-making powers			
Impact of international declarations and treaties on the interpretation of the external affairs power			
<b>Unit 4 Area of Study 2</b>			
<b>The people, the parliament and the courts</b>			
Factors that affect the ability of parliament to make law			
Roles of the houses of parliament			
Representative nature of parliament			
Political pressures on law-making			

Restrictions on law-making powers of parliament			
Roles of Victorian courts and High Court in law-making			
Factors that affect the ability of courts to make law			
Reasons for and effects of statutory interpretation			
Doctrine of precedent			
Judicial conservatism			
Judicial activism			
Costs and time in bringing a case to court			
The requirement for standing			
The relationship between courts and parliament			
The supremacy of parliament			
The ability of courts to influence parliament			
Interpretation of statutes by courts			
Codification of common law			
Abrogation of common law by parliament			
Reasons for law reform			
Ability and means by which individuals may influence law reform: petitions, demonstrations, use of courts			
Role of media in law reform (including social media)			
Role of VLRC and its ability to influence law reform			
One recent example of a VLRC recommendation for law reform			
Role of one parliamentary committee or Royal Commission and its ability to influence law reform			
One example of recommendation for law reform by a parliamentary committee or Royal Commission			
Ability of parliament and courts to respond to need for law reform			

## Tasks for you to try:

These questions are drawn from past examination papers. Your teachers will provide you with practice questions specific to your work as the year progresses.

1. Describe one purpose of a committal hearing and explain how it can provide for the timely resolution of a criminal case, (3 marks)
2. Maximilian, 22, has prior convictions and drug and alcohol addictions. Maximilian has been charged with three indictable offences, including armed robbery. The prosecution alleges that Maximilian was in possession of high-heeled shoes when committing the armed robbery and, therefore, possessed an 'offensive weapon' within the meaning of the *Crimes Act 1958* (Vic). Maximilian meets with lawyers at their office and is advised that there is no precedent for whether high-heeled shoes are an 'offensive weapon'.
  - a. Describe the law-making process that the court will use to determine whether Maximilian possessed an offensive weapon within the meaning of the statute. (3 marks)
  - b. Provide **one** sanction that may be imposed if Maximilian is found guilty and discuss the ability of that sanction to achieve its purposes. (5 marks)
3. Compare the role of a criminal jury with that of a civil jury. (5 marks)
4. Explain two possible advantages of having a dispute resolved by VCAT rather than a court. (4 marks)
5. To what extent are judges bound to follow a new precedent in future cases with similar fact situations? (5 marks)
6. Other than changes in technology, explain one reason why a law may need to change. (2 marks)
7. "One of the purposes of damages as a civil remedy is to restore the plaintiff to the position that he or she was in before the wrong occurred." Discuss the extent to which damages achieve this purpose. (4 marks)
8. Distinguish between exclusive and residual powers in the Australian Constitution. (2 marks)
9. Using one successful referendum and one High Court case, analyse the impact of referendums and the High Court's interpretation of the Commonwealth Constitution on the division of law-making powers. (8 marks)
10. Using one High Court case as an example, explain the impact of international declarations and treaties on the interpretation of the external affairs power. (6 marks)
11. Explain one recent change and one recommendation for change in the legal system. In your answer explain how each may support the principles of justice. (6 marks)
12. Discuss the extent to which courts are able to overcome the limitations of parliament in making laws. (10 marks)
13. Evaluate the effectiveness of two methods that may be used by individuals or groups to influence a change in the law. (6 marks)

## **Useful websites:**

Australian Electoral Commission	<a href="http://www.aec.gov.au">www.aec.gov.au</a>
Australian Law Reform Commission	<a href="http://www.alrc.gov.au">www.alrc.gov.au</a>
Australasian Legal Information Institute	<a href="http://www.austlii.edu.au">www.austlii.edu.au</a>
Australian Parliament	<a href="http://www.aph.gov.au">www.aph.gov.au</a>
Court Services Victoria	<a href="http://www.courts.vic.gov.au">www.courts.vic.gov.au</a>
Department of Justice and Regulation	<a href="http://www.justice.vic.gov.au">www.justice.vic.gov.au</a>
Family Court of Australia	<a href="http://www.familycourt.gov.au">www.familycourt.gov.au</a>
Governor of Victoria	<a href="http://www.governor.vic.gov.au">www.governor.vic.gov.au</a>
Governor-General of Australia	<a href="http://www.gg.gov.au">www.gg.gov.au</a>
High Court of Australia	<a href="http://www.hcourt.gov.au">www.hcourt.gov.au</a>
Law Institute of Victoria	<a href="http://www.liv.asn.au">www.liv.asn.au</a>
Law Reform Committee	<a href="http://www.parliament.vic.gov.au/lawreform/">www.parliament.vic.gov.au/lawreform/</a>
Parliament of Victoria	<a href="http://www.parliament.vic.gov.au">www.parliament.vic.gov.au</a>
Parliamentary Counsel	<a href="http://www.ocpc.vic.gov.au">www.ocpc.vic.gov.au</a>
Sentencing Advisory Council	<a href="http://www.sentencingcouncil.vic.gov.au">www.sentencingcouncil.vic.gov.au</a>
Victoria Police	<a href="http://www.police.vic.gov.au">www.police.vic.gov.au</a>
Victoria Law Foundation	<a href="http://www.victorialawfoundation.org.au">www.victorialawfoundation.org.au</a>
Victoria Legal Aid	<a href="http://www.legalaid.vic.gov.au">www.legalaid.vic.gov.au</a>
Victorian Electoral Commission	<a href="http://www.vec.vic.gov.au">www.vec.vic.gov.au</a>
Victorian Law Reform Commission	<a href="http://www.lawreform.vic.gov.au">www.lawreform.vic.gov.au</a>