

2024 Legal Studies Question and Answer Book

Written Trial Examination

- Reading time: 15 minutes
- Writing time: 2 hours

Approved materials

- 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 correction fluid/tape.
- No calculator is allowed in this examination.

Instructions

- Write your **name** 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.

Contents	pages
Section A (8 questions, 40 marks) _____	3-12
Section B (2 questions, 40 marks) _____	13-23
Extra space for responses _____	24-25



Section B

Instructions

- 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 space provided.

Question 1 (19 marks)

Source 1

The common law of negligence in Australia was first established in the High Court case of *Grant v Australian Knitting Mills* [1936]. The case was originally heard in the Supreme Court of South Australia; however, the case was appealed to a higher court. Below is a summary of the final case.

***Grant v Australian Knitting Mills* [1936] AC 85**

Facts of the Case

- Dr Grant bought two pairs of woolen underwear from a retailer (shop). The underwear had no instructions requiring Dr Grant to wash the underwear before use, and therefore, Dr Grant did not wash them before using them.
- Dr Grant developed a severe skin irritation after wearing the underwear.
- Dr Grant sued the retailer and the manufacturer (maker) of the underwear believing his skin irritation was caused by a chemical residue left in the underwear during manufacturing.

Court Decision

- The court determined that Dr Grant's skin irritation was caused by a chemical residue left on the underwear from manufacturing.
- The court considered the case of *Donoghue v Stevenson*, which set the precedent that manufacturers owe a duty of care to the end consumer of their product. This established the law of negligence in Britain.
- The court held that the manufacturer (Australian Knitting Mills) was liable as they owed a duty of care to their consumers and breached that duty of care when they failed to take reasonable care that would result in injury to the consumer of the underpants (Dr Grant).
- This upheld (agreed with) the original decision of the Supreme Court of South Australia.

Source 2

In Australia, tort law (a branch of civil law), including the law of negligence, is a residual power. In Victoria, this area of law is governed by the Wrongs Acts 1958 (Vic). The law of negligence allows a plaintiff to recover compensation for loss or injury caused by another person's failure to take reasonable care.

Section 48(1) of the Wrongs Act 1958 (Vic) explains that a person (defendant) will breach their duty of care if they fail to act to prevent harm and loss to another person (plaintiff) when the law requires.

48 General principles

- (1) A person is not negligent in failing to take precautions against a risk of harm **unless**—
- (a) the risk was foreseeable (that is, it is a risk of which the person knew or ought to have known); and
 - (b) the risk was not insignificant; and
 - (c) in the circumstances, a reasonable person in the person's position would have taken those precautions.

Student Name: _____

2024 Legal Studies

Suggested Solutions

Written Trial Examination

Section	Number of questions	Number of marks
A	8	40
B	2	40
		Total 80



Significance of the 1967 Referendum:

- It resulted in a change in the division of constitutional law-making powers between the states and the Commonwealth. The power to make laws regarding indigenous people changed from being a residual power to a concurrent power, thus shifting the division of law-making powers in favour of the Commonwealth parliament at the expense of the states.
- This change has enabled the Commonwealth to implement major reforms in relation to indigenous affairs. For example, the Native Title Act (1993) was passed by the Commonwealth Parliament to provide a process for indigenous people to make land rights claims.

Suggested Response

Before the 1967 referendum, the Australian Constitution contained two discriminatory powers. s51 (xxvi) gave the Commonwealth Parliament the power to make laws concerning the people of any race, other than the Aboriginal race. This acted as a restriction on the Commonwealth Parliament. Also, s127 stated that the Aboriginal people shall not be counted in the census. The 1967 referendum sought to remove the restriction on the Commonwealth parliament by removing 'other than the Aboriginal race' from s51(xxvi) and repealing s127 completely. The referendum succeeded by achieving a 'Yes' vote of approximately 91% across Australia and in 6 out of 6 states.

This referendum was significant because it resulted in a change in the division of constitutional law-making powers between the states and the Commonwealth. The power to make laws regarding indigenous people changed from being a residual power to a concurrent power, thus shifting the division of law-making powers in favour of the Commonwealth parliament at the expense of the states. The Commonwealth Parliament can now make laws concerning Aboriginal people.

Question 6 (6 marks)

According to the Productivity Commission's 2024 Report on Government Services, two out of every five adults released from prison are back in jail with a new sentence after just 24 months. Victoria's recidivism rate has risen to 39.5%.

With reference to the above statistic, discuss the ability of imprisonment as a sanction to achieve the purposes of rehabilitation and denunciation.

Marking Guide

Marks	Description
6	A detailed and comprehensive discussion that has the following features: <ul style="list-style-type: none"> • Comprehensive discussion (not explanation) of imprisonment achieving the purposes of rehabilitation and denunciation • A discussion is more than an explanation, so counter-arguments, limitations, cons, and restrictions should be raised. • The response should address both sides of the argument: how imprisonment does and does not achieve its purposes (rehabilitation and denunciation) • Demonstrates an understanding of imprisonment as a sanction • Demonstrates an understanding of the purpose of rehabilitation and denunciation • Draws on the salient and relevant facts of the stimulus material to support response
5	A strong response that falls short of full marks. For example: <ul style="list-style-type: none"> • It is a very good discussion, but there is not enough elaboration to warrant full marks (i.e. some points are briefly made).

	<ul style="list-style-type: none"> • There is an understanding of the impact of cost and time factors on the court's ability to make law, but there is a lack of depth of knowledge on the topic • There is an error that cannot be ignored
4	<p>A good response that is lacking in some areas. For example:</p> <ul style="list-style-type: none"> • It is a strong explanation of how cost and time hinder the court's ability to make law, but it does not engage with opposing points (i.e. it is not a discussion). • There is an attempt at a discussion, but the points are made briefly and require elaboration, or there is a list of points made but no depth • There are a number of errors that cannot be ignored.
3	<p>The response is 'middle of the range' but is missing key features. For example:</p> <ul style="list-style-type: none"> • Cost and time factors are explained but links to law-making by courts are weak or under-developed • Only one factor (cost or time) is full explained and linked to law-making by courts • Limited use of the stimulus material • There are significant errors such that part of the answer is incorrect.
2	<p>The response is limited. For example:</p> <ul style="list-style-type: none"> • It makes one brief point about how cost and/or time impact law-making by courts. • Costs and time are briefly outlined but does not otherwise address the question. • There is no use of the stimulus material to support the response
1	<p>The response is more than nothing and, in some way, relates to the question. For example:</p> <ul style="list-style-type: none"> • Cost or time has been defined
0	<ul style="list-style-type: none"> • Incorrect response or no response given

A note on marking this question (Discussion):

- The response does not have to have both sides of both purposes.
- It is enough that both denunciation and rehabilitation have been addressed and that there are both positive and negative points.
- The discussions of both purposes do not have to be equally weighted.

Possible Responses

Below is a non-exhaustive list of possible points that could be made...

Imprisonment: Denunciation

- The purpose of denunciation is to show the court's disapproval of the offender's behaviour by publicly condemning it.
- Imprisonment demonstrates the court's disapproval because it is the most severe sanction that a court can impose. Courts can use the length of the sentence to demonstrate their disapproval.
- Repeat offenders who have already been to prison may not 'receive' the court's message of disapproval.

Imprisonment: Rehabilitation

- The purpose of rehabilitation is to change an offender's behaviour or attitude by addressing the underlying reasons for their offending, such as anger, drug addiction or mental health issues.
- Imprisonment provides offenders with treatment (e.g. drug, anger management) and education (e.g. TAFE courses) programs that aim to address the underlying reasons for their offending and provide them with skills to become a more productive member of society.
- The programs offered by prisons are optional, and the demand can often exceed the number of spots available.

- Imprisonment removes an offender from their support network of family and friends, which could hinder their ability to change their behaviour and rectify the underlying reasons for their offending.

Suggested Response

Below is the start of a high-scoring response...

Imprisonment is a custodial sanction that removes an offender from the community and places them in a prison facility, where they lose freedoms, rights and liberties. This sanction attempts to achieve the purpose of denunciation, which is to show the court's disapproval of the offender's behaviour by publicly condemning it. Imprisonment demonstrates the court's disapproval because it is the most severe sanction a court can impose. Courts can use the length of the sentence to demonstrate their disapproval.

However, although imprisonment achieves denunciation, it may struggle to achieve rehabilitation...

Question 7 (7 marks)

Evaluate the ability of either Royal Commissions or parliamentary committees to influence a change in the law. Use an example to support your response.

Marking Guide

Marks	Description
7	<p>An excellent response which has the following features:</p> <ul style="list-style-type: none"> • Comprehensive evaluation of the strength(s) and weakness(es) of either Royal Commissions or parliamentary committees • The response addresses 'why' the chosen law reform body will and will not achieve law reform • Response demonstrates an understanding of their chosen law reform body and their role in achieving law reform • Includes an example of a recent inquiry • Provides an overall position/concluding statement • Accurate and correct use of terminology and understanding of legal principles
5-6	<p>A strong response that falls short of full marks. For example:</p> <ul style="list-style-type: none"> • There is no overall position/concluding statement • The response is strong but is not comprehensive enough to achieve full marks. It is too brief in some areas • Some of the points are not elaborated on, or the student stops too short once or twice e.g. why will their point about their chosen law reform body lead to law reform • The example of a recent inquiry is brief and missing significant key points • There are one or two errors which cannot be ignored
3-4	<p>A satisfactory but limited response. For example:</p> <ul style="list-style-type: none"> • Response considers a couple of points, but critical points have been missed • Response may only address one side of the argument but not both e.g. response only argues their chosen law reform body will achieve law reform. (max 4 marks) • There is no overall position/concluding statement • The response is really limited to one or two points (max 3 marks) • The example of a recent inquiry is not present or very limited • There is significant repetition in points

	<ul style="list-style-type: none"> The response is weak overall. There are significant inaccuracies such that much of the answer is not correct
1-2	<p>The response is more than nothing and, in some way, relates to the question. For example:</p> <ul style="list-style-type: none"> Response outlines the role of the chosen law reform body or outlines their process The response identifies one recommendation/inquiry by their chosen law reform body
0	<ul style="list-style-type: none"> Incorrect response or no response given

Possible Responses

Below is a non-exhaustive list of possible points that could be made...

Parliamentary Committees Influencing Law Reform

- **Power to compel evidence means parliament is fully informed:** Parliamentary committees have the power to compel witnesses to give evidence or produce documents, which ensures parliament has access to all the relevant information to fully understand an issue and is better placed to reform the law.
- **Enables community involvement:** Parliamentary committees provide an opportunity for community involvement in law reform by allowing special interest groups and members of the community to make submissions or attend hearings in various locations. Due to this research/consultation, proposed laws are more likely to reflect community attitudes and values.
- **Parliament may not act on recommendations:** Parliament is not required to act on the recommendations of a committee and the government/parties with a majority in the houses may block any legislation introduced.
- **Investigative process can be time-consuming and costly:** Committee investigations can take a long time to complete and can distract members from their other work. They can also be expensive to conduct.
- **Limited by terms of reference:** Parliamentary committees are limited to investigating issues within their terms or reference. This could result in important ancillary issues being ignored, which could limit the law reform that takes place.

Royal Commissions Influencing Law Reform

- **Independence:** Royal Commissions are independent, which means investigations are not influenced by the government or members of parliament that may rely on the commission's report to enact legislation.
- **Extensive powers:** Royal Commissions have the power to compel witnesses to give evidence or produce documents, which ensures parliament has access to all the relevant information to fully understand an issue and is better placed to reform the law.
- **Expense limits the number of inquiries:** Royal Commissions can be very expensive, which means the government isn't able to establish commissions for all areas of law reform.
- **Dependence on government:** Royal Commissions are dependent on the government to be established, provided with funds, and given terms of reference. If the government doesn't want to send an issue to a Royal Commission, it may not receive a thorough investigation and the independence afforded by a commission.

Suggested Response

Below is the start of a high-scoring response...

A parliamentary committee consists of a group of members from one or both houses of Parliament (depending on the committee) that include a range of political persuasions (government, opposition, minor parties, independents). They can investigate issues or proposed law reforms by conducting research, receiving written submissions, consulting with experts/members of the community and conducting hearings to hear from witnesses. Their findings and any recommendations are documented in a report that is tabled in Parliament, which ensures MPs are fully informed when considering law reform.

Parliamentary committees are effective at influencing a change in the law because they enable community involvement in the law reform process. Parliamentary committees provide an opportunity for community involvement in law reform by allowing special interest groups and members of the community to make submissions or attend hearings in various locations. Due to this research/consultation, proposed laws are more likely to reflect community attitudes and values. This was seen in the Legal and Social Issues committee's inquiry into 'The use of Cannabis in Victoria' in 2019, where the committee conducted 28 public hearings and received over 1400 submissions from special interest groups and members of the public.

Question 8 (10 marks)

'Parliament, as the supreme law-making body, is more able to respond to the need for law reform than the Courts, who must wait for a case to come before them'.

Discuss the extent to which you agree with this statement.

Marking Guide

Marks	Description
10	A full and comprehensive response which has the following features: <ul style="list-style-type: none"> • An extent statement • The response addresses the quote <ul style="list-style-type: none"> ○ Parliament as the supreme law-making body = enables law reform ○ Courts must wait for a case = hinders law reform • Discussion of how Parliament can respond to the need for law reform • Discussion of how Parliament is limited in their ability to respond to the need for law reform • Discussion of how Courts can respond to the need for law reform • Discussion of how Courts are limited in their ability to respond to the need for law reform • There is a connection made between the strengths/weaknesses of parliament and the strengths/weaknesses of courts (relationship)
8-9	A very good response which falls short of full marks. For example: <ul style="list-style-type: none"> • There is not enough depth/elaboration to warrant full marks. Some points are briefly made • There is no connectedness between the discussions of courts and parliament. They are two separate discussions with no interaction/relationship • There are one or two errors that cannot be ignored
6-7	A good response that is missing key features. For example:

Section B

Question 1 (19 marks)

Source 1

The common law of negligence in Australia was first established in the High Court case of *Grant v Australian Knitting Mills* [1936]. The case was originally heard in the Supreme Court of South Australia; however, the case was appealed to a higher court. Below is a summary of the final case.

***Grant v Australian Knitting Mills* [1936] AC 85**

Facts of the Case

- Dr Grant bought two pairs of woolen underwear from a retailer (shop). The underwear had no instructions requiring Dr Grant to wash the underwear before use, and therefore, Dr Grant did not wash them before using them.
- Dr Grant developed a severe skin irritation after wearing the underwear.
- Dr Grant sued the retailer and the manufacturer (maker) of the underwear believing his skin irritation was caused by a chemical residue left in the underwear during manufacturing.

Court Decision

- The court determined that Dr Grant's skin irritation was caused by a chemical residue left on the underwear from manufacturing.
- The court considered the case of *Donoghue v Stevenson*, which set the precedent that manufacturers owe a duty of care to the end consumer of their product. This established the law of negligence in Britain.
- The court held that the manufacturer (Australian Knitting Mills) was liable as they owed a duty of care to their consumers and breached that duty of care when they failed to take reasonable care that would result in injury to the consumer of the underpants (Dr Grant).
- This upheld (agreed with) the original decision of the Supreme Court of South Australia.

Source 2

In Australia, tort law (a branch of civil law), including the law of negligence, is a residual power. In Victoria, this area of law is governed by the Wrongs Acts 1958 (Vic). The law of negligence allows a plaintiff to recover compensation for loss or injury caused by another person's failure to take reasonable care.

Section 48(1) of the Wrongs Act 1958 (Vic) explains that a person (defendant) will breach their duty of care if they fail to act to prevent harm and loss to another person (plaintiff) when the law requires.

48 General principles

- (1) A person is not negligent in failing to take precautions against a risk of harm **unless**—
 - (a) the risk was foreseeable (that is, it is a risk of which the person knew or ought to have known); and
 - (b) the risk was not insignificant; and
 - (c) in the circumstances, a reasonable person in the person's position would have taken those precautions.

- a. With reference to Section 48(1) of the Wrongs Act 1958 (Vic), outline **one** reason for statutory interpretation. 3 marks

Marking Guide

Marks	Description
3	An excellent and comprehensive response which has the following features: <ul style="list-style-type: none"> • Response 'outlines' one reason for statutory interpretation • The answer that is more than identifying or stating • There is effective and accurate use of the stimulus material
	A strong response that falls short of full marks. For example: <ul style="list-style-type: none"> • A strong outline of one reason for statutory interpretation, but there is limited use of the stimulus material • A reason for statutory interpretation is stated but not outlined and there is effective use of the stimulus material
1	The response is more than nothing and, in some way, relates to the question. For example: <ul style="list-style-type: none"> • A reason for statutory interpretation is identified or stated, but the response goes no further • There is no use of the stimulus material
0	<ul style="list-style-type: none"> • Incorrect response or no response given

Possible Responses

Below is a non-exhaustive list of possible points that could be made...

- Meaning of the words in the Australian Constitution are ambiguous: foreseeable, insignificant, reasonable etc.
- Difficulty foreseeing future application
- Statute was drafted in general/broad terms

Suggested Response

One reason why courts may have needed to interpret section 48(1) of the Wrong Act 1958 (Vic) is that many of the words are ambiguous in this section. Words in s48(1), such as 'foreseeable, insignificant and reasonable', may have more than one meaning, and therefore, courts would need to interpret these words to determine what parliament intended. By giving the words in section 48(1) meaning, courts would then be able to apply this interpretation to cases before them in order to resolve negligence disputes.

- b. Describe **one** reason for the civil court hierarchy. 4 marks

Marking Guide

Marks	Description
4	A comprehensive and detailed description which has the following features: <ul style="list-style-type: none"> • A description of one reason for the civil court hierarchy • The response addresses the 'why' a civil court hierarchy is needed • Demonstrates an understanding of a <u>civil</u> court hierarchy (uses civil terminology) • There is effective and accurate use of the stimulus material

3	<p>A strong response but falls short of full marks. For example:</p> <ul style="list-style-type: none"> • It outlines but does not describe the reason • The response does not sufficiently address the 'why' a civil court hierarchy is needed • The response is lacking in some small aspect (e.g. it confuses civil for criminal) • There is limited use of the stimulus material • An error is present which cannot be ignored
2	<p>The response is limited. For example:</p> <ul style="list-style-type: none"> • A reason for the court hierarchy is briefly outlined • There are no links to the stimulus material • There are significant errors present which cannot be ignored
1	<p>A brief response that is more than nothing and, in some way, relates to the question. For example:</p> <ul style="list-style-type: none"> • A reason for the court hierarchy generally is briefly outlined.
0	<ul style="list-style-type: none"> • Incorrect response or no response given

Possible Responses

Below is a non-exhaustive list of possible points that could be made...

- **Administrative Convenience:** allows the courts to efficiently allocate resources by distributing cases to courts based on the seriousness and complexity of the dispute.
- **Appeals:** allow decisions of lower courts to be reviewed by higher courts (with more authority and expertise) to correct any errors in law, fact or the remedy awarded.
- **Specialisation:** allows courts to develop expertise in particular areas of civil law based on the damages sought.
- **Doctrine of Precedent:** allows decisions of higher courts to be binding on lower courts within the same hierarchy to create more consistent and fairer outcomes.

Suggested Response

One reason for the civil court hierarchy is appeals. Appeals allow decisions of lower courts to be reviewed by higher courts (with more authority and expertise) to correct any errors in law, fact or the remedy awarded. This promotes fairness and acts as a safeguard against unjust decisions. For example, Grant v Australian Knitting Mills was originally heard in the Supreme Court of South Australia; however, the case was appealed to a higher court to review the decision. The court upheld the original decision of the Supreme Court of South Australia, meaning there was no error to correct.

- c. Referring to source 2, outline why s109 would **not** be relevant if the Commonwealth Parliament passed legislation that abolished the tort of negligence in Australia.
3 marks

Marking Guide

Marks	Description
3	<p>The response 'outlines' why section 109 would not be relevant, including the following features:</p> <ul style="list-style-type: none"> • The answer that is more than identifying or stating one reason why section 109 is not relevant • Demonstrates an understanding of the operation of section 109