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Summary

VCE Legal Studies Units 3 and 4 Exam Revision Notes

In general this document may be useful for,

Students studying VCE Legal Studies Units 3 and 4. These notes are aimed as a revision tool, in order to assist your study for the end of year exam, and serve as a guide to the key knowledge areas that you are required to know before the exam.

Notes about the Exam in General

Although these revision notes cover all the material that you are required to know for the exam, for those students who wish to excel in this subject, it is highly advised that you use these notes as a guide in preparing your own set of notes.

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	nation (why all states have equal representation)
The Crown (Australian Head of State) - represented by the GG (Federal) or the Governor (State)	<ul style="list-style-type: none"> ▪ Gives royal assent to bills ▪ Ensures that our democratic system operates effectively ▪ Appoints Federal judges to courts

The reasons why laws may need to change

- Changing values and attitudes
- Changes in society
- Advances in technology
- Protection of the community
- Protection of rights
- To improve access to the law
- To generate changing values in society

The role of the Victorian Law Reform Commission

- **Undertake research and make recommendations to parliament for changes in the law on issues that are referred to it by the Attorney-General (reference)**
 - Make recommendations to parliament on minor legal issues of general community concern.
 - Suggest to the Attorney-General that he/she refer a law in need of investigation to commission
 - Educate the community on areas of law relevant to commission's work.
 - Monitor and coordinate law reform in Victoria
1. Undertake general research and consult with experts.
 2. Publish a discussion paper, explaining the key issues
 3. Invite written submissions from public, organisations and legal bodies.
 4. Undertake consultation with relevant individuals and groups.
 5. Seek expert advice, for areas requiring further information.
 6. Publish a report with recommendations
 7. Table report in Parliament
 8. Parliament decides if they want to implement the recommendations.

Examples:

- Property
- Child Protection
- Surveillance in Public
- Guardianship

The means by which individuals and groups influence legislative change, including petitions, demonstrations and use of the media

DEMONSTRATIONS = a gathering of people in a public/significant place	<ul style="list-style-type: none"> ▪ To alert the government for a need to change the law ▪ A large group of people required to be successful ▪ Aimed at bringing an issue to the attention of the community and law-makers.
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AREA OF STUDY 3: ROLE OF THE COURTS IN LAWMAKING

The ability of judges and courts to make law

→ Judges make law by:

- deciding on a new issue that's brought before them, when there's:
 - no previous binding precedent that applies to the current situation
 - a previous precedent that requires expansion to be applied to the new situation
- statutory interpretation; interpreting the words in an act of parliament

→ Restrictions on judges in the way they make law:

- a case needs to be brought before the superior courts; judges are not free to make law when they feel the need arises
- judges are bound by precedent

→ Ways judges can develop precedent

Distinguishing	Judge may find material facts from present case to be different from the previous binding precedent case, thus the judge is not bound to follow the previous decision.
Overruling	When a superior court decides not to follow an earlier decision of a lower court, <i>ratio decidendi</i> from latest case creates new precedent.
Reversing	When the <u>same case</u> is taken on appeal to a higher court, the superior court may change the decision of the lower court, creates new precedent.
Disapproving	<ul style="list-style-type: none"> ▪ When a precedent has been made in a court at the same level in the court hierarchy, the present court states their lack of agreement with the earlier decision, and makes a new precedent. ▪ Both precedents remain in force, until another case on the same issue is taken to a higher court.

The operation of the doctrine of precedent

The reasoning of the judges (*ratio decidendi*; the reason for the decision) in cases heard in superior courts of record (High Court, Court of Appeal and Supreme Court) which is known as precedent, must be followed by all lower courts in the same hierarchy (binding precedent) when deciding cases with similar facts to those in the precedent case (*stare decisis*; to stand by what has been decided)

LEGAL REPRESENTATION

VCAT	COURTS
Some parties may be unable to represent themselves effectively as they are not of equal bargaining strength, thus one may exert influence over the other.	The use of legal representation ensures that both parties have equal footing, as both parties have legal representatives who understand the legal system as their advocates in court.

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	<p>by a jury in a higher court</p> <p>PURPOSE;</p> <ul style="list-style-type: none"> -to avoid wasting time and expenses -to bring forward and clarify the legal issues in dispute <p>→ Two methods:</p> <ul style="list-style-type: none"> - hand-up brief (written evidence submitted) -traditional method (all in person, oral evidence)
Directions Hearing	<p>To allow judges to identify the main issues in a case and give directions to parties as to how their action should continue.</p> <p>→ Reduces time taken for process before and during trial, thus a quicker, cheaper and more efficient resolution.</p>

General purposes of criminal sanctions

PUNISHMENT	Offender should be punished in a just manner and so society can feel that there has been retribution
DENUNCIATION	To show the court's disapproval of the offender's behaviour
DETERRENCE	<ul style="list-style-type: none"> - specific deterrence (to deter offender) -general deterrence (to deter other offenders from committing similar offences)
REHABILITATION	To establish conditions so that rehabilitation of the offender may be facilitated
PROTECTION	To protect community by removing offender from society.

An overview of three types of sanctions and their specific purpose

SANCTION	PURPOSE
<p>Fine</p> <p>= a monetary penalty</p>	<ul style="list-style-type: none"> - punishment -general and specific deterrence -denunciation <p>BUT NOT:</p> <ul style="list-style-type: none"> -rehabilitation -protection
<p>Community-Based Order (CBO)</p> <p>= supervised sentence served in the community</p>	<ul style="list-style-type: none"> - punishment (demand on offender's time) -specific deterrence -protections (occupies offender) -rehabilitation
<p>Imprisonment</p> <p>= record a conviction and order offender to serve time in prison</p>	<ul style="list-style-type: none"> -punishment (removes offender from society) -protection -rehabilitation (BUT likely to lead to more crimes because of influence of other prisoners)

PROBLEM	RECENT CHANGE	RECOMMENDATION
<p>Delays</p> <ul style="list-style-type: none"> - cases not resolved in a timely manner -increases stress, memory loss for witnesses and a loss of confidence in the legal system -due to time involved in gathering evidence, pre-trial procedures, lack of court room and judges 	<p>ADR</p> <ul style="list-style-type: none"> - voluntary and compulsory -quicker way of resolving civil disputes, and helps clear backlog of court cases 	<p>Majority jury verdict be extended</p> <ul style="list-style-type: none"> - to include murder, manslaughter and Commonwealth offences - timely resolution of disputes

PROBLEM	RECENT CHANGE	RECOMMENDATION
<p>Cultural differences – Aboriginals</p> <ul style="list-style-type: none"> - Often disadvantaged, as their complex system of laws and customs is different to that of contemporary Australia - May be treated differently due to communication differences, body language, hearing loss, cultural taboos 	<p>Koori Court Divisions</p> <ul style="list-style-type: none"> - of Magistrates', County and Children's Court -informal proceedings aim to ensure understanding of the defendant, their family and the Aboriginal community 	<p>Increase number of Aboriginal police, lawyers and legal officials</p> <ul style="list-style-type: none"> - to increase representation of Aboriginal culture within the community and legal system -access to mechanisms for the resolution of disputes -fair and unbiased hearing - recognition of prevailing values