



Fortify Sample Exam A

LEGAL STUDIES

Full Solutions

Section A

Question 1

Students should seek to be concise in their answers and provide a simple identification of the disadvantage and a very brief outline of how it harms the judicial system. Students should aim to limit their answers to two sentences at the maximum: one to identify and one to describe.

Acceptable disadvantages to be identified include:

- The complicated hierarchy system can be difficult for the ordinary person to understand and may deter them from seeking justice.
- Precedents made binding by the court hierarchy may not be appropriate in certain cases, leading to unjust outcomes.
- The hierarchy enables appeals, which can greatly add to the stress and cost of a legal case.
- More administrative personnel are required for each court under a hierarchy.
- Parties to a case in a lower court might not receive the same level of judicial expertise as those in higher courts.

A high-scoring response could be:

One disadvantage of the court hierarchy is that by dividing the judicial system into multiple courts, more administrative personnel are required to run each court. Consequently, this can greatly increase the legal system's costs for both the State and the parties accessing justice.

Question 2

Students are expected to engage with the question's stimulus material and specifically explain why, in this situation, CAV is likely inappropriate to resolve the dispute. Students could identify VCAT or the courts as appropriate alternatives to CAV.

A good answer would identify that Preston is unwilling to negotiate and, as CAV cannot compel a party to attend conciliation, CAV may not be appropriate to resolve this dispute. Alternatively, students could respond that CAV cannot make legally binding decisions and, given the nature of the dispute, is unlikely to help.

Students could then explain that VCAT or the courts would be more appropriate, so either of those bodies can make binding decisions.

A high-scoring answer could be:

CAV may not be appropriate for resolving this dispute due to its inability to force parties to attend conciliation, which is its primary method of dispute resolution. As Preston has demonstrated unwillingness to negotiate, conciliation is unlikely to resolve the dispute. The Victorian Civil and Administrative Tribunal (VCAT) may be more appropriate, as it can make legally binding resolutions, such as through arbitration, that Preston could not avoid.

Question 3

To attain full marks, students **must** use a case example, such as the *Tasmanian dam case* [1983] or *Croome v. Tasmania* [1997], to describe the relationship between international treaties and the external affairs power. Students must then explain from the case that the external affairs power has been interpreted by the High Court to enable the Commonwealth government to pass laws on any matter relating to an international treaty, even if the area of law-making power is residual. Students should conclude that this has increased the Commonwealth parliament's power.

A high-scoring answer could be:

In Croome v. Tasmania [1997], the High Court interpreted the term 'external affairs' under s51(xxix) of the Constitution to include any matter covered by an international treaty.

Consequently, the power to make laws relating to 'external affairs' enables the Commonwealth government to create laws on any matter, so long as it is covered by a treaty to which Australia is a signatory, even if the matter is a residual area of power.

This interpretation has extended the power of the Commonwealth parliament to make laws in more areas and invalidate inconsistent State legislation, as done in Croome v. Tasmania. Consequently, this has increased the power of the Commonwealth parliament.

Question 4

Students **must** provide a contention and sufficient reasoning for their arguments. Although this question is not a strict 'evaluate' question, students should (depending upon their contention) provide strengths and weaknesses of judges **in terms of achieving the principle of fairness**.

Students should also provide a conclusion summarising their argument and contention.

Possible strengths include:

- Judges are independent adjudicators and should resolve cases fairly.
- Judges are not elected, meaning that they should be able to resolve cases without political influence and provide for a fair trial.
- The effect of precedent on the court requires judges to decide cases consistently and should therefore result in fair results.
- Judges can give instructions to juries or legal parties to ensure fairness, such as by ruling illegally obtained evidence inadmissible.

Possible weaknesses include:

- Judges are not elected, meaning their views may not reflect societal values. Consequently, judicial determinations may be considered unfair from the public's perspective.
- Judges may be bound by precedents or reluctant to change them and consequently enable an unfair legal decision.
- Judges are limited in how they can affect the trial, and cannot investigate a case beyond what is presented in court. Consequently, the extent to which they can provide for fairness is limited.

A high-scoring answer could be:

To a moderate extent, judges aid in providing for fairness within the legal system.

Judges can provide for fairness when enforcing the rules of procedure and evidence in the courtroom. Judges can prevent parties from presenting, for example, illegally obtained evidence to the detriment of the other party. This ensures that both parties will act in accordance with the rules and, therefore, aid in providing fairness. However, judges are limited in how they can affect a court case. Judges cannot investigate or provide aid to either party's argument, thereby reducing their ability to provide for fairness in the courtroom. That being said, this does also aid in ensuring the independence of the judiciary and, consequently, fairness, as they cannot side with either party.

Judges are appointed rather than elected and this helps to ensure fairness. By not having to worry about elections, judges should not be swayed by political influence and can make decisions based upon the evidence and legal knowledge available. Consequently, this should lead to cases being resolved fairly. However, by not being elected, this could mean that the views of judges do not reflect those of the society at large. Instead, judges could be making decisions motivated by individual beliefs that are not shared by broader society and could result in an unfair decision.

Judges are likely the best candidates to ensure fairness in the courtroom, despite some weaknesses than can minimise their effect. As independent legal experts, judges can provide for fairness by not favouring either party and can be reasonably expected to rely upon legal principles rather than their own personal beliefs when deciding cases.

Question 5a.

For full marks, students must correctly identify that the standard of proof in Bob's case is 'on the balance of probabilities.' Students must then identify that the standard of proof would be different in a criminal trial, as it would be 'beyond reasonable doubt.'

Question 5b.

Students should seek to first identify a responsibility, briefly explain it, and then repeat. As this question affords only two marks per responsibility, students would be wise to be succinct and straight to the point in their answers.

Students should also remember that the question asks for responsibilities at trial, so no marks will be afforded to responses focusing on pre-trial responsibilities.

Students should also be specific when describing the responsibility: it is not enough to say that the practitioner must just try to win the case.

Students could describe responsibilities such as:

- Giving an opening and closing address trial.
- Assisting Bob's former employer in understanding procedures and obligations at trial.
- To present and argue the case in a manner which seeks to prove Bob's former employer is not liable, such as cross-examining witnesses.
- To cooperate with the court and Bob's representatives in resolving the dispute.

A high scoring answer could be:

One responsibility of Bob's former employer's legal practitioners would be to cooperate with the court and Bob's lawyers in resolving the dispute. This would involve fair and reasonable sharing of documents and evidence relating to the matter, either when called upon by the court or requested by Bob's representatives.

A second responsibility would be to give opening and closing addresses at the trial. Generally, this would involve the practitioners providing an initial response to the plaintiff's claims at the start of the trial and also summarizing their case to the jury or judge at the end.

Question 5c.

Students must determine that Bob's case could be held before a jury if requested by either party. Students must the answer that a civil jury would be composed of 6 people who would decide whether the defendant is liable on the balance of probabilities.

Question 6a.

To gain full marks, students must comment on the strengths **and** weaknesses of the bicameral structure of the Commonwealth parliament. Students must also provide a meaningful conclusion that summarises their overall position on how well the bicameral structure acts as a check on parliament.

Possible strengths include:

- The bicameral system provides for greater debate and scrutinization of bills.
- The two houses create checks and balances against one another, preventing unlawful behaviour.
- The bicameral system ensures wider representation of Australia by having one house reflect the people's will and the other reflect the state's.
- The structure of the Senate prevents smaller states from being overpowered by larger states.

Possible weaknesses include:

- Having two houses leads to more debate and discussion, which slows down the law-making process.
- If both houses are controlled by the same party, then debate and scrutiny of Bills is greatly reduced.
- The number of representatives from each state in the Senate is disproportionate and means that some states have a lower representation per-person.
- Two houses are more expensive to run and maintain than just one, which may be unnecessary when they both fulfil very similar tasks.

A high-scoring answer could be:

By having an upper house to represent the States' interests and a lower house to reflect the will of Australia as a whole, the bicameral structure of the Commonwealth Parliament ensures that all areas of Australia are represented in the law-making process. By ensuring broader representation, this should prevent the parliament from making laws that do not reflect the will of the people and, thus, acts as a check on parliament.

Having each State elect the same number of Senators (12) is also advantageous in providing a check on parliament. By ensuring that larger States (like New South Wales) are given the same representation as smaller States (like Tasmania), it prevents larger states from dominating the law-making process.

However, this does also mean that the representation of people in the Senate is disproportionate, meaning that same populations have less power relative to the number of people within. This could enable laws to be passed by a majority in the Senate that a majority of people within the States would have disagreed with. Yet, this issue is mitigated by the fact that the House of Representatives always reflects the will of Australians at large so, in theory, a disagreeable Bill would be stopped in the lower house.

The bicameral structure is also beneficial by ensuring greater scrutinization of Bills. As Bills must be passed by both houses, it means that two groups of people will debate and discuss any potential change to the law, thus ideally preventing harmful or corrupt legislation.

However, if the Senate is controlled by the party that has a majority in the lower house, it can become a rubber stamp', where it will just agree to legislation passed in the House of Representatives without any significant debate or opposition.

To conclude, despite the weaknesses of the bicameral structure, its advantages in terms of broader representation and more significant scrutinization are greatly beneficial to the law-making process. The bicameral structure is an effective check on the parliament, as it requires lawmakers to prove that their suggested legislation is good and proper in two houses and face two waves of scrutinization and debate from two different groups of elected people.

Question 6b.

Students must identify that the referendum would have passed as section 128 of the Commonwealth requires the proposal be agreed to by a majority of voters nationally and a majority of people in a majority of States. As the referendum had a majority of votes nationally and Western Australia and Queensland are not a majority of states, the hypothetical referendum would have passed.

Question 7.

To achieve full marks, students must express a clear contention (whether it be agreement, disagreement or partial agreement with the prompt) that is expressed both at the start and end of their answer. Students **must** discuss both the doctrine of precedent and the use of juries when discussing whether these concepts enable the court to achieve fairness and efficiency.

Students should seek to link the strengths and weaknesses of the doctrine of precedent and juries back to the prompt in order to argue their contention.

There is no need for students to describe reforms or alternatives to these concepts. As the question does not state whether it is in regard to criminal or civil trials, students should refer to trials more broadly but can make points specific to criminal or civil disputes.

The following points would be valid:

Doctrine of precedent

Strengths:

- Doctrine of precedent allows both parties to expect fair and consistent results from courts that are in line with cases that have been previously decided.
- Doctrine of precedent aids in the justice system's efficiency by allowing judges to rely on previous cases.
- However, doctrine of precedent also gives judges the flexibility to make a more appropriate decision when the facts of the case can be distinguished from the precedent.
- The doctrine of precedent reduces the threat of bias or prejudice influencing the court's decision.

Weaknesses:

- In some situations, the inflexibility of the doctrine of precedent may force a court to rely on an historical precedent that leads to an unfair or unjust resolution.
- Judges may be reluctant to change the established precedent.
- Until a relevant case is brought before a court with the power to change the common law, judges can still be bound by old precedent.
- The doctrine of precedent complicates the law-making process and can be hard for ordinary people involved in the court system to understand.

Juries

Strengths:

- Juries represent a cross-section of the public and should reflect the community's values in the law-making process, thereby enabling fairness.
- Juries are independent and impartial, as they should not know anyone who is involved in the case.
- By having several people make up a jury, the harm of individual biases is reduced.
- Juries prevent oppression or the misuse of power by the legal system, as it is ordinary people who make the decision.

Weaknesses:

- Juries are not true cross-sections of the community, as a number of people are disqualified, ineligible or can be excused or challenged as part of the empanelment process.
- The empanelment of juries is a time-consuming and expensive process.
- Juries do not need to give reasons for their decisions, thereby preventing parties from being aware if jurors misapplied the law to a case.
- As jurors are generally not experts on the legal system, they may be confused by the processes and evidence presented, thereby potentially leading to an incorrect verdict.

A high-scoring answer could be:

I agree with this statement to a strong extent. Although the doctrine of precedent and juries have some limitations that may reduce the fairness and efficiency of the court, situations in which these limitations are present are rare and these concepts provide significant benefits to the administration of justice.

The doctrine of precedent provides a significant benefit to the fairness of a trial by enabling parties to rely upon previously made decisions. This allows parties to estimate their chances of success and, if precedents suggest that they will be unsuccessful in their case, parties may avoid a lengthy and expensive trial. This also aids in the efficiency of the justice system, as judges can rely on previous decisions and reasoning when resolving a complex issue.

However, depending upon the court in which the case is heard, judges may be forced to apply historical precedents that result in a case being resolved unfairly. Although it could be possible to appeal a decision to a higher court and have that precedent overturned, doing so would be an expensive and time-consuming process. Furthermore, judges can be reluctant to overturn previous decisions. Judges can be conservative in their decision-making, thereby preventing progress and enabling the continuance of unfair precedents.

That being said, judges do have some flexibility when applying precedents. Judges can distinguish between the present case and a precedent if the facts are different, thereby enabling the judge to make an original and, possibly, fairer decision.

The jury system also enables fairness by providing for a representation of the community's values in the law-making process. Jurors consist of a cross-section of the community and reflect the society's values in the courtroom.

Yet, juries are not a true-cross section, as many people are ineligible, excused or can be challenged from the process.

However, I would argue this is advantageous to the fairness of the judicial system. Jurors can be excused or ineligible because of potential biases, such as knowing the involved parties. This helps ensure that jurors are impartial and can make a fair decision when resolving the case. Furthermore, this also prevents unnecessary strain upon members of the public who do not have the mental or physical ability to effectively participate in a trial.

Although the doctrine of precedent and juries do have their faults, their advantages for the fairness and efficiency of trials are significant enough to warrant their existence. Juries play important roles in enabling democratic justice, while the doctrine of precedent ensures consistency throughout the judicial system. These advantages are vital to the fairness and efficiency of the administration of justice.

Section B

Question 1a.

For full marks, students must explain that the burden of proof in a criminal trial refers to the the prosecution's responsibility to prove the accused guilty. Students must distinguish the former principle from the presumption of innocence, which requires Jon to be assumed innocent of the murder charge until he is found guilty by the court.

Students must ensure they describe the difference between the burden of proof and presumption of innocence within the context of Jon's trial.

Question 1b.

Students will receive one mark for correctly identifying that Jon's committal proceeding would be held in the Magistrates Court. For the other two marks, students must identify their chosen purpose and properly explain how that purpose seeks to benefit the legal system or the trial process.

There are several purposes students could explain, such as:

- To determine whether prima facie exists and prevent the court's time from being wasted on cases that are unlikely to proceed.
- To bring forward the disputed legal issues to clarify the legal issues that are in question, thereby enabling the prosecution and defence to determine their arguments.
- To determine the plea of the accused and how the case should proceed. This can save the justice system the immense cost and time that a trial requires if the accused pleads guilty.

Question 1c.

For one mark, students should recognize that, for a charge of murder, the sanction the accused would receive is imprisonment. They must also briefly explain what imprisonment is. No marks will be given for the entire question if the student discusses any other sanction.

Students must consider arguments for and against imprisonment. Students should address each of the purposes of criminal sanctions (rehabilitation, punishment, deterrence, denunciation and protection) and discuss how imprisonment achieves them. They must also refer to Jon and the context provided by the prompt.

A high-scoring answer could be:

If found guilty, a sanction of imprisonment would be likely be imposed. Imprisonment would involve Jon serving a period in prison, losing freedom and liberty as punishment for his crime.

Imprisonment has had mixed results when it comes to rehabilitation. Although most prisons do provide rehabilitative programs and make offenders consider the harms of their crimes, Australian offenders still have a high rates of recidivism. Consequently, the specific deterrence of imprisonment to the individual is also quite limited.

In terms of punishment, however, prisons are more successful. The reduction in freedoms for the prisoner can be particularly grave and demoralizing, helping to present prison as a highly undesirable place to be. In turn, this aids in the general deterrence provided by imprisonment, thereby acting as a deterrent for other members of the public.

Longer sentences can also achieve the purpose of denunciation, as increased sentences signify a more despicable or dangerous crime. However, this is not always the case, as many crimes, such as sex crimes, are often not afforded sentences that the community at large agrees to be equivalent with the crime committed.

Lastly, imprisonment does achieve protection. By putting potentially dangerous individuals in secured locations, it prevents them committing further crime. However, once released, the ability of the justice system to prevent recidivism and further criminal activity is limited, as demonstrated by the crimes committed by individuals on parole.

Question 1d.

For full marks, students should seek to define mitigating and aggravating factors and use examples from the case to aid in their explanation. Students **must** refer to examples from the prompt.

Students should be able to note that mitigating factors are ones which reduce an offender's culpability, whereas aggravating factors increase their culpability.

Examples of mitigating factors in Jon's case could be:

- His remorse
- His subsequent cooperation with police and revealing where the body was hidden.
- His young age.

Examples of aggravating factors in Jon's case could be:

- His intentional misleading of the police for an extended period.
- The costs associated with his false statement.
- His decision to plead not guilty and avoid further punishment, which suggests that he is not remorseful enough to believe that he deserves justice.

A high-scoring response could be:

A mitigating factor is one that lessens the culpability of an offender for the crime they have committed. In Jon's case, his cooperation with police and revealing to them where he hid the body of his wife could be considered a mitigating factor. Rather than attempting to deny his crime, this act shows a level of remorse and regret for his crime.

An aggravating factor is one that increases an offender's culpability for their committed crime. An aggravating factor in Jon's case could be the extended period that he misled and lied to the police. This act shows an unwillingness on Jon's part to admit his guilt, as well as costs the State significant time, money and resources in an investigation that Jon could have immediately resolved had he been honest.

Question 2a.

There are a number of explanations that can be given for the media's role in influencing law-reform. As the question is only three marks, students should make at least two points regarding the media's ability to influence law makers, such as:

- Law-makers often use the media to gauge public opinion, so the media can inform politicians of what the people want.
- The media brings awareness to issues and can generate broader public support for reform.
- The media is a site for debate and discussion on issues, and can, consequently, influence how laws are reformed.
- Increases in online users and media gives the media even wider reach, enabling more people to be aware of law reform issues.

For full marks, students must reference information provided in the prompt. Students could refer to the event described in source one or just generally identify how the media could influence changing the law surrounding secrecy of information.

A high-scoring answer could be:

The media can be a powerful tool for law-reform, as its broad reach over the internet can inform the public of current issues and generate support for reform. As politicians frequently utilize the media to gauge public opinion, the views expressed within the media can greatly influence politicians' decisions. Media giants like News Corp and the ABC have an enormous combined reach and, as shown by their cooperation in source 1, could influence lawmakers through their wide control over public discussion of freedom of information laws.

Question 2b.

In this instance, the most apparent reason for judicial interpretation of the phrase 'public interest' is ambiguity. As indicated by source 3, the phrase 'public interest' is not defined within the context of the law and, as public interest is not an objective concept, it should be clarified by a court of law through judicial interpretation.

Students should also explain why ambiguity is harmful to the law, such as it makes laws difficult to understand or apply objectively.

Question 2c.

For full marks, students must describe one effect of a statutory interpretation in the context of the phrase 'public interest.' Effects of a statutory interpretation could be:

- Words or phrases are given meaning in the context of the law
- A precedent is set for later cases to follow
- The law is extended because of the court's broad interpretation
- The law is narrowed because of the court's restrictive interpretation.

A high-scoring answer could be:

A statutory interpretation of the phrase 'public interest' could give an explicit meaning to the phrase within the context of the Act. This would enable a clear understanding of the phrase that would clarify its ambiguous meaning and establish a precedent for how it should be interpreted in future cases.

Question 2d.

For full marks, students must give strengths **and** weaknesses of petitions **and** demonstrations as law reform methods. Students must also give a conclusion or conclusions for each of these methods summarizing their evaluation.

Students should remember to focus on evaluating petitions and demonstrations rather than just explaining them.

The following points would be valid:

Petitions

Strengths:

- Makes direct contact with government when tabled
- Lots of signatures can demonstrate a high level of community support, making it more persuasive.
- Can be completed as an e-petition and gather more support electronically.
- Can generate awareness of the issue.

Weaknesses:

- Minister who tables the petition may have little influence over the drafting of government policy for new laws, leading the petition to be ineffectual.
- Less likely to gain media support as its not very visual.
- Parliaments are frequently flooded with petitions and the increased saturation only increases response times.
- There are often opposing petitions, which can reduce the impact of the petition.

Demonstrations

Strengths:

- Likely to gain media attention if numbers are high enough
- Media support can gain greater support and create a national call to action.
- Large demonstrations can have a big impact on the public, as they are highly visual.
- Demonstrations, which sizable enough, can get the attention of lawmakers, who may 'take on' a cause.

Weaknesses:

- Hard to organize and very time-consuming.
- Unlikely to have ongoing effect without media support.
- Must be well publicized to get the required numbers to attend.
- Demonstrations can turn violent and put a negative focus on the issue.

A high-scoring response could be:

Petitions involve gathering signatures digitally or on paper that show support for a particular change in the law. When a large number of signatures have been gathered, petitions can be highly persuasive arguments for members of parliament to change the law in line with current public opinion. Conversely, if not many signatures are gathered, then it can be difficult for a petition to be influential.

Petitions can then be handed to a politician and tabled within parliament, thus increasing their chance to change the law. However, due to the ease of creating petitions (and the advent of digital petitions), parliaments generally face a severe backlog of petitions to table and this can delay the process.

To conclude, although petitions can be difficult to publicise, they are an extremely cost-effective way of initiating or gathering support for a change in the law.

Demonstrations refer to large public gatherings of individuals on a particular issue. Due to being highly visual, demonstrations can gain significant media interest and thereby increase awareness and support for their cause. This can make their demonstration even more persuasive to lawmakers. However, without ongoing media coverage, numbers at demonstrations can dwindle and decrease the visibility and effectiveness of the demonstration.

Larger sized demonstrations can have a big impact on the public and the lawmakers, as their visibility/inconvenience for daily commutes or travel can greatly increase their voice and impact. However, with greater size comes a significantly increased risk of violence or clashes with police, which can greatly reduce the positive focus of an event.

In conclusion, although demonstrations pose logistical difficulties, when properly managed for safety and size they can be very influential methods of law reform for the lawmakers and the public.

Question 3a.

The first mark is given for students correctly identifying 'marital status' as a concurrent law-making power. The second mark is given for providing a correct description of concurrent powers, such as '*concurrent powers are areas of law-making power shared by the Commonwealth and State parliaments.*' For full marks, students must specifically state that concurrent powers are shared between federal and State parliaments.

Question 3b.

For full marks, students must describe s109 of the Commonwealth Constitution and use it to explain why section 8 of the Victorian law was struck down. Students must provide a correct definition of s109 and its effect, specifically mentioning how it invalidates State laws that are inconsistent with Commonwealth laws.

Students must also provide adequate application to the prompt and more than just 's8 was invalidated because of s109'. Students must demonstrate careful and precise legal reasoning.

A high-scoring response could be:

Section 8 of the Infertility Treatment Act 1995 was likely struck down because it was invalid with section 22 of the Commonwealth Sex Discrimination Act 1984. S8 of the Victorian law required IVF providers to discriminate based on marital status, whereas s22 of the Commonwealth law prohibits providers from discriminating on that basis. S109 of the Commonwealth Constitution provides that, if a State law is inconsistent with a Commonwealth law, then the state law will be invalidated to the extent of the inconsistency. Consequently, s8 of the Victorian law was invalidated because of its inconsistency.

Question 3c.

For full marks, students must clearly state to what extent they agree with the prompt and present a reasonable discussion that reflects their contention. This question requires students to present their knowledge of the High Court, its role and the division of power under the Commonwealth Constitution. Examples can be used to highlight and present points but are not required. However, students must include the *Infertility Treatment* case in the prompt into their discussion.

There are many acceptable points students could have made, including:

- The High Court has significant power over the application of the Constitution, as they determine how it is interpreted. This has led to some reductions in the States' powers, such as in the Uniform Tax Case or Tasmanian Dams Case.
- The High Court cannot 'seek change' but must wait for a case to be brought before them. Furthermore, constitutional cases are not very regular in occurrence.
- The High Court can only interpret the words within the Constitution. They cannot change the wording, thus reducing the court's ability to alter the Constitution.
- The invalidation of s8 of the Infertility Treatment Act 1995 was decided in the Federal Court, not the High Court.
- The invalidation of s8 of the Infertility Treatment Act 1995 is not a fault of the High Court, as s109 of the Constitution makes it very clear that State laws cannot be inconsistent with Commonwealth laws.

A high-scoring response could be:

To some extent, the High Court can and has changed the Constitution. However, to say that they are 'always' doing so and that the invalidation of the Victorian law is a reflection of this would be inaccurate.

Through its interpretation of the Constitution, the High Court can alter the division of powers in Australia. The Uniform Tax Case is evidence of this, where the High Court's interpretation effectively made levying taxes an exclusive power of the Commonwealth, despite it being concurrent with the states.

However, there are many limitations on the High Court's ability to change the Constitution. Firstly, the High Court can only interpret the Constitution and cannot change the words within. The only way the words can be changed is through a referendum, not the High Court. Secondly, the High Court cannot 'seek change' but must instead wait for a relevant case to be brought to the High Court by someone with standing in order for the Constitution to be reinterpreted. Consequently, the High Court cannot 'always' be changing the Constitution as constitutional cases are rare.

Furthermore, it would be unfair to call the invalidation of s8 of the Infertility Treatment Act 1995 a reflection of the High Court's alleged desire to change the Constitution, as the Constitution itself makes abundantly clear that a State law cannot be inconsistent with a Commonwealth law. Consequently, it is not fair to blame the court for invalidating the law when the Constitution makes its correct application so apparent.

Therefore, although the High Court can change the Constitution to some extent, it would be untrue to say that it is always doing so and that the invalidation of the Victorian law reflects this.