You will have 55 minutes to complete the following questions under exam conditions. You will need to provide your own writing paper. This is a closed book exercise so no textbook or notes should be used.

1. Outline the significance of S75 and S76 within the Constitution.

*Section 75 and 76 are significant aspects of the Constitution as it equips the High Court with the jurisdiction to hear and determine matters related to the Constitution. Here, the High Court has the power resolve disputes between Commonwealth and States, amongst States and as the only court to interpret the wording of the Constitution.*

2 marks

* 1. Describe the purpose of S109.

*Section 109 exists within the Constitution to resolve disputes that may occur between Commonwealth and States in relation to law making within concurrent powers. Section 109 states that any conflict between Cmth and State within concurrent law making powers will result in Cmth laws overriding that of State laws and State laws will become invalid to the extent of that inconsistency. This once again further reaffirms Cmth as the ultimate law making authority.*

* 1. Explain how S109 could act as a restriction on States’ powers.

*S109 can act as a restriction on States powers because it means that any State Act arising from concurrent law making powers can be made invalid if Cmth introduces legislation that is inconsistent with that of states. Secondly, to a lesser extent, S109 can also limit residual law making powers. Despite not being able to interfere with law making powers left over to the States, Cmth has the ability to introduce federal legislation that contradicts with that of States. Due to the existence of S109, that function of the law will be deemed invalid as seen in Tasmanian Dam (1983).*

2+2 = 4 marks

1. Give reasons as to why States would want to lose some of its law making powers. Support your answer with a relevant example.

*States are often not willing to hand over their law making powers to the Cmth. This further erodes their independence as a governing State however in certain situations, such as for the purpose of consistency and to rely on the expertise of Cmth parliament. States may hand over their certain aspects of their law making powers. This is called referral of powers and the Cmth has a choice as to whether they choose to absorb this law making power of not. This occurred in 1989 where all states in Australia (except WA) chose to hand over their law making powers with regards to ex-nuptial children so that a the federal family court could legislate on such matters. This ensured a level of consistency across the country.*

3 marks

1. ‘A key factor in the likelihood of a successful referendum is the existence of bipartisan support. Unfortunately, this process can be hindered due to a lack of voter understanding.’

Discuss

*One key factor that may influence the success of a referendum is bi partisan support. This refers to the both political parties within parliament (Labour and Liberals) voting for the change in the Constitution to occur. If bi partisan support does not exist, more than likely the Constitution Alteration bill would be not passed. On the other hand, the double majority provision of the referendum process can act as a hindrance. This term refers to the requirement of more than 50% of the population and at least 4 out of 6 states supporting the change which can be difficult to achieve.*

*Another barrier that often prevents referendums being successful is the lack of voter understanding. Often, the wording of the ‘yes’/’no’ question is written in language and terms that make it very difficult for the common person to understand. If people generally do not understand the question being asked, they are more likely to err on the side of caution and vote ‘no’. In saying that, the thorough process of a referendum means that the change to the Constitution is debated in detail. This ensures that only changes the parliament and the people of Australia want to occur will result in change.*

*Overall, despite being a stringent and difficult process to pass, S128 outlining the referendum process is a crucial step in our legal system.*

4 marks

1. Evaluate two weaknesses of High Court interpretation as a method of providing change in the division of law making powers.

*One weakness of the High Court being given the duty to interpret the Constitution is that historically, the High court has ruled in favour of the Cmth. This stems from interpreting aspects of the Constitution broadly such as ‘like services’ (Brislan) and as a result, expanding the law making powers awarded to the Cmth. This has led to a gradual eradication of State law making powers. On the other hand, High Court judges are experts on wording of the Constitution. As the High Court is the only court with jurisdiction to interpret wording of the Constitution, High Court judges have the most expertise in adding meaning to wordings of the Constitution.*

*Another weakness of High Court interpretation is that they rely on a test case being brought forward. This requires someone willing to challenge the Constitution which can be an expensive and timely process requiring the expertise and experience of senior counsels. However, the High Court has been the most effective method of influencing change in division of powers. Since referendums are rarely successful, cases brought to the High court has had the most impact in altering the division of powers.*

*Overall, despite some weaknesses, the function of the High court in altering the division of powers is effective.*

4 marks

1. ‘The High Court has played a far more significant role than referendum procedures in influencing the division of powers between parliaments in Australia.’

Discuss this statement and use relevant examples to support your answer.

Intro: (agree?)

Para 1:

* S75 and S76
* Tasmanian Dam case as example of how DOV was altered.

Para 2:

* Strengths of High Court
* Weakness of High Court

Para 3:

* S128 referendum process
* 1967 referendum as an example

Para 4:

* Strength of referendum
* Weakness of referendum

Conclusion: Reaffirm High Court’s effectiveness over referendum.

(Plan out this response) 8 marks

Total: 25 marks