



HIGHER SCHOOL CERTIFICATE EXAMINATION

1995

LEGAL STUDIES

2/3 UNIT (COMMON)

*Time allowed—Three hours
(Plus 5 minutes' reading time)*

DIRECTIONS TO CANDIDATES

- You may ask for extra Writing Booklets if you need them.

Section I (20 marks)

- Attempt ALL questions.
- Mark your answers in pencil on the Answer Sheet provided.

Section II (50 marks)

- Attempt TWO questions, each from a different Option.
- Answer each question in a *separate* Writing Booklet.

Section III (30 marks)

- Attempt ONE question.
- Answer the question in a *separate* Writing Booklet.

SECTION I

(20 Marks)

Attempt ALL questions.

Mark your answers in pencil on the Answer Sheet provided.

Select the alternative A, B, C, or D that best answers the question.

1. When delegated legislation is in conflict with an established precedent, the State courts are required to
 - (A) follow the precedent.
 - (B) apply the regulation.
 - (C) make a choice between the two.
 - (D) rewrite the regulation.

2. Limited right of access to courts is
 - (A) determined by rules of standing.
 - (B) controlled by the police.
 - (C) determined by court officials.
 - (D) controlled by an ombudsman.

3. Maisie and Tom were arrested for offensive behaviour. Both are unemployed and cannot afford a lawyer. They should
 - (A) plead guilty.
 - (B) appeal to an ombudsman.
 - (C) apply for legal aid.
 - (D) seek mediation at a Community Justice Centre.

4. Chris and Penny want a religious service for the burial of their father. The minister of religion refuses to perform the service. The minister of religion has a legal right to refuse to perform the service because
 - (A) ministers of religion are not bound by the law.
 - (B) religious issues are not covered by the law.
 - (C) religion and law are separate systems of rules.
 - (D) Chris and Penny do not attend church services regularly.

5. The main historic source of the common law can be traced back to
- (A) mercantile courts.
 - (B) King's courts.
 - (C) ecclesiastical courts.
 - (D) Roman courts.
6. The most important reason the jury system exists is to
- (A) provide the cheapest system.
 - (B) ensure justice.
 - (C) ensure equality before the law.
 - (D) provide judgement by peers.
7. The idea that the authority of the law is based on the consent of the citizens is
- (A) founded on the Australian Constitution.
 - (B) known as 'social contract'.
 - (C) fundamental to constitutional monarchy.
 - (D) the basis of the separation of powers.
8. A Bill of Rights
- (A) is provided by the common law.
 - (B) is contained in the Australian Constitution.
 - (C) gives a citizen remedies against actions by neighbours.
 - (D) gives a citizen remedies against actions by governments.
9. Public law
- (A) deals with disputes between private citizens.
 - (B) deals with disputes between the government and others.
 - (C) is a body of law relating to companies.
 - (D) is a body of law relating to wills.
10. An unjust law passed by the State Parliament
- (A) can be enforced by the police.
 - (B) can be altered by the Independent Commission Against Corruption.
 - (C) can be repealed by the Commonwealth Parliament.
 - (D) cannot be repealed.

11. Colonial courts justified the application of *terra nullius* because the Aboriginal and Torres Strait Islander peoples
- (A) had written laws.
 - (B) did not have a recognized legal system.
 - (C) farmed the land.
 - (D) protected the environment.
12. An international treaty signed by Australia requires action to eliminate discrimination. This will become law in Australia when it is
- (A) ratified by the State Government.
 - (B) ratified by the Federal Government.
 - (C) included in Australian legislation.
 - (D) approved by referendum.
13. The Motor Traffic Regulations provide that in special cases a licence may be granted to a person under the age of 17. The decision to grant a licence to a 16-year-old would be an example of
- (A) legal rights.
 - (B) discretionary power.
 - (C) ministerial power.
 - (D) political rights.
14. A country has six states. Each of these states has its own parliament. From these facts this country is
- (A) a republic.
 - (B) independent.
 - (C) a federation.
 - (D) democratic.
15. The Australia Acts of 1986
- (A) stopped appeals from the State courts to the Privy Council.
 - (B) stopped appeals from the High Court to the Privy Council.
 - (C) allowed appeals from the State courts to the Privy Council.
 - (D) allowed appeals from the High Court to the Privy Council.

- 16.** Joanne and Robert are unhappy about a decision by their local council to permit a parking-station to be built nearby. This can be challenged informally by
- (A) bringing an action in the Land and Environment Court.
 - (B) selling their house and moving away.
 - (C) bringing an action in the Supreme Court.
 - (D) writing to their local Member of Parliament.
- 17.** Traditional land owners in Kakadu National Park wanted to prevent a uranium mine from dumping contaminated water in a wetlands area. They successfully applied to the High Court for an order. This type of order is called
- (A) an injunction.
 - (B) specific performance.
 - (C) a protection order.
 - (D) a restraining order.
- 18.** Betty, a teenager, took her parents to the local Community Justice Centre. She complained that their demand that she return home by 9 p.m. on weekends was unreasonable. The Community Justice Centre attempted to resolve this dispute by
- (A) arbitration.
 - (B) issuing a special order.
 - (C) mediation.
 - (D) appointing a lawyer.
- 19.** A Minister of the Crown in the NSW Government uses a travel allowance to pay for landscaping a holiday house. A decision as to whether this is a proper use of the allowance will be made by the
- (A) High Court.
 - (B) Ombudsman.
 - (C) Administrative Appeals Tribunal.
 - (D) Independent Commission Against Corruption.
- 20.** Ministerial responsibility under the Westminster system
- (A) is always democratic and will respond quickly to popular demand.
 - (B) was rejected by Australia.
 - (C) means the Minister must resign if he or she loses the confidence of the Australian people.
 - (D) is least effective when one party holds a large majority in parliament.

SECTION II—OPTIONS**Marks**

(50 Marks)

Attempt TWO questions, each from a different Option.

Each question is worth 25 marks.

Answer each question in a *separate* Writing Booklet.

CONSUMERS AND THE LAW*EITHER***QUESTION 21****25**

Consumers have a right to receive accurate information about products or services so that they can make informed decisions when they buy. It is often argued, however, that business should be free to advertise and market goods in such a way as to maximize sales.

'Fair Go! Every student's guide to fair trading', 1994.

Reproduced with the approval of Dept of Fair Trading - NSW Consumer Protection Agency.

Discuss this statement and evaluate the role of regulation and self-regulation of marketing in protecting the rights of consumers.

In your answer, you should at least:

- identify the ways in which marketing and advertising are regulated by consumer law;
- comment on the extent to which the control of advertising and marketing interfere with freedom of expression.

*OR***QUESTION 22**

Start each part of this question on a new page.

Kate bought a toy for her daughter, Isabel. Her daughter is injured because of a manufacturing fault in the toy.

Refer to the above statement and use your knowledge of the legal system to answer the following questions.

- | | | |
|-----|---|-----------|
| (a) | What is the nature of the consumer contract? | 5 |
| (b) | Describe the manner in which statutory controls both protect the rights of consumers and regulate manufacturers and suppliers of consumer goods and services. | 9 |
| (c) | Evaluate the effectiveness of the law in protecting consumers such as Kate and Isabel, and in providing redress against manufacturers and suppliers of faulty goods and services. | 11 |

ENVIRONMENT AND THE LAW**Marks***EITHER***QUESTION 23****25**

As political issues, conservation and protection of the environment are of comparatively recent origin. Indeed 20 years ago a book on environmental law would never have been written. Today it is acknowledged that the Commonwealth and the States play important roles in relation to the environment.

'The political impact of the High Court', D Solomon, Allen and Unwin, 1992.

Discuss this statement and evaluate the effectiveness of Australian environmental law in responding to the changes in conditions and attitudes that have focused attention on the protection of the environment.

In your answer, you should at least:

- identify the sources of environmental law;
- comment on the role of law reform agencies and other groups in the development of environmental law.

*OR***QUESTION 24**

Start each part of this question on a new page.

Margaret and Eilis live next to a factory where meat is processed. An awful smell comes from the factory almost all the time, and once every two weeks Margaret's and Eilis's house is covered in black smoke from the factory. Margaret and Eilis would like to take legal action against the factory.

Refer to the above statement and use your knowledge of the legal system to answer the following questions.

- | | | |
|-----|--|-----------|
| (a) | What rights and duties recognized by the common law might be relevant to this situation? | 5 |
| (b) | Explain the ways in which the laws passed by the three levels of Australian government have both increased the protection of environmental rights available at common law and imposed additional duties. | 9 |
| (c) | Evaluate the effectiveness of the system of environmental law in recognizing and balancing various interests in the environment. | 11 |

FAMILY AND THE LAW**Marks***EITHER***QUESTION 25****25**

Federal Parliament has power to make laws about custody and access to children of a marriage . . . The Family Court now deals with the custody and maintenance of, and access to, all children, whatever the status of their parents.

Reproduced with the permission of the AUSTRALIAN LAW REFORM COMMISSION,
Equality before the Law, Discussion Paper, 1993

Discuss this statement and evaluate the effectiveness of the law in protecting the best interests of children.

In your answer, you should at least:

- identify and explain how the Federal Parliament and the Family Court have used their powers in this area;
- discuss the legal rights and obligations between parents and children.

*OR***QUESTION 26**

Start each part of this question on a new page.

Until recently, domestic violence was inadequately recognized by the law, due to a reluctance on the part of those who enforce the law to enter what they saw as a private or domestic area.

Reproduced with the permission of the AUSTRALIAN LAW REFORM COMMISSION,
Equality before the Law, Discussion Paper, 1993

Refer to the above statement and use your knowledge of the legal system to answer the following questions.

- | | | |
|-----|--|-----------|
| (a) | What are the causes of domestic violence and other crises in family relationships? | 5 |
| (b) | Describe and discuss the legal responses to violence within the family and identify recent changes in these responses. | 9 |
| (c) | Evaluate the effectiveness of the legal system in achieving justice for family members in situations of violence. | 11 |

HOUSING AND THE LAW**Marks***EITHER***QUESTION 27****25**

Housing law, like all other areas of law, deals with problems arising out of the actual requirements of human life . . . The foundations of this law were laid in the world of the Middle Ages, when the problems to be solved by the law were very different from those of the twentieth century. Although social problems have altered, the original legal answers have been kept to serve as the basis of modern housing law.

PETER BUTT, *Introduction to Land Law*
Law Book Company

Discuss this statement and evaluate the effectiveness of the law in dealing with the range of interests in housing that must be protected.

In your answer, you should at least:

- refer to the problems housing law deals with in the twentieth century;
- comment on twentieth-century developments in housing law.

*OR***QUESTION 28**

Start each part of this question on a new page.

Hai, Quy, and Thom in their last year of university are considering their accommodation options for the following year. It has been suggested that they buy a house together.

Refer to the above statement and use your knowledge of the legal system to answer the following questions.

- (a) What are the advantages and disadvantages of buying rather than leasing a house? **5**
- (b) If Hai, Quy, and Thom decide to buy, what options are available to them to obtain the finance and to insure the property? **9**
- (c) Evaluate the effectiveness of protection given by the law to those who lease or buy. Compare it with the protection given to those who live in public housing or special accommodation. **11**

THE WORKPLACE AND THE LAW**Marks***EITHER***QUESTION 29****25**

Australia's industrial relations system can only be understood in the context of Australia's federal system. The Federal Parliament and the State Parliaments both have some constitutional power to legislate for industrial relations.

Discuss this statement and evaluate the effectiveness of Australia's system of industrial law.

In your answer, you should at least:

- explain the impact of Australia's federal system on workers' rights and employers' responsibilities;
- outline the growth of federal power in workplace law.

*OR***QUESTION 30**

Start each part of this question on a new page.

Fatima, a chef in the hospitality industry, was injured at work. Fatima is unable to continue working as a chef and seeks compensation for her injury.

Refer to the above statement and use your knowledge of the legal system to answer the following questions.

- | | | |
|-----|--|-----------|
| (a) | What rights of action does the common law give to Fatima and other injured workers? What duties does the common law impose on employers? | 5 |
| (b) | Identify the rights recognized, and the duties imposed, by legislation in the workplace. | 9 |
| (c) | Evaluate the effectiveness of the legal system in regulating both safety in the workplace and termination of employment. | 11 |

SECTION III—CASE STUDIES**Marks**

(30 Marks)

Attempt ONE question.

Answer the question in a *separate* Writing Booklet.**ABORIGINAL AND TORRES STRAIT ISLANDER PEOPLES***EITHER***QUESTION 31****30**

The response of the Commonwealth Government to the recommendations of the Report of the Royal Commission into Aboriginal Deaths in Custody has been heartening. Tragically, Aboriginal people continue to die in jail. The underlying causes—poverty, racism, and homelessness—have to be addressed.

SOL BELLEAR,
Deputy Chairperson of the Aboriginal and Torres Strait Islander Commission
Courtesy ATSIC

Discuss this statement and evaluate the responsiveness of the legal system to the pursuit of justice by Aboriginal and Torres Strait Islander peoples.

In your answer, you should at least:

- outline the problems the Aboriginal and Torres Strait Islander peoples have faced in their dealings with police;
- refer to difficulties that may be faced by Aboriginal and Torres Strait Islander peoples in criminal-court procedures;
- explain how poverty, racism, and homelessness have led to the over-representation of Aboriginal and Torres Strait Islander peoples in the prison system.

OR

QUESTION 32**Marks**

Start each part of this question on a new page.

On the third of June 1992, the High Court of Australia reached a decision, known widely as the *Mabo* decision. This decision recognized that the Murray Island people of the Torres Strait were entitled ‘as against the whole world, to possession, occupation, use, and enjoyment of the lands of the Murray Islands’. The judgment made a fundamental change to the law of Australia by overturning the doctrine of *terra nullius*, that is, that the land of Australia belonged to no-one before European colonization.

Refer to the above statement and use your knowledge of the legal system to answer the following questions.

- (a) What is the traditional significance of land to Aboriginal and Torres Strait Islander peoples? **4**
- (b) Outline changes in government policy towards Aboriginal and Torres Strait Islander peoples between 1788 and 1992. **6**
- (c) Explain how Aboriginal and Torres Strait Islander land councils and trusts have tried to achieve justice for Aboriginal and Torres Strait Islander peoples. **8**
- (d) Evaluate the present and possible future effectiveness of the *Mabo* decision in achieving justice for Aboriginal and Torres Strait Islander peoples. **12**

MIGRANTS**Marks****QUESTION 33****30**

Power placed in the hands of public officials and elected politicians is open to abuse unless there are controls built into the system. Nowhere can this control be more clearly seen than in the review of decisions that are made about immigration matters.

BOBBY WATT, legal academic

Discuss this statement and evaluate the effectiveness of the legal system in controlling decisions about immigration and achieving justice for migrants.

In your answer, you should at least:

- identify and explain the categories used to describe migrants on their arrival in Australia;
- describe how administrative decisions that might affect the status of a migrant in Australia are made;
- explain how these decisions are controlled by the legal system.

OR

QUESTION 34

Start each part of this question on a new page.

From 1901 until the 1970s, the White Australia Policy controlled entry to the nation in explicitly racist terms. In 1947 a mass immigration policy was introduced to increase population for strategic reasons and to provide labour for industrial growth . . . Later policies were designed to bring about complete political and cultural assimilation . . . However, there were (and remain today) a number of institutional barriers which prevent migrants from fully participating in society, and lead to economic and social disadvantage.

STEPHEN CASTLES, *The Challenge of Multiculturalism*
Centre for Multicultural Studies, 1992.

Refer to the above statement and use your knowledge of the legal system to answer the following questions.

- | | |
|---|-----------|
| (a) How have Australian attitudes to migrants changed since 1901? | 4 |
| (b) Identify and explain the problems migrants face in Australian society. | 6 |
| (c) In what ways do Australian laws continue to create problems for migrants? | 8 |
| (d) Evaluate the effectiveness of the Australian legal system in addressing institutional and other barriers faced by migrants. | 12 |

WOMEN**Marks***EITHER***QUESTION 35****30**

Women are entitled to have their fundamentally different place in society respected. Women are subjected to unequal treatment, for example in employment, which needs to be addressed through anti-discrimination laws. Aspects of women's difference need to be recognized and respected because they define women's distinctive place in our society. The mistake is to see 'anti-discrimination' as identified only with the pursuit of equality. The concept of 'anti-discrimination' can extend to recognizing and protecting difference.

SIMON RICE, Solicitor, *Sydney Morning Herald*, 31/1/95.

Discuss this statement and evaluate the effectiveness of the Australian legal system in addressing equality and achieving justice for women.

In your answer, you should at least:

- outline the struggle for women's rights in the twentieth century;
- identify the problems women may encounter in society;
- explain how anti-discrimination legislation addresses problems faced by women in the workplace.

OR

QUESTION 36

Start each part of this question on a new page.

The increasing use of mediation and related alternative dispute resolution processes for family disputes is one of the most significant changes presently taking place in Australia. Mediation, however, cannot provide protection for women who are the targets of male violence. It is an inadequate and unsuitable mechanism for almost all family disputes where there has been violence. It is highly likely to produce inequitable results and may place women and the children in their care in danger.

HILARY ASTOR, *Women, Male Violence, and the Law*, 1994
Institute of Criminology, 1994. Reprinted with the permission of the author and publisher.

Refer to the above statement and use your knowledge of the legal system to answer the following questions.

- | | |
|--|-----------|
| (a) How does domestic violence affect women and families? | 4 |
| (b) What are the different forms of marriage and how do they affect the status of women in society? | 6 |
| (c) Why is the law sometimes ineffective in dealing with violence in relationships? | 8 |
| (d) Evaluate the role of women, the legal system, and society in protecting women in danger of violence. | 12 |

OTHER DISADVANTAGED PEOPLE**Marks***EITHER***QUESTION 37****30**

In 1947 the Social Security Act provided benefits in the form of direct cash payments to clients. Now it targets individuals and families in genuine need, while positively encouraging them towards independence of the welfare system.

MR HOWE, Minister for Community Services and Health, December 1990

Discuss this statement and evaluate the effectiveness of the legal system in providing for people in need of social security.

In your answer, you should at least:

- refer to the grounds on which an applicant can claim benefits under the Social Security Act;
- identify the problems that can be faced by people claiming benefits under the Social Security Act;
- describe and explain the ways in which the Department of Social Security helps people who are experiencing difficulty in gaining access to the system.

*OR***QUESTION 38**

Start each part of this question on a new page.

Those involved in the process of bringing into effect mental-health legislation are inevitably faced with the task of balancing competing interests relevant to the care, treatment, and control of mentally ill and mentally incapacitated persons.

Report of the Mental Health Act Implementation Monitoring Committee, 1992
Courtesy NSW Health

Refer to the above statement and use your knowledge of the legal system to answer the following questions.

- | | | |
|-----|--|-----------|
| (a) | What are the legal definitions of mental illness and other forms of mental incapacity? | 4 |
| (b) | Identify and explain the legal measures that exist to address the problems of the mentally ill or mentally incapacitated. | 6 |
| (c) | Describe how mental incapacity and mental illness affect the rights of these disadvantaged people. | 8 |
| (d) | Evaluate the effectiveness of the legal system in balancing competing interests relevant to the care, treatment, and control of mentally ill and mentally incapacitated persons. | 12 |

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