



HIGHER SCHOOL CERTIFICATE EXAMINATION

1996

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. A law is unjust if it
 - (A) costs a lot to enforce.
 - (B) fails to treat all people equally without cause.
 - (C) is based on religious beliefs to which most people subscribe.
 - (D) allows for situations in which general principles will not be applied.

2. If a common law rule is generally agreed to be outdated,
 - (A) courts must still apply the rule.
 - (B) it will have to apply in Australia if it applies in England.
 - (C) the Governor-General may alter it by proclamation.
 - (D) parliament may pass legislation to change the rule.

3. If the Prime Minister wishes to have a matter in court decided in a particular way,
 - (A) the Prime Minister can direct public service lawyers to argue for this result.
 - (B) only the Governor-General can ensure the desired result.
 - (C) the judge must follow any direction from the Prime Minister.
 - (D) the Prime Minister must bring the matter before Cabinet.

4. The Commonwealth has passed a valid law to require horses imported from Spain into Australia to spend six months in quarantine. The Premier of NSW wants to pass a law stating that two months' quarantine is enough. The NSW law will be
 - (A) valid because NSW is a sovereign state.
 - (B) invalid because it is inconsistent with the Commonwealth law.
 - (C) valid because the Premier leads a democratic government.
 - (D) invalid unless ratified by the State Parliament.

5. Citizens could obtain legal remedies against actions by governments from
- (A) their local member of parliament.
 - (B) a Citizens' Advice Bureau.
 - (C) a Bill of Rights.
 - (D) the police force.
6. Rob and Jann keep roosters in their backyard. This is allowed by common law, but is against the by-laws of the city in which they live. If this case goes to court, the court will
- (A) apply the common law.
 - (B) apply the by-law.
 - (C) choose between the common law and the by-law.
 - (D) rewrite the by-law.
7. The role of the jury is to
- (A) ensure that similar cases have similar results.
 - (B) provide a method for appeal.
 - (C) ensure that the law is applied justly.
 - (D) provide judgement by peers.
8. A 'social contract' confers power on the Government because
- (A) agreement by the citizens is assumed.
 - (B) it is found in the Australian Constitution.
 - (C) Parliament has incorporated it into an Act.
 - (D) it is contained in an international treaty.
9. Historically, the principles of equity were developed by the
- (A) King's Courts.
 - (B) mercantile courts.
 - (C) Chancellor's Court.
 - (D) International Court of Justice.

- 10.** The Independent Commission Against Corruption was established by the NSW Government
- (A) to investigate charges of corruption.
 - (B) to replace the criminal justice system.
 - (C) because the Commonwealth Government recommended its establishment.
 - (D) because it would be cheaper and more efficient than the Ombudsman.
- 11.** Cabinet responsibility is a major feature of
- (A) democratic government.
 - (B) republican government.
 - (C) the Westminster system.
 - (D) a federal system.
- 12.** The appeals from the state courts to the Privy Council were
- (A) abolished by the Commonwealth of Australia Constitution Act 1900.
 - (B) established by the Australia Acts 1986.
 - (C) established by the Commonwealth of Australia Constitution Act 1900.
 - (D) abolished by the Australia Acts 1986.
- 13.** To obtain entry to the NSW Police Service, applicants are required to complete a test of physical ability. A much higher percentage of men than women pass this test. The use of such a test
- (A) is an example of formal inequality.
 - (B) ensures equality of outcomes.
 - (C) is an example of institutionalised inequality.
 - (D) denies women equality of opportunity.
- 14.** An international treaty signed by Australia, but not yet implemented by legislation,
- (A) can be considered by our judges in interpreting domestic law.
 - (B) gives rights to Australian citizens that can be legally enforced.
 - (C) must be introduced into Federal Parliament at the first opportunity.
 - (D) needs to be ratified by referendum in at least four states.

- 15.** Albert Langer, a candidate for parliament, gave information to people about how to vote. This information was against the interests of the majority parties. Albert Langer was sent to jail. This
- (A) is an example of ideal justice.
 - (B) is an example of discrimination.
 - (C) reflects the dictates of a ruling elite.
 - (D) results from judicial bias.
- 16.** The concept of ‘the rule of law’
- (A) should underlie our legal system.
 - (B) is founded on the doctrine of precedent.
 - (C) must always be followed by judges.
 - (D) must always be followed by legislatures.
- 17.** A change to the Constitution of the Commonwealth of Australia will take effect if
- (A) passed by the Australian Parliament and supported in a referendum by a majority of Australians.
 - (B) passed by the Australian Parliament and supported in a referendum by a majority of electors in a majority of states.
 - (C) supported in a referendum by a majority of states and ratified by a majority of state parliaments.
 - (D) supported in a referendum in at least four states, and signed by the Queen.
- 18.** The NSW Ombudsman
- (A) must be a member of the NSW Parliament.
 - (B) has power to investigate all government action in Australia.
 - (C) can recommend change in NSW government decisions.
 - (D) charges a fee to any person who files a complaint.
- 19.** A company has been sued for damages. The Director of Public Prosecutions wishes to bring criminal charges against the company in relation to the same incident. This is
- (A) impossible because the case has already been decided.
 - (B) possible because civil and criminal proceedings are separate.
 - (C) permissible by way of appeal from the earlier decision.
 - (D) impermissible, unless judicial consent is given.

- 20.** A case about family provision has been decided by a judge in the Supreme Court of NSW. An appeal can be taken to
- (A) the Full Court of the Federal Court of Australia.
 - (B) a single judge of the Family Court of Australia.
 - (C) a single judge of the High Court of Australia.
 - (D) the Court of Appeal of the Supreme Court of NSW.

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**

During the past 25 years public concern with consumer protection issues has grown. Individuals, in acquiring goods and services for private use, increasingly find themselves at a disadvantage in dealing with the business community on which they must rely for the supply of those goods and services.

DAVID HARLAND

‘Consumers and the Law’, David Harland, Committee for Post Graduate Studies, 1994.

Discuss this statement and evaluate the effectiveness of the legal system in responding to the growing concern about consumer protection.

Your answer should refer to the stimulus, provide relevant information, and *at least*:

- identify concerns for consumer protection, and explain the processes for redress of consumer complaints;
- comment on the role of law reform agencies and other groups in the development of consumer law.

*OR***QUESTION 22**

Start each part of this question on a new page.

Ken and Barbie selected an engagement ring from a jeweller’s catalogue. The ring could not be made in time for their engagement party and so the jeweller gave Barbie a replica to wear. This was much admired. When the real ring arrived, the diamond was much smaller than the replica.

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

- | | | |
|-----|--|-----------|
| (a) | What is a consumer contract? | 4 |
| (b) | Describe the forms of consumer redress and remedy available to people like Barbie and Ken. Discuss the protection afforded by the law to people like the jeweller. | 9 |
| (c) | Evaluate the effectiveness of consumer law in regulating the rights and obligations of buyers and sellers of consumer goods. | 12 |

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

A number of suggestions have been made for simplifying the legal and administrative maze, providing for participation by the public in decisions affecting their environmental welfare, and ensuring freedom of information and citizen rights in the environment and its uses.

Report of the National Estate, 1974
AGPS, p28, 1.52. Commonwealth of Australia copyright reproduced by permission.

Discuss this statement and evaluate the effectiveness and justice of the legal system in providing for participation in decisions about the environment.

Your answer should refer to the stimulus, provide relevant information, and *at least*:

- identify the interests of various parties or groups that are relevant to environmental decisions;
- describe the statutory framework within which environmental decisions are made.

*OR***QUESTION 24**

Start each part of this question on a new page.

Environmental law cases are not new but the practice and procedure governing such cases has altered significantly in the last twenty years. Developments include new legislation that emphasises public interest considerations and public involvement, and the establishment of specialist courts.

BRIAN PRESTON, *Environmental Litigation*, 1989
Law Book Co 1989. Courtesy LBC information Services.
<http://www.ozemail.com.au/lawbook>

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

- | | | |
|-----|--|-----------|
| (a) | Outline the powers given to the Land and Environment Court by legislation. | 4 |
| (b) | Describe the manner in which environmental impact statements place emphasis on public interest considerations and allow conflicts between environmental protection and resource management to be resolved. | 9 |
| (c) | Evaluate the effectiveness of the legal system in providing for environmental protection and resource management. | 12 |

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

Marriage is not simply a private contract; it is a social and public recognition of a private commitment. As such, it is the highest public recognition of personal integrity. Denying it to homosexuals is the greatest possible challenge and insult to their public equality.

ANDREW SULLIVAN, *The Sydney Morning Herald*, 1996
 'Virtual normal', Andrew Sullivan, Picador. Permission courtesy macmillan General books, UK.

Discuss this statement and evaluate the effectiveness and justice of the law in recognising marriage and alternative family arrangements.

Your answer should refer to the stimulus, provide relevant information, and *at least*:

- outline the legal definition and requirements of a valid marriage;
- describe the varied forms of alternative family arrangements and comment on the justice of a legal system that recognises some and not other family arrangements.

*OR***QUESTION 26**

Start each part of this question on a new page.

Family support services assist people in dealing with the difficulties that can arise over the years in their relationships with each other. Community-based agencies receive government funding for relationship counselling and for marriage/relationship education. These courses give information on issues likely to cause difficulties in relationships and develop conflict resolution and negotiation skills.

The Justice Statement, 1995
 Commonwealth Attorney-General's Department.

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

- | | | |
|-----|--|-----------|
| (a) | What are the mutual duties and rights of husbands and wives? | 4 |
| (b) | Describe and discuss the effect of termination of marriage by death or dissolution on the duties and rights of husband and wife. | 9 |
| (c) | Evaluate the effectiveness of the legal system in providing counselling and judgments to achieve justice for husbands and wives during and after a marriage. | 12 |

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

After the Second World War, there was a dynamic demand in Australia for housing and the construction of multi-storey buildings and flats. The methods previously used for subdividing a building into separate units could not provide the individual occupant of a unit with security of title and ownership. The NSW Government therefore passed legislation establishing strata titles.

ALEX ILKIN, *Strata Title Management and the Law*, 1989
 Law Book Co, p4-5. Courtesy LBC Information Services.
<http://www.ozemail.com.au/lawbook>

Discuss this statement and evaluate the effectiveness of the legal system in providing individuals with security of title and ownership of housing.

Your answer should refer to the stimulus, provide relevant information, and *at least*:

- outline the types of title for shared space which the legal system recognises;
- compare the rights and duties of owners of shared space with the rights and duties of other owners of housing.

*OR***QUESTION 28**

Start each part of this question on a new page.

Col and Joanne have recently moved from a rented flat to a rented house. They are concerned about three disputes in which they are now involved. The real estate agent from whom they rented the flat has not returned their bond money to them. They have asked the landlord of the house to fix a blocked drain, but this has not been done. The third dispute is with their new neighbours who have been throwing rubbish over the fence into Col and Joanne's yard.

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

- | | | |
|-----|---|-----------|
| (a) | What obligations do landlords have to tenants? | 4 |
| (b) | Outline the mechanisms which could be used to address each of the three problems. | 9 |
| (c) | Evaluate the effectiveness of dispute resolution procedures that exist to deal with disputes between landlords, tenants and neighbours. | 12 |

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

We live in a society which places enormous value on the performance of paid work. Having a job is not merely important in offering a means of survival. It also helps to provide a sense of identity and self-worth, no matter how unsatisfying or boring the tasks involved. For that reason, the involuntary loss of employment is one of the most painful misfortunes that can happen to a citizen.

ANDREW STEWART, Labour Lawyer, 1996
 'And (Industrial) Justice for all?', Flinders journal of law Reform, 1995, p85.

Discuss this statement and evaluate the effectiveness of the legal system in regulating the termination of employment.

Your answer should refer to the stimulus, provide relevant information, and *at least*:

- outline the basis on which employers are entitled to terminate employment;
- describe the remedies that an individual employee can utilise against wrongful dismissal.

*OR***QUESTION 30**

Start each part of this question on a new page.

Kelly and Tay have just got their first jobs. They have been asked to join the union but have read that Federal Government policy is designed to weaken the role and influence of unions. Kelly and Tay need to decide whether to join the union.

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

- | | | |
|-----|--|-----------|
| (a) | Outline the historical role of trade unions. | 4 |
| (b) | What role do unions play in industrial relations today? | 9 |
| (c) | Evaluate the advantages and disadvantages of union membership in achieving industrial justice and industrial peace in the workplace. | 12 |

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**

Achieving real and lasting improvement in the social and economic status of indigenous people is proving to be a difficult and long-term process. The developing role of the Aboriginal and Torres Strait Islander Commission and the structure of Regional Councils is important. These structures empower Aboriginal and Torres Strait Islander peoples to make their own decisions about their futures.

Aboriginal and Torres Strait Islander Commission, 1994

'Indigenous Australia Today: an overview by ATSIC', ATSIC, Canberra, 1994, p5-6.

Discuss this statement and evaluate the effectiveness of the legal system in responding to the pursuit of justice for Aboriginal and Torres Strait Islander peoples.

Your answer should refer to the stimulus, provide relevant information, and *at least*:

- describe the changes in government policy towards Aboriginal and Torres Strait Islander peoples;
- outline the manner in which the law has dealt with the status of Aboriginal and Torres Strait Islander peoples;
- assess the success of bodies such as the Aboriginal and Torres Strait Islander Commission and Regional Councils in empowering Aboriginal and Torres Strait Islander peoples.

OR

QUESTION 32**Marks**

Start each part of this question on a new page.

In Australia there are over 300 000 people of Aboriginal and Torres Strait Islander descent. Their social culture is very different from the dominant culture. This difference emphasises the work/family split experienced by all Australian families. For Aboriginal and Torres Strait Islander peoples, problems of balancing work and family responsibilities are often of major importance.

Working Families materials

The Office of the Status of Women. Department of the Prime minister and Cabinet.

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

- | | |
|---|-----------|
| (a) Identify the difference between Aboriginal and Torres Strait Islander peoples and other Australian people recognised by civil law. | 4 |
| (b) To what extent does the legal system recognise the social and cultural values of Aboriginal and Torres Strait Islander peoples? | 5 |
| (c) To what extent does Australian legislation provide equality for Aboriginal and Torres Strait Islander peoples in the areas of workplace and family law? | 8 |
| (d) Evaluate the effectiveness of the legal system in recognising and addressing problems that arise from ignorance and differences of tradition. | 13 |

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

The migrant community in Australia is extensive and incredibly diverse. With over one hundred cultural and national groups represented, Australia is one of the most polyethnic countries in the world . . . yet some recent non-English speaking migrants are in real danger of being excluded from participation in Australian life.

ROB WHITE

'Current Issues in Criminal justice', vol 7 1996 p302.

Reproduced with permission of the Institute of Criminology, University of Sydney.

Discuss this statement and evaluate the effectiveness of the legal system in addressing the exclusion of migrants from participation in Australian life.

Your answer should refer to the stimulus, provide relevant information, and *at least*:

- identify the areas of Australian life from which migrants may be excluded;
- explain the factors that lead to this exclusion;
- discuss the ways in which the legal system attempts to meet the problems of exclusion.

OR

QUESTION 34

Start each part of this question on a new page.

The Varayudej family arrive in Australia on a small boat that sailed from Thailand. They have no visas and are therefore confined to a detention centre. Mr Varayudej's brother is a permanent resident of Australia.

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

- | | |
|---|-----------|
| (a) What is a refugee? | 4 |
| (b) Outline the different types of status which an individual arriving in Australia can be given. | 5 |
| (c) How would a migrant obtain an administrative review of an immigration decision? | 8 |
| (d) Evaluate the effectiveness of the legal system in providing justice, fairness and equity for families such as the Varayudejs. | 13 |

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

Police claim that they lack power to deal with domestic violence. A recent response to this claim is the provision of protection orders. Yet the first assault, which provides the basis of the order, goes unpunished. It is only a breach of the protection order which leads to police action. This reinforces the idea that domestic violence is a civil matter, not a criminal offence. Such law reform is a step backwards.

Office of the Status of Women, 1993

Discuss this statement and evaluate the effectiveness of the Australian legal system in controlling domestic violence.

Your answer should refer to the stimulus, provide relevant information, and *at least*:

- discuss the role of protection orders;
- explain how law can reflect and change a society's moral values;
- comment on the role of women's groups in contributing to law reform and challenging gender bias in the legal system.

OR

QUESTION 36

Start each part of this question on a new page.

Australia and many other countries have legislated to put human rights conventions into effect. There are still major difficulties, particularly in the area of sex discrimination. Major difficulties exist because of the need to move away from power derived from physical strength that is the primary reason for male dominance. That dominance begins in the 'private' area of the home and childhood, and flows over into the more 'public' areas of domestic and international life.

PETER BAILEY, *Bringing Human Rights to Life*, 1993
Federation Press, p149.

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

- | | |
|--|-----------|
| (a) What force do international declarations of rights have in Australia? | 4 |
| (b) What Australian legislation has been passed to put human rights conventions affecting women into effect? | 5 |
| (c) Describe the problems that women continue to face, both at home and at work. | 8 |
| (d) Evaluate the effectiveness of domestic and international law in addressing the problems faced by women. | 13 |

Please turn over

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

Most of our mental health legislation is directed to people who are in hospitals. We have mental health acts . . . and mental health review tribunals. These are for people in hospital but for the people outside there isn't such protection.

DR JOHN HOLT, *Human Rights and Mental Illness* (Burdekin Report), 1993

AGPS vol 1 p50. Dr John Houl, oral evidence 20/6/91 p409.
Commonwealth of Australia copyright, reproduced by permission.

Discuss this statement and evaluate the effectiveness of the legal system in providing appropriately for all people with mental illness or intellectual disability.

Your answer should refer to the stimulus, provide relevant information, and *at least*:

- refer to the rights that are affected by mental illness or intellectual disability;
- describe the roles of institutions and people who protect those with mental illness or intellectual disability;
- describe and explain the legal position of the following three groups of mentally ill or intellectually disabled persons: people being treated voluntarily in an institution, people being treated involuntarily in an institution, and people being treated involuntarily in the community.

*OR***QUESTION 38**

Start each part of this question on a new page.

Social security payments are not made as an exercise of charity to individuals whom the bureaucracy considers to be worthy of assistance. The social security system is based on rights, entitlements, responsibilities, and obligations, which should be clearly stated and legally enforceable.

The Independent Social Security Handbook, 1994
Pluto Press 1994.

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

- | | |
|--|-----------|
| (a) Describe the categories of social security applicants. | 4 |
| (b) Identify and explain the rights, entitlements, responsibilities, and obligations found in the social security legislation. | 5 |
| (c) Describe the legal processes available to applicants to claim and enforce their rights and entitlements. | 8 |
| (d) Evaluate the effectiveness of the legal system in providing social security applicants with appropriate rights, entitlements, responsibilities, and obligations. | 13 |