Legal Institutions Exam – March 2014

Examiner's comments

Students appeared to be poorly prepared for this exam – in particular, a number of students were unable to satisfactorily answer all parts of multi-part questions. There were a number of examples where students did not even attempt to answer the second part of a two part question. This sadly, is reflected in lower marks. The entire course is examinable, and the exam aims to cover the entire course.

Question One illustrates the general lack of preparation. Even in Part A not all those students who attempted this question could adequately answer all the issues raised – especially the need to support their answer by examples drawn from NSW colonial history (for example the early establishment of civil and criminal courts.) Magna Carta, important as it is to the development of our own legal institutions, is not an example drawn from NSW colonial history. Similarly in Part B a number of students attempted to draw on English legal history rather than the NSW legal history required by the question.

Question Two Part A was generally well done, although interestingly a range of cases not discussed in the course were referred to by students. This is not inappropriate (where the cases were correctly selected) but the cases we used to discuss this issue in class were *Mabo* and the *Second Territorial Senators case.* In Part B not all students were able to identify that there is no legislative power over sport conferred on the Commonwealth Government by s51, but that the Commonwealth does enjoy a broad power to legislate with respect to territories (such as the ACT).

Question 3 was not widely attempted, but was done well by most students who attempted it. Again however, a number of students were not able to identify and discuss important High Court cases such as *Viskauskas v Niland*. Question 4 was very poorly done – with a number of students essentially offering the same response for every part of this four part question. It is statistically improbable that four different parts of one question would all have the same answer – and in this case, they did not. Students were asked to demonstrate their understanding of the different mechanisms of referenda, referral, co-operative schemes and application schemes.

There was much confusion about Question 5 Part A. It is clear that most students who attempted this question did not understand the difference between the reserve powers and the executive power conferred by s57. Mr Whitlam would be most surprised to hear that he had been dismissed by the Governor-General exercising his powers pursuant to s57! Part B was better done, but illustrated the pitfalls of an open book exam, with a number of students appearing to simply copy their notes about Tribunals into the examination booklet. This was not an adequate answer to the question.

In Question 6 very few students identified the doctrine being defended by Sir Edward Coke as independence of the judiciary. A number raised this doctrine incidentally as part of a larger discussion of the issue of separation of powers, but were usually not able to address the other parts of the question and provide relevant examples from the Commonwealth (s72) and NSW (s53) Constitutions.