

Legal Institutions – Examiner's comments

September 2013

Overall this exam was well done, and students generally were able to identify and address the issues raised by each question. However a continuing difficulty is that students often did not discuss the relevant issue in sufficient detail, or support their answers well enough with appropriate legal sources. Despite warnings, and the advice on the front sheet of the examination paper, some students still attempt more than the required 4 questions – penalising themselves by ensuring that less time is available to complete the required questions to an appropriate standard.

In Question 1 Part A most students had little difficulty with the obiter, but surprisingly, struggled to identify the ratio as: *'Kicked' must include any movement of the ball initiated by contact between the ball and the foot.* In Part B a number of students appeared to copy out their notes about the *Magna Carta* rather than read and respond to the question. This highlights one of the difficulties with an open book exam – students are tempted to rely too heavily on their notes, and not think clearly about what the question requires. Similar difficulties were evident in Question 2. This required the cases about growth of Commonwealth power to be discussed – but from the perspective of Federal/State balance. Students who relied too heavily on their notes from the Commonwealth Parliament topic often merely repeated these – and did not reflect sufficiently on the requirements of the question. As well, they often failed to identify the need to discuss *Williams case* – as this was dealt with primarily in the Executive topic. It is important to learn the material so that it can be used as a base for the discussion of a number of issues.

Question 3 Part A was poorly done. Very few students could explain the difference between a referral of powers – where the Commonwealth legislative power is increased by a referral from the States – and an application scheme – which involves no increase in Commonwealth power. Part B was much more strongly done. Question 4 was well done, although not all students could sufficiently differentiate between the effect of the *Statute of Westminster* and the *Australia Acts*.

Again, in Question 5, the negative effects of an over reliance on notes in an open book exam was evident. In Part A many students simply reproduced their notes about legal history – some in point form – rather than using this information to support an argument about the development of judicial independence. There were also surprising difficulties with Part B – where despite the clear lack of any extrinsic material or information about purpose, some students attempted to use these as interpretative tools. Presumably, because this is what their notes said to do. This demonstrates a fundamental lack of understanding of the material. Question 6 was generally well done, although again, many simply copied their notes about *Ruddock v Vadarlis* rather than using these notes as a base to think about and answer the question.