

UNDERSTANDING LEGAL LANGUAGE AND LEGISLATION

EXAMINER'S COMMENTS

SEPTEMBER 2013

This exam was well done, with students having very few problems. Question 2 was very well handled. In Question 3 some answers would have been stronger if students had engaged more fully with the question. Not all students provided strong support for their arguments by reference to case law and legislation, and arguments around the limitation of access to extrinsic material – especially those canvassed in *Pepper v Hart* and reflected in the restrictive drafting of s15AB(2) and (3) - were not universally discussed.

Question 1 is where students experienced the greatest difficulties. A stronger approach would have been to integrate the discussion of the extrinsic material rather than deal with it separately, but as the instructions may have been ambiguous no student was penalised for treating this as two separate discussions. With respect to extrinsic material, the now special situation of NSW where section headings are extrinsic material was not acknowledged by students. As the legislation was passed by the Legislative Assembly and the Legislative Council, this was clearly NSW legislation.

Disappointingly, a number of students did not support their discussion of the statutory interpretation problem by a rigorous legal analysis and crisp references to s33 and associated case law. In particular the purpose discussion – the difference between Jennifer's purpose and the purpose of the legislation – was not always well handled.