Statistics

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Multiple-choice questions

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General comments

Prospective candidates are encouraged to learn definitions and understand legal positions. This will enable them to investigate common legal situations including case-study type questions and evaluate the law's effectiveness in a particular area. Candidates are also encouraged to learn the fundamentals of legal studies before concentrating on more complicated areas.

Characteristics of good responses

Paper One

High-performing responses from the 2009 examination had the following features:

- They responded directly to the question and not what the candidate assumed was the question.
• The candidate actually knew the law or legal position and was able to demonstrate the legal elements of a matter when responding to a particular question.

• Appropriate mention of the law was made in a response. Some candidates gave a general or social response such as “… is entitled to more sleep”. An appropriate legal response would have been “the defendant interfered with the plaintiff’s right to quiet enjoyment of his land”.

• The candidate applied the correct area of law to the question. For example, a good response considered the elements of a contract when considering a contract law question rather than discussing the Criminal Code which is clearly a different and unrelated jurisdiction.

• Consideration was given to the syllabus standards descriptors printed at the end of each question book when looking at questions under different criteria.

• The demonstration of knowledge was targeted in questions that assessed criterion 1 (Knowledge and understanding).

Paper Two

Good responses from Paper Two had the following features:

• a discussion of legal issues
• evidence of effective essay planning
• effective use of the research task notes allowed into the examination.

Common weaknesses

Paper One

Common weaknesses:

• limited knowledge of the law
• not applying legal principles to the cases/questions at hand
• not reading the questions carefully and not always following all instructions
• contradictory responses, e.g. “His behaviour is very suspicious and odd and he should have known that the product was stolen… He won’t be found liable” or “He should not be in trouble with police … He will be found guilty of the crime”
• repeating the text from questions in responses
• a reliance on responding to questions using ILAC methodology and using all the question detail when answering
• some candidates did not identify the law; did not state the legal position; did not apply the law to the scenario and their conclusions simply repeated information provided in questions
• mixing various jurisdictions of law incorrectly in the one response
• giving a “social response” with no particular mention of the law.
Paper Two

Common weaknesses:

- a lack of ability in applying relevant legal principles and procedures
- essays consisting of mainly social discussion with little reference to law
- legal issues being rarely critiqued
- valid conclusions about suitability of legal outcomes being seldom made
- instructions not always followed
- a lack of awareness of the syllabus standards descriptors.

Sample solutions

The responses on the following pages were written by a candidate who met the High Achievement standard as defined by the assessment criteria.
Part A: Knowledge and understanding

Section II — Short response

Question 1

Define the following terms and provide an example of the application of each.

a. damages

Damages are an amount of money that the court orders, as part of its decision of a case, to the defendant to pay the plaintiff. Damages can be of different types: contempts (forcibly of an order, e.g., contempt of a court order); exemplary (high damage awarded as a penalty). For example, a case of negligence. The court finds B liable in negligence and awards damage of $x to A. i.e. the court orders B to pay $x.

b. adversary system

There are two major legal systems in the world: common law and civil law. Australia is a common law country, and the adversary system is how trials are conducted in this system. The motion is in the hands of the parties, and the judge refers the debate between them, and the decisions made by the judge, jury or jury alone.

Question 1 continues overleaf
e. portal acceptance rule

The portal acceptance rule is a part of contract law and it provides that when an offer is accepted. A post acceptance is valid when the acceptance is posted, not when it is received (Adams v. Minter). For example, I want to accept an offer to buy my house, then when I put my acceptance in the post box my acceptance operates and I am bound by them.

d. diminished responsibility

This is a partial defence to a charge of murder, as it reduces murder to manslaughter. It is provided in S.304A of the Old Crim. Code. It provides that if one of the three elements of insanity are substantially impaired, then what would otherwise be murder is reduced to manslaughter. The onus of proof is on the defence. The standard of proof is on the balance of probabilities, i.e. reduced accuracy.

e. exclusion clause

An exclusion clause is a term of a contract that seeks to reduce liability to take the premises out of warranties. Consequently the court seeks to construe them narrowly against the party relying on them. For example, car parks often say that they accept no responsibility for any damage to your car if you park your car or their car parks your vehicle.
Question 2

Why does the legal system have specific laws for minors entering into contracts?

The legal system has specific rules for minors entering into contracts because minors lack the judgment, the capacity, of adults to understand the full implications of entering into a contract. However, there is an exception. Minors will be bound by contracts they have entered into for necessaries, which are goods and services that are necessary for them in their 'station in life'.

Question 3

Explain the two things that the prosecution generally must prove against the accused person to satisfy criminal responsibility.

To establish the accused as criminally responsible for an offence he/she is charged with, it must be proved beyond reasonable doubt that the accused committed the actus reus, the unlawful act, and the mens rea, the mental element of guilty mind or mental criminal intention. This is the original common law understanding of crime; actus non facit reum nisi mens situa. So, all the elements of the offence need to be supported by evidence and no defences apply.

Section II continues overleaf.
Question 4

Construct a flow diagram illustrating the steps a Bill goes through before it becomes a law in Queensland.

1. First reading (speech) - The title of the proposed bill is read out, usually by a member.
2. Second reading - The minister responsible for the proposed bill gives the second reading speech, arguing for the bill.
3. Committee stage - The house forms a committee to examine and debate each clause.
4. Third reading - The house votes on whether to accept the bill.
5. If the house votes for the bill, it is presented to the Governor for the Royal Assent, which makes the bill a law.
Question 5

Explain how you could use the legal principles derived from the famous case *Carlill v Carbolic Smoke Ball Company* [1893] in a more recent scenario or case example.

**Facts:** The Carbolic Smoke Ball (CSB) Co. advertised that if someone hung their smoke balls and used them as directed and still catch influenza, then they would pay them £100. Mrs. C. bought and used the balls as directed and still caught the flu. She asked for the £100. The CSB Co. refused. Mrs. C. sued.

 Held. Mrs. C. entitled to the £100 because the advertisement was an offer to the world; she had accepted by conduct (no need to communicate acceptance in writing). Offer was consideration making the ballring back as directed. E.g., A rewards for dog. Return dog (see photo and description) get $50 reward. In the dog described in the advertisement, it is to the advantage of A to expect to receive the $50 if I don’t. I can sue based on the principles in Carlill v Carbolic Smoke Ball Co.
Part B: Investigation

Number each question you respond to.

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The issue before me to decide is whether the accused is criminally responsible for
infringing the particular provision of the Traffic
Act [that pertains] as per the charge.

When deciding what law to apply I must
consider that I am bound to follow the
decisions of precedent which provide. This
case that decisions of other magistrates are not
binding but highly persuasive.

In this case, the trial judge decided, the rule
of law the case was decided on, provided that
when the school is not a normal operational
inground it is not cleared as a school day
for the purposes of the provision. As the
case was decided on that rule, it was not
clarified, things said by the way,
speaking hypothetically if things had been
different.

Applying this rule to the instant matter,
I held that a period free day for a day
for off-school) when the school is
not a normal operational mode and so
is not a school day for the purpose of the
provision, I held that the rule in this case
was easily be generalised to (ertain
cover the material facts of the instant matter.
I do not see the circumstances of the school holidays can be distinguished from a normal holiday because on both days school children are not present. The facts interpreted by the judge counts to apply the purpose rule to interpret acts.

The purpose here is to protect children. The school children are not present here as they are not in school. Therefore interpret school days to mean when school children are present.

I decide therefore that the accused is not guilty of the charge charged for the above reasons.
Part B   Question 2.

John should not be charged with any crime because at the time he purchased the DVD recorder he did not know it was stolen. Because it was stolen he may be charged with receiving stolen goods. For the reason given he is not guilty of this crime. He thought he was entering into and executing a simple contract. If he was charged he can plead not guilty. If after the judge finds that the DVD player is stolen and decides to keep it, he may be receiving stolen goods at that point. We should contact the police as soon as he learns that the DVD player is stolen.
The issue here is whether Mr. X is liable in private nuisance. Private nuisance is a tort and is a matter where one private citizen alleges that a particular type of civil wrong has been committed against them. The nuisance cannot include minor or small. It must be unreasonable and cause considerable injury to the plaintiff.

Here the noise is unreasonable. It is very damaged and noisy cars being operated at a vulnerable time. It is usually on frequent happen. The plaintiff is being disturbed at such an hour so often has suffered damage.

It is submitted that the elements of the tort of private nuisance are made out and the defendant is liable.
For matter in contract law, offer and acceptance dispute. Has the salesperson accepted or rejected Stephen's offer?

It is submitted that the applicable or relevant law is that in these circumstances the person buying makes the offer and the store accepts or not. Price labels are merely invitations to treat. The Commonwealth Society of Accountants and Local Business Chemists. Stephen will argue that he made an offer when he asked how much are you selling this shirt to promote? The salesperson said whatever it says on the sticker. However, the salesperson was just making an invitation to treat. When S. went to the cash register with his ball of $2, he was making an offer and the salesperson rejected it. She was not legally entitled to according to the above close law. No acceptance of S's offer was made. There is no contact between the two.
Part C – Evaluation

Number each question you respond to.

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Specialized courts are a progressive development because they enable specialized knowledge to be relied on in decision making and they also enable efficient and quick outcomes for accused who are different in an important respect from the rest of society.

According to international data presented in The Spirit Level by Wilkinson & Pickett (2009) almost all social and health problems including crime and drug use are generated by income inequality such as deprivation. The disproportion is greatest as the pattern of unequal societies but it also extends up to affect the most advantaged groups also. Australia has the highest illegal drug use per capita in the modern world and Aboriginals are not only at the bottom of Australian society, which is the fifth most unequal of the twenty-three most wealthy countries in the world in terms of income inequality, but Aboriginals are also non-white and non-Western, placing them at great disadvantage in an Australian court. Because of the volume of drug use.
alone there is a need for a separate account, and it is arguably a health problem more than a crime problem. Aboriginal people definitely need a legal system that recognizes their particular characteristics.

It needs to be considered though, that there is an important requirement in a liberal democracy for equality before the law. Also, the marginalization of Aboriginals in Australia is the great source of inequality in Australia and these problems will not be solved by special programs, but by processes that enable more opportunities and mutual respect.
Our common law criminal trial procedures date from Virginia Code 1215 and are founded on the principle that it is better for ten guilty men to go free than for one innocent man to be punished. There are many protections for the accused. Collectively, they are known as due process of law. They include: the rules of evidence (e.g., hearsay, inadmissible, etc., procedure; the concept of proof is on the prosecution; the burden of proof is beyond a reasonable doubt; guilty verdicts must be unanimous; the double jeopardy rule (can’t be charged for an offense already convicted of or newer acquitted of); the burden of proof on the defense to establish some defenses (e.g., insanity, diminished responsibility); the right to silence; the right to the assistance of counsel; the right to due the evidence against the accused and the right to appeal.)

We submitted that majority verdicts may be an improvement to our system as would more educated people on juries. Collectively, though, the protections for an accused person operate to protect the rights of citizens against tyrannical government.
The definition of marriage does not reflect the liberal democratic ideal that Australian constitutions promote for and the Australian community aspires to. The current definition, in particular, The element that restricts marriage to heterosexual couples should be reformed because it breaches the separation of church and state and s.116 of the Commonwealth Constitution is inconsistent with other acts prohibiting discrimination, and is inconsistent with a liberal democratic regime causing severe detriment to same sex people.
The definition of marriage currently in The Marriage Act (1961) (s.s interpretation) has its origin in the case of Moore v. Wylde (1866) in which Lordlangze Expres stated that the definition be provided had a religious origin. It is understood in Christians as the voluntary union for life of one man and one woman to the exclusion of all others. Because this definition is a religious one it breaches the need for church and state to be separate and a precondition for liberal democracy.
This need for separation is frequently provided for in s.116 of the Commonwealth Constitution, which provides, inter alia, “The Commonwealth shall not make any law . . . . for imposing any religious observance.” It is submitted that a definition of marriage provided by a religion is an imposition of a religious observance in breach of s.116.

Furthermore, there is a need for the laws of a legal system to be consistent, not in conflict, or that system will be unworkable and lack community respect. There are many Acts that prohibit discrimination, such as the Racial, Sex, Age and Disability Discrimination Acts. The Marriage Act currently discriminates against same sex couples, placing it in conflict with other laws prohibiting discrimination, and thus weakening the cohesion of the Australian legal system.

Perhaps the most important reason why this element of the definition of marriage needs to be extended to include same sex couples.
is that it is inconsistent with a liberal democratic regime and society. Liberal democracy requires that everyone be treated equally before the law unless there is a compelling reason not to. No such reason exists in the case of same sex couples except religious views which are inadmissible in a liberal democracy which can never coexist with democracy. People with a same sex orientation have the same right to marriage as other people. To do otherwise is to replace liberal democracy with a form of master-slave relations that invites vilification.

Humans have a deep human need for respect from others, to receive the same amount of respect that others have. Liberal democracy promises to provide this. When same sex couples don't have their unions recognized socially like heterosexual couples do, it has impose severe deficiencies on them. For example, a survey of 1,500 same sex people in the US found that those in states that prohibited same sex unions experienced
The highest rates of minority stress and general psychological stress. A further example comes from Tennessee, where after a ban was placed on same sex marriage the same sex people there felt alienated from their communities and more at risk of violence. These experiences are just suffering in unnecessary and unjust. It is generated by an unjust law and is inconsistent with genuine liberal democracy. There are even financial incentives for same sex couples as they are not entitled to the same social security benefits as heterosexual sexual couples.

Other Western countries have reformed their definitions of marriage to allow same sex marriage. The Netherlands was the first in 2001, and since then Sweden, Norway, Belgium, Spain, France, South Africa and Canada have all followed. It is significant that all these countries mentioned except South Africa are much more economically and socially
A liberal democracy is one that has the fifth highest level of income inequality of the world’s twenty-three wealthiest nations. On liberal democracy, Australia is backward compared to other modern nations and it is submitted that its current definition of marriage is a reflection of this.

Australia needs to reform its current definition of marriage to include same-sex couples because currently it breaches the principle of separation of church and state; is inconsistent with current anti-discrimination legislation resulting in an unbalanced legal system; and is at odds with the requirements of a liberal democratic legal system providing for a liberal democratic culture and society. Canada currently defines marriage as ‘the lawful union of two persons for life to the exclusion of all others’. It is submitted that Australia adopts essentially the same definition.
Sporting participants should be able to pursue civil and criminal redress, where necessary. Sporting tribunals do not have the jurisdiction to determine civil and criminal matters, and their tribunals are unable to be completely imputed. That law provides the defence of "volenti non fit injuria", which means that liability does not arise where the injured party consented to the acts done. This defence is often cited in sporting contexts. However, it has no application where the acts or omissions are performed outside of the rules of the sport, when matters are outside the rules of the sport, and become criminal or civil matters. A sporting tribunal lacks the jurisdiction to hear such matters. The administrators of the sport are not learned in the law and have no authority to apply civil and criminal law of a jurisdiction and no power to sentence or to impose their judgments. For example, recent years ago, two rugby footballers...
got into an argument while jogging inside each other’s track, fell away from the wall, in anger, one punched the other in the head. That player subsequently died. The police charged the other player with manslaughter, and he was subsequently convicted. The Rugby Union Association and its tribunals are completely unable to determine a matter such as this fairly and squarely.

Another important reason why sporting participants should have access to the legal system is that sporting tribunals are not transparent or impartial. For example, there have been cases where rugby players with quadriplegia from collapsed spines have faced their sporting association, along with the referee and lawyer, on the basis of vicarious liability. If the association were to hear this case it would be judging, in its own case and plaintiff, and it would be unlikely to get a fair trial. Furthermore, there are powerful financial interest involved in sport now and these interests must not be able to judge in their own case or influence outcomes.
Those that argue that sporting tribunals should be able to hear civil and criminal matters do have a strong case. Sporting tribunals are able to keep things ‘in-house’, so that their particular sports are not brought to disrepute, and funding, sponsorship and fan support are not affected. Such tribunals can also minimize the ill-will that court cases can generate along with all the other difficulties raised by the legal system such as expense and delay. The games would become very logistical to the detriment of the overall enjoyment of the game.

However, sport is not above the law. While there may be problems with sporting participants seeking justice from the legal system, this must be accepted as the benefits of drugs the detriment. The law seeks to reconcile competing interests and the rule of law must prevail. Sporting administrators should recognise that having a check on their sports is the
Form of the legal system is ultimately to the benefit of the sporting community at large. The law affects all aspects of our lives including sports. When people's legal rights are infringed they should be able to seek justice from the legal system regardless of the context. Sporting tribunals lack the jurisdiction to resolve civil and criminal law matters and they are unlikely to be impartial, especially when the sports association or leadership is a defendant and large sums of money are at stake. Civil and criminal matters that arise in the sporting arena are not just a matter for the parties, sport they are a matter for the whole community and therefore the legal system also.
Law and Justice

Human beings are social by nature, but can only flourish with minimal conflict if they live together on a just and well-ordered basis. German philosopher, Georg Hegel, argued that liberal democracy was the best fit for human nature because it did not meet the human need for recognition. So laws that provide for a liberal democratic society will very likely be just laws.

However, as history provides numerous examples, law and justice do not always coincide. The laws of non-liberal democratic regimes such as fascist, communist and theocratic regimes can hardly be called just. That law should provide justice is indicated in some famous quotes about law. For example: “Without justice, what are kingdoms but great robberies?” St. Augustine

Where laws end, there tyranny begins.” John Locke
In order to be free we must always be servants of the law" (Cicero).

That laws sometimes do not coincide with justice forces us to consider what each one is.

Indeed, in jurisprudence there is a school of thought, begun by Thomas Hobbes and Jeremy Bentham and known as legal positivism, that argues that law does not consider justice, and that talk of natural rights is nonsense on stilts (Bentham).

This school of thought became untenable after the Holocaust of WWII and since then its rival school, Natural law theory, begun by St. Thomas Aquinas building on Roman law and Aristotle, has become more prominent and has supported the Universal Declaration of Human Rights (1948) U.N. which Australia is a signatory to.

It is still useful, though, to examine definitions of law and justice. Blackstone defined law as a rule of conduct provided by a superior which an inferior is bound to obey. This is very much a positivist definition. The definition
of justice provided by the Roman

law, called Justinian, the

founder of the civil law

system of continental Europe.

Defined justice as 'the perpetual

liability to give each man his

due'. Perhaps this is what law

should seek to achieve. Legal

and many others would argue that

it should. The epidemiological

histories evidence clearly shows

that societies become increasingly

dysfunctional as they become

more unequal.

How effective has the law

been in providing justice for minorities

in Australia? Although Australia is

one of the world’s seven oldest liberal

democracies, traditionally it has not

been very good at recognising the

rights of minorities but progressively

improved a lot since.

It is still not as effective as it

should be. Australia is not as

liberal democratic as it should be,

indeed it is quite backward in

many respects, especially when compared

to countries like Scandinavian, and
01 The Treaty - human rights

...
for many minorities.

Minorities are also disadvantaged by being non-Western, non-migrant, and non-English speaking. The Australian legal system is quite alien to them and is possibly difficult, as it often is to other migrants from sources outside the Anglo-Sphere.

Inequality also generates low educational outcomes for minorities. This also makes the legal system less accessible for them. They do not know who to see in the event of a legal issue arising and are find the system impossible to understand. High school dropouts struggle with legal letters and official encounters with officials.

Same sex people commonly do not have their life-long committed to each other recognized in the Marriage Act (1961 or later) sexually do. This is unequal treatment for no good reason and causes them to feel stupid.

This is an instance of lawful justice not connecting in Australia at present.
The law and justice do not always
of hand in hand, but it is submitted
that they should. That law should
provide justice and that a just
regime is a liberal democratic one.

Australia has come a long way
since the White Australia Policy,
massacres of Aboriginals,
prohibiting women from using
public libraries or having their
own bank accounts and making
homosexuality a crime, but it still
has a long way to go. Liberal
democracy is an ideal, a light
on the hill, a worth-while project.
Australia still has much to do
in this area. As Australia
becomes more liberal democratic
law and justice will coincide
more. Communities will
experience more justice and the
whole community, rich and
poor, will flourish more.