### Statistics

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### Characteristics of good responses

Good responses tended to have similar characteristics. Candidates who performed well:

- were able to differentiate between “outline, describe and explain” in the task of each question
- wrote responses in full sentences that led to more complete responses
- explained the relevant aspect of law under review in specific questions
- responded to definition questions using appropriate legal language, and provided detailed examples
- planned responses to ensure that all parts of a task were covered
- "justified" their responses (a requirement of Criterion 2: Investigation)
- responded according to the parts of questions, providing responses that were suitably sequenced
- used clear and concise expression
- addressed the question rather than simply repeating it
- used the research material allowed into the examination room for Paper Two Part A — Section 2 to develop an appropriate response, rather than just repeat the material.

### Common weaknesses

- Some candidates were unable to define key legal terms or describe and explain key legal concepts.
- Some responses showed evidence of poor organisation and lack of clarity.
• Some candidates gave general or social commentary instead of answering the essay questions with legal responses.

• Some candidates did not refer to the legal position when dealing with specific areas of law outlined in the question.

Sample solutions

The following response met the A Standard in all criteria in both papers. It has been reproduced exactly as written and therefore includes any spelling or grammatical errors made by the candidate.
Paper One

Part A — Knowledge and understanding

Part A has 10 questions. Attempt all questions.
Write your responses in the spaces provided.
Suggested time allocation: 60 minutes.

Question 1

State two differences between rules and laws, giving an example of each:

1) Rules generally apply to groups in the community only, whereas laws apply to all of society.
2) Rules are not often (may occasionally result in sanctions), whereas laws are enforceable and punishable, whereby

   E.g. Rules: Tennis club - white shoes must be worn on court. E.g. Law: Employers may not “unfairly” dismiss employees.

Question 2

Define the following legal terms.

a. Ratio decidendi
   "literally = "reason for the decision" - The part of a judge's decision that is vital/essential - can set precedents for future cases.

b. Consideration
   Something of value exchanged between parties in a contract (does not have to be money).

c. Postal acceptance rule
   Acceptance of an offer by writing is deemed to have taken place when the letter is posted.

d. Robbery
   Fraudulently depriving someone of their possessions with permanent intent - stealing with no plan to return the items.

e. Trespass to the person
   Depriving/infringing on a person's right to personal freedom of movement. E.g. unlawful confinement or false imprisonment.
Question 3

Outline the Separation of Powers doctrine. What is its purpose?

There are 3 areas in the "Separation of Powers" -
the purpose being to allocate care/responsibility for the various types of powers to the appropriate body/sector.

1. Judicial Powers - Courts interpret the law
2. Legislative Powers - Parliament makes the law
3. Executive/Administrative Powers - the government enacts/puts into action the law

Question 4

State two features of a court hierarchy.

1. Lower courts may be guided by precedents set in higher courts
2. A case lost in a lower court may be heard on appeal in a higher court

Question 5

Explain the purpose of a committal hearing.

A committal hearing in the Magistrates Court will determine whether or not enough evidence exists to bring a case to trial (or a later date in a higher court)

Question 6

Explain the purpose of a jury in a criminal trial.

A jury is selected randomly - usually consisting of 12 members of the public. Their role is to hear all the evidence in the case from both prosecution and defence. The jury then must return a verdict of either guilty or not guilty - and in criminal cases the standard of proof is "beyond reasonable doubt."
Question 7
List the three main elements that a plaintiff must prove to be successful in the tort of negligence:
1) Is a duty of care owed to the plaintiff?
2) Was there a breach of that duty of care?
3) Did damage or loss ensue as a result of the breach?

Question 8
Describe the purposes of damages as a remedy for tort.
- To indemnify the plaintiff against loss
- To provide financial compensation to plaintiff
- Sometimes to penalize the defendant person guilty of the tort for their actions

Question 9
Define the term “contract”. Give an example.
A contract is a legally binding and enforceable agreement, often set down in writing.
E.g., John agrees to buy Anne’s car (agreement) for $8,000, he gives $200 deposit (consideration)

Question 10
Explain the legal concept of vicarious liability by using an appropriate example.
Vicarious liability means a supervisor or employer is vicariously liable or responsible for the actions or omissions of a subordinate or employee under their care or supervision.
E.g., Staff member of a small supermarket maps front, is not instructed to put up sign—an old lady slips and is injured—she may sue the owner or manager rather than the junior employee.
Part B — Investigation

Part B has five questions. Attempt all questions.
Each response should be up to 300 words in length.
Write your responses in the spaces provided. Cross out any draft work that is not to be assessed.
Suggested time allocation: 1 hour 30 minutes.

Question 1 — Crime and society

John has been charged and found guilty of causing grievous bodily harm following a fight at a sporting match. He is married with two young children and is the local bank manager. John has never before been in trouble with the law.

Your task

a. Analyse the various factors the judge would consider in sentencing John.


In this case, where John has already been found guilty of the offence, the judge would take into account various factors before deciding on a sentence:

1. The circumstances of the offence (which would have already been revealed in court).
2. Whether John was intoxicated or not at the time of committing the offence.
3. His previous criminal record — in this case, John does not have one.
4. His family, status and responsibilities — he is a father of two young children, and the family may suffer severe hardship were he to serve any time in prison.
5. His standing in the community — he holds a respectable and responsible position, being the local bank manager.
SENTENCING OPTIONS:

Due to the previously outlined factors, jail time would not be an appropriate sentence. The most reasonable/appropriate sentence would be less severe, and the judge has several at his disposal.

Reasonable options include:

- Fine
- Suspended sentence
- Community service order

An appropriate sentence would be a suspended sentence, including:

- counselling (for any anger management issues)
- rehabilitation program (if the incident was the result of intoxication or substance abuse)

In addition, a community service order would serve to reinforce the seriousness of John's actions - as a fine may not have a huge impact on a bank manager, and could be all too easily forgotten.

End of Question 1
Question 2 — The legal system

In recent years, alternative dispute-resolution processes have been introduced to help settle disputes. They have been designed to replace traditional court-resolved processes.

Your task

a. How do these alternative dispute-resolution processes differ from traditional court proceedings?

b. Do these alternative processes provide viable ways of resolving disputes for various stakeholders? Justify your response.

Some alternative forms of dispute resolution are:
- Mediation
- Counselling
- Ombudsman
- Tribunals
- Commissions/hearings.

Most of the above dispute resolution alternatives are less formal than the court process. They may be less intimidating, less time-consuming, less costly, and less adversarial than traditional court cases.

They are more affordable and accessible for many Australians too, who may not have the confidence or resources to take a matter to court.

For the court system itself, these alternative processes are a positive, much of court time and resources previously consumed in settling these disputes are now freed up.
Both parties on either side of a dispute have a chance to speak for themselves and put their case/side of the story forward - which in most cases is preferable to having legal representatives speak for you in court.

Alternative processes are also less drastic and damaging (emotionally) on the parties involved; court can be traumatic for families in dispute, whereas mediation is a much "softer" option.

The above-mentioned "positive" however, can also be a drawback - alternative processes are often seen to be lacking the authority of the court system, and orders, decisions and injunctions arrived at can sometimes be disregarded because of this.

For many, alternative dispute resolution processes are viable, and there is always the court system (available as legal "back-up") should these measures fail.

End of Question 2
**Question 3 — Crime and society**

Emily and Simone were both under the influence of drugs and alcohol. Emily stabbed Simone multiple times, nearly killing her. Emily was charged with attempted murder. During police questioning, Emily said, "I didn't know what I was doing. I thought I was being attacked by crocodiles and was defending myself".

**Your task**

a. Explain the offence that Emily has been charged with.

b. What type of offence is this?

c. Explain any defences that may be available to Emily.

d. Determine a likely outcome for Emily. Give reasons for your response.

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Emily has been charged with attempted murder, by definition murder is unlawful killing with intent.

This type of offence is an offence against the person.

Because Emily and Simone were both under the influence of drugs and alcohol, Emily's defence may try to use more than one line of defence.

The circumstances partially fit the requirements for:

- Intoxication
- Diminished responsibility
- Insanity (not likely)

Intoxication defence will only be successful if Emily can prove that she did not willingly or knowingly ingest the alcohol and drugs. As it is likely she voluntarily consumed the substances, this defence would not succeed.
Diminished responsibility/insanity are similar defences - they both rely on being able to prove the "mental state" at the time of the crime.

If Emily can prove there was no intent to kill, that she was of abnormal mind at the time of the crime, and that she was unable to distinguish right from wrong/know what she was doing was wrong - she may be successful. "Success" though, in this case, would most likely be a reduction in charges, not a dismissal, as "diminished responsibility" is only a partial defence.

It is likely that Emily will be able to prove no prior motive/intent, and possibly diminished responsibility so she will probably face reduced charges - either manslaughter or grievous bodily harm.

End of Question 3
Question 4 — Torts

Mrs Black wishes to take legal action because of a problem she is having with her neighbour, Mr Smith. Mrs Black and her young children are disturbed by her neighbour's frequent parties and loud music, which often occur in the early hours of the morning. She has called the police every time he has had a party or played loud music, which has been at least twice every week. Now she wants to put a stop to his partying and loud music. Mr Smith told her that he works late shifts, finishes work at around midnight and sleeps during the day. He also exclaimed, "Get a life; we're not living in the 1950s! Anyway, I am entitled to do what I like in my own house".

Your task:

a. Identify the tort in this case.

b. What legal elements would the plaintiff have to establish to be successful?

c. What defences, if any, could the defendant argue?

d. Determine a likely outcome. Justify your response.

The tort in Mrs Black's dispute with her neighbour is one of "Private Nuisance".

She needs to establish that the private nuisance is not a "one-off" occurrence, and that Mr Smith's actions interfere with her right to "quiet enjoyment" of her own home and land. In this case, Mrs Black has called the police often, and as the parties occur twice a week, she will be able to prove the nuisance tort. (There will be records of police attendance, as well as twice-weekly being frequent enough to be legally considered a nuisance.)

It is possible that Mr Smith may only have one line of defence to the tort.

If Mr Smith lived in his premises and was already in the habit of having late...
Night and loud parties then the nuisance was pre-existing. His defence would be that Mrs Black "came to the nuisance" - that he and his habits were essentially there first. This defence however, is by no means guaranteed in these circumstances, and if Mrs Black and her family were there first, it is likely that Mr Smith will have no viable defence.

The most likely outcome in this case would be an injunction - a court order specifically instructing Mr Smith to restrict the hours and noise levels.

An additional possible outcome could be damages - for emotional pain/suffering/loss of sleep/affected health & loss of income due to poor work performance - Mrs Black may be in a position to claim all of the above with financial compensation. Unlikely.

End of Question 4
Question 5 — Agreements

Tran is 17 years old and a first-year university student. He lives close to the university in student accommodation. His friend Ellie tells him she is selling her car. Tran, on impulse, offers to buy the car for $10000. Ellie agrees, and tells Tran it is in perfect condition mechanically but just needs a bit of a clean-up. Tran is thrilled with the prospect of buying his first car and gives Ellie a bank cheque for $10000.

The next day, Tran has second thoughts. He realises how foolish he has been. When Ellie arrives with the car, he is horrified to see it is not in good condition at all. Smoke is streaming from the exhaust, there are strange rattling sounds from the engine and the body has been severely hail-damaged.

Tran tells Ellie that he does not want to buy the car any longer but Ellie insists that Tran is bound by their agreement.

Your task:

a. Identify any legal factors that might affect the enforceability of the contract.

b. What remedies, if any, are available to Tran?

c. What would be the likely outcome in this matter? Justify your response.

Several legal factors affect the enforceability in this case — they are:

1) Tran is still a minor, by law he is not considered capable of entering such a contract, unless it is for necessaries.

2) The car may be considered a necessary for some purposes but seeing as Tran lives close to his university, it would not be considered "essential to maintain his current standard of living" in this case.

3) Ellie did not act in good faith — all relevant details were not disclosed.

4) Ellie is actually guilty of "fraudulent misrepresentation" — stated the car was in perfect condition mechanically, but open to a layperson with no special knowledge of mechanics to smoke and rattling noises.

Show the car is not...
There are several legal remedies available to Tran:

1) The contract could be considered "void", or legally non-existent in the first place, as he is a minor.

2) The contract would be voidable, because Ellie breached a vital condition - the contract was on the understanding that the car was in "perfect condition". Tran can therefore have the contract rescinded, and could also sue for damages.

The likely outcome in this matter - the contract would be declared void on the basis of Tran being a minor, and Ellie would be ordered to return his money. A judge may also impose damages on Ellie for her fraudulent misrepresentation and unconscionable dealings with Tran.

End of Question 5

End of Part B

End of Paper One
The legislation governing work-related issues in Australia currently is:

At State level: Workplace Health and Safety Act 1995 (Old), and WorkCover (Old) 1996.

In addition, there are the Workers Compensation and Rehabilitation Act 2003, and Fair Work Act 2009.

WorkCover is run like an insurance company - employers pay insurance premiums to WorkCover, based on the number of people they employ. In the event of a workplace injury, workers have guaranteed access to protection and compensation, providing they meet the criteria. While the current legislation has come a long way, there is still significant room for improvement.

The 2003 legislation provides a financial table, with a corresponding schedule of injuries. This is designed to protect employees financially from the ramifications of workplace injuries. In the event of an injury or accident, the employee is guaranteed to receive a payout corresponding to the nature and severity of their injury.

WorkCover payments are one-off payments, though, in one lump sum, calculated at the time.

WorkCover as it exists today does not
take into account pain and suffering, loss of enjoyment of life, future loss of earnings, or future medical bills.

While WorkCover payments are relatively easy to process, timely and guaranteed, they are not adequate financial compensation in many cases. WorkCover fails to adequately protect workers in the event of an injury, because if a worker is not satisfied with the proposed compensation, they must take their chances in a lengthy, financially draining and often risky civil action. If an employee chooses to pursue the option of increased damages in a civil case (usually against employer for negligence or breach of contract), they lose the right to claim WorkCover in the event of an unsuccessful court action.

For this system to be fair to all stakeholders, the current legislation needs to be reviewed and revised. Both the government and the employers are not adversely impacted by current laws, in fact employers are protected to a large extent. As long as employers pay their premiums and adhere to OH&S laws, they have nothing to worry about. Employees though, potentially have a
...not to lose. The fact that in successful civil cases, damages over and above workcover payments are regularly awarded, highlights workcover's current shortcomings. Yet often an injured worker has medical bills, a mortgage or rent to pay and a family to feed... and literally cannot afford the time and expense of a trial. Therefore, in many cases, workers just settle for their workcover payout because it is quick, easy and guaranteed. A review of scheduled payouts would be advisable, as well as some form of assessment of possible future disadvantages. A possible process would be re-assessment of a worker, their health, life & emotional state, as well as financial position after a period of 1, 2 or 5 yrs. If the worker were still suffering 'genuine disadvantages/problems as a direct result of the injury', a follow up payment would be appropriate. Current legislation is expedient, but not necessarily equitable or fair.
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The technologically advanced society we live in has clear benefits - the internet holds a wealth of previously inaccessible information, and anyone can access it. On the flip-side of this major positive though, is a serious cause for concern - the prevalence of Identity Theft.

Broadly defined, Identity Theft (IT) occurs when someone pretends to be someone else by assuming their identity, typically to gain credit, access resources, or gain other benefits in that person's name. Australia's current legislation is woefully deficient - "identity theft" is not a crime in most States and Territories (SA being the exception). With the advent in recent years of social networking sites - which store and display substantial amounts of personal data - users are exposing themselves to the possibility of fraud and loss.

When lack of legislation combines with lack of awareness in many internet users, it is clear that current legislation is not adequate, and urgently needs to be addressed.

The governments of each country has the responsibility to secure and protect its citizens. The USA, as far back as 1998, passed the "Identity Theft and Assumption Deterrence Act of 1998 (US)". This Act makes

Part/Section 2A  Question 2  (IDENTITY THEFT)
It is a federal offence, punishable by up to 15 years jail and $250,000 (US) to "knowingly transfer or use... a means of identification of another person with the intent to commit any unlawful activity." By comparison, in South Australia, the "Criminal Law Consolidation Act of 1935" was amended to include four new offences, specifically targeting those who use a false identity to commit a serious crime. This legislation, though, still falls well short of the mark when it comes to the definition of a "crime" in this regard. Internet fraud or identity theft is only deemed to have taken place if the perpetrator uses the appropriated identity to commit another crime, usually financial in nature.

An American woman, Dana Thorton, however, was indicted on one count of 4th degree identity theft for hijacking an ex-boyfriend's Facebook page, and making derogatory and defamatory comments under his name. In this US case, "impersonating someone to injure or defraud them" was considered a crime in itself. Until Australian law catches up with international legislation on this area, the government here will be failing in its duty to protect victims of
Identity Theft

A case in the UK highlights that online users also have an obligation to try and reasonably protect themselves. Lain Wood in 2009 was able to take more than £35,000 from two neighbours by scouring their Facebook accounts for personal information. He was able to pass bank online security questions and obtain passwords because as he said on Facebook "most people tend to post extremely personal details, and don't think to use different passwords for various sites. Many users contribute to their own victimization by sharing too much "real" personal information online, and not taking advantage of various privacy levels offered.

As well as an imperative need for legislation on this offence in Australia, defining identity theft and clearly outlining punishment, a consumer awareness campaign would be highly advantageous. Teens, the elderly and other Facebook users need to become better educated as to the pitfalls of social networking and online dangers.

Until then happens, along with clear, definitive, consistent and prohibitive legislation nationwide, identity theft...
and online fraud will continue unabated in this country.
For our laws in Australia to be beneficial and effective, it is vital that some aspects of legislation "change with the times." These changes can be brought about by various means—more often than not via new or amended legislation. Court action (and the subsequent precedents set) is another means of change, perhaps less for reaching, but nonetheless important in society today.

There are many advantages to the law being amended via legislation. Politicians are the ones that bring a bill or proposal forward initially, and politicians are by nature susceptible to, and greatly influenced by, popular opinion. In many cases (not all as seen by the introduction of the unpopular GST and carbon taxes), pressure groups, lobby groups, the media, and other stakeholders are able to bring about change via direct pressure on politicians/government. These changes usually reflect the thinking and attitude of the majority, and reflect social and cultural values of the time, and are therefore positive changes. Another advantage in new or amended legislation—changes can be enacted relatively quickly in response to international events.
terrorism (laws after Sep 11) and environmental concerns (bans on logging/mining or protection of land declared to be 'under native title').

There are however some disadvantages too, to new legislation being passed. Laws introduced or systems installed via legislation are sometimes only as permanent as the government passing them. An example is the 'WorkChoices' scheme from the mid-2000's, which was subsequently scrapped by the next government party to come to power. Another disadvantage is that in a country of 22 million people, not everyone will be better off under each new law, passed. But that same new law will apply to everyone indiscriminately, regardless of each person's personal circumstances.

There are some drawbacks to the legislative method of change. When it comes to common law, Common or judge-made law sets precedents to be followed in future cases, and also takes into account the individual. Common law changes are usually in response to one to address a perceived "loophole" in the system, or
are made to accommodate a particular individual's unique circumstances - hopefully ensuring that justice is always served. Any future cases where the new common law is applied should only be when circumstances/particulars are very similar, meaning that individuals or minority groups are not disadvantaged.

Another advantage of common law is that judges are impartial entities, not to be swayed by common opinion, pressure groups or current affairs. Their foremost concern at all times is a fair and just outcome, theoretically resulting in fair & just laws.

In regards to changing laws effecting real change in our modern society, both court action and legislation play a role. Legislation, perhaps, though a more significant one. Laws enacted by parliament are more far-reaching in their scope, whereas common law jurisdiction may be at times limited to the courtroom, and more who enter it. As legislation can be influenced by society, and our ever changing and evolving values, it is probably the greater effector of real change in modern day Australia.

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