Legal Studies
2013 Senior External Examination — Assessment report

Statistics

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Characteristics of good responses

Candidates who performed well:
- were able to respond to key words used e.g. “state, describe, define, name”
- clarified their understanding of key concepts by writing comprehensive explanations
- offered clear legal examples to explain concepts
- identified legislation accurately
- wrote sequenced paragraphs in responses to stimulus questions
- ensured that responses to stimulus questions identified the legal problem, stated the relevant elements of the law and applied the relevant law
- referred to specific legislation and legal cases in responses
- provided substantial evaluation in essays
- used research materials allowed into the examination room to develop a response, rather than just copying the material
- managed their time to ensure final editing of responses for clear and concise expression.

Common weaknesses

- Some candidates provided general information about the law rather than identifying relevant legal concepts
- Some responses were too brief to allow candidates to show specific Investigation in both responses to stimulus questions and in essay responses
- Some responses did not address all sections of the question
- Some candidates did not draw valid conclusions or provide justification for their views.
Sample solutions

The following responses met the A Standard in all criteria. They have been reproduced exactly as written and therefore include any spelling or grammatical errors made by the candidates.
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: 1 hour.

Question 1

State two differences between statute law and common law.

1. Statute law — made by parliament through the process of enactment. Parliament can legislate on all issues and can essentially change laws on their own accord. Unlike common law, sometimes referred to as case law, it is made by judges through the interpretation of judicial precedent. Therefore, to establish precedent (i.e., case law), judges are required to be heard.

Question 2

Define the following legal terms.

a. Judicial precedent

A legally binding doctrine, to which judges are required to follow the rationale of earlier cases in higher courts when the factual circumstances of the case are substantially the same.

b. Standard of proof

The degree of certainty required to prove a contested fact.

To the balance of probability — the party carrying the burden of proof.

Requirements process all lower (including the court in question)
c. Injunction

An order of the court requiring the defaulting party (herein

an wrongdoer (tort) to stop a harmful act.

d. Deterrence

One of the primary aims of punishment, irrespective of the

Penalties and Sentences Act 1992 — to deter members of society from committing crime.

Unconscionable conduct

The court will interfere to contracts where the party is plagued by special disadvantage and another at unfair, unconscionable disadvantage. Contracting parties with a mental illness or who are financially disadvantaged may not

founded by the contract on the basis of unconscionability -
Question 3

Describe the role of the jury in the criminal justice process.

Trial by jury is fundamental to many justice systems, and is one of the few constitutionally entrenched rights. The jury generally consists of 12 randomly selected jurors from the pool of eligible citizens eligible for jury service. In theory, the jury members represent a cross-section of society and will therefore make decisions consistent with societal concerns. (Cont. back page)

Question 4

List two defences which may be pleaded by a defendant in a negligence case.

Contributory negligence - apportionment of blame

Question 5

The Bail Act 1980 (Qld) regulates the operation of bail. Describe two circumstances in which bail would not be granted.

Where the accused is likely to interfere with witnesses or fail to return to court at the specified date and time.

Question 6

a. State two features of tribunals.
   1. Established for a specific purpose
   2. Do not have a permanent feature in the Australian legal system

b. Name a specific tribunal and describe its function.
   Queensland Civil Administrative Tribunal - deals with minor disputes (e.g., tenancy disputes) and has a maximum of $25,000 in civil claims
Question 7
For each of the following criminal situations, name the court in which the matter would be heard.

a. Jane Coleby is tried for armed robbery.
   District Court

   The High Court of Australia

Question 8
Describe one similarity and one difference between trespass and nuisance.

a. Similarity
   Both are defined as tortious actions and contained in the Summary Offences Act 2009 Qld.

b. Difference
   Namely, trespass overlaps with offences under Criminal Code. Nuisance is limited to tort law and offences relating to public order.

Question 9
a. Explain the principle of “duty of care” in the law of negligence.
   A duty of care was developed in the case of Donoghue v Stevenson 1932, and imposes a duty on all people to take reasonable care of one’s legal relations when engaging in unreasonable conduct.

b. Use an example to demonstrate how this principle might apply.
   There are well-established categories within a duty of care.
   Care is said to exist between doctors and health-care professionals, teachers and educators, and drivers of motor vehicles.

Therefore, a driver owes all other drivers, pedestrians, anyone otherwise reasonably foreseeable to be affected by their actions, a duty of care.

Question 10
List two rules in relation to “offer” in forming a contract.

1. An offer may be made to an individual, a class of people, and the world at large.

2. The offerer will expect the offer to be accepted within the time prescribed, or, where no time has been stated, within a reasonable time.

End of Part A
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

A fight erupts after two members of rival bikie gangs have a disagreement. One gang member, Sean, produces a knife and stabs Chris in the chest. Chris collapses and dies within minutes. Sean has previously been convicted of both assault and wounding as a result of gang-related crime. Evidence was presented in court that both Sean and Chris were under the influence of drugs at the time of the fight.

Your task

a. Analyse the above situation and determine which offence Sean will be charged with.
b. What defence, if any, could be offered by Sean?
c. If Sean was found guilty in court, determine a likely outcome for him. Give reasons for your response.

In accordance with s 302 of the Queensland Criminal Code, murder can be defined as the killing of another person unlawfully, with either an intention to kill or cause grievous bodily harm, or whilst in the execution of an unlawful purpose the accused did an act which was likely to endanger life and the victim died as a result of said act. As Sean repeatedly stabbed Chris in the chest, which directly caused his death, it can be seen that the first two requirements have been satisfied. When Sean drew the knife and proceeded to stab Chris, the element of intention is satisfied as a reasonable person would expect that such an act would either kill or do grievous bodily harm. Therefore on the balance of the facts, Sean is likely to be found guilty of murder.
Sean may enter a plea of provocation, however, to be successful in such a claim his actions would have to be that of a reasonable man in the position of Sean. The defence of intoxication is not applicable as the consumption of drugs would have to be unintentional/unknowing.

If Sean is found guilty of murder and the claim of provocation is unsuccessful, it is likely that the judge will sentence him to a mandatory period of life imprisonment – consistent with provisions in 5305 of the Queensland Criminal Code, taking into account his criminal history and his affiliation to the gang (which was an operating factor in the incident).

End of Question 1
Question 2 — Agreements

Nicole, who is 18 years of age, has a 7-year-old brother who is a fan of Harry Potter. While searching the internet, she finds a variety of Harry Potter lunchboxes and decides that she will buy one for him for his upcoming birthday. The seller is based in Queensland. She completes the payment over the internet and receives a lunchbox five days later through the post. Unfortunately, the lunchbox she receives shows a different Harry Potter scene and is of a different size to the one she specifically ordered.

Your task

a. Apply the law of contract to determine whether a valid contract had been formed between Nicole and the online seller.

b. Identify any legal grounds on which Nicole could avoid the contract. Justify your response.

c. If Nicole was successful, what remedy or remedies would be available?

A legally binding contract requires existence of three elements to prove by the plaintiff (commonly known as the plaintiff or plaintiff) on the balance of probabilities to the satisfaction of the judge in civil trial. These include:

- an intention to create legal relations, offer and acceptance, and consideration. As the agreement was neither social nor private in nature, and the seller can be described as being in the business of selling merchandise, an intention to create legal relations is present. Offer and acceptance occurs at the time the seller (the offeror) accepts Nicole's (the offeree) proposal to enter into a legally binding contract.

- Consideration: an exchange occurs. Nicole completes the transaction, paying (something of value) for the lunchbox. Therefore, all elements are satisfied, a valid contract exists.

Nicole may resist (separate to contract) the contract on the well-established grounds of ‘futile of genuine consent’, namely misrepresentation. Although not all representations made in the course of negotiations are regarded as terms of the contract — e.g. sales talk as the basis nature of the
Contract is altered by the product not being that which was specifically ordered, and therefore agreed.
The report is likely to found that the representative is in fact a term and therefore a failure to perform said term
is in breach of the contract.

If Nicole is successful, she is entitled to a full
- refund of the product, as well as special damages;
- to the exact monetary value of the product. She may
  additionally seek compensation for the legal costs of
  the suit.

*To be successful in a claim of damages, Nicole must
 prove that the damage arising from the breach was not too
 remote." In determining whether the damages are "too remote,"
the court will consider End of Question 2
whether: a) the damage arose naturally from the breach; and
b) they are an actual probable result of the breach.
Question 3 — Torts

Jonathan works part-time at a local pizza store while he is studying at university. On his way home from university, Jonathan calls in to see a friend of his and they each consume six stubbles of beer in two hours. He gets into his car and, when he is one kilometre from home, runs a red light and collides with another car that is exceeding the speed limit. As a result of the collision, the sole occupant of the other car, Tracey, is thrown from her vehicle and suffers severe spinal injuries.

Your task

a. Identify the tort which Tracey could bring before a civil court as a result of this accident.

b. What legal principles would she have to establish to be successful in this matter?

c. What defences, if any, could Jonathan argue in this case?

d. Would Tracey be likely to succeed? Justify your response.

Tracey may bring action against Jonathan in the tort of negligence.

The “Civil Liability Act 2003 (Qld)” requires the plaintiff, Tracey, to prove the existence of three elements. These include: a) that the defendant owed a duty of care to her; b) that the defendant breached that duty by failing to meet the necessary standard of care required; and c) that the plaintiff suffered damage as a result of said breach. In accordance with s 10(1) of the “Civil Liability Act 2003 (Qld), Tracey would need to prove on the balance of probabilities that: i) the risk was foreseeable; ii) the risk was not insignificant; and iii) that a reasonable person would have taken precautions to prevent the risk of harm.

Jonathan is entitled to advance the defence of “intentional tort or culpa iuris” or contributory negligence. However, on the facts, “voluntary assumption of risk” is more applicable. To be successful in this defence Jonathan must prove that Tracey: 1) knew the facts which brought up the danger (driving onto the road)
End of Question 3
Question 4 — The legal system

A District Court judge is dealing with a case involving Sam, a 28-year-old male accused of arson. The police allege that he set fire to a number of buildings including an office block, a small factory and a food outlet. He claims that he had not intended to commit arson. His workshop was in an industrial area and, when he was using some welding equipment, there was a fault which started a fire that spread to neighbouring properties. He did not contact emergency services immediately as he feared the consequences.

Your task

The following cases have been researched by the judge’s assistant. Identify which case would be considered as binding precedent by the judge. Explain the legal reasoning behind your decision and justify why the other cases would or would not be followed.

Case 1: R v Jess and Ben 2000 (District Court of Queensland)

Jess and Ben (both 18 years old at the time of the incident) appeared before the local District Court on a matter involving attempted arson of the local primary school. The facts presented indicated that the two had entered the school grounds after hours and were smoking in one of the sports sheds when flammable materials caught alight. The fire subsequently spread to the administration block. Neighbours saw the smoke and alerted emergency services in time to save the other buildings. The judge stated that, despite his belief that Jess and Ben had not intended to start a fire, their action indicated gross recklessness and the protection of public buildings was everyone’s responsibility.

Case 2: R v Rory and Kelsey 1996 (District Court of Queensland)

Rory and Kelsey (both in their early 20s) lived on the streets and sought shelter in a picnic shed. It was a cold night and they decided to light a small fire in a container which they found inside the shelter. Unfortunately, the building caught alight and the fire spread to a nearby toilet block and maintenance shed. All the buildings burnt to the ground and Rory and Kelsey were charged with arson in the District Court. Both suffered serious burns in the incident.

Case 3: R v Jordan 2006 (Queensland Supreme Court)

Jordan runs away from members of a gang who have been chasing him through a park which is next to the local high school. He is heavily under the influence of amphetamines at the time. In an attempt to protect himself from those chasing him, he sets fire to some bushes at the entrance to the park and some embers spread to the nearby high school. Several wings of the school are destroyed. He appeared before the Supreme Court on arson offences but claims he had not intended to cause any damage to buildings — he was simply trying to protect himself.

In accordance with the principle of stare decisis (doctrines of precedent), the ratio decidendi of judge in a higher and equal standing court is binding on all inferior courts. Therefore, all cases listed above lend the ability to form binding precedent on the District Court. However, the ratio decidendi reasons for deciding, provided in the case of R v Jess and Ben 2000,
is likely to be held in the case of "L v Sam," as... 
...there decisions require. First the factual circumstances of the case are materially the same. Therefore the judge is likely to distinguish between the cases 2 and 3 on the basis that the facts are not substantially the same. In case 2, the defendant's lighting and spreading of fire was unintentional, however, in uploading the ratio decision of case 1, the judge would find both parties guilty of arson. Case 3 will not set any binding precedent as the case has merely followed the precedent set in case 1 – where although the arson was not intended, the defendant's actions were grossly reckless and the protection of public buildings is the responsibility of everyone.

Therefore, given that the facts of Sam's case are materially the same to that of the case involving theory and belief, the judge is likely to find Sam guilty of the offence of arson. In addition, the Queensland Criminal Code requires the existence of the following elements: wilfully; unlawfully; set fire to things; such as building...
Question 5 — Torts

Justin Kim owns a popular Korean restaurant. A food critic for the local newspaper visits the restaurant and writes a review of the food that includes the comments, “not authentic, tasteless and clearly not fresh”. These comments cause a significant reduction in trade over the following weeks. Justin sues the journalist and the newspaper’s owners for defamation.

Your task

a. Explain what elements would need to be established by Justin.

b. Decide what defence the journalist and the newspaper’s owners are likely to use.

c. Taking into account your responses to a and b above, determine whether Justin would be successful. Justify your decision.

2. Defamatory material, constituting an:  
   a. Imputation of middle-class or professional status, creating a criminal, lacking in principle.
   b. Imputation of middle-class or professional status, directly (eg. personally named) or indirectly, in which a reasonable person would be capable of believing it
   c. Imputation of middle-class or professional status, directly (eg. personally named) or indirectly, in which a reasonable person would be capable of believing it
   d. Imputation of middle-class or professional status, directly (eg. personally named) or indirectly, in which a reasonable person would be capable of believing it

There are three defences available to a claim of defamation:

1. Justification: honest opinion and privilege.
   However, the defence of honest opinion is not applicable to the journalist and the newspaper owners. Provided the defendant’s actions were based on fact and were not fabricated or motivated by mala fide, the defence will
As the good critic is entitled to his or her opinion, and the comments made were not unreasonable for that of a good critic, the defence of honest opinion will absolve the defendant from all legal action. Justice is likely to be ordered to pay the plaintiff all monetary damages, in order to compensate them for the legal costs of the suit.

End of Question 5

End of Part B

End of Paper One

That 2.) damaged the plaintiff’s personal reputation; 3.) damaged the plaintiff’s trust in business or profession; or 4.) caused others to ridicule or avoid the plaintiff.
PART ONE: The jury is often referred to as the 'impartial fact-finders' of the trial. Their impartiality is essential, therefore the Jury Act 1995(Act 1) requires any juror to believe they will show bias, or have a vested interest in the case, to renounce themselves immediately. The judge decide questions of fact, whereas the judge decide questions of law.
In Australia, the legislation that guides the right to marry is the Marriage Act (1961) (Cth). The act sets out the definition of marriage as well as whom is eligible to marry, with other things. Australia’s current marriage legislation does not cater for the diversity of its society. This can be seen through an analysis of the Marriage Act, failed attempts at changing legislation, and societal changing attitudes toward same-sex marriage.

According to the Marriage Act, a person in Australia is free to marry if they are: of marriageable age, that is of 18 years or older (s.11); not already married to someone else (s.14); not in a prohibited relationship (s.23); and genuinely consenting (s.23). Although Australia is a western country, people from many different cultures and backgrounds live here, whom recognize

marriage, monogamy, and premarital sex as normal. Some cultures also strongly believe in forced marriage. Australian law does not recognize marriages entered into in that country or outside the same-sex marriage until last year. In the past, few years...

Section 5(1) of the Marriage Act provides a definition of marriage, ‘the union of a man and a woman to the exclusion of all others voluntarily entered into for life.’
The current legislation needs to be reviewed and revised. Both the government and the employer 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 OHS laws, they have nothing to worry about. Employees though, potentially have a
Part/Section  1  Question  1  Marriage

The most contentious part of this definition is the part specifying ‘a man and a woman’. It is these few words in the definition that has stopped same-sex marriage being legalised in Australia. In fact, as recently as July 2013, England, France and even New Zealand have recognised the right to same-sex marriage. Rodney Crooms, Australia’s National Director on Marriage Equality, when asked about New Zealand legalising same-sex marriage argues that Australian Gays and Lesbians would spend over $100 million on marriage if they were allowed. The Australian economy and government would directly benefit from legalising same-sex marriage.

It is clear that societal values and beliefs towards same-sex marriage are changing from shaming homosexuals many years ago to the acceptance of their right to marry, and legislation needs to keep in time with changing society. In 2012, a Bill was proposed to parliament by Adam Bandt (Green), Mr. Andrew Wilkie (Independent), and Mr. Steven Jones (Labor) to try to change the words ‘a man and a woman’ to ‘of two people, regardless of their sex, sexual orientation or gender identity.’ Unfortunately, this Bill was not passed. There are many other indications that the majority of Australians support same-sex marriage, such as a Galaxy poll taken from 2009–2012 stated that 64% of respondents believed same-sex couples should have the right to marry.
Some sex marriage is supported by the majority of Australians and our legislation should reflect that. Amendments are needed to be urgently made to The Marriage Act (1961), (cit) so to stop excluding large parts of the community wishing to marry. The words 'a man and a woman' should be amended to 'of two people' or something more similar to the Bill that attempted to be passed in 2012.

An Australian society has left the law behind when it comes to attitudes towards same sex marriage. The law should aim to represent as many values as it can, and it is obvious that on the subject of same sex marriage legislation needs to catch up, with many countries having legalised it years ago. Current Australian legislation on marriage does not cater for all of the country's diversity and needs to be amended.
The question as to whether Australia needs a Bill of Rights is not a new one. For many years people have argued whether we should protect our fundamental rights in a document, while some argue to write them down is to take them away. Australia does not need to introduce a Bill of Rights; however a Charter of Rights may be more adequate to protect the rights of minorities groups such as asylum seekers, the disabled and the elderly.

One of the most potent arguments on introducing a Bill of Rights to Australia is the fact that Australia is the only democracy without one. Is it because Australians have no rights? No, rather it is that Australians feel safe and secure with their rights. Many don’t see the need for legislation to protect them. Whereas in democracies like the United States, where there is a larger population, more corruption and less chance to get your voice heard, the Bill of Rights can be a very important document that ensures equality of rights to all citizens.

A Bill of Rights has its disadvantages. One of the greatest disadvantages comes from the fact that a Bill of Rights is federal legislation, it belongs in the constitution. This doesn’t cause a disadvantage until something needs to be changed, because the only legal way to change something in the constitution is with a referendum. Referendums are a very lengthy process, Australia does not need to introduce a Bill of Rights, however a Charter...
Part/Section 3  Question 2

...of rights may be more accepted and useful...

Although Australian rights, freedom, and human freedom... from arbitrary detention, freedom of expression, and speech... can be found in many common law principles, this

is not to say that they are protected. New laws such as the new counter-terrorism laws that have been introduced since 2001 directly infringe on freedoms such as the ones mentioned. Legislation governing asylum seekers includes mandatory detention, meaning even unaccompanied children can be detained for years. A Charter of Rights is similar to a Bill of Rights, the difference being it is legislation and not part of the constitution. If it needs to be changed a parliamentary bill can bring about change without a referendum. A Charter of Rights would be hugely beneficial for all people wishing to have their rights protected, as well as minority groups such as asylum seekers, children and the elderly. A Charter of Rights should be introduced in Queensland to ensure our rights are protected and not infringed upon.

Australia does not need to introduce a Bill of Rights... Australians already feel secure in their rights, a Bill of Rights is a federal legislation reading a referendum to change anything and a Charter of rights would be more advantageous to the community, its people and all minorities. A Charter of rights should be introduced into Queensland legislation.
SPORT

When disputes arise in sport, there are a number of different organisations that seek to resolve the issues. The Court of Arbitration of Sport (CAS) is the leading tribunal in Australia that deals with sport conflicts, as well as this, the Australian Sports Anti-Doping Agency lead the way in in and out of competition doping testing, and are Australia’s peak anti-doping authority. These organisations along with the traditional Court System attempt to resolve disputes in Australian sport.

The Court of Arbitration of Sport was set up in 1984 by the International Olympic Committee (IOC) to settle disputes involving Olympic sport. Although its head quarters are in Lausanne, Switzerland, two decentralised courts have been established, one in New York, and one in Sydney. CAS is a dispute resolution forum offering both services of Arbitration and Mediation. The role is to settle disputes using Arbitration and mediation, provided by panels, which are made up of international arbitrators. CAS effectively handles disputes between parties, although a CAS decision is strictly not binding, typically both parties to a dispute agree to comply with what ever is decided by CAS, and CAS, will not assume jurisdiction over the matter in dispute, until this agreement has been signed. The Jurisdiction of the Court of Arbitration of Sport includes breaches of contract, between athletes and clubs, contractual disputes between athletes and managers, disputes about collective agreements, etc.
Part/Section 2 Question 2

The Australian Sports Anti-Doping Agency (ASADA) is Australia’s peak anti-doping authority. In recent years, ASADA has conducted extensive testing both in and out of competition on athletes. In 2007, it resolved to freeze samples taken from athletes in a storage facility (known as The Tank). So that these samples can be tested when new scientific methods are discovered to test for drugs previously unable to be tested. ASADA may choose to store samples for up to 10 years, and share their intelligence with the Customs Service and the Australian Federal Police. The Australian Sports Anti-Doping Agency has even been known to cross reference athletes’ names with prescription records from Medicare to establish if they are taking prohibited drugs.

ASADA is also responsible for preventing cases at tribunals against athletes and any support personnel found in breach of the World Anti-Doping Agency (WADA) Code.

The traditional court system also plays a role in dispute resolution in the sporting community. There are a number of disputes that can arise in the sporting arena and have the potential to go to court. Disputes such as a breach of contract, a complaint about racial abuse under the Racial Discrimination Act 1975 (Cth), a breach of restraint of trade or a complaint made to the police leading to a criminal charge. A court will also step in if a tribunal is found to not follow the rules of natural justice. Sporting bodies can set up their own systems to administer their rules as long as they do not attempt to exclude the jurisdiction of the court.

Good
Although the Court of Arbitration of Sport and the Australian Sports Anti-Doping Agency are extensive in there dispute resolution and testing improvement is always needed. Organisations should follow ASADA's example of more extensive testing of prohibited substances, more severe penalties for offenders, and to increase the education on, dopeing and dispute resolution in all sporting communities. With the increase in commercialisation in sport, a cry for education and factual knowledge among sporting bodies is evident.

When conflicts arise in sport, there are many different organisation that seek to resolve the dispute. The Australian Sports Anti-Doping Agency and the Court of Arbitration of Sport both effectively provide an alternative solutions to resolve a dispute outside the traditional court system. With minor changes and continued review of all systems, Australia's sporting community will continue to improve and be able to peacefully resolve disputes.
are made to accommodate a particular individual’s unique circumstances—hoping to ensure that justice is always served. Any future cases where the new common law is applied should only be upon 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 and 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 those who enter it. As legislation can be influenced by society and our ever-changing and evolving values, it is probably the greater enabler of real change in modern day Australia.