Legal Studies

2014 Senior External Examination: Assessment report

Statistics

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General comments

Candidates generally performed better in Paper One than Paper Two. Three candidates failed to complete all or most of Paper Two.

Paper One

Candidates responded well to the short response questions in Part A, which required accurate and comprehensive information about key concepts. Many were also able to provide effective examples.

In Part B, most candidates identified the relevant issues. However, fewer candidates were able to apply the legal principles and demonstrate a wide range of legal responses. Although candidates were required to respond to at least two subquestions in each case study in up to 300 words, they often used only about 100 words.

Prospective candidates are encouraged to make better use of this opportunity in order to provide evidence of the higher criteria descriptors in Knowledge and understanding and Investigation. Key words such as ‘remedy’ were sometimes misunderstood by candidates so they were unable to fully respond to one of the subquestions. A number of candidates were not familiar with torts other than negligence, even though this was one of the prescribed topics. Most candidates demonstrated generally satisfactory communication skills.

Paper Two

It was evident that most candidates had prepared well for the Part A Section 2 questions where research material is allowed into the examination room. Responses to this section were
considerably better than those in other sections. However, it was noted that several candidates wrote the same responses almost verbatim. Few candidates were close to the 600-word length.

Regardless of which essay topic candidates choose, the relevant law should always be identified early in responses. It is also good practice to include the year and jurisdiction of any statutes. The opening paragraph should not simply repeat the stem of the essay question. A good start would be to name the law and state the relevant issues.

Candidates sometimes discussed social or economic issues rather than legal issues relating to a question. For example, a number of candidates discussed the recent Brisbane flood in response to the insurance question. However, they did not relate this to insurance law and focused only on the social or economic problems of those who suffered insurance losses. In approaching essay questions, prospective candidates should be encouraged to critically review the impact of the law on stakeholders, draw conclusions and make recommendations for action.

To prepare for Paper Two, they should create their own mind map summary of where the inequities are in the legal system in relation to all of their prescribed units. In practice essays, candidates should follow the guidelines stated above. At all times candidates should present legal arguments and avoid personal views. Guiding candidates to write in the third person can help this process. Essay responses require paragraphing and an introduction and a conclusion. Finally, all legal terms should be spelt accurately.

In summary, to demonstrate higher levels of the criteria, candidates should be familiar with specific legislation, write to the expected word length and always consider whether the law attempts to achieve just, fair and equitable outcomes to the issues raised.

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: 60 minutes.

Question 1
State one difference between ratio decidendi and obiter dicta.

The ratio decidendi is the legally binding reason for the decision in the doctrine of precedent whereas, obiter dicta are not legally binding, sideline or extraneous commentary — however it may be persuasive on other cases.

Question 2
Define the following legal terms:

a. Separation of powers
   The separation of powers is a doctrine that aims to successfully separate the legislative, executive and judicial powers to avoid one sector holding too much power over the others.

b. Defamation
   Defamation is a tort that arises when one party makes and publishes a statement or claim that will lower the defamed person's reputation.

c. Exemption clause
   An exemption clause is a clause that legally excludes someone/something from doing a specific action e.g. sky-diving exempt from liability of certain injuries common to sky-diving.

d. Committal hearing
   A committal hearing decides if there is substantial evidence to continue to trial. It establishes a prima facie case/evidence.

e. Injunction
   An injunction is a legally enforceable court order that prevents someone from continuing the wrong act they're doing.
Question 3

Describe two defences which may be used in a negligence matter.

- Volenti non fit injuria
- Contributory negligence

Question 4

a. Distinguish between oral and real evidence as presented in court.

- Oral evidence: as presented in court is spoken evidence.
- Real evidence: can be seen in pictures, videos, or other.

b. Provide an example of each.

- An example of oral evidence is the evidence given by a witness to a crime, while on the stand.
- An example of real evidence could be hard copy reports of DNA matching to a gun used to kill someone or a video of someone assaulting another person.

Question 5

Name two theories of punishment and explain the purpose of each.

- Retribution
- Deterrence, punishment and prevention

Deterrence aims to prevent the offender and other persons from committing or re-offending a crime.

- Rehabilitation aims to rehabilitate and help the offender during the punishment to ensure they won’t re-offend.

Question 6

State two differences between the Magistrates Court and the Supreme Court.

1. The Magistrates Court deals with claims up to $150,000, whereas the Supreme Court deals with claims over $250,000.

2. The Magistrates Court does not have an appellate jurisdiction, whereas the Supreme Court does (Supreme Court of Appeal).
Question 7

‘Contracts are never enforced against minors or infants’. Do you agree with this statement? Justify your response.

- No, contracts can be enforced against minors or infants if they are in a contract for necessity. Generally, a minor infant is incapable of entering into a lawful contract as they lack the legal capacity to do so until they reach the age of 18. However, a minor can enter into a contract if it is for necessity to maintain a certain standard of living, which then can be enforced.

Question 8

Explain one remedy available in contract law. Give an example of how it might be used.

- One remedy available in contract law is damages. E.g. If Mary buys a $2000 bicycle from Jane and it is faulty, which results in Mary breaking her leg, then damages will be awarded to Mary in the form of monetary compensation for the expense of the bike and any excess medical expenses, loss of income resulting from the faulty bicycle.

Question 9

a. List four defences which could be used by a defendant in a criminal matter.

- Four defences that can be used by a defendant in a criminal matter are: intoxication, mistake of fact, insanity and extraordinary emergency.

b. Provide an example of how one defence might be used to defend a charge of assault.

- Intoxication, if not self-administered, could be used to defend an assault charge by stating that the accused mind was altered (to an extent) that they did not have the capacity to control their actions.

Question 10

State two rules which must be followed by police when making an arrest.

1) Police must inform the person why they are being arrested.
2) Police must have a warrant for an arrest unless there are circumstances that permit arrest without a warrant.

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: 90 minutes.

Question 1 — Crime and society

Sam and Peter are both 17 years of age, unemployed and have a history of minor crimes including destruction of property and public drunkenness. They decide to break into a corner store late one evening and obtain access by breaking a side window. An alarm is activated. This alerts a security company, which immediately notifies the police. Sam and Peter are apprehended while running from the scene.

Your task

a. Analyse the above situation and determine which offence Sam and Peter will be charged with.

b. If Sam and Peter were convicted of this offence, determine a potential sentence. Give reasons for your decision.

The most pertinent charge that Sam and Peter will be charged with on this occasion is burglary. (Also referred to as break and enter.) Burglary is the act of breaking into a place — in this case, a corner store — with the intent to commit an indictable offence.

Sam and Peter are seventeen years of age in Queensland, that means that they are adults and will be tried as such. The penalty for burglary is a maximum of 16 years imprisonment. The penalty goes up to this lengthy period if the offence is committed by more than one person. In this case, it is committed by two people.

The charge for burglary also goes up if the crime takes place at night. In cases, R v. Sam and R v. Peter, the crime took place late one evening, which would constitute a higher penalty.
The sentence can also be increased if a weapon was used, the window may have been smashed using a weapon, but there is no evidence presented to prove this.

If Sam and Peter are convicted of this offence, they may receive significant jail time despite jail time being the courts last resort due to the multiple offenders, the time it took place and the possibility that a weapon was used.

Upon sentencing, however, many things can be taken into consideration by the judge; so this would be heard in the District or Supreme Court. Albert, small time, they do have a history of minor offences, and a history of committing crimes so a strict penalty could be administered as a deterrent. This young age would also be taken into consideration which could lead to a reduction in sentencing.

End of Question 1
Question 2 — Agreements

Justine has just purchased her first home unit. She decides to re-carpet the unit and visits Highgrove Carpets to make a selection. The salesperson provides a number of samples which Justine eventually returns and confirms a final order by making a deposit. After the carpet was installed, Justine realised that it did not match the sample. After complaining to Highgrove, they explain that 'you need to expect some variation from the small sample.' She is also told that she needs to make the final payment.

Your task

Using common law principles:

✓ Apply the law of contract to determine how a valid contract was formed between Justine and Highgrove Carpets.

✓ Identify any legal grounds on which Justine could avoid the contract. Give reasons.

✓ If Justine was successful, what remedy or remedies would be available?

a) A contract is a legally binding agreement between two or more parties. For a contract to be

✓ legally binding, the three elements that must be present are: intention to create legal relations, offer and

✓ acceptance, and consideration. Intention to create

✓ legal relations is fulfilled as Highgrove is a shop that

✓ therefore wishes to create business relations with its customers.

✓ offer and acceptance: The salesperson offers Justine a

✓ selection of carpet samples to make her selection.

✓ from, or in which Justine then fulfills acceptance by choosing

✓ one and paying the consideration (or monetary value) to be

✓ exchanged. The consideration is satisfied in the

✓ form of a deposit, with the establishment of a payment

✓ plan to complete the consideration. As all the elements

✓ of contract law have been satisfied, a valid contract

✓ exists between Justine and Highgrove Carpets.

b) As the sample carpet differed from the colour

✓ of the carpet installed in Justine's home, a condition

✓ of the contract has been broken by innocent misrepresentation,

✓ allowing Justine to be able to avoid the contract. As
Highgrove Carpets did not establish at the beginning of the contract during the offer that there should be an expectation of variety in colour, a condition of the contract has been misrepresented. Highgrove has innocently misrepresented the variation of sample to installation batches, thus allowing Jutine to avoid the contract.

c) If Jutine was successful the remedies available to her are Damages and Injunction. It is likely that Jutine would seek Damages in the form of monetary value to compensate her for the loss of the expenses of the carpet. It would be likely that Highgrove Carpets would be legally bound by the Court to compensate Jutine for the expenses of the carpet and any extra expenses to remove and replace that carpet installed.

End of Question 2

Onus of proof - Plaintiff
Standard of proof - Civil
Cost time limitations - by 15 yrs where personal injury.
Question 3 — Torts

The Rezvani family live in a street which borders a golf course. On purchasing their home, they were aware that there may be occasional golf balls landing over the fence. However, on average 10 golf balls per week end up on their property. One day, Mrs Rezvani is hit by a golf ball while she is gardening.

Your task

✓ Identify which tort (other than negligence) could be used to take this matter to court.
✓ What legal principles would Mrs Rezvani have to establish to be successful in this matter?
✓ Determine whether Mrs Rezvani is likely to be successful.

a) Private Nuisance — where there is an interference to a person's use and enjoyment of their land, and the interference is unreasonable and substantial.

b) Mrs Rezvani would have to establish the nature, frequency, duration, intensity, locality, and motivation of the interference to be successful with private nuisance.

Issue: Interference of golf ball of Mrs Rezvani's land.

Rule: interference of use and enjoyment must be unreasonable and substantial.

Application: Nature — the nature of the nuisance is... the golf balls landing on the property and even being hit by them.

Frequency — the frequency of the nuisance is an average of 10 golf balls per week end up on their property.

Duration — the duration is weekly per year (assumed).

Intensity — golf balls flying into the backyard with any warning, could possibly be at high speed as well.

Locality — landing on her property during the day.

Motivation — the motivation is not malicious but rather an unfortunate and unreasonable side effect of living near a golf course.

Conclusion: Mrs Rezvani is suffering from private nuisance that is substantial and unreasonable.
c). If Mrs. Rezvani can establish the legal principles to show the nuisance of Golf Balls landing in her yard is unreasonable and substantial, she would be likely to succeed. The likely outcome if it was taken to court would be damages in the form of monetary compensation for the nuisance of having to clear and return the balls or a court order for the Golf Course to put up fences surrounding the border that is high enough to stop the golf balls (or a large majority of them landing in Mrs. Rezvani’s property).

End of Question 3

Good application

A + A
Question 4 — The legal system

A District Court judge is dealing with a case involving Lucy, a 25-year-old full-time lifeguard accused of dangerous operation of a motor vehicle causing grievous bodily harm. It is alleged that while operating a patrol vehicle on a popular beach she caused serious ongoing injuries to Bill, who was sunbathing. A number of witnesses stated that she was driving at excessive speed at the time of the accident. Lucy claimed that she received a report about a person suffering a heart attack and was rushing to assist. Her evidence was verified from recorded phone messages.

Your task

The following cases have been researched by the judge's assistant. Identify the ratio decidendi in each case and determine which one could be used as binding precedent by the judge. Explain the legal reasoning behind your decision and why the other cases would not be followed.

Case 1: R v Louis 2003 (Queensland Supreme Court)

Louis was driving a petrol tanker along a country road when he overtook a smaller vehicle and misjudged the distance between his vehicle and an oncoming one. As a result, he collided with the oncoming vehicle. The driver was seriously injured and died several days later. Louis, who was an experienced driver, claimed that the deceased driver must have been speeding at the time. He was charged with manslaughter.

Case 2: R v Brooke 1995 (District Court of Queensland)

Brooke was driving home after working an evening shift. On turning slowly into her property, she felt a thump. She stopped her vehicle, got out to investigate and saw a person in dark clothing lying on the pavement. She had obviously run over someone. Brooke immediately called emergency services, who arrived promptly. The victim suffered a permanent disabling injury to his hip. Brooke was charged with dangerous operation of a motor vehicle causing grievous bodily harm. Evidence was presented that the victim had been drinking heavily and had passed out on the footpath as he was walking home from a nearby tavern. Traffic camera evidence from a street near her home showed Brooke's car travelling without headlights on.

Case 3: R v Charlie 1980 (District Court of Queensland)

Charlie was employed as a contractor to clear land beside a highway. As he was clearing some fallen tree trunks early one morning, he disturbed two hitchhikers who had camped among the trees during the night. Some of the timber in the load he was hauling fell on one of the hitchhikers, causing severe head injuries. Charlie contacted emergency services immediately. He was later charged with dangerous operation of a motor vehicle causing grievous bodily harm.

...The doctrine of precedent (also known as stare decisis), is the principle that judges in future cases must decide the same (issue, case, point, etc) as the decision of the past cases. This is the decision of the past cases to future ingress.

...The ratio decidendi in case A is that Louis...
... an experienced driver was charged with manslaughter for colliding with an oncoming car, the victim dying as a result.

In Case 2, the ratio decided is that Brooke, who has been travelling without holding his on, and hit a pedestrian, was charged with dangerous operation of a vehicle causing grievous bodily harm. In Case 3, a contractor to clear land caused severe head injuries by dropping timber from his haul onto a hitchhiker, and he was later charged with dangerous operation of a vehicle causing grievous bodily harm.

Although all of the facts in the cases are substantially similar to the facts of RV Lucy, Case 1, (RV Louis) would be legally binding to the judge as it is in a higher court—Supreme Court—earlier in the court hierarchy, and judges of lower courts are bound to follow the decisions of higher courts where the facts are substantially the same. Although the judge is legally bound to follow the decision of "RV Louis", the cases of RV Brooke and RV Centre will still be persuasive to the decision of the court. As the facts of the cases are also materially the same as those of "RV Lucy", it is likely that the judge would find Lucy guilty of dangerous operation of a motor vehicle causing grievous bodily harm. The decision of "RV Louis" binds that conclusion, and the facts of the other grievous bodily harm caused are... persuasive on the facts are... materially the same.

End of Question 4
Question 5 — Torts

Dr Lisa Martens is an eye specialist. A patient, Sean, suffers an unusual bleed while she is carrying out a routine procedure to remove a cataract. As a result, Sean loses 30% vision in the affected eye. Sean discovers that Dr Martens may have been distracted by a tray of surgical instruments that dropped to the floor during the procedure. Sean decides to sue Dr Martens.

Your task

a. Identify which tort Sean would bring against Dr Martens. What elements would need to be proven by Sean?

b. What defence is likely to be used by Dr Martens?

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

a) Sean would bring a tort of negligence against Dr Martens.
   To prove a claim of negligence, the three elements that need to be satisfied are: 1. Duty of Care, 2. Breach of Duty of Care and 3. Damage caused by Breach of Duty of Care.

1. Duty of Care
   A duty of care is owed to our legal neighbour (someone who can be reasonably foreseen to be affected by your actions) — Donoghue v Stevenson. As a Dr. as a doctor, is a doctor, and Sean is a patient, there is an established duty of care for Dr. Martens to take reasonable care (to the extent of a doctor) for Sean. Thus, there is a duty of care owed by Dr. Martens to Sean.

2. Breach of Duty of Care

   To establish if there has been a breach, sections of the Civil Liabilities Act are assessed:
   - Reasonably foreseeable - it was reasonably foreseeable for Sean to be able to be injured by the medical procedure.
   - Not insignificant - the risk to Sean’s health is not insignificant, as it resulted in a 30% loss of his vision.
   - Likely precautions - to establish the likely precautions that we must be establish.
Risks of harm to Sean

1. Likelihood of harm - If care is not taken by Dr. Marken, the likely seriousness of harm could result in death.

2. Burden of taking precautions - The burden of taking precautions on Dr. Marken, as a Doctor, is low as she is assumed to have the competence of a reasonable eye specialist.

3. Likelihood of Harm - As it is a medical procedure, there is a probability of harm that could occur to Sean. Therefore, there has been a breach of duty of care by Dr. Marken to Sean.

End of Question 5

End of Part B

End of Paper One

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P. T. O
b) The defences available to Dr. Martin are Volenti Non Fit Injuria (Voluntary Assumption of Risk) and Contributory Negligence. Dr. Martin is likely to use the defence of Voluntary Assumption of Risk and attempt to prove that Sean voluntarily assumed the risk of injury by undergoing the procedure, like any other medical procedure.

c) If Sean as the plaintiff can prove that it was the negligent action of Dr. Martin that directly caused the damage to his eye, it would be likely that Sean would be successful in his case. Sean would be successful on it was the direct negligent action of Dr. Martin failing to adequately fulfill her duty of care owed to Sean as a doctor. The remedy available and most likely to be used would be damages in the form of monetary compensation for any loss of work and medical expenses. Sean has to pay because of his vision impairment.

Standard of Proof - Civil Court, "on the balance of probabilities."

Time Limitation - 6 years for physical injury.
The Australian Fair Work Act 2009 (Cwlth) is a delicate balance of protecting both the employees and employers. The current laws surrounding the Fair Work Act 2009 (Cwlth) have been thoroughly processed and passed to try to ensure the best and most fair outcome for both parties. Employees and employers fall into two categories: the Modern Awards and Enterprise Agreements.

Modern Awards govern people that are majority of the population. People employed by franchises, chain stores, hospitality, medical practitioners and many more industries. Anyone under the Modern Awards works for a company or organisation. Those who are under the Enterprise Agreements are typically self-employed, contracted workers or temporary/seasonal employees. Industries such as trades or farming are commonly among the Enterprise Agreement.

The Fair Work Act 2009 (Cwlth) breaks into these two sections to better suit employees and employers. Particular needs without the Modern Awards and Enterprise Agreements Australia's workforce would be bundled into one whole group, forced to regulate their
rules of employment by the same set of guidelines and boundaries. This would simply create an unbalanced system where employees or employers would be ripped off or put at unfair advantage. As it stands the separation of employment enables Fair Work to enforce specific rules particular to their the needs and conditions of particular industries.

Although the Fair Work Act 2009 (Cth.) does an extensive job at fairly managing employees and employers, there will always be room for improvement. Change is needed and predominantly felt by the Australian workforce in the area of Dismissals and Award Wages.

Dismissals is always a touchy topic because in every case there is always someone losing. In particular industries such as Hospitality, it can be difficult to dismiss an employee due to regulations and laws under the Fair Work Act 2009 (Cth.). When an employee is being purposely negligent or lazy, there are particular steps an employer has to take before being able to fire them; if the employee is aware of their rights they sometimes use them against the employer.
A better process should be put in place to dismiss a deliberately lazy or damaging employee. Perhaps an exempt clause can be brought in and instead a manager or business owner having to report incidents, circumstances, fellow employees who witness the behaviour could sign-off on that person being deliberately poor in their word duties. This could speed up the process, and while maintaining good business for the employer, it would also encourage better work ethic and enable positions to be taken by those truly willing to fulfill their duties.

Another hot topic is award wages. Although Australia is one of the highest paid employees internationally, we are also one of the highest living costs internationally. As the economy changes and Australia grows we are seeing rising taxes and rising living costs. Massive companies capitalising and gaining monopoly by slowly increasing the average living cost is beginning to take its toll on the Australian workforce. Australia is seeing constant strikes and lobbying against the unbalance of employers and employees. Although some companies pay above award wages, there is a large majority of people on, in honest.
Jobs not being able to live reasonably and maintain good credit. Occasionally new laws are passed and amend the current award wage; however, it is not at an accurate or up-to-date speed as the living costs. It's time the employers who are gaining mass profits and monopolising assets started allowing their employees to live more affordably and fairly.

Australia's Fair Work Act 2009 (with) does do a great effort at maintaining fair work practices and laws. Although, there are always cracks in the system, and it's about time they were fixed. In conclusion, Australia's laws and agreements do a good job at governing our workforce.
The Australian Securities and Investments Commission, a wide organisation that is in place to ensure and regulate company and financial services, laws to protect consumers, investors and collectors. The legislative protections they have in place to protect against unfair practices are: National Consumer Credit Protection Act 2009 (Cwlth), The Competition and Consumer Act 2010 (Cwlth), the Sale of Goods Act 1896 (Qld) and the Fair Trading Act 1989 (Qld).

These legislations have been put in place delicately with thorough thought and consideration for both traders and consumers. In such intricate systems, there is an ever-changing balance needed to maintain the best outcome for both parties (traders and consumers). You can see this balance just by closely examining the legislations.

The National Consumer Credit Protection Act 2009 (Cwlth) has been placed in the system to regulate and ensure everyone who provides or associates themselves with credit activity are nationally accredited and recognised. This legislation helps traders to understand their
duties as creditors and gives them the confidence to know that what they are doing is perfectly legal or not. This legislation protects consumers by making sure any organisation or individual offering a credit service is nationally recognised and acting in a fair business manner, not just in a manner for personal gain.

The National Consumer Credit Protection Act 2009 (with) covers things such as home loans, personal loans, overdrafts and credit cards, however, they do not cover car yards, business loans, pawnbroker deals, insurance premiums and retail stores. Because these industries or circumstances are exempt from the legislation it can cause an unfair balance and may put the trader in a better position over the consumer; this is not a good balance of rights.

The Fair Trading Act 1989 (Old) is implemented in the system to create a fairer and safer Queensland and increases business and consumer confidence by protecting consumers and businesses against unethical behaviour. To make sure both the traders
and consumers are covered fairly there are numerous steps the Fair Trading Act enforces to maintain the balance. Some of these are the nine consumer guarantees granted to a consumer in a purchase and required by the trader. Although it sometimes sounds like the consumer has more protection than traders it works in a positive for the trader as well. By placing strict protection around the consumer it gives the trader a more precise guideline to follow which in turn creates great confidence for the Trader to act legally.

Along with strict safety standards there is also the power of Ministerial Prohibitions. This is when a product has a reoccurring fault or risk associated with it the Minister is able to place a ban on that product until it is redesigned and retested. This policy ensures the safety of consumers as traders continually produce new products.

The Fair Trading Act covers any purchase made for home goods or personal use under the amount of $40,000, this also includes vehicles/trailers. Unfortunately it doesn’t cover purchases made before
January the 1st 2011 as they fall under a different legislation. It also doesn't cover purchases made as a one-off, auctions, re-sale supplies or products that are able to be repaired or transformed to another product.

Two major circumstances that take away the fair balance of consumers and traders are when the goods is unsolicited they are not included (this is seen as a positive imbalance) and dealers can apply for exemptions and create contracts that are exempt from parts of the legislation (this is seen as a negative imbalance particularly to consumers).

In conclusion the Australian Securities and Investments Commission is a powerful piece of legislation and covers a wide range of avenues. They do a fair job at keeping traders and consumers balanced but perhaps should work on filling in the gaps and grey areas where exemptions and particular industries have clear advantages on consumers.
To compare the Australian court system with European courts, it feels a great deal odd to the common Australian. Both court systems, although unique, get the job done, but which system would be considered the better approach?

In Australia, the court system is adversarial, meaning each party presents testimonies and evidence in their favour, they oppose and argue the evidence of the opposing party and the decision is made by a judge or a jury. This system works for the Australian system, but like every system, there is always strengths and most certainly always weaknesses.

Some of the strengths of Australia’s adversarial system is that you have the choice of having your own representative or a court appointed one. This choice enables those with the finances to choose the best possible lawyer for their case and give themselves the highest chance of winning their case. It’s also beneficial to those who can’t afford a lawyer to get a government funded-appointed representative.
By separating the representative (lawyer) who investigates the case and the judge or jury who decides the case, it can separate any concern of emotional attachment and biased decision making. A judge or jury are not allowed to know the people involved in the case and therefore prevents unwanted pre-judgments, assumptions or biased opinions (ideally).

The flip side to these positives are some strong negatives. In relation to the chance to choose your representative, it can create a corrupt system. Cases have been known to be unfair when a person who is significantly more wealthy than the opposing side can pay for an extensive lawyer while the opposition can only afford the appointed lawyer. It is not unheard of for lawyers to be ‘paid off’ in order to win a case. This also has a ripple effect on the attitude of lawyers, for example if a lawyer is being paid a large amount of money, they are going to fight harder to win. If a lawyer was being paid a normal wage, they may not have such a...
determined attitude to win the case.

The biggest issue with letting a jury decide the case is that although juries are picked at random and analysed before allowed to attend court in every case you run the risk of having an uneducated and possibly biased decision. A random person...without legal training and understanding can make assumptions about the accused or defendant without psychologically knowing they are. A common problem heard with jury decisions are that the juries are so innocence and uneducated that they won't believe an accused person committed the crime because they don't see it as a humanly possible action. This causes great corruption in the court room, the detentional centres and the community.

In comparison the European system is what's known as an inquisitorial system. This is where the judge is more like a police investigator and they conduct their own investigation, collect their own evidence and make the decision themselves.
The inquisitorial approach would seem to be more fair and less hassle. The positives to this system would be the fact that, being the only investigator, the judge is able to slowly and thoroughly compile his own evidence without the distraction of lawyers or juries. Another positive is that all judges would be government funded and appointed, therefore it doesn't allow room for extra effort paid by the accused or defendent. Ideally this would reduce the event of a judge being 'paid off'. Judges in Europe wouldn't work on the commission basis, and ideally means they all have no extra motives to decide the case.

The negatives to the European inquisitorial system is that it relies a lot more on the skill of the judge and their investigation. Assuming all the judges are paid the same according to their role, how would you always have some people better than others? Due to their system, it seems like getting
A good judge is at random, at least in Australia you can pay to have a high performing judge.

Taking away the commission base of a judge may also run the risk of lack in attitude or attention to detail. If they are being paid a set amount to just determine a case it can take away the psychological determination for a judge to look at all angles of the case not just the obvious angles. In the cases where circumstantial evidence is loud against the actual innocent person European judges may become complacent and simply decide based on that circumstantial evidence.

Another aspect of the removed commission basis is that in Australia, Lawyers work their way up a pay bracket (increased pay and bonuses) by the amount of cases they win. In Europe they don't have that enticement to continue solving cases with zeal. The longer a European judge is in employment for, it is likely to assume the less passionate they would become due to the natural human
desire to be rewarded for hard work.

Comparing both systems opens up new realizations of the court systems and, unfortunately, or fortunately depending on how you look at it, reveals just how fragile and crucial a just court system is.

Based on the corruption that is able to take place in both the Adversarial and Inquisitorial system Australia should follow the European Inquisitorial system. The negatives and possibilities of the Australian system seem to out weigh the European system. The Inquisitorial system removes more greed and bias opportunities therefore ideally would create a fairer and just legal system.