

2009 HSC Legal Studies

Sample Answers

This document contains ‘sample answers’, or, in the case of some questions, ‘answer may include’. These are developed by the examination committee for two purposes. The committee does this:

- (a) as part of the development of the examination paper to ensure the questions will effectively assess students’ knowledge and skills, and
- (b) in order to provide some advice to the Supervisor of Marking about the nature and scope of the responses expected of students.

The ‘sample answers’ or similar advice, are not intended to be exemplary or even complete responses. They have been reproduced in their original form as part of the examination committee’s ‘working document’. While the handwritten notes have been typed for legibility, no further editorial change or addition has occurred.

Section I — Law and Society

Part B

Question 16 (a)

Answers could include:

Comparison:

- Natural justice is positive law (actual legal principles applied by courts) whereas ‘natural law’ doctrine is normative (guiding principles in designing laws).
- ‘Natural law’ doctrine is not law as applied by courts where natural justice is.
- Both aim for justice.
- Natural justice rules may be shaped by natural law.

‘Natural law’ doctrine features:

- The law that has been created by higher powers and/or higher reasoning
- Frequently said to be divine law or the true law
- Law that exists rather than created by humans/the state
- That everyone is answerable to a higher authority
- NB natural law does not over-ride positive law

Natural justice features:

- The need for equality of all people before the law
- Hearing rule
- Procedural fairness
- Fundamental principle of the Australian legal system.

Question 16 (b)***Answers could include:***

Examples of struggles could include any denial of human rights to an individual or group: gay rights, right to self-determination, reproductive rights, religious persecution, genocide, refugees, etc. Other examples could include specific instances of human rights abuses.

Domestic measures could include: law creation and law enforcement, law reform, tribunals (HREOC), and political change.

International measures could include: sanctions, treaties, conventions, international courts and tribunal and interventions (eg NATO in Kosovo.)

Sample answer:

The human rights struggle of refugees seeking asylum demonstrates the complexity of domestic legal measures in addressing this issue. In Australia domestic law has been changed to limit the ability of refugees seeking asylum to become residents of Australia, including mandatory detention and excising the northern offshore islands for the purpose of the Migration Act. In contrast, international bodies such as the UNHCR continue to provide protection to refugees and to criticise countries such as Australia.

Section II — Focus Study – Crime

Question 17 (a)

Answers could include:

Complete: self- defence, necessity, mental illness, and duress.

Partial: provocation, substantial impairment, and diminished responsibility.

Question 17 (b)

Answers could include:

Main features: Reporting a crime, the police investigate, police arrest, police interrogate suspects, evidence gathering, and the question of bail, remand, trial, and sentencing.

Sample answer:

When a crime occurs, it is assumed that it is reported, however, some crimes, such as rape often go unreported. Once the crime is reported it is then up to the police to investigate the crime. Whether the investigation occurs will be determined by factors such as the severity of the crime and the availability of police resources. Once the police have gathered enough information the police may arrest the suspect/s. Further to any interrogation, evidence will be gathered to support the case for the prosecution. If the suspect is arrested the question of bail is raised. Whether bail is granted by the police or a court is also determined by the severity of the crime or the status of the suspect. If refused bail the suspect is remanded until the trial. The trial is held and if they are found guilty the final step in this process is sentencing.

Question 17 (c)***Sample answer/Answers could include:***

Some places discretion is present in the criminal justice system: the role of police discretion in the earlier stages of the criminal justice process, reporting crime, over-policing, granting bail, sentencing and post-sentencing decisions.

FOR: flexibility, adapt to individual circumstances, professional judgement

AGAINST: abuse of position or power, inconsistency, corruption.

This question provides a wide scope for students to explore how discretion operates throughout the criminal justice system. As such a sample answer cannot cover the range of responses and could mislead markers. Better responses will focus on the discussion i.e. set out points for and against the need for discretion. This discussion may be based on a wide selection of instances where discretion is present OR more limited selection of discretions with support for why these are worthy of more detailed exploration. Also better responses will target discussion on the NEED for discretion not just its role or attributes.

Question 17 (d)***Sample answer/Answers could include:***

Factors affecting the degree of commitment:

- Family, community, genetic, political, self interest and social values.
- Historical involvement with the law, ethnic background, language, deterrence factor, punishment levels, economic status, educational levels and religious values.

Examples could include: drink-driving, domestic violence, abortion, organised crime, fraud, gang crime, drug taking or white-collar criminals.

Given the huge diversity of response possible to the very open question any sample answer could be misleading. Better responses will demonstrate the criteria set out in the marking guideline above. The context of that response needs to be in terms of commitment to criminal law. This commitment will be shown through compliance, reporting, adverse public comment, legal challenge etc. To examine commitment to the law better responses will have to provide and integrate examples in order to provide context for that examination.