

# **2000 HSC Notes from the Examination Centre Legal Studies**

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Tel: (02) 9367 8111  
Fax: (02) 9262 6270  
Internet: <http://www.boardofstudies.nsw.edu.au>

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# Legal Studies

## Introduction

Total candidature for the 2/3 Unit (Common) paper was 8071 while 1118 attempted the 3 Unit (Additional) paper.

The overall standard for candidate's responses, especially in the options was excellent, with good use of stimulus material provided. The more able candidates were able to refer to relevant legislation and discuss the effectiveness of the legal system in addressing particular issues. These candidates were well informed in the changes in legislation and terminology. As in previous years, the poorer candidates failed to display an understanding of the course content, incorporate the stimulus material and address the specific question in their responses. Often these candidates gave detailed answers to parts (a) and (b) but little relevant information and analysis in part (c). The overall quality of the responses to the Case Studies was excellent, however, fewer candidates attempted the Migrants and Other Disadvantaged People but the quality here has improved. The rest of the candidature concentrated on the other two case studies where the quality of the response was excellent.

## 2/3 Unit (Common)

### Section II – The Options

#### Consumers and the Law

Approximately 39% of candidates attempted Consumers and the Law, with approximately 66% attempting question 21 and 34% attempting question 22. This is a significant shift away from the tendency of previous years, where the number of candidates tended to be at least balanced or even slightly weighted towards the structured question.

#### Question 21

The content of some of the responses to the credit section of question 21, suggests that some candidates may have selected it because they had limited knowledge of contracts and common law, which was a requirement in question 22. Accordingly, the most common area of weakness in the responses to question 21 was in dealing with the rights and remedies of borrowers and credit providers.

The best responses were those, which addressed the entire question in a well balanced manner. These candidates made appropriate use of the stimulus without being overly reliant on it. They were able to clearly distinguish between rights remedies and redress, and illustrated their responses with relevant legislation, cases and examples. Excellent responses also included up to date legislation, such as the Consumer Credit Code in addition to the Credit Act 1984. The better candidates once again stood out as being those who could analyse and evaluate rather than merely describe and outline how the law protects consumers.

### **Question 22**

The overall standard of the responses to question 22 was not as high as for question 21 and indicated that a number of candidates found the specificity of the question, ie: parts (a) and (b), difficult.

The best responses were those, which contained clear, concise definitions of ‘freedom of contract’ and ‘privity of contract’, and displayed a superior understanding of the difference between common law and legislation. Many candidates still have difficulty in understanding the difference between common law and legislation and the relationship between them. This question lent itself to the inclusion of cases to a greater extent than question 21, and the better candidates were able to give some very good examples of cases, which specifically illustrated types of harsh and unconscionable conduct, such as duress, undue influence and misrepresentation.

Once again the better candidates were able to provide a clear and thorough evaluation of how legislation protects consumers’ rights.

### **The Environment and the Law**

This option was attempted by 12% of candidates, 43% of them attempted question 23 and 57% attempted question 24. The best responses in each question successfully incorporated the statement/stimulus into their response and had a high degree of evaluation and analysis in their answers.

### **Question 23**

The best responses to this question had an excellent understanding of the variety of changes in the perception of the environment in the 20<sup>th</sup> century. This included concepts such as: inter/intra generational equity, the precautionary principle, decision irreversibility, and property rights over the environment. The best responses also had an excellent understanding of the fragmented system including details of the constitution and specific case and statutory examples. The better responses also included details of current legislative changes. eg: The Environment Protection and Biological Conservation Act 1999. (Cth)

### **Question 24**

Candidates incorporated an analysis of the statement and a detailed response to each area of the question. A major weakness was the large number of candidates who did not understand the sources of environmental law. Better responses provided relevant case and statute examples when evaluating the effectiveness of the management of environmental conflicts. This evaluation included an understanding of the tiers of government, national and international issues and licensing problems. eg: licenses to pollute, the M2 case, Optus cables case, and the third runway.

### **Family and the Law**

Family and the Law was by far the most popular option attracting 94% of the Legal Studies candidature. Of this, 70% attempted question 25 and 30% attempted question 26.

**Question 25**

Many candidates adequately addressed marriage and defacto relationships and better candidates also included customary marriage, same sex relationships and single parent families. Weaker responses concentrated on legal protection in cases of domestic violence, whilst better responses included an analysis of economic, emotional and physical protection. This question required candidates to demonstrate a detailed knowledge of contemporary legislation, including the Property (Relationships) Legislation Amendment Act 1999. (NSW)

**Question 26**

This question challenged many candidates with the reference to the functions of the family as dealt with by the law, opting instead to describe the different types of families. Part (b) required candidates to be familiar with the UN Convention on the Rights of the Child. Better responses demonstrated this knowledge and clearly linked it to Australian legislation, including Children and Younger Persons (Care in Protection) Act 1998 (NSW). Weaker responses understood that the Convention existed but could not relate it to domestic law. Part (c) instructed the candidates to evaluate the effectiveness of the legal system in addressing the needs of children. Better responses considered the best interests of the child and recent changes to legislation including the Family Law Reform Act 1995 (Cth). The stronger responses evaluated effectiveness using relevant legislation, recent case law and appropriate media references. Weaker responses tended to over-emphasise the failure of the legal system to protect children with particular reference to DOCS.

**Housing and the Law**

Housing and the Law was the least popular option attracting 22 % of the candidature. 45% answered question 27 and 55% attempted question 28. While both questions appear to be of equal difficulty, the better candidates attempted question 27.

**Question 27**

Better responses were able to evaluate the protection provided by the legal system to people who live in public housing or special accommodation. These candidates referred to new legislation including:

- Residential Tenancies (Social Housing) Act 1998
- Residential Parks Act 1998
- Aged Care Act 1997 (Cth)
- Amendments in 1998 to the Retirement Village Act

Better candidates were able to make reference to the statement, use relevant cases and legislation as well as up to date media sources.

**Question 28**

Question 28 allowed many candidates to score well in parts (a) and (b), but part (c) was not answered confidently. Average responses referred to the protection available to purchasers and tenants, rather than evaluating the effectiveness of the legal processes involved in this protection.

## **Workplace and the Law**

Workplace and the Law was the third most popular option attracting 32% of the candidates. Approximately 42% of these attempted question 29, and 58% attempted question 30.

### **Question 29**

Question 29 broadly related to change in the workplace. Many candidates adopted an historical approach and were able to identify a wide variety of changes that have occurred in the workplace. Better candidates were able to describe the factors causing these changes, as well as the extent of responsiveness of the legal system. These candidates were able to show how the law has supported the modern employer-employee model, as well as allowing for technological and other changes, with an evaluation of current legislation and recent case studies.

### **Question 30**

Better candidates were able to distinguish between unfair and unlawful dismissal and were able to relate this to the stimulus. These candidates also addressed the roles of legislation and employment contracts. Others simply listed relevant Acts and common law duties. Many candidates were able to identify examples of different types of redress. Better candidates were able to evaluate these in terms of suitability, complexity, time and cost effectiveness.

## **Section III – Case Studies**

### **Aboriginal And Torres Strait Islander Peoples**

17% of candidates attempted this Case Study. Of this total, 63% attempted Question 31 and 37% attempted Question 32.

### **Question 31**

Excellent responses made very good use of a range of legislation, case law and media sources in their answers. They demonstrated a high degree of critical analysis of the legal system in responding to the pursuit of justice for ATSIP. They incorporated the statement/stimulus material into their discussion in a confident manner.

### **Question 32**

As in Question 31, excellent responses exhibited a high degree of skill in incorporating a range of legislation, case law, statistics and examples into a concise, balanced response in answering the question. Excellent responses demonstrated a substantial knowledge of the case study and were able to effectively integrate the statement/stimulus material into their response.

### **Migrants**

6.2% of Legal Studies candidates attempted this Case Study. Of this total, 73% attempted Question 33 and 27% attempted Question 34.

### **Question 33**

Excellent responses answered the whole question, including the statement and referred to case law (eg Teoh V Minister for Immigration, Chen Yi V Minister for Immigration, Amadio V CBC Bank Checklekov V Administrative Appeals Tribunal), legislation and government policies (eg Migration Act 1958, Migration Reform Act 1992, Anti-Discrimination Act, Racial Discrimination Act, Racial Vilification Act, White Australia Policy, etc.). Excellent responses also referred to other legislation effecting migrants. eg: Contracts Review Act, Workplace Relations Act. Excellent responses were fully aware of the recent changes to the ‘categories of migrants’ and this was evidenced in their responses.

### **Question 34**

Excellent responses distinguished between refugees and illegal immigrants and gave a detailed description of the problems that each group encountered. These responses clearly indicated an understanding of the term ‘administrative review’ and were able to use cases and legislation to demonstrate the difficulties faced by these people. Excellent responses incorporated a high degree of critical analysis in evaluating the effectiveness of the legal system in responding to the needs of refugees and illegal immigrants.

### **Women**

71.9% of candidates attempted this Case Study. Of this total 45% attempted Question 35 and 55% attempted Question 36.

### **Question 35**

A high degree of critical analysis was demonstrated by excellent responses. These candidates were able to integrate case law, legislation and other legal material such as reports, statistics and media sources to address the effectiveness of the legal system in responding to the changing role of women in the workplace. Excellent responses also were able to effectively incorporate the statement/stimulus material into their discussion. Some candidates were aware of legislative change, remedies, the Affirmative Action Act 1986 (Cth) being replaced by the Equal Opportunity for Women in the Workplace Act 1999(Cth).

### **Question 36**

Excellent responses were distinguished by their ability to deal with all four parts of the question. In particular, in Part D they were able to critically analyse the effectiveness of the Australian legal system in providing access to justice for women in the home, workplace and in violent situations. These candidates also incorporated the statement/stimulus material into their work.

### **Other Disadvantaged People**

4.2% of candidates attempted this Case Study. Of this total 48% attempted Question 37 and 52% attempted Question 38.

### **Question 37**

The standard of response for this holistic question was varied. Stronger candidates had a comprehensive understanding of all relevant aspects of the provision of social security payments. Excellent responses were characterised by the development of a specific point of view with reference to the statement and the question. Such answers referred to relevant legislation including the Social Security Act (Cth) 1991, the Disability Services Act (Cth) 1986 and the Veterans Entitlement Act (Cth) 1986, institutions such as Centrelink and also administrative review bodies. Legal reports (eg Henderson, McClure) and contemporary policies and issues such as “mutual obligation” and “work for the dole” were a further feature of excellent responses. These specific aspects of the legal system were integrated into the stronger responses demonstrating a high level of analysis and critical evaluation.

### **Question 38**

Excellent responses answered all parts of the question with a depth of treatment warranted by the marks allocated to each part. Such responses were characterised by a critical analysis of the statement and question. Such analysis integrated legislation including the Mental Health Act (NSW) 1990, the Disability Services Act (NSW) 1993, the Guardianship Act (NSW) 1987, the Protected Estates Act (NSW) 1983 and both Federal and State anti-discrimination statutes into the answer. Institutions including the Mental Health Review Tribunal, Guardianship Board, Official Visitors, the Human Rights and Equal Opportunity Commission and contemporary policies and issues ( eg deinstitutionalisation) were also woven into a well structured response which developed a logical point of view.

## **3 Unit (Additional)**

### **Section III**

The questions were very demanding in all options with some candidates clearly struggling to come to terms with answering the whole question. However, in general it was clear that the quality of candidates’ work was superior to that of candidates in previous years.

Most candidates attempted to address the issues within the questions, and the responses were of a higher standard than those in previous years. The effectiveness of the legal and non-legal responses to issues across the 3 Unit topics was well argued with a high proportion of students integrating topical case studies.

Many candidates attempted to link the Case Studies to the Core and better responses linked the Core to the Depth Studies. The evaluation of international law was more extensive and substantial than evaluation of national law. However, in the Indigenous People option, the concentration of the media and the community on the national debate on issues within the course contributed to a superior discussion of the issues from a national perspective. The difference of approaches between international and national responses was particularly well done in Indigenous People. In the

Technology Change topic the national approach was only well contrasted with the international with respect to Biotechnology. This was not the case with World Order or with Global Environmental Protection where natural approaches were added on as afterthought.

A high proportion of answers were clearly prepared though many of these indicated considerable understanding of the topic. The prepared answers sometimes made it difficult to recognise which question had been attempted.

Candidates did not necessarily come to terms with the statement and with few exceptions only some reference was made to the stimulus. Candidates had difficulty in directly addressing some of the details within questions e.g. differentiating between 'frameworks and processes' (World Order), political/geographical boundaries (global environmental protection)