



HIGHER SCHOOL CERTIFICATE EXAMINATION

1997

LEGAL STUDIES

2/3 UNIT (COMMON)

*Time allowed—Three hours
(Plus 5 minutes reading time)*

DIRECTIONS TO CANDIDATES

- You may ask for extra Writing Booklets if you need them.

Section I (20 marks)

- Attempt ALL questions.
- Mark your answers in pencil on the Answer Sheet provided.

Section II (50 marks)

- Attempt TWO questions, each from a different Option.
- Answer each question in a *separate* Writing Booklet.

Section III (30 marks)

- Attempt ONE question.
- Answer the question in a *separate* Writing Booklet.

SECTION I

(20 Marks)

Attempt ALL questions.

Mark your answers in pencil on the Answer Sheet provided.

Select the alternative A, B, C, or D that best answers the question.

1. Under the Westminster system, the Australian Government is responsible to the
 - (A) Parliament.
 - (B) Governor-General.
 - (C) High Court.
 - (D) Ministry.

2. The doctrine of separation of powers is about power divided between the
 - (A) Supreme Court, Federal Court, and High Court.
 - (B) people, courts, and government.
 - (C) Executive, Judiciary, and Legislature.
 - (D) Local, State, and Commonwealth governments.

3. Margaret, a physical trainer, was denied a deduction for training shoes in her annual tax assessment. She was unhappy with this decision and appealed to the Taxation Commissioner. This appeal failed. Margaret may now appeal to the
 - (A) Administrative Appeals Tribunal.
 - (B) Supreme Court.
 - (C) Public Accounts Committee.
 - (D) Minister for Finance.

4. The doctrine of precedent is concerned with the
 - (A) power of Parliament to override court decisions.
 - (B) application of established principles of case law to new cases.
 - (C) superiority of Commonwealth law over State law.
 - (D) ranking of judges within the court hierarchy.

5. Compulsory voting in Australian federal elections is a
 - (A) social duty.
 - (B) moral duty.
 - (C) legal duty.
 - (D) civic duty.

6. A judge in a criminal matter finds a friend appearing before her for sentencing. The judge should
- (A) pass sentence because the judiciary is independent.
 - (B) disqualify herself because this is required by natural justice.
 - (C) pass sentence because this is required by common law.
 - (D) disqualify herself because this is required by legislation.
7. In 1995 the Northern Territory Parliament passed legislation allowing people to choose to die by medically assisted suicide. At the time, this legislation reflected
- (A) judicial values influencing the development of law.
 - (B) the development of the common law.
 - (C) the development of equality before the law.
 - (D) social values influencing the development of the law.
8. Kim owns the Piece of Quiet Cafe. She displays signs banning the use of mobile phones. Alan is asked by her to leave the cafe after using his mobile phone. This ban is an example of a
- (A) by-law.
 - (B) law.
 - (C) custom.
 - (D) rule.
9. The principal argument for replacing some court processes with alternative dispute resolution is that it
- (A) produces results that can be enforced by the police.
 - (B) is usually cheaper than court processes.
 - (C) guarantees effective legal representation.
 - (D) will rely only on arbitration.
10. The judgment of a court
- (A) always reflects community ethics.
 - (B) enforces government policy.
 - (C) always reflects justice.
 - (D) applies the law without bias.

- 11.** Australian courts regard Aboriginal customary law as
- (A) not relevant to any legal dispute in Australia.
 - (B) relevant in sentencing some Aboriginal offenders.
 - (C) applying to all legal disputes arising between Aboriginal people.
 - (D) applying to any legal claim brought by an Aboriginal person.
- 12.** Rights and duties established by an international treaty will only apply to the residents of Australia if the
- (A) treaty is enacted into domestic law.
 - (B) State and Commonwealth governments agree with the treaty.
 - (C) Executive government adopts the treaty.
 - (D) High Court approves the treaty.
- 13.** Anti-discrimination legislation attempts to achieve
- (A) equality before the law.
 - (B) equality of opportunity.
 - (C) informal equality.
 - (D) formal equality.
- 14.** A politician uses his influence as a Member of Parliament to avoid being charged with a criminal offence. This is an example of a breach of
- (A) the rule of law.
 - (B) the doctrine of natural justice.
 - (C) parliamentary privilege.
 - (D) doctrines of equity.
- 15.** The State Government decides to build a road through a koala colony. Environmentalists wish to prevent this road being built. They may informally challenge this decision by
- (A) approaching the media.
 - (B) contacting the Ombudsman.
 - (C) applying to the Land and Environment Court.
 - (D) applying to their local Community Justice Centre.

16. State parliaments

- (A) are unable to legislate in an area in which the Commonwealth Parliament has power to legislate.
- (B) are bodies subordinate to the Commonwealth Parliament.
- (C) have their own Constitutions that give them powers to enact laws for people of their state.
- (D) must have their legislation approved by Caucus.

17. A civil dispute is best described as

- (A) a dispute between two individuals where one individual's rights are infringed by another.
- (B) a dispute between the state and an individual who breaches a rule that is punishable by law.
- (C) a dispute between two individuals where the matter is heard at a committal proceeding.
- (D) a dispute between the state and an individual who engages in civil disobedience.

18. A major justification for a hierarchical system of courts is that

- (A) different courts allow for specialisation.
- (B) cases can be allocated on the basis of administrative convenience.
- (C) parties to a dispute may choose the court in which their action will be heard.
- (D) appeals to higher courts mean that legal rules are more thoroughly tested.

19. Rob was convicted of drink driving. Rob has a disabled child who needs to be driven to the hospital for regular medical attention. A magistrate granted Rob a special licence for this purpose. The granting of this special licence is an example of

- (A) delegated authority.
- (B) common law power.
- (C) licensing authority.
- (D) discretionary power.

20. After leaving school, Anthony applied for a position in the State Public Service. He was unsuccessful. He may gain access to the records explaining this decision by applying to

- (A) his local Member of Parliament under the Electoral Act.
- (B) the Public Service Union.
- (C) the State Public Service under the Freedom of Information Act.
- (D) the Department of Education, Employment, Training and Youth Affairs.

SECTION II—OPTIONS**Marks**

(50 Marks)

Attempt TWO questions, each from a different Option.

Each question is worth 25 marks.

Answer each question in a *separate* Writing Booklet.**CONSUMERS AND THE LAW***EITHER***QUESTION 21****25**

Consumers will never be fully protected so long as the sellers of consumer goods, such as motor cars, are allowed to link these sales to the provision of easy credit.

Courtesy the author.

Discuss this statement, and evaluate the effectiveness of the legal system in providing protection for sellers, consumers, and credit providers.

Your answer should refer to the stimulus material, provide relevant information, and *at least*:

- discuss the role of credit legislation in addressing the problems facing consumers and credit providers;
- evaluate the legislation that protects consumers against unconscionable contracts.

*OR***QUESTION 22**

Start each part of this question on a new page.

Mr Jones read an advertisement for ‘Slimming Patches’ in a magazine. The advertisement promised:

‘Use Slimming Patches for three weeks and lose five kilos!!’

Mr Jones purchased the Slimming Patches and used them according to the instructions. After three weeks Mr Jones had a skin rash on his arm around the area where he had applied the Slimming Patches, and he had not lost any weight.

Refer to the above statement, and use your knowledge of the legal system to answer the following questions.

- | | | |
|-----|--|-----------|
| (a) | What is meant by the term ‘caveat emptor’? To what extent does it apply to Mr Jones’ case? | 4 |
| (b) | How are the marketing and advertising of consumer goods regulated? | 9 |
| (c) | Evaluate the effectiveness of the law in protecting consumers such as Mr Jones, and in providing redress against manufacturers and suppliers of faulty goods and services. | 12 |

ENVIRONMENT AND THE LAW

Marks

EITHER

QUESTION 23

25

Many of the environmental problems we face today do not respect State and Territory boundaries, and cannot be resolved piecemeal. Increasingly the Australian community is demanding national approaches to major environmental issues. They do not want as many systems for dealing with these problems as there are States and Territories.

Adapted from R. J. L. HAWKE,
Our Country, Our Future – Statement on the Environment, 1989

'Our country our future', AGPS July 1989 R.J.L Hawke p10.
Commonwealth of Australia copyright reproduced by permission.

Discuss this statement, and evaluate the effectiveness of the various laws in managing the environment.

Your answer should refer to the stimulus material, provide relevant information, and *at least*:

- identify the various sources of environmental law in Australia;
- describe the present balance of power among Commonwealth, State, and Local governments to legislate for management of the environment.

OR

QUESTION 24

Start each part of this question on a new page.

Conservationists are destined to fight again and again for places they believe worth keeping. Forests declared as national parks, buildings subject to heritage orders, even plants and animals classified as endangered, can be stripped of these protections by ministerial decision or an Act of Parliament.

Adapted from TIM BONYHADY, *Places Worth Keeping*, 1993

Allen & Unwin 1993.

Refer to the above statement, and use your knowledge of the legal system to answer the following questions.

- | | |
|---|-----------|
| (a) To what extent can lobby and pressure groups influence change in environmental law? | 4 |
| (b) How does the common law allow individuals to protect their environment? | 9 |
| (c) Evaluate the effectiveness of environmental protection and preservation legislation in balancing the interests of environmental protection and resource management. | 12 |

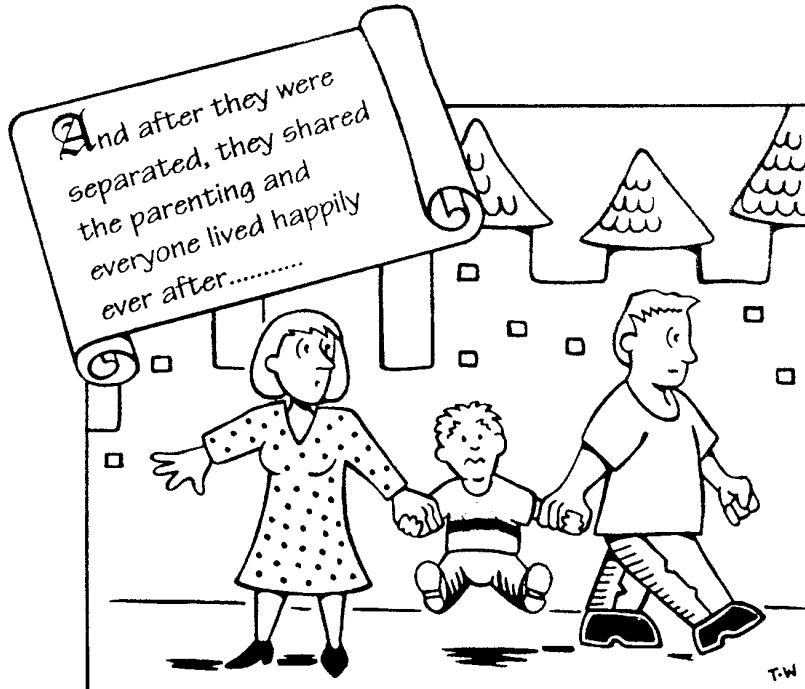
FAMILY AND THE LAW

Marks

EITHER

QUESTION 25

25



THE FAIRYTALE

Reproduced with permission from the Alternative Law Journal
(1996) Vol. 21, p215 and Ms Tonia Walden.

Refer to the above cartoon, and evaluate the effectiveness of the legal system in regulating the duties and responsibilities of parties to a marriage.

Your answer should refer to the stimulus material, provide relevant information, and *at least*:

- identify the obligations that marriage imposes upon spouses for each other and their children;
- discuss the way in which the law addresses division of property and responsibilities towards children after the dissolution of a marriage.

OR

QUESTION 26**Marks**

Start each part of this question on a new page.

Patsy and Edwin have been trying to have a baby for a number of years. They visit their doctor, who explains that there are many other ways of forming a family, such as adoption, guardianship, or taking advantage of recent birth technology.

Refer to the above statement, and use your knowledge of the legal system to answer the following questions.

- | | |
|---|-----------|
| (a) Explain the terms 'adoption' and 'guardianship'. Who can adopt children? | 4 |
| (b) Outline the legal and moral issues arising from scientific and medical developments in birth technology and surrogacy. | 9 |
| (c) How has the law dealt with the concept of a family unit? Evaluate the effectiveness of the legal system in balancing the rights and obligations between parents and children in different family units. | 12 |

Please turn over

HOUSING AND THE LAW**Marks***EITHER***QUESTION 27****25**

In 1987, Justice Einfeld shed tears at the condition of housing for Aborigines in Toomelah, northern NSW. In early 1997, consideration was being given to bulldozing 'The Block', an Aboriginal housing estate in Eveleigh Street, Redfern in inner Sydney.

Discuss this statement, and evaluate the extent to which government has been successful in addressing housing issues affecting the whole community.

Your answer should refer to the stimulus material, provide relevant information, and *at least*:

- discuss the right to shelter, and the role of government in satisfying that right;
- outline the specific issues raised in relation to Aboriginal and Torres Strait Islander housing in both rural and urban locations.

*OR***QUESTION 28**

Start each part of this question on a new page.

Eleanor and David have decided that they will purchase their first residential property. Before they do so, however, they will need to make a number of important legal and financial decisions.

Refer to the above statement, and use your knowledge of the legal system to answer the following questions.

- | | |
|--|-----------|
| (a) What types of title to property can they acquire? | 4 |
| (b) What are the advantages and disadvantages of mortgages, compared with other forms of finance? | 9 |
| (c) What problems could David and Eleanor encounter prior to the purchase being completed? Evaluate the effectiveness of the law in protecting their legal interests and investment. | 12 |

THE WORKPLACE AND THE LAW**Marks***EITHER***QUESTION 29****25**

Employers should devote more effort to injury prevention, rather than simply paying expensive workers' compensation costs once injuries have occurred.

Permission the author.

Discuss this statement, and evaluate the effectiveness of the law in dealing with the protection of employees in the workplace.

Your answer should refer to the stimulus material, provide relevant information, and *at least*:

- refer to the rights and obligations of employers and employees in addressing the issue of safety in the workplace;
- discuss the role of government and other agencies in providing for compensation and rehabilitation after an injury sustained in the course of employment.

*OR***QUESTION 30**

Start each part of this question on a new page.

Historically, the common law governed the contract of employment, but legislation aimed at combating discrimination has fundamentally altered the rights and duties of employers and employees.

Refer to the above statement, and use your knowledge of the legal system to answer the following questions.

- | | | |
|-----|--|-----------|
| (a) | Outline the historical development of the contract of employment. | 4 |
| (b) | Discuss the common law rights and duties of employers and employees in the contract of employment. | 9 |
| (c) | Evaluate the effectiveness of legislation in dealing with ongoing technological change and ensuring equal treatment of workers in today's workplace. | 12 |

SECTION III—CASE STUDIES**Marks**

(30 Marks)

Attempt ONE question.

Answer the question in a *separate* Writing Booklet.**ABORIGINAL AND TORRES STRAIT ISLANDER PEOPLES***EITHER***QUESTION 31****30**

An Aboriginal juvenile is 21 times more likely to be held in custody in Australia than a non-Aboriginal. One distinguishing factor is undoubtedly the hangover of the racism of the past, eroding the self-esteem of Aboriginal families. Particularly damaging was the policy of removing children from their parents and institutionalising them.

DR MARLENE GOLDSMITH MLC

Courtesy Marlene Goldsmith MLC.

Discuss this statement, and evaluate the effectiveness of the legal system in responding to the pursuit of justice for Aboriginal and Torres Strait Islander peoples.

Your answer should refer to the stimulus material, provide relevant information, and *at least*:

- discuss the status of Aboriginal and Torres Strait Islander peoples under the criminal law;
- outline the problems that arose from government misunderstanding of Aboriginal and Torres Strait Islander peoples' tradition and culture;
- evaluate the effectiveness of federal and state mechanisms for achieving justice for Aboriginal and Torres Strait Islander peoples in the criminal justice system.

OR

QUESTION 32**Marks**

Start each part of the question on a new page.

Colonisation meant dispossession and relocation of Aboriginal people to different living areas. It also meant the imposition of a particular European-defined lifestyle.

Adapted from C. CUNEEN and T. LIBESMAN,
Indigenous People and the Law in Australia, Butterworths 1995

Refer to the above statement, and use your knowledge of the legal system to answer the following questions.

- | | |
|--|-----------|
| (a) What was the official policy towards indigenous peoples in the early 1800s, and how has it changed? | 4 |
| (b) How successfully has native title been embodied in federal and state law? | 6 |
| (c) Describe the problems experienced by Aboriginal and Torres Strait Islander peoples in relation to housing, the workplace, consumers, and family law. | 8 |
| (d) Evaluate the effectiveness of the legal system and other mechanisms for achieving justice for Aboriginal and Torres Strait Islander peoples. | 12 |

MIGRANTS**Marks***EITHER***QUESTION 33****30**

Immigration over the last forty years has posed a number of challenges to which the government has been required to respond.

Adapted from OFFICE OF MULTICULTURAL AFFAIRS,
Access and Equity Evaluation Report, 1992

Commonwealth of Australia copyright reproduced by permission.

Discuss this statement, and evaluate the effectiveness of the legal system in responding to the challenges posed by immigration over the last forty years.

Your answer should refer to the stimulus material, provide relevant information, and *at least*:

- identify the challenges faced by migrants as they seek access to housing, employment, social services, and the law;
- outline the government policies developed to meet these challenges;
- discuss the effectiveness of the Federal Government's response to the problems created by immigration.

*OR***QUESTION 34**

Start each part of this question on a new page.

In dealing with migration decisions we must make sure that the mechanisms for entering and remaining in Australia, and the enforcement of the departure of persons who have no further entitlement to stay, is 'fair, just, economical, informal, and quick'.

'Non-adversarial Review of Migration Decisions - the way forward',
Committee for the review of the system for review of migration, AGPS 1992 p14-16.
Commonwealth of Australia copyright reproduced by permission.

Refer to the above statement, and use your knowledge of the legal system to answer the following questions.

- | | |
|---|-----------|
| (a) Identify the principal categories of migrants entering Australia. | 4 |
| (b) Outline the ways in which migrants can challenge government decisions associated with their status. | 6 |
| (c) Outline the special problems of migrants with respect to administrative and court procedures associated with deportation and extradition. | 8 |
| (d) To what extent is the administrative review of migration decisions 'fair, just, economical, informal, and quick'? | 12 |

WOMEN**Marks*****EITHER*****QUESTION 35****30**

Unequal power relationships within the family, ideas about male authority and women's unequal access to economic security are all causes of domestic violence.

'Creating the links: Families & social responsibility', Final report AGPS 1994.
Commonwealth of Australia copyright reproduced by permission.

Discuss this statement, and evaluate the effectiveness of the Australian legal system in responding to gender bias between women and men.

Your answer should refer to the stimulus material, provide relevant information, and *at least*:

- outline the historical position of women in Australian society;
- identify the problems women face in gaining protection from violence, and discuss the legal and non-legal responses to these problems;
- comment on the mechanisms available to women to combat the problem of gender bias in access to education, training, and promotion within the workplace.

OR**QUESTION 36**

Start each part of this question on a new page.

Women were seen as the homemakers, and the idea that they could, or should, also play a role in public life was unheard of. For centuries, women had worked at home in cottage industries, and later, outside the home, in factories, hospitals and offices. However, leadership was seen as a male right and men ran the government, the law, business and professions. It was only in the twentieth century that the exclusion of women from public life began to be seriously challenged.

Adapted from PATRICK PARKINSON, *Tradition and Change in Australian Law*, 1994

Law Book Co 1994. Reproduced with the permission of LBC Information Services.

Refer to the above statement, and use your knowledge of the legal system to answer the following questions.

- | | |
|---|-----------|
| (a) What were the historical roles of, and attitudes towards, women in Australian society? | 4 |
| (b) In what ways have the difficulties faced by women in entering the workforce changed since early colonial times? | 6 |
| (c) To what extent does the law reflect the changing role of women in the workforce? | 8 |
| (d) Evaluate the effectiveness of legal and non-legal methods in addressing the needs of women in the workforce. | 12 |

Please turn over

OTHER DISADVANTAGED PEOPLE**Marks***EITHER***QUESTION 37****30**

Poverty is costly not only to the disadvantaged but to the whole society. It is not only a personal or local concern but also a social and national problem.

'The Economic Circumstances of the Poor', N Podder for Commission of Inquiry into Poverty, AGPS 1978. Commonwealth of Australia copyright reproduced by permission.

Discuss this statement, and evaluate the effectiveness of the legal system in providing for the disadvantaged in society.

Your answer should refer to the stimulus material, provide relevant information, and *at least*:

- identify the categories of social security applicants;
- outline the problems faced by applicants in accessing the social security system;
- evaluate the effectiveness of social security legislation in responding to the problems faced by the socio-economically disadvantaged.

*OR***QUESTION 38**

Start each part of this question on a new page.

Mental health law serves a mass of conflicting interests and ideas. The general public is no doubt suspicious that some people may use mental incapacity as an excuse for anti-social behaviour. But they forget that the consequences may be just as severe for these people, and sometimes more so if they are institutionalised.

'Mental health law', B Haggett, Sweet & Maxwell 1990 p1.

Refer to the above statement, and use your knowledge of the legal system to answer the following questions.

- | | |
|---|-----------|
| (a) What is legal capacity and when is it lacking? | 4 |
| (b) What is a guardian and when would one be appointed? | 6 |
| (c) What problems arise for decision makers attempting to balance a person's rights with the need for protection and/or treatment? | 8 |
| (d) Evaluate the effectiveness of the legal system in responding to the needs of those who are mentally ill or intellectually disabled. | 12 |