



B O A R D O F S T U D I E S
NEW SOUTH WALES

2012 HSC Legal Studies 'Sample Answers'

When examination committees develop questions for the examination, they may write 'sample answers' or, in the case of some questions, 'answers could include'. The committees do this to ensure that the questions will effectively assess students' knowledge and skills.

This material is also provided to the Supervisor of Marking, to give some guidance about the nature and scope of the responses the committee expected students would produce. How sample answers are used at marking centres varies. Sample answers may be used extensively and even modified at the marking centre OR they may be considered only briefly at the beginning of marking. In a few cases, the sample answers may not be used at all at marking.

The Board publishes this information to assist in understanding how the marking guidelines were implemented.

The 'sample answers' or similar advice contained in this document are not intended to be exemplary or even complete answers or responses. As they are part of the examination committee's 'working document', they may contain typographical errors, omissions, or only some of the possible correct answers.

Section II

Part A — Human Rights

Question 21

Sample answer:

State sovereignty is the ability of a nation state to make laws for its citizens without external interference. The impact that state sovereignty has on human rights influences whether there is recognition, protection or enforcement of such rights. For example, a sovereign state may recognise the fundamental human rights as listed in the Universal Declaration of Human Rights and then enact them into domestic legislation as seen in the Australian Racial Discrimination Act 1975 (Cth).

Answers could include:

- Impact that state sovereignty has on the protection of human rights
- State sovereignty is a major factor that works for and/or against the protection of human rights
- Human rights protection relies heavily on the will of the nation state to enact appropriate legislation, based on international instruments

Question 22***Answers could include:***

- Forms of media (electronic or print) used as a vehicle to influence ONE contemporary human rights issue
- Influence public opinion and promote government action
- Investigate and report on contemporary human rights issues
- Acknowledge that the media is a vehicle for change or the promotion of change
- May exhibit political bias in the reporting of a contemporary human rights issue
- Censorship of the media by the sovereign nation impeding the promotion of the human rights issue
- A non-legal response that can only expose the issue, cannot legislate or enforce
- Catalyst for change through private debate
- Can promote law reform
- Highlights the need and generates a response

Sample answer:

The media in its various forms can be an influential instrument in the promotion of any issue, especially in reference to the numerous human rights issues that affect individuals and groups throughout the world. The media can influence public opinion and promote action from governments. As a non-legal vehicle for change the media can expose a human rights issue. For example the processing of refugees seeking asylum in Australia has been widely publicised. This enables the issue to be raised as an area of potential law reform and evokes a debate within society and the government. However, the exposure holds no legal protection for these individuals as they rely on legislation from parliament to uphold and enforce their rights.

Question 23***Answers could include:***

- Reference to human rights legislation or referenda.

Sample answer:

A charter of rights is the document that sets out a country's or group of people's human rights and entitlements within a nation state. There are many reasons for and/or against Australia adopting a charter of rights.

Within Australia the extent to which human rights would be protected would depend upon the way in which a charter of rights was created.

If it is a legislated charter of rights, it is one created by parliament. The effect this has on the protection of human rights is that it is at the will of the parliament. This means that the human rights afforded can be changed at any time. On the other hand a legislative charter of rights provides for a uniform and codified method of protection.

On the other hand, if it is a constitutional charter of rights the effects on human rights would be protected differently. This type of charter provides, to some extent, a better level of protection as it is one that is difficult to change. In order to change this charter a nation state needs to implement a referendum. This is time consuming, costly and not always successful.

Section II

Part B — Crime

Question 24

Students will present statements that demonstrate the extent to which the operation of the courts achieve justice for individuals, victims, offenders, society, or all of these within the criminal justice system.

Statements may include:

- Nature of crime in relation to serious and indictable offences – courts are the only vehicle
- In the eyes of society, courts reflect this notion of justice being achieved – removal from society etc.
- Punishment and sentencing decisions and processes are an indicator of justice, eg Sentencing guidelines, VIS, Truth in Sentencing
- Official process → formal delivery
- Adversarial nature and system which is a mechanism for justice
- Primary agents for common law – significant part that delivers justice
- Provision of legal aid enables access to the court system to provide for justice
- Appellate structure of the court structure
- Use of evidence and rules of admissibility
- Role of juries, eg. reform of jury system
- Cater for special groups – young offenders, coroners court, drug court – relating to specific or ‘special’ issues, as well as using closed courts with cases of a special nature
- Protections offered by the burden of proof and standard of proof – much higher in a criminal case
- Court processes probe deeper into an issue to determine and identify facts
- Nature of crime – alternative forms of punishment issued to a variety of crimes that don’t require the use of courts
- Role of discretion outside the court system can deliver justice, eg police discretion
- Court processes are lengthy and expensive
- Geographical isolation – can’t access specific court’s use of community mediation, circle sentencing, re-integrative shaming. Negotiation of punishment from ADR might affect justice in greater terms than in a court, eg 50 hours of community service versus a caution issued in a court
- Legal aid is not guaranteed to all – criteria based
- Measure of success depends on the quality of legal representation – pay for what you get
- Plea and charge negotiation in some instances is not viewed as an adequate punishment if entered into
- Public nature of courts prejudice the outcome if subject to media exposure eg trial by media
- Remove juries and have a specialised panel of experts to make decisions eg admissibility of DNA or issues relying on medical expertise
- VIS can sway punishment outcomes
- Role of media in court process, eg video statements of victims not enabling cross examination
- Not inquisitorial, can’t get into all the facts

- Outcome based on the rules of the court
- Disproportionate impact on lower socioeconomic groups, eg traffic fines