

Legal Studies

2013 Chief Assessor's Report



Government
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LEGAL STUDIES

2013 CHIEF ASSESSOR'S REPORT

OVERVIEW

Chief Assessors' reports give an overview of how students performed in their school and external assessments in relation to the learning requirements, assessment design criteria, and performance standards set out in the relevant subject outline. They provide information and advice regarding the assessment types, the application of the performance standards in school and external assessments, the quality of student performance, and any relevant statistical information.

SCHOOL ASSESSMENT

Assessment Type 1: Folio

The high quality of many of the folios reflected the care and attention that teachers paid to addressing the assessment design criteria. The best folios contained a balance of different tasks that provided opportunities for students to demonstrate evidence of achievement against all of the assessment design criteria.

Teachers need to ensure that they provide adequate opportunities for their students to demonstrate evidence of I1 (location, selection, documentation, and application of relevant sources) and I2 (critique of legal processes and structures) in the folio, in addition to the inquiry task.

The design and wording of questions must allow students to analyse and evaluate aspects of the legal system. Teachers are encouraged to use words like 'evaluate' and 'analyse' or use phrases such as 'discuss whether or not' in the wording of extended response questions. Although questions that ask students to 'explain', 'outline', 'define', or simply 'discuss' are useful for eliciting evidence of 'knowledge and understanding', they do not allow students to demonstrate 'analysis and evaluation' adequately. There should be an appropriate balance between questions that focus only on 'knowledge and understanding' and questions that require 'analysis and evaluation'.

There is a 5000-word limit for the folio in this subject. When setting tests, teachers should be mindful that student responses will be included in the word count, and that they may need to give students a maximum word count for essays and responses written under timed conditions.

It was pleasing to see that many teachers had adopted a more targeted approach in the setting of tasks that gave students a narrower focus. This allowed them to demonstrate a higher standard through a more in-depth application of 'knowledge and understanding'.

Assessment Type 2: Inquiry

It was pleasing to see that many student inquiry tasks were of a high standard.

Many students chose a topic that could be explicitly linked to the Australian legal system. The better inquiries responded to a question rather than a statement, which ensured that they were analysing two sides of an issue and reaching an informed conclusion.

Many questions were carefully constructed so that they required the analysis of principles, processes, and structures, and also provided an evaluation of opposing arguments. It was pleasing to see that students included recommendations for change in their responses.

There was an improvement in the location, selection, documentation, and application of sources, but the standard of referencing still needed greater care in some inquiries. Students are encouraged to provide evidence that they have evaluated the reliability and validity of their sources. The standard of communication — particularly the use of legal terminology — reflected a higher standard than in previous years.

The responses were typically of an appropriate length. It was pleasing to see more students using the available 1500 words to demonstrate their depth of 'knowledge and understanding'.

There were still too many inquiries that contained a strong social emphasis rather than a legal emphasis, which limited students' ability to link their arguments to the Australian legal system.

Students should be allowed to choose and plan their own topic, but teachers should ensure that they provide appropriate guidance. Where possible, a broad range of topics should be explored within the class.

Teachers are encouraged to guide their students to ensure that their topic is a current legal issue and that evidence of this is provided in the inquiry.

EXTERNAL ASSESSMENT

Assessment Type 3: Examination

Part A: Short Responses

The less successful papers contained incomplete explanations which lacked clarity. Responses read as if the reader already knew what lay behind the author's thinking. It is important to help students understand the need to develop complete answers.

A number of students rewrote the question; however, there is little space provided on the examination paper to do this and it is unnecessary.

Teachers should instruct students not to use the script books to continue their answers to the questions in Part A. Part A answers must be restricted to the question booklet.

Quite a few students used legal terms relating to either civil law or criminal law interchangeably. This is incorrect and students and teachers are reminded that this changes the meaning of what is being discussed. Application of correct terminology is a curriculum requirement.

Question 1

- (a) Generally, this question was poorly answered. Students had trouble explaining their understanding of how social progress differs from social cohesion. However, students were able to explain the judge-made law aspect of the question quite well.
- (b) This question was well answered. Students only needed to identify one element of four that exists to facilitate social cohesion; whichever element they chose to discuss was usually done well.

If students were unable to identify a specific statute, they failed to gain a second mark. There are many worthwhile examples to choose from the curriculum; for example, the Criminal Law Consolidation Act, the Road Traffic Act, Controlled Substances Act, and the Motor Vehicles Act.

- (c) Some students managed this question well, while others did not. It was important for students to show that they understood the difference between representative and responsible government. This meant they had to clearly state that representatives were elected by the people to the parliament and not to government. Many students confused representatives with Ministers.
- (d) This question attracted many well-argued responses.
- (e)(i) The responses were equally split regarding this question, depending on whether they understood the term liability or not. Students either understood that a strict liability offence required no *mens rea* (intent), or they confused the term 'liability' and tried to link it to a civil matter where the goal is to establish legal liability.
 - (ii) Again, the responses were mixed to this question. The definition provided by students needed to include the basic feature that serious offending could potentially attract more than a two-year term of imprisonment — for example, grievous bodily harm, rape, drug trafficking, or manslaughter/murder — and these offences are heard in the District or Supreme Courts. Many students could not construct a basic definition of the two types of offences.
 - (iii) The responses were mixed to this question.
- (f) This question was poorly answered. Most students recognised that judicial independence arises from the doctrine of the separation of powers, but then struggled to explain what this meant. For a four-mark question, students should have made some attempt to identify the means for achieving and maintaining this separation; for example, through appointment and dismissal processes, assured tenure, pay, or judicial privilege — all mechanisms to protect against external interference. They should also have explained the role that constitutional clauses play to uphold these requirements. Instead, many students gave generalised phrases about issues of fairness and impartiality, without explanation about how to achieve these goals.

Question 2

- (a)(i) Most students answered this correctly.
- (ii) Generally, this question was not well answered. Many students failed to differentiate between compiling a jury list and empanelment. More students described the process of compiling a jury list than the correct interpretation.
- (iii) This question was reasonably well answered; however, some of the justifications were somewhat far-fetched and unrealistic.
- (b) This question specifically sought to identify other ADR (alternative dispute resolution) mechanisms and was reasonably well answered. There was a choice between Conciliation, Arbitration, Consensus, and Abandonment; students needed to identify one of these and then explain requirements. It was not sufficient to vaguely describe a process without labelling the method.
- (c) (i) & (ii)
These questions were generally well answered, but some students struggled to provide successful answers. There was a good range of options to select two reasons for a court hierarchy; for example, Appeal Process, Doctrine of Precedent, Administrative Efficiency, and Specialisation. However, some students selected one reason and broke down their example into two aspects, rather than provide two distinct reasons.
- (d) In the main, this question was well answered. However, students scored poorly if they chose to simply state the different standards of proof without expanding on the implications of those differences.
- (e) (i) & (ii)
This question attracted an equal number of successful and less successful responses. There were some flimsy suggestions offered, and many students failed to articulate why they arrived at a particular conclusion. The comment was often not forthcoming about why the challenge was of concern.

Question 3

- (a) Many students did not know the meaning of terms. Those who did provided detailed responses. Overall, the basic principle that a public bill is initiated and endorsed by Cabinet and taken through the parliament by the responsible Minister did not feature in very many responses.
- (b) Some responses suffered from a lack of basic detail about process, and a number were vague and incomplete.
- (c) Most students understood that parliament could codify the case law precedent made by judges or introduce remedial legislation to overcome problematic judge-made law. However, it was not sufficient to only state that parliament could override the Court, which was a claim by a number of students. They also needed to show what this action meant, such as override by introducing remedial legislation. Some students confused this question with the one that followed and responded by discussing guidelines for statutory interpretation. The fact that they were then talking about statutory interpretation twice in

consecutive questions should have been a sign that they were on the wrong track with one of the questions.

- (d) This part was relatively well answered. If students did not score full marks for this question, it was because they only provided one example.
- (e) (i) & (ii)
These questions required the student to show two fundamental ways that case law develops: statutory interpretation and through the resolution of disputes. Many students referred to the latter only, giving two situational examples for this mechanism and so scoring only one mark.
- (f) Most students understood the requirement for significant material differences between the case before the court and precedent from an earlier case.
- (g) This question was relatively well answered, although examples showed little imagination or evidence that went beyond the textbook, which would have shown currency of knowledge/application.

Question 4

- (a) Another relatively well-answered question; however, students tended to have polarised opinions about whether or not referenda was effective. Few students showed an understanding that frequent changing of the Australian Constitution may undermine confidence in the legal system. Therefore having strict criteria for success is a safeguard against this possibility.
- (b) To gain two marks for this question, it was imperative that reference was made to the Preamble in the Australian Constitution; however, this component to the answer was often missing. Students understood well that the states, once in the federation, could no longer withdraw.
- (c) Religion proved to be the favoured freedom for most students. If students were to choose freedom of speech, however, then it needed to be freedom of 'political' speech, as this has been interpreted as an implied freedom by the HCA (High Court of Australia). There are a number of case studies in the curriculum and textbooks that deal with this, such as Australian Capital Television P/L v Cth; Theophanous Case.
- (d) (i) In fact, 80% of students had no trouble identifying the International Criminal Court (ICC) and this was the favoured answer. Where students went wrong was in trying to refer to a United Nations Court. The International Court of Justice was barely mentioned.
- d) (ii) Generally, students needed to answer the previous question correctly to get this question correct. However, if they did not get the name of the court (ICC) right, they still scored a mark if they could correctly describe the role.
- (e) (i) & (ii)
Again, two examples meant that students needed to provide two distinct occurrences. Most students did this; however, some chose to look at one event and attribute two examples, such as the 1967 Referendum changes to two sections of the Australian Constitution and used each change of clause as an example. To gain 4 marks, students had to describe two events. There are plenty of examples to choose from. Too many students still related the

1967 Referendum to gaining the vote, and did not understand the impact of Mabo HCA, 1992.

- (i) This question was generally well answered by the majority of students.
- (f) (i) This question was generally poorly answered. Very few students recognised the need for parliament to embed the principles into existing legislation or to create new legislation.

Part B: Extended Responses

Section 1

Most students selected a set of questions that enabled them to answer all parts. There was a pleasing improvement in the ability of students to respond to the instructions of questions; especially to 'critically analyse'.

The detail and use of legal terminology in many answers was pleasing. There were still a few students who attempted all the short extended questions, instead of choosing one. Teachers need to ensure that students understand the requirements of this section.

Question 5

- (a) Elements of the tort of negligence were generally explained well.
- (b) Many students understood the features and the importance of the doctrine of precedent. It was not enough to explain binding and persuasive precedents, without explaining their role in relation to the court hierarchy.
- (c) Students provided many detailed explanations of the rights in the Australian Constitution with some explanation of limitations. Some arguments for a Bill of Rights only focused on the issue of gay marriage and so did not address the benefits fully. Arguments against a Bill were often superficial.

Question 6

- (a) There was some confusion about how evidence is presented, with some students referring to the inquisitorial system.
- (b) Many students simply explained how judicial independence was achieved with a list of points, rather than explaining the role of the judiciary. Good answers referred to features such as protecting the rights of the accused, upholding the rule of law, and following the judicial review process.
- (c) Most students could explain the reasons for federation but many then failed to examine the relevance of these reasons today. However, there were some very well-argued and detailed responses to this question.

Question 7

- (a) The Division of Powers Doctrine was explained well and many students provided examples of what these powers are.
- (b) This question was generally answered well, with features of the composition and role being discussed.
- (c) Students provided many very good answers to this question. Some students only focused on the positive features of the inquisitorial system and did not discuss the benefits of the adversarial system. It was important to explain how features of each system delivered just outcomes and this part of the question was not addressed by some students.

Question 8

- (a) Some students showed a detailed understanding of the role of Cabinet and Ministers. However, many could not adequately explain the features of representative government or did not understand the role and responsibilities of Ministers, including those of the Prime Minister.
- (b) Most students understood the key differences between civil and criminal law but many were only able to discuss the features of the pre-trial stage with reference to criminal law.
- (c) This question received some very detailed and well-argued answers. Students provided good examples of the role of legislation in both achieving and failing to achieve social progress. Many students also successfully explained how both sources of law played a valuable role in achieving social progress, and gave good examples of legislation and case law to support their arguments. However, many students failed to focus on social progress and some struggled to show how case law achieves social progress. Students who saw this as a platform to discuss 'gay marriage' often failed to critically analyse the legal aspects of the question.

General

Part (a) of each question was generally done well, with most students explaining each of the elements well. Likewise, successful responses in Part (b) of each question went beyond a list of points and attempted to comment on the importance of features of the Australian legal system. Students also gave good answers to Part (c), which required critical analysis. However, teachers need to ensure students understand that listing points, without explanation, is not an adequate response. Both sides of an issue need to be examined, not just the aspect with which the student agrees.

Section 2

Students and teachers had heeded comments made in previous chief assessor's reports and provided a detailed argument with a clear stance in response to the question. Many answers showed a good understanding of topics and students were able to effectively synthesise and provide evidence of evaluation. Many students also used appropriate examples in their answers to support their argument.

Students and teachers need to ensure that students provide more than a list of facts in their responses. There was also evidence of students using previously prepared answers; in these cases, they clearly failed to address the question.

Students are reminded that they are expected to use examples from their study of the Australian legal system to provide examples to support their evaluation.

OPERATIONAL ADVICE

Support by teachers is still needed for some of their students to ensure that all tasks are appropriately labelled, and that task sheets are included. Teachers need to ensure they have included their assessment plan and that any changes are included on the addendum.

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