



2013 LEGAL STUDIES

FOR OFFICE USE ONLY

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ATTACH SACE REGISTRATION NUMBER LABEL TO THIS BOX

Tuesday 19 November: 1.30 p.m.
Time: 3 hours

Pages: 11
Questions: 12

Examination material: one 11-page question booklet
one 16-page script book
one SACE registration number label

Approved dictionaries may be used.

Instructions to Students

- You will have 10 minutes to read the paper. You must not write in your question booklet or script book during this reading time but you may make notes on the scribbling paper provided.
- This paper is in two parts:
 - Part A: Short Responses** (Questions 1 to 4)
Answer **all** parts of Questions 1 to 4 in the spaces provided in this question booklet.
 - Part B: Extended Responses** (Questions 5 to 12)
Answer **two** questions from this part, **one** from Section 1 and **one** from Section 2.
Answer both questions in the separate script book.
- The marks for each part and each section and the suggested allotment of time are as follows:

Part A	60 marks	100 minutes
Part B		
Section 1	20 marks	40 minutes
Section 2	20 marks	40 minutes
Total	100 marks	180 minutes
- Use only black or blue pens to write your answers.
- Attach your SACE registration number label to the box at the top of this page. Copy the information from your SACE registration number label into the box on the front cover of your script book.
- At the end of the examination, place your script book inside the back cover of this question booklet.

PART A: SHORT RESPONSES (Questions 1 to 4)

(60 marks)

Answer **all** parts of Questions 1 to 4. Write your answers in the spaces provided for each question. The allocation of marks is shown in brackets at the end of each part of each question.

1. (a) Explain how judge-made law aims to achieve social progress.

(2 marks)

(b) Explain how social cohesion is upheld, with reference to *one* statute.

(2 marks)

(c) Explain the principle of representative government.

(2 marks)

(d) Present *one* argument for *or* against compulsory voting in Australia.

(2 marks)

(e) (i) Define the term 'strict liability offence'.

(1 mark)

(ii) Define the term 'indictable offence'.

(1 mark)

(iii) Identify *one* difference between a strict liability offence and an indictable offence.

(1 mark)

(f) Evaluate the principle of judicial independence in relation to Australia's legal system.

(4 marks)

TOTAL: 15 marks

2. (a) (i) Who decides whether or not a jury will be used in the adversary system of trial?

(1 mark)

(ii) Describe the process of empanelling a jury in *either* South Australia *or* the Northern Territory.

(2 marks)

(iii) Explain *one* disadvantage of the jury system.

(2 marks)

(b) Explain *one* method, aside from self-help or mediation, of resolving a civil dispute without involving a trial.

(2 marks)

(c) Outline *two* reasons why the courts are arranged into a hierarchy.

(i) _____

(1 mark)

(ii) _____

(1 mark)

(d) Explain why the standard of proof is lower in a civil trial than it is in a criminal trial.

(2 marks)

(e) The Australian legal system faces many challenges in delivering justice for diverse groups in the community. Discuss *two* of these challenges.

(i) _____

(2 marks)

(ii) _____

(2 marks)

TOTAL: 15 marks

3. (a) Explain *one* difference between a public Bill and a private member's Bill.

(2 marks)

(b) Describe the circumstances that may lead to a double dissolution.

(2 marks)

(c) State *one* way in which parliament supervises case law.

(1 mark)

(d) Explain how parliament guides the judiciary in interpreting statutes.

(2 marks)

(e) Identify the *two* fundamental ways in which case law develops.

(i) _____
_____ (1 mark)

(ii) _____
_____ (1 mark)

(f) Explain the circumstances in which a judge may 'distinguish' from a binding precedent.

(2 marks)

(g) Using at least one example, explain *two* reasons why parliament delegates power to the executive.

(i) _____

(2 marks)

(ii) _____

(2 marks)

TOTAL: 15 marks

4. (a) Evaluate the effectiveness of the mechanism for changing the Australian Constitution.

(3 marks)

(b) Explain what is meant by the phrase 'the indissoluble nature of the federal system'.

(2 marks)

(c) Identify *one* freedom that is protected by the Australian Constitution.

(1 mark)

(d) (i) Identify *one* international court.

(1 mark)

(ii) Outline the role of this court.

(1 mark)

(e) Explain *two* examples where the Australian legal system has had an impact on Indigenous Australians through recognition of their rights.

(i) _____

_____ (2 marks)

(ii) _____

_____ (2 marks)

(f) *Read the following extract and answer the questions that follow.*

Constitutional recognition of Indigenous Australians involves a large set of issues.

I am arguing that defining Aboriginal people as a 'race', as the Australian Constitution does¹, sets up the conditions for indigenous people to be treated, not just as different, but exceptional, and inherently incapable of joining Australian society.

It is vital that we broaden the understanding that the constitutional tradition of treating Aborigines as a 'race' must be replaced with the idea of 'first peoples'. By this I mean simply what is proposed in the United Nations Declaration on the Rights of Indigenous Peoples²: it recognizes that '*Indigenous peoples are equal to all other peoples, while recognizing the right of all peoples to be different, to consider themselves different, and to be respected as such*'.

¹ 'Race power' is addressed in Section 51 (part xxvi) of the Australian Constitution as amended by the 1967 referendum.

² United Nations Declaration on the Rights of Indigenous Peoples, as signed by the Australian Government.

Source: Adapted from M. Langton 2012, 'Indigenous exceptionalism and the constitutional 'race power'', speech presented to the Melbourne Writers Festival, Melbourne, 23 August – 2 September 2012, http://visions-download.unimelb.edu.au/LANGTON_SPEECH.pdf

(i) Identify the constitutional reform that is proposed in the extract above.

_____ (1 mark)

(ii) Explain *one* way in which Australian law recognises international agreements such as the United Nations Declaration on the Rights of Indigenous Peoples.

_____ (2 marks)

TOTAL: 15 marks

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PART B: EXTENDED RESPONSES (Questions 5 to 12)

Answer two questions from this part, **one** from Section 1 and **one** from Section 2.

Write your answers in the separate script book provided. Write the question numbers in the appropriate box on the front cover of the script book and at the beginning of each answer.

SECTION 1 (Questions 5 to 8)

(20 marks)

Answer **one** question from this section. You must attempt all parts of the question. Label each part of your answer.

The allocation of marks is shown in brackets at the end of each part of each question.

5. (a) Outline the elements of the tort of negligence. (5 marks)
- (b) Discuss the importance of the doctrine of precedent in the Australian legal system. (5 marks)
- (c) Critically analyse the arguments surrounding the introduction of a Bill of Rights to the Australian constitutional system. (10 marks)
6. (a) Outline how evidence is examined in the adversary system of trial. (5 marks)
- (b) Discuss the role of the judiciary in upholding the rule of law. (5 marks)
- (c) Critically analyse whether or not the reasons for federation remain relevant to Australian society today. (10 marks)
7. (a) Outline how the division of legislative power between the Commonwealth and the states or territories operates. (5 marks)
- (b) Discuss the importance of the Senate in the Australian legal system. (5 marks)
- (c) Critically analyse how effectively the inquisitorial system, compared with the adversary system, delivers just outcomes. (10 marks)
8. (a) Outline the features of responsible government. (5 marks)
- (b) Discuss the differences between civil law and criminal law, with reference to the pre-trial stage. (5 marks)
- (c) Critically analyse how the relationship between legislation and case law aims to achieve social progress. (10 marks)

SECTION 2 (Questions 9 to 12)

(20 marks)

Answer **one** question from this section.

9. 'The adversary system of trial operates perfectly; therefore there should be no need for appeal courts.'

Using examples, evaluate this statement.

(20 marks)

10. 'The power of the federal executive government has become too great.'

Using examples, evaluate this statement.

(20 marks)

11. 'The High Court has distinct roles — the recognition of human rights is not one of these roles.'

Using examples, evaluate this statement.

(20 marks)

12. 'The supervisory role of each of the three arms of government ensures effective law-making.'

Using examples, evaluate this statement.

(20 marks)