

Student Number .....



Barker College

**2013**  
**TRIAL**  
**HIGHER SCHOOL**  
**CERTIFICATE**

# Legal Studies

**ANSWER SHEET**

**Staff Involved:**

- RAW
- SCM
- JLD\*
- RHM

**AM MONDAY 5<sup>TH</sup> AUGUST**

**115 copies**

**Section I**

**Part A – Multiple Choice**

**Choose the best response and fill in the response oval completely**

- 
- |     |   |                       |   |                       |   |                       |   |                       |     |   |                       |   |                       |   |                       |   |                       |
|-----|---|-----------------------|---|-----------------------|---|-----------------------|---|-----------------------|-----|---|-----------------------|---|-----------------------|---|-----------------------|---|-----------------------|
| 1.  | A | <input type="radio"/> | B | <input type="radio"/> | C | <input type="radio"/> | D | <input type="radio"/> | 11. | A | <input type="radio"/> | B | <input type="radio"/> | C | <input type="radio"/> | D | <input type="radio"/> |
| 2.  | A | <input type="radio"/> | B | <input type="radio"/> | C | <input type="radio"/> | D | <input type="radio"/> | 12. | A | <input type="radio"/> | B | <input type="radio"/> | C | <input type="radio"/> | D | <input type="radio"/> |
| 3.  | A | <input type="radio"/> | B | <input type="radio"/> | C | <input type="radio"/> | D | <input type="radio"/> | 13. | A | <input type="radio"/> | B | <input type="radio"/> | C | <input type="radio"/> | D | <input type="radio"/> |
| 4.  | A | <input type="radio"/> | B | <input type="radio"/> | C | <input type="radio"/> | D | <input type="radio"/> | 14. | A | <input type="radio"/> | B | <input type="radio"/> | C | <input type="radio"/> | D | <input type="radio"/> |
| 5.  | A | <input type="radio"/> | B | <input type="radio"/> | C | <input type="radio"/> | D | <input type="radio"/> | 15. | A | <input type="radio"/> | B | <input type="radio"/> | C | <input type="radio"/> | D | <input type="radio"/> |
| 6.  | A | <input type="radio"/> | B | <input type="radio"/> | C | <input type="radio"/> | D | <input type="radio"/> | 16. | A | <input type="radio"/> | B | <input type="radio"/> | C | <input type="radio"/> | D | <input type="radio"/> |
| 7.  | A | <input type="radio"/> | B | <input type="radio"/> | C | <input type="radio"/> | D | <input type="radio"/> | 17. | A | <input type="radio"/> | B | <input type="radio"/> | C | <input type="radio"/> | D | <input type="radio"/> |
| 8.  | A | <input type="radio"/> | B | <input type="radio"/> | C | <input type="radio"/> | D | <input type="radio"/> | 18. | A | <input type="radio"/> | B | <input type="radio"/> | C | <input type="radio"/> | D | <input type="radio"/> |
| 9.  | A | <input type="radio"/> | B | <input type="radio"/> | C | <input type="radio"/> | D | <input type="radio"/> | 19. | A | <input type="radio"/> | B | <input type="radio"/> | C | <input type="radio"/> | D | <input type="radio"/> |
| 10. | A | <input type="radio"/> | B | <input type="radio"/> | C | <input type="radio"/> | D | <input type="radio"/> | 20. | A | <input type="radio"/> | B | <input type="radio"/> | C | <input type="radio"/> | D | <input type="radio"/> |

**BLANK PAGE**

Student Number .....



Barker College

**2013  
TRIAL  
HIGHER SCHOOL  
CERTIFICATE**

**Legal Studies**

**Staff Involved:**

- RAW
- SCM
- JLD\*
- RHM

115 copies

AM MONDAY 5<sup>TH</sup> AUGUST

**General Instructions**

- Reading time – 5 minutes
- Working time – 3 hours
- Write using blue or black pen
- Write your Student Number at the top of the Answer Sheet and on all answer pages submitted

**Total marks – 100**

**Section I** Pages 3–8

**20 marks**

- Attempt Questions 1 - 20
- Allow about 30 minutes for this section.

**Section II** Page 9 - 14

**30 marks**

This section has two parts, Part A and Part B

- Allow about 60 minutes for this section

**PART A – 15 marks**

- Attempt Questions 21 - 23
- Indicate all answers in the spaces provided

**PART B – 15 marks**

- Attempt Question 24
- Answers on the paper provided

**Section III** Pages 15 - 18

**50 marks**

- Attempt TWO questions from Questions 25 - 31, each from a different Option
- Allow about 1 hour and 30 minutes for this section
- Answer on the paper provided



1. Which of the following is a public order offence?
  - (A) Illegal download of music
  - (B) Seditious
  - (C) Drink driving
  - (D) A bomb hoax
  
2. When is a victim impact statement presented in court?
  - (A) At the committal hearing
  - (B) During the selection of the jury
  - (C) After the verdict is given and before sentencing
  - (D) During the prosecution's evidence
  
3. Justin is given the opportunity to apologise to the person whose shop he vandalised.  
What is this called?
  - (A) Remand
  - (B) Restorative justice
  - (C) Parole
  - (D) Diversion
  
4. What is the purpose of cross examination of a witness in a criminal trial?
  - (A) To select the jury
  - (B) To make sentencing recommendations to the jury
  - (C) To allow the witness to explain their evidence to the jury
  - (D) To test the evidence given by the witness

Use the following information to answer Questions 5 – 8.

Police surveillance units have detected the cultivation of drugs in a suburban house. They enter the property and arrest two males, Bill and Ben. A large quantity of cannabis, cultivation equipment, some assault rifles and cash are seized for evidence.

5. Which of the following statements best describes their chance of being released on bail?

- (A) Bail is likely to be granted because Bill and Ben did not resist arrest.
- (B) Bail is likely to be granted because Bill and Ben answered all questions when interviewed by police.
- (C) Bail is unlikely to be granted because of the nature of the crime.
- (D) Bail is unlikely to be granted because they plan to plead guilty.

6. Which statement is true about the search of the property?

- (A) A search warrant is not required in drug related cases.
- (B) A search warrant protects the rights of property owners.
- (C) To be legal the search must be videotaped.
- (D) A warrant is only required if a crime has been detected.

7. In return for information about other cannabis suppliers, Bill is offered a plea bargain by the prosecution.

Which of the following best describes events if Bill accepts the offer?

- (A) Bill must plead not guilty and will be released on bail.
- (B) Bill must plead guilty to the charges and will likely receive a lesser sentence.
- (C) The jury is instructed to find Bill not guilty on some of the charges.
- (D) Bill and his lawyer will negotiate his sentence.

8. In court Ben argues that the cultivation of cannabis was to support his own drug habit.

Which of the following is true?

- (A) Ben can raise the defence of necessity.
- (B) Ben can raise the defence of insanity.
- (C) Ben can raise the defence of provocation.
- (D) Ben's drug habit has no bearing on his guilt.

9. The Antarctic Treaty forbids mining in Antarctica. The US, a signatory to the Treaty, decides to commence drilling for oil in Antarctica. Australia disputes this action and refers the matter to the UN.

In which court would this dispute be heard?

- (A) The International Court of Justice
- (B) The International Criminal Court
- (C) The Security Council
- (D) The Human Rights Council

10. Amir, a Malaysian citizen, is wanted in Australia to face charges of people smuggling. He is arrested in a Malay fishing village by local authorities.

Which of the following statements is true?

- (A) Amir should be released from custody because the arrest occurred outside the Australian jurisdiction.
- (B) Australian police can immediately travel to Malaysia, arrest Amir and return him to Australia.
- (C) Australian police must make an application in a Malaysian court to obtain permission to return Amir to Australia.
- (D) Amir will be tried in the International Criminal Court.

11. The right to work is protected under which international law?

- (A) International Covenant on Economic, Social and Cultural Rights
- (B) International Covenant on Civil and Political Rights
- (C) The Slavery Convention
- (D) The Convention on the Rights of the Child

12. Which of the following does legal aid in NSW attempt to achieve?

- (A) Accessibility
- (B) Self-representation
- (C) Prevention of discrimination
- (D) Employment of public defenders

**13.** The Prime Minister of Australia signs a new international law aimed at abolishing the use of the internet for the distribution of child pornography.

When does this law apply in Australia?

- (A) As a signatory to the law, it automatically applies in Australia
- (B) When it is passed by referendum
- (C) When the High Court approves it
- (D) When the Parliament passes laws which reflect the intent of the law

**14.** The NSW Council of Civil Liberties is best described as what type of organisation ?

- (A) An intergovernmental organisation
- (B) A tribunal
- (C) A statutory authority
- (D) A non-government organisation

**15.** Which of the following statements is considered an argument against the passing of an Australian Human Rights Act?

- (A) It would require approval by the United Nations which is costly and time consuming.
- (B) It is too difficult to pass as it needs a majority of voters in a majority of States.
- (C) It transfers power from the legislature to unelected members of the judiciary.
- (D) It would quickly become outdated.

**16.** Monty is given a two year suspended sentence for assault. What circumstances are associated with such a sentence?

- (A) Monty is allowed to live at home during weekdays and must attend prison on weekends.
- (B) Monty must perform compulsory supervised work in the community for up to 500 hours.
- (C) Monty is issued with a caution and would face more serious penalties if he re-offends.
- (D) Monty is placed on a good behaviour bond and must obey the conditions of the bond or risk being sent to jail.



**17.** Isaac is 15 years old and has been arrested and charged with armed robbery.

Which statement is correct about Isaac's trial?

- (A) If found guilty, Isaac is responsible for the crime but may not have a conviction recorded.
- (B) The Judge will dismiss the charges as Isaac is not able to be charged with a crime.
- (C) Isaac's identity is kept secret from the jury.
- (D) The prosecution must first prove beyond a reasonable doubt that Isaac knew the act was wrong.

**18.** Who can appeal a sentence?

- (A) Both the defence and the prosecution
- (B) The prosecution only
- (C) The defence only
- (D) The victim

**19.** Which statement is true about sentencing in NSW?

- (A) Minimum sentences have been determined in legislation.
- (B) Maximum sentences have been set in legislation.
- (C) Judges must follow judicial guidelines.
- (D) The jury recommends sentences to the judge.

**20.** Which of the following is an example of situational crime prevention?

- (A) Literacy programs for disadvantaged children
- (B) Increased funding for on the job skills training
- (C) Drug and alcohol rehabilitation
- (D) Encryption of computer data

**END OF PART A**

**BLANK PAGE**

**Section II - 30 marks**

**Allow about 60 minutes for this section**

**Part A - Human Rights**

**15 marks**

**Attempt Questions 21 - 23**

Answer the questions in the spaces provided. These spaces provide guidance for the expected length of the response.

---

**Question 21 (3 marks)**

Outline how changing values and ethical standards have contributed to the development of human rights.

**3**

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

**Question 22** (5 marks)

**5**

How do courts and tribunals promote and enforce human rights in the international community?

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....



**BLANK PAGE**

## Section II (continued)

### Part B - Crime

15 marks

#### Attempt Question 24

Answer the question on writing paper. Extra writing paper is available if required.

---

In your answers you will be assessed on how well you:

- demonstrate knowledge and understanding of legal issues relevant to the question
  - communicate using relevant legal terminology and concepts
  - refer to relevant examples such as legislation, cases, media, international instruments and documents
  - present a sustained, logical and cohesive response
- 

**Marks**

#### Question 24 (15 marks)

Explain how law reform has affected the rights of victims, offenders and society.

**15**

**End of Part B**

**End of Section II**

**BLANK PAGE**



## Section III — Options

**50 marks**

**Attempt TWO questions from Questions 25 - 31, each from a different Option**

**Allow about 1 hour and 30 minutes for this section**

Answer each question **SEPARATELY**.

---

In your answer you will be assessed on how well you:

- demonstrate knowledge and understanding of legal issues relevant to the question
  - communicate using relevant legal terminology and concepts
  - refer to relevant examples such as legislation, cases, media, international instruments and documents
  - present a sustained, logical and cohesive response
- 

**Marks**

### **Question 25 — Consumers (25 marks)**

- (a) How effective are legal and non-legal measures in responding to credit and product certification issues? **25**

**OR**

- (b) To what extent do remedies available through the legal system achieve justice for consumers? **25**

### **Question 26 — Global Environmental Protection (25 marks)**

- (a) How effective is the law in achieving an international response to global environmental protection? **25**

**OR**

- (b) To what extent do legal and non-legal processes promote compliance with global environmental initiatives? **25**

**Please turn over**

---

In your answer you will be assessed on how well you:

- demonstrate knowledge and understanding of legal issues relevant to the question
  - communicate using relevant legal terminology and concepts
  - refer to relevant examples such as legislation, cases, media, international instruments and documents
  - present a sustained, logical and cohesive response
- 

**Marks**

**Question 27 —Family (25 marks)**

- (a) Evaluate the legal processes involved in dealing with problems in families. **25**

**OR**

- (b) To what extent has the law adequately responded to the changing nature of parental responsibility? **25**

**Question 28 —Indigenous People (25 marks)**

- (a) Assess the significance of state sovereignty in encouraging cooperation and resolving conflict in issues regarding indigenous peoples. **25**

**OR**

- (b) Evaluate legal and non-legal responses to the issue of land rights for indigenous peoples. **25**

**Please turn over**

---

In your answer you will be assessed on how well you:

- demonstrate knowledge and understanding of legal issues relevant to the question
  - communicate using relevant legal terminology and concepts
  - refer to relevant examples such as legislation, cases, media, international instruments and documents
  - present a sustained, logical and cohesive response
- 

**Marks**

**Question 29 — Shelter** (25 marks)

- (a) How effective is the law in achieving justice for people seeking and providing shelter? In your response, make reference to ONE contemporary issue concerning shelter. **25**

**OR**

- (b) *‘Compliance with the law is necessary to achieve justice for all.’*  
Assess this statement in relation to the protection of those who seek and provide shelter. **25**

**Question 30 — Workplace** (25 marks)

- (a) Assess the effectiveness of the changing legal framework in recognising rights and enforcing responsibility of employees and employers. **25**

**OR**

- (b) To what extent does workplace law reflect the changing values and ethical standards of society? **25**

**Please turn over**

---

In your answer you will be assessed on how well you:

- demonstrate knowledge and understanding of legal issues relevant to the question
  - communicate using relevant legal terminology and concepts
  - refer to relevant examples such as legislation, cases, media, international instruments and documents
  - present a sustained, logical and cohesive response
- 

**Marks**

**Question 31 — World Order** (25 marks)

‘The sovereignty of states is more important than the rights of humans.’

Discuss this statement in relation to the effectiveness of legal responses in promoting and maintaining world order.

**25**

**End of Section III**

**END OF PAPER**

**Barker College Legal Studies  
Trial Examination Marking Guidelines 2013**

**Section I: Multiple Choice**

<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>5</b>	<b>6</b>	<b>7</b>	<b>8</b>	<b>9</b>	<b>10</b>	<b>11</b>	<b>12</b>	<b>13</b>	<b>14</b>	<b>15</b>	<b>16</b>	<b>17</b>	<b>18</b>	<b>19</b>	<b>20</b>
D	C	B	D	C	B	B	D	A	C	A	A	D	D	C	D	A	A	B	D

**Section II:**

**Part A – Human Rights**

**Question 21:**

**Outline how changing values and ethical standards have contributed to the development of human rights.**

Criteria	Marks
<ul style="list-style-type: none"> <li>Clearly demonstrates an understanding of the contribution of changing values and ethical standards to the development of human rights.</li> </ul>	3
<ul style="list-style-type: none"> <li>Makes some reference to the contribution of changing values and ethical standards to human rights.</li> </ul>	2
<ul style="list-style-type: none"> <li>Makes general statements about changing values and ethical standards or the development of human rights.</li> </ul>	1

**Answers could include:**

- International law has reflected changes in attitudes in society ie: the creation of the UDHR and subsequently the ICCPR and ICESCR and other international laws have stated the views of society as to the minimum standards of existence for humans.
- Response cites example/s of changing values and ethics over time – abolition of slavery, trade unionism and labour rights, universal suffrage, universal education, self-determination, environmental rights, peace rights. The international law supporting these reforms should be referred to.
- Domestic responses to international law reform eg: Anti-discrimination legislation in response to CEDAW; changes to the Migration Act in response to the Refugee Convention.

**Markers feedback:**

- This question was generally answered well, although some students didn't clearly link the changing values and ethics to the development of human rights. What are these values? Eg. Equality, freedom, right to life etc.*
- The best answers would mention the development of the UN, UDHR, ICCPR and ICESPR and then give an example such as slavery. It was possible to get full marks if you just mentioned an example, such as slavery, but you needed to give the relevant laws and link it clearly to the question of values.*
- This wasn't a question on family law and if you mentioned only domestic legislation regarding same sex relationships you would not receive full marks.*

**Question 22:****How do courts and tribunals promote and enforce human rights in the international community?**

Criteria	Marks
<ul style="list-style-type: none"> <li>Clearly demonstrates how courts and tribunals promote and enforce human rights in the international community.</li> <li>May integrates an example of an international court or tribunal</li> </ul>	4 – 5
<ul style="list-style-type: none"> <li>Makes some reference to how courts and tribunals promote and/or enforce human rights in the international community</li> <li>May identify an example of an international court or tribunal</li> </ul>	2 – 3
<ul style="list-style-type: none"> <li>Makes general statements about courts or tribunals or human rights</li> </ul>	1

**Answers could include:**

- Answers may cite examples of courts and tribunals.
- International Criminal Court – Set up to try offenders for breaches of International Humanitarian Law (genocide, war crimes and crimes against humanity)
- International Court of Justice – to resolve disputes over Treaties
- Ad hoc* tribunals – ICTR (Rwanda 1994); ICTY (Yugoslavia 1993); Special Court for Sierra Leone (Sierra Leone 1996). Three specialist tribunals/courts set up to try offenders for for breaches of International Humanitarian Law (genocide, war crimes and crimes against humanity)
- These courts and tribunals enforce international law to bring offenders to justice. To send a signal to the global community that offenders cannot act with impunity in regard to breaches of human rights.

**Markers feedback:**

- To get full marks you needed to cite examples of both courts and tribunals. It wasn't sufficient to just explain how they in general promote and enforce human rights. You needed to mention the specific roles of each in promoting and enforcing human rights.*
- If you gave a great answer about the ICC and ICJ but didn't mention any tribunals then you could only receive a maximum of 4.*
- Many students didn't know the role of the ICJ and often confused it with the ICC – make sure you know the differences.*

**Question 23:****Evaluate the effectiveness of legal and non-legal responses in protecting human rights.**

Criteria	Marks
<ul style="list-style-type: none"> <li>• Demonstrates detailed understanding of international or domestic legal AND non-legal responses in protecting human rights.</li> <li>• Makes a judgement about the effectiveness of these responses in protecting human rights.</li> </ul>	6 – 7
<ul style="list-style-type: none"> <li>• Demonstrates some understanding of international or domestic legal AND/OR non-legal responses in protecting human rights.</li> <li>• Makes statements about the effectiveness of these responses in protecting human rights.</li> </ul>	3 – 5
<ul style="list-style-type: none"> <li>• Makes a general statement about legal or non-legal responses AND/OR the enforcement of human rights.</li> </ul>	1 – 2

**Answers could include:**

- Answer refers to both legal and non-legal responses in protecting human rights.
- International legal responses include the actions of – Treaties and conventions, UN (General Assembly, Security Council, Courts and Tribunals), IGO's. Students demonstrate knowledge and examples of some of these actions.
- Non-legal international responses – actions of the media, NGO's and *unauthorised* military action. Students demonstrate knowledge and examples of these actions.
- Answer makes a judgement about the effectiveness of these measures – eg: the role that state sovereignty plays in impeding the operation of these legal and non-legal measures.
- The answer may introduce the emerging principle of the responsibility to protect R2P.
- The answer may integrate examples to demonstrate the effectiveness of legal and non-legal responses. Examples could include operation of the ICC, limitations of SC operations in Egypt and Syria, CROC and child soldiers, aid agencies.
- Domestic legal responses would include the actions of Australian parliaments and courts. Students demonstrate knowledge and examples of some of these actions.
- Domestic non-legal responses include the actions of the media and NGO's. Students demonstrate knowledge and examples of some of these actions.

**Markers feedback:**

- *Many students used this question to just write all they knew about a particular human rights issue, eg. Child soldiers in Uganda. This often led to them not specifically evaluating enough legal responses and therefore getting low marks.*
- *It would seem that many didn't actually read the question properly and instead regurgitated a response they had learnt for a past paper regarding a contemporary issue.*
- *When given a question about evaluating responses to human rights abuse, it should be obvious to you that you need to mention the concept of state sovereignty and how it can impede responses. Many students didn't even mention this.*
- *It wasn't acceptable to write about legal responses in general. You needed to give specific examples, such as the UN, ICC, SC, international laws etc.*
- *When talking about international laws, don't call it legislation as it isn't!*
- *The weighting of legal to non-legal responses did not need to be 50/50 in the amount you wrote. However you did need to evaluate the types of non-legal responses – the media and NGOs. You could have also mentioned unauthorised military action as a non-legal response.*
- *Many wrote that non-legal responses are far more effective than legal! This is not the case. Non-legal can be effective but in a different way to legal – i.e. by raising awareness and encouraging governments to take action, but they cannot be MORE effective than legal action.*
- *IGOs are not non-legal responses! They are intergovernmental organisations (regional organisations) such as The African Union, and are therefore a LEGAL response.*

RHM

**Section II:  
Part B – Crime**

**Question 24:**

**Explain how law reform has affected the rights of victims, offenders and society.**

<b>Criteria</b>	<b>Marks</b>
<ul style="list-style-type: none"> <li>Clearly outlines criminal law reforms</li> <li>Demonstrates extensive knowledge of the rights of victims, offenders and society</li> <li>Relates in detail how law reform has affected the rights of victims, offenders and society</li> <li>Integrates relevant examples such as: legislation, cases, media, international instruments and documents into the response</li> <li>Presents a sustained, logical and cohesive answer using relevant terminology and concepts</li> </ul>	13 – 15
<ul style="list-style-type: none"> <li>Outlines criminal law reforms</li> <li>Demonstrates knowledge of the rights of victims, offenders and society</li> <li>Relates how law reform has affected the rights of victims, offenders and society</li> <li>Uses relevant examples such as: legislation, cases, media, international instruments and documents</li> <li>Presents a logical and cohesive answer using relevant terminology and concepts</li> </ul>	10 – 12
<ul style="list-style-type: none"> <li>Refers to reform of criminal law</li> <li>Demonstrates some knowledge of the rights of victims and/or offenders and/or society</li> <li>Makes limited references to how law reform has affected the rights of victims and/or offenders and/or society</li> <li>Makes some reference to examples such as: legislation, cases, media, international instruments and documents</li> <li>Presents a structured answer using relevant legal terminology and concepts</li> </ul>	7 – 9
<ul style="list-style-type: none"> <li>Demonstrates limited knowledge of reform to criminal law</li> <li>May refer to the rights of victims or offenders or society</li> <li>Makes general statements with few relevant or supported examples</li> <li>Makes limited reference to examples such as: legislation, cases, media, international instruments and documents</li> <li>Uses some relevant legal terminology</li> </ul>	4 – 6
<ul style="list-style-type: none"> <li>Writes in general terms about criminal law</li> <li>May make reference to legislation, cases, media, international instruments and documents</li> <li>May refer to general legal terms</li> </ul>	1 – 3

**Answers could include:**

- Explanation of how and why changes to the law affect victims, offenders and society.
- Examples of law reform including – mental illness, self defence, sniffer dogs, covert search warrants, tazers, bail, the removal of the defence of provocation in Victoria, unanimous to majority jury verdicts, judge only trials, changes to sentencing guidelines, drug courts, MERIT program, extended detention of serious sex offenders, the measures in the YOA.
- Conclusions as to whether these changes to the law have been effective in terms their effects on victims offenders and society. The shifting nature of priorities based on changing societal values or drives for efficiency
- Reference to the difficulty in achieving justice for victims, offenders and society.
- The need for a balance of the rights of victims, offenders and society.
- The role of changing values, ethical standards and notions of justice.



### **Markers feedback:**

- *This question blended two of the themes and challenges – law reform and the rights of victims, offenders and society. This made it possible for students to refer to examples of law reform from all parts of the crime syllabus.*
- *The main problem which students faced in this response was coming to terms with the tense of the verb – **affected**. This meant that it was necessary to explore reforms to the law which have actually happened, rather than to outline **proposed law reforms**.*
- *The message here is to avoid just writing pre-prepared answers. Many students wrote essays which focussed on the effectiveness of the CJS broadly. Students who went down this path were often writing detailed and accurate responses, but were drawing conclusions about effectiveness, rather than focussing on the shifting balance between the rights of victims, offenders and society.*
- *Therefore, planning of your answer whilst in the examination is vital. This does not negate the need to practise writing sample responses in the lead up to the HSC. These practice essays will assist you to develop the fluency of your writing, help you to incorporate LCMD to support your answers and eliminate any discrepancies in your knowledge on topics/issues. So, the message from your teachers is **CONTINUE WRITING!!!***
- *Law reform could have been*
  - *common law reform eg; M’Naghton rules on mental illness or the decision in Zecevic regarding self-defence,*
  - *judicial guidelines such as the Fernando principles on sentencing indigenous offenders or non-parole periods when sentencing*
  - *statute law reform such as new laws or amendments to existing laws eg: on sniffer dogs, tazers, victim impact statements, bail, drug courts, legal aid, covert search warrants, right to silence, majority verdicts for juries, provocation in VIC*
- *Proposed laws reforms considered included charge negotiation, provocation in NSW, changes to the operation of juries (sentencing). **NB:** the question was retrospective in that it asked for actual law reforms. Students who relied heavily on proposed law reforms were able to get high band 5 marks, if other elements of the criteria were met.*
- *The better responses*
  - *Supported their statements with LCMD’s.*
  - *Correctly cited the full name of legislation – including year and jurisdiction.*
  - *Cited the authority of any source to which they referred.*
  - *Wrote at least 4 pages.*
  - *Explored at least 3 law reform issues.*
  - *Concluded each paragraph with some sort of reference back to the shifting balance of rights between victims, offenders and society.*
- *MY PET HATE – poor handwriting!! I am left handed so I have an excuse! Seriously, try to work on this as it does leave a negative impression.*

JLD

## Section III – Family Law

### Question 27 (a)

Evaluate the legal processes involved in dealing with problems in families.

<ul style="list-style-type: none"> <li>• Demonstrates extensive knowledge of the legal processes in dealing with problems in families</li> <li>• Makes an informed judgement, using criteria about how legal processes dealing with problems in families</li> <li>• Integrates relevant examples such as legislation, cases, media, international instruments and documents in the response</li> <li>• Presents a sustained, logical and cohesive answer using relevant legal terminology and concepts</li> </ul>	21-25
<ul style="list-style-type: none"> <li>• Demonstrates knowledge of the legal processes in dealing with problems in families</li> <li>• Makes a judgement using criteria (explicit or implicit) about how legal processes deal with problems in families</li> <li>• Uses relevant examples such as legislation, cases, media, international instruments and documents in the response</li> <li>• Presents a logical and cohesive answer using relevant legal terminology and concepts</li> </ul>	16-20
<ul style="list-style-type: none"> <li>• Demonstrates some knowledge of the legal processes in dealing with problems in families</li> <li>• Makes some judgement about how legal processes deal with problems in families</li> <li>• Makes some reference to examples such as legislation, cases, media, international instruments and documents in the response</li> <li>• Presents a structured answer using relevant legal terminology and concepts</li> </ul>	11-15
<ul style="list-style-type: none"> <li>• Demonstrates limited knowledge about legal processes dealing with problems in families</li> <li>• Makes general statements about how the legal processes deal with problems in families</li> <li>• Makes limited reference to examples such as legislation, cases, media, international instruments and documents in the response</li> <li>• Uses some relevant legal terminology and concepts</li> </ul>	6-10
<ul style="list-style-type: none"> <li>• Writes in general terms about family law</li> <li>• May make limited reference to examples such as legislation, cases, media, international instruments and documents in the response</li> <li>• Uses some legal terminology</li> </ul>	1-5

#### Answers could include -

- Legal processes relating to divorce of married couples
- Legal processes relating to the separation of de facto couples
- Legal processes relating to parenting and custody of children
- Legal processes relating to the division of property
- Legal processes relating to the protection of family members from domestic violence
- Commonwealth legislation – FLA 1975 (Cth); FLRA 1995 (Cth); FLAA 2000 (Cth); FLA(SPR)A 2006 9Cth); FVA 2011 (Cth) and others
- State legislation – Status of Children Act 1996 (NSW); Property Relationships Act 1984 9NSW); Children and Young Person (Care and Protection) Act 1998 (NSW) Adoption Act 2000 (NSW) and Amendment in 2010; Surrogacy Act 2010 (NSW) and others.

**Markers feedback:**

- *Start by reading the question thoughtfully. You need to evaluate legal processes which address problems in families. To do this properly, you need at least one sentence to tell the marker what legal processes are. For example: Legal processes include provisions in legislation and procedures, practice directions and orders of courts.*
- *For problems in families, you need to say which problems you will deal with. For example: Problems which affect families include the legal consequences of separation for children, the division of property upon separation, family violence and allegations of family violence (or whatever you choose).*
- *If it asks you to evaluate, you must include criteria. Explicit ones (actually written down) are best. For example: To be effective, legal processes should reflect the society's concept of family, protect the best interests of children and reduce conflict between the parties. [Of course, there are others.]*
- *Your introduction should ideally contain this information. You do not need to make a judgement in the introduction. Save that for the body of the essay and the conclusion.*
- *Make sure you have the correct legislation. Many people did not.*
- *The issue of no-fault divorce arose as a problem. There is a legal process for this (ie dissolution of marriage). However, when this is evaluated, some students suggested the reintroduction of fault. I don't think many commentators see this as a realistic option. It may be better to do a more contemporary legal process, for example the issue of equal shared parental responsibility or family violence. This is better to evaluate.*

RAW

## Section III – Family Law

### Question 27 (b)

To what extent has the law adequately responded to the changing nature of parental responsibility?

<ul style="list-style-type: none"> <li>• Demonstrates extensive knowledge about how the law responds to the changing nature of parental responsibility</li> <li>• Makes an informed judgement about the adequacy of the law relating to parental responsibility</li> <li>• Integrates relevant examples such as legislation, cases, media, international instruments and documents in the response</li> <li>• Presents a sustained, logical and cohesive answer using relevant legal terminology and concepts</li> </ul>	21-25
<ul style="list-style-type: none"> <li>• Demonstrates sound knowledge about how the law responds to the changing nature of parental responsibility</li> <li>• Makes a sound judgement about the adequacy of the law relating to parental responsibility</li> <li>• Uses relevant examples such as legislation, cases, media, international instruments and documents in the response</li> <li>• Presents a logical and cohesive answer using relevant legal terminology and concepts</li> </ul>	16-20
<ul style="list-style-type: none"> <li>• Demonstrates some knowledge about how the law responds to the changing nature of parental responsibility</li> <li>• Makes some judgement about the adequacy of the law relating to parental responsibility</li> <li>• Makes some reference to examples such as legislation, cases, media, international instruments and documents in the response</li> <li>• Presents a structured answer using relevant legal terminology and concepts</li> </ul>	11-15
<ul style="list-style-type: none"> <li>• Demonstrates limited knowledge about how the law responds to the changing nature of parental responsibility</li> <li>• Makes general statements about the law relating to parental responsibility</li> <li>• Makes limited reference to examples such as legislation, cases, media, international instruments and documents in the response</li> <li>• Uses some relevant legal terminology and concepts</li> </ul>	6-10
<ul style="list-style-type: none"> <li>• Writes in general terms about family law</li> <li>• May make limited reference to examples such as legislation, cases, media, international instruments and documents in the response</li> <li>• Uses some legal terminology</li> </ul>	1-5

#### Answers could include -

- FLA 1975 (Cth) – Family Court, custody, access, care of children ‘of paramount importance’
- FLRA 1995 (Cth) – change in the language to residence and contact, shared parental responsibility introduced, CROC – ‘best interests of the child’, mediation the preferred method of dispute resolution, focus on parental responsibilities not rights.
- FLA(SPR) 2006 (Cth) – change in the language to lives with and spends time with, rebuttable presumption of shared parental responsibility with a focus on shared decision making for the child, court directed to consider equal time, provision of Family Relationship Centres to assist the education and mediation process, less adversarial nature of family court hearings allows for greater accessibility.
- Concerns still present regarding the enforcement of parenting orders.
- Issue of family violence and the safety of children when shared care is awarded prompted a review of the legislation. The Domestic Violence amendments to the FLA in 2012 were an attempt to re-define the meaning of family violence to further protect family members.
- Changing social values regarding gender roles and parenting.

**Markers feedback:**

- *You are asked to make a judgement here: to what extent.....? So you should use some criteria. Consider these: more shared care arrangements, less conflict between parents, less litigation?*
  - *You must clearly address the issue of the changing nature of parental responsibility. Vague statements about reflecting society's values and the modern family are not enough to address this issue.*
  - *In the 1970s when the FLA 1975 (Cth) was introduced, it was mostly mothers who had 'custody' of children post separation. This reflected the social reality that mothers were mostly responsible for the day to day care of children. Both parents usually had 'guardianship' of children (similar to equal shared parental responsibility?). The FLA also encouraged this, with the provision that judges make orders based on the status quo. This means that, if a mother had the care of the children post separation before a hearing, judges took this into consideration in their orders. So there was a legal reason for mothers having orders in their favour.*
  - *However, fathers began to expect to play a greater role in the care of their children post separation and lobby groups were established to put their position forward. More co-operation between parents was behind the Family Law Reform Act 1975 (Cth). The parliamentary report in 2003 Every Picture Tells a Story reflected the need for the law to address a growing expectation of 'shared care' post separation.*
  - *The Family Law Amendment (Shared Parental Responsibility) Act 2006 (Cth) was a legislative response to the changing concept of parental responsibility post separation. It clarified shared care as the presumption of equal shared parental responsibility (ie about decision making): s61DA.*
  - *However, it also directed judges to consider equal time: s65DAA. This is what caused confusion and the Act has been criticised for this reason. Find some of that evaluation (eg Chisholm J).*
  - *To really be able to answer this question, you need to do some analysis of the shift in parental expectation of 'shared care'.*
  - *Many students correctly identified the shift from parental rights to responsibilities. This is a good point to make about the changing nature of parental responsibility.*
  - *There are other issues which can be raised to answer this question: the issues of financial support of children post separation, family violence, adoption, particularly same-sex adoption, the responsibilities of same-sex couples, including lesbian co-parents, rights of sperm donors and surrogacy. You must link them back to the issue of changing nature of parental responsibility.*
- 
- *Generally: (both questions) Have you*
    - *Given a clear introduction which addresses the question?*
    - *Used clear topic sentences which link to the question?*
    - *Given a clear outline / explanation of issues?*
    - *Followed this with evaluation / analysis?*
    - *Used legislation, cases (possibly) and, importantly, opinions to support your argument? Otherwise, your argument is general and does not convince the reader. Use the experts in the paragraphs where you evaluate.*
    - *Got your facts right?*
    - *Used expert opinions correctly? For example, I don't think Chisholm J was commenting about family law when he was a judge! It was in 2010 that he commented about the 2006 Act. Nor do I think that he said that the 2006 Act was 'sloppily worded'.*

RAW

## Section III - World Order

### Question 32(a)

**‘The sovereignty of states is more important than the rights of individuals’**

**Discuss this statement in relation to the effectiveness of legal responses in promoting and maintaining world order.**

<ul style="list-style-type: none"> <li>• Demonstrates extensive knowledge of state sovereignty</li> <li>• Demonstrates extensive knowledge of the legal responses used to promote and maintain world order</li> <li>• Provides detailed arguments for and against the effectiveness of legal responses used to promote and maintain world order</li> <li>• Integrates relevant examples such as legislation, cases, media, international instruments and documents into the response</li> <li>• Presents a sustained, logical and cohesive answer using relevant legal terminology and concepts</li> </ul>	21 – 25
<ul style="list-style-type: none"> <li>• Demonstrates knowledge of state sovereignty</li> <li>• Demonstrates knowledge of the legal responses used to promote and maintain world order</li> <li>• Provides arguments for and against the effectiveness of legal responses used to promote and maintain world order</li> <li>• Uses relevant examples such as legislation, cases, media, international instruments and documents in the response</li> <li>• Presents a logical and cohesive answer using relevant legal terminology and concepts</li> </ul>	16 – 20
<ul style="list-style-type: none"> <li>• Demonstrates some knowledge of state sovereignty</li> <li>• Demonstrates some knowledge of the legal responses used to promote and maintain world order</li> <li>• Provides arguments for and/or against the effectiveness of legal responses used to promote and maintain world order</li> <li>• Makes some reference to examples such as legislation, cases, media, international instruments and documents in the response</li> <li>• Presents a structured answer using relevant legal terminology and concepts</li> </ul>	11 – 15
<ul style="list-style-type: none"> <li>• Demonstrates limited knowledge about state sovereignty</li> <li>• Makes general statements about legal responses to promote and maintain world order</li> <li>• Makes limited reference to examples such as legislation, cases, media, international instruments and documents in the response</li> <li>• Uses some relevant legal terminology and concepts</li> </ul>	6 – 10
<ul style="list-style-type: none"> <li>• Writes in general terms about international law</li> <li>• May make limited reference to examples such as legislation, cases, media, international instruments and documents in the response</li> <li>• Uses some legal terminology</li> </ul>	1 – 5

### Answers could include -

- A definition of state sovereignty and reference to how this assists and impedes the legal responses
- An outline the various types of rights protected in international law
- An outline of the concept of the ‘responsibility to protect’ and how this doctrine may see the elevation of human rights protections above state sovereignty.
- Description of the legal measures available to promote and maintain world order
  - UN (General Assembly, Security Council, treaty bodies);
  - International law eg UDHR, ICCPR, ICESCR;
  - The use of measures such as diplomacy, sanctions, embargos, military force, peacekeeping operations;
  - Courts and tribunals – ICC, ICTR, ICTY, Special Court for Sierra Leone in prosecuting offenders for war crimes, crimes against humanity and genocide.
- The use of examples to demonstrate the difficulty in both protecting human rights and respecting state sovereignty – Rwanda, Libya, Syria

## Markers feedback:

### Positives:

- You all know what state sovereignty means and how it limits the effectiveness of legal responses to world order.
- Most of you know a lot about responsibility to protect and what happened in Libya and Syria.
- Most of you referred to the Security Council and how the veto power limits the effectiveness of the UNSC in responding to breaches of human rights.
- Most people wrote a decent length essay of 4+ pages and demonstrated their understanding of what we have studied to date.

### What you should have written:

<b>Effectiveness of state sovereignty</b>	<b>Limitations of state sovereignty</b>
Defines borders – has led to a decrease in expansionism and conflict	Can limit the ability of the international community to intervene in internal conflicts
Protects and enforces human rights through domestic law	Protects governments which abuse their citizens
Protects the culture and values of a country	Means that nations act in their own self-interest which limits the effectiveness of the UN and other legal responses
<b>Effectiveness of other legal responses</b>	<b>Limitations of other legal responses</b>
Moral authority/legitimacy of collective action	Lack of enforceability
Deterrent effect (tribunals and ICC)	Veto power in the Security Council
Decrease in conflict since 1945	Relies on the political will and the co-operation of nations
Success of peacekeepers in most instances	International law is voluntary

- The notion that it is unacceptable to invade other countries has been a key feature of international law since at least 1648. State sovereignty is protected in both the Montevideo Convention 1933 and the UN Charter. The reason that sovereignty is one of the twin pillars of the UN Charter (the other being human security – human rights, peace and stability) is that the citizens of countries want to opportunity to choose their own government and have laws which reflect their values. So state sovereignty is a great idea in theory. On the other hand, state sovereignty is a major limitation on the effectiveness of international law in practice. Thus state sovereignty is a 'double edged sword'.
- State sovereignty is not absolute – the UN Charter has said since 1945 that it can be overridden if the Security Council votes to do so. This is what happened to Iraq in 1991 and Afghanistan in 2001. The idea that the Security Council could vote to allow intervention in a country predates the 2005 World Summit and the formal acceptance of the doctrine of 'responsibility to protect'. (Only one person seemed to know this – kudos to you!) The Security Council has always been able to authorise an invasion. What happened in 2005 was that the countries of the world agreed that it would be a really good idea if they used the Security Council to protect people from their abusive governments. R2P has only been used so far in Libya because the veto power in the Security Council limits its implementation.
- The distinction between what is possible in theory and what happens in practice is an important one and should be acknowledged. This is where concepts like the self-interest of nations and political will come into play.

### Problems:

- The majority of students only responded to half the question ie you wrote about the statement OR about the effectiveness of legal responses, but not both.
- Responses which correctly defined state sovereignty and R2P, and described what happened in Libya and Syria, received a Band 5 mark. To get into Band 6, you needed to address both the tension between state sovereignty and human rights protection AND discuss the effectiveness of the legal responses.
- Many of you wrote 'human rights are more important than state sovereignty'. Well, maybe in your opinion they should be, but you need to provide some evidence for that statement (a quote). If human rights are more important than state sovereignty, why? In reality, international law values both and which one is prioritised in a given situation depends on the political will of the world's countries.
- The question says legal responses so you need to include more than one – the UN (General Assembly, Security Council), international law, ICJ, ICC, ICTR, ICTY, intergovernmental organisations like the Arab League – not just R2P.
- You need a balance between theory and the case studies. Many of you wrote about the theory without examples, others wrote about Rwanda, Libya and Syria without any theory about how and why international law works.
- Quite a few students wrote about the 'right to protect'. A right is something you can choose to claim. A responsibility is something you have to do. The responsibility to protect is saying that the international community has an obligation to protect human rights. This is a much higher burden.

- Many responses contained assertions – statements which weren't supported by evidence. It is absolutely essential to provide evidence to show why what you have written is true. Try using the phrasing 'this shows that'.
  - Without supporting evidence you are not showing the marker that you know the law. When you use examples of treaties and conventions, cases, media reports, expert opinions (LCMID) in your essays this shows that you have studied and really understand what you are writing about.
  - Also, when you use LCMID, underline/highlight it so it stands out to the marker.
- The Rwandan genocide is not an example of the international community not being able to do anything because of state sovereignty. There were UN peacekeepers in Rwanda and the ICTR was set up within 6 months of the genocide occurring. Rwanda was a failure of political will which shows that cooperation with the international community is voluntary. This is due to the sovereignty of states, but that is not the point most of you made.
- Please write a plan. It helps to organise your ideas and ensures that you don't wander away from the question. Very few people did this. You cannot get Band 6 if you write down everything you know about world order, but don't answer the question.

### **Annoyances:**

- There were no peacekeepers in Libya. There is a support mission (UNSMIL) which is a political mission to assist the transition to democracy.
- Capitals – Security Council, Libya, Arab League
- Just as they had opposite outcomes in the Security Council, so too do Libya and Syria have the 'y' and the 'i' in opposite places!
- The word 'veto' is not an acronym (it doesn't stand for anything) – it does not need to be in capitals.
- The accepted anglicised spelling of Gaddafi is like that.
- You don't use an apostrophe to make a plural; it is Hutus, Tutsis and Syrians.

### Ms Mynott's Soapbox

The crux of your essay is your analysis. This shows the marker that you understand the issues and have weighed them before making up your mind. If this wasn't important, the entire exam could be multiple choice. You must show your thinking:

*A happened, which was caused by B, which led to C, which shows the limitations of D.*

This is like showing your working in Maths. You can't just write 'the UN is ineffective' without showing how you arrived at that conclusion. And saying 'what happened in Rwanda shows the ineffectiveness of the UN' doesn't cut the mustard either. How is what happened in Rwanda the fault of the UN? In what ways is the UN culpable? Why are they to blame? No UN officials or peacekeepers picked up a machete. Show me the logic!

The UN is not a monolith. It is not an independent organisation. It is a collection of countries. When the UN fails to act, or stuffs up, it is because the member states lacked the political will to solve the problem. Where there's a political will, there's a way. Reread Mack and Fullilove if you are unsure about this. Of course, governments tend to only be interested in supporting international efforts if there's something in it for their country. For example, the reason Australia is so concerned about our region is because when things go wrong close to home, there are consequences for us. The crisis in Syria? Low potential impact on Australia. Instability in East Timor or PNG? Refugees, terrorist activity, people smugglers, drug runners, blockages to the oil supply...

So a much more sophisticated argument is to write about the limitations of the UN and international law. If one of the permanent members of the SC vetoes a resolution, the UN can't act. If countries won't send their soldiers, or pull them out because some are killed (which is what happened in Rwanda), the UN has no peacekeeping force. Peacekeepers aren't allowed to engage in fighting, because then they become targets (see Black Hawk Down) and they die, which does not look good on the 6 o'clock news. If the US illegally invades another country, there is realistically very little that can be done because countries are not going to vote to impose economic sanctions on the US, nor will anyone send an invasion force to the most strongly defended country in the world. Plus they'd veto it in the SC anyway.

So the big powers get away with violating international law, as do the governments of small countries without important natural resources or a strategic location. But when there is some economic or strategic benefit to restoring stability and/or preventing human rights abuses, countries will act. They will also act if the citizens make it clear to their government that they expect action, that is, if it becomes politically expedient for the government to act to ensure their own re-election. That's why Amnesty and other NGOs play a role in world order – they help create an imperative for governments to act. That's right kiddies, the world is a selfish nasty place. Countries, like people, are most likely to act when it is in their self-interest. So the UN can only act when it is in the self-interest of a majority of the world's countries, or at least when it is in the interest of the 5 permanent members of the SC.

Please see me if you have any questions about any of this.

Ms Mynott ☺  
August 13