

## Examiner's comments

### Legal Institutions – March 2009

Students generally displayed an understanding of the issues raised by the questions, but disappointingly, only a few students actually sought to answer the questions. Instead of answering the question, most provided information about the question. This displays a lack of understanding of the course material, and an inability to analyse and apply the material to new situations.

A challenge for students in an open book exam appears to be to use their notes to answer the question rather than to use their notes as a source to be copied into the examination booklet, should the same word appear in an exam question and in a heading in their notes. For example, Question 1A was not best answered by copying out s15AB of the *Acts Interpretation Act 1901* (Cth) in its entirety. It required a knowledge of s15AB and indeed the question required reference to this authority. But the question also required a discussion of the use of extrinsic material – not simply a description of what it is.

Students recognized Questions 1B and 6 as problem questions and answered them accordingly. The most common problem encountered in these questions was attempting to use statutory purpose as a benchmark for behavior rather than statutory interpretation (Q1B) and failure to recognize that Smith Co – without a designation which indicates its liability is limited (such as “Pty Ltd”) is not a company simply because its business name includes Co (Q6).

Very few students attempted to answer Questions 2(c), (d), 3A and 4 as problem questions. Instead the issues were discussed and the way in which the question was asked was ignored. In some cases this meant that the question was never actually answered as the required advice was never given.

Question 2 appeared to give students the most trouble. It focused on the limits of Federal legislative power in a federation such as Australia. 2(a) required a recognition that the Commonwealth legislative power located in the Constitution at s51 does not include a power with respect to sport – but the territories power allows location of the AIS in the ACT. Similarly, the power of the Commonwealth

government to legislate with respect to trade practices is limited constitutionally – as is reflected in ss4,6 of the Trade Practices Act (2(b)). 2(c) focused on the power with respect to tied grants, s96, and the cases which have interpreted this power. 2(d) raised issues with respect to the external affairs power and the Tasmanian Dams case.

While generally marks were not deducted for poor spelling and grammar a number of students continue to have problems in this area. This was particularly evident in Q3B. It is important that those attempting to enter the legal profession be able to spell the word ‘profession’. Failure to do so is simply ‘unperfectionable’.