

LEGAL INSTITUTIONS: EXAMINER'S COMMENTS
SEPTEMBER 2008

Overall this examination was well done, with a large number of students demonstrating the ability to support their arguments by reference to relevant legal sources. As well, the problem questions were generally well done, showing an ability to apply legal knowledge to isolate and address the legal issues raised by a particular set of facts.

However, the majority of candidates did not answer the problem in question 1 well. Most picked the issue raised by paragraphs (b) and (c) as a s109 conflict although very few students understood the issue raised by paragraph (a) – the powers of the Commonwealth government. Section 51 of the Commonwealth Constitution confers no general power to legislate with respect to snorkelling and a section 109 conflict can only arise when there is a conflict of validly made State and Federal laws. It was disappointing that students who understood the impact of the Tasmanian Dams case, and the fact that in (b) this would provide Federal legislative power did not also recognise that this legislative power did not exist prior to the conclusion of a bona fide international agreement.

Question 2, Part A was generally well done, although a number of students considered that the historical development of the principle of judicial independence began with the colonisation of New South Wales. Sir Edward Coke and the framers of the *Act of Settlement 1701* would have found this view confusing. Similarly some students seemed to confuse the concepts of Separation of Powers and Judicial Independence. While closely related they are distinct concepts, and students were expected to demonstrate a knowledge of this difference.

Part B was – overall – very disappointing. A large number of students saw this as an opportunity to share their views on aboriginal land rights in Australia. These views were apparently developed without the students ever having troubled themselves by reading the High Court's decision in *Mabo* (or the required extracts.) Any legal discussion must proceed from legal sources. Any discussion of a case must be grounded in the case itself, and not the general social/political context in which the case was decided.

Similarly, case notes do not normally complain about the length of the case and the consequential boredom factor involved in any attempt to read the case in question.

Question 3, Part A was very well done by most students who attempted it. The majority read the instructions carefully, and proofread the draft provided noting the relevant mistakes. A significant minority however chose to redraft the provided letter significantly. It was not always clear whether those students who offered a total revision of the draft were motivated by elegance of expression or were seeking to disguise their lack of knowledge of the particular grammatical errors presented in the draft by rewriting the passage entirely. It is clear that a number of students are untroubled by the presence of contractions in formal writing, and some of the improvements offered were not always successful, or grammatically correct. E.g.: “would of”; “their will be a problem”; or “we’ll get this sorted”. Very few students recognised that “deemed” should have been replaced with another word such as “consider/understand” or that “fewer” was grammatically preferable to “less”. A number of students who did well in this question were, under the pressure of exam conditions, not always able to carry their demonstrated grammatical understanding across into their answers to the other questions.

Part B was generally very well done.

In Question 4 students were not required to demonstrate an understanding of the relevant law, but rather to demonstrate their skills in approaching a problem question using the legal sources which had been provided. Unfortunately, two of those legal sources were conflated and s19 SGA and s71 TPA became s19 TPA. Because this may have confused students, this question was marked accordingly. Overall this question was well done, although not all students recognised that there were three issues raised by the facts, all of which had to be addressed: Whether George’s offer to buy a television from Cheap TV Kings was ever accepted, resulting in a binding contract; Whether the agreement between Joanne and George was supported by fresh consideration and therefore enforceable; and whether the TV cabinet purchased from TV Furniture Pty Ltd was fit for its purpose and of merchantable quality.

In Question 5, Part A was either done very well, or very poorly. A surprising number of students did not read the question carefully, and instead of discussing deadlock procedures between the two houses of parliament at

State and Federal level (as required) discussed division of powers between State and Federal governments. Part B was generally well done, although some students did not answer the question but merely provided material from their notes about tribunals and courts.

Question 6 was generally done well, with most students identifying the relevant elements of s7(2) and interpreting the section using ss33,34 *Interpretation Act 1987* (NSW) and relevant case law.