

Legal Institutions – September 2009 Examination

Examiner's Comments

Students generally handled this paper well, although the two most common problems remain not reading the question carefully and not supporting propositions by reference to sound legal authority.

Students are reminded that it is difficult to pass the examination unless all necessary parts of 4 questions are attempted, and that if more than four questions are attempted only the first four questions will be marked, in accordance with the instructions on the examination paper.

Question 1 Part A would have been better handled if more students had concentrated on what was meant by representative and independent government. Two issues needed to be discussed here: what is meant by representative government and when was it truly achieved in NSW; and when was legislative independence achieved from Great Britain. Very few students discussed both issues. In Part B, most students discussed ADR well, but often without sufficient detail or examples to support a sound argument.

In Question 2 a number of students ignored altogether the provisional government of Boboland's interest in responsible government, or demonstrated a clear lack of understanding of what is meant by responsible government. Instead of focussing on responsible government as required by the question, a number of students focussed on issues relating to judicial independence. This suggests that some students, rather than studying the course material and being prepared to answer any questions in relation to it, are instead attempting to predict questions from past papers and narrowing the focus of their studies accordingly.

There were very few marks in this question for simply rewriting notes about English legal history – the marks were for being able to demonstrate how the important historical developments shaped the creation of our major institutions, and for being able to evaluate these institutions in the light of the desires of the people of Boboland.

Question 3 was generally well answered, as was the statutory interpretation problem in question 4. However a number of students ignored the extrinsic material and a surprisingly large number appeared to be dealing with Commonwealth legislation as they were using the Commonwealth interpretation legislation.

In Question 5 students struggled with using the required cases to discuss the broader principles raised by the question. This question required students to demonstrate an understanding of the importance of the cases listed, not to simply rewrite their notes about the cases in question. All cases listed in the question needed to be discussed – not a selection. Some students answered this question as one whole, rather than in two parts. Those who did typically did poorly as they did not demonstrate an understanding of the relevant issues.

Question 6 was generally done well, but surprisingly, a number of students ignored the advice in the question to consider only s71 of the *Trade Practices Act* and instead raised a variety of other issues. These students were not answering the question.