
Student Number

Barker College

2016
TRIAL HIGHER SCHOOL CERTIFICATE

Legal Studies

ANSWER SHEET

Staff Involved:
- **VZA**
- **KAK***
- **JLD***
- **RHM**

AM WEDNESDAY 10TH AUGUST

85 copies

Section I
Part A – Multiple Choice
Choose the best response and fill in the response oval completely

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Start Here →

1.	A ○	B ○	C ○	D ○		**11.**	A ○	B ○	C ○	D ○
2.	A ○	B ○	C ○	D ○		**12.**	A ○	B ○	C ○	D ○
3.	A ○	B ○	C ○	D ○		**13.**	A ○	B ○	C ○	D ○
4.	A ○	B ○	C ○	D ○		**14.**	A ○	B ○	C ○	D ○
5.	A ○	B ○	C ○	D ○		**15.**	A ○	B ○	C ○	D ○
6.	A ○	B ○	C ○	D ○		**16.**	A ○	B ○	C ○	D ○
7.	A ○	B ○	C ○	D ○		**17.**	A ○	B ○	C ○	D ○
8.	A ○	B ○	C ○	D ○		**18.**	A ○	B ○	C ○	D ○
9.	A ○	B ○	C ○	D ○		**19.**	A ○	B ○	C ○	D ○
10.	A ○	B ○	C ○	D ○		**20.**	A ○	B ○	C ○	D ○

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AM WEDNESDAY 10TH AUGUST

General Instructions

- Reading time – 5 minutes
- Working time – 3 hours
- Write using 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 2 – 7

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

Section II Page 9 - 13

30 marks
This section has two parts, Part A and Part B
- Allow about 1 hour for this section

PART A – 15 marks
- Attempt Questions 21 - 24

PART B – 15 marks
- Attempt Question 25

Section III Pages 15 - 17

50 marks
- Attempt TWO questions from Questions 26 - 32, each from a different Option
- Allow about 1 hour and 30 minutes for this section

Section I

20 marks
Allow about 30 minutes for this section

Attempt Questions 1–20

Use the multiple-choice answer sheet for Questions 1 – 20.

Select the alternative A, B, C or D that best answers the question. Fill in the response oval completely.

Sample 2 + 4 = (A) 2 (B) 6 (C) 8 (D) 9

(A) ⬭ (B) ⬭ (C) ⬭ (D) ⬭

If you think you have made a mistake, put a cross through the incorrect answer and fill in the new answer.

(A) ● (B) ⊗ (C) ⬭ (D) ⬭

If you change your mind and have crossed out what you consider to be the correct answer, then indicate this by writing the word *correct* and drawing an arrow as follows.



(A) ● (B) ⊗ (C) ⬭ (D) ⬭

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1. In which court would an appeal against a murder conviction be heard?

(A) The Local Court

(B) The Coroner's Court

(C) The NSW Supreme Court

(D) The NSW Court of Criminal Appeal

2. A young girl has been caught travelling on a train without a ticket. What type of offence is this?

(A) Traffic offence

(B) Indictable offence

(C) Economic offence

(D) Strict liability offence

3. Which statement is true about the Universal Declaration of Human Rights?

(A) It is binding and must be signed by all nations.

(B) It outlines the operation of the International Criminal Court.

(C) It outlines the rights and obligations of members nations of the United Nations.

(D) It is non-binding but provides the foundation for international human rights law.

4. How long can police in NSW initially detain an adult suspect for questioning without charge?

(A) 2 hours

(B) 4 hours

(C) 6 hours

(D) 8 hours

5. What is the purpose of a sentencing hearing?

(A) To determine the penalty to be given to the accused

(B) To determine the penalty to be given to the convicted

(C) To establish the range of penalties to be given by the prosecutor

(D) To establish that the accused has committed a punishable offence

6. Which of the following statements does NOT describe the role of non-government organisations (NGO's) in protecting human rights?

(A) NGO's can assist victims of human rights abuses.

(B) NGO's play a central role in enforcing human rights law.

(C) NGO's use the media to name and shame human rights violators.

(D) NGO's assist better compliance with human rights law by governments.

7. A 13-year-old boy has been found guilty of theft.

Which of the following is most likely to be a priority for the magistrate during sentencing?

(A) Deterrence

(B) Incapacitation

(C) Rehabilitation

(D) Retribution

8. Which of the following is an example of a transnational crime?

(A) Sedition

(B) Genocide

(C) Sexual assault

(D) Drug trafficking

9. What is the role of the jury in a criminal trial?

(A) To provide reasons for their decision in the case

(B) To decide on an appropriate sentence for the accused

(C) To find the evidence to determine the verdict of the case

(D) To listen to the evidence and then hand down their verdict

10. Which of the following is NOT a function of the Coroner's Court?

(A) To investigate the cause of death

(B) To determine the guilt of an accused person

(C) To refer suspected criminal behaviour to the Director of Public Prosecutions

(D) To make recommendations for law reforms or changes in regulations to protect society

11. Which of the following is NOT a characteristic of a state in international law?

(A) A defined territory

(B) A common language

(C) A permanent population

(D) An ability to enter into international relations

12. Which of the following is an example of social crime prevention?

(A) Police patrols at music concerts

(B) No alcohol zones in public places

(C) Parenting courses for young parents

(D) Closed-circuit television cameras in city streets

13. In sentencing an offender, the judge states that the offender "is remorseful and understands the consequences of her actions".

What has the judge considered in this sentencing decision?

(A) Mitigating factors

(B) Aggravating factors

(C) Specific deterrence

(D) Charge negotiation

14. When assessing an application for legal aid for a person accused of a crime, what does the means test refer to?

(A) The nature of the crime

(B) The assets and income of the applicant

(C) The likelihood of a not guilty verdict in the trial

(D) Whether the accused meant to commit the crime

15. The Australian government has commenced mining in Antarctica. This is a breach of the Antarctic Treaty, of which Australia is a signatory.

What is the likely response from the UN?

(A) Expel Australia from the UN.

(B) Do nothing as the Australian government can use its territory as it wishes.

(C) Arrest the employees of the mining company and prosecute them in the ICC.

(D) Use diplomatic pressure to stop the mining and then refer the matter to the ICJ.

16. When raising the defence of duress in a criminal trial, what does the accused have to prove?

(A) They did not commit the crime.

(B) Their actions were involuntary and could not be controlled.

(C) They carried out the offence in the act of protecting themselves or others.

(D) Unlawful pressure forced them to commit the offence against their own free will.

17. Jack and Jill plan to steal expensive items from Jack's place of work. Jack remains at home and uses his mobile phone to guide Jill whist she carries out the robbery. Both Jack and Jill are arrested and charged.

Which statement describes Jack's role in this crime?

(A) He is an accessory after the fact.

(B) He is an accessory before the fact.

(C) He is a principle in the first degree.

(D) He is a principle in the second degree.

18. In what way does a victim impact statement help to promote justice?

(A) It provides the victim with a voice during the sentencing process.

(B) It allows the victim to present transcript evidence during the trial.

(C) It gives the victim some input into the charge negotiation process.

(D) It allows the victim to have a say regarding the collection of evidence.

19. Sam is initially charged with murder but in return for entering a guilty plea, he now faces the lesser charge of manslaughter.

This is an example of which of the following?

(A) Procedural fairness

(B) Charge negotiation

(C) Restorative justice

(D) Efficient use of police powers

20. Josie is a reporter in Syria during a time of civil war. Under which formal statement on human rights does she have the right to communicate the situation to the world media?

(A) The *USA Bill of Rights*

(B) The *Convention on the Rights of the Child*

(C) The *International Covenant on Civil and Political Rights*

(D) The *International Covenant on Economic, Social and Cultural Rights*

End of Section I

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Student Number

Section II - 30 marks
Allow about 1 hour for this section

Part A - Human Rights
15 marks
Attempt Questions 21 - 24

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

Question 21 (2 marks)

Define human rights. **2**

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Question 22 (2 marks)

Outline the process by which an international treaty becomes law in Australia. **2**

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Student Number

Question 23 (4 marks)

With reference to an example, explain the role of the media in protecting human rights in Australia. **4**

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Question 24 (7 marks) **Student Number**

Referring to a contemporary human rights issue, assess the role of law reform in protecting human rights. **7**

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Section II (continued)

Part B - Crime
15 marks
Attempt Question 25

Answer the question in a writing booklet. Extra writing booklets are available.

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

Question 25 (15 marks)

Evaluate the extent to which the criminal justice system reflects moral and ethical standards.

End of Part B

End of Section II

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Section III — Options

50 marks
Attempt TWO questions from Questions 26 - 32, each from a different Option
Allow about 1 hour and 30 minutes for this section

Answer each question in a SEPARATE writing booklet. Extra writing booklets are available.

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

Question 26 — Consumers (25 marks)

(a) How effective has the legal system been in responding to the changing needs of consumers? **25**

OR

(b) With particular reference to the issue of technology, assess the effectiveness of legal and non-legal responses in achieving justice for consumers. **25**

Question 27 — Global Environmental Protection (25 marks)

(a) How effective are legal and non-legal processes in responding to the need for global environmental protection? **25**

OR

(b) Evaluate the effectiveness of legal responses to the need for global environmental protection. Make particular reference to conflict between the demand for resources and global environmental protection. **25**

Please turn over

Question 28 —Family (25 marks)

(a) To what extent do legal processes encourage compliance when dealing with problems in family relationships. **25**

OR

(b) Assess how family law achieves just outcomes for family members and society in relation to surrogacy and birth technologies. **25**

Question 29 —Indigenous Peoples (25 marks)

(a) How effective is the legal system in responding to the changing needs of indigenous peoples? **25**

OR

(b) How adequately does the legal system deal with issues associated with the intellectual property rights of indigenous peoples? **25**

Question 30 — Shelter (25 marks)

(a) To what extent do changes in the law improve access to shelter? **25**

OR

(c) How effective are the legal and non-legal responses to issues of social housing in the provision of shelter? **25**

Please turn over

Question 31 — Workplace (25 marks)

(a) How effective is the legal system in recognising rights and resolving disputes in the workplace? **25**

OR

(c) How well does the law achieve justice in the workplace in relation to the issue of termination of employment? **25**

Question 32 — World Order (25 marks)

(a) To what extent have legal measures encouraged compliance with international law to achieve world order. **25**

OR

(b) Assess the role of courts and tribunals in promoting peace and resolving conflict. **25**

End of Paper

Barker College
Legal Studies
Trial Examination Marking Guidelines and Markers Comments 2016

Section I: **Multiple choice**

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

Section II: Part A

Human Rights

Question 21: Define human rights.

Criteria	Marks
• States meaning and identifies essential qualities of human rights	2
• Briefly states meaning of human rights or provides an example of a human rights/s	1

Answers could include:

- Human rights are the basic rights and freedoms believed to belong to all human beings and that all people are entitled to.
- Human rights are inherent, inalienable and universal
- Human rights are contained within the UDHR
- Examples: right to education; right to shelter; right to freedom of religion; freedom of speech

Markers comments –

This question was answered well by most students. Better responses included a strong definition coupled with an example and a reference to the UDHR. Students must use all the space.

Question 22: Outline the process by which an international treaty becomes law in Australia.

Criteria	Marks
• Sketches in general terms the steps taken to incorporate international law into domestic law.	2
• Sketches in general terms some of the steps taken to incorporate international law into domestic law or makes a general statement about creating domestic law.	1

Answers could include:

- When an international treaty is signed, nation states such as Australia agree to the principles of that treaty.
- A treaty will be become law in Australia *when* it is ratified into domestic legislation. This is the process by the nation state to formally approve the treaty and then make it legally binding by passing a law.
- Examples: CROC – Education Act

Markers comments –

This question was not answered as well as it should have been. Some students did not clearly understand the ratification process and were not able to articulate this process. Better responses acknowledged that a treaty must first be signed and then it will only become law when it is ratified into domestic legislation. Some students simply stated ratification without explaining what the process is. This was not good enough to get two marks, it needed to be outlined.

Question 23:

With reference to an example, explain the role of the media in protecting human rights in Australia.

Criteria	Marks
• Demonstrates a clear understanding of the role of media in protecting human rights in Australia. • Refers to a relevant example	4
• Demonstrates some understanding of the role of the media in protecting human rights • Refers to an example	3
• Sketches in general terms the role of the media AND/OR how they protect human rights • Refers to an example	2
• Attempts to outline how the media protect human rights OR • Provides an example	1

Answers could include:

- The media (in the form of print, television, radio or social media) play an indispensable role in the 'naming and shaming' of governments and human rights violators by exposing instances of human rights abuse and so helping to bring about change. They raise awareness of HRs abuses.
- The media have a significant influence on public opinion and government action and as such they promote human rights rather than enforce them.
- The role of a free and impartial media and peoples' right to information is recognised as a human right.
- Examples include: asylum seekers, children held in detention centres, Kony, Juvenile detention in NT, 7/11, the Syrian crisis.

Markers comments –

This question was answered well. Students had a clear idea about the role of media and were able to include sophisticated examples. Those students who referred to a recent '4 Corners' episode on Juvenile Detention which lead to an announcement of a Royal Commission were impressive!

Better responses were able to articulate that the media have a role to raise awareness and influence public opinion and that this may lead to change within government policy. The media cannot directly protect HRs in Australia but what they can do is to inform and influence. Some students even made reference to the negative part that media can also play. Some students used their example and answered the question entirely through the case, but most students broadly discussed the role of the media and integrated their example as required.

Weaker responses did not have a good example and did not understand the role of the media at all and as such used examples that could not assist in answering the question.

Question 24:
Referring to a contemporary human rights issue, assess the role of law reform in protecting human rights

Criteria	Marks
• Demonstrates extensive knowledge of a contemporary human rights issue. • Clearly outlines the role of law reform • Provides examples of changes to international and/or domestic law • Makes a judgement about the effectiveness of the changes in the law in protecting human rights	**7**
• Demonstrates some knowledge of a contemporary human rights issue. • Outlines the role of law reform • Provide some examples of changes to international and/or domestic law • Attempts to make a judgement about the effectiveness of the changes in the law in protecting human rights	**5 - 6**
• Makes general statements about a contemporary human rights issue and/or the role of law reform. • May provide some examples of changes to international and/or domestic law	**3 - 4**
• May refer to a contemporary human rights issue • Makes general statements about law reform	**1 - 2**

Answers could include:

- A detailed overview of a contemporary rights issue. Examples could include: Child soldiers, human trafficking and slavery, asylum seekers in Australia
- An outline of law reform and why it happens, i.e. as a result of changing societal values
- Examples of relevant international law and/or domestic law
- Definition of state sovereignty and how this can impede or assist law reform in protecting HRs
- Statement of effectiveness of the changes

Markers comments:
Students referred to a range of contemporary issues including:

Human trafficking and Slavery

- *Human trafficking is the commercial trade or trafficking of human beings for the purpose of some form of slavery, usually involving recruiting, transporting or obtaining a person by force, coercion or deceptive means.*
- *Slavery began in the 18th century, but in this question the focus is on modern day slavery which can take many forms eg forced labour, debt slavery or sexual slavery. There have been numerous anti-slavery treaties in the 20th century.*
- *International law: UDHR Article 4, ILO*
- *Protocol to prevent, suppress and punish trafficking in persons 2000*
- *Domestic laws – Criminal Code Act 1995*

Child Soldiers

- *A person under the age of 18 who participates directly or indirectly, in armed conflict as part of an armed force or group, in armed or support roles is known as a child soldier.*
- *Article 25 UDHR, Provisions within CROC and optional protocol on the involvement of Children in Armed Conflict 2000, Geneva Convention "laws of war", Rome Statute (ICC), ILO Worst Forms of child labour convention 1999*
- *Role of the UN Security Council resolutions*
- *International labour Organisation (ILO)*
- *Children are more vulnerable, less power and are more subject to violation*

- *Case studies: Uganda, Sudan, Lord's Resistance Association LRA in the Democratic Republic of Congo*
- *Relatively new issue, very little response*
- *Domestic law reform - Australian Defence Force – subscription at 17*

Asylum seekers

- *Domestic – offshore detention, The Migration Act and amendments 2008, Border Security Amendment Act 2002*
- *Role of the AHRC*
- *International – UN Convention relating to the status of Refugees 1951, UN High Commissioner for Refugees (UNHCR)*

Students answered this question quite poorly and it was clear that they did not know their Contemporary issue very well. This is a part of the syllabus that students must know (like all the others), but you must be prepared for a question on this.

It is important to know details such as:

- *An overview of the issue including dates, times, where, who, why*
- *Legal responses to the issue*
- *Non-legal responses to the issue*
- *How effective the responses have been*

This question could be answered with regard to international law/domestic law or both. The role of law reform is to create, amend or overturn laws in order to better protect human rights, in accordance with changing social values and/or changing international human rights norms. International law reform promotes, and to a lesser extent protects, human rights by creating globally acknowledged human rights norms, placing political, economic and diplomatic pressure on countries to conform to these. Domestic law reform is more effective in protecting HRs, due to state sovereignty. Law reform isn't enough to protect HRs without effective enforcement.

Better responses were able to articulate an appropriate "contemporary HRs issue", that is 'recent' and apply this issue to a particular country. By providing a clear outline of the issue and the law reform that had occurred, they were then able to assess the role of law reform and make a clear judgement. Better responses referred to state sovereignty and how it can impede the role of law reform in addressing an issue.

Those students in the middle range (and there were a lot) did not address the specific question but instead provided a vague outline of a HRs issue and were lacking depth in their response. Providing examples of changes to international and/or domestic law as a result of changing values is critical. Stating the meaning of law reform in protecting human rights is another important point to include.

Weaker students did not provide a good example (i.e. did not know what a contemporary HRs issue was) and should refer to their syllabus and their first HRs task for guidance. Others went back to the 1800s and this is not considered contemporary and as such will not get marks. Without a valid example, it was difficult to answer the question.

Lastly, don't forget to refer to the question, use the entire space and do not go outside the lines provided, ask for a booklet and label accordingly. Underline your international/domestic law, include appropriate dates and make note of its relevance. Don't make broad sweeping statements and hope for the best.

Section II – Part B
Crime

Question 25:
Evaluate the extent to which the criminal justice system reflects moral and ethical standards.

Criteria	Marks
• Demonstrates an extensive understanding of the way in which the criminal justice system reflects moral and ethical standards • Makes an informed judgement based on criteria (explicitly or implicitly) of the extent to which the criminal justice system reflects moral and ethical standards • Integrates relevant examples such as legislation, cases, media, international instruments and documents into the response • Presents a sustained, logical and cohesive answer using relevant terminology and concepts	13 – 15
• Demonstrates a detailed understanding of the way in which the criminal justice system reflects moral and ethical standards • Makes a judgement (explicitly or implicitly) of the extent to which the criminal justice system reflects moral and ethical standards • Uses relevant examples such as legislation, cases, media, international instruments and documents into the response • Presents a logical and cohesive answer using relevant terminology and concepts	10 – 12
• Demonstrates an understanding of the way in which the criminal justice system reflects moral and ethical standards • Attempts to make a judgement (explicitly or implicitly) of the extent to which the criminal justice system reflects moral and ethical standards • Makes some reference to examples such as legislation, cases, media, international instruments and documents into the response • Presents a structured answer using relevant terminology and concepts	7 – 9
• Makes general statements about the criminal justice system and moral and ethical standards • Makes limited reference to examples such as legislation, cases, media, international instruments and documents • Uses some relevant legal terminology	4 – 6
• Writes in general terms about the criminal justice system • May make reference to legislation, cases, media, international instruments and documents • May refer to general legal terms	1 – 3

Answers could include:
A definition of crime
References to examples of how the criminal justice system reflects moral and ethical standards:

- ✓ Police powers
- ✓ Types of punishment; purposes of punishment
- ✓ The criminal investigation process – use of technology; rights of suspects including the right to silence; search & seizure
- ✓ Court jurisdiction – role of drug court; children's court
- ✓ Pleas and Charge negotiation
- ✓ Legal representation and legal aid
- ✓ The role of juries, verdicts
- ✓ The sentencing process – statutory and judicial guidelines; discretion; factors affecting a decision; alternative methods
- ✓ Post-sentencing consideration
- ✓ Young offenders – age; rights; penalties
- ✓ International crime

Marker's Feedback

This question could have been answered better. Whilst for the most part you demonstrated an understanding of the criminal justice system in general terms, the better responses made references made to legislation, cases and expert opinions and were able to draw out the moral and ethics surrounding the issue. This means that you did read your articles from the resource booklets and demonstrated an understanding and skill to integrate legislation, cases, media and a range of expert opinions to back up your arguments. Well done to you!

The area that most of you grappled with was the question regarding the criminal justice system through the theme and challenge of moral and ethical standards. A few approaches to frame your response could be explored through demonstrating:

- *An understanding that crimes are actions that individual societies have decided are illegal and that what constitutes a crime may differ as to how society perceives the actions taken to address "crime" may change over time.*
- *Crimes are the result of moral and ethical judgement deemed harmful to society and as a result these are reflecting in statute law, common law and international treaties.*
- *The way that the law responds to the shifts in public morality can be demonstrated through the law reform process in response to domestic legislation and/or cases driven as a result of this shift in public perception usually fuelled by media and/or government politics.*
- *The moral and ethical standards can be explored though the views/opinions of the stakeholders surrounding the issue/topic through the opinions of society the offender and/or the victims.*
- *Criteria that could be used to evaluate the topics/issues are: application of the rule of law, resource efficiency and justice whilst balancing the rights of the stakeholders pertaining to the issue you discussed.*

A range of topics were explored with inclusion of relevant legislation/cases and expert opinions most of you ha obtained through your resource booklet. The most popular areas of the criminal justice system were across the below:

Area of the Criminal Justice system	**Moral and ethical standards issue in debate**	**Key legislation, cases, media, etc….** ***(note: this list is not exhaustive)***
Sentencing laws	The current debate regarding mandatory sentencing impacting judicial discretion. The judge must impose penalties that will satisfy the community and be fair to both victim and the offender. These are weighed up with mitigating and aggravating factors, however debate surrounds the process and outcomes subject to community expectations and judges are regularly criticised in the media for failing to hand down sentences that reflect public morality.	*Crimes (Sentencing Procedure) Act* 1999 Thomas Kelly case- 'One punch laws'
Bail laws	Issue surrounding the Bail laws and the current two stage- test that was a response to a shift in public morality and government politics	*Bail Act 1978* (NSW) *Bail Act* 2013 (NSW) *Bail Amendment Act 2014* (NSW) Fesus case Mahmoud Hawi etc

Police powers (ie tasers and sniffer dogs), interrogation and rights of suspects	Police powers and the debate surrounding the powers to exercise "reasonable suspicion". This lends itself to the debate of police abusing their powers that is in conflict with the rights and privacy and human rights of the individual. In addition the right to silence and the denigration of the presumption of innocence surrounding the issue of high profile criminals using delay tactics during the trial process.	*Law Enforcement (Powers and Responsibilities) Act* 2002 *Evidence Act 1995* (NSW) Darby v Director of Public Prosecutions (2004) *Roberto Curti case*
The role of juries	The ongoing debate of judge versus jury only trials. The right to a fair trial that underpins our adversarial and democracy and obligations to International treaties (The International Covenant on Civil and Political Rights)	*Jury Act* 1977
Pleas, charge negotiations	The debate surrounding resource efficiency of our criminal justice system versus the rights of the victim and retribution they are seeking.	Nanette May Case *Crimes (Sentencing Procedure) Act* 1999
Defences	The issue surrounding the use of complete and partial defences and that in NSW we accept legal excuses in our judicial system to address the issue of "human frailty". Most of you discussed the controversy surrounding provocation and use of "battered woman's syndrome" as evidence indicating our growing acceptance to address this issue in NSW.	*Crimes Act 1900* (NSW)
Victim Impact Statement	The issue of the victim and the impact of the crime to potentially influence sentencing. Therapeutic for the victim but detrimental for the offender and judicial process. This could also be impacted/lessened by the plea bargaining process	*Crimes (Sentencing Procedure) Act* 1999 *Victims Right Act 1999* (NSW) Charter of Victims Rights *(Victims Rights and Support Act 2013)*
Young offenders and the age of criminal responsibility	For the most part our approach to young offenders is a reflection of society through the protective mechanism of "*doli incapax*". This is a common law presumption in criminal law proceedings between 10-14 and the age of criminal responsibility as a rebuttable presumption for the prosecution (under statute law). What are the opposing views here and the debate surrounding abolishing or altering this presumption lowering the "*doli incapax*" principle?	*Young Offenders Act 1997* (NSW) *Children (Criminal Proceedings) Act 1987* (NSW) R v GDP (1991) R v LMW (1999) UN Convention on the Rights of the Child (CROC)
Alternatives to Courts	Issue surrounding the tension in society when attempting to uphold the conflicting purpose of punishment (get tough on crime) versus rehabilitation (take into account the factors surrounding offending behaviour). These can be identified through diversionary programs such as the MERIT program and alternatives to court such as Circle Sentencing. Furthermore, the *Young Offenders Act 1997* established youth justice conferences, cautions and warnings as alternatives to court for children who commit certain prescribed offences.	C*riminal Procedure Regulation 2010 – Circle Sentencing* *Young Offenders Act 1997* (NSW) *Magistrates Early Review Into Treatment (MERIT)* *BOSCAR Stats- various (refer to resource booklets)*

Poorly answered responses were mostly confined to broad statements on the issue you discussed and limited use of legislation, cases and media. Mostly a factual account of the issue without linking back to the question to provide a judgement on what the moral/ethical standards was that being evaluated.

Note: Just throwing in repeatedly "moral/ethics" intermittently in your paragraph was not answering the question and not explaining what moral and ethics represents in the criminal justice system.

Ms Argyrakis, August 2016

Section III - Options

Question 28 (a): Family Law

To what extent do legal processes encourage compliance when dealing with problems in family relationships?

CRITERIA	MARK
• Demonstrates extensive knowledge of legal processes dealing with problems in family relationships • Makes an informed judgement based on criteria (explicitly or implicitly) to the extent to which legal processes encourage compliance in family law • Clearly integrates relevant examples such as legislation, cases, media, international instruments and documents • Presents a sustained, logical and cohesive answer to the question using relevant legal terminology and concepts	21 – 25
• Demonstrates substantial knowledge of legal processes dealing with problems in family relationships • Makes a sound judgement (explicitly or implicitly) to the extent to which legal processes encourage compliance in family law • Uses relevant examples such as legislation, cases, media, international instruments and documents • Presents a sustained, logical and cohesive answer to the question using relevant legal terminology and concepts	16 – 20
• Demonstrates some knowledge of legal processes dealing with problems in family relationships • Makes a judgement (explicitly or implicitly) to the extent to which legal processes encourage compliance in family law • Makes some reference to examples such as legislation, cases, media, international instruments and documents • Presents a structured answer to the question using relevant legal terminology and concepts	11 – 15
• Demonstrates limited knowledge of legal processes dealing with problems in family relationships • Makes general statements about the effectiveness of family law • Makes limited reference to examples such as legislation, cases, media, international instruments and documents • Presents a structured answer to the question using legal terminology and concepts	6 – 10
• Writes in general terms about family law or problems in family relationships • May include reference to legislation, cases, media, international instruments and documents • May refer to general legal terms	1 – 5

Answers could include:

Divorce & Separation

- ✓ Role of the Family Court of Australia
- ✓ Family Relationship Centres
- ✓ Compulsory mediation
- ✓ Parenting plans and orders; financial agreements; consent orders
- ✓ Non legal responses

Domestic Violence

- ✓ Criminal law
- ✓ ADVOs
- ✓ Role of the Family Court of Australia
- ✓ Role of media/non legal responses

Marker's Feedback
About 70% of students chose this question.

This question was asking you what areas of family law aim to get various parties obeying / meeting the rules / acting in agreement with decisions made by the courts or between each other, when issues arise in their relationships.

Many students weren't clear what 'compliance' means. You should be aware that it is a theme and challenge and therefore may be tested in the HSC. Make sure you understand what it means and what areas of the syllabus best answer this type of question.

Topics that were good choices included shared parenting, care and protection of children, parenting orders, parenting plans, mediation, domestic violence and surrogacy, the role of the Family Court, child support, amongst others.

A topic that many chose was divorce and this was mainly done quite poorly. It was difficult to link this back to the issue of compliance and many showed that they weren't clear what compliance meant when they discussed the change in law regarding divorce.

Domestic violence was a good area of the law to choose but many students lacked knowledge of the relevant laws and appeared to just write off the top of their heads regarding information learnt in 'Crime' rather than 'Family Law'. ADVOs were the natural area to discuss, but you needed to be clear what the laws are and how many people comply or don't comply with them. Only one student mentioned the recent 2016 amendment which is very relevant for this question.

Shared parenting was an ideal topic for this question. There were many aspects that could have been mentioned and students discussed the issues in the 1995 act regarding the introduction of shared parenting and the problems with compliance that this raised by an increase in fathers assuming it meant 'equal time' and therefore ending up in court. The 1995 act also introduced parenting plans – this mainly wasn't done well as students failed to state that parenting plans were all about encouraging compliance through the flexible agreement made outside of court making it more likely that both parties agreed to comply with it. The 2006 act was mainly done reasonably well, with students raising issues about alternative dispute resolutions and compulsory mediation, as well as Family Relationship Centres. The introduction of equal shared parental responsibility and the clarification of the term 'equal time' was also an important aspect of this act and helped encourage compliance through ensuring both parents were actively involved in the raising of their children.

Child support was a good topic to choose showing that the introduction of the Child Support (Assessment) Act 1989 created the Child Support Agency and allowed deductions of child support to be made at source (before the parented received their pay from their employee). This allowed greater compliance with child support being paid regularly and on time.

The other law that could have been mentioned was the Family Law Amendment Act (2000) that was all about compliance regarding both children (Explanation, education, enforcement) and property (Binding financial agreements). Only a couple of students mentioned this law.

Surrogacy, in particular commercial / overseas surrogacy, was a good choice for this question. Students could have discussed the lack of regulation and lack of compliance with people going overseas and paying for a surrogate and then the courts allowing the child to return to Australia with the parents, despite them having committed an offence.

Finally, ensure you have learnt the names and dates of relevant laws and the key features of each. Expert opinions help support your argument, as do facts, statistics and research. Remember, you are writing a LEGAL essay and therefore must have LAWS!

Question 28 (b): Family Law

Assess how family law achieves just outcomes for family members and society in relation to surrogacy and birth technologies.

CRITERIA	MARK
• Demonstrates extensive knowledge of surrogacy and birth technologies • Makes an informed judgement based on criteria (explicitly or implicitly) of how just outcomes for family members and society can be achieved • Clearly integrates relevant examples such as legislation, cases, media, international instruments and documents • Presents a sustained, logical and cohesive answer to the question using relevant legal terminology and concepts	21 – 25
• Demonstrates substantial knowledge of surrogacy and birth technologies • Makes a sound judgement (explicitly or implicitly) of how just outcomes for family members and society can be achieved • Uses relevant examples such as legislation, cases, media, international instruments and documents • Presents a sustained, logical and cohesive answer to the question using relevant legal terminology and concepts	16 – 20
• Demonstrates some knowledge of surrogacy and birth technologies • Makes a judgement (explicitly or implicitly) of how just outcomes for family members and society can be achieved • Makes some reference to examples such as legislation, cases, media, international instruments and documents • Presents a structured answer to the question using relevant legal terminology and concepts	11 – 15
• Demonstrates limited knowledge of surrogacy and birth technologies • Makes general statements about the effectiveness of family law • Makes limited reference to examples such as legislation, cases, media, international instruments and documents • Presents a structured answer to the question using legal terminology and concepts	6 – 10
• Writes in general terms about surrogacy and birth technologies • May include reference to legislation, cases, media, international instruments and documents • May refer to general legal terms	1 – 5

Answers could include:

- ✓ Definition of surrogacy and birth technologies
- ✓ Reference to legal responses including legislation and case law
- ✓ Legal definition of a parent
- ✓ Overseas surrogacy – commercial vs altruistic
- ✓ Reference to non-legal responses
- ✓ Just outcomes – time, access, cost?

Marker's Feedback

Only about 30% of students chose this option and generally it wasn't done very well.

This question was asking how much family law achieves justice for all parties as well as society when looking at the issue of surrogacy and birth technologies.

Firstly you needed to understand what 'just outcomes' are for each of the parties involved. For example, what does society want, what does a child want, what do parents want and what does the surrogate want? Answers to those questions may include that society would want children to be protected, along with

surrogate mothers not being exploited; a child wants its best interests to be considered; parents want the opportunity to have children and to be treated fairly by the law. In addition, what do same sex couples want? – Equality. Many students failed to be clear as to what these 'just outcomes' were and therefore it was difficult for them to fully answer the question. THIS IS A FUNDAMENTAL REQUIRMENT TO STATE WHEN ANSWERING ANY QUESTION REGARDING JUST OUTCOMES, JUSTICE, MORALS, VALUES etc etc.

If you are going to choose a specific question such as this, you need to ensure you have a detailed knowledge of the topic. It is a 45 minute / 25 mark question and therefore writing just 1-2 pages, with no laws etc, is not sufficient.

If you knew this topic well, it was a relatively easy question to answer. However, you needed a knowledge of BOTH surrogacy AND birth technologies. Some students were unable to separate the two issues or show the difference and connection between them. An increase in birth technologies has led to a greater opportunity for couples to have a baby via a surrogate mother. However, there are many other issues students could have raised regarding birth technologies, such as sperm donors and same-sex couples.

Laws are an important aspect of this question (as it is a LEGAL essay). Many students weren't aware of the laws in this area and either mentioned few / none, or got them wrong.

Relevant laws included Status of Children Act, Assisted Reproductive Technology Act, Miscellaneous Acts Amendment (Same Sex Relationships) Act 2008 and The Surrogacy Act (2010).

Areas that should have been discussed include the features of the Surrogacy Act that are related to altruistic surrogacy and how they have helped achieve just outcomes for the commissioning parents, such as the ability to transfer parentage of the child up to the age of 6 months. But then the issues surrounding commercial / overseas surrogacy due to the lack of regulation and the potential exploitation of the surrogate were important considerations. Baby Gammy was a case that could be used to highlight some of the problems surrounding commercial surrogacy.

When incorporating cases, such as Re Evelyn, you need to ensure they are in a chronological order. For example, there is no point in discussing the changes to the law in 2010 regarding surrogacy and then mention the problems with the Re Evelyn case in 1998! It needs to be the other way around.

There are some interesting expert opinions that could have been included in this topic, in particular the opinions of the Chief Justice of the Family Court, Diana Bryant, who fairly recently stated that she believes commercial surrogacy should be legalised in Australia.

Question 32 (a): World Order

To what extent have legal measures encouraged compliance with international law to achieve world order?

CRITERIA	MARK
• Demonstrates extensive knowledge of legal measures which encourage compliance with international law to achieve world order • Makes an informed judgement (explicitly or implicitly) to the extent that legal measures encourage compliance with international law to achieve world order • Clearly integrates relevant examples such as legislation, cases, media, international instruments and documents • Presents a sustained, logical and cohesive answer to the question using relevant legal terminology and concepts	21 – 25
• Demonstrates substantial knowledge of legal measures which encourage compliance with international law to achieve world order • Makes a sound judgement (explicitly or implicitly) to the extent that legal measures encourage compliance with international law to achieve world order • Uses relevant examples such as legislation, cases, media, international instruments and documents • Presents a sustained, logical and cohesive answer to the question using relevant legal terminology and concepts	16 - 20
• Demonstrates some knowledge of legal measures which encourage compliance with international law to achieve world order • Makes a judgement (explicitly or implicitly) to the extent that legal measures encourage compliance with international law to achieve world order • Makes some reference to examples such as legislation, cases, media, international instruments and documents • Presents a structured answer to the question using relevant legal terminology and concepts	11 – 15
• Demonstrates limited knowledge of legal measures to achieve world order • Makes general statements about international law • Makes limited reference to examples such as legislation, cases, media, international instruments and documents • Presents a structured answer to the question using legal terminology and concepts	6 – 10
• Writes in general terms about international law or world order issues • May include reference to legislation, cases, media, international instruments and documents • May refer to general legal terms	1 – 5

Answers could include:

- Definition of world order.
- An overview of legal measures to achieve compliance with international law – eg: UN, international law such as treaties, covenant, conventions, protocols, operation of UN and various organs.
- Voluntary nature of international law.
- Importance of state sovereignty and the problems this presents for the international community when conflict or human rights abuses occur.
- Reasons why nation states do not comply with international law eg: greed, lack of resources, unresolved historical conflict, ideology, self-interest etc.
- Changing nature of conflict – inter-state to intra-state.
- Political will to enforce R2P
- Case studies – Rwanda, Libya and Syria
- Role of IGO's in encouraging compliance with international law to achieve world order?
- The role of non-legal responses in encouraging compliance g; political negotiation, persuasion, unauthorised use of force.

Marker's Feedback

Characteristics of the better responses –
Approximately 75% of students chose this option.

Knowledge
- *They reflected strong syllabus knowledge.*
- *Defined key terms.*
- *Had specific references to international law.*
- *Made clear judgements and proposed opposing points of view.*
- *Had sophisticated understanding of the case study/ies.*

Skills
- *Had a clear thesis, throughline or main idea of an argument which they referred to in the closing sentences of each paragraph.*
- *Paragraphs had strong and clear topic sentences which directed the reader.*
- *Cited the authority of the source they quoted or referenced.*
- *Were about 5 pages or longer.*
- *Case studies were clearly chosen and linked to support the central throughline of the essay.*
- *Used sophisticated language, no slang or informal phrase or statements.*
- *Used linking and structuring terms such as To be effective, On one hand, On the other, This shows that .....*

Things to avoid
- *Do not give lengthy descriptions of the events surrounding the chosen case studies, rather, give a brief description of the facts and then focus on the conclusions or illustrative points the case study provides.*
- *Excessive abbreviations.*
- *Pre-prepared answers which are general in nature and which do not answer the question.*

Question 32 (b): World Order

Assess the role of courts and tribunals in promoting peace and resolving conflict.

CRITERIA	MARK
• Demonstrates extensive knowledge of the role of courts and tribunals in promoting peace and resolving conflict. • Makes an informed judgement (explicitly or implicitly) about the role of courts and tribunals in promoting peace and resolving conflict. • Clearly integrates relevant examples such as legislation, cases, media, international instruments and documents • Presents a sustained, logical and cohesive answer to the question using relevant legal terminology and concepts	21 –25
• Demonstrates substantial knowledge of the role of courts and tribunals in promoting peace and resolving conflict. • Makes a sound judgement (explicitly or implicitly) about the role of courts and tribunals in promoting peace and resolving conflict. • Uses relevant examples such as legislation, cases, media, international instruments and documents • Presents a sustained, logical and cohesive answer to the question using relevant legal terminology and concepts	16 - 20
• Demonstrates some knowledge of the role of courts and tribunals in promoting peace and resolving conflict. • Makes a judgement (explicitly or implicitly) about the role of courts and tribunals in promoting peace and resolving conflict. • Makes some reference to examples such as legislation, cases, media, international instruments and documents • Presents a structured answer to the question using relevant legal terminology and concepts	11 - 15
• Demonstrates limited knowledge of the role of courts and tribunals in promoting peace and resolving conflict. • Makes general statements about courts and tribunals. • Makes limited reference to examples such as legislation, cases, media, international instruments and documents • Presents a structured answer to the question using legal terminology and concepts	6 – 10
• Writes in general terms about courts and/or tribunals or conflict • May include reference to legislation, cases, media, international instruments and documents • May refer to general legal terms	1 – 5

Answers could include:

- Definition of world order.
- Describes the central role of the UN in promoting peace and resolving conflict.
- Outline of the basic function and operation of the various courts – ICJ, ICC
- Outline of the basic function and operation of the tribunals – ICTR, ICTY and others
- Case studies – operation of ICTR post Rwandan genocide. Comments about its effectiveness pros and cons.
- ICC – effectiveness pros and cons.
- Other legal measures to promote peace and resolve conflict.
- Other non-legal measures to promote peace and resolve conflict.

Marker's Feedback

Characteristics of the better responses –
Approximately 25% of students chose this option.

Knowledge
- *They reflected strong syllabus knowledge.*
- *Defined key terms.*
- *Had specific references to international law.*
- *Made clear judgements and proposed opposing points of view.*
- *Had sophisticated understanding of the case study/ies.*
- *Responses were logical in terms of the order in which issues or examples were presented eg: Rwandan case study, then ICTR, then the ICC.*

Skills
- *Had a clear thesis, throughline or main idea of an argument which they referred to in the closing sentences of each paragraph.*
- *Paragraphs had strong and clear topic sentences which directed the reader.*
- *Cited the authority of the source they quoted or referenced.*
- *Were about 5 pages or longer.*
- *Case studies were clearly chosen and linked to support the central throughline of the essay.*
- *Used sophisticated language, no slang or informal phrase or statements.*
- *Used linking and structuring terms such as, To be effective, On one hand, On the other, This shows that .....*

Things to avoid
- *Do not give lengthy descriptions of the events surrounding the chosen case studies, rather, give a brief description of the facts and then focus on the conclusions or illustrative points the case study provides.*
- *Excessive abbreviations.*
- *Pre-prepared answers which are general in nature and which do not answer the question.*