Student Number

2018
Trial HSC Examination

Legal Studies

General Instructions

- Reading time – 5 minutes
- Working time – 3 hours
- Write using black pen
- Write your Student Number at the Top of page **9-13**, the Multiple Choice Answer Sheet and on the front cover of each writing booklet that you use.
- There is spare paper for Section II Part A on page 12-13.

Total marks – 100

Section I Pages 3 - 8
20 marks

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

Section II Pages 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

Part B – 15 marks
- Attempt Question 24

Section III Pages 15 – 17
50 marks

- Attempt TWO questions from Questions 25 – 30, each from a different Option.
- Allow about 1 hour and 30 minutes for this section

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KNOX GRAMMAR SCHOOL

Section I

20 marks
Attempt questions 1 - 20
Allow about 30 minutes for this section
Select the best answer to the questions below on the answer sheet provided

Use the multiple choice answer sheet for Questions 1 - 20

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1 Which of the following is a mitigating factor at sentencing?

a Age
b Weapon
c The vulnerability of the victim
d The absence of causation

2 David is the victim of a home invasion and fears for the life of his small children. He kills the offender.

Which of the following is the best defence for David?

a Substantial impairment of the mind
b Provocation
c Duress
d Self defence

3 A person has been detained without charge by the police.

What is this an example of?

a Protective custody
b Sex offenders registration
c Civil and political rights
d Preventative detention order

4 Which of the following orders are not available from the Children's Court?

a Control orders
b Good behaviour bonds
c Intensive correction orders
d Community service orders

5 Who sets out guideline judgements?

a NSW Sentencing Council
b NSW Court of Criminal Appeal
c Attorney General
d The High Court of Australia

6 Under what circumstances is a 13 year old girl who is under arrest breaking the law?

a When she runs home to get away from the police
b When she refuses to answer questions by the police
c When she asks the police officer his name
d When she refuses to be strip searched

7 Who could challenge a juror who has been selected to serve on a jury, causing them to leave the jury and no longer be a part of it?

a The prosecution and defence
b The jury foreman
c The defendant
d The prosecution

8 Under what circumstance would an individual **not** be entitled to the right to silence at police questioning?

a If they are a young offender
b If charged with robbery
c If they have been arrested
d If they are held on remand

Use the following information to answer questions 9 – 10

9 Luke aged 16 and Rick aged 22, planned to rob Jennifer. The next day Luke drove the car, acted as the lookout, and waited for Rick to rob Jennifer. Rick assaulted Jennifer before stealing a few items and then they both drove away.

Which party to a crime would Luke be with regard to the charge of robbery?

a Principal in the first degree
b Principal in the second degree
c Accessory before the fact
d Accessory after the fact

10 Which of the following categories of crime best describes Rick's indictable offence?

a A property offence
b A driving offence
c A crime against the person
d An economic offence

11 Vivienne was found guilty of a series of summary offences. She claims that she is innocent.

In which court will Vivienne have her appeal heard?

a Local Court
b NSW District Court
c NSW Supreme Court
d NSW Court of Criminal Appeal

12 Freedom from torture and slavery are best protected by the:

a International Covenant on Civil and Political Rights
b International Covenant on Economic, Social and Cultural Rights
c Universal Declaration of Human Rights
d International Bill of Rights

13 Which of the following must be proven in a strict liability offence?

a Causation
b Mens rea
c Actus reus
d Negligence

14 Which legal instrument protects the right to vote in Australia?

a Statute law
b Common law
c Trade unions
d The suffragette movement

15 Human rights are said to be inherent

What is the meaning of this?

a That human rights apply to everybody
b That human rights exist from birth
c That human rights cannot be discriminated against due to sex or race
d That human rights cannot be taken away

16 In the Wik People v Queensland decision which human right was realised for Aboriginal people?

a Abolition of slavery
b The right to suffrage
c The right to self determination
d The right to own land

17 Mary is sentenced to 10 years in prison for a serious criminal offence. The judge in sentencing refers to the fact that this offence is becoming all too common and must be addressed through more significant sentences.

What was a significant consideration in Mary's sentence?

a Retribution
b General deterrence
c Rehabilitation
d Specific deterrence

18 In NSW there is a mandatory life sentence for the murder of a police officer.

Which of the following best describes the purpose of punishment for the community?

a Rehabilitation
b To limit judicial discretion
c Recidivism
d Retribution

19 Which of the following statements is TRUE regarding the Children's Court in NSW?

a The Children's Court hears all criminal matters involving offenders under 18 years of age.
b The Children's Court follows the exact same rules and procedures as all other NSW courts.
c Once a juvenile offender turns 18 they can no longer have their matter heard in the Children's Court.
d The Children's Court can sentence offenders to juvenile detention, even if they are over the age of 18.

20 Which of the following is a feature of victim impact statements in NSW?

a Used by the courts for all indictable offences
b Used by the prosecution to determine evidence
c Used by judges when determining some sentences
d Used by the jury when determining some verdicts

END OF SECTION I

Legal Studies
Section II

Student Number…….

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 (2 marks)

Why has universal suffrage been difficult to achieve? **2**

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Student Number…….

Question 22 (5 marks)

Compare the effectiveness of international and domestic courts in protecting human rights **5**

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Question 23 (8 marks)

Assess the extent to which the Australian Constitution embodies human rights and promotes them in practice?

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Student Number…….

Section II Spare Paper
Indicate clearly which question you are attempting

Student Number…….

Section II Spare Paper
Indicate clearly which question you are attempting

Legal Studies

Section II (continued)

Part B – Crime
15 marks
Attempt Question 24

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 24 (15 marks)

"The legal system is constantly changing as it seeks to reflect moral and ethical standards."

To what extent is this statement true in regards to the criminal trial process?

End of Section II

Section III – Options

50 Marks
Attempt TWO questions from Questions 25 – 30, 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 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 – Consumers (25 marks)

(a) "Unless the law reflects moral and ethical standards it cannot achieve justice."

Assess the statement with reference to product certification **25**

OR

(b) Explain the role of law reform in protecting the rights of consumers. **25**

Question 26 – Global Environmental Protection (25 marks)

(a) With reference to ONE contemporary issue relating to global environmental protection, evaluate the effectiveness of legal and non-legal responses. **25**

OR

(b) How effective are legal measures in resolving conflict between the demand for resources and global environmental protection? **25**

Question 27 – Indigenous Peoples (25 marks)

(a) To what extent do laws relating the rights of indigenous peoples reflect changing values and ethical standards? **25**

OR

(b) Explain the role of law reform in protecting the rights of indigenous peoples. **25**

Question 28 – Family (25 marks)

(a) "Unless the law reflects moral and ethical standards it cannot achieve justice."

Assess the statement with reference to domestic violence.

25

OR

(b) Explain the role of law reform in protecting the rights of those in alternative family relationships? **25**

Question 29 – Workplace (25 marks)

(a) "Effective dispute resolution mechanisms are the only way for workers to achieve justice in the workplace."

To what extent is this statement true? **25**

OR

(b) "Unless the law reflects moral and ethical standards it cannot achieve justice."

Assess the statement with reference to the industrial relations framework.

25

Question 30 – World Order (25 marks)

(a) Compare the effectiveness of IGO's with courts and tribunals in resolving world order issues.

25

OR

(b) "Unless the law reflects moral and ethical standards it cannot achieve world order."

Assess this statement with reference to international instruments.

25

End of paper

Marking guidelines Knox Trial 2018

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

Question 21

Why has universal suffrage been difficult to achieve? 2 marks

Student clearly identifies 2 reasons that suffrage has not been achieved or 1 reason with an example	2
Student defines suffrage and/or writes in general terms about difficulties achieving suffrage	1

Sample answer

The right to vote in a democratic election has been difficult to achieve due to the notion of state sovereignty where countries can make laws for their own people and choose not to allow universal suffrage. Furthermore, human rights expressed in the UDHR are aspirational rather than enforceable thus making suffrage difficult to achieve.

Markers feedback

The main issue was that students focused on how suffrage has evolved over time.

Question 22 5 marks

Compare the effectiveness of international and domestic courts in protecting human rights

Student comprehensively compares the effectiveness of international courts and domestic courts in promoting and enforcing human rights using examples	4-5
Student compares the effectiveness of international courts and/or domestic courts in promoting and enforcing human rights using examples	2-3
Student writes in general terms about of international courts and/or domestic courts protecting human rights	0-1

Sample answer

Compare

Show how things are similar or different

International courts such as the International Criminal Court (ICC) is less effective than domestic courts of Australia in protecting human rights due to a failure to be enforceable. *The ICC is limited in its jurisdiction being established under the Rome Statute 1998 and the 123 member states or UNSC, who can refer matters to the court. Although it has 4 convictions over 16 years (Lubanga, Katanga, Bemba and Al Madi) for human rights abuses thus aims to act as a global deterrent for human rights abuses, the court has failed to be enforceable in the prosecutions of President Kenyatta and President Bashir. Furthermore, it is losing enforceability as states such as Burundi, South Africa and Gambia left the court in 2017. As the ICC requires suspects to co-operate with the court, the court has failed protect human rights.* ***In contrast domestic courts are more effective in protecting human rights*** *due to their jurisdiction, ability to call witnesses and prosecute offenders within Australia improving their enforceability. The High Court of Australia can promote and enforce human rights through safeguarding limited Constitutional Rights in Australia as evidenced in Dietrich v The Queen where the High Court set precedent on the ICCPR's Article 12 'right to a fair trial' through establishing a limited right to legal representation.* ***Thus domestic courts are more effective than international courts*** *as all lower courts in Australia are bound by decisions thus both promoting rights in the future. Furthermore, the High Court can protect fair trial hearing appeals from all lower courts in Australia e.g in R v Wei Tang 2008 on appeal the court redefined the notion of slavery thus protecting future human rights through establishing precedent.* ***Although both courts are limited to enforcing the laws that exist, due to jurisdiction advantages domestic courts are more effective at enforcing thus protecting human rights than international courts.***

Markers feedback

The main issue in this question is that students 'assessed' and did not compare.

The areas of compare are **bold** above

You could have answered that international courts are more effective than domestic courts however, in order to do this you would need to focus on the failures of the High Court e.g lack of access, failure to protect refugees.

The main issue with content was that students would say the International courts were more effective but then criticise the ICC while highlighting the successes of the High Court. This doesn't make sense – make sure your evidence matches your argument.
You must compare – use the words of the question – In comparison…..

Content issues
Captain Dragan was not sent to the ICC, he was actually tried by a Croatian court.
The ICC is not a UN court
Do not focus on the law – the question was about courts – enforceability should have been your criteria.
You needed cases to illustrate your answer without cases this is not a comprehensive answer.

Question 23 8 marks
Assess the extent to which the Constitution embodies human rights and promotes them in practice?

Student comprehensively makes a clear judgement on whether the Constitution embodies human rights and promotes them in practice	6-8
Student makes some judgement on whether the Constitution embodies human rights and/or promotes them in practice	3-5
Student writes in general terms about the Constitution	0-2

Sample answer

The Constitution of Australia established in 1901 was not established as a human rights document however, the Constitution sets out the separation of powers and independence of the High Court which to a moderate extent embodies human rights and promote them in practice.

The Constitution fails to embody human rights as there are few express rights in the Constitution limited to rights such as freedom of religion, voting, just compensation for state acquired land and trial by jury for a Federal offence.

However, the Constitution established the role of High Court in 1903 and through its ability to interpreting Constitutional rights does embody human rights and promote them in practice. Evidenced in Dietrich and the Queen 1992 where Dietrich's right to a fair trial through legal representation was established by the High Court. Furthermore, the High Court can protect fair trial hearing appeals from all lower courts in Australia e.g in R v Wei Tang 2008 on appeal the court redefined the notion of slavery thus protecting future human rights in practice through establishing precedent. This promotes human rights as the High Court's binding precedent applies to lower courts thus promoting human rights. However, the High Court fails to promote human rights in practice as it lacks access, only 6% of cases that seek leave to appeal to the High Court are approved thus the Constitution and operation of the High court can fail to promote human rights.

The separation of powers was established in the Constitution giving power to the legislature to make laws that embody human rights and promote them in practice. An example is the Criminal Code Act 1995 that criminalises human trafficking and slavery imposing penalties of up to 20 years for such human rights breaches of ICCPR Article 8 'no one should live in slavery or servitude'. The separation of powers upholds Rule of law principles ensuring no one group has too much power thus the Constitution does embody human rights principles. However, laws made by the legislature can also breach human rights such as laws created under the Anti-Terrorism Act 2004 (Cth) allowing preventative detention breaching arbitrary detention principles, thus the legislature through powers from the Constitution may not embody human rights due to state sovereignty.

The Constitution also set out the Division of powers between the states and the Commonwealth which can embody human rights as it allows the Federal Government to use their s51 powers to enter into treaties including the Convention on the Rights of a Child 1990 (CROC) this obliges Australia to uphold human rights of said treaty as thus the Constitution through division of powers also can embody human rights and promote them in practice. However, due to Australia's dualist system not all laws in treaties such as CROC have been enacted through parliament, thus the Constitution does not always protect human rights. Thus, although the Constitution is not a human rights document it has set out the independence of the High Court, role of the legislature and division of powers thus to a moderate extent can embody human rights and promote them in practice.

Markers feedback

This was a question that required you to really think about how you could argue more than just s116 'freedom of religion'

Most students were able to refer to two areas e.g High Court/Separation but for 8 marks you must include examples specific to the points you are making.

Linking back to the question was an issue

This question comes from the principle focus "embodies human rights and promotes them in practice"

The sample answer above had 4 distinct areas but to get 8 marks 3 areas of the Constitution with good examples and links back to the question were OK

Remember that an 8 mark question is really like a mini essay – you write 4 pages for 15 marks in Crime so picture what needs to be covered for 8 marks.

Question 24 Crime Number: _____

"The legal system is constantly changing as it seeks to reflect moral and ethical standards." To what extent is this statement true in regards to the criminal trial process?

Criteria	Marks
• Demonstrates an extensive understanding of a range of criminal trial processes • Makes an informed judgement (using explicit or implicit criteria) of the extent to which the criminal trial process is constantly changing to reflect moral and ethical standards • 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	13-15
• Demonstrates a substantial understanding of a range of criminal trial processes • Makes a judgement (using explicit or implicit criteria) of the extent to which the criminal trial process is constantly changing to reflect moral and ethical standards • Uses relevant examples such as legislation, cases, media, international instruments and documents • Presents a logical and cohesive answer to the question using relevant legal terminology and concepts	10-12
• Demonstrates an understanding of a range of criminal trial processes • Attempts to make a judgement (using explicit or implicit criteria) of the extent to which the criminal trial process is constantly changing to reflect moral and ethical standards • 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	7-9
• Demonstrates limited knowledge of criminal trial processes • Makes general statements about the extent to which the criminal trial process is constantly changing to reflect 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 criminal trial processes • May include reference to examples such as legislation, cases, media, international instruments and documents • Uses legal terminology	1-3

Markers feedback

The main issue students had was selecting the correct areas of the Syllabus.
Trial process includes Charge negotiation, juries, defences, legal representation (legal aid)

Please do not just focus on defences or just juries if you get a trial process essay – you are not showing enough breadth across the syllabus.

Content issues

Charge negotiation is legislated under DPP Guidelines 2007 (there is an update expected in 2018) under Guideline 20
Negotiations between the parties are to be encouraged and may occur at any stage of the progress of a matter through the courts.
Charge negotiations must be based on principle and reason, not on expedience alone.
Written records of the charge negotiations must be kept in the interests of transparency.
The offender and the DPP prepare an agreed 'statement of facts' about the crime and the lesser charge must reflect the 'criminality' of what occurred i.e it must allow the judge enough scope in sentencing based on the crime.
Victim under Victims Charter of Rights 1996 and Crimes (Sentencing Procedure) Act 1999 s35a victim needs to be consulted not approve. s35a was amended AFTER Nanette May case so would have been a good discussion for this essay.

Trial process does NOT include
Bail, Victim Impact Statements or Mandatory Sentencing
Evidence of silence unless you really focused on the role of the caution in the trial process.

Better students were able to engage with the quote recognising that this was a law reform question and the focus should have been on either how the trial process
1. Was constantly changing in order to achieve justice e.g changes to majority verdicts, changes to charge negotiation after Nanette May case (law reform was Crimes (Sentencing Procedure) Amendment Act 2010 inserting 35a that the victim must have been consulted before the judge accepts the guilty plea.
2. Or has failed to change and thus justice has not been achieved e.g Mental illness defence (M'Naughton Rules fail to achieve justice), self defence (which lacks clarity)

Weaker students
Did not engage with the notion of 'is constantly changing'
Did not answer the question which was "Is this statement true"

Question 30 – World Order (25 marks) Number: _____

(a) Compare the effectiveness of IGO's with courts and tribunals in resolving world order issues.

Criteria	Marks
• Demonstrates extensive knowledge of world order issues • Makes an informed judgement (explicit or implicit) comparing the effectiveness of IGO's with courts and tribunals in resolving world order issues • Integrates relevant examples such as legislation, cases, media, international instruments and documents • Presents a sustained, logical and cohesive answer using relevant legal terminology and concepts	21-25
• Demonstrates a substantial understanding of world order issues • Makes a judgement (explicit or implicit) comparing the effectiveness of IGO's with courts and tribunals in resolving world order issues • Uses relevant examples such as legislation, cases, media, international instruments and documents • Presents a logical and cohesive answer using relevant legal terminology and concepts	16-20
• Demonstrates an understanding of world order issues • Attempts to make a judgement (explicit or implicit) comparing the effectiveness of IGO's with courts and tribunals in resolving world order issues • Makes some reference to examples such as legislation, cases, media, international instruments and documents • Presents a structured answer using relevant legal terminology and concepts	11-15
• Demonstrates limited knowledge of world order issues • Makes general statements comparing the effectiveness of IGO's with courts and tribunals in resolving world order issues • Makes limited reference to examples such as legislation, cases, media, international instruments and documents • Uses some relevant legal terminology	6-10
• Writes in general terms about world order issues • May include reference to legislation, cases, media, international instruments and documents • May refer to general legal terms	1-5

a)Compare the effectiveness of IGO's with courts and tribunals in resolving world order.

KNOW YOUR DIRECTIVE TERMS

- **Compare** – show how things are similar or different

Define terms such as world order, state sovereignty, permanent 5, veto, R2P.

IGO's – most students referred to the United Nations and/or NATO.

COURTS – most students referred to the International Criminal Court.

TRIBUNALS – most students referred to either Rwanda or Yugoslavia, or both.

CONFLICTS – Syria, Libya, Rwanda, Yugoslavia, Timor-Leste and North Korea (although the last one was difficult to connect to the question).

Students needed to discuss at least one IGO, court and tribunal but the length of discussion did not need to be equal.

Students needed to show an understanding of the directive term 'compare' and make comparisons between IGO's, courts and tribunals. Some students wrote a series of disconnected paragraphs – **always refer back to the question to tie your ideas together.**

The majority of students were able to identify areas of effectiveness and ineffectiveness, writing one paragraph on each for their IGO, court and tribunal.

Question 30 – World Order (25 marks) Number: _____

(b) "Unless the law responds to changing values and ethical standards it cannot achieve world order."
Assess this statement with reference to international instruments.

Criteria	Marks
• Demonstrates extensive knowledge of international instruments • Makes an informed judgement (explicit or implicit) about the extent to which the law has responded to changing values and ethical standards in order to achieve world order • Integrates relevant examples such as legislation, cases, media, international instruments and documents • Presents a sustained, logical and cohesive answer using relevant legal terminology and concepts	21-25
• Demonstrates a substantial understanding of international instruments • Makes a judgement (explicit or implicit) about the extent to which the law has responded to changing values and ethical standards in order to achieve world order • Uses relevant examples such as legislation, cases, media, international instruments and documents • Presents a logical and cohesive answer using relevant legal terminology and concepts	16-20
• Demonstrates an understanding of international instruments • Attempts to make a judgement (explicit or implicit) about the extent to which the law has responded to changing values and ethical standards in order to achieve world order • Makes some reference to examples such as legislation, cases, media, international instruments and documents • Presents a structured answer using relevant legal terminology and concepts	11-15
• Demonstrates limited knowledge of international instruments • Makes general statements about the extent to which the law has responded to changing values and ethical standards in order to achieve world order • Makes limited reference to examples such as legislation, cases, media, international instruments and documents • Uses some relevant legal terminology	6-10
• Writes in general terms about international instruments • May include reference to legislation, cases, media, international instruments and documents • May refer to general legal terms	1-5

b)"Unless the law responds to changing values and ethical standards it cannot achieve world order." Assess this statement with reference to international instruments.

KNOW YOUR DIRECTIVE TERMS
- **Assess** – make a judgement of value, quality, outcomes, results or size.

Define terms such as world order, state sovereignty, permanent 5, veto, R2P.

Students referred to a variety of international instruments including:
- Treaties and declarations - UN Charter, UDHR, NPT
- Geneva conventions
- Rome Statute
- ICC and/or ICJ
- Ad hoc tribunals – Rwanda, Yugoslavia
- United Nations – specifically the Security Council
- IGOS including NATO
- R2P

Students discussed a variety of conflicts including Libya, Syria, North Korea, Timor-Leste and provided context around these issues while assessing values and moral standards. Stronger students could identify specific values and morals such as care, protection, good will.

General
In relation to both questions, students need to make sure that they understand the concept of state sovereignty, the permanent 5 and veto powers, including the impact of these on World Order.

Most students made a judgement of some description, even if it was only a personal opinion. Stronger students were able to make an informed judgement using criteria. In relation to making a judgement, explicit criteria generally assists with the flow of a response, however, more able students can successfully imply their judgement. The following criteria is useful when talking about judgement, although this is by no means a definitive list of how to assess effectiveness.

- **C**ommunity standards
- **A**ccessibility
- **R**esource efficiency
- **E**quality
- **B**alance of rights
- **E**nforceability
- **A**ppeals and review
- **R**esponsiveness of the law

However, this is not always helpful when talking about international law. You could also try:

- **J**ustice
- **A**ccessibility – cost and time

- **M**eeting society's needs

Or

- **R**ule of law
- **I**nternational law
- **R**esponsiveness of the law

Students can develop their own set of criteria to review effectiveness that they can apply across all sections of the paper but should specify for the marker.

Students should not be tempted to fill pages with irrelevant information or lengthy sentences with big words just to make their answer appear longer. They should stick to the question and keep referring back to it throughout their response.

Students should also be careful of using abbreviations. Make sure you use the full terms once and then abbreviate. This will help to highlight your understanding of the concept.

Students also need to be more conscious of their handwriting, as bad penmanship can and will cost them marks. If the marker cannot read or follow a train of thought due to poor writing this is very problematic. It also affects the flow and cohesiveness of your response and therefore will directly impact the mark received. WRITE USING BLACK BALLPOINT PEN – blue ink does not scan well and is very difficult to read.

Most students have a very good grasp of legal terminology and use it appropriately.