

LEGAL STUDIES

Unit 2 – Written examination



2012 Trial Examination

SOLUTIONS

Question 1

Civil laws are important in a society as they protect the rights of an individual/group. This means that if a person or group feels that their rights have been infringed they can take their case to court and seek compensation as a way of redressing any wrong they have endured.

2 marks

Question 2

The ratio decidendi is the binding part of a decision which must be followed in all cases where the material facts are the same whereas the obiter dictum are statements/comments that are made by the judge/magistrate but they are not binding. However, they can be used as a persuasive precedent.

2 marks

Question 3

The main role of the courts is to apply the law and settle disputes however, sometimes when a case comes before the courts they cannot apply an existing law to the case as it does not cover the situation in the case before them. In order to settle the dispute the judge will make a decision and give a reason for the decision. This is known as setting a precedent which then forms part of the law.

2 marks

Question 4

*In order to achieve **four** marks for this question, students will need to provide a brief explanation of each of the following.*

- Overruled
- Distinguished
- Disapproved
- Reversed

Example: Disapproving is when a court does not agree with a previous decision/precedent but they must still follow the existing precedent.

4 marks

Question 5

The role of a jury in a civil trial includes:

- They must consider the facts of the case and decide on the balance of probabilities which party is most likely in the wrong.
- If they cannot reach a unanimous decision a majority decision of up to five out of six will be accepted.
- The jury will also decide on the remedy, that is, the amount of damages that will be awarded to the plaintiff if they are successful.

*To achieve **four** marks for this question, students will need to identify **two** roles performed by a jury in a civil case and provide an explanation of the selected role.*

4 marks

Question 6

a. The key principles that Mark French had to show were:

- That the statements made against him were defamatory
- That the statements referred to him
- That the statements were published by the Herald Sun.

3 marks

b. This question is asking students to name **one** defence that can be **used** in a case of defamation.

One of the following defences needs to be named and explained.

- justification
- honest opinion
- absolute privilege
- qualified privilege

2 marks

Question 7

a. Civil remedies aim to restore the plaintiff to a position similar to the one that they were in prior to the wrong having occurred. The remedy that a person may receive can range from monetary compensation to an injunction.

2 marks

- b. Compensatory damages aim to remedy Simon Cowley for the wrong that was inflicted upon him by Nick Darcy. Compensatory damages can be specific which means they are easy to work out such as medical expenses and wages or they can be general damages, these are not as easy to work out. This would entail working out the amount of pain and suffering incurred by the plaintiff as a result of the defendant's actions. (pain and suffering can be emotional stress or it can be to compensate the plaintiff for a permanent loss, such as the loss of a limb.)

4 marks

Question 8

*To achieve **four** marks for this question, students will need to discuss how their chosen area of law protects the rights of an individual and how the law regulates behaviour.*

Students will need to:

- Outline the purpose of the law in your particular area
- Discuss the extent the law fulfils and reflects the values in our society
- The methods and institutions available for resolving disputes that may occur in your area of law.

4 marks

Question 9

A Question of Rights

Students can refer to the case/s that they have studied to assist them in answering the following two questions.

- a. A test case is when a case is launched that is the first of its kind in that area and as a result it creates a new law or legal principle.

2 marks

- b. The following are the key reasons why a test case might be launched:

- there might be gaps in an existing piece of legislation
- to amend a current law
- to bring about political academic and social awareness to an issue
- create a new law because of changes in society/technology

*To achieve four marks for this question, students will need to name **two** reasons and provide an explanation for the selected reason.*

4 marks

Question 10

- a. The tort in the Tanjii Duan case is that of Negligence.

1 mark

- b. The County Court has an unlimited civil jurisdiction and has no civil appellate jurisdiction. If an appeal was lodged the case would be heard in the Court of Appeal. The Court of Appeal

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hears appeals from the County Court and the Supreme Court on points of law, question of fact or the amount of damages that has been awarded. It can also hear appeals from VCAT.

3 marks

c. Tanjii Duan would have to prove the following three elements in order to be successful.

- that the school (Braybrook Secondary College) owed Tanjii a duty of care
- that the school breached their duty of care
- that Tanjii suffered loss as a consequence

3 marks

d. The pleadings stage outlines the details of the claim that is being made and it gives the court a written record of the claim that is being made.

The Pleadings include:

- Writ
- Notice of Appearance
- Statement of Defence
- Counterclaim
- Further and Better Particulars

*To achieve **six** marks for this question students will need to explain what pleadings is and then briefly outline the various stages.*

6 marks

Question 11

The Adversary System of trial is a trial whereby two parties (the plaintiff and the defendant) in a case are battling to win their case.

The key features of the adversary system include:

- role of the judge
- role of the jury
- equal representation
- burden of proof and standard of proof
- rules of evidence and procedures

To achieve **six** marks for this question students need to explain what is meant by the term Adversary System (**1 mark**) and then name and briefly explain each of the five features (**5 marks**).

6 marks

Question 12

*To achieve **six** marks for this question student need to identify the three errors in the scenario and then provide the correct process/procedure.*

1. Sam's case is being heard in the Supreme Court; therefore a judge would preside over the trial.
2. If there was a jury present it would consist of six jurors, not 12 because 12 jurors are used in criminal cases.

3. The standard of proof required in a civil case is on the balance of probabilities not beyond reasonable doubt as this is the standard required for criminal cases.

6 marks

Question 13

*To achieve **ten** marks for this question student will need to select three of the following methods and then discuss their strengths and weakness.*

Methods include:

- Mediation
- Conciliation
- Arbitration
- Judicial determination

Strengths include:

- Processes are less formal than a court hearing
- During the mediation and conciliation process the parties are more likely to reach a decision that is acceptable to both parties
- Not as confrontational and as a result better suited to preserving the relationship
- Matter can be discussed openly

Weaknesses include:

- Decision is not binding except in arbitration and judicial determination
- Judicial determination is expensive
- Parties might not want to attend the conciliation or mediation process
- One party may be more dominant than the other and therefore influence a decision
- There is no advice given on how best to resolve their dispute (mediation and conciliation)
- Legal representation is usually used in arbitration and judicial determination adding to the formality and cost of the case

10 marks