

Legal Studies

2024 examination

Part A: Response to sources (Question 1) 30 marks

Answer **all** questions in Part A

Allow approximately 65 minutes

Part B: Extended response (Question 2) 30 marks

Answer **one** question from Part B

Allow approximately 65 minutes

Total time: 130 minutes

Total marks: 60

The SACE Board of South Australia acknowledges that this examination was created on Kaurna Land. We acknowledge First Nations Elders, parents, families, and communities as the first educators of their children, and we recognise and value the cultures and strengths that First Nations students bring to the classroom. We respect the unique connection and relationship that First Nations peoples have to Country, and their ever-enduring cultural heritage.

Source 1



Source 2

Road Traffic Act 1961 (SA)

46—Reckless and dangerous driving

(1) A person must not drive a vehicle recklessly or at a speed or in a manner which is dangerous to any person.

Maximum penalty:

- (a) in the case of a first offence—\$5000 or imprisonment for 2 years;
- (b) in the case of a subsequent offence—imprisonment for 3 years.

(2) In considering whether an offence has been committed under this section, the court must have regard to—

- (a) the nature, condition and use of the road on which the offence is alleged to have been committed; and
- (b) the amount of traffic on the road at the time of the offence; and
- (c) the amount of traffic which might reasonably be expected to enter the road from other roads and places; and
- (d) all other relevant circumstances, whether of the same nature as those mentioned or not.

Source: Road Traffic Act 1961 (SA), section 46, viewed 8 May 2024, www.legislation.sa.gov.au

Source 3

Extract from the judgment of Justice Gray in *Lehmann v Police* [2010] SASC 102

The question of whether a person was driving at a speed which is dangerous to the public involves an objective test. The test focuses upon the nature and degree of risk of harm created by the driver's conduct to those on or in the vicinity of the roadway. ...

... when assessing whether the defendant's driving constitutes driving at a speed dangerous to the public, the relevant consideration is the likelihood of an adverse incident occurring involving other road users, and the likely seriousness of such an incident. A risk may exist regardless of whether any persons are actually present at the time of the alleged offence.

Source: adapted from *Lehmann v Police* (2010) SASC 102, viewed 8 May 2024, www.austlii.edu.au

Source 4

Statement of Agreed Facts*

In the matter of *Police v Brief*, the parties agree that:

1. The defendant was driving their car at 9.30 pm on Wednesday 10 January 2024 in a northerly direction on George Street. The speed limit on that section of road is 60 km/h.
2. The road is straight and at the time in question it was dry and in good condition. The weather was fine, and the visibility good.
3. The traffic was light, with less than one vehicle per minute travelling north on the road.
4. There were no pedestrians in the immediate area and no other vehicles entering or exiting the roadway.

* These facts have been agreed by the parties and therefore do not need to be proved at trial.

Source 5

Extract from the transcript in the *Police v Brief* trial before Magistrate Stevenson

Evidence given by the prosecution's key witness at the trial

PROSECUTOR DAVID: Where were you standing on the night in question?

POLICE OFFICER SMITH: On the corner of George Street and Donoghue Road, near the 24-Hour Fast Food restaurant.

PROSECUTOR DAVID: What did you see?

POLICE OFFICER SMITH: I saw the defendant's car speed past heading north along George Street.

PROSECUTOR DAVID: Can you provide an estimate of the speed that the defendant was driving at?

POLICE OFFICER SMITH: In my opinion the defendant was going at least 90 kilometres per hour.

DEFENCE COUNSEL MAXWELL (interjecting): Your Honour, the prosecutor has not established that this witness is a recognised expert in this field. I object to Officer Smith giving an opinion about the speed.

...

Evidence given by the defendant at the trial

DEFENCE COUNSEL MAXWELL: How much experience do you have as a driver?

DEFENDANT BRIEF: Heaps. I am a ride share driver and have been for three years. I drive along George Street all the time.

DEFENCE COUNSEL MAXWELL: How would you describe the usual road conditions at 9.30 pm?

DEFENDANT BRIEF: It's always really quiet. There's hardly anyone on the road. I've never seen any pedestrians in the area at that time of night.

DEFENCE COUNSEL MAXWELL: Do you think your driving was dangerous?

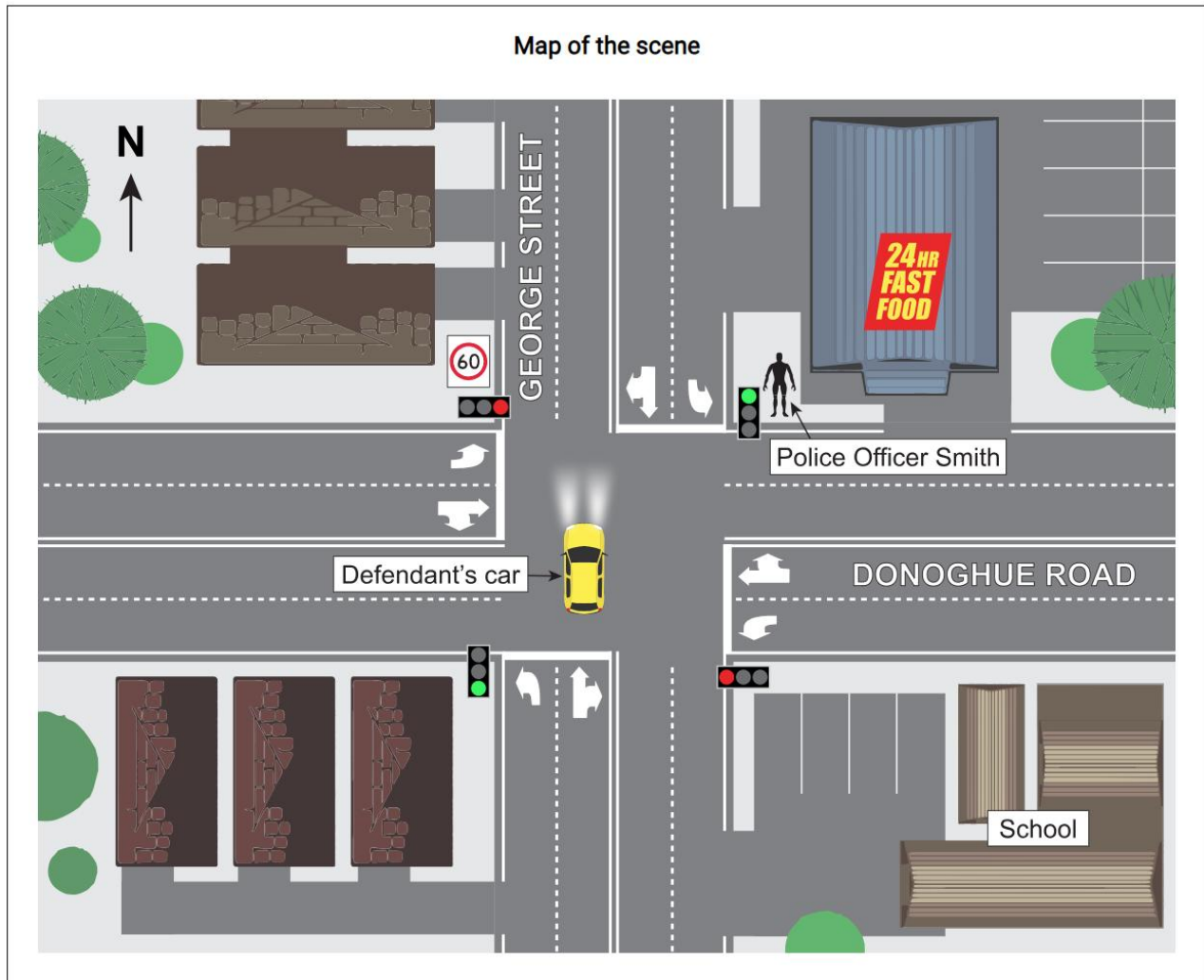
PROSECUTOR DAVID: Your Honour, I object to the relevance of this question.

...

PROSECUTOR DAVID: Mr Brief, have you ever been convicted of a driving offence?

DEFENCE COUNSEL MAXWELL: Don't answer that, Mr Brief! Your Honour, I object to that question.

Source 6



Source 7

Marshalling The Evidence, An address by The Hon. Justice Stephen Hall, Supreme Court of Western Australia

For evidence to be admissible in a court it must be relevant and not excluded on some ground such as the rules against hearsay [illegally obtained] or non-expert opinion. ...

The laws of evidence have a bad reputation amongst the general public and law makers. They are viewed as a creation of lawyers – as the rules of an exclusive game that defy common sense. ...

It is about ensuring that only relevant facts are taken into account and that prejudice and emotion are excluded. It is all about the fairness of the process and the quality of the decisions that are made at the end of the process. Decisions will likely be more accurate, reliable and fair if they are only based on material that is logically probative¹ and if material that is merely prejudicial² is excluded.

The reason why the law of evidence is particularly important in the common law is because it is adversarial. Every case is a contest of ideas. Each party has a theory or hypothesis that it is seeking to establish. Those theories are opposed and inconsistent. The point of a trial is to pit those theories against each other and see which one prevails. This is done by allowing each party to call witnesses and by allowing the other party to test them in cross-examination.

The laws of evidence are the rules of engagement in the contest that is the trial.

¹ capable of proving a fact

² harmful, damaging, unfair

Source: adapted from Hall, S 2023, *Marshalling the Evidence: An Address to the Advanced Evidence and Proof Unit Students University of Western Australia, Law School*, 27 June 2023, viewed 8 May 2024, www.supremecourt.wa.gov.au

PART A: Response to sources (Question 1) 30 marks

Question 1 (a) to (i)

Examine Sources 1 to 7 before answering Question 1.

(a) In the dispute in *Police v Brief*, what is the standard of proof?

A rich text editor toolbar containing icons for bold, italic, underline, superscript, subscript, bulleted list, numbered list, decrease indent, increase indent, justify left, justify center, justify right, justified, undo, and redo.

(1 mark)

(b) Outline **one** way that the dispute in *Police v Brief* could have been resolved without a trial.

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(1 mark)

(c) With reference to the sources, explain whether or not Brief could have chosen to have a trial by jury.

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(2 marks)

(d) With reference to the sources, explain **one** role of a magistrate or judge in a criminal dispute.

B *I* U x² x₂

(2 marks)

(e) Explain **one** pre-trial procedure **and** how it might apply in the dispute in *Police v Brief*.

[illegible]

(2 marks)

- (f) In the adversary system, the parties control what evidence and arguments are presented in court. With reference to the sources, explain one strength *or* one weakness of this feature.

ABC	✓	B	I	U	x ²	x ₂	1/3	▼	≡	▼	≡	≡	≡	≡	≡	≡	≡	↶	↷

(2 marks)

- (g) With reference to the sources, present an argument that Brief is guilty or not guilty of the offence of dangerous driving. You must apply the legislation (Source 2) *and* the case law (Source 3) in your answer.

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(5 marks)

- (h) With reference to the sources, discuss whether or not parliaments provide appropriate guidance to courts in the interpretation of legislation. Consider the tension between certainty and flexibility in your answer.

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(5 marks)

- (i) With reference to the sources and your own knowledge, critically analyse the use of strict rules of evidence in the resolution of criminal disputes. Refer to the tension between fairness and efficiency in your answer.

ABC	✓	B	I	U	x ²	x ₂	1/3	▼	≡	▼	≡	≡	≡	≡	≡	≡	≡	↶	↷	0 Words

(10 marks)

Statement 1 to Statement 4

Statement 1

Parliaments are too powerful in Australia's system of government.

Statement 2

The civil justice system fails to uphold the rule of law.

Statement 3

The High Court of Australia should be more accountable to the Australian people.

Statement 4

In the Australian legal system, some rights must be prioritised over others.

PART B: Extended response (Question 2) 30 marks

Choose **one** statement.

Evaluate this statement with reference to examples and one or more of the following competing tensions:

- competing rights and responsibilities
- fairness and efficiency
- the empowered and the disempowered
- certainty and flexibility.

Select the statement you are evaluating from the following list.

- ☐ Statement 1
- ☐ Statement 2
- ☐ Statement 3
- ☐ Statement 4

ABC	B	I	U	x ²	x ₂									0 Words

(30 marks)

Final checklist

- ☐ I have reviewed my work
- ☐ I understand that by selecting 'Next' I cannot return to the examination

Next