# Legal Studies Subject Assessment Advice

## Overview

Subject assessment advice, based on the previous year’s assessment cycle, gives an overview of how students performed in their school and external assessments in relation to the learning requirements, assessment design criteria, and performance standards set out in the relevant subject outline. They provide information and advice regarding the assessment types, the application of the performance standards in school and external assessments, and the quality of student performance.

Teachers should refer to the subject outline for specifications on content and learning requirements, and to the subject operational information for operational matters and key dates.

# School Assessment

Assessment Type 1: Folio

Most Folios were organised well, comprising a balanced program that allowed for assessment across all four assessment design criteria. Assessment conditions were generally adhered to.

The more successful responses commonly:

* incorporated a range of task types in the folio
* provided tasks in which students had opportunities to demonstrate in-depth analysis and evaluation in essays and media-response tasks, which allowed students to achieve at higher levels
* included tasks requiring research and then sourcing and use of appropriate bibliographies, which enabled students to achieve at the higher levels for Inquiry
* used oral presentations or mock trials and provided a record of every performance in film, audio, or text that was able to clearly demonstrate to moderators the standard achieved
* included extended responses that required a student to present an argument, providing both sides and reaching a conclusion — use of terms such as ‘critically analyse’ or ‘evaluate this statement’, enabled students to demonstrate achievement at a higher level for Analysis and Evaluation.

The less successful responses commonly:

* comprised folios of mainly short-answer tests that provided limited opportunity for students to demonstrate Analysis and Evaluation at the higher levels
* did not address all aspects of the Inquiry, Analysis and Evaluation, and Communication assessment design criteria, in particular, to demonstrate sourcing - providing at least one task in the Folio requiring research and sourcing gives students an opportunity to achieve against all specific features
* included tasks that required students to merely explain an event, a case, or basic features, which often did not allow students to display knowledge and understanding at higher levels.

General information

* the use of performance standards in most folios was evident
* achieving in the A grade band for Knowledge and Understanding was often difficult in tasks that only required very short answers, or in tasks that comprised ‘What is’ type questions
* performance standards should be used for all assessment tasks, including tests. Use of marks and percentages should also be accompanied by the use of performance standards.

Assessment Type 2: Inquiry

The choice of inquiry topics was often crucial in allowing students to demonstrate higher levels of achievement in specific features of analysis and evaluation.

Inquiry topics were generally related to aspects of the Australian legal system, and were mostly current issues. Many students provided evidence from a recent source that showed that it was a current issue.

Teachers are encouraged to include mark sheets showing which assessment design criteria were assessed in each Inquiry, which can vary depending on the question posed by the student, and to show the achievement level against each assessment design criterion.

The more successful responses commonly:

* used a question or statement that could be argued
* provided recommendations that related clearly to the argument
* were sufficiently narrow to allow students to focus on specific aspects of the legal system, as opposed to broad concepts such as ‘republic’, ‘juries’, ‘death penalty’, or ‘adversary/inquisitorial systems’
* used a range of reputable sources that went well beyond classroom textbooks, Wikipedia, and short newspaper articles.

The less successful responses commonly:

* did not present both sides of an argument
* had questions that allowed a yes or no response, or asked ‘What is’; these questions did not encourage students to provide sufficient Analysis and Evaluation
* contained too much scaffolding by teachers; while scaffolding can support students, some Inquiries used headings that were not appropriate to their question or topic
* addressed social, political, physical education, or business and enterprise issues, rather than legal issues.

Assessment Type 3: Examination

The Examination provided students with ample opportunity to demonstrate their level of Knowledge and Understanding, Communication, and Analysis and Evaluation of the legal principles, processes and structures in the subject outline.

Students and their teachers are encouraged to structure their revision around the content of the subject outline.

Part A: Short Responses

Questions relating to Topic 1: The Australian Legal System and Topic 2: Constitutional Government posed the greatest challenges for students.

Less successful papers contained incomplete explanations or lacked clarity in the use of legal terminology. Some students rewrote or reworded the question, which is unnecessary.

Students should ensure they address the wording of the question closely. The directive ‘outline’ requires a brief description of a principle, process, or structure, while ‘explain’ requires a fuller explanation of a principle, process, or structure.

The directive ‘discuss’ requires students to weigh up competing factors and to come to a clear conclusion, which may be outlined at any point in the answer. Students can successfully answer a question with the ‘discuss’ directive by only addressing one side of the argument, or they may explain one point for both sides of an argument.

It is important to give students the opportunity to practise interpreting and responding to short-answer questions.

Question 1

This question covered Topic 4: Justice Systems and was statistically the best answered. There was generally good knowledge of pre-trial criminal procedure and the reasons for the court hierarchy. Some responses to part (c) required greater precision in explaining the role of the judge in adversarial and inquisitorial systems. The most successful responses to part (e) linked sentencing to a specific feature of social cohesion such as the need to reflect societal values or set acceptable standards of behaviour. Many responses to part (f) made vague judgments about the criminal justice system in general and failed to specifically apply the judgments to victims of crime.

Question 2

This question covered Topic 3: Law-making and was generally well answered. Some students were unable to identify who introduces a private members’ bill into Parliament and this impacted their capacity to address part (b) correctly. Part (e) was not well answered; many students were unclear on the distinction between two quite fundamental features of the legal system. There was generally good knowledge of the law-making process and most students were able to offer a logical judgment in respect of part (h).

Question 3

This question covered Topic 2: Constitutional Government and was statistically the most challenging for students. Many students were unable to identify an unwritten convention; some outlined a convention but did not explain its role in the system of government. The questions relating to the ‘Global Links’ subtopic, were well answered but some students confused the role of the ICC and ICJ. A number of students misread part (e) and wrote about the overturning of terra nullius in the Mabo decision rather than addressing the impact that it had prior to Mabo as intended by the question. Responses to part (f) were generally good but some students were confused about which arm of government had been responsible for particular legal developments. The most successful responses to part (g) identified a specific change that could be made to the Constitution; less successful responses made ambiguous comments about things that had already been addressed by the legal system or which were ill-suited to inclusion in the Constitution.

Question 4

This question covered Topic 1: The Australian Legal System and was less-successfully answered. Students are encouraged to examine stimuli closely. The basis for a number of answers to this question could be found in the stimulus, which provided students with features of the American legal system. This question did not require any background knowledge of other systems as the focus of all questions was on applying knowledge of the Australian legal system. Some students were unable in part (a) to clearly explain the relationship between the executive and legislative arms in the Australian separation of powers. In respect of part (e), the most successful responses identified specific features such as compulsory voting in Australia or the direct election of the President in the USA and linked these features to the principle of representative government. In part (f), a number of students were unable to make judgments about the federal system of government and instead made vague comments about the constitutional system more generally.

Part B: Extended Responses

Students are advised to refrain from highlighting words or phrases in their extended responses. This makes responses difficult to read for markers, especially when the highlighting is indiscriminate. Signposting by using headings or topic sentences is encouraged.

Section 1

The directives used in the 2016 paper were retained for the 2017 paper.

Part (c) continued to pose challenges for some students. Students must be reminded that simply outlining points without explanation will not be well rewarded. Both sides of an issue need to be analysed, not just the aspect with which the student agrees. As a general guide, students should aim to write 1½−2 or more pages for part (c) questions. The more successful responses selected a small number of points and wrote in great detail about them, often with the use of examples. Less successful responses wrote too little, or offered a series of short judgments without explanation of how all of the judgments should be balanced to reach a conclusion. Students should be reminded that a ‘critical analysis’ involves more than presenting competing judgments or arguments; there also must be some indication of which arguments or judgments are more convincing or important, and the reasons why.

Question 5

Few students attempted this question.

1. Students were able to name two courts and most provided an accurate outline of the role of at least *one*.
2. The most successful responses explained the influence of the United Nations, treaties and international courts. Less successful responses spoke of developments in the parliaments of other countries but were unable to show how this had had a tangible influence on the Australian legal system.
3. The most successful responses explained how the judiciary has a role in keeping the legislature and executive in check, primarily through statutory interpretation, and then offered judgments on the appropriateness of the way this role is carried out. Less successful responses described one or two functions of the judiciary or referred to roles that are not supervisory in nature.

Question 6

This question was the most popular.

1. Most students could outline what the doctrine of precedent actually entails but many responses were unable to articulate the consequences of it and thus why it is important. Successful responses provided an outline of how precedent creates fairness and predictability, supports the rule of law, and provides guidance to judges among other functions. Less successful responses mentioned these words and phrases without actually outlining how these particular outcomes were achieved.
2. Many students could identify three rights that the accused has in the criminal justice system but struggled to explain why these were important. Successful responses linked the rights to other important principles such as the rule of law, presumption of innocence and the burden of proof. Less successful responses said that a right ensured the defendant received a “fair trial” without explaining how this was achieved.
3. Responses to this question varied in quality. The best responses used specific examples of laws that achieve specific aspects of social cohesion and social progress and were able to highlight examples of where parliaments were failing to achieve the functions of law. Less successful responses alluded to the functions of law without providing tangible evidence of how parliaments impact achievement thereof.

*Question 7*

1. This question was generally not well answered. Many students used terminology specific to criminal law. The better responses provided a detailed outline of the judge’s role as both fact-finder and determiner of law and used language and examples specific to civil law.
2. This question was well answered. Students showed a good understanding of some of the rules of statutory interpretation and many students incorporated examples to good effect. Less successful responses identified rules of interpretation (literal, golden, mischief, etc.) but did not explain how they operate.
3. Responses to this question varied in quality. The best responses identified some of the rights that are included in the Constitution and acknowledged that the framers of the Constitution left rights-protection primarily to parliaments and the judiciary. Some successful responses also analysed the arguments for and against a bill of rights. A number of students used detailed examples to supplement their analysis. Weaker responses made loose assertions about human rights successes or failures or failed to analyse the role of the Constitution.

Question 8

1. The best responses outlined a range of ways in which the Constitution preserves state powers. A number of less successful responses focused solely on the division of powers and failed to show how state sovereignty is protected through this feature.
2. As with previous years, the concept of responsible government continued to be challenging for many students. A number of responses to this question erroneously addressed aspects of representative government.
3. Out of all of the part (c) questions, this question tended to produce the most detailed responses. Markers observed a number of excellent responses where students took well-known judgments about juries in the criminal context and analysed how those judgments would play out in a civil context. Less successful responses focused solely on how juries operate in a criminal context or showed limited awareness of the unique features of civil law.

Part B: Extended Responses

Section 2

To maximise student success, teachers are encouraged to teach this style of extended response explicitly. Students need to address the wording of the question more closely, and ensure that their responses are not just a series of legal facts but instead, contain evaluative judgments that address the proposition in the question. Students are expected to discuss and illustrate opposing arguments to reach an informed conclusion; students who only agree or disagree with the proposition without considering alternative arguments, limit their opportunity to achieve at the highest level.

Communication is a criterion on which this section is assessed, and students need to ensure their response is logically structured, coherently expressed, and uses the correct legal terminology. As a general guide, students should aim to write at least 3 pages for this part of the examination; responses of 2 pages or less limit the opportunity for students to demonstrate higher achievement.

Students and teachers are reminded that the question directs respondents to answer ‘using examples’. The best responses contained a number of well-explained examples drawn from recent illustrations of principles, processes, and structures. Less successful responses named cases or pieces of legislation without explanation; a significant number of otherwise sound responses contained no examples, and this omission precluded achievement at a high level.

Question 9

This question was the most popular but responses varied in quality. A number of students did not address how either system impacts upon diverse groups in the community, which limited their capacity for higher achievement. Many responses made vague assertions about the superiority of inquisitorial systems and failed to establish a convincing basis for why the established adversarial justice system should be overhauled. Better responses weighed the respective strengths and weaknesses of specific features of the two systems and demonstrated very clearly how those features impact upon different stakeholders.

Question 10

Students with a detailed understanding of the respective strengths and weaknesses of the three forms of law-making were able to answer this question successfully. The best responses acknowledged the interrelationship between the three arms and observed that they each have advantages and disadvantages that tend to be balanced out. Less successful responses failed to evaluate the role of all three arms of government. Some responses showed a limited understanding of the role of the executive; others ignored the first part of the proposition and wrote exclusively about why delegated legislation and case law are necessary.

Question 11

This question was not popular but students who chose to answer it were mostly successful. The best responses wrote at length and with accuracy about a number of High Court decisions that have contributed to a shift in the division of powers, and acknowledged other structural features that have facilitated the shift. Less successful responses were unable to accurately explain one or more High Court decisions, ignored other constitutional features, or wrote prepared responses about whether the High Court has too much power.

Question 12

This question tended to produce the least successful responses. Although the question allowed for a very broad analysis of the legal system, a number of responses adopted an overly narrow focus that failed to show an understanding of the multilayered components of the rule of law, or failed to address the role of all three arms in achieving it. The better responses provided a clear explanation of the different features of the rule of law and set out a logical basis against which to evaluate all three arms. Successful responses tended to use a number of examples to substantiate their evaluation.