

Leading Edge Legal Studies Trial HSC 2008 Answers

Question 16

Firstly it should be noted that it is difficult to isolate effects and ascribe them to only one particular influence. Nevertheless in each of the following examples they are the predominant influence on the law. Each is worth two marks and students should not only identify the influence but also provide an example of an actual law which reflects the influence.

Social

Some social changes include: aging labour force, greater awareness of gay and lesbian couples, inclusion of women into the workplace, an awareness of the needs of young persons when being brought before the courts, a greater understanding of the needs of persons with a disability. These social issues are addressed through the following laws:

- Aging labour force: OH&S Act 2000 (NSW), Superannuation Guarantee Act 1991 (Cth)
- Gay and lesbian partnerships: Property Relationships Act 1999 (NSW)
- Inclusion of women into the workplace: Anti-Discrimination Act 1977 (NSW), Sex Discrimination Act 1984 (Cth)
- The needs of young person brought before the courts: Young Offenders Act 1988 (NSW)
- Awareness of the needs of those with a disability: Disability Discrimination Act 1992

Cultural

Essentially this is a reference to increased cultural diversity. The primary legislative response has been:

- Racial Discrimination Act 1975 (Cth)

Moral

Laws consistent with this influence are often passed after a conscience vote, or seek to guide parents/adults in their dealings with minors. This, Minors (Property and Contracts) Act 1970 (NSW) is an example. Others include:

- Censorship Act
- Trade Practices Act 1974 (Cth) which legislates against misleading and deceptive conduct: s52
- Alcohol licensing laws which restrict the sale of alcohol to minors

Political

This is best demonstrated with reference to laws passed based on a particular political ideology. Thus:

- Workplace Relations Act 1996 (Cth)
- Workplace Relations (WorkChoices Amendment) Act 2005 (Cth) and
- ASIC Act 2001 (Cth)

Economic

These are laws passed with particular focus on economic matters. Such laws include:

- Taxation Act
- Child Support Act 1990

Question 17

- a) Two sources of criminal law. Students could answer with two of any three of the following:
- Statute law: Crimes Act 1900 (NSW) or Crimes Act 1914 (Cth)
 - Common law: Defence such as self-defence and duress are found in the common law
 - The Constitution which provides that the Commonwealth has power over external affairs Section 52 (29) thus meaning that customs breaches, importation of drugs and people smuggling are all criminalised by the Commonwealth
- b) Compliance and non compliance can affect criminal justice as follows:
- Widespread compliance can mean that there is widespread community support and that the penalties are in line with society values and expectations. Non compliance can suggest a poor understanding of the law (and thus a need for community education), that the laws are out of step with mainstream values and expectations or that people do not obey the law because the penalties are too lenient. All of these give insight into the law and whether there is a need for reform.
- c) An issue arising in the criminal justice system leading to the need for law reform include any of:
- There are numerous possible criminal justice issues: whether the laws are too punitive on those with a mental illness, the high proportion of indigenous Australians subject to incarceration, the disparity in penalties between white collar crimes and other property offences, the use of sentencing guidelines and the limitation of judicial discretion, the use and breach of AVOs, the lack of success of jail as a means for rehabilitation, the use of Continuing Detention Orders, the slowness of the law to keep up with changes to technology and so on.

▪ Student refers to issues arising in the criminal justice system giving rise to the need for reform. Typically this would involve identifying and defining the problem with respect to TWO such issues and explaining why the issues give rise to the need for reform. A need could arise from a lack of equality, access, justice, resource efficiency	5 – 6 marks
▪ Student refers to issues arising in the criminal justice system giving rise to the need for reform. However the response may lack depth and specificity. Thus it may refer generally to situations where justice is not served for a variety of reasons.	3 – 4 marks
▪ Student may refer to issue(s) arising in the criminal justice system giving rise to the need for reform.	1 – 2 marks

d) The factors which give rise to a need for law reform and the agencies of reform include:

In assessing the factors students should take into account:

- Changing social values and changing composition of society (ie greater diversity)
- New concepts of justice (often informed through a look at trends overseas)
- Failure of existing law (as evidenced by high rates of non-compliance)
- International law (including treaties and Declarations)
- New technology (pushing the law to change in response to issues arising with that technology)

- The agencies of reform must also be assessed: law reform commissions state and federal, the parliaments (state and federal) and the courts

<ul style="list-style-type: none"> ▪ Student assesses in detail the factors that give rise to the need for reform as well as the agencies of reform ▪ In assessing the need for reform students mention all of the salient factors in the context of domestic and international trends ▪ In assessing the agencies for reform the students clearly delineate between the roles of the LRCs, the parliaments and the courts, in particular noting that LRC Reports are never usually adopted in whole. Moreover, they should refer to the power of statute law to overcome the effects of common law and the reactive nature of common law following the passing of a statute ▪ Relevant examples should be provided 	11 – 13 marks
<ul style="list-style-type: none"> ▪ Student explains in detail the factors that give rise to the need for reform as well as the agencies of reform ▪ In assessing the agencies for reform the students delineate between the roles of the LRCs, the parliaments and the courts, in particular noting that LRC Reports are never usually adopted in whole. Moreover, they should refer to the power of statute law to overcome the effects of common law and the reactive nature of common law following the passing of a statute ▪ Some relevant examples should be provided 	8 – 10 marks
<ul style="list-style-type: none"> ▪ Student describes some factors that give rise to the need for reform and may refer to agencies of reform ▪ Students may distinguish between the roles of the LRCs, the parliaments and the courts, in particular noting that LRC Reports are never usually adopted in whole. ▪ May refer to examples should be provided 	5 – 7 marks
<ul style="list-style-type: none"> ▪ Student may refer to law reform and/or agencies of reform ▪ Students may refer to the parliament, courts or law reform agencies ▪ May refer to examples 	1 – 4 marks

Questions 18 - 25 Optional Focus Studies

Question (a)

<ul style="list-style-type: none"> ▪ With reference to the relevant focus study the student discusses in detail changes to the area of law ▪ Student clearly articulates how social changes influence law-making and law reform in the chosen focus study ▪ Student synthesises relevant examples by reference to legislation, media reports, cases, treaties or other documents (eg law reform commission reports) ▪ Student presents a logical, sustained and well-structured response to the issues ▪ Student integrates reference to the stimulus quote 	21 – 25 marks
<ul style="list-style-type: none"> ▪ With reference to the relevant focus study the student discusses changes to the area of law ▪ Student articulates how social changes influence law-making and law reform in the chosen focus study ▪ Student explains relevant examples by reference to legislation, media reports, cases, treaties or other documents (eg law reform commission reports) ▪ Student presents a logical, sustained and well-structured response to the issues ▪ Student integrates reference to the stimulus quote 	16 – 20 marks
<ul style="list-style-type: none"> ▪ With reference to the relevant focus study the student describes changes to the area of law ▪ Student refers to social changes, law-making and/or law reform in the chosen focus study ▪ Student refers to legislation, media reports, cases, treaties or other documents (eg law reform commission reports) ▪ Student presents a sustained and structured response to the issues ▪ Student may refer to the stimulus quote 	11 – 15 marks
<ul style="list-style-type: none"> ▪ With reference to the relevant focus study the student refers to the area of law ▪ Student may refer to law reform and/or social change ▪ Student may refer to legislation, media reports, cases, treaties or other documents (eg law reform commission reports) ▪ Student presents a report which may refer to the quote 	6 – 10 marks
<ul style="list-style-type: none"> ▪ Student may refer to the law ▪ Student may refer to legislation, the media, case(s) or other documents ▪ Student presents a response to the question 	1 – 5 marks

Question (b)

<ul style="list-style-type: none"> ▪ With reference to the relevant focus study the student analyses in detail the effectiveness of both the legal and non-legal remedies in protecting the rights of all of the parties identified ▪ Student clearly distinguishes between legal (formal) and non-legal (informal) remedies ▪ Student synthesises relevant examples by reference to legislation, media reports, cases, treaties or other documents (eg law reform commission reports) ▪ Student presents a logical, sustained and well-structured response to the issues 	21 – 25 marks
<ul style="list-style-type: none"> ▪ With reference to the relevant focus study the student analyses the effectiveness of both the legal and non-legal remedies in protecting the rights of all of the parties identified ▪ Student distinguishes between legal (formal) and non-legal (informal) remedies ▪ Student explains relevant examples by reference to legislation, media reports, cases, treaties or other documents (eg law reform commission reports) ▪ Student presents a logical, sustained and well-structured response to the issues 	16 – 20 marks
<ul style="list-style-type: none"> ▪ With reference to the relevant focus study the student describes the legal and non-legal remedies in protecting the rights of the parties identified ▪ Student refers to both legal (formal) and non-legal (informal) remedies ▪ Student refers to legislation, media reports, cases, treaties or other documents (eg law reform commission reports) ▪ Student presents a sustained and structured response to the issues 	11 – 15 marks
<ul style="list-style-type: none"> ▪ With reference to the relevant focus study the student refers to legal and/or non-legal remedies in protecting people ▪ Student refers to legal (formal) and/or non-legal (informal) remedies ▪ Student may refer to legislation, media reports, cases, treaties or other documents (eg law reform commission reports) ▪ Student presents a report 	6 – 10 marks
<ul style="list-style-type: none"> ▪ Student may refer to the law ▪ Student may refer to legislation, the media, case(s) or other documents ▪ Student presents a response to the question 	1 – 5 marks

Multiple Choice Answers:					
1. D	2. B	3. B			
4. A	5. C	6. D			
7. D	8. B	9. A			
10. B	11. B	12. D			
13. C	14. D	15. B			