



Trial Examination 2022

HSC Year 12 Legal Studies

Solutions and Marking Guidelines

Answer and explanation	Syllabus content, outcomes and targeted performance bands
<p>Question 10 C</p> <p>C is correct. Chen is 14 years old, so the prosecution is most likely to rebut the presumption that Chen could not be criminally responsible as he is not aged 10 years to under 14 years.</p> <p>A is incorrect. Chen is over the age of 10 and criminally responsible.</p> <p>B is incorrect. A judge is most likely to focus on rehabilitation rather than retribution.</p> <p>D is incorrect. The burden of proof is on the prosecution.</p>	<p>Young Offenders H1, H3</p> <p>Bands 3–4</p>
<p>Question 11 B</p> <p>B is correct. State sovereignty refers to a nation state dictating its own laws and terms outside of the influence of international law.</p> <p>A is incorrect. Nationalism is a political ideology.</p> <p>C is incorrect. Self-determination refers to groups determining laws that affect them.</p> <p>D is incorrect. Intergovernmental organisations (for example, the European Union) are not nation states; they are created by treaty and have member countries.</p>	<p>Promoting and Enforcing Human Rights H1, H3</p> <p>Bands 2–3</p>
<p>Question 12 C</p> <p>C is correct. Charge negotiation involves a guilty plea and requires no trial with a jury.</p> <p>A is incorrect. There would be no trial.</p> <p>B is incorrect. Charge negotiation involves a downgrading of charges for a guilty plea.</p> <p>D is incorrect. The victim would most likely be unsatisfied with the reduced sentence of the offender.</p>	<p>The Criminal Trial Process H1, H3, H6</p> <p>Bands 3–4</p>
<p>Question 13 C</p> <p>C is correct. The International Covenant on Civil and Political Rights contains the right to procedural fairness.</p> <p>A, B and D are incorrect. Work rights, education rights and cultural rights are included in the International Covenant on Economic, Social and Cultural Rights.</p>	<p>The Nature and Development of Human Rights H3</p> <p>Bands 2–3</p>
<p>Question 14 D</p> <p>D is correct. Fines are a method of general deterrence as they do not relate to a crime that is high profile and being followed by the media.</p> <p>A is incorrect. Retribution usually refers to the victim of a serious crime.</p> <p>B is incorrect. Incapacitation refers to a prison sentence.</p> <p>C is incorrect. Specific deterrence usually relates to a specific, high-profile court case.</p>	<p>Sentencing and Punishment H3, H6</p> <p>Bands 2–3</p>

Sample answer	Syllabus content, outcomes, targeted performance bands and marking guide
<p>Question 22</p> <p>Domestic courts and tribunals have contributed greatly to the promotion and enforcement of human rights in Australia. Courts enforce domestic legislation, interpret the constitution and create common law in the High Court of Australia. The Administrative and Equal Opportunity Division hears complaints of discrimination under the <i>Anti-Discrimination Act 1977</i> (NSW).</p> <p>An example of this is the case of <i>R v Wei Tang</i> (2009), which recorded the first conviction for slavery and sex trafficking under Australia’s <i>Criminal Code Act 1995</i> (Cwlth).</p> <p><i>Toonen v Australia</i> (1994) involved a complaint regarding same-sex laws in Tasmania and the right to privacy. This was brought before the United Nations Human Rights Commission, which found that the laws violated article 17 of the International Covenant on Civil and Political Rights (ICCPR). This led to the eventual repeal of these laws in Tasmania through the High Court.</p> <p><i>Roach v Electoral Commissioner</i> (2007) is an example of voting rights being violated. The subsequent High Court decision allowed prisoners to vote, upholding the rights expressed in the Australian constitution.</p> <p>These examples demonstrate the importance of domestic courts and tribunals in promoting and enforcing human rights in Australia as they can prosecute those who violate human rights or change laws that contravene human rights.</p>	<p>Promoting and Enforcing Human Rights H1, H2, H3, H5, H8 Bands 3–4</p> <ul style="list-style-type: none"> • Demonstrates a thorough understanding of domestic courts and tribunals in promoting and enforcing human rights in Australia. <p>AND</p> <ul style="list-style-type: none"> • Makes an informed judgement about the effectiveness of domestic courts and tribunals in promoting and enforcing human rights. <p>AND</p> <ul style="list-style-type: none"> • Provides relevant examples 5 <hr/> <ul style="list-style-type: none"> • Demonstrates a sound understanding of domestic courts and tribunals in promoting and enforcing human rights in Australia. <p>AND</p> <ul style="list-style-type: none"> • Makes a sound judgement about the effectiveness of domestic courts and tribunals in promoting and enforcing human rights. <p>AND</p> <ul style="list-style-type: none"> • Provides a relevant example 4 <hr/> <ul style="list-style-type: none"> • Demonstrates an understanding of domestic courts and tribunals in promoting and enforcing human rights in Australia. <p>AND</p> <ul style="list-style-type: none"> • Provides a relevant example 3 <hr/> <ul style="list-style-type: none"> • Makes general statements about domestic courts, tribunals and human rights 2 <hr/> <ul style="list-style-type: none"> • Makes general statements about human rights 1

Sample answer	Syllabus content, outcomes, targeted performance bands and marking guide
<p>Question 23</p> <p>There have been numerous instances of the international community exhibiting non-compliance regarding international human rights law. For example, state sovereignty and the lack of enforceability of human rights in the international community have been greatly evident in the use of child soldiers.</p> <p>The optional protocol to the <i>United Nations Convention on the Rights of the Child</i> (1989) on the involvement of children in armed conflict came into force in 2002 and has been ratified by the majority of the world’s countries.</p> <p>In 2012, Thomas Lubanga was convicted by the International Criminal Court for committing war crimes by using children under the age of 15 in armed conflict in the Democratic Republic of the Congo. The adoption of the Rome Statute established International Criminal Court Article 8, which prohibits ‘conscripting or enlisting children under the age of 15 years into armed forces or groups or using them to participate actively in hostilities’. The 2012 Lubanga case was the first conviction in the International Criminal Court for this non-compliance with the <i>United Nations Convention on the Rights of the Child</i> and the Rome Statute. More recently, the United Nations Children’s Fund (UNICEF) reported that 19 000 child soldiers were also recruited in the armed conflict in South Sudan in 2019.</p> <p>Continued non-compliance with international human rights law through the use of child soldiers remains an issue despite the enforceability of the International Criminal Court, as state sovereignty limits the United Nation’s ability to enforce international law.</p> <p>(continues on the next page)</p>	<p>Contemporary Issue H1, H3, H4, H5, H7 Bands 5–6</p> <ul style="list-style-type: none"> • Demonstrates a thorough understanding of international human rights law. <p>AND</p> <ul style="list-style-type: none"> • Makes an informed judgement about the extent to which the international community exhibits non-compliance with international human rights law. <p>AND</p> <ul style="list-style-type: none"> • Refers to ONE contemporary human rights issue 7 <hr/> <ul style="list-style-type: none"> • Demonstrates a sound understanding of international human rights law. <p>AND</p> <ul style="list-style-type: none"> • Makes a judgement about the extent to which the international community has exhibits non-compliance with international human rights law. <p>AND</p> <ul style="list-style-type: none"> • Refers to ONE contemporary human rights issue 5–6 <hr/> <ul style="list-style-type: none"> • Demonstrates some understanding of international human rights law. <p>AND</p> <ul style="list-style-type: none"> • Makes statements about the extent to which the international community exhibits non-compliance with international human rights law. <p>AND</p> <ul style="list-style-type: none"> • Refers to ONE contemporary human rights issue 3–4

Sample answer	Syllabus content, outcomes, targeted performance bands and marking guide
(continued)	<ul style="list-style-type: none"> • Makes general statements about international human rights law. <p>OR</p> <ul style="list-style-type: none"> • Makes general statements about the extent to which the international community exhibits non-compliance with international human rights law 2 <hr style="width: 100%; margin: 5px 0;"/> <ul style="list-style-type: none"> • Makes general statements about human rights 1

SECTION II

Part B – Crime

Question 24 (15 marks)

The process of sentencing and punishment in NSW courts has been important in ensuring there is a balance between the rights of victims, offenders and society. Each of these parties has differing needs and can be adversely affected by the outcomes of cases and law reforms. The *Crimes (Sentencing Procedure) Act 1999* (NSW) is the starting point for a court imposing a sentence on a person who is either found guilty of a criminal offence or has pleaded guilty. Judges can use discretion when determining the most appropriate sentence for an offender. However, recent law reforms and the use of aggravating and mitigating factors when sentencing have created controversy. The purposes of punishment can also be considered when looking at this balance.

The use of aggravating factors when sentencing can often balance the rights of victims and society. Aggravating factors are based on the circumstances of the crime committed, such as if the offence involved the actual or threatened use of violence, weapons or explosives; if the defendant has a record of previous convictions; if the offender lacked remorse; if the offence involved gratuitous cruelty; if the injury suffered by the victim was substantial; or if the offence was part of a planned or organised criminal activity. An example of this is *R v Campbell* (2010), in which the offender received at least 24 years imprisonment for the murder of his wife. He received the maximum penalty due to his lack of remorse as he did not attend his wife's funeral and arranged a holiday with another female partner the week after his wife's death. A further example is *R v Farmer* (2008), in which the offender received a lengthy sentence due to the violent nature of the crime. Aggravating factors in sentencing can balance the rights of victims and society as they can provide retribution for the victim and their families and incapacitation for offenders who could be a risk to society. Consequently, this is at odds with the rights of offenders who receive lengthier sentences.

The use of mitigating factors when sentencing can have the opposite effect and allows judges to use discretion when looking at the circumstances of the crime and the offender. Mitigating factors can reduce the severity of a sentence and serve to protect the rights of offenders. Mitigating factors include looking at the age of the offender; if the offender shows remorse; or if the offender has good prospects of rehabilitation. In *R v Loveridge* (2013), the offender, Kieran Loveridge, was initially given a lighter sentence due to his age and good prospects of rehabilitation. The rights of the offender can be met in the judge's use of discretion and focus on rehabilitation, rather than incapacitation. This also can help recidivism of the offender. However, this may not balance the rights of victims and their families who may feel that a lighter sentence does not meet their rights for retribution. This was seen in *R v Loveridge* (2013); the family of the victim, Thomas Kelly, was not satisfied with the outcome of the case and a subsequent appeal from the NSW Director of Public Prosecutions nearly doubled the original prison sentence. This was outlined in the *Sydney Morning Herald* article 'Kieran Loveridge's sentence shocking, Thomas Kelly's parents say' (Bibby 2013). Consequently, the need for the deterrence of alcohol-fuelled violence (as seen in *R v Loveridge* (2013)) balances the rights of society as it can help protect society from potential offenders.

Furthermore, another area of sentencing and punishment that is relevant to the rights of victims, offenders and society is the use of mandatory sentencing. The minimum sentence imposed for offences such as a one-punch assault causing death and the murder of a police officer can be problematic for the rights of the offender, as it removes the ability of a judge to use discretion when considering sentencing options. Further, mitigating factors such as the prospects for rehabilitation are not considered in sentencing and the focus is centred on retribution and incapacitation, with disproportionately long sentences being imposed. In *R v Jacobs* (2013), the judge had no option but to give the offender a mandatory life sentence under the *Crimes Amendment (Murder of Police Officers) Act 2011* (NSW). Having a judge hear all evidence relevant to the offender and offence can allow the judge to give a more appropriate sentence that balances the rights of the offender. However, victims and society may not be satisfied with a lesser sentence and would see mandatory sentencing as a positive outcome. The *Australian Broadcasting Corporation (ABC) News* article 'Mandatory sentencing: does it reduce crime?' (ABC 2014) asserts there is little evidence to suggest that mandatory sentences serve as an effective deterrent or decrease crime rates. Therefore, the rights of the offender could be adversely affected if all evidence in a case is not considered.

Syllabus content	Syllabus outcomes
Sentencing and Punishment	H1, H2, H3, H5, H6, H7, H8, H9, H10

Criteria	Marks
<p>The response is effective in:</p> <ul style="list-style-type: none"> demonstrating an extensive understanding of the sentencing and punishment process making an informed judgement the extent to which the sentencing and punishment process balances the rights of victims, offenders and society integrating relevant examples such as legislation, cases, media, international instruments and documents using relevant legal terms and concepts in a logical and cohesive way. 	13–15
<p>The response is competent in:</p> <ul style="list-style-type: none"> demonstrating a substantial understanding of the sentencing and punishment process making a sound judgement about the extent to which the sentencing and punishment process balances the rights of victims, offenders and society using relevant examples such as legislation, cases, media, international instruments and documents using relevant legal terms and concepts in a logical and cohesive way. 	10–12
<p>The response is adequate in:</p> <ul style="list-style-type: none"> demonstrating an understanding of the sentencing and punishment process making a judgement about the extent to which the sentencing and punishment process balances the rights of victims, offenders and society referring to examples such as legislation, cases, media, international instruments and documents using relevant legal terms and concepts. 	7–9
<p>The response is limited in:</p> <ul style="list-style-type: none"> demonstrating a basic understanding of the sentencing and punishment process making general statements about the extent to which the sentencing and punishment process balances the rights of victims, offenders and society making basic references to examples such as legislation, cases, media, international instruments and documents using some relevant legal terms. 	4–6
<p>The response attempts to:</p> <ul style="list-style-type: none"> describe the criminal justice system AND/OR victims, offenders and society in general terms include some reference to legislation, cases, media, international instruments and documents use basic legal terms. 	1–3

SECTION III

Question	Marks	Syllabus content	Syllabus outcomes
25(a)	25	Consumers — theme and challenge – role of law reform	H1, H4, H5, H6, H8, H9, H10
25(b)	25	Consumers — theme and challenge – encouraging cooperation and resolving conflict – contemporary issues	H1, H3, H4, H5, H6, H8, H9, H10
26(a)	25	Global Environmental Protection — theme and challenge – role of law reform	H1, H4, H5, H6, H8, H9, H10
26(b)	25	Global Environmental Protection — theme and challenge – encouraging cooperation and resolving conflict – contemporary issues	H1, H3, H4, H5, H6, H8, H9, H10
27(a)	25	Family — contemporary issues – theme and challenge – role of law reform	H1, H4, H5, H6, H8, H9, H10
27(b)	25	Family — theme and challenge – encouraging cooperation and resolving conflict – contemporary issues	H1, H3, H4, H5, H6, H8, H9, H10
28(a)	25	Indigenous Peoples — theme and challenge – role of law reform	H1, H4, H5, H6, H8, H9, H10
28(b)	25	Indigenous Peoples — theme and challenge – encouraging cooperation and resolving conflict – contemporary issues	H1, H3, H4, H5, H6, H8, H9, H10
29(a)	25	Shelter — contemporary issues – theme and challenge – role of law reform	H1, H4, H5, H6, H8, H9, H10
29(b)	25	Shelter — theme and challenge – encouraging cooperation and resolving conflict – contemporary issues	H1, H3, H4, H5, H6, H8, H9, H10
30(a)	25	Workplace — contemporary issues – theme and challenge – role of law reform	H1, H4, H5, H6, H8, H9, H10
30(b)	25	Workplace — theme and challenge – encouraging cooperation and resolving conflict – contemporary issues	H1, H3, H4, H5, H6, H8, H9, H10
31(a)	25	World Order — theme and challenge – role of law reform	H1, H4, H5, H6, H8, H9, H10
31(b)	25	World Order — theme and challenge – encouraging cooperation and resolving conflict – contemporary issues	H1, H3, H4, H5, H6, H8, H9, H10

Option A

Criteria	Marks
<p>The response is effective in:</p> <ul style="list-style-type: none"> • demonstrating an extensive understanding of laws relating to consumers; global environmental protection; family; Indigenous peoples; shelter; workplace; or world order • making an informed judgement about the effectiveness of law reform in recognising the rights of consumers; protecting the global environment; achieving just outcomes for family members and society; recognising the rights of Indigenous peoples; protecting the rights of those seeking shelter; recognising rights and enforcing responsibilities in the workplace; or promoting and maintaining world order • integrating relevant examples such as legislation, cases, media, international instruments and documents • using relevant legal terms and concepts in a logical and cohesive way. 	21–25
<p>The response is competent in:</p> <ul style="list-style-type: none"> • demonstrating a substantial understanding of laws relating to consumers; global environmental protection; family; Indigenous peoples; shelter; workplace; or world order • making a sound judgement about the effectiveness of law reform in recognising the rights of consumers; protecting the global environment; achieving just outcomes for family members and society; recognising the rights of Indigenous peoples; protecting the rights of those seeking shelter; recognising rights and enforcing responsibilities in the workplace; or promoting and maintaining world order • using relevant examples such as legislation, cases, media, international instruments and documents • using relevant legal terms and concepts in a logical and cohesive way. 	16–20
<p>The response is adequate in:</p> <ul style="list-style-type: none"> • demonstrating an understanding of laws relating to consumers; global environmental protection; family; Indigenous peoples; shelter; workplace; or world order • making a judgement about the effectiveness of law reform in recognising the rights of consumers; protecting the global environment; achieving just outcomes for family members and society; recognising the rights of Indigenous peoples; protecting the rights of those seeking shelter; recognising rights and enforcing responsibilities in the workplace; or promoting and maintaining world order • referring to examples such as legislation, cases, media, international instruments and documents. • using relevant legal terms and concepts. 	11–15
<p>The response is limited in:</p> <ul style="list-style-type: none"> • demonstrating an understanding of laws relating to consumers; global environmental protection; family; Indigenous peoples; shelter; workplace; or world order • making general statements about the effectiveness of law reform in recognising the rights of consumers; protecting the global environment; achieving just outcomes for family members and society; recognising the rights of Indigenous peoples; protecting the rights of those seeking shelter; recognising rights and enforcing responsibilities in the workplace; or promoting and maintaining world order • referring to examples such as legislation, cases, media, international instruments and documents • using some relevant legal terms. 	6–10
<p>The response attempts to:</p> <ul style="list-style-type: none"> • describe laws relating to consumers; global environmental protection; family; Indigenous peoples; shelter; workplace; or world order in general terms • refer to legislation, cases, media, international instruments and documents • refer to general legal terms. 	1–5

Option B

Criteria	Marks
<p>The response is effective in:</p> <ul style="list-style-type: none"> • demonstrating an extensive understanding of laws relating to consumers; global environmental protection; family; Indigenous peoples; shelter; workplace; or world order • making an informed judgement about the effectiveness of the law in encouraging cooperation and resolving conflict regarding consumers; global environmental protection; family; Indigenous peoples; shelter; workplace; or world order with reference to at least ONE contemporary issue • integrating relevant examples such as legislation, cases, media, international instruments and documents • using relevant legal terms and concepts in a logical and cohesive way. 	21–25
<p>The response is competent in:</p> <ul style="list-style-type: none"> • demonstrating a substantial understanding of laws relating to consumers; global environmental protection; family; Indigenous peoples; shelter; workplace; or world order • making a sound judgement about the effectiveness of the law in encouraging cooperation and resolving conflict regarding consumers; global environmental protection; family; Indigenous peoples; shelter; workplace; or world order with reference to at least ONE contemporary issue • using relevant examples such as legislation, cases, media, international instruments and documents • using relevant legal terms and concepts in a logical and cohesive way. 	16–20
<p>The response is adequate in:</p> <ul style="list-style-type: none"> • demonstrating an understanding of laws relating to consumers; global environmental protection; family; Indigenous peoples; shelter; workplace; or world order • making a judgement about the effectiveness of the law in encouraging cooperation and resolving conflict regarding consumers; global environmental protection; family; Indigenous peoples; shelter; workplace; or world order with reference to at least ONE contemporary issue • referring to examples such as legislation, cases, media, international instruments and documents • using relevant legal terms and concepts. 	11–15
<p>The response is limited in:</p> <ul style="list-style-type: none"> • demonstrating an understanding of laws relating to consumers; global environmental protection; family; Indigenous peoples; shelter; workplace; or world order • making general statements about the effectiveness of the law in encouraging cooperation and resolving conflict regarding consumers; global environmental protection; family; Indigenous peoples; shelter; workplace; or world order with a potential reference to ONE contemporary issue • referring to examples such as legislation, cases, media, international instruments and documents. • using some relevant legal terms. 	6–10
<p>The response attempts to:</p> <ul style="list-style-type: none"> • describe laws relating to consumers; global environmental protection; family; Indigenous peoples; shelter; workplace; or world order in general terms • refer to legislation, cases, media, international instruments and documents • refer to general legal terms. 	1–5