2021 Legal Studies Subject Assessment Advice

Overview

Subject assessment advice, based on the 2021 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

This was the first folio related to the new subject outline. Students complete four assessments as a set worth 40%. At least one assessment must be conducted under direct supervision and at least one task must correspond to the option area of choice. Most schools presented a broad range of tasks, including presentations, essays, reports, mock trials and tests. Generally, schools attempted to address the competing tensions within at least one task although engagement was inconsistent across students. Concepts irrelevant to the new subject outline, such as functions of law, were apparent in task design and student responses for a number of schools.

The more successful responses commonly:

* incorporated the opportunity to demonstrate achievement against all specific features
* included tasks that made explicit references to the competing tensions, which were explored as tensions rather than as separate entities, and evidenced a judgment as to how successfully the legal system had balanced the tension
* included several tasks that demonstrated extensive research, including a range of relevant sources, which were appropriately acknowledged
* provided opportunities for students to apply their knowledge to specific contexts, for example by responding to sources
* showed evidence of depth and breadth of knowledge and application of legal principles and processes including precise use of terminology
* provided several opportunities for perceptive analysis and evaluation of concepts, legal principles, processes, or problems
* allowed for responses of sufficient length for students to make detailed and in-depth judgments that were supported by evidence
* included records of performances in film, audio, or text that clearly demonstrated the standard achieved in oral presentations and mock trials
* included relevant and contemporary primary source materials that were not excessively long
* included tasks that required the evaluation of arguments or issues and a conclusion and/or recommendations
* included at least one task that was conducted under direct supervision and at least one task that corresponded to an option area
* provided a variety of assessment opportunities, such as tests, essays, multi modal presentations and media responses, that allowed individuals to show their various strengths.

The less successful responses commonly:

* included a large number of tests which consisted substantially of ‘outline’ or ‘describe’ short-answer questions which evidenced recall but limited opportunity for analysis and evaluation at a high level
* responded to questions that called for descriptive or explanatory answers that tended to preclude analysis and evaluation of issues or arguments
* made simplistic judgments or generalisations that did not demonstrate deep understanding of concepts, legal principles, processes, or problems
* lacked accuracy in their use of legal terminology
* included brief, superficial responses with no application to specific contexts or ‘name-dropped’ examples
* referenced terminology from the previous subject outline, such as the functions of law, which is no longer part of the course
* did not mention or discuss the competing tensions or ‘name-dropped’ them
* did not understand the competing tensions as a tension and made no judgment about how effectively the legal system had balanced the tension
* did not include a clearly defined supervised task
* did not incorporate a task that related to an option area
* used sources that were very dated, for example from 2008 or earlier, where a contemporary source may have been more effective.

Assessment Type 2: Inquiry

The inquiry must focus on a contemporary legal issue of public interest in the previous 12 months and relate to at least one of the competing tensions. Generally, students performed well in this assessment. The increase in the word limit provide by the new subject outline allowing more scope for in depth research and detailed recommendations and conclusions. There was a large variation in the quality of question choice and teachers should note that a well-framed question that allowed for the consideration of multiple legal perspectives was critical for success.

The more successful responses commonly:

* selected a contemporary legal issue and formulated an appropriate question that could be argued
* provided evidence from a recent source to demonstrate it was a current issue
* clearly identified at least one competing tension, sometimes incorporating it into the question, and then made frequent references to the balance reached by the legal system, weighing both sides of the tension in the main body and conclusion
* focused their question on a specific aspect of the legal system, rather than broad concepts
* were well structured and made good use of sub-headings that were relevant to the arguments being presented
* selected and engaged with a variety of good quality sources, including primary legal sources
* engaged in in-depth research to explore a wide range of perspectives on the issue
* incorporated well explained, relevant examples to support arguments
* included perceptive analysis and evaluation
* had logical and achievable recommendations, sometimes in more than one paragraph, including from their own deductions, that were based on judgments made throughout the response
* included conclusions that answered their question and reached a position concerning the balance of their identified tension(s)
* used legal sources such as legislation, case law, parliamentary reports and academic articles that were appropriately referenced including a bibliography.

The less successful responses commonly:

* addressed social, political, physical education, or business and enterprise issues, rather than legal issues
* used ambiguous questions that did not make grammatical sense or clearly invite an argument
* did not engage with a competing tension or name-dropped a tension showing little understanding
* only examined one side of a tension
* did not show understanding of how the legal system balanced a competing tension
* responded to a very broad question such as “the adversary system”, resulting in responses almost entirely devoted to explanation and description of concepts with little to no analysis and evaluation
* used distracting templates to present their work
* made repeated references to concepts that are no longer part of the course, such as functions of law
* included unnecessary images, tables, or other sources, which were dropped into the inquiry with no engagement
* did not research the topic in sufficient breadth or depth, relying exclusively short newspaper articles or a textbook
* used few and/or inappropriate sources such as Wikipedia
* did not fully reference their work, instead only pasted in links to websites
* did not present both sides of an argument
* made generalised or unjustified assertions
* made limited recommendations or strong recommendations to abolish entire systems that were not logical
* made brief or general conclusions
* were poorly formatted and well under the word count
* used outdated information, about topics such as double jeopardy laws, and/or examples, such as the Lindy Chamberlain case, where more recent, relevant evidence would be appropriate
* were constrained by too much or inappropriate scaffolding in the task provided, including the use of irrelevant headings and appendices.

External Assessment

Assessment Type 3: Examination

This was the first year of the new subject outline and exam format. The 2021 examination provided students with many opportunities to demonstrate their learning against the assessment design criteria Understanding and Application, Analysis and Evaluation, and Communication.

Part A: Response to sources (Question 1)

Teachers and students should note that the questions in this section of the examination require specific and explicit reference to one or more source. Teachers are encouraged to explicitly teach students how to specifically refer to sources in their responses.

The more successful responses commonly:

* explicitly referred to a source (e.g. paraphrase or short quote, and clearly identified e.g. “In source 1 …”)
* engaged with the sources rather than simply repeating them
* challenged the sources, where appropriate
* addressed the question
* followed question directives such as outline, explain, discuss, or critically analyse
* demonstrated accuracy and precision in their understanding, analysis and evaluation of legal concepts, principles, and processes.

The less successful responses commonly:

* did not refer to a source where directed, or made superficial references such as, “as seen in Source 1,” without explanation or specific engagement with the source
* provided superficial analysis or evaluation
* did not answer the question
* did not appropriately follow the question directives such as outline, explain, discuss, or critically analyse
* lacked accuracy and precision in their understanding, analysis and evaluation of legal concepts, principles, and processes
* made long references to concepts that are no longer in the course and therefore not relevant, such as social cohesion and social progress
* had overly long answers for the one and two mark questions and/or brief responses for the five and 10 mark questions.

(a) Successful responses outlined a role of the opposition such as holding the Government to account, contributing to debate on bills, participating in and contributing to committee investigations and reports, and identified this role specifically in one of the sources. Less successful responses did not specifically refer to a source or gave vague answers.

(b) Successful responses outlined roles of committees such as investigating issues referred by the parliament, presenting reports to the parliament, and making recommendations regarding proposed laws, and identified the role specifically in one of the sources. Less successful responses did not refer to a source or did so superficially.

(c) Successful responses outlined two distinct ways individuals or groups in the Australian community can influence laws such as, making submissions to parliamentary committees, voting at elections, signing petitions about issues of concern, lobbying MPs to introduce bills or vote a particular way on bills etc, and linked each way to a source. Less successful responses referred to individuals and groups in the parliament, rather than the Australian community, or only referred to one way, or did not specifically refer to a source.

(d) Successful responses provided a detailed explanation of an element of the rule of law such as, regular elections/democratic processes, freedom of speech, transparency in lawmaking processes, open parliamentary debate, free media, and open political communication etc, and specifically referred to a source. Less successful responses did not adequately explain the element and/or did not specifically refer to a source.

(e) Successful responses explained that the legislative and executive arms overlap in that the executive is drawn from the legislature, and specifically identified this in a source. Less successful responses did not demonstrate accurate understanding of the separation of powers, or identified the overlap but did not explain, and/or did not specifically refer to a source. Less successful responses incorrectly stated that the incomplete separation of powers was related to the judicial arm or to the federal system.

(f) Successful responses explained that the Government has a majority in the lower house and is therefore more likely to be able to pass bills, and specifically referred to a source. Less successful responses did not demonstrate understanding of the difference between government bills and private bills or could not explain why government bills are more likely to pass, and/or did not specifically refer to a source.

(g) Successful responses demonstrated perceptive understanding of Senate representation and the purpose and function of the Senate, and provided a detailed paragraph with two or more arguments, which were explained and supported with reference to one or more source. Successful responses recognised that by empowering one group another may be disempowered and drew conclusions or made recommendations about how a balance could be achieved. Less successful responses summarised or repeated the sources with no or very vague engagement, analysis, or evaluation, or simply agreed with the proposal without considering its impact if introduced. Less successful responses lacked understanding of representative government and how diverse groups, such as Indigenous peoples and those living in rural areas, are currently represented in the Commonwealth Parliament.

(h) Successful responses demonstrated thorough understanding of the lawmaking process by Commonwealth Parliament and clearly identified and explained a weakness, referred specifically to one or more sources, and provided a logical and convincing recommendation to improve the lawmaking process. Less successful responses did not focus on lawmaking by the Commonwealth Parliament and instead focused on irrelevant information such as lawmaking by judges or the impact of lawmaking on members of the community. Less successful responses made vague generalisations about the lawmaking process, or explained the lawmaking process without explaining a weakness, did not refer specifically to a source, and/or provided a superficial or unconvincing recommendation, such as using delegated legislation, which is a way to bypass the lawmaking process rather than improve it.

(i) Successful responses demonstrated in-depth and perceptive understanding and analysis of a range of electoral processes such as term limits, secret ballot, voting age, power and influence of political parties, preferential and proportional voting, role of AEC etc, made judgments about the fairness and efficiency of the processes, linked to principles such as representative government and the rule of law, and referred to one or more sources and their own knowledge. Less successful responses were brief and superficial, lacked adequate understanding of electoral processes, confused preferential voting with voluntary voting, did not refer to a source or repeated sources without analysis, described rather than critically analysed, and/or did not refer to the competing tension or did so superficially.

Part B: Extended response (Question 2)

Most students provided detailed responses of 800+ words, with some responses 1500+ words. Teachers and students should note that this section requires the use of relevant examples and engagement with one or more competing tension.

The more successful responses commonly:

* engaged strongly with the statement
* provided numerous, well-explained and relevant examples
* included some contemporary examples
* demonstrated perceptive understanding of one or more competing tension
* demonstrated perceptive analysis and evaluation of relevant concepts, principles, and processes
* explored more than one side of the statement
* provided insightful evaluation of the arguments and weighed them in convincing conclusions and/or recommendations
* used accurate and appropriate legal terminology
* provided a structured response with an introduction, paragraphs, and an in-depth conclusion
* used clear and effective expression.

The less successful responses commonly:

* did not engage strongly with the statement
* included information that was not relevant to the statement
* lacked examples or used vague or irrelevant examples
* ‘name-dropped’ examples without explanation
* used only old and dated examples, some of which may no longer be particularly relevant
* did not demonstrate understanding of a competing tension or did so superficially (name-dropped with little or no explanation)
* lacked precision in their explanations of legal concepts, principles, or processes
* made sweeping generalisations
* described rather than evaluated, or evaluation was superficial and simplistic
* contained inaccurate use of legal terminology
* lacked structure, often writing one or two very long paragraphs
* lacked clear communication with poor grammar and multiple grammatical and spelling errors that made the response difficult to understand. Students are encouraged to read through and check their work and not assume spellcheck will fix everything. Errors such as ‘onions’ instead of ‘opinions’ were common
* repeated information
* made long and or multiple references to concepts that are no longer in the course, such as social cohesion and social progress.

Statement 1

The more successful responses commonly:

* focused specifically on ‘law-making’ and provided explanation of the circumstances in which judges make law and the role of precedent. Most focused solely on lawmaking by the judiciary, but some opened up the question and explored which branch of government lawmaking was the most effective at protecting rights
* examined a range of rights and groups/individuals
* explicitly engaged with a competing tension
* drew conclusions about the extent to which judicial lawmaking has effectively protected rights.

The less successful responses commonly:

* showed little understanding of how, why, and when judges make law
* focused on the role of judges in the adversary system generally rather than engaging with the statement
* used few examples, or examples that were not particularly relevant and did not focus on protecting rights
* discussed rights and groups very generally
* provided little to no engagement with a competing tension.

Statement 2

This was the most popular statement. Students could focus solely on Australia’s adversary system of trial or make comparisons to the inquisitorial system. Students could focus on criminal or civil trial, or aspects of both.

The more successful responses commonly:

* strongly engaged with the concept of ‘justice’
* strongly engaged with a competing tension
* used accurate terminology associated with criminal and/or civil dispute resolution
* used a range of relevant examples, including some contemporary examples
* drew nuanced conclusions about the extent to which justice is achievable.

The less successful responses commonly:

* provided a generic response explaining features of the adversary system, without engaging with the concept of ‘justice’
* used irrelevant United States examples when the statement specified ‘Australia’s adversary system of trial’
* made sweeping generalisations about the adversary system of trial such as, ‘all juries are biased’
* did not make distinctions between civil and criminal dispute resolution
* used only old and dated examples, or examples that were not relevant or convincing in terms of the argument presented
* provided long explanations of features of the adversary system of trial with little evaluation
* provided superficial, if any, engagement with a competing tension.

Statement 3

The more successful responses commonly:

* demonstrated perceptive analysis and evaluation of the federal system and the Constitution
* used a range of contemporary examples (e.g. management of the COVID crisis between the Commonwealth and the States)
* strongly engaged with a competing tension
* drew nuanced conclusions about the distribution of power in the federal system.

The less successful responses commonly:

* showed little understanding of the federal system
* lacked examples or gave long explanations of examples, such as the Tasmanian Dam Case, without being able to relate it to the statement
* provided superficial, if any, engagement with a competing tension.

Statement 4

This was a very broad and open question that could be adapted to numerous aspects of the Australian legal system. The responses to this statement were commonly poor quality.

The more successful responses commonly:

* engaged strongly with difficulties of balancing competing rights and responsibilities
* provided perceptive analysis and understanding of a range legal concepts, principles, and processes
* used a range of specific and relevant examples, including contemporary examples.

The less successful responses commonly:

* demonstrated simplistic and superficial understanding of rights and responsibilities, or any other competing tension
* did not address rights and responsibilities
* demonstrated superficial understanding of legal concepts, principles, and processes
* used very general and superficial examples.