

## 1. INSTRUCTIONS

Please read **all** the instructions carefully.

### Method

This assessment task requires you to:

- PART A: Prepare a case analysis (also known as a 'case note') of the High Court of Australia's decision in *New South Wales v Robinson* (2019) 266 CLR 619 (this part is marked out of 40 and worth 40% of total mark in course).
- PART B: Provide an answer to a legal problem scenario assuming that *New South Wales v Robinson*, and the legislation referred to within that case, are the **only** relevant legal materials (this part is marked out of 30 and worth 30% of total mark in course).

**Both Part A and Part B are compulsory. There is no choice of questions.**

### Tips on Part A

To recap the essential principles of preparing a case analysis, refer to Creyke et al, *Laying Down the Law* (LexisNexis, 11<sup>th</sup> ed, 2020) para 7.6 – 7.12 (set as essential reading for Session 2). For this assessment task, I would like you to structure your analysis under the following headings: (a) citation; (b) court; (c) brief statement of material facts; (d) procedural history; (e) grounds for appeal and/or issues to be decided; (f) summary of court's reasoning; (g) principle on which the case was decided; (h) decision and orders; (i) context, commentary and/or critique. Doing so will ensure that you cover off all of the **marking criteria** for this assessment task. The marking criteria are set out in the Course Summary and also extracted below in these instructions.

### Tips on Part B

Part B is what at law school we call a 'bounded' task. This means you must answer the problem scenario on the assumption that *New South Wales v Robinson*, and the legislation featuring in that case, are the **only** binding legal authorities available and applicable in these circumstances. You may (and you can as relevant) also refer to any other primary sources referred to within *New South Wales v Robinson* – but it is not essential that you do so. However, do not refer to any other legal rules (either cases or legislation) that you may

happen to know of but which are not expressly referred to in *Robinson*. The problem question is not a research task and you are not expected to do any research or updating. If you do refer to other cases that are cited by judges in *Robinson*, then you should cite your source to reflect the fact that you have not gone back to the original case being cited. See

Rule 1.3 in the *Australian Guide to Legal Citation* (Melbourne University Law Review Association, 4th ed, 2018).

I recommend that in answering the Problem Question you follow the 'HIRAC' method of answering legal problems as discussed and employed in Session3, 4 and 5. If you need a reminder of that method, please refer to reading and materials for these sessions available on the Wattle course site. That material includes some sample 'answers' to problem questions using the HIRAC method.

### **Purpose**

This assessment task (**both** Parts A and B) draws together and assesses knowledge and skills broadly covered across the whole course, but especially Sessions 1-7.

Specifically it focuses on assessing a student's key skills in reading, reviewing and analysing legal cases and answering legal problems. However, more generally, it will demonstrate a student's background knowledge and understanding of:

- the foundations of law, legal systems and legal institutions
- the Australian legal system, including the executive, legislative, judicial and federal systems and their functional interrelationships, and
- social, policy, comparative or interdisciplinary approaches to legal analysis.

### **Submission Date and Late Submission**

The Problem Question / Case Analysis (**both** Parts A and B) must be submitted by **5.00pm on 13 April 2022 at 5pm**

Late submission (without an extension) will attract the penalty of 5% of the possible marks available per working day or part thereof. Late submission after 10 working days after the due date will not be accepted.

### **Extensions**

The College's Student Administration Manager may approve extensions in certain circumstances, although supporting documentation is generally required. The procedure for seeking an extension is explained here: <https://law.anu.edu.au/extensions-late-submission-and-penalties>

If you need an extension, you must request it in writing **on or before the due date**. If you have documented and appropriate medical evidence that demonstrates you were not able to request an extension on or before the due date, you may be able to request it after the due date.

The normal pressures of work - including predictable periods of high workload - are not generally sufficient to justify extensions. Students are encouraged when planning for their participation in graduate courses to set aside not just the days needed to attend classes, but also a sufficient number of days to research and write the assessment tasks. No further extensions will be granted beyond a total of three months from the original due date for submission, unless the LLM Program Director considers that the circumstances would entitle the student to a special examination. Students should note that those who seek extensions may not receive their results in time to graduate at the next ceremony or at the advertised time for the release of results.

International students should in particular take note of the delays that may result from submission of assessment after the original deadline.

### **Word Length**

The maximum total word length for the Problem Question / Case Analysis is 4,200 words. There is no specific word length set for Part A or Part B. It is up to you to determine how to apportion your words between Part A and Part B (but a 4:3 ratio would be appropriate as a default, reflecting the marks that attach to each Part).

The number of words **includes** all headings, text, and footnotes, but **excludes** any list of references at the end. It should be calculated using Microsoft Word's word count function. Papers which come in substantially under the word limit will not be penalised on that basis alone. However, short papers risk failing to address the question adequately.

Assignments that exceed the word limit may be subject to a penalty as follows: 'the mark which is awarded initially will be reduced by half the proportion by which the word limit has been exceeded. As an example, if the word limit is 2,000 words, and the assignment submitted is 3,000 words long, then the initial mark for the assignment would be reduced by 25% of that mark. The appropriateness of the normal, full application of the above penalties, including provision that a piece of work will not be marked and will incur a mark of 0, should be assessed in the light of the circumstances and, where appropriate, mitigated in accordance with the responsibility of the Chair of Examiners to ensure that a student's performance is adequately and fairly assessed'.

### **Presentation**

The Problem Question / Case Analysis must be in 12-point font, double-spaced or 1.5 line-spaced, formatted for A4-size paper, and with pages numbered. Please submit Part A and Part B in a **single document** (not two separate documents).

You **only** need to list as **references** any sources that you use for the **last part of Part A** (i.e. the critical comment on the policy or social ramifications of the case) but which do not otherwise appear in a footnote. For the rest of Part A you are simply analysing the case so you won't have additional sources other than the case itself. For Part B (i.e. the problem

question) you do not need to do any research beyond the case that you are required to analyse for Part A.

### **Submission Method**

The Problem Question / Case Analysis is to be submitted in a **single** document using Turnitin on the Wattle site. You will be required to electronically sign a declaration as part of the submission of this assessment task. Please keep a copy of the assessment task for your records. When submitting assessment tasks via Turnitin, you do **not** need to include a front cover sheet.

The ANU is using Turnitin to enhance student citation and referencing techniques, and to assess assignment submissions as a component of the University's approach to managing Academic Integrity. For additional information regarding Turnitin please visit the ANU Online website.

### **Mark and Marking Criteria**

The Problem Question / Case Analysis is marked out of 70 and comprises 70% of your total mark for the course. Part A is marked out of 40 and Part B is marked out of 30.

Failure to submit will result in an NCN grade for the entire course.

The Problem Question / Case Analysis will be marked against the following criteria:

#### **a) Analysis of the judgment**

- summarises facts and procedural history
- identifies issues to be decided
- summarises court's analysis of law and identifies principles of law to be applied
- summarises court's application of law to the facts
- identifies court's decision
- critical comment on **policy ramifications and/or social or cultural context** of the case

-using logical and well-organised discussion

-conducting critical analysis of the material

- drawing on a range of appropriate research sources – reaching well-reasoned conclusions

#### **b) Application to the hypothetical problem**

- answers the question asked
- identifies the legal issues raised from the facts of the question
- legal principles stated/explained with accuracy
- legal principles applied to the relevant facts, recognising any 'grey areas'
- clear conclusions reached

#### **c) Presentation, style and referencing**

- good use of structure, section headings and paragraphs
- clarity and conciseness of expression
- full and accurate footnotes
- style according to *Australian Guide to Legal Citation*

- adherence to word limit

**\*\*\*\*\* END OF INSTRUCTIONS \*\*\*\*\***

**THE QUESTIONS BEGIN ON THE NEXT PAGE**

## **QUESTION**

### **PART A: Case Analysis**

Write a case analysis for the High Court case *New South Wales v Robinson* (2019) 266 CLR 619. A copy of the case is available via the Wattle course page.

**\*\*\*\*\* END OF PART A QUESTION \*\*\*\*\***

**PART B QUESTION BEGINS ON THE NEXT PAGE**

## PART B: Problem Question

Lisa and Reggie are both Constables in the New South Wales Police Force. On the morning of 3rd January 2021 they were patrolling on foot in the Chatswood shopping precinct in suburban Sydney when they heard a burglar alarm sounding. They followed the sound around a corner to a nearby jewellery shop, where the front window had been smashed. Surveying the scene, they noticed a woman running in the opposite direction further down the street. Lisa chased after the running woman while Reggie stayed behind to talk to the distressed shop owner.

Reggie learned from the shop owner that the person/s who had smashed the window had then grabbed a few items of jewellery from the window display and run off. She was not able to describe the thief (or thieves) as she had been in a back room when the incident happened. Reggie left the shop and walked towards his parked police van. About 200 metres from the shop Reggie spotted a man sitting on the grass in front of a residential unit complex, with his hand wrapped in a piece of clothing. Noticing that parts of this wrapping cloth were soaked with what appeared to be blood, Reggie stopped to talk to the man. The man gave his name as 'Scott Morrison' and provided an address in Newcastle, NSW. Other than that, he refused to answer any of Reggie's questions. Reggie said to Scott, 'Something's not quite right, here, Scott. I think we need to talk more. So, I am placing you under arrest on suspicion of having committed the crime of larceny'. He then marched Scott back to the police van.

Lisa, meanwhile, had pursued the running woman through Chatswood shopping mall and noticed the woman drop something small from her hand into a rubbish bin as she ran. When Lisa caught up to the woman and trapped her in a dead-end corridor, the woman placed another small item in her mouth and swallowed hard. Lisa did not see what it was. Lisa asked the woman to open her mouth but she could see nothing unusual inside. The woman gave her name and address as 'Sally Young, Unit 9, 8 Elisabeth Parade, Lane Cove'. Lisa then told the woman that 'I am arresting you for the crime of larceny' and took her back to the police van.

Lisa and Reggie drove the two arrestees back to their police station. After further questioning at the police station, and after receiving some results from the police forensics lab some hours later, Lisa and Reggie formed the view that Scott and Sally were likely not connected with the robbery at the jewellery shop. Scott and Sally were both then released from police custody without charge.

You are a lawyer at Western Sydney Community Legal Centre in Parramatta. Scott and Sally each seek your advice as to **whether their arrest and/or detention was unlawful** (in which case they could pursue compensation from the NSW Government for wrongful arrest and false imprisonment). In preparing your answer use **only** *New South Wales v Robinson* (2019) 266 CLR 619, including the legislation referenced in it.