

External assessment 2023

Stimulus book

Legal Studies

General instruction

- Work in this book will not be marked.

Stimulus 1

Excerpt from the United Nations *International Covenant on Civil and Political Rights* (ICCPR)

Article 12

1. Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.

...

Article 14

1. All persons shall be equal before the courts and tribunals ...
2. Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law.

...

Article 26

All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Stimulus 2

Excerpt from the *Human Rights Act 2019* (Qld)

15 Recognition and equality before the law

- (1) Every person has the right to recognition as a person before the law.
- (2) Every person has the right to enjoy the person's human rights without discrimination.
- (3) Every person is equal before the law and is entitled to the equal protection of the law without discrimination.
- (4) Every person has the right to equal and effective protection against discrimination.
- (5) Measures taken for the purpose of assisting or advancing persons or groups of persons disadvantaged because of discrimination do not constitute discrimination.

...

19 Freedom of movement

Every person lawfully within Queensland has the right to move freely within Queensland and to enter and leave it, and has the freedom to choose where to live.

Stimulus 3

Infographic on sentencing for public nuisance offences in Queensland, July 1, 2018 – June 30, 2019

This content has been redacted while copyright is being assessed and cleared.

The redacted image is a close adaptation of Queensland Sentencing Advisory Council 2019, *Sentencing at a Glance: Public nuisance*,
www.sentencingcouncil.qld.gov.au/statistics/type-of-offence/public-nuisance

Stimulus 4

Excerpt from *Access to Justice*, Australian Law Reform Commission (ALRC) Report 133, 2018

10.1 'Access to justice' is an essential element of the rule of law. In essence, access to justice refers to the 'affirmative steps' necessary to 'give practical content to the law's guarantee of formal equality before the law'. It refers to the need to [reduce] or remove barriers to access and 'must be defined in terms of ensuring that legal and judicial outcomes are just and equitable'. It is enshrined in [Article] 14 of the *International Covenant on Civil and Political Rights* (ICCPR).

Stimulus 5

Excerpt from Australian Bureau of Statistics Census data, 2016

Homelessness is not just the result of too few houses. Its causes are many and varied. Domestic violence, a shortage of affordable housing, unemployment, mental illness, family breakdown and drug and alcohol abuse all contribute to ... homelessness in Australia. Homelessness is not a choice. Homelessness is one of the most potent examples of disadvantage in the community, and one of the most important markers of social exclusion.

...

There were 116 427 people ... in the Census who are classified as being homeless on Census night (up from 102 439 persons in 2011) ...

The homeless rate was 50 persons for every 10 000 persons ... up from 48 persons in 2011 and 45 persons in 2006 ...

Stimulus 6

Excerpt from journal article, 2008

Human beings ... need a private and secure location in which to carry out necessary ... functions such as sleeping, washing, reproducing and socialising. In advanced industrial democracies, such a location is typically secured by access to housing. Homeless people by definition are unable to access adequate housing of their own, and societal property rules forbid access (without permission) to the private property (houses) of others. The alternative location for homeless people, for human functioning, is public space ...

Stimulus 7

Excerpt from research report, 2008

Criminalising public nuisance behaviours necessarily involves an important balancing act, one which must strike a fair compromise between the rights of individuals to engage in certain behaviours that might not ordinarily warrant criminal justice system intervention, and the rights of all sectors of the community to be able to enjoy public places.

In Queensland, after the introduction of the new public nuisance offence, there was on one hand a great deal of anxiety expressed about its impact by some sectors of the community — there were fears that the balance of rights had been significantly altered, to the detriment of some groups ... On the other hand, other groups were pleased by the prospect of the new offences allowing police to tighten their control of public order issues; they saw it as an opportunity for police to better respond to public concerns, often relating to the behaviour of those in public places who had consumed alcohol excessively.

Stimulus 8

Excerpt from research into Special Courts, 2011

At ... Special Circumstances Courts, magistrates work closely with defendants to find practical solutions to the difficulties they face to reduce their offending behaviour ... defendants are required to plead guilty, or indicate an intention to plead guilty, in order to be eligible for inclusion, and they must submit to an initial assessment. Once they are accepted into the program, they are required to regularly report to the court (often on a weekly or fortnightly basis) so that their compliance with requirements imposed upon them by the court can be monitored. Such requirements might include engaging in processes to secure accommodation, attending drug or alcohol treatment, participating in counselling, and other self-help activities.

...

[A] defendant must plead guilty ... [some] participants took issue with this ... They expressed discomfort with the fact that the 'evidence was not tested' and they felt the injustice of this because, in their view, the police had behaved badly towards them and they did not deserve the charge.

Stimulus 9

Excerpt from law journal article, 2021

In addition to on-the-spot fines (over which judicial officers have no control, save for the very rare occasions when recipients challenge them in court), another reason fines are sometimes imposed — despite the absurdity of imposing a financial burden on a person with no capacity to pay — is that magistrates have no other suitable sentencing options.

...

[Homeless] people are excluded from home detention orders ...

[Regarding electronic monitoring, they have nowhere] to charge the device ...

...

For people experiencing homelessness or housing insecurity, imprisonment can be especially harmful [as it] places them at increased risk of entering (or re-entering) homelessness ...

Stimulus 10

Excerpt from online article, 2022

A ... councillor has called for a decades-old law to be reintroduced that would make being homeless illegal.

...

[The councillor] said while the idea ‘sounds harsh’, it would give the region’s most vulnerable a temporary roof over their head, a bed, medical attention and connections to support services.

...

The [V]agrancy [A]ct, introduced in 1931, deemed that a number of people could fit the definition of a ‘vagrant’.

Pertaining to homelessness, it stated that any person who did not have ‘visible lawful means of support’ — such as housing or money — could be fined \$100.

Those unable to pay could be imprisoned for up to six months.

Stimulus 11

Excerpt from research report, 2004

[Many] jurisdictions (such as ACT, NSW and SA) have a provision in their sentencing legislation which states that if an offence is trivial, the court should consider releasing the defendant without conviction, either conditionally or subject to conditions. Thus, many jurisdictions in Australia have a formal system of diversion in place at the sentencing level in relation to minor victimless offences.

[Various] jurisdictions have expanded the content of their community service orders beyond mere community service work ... homeless people in Queensland are generally judged to be unsuitable for a community service order ... However, in [other jurisdictions], attendance at rehabilitative programs, counselling and other self-development activities can be credited to offenders as community service work for the purpose of a community service order.

References

Stimulus 1

United Nations 1966, *International Covenant on Civil and Political Rights*, www.ohchr.org.

Stimulus 2

Human Rights Act 2019 (Qld), sourced from the Queensland Legislation website. For the latest information on Queensland Government legislation please go to <https://www.legislation.qld.gov.au>. Licensed Creative Commons Attribution 4.0 International (CC BY 4.0).

Stimulus 3

The redacted image at Stimulus 3 is a close adaptation of Queensland Sentencing Advisory Council 2019, *Sentencing at a Glance: Public nuisance*, www.sentencingcouncil.qld.gov.au/statistics/type-of-offence/public-nuisance.

Stimulus 4

Australian Law Reform Commission 2018, 'Access to Justice', *Pathways to Justice — Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples (ALRC Report 133)*, www.alrc.gov.au/publication/pathways-to-justice-inquiry-into-the-incarceration-rate-of-aboriginal-and-torres-strait-islander-peoples-alrc-report-133/10-access-to-justice/summary-269. Licensed Creative Commons Attribution-NonCommercial-NoDerivs 3.0 Australia (CC BY-NC-ND 3.0).

Stimulus 5

Extracted from Australian Bureau of Statistics 2016, *Census of Population and Housing: Estimating Homelessness*, www.abs.gov.au/statistics/people/housing/census-population-and-housing-estimating-homelessness/2016. Licensed Creative Commons Attribution 4.0 International, (CC BY 4.0).

Stimulus 6

Doherty, J et al 2008, 'Homelessness and Exclusion: Regulating public space in European cities', *Surveillance & Society*, vol. 5, no. 3, pp. 290–314, <https://ojs.library.queensu.ca/index.php/surveillance-and-society/article/view/3425>. Licensed Creative Commons Attribution-Noncommercial-No Derivative Works 4.0.

Stimulus 7

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Stimulus 8

Walsh, T 2011, *A Special Court for Special Cases*, pp 8–9; 38, The Australasian Institute of Judicial Administration and The University of Queensland, <https://espace.library.uq.edu.au/view/UQ:344159>.

Stimulus 9

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Stimulus 10

Cassidy T 2022, 'Gold Coast councillor says vagrancy act should return in response to homelessness' *ABC News*, 28 July <https://www.abc.net.au/news/2022-07-29/gold-coast-councillor-wants-vagrancy-homelessness-laws-returned/101271214>. Reproduced by permission of the Australian Broadcasting Corporation - Library Sales Tara Cassidy © 2022 ABC

Stimulus 11

Walsh, T 2004, *From Park Bench to Court Bench: Developing a response to breaches of public space law by marginalised people*, p. 10, Faculty of Law, QUT, in association with the QPILCH Homeless Persons' Legal Clinic and the Rights in Public Space Action Group (RIPS), <https://espace.library.uq.edu.au/view/UQ:398651>.



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