This exam was generally well done, with most students displaying a strong understanding of the principles and application of statutory interpretation.

Question One appeared to offer the greatest difficulty for students — especially part 1. The Merger Guidelines are not delegated legislation — they are an administrative pronouncement, at best quasi-legislation, and have no legislative force. They are interpreted as any other document, not as legislation. Most students recognised that part 2 required an interpretation consistent with principles of international law rather than domestic cases, but there was considerable confusion in part 3. An application scheme is different to a referral of powers, and legislation subject to an application scheme must be read according to the relevant interpretative provisions.

Question Two was often very well discussed although this question was not an invitation to discuss the protection of human rights generally. Students were asked to refer specifically to the principle of legality — a presumption which operates in statutory interpretation, and which is not interchangeable with general statements about the rule of law. Not all students were able to discuss this adequately — and support their discussion by reference to the relevant case law.

The problem question in Question Three was generally done well, although many answers displayed the clear effects of poor organisation with respect to time, especially when discussing Ray’s plight. Of concern was that some students appeared not to understand how purpose should be used and there were statements to the effect of “Ray’s actions were not in breach of the purpose of the legislation”. Interesting, possibly true, but entirely irrelevant — and displaying a poor understanding of the use of purpose. Purpose is a tool of interpretation to elucidate the meaning of a section — it is not a separate criterion against which actions are to be judged.