



Supporting the teaching and learning of Legal Studies since 1994



# Teaching Preliminary Legal Studies: Beginning with the End in Mind

Presented by

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Presented by

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# Acknowledgement of Country

**We acknowledge the Gadigal people of the EORA nation, who are the traditional custodians of this land where we are gathered, and pay respect to their Elders past, present and emerging.**

**We acknowledge and respect their continuing culture and their connection to community, land and water. We value the contribution they make to the life of this city and this region.**

**We extend that respect to other Indigenous people in our community here today.**

**May we walk together for a peaceful and reconciled nation, based on justice and hope.**

**We also take this opportunity to warn Aboriginal people present that this presentation may include names and images of people who have passed away.**

# Developing analytical / evaluative writing early on

Using HSC workbook answers and relevant strategies in Legal Studies

Keith Thomas



# What will this section of the presentation comprise?

- Extracting and utilising sample paragraphs from the NESAs Legal Studies workbooks: Human Rights and Crime
- Crime essay sample essay with marking table and qualitative judgements
- Preparing useful feedback to assist students improve their essays

# HUMAN RIGHTS



# Human Rights

## HSC

### short answers

- Q22 2014
- How are human rights protected by the Australian Constitution? (5mks)

The Australian Constitution protects human rights in many ways. Firstly, it outlines specific rights guaranteed to all Australians such as the right to vote and the right to freedom of religion. It also includes implied rights such as the right to freedom of speech. This sets out rights which are provided to all Australians, <sup>and can only be changed by a referendum</sup> so ~~effectively~~ <sup>effectively</sup> protects them. Secondly, the Constitution protects human rights by ensuring that no individual can hold power in Australia. By outlining the division of power ~~and~~ between the states and the commonwealth and the separation of power between the executive, legislature and judiciary, the Constitution is able to ensure that power is evenly spread and so human rights can be adequately protected on many different levels. This also ensures human rights can not easily be taken away as one person ~~cannot~~ <sup>cannot</sup> have the power to remove them. Thus, the Australian constitution protects human rights in Australia by outlining specific rights and outlining the separation/division of power.

# Human Rights

## HSC

### short answers

- Q22 2014

## **Comment**

The student demonstrates a clear understanding of how the Australian Constitution protects human rights. They demonstrate their clear understanding by correctly referring to legal concepts such as a referendum, the division of powers and the separation of powers. They also display relevant knowledge of the Australian Constitution through, for example, discussing the role of implied rights and express rights.

# Human Rights

## HSC

### short answers

- Q22 2015
- Outline the role of law reform in the abolition of slavery. (5mks)

Law reform has been very effective in the abolition of slavery, to reflect the changed societal and community values. Nation states worldwide have passed legislation or reformed their legislation to enact the International Covenant on Civil and Political Rights if they are signatory to it, and to also incorporate the values of the Universal Declaration of Human Rights. As Australia is a signatory to human rights treaties, they must do their best to promote and enforce them, as demonstrated with the law reform of the Crimes Amendment (Slavery) Act where it states slavery is a crime and is a punishable offence. With the amendments in action, it has helped abolish the potential of <sup>an</sup> ever greater amount of slavery due to its ~~deterrence~~ ability to deter offenders. The case of Queen v Tang had initiated law reform as it was the first <sup>case which</sup> ~~one~~ prosecuted an offender for slavery and trafficking, resulting in ~~slavery~~ the recognition of the abolishment of slavery under section 270 and 271 of the criminal code.



# Human Rights

## HSC

### short answers

- Q22 2015

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## **Comment**

This candidate references mechanisms and conditions that give rise to reform and uses the sequence of international instruments that have been fundamental in legislative changes. The response references changing values and the implied role of enacting law from ratifying conventions. In considering a crime that is punishable, the candidate uses the example of the *Wei Tang* case.

# Human Rights

## HSC

### short answers

- Q22 2015
- Sample answer

Law reform has been effective in the movement towards the abolition of slavery. The move to abolish slavery began in the 12th century. The transatlantic slave trade gradually gave way to changing social values and led to law reform to protect individual rights. In addition, France abolished slavery in 1794 and there was a worldwide movement towards abolishing slavery. In the USA, the US Constitution was amended to abolish slavery. This is an example of domestic law reform responding to changing community standards. Slavery was the first human rights issue to raise wide international concern. The Slavery Convention (1926) was the first document to prohibit slavery, with a number of countries ratifying this convention. There was further law reform under the Universal Declaration of Human Rights (UDHR) (1948) and International Convention on Civil and Political Rights (ICCPR) (1966). Despite efforts at law reform, slavery still exists in a number of countries.

# Human Rights

## HSC

### short answers

- Q22 2016

A charter of rights may be effective in protecting human rights as currently the protection of HR under the constitution is limited; only having 5 explicit rights. Furthermore ~~is~~ a charter of rights would improve a Australian ~~to~~ international standing on HR ~~to~~ protection & protect the disadvantaged & marginalised. However, a charter of rights would also undermine a tradition of parliamentary sovereignty by priming unelected judicial officers. ~~It can be said~~ a charter of rights may also be costly and unnecessary because HR. Further some can argue that the already adequate protection of HR in Australia under ~~state~~ statute law, common law & the constitution. However there is also high community support for a charter of rights as ~~it~~ <sup>it</sup> protects the rights of all citizens, that is more accessible to the Australian public.

# Human Rights

## HSC

### short answers

- Q22 2016

## **Comment**

This candidate highlights the potential benefits that may come from the introduction of a Charter of Rights by referring to the deficiencies arising from the common law and the statutory and constitutional means by which human rights are currently recognised. Reference is given to the movement both domestically and internationally for a Charter of Rights as a valid means by which human rights can be protected.

# Human Rights

## HSC

### short answers

- Q23 2020

International human rights law relies heavily on compliance due to its lack of enforceability and the notion of state sovereignty. As a result, compliance with international human rights law has been achieved by nations to a minimal extent. For example, the Refugees Convention states that all individuals have the right to seek refuge in another country if they are fleeing persecution, however, Australia's 'Stop the Boats' campaign involved intercepting boats and towing them to Indonesia or their home country, denying basic human rights and indicating a lack of compliance with international law. Additionally, the international laws require states to become a signatory, therefore compliance is extremely limited, evident in Syria.

when the civil war sees <sup>severe</sup> human rights abuses take place and state sovereignty prevents interferences. Despite this, compliance has been seen ~~within~~ in various countries where international law relating to human rights has been signed, ratified and enacted, enabling domestic enforceability. For example, Australia signed the Convention on the Elimination of Racial Discrimination through their Racial Discrimination Act (Cth). Evidently, compliance with international human rights law has only been achieved to an extent due to its consensual nature, lacking enforceability and the principle of state sovereignty.

# Human Rights

## HSC

### short answers

- Q23 2020

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#### **Comment**

This response is written in a sophisticated manner and comprehensively addresses the question. It makes a clear judgement in its opening statement, and it references an example of international human rights law in the Refugee Convention. By using the concept of state sovereignty, the response highlights the ineffectiveness of international human rights law in enforcing compliance. This is further reinforced through the discussion of international treaties and their incorporation into domestic legislation. This argument is supported with evidence of Australian domestic legislation, the *Racial Discrimination Act* (Cth). Through developing a clear link between international and domestic law, the response provides an informed judgement of the ineffectiveness of treaties in enforcing compliance with international human rights law. By concluding with the relevant examples, the response demonstrates a detailed understanding of the question and provides a sustained judgement of compliance with international human rights law.

# CRIME



# Crime essay excerpts

Media &  
Quote

- Q24 2014
- To what extent does the criminal investigation process balance the rights of victims, suspects and society?

<sup>17</sup> return, they will be able to detain the suspect for up to 48 hours. The article states, "There is dispute ~~within~~ within the Office of the Department of Public Prosecutions as to how ~~the~~ the courts will cope with the extra workload." While these proposals balance the rights of ~~the~~ society and the victim to protection and the rights of the suspect to an extent, ~~the~~ ~~inade~~ resource efficiency may suffer as a result, which may act as an impediment to the protection of society.



# Crime essay excerpts

- Q24 2014

The criminal investigation process highlights the difficulty in striking an effective balance between the rights of victims, suspects and society. Bail processes <sup>and</sup> the process of searching for evidence ~~for~~ illustrates that when one <sup>person's</sup> right is respected, another's is infringed upon. While a balance is achieved to some extent, this balance is not always entirely effective,

# Crime essay excerpts

- Q24 2014

## **Comment**

This response demonstrates extensive understanding of the criminal investigation process, especially through contemporary reforms. The student's judgement is well informed throughout, and is fully justified with reference to the balance of the rights of victims, suspects, society. Statements are well integrated not only through direct reference but through the underlying themes of power / responsibility and discretion. This response is succinct, cohesive and well written.

# Crime essay excerpts

- Q24 2014
- Marking criteria!

<b>Criteria</b>	<b>Marks</b>
<ul style="list-style-type: none"><li>• Demonstrates an extensive understanding of the criminal investigation process</li><li>• Makes an informed judgement (explicitly or implicitly) of the extent to which the criminal investigation process balances the rights of victims, suspects and society</li><li>• Integrates the statement AND relevant examples such as legislation, cases, media, international instruments and documents</li><li>• Presents a sustained, logical and cohesive answer to the question using relevant legal terminology and concepts</li></ul>	13–15

# Crime essay excerpts

- Q24 2016

~~offenders~~. However, due to the public and concerns in ethical concerns over the wellbeing and the development of young offenders, it only stands to reason that specific laws regarding young offenders need to be in place. In order to achieve justice, young offenders must be treated differently from adults, as their future in both wellbeing and in ~~educ~~ employment opportunities may be affected by "blanket" laws. As such, the criminal justice system tends to adhere to Article 37 of CrOC, children should not be subject to cruel or degrading punishment. Article 40 of CrOC, <sup>coarctant</sup> children should receive legal support and be allowed to maintain anonymity, and Section 2 of Article 40 of CrOC, <sup>under-age</sup> children should not be convicted. ~~The criminal justice system~~

# Crime essay excerpts

- Q24 2016

under Section 5, outlines the age of criminal responsibility for young offenders. Those aged 0-9 years old, have a presumption of *doli incapax* meaning they cannot be held criminally responsible due to the lack of mens rea. Children aged 10-13 years old have the presumption of *doli incapax*, but can be rebutted and proven to be criminally responsible, and children aged 14-16 are criminally responsible but no conviction can

be recorded.

The overarching law that provides justice for young offenders is the Young Law Enforcement (Penance and Responsibilities) Act 2002, which grants laws for regarding young offenders that otherwise wouldn't exist for adults. This would include the limiting of the use of force on children aged under 16. As such, there is an emphasis on the conviction of children, and thus, the age of criminal responsibility. The Child Criminal (Parental) Act 1987.

# Crime essay excerpts

- Q24 2016

1997, is extremely effective in promoting rehabilitation and reducing recidivism. As outlined in the media article (Racial attack on Bus: Offender's Youth Justice Conferencing, *The SMH*, vol. 13), ~~the~~ A teenager involved in an Anti-Semite attack felt remorse after visiting the Jewish museum and learning more about Jewish culture. As such, there has been a reported decrease of reoffending from 48% to 33% of young offenders (YJC, recidivism 2014). In this way, the criminal justice system, through treatment of young offenders differently in the ~~post~~ sentencing process, is able to achieve justice for the young offenders and society.

# Crime essay excerpts

• Q24 2016

Ultimately, the criminal justice system <sup>has</sup> ~~has~~ to treat young offenders differently in order to achieve justice. Predominantly, this is due to reasons such as mental health, development and future prospects. It is only when young offenders are treated differently from adults, can the criminal justice system to achieve justice for both <sup>young</sup> offenders and society.

## Comment

This candidate uses the processes of criminal investigation, sentencing and punishment as the basis for an extensive explanation of how the criminal justice system treats young offenders differently in order to achieve justice. Informed judgment is evident throughout and the candidate highlights the issues involved in achieving justice for both young offenders and society.

# Crime essay sample answer

- Bail essay
- Why use this question and student answer in Year 11 Legal Studies?
- How to best use this essay?



# Marking table

- Question:
- Table:

<b>PLAN</b>	<b>CA1</b>	<b>CA2</b>	<b>QUALITATIVE JUDGEMENTS and EXTENT</b>	
<b>ACTS</b>	<b>CASES</b>	<b>MEDIA</b>	<b>REPORTS/ REVIEWS</b>	<b>INT LAW</b>
<b>STATS/ QUOTES</b>	<b>THEMES &amp; CHALLENGES</b>		<b>EFFECTIVENESS CRITERIA</b>	

# Qualitative judgements

## Evaluating the effectiveness of the law

Intensification	Quantification
<p>Nearly (effective) Slightly (effective) Just (effective) Somewhat (effective) Moderately (effective) Rather (effective) Relatively (effective) Fairly (effective)</p>	<p>Very (effective) Greatly (effective) Extremely (effective) Utterly (effective) Totally (effective)</p> <p>Start evaluating / making quantitative judgements in the plan &amp; introduction</p> <p>Vary and sustain those judgements throughout. Conclude strongly on those judgements!</p>

# Feedback – long responses

- This is an excellent response. I would have broken it down into two paragraphs, non-legal and the other on non-legal responses. You have covered both sections quite well. This response would have been enhanced with the inclusion of an act of parliament and a specific NGO. Did you make qualitative judgements? Excellent coverage of a range of emerging technological issues.

• Demonstrates sound knowledge of legal and non-legal responses to emerging technological issue(s)	7-8
• Makes some judgment the effectiveness of legal AND/OR non-legal responses in protecting the rights of individuals with regards to emerging technological issues	8.5/10
<del>• Integrates some valid support</del>	
• <u>Utilises</u> a good structure and a variety of legal terms	

# Feedback – long responses

You have set a good thesis from the outset, with legal mechanisms and two non-legal along with a qualitative judgement of mostly effective in your introduction. It is good that you have made a judgement of somewhat effective in dealing with the issues, however, you have now got to the end of the second paragraph and haven't actually mentioned any specific technological issues. Your linking words, such as 'overall', and 'on the other hand' along with your paragraphing is excellent. The problem is you have written a whole response about emerging technological issues without actually stating any. This makes it very hard for me to mark this response. I'm sorry to say but I think this may be a Seinfeld response, it is a long response about nothing. This is a shame, because if you throw in a few emerging technological issues and a law you would have attained 10 out of 10.

<ul style="list-style-type: none"><li>• Demonstrates some knowledge of legal AND/OR non-legal responses to emerging technological issues <b>but no specifics – issues or examples</b></li><li>• Makes some comment on the effectiveness of legal OR non-legal responses in protecting the rights of individual <b>NO QJ's as no issues raised</b></li><li>• Provides a <u>generalised</u> response</li></ul> <p style="text-align: center;"><b>OUTSTANDING STRUCTURE!!!!</b></p>	4-6  <b>6/10</b>
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# Feedback – long responses

A good introduction, in which you have outlined both legal and non-legal avenues as well as them being highly effective as a qualitative judgement. You've given the Law Reform a thumbs up, even though it is very slow to react. A good example of the Criminal Code Act being updated. There were a couple of words that were a bit hard to read and it was the telecommunications ombudsman that you were after. You have stuck to your thesis and written and incredibly well structured response with some good examples. Well done!

<ul style="list-style-type: none"><li>• Demonstrates some knowledge of legal AND/OR non-legal responses to emerging technological issues <b>but no specifics – issues or examples</b></li><li>• Makes some comment on the effectiveness of legal OR non-legal responses in protecting the rights of individual <b>NO QJ's as no issues raised</b></li><li>• Provides a <u>generalised</u> response</li></ul> <p style="text-align: center;"><b>OUTSTANDING STRUCTURE!!!!</b></p>	<p>4-6</p> <p><b>6/10</b></p>
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# Feedback – long responses

You have made some good points. Unfortunately, when you didn't structure your work in a way that would have shown the legal responses in one paragraph and the non-legal responses in another. Where is your support? You referred to new laws but haven't stated any. You have also referred to the media and made a qualitative judgement of it being 'very effective' without giving a specific example. This is a good effort.

<ul style="list-style-type: none"><li>• Demonstrates some knowledge of legal AND/OR non-legal responses to emerging technological issues <b>but no specifics – issues or examples</b></li><li>• Makes some comment on the effectiveness of legal OR non-legal responses in protecting the rights of individual <b>NO QJ's as no issues raised</b></li><li>• Provides a <u>generalised</u> response</li></ul> <p style="text-align: center;"><b>OUTSTANDING STRUCTURE!!!!</b></p>	<p>4-6</p> <p><b>6/10</b></p>
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# Feedback – extended responses

**How effectively does the law operate in practice? In your response refer to at least TWO contemporary issues or law reform issues.**

# Feedback – extended responses

No evidence of a plan. An excellent qualitative judgement of "moderately effective" from the outset, in your concise introduction. Excellent integration of the Wei Tang case and the Modern Slavery Act. This was well supported by a paragraph on non-legal responses. It is wonderful to see a Year 11 student integrate a report in their extended response. Has the Native Title Act really shown high effectiveness given that very few Aboriginal groups have received their land back? Excellent reference to the Wik decision in line with pastoral leases. A little repetitive in places and perhaps some other information could have been included instead. Some good evaluation there, with the judgement of 'moderate effectiveness' being well-placed. Overall, despite a plan and misplacing a sentence, your response is soundly structured. Have you thought of specifying syllabus themes and challenges and effectiveness criteria? None-the-less, this is a really good essay.

- Makes a highly informed judgment about how effectively the law operates in practice.
- Demonstrates extensive understanding of the law relating to at least TWO contemporary issues and/or law reform issues. **TWO in total**
- Integrates a range of relevant examples such as legislation, cases, ~~media, international instruments, reports, statistics, quotes and/or documents~~ into the response.
- Presents a sustained, logical and cohesive response using relevant legal terminology and concepts.

17-20

**18/20**



# Feedback – extended responses

No evidence of a plan. I like your approach to your introduction. Good definition of euthanasia. Excellent coverage of many of the issues with voluntary assisted dying. However, at least one specific law such as the New South Wales Bill should have been referenced. Your coverage of native title has the Mabo case, the Native Title Tribunal, the Wik decision and a judgement of the law as being ‘somewhat effective’ in practice. That was all well done, but you should have noted the legal fiction of terra nullius. Excellent integration of effectiveness criteria, such as cost and time. Apart from the lack of a plan, your response has been well-structured. As you go into your 12 you will need to write more than under 2 Pages to attract the high marks. Have you thought of specifying syllabus themes and challenges? Overall, this is an excellent response.

<ul style="list-style-type: none"><li>• Makes a highly informed judgment about how effectively the law operates in practice.</li><li>• Demonstrates extensive understanding of the law relating to at least <b>TWO</b> contemporary issues and/or law reform issues.</li></ul>	
<ul style="list-style-type: none"><li>• Integrates a range of relevant examples such as legislation, cases, <del>media, international instruments, reports, statistics, quotes and/or documents</del> into the response.</li></ul>	17-20
<ul style="list-style-type: none"><li>• Presents a sustained, logical and cohesive response using relevant legal terminology and concepts.</li></ul>	<b>18/20</b>

# Feedback – extended responses

No evidence of a plan. You have commented in your introduction that "the law is effective" – you need to make those judgements into qualitative judgements. I'm gathering from your introduction that you are going to talk about new technology, changing social values and new concepts of justice as your contemporary issues. Your response didn't pan out that way and ended up being quite broad. There was reference to technology and social media. It only had one act of parliament, but not the most recent amendment in 2017. This is a very generalised response. You have to be careful not to be too colloquial, eg: "juvie". You needed to write an essay that addressed what the question was asking for. The one good thing about your response is that it has an introduction, body and conclusion. That's a great start that you can build on next time.

- |  |                   |
|--|-------------------|
| <ul style="list-style-type: none"><li>• Attempts to make a judgement about how effectively the law operates in practice.</li><li>• Demonstrates some understanding of the law relating to a relevant issue.</li><li>• Refers to limited examples such as legislation, cases, <del>media, international instruments,</del> reports, statistics, quotes and/or documents into the response.</li><li>• Presents a structured answer using relevant legal terms.</li></ul> | 9-12<br><br>10/20 |
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Conclusion of the first section!

# Beginning with the End in mind

Case Study selection to encourage critical thinking  
Preliminary Legal Studies

Nick Fernandez



# Why encourage critical thinking in legal studies?

- Avoid rote learning of case study facts and focus on the application of the case to broader conceptual understanding
- Encourages students to have a curious mind, and apply learning to the world around them.
- Encourages deep questioning and to assess the validity of “what if”
- This skill assists students in exam preparation to move away from matching content to question wording, and allows adaptive processes to occur

# Term 1 : Sources of Contemporary Australian Law

*How do you normally approach this topic?*

## **Aboriginal and Torres Strait Islander Peoples' customary laws**

- diverse nature of customary laws
- spiritual basis, significance of land and water
- family and kinship
- ritual and oral traditions
- mediation and sanctions
- relevance to contemporary Australian law

- examine the characteristics of Aboriginal and Torres Strait Islander Peoples' customary laws
- outline the extent to which Aboriginal and Torres Strait Islander Peoples' customary laws have been integrated into Australian law

# Term 2 : Law Reform Case Studies

## A) **native title**

- terra nullius
- the roles of the High Court and federal parliament
- major native title decisions
- legislation

- explain why terra nullius was an obstacle to achieving native title
- examine the roles of the High Court and federal parliament in recognising native title
- examine major Australian native title decisions
- assess the effectiveness of the law reform process in achieving just outcomes in regard to native title

One useful strategy might be to search out links between topics early in the Preliminary course and those that occur later such as the link between Sources of Contemporary law and law reform

# An example from last week

- Outline the extent to which Aboriginal and Torres Strait Islander Peoples Customary laws have been integrated into Australian law
- On one level, the simple answer is they haven't been (mostly)
- But, that answer isn't interesting, challenging, thought provoking, a good catalyst for differentiated classroom activity or critical thought
- The Common law answer is that **Gibbs J in 1979**, the case of **Coe v Commonwealth (1979) 24 ALR 118** expressly rejects the claim of Paul Coe, a Wiradjuri elder about the existence of sovereign Aboriginal nations in Australia. The Court left open the question of what rights to land Aboriginal Peoples may have in Australia



# Making the Links: Evolution of the Common Law

- Over time, the Common Law has evolved in its understanding of the connection between Aboriginal and Torres Strait Islander People and Country.
- That dynamism can be tracked across the following decisions:
  - ❑ Mabo (No.2) - Court recognition of Native Title
  - ❑ Wik – Co-existence of Pastoral Leases and Native Title
  - ❑ Blue Mud Bay – Rights to Water
  - ❑ Timber Creek - Compensation for cultural loss
- LINK: These are sensible cases to introduce in Term 1. And they'll help when studying Law Reform and studying the Indigenous Peoples Option in Year 12.

# Links that are current

- And those cases can help with a more focused study of Law Reform.
- Law reform is an ongoing process
- <https://www.abc.net.au/news/2023-03-02/eddie-mabo-native-title-vision-continues-in-the-torres-strait/101982076>
- The link refers to a decision from earlier in the month recognising Native Title rights over the sea surrounding Mer Island, the Country upon which Eddie Mabo's claim was based some 31 years ago
- Talk of a 31 year court process can (and should) provoke discussion of Part 1 concepts like equality, access and fairness

# Links as a classroom resource

- Wik [https://aiatsis.gov.au/sites/default/files/research\\_publications/wik-coexistence-pastoral-leases-mining-native-title-ten-point-plan\\_0\\_3.pdf](https://aiatsis.gov.au/sites/default/files/research_publications/wik-coexistence-pastoral-leases-mining-native-title-ten-point-plan_0_3.pdf)
- Timber Creek <https://www.theguardian.com/commentisfree/2019/mar/14/let-timber-creek-be-a-step-towards-true-and-respectful-reconciliation>
- <https://www.theguardian.com/australia-news/2016/aug/25/timber-creek-3m-native-title-payout-paves-way-for-billion-dollar-liability-claims>
- Blue Mud Bay <https://www.theguardian.com/australia-news/2019/jun/27/indigenous-fishing-deal-finally-reached-after-bitter-battle-with-nt-government>

# Influences on the Court process

- <https://www.theguardian.com/australia-news/2015/jun/16/largest-native-title-claim-in-nsw-finalised-after-18-year-struggle-by-barkandji>
- Flexibility in the interpretation of strict rules about evidence
- Growth in the use of mediation
- From the Federal Court's website.

All cases, regardless of their complexity or number of parties, are eligible to be referred to mediation. The types of matters commonly mediated at the Federal Court include commercial and corporations law, intellectual property, industrial law, consumer law, human rights, admiralty, tax and costs.

<https://www.fedcourt.gov.au/services/ADR/mediation>

# Influences in Sentencing

- Fernando - Principles for the sentencing that consider social disadvantage
- **R v Wunungmurra** and S91 of the NTER (2007)
- <http://classic.austlii.edu.au/au/journals/IndigLawB/2010/42.html>

# Links to Court Operation and Process

- [https://www.bocsar.nsw.gov.au/Pages/bocsar media releases/2022/mr-YKC-outcomes.aspx](https://www.bocsar.nsw.gov.au/Pages/bocsar%20media%20releases/2022/mr-YKC-outcomes.aspx)
- Youth Koori Court delivers Positive Outcomes
- [https://www.bocsar.nsw.gov.au/Pages/bocsar media releases/2020/mr-circle-sentencing-cjb226.aspx](https://www.bocsar.nsw.gov.au/Pages/bocsar%20media%20releases/2020/mr-circle-sentencing-cjb226.aspx)
- Circle Sentencing delivering some positive results

# Links to the Rule of Law

In *R v Ceissman* [2001] NSWCCA 73, Wood CJ cautioned at [32]:

As I endeavoured to explain in *Fernando*, the eight propositions there enunciated were not intended to mitigate the punishment of persons of Aboriginal descent, but rather to highlight those circumstances that may explain or throw light upon the particular offence, or upon the circumstances of the particular offender which are, referable to their aboriginality, particularly in the context of offences arising from the abuse of alcohol... The principles stated should not be elevated so as to create a special class of persons for whom leniency is inevitably to be extended, irrespective of the objective and special circumstances of the case. To do so would itself be discriminatory of others.

# Links to Court hierarchy and Just Laws

<https://www.theguardian.com/australia-news/2020/oct/26/stop-reporting-and-start-doing-lawyers-tell-nsw-inquiry-into-inhumane-indigenous-incarceration>

<https://www.theguardian.com/australia-news/2014/oct/01/court-deliberates-indigenous-disadvantage-sentencing-offenders>



# Authentic Storytelling is an engagement strategy

<https://www.theguardian.com/commentisfree/2022/jul/28/my-brother-a-child-of-the-stolen-generations-died-in-jail-he-got-none-of-the-help-he-deserved>

- This is very hard to read without crying – but this text or an adapted version of it as a good stimulus for a discussion about the achievement of justice and also about balancing the rights of offenders and society.

# Links to Family Law (the BIGGEST option)

- Queensland recognises customary cultural practices from the Torres Strait regarding adoption

<https://www.nortonrosefulbright.com/en-au/knowledge/publications/4e7d46a0/legal-update-queensland-bill-to-recognise-torres-strait-island-cultural-practice>

# Skills and Role-modelling

- I hope that you have found the linked resources in this presentation useful for teaching in your Legal Studies classroom.
- Take a moment to reflect on the range of types of evidence here
- My hope is that this range will help motivate students to incorporate a range of evidence in their responses

# Discovery and Application through Blooms

<p><b>The relationship between justice, law and society</b></p>	<p>Outline what effect this issue is having on society</p>	<p>Explain the need for the legal system to be involved in dealing with the issue</p>	<p>Hypothesise a potential impact on society if this issue is not addressed appropriately</p>
<p><b>The development of law reform as a reflection of society</b></p>	<p>List the social developments that have occurred over time in relation to this issue</p>	<p>Compare social standards between when the original law was released on this issue and the standards now</p>	<p>Evaluate the effectiveness of the law reform in meeting the new social standards</p>
<p><b>The importance of the rule of law</b></p>	<p>Outline how this issue is challenging the rule of law</p>	<p>Discuss the viewpoints of two parties regarding this social issue</p>	<p>Assess if resolving the issue will maintain the rule of law in this case</p>
<p><b>The responsiveness of the legal system in dealing with issues</b></p>	<p>Describe the current legal climate with regards to the issue</p>	<p>Examine the current responses to the issue and their relevance</p>	<p>Predict the outcome of new responses in addressing the issue</p>
<p><b>The effectiveness of legal and non-legal mechanisms in achieving justice for individuals and society.</b></p>	<p>Categorise the legal and non-legal measures employed to deal with the issue</p>	<p>Rate the effectiveness of these measures against your own criteria</p>	<p>Reflect on the effectiveness of the responses in being able to address the issue long term</p>

# Explicitly Teaching Writing Skills and Reflection is Key

- Writing about procedural fairness.
- An example from my own classroom
- See paper handout.



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