



LSA Annual Conference 2023

Using Evidence in Legal Studies

Teresa O'Dwyer

Marking Criteria Prelim



- Demonstrates extensive knowledge of the content specified in the question
- Provides an informed judgment, based on criteria, on the content specified in the question
- Provides a sustained, logical and cohesive response
- Integrates relevant legal examples such as legislation and/or cases and/or media and/or international instruments and/or documents to support ideas
- Consistently uses and applies appropriate legal terminology

How to find LCMIDs?



- ❑ [https://guides.sl.nsw.gov.au/legal-studies-hsc/Begin your HSC legal studies research](https://guides.sl.nsw.gov.au/legal-studies-hsc/Begin_your_HSC_legal_studies_research)
- ❑ <https://www.facebook.com/LSANSW/>
- ❑ <https://www.caselaw.nsw.gov.au/>
- ❑ <https://www.softwareadvice.com/resources/how-to-set-up-google-alerts/>
- ❑ <https://artofsmart.com.au/legal-studies/hsc-crime-cases/>

TEEL Paragraphs



□ **T**opic sentence

□ **E**laborate

□ **E**vidence (LCMIDs)

□ **E**valuate

□ **L**ink



ARTICLE SUMMARY TABLE	
TITLE	
SOURCE	
DATE	
KEY LEGAL WORDS	Use syllabus terminology
RELEVANT THEMES and CHALLENGES Select ONE or TWO themes only	
SYNOPSIS OF ARTICLE	

HOW TO WRITE A PEEL PARAGRAPH

<p>P- POINT</p> <p>At the start of a PEEL paragraph, you must make your POINT. This is the statement that you would like to make about the question.</p> <p>‘Why do courts in Australia use the doctrine of precedent?’ (4 marks)</p> <p>Activity:</p> <p>Using the sentence scaffolding provided, make you own statement about the question.</p> <p>My Example:</p> <p>Australian courts use the doctrine of precedent because it upholds the rule of law.</p> <p>Your Example</p> <p>Australian courts use the doctrine of precedent because</p> <hr/> <hr/> <hr/> <hr/>	<p>E- EVIDENCE</p> <p>After you have made your POINT, you need to add EVIDENCE to persuade the reader that your argument is correct.</p> <p>Activity:</p> <p>Using the sentence scaffolding provided, add evidence to your argument.</p> <p>My Example:</p> <p>For example, <u>Donoghue V Stephenson</u> established the precedent that manufacturers owe a duty of care to the consumer of their products.</p> <p>Your Example:</p> <p>For example _____</p> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/>	<p>E- EXPLANATION</p> <p>Then, you need to EXPLAIN your evidence, showing how it proves your point.</p> <p>Activity:</p> <p>Using the sentence scaffolding provided, explain how your evidence proves your point.</p> <p>My Example:</p> <p>Therefore, once the Plaintiff can establish that a duty of care was breached, they can expect to be compensated, ensuring equal treatment under the law.</p> <p>Your Example:</p> <p>Therefore,</p> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/>	<p>L- LINK</p> <p>Lastly, you need to LINK your explanation back the question. This means that the reader knows exactly what your argument is!</p> <p>Activity:</p> <p>Using the sentence scaffolding provided, link your paragraph back to the question.</p> <p>My Example:</p> <p>Consequently, Australian courts use precedent to ensure that individual rights are upheld and protected under law.</p> <p>Your Example:</p> <p>Consequently, Australian Courts</p> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/>
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HOW TO WRITE A PEEL PARAGRAPH

Success Checklist:

Use this checklist when writing a paragraph, to make sure that you are using the PEEL structure! Tick each box as you achieve it.

- ☐ I have made a POINT.
- ☐ I have given EVIDENCE to prove my point.
- ☐ I have EXPLAINED my evidence.
- ☐ I have LINKED my paragraph back to the question.
- ☐ I have written in full sentences.
- ☐ I have used the correct spellings, punctuation and grammar.

Law Reform in Action

One Punch Laws in NSW

Task 2 2021

One Punch Law Reform

- At 10pm on Sat 7 July 2012, Thomas Kelly was walking with friends in Victoria Street Kings Cross when he was punched, rendered unconscious, fell and hit his head and later died from head injuries he received.



One Punch Laws – Alcohol Fuelled Violence

- Four Corners: Punch Drunk:

<http://www.abc.net.au/4corners/stories/2013/02/25/3695353.htm>

- Bureau of Crime Statistics and Research

https://www.bocsar.nsw.gov.au/Pages/bocsar_pages/Alcohol_Related_Violence.aspx

One Punch Laws

- On 4 November 2013 – Kieran Loveridge was sentenced (for manslaughter and four other assaults that night to which he had pleaded guilty) to imprisonment for 7 years with a 5 year and 2 month non-parole period (minimum period to be spent in prison).
- Loveridge was intoxicated with alcohol and drugs and was intent on hitting as many young men as he could.

One Punch Laws

- SMH: “Was that one of my fights? I don’t know it fits my description”
<http://www.smh.com.au/nsw/was-that-one-of-my-fights-i-dont-know-it-fits-my-description-20130909-2tgeo.html>
- 60 Minutes - <https://www.youtube.com/watch?v=ES8195Gr6qg>

Reform Timeline

- Reaction after Thomas Kelly attack was swift:
- Within days Sydney Lord Mayor – 8 point plan for safer Kings Cross.
- 17 July 2012 – public forum “Safer Sydney”.
- Coalition of Concerned Emergency Services Workers campaigned for “last drinks”.
- 26 July 2012 News Ltd launched “Real Heroes Walk Away” campaign.

Reform Timeline

- 14 Nov 2013 – After a public outcry, the DPP appealed against the inadequacy of the sentence. The Court of Criminal Appeal quashed the original sentence and increased the penalties.
- Read : <https://www.ruleoflaw.org.au/loveridge-appeal-decision/>
- Attorney General announced introduced of new offence of “one punch death” with maximum penalty of 20 years.
<https://www.gotocourt.com.au/criminal-law/nsw/one-punch-assaults-causing-death/>

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Reform Timeline

- Early 2014 – Announcement of **Liquor Licensing and Lock Out Times AND minimum mandatory sentencing** – Premier announces new suite of laws about the availability and regulation of alcohol and range of new increased maximum penalties and mandatory minimum sentencing introduced for assault offences committed in public places while intoxicated.
- Read chapter 15 of your text book.
- Note that there was no known public consultation from the NSW Law Reform Commission or other expert groups before the Bills were passed.

Reform Timeline

- 7:30 Report: Leigh Sales interview with Barry O'Farrell - <http://www.abc.net.au/news/2014-01-21/one-punch-laws-to-tackle-sydney-alcohol-fuelled-violence/5210740>
- Premier announcement was separate to the announcement by the Attorney General's office.

One Punch Law – What is the offence

What is the offence?

s25A(1)(a)-(c) Crimes Act 1900 (NSW):

"(1) A person is guilty of an offence under this subsection if:

- a) the person assaults another person by intentionally hitting the other person with any part of the person's body or with an object held by the person, and*
- b) the assault is not authorised or excused by law, and*
- c) the assault causes the death of the other person."*

A person who is found guilty of the offence is subject to a maximum sentence of 20 years imprisonment.

A person who is over 18, intoxicated, and is found guilty of the offence is subject to a maximum sentence of 25 years, and a minimum mandatory sentence of 8 years imprisonment.

One Punch Law - What is the offence

- Read: <https://www.sydneycriminallawyers.com.au/blog/one-punch-laws-the-offence-of-assault-causing-death-in-nsw/>

One Punch Law

1 Intent to Hit (mens rea)

Intent to hit is all that is required for this element of the offence, not intent to kill or injure. It is much easier to establish intent to hit than it is to show intent to kill or injure. Where the 'hit' was accidental the mens rea will not exist.

For example: *it would be very hard to argue that a person who punches someone in the face with a closed fist did not intend to hit them.*

2 The Accused Hit the Victim (actus reus)

It must be shown the accused actually hit the other person

What does hitting mean?

Hitting the other person with their own body or with an object held by the person is considered hitting.

3 The Hit led to the Death (Causation)

Causation, which is the link between the hit and the death can be established by medical evidence, a finding by a court or the NSW Coroner.

4 Proof of Intoxication?

To receive the mandatory minimum sentence for this offence, the accused must be found to have been intoxicated when hitting the victim. If intoxicated with alcohol this means a breath or blood alcohol concentration of 0.15 (0.05 is the legal limit for driving a vehicle under the influence in NSW, 0.15 or above the amount for a high range drink driving offence).

This element is optional and does not need to be proven to secure a conviction.

One Punch Law

- Hugh Garth, first person to be sentenced under One Punch Laws
- <https://www.bbc.com/news/world-australia-42274932>

Issues/Concerns

- What do you think are some concerns or issues with the amendments to the Crimes Act 1900 with regards to One Punch and Mandatory Sentencing
- Article: Alcohol not a factor in tourists alleged one-punch attack:
<http://www.smh.com.au/nsw/alcohol-not-a-factor-in-tourists-alleged-onepunch-attack-20150104-12hnmw.html>

Does Mandatory Sentencing produce just outcomes?

- One size fits all approach – some cases it may fit the crime and other times it may not.
- Limits judge's discretion
- Does not allow important facts of the case to affect sentencing

EXAMPLE:

- ◆ 18-year-old, no criminal record is drinking in a bar when a stranger hurls continued insults at his girlfriend. Young man hits the stranger, who trips, hits his head on bar and dies.
- ◆ Biekie gang member with history of violence lies in wait for his rival gang member, punches him in the head, causing him to crack his head on pavement and die.
- ◆ Both are subject to mandatory minimum sentences. Do you think this is a just outcome?

Does Mandatory Sentencing produce just outcomes?

- Rule of law – requires that justice system provides equality – e.g. punishments are proportionate to the crime. Mandatory sentences do not necessarily provide sentences/punishments that are proportionate to the crime (consider the example provided)
- Separation of Powers – separation of the Judiciary, Legislature and Executive – responsibility for sentencing should rest with the Courts. The Legislature are infringing with the powers that belong to another branch.
- 7:30 Report: <http://www.abc.net.au/7.30/content/2013/s3939751.htm>
- Read: <https://www.ruleoflaw.org.au/wp-content/uploads/2014/05/Dist.-speakers-15-May-2014-Mandatory-Sentencing-paper1.pdf>

Support for Mandatory Sentencing

- Consistency of sentencing – however, it may be consistent, but it also must be fair and just.
- Incapacitation of the offender – imprisonment
- Deterrence – not enough research to determine this effect.

Update from the Kelly Family

60 Minutes (The Unthinkable 2017)

Watch <https://www.youtube.com/watch?v=lRAKWJSGI0g>

Further reading

- **One Punch Laws:** <https://www.ruleoflaw.org.au/mash-one-punch-laws-australia/>
- Read: A **short review** of the NSW Government's one-punch law reforms (2016) <https://sydneyhealthlaw.com/2016/03/28/a-short-review-of-the-nsw-governments-one-punch-alcohol-control-reforms/>
- **End to lock out laws:** <https://www.abc.net.au/news/2021-02-09/nsw-government-scrapping-lockout-laws-in-kings-cross/13133234>



**The Legal Studies Association
of NSW Inc**

Thank you

- **LSA Annual Conference 2023**
- **Using Evidence in Legal Studies**
- **Presenter: T. O'Dwyer B.B.S. (Hons),
HDipEd (Hons), M.Ed (merit)**