

Law Talks Material

Study Notes for Unit 2 Legal Studies

Let me dispel a myth. Many secondary students believe that Legal Studies is only for those planning to study law at university. That is very far from true.

Many decades ago, Australian-born judge Lord Atkin told students in Birmingham that law should be taught as a Year 12 subject because a knowledge of the law and its administration should be part of the ordinary equipment of the good and efficient citizen. He would be very pleased that the Victorian secondary curriculum includes Legal Studies and Civics and Citizenship (which has a substantial law component) and he would be very pleased that we are all here today.

For the rest of this semester, you will be exploring sanctions, remedies and rights.

What I am going to do now is outline some ways in which you can maximise your performance in Unit 2 and best prepare yourselves for Units 3 and 4. Some of this you may well have heard from your own teachers but it won't do any harm for me to reinforce it. If you have any questions, please put up your hands. I have no problem with answering questions as we move along.

Knowledge audit

Are the following aspects of the course familiar to you? Could you write about each of them?

Aspect	Yes	No	Action
Unit 2 Area of Study 1 – Sanctions			
The principles of justice: fairness, equality and access			
Institutions that enforce criminal law, such as the police and delegated bodies			
The balance between institutional powers and individual rights			
Overview of the role and criminal jurisdictions of the Victorian courts			

The role of the jury in a criminal trial			
The purposes of sanctions: punishment, deterrence, denunciation, protection and rehabilitation			
Types of sanctions such as fines, community correction orders and imprisonment			
Factors considered by judges in sentencing			
Aspects of sentencing practices in Victoria and one other jurisdiction			
Alternative approaches to sentencing, such as the use of the Drug Court, the Koori Court and diversion programs			
Two recent criminal cases and for each case: <ul style="list-style-type: none"> - An overview of the charges and central facts of the case - Courts that may be or were involved - Sanctions that could be or were imposed and their appropriateness - Factors that may be or were taken into consideration in sentencing - Possible avenues of appeal - The extent to which the principles of justice could be or were achieved 			
Unit 2 Area of Study 2 - Remedies			
The principles of justice: fairness, equality and access			

Methods used to resolve a civil dispute such as mediation, conciliation and arbitration			
Institutions that resolve civil disputes such as tribunals, ombudsman and complaint bodies			
An overview of the role and civil jurisdictions of the Victorian courts			
The role of the jury in a civil trial			
The purposes of remedies			
Types of remedies such as damages and injunctions			
Two recent civil cases and for each case: <ul style="list-style-type: none"> - An overview of the claim and the central facts of the case - Dispute resolution bodies that may be or were involved - Methods of dispute resolution and their appropriateness - Remedies that could be or were awarded and their appropriateness - Possible avenues of appeal - The extent to which the principles of justice were or could be achieved 			
Unit 2 Area of Study 3 - Rights			
An overview of the ways in which rights are protected in Australia, such as through the Australian Constitution, the Victorian Charter of Human Rights and			

Responsibilities, statute law and common law			
The influence of international declarations and treaties on the protection of rights in Australia			
The approach adopted by one other country in protecting rights			
Possible reforms to the protection of rights in Australia			
<p>One Australian case that has had an impact on the protection of rights in Australia, including:</p> <ul style="list-style-type: none"> - The role of the individual in taking the case to court - The facts and issues central to the case, including the rights in question - The law that applied to the case - The outcome of the case and its impact on the rights of individuals and on the legal system 			
Possible conflicting attitudes in relation to the case			

Cases for consideration

Criminal Case

DPP v Tang (2018)

Phuc Thien Tang, 50, bashed his partner, Hoa Thi Huynh, 44, to death and stabbed her with a samurai sword in the St Albans house where they lived as squatters. Tang repeatedly struck Huynh, a mother of two, on the head with a vacuum cleaner pipe and stabbed her in the face with the sword. It was alleged that Tang had injected “ice” in the early hours of September 7, 2017, before returning to the house where he stayed with Huynh and killed her following an argument. In a statement to police, Tang said that he knew he became angry whenever he used “ice”. At the time of Huynh’s death, Tang was on bail over allegations he used the sword and a fake pistol to threaten a man with whom Huynh had been in a relationship. Tang pleaded guilty to murder and will be sentenced later in 2018.

Civil Case

Wilson v Bauer Media (2017) [Supreme Court of Victoria]

A series of articles was published in Australian celebrity gossip magazines. These caught the attention of media in the United States. The plaintiff, Rebel Wilson, an actress, claimed that the articles were defamatory and that they wrongly stated that she had lied about her name, age and upbringing. She claimed that the articles led to her losing leading and lucrative film roles and that she had become ill as a result of the associated stress.

The jury found for the plaintiff and awarded \$4.5 million in damages.

Rights Case

Australian Capital Television Pty Ltd v The Commonwealth (No 2) (1992)

Australian Capital Television Pty Ltd challenged the validity of changes to the *Broadcasting Act 1942* effected by the Political Broadcasts and *Disclosure Act 1991*. The 1991 legislation imposed bans on radio and television advertising for federal, state and local government elections.

The High Court held that the 1991 legislation was invalid as there was an implied right of freedom of communication on political matters.

The High Court determined that ss 7 and 24 of the Constitution, which state that the Senate and House of Representatives are to be elected by the people, requires the voters to be able to be fully informed about the issues upon which they are called to vote. Anything that prevents them from being informed voters is, therefore, contrary to the spirit of ss 7 and 24 of the Constitution and is thus unlawful.

Justice McHugh stated, “The right of freedom of communication derived from ss 7 and 24 of the Commonwealth Constitution. . . is a paramount right given for the limited purpose of enabling the people of the Commonwealth to choose their representatives in the Federal Parliament. Such power as the Commonwealth has is subject to and not superior to the right of freedom of communication which ss 7 and 24 confer”.

**Presenter: David Thomson
MA, LLB, FACE
Melbourne 2018**