
Information for Teachers (CC BY)

Note to Teachers

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The teaching resources and lesson plans provided here have been created to promote the study and teaching of History, Legal, and Social and Community Studies in Australian classrooms and to promote the historical links to Eddie Koiki Mabo in Australian secondary education.

The three lesson plans provided have detailed and practical overviews of learning and assessment with examples and activities for teachers to use in:

- Year 9 History unit ‘Making a Nation’
- Year 12 Social and Community Studies unit ‘Legally, it could be you!’
- **Year 12 Legal Studies unit ‘Law Reform’**

Each unit includes lesson ideas, assessments, and resources to focus learning and help students relate to the content through effective and quality teaching. The resources explore human rights, human rights activism and acknowledge human rights abuses while teaching students about long-held incorrect beliefs that Australia was *terra nullius*.

These resources are included with thanks and appreciation to our Educational Contributors.

Year 12 - Legal Studies (CC BY)

Subject overview

Legal Studies General Senior Syllabus (2019)

Unit overview

Legal Studies focuses on the interaction between society and the discipline of law. Students study the legal system and how it regulates activities and aims to protect the rights of individuals while balancing these with obligations and responsibilities (Queensland Curriculum and Assessment Authority [QCAA], 2022). Legal studies explores the role and development of law in response to current issues. An understanding of legal processes and concepts enables citizens to be better informed and able to constructively question and contribute to the improvement of laws and legal processes.

Unit 3, Topic 1 Law, Governance and Change

In Unit 3, students examine the complexities of the Australian legal system and its capacity to deal with the diversity of competing needs. They explore the role of legal institutions and lawmaking bodies in creating laws that reflect the views of society. Students consider the range of forces that create catalysts for change and reform, and how laws are changed to reflect shifting societal demands. This unit encourages and informs critical thinking about Australian and Queensland laws, and the importance of society and individuals engaging in lawmaking processes (QCAA, 2022).

This teacher resource for Unit 3 (law reform) overlaps with Unit 4 (Human Rights).

Core concepts and ideas

- Beyond reasonable doubt
- Balance of probabilities
- Law, governance, and change
- Human rights in legal contexts

Objectives

- Comprehend legal concepts, principles and processes
- Select legal information from sources
- Analyse legal issues

- Evaluate legal situations
- Create responses that communicate meaning

Curriculum links

This resource is aligned with the Queensland Curriculum & Assessment Authority Version 1.1 and the Australian Curriculum Cross-Curriculum Priority: Aboriginal and Torres Strait Islander Histories and Cultures.

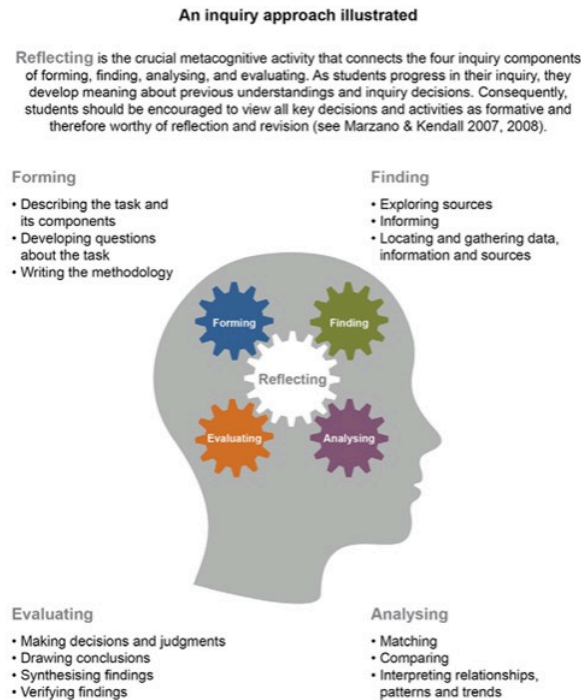
Underpinning factors

- Literacy — the set of knowledge and skills about language and texts essential for understanding and conveying Legal Studies content.
- Numeracy — the knowledge, skills, behaviours and dispositions that students need to use mathematics in a wide range of situations, to recognise and understand the role of mathematics in the world, and to develop the dispositions and capacities to use mathematical knowledge and skills purposefully.
- 21st century skills — the attributes and skills students need to prepare them for higher education, work and engagement in a complex and rapidly changing world.

Pedagogical and conceptual frameworks

An approach to inquiry

Figure 3: Stages of an inquiry approach



Source: Queensland Curriculum and Assessment Authority (2019)

Inquiry-based learning involves:

- a method of learning, initiated by questions or problems
- personal construction of a student's own knowledge, i.e. knowledge that is new to the student
- an active approach to learning where students have the central role
- the teacher acting as a facilitator
- developing self-directed learning over time, as students assume increasing responsibility for their learning.

Unit objectives

- Comprehend legal concepts, principles and processes of Australian and Queensland governance and law reform
- Select legal information from sources relevant to law reform issues
- Analyse legal issues involving Australia and/or Queensland governance and law reform
- Evaluate legal situations relevant to Australian and/or Queensland governance and law reform
- Create responses that communicate meaning to suit the intended purpose

Students will be able to:

- describe the role of advocacy groups in bringing about change
- describe the difference between legislation and case law
- describe the impact that High Court decisions can have on law reform
- analyse the impact of recent decisions on case law and legislation.

Eddie Koiki Mabo

Students are asked to comprehend and analyse legal issues, concepts, and processes, evaluate legal situations, select legal information, and create responses. In this unit, students can consider the role of landmark court decisions in influencing legal change or law reform in:

- *Mabo v Queensland (No. 2)* (1992) 175 CLR 1; [1992] HCA 23.
- *Wik Peoples v Queensland* (1996) 187 CLR 1; [1996] HCA 40.

The relationship between legislation and case law, the relationship of specialist courts and tribunals with state and federal jurisdictions, e.g. the Family Court, the Children's Court, Murri Court, Administrative Appeals Tribunal (AAT), and Queensland Civil and Administrative Tribunal (QCAT). They will analyse and evaluate the role of courts in law-making through the interpretation of statutes and the development of legal principles through the application of the doctrine of precedent.

Lesson Plan

Topic 1 Governance in Australia

Notional time: 28 hours

In Topic 1, students consider the processes and roles of government in shaping law in Australia and Queensland. They examine how federal and state or territory legal institutions respond to forces of change and the impact of landmark cases (QCAA, 2019).

Topic 1	Lesson Plan	Resources
Governance in Australia	<p>Define:</p> <ul style="list-style-type: none"> • Democracy • The rule of law • Representative government <p>Discuss:</p> <ul style="list-style-type: none"> • Responsible government • Separation of powers <p>Activity:</p> <ul style="list-style-type: none"> • Establish a dictionary with key words defined in workbook • Watch the video <i>What is the rule of law?</i> • Discuss a rule at school or a law that you know is strictly followed by students/people. Why is this rule followed? Discuss a rule that is often broken. Why is this rule broken? • Discuss why we need laws • Watch <i>Magna Carta</i> video and then complete: Australia's Magna Carta Institute: Magna Carta: Foundation of rule of law Worksheet. 	<p>The Law Society of NSW. (2018). <i>What is the rule of law?</i> [Video]. YouTube. https://www.youtube.com/watch?v=0R20U9zkMmg</p> <p>Rule of Law Education Centre. (n.d). <i>Rule of Law Wheel</i>. https://www.ruleoflaw.org.au/what-is-the-rule-of-law/</p> <p>Australian Human Rights Commission.(2018). <i>What is Democracy?</i> [Video]. YouTube. https://www.youtube.com/watch?v=8Eu6G5YrBt4</p> <p>Rule of Law Legal Studies.(2021). <i>Magna Carta: The Foundation of the rule of law</i>. [Video]. YouTube. https://www.youtube.com/watch?v=XuPRCV1RtZM&t=5s</p>

<p>The Australian Constitution</p>	<p>Define:</p> <ul style="list-style-type: none"> • Doctrine of precedent • Referendum • Double dissolution • Joint sitting <p>Discuss:</p> <ul style="list-style-type: none"> • Unicameral representation • Bicameral representation • Bureaucratic procedures <p>Activity:</p> <ul style="list-style-type: none"> • Write definitions of key words • Create a infographic or flow chart explaining the key features of the Australian Constitution • Individually or in small groups search for recent newspaper articles on one of the key terms above • Analyse the sources as a class or in small groups. Scan for keywords and phrases. • Who decides what laws are made? 	<p>Australian Human Rights Commission. (2018). <i>What is the Australian Constitution?</i> [Video]. YouTube. https://www.youtube.com/watch?v=xyOH605fHW8</p> <p>Australian Electoral Commission. (n.d). <i>Referendums</i>. https://www.aec.gov.au/elections/referendums/</p> <p>Engage Wiki. (2015). <i>Doctrine of Precedent</i>. [Video]. YouTube. https://www.youtube.com/watch?v=ysfJJT6o4jM</p>
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Government in Australia	<p>Define:</p> <ul style="list-style-type: none"> • The challenges of changing the Australian Constitution, using past referenda as examples • Separation of powers and the importance of an independent judicial system. <p>Discuss:</p> <ul style="list-style-type: none"> • The role of s51 of the Australian Constitution, and residual powers with reference to current and/or landmark cases, e.g. <i>the Tasmanian Dam Case</i> (<i>Commonwealth v Tasmania</i> (1983) 158 CLR 1; [1983] HCA 21). <p>Activity:</p> <ul style="list-style-type: none"> • Write a paragraph on the structure and function of the three levels of government in Australia including concepts of representative and responsible government and accountability of parliament and the rule of law. • Think about the Government responses to COVID-19. What was the response? What did they do well? How could it be improved? 	<p>Australian Electoral Commission. (n.d). <i>1999 referendum report</i>. https://tinyurl.com/yc64uvcd</p> <p>Parliament of Australia. (n.d). <i>Part V- Powers of the Parliament</i>. https://tinyurl.com/2ud4awpf</p>
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Legislative Powers	<p>Define:</p> <ul style="list-style-type: none"> • The role of the crown • Upper and lower houses of parliament. <p>Discuss:</p> <ul style="list-style-type: none"> • Differing legislative powers of federal and state parliaments under the Constitution, e.g. in the areas of health, education, immigration or the environment • Implications of the unicameral parliament in Queensland • Implications of single majority, double majority and minority governments • Function of parliament as a law-making body and describe the legislative process. <p>Activity:</p> <ol style="list-style-type: none"> 1. Research the <i>Tasmanian Dam Case</i> which is one of the most famous and influential environmental law cases in Australian constitutional law. 2. Watch the video on YouTube. 3. Read through the official documents available on the Environmental Law Australia website. 4. Explain and analyse the strengths and weaknesses of parliament as a law-making body. 	<p>Environmental Law Australia.(n.d). Tasmanian Dam Case. http://envlaw.com.au/tasmanian-dam-case/</p> <p>McGrath, C. (2015). <i>The Story of the Tasmanian Dam Case</i>. [Video]. YouTube. https://tinyurl.com/nfjmwphm</p> <p>Parliament of New South Wales. (n.d). <i>Understanding the role of the crown in parliament</i>. https://tinyurl.com/mrmt3hb8</p>
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Specialist courts	<p>Define:</p> <ul style="list-style-type: none"> • The Family Court • The Children's Court • Murri Court • Administrative Appeals Tribunal (AAT) • Queensland Civil and Administrative Tribunal (QCAT) <p>Discuss:</p> <ul style="list-style-type: none"> • Why are there Specialist Courts? • What are their purposes? • Murri Court links Aboriginal and Torres Strait Islander defendants to cultural and support services to help them make changes in their lives and stop offending. <p>Activity:</p> <ol style="list-style-type: none"> 1. Watch the video about Murri Court. 2. Research and discuss Supreme Court, Industrial Court, Land Appeal Court, Drug and Alcohol Court, Coroners Court, Children's Court, and Mental Health Court. What is the purpose of these courts? 	<p>Queensland Courts. (n.d). <i>Murri Court</i>. https://tinyurl.com/ymtvzn85</p> <p>Queensland Sentencing Advisory Council. (2020). <i>Murri Court: Doing Justice Differently</i> [Video]. YouTube. https://www.youtube.com/watch?v=Onl8bHr9FLM</p> <p>Queensland Courts. (n.d) <i>Courts</i>. https://www.courts.qld.gov.au/courts</p> <p>Moore, M. (2001). <i>The Role of Specialist Courts : An Australia Perspective</i>. Federal Judicial Scholarship. AustLII. https://tinyurl.com/385vu4v6</p>
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Over-representation	<p>Define:</p> <ul style="list-style-type: none"> • Over-representation <p>Discuss:</p> <ul style="list-style-type: none"> • As a class discuss over-representation in society eg. crime statistics, traffic crimes etc. <p>Activity:</p> <ol style="list-style-type: none"> 1. Examine the Australian Law Reform Commission Website. Specifically over-representation section. 2. Individually or in pairs, create a presentation that provides an examination of the over-representation of Aboriginal and Torres Strait Islanders in our legal system. The presentation should include: <ul style="list-style-type: none"> • What percentage of Aboriginal and Torres Strait Islanders are imprisoned in Australia? • How does this compare with non-Aboriginal and Torres Strait Islanders? • What reasons are given for this over-representation? • Has this changed over time? 	<p>Australian Law Reform Commission. (2018). <i>Over-representation</i>. Australian Government. https://tinyurl.com/rpzv8anp</p>
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Effective Laws and Rights	<p>Define:</p> <ul style="list-style-type: none"> • Legislation • Laws • Doctrine of precedent (revise) • Social cohesion <p>Discuss:</p> <ul style="list-style-type: none"> • The role of individuals, laws and the legal system • The principles of justice: fairness, equality and access • Effective law characteristics • Common law and statute law <p>Activity:</p> <ol style="list-style-type: none"> 1. In dot point form-explain what legal and non-legal rules are 2. Think of an example for each rule 3. Read Rights and liberties of individuals in the Legislation Handbook. In your own words summarise the rights and liberties you have in Australia under the law. 4. Watch the documentary <i>Every Family's Nightmare</i>. Apply your knowledge of laws and rights to this real case. 5. Work through the teacher notes for <i>Every Family's Nightmare</i>. 6. Optional- ask students to choose a current case from the newspaper to look at the laws and rights of the individuals involved according to the rights and liberties of individuals. 	<p>Attorney-General's Department. (n.d). <i>Courts</i>. Australian Government. https://www.ag.gov.au/legal-system/courts</p> <p>James Cook University Library. (2022). <i>Eddie Koiki Mabo: A timeline of history in the making</i>. James Cook University Open eBooks. https://tinyurl.com/mt9k9r2z</p> <p>Queensland Government. (n.d). <i>Queensland Legislation</i>. https://www.legislation.qld.gov.au/</p> <p>State Library of New South Wales. (n.d). <i>Precedent and Evidence</i>. https://tinyurl.com/3e832uhw</p> <p>Prospero8800. (2013). <i>Every Family's Nightmare</i>. [Video]. YouTube. https://www.youtube.com/watch?v=X7Db_IhQgNc</p> <p>Muntz, M., Punched, E., & Redwood, J. (2013). <i>Teacher Notes- Every Family's Nightmare</i>. National Film and Sound Archive. https://shop.nfsa.gov.au/every-familys-nightmare</p>
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<p>Law Reform</p>	<p>Define:</p> <ul style="list-style-type: none"> • Law Reform <p>Discuss:</p> <ul style="list-style-type: none"> • How laws are made <p>Activity:</p> <p>Case Study (choose one to research in groups or pairs)</p> <ul style="list-style-type: none"> • <i>Mabo v. Queensland (No. 2)</i> (1992) 175 CLR 1; [1992] HCA 23 • <i>Wik Peoples v. Queensland</i> (1996) 187 CLR 1; [1996] HCA 40 <p>Analyse legal issues by determining the nature and scope of the issue and examining viewpoints and consequences</p> <p>Activity: (in pairs)</p> <ol style="list-style-type: none"> 1. Read a local newspaper. 2. Search for reports that mention current criminal and civil cases. 3. Summarise a report – name of court, name of judge, the nature of the dispute, parties involved, progress of case. 4. Present to the class. (Gray and Herlily, 2004). 	<p>State Library of New South Wales. (2014). <i>How Laws are made-parliament</i>. Public Library Services. [Video]. YouTube. https://www.youtube.com/watch?v=INZ8CQUak6A</p>
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Case law versus legislation	<p>Define:</p> <ul style="list-style-type: none"> • Difference between case law and legislation. • Doctrine of precedent <p>Discuss:</p> <ul style="list-style-type: none"> • How is legislation formed? What is the process? • How is case law determined? (Case laws are made by judges through their decisions in court cases. This is known as the doctrine of precedent. • How legislation has changed over time? • What was once considered appropriate are now crimes? • How is case law determined? <p>Activity:</p> <ul style="list-style-type: none"> • Think about how legislation has changed over time. E.g. Seatbelts became mandatory in 1969. In July 2021 new rules made it illegal for a driver to hold a mobile phone in their hand or have it resting on their lap. • Make a list of laws that have changed over time. Ask your parents, grandparents about laws that have changed or come into effect in their lifetime. 	<p>Queensland Government. (2012). Legislation- How laws are made. https://tinyurl.com/3bdm4z69</p>
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Topic 2 Law reform within a dynamic society

Notional time: 15 hours

In Topic 2, students explore issues and situations where Australian society's changing values, needs, morality, ethics, technology and significant events have acted as impetus for legal change and reform. The focus is on identifying changing Australian values and pressures on legal freedoms, and how the application of law creates a balance between competing interests. This topic offers scope to examine current and emerging legal issues in Australia and Queensland that create authentic discussions of viewpoints regarding the need for change (QCAA, 2019).

Topic 2	Lesson Plan	Resources
Advocacy groups	<p>Define:</p> <ul style="list-style-type: none"> • Democracy (revise) • The Rule of Law (revise) • Inquiries • Law reform (revise) • Lobby • Advocacy • Citizens' jury <p>Discuss:</p> <ul style="list-style-type: none"> • Why laws and related processes require change because of a range of impetus. eg. <ul style="list-style-type: none"> – society's changing values, needs, morality and ethics – the influence of lobby and advocacy groups and the media – patterns of crimes and civil offences eg. family and domestic violence, privacy – technological advances- forensic science, investigative process and developments – increased organised and transnational crime – a current issue – change impetus of significant events e.g. the Port Arthur Massacre and September 11 terrorist attacks. <p>Activity:</p>	<p>Australian Federation of Disability Organisations. (n.d). <i>Disability advocacy organisations</i>. https://www.afdo.org.au/</p> <p>ANTAR.(n.d). <i>Current Campaigns and Issues</i>. https://antar.org.au/</p> <p>Parliamentary Education Office. (2022). <i>Conduct a law reform inquiry</i>. Commonwealth of Australia. https://tinyurl.com/525decdx</p>

	<ol style="list-style-type: none"> 1. Students to think about how change comes about. 2. Check students understand key terms revise Law Reform, Australian Law Reform Commission (ALRC) and Attorney- General of Australia. Conduct a law reform inquiry by investigating a law reform issue and present recommendations to a citizen's jury (PEO). 3. Go to the Parliamentary Education Office and work through the steps to conduct the inquiry (two lessons) 	
Human rights	<p>Define:</p> <ul style="list-style-type: none"> • Terms of reference • Consultations • Utilitarianism • Issue papers • Submissions <p>Discuss:</p> <p>What changes have occurred around issues such as women's rights, disability rights?</p> <p>Activity:</p> <ol style="list-style-type: none"> 1. Using computers ask students to navigate to The Conversation. 2. Search for key terms in recent law and governance articles. 	<p>United Nations. (n.d). <i>Universal Declaration of Human Rights</i>. https://tinyurl.com/2p87ttv2</p> <p>Australian Human Rights Commission. (n.d). <i>Women's Rights</i>. https://tinyurl.com/5n7r774a</p> <p>CrashCourse. (2016). <i>Utilitarianism: Crash Course Philosophy #36</i>. [Video]. YouTube. https://www.youtube.com/watch?v=-a739VjqdSI</p>

<p>Commissions</p>	<p>Define:</p> <ul style="list-style-type: none"> • Commissions • Parliamentary inquiries <p>Discuss:</p> <ul style="list-style-type: none"> • The law reform commissions • Examine the guiding criteria of making laws and related processes more equitable, modern, fair and efficient, e.g. – Royal Commission into Institutional Responses to Child Sexual Abuse – Royal Commission into the Child Protection and Youth Detention Systems of the Government of the Northern Territory – Royal Commission into the Home Insulation Program – Royal Commission into Trade Union Governance and Corruption parliamentary inquiries <p>Activity:</p> <ol style="list-style-type: none"> 1. Examine the coronial inquest – Gabe Watson (the ‘Honeymoon Killer’) 2. Use the case study and work through the questions. 3. What changes, if any have occurred because of commissions? 4. Why did these changes come about? 	<p>Woodgate, R., Biggs, J., & Owens, D. (2018). <i>Legal Studies for Queensland: Units 1 & 2 Volume 1</i> (8th ed.). Legal Eagle Publications.</p> <p>Office of the Townsville Coroner. (2003). <i>Findings of Inquest</i>. Queensland Courts. https://tinyurl.com/4wbb8ztx</p> <p>Hanger, I. (2014). <i>Report of the Royal Commission into the Home Insulation Program</i>. Analysis & Policy Observatory [APO]. https://apo.org.au/node/41087</p> <p>Grattan, M. (2014). <i>Royal Commission says insulation deaths were fault of the government’s program</i>. The Conversation. https://tinyurl.com/4krpxyx</p>
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Tent Embassy	<p>Define:</p> <ul style="list-style-type: none"> • Tent Embassy <p>Discuss: (prior knowledge)</p> <ul style="list-style-type: none"> • How has life changed for Aboriginal and Torres Strait Islander peoples' throughout history? • What do you think brought about these changes? <p>Activity:</p> <ol style="list-style-type: none"> 1. Students to research the nature and purpose of the tent embassy. 2. Highlight key terms and notate this article on the Tent Embassy. 3. In groups research the Aboriginal Sovereign Manifesto of Demands. 	<p>National Museum of Australia. (n.d). <i>Defining moments: Aboriginal Tent Embassy</i>. https://tinyurl.com/pae97eb5</p> <p>Carlson, B., & Coe, L-J. (2022). <i>A short history of the Aboriginal Tent Embassy- an indelible reminder of unceded sovereignty</i>. Museum of Australian Democracy at Old Parliament House. https://tinyurl.com/yhjae89p</p> <p>Langton, M. (n.d). <i>Sovereignty: 65,000 years of Ancestral links to land</i>. Agreements Treaties and Negotiated Settlements. https://tinyurl.com/yc82mubj</p> <p>Sovereign Union-First Nations Asserting Sovereignty. (n.d). <i>Aboriginal Sovereign Manifesto of Demands</i>. https://tinyurl.com/mr48hejr</p>
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<p>Recognising Aboriginal and Torres Strait Islander Sovereignty</p>	<p>Define:</p> <ul style="list-style-type: none"> • Sovereignty <p>Discuss:</p> <ul style="list-style-type: none"> • The efforts made by Indigenous people to reassert their sovereign title to Country <p>Activity:</p> <ul style="list-style-type: none"> • Read the Uluru Statement From the Heart using the interactive website • Discuss in a pair what the statement is about • Read the ABC news article Traditional owners mark one year since closure of Uluru Climb. • Right a response to this question- Why is the closure of the Uluru climb important? 	<p>Australian Human Rights Commission. (2002). <i>Recognising Aboriginal sovereignty-implications for the treaty process</i>. https://tinyurl.com/3zepw8dz</p> <p>Langdon, M. (n.d). <i>Understanding Sovereignty. Sovereignty: 65,000 years of ancestral links to land. Agreements Treaties and Negotiated Settlements</i>. https://www.atns.net.au/understanding-sovereignty</p> <p>The Uluru Statement. (2022). <i>The Uluru Statement From the Heart</i>. https://ulurustatement.org/</p> <p>Mackay, M. (2020). <i>Traditional owners mark one year since closure of Uluru climb</i>. ABC News. https://tinyurl.com/yc5z2snh</p>
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The doctrine of <i>terra nullius</i>	<p>Define:</p> <ul style="list-style-type: none"> • <i>terra nullius</i> <p>Discuss:</p> <ul style="list-style-type: none"> • Social justice and human rights <p>Activity:</p> <ol style="list-style-type: none"> 1. Write a short response on protests, Manifesto of Demands or sovereignty. 2. Read Callum Clayton-Dixon's article in the Guardian. 3. What does he mean in the article when he says "Aboriginal sovereignty is integral to the future of Indigenous people in Australia?" 	<p>Clayton-Dixon, C. (2015). <i>I can't call myself an Indigenous Australian and also say sovereignty never ceded</i>. The Guardian. https://tinyurl.com/2p84f359</p> <p>Justice Jagot. (2017). <i>Opening Address to the Law Society of New South Wales Young Lawyers' Conference</i>. Federal Court of Australia. https://tinyurl.com/y6ejmwnd</p> <p>McBride, L., & Smith, M. (2021). <i>Terra nullius</i>. Australian Museum. https://tinyurl.com/2nc5kv9d</p>
Impact of landmark decisions	<p>Discuss:</p> <ul style="list-style-type: none"> • Ask the class if they have heard of <i>Mabo v Queensland</i> or The Mabo Decision? • What do they know about the case? • The role of advocates in bringing an important social and legal issue to the forefront of the Australian public. <p>Activity</p> <ol style="list-style-type: none"> 1. Read the chapter <i>30 Years of the Mabo Legacy</i> in JCU Open eBooks <i>Eddie Koiki Mabo: History in the Making</i> 2. What was Eddie Mabo's Case? Describe in your own words. 	<p>Q+A. (2022, June 3). <i>The legacy of Eddie Koiki Mabo</i> [TV series episode]. YouTube. https://youtu.be/oLaTtlcAg8w</p> <p>James Cook University Library. (2022). <i>Eddie Koiki Mabo: A timeline of history in the making</i>. JCU Open eBooks. https://tinyurl.com/4zecs3hs</p>

The High Court's Mabo decision	<p>Define:</p> <ul style="list-style-type: none"> • The High Court (revise) <p>Discuss:</p> <ul style="list-style-type: none"> • The Mabo Case outcome <p>Activity:</p> <p>The High Court's decision was a 6:1 majority.</p> <ul style="list-style-type: none"> • Divide the class in two groups (size dependent) and ask one group to research the majority decision and other, the dissenting judge. • They are to present to the class the reason for each of the judgments. 	<p>Australian Institute of Aboriginal and Torres Strait Islander Studies. (n.d). <i>Overturning the Doctrine of Terra Nullius: The Mabo Case</i>. https://tinyurl.com/2baf67zk</p>
Wik Peoples v Queensland (1996).	<p>Define:</p> <ul style="list-style-type: none"> • Native Title • Exclusive possession • Judgement • Claim <p>Discuss:</p> <ul style="list-style-type: none"> • What was the Wik decision about? • What did the decision achieve? <p>Activity:</p> <ul style="list-style-type: none"> • Individually or as a class go on the virtual Eddie Koiki Mabo Timeline tour. • Write an extended response to this question: how did the Mabo decision and the Wik decision influence legal change in Australia? 	<p>Australian Institute of Aboriginal and Torres Strait Islander Studies. (n.d). <i>Case Summary: Wik Peoples v Queensland</i>. https://aiatsis.gov.au/publication/35303</p> <p>Durmush, G. (2018). <i>Explainer: Wik Vs. Queensland</i>. National Indigenous Television. https://tinyurl.com/mu47f5u</p> <p>Attorney-General's Department. (n.d). <i>Native Title</i>. Australian Government. https://tinyurl.com/bdza5uwn</p> <p>Federal Register of Legislation. (1993). <i>Native Title Act 1993</i>. Australian Government. https://tinyurl.com/5yu4bhze</p> <p>James Cook University Library. (n.d.). <i>Virtual tour of the Mabo Timeline interpretative wall</i>. https://tinyurl.com/2p9a2kup</p>

Reflection	<p>Define:</p> <ul style="list-style-type: none"> • Doctrine of precedent (revise) • Case law versus legislation (revise) • Law reform (revise) • Human rights (revise) <p>Discuss:</p> <ul style="list-style-type: none"> • What impact can the High Court of Australia have on case law? <p>Activity:</p> <ol style="list-style-type: none"> 1. Look at two cases – <i>Imbree v McNeilly</i> (2008) 236 CLR 510; [2008] HCA 40 and <i>Cook v Cook</i> (1986) 162 CLR 376; [1986] HCA 73. These cases have similar facts, however, the two decisions span over 20 years. 2. Reflect on the power the High Court of Australia can have on the law. 3. Do you think it is important that the High Court can overrule previous decisions? 4. What has been the long lasting impact of the Mabo decision on human rights and justice? 5. Identify some of the issues and challenges that face Indigenous communities today. 6. Think about the consequences of the Native title claim process. 7. What is Eddie Koiki Mabo's legacy? 	<p>Lawrence, C., Flynn, L., & Harris, I. (2022). <i>Native title compensation: Not much to see but plenty happening below the surface</i>. https://tinyurl.com/5n7mv3tb</p> <p>Miller, I. (2022). <i>The legacy of Eddie Koiki Mabo: Mabo Day</i>. Queensland Museum Network. https://tinyurl.com/2e572chh</p>
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Assessment

Topic: Mabo

Internal Assessment 1: Possible practice short response questions

Explain the implications of the *Mabo v Queensland (No. 2)* (1992) 175 CLR 1; [1992] HCA 23 in the interpretation of Native Title rights to Indigenous Australians.

Explain how *Mabo v Queensland (No. 2)* (1992) 175 CLR 1; [1992] HCA 23 influenced legal change in Australia.

High-level response:

The *Mabo v Queensland* case in 1992 altered the foundation of land law in Australia. The case acknowledged the traditional rights of Indigenous people to their land and waters. It paved the way for native title in Australia and started the process for claims by Aboriginal and Torres Strait Islander peoples to their traditional rights to land and compensation. The *Mabo v Queensland* case recognised that Indigenous people occupied Australia for tens of thousands of years before the British arrived, therefore abolishing *terra nullius*.

Transcript:

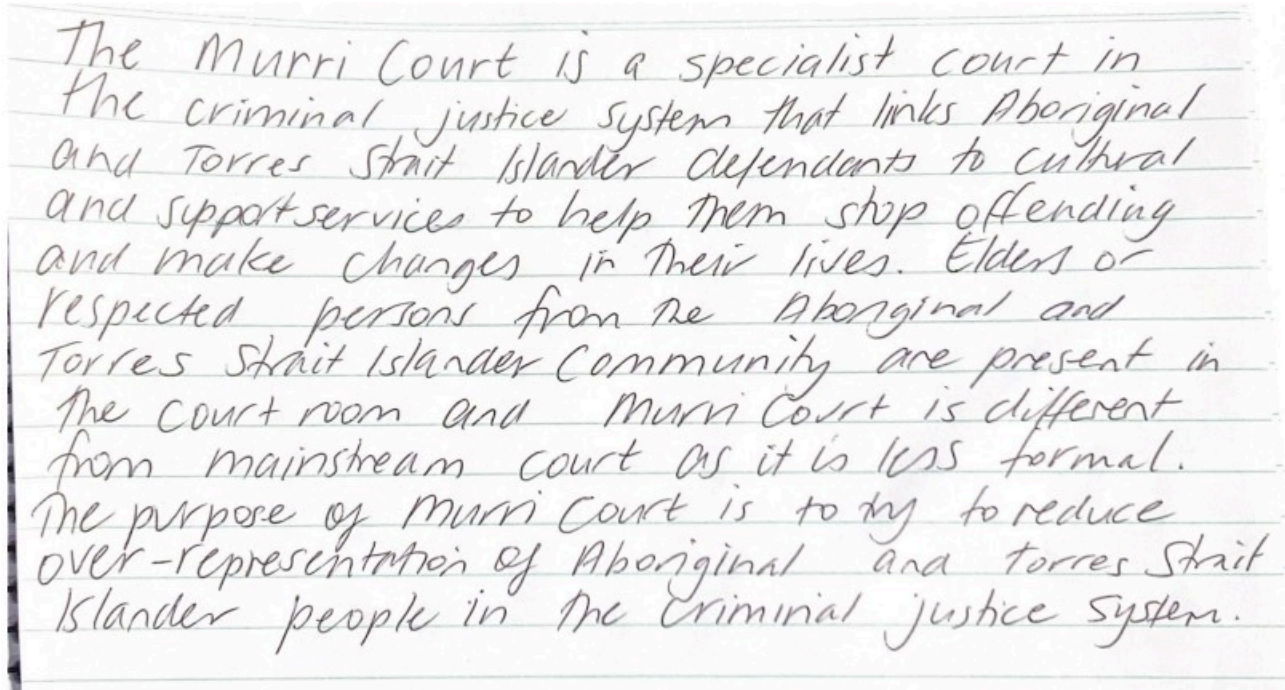
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Topic: Specialist Courts

Internal Assessment 1: Possible practice short response questions

Describe the Murri Court and explain its purpose in the Queensland Court structure.

High-level response:



The Murri Court is a specialist court in the criminal justice system that links Aboriginal and Torres Strait Islander defendants to cultural and support services to help them stop offending and make changes in their lives. Elders or respected persons from the Aboriginal and Torres Strait Islander community are present in the court room and Murri Court is different from mainstream court as it is less formal. The purpose of Murri Court is to try to reduce over-representation of Aboriginal and Torres Strait Islander people in the criminal justice system.

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Practice Extended Response- Judicial activist using the decision of Mabo as an example

1. Analyse sources 1-6 to determine the nature and scope of the legal issue, and examine two viewpoints.
2. Evaluate whether the High Court of Australia should have the ability to make law. In your evaluation, consider two possible alternatives and decide about the best way to achieve just and equitable outcomes.

1	<p>Mikiandme. (2015, September 30). Critical Legal Thinking. <i>MIKIANDME</i>. https://mikiandme.wordpress.com/</p> <p>An interesting point came up while reading about critical legal studies in that legal realists and critical legal scholars believed that judges when making their decisions conceal the true nature of the decision under the guise of an objective rather than subjective position.</p> <p>Well of course they do. It would be inherently impossible for any person to use a truly objective position in making any decision. It is to the very core of our human nature to form subjective opinions and even make subjective decisions or determinations. Oh, we say they are objective to appease the need of law, but it would be truly impossible to be purely objective in any thought process. We will always be influenced by our internal governance. I don't think it is deliberate and possibly that is why judges use elaborate rationalizing, not to disguise what they are saying, but rather to ensure they are being as objective as is humanly possible.</p>
2	<p>French, R.S. (2009, November). <i>Judicial Activism – The Boundaries of the Judicial Role</i>. [Paper presentation]. Law Asia Conference 2009, Ho Chi Minh City, Vietnam. https://tinyurl.com/2mxvvr2m</p> <p>Much room is left for judges in the interpretation process to determine what the law is. But if that occasions complaint then the complaint is misconceived. The meanings of legislative words are not like rocks lying around on the ground waiting to be picked up. They are necessarily products of interpretation. That interpretation is legitimate when it is principled and invokes criteria which, whether developed by courts or decreed by statute or both, are broadly understood by the legislature, the executive and the judiciary. And to that extent they represent another example of a necessary, legitimate and generally accepted authority to the judges to determine what the law is by determining what it means.</p>
3	<p>Kirby, M., (2006). <i>Judicial Activism: Power without Responsibility? No, appropriate activism conforming to duty</i>. University of Melbourne. https://tinyurl.com/27k9sn8y</p> <p>Judicial activism: power without responsibility?</p> <p>The decision in Mabo changed the line of legal authority, for two reasons. The first was the acceptance that the old theory of law had been founded on a factual error. The second stimulus to a changed approach was the international law of human rights. Formally, it would have been understandable if the High Court had left the law as it was. But courts are about law and justice. That is the oath that judges take.</p>

4	<p>Allan, J.,(2012). “The Three ‘Rs’ of Recent Australian Judicial Activism: Roach, Rowe and (No)’Reginalism.” Melbourne University Law Review. Auslii. https://tinyurl.com/2p8sj35z</p> <p>Judicial activism ... undermines the rule of law in its old-fashioned procedural sense of the desirability of being governed by the use of general rules, known in advance, that allow citizens to shape their expectations and so guide their behaviour.</p>
5	<p>Sakr, J.M., & Zimmermann, A. (2021). Judicial Activism and Constitutional (Mis)Interpretation. <i>University of Queensland Law Journal</i> 40(1), 119-143. https://tinyurl.com/4n7ck6s3</p> <p>Judicial Activism and Constitutional (Mis)Interpretation: A Critical Appraisal.</p> <p>Such an approach regards judicial activism as always preferable, while an intentionalist or purposive approach would be relevant only in terms of legal history. Based on such a premise, Deane J opined that to take an originalist approach is ‘to construe the Constitution on the basis that the dead hands [of the past] reached from their graves to negate or constrict the natural implications of its express provisions or fundamental doctrines’, to deprive the document of ‘its vitality and adaptability to serve succeeding generations. Most Australians would recognise the wisdom and timeliness of the decision in the Mabo case. Yet the criticism of them as ‘judicial activism’ is endless in the muttering circles of conservative lawyers. What they need to be told is that the law moves and changes and does not stand still. Basic considerations of legal principle and common justice in true equality for all sometimes require change.</p>
6	<p>Josev, Tanya., (2016, April 11). Twenty years after the High Court’s Wik decision, how does the ‘judicial activism’ charge stand up? <i>The Conversation</i>. https://tinyurl.com/3nwt59nd</p> <p>It is no coincidence that the rise of the “judicial activism” terminology coincided not only with the Wik decision but also with the new Coalition government’s campaign to ensure all arms of government focused on the protection of “mainstream” interests. The Coalition argued these had been ignored at the expense of progressive, boutique interests during the Keating government years.’</p>

Assessment – Short Response Questions

Explain how protests can contribute to improving social justice and human rights for Aboriginal and Torres Strait Islander Peoples. Make sure you provide examples in your answer.

The answer should include:

- Protests can contribute to improving social justice and human rights.
- Bring attention to both contemporary and historic issues.
- The place to voice concerns.
- The narrative generally seeks to pressure those relevant people/groups to enact change on matters relating to social justice and human rights.
- The significance of this protest brings the matter of a lack of legal recognition of Aboriginal and Torres Strait Islander sovereignty rights to the national consciousness and pressures policymakers to change their position.

Possible examples:

- The Tent Embassy
- Australia Day (Invasion Day) protests

High-level response:

Protests can contribute to improving social justice and human rights for Aboriginal and Torres Strait Islander Peoples. They can bring attention to contemporary and historic issues. Protesting can be a place to voice concerns and the protest narrative places pressure on the relevant people/groups to enact change on matters relating to social justice and human rights. The significance of the Tent Embassy protest brings the matter of a lack of legal recognition of Aboriginal sovereignty rights to the national consciousness and pressures policy makers to change positions on this issue.

Transcript:

Protests can contribute to improving social justice and human rights for Aboriginal and Torres Strait Islander peoples. They can bring attention to contemporary and historic issues. Protesting can be a

place to voice concerns and the protest narrative places pressure on the relevant people/groups to enact change on matters relating to social justice and human rights. The significance of the Tent Embassy protest brings the matter of a lack of legal recognition of Aboriginal sovereignty rights to the national consciousness and pressures policy makers to change positions on this issue.

References

Gray, A., & Herlihy, G. (2004). *Legal Studies in Action*. Jacaranda.

