

6 August 2020
VCE Legal Studies
Professional Development Workshop

Tackling scenario-based questions in
VCE Legal Studies: how to help your
students master application, synthesis
and analysis skills

Hosted by Peter Farrar & Lisa Filippin



Agenda

1 What is analyse, apply, synthesise?

2 Why are the skills relevant?

3 Examples of stimulus material

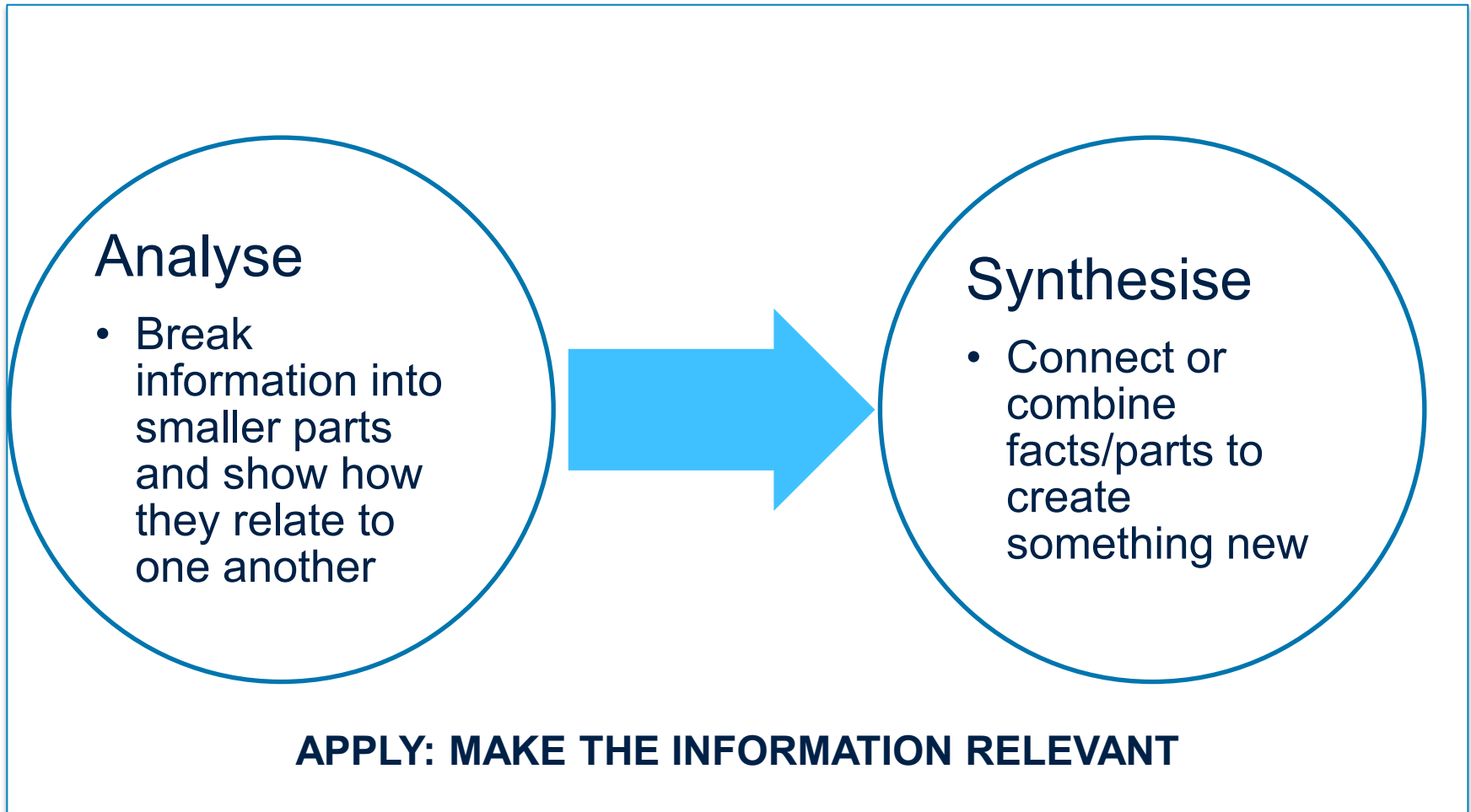
4 Advice for students

5 Questions



Please post questions in the 'chat' throughout as we talk and we will respond to them during the question time section of the webinar at the end

What does it mean to analyse, apply, synthesise?



What does it mean to analyse, apply, synthesise?

Non-legal example

- Mary wants three apples but has two oranges
- Paola has three oranges but wants two pears
- John has four apples but wants two bananas
- Shamim has three pears but wants two bananas

How does Mary get her three apples?

The question requires analysis, synthesis and application

What does it mean to analyse, apply, synthesise?

Legal example: *Holcombe v Hunt*
[2018] VSC 55 (27 February 2018)

- P's application for extension of time to bring claim for personal injury was refused
- Application required a synthesis of competing considerations / matrix of factors
- Appeal court noted that the judge did identify proper approach and material considerations to decide whether to extend
- But key issue was whether primary judge erred in properly **synthesising** the relevant factors in deciding whether to extend the limitation period
- Appeal allowed

Study Design requirements

Aims

- Apply legal terminology, principles & concepts
- Apply legal principles to actual/hypothetical scenarios, explore solutions to legal problems, form reasoned conclusions
- Analyse institutions that make laws
- Analyse the methods and institutions that determine/resolve cases/disputes
- Analyse reforms to the legal system

Study Design requirements

Key skills: examples

- Analyse/apply relevant information about...
- Synthesise and apply legal information to actual **or** actual and/or hypothetical scenarios
- Apply legal reasoning and principles to...
- **But also** other key skills require analysis/application/synthesis (e.g. discuss ability of sanctions to achieve purposes)

Study Design requirements

VCE end-of-year examination

- All of the key skills are examinable
- Section A may have stimulus material/be scenario-based
- Section B will be scenario-based (actual, hypothetical or a combination)
- Visual and/or written material may be included

Study Design requirements

2019 examination report

- Students should practise synthesis, application and analysis skills as much as possible, by undertaking a variety of scenario-based and source-based tasks.
- All Section B responses must make use of the relevant stimulus material.
- For Section A responses, this is necessary for questions that specifically require reference to or use of them.
- Students should adopt techniques to effectively use their reading time, particularly where there is a significant amount of reading, and practise these techniques throughout the year.

Examples of scenarios: FAQs

Set of facts

Set of stated
circumstances

Case

Referendum

Series of
information

Case study

Issue

Series of
arguments

What we've seen from the 2018 & 2019 examination

Hypothetical
set of facts
(e.g. Bob)

Actual set of
facts (e.g.
VLRC)

Extracts from
legislation and
Constitution

Quotes from
cases

Data

Articles

Short
statements

Combination –
source
material

Different types of stimulus material

EXTRACT

Summary Offences Act 1966 (Vic) – section 23

Common assault

Any person who unlawfully assaults or beats another person shall be guilty of an offence.

Penalty: 15 penalty units or imprisonment for three months.

1960s cult 'The Family' class action in the Supreme Court

Leeanne Joy Creese has brought a claim on behalf of persons who allegedly suffered personal injury in relation to a sect known as 'The Family' during the period 1968 to 1987.

The sect allegedly operated between 1968 and 1987. Anne Hamilton-Byrne was the head and administrator of a group of adults and children who were part of the sect. It is alleged that the children were subjected to cruel and inhumane treatment at her direction. Ms Hamilton-Byrne allegedly considered herself a reincarnation of Jesus Christ and founded the sect in the 1960s, and acquired children through adoption, imprisoning them at a house near Lake Eildon. The children were home-schooled, wore identical clothes, and their hair was often dyed blonde. It is alleged that psychological abuse took place.



Source 2 Ms Hamilton-Byrne died in 2019 aged 97. The claim is being made against her estate.

ACTUAL

SCENARIO

Persistent abusive messages

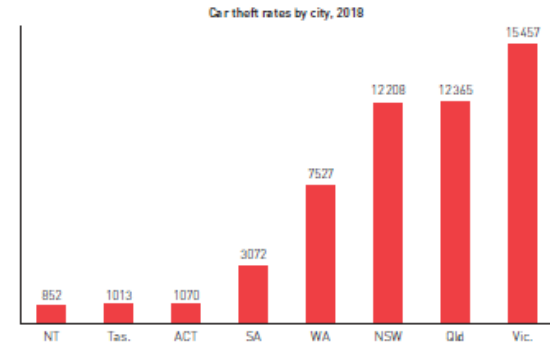
Susan's neighbour, Carl, has set up a music studio in his backyard shed. Between midnight and 3 am every morning, Carl plays loudly on the drums and other musical instruments. Susan has been unable to sleep at night, and her work is suffering as a result.

On at least five occasions, Susan has approached Carl and asked that he stop. Carl laughs every time and asks Susan 'who does she think she is' and insists that he has a right to play music on his own property. On the last occasion, Susan told her neighbour she would go and see a lawyer.

Since that time, Susan has received abusive messages from Carl. Her lawyer has advised her not to approach him again, and that she is not to try and negotiate any resolution.

HYPOTHETICAL

SCENARIO



Source 9 According to the insurance company, Budget Direct, there were 53 564 vehicles stolen in Australia in 2018.

EXTRACT

DPP v Ristevski [2019] VSC 253 (18 April 2019)

36 Ultimately, the view that I have arrived at is that I have insufficient information to say whether your offence is a mid or upper range example of manslaughter, although it is clearly not a low range example of manslaughter because of the aggravating domestic violence aspect. Without knowing the level and duration of the violence perpetrated by you which caused your wife's death, I simply cannot say whether your offending was mid or upper range. I do not regard your silence as to how you killed your wife as providing a sufficiently firm basis for drawing the inference that yours must have been an upper range example of the offence of manslaughter. Whilst the community and the courts rightly abhor domestic violence, it is simplistic to suppose that all domestic violence manslaughter cases necessarily fall into the upper range on the spectrum of seriousness for manslaughter. It takes little imagination to think of circumstances where a domestic violence manslaughter – for example, one involving a momentary loss of control and a comparatively low level of violence – could not reasonably be viewed as an upper range example of the offence of manslaughter.

Source: Legal Studies for VCE, Oxford University Press

What we've seen from the 2019 examination

In the 2019 exam, **75% of marks involved** direct reference to a scenario or other stimulus material:

In Section A:

- criminal justice system
- civil justice system
- Commonwealth Parliament
- external affairs power

In Section B:

- combination of actual/hypothetical: defamation
- actual: *D'orta-Ekenaike* case



Advice for teachers when giving stimulus material

1. Consider mark allocation v number of words

2. Ensure proper use of actual v hypothetical

3. Victorian cases for Unit 3, Area of Study 1!

4. Ensure you are assessing synthesis where you want it to be assessed

5. Are your questions truly scenario-based, or stand alone just tacked onto a question?

6. How are you incorporating scenarios into your SACs?

PRACTICE ASSESSMENT TASK

UNIT 1 – Area of Study 1

Religious discrimination Bill gives Australians 'right to be a bigot'

Judith Ireland, *The Sydney Morning Herald*, 30 January 2020

Proposed religious discrimination laws could make it legal for a boss to tell a gay worker 'being gay is a form of brokenness', or a childcare provider to tell a single mother 'God will judge you harshly for taking away the child's right to have a father'.

As public submissions close on the second draft of the Morrison government's religious discrimination Bill, Monash University associate professor of constitutional law Luke Beck warned the revised Bill included provisions that 'appear to be motivated by a desire to allow people to be nasty to others'.

In a separate submission, the 13-member Australian Discrimination Law Experts Group (ADLEG), said the Bill was 'deeply flawed', prioritising religious beliefs over the rights of LGBTIQ Australians, people with a disability and women.

The ADLEG, which includes Sydney University professor Simon Rice and Melbourne University professor Beth Gaze, said the Bill's wide definition of 'statements of belief' meant current unlawful acts of discrimination would 'likely become lawful if based on religious belief'.

As an example, a receptionist in a medical practice telling a person with a disability 'they have been given their disability by God so they can learn important lessons' would be protected.

In explanatory information accompanying the Bill, the government

said it would not be discrimination under any Australian anti-discrimination law for 'merely expressing ... genuinely held religious beliefs in good faith'.

Attorney-General Christian Porter said the Bill's approach to statements of belief was a 'common-sense position'.

'In essence, the Bill simply takes the uncontroversial position that, on their own, mere written or spoken words are not discrimination – provided they express genuine religious beliefs and are stated in a way that is not malicious and does not harass, vilify, threaten, intimidate or urge criminal offences.'

But Professor Beck said the practical effect of the right to make statements of belief was to establish 'the right to be a bigot', noting there was still room for statements that insulted, offended, ridiculed or humiliated others. He also noted the proposed Bill ruled out only 'serious' intimidation.

'Provided a person does not use threats, this Bill gives a person the right to intimidate others', he said. Professor Beck gave the example of a boss telling a gay worker they were 'broken' or a childcare provider judging a single mother.

While many faith groups – including the Catholic Archdiocese of Sydney, the Anglican Diocese of Sydney, the Executive Council of Australian Jewry and the National Imams Council – have been pushing for greater religious freedoms in the Bill, the Uniting Church

has been among those saying there needs to be more protection for vulnerable groups.

In its submission, the Uniting Church in Australia echoed the concerns of legal experts, saying the redrafted version does not 'get the balance right'.

'To be a welcoming, inclusive, multi-faith and multi-cultural society, it is important that people are able to freely practice religion without fear', Uniting Church president Dr Deidre Palmer told a forum in Sydney last week.

'But privileging statements of religious belief at the expense of other people's dignity and wellbeing is not something we support. Christians in Australia are not persecuted. In Australia, churches aren't victims. To cultivate some kind of victim status is disingenuous.'

The Morrison government released the second draft of the religious discrimination Bill shortly before

Christmas in response to wide-ranging criticism from faith groups, business, community groups and legal experts. Mr Porter said submissions on the second draft would be 'considered in detail' before the legislation was introduced to parliament.



Source 1 If enacted, the Religious Discrimination Bill 2019 (Cth) would introduce a legal right to make statements of belief.

Practice assessment task questions

- Define the following terms:
 a fairness
 b common law
 c civil law. (3 marks)
- If it is enacted, will the Religious Discrimination Bill 2019 (Cth) be statute law or common law? Justify your answer. (2 marks)
- Justify one reason for the Victorian court hierarchy. (3 marks)
- Explain how the Religious Discrimination Bill 2019 (Cth) may be relevant in a criminal case and in a civil case. (5 marks)
- Explain how the Religious Discrimination Bill 2019 (Cth) may aim to achieve social cohesion and protect the rights of individuals. (6 marks)
- Using examples, explain two features of the relationship between parliament and the courts in relation to religious discrimination. (6 marks)
- If enacted, do you think the Religious Discrimination Bill 2019 (Cth) will be effective? Give reasons for your response. In your answer, address each of the five characteristics of an effective law. (10 marks)

Total: 35 marks

HIS HONOUR JUSTICE LASRY:

Andrew William Lee, on 8 September 2017 ... you pleaded guilty to one charge of manslaughter. That charge related to events which occurred on 16 April 2016 ... at some time after 11:00pm that night ... you threw a punch which struck Patrick Cronin to the right side of the head. That punch caused a fracture to him which in turn caused an unsurvivable brain injury and ultimately resulted in his death the following day, 17 April 2016 ...

... As to your plea of guilty, it was made at a late stage in the legal process ... However, late as it was, your plea of guilty has avoided the need for a trial and the trauma connected with it, particularly for the members of the Cronin family. In addition I am satisfied that you are genuinely remorseful for what you have done and, in part at least, your plea of guilty is a reflection of that and a willingness to accept responsibility for your actions ...

... In the course of the proceedings on 3 October 2017, I received a total of 93 victim impact statements ... The effect of Patrick Cronin's death on a very large number of people in the area in which he and his family lived, was educated and played football, is profound ...

... On any view you acted violently and that violent act had a dreadful consequence. The nature and gravity of your offending was significant. However, it is not suggested that on that night you had entered the hotel with any intention of engaging in physical violence ... As I understand it, there is no explanation for your spontaneous conduct which is connected with alcohol or drugs.

... you will be sentenced to be imprisoned for a period of eight years. I fix a period of five years to be served by you before you are eligible to apply for release on parole.

Lee sought to appeal the sentence in the Court of Appeal but was refused leave. Patrick Cronin's family is reported to have said that Lee should not be allowed to keep trying to be let off.

Practice assessment task questions

- | | |
|--|---|
| 1 Referring to this case, explain one reason for a court hierarchy.
(3 marks) | 4 Explain one responsibility of the judge and one responsibility of the prosecution in this case.
(6 marks) |
| 2 Describe two factors considered when sentencing Lee.
(4 marks) | 5 Identify two purposes of imprisonment and discuss the extent to which it may be able to achieve those purposes in this case.
(6 marks) |
| 3 Was a sentence indication used to determine the charges? Justify your answer.
(3 marks) | 6 Discuss the extent to which the principles of fairness and access were achieved in this case.
(8 marks) |

Total: 30 marks

Advice for students when given stimulus material

1. Read and identify **AOS** (e.g. civil, criminal, parliament, courts, law reform)

2. Read and identify **key facts** v background/context

3. Identify **how key facts are relevant** and to **what question**

- E.g. appropriateness of plea negotiations
- E.g. factors to consider when initiating claim
- E.g. principles of justice

4. **Find connections** where there are **multiple sources** (analyse and synthesise)

5. **Break down the question** (see Chapter 1 textbook)

- Task/command words
- Mark allocation
- Quantifying words
- Content words

6. In your answer, use **facts from the scenario to support it**

Advice for students: criminal justice system questions

Look out for facts that support **principle of justice** discussion

Is the offence **summary or indictable**?

Has a **plea** been entered?

What is the **stage of proceedings** (committal, trial, sentencing, appeal?)

What **mitigating/aggravating** factors might exist?

Are there **vulnerable witnesses** involved?

What **cost, time and cultural factors** are relevant; what reforms could be used?

What facts point to which **sentence**?

Choose wisely

Advice for students: civil justice system questions

Look out for facts that support **principle of justice** discussion

What **financial** information is provided (e.g. about plaintiff or defendant)

What other **information about the parties** is supplied (vulnerabilities)?

What is the **relationship between the parties**? Do they have goodwill?

Look for facts that point to a particular method/institution

What **cost, time and accessibility** are relevant; what reforms could be used?

Are there **enforcement/limitations** of actions issues?

Choose wisely

For the best part of 800 years, juries have had a single function in criminal trials that higher courts could not meddle in. The jury was the finder of fact. In Australian law, this began to change in the 1994 case of *M v The Queen*, when the High Court said an appeal court could ask "whether it thinks that upon the whole of the evidence it was open to the jury to be satisfied beyond reasonable doubt that the accused was guilty". Victoria's Criminal Procedure Act gave statutory back-up to this evolution of the courts' role in 2009.

In the trial in which George Pell was found guilty, only 12 people saw and heard the 50-plus witnesses questioned, and only those 12 people were qualified to say whether or not Pell committed crimes. All of those 12 decided, beyond reasonable doubt, that he did. And yet their months of service, and their first-hand experience, has been overturned by the High Court not for reasons of law, but because the seven justices would have come to a different conclusion. Those jurors are entitled to ask what, then, was the point of the original trial?

There are 12 unmentioned victims in the Pell verdict: the jurors - Malcolm Knox

The Sydney Morning Herald [April 8, 2020]

<https://www.smh.com.au/national/there-are-12-unmentioned-victims-in-the-pell-verdict-the-jurors-20200408-p54i3m.html>




ACTUAL SCENARIO [13 marks]

TikTok is facing intensifying scrutiny in Canberra, with intelligence agencies putting the app under the microscope and some MPs pressing the Federal Government to ban it. The video-sharing app is enormously popular with young people in their teens and 20s, with more than 1.5 million Australians downloading it to their phones. But analysts say TikTok harvests huge amounts of data, and warn that the Chinese company which owns it — ByteDance — may be forced to share that information with the Chinese Government. Last month, Prime Minister Scott Morrison declared the Federal Government was looking "very closely" at TikTok. Other parliamentarians have hesitated about pressing for a ban but say TikTok needs to face greater scrutiny.

SOURCE:




<https://www.abc.net.au/news/2020-08-02/tiktok-under-investigation-in-australia-over-privacy-concerns/12513466>

1. Explain the political pressures on the Commonwealth Government in regard to TikTok. [3 marks]
2. Analyse the influence of the media, including social media, in law reform. [4 marks]
3. Given that '[some]parliamentarians have hesitated about pressing for a ban', discuss the ability of parliament to respond to the need for law reform in cases such as this. [6 marks]


Peter Farrar






 11:27 AM Yesterday

 political pressure - international


Peter Farrar






 11:28 AM Yesterday

 political pressure - domestic


Peter Farrar



 11:29 AM Yesterday

 Representative government.


Peter Farrar



 11:31 AM Yesterday

 Suggests a hostile Senate and the need of the government to negotiate. The Coalition has 36 senators.


Some more information: video tutorial

LEGAL STUDIES FOR VCE UNITS 3 & 4


JUSTICE & OUTCOMES

YEAR 12

VIDEO TUTORIAL



HOW TO ANSWER SCENARIO-BASED QUESTIONS



KEY POINTS

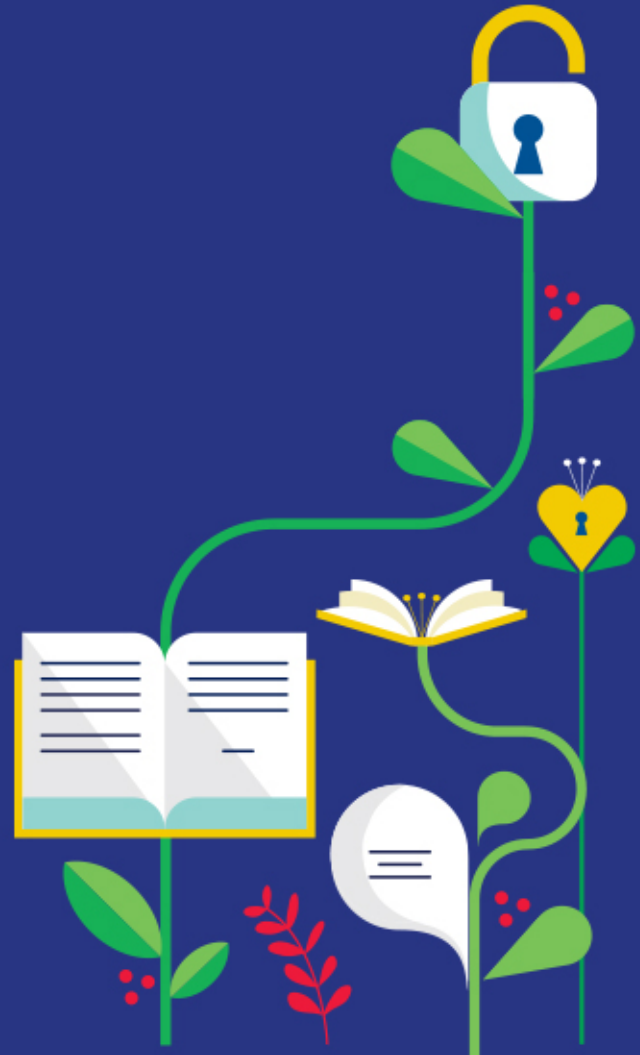
1. Read the scenario carefully
2. Sequence the facts and look for key legal terms
3. Select information carefully to answer the questions

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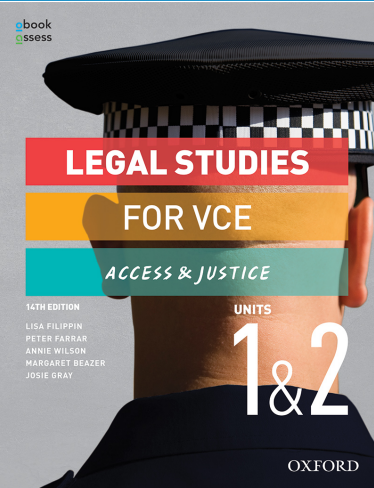
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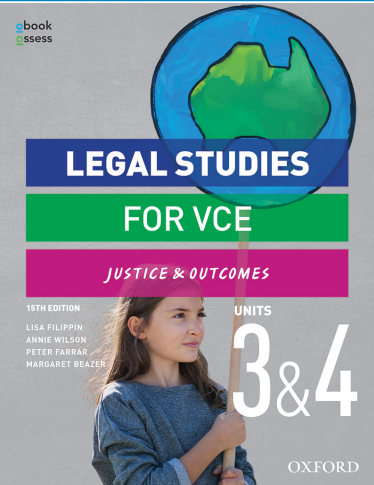


Q & A



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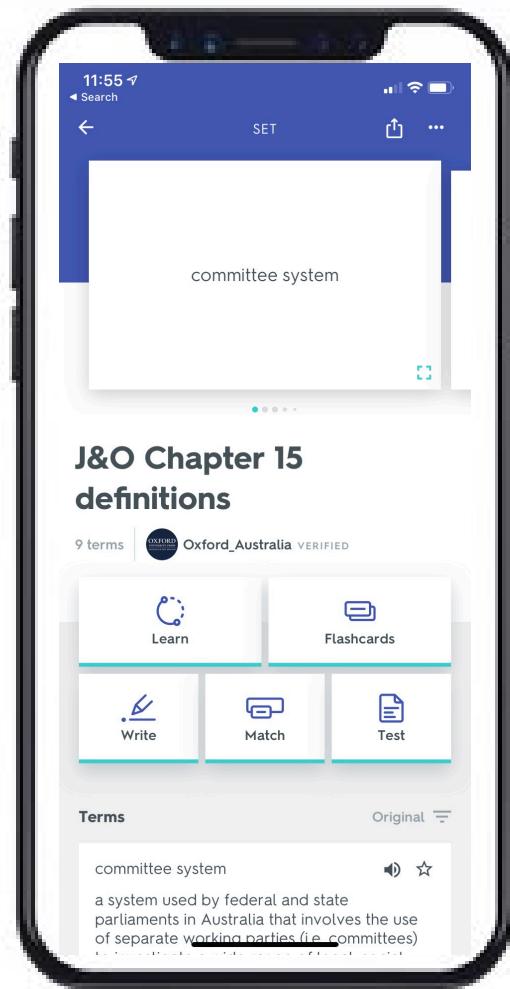
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2019 11 Maths Live

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Chapter 15 Law reform

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First name	Last name	Are you ready?	Topic 4A	Topic 4B	Topic 4C	Topic 4D	Topic 4E	Topic 4F	Chapter 4 review	Overall comments
Adam	Apple	60%	83%	50%	33%	50%	83%	33%	65%	Needs to work on his weakn...
Bertie	Banana	90%	83%	83%	83%	100%	83%	100%	100%	Excellent work! Keep it up
Caroline	Cheese	100%	83%	67%	100%	67%	67%	67%	85%	Very consistent. A good st...
Diana	Doritos	60%	17%	0%	33%	33%	50%	50%	20%	Often gets distracted.
Erica	Egg	70%	67%	83%	50%	67%	83%	67%	70%	A keen learner.
Freddy	Fig	70%	100%	67%	83%	83%	83%	67%	85%	Always tries very hard.
Class average		75%	72%	58%	64%	67%	75%	64%	71%	

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What's new?

STUDENT BOOK FEATURES

- Over 80% of the legal scenarios in the series have been updated to new, recent and relevant cases.
- An updated review spread at the end of each chapter which includes three top tips from that chapter, three exam-style graded questions, and a practice assessment task.
- **We've pared it back!** This includes:
 - delivering complex and potentially confusing content in clear, easy-to-read formats, such as tables and diagrams
 - moving the “going further” sections from the previous editions to obook assess in order to enhance the focus of the Student book
 - updating the terminology throughout to simplify the structure of the book and encourage students to use syllabus terminology (e.g. ‘actual scenarios’ and ‘hypothetical scenarios’)

We've kept the best features from the previous edition, including:

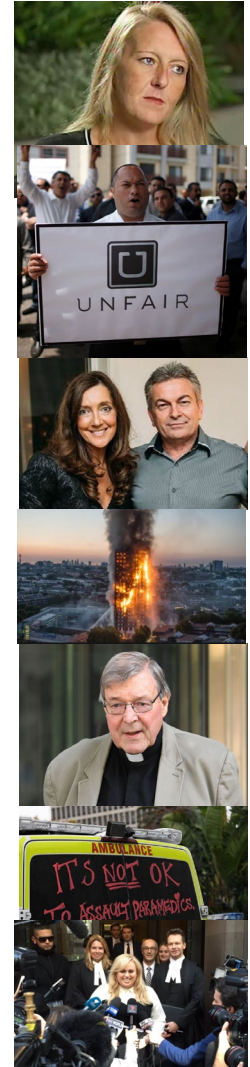
- The Legal Toolkit chapter at the start of each book, which provides clear course information, exam advice and preparation, tips for mastering legal citation and career information.
- An introductory chapter at the beginning of each unit to cover core concepts and essential prior knowledge.
- Chapter opener spreads which succinctly cover outcomes, key knowledge and key terms from the Study Design.
- Margin notes throughout, such as must-see Study Tips and exciting Did You Know? content.
- A range of leveled learning questions found at the end of every topic that support differentiation.
- Last but certainly not least, our well-respected, well-connected **author team** are back to bring their knowledge and experience to each book.

Unit 2, AOS1 – Sanctions

- A weekend at an Airbnb ends in murder
DPP v AK (Sentence) [2019] VSC 852 (20 December 2019)
- The case that captivated Victoria
DPP v Ristevski [2019] VSC 253 (18 April 2019); DPP v Ristevski [2019] VSCA 287 (6 December 2019)
- The assault of a paramedic
Tang v Haberfield (Victorian Magistrates' Court, Magistrate Zebrowski, 28 August 2019); DPP v Haberfield [2019] VCC 2082 (16 December 2019)
- The trials and acquittal of George Pell
DPP v Pell (Sentence) [2019] VCC 260 (13 March 2019); Pell v The Queen [2019] VSCA 186 (21 August 2019); Pell v The Queen [2020] HCA 12 (7 April 2020)

Unit 2, AOS1 – Sanctions

- The crime reporter who sued *The Age*
YZ (a pseudonym) v The Age Company Limited [2019] VCC 148 (22 February 2019); The Age Company Limited v YZ (a Pseudonym) [2019] VSCA 313 (19 December 2019)
- Uber success drives Taxis to class action
Andrianakis v Uber Technologies Incorporated and others S ECI 2019 01926
- Highrise fire in Docklands earns \$5M in damages
Owners Corporation No.1 of PS613436T v LU Simon Builders Pty Ltd (Building and Property) [2019] VCAT 286
- The shocking revelations of Lawyer X
Orman v State of Victoria (2020)
- Rebel with a cause (obook only)
Wilson v Bauer Media Pty Ltd [2017] VSC 521 (13 September 2017); Bauer Media Pty Ltd v Wilson (No 2) [2018] VSCA 154 (14 June 2018)



Unit 3 AOS1 – The Victorian Criminal Justice System

Recent

- Expansion of the Koori Court (2019)
- Victim Support Dog Program (2019)
- Changes to committal proceedings for some sexual offence matters (2018 and 2020)

Recommended

- Continued expansion of the Koori Court
- Judge-alone trials
- Increased funding for legal aid, legal centres and other services

Unit 3 AOS1 – The Victorian Civil Justice System

Recent

- Group class orders in class actions (2020)
- Technological improvements in the legal system (2019)
- Expansion of VCAT's fast track mediation and hearing processes (2019)

Recommended

- Allowing contingency fee agreements
- Increased use of case management
- Introduction of a National Justice Interpreter Scheme

Unit 4 AOS2 – The People, the Parliament and the Courts

Recent example of the VLRC recommending law reform: Improvements to the committal system

Recent example of a recommendation for law reform by one parliamentary committee: New bill proposes drug testing for those on unemployment benefits, Senate Committee investigates

Recent example of a recommendation for law reform by Royal Commission: Royal Commission into the Management of Police Informants

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