**Legal studies (Year 11) – The legal system – part 1 basic legal concepts**

This resource has been designed to support teachers by providing a range of tasks based on syllabus content. Tasks can be incorporated into context driven teaching and learning programs in full or can be used to supplement existing programs. All content is textbook non-specific to ensure equity.

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## Aim

Legal studies develops students’ knowledge, understanding and critical thinking skills in relation to the legal system and its effectiveness in promoting a just and fair society, with a view to empowering students to participate effectively as responsible citizens at the local, national and international level.

## Principal focus

Students develop an understanding of the nature and function of law through the examination of law-making processes and institutions.

## Themes and challenges

* the need for law in the operation of society
* the importance of the rule of law for society
* the relationship between different legal institutions and jurisdictions
* the development of law as a reflection of society
* influences on the Australian legal system

## Outcomes

A student:

* **P1** identifies and applies legal concepts and terminology
* **P2** describes the key features of Australian and international law
* **P3** describes the operation of domestic and international legal systems
* **P4** discusses the effectiveness of the legal system in addressing issues
* **P5** describes the role of law in encouraging cooperation and resolving conflict, as well as initiating and responding to change
* **P6** explains the nature of the interrelationship between the legal system and society
* **P7** evaluates the effectiveness of the law in achieving justice
* **P8** locates, selects and organises legal information from a variety of sources including legislation, cases, media, international instruments and documents
* **P9** communicates legal information using well-structured responses
* **P10** accounts for differing perspectives and interpretations of legal information and issues

[Legal Studies Stage 6 Syllabus](https://educationstandards.nsw.edu.au/wps/portal/nesa/11-12/stage-6-learning-areas/hsie/legal-studies) © NSW Education Standards Authority (NESA) for and on behalf of the Crown in right of the State of New South Wales, 2009.

## Learning sequence 1 – basic legal concepts

Table 1 – syllabus content

|  |  |
| --- | --- |
| Students learn about: | Students learn to: |
| * meaning of law
* customs, rules and law
* values and ethics
* characteristics of just laws
* nature of justice:
* equality
* fairness
* access
* procedural fairness (principles of natural justice)
* rule of law
* anarchy
* tyranny.
 | * define law
* distinguish between customs, rules, laws, values and ethics
* describe the characteristics of just laws and the nature of justice
* define and investigate procedural fairness and the rule of law
* define anarchy and tyranny.
 |

**Teacher note:** this learning sequence is likely to take 2–3 weeks. Prior to starting the preliminary course, students should review the [Legal Studies Stage 6 Syllabus](https://www.educationstandards.nsw.edu.au/wps/portal/nesa/11-12/stage-6-learning-areas/hsie/legal-studies). Syllabus themes and challenges should be integrated throughout learning sequences. Please note that cases used in the activities below should be read and assessed for the suitability of the cohort and context.

### Meaning of law

* As a class, discuss the meaning of law and the ways that students’ lives are impacted by the law.
* Watch [ABC Legal Briefs, ‘What is Law’ (8:00)](https://iview.abc.net.au/show/legal-briefs/series/1/video/ZW0684A001S00) and use this to complete a [concept map](https://app.education.nsw.gov.au/digital-learning-selector/LearningActivity/Card/577#.YpXCiik82dA.link) illustrating the key features of law.
* Use this discussion and [Cambridge Dictionary](https://dictionary.cambridge.org/) to construct a 1–2 sentence definition of the law.

### Customs, rules and laws

**Teacher note:** for this [Step Inside](http://www.pz.harvard.edu/resources/step-inside) activity, students will be broken into 3 groups. Assign each group to the concept of a rule, custom or law.

* Use [Cambridge Dictionary](https://dictionary.cambridge.org/) or school resources to briefly define the following terms
	+ customs
	+ rules.
* Work with your group to research your concept. Use this to complete a [Step Inside](http://www.pz.harvard.edu/resources/step-inside) thinking routine that clearly explains your concept. Use the following sentence stems to guide your presentation to the class
* I am a (rule, custom or law)
* I am important because …
* I am different to (rules, customs or laws) because …
* an example of how I am involved in year 11 students’ lives is …
* As each group presents, make brief notes in the table below, including examples of rules, customs and laws that are shared by your peers.

Table 2 – examples of rules, customs and laws

|  |  |  |
| --- | --- | --- |
| Rules | Customs | Laws |
|  |  |  |

### Values and ethics

**Teacher note:** students will often have conflicting values and ethics. It is important to emphasise that this is normal and people have differing opinions, which is what makes the law so complex. Teachers should guide student discussion around the complex nature of the law and how it is often difficult to achieve an outcome that suits everybody. The [Controversial Issues in Schools Policy](https://education.nsw.gov.au/policy-library/policies/pd-2002-0045) should be followed.

* Read the [Ethics explainer](https://ethics.org.au/ethics-explainer-ethics-morality-law/) and use this to write 2–3 sentences explaining the difference between values and ethics.
* With a partner, identify 2 examples of each of the following
* values
* ethical behaviour
* unethical behaviour.
* In small groups, read [The trolley dilemma: would you kill one person to save five?](https://theconversation.com/the-trolley-dilemma-would-you-kill-one-person-to-save-five-57111) and discuss the ethical dilemmas that this problem presents. Discuss all of the possible approaches that could be taken to this problem. Select 3 different perspectives and use these to complete a [Circle of Viewpoints](http://www.pz.harvard.edu/resources/circle-of-viewpoints) activity from these perspectives. Use the sentence starters below as a guide
* I am thinking of the dilemma from the (perspective of)
* The correct action from this viewpoint would be …
* The reason for this action would be …
* In your group, discuss the 3 different approaches to the trolley dilemma. Decide which approach is the most ethical overall and justify the choice. Share your decision with the class.
* Individually reflect on the different perspectives in the ethical dilemma presented by the trolley problem. Use this to identify ethical dilemmas that may arise in the law.
* Think about how values can change over time. In small groups, complete a [Making predictions](https://app.education.nsw.gov.au/digital-learning-selector/LearningActivity/Card/638#.Yh7sUkkileo.link) activity to identify 2 examples of
* how values have changed in the past
* how values may change in the future.
* In small groups, [brainstorm](https://app.education.nsw.gov.au/digital-learning-selector/LearningActivity/Card/542?clearCache=57da1fd9-9d48-bc03-d0f9-f10439e3f49c) other examples of how changing values have influenced the development of the law. Your teacher will lead a class discussion where you can share your ideas.
* Read [Same-sex marriage bill passes House of Representatives](https://www.abc.net.au/news/2017-12-07/same-sex-marriage-bill-passes-house-of-representatives/9235560) after hundreds of hours of debate. Use this example to describe the influence of changing values on the law in 1–2 paragraphs.

### Characteristics of just laws and the nature of justice

**Teacher note:** the syllabus requires students to describe the characteristics of just laws. Laws that are just often meet the following criteria: they are utilitarian, they are timely, they are known by all, they amend inequality, they are equally applied to all, they protect human rights and they are not retroactive. Understanding of the characteristics of just laws and the nature of justice is essential for students to be able to evaluate the effectiveness of the law in achieving justice. This is required in later learning sequences.

* Watch [What is Justice?](https://www.youtube.com/watch?v=hjwYcZR9fIg) (9:47) (to 1:51) and Julian Burnside’s speech, [What is Fair, and What is Just?](https://www.youtube.com/watch?v=iF4s75ZPano) (13:01) (to 4:25) and make brief notes on each. Use these notes to help you to write one paragraph outlining the meaning of justice.

**Teacher note:** the following activity uses the jigsaw strategy. [Jigsaw](https://app.education.nsw.gov.au/digital-learning-selector/LearningActivity/Card/546#.YhbvOGkJ8yY.link) provides a step-by-step outline on how to run this activity in your classroom.

* Your teacher will assign you into a ‘home’ group as part of a [Jigsaw activity](https://app.education.nsw.gov.au/digital-learning-selector/LearningActivity/Card/546#.YhbvOGkJ8yY.link) to explore the characteristics of justice.
* In your ‘home’ group, each person will be allocated one of the following characteristics of justice to research
	+ utilitarian
	+ timely access
	+ must be known
	+ amends inequality
	+ equally applied to all
	+ protects human rights
	+ must not be retroactive.
* Break into ‘expert’ groups and collaborate with your peers who have been allocated the same characteristic of justice as you. In your expert group, research your characteristic of justice and develop
* a short group description of the characteristic
* an example of the characteristic
* a short explanation of how the characteristic improves our society.
* Decide how to best explain your characteristic to your home group. Return to your home group and share your research with your team. As your team shares their research, write a 1–2 sentence description of each of the characteristics of justice.
* In small teams, examine each of the laws provided in the following table and make notes in the table on why the law may not be just. In this activity, links should be made to the characteristics of justice.

Table 3 – characteristics of just laws

|  |  |
| --- | --- |
|  Law |  Why it is not just |
| A new law has been introduced to decrease the speed limit in Newcastle. People who are caught speeding will be fined. The government has decided they are not going to tell the public about the fine |  |
| The new speeding law in Newcastle is going to be backdated to October 2019. |  |
| A mask mandate has been introduced on Sydney’s northern beaches. All blonde-haired people are required to wear masks whilst outside for any reason. No others are required to wear masks. |  |

* Read [New laws and litter penalties for littering in NSW](https://www.criminaldefencelawyers.com.au/blog/new-laws-penalties-for-littering-in-nsw/). In one paragraph, outline how this law demonstrates the characteristics of a just law.
* Laws should be applied equally, but do not always result in equal outcomes. Read the 2 scenarios as follows and use them to discuss with a peer whether justice has been achieved. Consider the following in your discussion
* Was the law known?
* Has the law been applied equally?
* What is the impact of the law on the offender?
* Have there been any unintended consequences?
* Do you think the outcome is fair? Explain your thinking.

Scenario 1 – justice scenarios

Scenario 1: Eric has spent the morning caring for his elderly mother. He lost track of time and is now late for his job at the local restaurant, where he is an assistant chef. Eric earns $700 a week, most of which he spends on rent, petrol, food and caring for his mother. Eric has been warned that if he is late to work he will be fired. Eric decides to speed on the highway, to try and get to work on time. Eric is pulled over by the police. He was driving 20kms over the speed limit. He is fined $220 in accordance with the [Road Rules 2014.](https://legislation.nsw.gov.au/view/html/inforce/current/sl-2014-0758) Eric is late to work and loses his job. He is worried about how he will pay the fine and look after this mother.

Scenario 2: Meera is a student who comes from a wealthy background. Meera does not have to work or look after anyone. She enjoys hanging out with her friends and driving around near the beach. Meera and her friends hang out on the weekend and she drives 20kms over the speed limit. Meera is pulled over by the police. She is fined $220 in accordance with the [Road Rules 2014.](https://legislation.nsw.gov.au/view/html/inforce/current/sl-2014-0758) She is not worried as she knows she can easily pay the fine.

### Procedural fairness – principles of natural justice

**Teacher note:** procedural fairness is concerned with fair decision making in the courts. Fair procedures in courts are needed for a fair trial. There are 3 main principles of procedural fairness: the right to be heard, impartial decision making free from bias, and that decisions must be made based in fact and reasoning. The materials linked in this section should be adapted or read with teacher guidance and additional explanation where appropriate.

* Your teacher will lead a brief discussion about what is meant by the idea of fair procedures.
* Read the scenario below and with a partner, complete the following
* discuss the problems with the process followed by Susan
* explain how the process followed could be made fairer for Janelle.

Scenario 2 – procedural fairness scenario

Janelle is at her office completing her daily tasks. Her boss Susan walks in and asks to speak with her privately. During the meeting, Susan tells Janelle she is being fired. When Janelle asks Susan why she is being fired, Susan says she has evidence that Janelle has breached company policy several times and so she made the decision to terminate Janelle’s employment. Janelle is upset and asks to see the evidence and the policy she broke. Susan refuses, explaining that as Janelle is now an ex-employee she does not have to show her anything, and asks her to leave. Janelle tells Susan she will speak to Susan’s supervisor Bill about this. Susan tells her not to bother, as the supervisor Bill has always disliked Janelle for personal reasons and that they made the decision to terminate her employment together. Janelle asks for the termination and reasoning to be given to her in writing. Susan says she will mail the paperwork to her, but the paperwork never arrives.

* Create your own school-based scenario where procedural fairness is not provided to a student.
* Use the scenarios above and at least one of the following resources, [Fair and Prompt Trials](https://www.ruleoflaw.org.au/principles/fair-and-prompt-trial/), [What's involved in making a 'fair' decision?](https://www.bartier.com.au/insights/articles/whats-involved-in-making-a-fair-decision-natural-justice-or-procedural-fairness/#:~:text=Natural%20justice%20or%20procedural%20fairness%20comprises%20three%20main%20components%3A%20the,basis%20in%20fact%20or%20reasoning.), [Open, Independent and Impartial Judiciary](https://www.ruleoflaw.org.au/principles/independent-judiciary/), to define procedural fairness.
* Watch [Fiqiri’s story: Forced to give up the right to a fair trial (6:47)](https://www.fairtrials.org/articles/case-studies/fiqiris-story-forced-to-give-up-the-right-to-a-fair-trial/) and make notes around the below ideas. Watch the video twice or pause through viewing for note taking
* Fiqiri’s understanding of the law
* interactions with the police, the prosecutor and the public defence lawyer
* fairness versus resource efficiency in the legal system.
* Your teacher will now lead a class discussion about the importance of procedural fairness. Share your thinking about the right to a fair trial in cases like Fiqiri’s.
* In one paragraph, explain why procedural fairness is important. Refer to the scenario or Fiqiri’s case as an example to support your explanation.

### The rule of law

**Teacher note: the rule of law is a key legal concept that informs student understanding of content explored in later preliminary and HSC legal studies. It is beneficial to spend time familiarising students with the** [What is the Rule of Law study guide](https://www.ruleoflaw.org.au/guide/index.html) for the following section. The inverted rule of law pyramid can be found by clicking ‘What happens without the rule of law’?

* Read [Rule of law](https://peo.gov.au/understand-our-parliament/how-parliament-works/system-of-government/rule-of-law/#:~:text=The%20'rule%20of%20law'%20is,to%20understand%2C%20findable%20and%20enforced.) and [No One is Above the Law](https://www.ruleoflaw.org.au/principles/equality-before-the-law/). Using this information, define the rule of law in 1–2 sentences.
* Use the [Rule of Law Wheel](https://www.ruleoflaw.org.au/principles/) to write 1–2 sentences explaining the following elements of the rule of law
* the presumption of innocence
* no retrospective laws should be made
* laws are made in an open and transparent way by the people
* the law and its administration is subject to open and free criticism
* people can only be punished in accordance with the law.
* Discuss with a peer what you think would happen without the rule of law. Use the inverted pyramid on the [What is the Rule of Law study guide](https://www.ruleoflaw.org.au/guide/index.html) to guide your discussion.
* What would life at school be like if there was no rule of law? Your teacher will lead a whole class discussion where you will share your ideas.
* Using what you have learned from your discussion, explain why the rule of law is important in one paragraph.

### Anarchy and tyranny

* Use the inverted rule of law pyramid on the [What is the Rule of Law](https://www.ruleoflaw.org.au/guide/index.html) study guide to define anarchy and tyranny in 1–2 sentences each.
* Complete a [Think-Pair-Share](https://app.education.nsw.gov.au/digital-learning-selector/LearningActivity/Card/645?clearCache=acb3a64-d702-cab5-b175-e386bb657ae#:~:text=Think%2DPair%2DShare%20supports%20students,word%20bank%20that%20is%20visible.) that answers the question: What would anarchy and tyranny look like in a school setting?
* Research in teams an example of either tyranny or anarchy that has occurred in the past. Share your research with the class in a whole class discussion, explaining how your example demonstrates the features of anarchy or tyranny.

## References

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