

0.1 Course Overview

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Competing tensions

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Folio

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Introduction

Legal Studies is a subject that has been designed to explore the structures of the Australian Legal System, the principles and values that underpin it, and to allow students to apply their learning in this area to issues in the real world.

The structure of the course has changed for 2021. There is a lesser focus on simply learning content about the legal system, and a stronger focus on allowing students to develop their own questions and investigations into the Australian legal system, to follow their own interests and passions. Students are encouraged to think conceptually, and connect values, principles and ideas between each of the Focus Areas.

The course is firstly designed around “Big Questions”. These are broad, large questions that could have many different answers, and require a lot of knowledge and understanding to address in depth. Your teacher might choose one or two big questions to focus on per Focus Area, or per chapter of this workbook. These make a great starting point at the beginning of a Focus Area.

To be able to answer the “Big Questions”, there are smaller, “Inquiry” questions that students will be addressing. These smaller, narrower questions form the basis of your learning for each Focus Area. Once you have covered all the “Inquiry” questions for each Focus Area, you should have the knowledge and understanding you need to be able to answer the “Big Questions” that you started with.

Amongst the questions, and across the whole course are the, “competing tensions”. These are ideals that run through our Legal System. These are ideas you should consider as you are learning about the different structures and principles that make up the Australian Legal system, to help you to understand the complexity of our system. They are not questions to be answered, or topics to study, rather, a way to help you access, evaluate and analyse the strengths and weaknesses of our system of government. They are explained in more depth, below.

Structure of the Workbook

The workbook has been divided up into the three separate Focus Areas as written into the subject outline.

- Focus Area 1 – Sources of Law
- Focus Area 2 – Dispute Resolution
- Optional Area 1 – The Australian Constitution

Each section, or Focus Area, is then broken down into smaller chapters (1.1–The Australian Legal System etc), in order to address different elements of each Focus Area.

At the beginning of each chapter, the authors have included suggested “Big Questions” and “Competing Tensions” from the SACE Outline that they believe fit well into each sub-chapter. Teachers and students may include and address these as they like. The “Inquiry” questions at the beginning of each chapter are also taken from the Subject Outline, and they are the focus of the content and activities.

Teachers and students are not limited to the “Big Questions” and “Inquiry Questions” as indicated at the beginning of each chapter. In collaboration, teachers and students may wish to create their own “Big Questions” for each Focus Area from their own interests that connect with the “Inquiry Questions”. Teachers and students may also wish to devise additional “Inquiry Questions” to what has been provided in the SACE Outline and/or this workbook.

The purpose of this workbook is to demonstrate how each Focus Area may be approached, and provide a starting place for research, question development, inquiry and discussion.

Unpacking the Subject

What are competing tensions?

Competing tensions recognise the opposing ideals that are at work in the legal system in its attempts to provide justice, and uphold principles such as the Rule of Law, responsible government and our parliamentary democracy. There are many different aims that our legal system is trying to achieve, and sometimes, these ideals seem to be contradictory to each other.

The purpose of including these competing tensions into the Legal Studies course is to give you the opportunity to weigh and consider each of these tensions in different contexts. By considering the competing tensions, you will automatically be considering concepts, issues, principles and structures from different angles; assisting you in your ability to analyse and evaluate.

For example—one of the competing tensions included in the Stage 2 course is, “**certainty and flexibility**”.

While not necessarily antonyms, these two concepts, or tensions, highlight opposing ideals. However, these are both tensions that we see in the legal system every day in different ways.

The Focus Area(s) that you and your teacher choose to consider this competing tension within is completely up to you and your class. We have suggested, for instance, that it be included in your study and inquiry into **Chapter 1.5 – Court Hierarchy and Case Law**.

In the context of this topic, the competing tension of “certainty and flexibility” could:

- Form the basis of a discussion at the beginning of the chapter, such as “How does the court hierarchy simultaneously provide certainty, but allow for flexibility?” This question could also be re-visited at the end of the chapter to gauge learning and understanding.
- Form the basis of a “Big Question” developed by the class at the beginning of the unit.
- Form the basis of a formative or summative assessment during the chapter.
- Students could use this set of competing tensions to devise a list of their own questions that arise through the study of the topic.
- Be visited weekly, fortnightly, or at the beginning and end of each chapter or Focus Area.

The inclusion of the competing tensions can be flexible and creative, and suit the needs of the class and their learning environment.

Big Questions

As mentioned in the introduction to this workbook, “Big Questions” are large, broad questions that are designed to:

- Promote discussion
- Allow for flexibility in the approach for each Focus Area
- Encourage critical and creative thinking
- Guide students in developing their own Inquiry questions, and areas of independent research.

Teachers and students are not limited to the “Big Questions” provided by the SACE Board, and outlined in this workbook. Teachers and students are encouraged to devise their own “Big Questions” that guide the study of each Focus Area that encompasses student interest in the context of each Focus Area.

Likewise, schools are not required to address all of the “Big Questions” outlined in the SACE document, in fact, it would be difficult to address them all in sufficient detail. We suggest choosing 1-3 “Big Questions” per Focus Area in response to student interest, to help focus the study of the Focus Area overall.

Inquiry Questions

The “Inquiry Questions” are the smaller, narrower, more direct questions in each Focus Area. These questions have formed the basis of each chapter in this workbook. Students should be able to address each of the “Inquiry” questions confidently at the end of each Focus Area.

It is these “Inquiry Questions” for the compulsory Focus Areas that will form the basis of the end of year examination.

Teachers and students may wish to add additional “Inquiry Questions” to their course of study if they like, to break down some questions into smaller parts, or to address other areas that may not have been addressed by the SACE Subject Outline, or this workbook.

Assessment

Folio – 40%

The Folio is the first assessment type. You will need to complete four tasks across the year that will be marked by your teacher. At least one of these tasks will be completed under your teacher's direct supervision, and at least one of these tasks must correlate to the Option Focus Area that your class has chosen. Additionally, students will be assessed on their ability to address one set of the competing tensions in at least one assessment task.

Schools have the flexibility to choose their own task types to suit the strengths of the students, and their interests. The maximum word count for all the tasks combined is 4,000 words. Schools may allocate the word count as they wish.



Helpful online resources

Schools may wish to visit the SACE website for examples of different assessment items.

<https://www.sace.sa.edu.au/web/legal-studies/stage-2-in-2021/assessment-type-1-folio>



Inquiry – 30%

The Inquiry task is an independent task that gives students the flexibility to develop their own question about the Australian legal system to investigate an area of interest.

There are a few requirements that students must meet to be successful:

- The question must address an element of the Australian Legal System
- The question must address one set of the competing tensions in some way (this does not need to be explicitly written into your question, although it can be)
- The maximum word limit is 2,000 words

Chapter 0.2 has some detailed tips and tricks for developing strong Inquiry questions, undertaking good quality research and referencing help to get you started.



Helpful online resources

Schools can also access more information by visiting the SACE website for further information about the Inquiry task:

<https://www.sace.sa.edu.au/web/legal-studies/stage-2-in-2021/assessment-type-2-inquiry>



Examination – 30%

The new Legal Studies course has a new examination.

From 2021 onwards, the Legal Studies examination will be two hours in length, online, and feature two parts:

- Part 1: Response to Sources
- Part 2: Extended Response

Part 1 – Response to Sources will be based upon one, or both, of the compulsory Focus Areas (Sources of Law and Dispute Resolution), as all SACE students will be addressing these Focus Areas. Students will be provided with a range of sources that could include:

- Excerpts from legislation
- Photos
- News articles
- News clips (television)
- Videos
- Court judgements
- Sentencing remarks
- Hansard etc.

Students will then be provided with a series of questions that they must answer in response to the sources they have been provided. They will increase in complexity from the first question to the last question.

Part 2 – Extended Response will feature four different questions that students can choose from. They must choose only one of the questions to address as an extended response. There will be one question from each Focus Area: Sources of Law, Dispute Resolution, the Australian Constitution and When Rights Collide.

As this is an extended response, students should be aiming to write a completed essay, that addresses both sides of an argument, and is an **extended piece of writing**. As a general rule of thumb, students should be aiming for three (at least) good length paragraphs, with an introduction and conclusion. Students should use examples to demonstrate their points—fictional examples are fine if students cannot think of real world examples that suit the question.

As per the subject outline, students are not required to be able to quote the Australian Constitution, or pieces of legislation in order to be successful in this task. However, if students are able to do so accurately, it would be to their benefit.

Helpful online resources

At the time of writing, the Legal Studies examination has not yet run in this format. Students and teachers can visit the SACE website for an example examination paper, based upon the Subject Outline, after December, 2020.

<https://www.sace.sa.edu.au/web/legal-studies/stage-2/assessment-type-3>



0.2 Essential Skills

Skills covered in this chapter:

- How to research effectively
- How to reference, incorporate quotes into your work, and paraphrase
- Using different referencing systems
- How to analyse and evaluate sources
- How to interpret essay questions and write an effective essay
- How to conduct a legal inquiry

How to Research Effectively

To undertake effective research, it is important to:

- Identify quality sources
- Cross-check information
- Ensure correct paraphrasing or quoting of text
- Correct referencing of sources

Identifying Quality Sources

Identifying a quality source when researching relies upon finding reliable and accurate information.

When conducting research online:

- Consider using “Google Scholar”, rather than only Google. Google Scholar will automatically filter results to return academic sources in any search result, such as government sites, published texts, and peer-reviewed sites. Additionally, schools may subscribe to databases through the Library or Resource Centre which operate in a similar way and offer quality sources without having to sift through a large number of search results.
- Look at the URL of the site visited. Does it end with, “.gov”, “.org”, or “.asn”? These sites are typically run by government or private organisations, and while they should still be cross-checked, due to the nature of their business or organisation, are likely to be a reliable starting point.
- Is the site authored by an individual or group of individuals?
- If yes, have a look at their credentials, if provided. Are they a journalist? An academic? Their qualifications and/or job title will give a strong clue as to the reliability and accuracy of this source.
- If not, the site, and information, may not be reliable.
- When using media articles, consider the following:
 - What type of article is this? (News report, opinion piece etc)
 - Who is the publisher (a major news organisation, small independent publication, satirical website etc), and will this impact on the reporting of information?
 - Is the same information available in an article from a different source?

Using published texts (ie—a textbook, or work of non-fiction such as an encyclopedia) is also a good, reliable starting place. Before publication, these sources are proof-read and checked by editors for factual accuracy. Peer-reviewed journal articles are also reliable sources due to the nature of the reviewing process before publication.

Below is a list of reliable sources for the study of SACE Legal Studies:

- South Australian parliament website: <https://www.parliament.sa.gov.au/>
- Northern Territory parliament website: <https://parliament.nt.gov.au/>
- Australian Federal parliament website: <https://www.aph.gov.au/>
- Austlii (Australasian Legal Information Institute): <http://www.austlii.edu.au/>
- South Australian Courts Administration Authority: <http://www.courts.sa.gov.au/Pages/default.aspx>
- Northern Territory Courts: <https://justice.nt.gov.au/attorney-general-and-justice/courts>
- High Court of Australia: <https://www.hcourt.gov.au/>
- Australian Law Reform Commission: <https://www.alrc.gov.au/>
- Jade (online search for Australian legal judgments)—<https://jade.io/>

Cross-checking Information

When conducting research, it is very important to cross-check information for accuracy. The volume of information available online necessitates cross-checking your sources and is an important step to ensure information found is factually accurate and reliable. Having identified a potential source for an assignment, look at a separate, unrelated source to check whether consistent information is presented. Multiple sources reporting the same information, will indicate the source is accurate, and therefore, a good source.

I Independent Activity

Practise research skills to find **reliable** and **accurate** resources.

Task: Find eight sources of information about the role of a jury in the adversarial system of trial.

Search #1 – Search Engine

1. Write key words to use in a Google search below:

Select **up to six results** and input the information below. With the reliability column, consider data in the previous three columns as a starting point to assess reliability.

Site (title or url)	Author	Source Type	Reliability?
Legal Services Commission–“Role of the Judge and Jury” https://lawhandbook.sa.gov.au/ch13s04s08s01.php	Legal Services Commission	Information page	This information is published on behalf of the South Australian Government, and the organisation’s primary role is to provide citizens with accurate legal information. Therefore, it is likely to be highly reliable.

I Independent Activity

Search #2 – Online Encyclopedia/Online Journals/Google Scholar

Write down the key words to be used in a search of an online encyclopedia or online journal below:

.....

Select **up to three results** and input the information below. With the reliability column, consider the data in the previous three columns as a starting point to assess reliability.

Site (title or url)	Author	Source Type	Reliability?
International Journal of the Sociology of Law (Google Scholar search)	Dr Mark Israel	Journal Article	This peer-reviewed journal article was published in 1998, by Dr Israel of Flinders University, SA. While a little old, this article is peer-reviewed, and written by a university professor. A reliable source.

Reflect on the search results and answer the questions below.

1. What types of results did the selected search words reveal?

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2. Overall, were identified sites reliable sources of information, or a mix of reliable and less reliable?

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3. What differences emerged between the results from a search engine, when compared to results from an online encyclopedia or journal?

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4. What changes can be made to improve the quality of future search results?

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Quotes, Paraphrasing and Referencing

When undertaking research, it is imperative to reference the authors or organisations who have provided the information which will be used. Copying images, text, figures and sources, without acknowledging the original author, is plagiarism. Plagiarism refers to theft of intellectual property and is a serious academic offence. Under SACE policy, teachers cannot mark plagiarised work, and a student will only be rewarded for the percentage of work completed in their own words.

At university, incidences of plagiarism can result in failure of a subject, being excluded from a degree, and in some instances, such as the practise of law, permanent exclusion from admission to the profession.

Referencing research

** All examples of referencing in this section are written using the Harvard referencing system **

General knowledge does not require a reference. A good way to measure whether something requires referencing is to consider what was already known before undertaking the research. If a piece of information is already known by the researcher (such as the fact the sky is blue, or the lowest court in the South Australian court hierarchy is the Magistrates Court), it does not need to be referenced.

When using a source as the basis for an argument or task, students can choose to either paraphrase the work of the original author, or insert a direct quotation. Both of these options require an in-text reference (or footnote, depending on the referencing system of choice), and a citation in a bibliography at the end of the document.

A direct quotation is inserted into the text with the use of double quotation marks, followed immediately with an in-text reference. For example, "If plagiarism is detected in the work submitted for marking, teachers should allocate a grade based upon the work that is the students own" (SACE, 2020 p24). This method of inserting a source into work means the information can be included word-for-word as there is acknowledgement the wording and ideas are credited to the author exactly as they appeared in the source.

The alternate method of using a source in work is through paraphrasing.

Paraphrasing is where someone else's idea forms the basis of what is written, but the actual information communicated is different from the original text. The most effective way to do this, is make notes from the original source, and use the notes to generate text used in the assignment. This will ensure there is no unintentional plagiarism, or direct copying of phrases or sentences. An in-text reference is still required as acknowledgment of the use of another's ideas.

Reference for quote:

South Australian Certification of Education (SACE), 2020. *Breach of Rules Information Sheet 03*. Accessed 14 September, 2020, at <https://www.sace.sa.edu.au/coordinating/admin/information-sheets/03>

Example of Paraphrasing

The text used below is from:

Bailey, G. 2008, *Legal Studies Key Ideas: SACE Stage 2*, 2nd edition, Essentials Education, Adelaide, Australia (pg 188).

Original text – Parliamentary Deadlock

In the Commonwealth Parliament a deadlock, as defined in section 57, occurs when the House of Representatives passes a bill twice and it is rejected twice in the Senate after a lapse of three months between each rejection. This process must occur in the same tenure of the parliament.

Example of Poor Paraphrasing

In Commonwealth Parliament a deadlock, as **outlined** in section 57, occurs when the House of Representatives passes a bill **two times** and it is **defeated** twice in the Senate after a **gap** of three months between each **defeat**. This process must occur in the same tenure of the parliament.

What are the problems here?

1. Sentence structure is the same as the original
2. Most sentences remain largely unchanged. Only a few words have been altered to give the appearance of paraphrasing or re-writing (highlighted).
3. There is no reference for the source of this information
4. Several sections are identical to the original and no quotation marks are included.

Example of Correct paraphrasing

A parliamentary deadlock occurs when the House of Representatives attempts to pass a bill twice, but it is blocked in both attempts by the Senate. At least three months must pass between each rejection of the bill, and each rejection must occur within one term of parliament for this to meet the Constitutional definition of a deadlock under section 57 (Bailey, 2008).

What makes this accurate paraphrasing?

1. While the information is the same, it is not presented exactly as it appeared the original text hence is not a direct quote.
2. The writer has changed the language used to explain the information/concept, while retaining accurate legal terminology
3. The writer has acknowledged the source of the information.

** Note: A page number is only required for direct quotes.

How to Analyse and Evaluate Sources

Many of the principles and ideas listed above under the heading “Identifying Quality Sources” are relevant here, when considering how to analyse and evaluate a source.

Why evaluate and analyse sources?

There are several reasons, but primarily, sources of information are evaluated and analysed to determine their usefulness and accuracy, and inclusion or non-inclusion in a piece of work. When using a source of information as the basis of an assignment or essay, it is important the source is factual. Using an unreliable source as the basis of an assignment can cause significant problems and result in work which is factually inaccurate.

The Internet is full of information, but the lack of regulation means anyone can publish with little or no regard to accuracy, honesty or fact. Analysing and evaluating sources ensures selection of trustworthy sources at the expense of unreliable sources.

When analysing and evaluating sources, consider the questions listed below:

1. Authorship

Who wrote the source? What is their background? What particular skills, academic background, life experience, qualification etc do they have which might inform their work? Is there the potential for bias in this source because of the relationship between the author and content? Has there been a disclosed conflict of interest?

2. Audience

Who is the intended audience for the source? Has it been designed to reinforce beliefs, or challenge them? Where was the information published, and who can access it? Does the language used target a specific audience? What language was the source originally published in, and has the message been affected through translation?

3. Purpose

Has the source been developed to inform, or entertain? Is the source designed to be informative, or persuasive? Is this source designed to reinforce existing beliefs, or challenge them? Is this source a form of advertisement or propaganda?

Remember, when analysing sources:

- Just because a source is biased, does not necessarily make it bad, or unreliable. These are important considerations when assessing its usefulness. Statements released by political parties, for example, are obviously going to be biased to align with a political party’s ideology. These are still useful sources and, if reflective of bias, such bias can be acknowledged in the submission of a piece of work.

How to Interpret Essay Questions to write an effective Essay

When interpreting essay questions, it is important to break the question down into parts in order to determine what structure the question demands, and what content is required in order to answer the question appropriately.

For example, consider the essay question below:

*To what extent is a **jury** an **essential element** of the **adversarial system of trial**?*

Firstly, consider the structure required for the question above. The words “To what extent” indicate this is an argumentative essay. “To what extent” is another way of asking, “how far”, “how much”, or, “to what degree”, is this statement true?

Secondly, consider the content required to answer the question. The question can be broken down as demonstrated below.

To what extent is a jury an essential element of the adversarial system of trial?

Three elements need to be addressed to correctly and thoroughly answer the question. Firstly, consider the role of a jury. Secondly, address whether or not a jury is “essential”. Thirdly, both of these things must be considered in the context of the adversarial system of trial. Each of these elements must be addressed in order to successfully answer the question. Simply outlining the role of a jury in an adversarial trial, for example, would not successfully answer the question and would result in a marginal grade.

Writing an Effective Essay

Deconstruction of the question has identified the need to write an argumentative essay, considering whether or not a jury is an essential element of the adversarial system.

Step 1: Research

As outlined in other places in this chapter, the research stage of an assignment is important. High-quality sources and accurate information will contribute significantly to a high-quality assignment.

All information gathered in the research stage should be analysed with regard to its reliability and accuracy. Where possible, students should be looking to find multiple, independent sources with the same information. As a guide, one reference per 100 words is something to aim for; so, for example for an 800-word assignment, eight independent sources should be accessed.

When undertaking research, **note-taking** is an important step that should not be overlooked. Many students can get into trouble with plagiarism when researching, through simply copying and pasting slabs of relevant text into their document. While the intention is usually to re-word the original text, this is often overlooked, and can have serious consequences. Making notes from the original source, greatly reduces the risk of plagiarism.

Some key reminders for effective note-taking:

- Write down your source! There is nothing worse than trying to locate the source of information at the end of an assignment.
- Try to write in dot-points or short sentences.
- If selecting direct quotes from the source, make sure they are included in quotation marks even when note-taking. This serves as a visual reminder they are not your own words, and that quotation marks need to be included. This also helps to remind you where your in-text references or footnotes need to go. Alternately, highlighting this text in another colour can also serve as a visual reminder to complete the required referencing.
- If lists of notes are not effective, try using a graphic organiser to note-take, like a mind map, fishbone diagram, bubble chart, etc. Most graphic organisers can be downloaded online for free.
- It is also helpful to categorise your notes by:
 - Author
 - Paragraph
 - For/Against side of your question

Step 2: Essay Plan

Writing an essay plan may feel like an unnecessary step, but it is a good practise to get into. Creating an essay plan allows organisation of thoughts and ideas, before commencing writing. This makes for easy identification of paragraphs lacking evidence or examples before the writing begins. It also helps to identify whether an argument is unbalanced, and if all the elements of the question have been addressed.

Having all this information before starting the final write-up saves time, rather than sitting and staring at a blank screen, trying to think of things to write.

A number of planning tools can ensure paragraphs are well constructed and have all necessary elements. Some suggested models include:

The TEEL paragraph method:

- Topic sentence
- Explanation
- Example/evidence
- Linking sentence (back to question, or to next paragraph)

The SEE paragraph method:

- Statement
- Example
- Evidence

The PEEL paragraph method:

- Point
- Evidence
- Explanation
- Link

While each of these is a slightly different acronym, they all follow roughly the same pattern. Clear paragraphs begin with a topic sentence to introduce the idea, are followed by an example and some evidence, and then conclude by linking the argument back to the question.

I Independent Activity

Below is a model paragraph written to address the proposed essay question; *To what extent is a jury an essential element of the adversarial system of trial*. Using highlighters, highlight each feature of the paragraph as you read it.

- The topic sentence/statement
- Evidence
- Example/explanation
- Link

To what extent is a jury an essential element of the adversarial system of trial?

To a large extent, a jury is not an essential element of the adversarial system of trial, as they do not fulfill the requirement of being “peers of the accused”. Many circumstances provide a juror grounds to apply for exemption or deferral from jury service, or reasons they may be ineligible for service, meaning certain groups in society are subsequently over or under-represented in a jury. This does not guarantee a broad cross-section of the community are available for jury duty. For example, people with small businesses, or prominent medical or business specialists will likely be exempted from service as replacing them in their employment can be difficult. Similarly, by removing people with criminal backgrounds, people with a broad range of lived experiences and different perspectives are not included. This results in a jury comprising a narrow rather than broad cross-section of society they are intended to represent. A less representative jury can be detrimental for an accused, as the jury does not represent the community at large, but rather, a narrow range of community members who are not peers of the accused. This is despite the ideal a jury is supposed to be a trial before one’s peers. Therefore, to a large extent, a jury is not an essential element of the adversarial system, as it fails to represent a broad cross section of the community, or “peers of the accused”.

I Independent Activity

Essay Plan Template

Question (write here): _____

Introduction:

Remember to include:

- An overview of the question, or issues around the question (this could include background/context of the issue)

- Definitions of all key terms. They are:

- Topic sentences:

Paragraph 1:

T: _____

E: _____

E: _____

L: _____

I Independent Activity

Paragraph 2:

T: _____

E: _____

E: _____

L: _____

Paragraph 3:

T: _____

E: _____

E: _____

L: _____

Conclusion

Remember to:

- Briefly summarise main arguments, and highlight most important/strongest evidence
- Make specific recommendations (where appropriate)
