CHAPTER 1 Skills for Legal Studies

This skills chapter has been developed so that students studying Legal Studies in Queensland can learn more effectively from their class lessons and assessment tasks, and through the use of this textbook. Senior Legal Studies aims to encourage students to be better able to recognise legal situations and issues so that they can know and understand their legal positions, rights and responsibilities as members of society. Students need knowledge to develop an understanding of the legal framework that helps regulate and shape our society, to formulate their personal views of the world and to understand the ways in which the law affects their world.

The study of Legal Studies over the two years of the course requires students to develop many skills to:

- access, select and organise information from diverse sources
- analyse and evaluate the quality and validity of legal information
- interpret and critically analyse data
- plan and organise inquiry activities
- use certain technologies, particularly the use of information technology and systems
- examine fact situations, apply relevant legal principles and solve problems
- communicate effectively using a range of spoken, written, graphic and other non-verbal means of expression for a variety of audiences
- construct comprehensive, well-informed explanations and draw detailed, convincing and valid conclusions.

The skills chapter of this textbook aims to help you with both language and research skills. In the first year of the course, students particularly need to concentrate on their language skills, and so this skills chapter will help you to:

1. Plan to write, and write for particular purposes and for a variety of audiences:
   - in paragraphs (explanations, summaries)
   - more extended responses under a range of conditions, for example, homework, test, assignment
   - writing and research tasks that involve the completion of a number of tasks progressively (developing a hypothesis or thematic statement, planning your response, writing drafts, appropriate referencing and bibliography).

2. Be familiar with legal terminology, formats and procedures, in order to:
   - understand and use case citations
   - read and understand law reports
   - read and understand statute law
   - read and analyse fictitious fact situations or real cases
   - participate in mini-moots and moots (mock trials).
3. Understand the requirements of the Senior Legal Studies course through the four criteria of assessment and apply that understanding to successfully complete set tasks. A detailed description of the four criteria of assessment that are applied to Legal Studies assessment tasks are provided on pages 21–3.

Students also need to focus on developing their research skills because the second year of the course requires them to complete a major research assignment, called an Independent Study.

The Independent Study allows students significant freedom in the choice of topic to be investigated as well as the approach the students may take with their topic, that is, an in-depth treatment or a breadth treatment. Students will be expected to develop a thematic statement or thesis that presents a focus for their independent study, as well as prepare five or six working questions that relate to their thematic statement. The Independent Study usually takes many weeks to research, organise and write, so research skills are very important to develop to successfully complete this task. A detailed description of the four criteria of assessment that are applied to Legal Studies assessment tasks is provided later in this chapter.

The skills chapter will make you aware of:
1. Where legal information is available and how it can be accessed:
   - print resources and audio and/or visual media
   - the different types of legal information available and how to approach them
   - electronic media, particularly the internet
   - other sources of legal information.
2. How to be an efficient and effective researcher by
   - reading resources available in print or electronically
   - making notes as you research — summarising, paraphrasing, annotating
   - discriminating available resources and selecting what is relevant to your task
   - acknowledging your sources of legal information.
3. How to plan, organise and conduct research in the community through interviews, questionnaires and presentations by guest speakers.

Language skills

1. Planning to write, and writing

Writing paragraphs (for explanations or summaries), and extended responses

Structure your writing. All good writing has a structure. Structure provides the order in which ideas are presented. Structure helps the writer express ideas logically as well as helping readers understand what they are reading.

Good writing is structured in sentences to form paragraphs. Paragraphing helps writers to present information in an organised and logical way. A paragraph is a group of complete sentences. A complete sentence clearly conveys its meaning. The reader does not have to rely on reading and understanding the previous or following sentence to understand a complete sentence.
Plan your writing as a whole. Plan its main divisions (for example, in a report), its sections (for example, in an extended response — an assignment or seminar presentation), its paragraphs (for example, in a short written response of 100–200 words), even its sentences.

Develop a paragraph plan to guide the order of the paragraphs. Write out a series of brief headings that stand for each paragraph. Each paragraph should make one clear point that was presented in the topic sentence. The other sentences — the supporting sentences of the paragraph — expand on the main point by, for example, making comparisons or providing examples, or providing evidence or reasoning to support the main point.

When you move on to a new idea, start a new paragraph. A word, phrase or sentence is usually written to link paragraphs and show the progression of ideas. Link ideas from sentence to sentence and paragraph to paragraph.

Know what you want to communicate before you begin. Before you try to write in the form required, think about what you’re trying to say. Even plan for each sentence before writing it down (particularly when under the pressure of exams)! If you start writing a sentence without thinking about what you are trying to say, you will always find writing that sentence (and writing, in general) more challenging than it has to be. It is also much easier to communicate your message through shorter sentences than longer ones.

Be aware of sentence structure, sentence length and variety. Different sentence structures and lengths provide interest for the reader. If your writing has a rhythm or flow when read, it carries the reader along and makes understanding of the writing easier. Have you ever received a comment from a teacher that your assignment or writing was ‘a pleasure to read’? If so, your writing has succeeded not only in clearly conveying meaning to your intended audience but in involving the reader. You have probably experienced this pleasure yourself when reading a novel you found hard to put down!

Read your written words aloud. Listen to how your sentences sound. If they sound awkward and do not flow well, you need to revise your sentence structure, length and variety.

Writing for particular purposes and a variety of audiences

In Year 11 Legal Studies you will be required to develop your writing skills so that you can express yourself clearly, logically and fluently in anything from a couple of paragraphs (approximately 100 words) up to an extended response requiring 600 to 1000 words.

Procedural writing is writing that is structured in a particular way as you attempt to describe, identify or analyse certain legal content. For example, you may be required to explain the essential features of a law (critically), examine how a law was applied in a real case or how it could apply to a set of facts, or outline a legal procedure. Later in this chapter, a guide to studying real and fictitious individual legal cases provides a suggested writing structure for answering case problems.

The purpose of your writing may be to persuade the reader to your point of view (persuasive writing) or to analyse a set topic and persuade the reader that your thesis is correct by developing an argument to support it (argumentative
writing). Many of these forms of writing require you to assess the relationship between the legal system and the community it serves. In other words, you must evaluate the effects (real and potential) of current legal outcomes — for example, legal decisions or new laws — on the community, that is, their consequences and implications for society (evaluative writing).

**Newspaper items — news stories, feature stories, editorials and letters to the editor**

*News items present information in different ways.* News stories should describe the facts of an event clearly and objectively, using unbiased language. The first sentence of a news story should present answers to the who, what, when, where and why of the event. The rest of the story provides background or elaborates upon the basic information already presented.

News items that do indicate a particular viewpoint or bias include feature stories, editorials and letters to the editor (written by newspaper readers). Feature stories tend to discuss issues raised by a news event and are often presented with the writer's opinion, using subjective, that is, emotive and provocative, language. Editorials (written by the editor of the newspaper and representing the newspaper's position) also present a particular viewpoint of a news event or newsworthy issue. Feature articles, letters to the editor and editorials are published every day in newspapers. It is worthwhile reading feature stories, editorials and letters to the editor to become aware of different views expressed by members of society.

**Writing in report format**

You may be required to provide a description and explanation in a report format that helps you organise your writing. A report format may be used to describe and explain your experiences on an excursion to the Supreme, District and/or Magistrates courts. Report writing may be the chosen genre when the main criterion of assessment to be applied to the task is the first criterion that Year 11 students must familiarise themselves with, *knowledge and understanding*.

A report may be based on the following structure:

1. Title page and table of contents (use roman numerals: (i), (ii), et cetera for these page numbers.)
2. Introduction (use Arabic figures: 1, 2, et cetera on pages for the rest of the report.)
3. Body of report — main points presenting information and/or discussion
4. Conclusion
5. Bibliography
6. Appendices.

1. The title page presents the title of your report, your name and class. The table of contents presents a precise list of what is contained in your report. It should contain the introduction, the headings you have chosen for the body of the report, your conclusion, bibliography and appendices, and accurate page references. The title page and table of contents page demonstrate your organisation of information in the report. Head the table of contents page, ‘Table of Contents’.
2. The introduction explains the purpose of your report and provides an explanation of how you will present your information in the body of the report. Head the page, ‘Introduction’.

3. The body of your report should be presented with headings (and, if necessary, subheadings) which draw your reader’s attention to the main points you are presenting and the order in which they appear. After each heading, you should present your points in logical paragraphs. (Subheadings may require only one or two paragraphs.)

4. The conclusion restates the main points you have presented in the body of the report and makes recommendations. Head the page, ‘Conclusion’.

5. The bibliography is a list of sources that you used in your research of the assignment. Sources can include texts, magazines and journals, videos, interviews with people with expert knowledge as well as information accessed by computer using CD-ROM or the internet. Include appropriate publishing details for print and electronic materials, as previously mentioned. For internet sources, this might include the date on which you accessed the site.

   Provide details of the title of the video or television program, its origin, date of broadcast of the television program or the date the video was made. If you have interviewed people, provide details of their name, position, type of information obtained from the interview, and date of interview. Head the page, ‘Bibliography’.

6. An appendix or appendices should be used to present relevant information that you have referred to in the body of your report. Each item, for example, a list of tables and figures, brochures and application forms, should be named as Appendix A, ‘Appendix B’, et cetera. Attach the appendices in order at the back of the report. Check with your teacher that you are preparing the appendix properly.

**Written submissions/research assignments**

An extended writing task may provide students with a specific list of topic statements where they are required to choose one topic statement only, or students may be given a broad subject area to research and write about. The provision of a general subject area rather than a more specific focus allows students significant freedoms in their approach to their writing task. This is a worthwhile process for students to experience in light of the similar, but significantly more demanding assessment task, the Independent Study, required to be completed by students in the second year of the Senior Legal Studies course.

**Choosing your topic statement from a specific list of topics**

When you are given a writing task, the first decision you make will be about which topic statement or thesis to choose. If you have been given the freedom to choose your own topic rather than from a selection set by your teacher, make sure you choose a topic that has suitable legal issues surrounding it. Many students make decisions about a topic statement or thesis without assessing what exactly it requires.
You should carefully read all topic statements presented and find at least one that appeals. Before committing to one topic, however, you should assess each topic statement, by considering:

(i) your interest level
(ii) the scope of the topic statement or thesis

Some tasks may provide broad scope for treatment while others may require a detailed and specific response. Some general topics may seem easy to tackle. Don't end up swamped by information where you find it difficult to identify what information is needed for your response.

Underline or highlight the key words or phrases. Key process words (also called prompts or cues) in the topic statement, such as ‘analyse’, ‘demonstrate’ and ‘prove’, indicate the appropriate approach to the topic. Key content words indicate the specific area of the subject to be investigated, for example, ‘laws relating to minors’. Examples of key process words are presented in figure 1.2 later in this chapter.

(iii) your current knowledge of the topic

List relevant points. Write down in point form all of the things you know that are relevant to the topic (brainstorming; see figure 1.1). Do you have enough current knowledge to correctly work out what the topic requires you to discuss? Discuss your interpretation of the topic with other students or your teacher. Brainstorming can be especially helpful when your topic statement is general rather than specific in focus.

(iv) availability of resources on the topic

Research skills are covered in detail later in this chapter.

FIGURE 1.1

Developing your own topic statement or thesis

Some writing tools present a broad subject area in which to conduct research, for example, ‘Criminal Law’, or ‘Describe the Criminal Law in Queensland’. It may be acceptable to present a very general discussion of a number of areas of interest within the topic, or to focus on one specific area of interest in greater detail. If possible, discuss your approach with your teacher.

If you have the freedom to research within an area, for example, Criminal Law, it is a good idea to compose your own topic statement to suit both your interest and your available research opportunities: for example, ‘Describe Offences Against the Person in the Queensland Criminal Code’. Composing your own topic statement should help focus you on your research and keep you on the task you have set yourself.
Topic statements also contain words that limit the scope of the topic, for example, ‘Describe the recent amendments to Offences Against the Person in the Queensland Criminal Code’. This topic statement does not require a discussion of all changes to the criminal law in Queensland but only changes to Offences Against the Person.

If we add to this topic statement, ‘and assess how effective these changes could be to the maintenance of law and order in the community’, you are also required to consider the reasons behind these new laws, and how effective they may be in preventing or reducing crime in the community. This question requires you to evaluate the law, which is an important skill for Legal Studies students. Is it a good law or not? Does society need this law? Why?

Some assignment topics provide you with a statement of facts followed by a sentence that provides a context for the discussion. For example, ‘After many years of examining the Criminal Code Act 1899 and recognising the need for the law to keep up with technological change in the community, the government has created ‘new’ laws. Describe these recent amendments to the Criminal Law in Queensland.’ For this topic, you would have to discuss the new laws relating to technology, for example, phishing, and discuss them in the context of the need for the law to keep up with changes in the community.

Know your approach to the topic statement. Each assessment task should be accompanied by its criteria of assessment, assessment descriptors and whether they are formative or summative. If you are given a very general topic to discuss, for example, ‘Criminal Law’, the criteria of assessment and assessment descriptors will provide you with more guidance.

If your topic statement is more detailed, an understanding of key process words will help you to develop an appropriate response. For example, if the question asked you whether euthanasia should be legalised or decriminalised, one issue will be the meaning of these words.

**FIGURE 1.2 Examples of key process words**

<table>
<thead>
<tr>
<th>Key process words</th>
<th>Meanings</th>
</tr>
</thead>
<tbody>
<tr>
<td>Account for</td>
<td>Give reasons for</td>
</tr>
<tr>
<td>Analyse</td>
<td>Find the main ideas/essential features/elements and explain how they are important; identify trends</td>
</tr>
<tr>
<td>Assert</td>
<td>Express a view confidently; state as true</td>
</tr>
<tr>
<td>Assess</td>
<td>Fix or determine the amount of/value of/effectiveness of</td>
</tr>
<tr>
<td>Classify</td>
<td>Arrange or distribute according to similar groupings, categories (classes)</td>
</tr>
<tr>
<td>Comment on</td>
<td>Discuss/criticise</td>
</tr>
<tr>
<td>Compare</td>
<td>Show similarities and differences</td>
</tr>
<tr>
<td>Contrast</td>
<td>Compare by explaining and discussing the differences</td>
</tr>
<tr>
<td>Conclude</td>
<td>Present your opinion/judgement with reasons to support it</td>
</tr>
<tr>
<td>Consider</td>
<td>Think carefully about, reflect on, take into account</td>
</tr>
<tr>
<td>Criticise</td>
<td>Present your opinion or judgement with reasons to support it (Helpful criticism shows both good and bad points.)</td>
</tr>
<tr>
<td>Critique (verb)</td>
<td>Criticise, review</td>
</tr>
</tbody>
</table>

(continued)
### FIGURE 1.2  (continued)

<table>
<thead>
<tr>
<th>Key process words</th>
<th>Meanings</th>
</tr>
</thead>
<tbody>
<tr>
<td>Debate</td>
<td>Discuss the two opposing points of view</td>
</tr>
<tr>
<td>Decide</td>
<td>Settle something in dispute; make a judgement</td>
</tr>
<tr>
<td>Define</td>
<td>Explain the meaning of; describe its essential features</td>
</tr>
<tr>
<td>Deliberate (verb)</td>
<td>Carefully consider before deciding; make a decision</td>
</tr>
<tr>
<td>Demonstrate</td>
<td>Explain or make clear by presenting examples</td>
</tr>
<tr>
<td>Describe</td>
<td>Give a brief or detailed account; write about its features</td>
</tr>
<tr>
<td>Determine</td>
<td>Make a decision or work out an answer after appropriate thought and investigation</td>
</tr>
<tr>
<td>Develop</td>
<td>Work out systematically, step by step</td>
</tr>
<tr>
<td>Devise</td>
<td>Create a new way of doing something, a new solution or plan</td>
</tr>
<tr>
<td>Diagram</td>
<td>Make a representation — drawing, graph, chart, flow chart</td>
</tr>
<tr>
<td>Differentiate</td>
<td>Recognise and point out the difference; distinguish; discriminate</td>
</tr>
<tr>
<td>Discern</td>
<td>Recognise or clearly understand appropriate information; distinguish; discriminate</td>
</tr>
<tr>
<td>Discover</td>
<td>Find out, detect</td>
</tr>
<tr>
<td>Discriminate</td>
<td>Know and show the differences between; select relevant information</td>
</tr>
<tr>
<td>Discuss</td>
<td>Describe, present ‘for’ and ‘against’ argument, debate</td>
</tr>
<tr>
<td>Distinguish</td>
<td>Point out the differences</td>
</tr>
<tr>
<td>Enumerate</td>
<td>List — name and list in logical order</td>
</tr>
<tr>
<td>Estimate</td>
<td>Form a view, make an approximate judgement</td>
</tr>
<tr>
<td>Evaluate</td>
<td>Measure the worth or value of, or assess the relevance of or appropriateness to</td>
</tr>
<tr>
<td>Examine</td>
<td>Investigate all aspects, carefully study all available facts</td>
</tr>
<tr>
<td>Explain</td>
<td>Present in detail, provide reasons for</td>
</tr>
<tr>
<td>Expound</td>
<td>Explain or state in detail; assert a view or theory with evidence in support</td>
</tr>
<tr>
<td>Formulate</td>
<td>Express in a precise way; state systematically</td>
</tr>
<tr>
<td>Generalise</td>
<td>Make a general statement that accurately applies to similar specific things</td>
</tr>
<tr>
<td>Identify</td>
<td>Recognise something, prove something to be as it is presented</td>
</tr>
<tr>
<td>Illustrate</td>
<td>Make drawings that explain; provide examples, comparisons et cetera in support</td>
</tr>
<tr>
<td>Infer</td>
<td>Interpret, judge from evidence presented</td>
</tr>
<tr>
<td>Interpret</td>
<td>Explain what you understand from/by</td>
</tr>
<tr>
<td>Judge</td>
<td>Assess; evaluate; form an opinion/view; criticise</td>
</tr>
<tr>
<td>Justify</td>
<td>Provide reasons or evidence to support your view/claim/conclusion</td>
</tr>
<tr>
<td>List</td>
<td>Form a sequence or series in order</td>
</tr>
<tr>
<td>Outline</td>
<td>Briefly describe the main features logically; summarise</td>
</tr>
</tbody>
</table>
### Key process words

<table>
<thead>
<tr>
<th>Key process words</th>
<th>Meanings</th>
</tr>
</thead>
<tbody>
<tr>
<td>Paraphrase</td>
<td>Rewrite the content presented, using your own words</td>
</tr>
<tr>
<td>Plan</td>
<td>Work out and outline an arrangement, procedure, design</td>
</tr>
<tr>
<td>Predict</td>
<td>Assert a view about something beforehand</td>
</tr>
<tr>
<td>Prioritise</td>
<td>Put in order of importance; rank</td>
</tr>
<tr>
<td>Propose</td>
<td>Suggest a plan; put an idea forward for consideration; recommend</td>
</tr>
<tr>
<td>Prove</td>
<td>Test; show or explain why something is true</td>
</tr>
<tr>
<td>Quote</td>
<td>Repeat or copy down an author’s words exactly</td>
</tr>
<tr>
<td>Recommend</td>
<td>Advise; suggest a plan of action</td>
</tr>
<tr>
<td>Relate</td>
<td>Explain the relationship between; tell a story</td>
</tr>
<tr>
<td>Report (verb)</td>
<td>Write a formal account or statement using standard English, that is, correct spelling, grammar, punctuation; and subject-appropriate terminology</td>
</tr>
<tr>
<td>Resolve</td>
<td>Settle on by choice; determine; deal with</td>
</tr>
<tr>
<td>Restate</td>
<td>Express (write or speak about) the content presented using your own words</td>
</tr>
<tr>
<td>Review</td>
<td>Consider the facts; look over again; discuss critically</td>
</tr>
<tr>
<td>Solve</td>
<td>Decide; find an answer; clear up or explain</td>
</tr>
<tr>
<td>State</td>
<td>Describe the main points clearly and specifically</td>
</tr>
<tr>
<td>Summarise</td>
<td>Present the main points of an author’s writing, briefly and comprehensively</td>
</tr>
<tr>
<td>Support</td>
<td>Provide reasons or appropriate evidence to back up a view/claim/conclusion</td>
</tr>
<tr>
<td>Synthesise</td>
<td>Discuss, by combining aspects</td>
</tr>
<tr>
<td>Translate</td>
<td>Express in other terms, interpret, explain</td>
</tr>
<tr>
<td>Verify</td>
<td>Prove something to be true</td>
</tr>
<tr>
<td>Weigh</td>
<td>Consider carefully; assess value or importance</td>
</tr>
</tbody>
</table>

### Planning your response

- Make a rough plan of what you think needs to be discussed to appropriately respond to the topic statement. This could take the form of a web diagram. See figure 1.1 on page 6.

At this stage, you need to make sure that your approach to your topic statement will fulfil the criteria of assessment that have been applied to this research and writing task. Refer to the standard descriptors of the criteria of assessment that should accompany your assessment task sheet. Will your approach to your topic clearly demonstrate the skills required by the criteria of assessment? Seek guidance from your teacher to help you with this important aspect of your task. For a detailed explanation, refer to ‘Tasks to assess Legal Studies criteria’ later in this chapter (see page 22).

- Research.
- Reassess the requirements of your topic statement.
- Rethink and redraft your plan according to your information.
- Make the outline of your extended response specific and clear.
Do not be afraid to get rid of points that you now recognise as irrelevant or only slightly connected to the topic statement. Writing is a dynamic process so your outline may change as your writing progresses and your approach becomes clearer.

<table>
<thead>
<tr>
<th>1 Introduction</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>e.g.</td>
<td></td>
</tr>
<tr>
<td>(a) Introduce, dissect and explain the topic statement or thesis.</td>
<td></td>
</tr>
<tr>
<td>(b) Describe how you will approach the topic.</td>
<td>(Points in paragraphs)</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>2 Body</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Main point</td>
<td></td>
</tr>
<tr>
<td>e.g.</td>
<td></td>
</tr>
<tr>
<td>(a) Topic sentence</td>
<td>(In sections, if necessary)</td>
</tr>
<tr>
<td>(b) Development of main point</td>
<td></td>
</tr>
<tr>
<td>(c) Argument to support topic statement or thesis</td>
<td>(Paragraphs to amplify the main sections of the argument/topic)</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>3 Conclusion</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>(a) Summary</td>
<td></td>
</tr>
<tr>
<td>(b) Conclusions</td>
<td></td>
</tr>
<tr>
<td>(c) Recommendations</td>
<td></td>
</tr>
</tbody>
</table>

**FIGURE 1.3** Suggested skeleton of an assignment

**First drafts**

Write the first draft of the introduction, the body, and the conclusion. It is sometimes difficult to write your response in the logical order in which it will eventually be presented. If necessary, leave your introduction and conclusion until after you have discussed your main points.

The body of your essay should present:

- points in paragraph form
- one topic sentence per paragraph
- an expansion of topic sentences in paragraphs
- relevant discussion of points.

The introduction should present:

- your interpretation of the topic statement
- the scope of your treatment of the topic statement.

Your conclusion should:

- avoid restating the introduction
• summarise the main points of your treatment
• make no new points
• state your conclusions
• make recommendations (if appropriate).

**Continuing the writing process**

**Distance yourself from your writing.** Ideally, leave some time between writing your first draft and writing later drafts. Read your first draft aloud — if it sounds awkward, it most likely is. Rewrite it. Ask a friend or family member to read it and give you feedback. You may end up rewriting and improving your work over a number of drafts.

Have you:
• responded to the topic statement appropriately?
• expressed yourself clearly?
• presented and developed your ideas in an organised piece of writing?
• acknowledged other authors’ words or ideas you have used through referencing?
• included a bibliography?

**Proofread your final draft for spelling, punctuation, grammar.** An effective way of proofreading for spelling errors is to read your sentences or paragraphs backwards. Incorrect spelling tends to be more easily detected this way as you are not reading for meaning. Use a computer spellchecker to help detect spelling errors.

Figure 1.4 (p. 12) summarises how to plan and write an extended response or assignment.

**General advice**

**Maintain relevance to your topic.** When writing the first draft, you should be mindful of the key words and phrases of the topic statement and use these words in your writing. This tends to help you stay on your topic and keep you aware of what the topic statement requires of you. It also communicates to the reader that you haven’t lost sight of your task. Avoid being too repetitive in your use of these key words, however.

**Write precisely.** Avoid writing assignments that are vague or too general. Your aim in writing is to communicate clear meaning. Write detailed precise statements. Do not assume that your Legal Studies teacher will understand what you meant to say (or give you credit for implying it!) if your sentences are not sufficiently clear and specific. You must be explicit in your writing. Do not rely on your reader to ‘read between the lines’.

**Write only statements that you can support.** Use detailed specific statements to support what you have to say. Refer to a source to back yourself up, for example, quote from an author or expert.

**Choose appropriate language.** Write for your audience. Use simple rather than complex language. Choose your words to express meaning, not to impress others with your command of language. Don’t use long words and phrases just for the sake of it. Use common words rather than unusual ones. This does not mean that your sentences will be full of boring words of only one syllable. You can use more complex words for variety and to establish a
particular ‘tone’ (or writing style) in your writing. Generally, use shorter sentences, rather than longer ones.

**Use a dictionary or thesaurus.** If you are not sure of the spelling of a word or whether you have used a word that correctly conveys what you wanted to say, check the dictionary or thesaurus. It might not occur to you to check the spelling later. **Be careful to spell all legal terms correctly all the time!**

![Diagram](image-url)

**FIGURE 1.4** Planning and writing an extended response or assignment
2. Be familiar with legal terminology, formats and procedure

How to read and understand statute law

All legislation is presented in a particular way; for example, the Corrective Services Act 2006 (Qld). The Act is cited by its short title, which includes the name of the Act and the year it was enacted. The jurisdiction of the Act is then presented in brackets. Reading and understanding the contents of a new law, an Act, is not difficult, even if it is a very long Act. It is important to understand the structure of an Act, so let us look at a new law from 2006, the Corrective Services Act. (We talk more about this law in our discussion of sentencing in the criminal law section of study.)

Queensland Corrective Services is the government department that looks after our prisons and prisoners and provides rehabilitation programs and other services to offenders while they are in prison. The department provides corrective services according to this new law. Judy Spence is the current Minister for Police and Corrective Services.

Figure 1.5 shows the first page of The Corrective Services Act.

FIGURE 1.5 First page of the Corrective Services Act
The first page of the law simply shows the Queensland Government crest or coat of arms, the motto ‘Audax at Fidelis’, which means ‘bold but faithful’, the name of the law, and the fact that it is the twenty-ninth law made in 2006. The contents page of the law describes the contents of the law and where it can be found. This is a big law; 343 pages in total.

![Queensland](image)

**Corrective Services Act 2006**

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**Chapter 2**

**Prisoners**

**Part 1**

**Custody and admission of prisoners**

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**Part 2**

**Management of prisoners**

**Division 1**

**Management of prisoners generally**

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**FIGURE 1.6** First page of the contents

On page 21 the Act is described as ‘An Act to provide for corrective services, and for other purposes’ as well as the date the Act became law. (This is the day that the Governor of Queensland, Quentin Bryce, agreed with the new law, on behalf of Queen Elizabeth II, Australia’s monarch. This is called **royal assent**. We discuss the role of the Governor later in the text.)
Chapter 1 of the Act provides the reader with important detail about the law, its short title, commencement date and purpose. The purpose of the Corrective Services Act 2006 is presented in Section 3: ‘the purpose of corrective services is community safety and crime prevention through the humane containment, supervision and rehabilitation of offenders’. The contents of the law follows.

Some Acts provide the meanings of specific words used in the law, such as a glossary at the start of the Act. Schedules are also often provided at the end of an Act and these provide other important information in relation to the Act.

The Corrective Services Act is a new law that replaces previous law. That previous law is said to be repealed.
What is an amendment to law?

Many laws are just changes (amendments) to existing Acts. The Drug Legislation Amendment Act 2006, which became law on 15 March 2006, is an example of an Act that makes changes to existing laws. It amends four existing laws, including the Drug Rehabilitation (Court Diversion) Act 2000, the Drugs Misuse Act 1986 and the Criminal Code. These laws will be discussed later in the text.

ACTIVITY 1

Find a copy of the Police Powers and Responsibilities and Other Acts Amendment Act 2006. What existing law is amended as a result of this new law? (Go to the Queensland Government website, www.qld.gov.au and click on legislation.) Briefly describe these amendments.

Before laws become Acts, they are called Bills. (Refer to the discussion in chapter 2 of how a Bill becomes law through the Queensland Parliament.) When Bills are introduced into Parliament, it is possible for the community to read these Bills and notes that explain the background to the Bill. When a Bill is first presented in Parliament, explanatory notes are provided. (Refer to the Queensland Government website, legislation, Bills, for this.) The discussion of the Bill in Parliament at its various stages is provided through Hansard.

Understanding and using case citations

Case law, also known as common law, is the law developed by the courts. Judges’ decisions in legal disputes, including the facts and the legal principles on which the decisions were made, are recorded in law reports. Only those cases that raise significant legal points or expand on the understanding of the law are published. In Section A, The Legal System, you will learn about the importance of previous court decisions in individual cases.

The case citation provides all the information necessary to find any case. Here is an example of a civil case with its citation:

O’Brien Glass Industries Ltd v Cool & Sons Pty Ltd (1983) 48 ALR 625

This case is cited with:

- the names of the parties in italics
- the year the judgement was reported or the year of the relevant report series in brackets
- the volume number of the report
- the abbreviated name of the report; and
- the first page of the case in the report.

FIGURE 1.8 A civil case citation explained
In the example in figure 1.8, O’Brien Glass Industries Ltd was the plaintiff (the party who made the complaint and started the action) and Cool & Sons Pty Ltd was the defendant (the party who defended the action). 1983 was the year the case was reported. You will find the case in volume 48 of the ‘Australian Law Reports’ at page 625. Note that round brackets are used for the year when there are a number of volumes of the law reports for that year. The ‘Australian Law Reports’ record decisions of the High Court of Australia which hears decisions on appeal from lower Australian courts.

Here are other examples of cases with their citations and explanations:

*Carlill v Carbolic Smoke Ball Co [1893] 1 QB 25*

This is an example of another civil case. The only important difference in this citation (in contrast to the one in figure 1.8) is that the year of the case is presented in square brackets. Square brackets are used when the date is essential to finding the correct volume of the reports. ‘QB’ refers to ‘Queen’s Bench’ reports, which are decisions of British courts. (You will find that many cases we study are to be found in British law reports because Australian law was historically based on British law.)

Here is an example of a criminal case:

*R v Falconer (1990) 96 ALR 545*

‘R’ refers to the State or the Crown, that is, the Government prosecuting the case. The ‘R’ is short for ‘Regina’ or ‘Rex’ which is Latin for the Queen or King (of England). Falconer is the name of the party who is the defendant — the person accused of a crime.

Examples of other law reports are:

- A Crim R ‘Australian Criminal Reports’
- CLR ‘Commonwealth Law Reports’
- FLR ‘Federal Law Reports’
- Qd R ‘Queensland Reports’ (from the Supreme Court)
- NSWLR ‘New South Wales Law Reports’

Many cases are available on the internet, particularly at www.austlii.edu.au.

**Reading and understanding law reports**

Law reports are published transcripts of judgements that present important information for us to understand. First, you will read the names of the parties involved in the action — plaintiff and defendant or appellant and respondent (in an appeal) as well as in which court the dispute was heard. The **headnotes** of the case are then presented (see figure 1.9). The headnotes include the legal issues of the case (presented in italics), a **summary of the facts** of the case and the **held statement**, that is, the decision of the court. If the case is on appeal, the held statement may include comments about the issues made by individual judges, for example, ‘Per Brennan J.’ refers to the comments made by Justice Brennan (of the High Court). You can quickly read through the headnotes to decide whether the case should be read in full.

The case is then presented with a more detailed summary of the facts and the arguments raised by both parties to the dispute — the prosecutor or plaintiff’s counsel (lawyer) and the counsel for the defendant. The report concludes
with an explanation by the court of the issues raised by the facts of the case, the court’s judgement and reasons for it. If the case is on appeal and there is more than one judge, each judge in turn may present his or her view of the case.

The Greater Union Organisation Pty. Ltd v Calin

ON APPEAL FROM THE SUPREME COURT OF NEW SOUTH WALES.

Negligence — Dangerous premises — Liability of occupier to person entering pursuant to contract — Injury to patron in darkened cinema — Duty of care.

Practice and Procedure — Jury verdict — New trial — When ordered — Party failing to seek direction at trial — Relevance to application for new trial.

A cinema patron who claimed to have suffered injury when she slipped on a banana skin in the aisle of the darkened auditorium sued the cinema operator for breach of an implied warranty owed to her as a contractual entrant, breach of a duty owed to her as an invitee, and for negligence. The trial judge put the plaintiff’s case to the jury as one of negligence, the defendant’s duty being to take reasonable care to avoid a foreseeable risk of injury to her. The plaintiff’s counsel did not seek further directions to have the other bases pleaded put to the jury.

 Held, by Mason C.J., Deane, Toohey and McHugh JJ., (1) that the omission to seek the jury’s verdict on the issue of breach of implied warranty to the plaintiff as a contractual entrant had not occasioned a substantial wrong or miscarriage.

While the failure to seek a direction or raise a new point at the trial is not necessarily fatal to an application for a new trial, it is material to take such failure into consideration in the exercise on the court’s discretion.

(1) Australian Safeway Stores Pty. Ltd v Zaluzna (1987), 162 C.L.R. 479 should not be taken to have overruled the principle established in Watson v George (1953), 89 C.L.R. 409 that if an occupier of premises agrees for reward to allow a person to enter the premises for some purpose, the occupier impliedly warrants that the premises are as safe for the purpose as the exercise of reasonable skill and care can make them.

(2) A court of appeal may order a new trial if the jury has reached a conclusion which is against the evidence in the sense that the evidence in its totality preponderates so strongly against the conclusion favoured by the jury that it can be said that the verdict is one that reasonable jurors could not reach.

(3) A court of appeal may order a new trial if the jury has reached a conclusion which is against the evidence in the sense that the evidence in its totality preponderates so strongly against the conclusion favoured by the jury that it can be said that the verdict is one that reasonable jurors could not reach.

Metropolitan Railway Co v Wright (1886), 11 App. Cas. 152; Phillips v Martin (1890), 15 App. Cas. 193; Jones v Spencer (1897), 77 L.T. 536; Hocking v Bell (1945), 71 C.L.R. 430; and Brooker v Roszykiewicz (1963), 37 A.L.J.R. 246, applied.

Per Brennan J. (1) An occupier’s duty to a person entering premises under contract is to use reasonable care and skill to make the premises safe for the purpose contemplated by the parties.

(2) Where the burden of proof is on a party who fails before a jury, the verdict cannot be set aside and a contrary verdict entered unless the jury could do nothing else but find in accordance with that party’s contention.

Decision of the Supreme Court of New South Wales (Court of Appeal), affirmed.

FIGURE 1.9 The first page of the reported case Calin v The Greater Union Organisation Pty Ltd, featuring the headnote (summary) of the case.
Reading and analysing fictitious fact situations or real cases

When studying a particular fact, situation or case, you should be able to:
- determine the important facts
- identify the issues raised by the facts
- identify the law or relevant legal principles that should apply, that is, name the law or cite the case authority
- apply the law or legal principles to the problem, that is, discuss how they may apply to the problem and work out what outcomes are likely
- reflect on the consequences of any particular outcome, that is, decide whether the law has provided a fair result.

Use this approach to structure your written response to questions that require an analysis of cases or fact scenarios.

Participating in mini-moots and moots (mock trials)

The presentation of mini-moots and moots are good experiences for students. These activities provide opportunities for you to experience the roles of court personnel, to understand court procedures and to improve your communication skills. You will be more confident with this activity if you have had the opportunity to view courtroom procedure first-hand after your court excursion.

Mini-moots

Work in groups of three students. Read and work through the facts and issues of a case. (Re-read the previous section, 'Studying and reading individual legal cases'.) Each student takes on a different role — judge, or counsel for the two parties to the dispute. Each of the lawyers argues her or his view of the case, in turn, to the judge. The judge then decides the case, giving the reasons for the decision. The judge may also constructively criticise the arguments raised by the lawyers.

Moots (mock trials)

Divide your class into a number of working groups.

Roles

You should each receive a copy of a particular fact scenario that is to be argued in court: this should include a statement of the charge or claim and the statement of defence, as well as accounts of witnesses. Remember that you must keep to the facts as presented in the fact scenario but can expand on the existing facts. No new information can be presented that is inconsistent with the particular fact scenario.

Group A is the working group that must plan the prosecution’s case in a criminal trial or the plaintiff’s case in a civil dispute. The group must volunteer a prosecutor and prosecutor’s assistant, victim’s or plaintiff’s counsel, an assistant and a plaintiff.

Group B is the working group that must plan the defendant’s case in a criminal or civil trial. The group must volunteer a defendant’s counsel, an assistant to the counsel, and a defendant.
Group C includes students who will be the witnesses for the prosecution or plaintiff. Aim for at least two witnesses. Other students in this group can rehearse the witnesses’ presentation of evidence. The evidence cannot be changed for any reason.

Group D includes students who will be the witnesses for the defendant. Aim for at least two witnesses. Other students in this group can rehearse the witnesses’ presentation of evidence. The evidence cannot be changed for any reason.

Group E can include other court personnel such as the judge, judge’s assistant, bailiff, court reporter, et cetera as well as the jury (for a criminal trial). This group needs to revise court procedure so that the trial will be run smoothly and with appropriate formality. Refer to Section A, The Legal System, for general information, as well as Section B, Crime and Society, and the civil law units for court procedure.

**Process**

Organise the classroom to look like a court. The trial is conducted in the following sequence.

- Opening of the court by the court officer or bailiff
- Opening statements by prosecutor or plaintiff’s counsel and defence counsel (opening comments should state what each side hopes to prove)
- Prosecutor’s or plaintiff’s witnesses are called
  - examination-in-chief by prosecutor or plaintiff’s counsel
  - possible cross-examination by defence counsel
  - possible re-examination by prosecutor or plaintiff’s counsel
- Prosecutor or plaintiff’s counsel closes the case by saying ‘I have no more questions, Your Honour’ or ‘That concludes the case for the prosecution [or] plaintiff, Your Honour’.
- Defence witnesses are called. (Note that the defendant in a criminal trial is not required to give evidence.)
  - examination-in-chief by defence counsel
  - possible cross-examination by prosecutor or plaintiff’s counsel
  - possible re-examination by defence counsel
- Defence summing-up and prosecution or plaintiff’s counsel’s summing-up (closing arguments should attempt to persuade the jury). (Note that if the defendant did not give evidence in a criminal trial, this order is reversed.)
- Judge’s directions to the jury in a criminal trial. (The judge instructs the jury on the relevant laws and what questions of fact they must determine. The judge generally explains the standard of proof required for a criminal or civil case.)
- Jury’s deliberations and return with verdict. Foreperson announces verdict.
- Jury is dismissed and court is adjourned.
- If a verdict of ‘guilty’ is returned in a criminal trial, the judge will impose a sentence or decide when sentencing will occur in the future.
**Courtroom conduct**

When referring to opposing counsel, you should refer to them as ‘My learned friend’ or ‘my friend’.

- Always address the judge as ‘Your Honour’.
- Only one counsel should be standing and speaking at any one time.
- Be polite and courteous at all times.
- Speak clearly and confidently.
- Don't ask questions of witnesses about facts that have been admitted by opposing counsel.
- Avoid using ‘I . . .’; instead, say ‘It is submitted . . .’ or ‘It is suggested . . .’.
- Keep your questions clear and simple.
- In direct examination, counsel should ask questions of their witnesses to support counsel’s argument.
- In cross-examination, counsel should ask questions of the opposing counsel’s witnesses that cast doubt on the credibility of their testimonies.
- Do not ask leading questions, that is, questions that suggest an obvious answer, for example, ‘Mr Khan, you were with the accused on the night in question, weren't you?’ Instead, pose the question: ‘Mr Khan, where were you on the night in question?’

**Post-moot discussion**

Conduct a class discussion following the moot to check understanding, using the following questions.

- With what crime was the defendant charged? What was the dispute between the parties?
- What legal issues were raised in court?
- Describe the arguments of counsel. What were the strategies used by counsel?
- What was the verdict? What was the decision?
- Are there grounds for appeal?

**3. Understand the requirements of the Senior Legal Studies course**

As a student in Legal Studies, you are encouraged to identify and focus on legal issues, investigate them, reflect upon possible solutions and resolve issues. You are encouraged to express your opinions about legal decisions made and their effects on the community and implications for society.

It is therefore important to understand how your response to or performance of set tasks fits the subject’s criteria of assessment. All criteria of assessment are weighted equally. To achieve a particular rating, at least three of the four criteria must be of that particular rating. For example, to achieve a Very High Achievement, you need a minimum of three standard A results and one standard B result in any three exit criteria.

Students are judged according to:

- knowledge and understanding
- investigation
- evaluation
- communication and research skills.
Tasks to assess Legal Studies criteria

Knowledge and understanding requires you to retrieve and comprehend information by:
- making statements of specific knowledge that you can recall and/or have researched
- describing and explaining key legal concepts
- recognising legal issues related to particular social situations
- using examples to demonstrate your knowledge and understanding.

Tasks that assess knowledge and understanding may require you to:
- define a key legal term
- describe aspects of Australia's legal system
- identify the main elements of law to be applied in various situations
- explain the purpose of laws in protecting various interests in society
- describe available legal remedies for resolving disputes.

Investigation requires you to examine legal situations and issues by:
- analysing situations and information to identify legal issues and problems
- selecting and applying relevant legal principles and procedures
- identifying a range of relevant legal responses to issues raised.

Tasks that assess Investigation may require you to:
- identify conflicting/competing interests of stakeholders in common legal situations
- select sources of relevant legal information
- analyse and apply the law to specific situations
- develop reasoned responses to specific legal situations.

Evaluation requires you to critically review the law’s attempts to achieve just, fair and equitable outcomes to issues by:
- synthesising and critiquing stakeholders’ responses to legal issues
- drawing conclusions about the suitability of legal outcomes and their social implications
- taking and justifying a reasoned stance on legal issues.

Tasks that assess Evaluation may require you to:
- discuss and debate common legal and social issues, providing convincing arguments to support definite and detailed opinions
- critically review the social impact of legal principles
- use rational and objective judgement in relation to legal and social issues
- make recommendations for action.

Communication and research skills require you to select, organise and present information for intended audiences by:
- planning and implementing an effective research process, accessing a variety of relevant sources
- organising and presenting information effectively using written and non-written formats
- using legal and law-related terminology, definitions and documents proficiently
- using appropriate modes, forms and styles of communication within a variety of conditions, situations and contexts.
Tasks that assess *Communication and research skills* may require you to:
- select and use sources of legal information
- follow a planning process
- organise information
- communicate using suitable formats
- acknowledge and reference sources of information using accepted conventions.

In our experience, the criterion with which Legal Studies students have most difficulty is evaluation. If you are asked to ‘evaluate’ or ‘assess the effectiveness’ of a law, make sure you think of arguments as to why it might be:
- a good law
- a bad law
- an effective law
- an ineffective law
- an appropriate law
- an inappropriate law
- a law that adequately meets the needs of stakeholders and the community as a whole
- a law that does not meet the needs of stakeholders and the community as a whole.

Come to a conclusion, giving reasons.

Remember that to fulfil the criterion of assessment, *evaluation*, you need to provide a balanced discussion, rather than provide an evaluation that appears one-sided.

If you are having difficulty thinking of arguments, think of all the different interest groups or stakeholders in society who might be affected by a law. For example, the following groups might be affected by the issue of euthanasia: the elderly, the terminally ill, relatives of the elderly or terminally ill, religious groups and the medical profession. What do you think each of these groups would say about euthanasia?

![Euthanasia Groups](image)

**FIGURE 1.10** Groups affected by the issue of euthanasia

Read the following example of an evaluative Legal Studies essay. Note that the topic statement is a challenging one and this effort would be one expected as you exit (complete) the Legal Studies course. The margin notes show important features of the essay. This example of an evaluative essay is provided as a guide and should not be seen as the only approach to take.
Topic

The Queensland Government enacted the Civil Liability Act 2003 (Qld) in response to serious concerns about negligence case outcomes and the ‘insurance crisis’ that occurred in the years immediately preceding the new law. Describe this law and discuss whether it has been an appropriate response by the government and effective in addressing the community's concerns and needs of the time.

Prior to the introduction of the Civil Liability Act 2003, there had been much concern in the community that the system of awarding compensation to people injured as a result of negligence was no longer working properly. Injured plaintiffs who had acted irresponsibly or knowingly taken significant risks had been able to hold others legally responsible. Juries and judges had awarded substantial compensation payouts and this had contributed to increased insurance premiums, particularly for those needing public liability insurance. The Queensland Government responded to that situation by codifying negligence law into its new Civil Liability Act 2003.

This essay will describe how the community had been affected by compensation payouts for negligence claims. It will explain Australia’s fault-based system of compensation and the negligence case outcomes that became the catalyst for change to the existing legal system. It will also outline some of the changes made by the Civil Liability Act 2003 and consider, now that three years have passed since the law was enacted, whether the new law has provided an appropriate and effective response to the problems that had arisen at the time.

Prior to 2003, court awards of compensation to injured plaintiffs had an impact on many different groups of people (stakeholders) in the community. The insurance companies who had insured the defendants had paid out huge sums of money and had lost profitability or made a loss and had to close down. Since 2002, the insurance industry had increased premiums for insurance cover, particularly public liability insurance, by an average of a third, but up to 716 per cent (New South Wales Council of Social Service, Dec 2003). Insurers had also discontinued cover to certain groups in the community.

Increases in the costs of public liability insurance particularly impacted on sporting groups who had to pass on their costs to their members so that the sports could continue to be played. Community groups and charities also cancelled activities because they could not afford the premiums (even though they had never made an insurance claim). Businesses had to severely limit or stop providing certain recreational activities to the public because they had been denied insurance cover. Organisations that provided important community services, for example, Surf Life Saving Australia, were faced with the decision to withdraw their services because of the tremendous difficulties that they were having in raising the necessary funds to pay their insurance. The ‘insurance crisis’ had affected how society functioned, that is, it had had adverse effects on our way of life.

Australia has largely a fault-based system of awarding compensation for injury. If I wish to obtain compensation from another person for injury I have suffered, in most cases, I must prove that the accident was the fault of the person I am suing (the defendant). Specifically, I must show that the defendant owed me a duty of care, that this duty of care was breached in some way, and
this breach caused me loss: Donoghue v Stevenson [1932] AC 562. Though this general principle of negligence liability was created only 70 odd years ago, the development of the law of negligence has, since then, been dramatic.

Some of these changes to negligence liability have been fairly predictable, but some of the contexts in which negligence law has been applied since then, have led to surprising results. For example, it was used in 1997 in Queensland to allow a man who voluntarily became intoxicated (with a blood alcohol level of 0.332 per cent) to sue for compensation for injuries when he was run over by a driver after stumbling onto a busy road. He successfully sued the Chevron Hotel for serving him the alcohol and the driver of the vehicle who ran him over. In the original decision, he was awarded approximately $300 000 in compensation and was found only 10 per cent responsible for his own injuries. In 2000, the case was retried and the Court increased the plaintiff’s responsibility from 10 per cent to 45 per cent, thus reducing the compensation payout: Cosgrove & Anor v Johns [2000] QCA 157. Although the Chevron Hotel’s liability was decreased by this decision, the result still adversely affected the hospitality industry, specifically affecting the duty of care owed by publicans to patrons.

Prior to 2003, there had also been cases where those who had engaged in extremely risky or foolish behaviour (and been seriously injured as a result) had been awarded multi-million dollar payouts when they took their cases to court. A man who dived from the top of a fence into a nearby Gold Coast canal (to fetch an esky lid that had blown off) was awarded more than $3 million by a jury on the basis that the homeowners had been negligent in not warning him of the risks of diving. Although the decision in this case was set aside on appeal in 2000 and the plaintiff was denied compensation, it was a controversial decision at the time: Borland v Makauskas & Anor [2000] QCA 521. Homeowners were extremely concerned that they might be held liable for injuries sustained by reckless visitors to their home.

Prior to statutory change of negligence law, other significant decisions on negligence cases had been upheld by the High Court of Australia. In 1997, a man was injured while swimming between the flags at Bondi Beach in New South Wales. He had dived into a wave and hit a sandbar, leaving him a quadriplegic. He sued the Waverley Municipal Council who was responsible for Bondi beach and was awarded $3.75 million. When the Council appealed to the New South Wales Court of Appeal, in 2003, this decision was set aside but Swain then appealed to the High Court of Australia. The High Court held that the Court of Appeal had made an error in setting aside the jury’s verdict. Mr Swain’s compensation was reinstated.

Increasingly successful claims and larger compensation payouts resulted in strong debate within the community as to the appropriateness of some of the payouts ordered. Should the legal system compensate a person who is seriously injured while performing a foolish act or voluntarily participating in a high-risk or dangerous activity? How should the law respond to the needs of injured plaintiffs as well as the needs of other stakeholders, and the community, at large?

The Queensland Government responded by making the new Civil Liability Act 2003 (Qld). This law was applicable to most accidents occurring on or after
2 December 2002 and affected the type of claims that could be made as well as limiting some of the damages that could be claimed. It aimed to discourage trivial or undeserving claims.

With the new law, if the risk that causes the plaintiff injury is an ‘obvious’ one (one a reasonable person would know about), the plaintiff is taken to have been aware of the risk, unless they prove they were not aware of it (s14). In theory, this could make it easier for the defendant to argue the plaintiff voluntarily assumed the obvious risk, that is, the defendant uses the volenti non fit injuria defence (voluntary assumption of risk) which is a complete defence. This could mean that if a swimmer was injured at a beach in Queensland, the law would consider that they were responsible for their own actions and therefore could be denied compensation.

The Civil Liability Act states that a person is not liable for negligence for harm suffered to another if it is the result of an ‘inherent risk’ coming into existence. An inherent risk is something that cannot be avoided by the exercise of reasonable care and skill (s16). This could limit claims made by injured plaintiffs who have participated in high-risk dangerous recreational activities.

The Civil Liability Act relies on common law principles to determine whether a person who has suffered injury has contributed to the negligence in failing to take precautions against the risk of injury. A court may now determine a reduction of 100 per cent for a successfully raised defence of contributory negligence if the court thinks it is just and equitable to do so. This may have denied compensation to Borland (the Gold Coast Canal case).

Three years after the enactment of the Civil Liability Act in Queensland, there are now many conflicting views as to whether the law has been of benefit to the community, addressing the problems recognised prior to 2003. There are substantial criticisms as to the need for statutory regulation of negligence law at the time, the appropriateness of the law and the effectiveness of the law since its introduction. There are also stakeholders who clearly assert that the law is beneficial to the community.

The government has defended its reforms while lawyers’ groups have labelled them unnecessary or unnecessarily severe on claimants. In May 2006, the Law Council of Australia released a report that ‘confirms what we have been saying for many years — tort law reforms were hastily introduced and ill thought out’ (media release, 31 May 2006).

The Chief Justice of Queensland, the Honourable P. de Jersey AC, stated in February 2006 that ‘the legislation has brought about marked erosion of . . . a fundamental right to adequate compensation for injury negligently occasioned by another’ (Australian Lawyers Alliance Queensland Conference, 17 February 2006). De Jersey CJ has expressed concern that the system of deciding compensation is inflexible, allowing no judicial discretion, and the amount of damages allowed is inadequate. Deserving plaintiffs cannot be restored, as far as money can achieve, to their pre-injury condition. The Chief Justice has been particularly critical of Section 62 of the Civil Liability Act that sets the maximum for general damages at $250 000 for the most serious case, substantially less than in other jurisdictions. ‘The real vice of this cap is that it leaves catastrophically injured claimants grossly under compensated, unable
to afford the treatment, support and other aids to rehabilitation a court would find reasonably necessary.'

According to the Law Council of Australia, more than over 40 per cent of claimants have been prevented from pursuing their common law rights. ‘The reality is that the rights of all claimants have been diminished, and in the case of extremely seriously injured claimants, probably dramatically’ (De Jersey CJ 2006). The Australian Government Productivity Commission January 2006 Review of Government Services report indicated that the ‘changes to compensation laws have had a devastating impact on the rights of injured Australians . . . Every year the number of people struggling to cope with injury, without compensation, continues to rise’ (Law Council of Australia, 2006).

It has been argued that the legislative regulation of negligence law was not needed (as recent court decisions had given greater importance to individual responsibility for those engaged in ordinary daily activity), that governments were unduly influenced by the insurance industry and that the so-called insurance ‘crisis’ was more the result of poor financial planning and mismanagement by insurers (De Jersey CJ, 2006).

There is some debate as to whether the Civil Liability Act 2003 has resulted in lower insurance premiums throughout the community. The insurance industry has now returned to high profit levels and there is some criticism that reductions in insurance premiums have been minimal. The Minister for Revenue and Assistant Treasurer, Peter Dutton, in a December 2006 speech stated, however, that, 'The changes made to the laws of negligence across Australia have had a positive impact on the availability and affordability of public liability and professional indemnity insurance'. He indicated that there have been falls in premiums of 13.4 per cent for public liability and six per cent for professional indemnity insurance.

To many stakeholders in the community, the Civil Liability Act has been an inappropriate response to the conditions that existed prior to the law being enacted. After three years, the insurance industry has returned to profitability and the general community has benefited from some reduction in insurance premiums and greater access to insurance cover, but this may have occurred at the expense of many deserving plaintiffs who have not been able to acquire compensation. At this stage, the Queensland Government is being called on by many stakeholders in the community to review the Civil Liability Act and this is currently being pursued by the Attorney-General of Queensland.

Conclusion brings essay to an end

Bibliography


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**Research skills**

1. Where legal information is available and how it can be accessed

**Print resources and audio and visual media**

When you are given a research task by your teacher, you may use your school library or resource centre as a starting point. Your school library is a good place to start as you will be able to check what hard copy resources are available and relevant to your task. School libraries generally contain hard copies of law-related print resources and audio and visual media, including:

- legal reference texts, for example, the *Queensland Law Handbook*, published by the Caxton Legal Centre Incorporated
- Legal Studies textbooks published in Queensland for Queensland Legal Studies students
- Legal Studies textbooks published for students studying different Legal Studies courses elsewhere in Australia (be aware that the law may be quite different in other jurisdictions and the contents of the text may therefore be inappropriate for our Queensland Legal Studies course)
- other textbooks that specialise in particular legal issues, for example, a text on the environment from a science as well as legal perspective
- Legal Studies magazines aimed at a student audience, for example, *Legaldate, The Verdict, Alternative Law Journal*
- other magazines that would cover issues relevant to the Legal Studies course (see the updated Guidelines booklets for the current year and previous years’ topics and titles of articles)
- current newspapers and archived newspaper items on legal and social events and issues
- copies of Queensland and Commonwealth statutes.

If your school library or resource centre does not have a particular magazine, radio recording or television documentary that you know the specific details about, ask the librarian whether it is possible to order the item.
The different types of legal information available and how to approach them

Students should note that legal resources consist of two types of material — primary and secondary sources. Primary sources consist of publications made by the law-making bodies themselves, that is, Queensland and Federal Parliament and the courts in State and Federal jurisdictions. The only primary source material listed earlier that your school library may have are actual copies of Acts of Parliament, that is, statute law. You can also access statute laws on the internet. Another primary source is Hansard. Hansard is the official report of the debates and proceedings that occur in Parliament and in the various parliamentary committees. It is available through the Queensland Government website. Secondary sources of law consist of material that provide commentary or criticism of the law and present some opinion of the law or summary of the law. Obviously, this would include most information contained on the internet.

Electronic media, particularly the internet

Schools and school libraries generally provide internet access where some of the law-related literature as well as other valuable sources of legal information are online. You probably also have internet access at home. The internet is an extremely valuable research tool for students and you should aim to use the internet in the early stages of your research. Schools may also have particular computer databases for Legal Studies students, for example, Casebase, electronic library. Schools may also have subscriptions to computer databases such as EDNA.

If you are trying to locate copies of the law, that is, Queensland Acts of Parliament, they are available at https://www.publications.qld.gov.au, the Government’s online bookshop. The law libraries of the universities in Queensland, for example, the University of Queensland or Queensland University of Technology hold copies of printed legislation for all Australian jurisdictions. Some legislation is available in electronic form from a variety of suppliers, for example, from the website of the Office of the Queensland Parliamentary Counsel at legislation.qld.gov.au/OQPChome.htm. Refer also to austlii.edu.au.

Commonwealth legislation is available electronically from the Attorney-General’s department at www.comlaw.gov.au. This new website replaces SCALEplus, which is still available at www.scaleplus.law.gov.au until all information has been transferred to the new site.

Word-for-word transcripts are taken of proceedings in Commonwealth and State Parliaments by Parliamentary reporters. These are known as Hansard. If you wish to read the actual speeches and argument that occurred as a Bill went through the stages of becoming a law, refer to aph.gov.au/hansard/index.htm for Commonwealth Hansard and parliament.qld.gov.au/hansard for Queensland Hansard.

To find case law, you need to refer to specific law reports available in law libraries or at the Queensland State Library at Southbank in Brisbane or access the reports electronically. If you have a complete citation of the case,
you should not have difficulty locating the volume of reports at the libraries. The Commonwealth Law Reports report only cases decided in the High Court of Australia, while the Australian Law Reports contain significant cases from the High Court of Australia, the Federal Court and the Supreme Courts of each State and Territory.

You may also access AustLII at austlii.edu.au. This site includes the full text of court cases (not case summaries) for each State and the Commonwealth (primary resources), legislation for each State and the Commonwealth (primary resources) as well as other legal information through related websites, for example, law reform and royal commission reports (secondary resources).

It is also possible to access the university law libraries electronically to see what resources are available, for example, the University of Queensland’s library is available on library.uq.edu.au. There are many other valuable internet sites available that provide current legal information for Queensland and Australia, that is, secondary resource material. A database of current Australian legal information is at weblaw.edu.au. It has been created by the research contributions of law libraries and legal information experts from Australian universities. It provides a subject index to current Australian legal information that is updated each month. AGIS, the Attorney-General’s Information Service provides information on all aspects of the law mainly from Australian, New Zealand and Pacific law journals but also US, UK and Canadian law journals.

Some primary and secondary sources are listed below.

**Primary sources**

www.comlaw.gov.au  
www.scaleplus.law.gov.au  
www.parliament.qld.gov.au/hansard

**Specialist legal search engines**

www.austlii.edu.au is a joint facility of the University of Technology Sydney and the University of New South Wales faculties of law. It provides free internet access to Australasian legal materials. AustLII’s broad public policy agenda is to *improve access to justice* through better access to information. AustLII publishes *public legal information* — that is, primary legal materials (legislation, treaties and decisions of courts and tribunals); and secondary legal materials created by public bodies for purposes of public access (law reform and royal commission reports for example) and a growing collection of law journals.

www.findlaw.com.au provides free Australian legal information for the public, including legal articles written by leading Australian lawyers on a range of subjects including family law, immigration law, resolving disputes and personal injury.

www.weblaw.edu.au is an online Australian legal information service provided for lawyers, students, researchers and lay professionals with annotated links to up-to-date, quality assessed internet resources.

www.law.gov.au, Australian Law Online, provides access to law and justice-related information and services from all levels of government. The objective
of this site is to provide Australians with ready access to clear, understandable, user-friendly information about the Australian legal system and the government organisations that are part of the Australian legal system.

Other useful websites include:
www.courts.qld.gov.au — the Queensland Courts
www.fedcourt.gov.au — the Federal Courts of Australia
www.familycourt.gov.au — the Family Court of Australia
www.edna.edu.au — Education Network Australia (edna), Australia’s leading online resource collection and collaborative network for the education and training community.

Other sources of legal information
Current legal information can also be found by contacting community organisations and agencies that have interest in particular areas of the law, such as Legal Aid Queensland at www.legalaid.qld.gov.au or the Queensland Law Society, www.qls.com.au (click on their Schools and Community Education link). Note that many other websites available to you do not necessarily provide accurate or objectively presented information (for example, www.wikapedia.com).

2. How to be an efficient and effective researcher
Reading and using resources available in print or electronically
Define your purpose in reading a particular publication. For example, are you looking for details of similar cases to compare, or general information on the judiciary? Different purposes for reading may require using different skills and strategies.

Check that the publication is relevant to your topic. There is no point in slavishly reading chapters of a publication (and making notes as you go!) or downloading and/or printing huge amounts of information if the publication does not ultimately present the information you require. If, after skimming for key information, you find that the information is relevant to your set task, you can then go back and read more carefully. For example, if you are reading to find the answers to questions in the activities in this book, you will read with a specific purpose in mind. Quickly scan the page looking for specific words and explanations that may be highlighted or included in headings.

Different publications have different functions and audiences. Newspapers and legal journals, for example, present information differently. Does the publication describe, compare, analyse or evaluate particular information?
What does the title of the publication tell you? Key words in the title or in chapter headings in a table of contents (found at the start of the book) should help you recognise what information is to be presented.
An introductory paragraph or chapter may present the author’s focus on the topic and the scope of the treatment of the topic, that is, the sequence of ideas that will be covered in the publication. An index (found at the end of the book) provides an alphabetical listing of the key items covered. Think of key words or terms that are basic to your subject content in order to best use this index. A glossary that presents a list of words and their subject-specific meanings may be provided. In Legal Studies texts you will find many general English words have special legal meanings.

Copy the author’s words exactly using quotation marks for direct quotations. This is the only occasion when copying word for word is essential. If you quote another’s work in your own writing, you should acknowledge the source of the quotation and include its page number.

**Making notes as you research — summarising and paraphrasing**

**Be brief but comprehensive.** To summarise, use a smaller number of words (generally using the language of the author) to accurately communicate a larger amount of information. Paraphrasing means expressing the author’s information in your own words. Paraphrasing and summarising are important skills for students to develop to help them make notes for research and study.

**Identify key words or ideas in sentences and paragraphs.** Write them logically, in note form. If you are working from a photocopy, highlight or underline key words or ideas. If you are required to write a polished draft of your summary in a paragraph or in a more extended form, remember your purpose and be aware of your audience. Present the main ideas, using language that is clear and concise and appropriate to your purpose and audience.

![Figure 1.12](image-url) How to make notes and conduct research

**Annotating**

**Identify, summarise and evaluate.** Identify the author’s approach to the topic, summarise the contents and evaluate the information presented.

Annotating is particularly useful when working with photocopies. Mark up key words, phrases and topic sentences by highlighting or underlining. Use the margin space to make your own comments on the information presented.
As you read, write down the main points presented as well as what you think about the information. Consult a dictionary if necessary.

An example of annotated copy is shown below.

The Government is made up of politicians who have been voted into office by the people. They are the people’s representatives, and are accountable to the people of their electorate through regular elections. In other words, if the people don’t agree with what the Government has done, they can vote against it at the next election. It follows that, as a general rule, the Government will do what the majority of people want it to do.

However, the process is more complicated than this. People are more interested in some issues than others. Some people are not interested in certain issues; others feel passionately about other issues. There will usually be a group of people who want the Government to act in a certain way, and other groups of people who want the Government to act in a different way. For example, a group of developers may want the Government to approve a bridge to an island. A group of environmentalists may be totally opposed to the bridge.

The Government is in a difficult situation. It is concerned with the electoral consequences of its decisions, that is, if it makes certain decisions, the people will show their dissatisfaction with the Government by voting it out of office. If a law is passed allowing the bridge, the environmentalists will be upset. If the bridge is not allowed, the developers will be upset. We can call these groups — in this case the developers and the environmentalists — stake-holders. They are stakeholders because they have a strong interest in the Government’s decision, and will be affected by it more than would an uninvolved person, with no personal interest in the outcome of the decision. Their interests are at stake. Much of the law you will study over the next two years is the result of weighing up the interests of different stakeholders.

FIGURE 1.13 How to annotate copy

Choosing from available resources and selecting what is relevant to your task

Students should exercise self-discipline and remain aware of the specific research task when first starting research or face the danger of getting sidetracked or confused as to how to best use the information available. The internet can add to the researcher’s difficulties as it is so useful in providing information
that you can easily be swamped by the quantity available. The challenge for the time-efficient and effective researcher is now to discriminate among available resources and use only what is relevant to your task.

Brainstorm your topic statement in advance of actual research and discuss your topic with your classroom teacher, peers and family members so that you have a clear picture of what information you are after. Develop a web diagram with your topic in the centre of the page and the main areas that you need to research (see figure 1.1, p. 6).

**Acknowledging your sources of legal information**

When you find information that is relevant to your research task, it is extremely important that you record the necessary details of the source of your information. Referencing is a standardised method of acknowledging sources of information and ideas that you have used in your writing task. Direct quotations, facts and figures, ideas and argument must be referenced. Plagiarism, the taking of another’s ideas and exact words without appropriate acknowledgement, is unacceptable, if not a form of cheating.

Your school should have a detailed guide as to how you should reference all print material as well as electronic information, video recordings, personal communication and email.

Make sure your work, particularly your independent study, includes a bibliography, accurately listing the material you have accessed. Material that may be included in your bibliography includes:

(a) websites — the URL address and the date the site was accessed
(b) journal articles — author, title of article — usually in inverted commas — then year and volume number of journal, followed by name of journal (in italics), followed by the first page number of the article
(c) books — author, name of book (in italics), followed by the year of publication and the publisher.

3. How to plan, organise and conduct research in the community

Not all research that students need can be found in print or electronic resources. Students need to research in the community in order to gather information as to how laws, legal and social issues impact on different groups in society, that is, stakeholders, as well as the community in general. Students are expected to take the initiative and conduct their own research in order to get expert opinions from consultants or specialists in the community as well as the opinions of members of the community. This can be done by:

- contacting and interviewing government departments or agency personnel
- contacting and interviewing members of special interest groups
- organising guest speakers who are specialists in particular legal or related areas, for example, lecturers from universities (and developing questions to ask guest speakers in advance of their presentations)
- planning and developing meaningful surveys or questionnaires to be given to specific groups in the school community or the wider community, organising and carrying out these surveys or questionnaires and drawing valid conclusions.
The interview

An interview is a common way to obtain information as well as expert opinions on legal areas and issues, but for an interview to be worthwhile the interviewer must do some planning. The planning of the questions is most important. The interviewer needs to work out what initial questions should be asked and what follow-up questions would be appropriate, depending on the responses given. There is no point in organising and conducting an interview if you have not elicited information relevant to your research task. Questions should be aimed at eliciting opinions and views that are justified by the interviewee and care should be taken to record responses accurately. Similarly, the opportunity to have guest speakers present legal information and expert opinion to you without the planning of appropriate questions to ask of the guest speakers is not an effective use of them as a resource.

Surveys and questionnaires

Surveys and questionnaires are often useful in legal studies because our legal system serves to regulate society. In so doing, the view of our legal system held by members of society is very important.

A survey or questionnaire is another popular method of collecting information on a specific subject area or issue. Questionnaires can be used to investigate the views of a selected number or sample of people in the community. Once again, the questions used must be carefully constructed to elicit the required information or opinion but also to limit the scope of the responses. Work out the main purpose of your questionnaire and how you wish to conduct it, that is, how many people you will survey and how these interviewees will be chosen, for example, randomly, in the school community, within an age group or within a geographic region. Generally, questionnaires usually start by asking for basic details about the respondent, such as age and gender, before asking factual questions, such as the respondent's awareness of a particular event or issue raised in the community (usually through the media) or questions about their opinions on specific topics.

Closed questions are questions that elicit a limited set of possible responses. Choice of response is often presented in a range, for example:

*Question:* Do you agree that the Queensland Government should sentence convicted murderers to indefinite gaol terms?
*Answer:* strongly agree agree don't know disagree strongly disagree.

These types of questions are quick to answer and much easier to collate, analyse for trends and patterns and draw conclusions.

Open questions allow respondents to give extended responses that will require you to identify categories of responses and then group those responses into these categories in order to be able to interpret your survey results and draw valid conclusions, for example:

*Question:* What should the Queensland Government do to reduce crime?

Answers could vary dramatically — the Government should impose more severe sentencing, more money should be spent on police, curfews to be imposed in trouble spots, et cetera.
Remember to use clear concise language in the wording of your questions and to keep your questionnaire relatively simple in structure.

The interpretation of your questionnaire results may require you to:

- describe the purpose of the questionnaire
- describe how, when and by whom the questionnaire was conducted
- present the results in some appropriate form, for example, a written report containing visual displays such as tables or graphs
- explain results that are considered significant, identifying trends or the actual size of a certain response
- discuss issues raised by the questionnaire responses, if any
- draw conclusions or make recommendations as a consequence of the results presented.

Bibliography


