# HSC Legal Studies Option 3 – Family – part 1 the nature of family law



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

## Controversial issues in HSIE

Controversial issues may be questions, subjects, topics or problems which create a difference of opinion, causing contention and debate within the school or the community. Controversial issues will differ across schools and communities.

This HSC legal studies, family law topic can be controversial as it covers divorce, issues related to children and property after separation, adoption, same sex marriage, birth technologies and domestic violence. As a result, it may be appropriate to explain the relevance of activities to the curriculum and communicate about this with parents and carers at the start of the topic or course.

It is important that all content is taught in a sensitive, objective and balanced way where students can explore issues from a variety of perspectives, critically analyse and form their own considered opinions. Materials should be introduced by the teacher in an objective and unbiased manner. The manner in which teachers approach the delivery of controversial issues in NSW public schools are guided by the Department of Education’s [Controversial Issues in Schools policy](https://education.nsw.gov.au/policy-library/policies/controversial-issues-in-schools) and the [Code of Conduct policy](https://education.nsw.gov.au/policy-library/policies/code-of-conduct-policy). Teachers must also ensure compliance with the departments [AudioVisual Materials in Schools policy](https://education.nsw.gov.au/policy-library/policies/pd-2002-0045) in the teaching of this unit.

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## Introduction

This option represents 25% of course time.

### Principal focus

Through the use of contemporary examples, students investigate the legal nature of family relationships and the effectiveness of the law in achieving justice. Themes and challenges to be incorporated throughout this topic include:

* the role of the law in encouraging cooperation and resolving conflict in regard to family
* issues of compliance and non-compliance
* changes to family law as a response to changing values in the community
* the role of law reform in achieving just outcomes for family members and society
* the effectiveness of legal and non-legal responses in achieving just outcomes for family members.

### Outcomes

A student:

* **H1** identifies and applies legal concepts and terminology
* **H2** describes and explains key features of and the relationship between Australian and international law
* **H3** analyses the operation of domestic and international legal systems
* **H4** evaluates the effectiveness of the legal system in addressing issues
* **H5** explains the role of law in encouraging cooperation and resolving conflict, as well as initiating and responding to change
* **H6** assesses the nature of the interrelationship between the legal system and society
* **H7** evaluates the effectiveness of the law in achieving justice
* **H8** locates, selects, organises, synthesises and analyses legal information from a variety of sources including legislation, cases, media, international instruments and documents
* **H9** communicates legal information using well-structured and logical arguments
* **H10** analyses differing perspectives and interpretations of legal information and issues

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

## The nature of family law

**Teacher note:** as part of the introduction to this options topic, provide students with a copy of the syllabus. Inform students that in the HSC examination there will be one 25 mark extended response question on this topic.

Terminology used in legal studies can be complex. For this reason, literacy strategies and adaptations may be required to meet the needs of the individual cohort in your context. Key words that students will need to understand for content and criteria in this sequence include: void, family, adoption, surrogacy, jurisdiction, merger, intervention, nuclear (family), obligation, right, just, criteria, deceptive, cohesive, integrates, substantial, judgement. Strategies to assist in understanding these words may include dictionary definitions, teacher explanation, placing words in sentences or using tools such as a [Frayer diagram](https://app.education.nsw.gov.au/digital-learning-selector/LearningActivity/Card/553#.YgsBs-FMR0U.link).

Table 1 – syllabus content

|  |  |
| --- | --- |
| Students learn about: | Students learn to: |
| * the concept of family law
* legal requirements of marriage
* alternative family relationships
* legal rights and obligations of parents and children
* adoption.
 | * discuss the difficulty of defining ‘family’ and the changing concepts of family
* distinguish between state and federal jurisdiction in family law
* outline the legal requirements of a valid marriage
* explain the legal rights and obligations of parents and children, including those derived from international law.
 |

### Lesson sequence

**Teacher note:** in this topic students will be introduced to key concepts in family law. At the end of the topic students will write an extended response that links to the themes and challenges of the course. This is important as an integrated study of the principal focus and themes and challenges of the course is essential.

#### Changing concepts of family

* Conduct a class discussion on the following question: ‘How has the definition of family changed between your grandparent’s generation and yours?’
* Watch [What is family? (2:31)](https://www.youtube.com/watch?v=IdyGAjj2xAw) and [Our Family: A Film About Family Diversity (7:30)](https://www.youtube.com/watch?v=cTqC4U_98Xo) and use this to complete the following:
* use the videos and previous discussion to write 1–2 sentences explaining how the concept of family has changed over time
* as a class, brainstorm ways that an evolving definition of family may present challenges for family law.

#### State and federal jurisdictions in family law

**Teacher note:** in this area, students need to know that the Federal Circuit and Family Court of Australia (FCFCA) mainly looks after issues around marriage and divorce, whereas state-based courts look after matters like child protection matters, domestic violence, adoption and surrogacy. Students should also understand that there is sometimes cross over between the state and federal jurisdictions, for example, child protection matters and domestic violence may be factors in the divorce. Explicit instruction on the meaning of jurisdiction may be required prior to this unit.

* Use [Family law](https://www.fcfcoa.gov.au/fl), [Structural reform of the federal courts](https://www.ag.gov.au/legal-system/courts/structural-reform-federal-courts), [Family Court merger condemned by former judges](https://www.abc.net.au/news/2021-02-18/family-court-merger-federal-circuit-court-reactions/13168506), or your own research, to complete the following
* identify the types of family law cases that the Federal Circuit and Family Court of Australia (FCFCA) has jurisdiction, or authority, to hear
* identify one benefit and one limitation of amalgamating the 2 federal courts in September 2021.
* Use [Family law](https://localcourt.nsw.gov.au/local-court/types-of-cases/family-law.html) to identify the types of family law cases that state courts have jurisdiction to hear.
* NSW courts have the jurisdiction to hear cases about child protection matters, domestic violence, adoption and surrogacy. Federal courts, like the FCFCA have jurisdiction to hear cases about marriage, divorce and where children live after separation. In small groups, use this information to discuss possible conflict or challenges that may arise between the 2 jurisdictions in family law.

#### Legal requirements of a valid marriage

**Teacher note:** in this sequence, teachers will have the opportunity to introduce students to the theme of ‘changes to family law as a response to changing values in the community.’ Whilst students may have been introduced to the concept of values in other topics, some explicit teaching or revision of the term may be required prior to the final activity.

* In small groups, use the information in the table below to complete the following
* compare the current definition of marriage with the old version
* discuss why the definition of marriage may have changed in recent years.

Table 2 – definitions of marriage

|  |  |
| --- | --- |
| Definition of marriage | Source of the definition |
| current definition | [*Marriage Act 1961* (Cth) s 5](http://classic.austlii.edu.au/au/legis/cth/consol_act/ma196185/s5.html): ‘the union of 2 people to the exclusion of all others, voluntarily entered into for life.’ |
| past definition | *Hyde v Hyde (1866):* ‘the voluntary union for life of one man and one woman to the exclusion of all others for life.’ |

* Use the *[Marriage Act 1961](http://www5.austlii.edu.au/au/legis/cth/consol_act/ma196185/s23b.html)*[(Cth) s23B(1)](http://www5.austlii.edu.au/au/legis/cth/consol_act/ma196185/s23b.html)and [Marriage in NSW](https://www.nsw.gov.au/family-and-relationships/marriages/marriage-nsw), to identify the requirements of a valid marriage.
* In pairs, use the [*Marriage Act 1961*(Cth) s23B(1)](http://www5.austlii.edu.au/au/legis/cth/consol_act/ma196185/s23b.html)and the requirements of a valid marriage, to write one paragraph explaining why each of the marriages in the scenarios below may be considered void
* Ally and her first cousin, Ravi were married last year. Ally is 16 and her new husband is 42. Ravi is still in the process of finalising his divorce from his wife in the United States of America.
* Kate and Sam are 25 and have just been married in Sydney. Kate has confided to a friend that she only married Sam as her father said he would hurt her mother if she did not marry Sam, so she did as she was told.
* Write one paragraph to discuss whether current marriage laws reflect the values of our contemporary society.

#### Alternative family relationships

* As a class, brainstorm all of the types of alternate families and relationships that don’t fit the description of a nuclear family, that is, a mother and a father who are married with children.
* In small groups, summarise the treatment of alternative family relationships into the table below. The following resources may be useful: [Defacto relationships](https://www.fcfcoa.gov.au/fl/pubs/defacto), [Polygamy, multiple relationships and welfare](https://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/FlagPost/2016/December/Polygamy_and_welfare) and [Existing Recognition of Traditional Marriages under Australian Law](https://www.alrc.gov.au/publication/recognition-of-aboriginal-customary-laws-alrc-report-31/13-the-recognition-of-traditional-marriages-general-approach/existing-recognition-of-traditional-marriages-under-australian-law/).

Table 3 – the law and alternative family relationships

|  |  |  |
| --- | --- | --- |
| Alternate relationship | Description | How the law recognises this relationship and protects family members |
| Defacto couples |  |  |
| Same sex couples |  |  |
| Polygamous families |  |  |
| Aboriginal and Torres Strait Islander relationships |  |  |

* As a class, discuss the following question: ‘To what extent does the legal recognition of alternate family relationships reflect the values of our contemporary society?’

#### Legal rights and obligations of parents and children

**Teacher note:** the best interests of children is the primary consideration when courts determine family matters after separation of parents. The primary and secondary considerations of the court are set out in the *[Family Law Act 1975](http://www5.austlii.edu.au/au/legis/cth/consol_act/fla1975114/s60cc.html)* [(Cth) s 60CC](http://www5.austlii.edu.au/au/legis/cth/consol_act/fla1975114/s60cc.html). Whilst a meaningful relationship with both parents is paramount, [*Family Law Act 1975* (Cth) s 60CC (2A)](http://www5.austlii.edu.au/au/legis/cth/consol_act/fla1975114/s60cc.html) sets out the need for a court to prioritise protection from abuse, neglect or violence over the need for a meaningful relationship with parents.

Whilst specific provisions of the *Family Law Act* (FLA) are stated here and in learning activities, students are not required to quote specific provisions and sections in their writing. In this sequence, teachers will have the opportunity to introduce students to themes, including: ‘the role of the law in encouraging cooperation and resolving conflict in regard to family;’ and ‘the role of law reform in achieving just outcomes for family members and society.’

The teaching of family law should be approached in a sensitive manner and an awareness that students may be experiencing family challenges and stress at home. Some alterations need to be made to teaching and learning to accommodate the needs of individual students.

* Make a [concept map](https://app.education.nsw.gov.au/digital-learning-selector/LearningActivity/Card/577) to illustrate 5 rights that children have under the [The Convention on the Rights of the Child: The child-friendly version](https://www.unicef.org/sop/convention-rights-child-child-friendly-version).
* Use NSW Communities and Justice [Your duties and rights as a parent](https://www.facs.nsw.gov.au/families/parenting/responsibility-and-rights/parent-duties) and [Rights of parents and children](https://www.ag.gov.au/rights-and-protections/human-rights-and-anti-discrimination/human-rights-scrutiny/public-sector-guidance-sheets/rights-parents-and-children%22%20%5Cl%20%22what-are-the-rights-of-parents-and-children) to add another 5 key rights of children to the concept map.
* Use [*Family Law Act 1975 (Cth) s60CC* (2) (a) and (b)](http://www5.austlii.edu.au/au/legis/cth/consol_act/fla1975114/s60cc.html) to summarise the primary considerations for a court in determining what is in a child’s best interests after separation of their parents.
* Use a [Think-Pair-Share](https://app.education.nsw.gov.au/digital-learning-selector/LearningActivity/Card/645#.YdVYqj-dX9A.link) strategy to explain how [*Family Law Act 1975 (Cth)* s 60CC (2A)](http://www5.austlii.edu.au/au/legis/cth/consol_act/fla1975114/s60cc.html) further protects the rights of children.
* Parents have an obligation to try to resolve disputes themselves rather than going straight to the courts. Use [Family Dispute Resolution FCFCA](https://www.fcfcoa.gov.au/fl/family-dispute-resolution) to complete the following
* explain what is meant by family dispute resolution (FDR)
* identify 3 benefits of FDR
* suggest why the obligation on parents to engage in FDR is in the best interests of all parties.
* Write a one paragraph response to the following question: ‘How has FDR law reform encouraged co-operation for families in conflict?’
* Work in small groups to prepare an infographic in [Canva](https://app.education.nsw.gov.au/digital-learning-selector/LearningTool/Card/653?clearCache=acb3a64-d702-cab5-b175-e386bb657ae#.YbkgV7MZ6OU.link), summarising the rights of children and the responsibility of parents. Minimum key points to include are
* at least one international source of rights and responsibilities
* at least one domestic law that covers rights and responsibilities
* the best interests of the child.
* In the same group, discuss why parents appear to have more responsibilities than rights.
* Reflect on what you have learnt about the legal obligations of parents and children. Use this to complete a [thinking routine](http://www.pz.harvard.edu/resources/i-used-to-think-now-i-think) using the following sentence stems as a guide
* I used to think …
* now I think …

#### Adoption

**Teacher note:** in this sequence, teachers will have the opportunity to introduce students to themes including: the effectiveness of legal and non-legal responses in achieving just outcomes for family members. The teaching of adoption should be approached in a sensitive manner with an awareness that students may have personal experience in this area. Some adjustments may need to be made to teaching and learning to accommodate the needs of individual students.

* You have been asked to provide advice to a family who are considering adopting a child. Use [Want to adopt?](https://www.facs.nsw.gov.au/families/adoption/adopting-a-child/want-to-adopt) and [What happens when an adoption order is made](https://www.facs.nsw.gov.au/families/adoption/birth-parents/orders) to complete one page of advice that covers the following
* define adoption
* identify examples of criteria used to determine who can adopt
* explain the legal implications of adoption
* summarise 3 key ways that the *Adoption Act* protects the ‘best interests’ of children
* identify one way in which the rights of birth parents are protected.
* In some situations, birth parents may wish to maintain contact with the child after adoption or seek to ensure the child maintains a connection with their culture and background. Use [What is an adoption plan?](https://www.facs.nsw.gov.au/families/adoption/birth-parents/what-is-an-adoption-plan) to explain how this may be possible.
* Use what you have learnt about adoption to write a one paragraph response to the following question: ‘How have legal and non-legal responses in the area of adoption improved protections for adoptive parents and adopted children?’

#### Writing activity

**Teacher note:** support students in the process of writing an essay for family law by reminding them of the structure of legal essays and explicitly teaching that a ‘to what extent’ question requires a qualified judgement. This means that they will be discussing aspects of family law and concluding whether it achieves justice to a significant, moderate or limited extent.

* Work in small groups to complete a 2-page response to the following question: ‘To what extent has law reform achieved just outcomes for family members?’ This response could contain a paragraph on each of the following content areas
* faster processing of family matters like divorce and parenting conflict in the new federal court structure
* a more inclusive definition of marriage
* laws protecting against forced or deceptive marriage
* recognition of alternate family structures
* protection of the best interests and rights of children
* protection of parties involved in adoption.
* Once complete, swap the response with another team and use a [2 stars and a wish](https://app.education.nsw.gov.au/digital-learning-selector/LearningActivity/Card/549#.YHONefPtueM.link) peer feedback strategy and the criteria below to gain ideas on improving the writing
* presents a logical and cohesive argument
* includes an introduction, body and conclusion
* each body paragraph contains a topic sentence with supporting arguments and evidence
* integrates relevant legislation, cases or media
* demonstrates substantial knowledge of family law
* makes clear judgement(s)

## References

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