HSC legal studies - criminal trial process

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## Aim

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

## Principal focus

Through the use of a range of contemporary examples, students investigate criminal law, processes and institutions and the tension between community interests and individual rights and freedoms.

## Themes and challenges

* the role of discretion in the criminal justice system
* issues of compliance and non-compliance in regard to criminal law
* the extent to which law reflects moral and ethical standards
* the role of law reform in the criminal justice system
* the extent to which the law balances the rights of victims, offenders and society
* the effectiveness of legal and non-legal measures in achieving justice.

## 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.

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

# Learning sequence 3 – criminal trial process

|  |  |
| --- | --- |
| Students learn about: | Students learn to: |
| * court jurisdiction * the adversary system * legal personnel: magistrate, judge, police prosecutor, Director of Public Prosecution, Public Defenders * pleas, charge negotiation * legal representation, including legal aid * burden and standard of proof * use of evidence, including witnesses * defences to criminal charges:   + complete defences   + partial defences to murder * the role of juries, including verdicts | * describe the role of courts in the criminal justice process * discuss the use of the adversary system as a means of achieving justice * examine the role of legal representation in the criminal trial * assess the use of defences to criminal charges in achieving justice * evaluate the effectiveness of the jury system in the criminal trial * assess the effectiveness of the criminal trial process as a means of achieving justice |

**Teacher note –** the driving question for the unit could come straight from the syllabus, that is, ‘assess the effectiveness of the criminal trial process as a means of achieving justice.’ on completion of this topic, students should complete a full essay that evaluates the effectiveness of the criminal trial process. They should then work in small teams to write an essay for each of the ‘themes’ in the syllabus.

## Court jurisdiction

* Use [Law Access, ‘Appeals’](https://www.lawaccess.nsw.gov.au/Pages/representing/driving_offences_and_crime/driving_and_crime_after_court/appeals.aspx#:~:text=An%20appeal%20must%20be%20filed,leave%20(permission)%20to%20appeal.), [State Library NSW, “Appeals’](https://legalanswers.sl.nsw.gov.au/defend-yourself-facing-charge-court/appeals#:~:text=Generally%2C%20you%20have%20a%20right,within%20the%20required%20time%20period.&text=Appeals%20against%20a%20NSW%20Local,hearing%20in%20the%20District%20Court.) to complete definitions for the following terms: appeal, appeal against conviction and appeal against sentence.
* Using resources provided below, complete brief notes on the role of courts in the following table:

**Table: The role of courts**

|  |  |  |
| --- | --- | --- |
| Court | Jurisdiction and role of this court | Examples of cases to be heard in this court |
| Local Court |  |  |
| Children’s Court |  |  |
| Coroner’s Court |  |  |
| Land and environment Court |  |  |
| Drug Court |  |  |
| District Court |  |  |
| Supreme Court |  |  |
| High Court |  |  |
| Family Court |  |  |
| Federal Court |  |  |
| Federal Circuit Court |  |  |

* Resources for this task:
  + [BOCSAR, Court structure](https://www.bocsar.nsw.gov.au/Pages/bocsar_court_stats/cjs_structure.aspx)
  + [Criminal Justice system in NSW](https://www.bocsar.nsw.gov.au/Pages/bocsar_court_stats/cjs_structure.aspx)
  + [NSW State Library, state courts](https://legalanswers.sl.nsw.gov.au/hot-topics-courts-and-tribunals/nsw-state-courts#:~:text=The%20District%20Court%20hears%20most,heard%20before%20a%20judge%20alone).)
  + [Role of the High Court](https://www.hcourt.gov.au/about/role-of-the-high-court)
  + [About the Supreme Court](https://www.supremecourt.justice.nsw.gov.au/Pages/sco2_aboutus/sco2_aboutus.aspx)
  + [Role of the District Court of NSW](https://www.districtcourt.nsw.gov.au/)
  + [Role of the local Court](https://www.localcourt.nsw.gov.au/)
  + [What is the Children’s Court?](https://www.facs.nsw.gov.au/families/legal/childrens-court/going/chapters/what-is-childrens-court#:~:text=The%20role%20of%20the%20Children's,go%20to%20a%20different%20court.)
  + [Drug Court of NSW](https://www.drugcourt.nsw.gov.au/drug-court/about-us.html)
  + [Land and Environment Court](https://www.lec.nsw.gov.au/)
  + [Federal Court](https://www.fedcourt.gov.au/)
  + [Family Court](http://www.familycourt.gov.au/wps/wcm/connect/fcoaweb/home)
  + [Federal Circuit Court](http://www.federalcircuitcourt.gov.au/wps/wcm/connect/fccweb/about/jurisdictions/#:~:text=Copyright%20Act%201968.-,The%20Federal%20Circuit%20Court%20has%20jurisdiction%20to%20hear%20and%20determine,and%20breaches%20of%20agreement%20making.).
* Construct a court hierarchy that includes NSW Courts, Federal Courts and the High Court.
* Watch [ABC, Trial and Error](https://www.abc.net.au/4corners/trial-and-error/3612532) (duration 45:40) and complete the following activities related to Gordon Wood’s **appeal against his conviction:**
  + identify the court where Gordon Wood’s case was first heard and the original conviction
  + identify the court where he appealed his conviction to and the outcome of the appeal
  + write 1-2 sentences in response to the following question: ‘Assess whether judicial oversight on cases like *Wood v R* [2012] NSW CCA 21 achieves justice.
* In small groups, complete the following:
  + locate a media article reporting on an **appeal against the sentence** imposed and use this to discuss with the group whether the appeal reflected the moral and ethical standards of society
  + read ‘[Justice done differently – how the NSW drug court transforms lives](https://www.theguardian.com/society/2015/feb/07/justice-done-differently-how-the-nsw-drug-court-transforms-lives),’ and in your group collaboratively write one paragraph explaining how the Drug Court balances the needs of the community with the individual rights of offenders. This can be done on paper, white boards or using collaborative tools like [Google Slides](https://app.education.nsw.gov.au/digital-learning-selector/LearningTool/Card/70#.YH0Ng_EJ5pE.link).

## The adversary system

* Complete research on the adversary system to assist in completing the table below:
  + Resource for this task: [Hot Topics: Courts and Tribunals – The adversary system](https://legalanswers.sl.nsw.gov.au/hot-topics-courts-and-tribunals/adversarial-system)

|  |  |  |
| --- | --- | --- |
| Features of the adversary system | Strengths of the adversary system | Weaknesses of the adversary system |
|  |  |  |

* Using a [think-pair-share](https://app.education.nsw.gov.au/digital-learning-selector/LearningActivity/Card/645#.YD16zysXRLk.link) strategy, locate a media article that challenges at least one of the following statements and make a short summary of the big ideas:
  + lawyers have an equal opportunity to present the truth
  + the jury makes decisions based only on the evidence presented
  + everyone can get Legal Aid.
* Using the media research and the completed table, complete a one paragraph response to the following question:

‘Discuss the role of the adversary system in achieving a fair and unbiased trial.’

## Legal personnel

* Research the role of legal personnel in courts and complete brief notes in the table using the following resources:
  + [Supreme Court, Justice NSW](https://www.supremecourt.justice.nsw.gov.au/Pages/sco2_facilitiessupport/sco2_what_to_expect/whos_who.aspx)
  + [Who’s who in the local court](https://nswcourts.com.au/articles/whos-who-in-the-local-court/)
  + [Director of Public Prosecutions](https://www.odpp.nsw.gov.au/our-role#:~:text=The%20NSW%20Office%20of%20the,not%20they%20are%20indictable%20offences.)
  + [Public defenders NSW](https://www.publicdefenders.nsw.gov.au/Pages/public_defenders_aboutus/public_defenders_aboutus.aspx)

|  |  |
| --- | --- |
| Court personnel | Description of role |
| Magistrate |  |
| Judge |  |
| Police Prosecutor |  |
| Director of Public Prosecutions |  |
| Public Defender |  |

## Pleas, charge negotiation

**Early guilty pleas**

* Investigate the recent law reform surrounding sentence discounts for early guilty pleas at [NSW Justice, early guilty pleas](https://www.justice.nsw.gov.au/Pages/Reforms/early-guilty-pleas.aspx) to help you complete the following:
  + explain what is meant by a guilty plea
  + in 1-2 sentences, summarise how the early guilty plea scheme works
  + identify an example of the sentence discounts that apply.
* Using the ABC media article, ‘[NSW's top lawyers not convinced guilty plea reforms will clear court backlogs](https://www.abc.net.au/news/2017-12-03/lawyers-not-convinced-legal-reforms-will-clear-backlog/9218536),’ identify concerns raised about early guilty pleas.
* Complete a [T-chart](https://app.education.nsw.gov.au/digital-learning-selector/LearningActivity/Card/599#.YFv4pjLqFO0.link) identifying the key strengths and weaknesses of early guilty pleas.

**Charge negotiation**

* Define charge negotiation (plea bargaining) and explain the benefits that may arise from this process.
* Use the resources below, to complete the following:
  + make brief notes on the weaknesses of charge negotiation
  + complete a perspectives table on charge negotiation from different viewpoints.

|  |  |
| --- | --- |
| Perspective | My opinion on charge negotiation is … |
| Accused |  |
| Victim |  |
| The court system |  |
| The community |  |

Resources for this task:

* + [ABC ’Calls for review of plea deal in Thomas Kelly case](https://www.abc.net.au/news/2013-06-19/calls-for-review-of-plea-deal-in-thomas-kelly-case/4765296);’
  + The Conversation, ‘[Plea bargains and the efficiencies of justice.](https://theconversation.com/plea-bargains-and-the-efficiencies-of-justice-8440)’
* Write a one paragraph response to the following question:

‘How well do early guilty pleas and charge negotiation balance the needs of the community and offenders?’

## Legal representation

* Use ‘[Who’s who in court?](https://www.supremecourt.justice.nsw.gov.au/Pages/sco2_facilitiessupport/sco2_what_to_expect/whos_who.aspx)’ to research the role of legal representation in a criminal trial and make brief notes.
* Hold a class discussion on the following question:

‘To what extent does justice depend upon access to quality legal representation?’

* Research the 2 media sources: Legal Aid NSW, ‘[Legal Aid eligibility tests](https://www.legalaid.nsw.gov.au/get-legal-help/applying-for-legal-aid/policy-easy-guide/legal-aid-tests)’

and The Guardian [‘Lawyers warn legal aid at breaking point after NSW trial derailed’](https://www.theguardian.com/australia-news/2019/jul/12/lawyers-warn-legal-aid-at-breaking-point-after-nsw-trial-derailed), to assist in completing the table below:

|  |  |
| --- | --- |
| Media (source, title and year) | Weaknesses in ensuring equal access to legal representation |
|  |  |
|  |  |

* Complete a one paragraph response to the following question:

‘Evaluate the extent to which unequal legal representation impacts on justice in Australia.’

## Burden and standard of proof

* Construct definitions for the burden of proof and standard of proof.
  + Resources for this task: [ALRC: A common law principle 11.1](https://www.alrc.gov.au/publication/traditional-rights-and-freedoms-encroachments-by-commonwealth-laws-alrc-interim-report-127/11-burden-of-proof/a-common-law-principle-7/) and [Criminal Trial, Courts bench book: Onus and standard of proof](https://www.judcom.nsw.gov.au/publications/benchbks/criminal/onus_and_standard_of_proof.html).
* Review the following case, ABC [‘NSW Police officer faces court charged with assault of teenager in Byron Bay’](https://www.abc.net.au/news/2020-11-09/nsw-police-officer-faces-court-over-byron-bay-arrest/12862392) and complete research on the following:
  + who must prove that the accused is guilty of the charge (burden of proof)?
  + what level of certainty there must be in a criminal case that he is guilty (standard of proof)?
  + write one paragraph, explaining how the burden and standard of proof protect the presumption of innocence and achieve justice overall. You should refer to media or cases in your response.

## Use of evidence, including witnesses

* Construct a [plus, minus, interesting chart](https://app.education.nsw.gov.au/digital-learning-selector/LearningActivity/Card/551#.YD23Cr600Us.link) on the rules surrounding the use of evidence in court.

**Resources for this task:**

* + [State Library NSW, find legal answers, Chp 11](https://legalanswers.sl.nsw.gov.au/defend-yourself-facing-charge-court/evidence)
  + The [Evidence Act 1995 No 25](https://www.legislation.nsw.gov.au/view/html/inforce/current/act-1995-025).
* Research the role of the ‘expert witness’ in achieving an unjust outcome in Gordon Wood’s trial. Make brief notes. Resource for this task: [ABC, Gordon Wood witness denies agenda to convict](https://www.abc.net.au/news/2017-03-07/gordon-wood-witness-denies-agenda-to-convict/8333068#:~:text=A%20key%20crown%20witness%20has,writing%20a%20book%20about%20it.&text=Mr%20Wood's%20case%20is%20that%20Professor%20Cross%20had%20a%20motive,How%20Physics%20Convicted%20a%20Killer.).
* Complete a one-paragraph response to the following question: ‘To what extent does evidence management in court balance the needs of the community with the individual?” In the response, consider the following:
  + the legal framework that protects how evidence is managed
  + the priority given to first hand evidence
  + the rules surrounding use of witnesses
  + the rules of admissibility
  + cases, for example Gordon Wood.

## Defences to criminal charges

* Read [ABC news, Dad guilty of Westgate bridge murder](https://www.abc.net.au/news/2011-03-28/dad-guilty-of-westgate-bridge-murder/2640356) and conduct a class discussion on:
  + whether Arthur Freeman was mentally ill
  + if so, whether he should be in jail.
* Research criminal defences used in trials to complete the following:
  + explain what is meant by a criminal defence
  + distinguish between the consequences of a complete and a partial defence being successfully proven in court. Use your own research and sites including [NSW Public Defenders, Partial defences](https://www.publicdefenders.nsw.gov.au/Pages/public_defenders_research/Papers%20by%20Public%20Defenders/public_defenders_partial_defences_to_murder.aspx).

**Teacher note –** students should be assigned to small groups, with one group researching each of the following defences: mental illness or insanity, involuntary behaviour or automatism, self-defence, necessity, duress, consent, provocation, and diminished responsibility.

* Complete a [fishbone diagram](https://schoolsnsw.sharepoint.com/:p:/s/DLS/ERF-bOnOxO1AnOzjx_N4zyMBkAtRg5VuIw4rfImO4iAolg?rtime=Fcshbdjd2Eg) in small groups to research the following aspects of your assigned defence. The fishbone headings should include:
  + definition
  + complete or partial defence
  + implications of this defence being proven in court
  + case example
  + evaluation on the role of this defence in achieving justice.
* Assign one person from each group to be the [hot seat](https://app.education.nsw.gov.au/digital-learning-selector/LearningActivity/Card/569#.YFwAwhHS4U8.link) presenter on the assigned defence. The presenter:
  + assumes the persona of the defence researched
  + presents a summary of how the defence works
  + answers questions from the class who take notes.
* Share the fishbone diagrams from each group and use this to prepare a 1-page written response to the following question:

‘Assess the use of defences to criminal charges in achieving justice.’

* Use a [guided feedback chat](https://app.education.nsw.gov.au/digital-learning-selector/LearningActivity/Card/549#.YHOMdLjglIk.link) to gain peer feedback on your writing. Peer reviewers should consider the following criteria:
  + presents a logical and cohesive argument
  + includes a topic sentence with supporting arguments and evidence
  + integrates relevant legislation, cases and media
  + demonstrates extensive knowledge of defences
  + makes clear judgement(s).

## The role of juries

* In small groups, complete a summary of the role of juries in court. Headings should include:
  + definition
  + role of juries
  + jury selection process
  + strengths of the jury system
  + weaknesses of the jury system
  + majority verdicts.

Resources:

* + [NSW Communities and Justice, ‘About jury service’](https://courts.nsw.gov.au/courts-and-tribunals/for-jurors/jury-service.html#:~:text=The%20role%20of%20a%20jury,matters%20involving%20large%20monetary%20claims)
  + ‘[Who’s who in court, juries’](https://courts.nsw.gov.au/courts-and-tribunals/going-to-court/who-s-who-in-court.html)
  + The Guardian, ‘[Juries are often prejudiced, like society. Should we get rid of them?’](https://www.theguardian.com/law/2018/jul/21/juries-are-often-prejudiced-just-like-society-should-we-get-rid-of-them)
  + ['Clearly asleep': snoring juror removed from months-long Sydney murder trial](https://www.theguardian.com/australia-news/2020/nov/25/clearly-asleep-snoring-juror-removed-from-months-long-sydney-trial)
  + [*Jury Act 1977* No 18 s55F](https://www.legislation.nsw.gov.au/view/html/inforce/current/act-1977-018#sec.55F)
* Complete a one paragraph response to the following question: ‘Evaluate the effectiveness of juries in the criminal trial process.’