

# RULE OF LAW

INSTITUTE OF AUSTRALIA

## QUEENSLAND RULE OF LAW

### ESSAY PRIZE

## RESEARCH GUIDE 2013

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# RULE OF LAW ESSAY COMPETITION 2013

## Question

*'The rule of law states that the law should apply equally to all.  
What does this mean for Australia in 2013?'*

Discuss the statement above with reference to the rule of law, contemporary cases, laws, and events from the last 5 years in Australia.

## Submission Guidelines

RoLIA encourages a variety of perspectives and approaches from any area of interest in the law at local, state or federal level. Submissions should take note of the rubric and checklist below.

A research guide can be found at: <http://www.ruleoflaw.org.au/QLDruleoflawessay/>

**First Prize: \$1000**

**Second Prize: \$600**

**Third Prize: \$400**

Prizes will be presented at the **Business Educators' Association of Queensland Conference** in July.

## Eligible Entrants

Students enrolled in Year 11 or 12 Legal Studies, Business, Economics and other SOSE subjects in Queensland schools. The school the student attends, or a teacher at the school the student attends, must be a BEAQ financial member in 2013.

## Submission Checklist

- no more than 1250 words (excluding bibliography)
- double spacing, and size 12 Times New Roman or Arial font is used
- appropriate referencing such as footnotes or intext references, with a bibliography at the end
- a title page which clearly states your name, school, and contact details
- saved as a PDF and sent to [info@ruleoflaw.org.au](mailto:info@ruleoflaw.org.au) before Monday, 1 July, 2013 at 5.00pm

You will receive a confirmation email when we receive your submission. **If you do not receive a confirmation email** within 24 hours, please call 02 8076 8230 to confirm we have received your entry.

## Rubric

Submissions should:

- discuss the statement provided with reference to cases, legislation, and events from the last 5 years in Australia
- provide a well supported argument involving discussion of the rule of law concept (see research guide)
- use appropriate legal terminology
- show evidence of extensive research which is referenced appropriately

Questions and enquiries please contact

**Rule of Law Institute of Australia**

02 8076 8230

[info@ruleoflaw.org.au](mailto:info@ruleoflaw.org.au)

Breaking down the question:

'The rule of law states that the law should apply equally to all.'

'What does this mean for Australia in 2013?'

### What is the rule of law?

The concept which states that all people regardless of their status are subject to the law. This has two aspects:

- all people who break the law must be held accountable
- all people must have equal access to the rights and freedoms given to them by law

These principles form the basis of certainty in the law and are recognised universally as principles which allow a society to be fair and just. This is why the rule of law is seen as a fundamental element of protecting human rights.

Principles and values in Australia which are important in upholding the rule of law are:

- the presumption of innocence
- an independent judiciary
- the right to a fair trial and procedural fairness
- freedom of speech and the press
- open courts and transparent government
- system of checks and balances on the power of the government

**SUBMISSIONS ARE NOT RESTRICTED TO THE TOPICS BELOW, WE ENCOURAGE YOU TO USE YOUR SCHOOL STUDIES AND PERSONAL INTERESTS AS A BASIS FOR A SUBMISSION. HOWEVER, PLEASE ENSURE YOUR SUBMISSION ADDRESSES THE QUESTION.**

Some contemporary issues to consider:

- Queensland Anti-Association Laws and Organised Crime
- Freedom of the Press and Media Regulation
- Journalist Shield Laws: Protecting Sources
- Mandatory Sentencing in Queensland
- Access to Legal Aid in Australia
- Regulation of Sport and the Use of Coercive Powers
- Free Speech and Offensive Behaviour
- Influence of Technology and Social Media on the Courts

### What does this mean for Australia?

Changes in the social, political, cultural and economic life of Australians are ongoing. To ensure stability in society, the law enforces responsibilities and protects certain rights and freedoms.

Study of the law in terms of Legal Studies, Economics or Business Studies highlights areas of legal responsibility, and examines the way in which the law protects rights and freedoms.

The topic chosen must relate to the law, and its effect on Australian society. You are free to choose whether you would like to discuss its effect on yourself, your local community, on a particular group in Australian society, or address its effect on the legal system, economy, or business.

## QUEENSLAND'S ANTI-ASSOCIATION LAWS AND ORGANISED CRIME

Dealing with organised crime presents a difficult task for law enforcement agencies. Laws in Queensland such as the *Criminal Organisations Act 2009* (Qld) have been enacted to dismantle the gangs. These laws rely on making it a crime for members of these gangs to associate with each other, rather than charging members with specific criminal offences. They also raise issues with regard to the fairness of legal procedures and the right of the accused to be able to question evidence brought against them. Where people are punished for membership of a group, rather than for a criminal offence, this discriminates against group members, and damages the presumption of innocence.

### LEGISLATION, CASE AND SUMMARY SHEET

- Criminal Organisations Act 2009 (Qld) - <http://bit.ly/13QuW6A>
- Assistant Commissioner Michael James Condon v Pompano Pty Ltd & Anor [2013] HCA 7  
<http://bit.ly/11GmiFX>
- Summary Sheet of Criminal Organisation Control Legislation and Cases in Australia 2008 - 2013  
<http://bit.ly/11GkInp>

### MEDIA ARTICLES

- Potts Lawyers, 'Potts Lawyers successfully obtain leave to appear before the High Court,' Potts Lawyers, 5/10/2012 - <http://bit.ly/ZTdgsd>
- Josh Bavas, 'Anti-bikie laws in Qld pass High Court test,' ABC Radio PM with Mark Colvin, 14/3/2013 - <http://bit.ly/YljHET>
- Josh Robertson, Robyn Ironside 'High Court rejects Finks motorcycle club's bid to have Queensland criminal organisation laws declared invalid,' The Courier Mail, 14/3/2013. - <http://bit.ly/102myh2>

## FREEDOM OF THE PRESS AND MEDIA REGULATION

Freedom of the press is an essential element of the rule of law. Independent, rigorous evidence based journalism can promote issues in society that require action from government or support from the public. The phone hacking scandal which has gripped the United Kingdom over the last few years has had raised this as a topic of discussion in Australia.

The issue of media regulation is an ongoing topic of discussion despite the Government's proposed media laws being withdrawn in March 2013.

### REPORTS

- Environment and Communications Legislation Committee Report on Media Reform Bills, March 2013. - <http://bit.ly/18gLhES>

### MEDIA ARTICLES

- Mark Pearson, 'Media reforms: lessons from a narrow escape to a fragile freedom', The Conversation, 28/3/2013. - <http://bit.ly/YcPs0B>
- Dr Johan Lidberg, 'Failed media reforms a lost opportunity', Mojo, 25/3/13. - <http://bit.ly/YcPwx9>
- Brisbane Times National Affairs Reporters, 'Media reform: key elements explained', 14/3/2013. <http://bit.ly/12Tby8U>

## JOURNALIST SHIELD LAWS: PROTECTING JOURNALISTS SOURCES

The public interest is at the centre of the work of journalists. They often provide an extra level of scrutiny which ensures that government and individuals follow the law.

Sometimes when covering particularly controversial or sensitive stories journalists receive information from sources. In several recent legal cases journalists have been called to reveal the identity of their source or face charge for contempt of court. Their code of ethics emphasises the importance of protecting the identity of sources under all circumstances.

Shield laws exist to protect journalists from prosecution except under rare circumstances. Nevertheless, many journalists feel the current laws are uncertain and do not go far enough to protect them and their sources. The public interest test used by judges can be interpreted in many different ways. At the moment the 'public interest' test operates in Federal law to decide whether a court will ask a journalist to disclose their sources.

### LEGISLATION

- Evidence Act 1995 (Cth) - Section 126G and 126H. - <http://bit.ly/16418aA>
- Nicolee Dixon, 'Shield Laws for Journalists', Research Brief 2012, No.03, Queensland Parliamentary and Library Research Service see page 3 for some contempt cases involving Queensland Journalists. <http://bit.ly/16vJDA5>

### MEDIA ARTICLES

- Robin Speed, 'Freedom of Speech risks being silenced', Sydney Morning Herald, 23/03/2011.- <http://bit.ly/ZVdi1t>
- Rule of Law Institute, 'Journalist shield laws – Sydney Morning Herald and the NSW Crime Commission', Rule of Law Institute, April 2011. - <http://bit.ly/102mON9>
- Dr Johan Lidberg, 'Journalists McKenzie and Baker go unshielded before demands to reveal sources', The Conversation, 5/2/2013. - <http://bit.ly/10rnavA>
- Mark Russell, 'Age reporters won't have to reveal their sources', The Age, 19/4/2013. <http://bit.ly/Ylk8Px>
- Rhys Michie, 'Journos in Vic and WA get shields', Civil Liberties Australia Inc, 30/9/2012. - <http://bit.ly/102rIOD>
- Nic Christensen, 'MEAA calls for uniform shield laws to protect journalists', 2/4/2013. <http://bit.ly/12Z3J2G>

## MANDATORY SENTENCING IN QUEENSLAND

The Law Council of Australia's Policy Statement on Rule of Law Principles says the following with regard to mandatory sentencing:

'In criminal matters judges should not be required to impose mandatory minimum sentences. Such a requirement interferes with the ability of the judiciary to determine a just penalty which fits the individual circumstances of the offender and the crime.'

Parliaments pass laws for minimum mandatory sentences which take independence away from the judiciary often because they wish to respond to public expectations of punishment for certain crimes. This removes an essential aspect of the work of judges in deciding an appropriate sentence based on precedent and the particular circumstances of the case.

### LEGISLATION

- Penalties and Sentences Act 1992 (Qld) - Section 161D - Mandatory life sentence for repeat child sex offences. - <http://bit.ly/13QEVc0>
- Criminal Code 1899 (Qld) - Section 305 (4) - Mandatory sentence for murder of a police officer. <http://bit.ly/133EtZ2>

### MEDIA ARTICLES

- Queensland Law Society Press Release, 'Mandatory Sentencing to Clog Judicial System', 09/07/2013. - <http://bit.ly/158RP9R>
- Daniel Hurst, 'LNP mandatory sentencing policy goes full-circle', Brisbane Times, 30/04/2012 . <http://bit.ly/18bQrC7>
- Youth Advocacy Inc, 'Submission to the Legal Affairs and Community Safety Committee in relation to Youth Justice(Boot Camp Orders) and Other Legislation Amendment Bill 2012' November 2012 pp. 7-9. <http://bit.ly/18bQttJ>
- Katherine Feeney, 'New laws to jail graffiti vandals for seven years', Brisbane Times, 10/04/2013. <http://bit.ly/YcPeX6>

## ACCESS TO LEGAL AID IN AUSTRALIA

The funding of legal aid and community legal centres is an area of debate about the amount of government funding that should be available for legal representation. Recently, State governments around Australia have cut funding to Legal Aid and Community Legal Centres. This limits access to legal advice and representation for many groups in Australian society.

### MEDIA ARTICLES

- Kim Agius, 'Qld community legal aid funding slashed' The Australian, 2/08/2012 - <http://bit.ly/158UfoZ>
- The Hon Jarrod Bleijie M.P. Attorney General and Minister for Justice, 'New funding model to support legal services for Queenslanders', 5/04/2013 - <http://bit.ly/11UHbPf>
- Community Law Australia, 'Unaffordable and out of reach, the problem of access to the Australian legal system', July 2012 - <http://bit.ly/YcSTnS>

## REGULATION OF SPORT AND THE USE OF COERCIVE POWERS

The release of a report into widespread drug use and doping in Australian sport has raised the issue of the use of coercive powers by regulatory agencies in Australia. Following the release of the report the government proposed a law to grant the Australian Sports Anti-Doping Authority (ASADA) wide ranging powers to question athletes suspected of doping with heavy fines if they do not answer questions or provide documents when required.

### REPORTS AND DIGESTS

- Australian Crime Commission, *Organised Crime and Drugs in Sport*, (February 2013).  
<http://bit.ly/133FMr5>
- Australian Parliament House Bills Digest, *Australian Sports Anti-Doping Authority Amendment Bill 2013*, (19 March 2013), see pages 26 to 31.  
<http://bit.ly/11G6WkO>

### MEDIA ARTICLES

- Rule of Law Institute of Australia, 'Australian Sports Anti-Doping Authority Act', 26/03/2013.  
<http://bit.ly/12kN0mK>
- Wayne Smith, 'Anti-drug boss claims one in four drug cheats slips the net ', *The Australian*, 2/3/2013.  
<http://bit.ly/ZVhduY>
- Heath Aston, 'Bid to give ASADA star chamber powers stymied', *Sydney Morning Herald*, 14/3/2013.  
<http://bit.ly/11WCD9Y>

## FREE SPEECH AND OFFENSIVE BEHAVIOUR

There is no express right to freedom of speech in Australia. High Court decisions in the past have found an implied right to freedom of political communication, but have not gone further in protecting free speech. This year two cases involving freedom of speech or the implied freedom of political communication have been decided by the High Court.

### CASES

- Attorney-General (SA) v Corporation of the City of Adelaide [2013] HCA 3 (27 February 2013) - <http://bit.ly/102qCNI>
- Monis v The Queen [2013] HCA 4 (27 February 2013) - <http://bit.ly/ZDARfv>

### MEDIA ARTICLES

- Damien Carrick. 'High court divided on freedom of speech', ABC Radio National, 5/3/2013. <http://bit.ly/16lOweM>
- Dr Manhattan, 'Monis v The Queen; Droudis v The Queen [2013] HCA 4: offensive post is not protected speech', quis custodiet ipsos custodies, 28/2/13 - <http://bit.ly/13KYjHg>

## INFLUENCE OF TECHNOLOGY ON THE LAW AND THE USE OF SOCIAL MEDIA AND THE COURTS

To ensure fairness within the legal system, careful attention must be paid to technological developments which impact on the way courts operate. Across Australia there are many cases where the use of social media has raised concerns, especially with regard to prejudice against an accused, and a variety of perspectives on the position courts should take on the reporting of proceedings on social media websites. The presumption of innocence is essential to ensure the fair prosecution of accused people. How should freedom of speech and the press be balanced with the rights of those involved in criminal trials?

### LEGISLATION AND REPORTS

- Court Security Act 2005 (NSW) Section 9 (amendments passed but not yet on force) link is to text of s9 on RoLIA's website - <http://bit.ly/1231N6W>
- Keyzer, Holland, Johnston, Pearson, Rodrick and Wallace, *Juries and Social Media - A Report prepared for the Victorian Department of Justice*, (April 2013) - <http://bit.ly/16wBXxi>

### MEDIA ARTICLES

#### USE OF SOCIAL MEDIA IN COURT PROCEEDINGS

- Sean Fewster, 'Plan to allow live tweeting from South Australian court proceedings', *Adelaide Now*, 25/02/2013 - <http://bit.ly/YilM23>
- Stephanie Quine, 'Technology ban may not be smart move', *Lawyers Weekly*, 17/01/2013.  
<http://bit.ly/164h3pq>

#### EFFECT ON JURY TRIALS

- Jane Johnson and Patrick Keyzer 'Trial by Social Media: why we need to properly educate juries', *The Conversation*, 17/04/2013 - <http://bit.ly/13KTL3A>
- Mark Oberhardt, 'Patel trial jury to be polled for bias', *The Daily Telegraph*, 4/2/2013.  
<http://bit.ly/10U2G68>
- Rae Wilson, 'Denise in plea: Don't talk online about Daniel's case', *Sunshine Coast Daily*, 08/02/2013.  
<http://bit.ly/YcPYvj>
- Adrian Lowe, 'Trial by social media' worry in Meagher case', *The Age*, 28/09/2012.  
<http://bit.ly/YcSwd8>