



Knowing the Law

Understanding the law is about knowing what the law is and how it is applied in the real world. Sometimes the law can be difficult to understand and can require legal knowledge to be able to decode the words and legal principles.

A key principle of the rule of law is 'knowing the law'. This resource is about how to make an assessment about a particular law or legal issue by first identifying; legal words, principles, structures of different areas of the law (criminal and civil) and then analysing how these elements apply to the legal issue.

The job of a lawyer

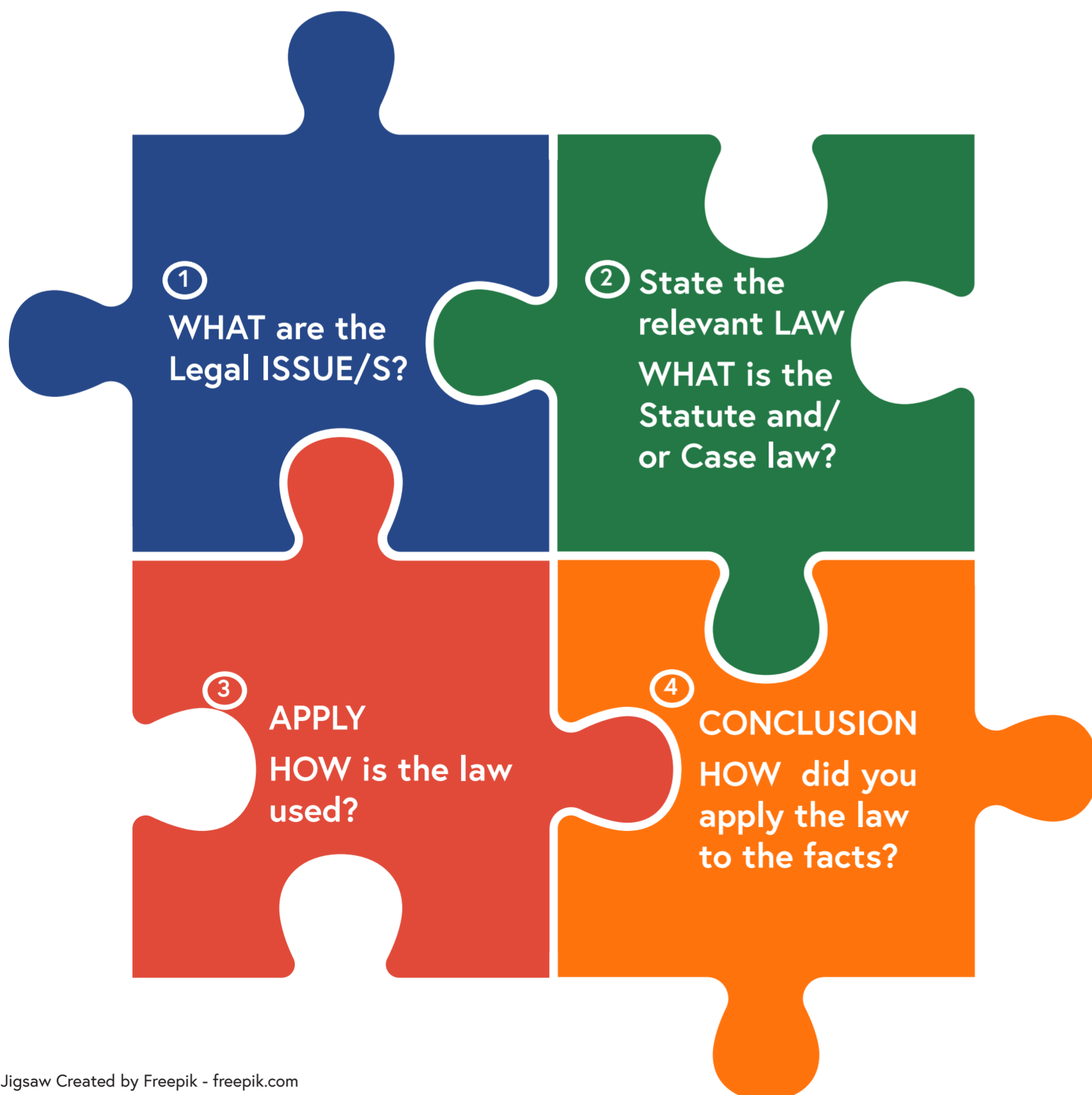
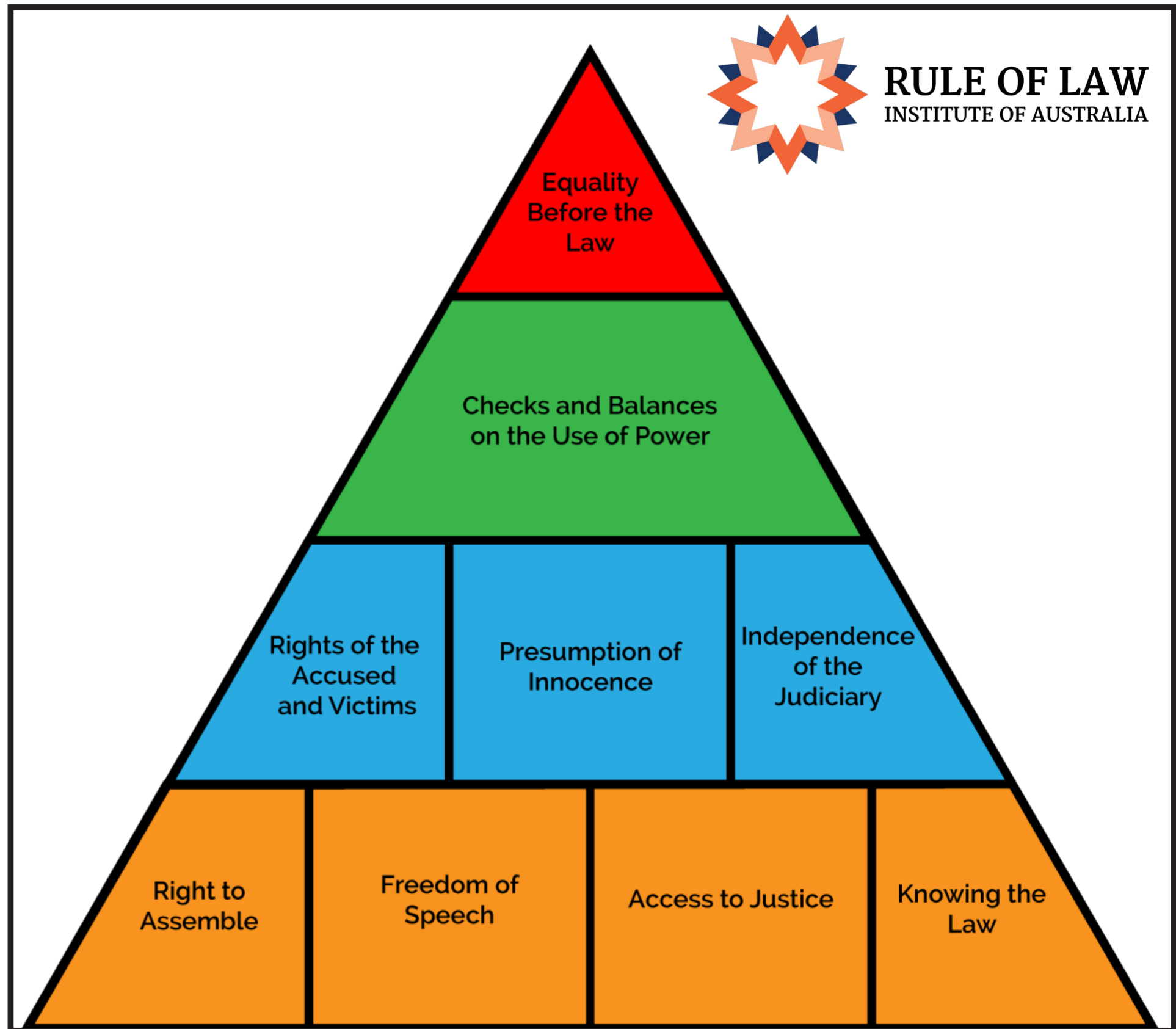
The job of a lawyer is to take a client's factual problem, apply the relevant law to that problem and give the client an answer to the problem, on the basis of what the particular law in that area will allow them to do/not do. This requires the lawyer to know both legislation and case law.

Sometimes the law will not be clear and the lawyer will have to suggest to the client what the most likely legal outcome might be, if a court is to decide on the case.

Legislation and case law can be considered from a different or creative viewpoint by the lawyer, who is able to suggest that a certain legal argument is available on the current law and the client's story. This might give the client the answer they were looking for.

This process is called legal reasoning and should be used when deciding how and why the law applies to a set of facts or a legal issue.

"The law is capable of being known to everyone, so that everyone can comply."
- Rule of Law Institute of Australia, Principle No. 5



How to do an ILAC analysis

In every legal case the legislation and case law has to be applied to a factual scenario. Below is a method that will assist you to properly consider a factual scenario or legal problem and how to apply the law to it.

I: Identify the ISSUE

What are the legal issues/the relevant area of law that will apply to the case (e.g. is it about car theft etc).

L: State the relevant LAW

What does the statute law and/or case law say?

Start by identifying relevant legislation and/or case law then write summaries of the decisions of judges in relevant cases. Sometimes there may not be legislation, only case law available.

Remember that you may have to write out definitions from the legislation that may be relevant to the case.

A: APPLY the law to the facts of the case

Each part of the law has to fit with the facts of the issue. It is like a jigsaw puzzle. All of the pieces have to fit together.

A person who really understands the law can apply it to many different facts. This may mean that they come up with many different answers, as the legal outcome will depend on the particulars facts of each legal issue.

Example of APPLY:

If a person is charged with possession of prohibited drugs under *s10 Drugs Misuse and Trafficking Act 1985 (NSW)* and the drugs were found in the pocket of their jacket, it is probable that they will be found guilty of that offence.

If a person was charged with the same offence, but the drugs were found in a car, which they were driving and in which there were other passengers, the facts might not so clearly indicate who was guilty, as the person in possession of the drugs is not necessarily clear.

C: Write a CONCLUSION on the outcome of applying the law to the facts

Always come to a conclusion and explain what you have decided the legal answer is on the facts. Provide a clear summary of what your answer is. The conclusion should neatly and succinctly sum up the application of the law to the facts of the issue.

Negligent Driving - Example ILAC

Facts

A driver of a motor vehicle in NSW stopped at a T intersection, briefly looked each way at the intersecting road and then proceeded to commence a right-hand turn into that road and across the path of a bicycle rider on the road. The driver's vehicle subsequently hit the bicycle rider on the road and killed them.

LEGAL ISSUE

Negligent driving and Negligent driving occasioning death

LAW

Statute Law -

Road Transport Act 2013 (NSW) s117 Negligent, furious or reckless driving

- 1) A person must not drive a motor vehicle on a road negligently.
- (2) A person must not drive a motor vehicle on a road furiously, recklessly or at a speed or in a manner dangerous to the public.
- (3) In considering whether an offence has been committed under this section, the court is to have regard to all the circumstances of the case, including the following:
 - (a) the nature, condition and use of the road on which the offence is alleged to have been committed,
 - (b) the amount of traffic that actually is at the time, or which might reasonably be expected to be, on the road,
 - (c) any obstructions or hazards on the road (including, for example, broken down or crashed vehicles, fallen loads and accident or emergency scenes).

Road Transport Act 2013 (NSW) s4 - definition of driving

Drive includes:

- (a) be in control of the steering, movement or propulsion of a vehicle, and
- (b) in relation to a trailer, draw or tow the trailer, and
- (c) ride a vehicle

Motor vehicle means a vehicle that is built to be propelled

by a motor that forms part of the vehicle.

Road Rules 2014 (NSW) - Regulation

Rule 73 Giving way at a T-intersection

(1) A driver at a T-intersection without traffic lights or a stop sign, stop line, give way sign or give way line, must give way in accordance with this rule.

Maximum penalty: 20 penalty units.

Note 2. For this rule, give way means the driver must slow down and, if necessary, stop to avoid a collision

Penalty Unit in NSW is \$110

Case Law -

Director of Public Prosecutions (NSW) v Yeo and Anor [2008] NSWSC 953 Johnson J quoting *Buttsworth R v Buttsworth (1983) 1 NSWLR 658 at 664ff.*

The courts have found that negligent driving is proven where the person drives a motor vehicle in a manner departing from the standard of care for other users of the road that is to be expected of the ordinary prudent (careful) driver in all of the circumstances.

Negligent driving is a criminal offence. Therefore it must be proved beyond reasonable doubt.

It also a strict liability offence. This means that the intent of the driver is not relevant in determining whether or not they are guilty of the offence. They only need to have driven negligently.

APPLY

The *Road Transport Act 2013 s117* Negligent, furious or reckless driving says that:

(1) a person must not drive a motor vehicle on a road negligently.

To apply the law you need to discuss any definitions of relevant key words from the Act itself, as well as from the Regulations or the Rules of that Act and how the facts fit those definitions.

Key words:

Drive: The driver was in the driver's seat and was in control of the steering and propulsion of the vehicle

Motor Vehicle: motor vehicle means a vehicle that is built to be propelled by a motor that forms part of the vehicle.

The driver was in a motor car, which is a vehicle that is propelled by a motor that formed part of the vehicle.

Road: A road is an area that is open to or used by the public and is developed for, or has as one of its main uses, the driving or riding of motor vehicles.

The vehicle was driven by the driver on a road that was used by the public.

The Rule is :

A driver should slow down and stop, if necessary, to avoid a collision at a T-intersection. The driver must give way to any vehicle on the intersecting road.

You then need to discuss the key question 'What does negligently mean?' and apply it to the facts of the legal issue remembering that under the legal definitions (above) the person was a driver of a motor vehicle on a road.

An exemplar answer to this question would be:

If you examine the case of *Director of Public Prosecutions (NSW) v Yeo and Anor [2008] NSWSC 953* you can see that the prosecution must prove that the driver was negligent in his driving. This occurs where the person drives a motor vehicle in a manner departing from the standard of care for other users of the road to be expected of the ordinary careful driver.

In this case the driver turned right from a T-intersection across the path of a bicycle, which had right of way along the road into which the driver was turning. The standard of care expected of an ordinary careful driver was that the driver of the vehicle would stop at the T intersection and check for any traffic proceeding in either direction along the road into which he was turning. The driver stopped and looked briefly each way at the intersecting road, but, for whatever reason, did not see the approaching bicycle rider. The driver departed from the standard of care as he did not keep a look out. Therefore he was negligent in his driving.

CONCLUSION

The facts indicate that the driver would be found guilty, beyond reasonable doubt of the offence of negligent driving. Whether he intended to cause the injury is not relevant, as it is a strict liability offence.

Valid Train Travel - Guided ILAC

Facts

A passenger on a train in Sydney had her Opal card scanned and checked by a transit officer and it showed that she did not swipe it before getting on to the train.

LEGAL ISSUE

The passenger is on a train without a valid ticket. Is this an offence?

LAW

What does the legislation say about being on a train without a ticket? Find and read the statute law below. Write out the law and explain what it means.

Statute Law

Passenger Transport (General) Regulation 2017 (NSW)

Clause 77A Valid ticket required for travel

Clause 70 Meaning of 'smart card'

Clause 69 Meaning of valid ticket

Clause 76 Meaning of valid smart card/s

Clause 77D Tickets to be processed

APPLY

Answer the following questions.

1. What did the person do?
2. Does the offence apply to someone on a train without a valid ticket?
3. Did the person have a valid ticket? What is a valid ticket?
4. The person had an Opal card. Is that a smart-card? What is a smart-card?
5. Was the smart-card valid? What does valid smart-card mean?
6. Had the smart-card been processed? What does processed mean?
7. Did the Transit Officer find that the Opal Card had been processed at the station according to the law?

CONCLUSION

Write a short conclusion and discuss whether the passenger followed the law. If you decide they did not, write down what law they broke and why you think they broke that law and what the penalty is for the offence.

Lost Property on a Bus - Independent ILAC

Facts

A person on a bus finds an Ipad on a seat when they sit down and puts it in their bag, so they can keep it. Another passenger sees them do that and reports it to the bus driver.

LEGAL ISSUE

The person took lost property on a bus, to keep for herself. Is this an offence?

LAW

What does the law say about lost property on buses and what people should do with it?

APPLY Hint: *Passenger Transport (General) Regulation 2017 (NSW)*

Apply the law to the facts of what occurred on the bus and determine what the outcome should be. Write down your thinking and analysis as you go through this process.

CONCLUSION

Write a short conclusion and discuss whether the passenger followed the law.

Extension ILAC Activities

1. Facts: A person pushes another person out of the way whilst they are having a verbal argument in a shopping centre. Legal Issue: Common Assault
2. Facts: A shop owner advertises and runs a sale offering a popular gaming console at a greatly reduced price - 70% less than the recommended retail price. Upon visiting the shop to purchase the console customers are told that the only consoles for sale are an out of date model of the console and the advertised console is not for sale. Legal Issue: Misleading and deceptive representation of goods or services
3. Facts: A builder dumps a large pile of building waste in a local area nature reserve. Legal Issue: Illegal Dumping
4. Facts: A person who rents a property gets a new puppy. The puppy eats a large hole in the bedroom door of the property. Legal Issue: Property Damage
5. Facts: A young person is studying for her final Year 12 exams at home. It is 11 pm on a Thursday night and her neighbours are playing music very loudly and disturbing her study. Legal Issue: Noise Control