

RULE OF LAW
INSTITUTE OF AUSTRALIA

The Rule of Law and the 2019 Qld Legal Studies Syllabus

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Resources

- Legal Precedent - 'The Sperm Case'
- Negligence - 'Petrol Stations of Qld'
- Human Rights - The Character Test and Immigration Detention and Medical Treatment
- Legal Literacy - The ILAC scaffold
- Further Professional Development - Quality Teaching Rounds and The Rule of Law Website

Civil Law

The 'Sperm Case'

2019
Syllabus
Links

Is Sperm
Property?

Negligence

3.3 Topic 1: **Civil law foundations**

- different methods of resolving civil disputes,
- judicial determination
- alternative methods in courts

4.4 Topic 2: **Law reform within a dynamic society**

- analyse and evaluate legal issues
- propose recommendations (e.g. specific new legislation) that improve outcomes
- justify using legal criteria and discuss implications

ALSO

- Property law
- Technology and the law
- Judicial Discretion
- Precedent - Common law

Re Cresswell [2018] QSC 142

Toowoomba woman wins court bid to use her dead boyfriend's sperm to have a baby

By Ashleigh Stevenson and Laura Gotry
Updated 20 Jun 2018, 8:14pm



PHOTO: Ayla Cresswell said she wanted to have children with her late partner Joshua Davies. (Facebook: Ayla Cresswell)

In what has been described as a landmark decision, the Supreme Court in Brisbane has granted a Toowoomba woman the right to use her dead boyfriend's sperm to have a baby.

RELATED STORY: Brisbane woman applies to use dead boyfriend's sperm to have baby

Ayla Cresswell's partner Joshua Davies died suddenly in August 2016, and within hours the court granted permission for his sperm to be harvested.

The Migration Act

The Character Test and Immigration Detention

What is the Character Test?

Human Rights

What has been the result

Court Decisions

What is the Character Test?

Section 501 of the Migration Act 1958 (Cth).

MIGRATION ACT 1958 - SECT 501
Refusal or cancellation of visa on character grounds
Decision of Minister or delegate--natural justice
applies

(1) The Minister may refuse to grant a visa to a person if the person does not satisfy the Minister that the person passes the character test.

An applicant can fail the character test if they have been sentenced to jail for more than 12 months

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Human Rights

Right to security of the person and freedom from arbitrary detention

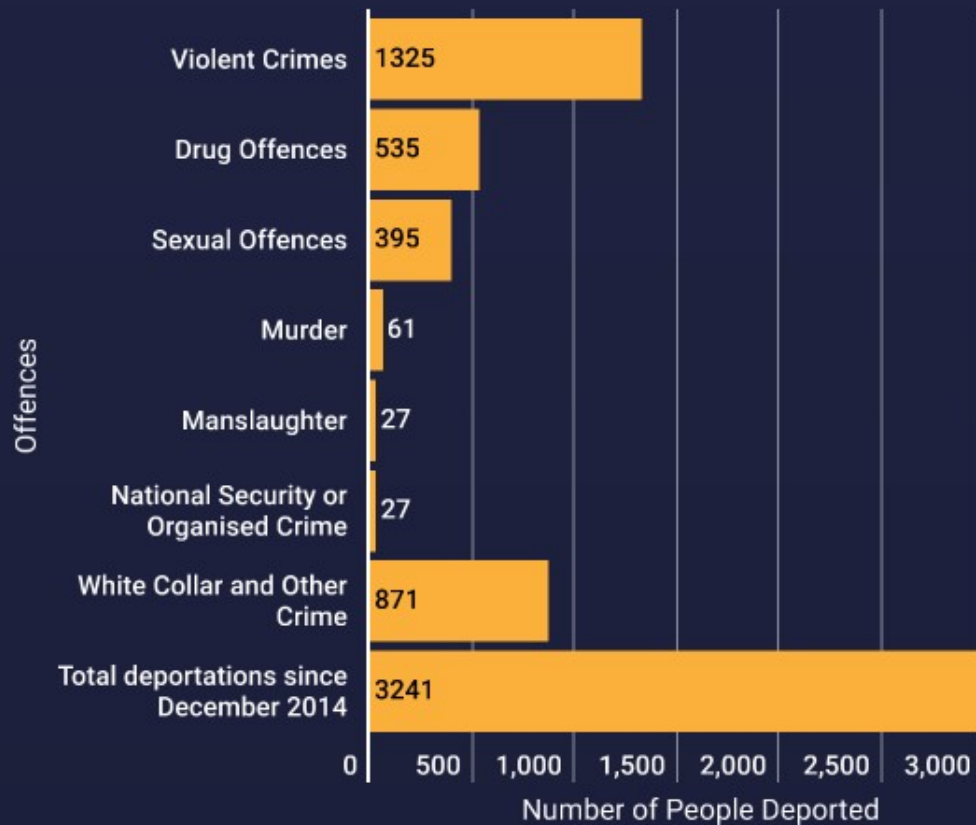
The right to security of the person and freedom from arbitrary detention is contained in **Article 9 of the International Covenant on Civil and Political Rights (ICCPR)**.

Article 9

1. Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and **in accordance with such procedure as are established by law.**
2. Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest.

If a person is NOT an Australian Citizen and they fail the character test they will be placed in immigration detention until they are deported back to their country of origin

What has been the result



Source: <https://www.homeaffairs.gov.au/about/reports-publications/research-statistics/statistics/key-cancellation-statistics>

AYX18 v Minister of Home Affairs[2018] FCA 283

...the evidence suggests an arguable case that the boy and his mother are dependent on the Commonwealth either directly or indirectly for their survival and sustenance...

I regard the risk of the boy's death as being a most powerful and compelling consideration.

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Court orders that boy, 10, at risk of suicide on Nauru be treated in Australia

Exclusive: Home affairs department argued against move but judge cites 'significant risk' he would die if left on island



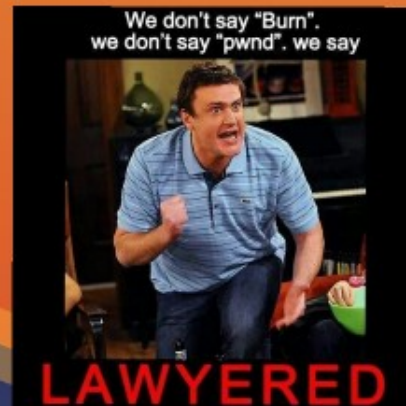
▲ The 10-year-old refugee and his mother have been flown to Australia from Nauru. Photograph: Remi Chauvin for the Guardian

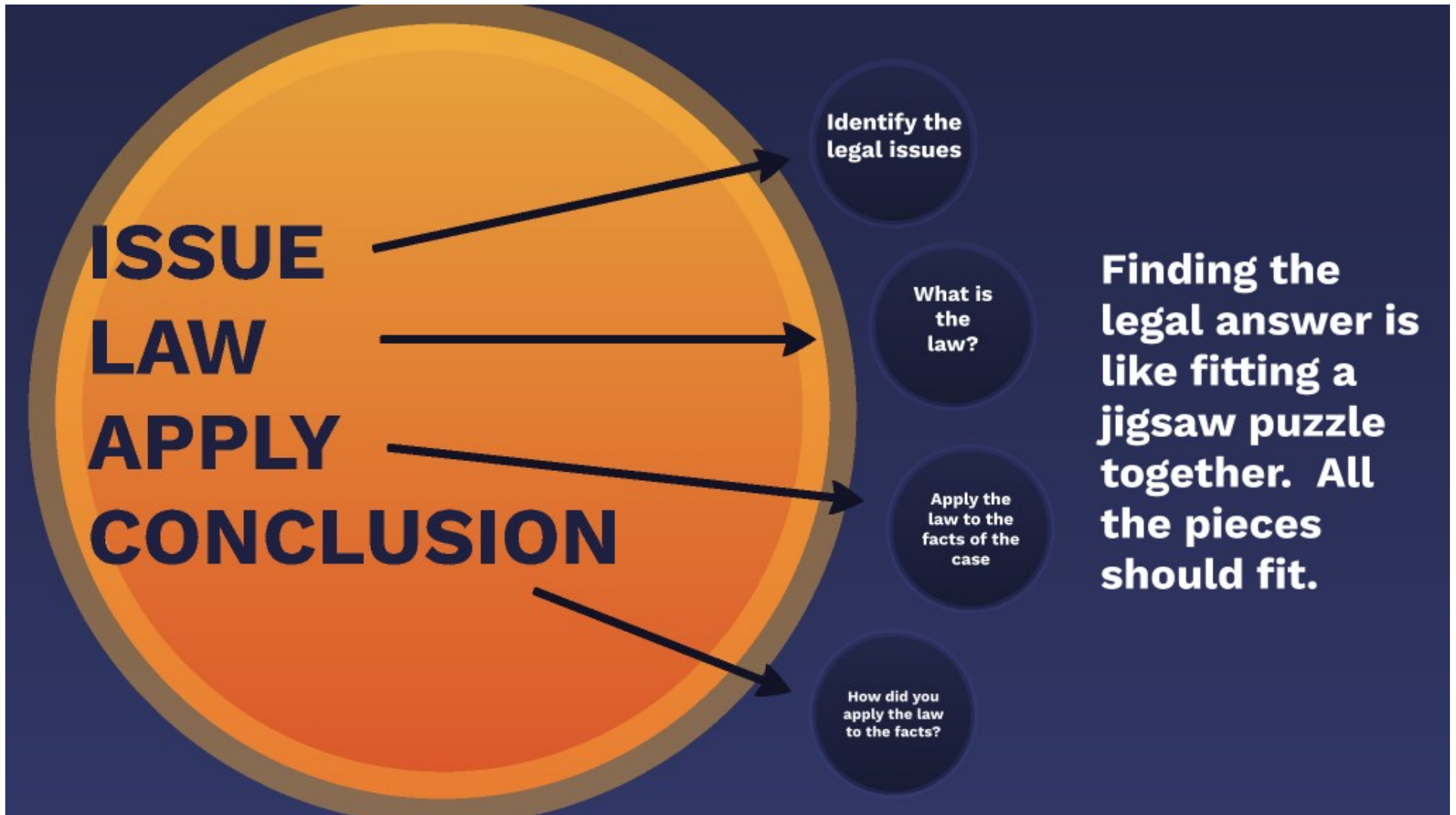
A 10-year-old refugee boy who has made repeated attempts to kill himself while held on Nauru has been ordered moved to Australia for acute psychological care, a judge has ruled, saying the boy would be at imminent risk of dying if left in the

ILAC

- Developing legal literacy skills is good for students at any point and can be tailored to the unit of work
- Allows for development of the 21st century skills outlined in the syllabus
-
- Can be fun.....

How
to
ILAC





What are the legal issues/the relevant area of law that will apply to the case?

Bolton v Queensland Police Service [2018] QDC 114

Assault
Occasioning
Bodily Harm



Schedule 1
Clause 339
Criminal Code
Act 1899 Qld

What is the law?

Queensland Criminal Code Act
1899 Schedule 1 Clause 339:
Assault Occasioning Bodily
Harm

What does the law say?

Clause 339 Assaults occasioning bodily harm

(1) Any person who unlawfully **assaults** another and thereby does the other person **bodily harm** is guilty of a crime, and is liable to imprisonment for 7 years.

(3) If the offender does bodily harm, and **is** or pretends to be **armed** with any dangerous or **offensive weapon** or instrument or is in company with 1 or more other person or persons, the offender is liable to imprisonment for 10 years.

Criminal Code Act 1899
Schedule 1 Clause 245 Definition of
assault

(1) A person who strikes, touches, or moves, or otherwise applies force of any kind to, the person of another, without the other person's consent, is said to assault that other person, and the act is called an **assault**.

Criminal Code Act
Schedule 1 Clause 1:
bodily harm means any bodily injury which interferes with health or comfort.

Offensive Weapon: broad definition

Apply the Law to the Facts of the Case



Reddit

Facts of the case

Road rage incident near Cairns. Much overtaking. Both drivers pulled into service station and one assaulted the other with a tyre spanner on the left arm.

Driver pleaded guilty.

Did the driver:

1. assault
2. cause bodily Harm
3. use an offensive weapon

How did you apply the law to the facts?

**CONCLUSION - what is the legal
answer on these facts and why?**

Driver committed an 'assault'.

The assault caused bodily harm.

**The assault was committed with an
offensive weapon.**



**Further
Professional
Development and
the New Syllabus**

Or...What can we do for you

QTR

Quality Teaching Rounds

1. **Reading Discussion** - shared theoretical basis for understanding legal concepts/cases/fundamentals/case studies
2. **Observation** - observation of host teacher's class - use of QTR coding sheet to give feedback
3. **Coding and Discussion** - Coding the lesson to the Quality Teaching Framework

Website

Rule of Law Institute

- www.ruleoflaw.org.au
- **Search by Syllabus**
- **Blog Posts**