

## HSC Legal Studies

### R v Skaf Activity 1

**Learning Intention:** to apply the learnings of sections 1-4 of the syllabus to a real case (R v Skaf) enabling students to gain perspective of the application of law and associated challenges in a real world context.

**Success Criteria:** Students will be able to accurately identify and match aspects learnt in the syllabus to elements of R v Skaf and form links to rule of law principles, analysing key challenges for the legal system discovered in this case.

**Resources:**

*Skaf Case Notes:*

<https://www.ruleoflaw.org.au/case-studies/crime/skaf/>

*Rule of Law Wheel:*

<https://www.ruleoflaw.org.au/what-is-the-rule-of-law/#wheel>

*Crime section of HSC Legal Studies Syllabus:*

<https://educationstandards.nsw.edu.au/wps/portal/nesa/11-12/stage-6-learning-areas/hsie/legal-studies>

Students may also need to supplement with their own research.

**Instructions:**

The principal focus of the Crime unit requires that students use contemporary examples to investigate criminal law, processes and institutions and the tension between community interests and individual rights and freedoms.

Using the Skaf Case Notes and your own research and the Rule of Law wheel, you will be creating a link between the information you have been learning and R v Skaf ('the case') and then linking this to rule of law principles to examine effectiveness.

#### 1. Nature of Crime

1. Outline how the case fits within the *meaning of crime*.
2. Identify the *elements of crime* present in R v Skaf, justifying why you believe each is or is not in the case.
3. Does this crime meet the definition of a *strict liability offence*? Explain your answer.
4. Is there *causation*? Why/ Why/not?
5. Identify the *category of crime* the Skaf brothers were accused of.
6. Explain why this is a *summary or indictable offence*.
7. State the relevant legislation that the *offence* would appear in.
8. Create a table that shows the *parties to the crime* and their role.
9. Were there any *factors affecting criminal behaviour* identified in the case?
10. Describe two *situational or social crime prevention strategies* that could be used to prevent other such cases of the same crime.
11. Explain how the rule of law is upheld by having legislative definitions in these areas to determine if a crime has occurred. Refer to the rule of law principles (see the Rule of Law wheel <https://www.ruleoflaw.org.au/principles/>) in your response.



## 2. The Criminal Investigation Process

1. Identify the relevant legislation that would govern *police powers* in this case.
2. Discuss the factors may have prevented the victims from *reporting* the crimes.
3. Create a mindmap that brainstorms of all of the types of *investigation* that may have occurred.
4. State the elements required by the legislation for an *arrest* to be made and legal. Why are these stated in legislation?
5. Were the Skaf brothers eligible for *bail*? Explain why/ why not using the issues that the courts must consider when deciding on bail.
6. Identify the legislation that regulates the *bail* system.
7. Explain how the regulation of the criminal investigation process upholds the rule of law and achieves justice. Apply elements from the Rule of Law wheel in your response.
8. Are there any circumstance where the rule of law may not be being achieved in the investigation process? Give examples and justify your position.

## 3. Criminal Trial Process

1. Name the *courts* with original and appellate *jurisdiction* in this case. Justify why the cases were heard in these courts.
2. State the Act that regulates the *courts* in which the original case was heard and outline what is contained in the Act.
3. Create a table with three columns: Position, Name and Role. Use this table to summarise the *legal personnel* involved in R v Skaf, even the ones you cannot find a name for (eg Court officer). Why are there so many roles in a court room?
4. Name the *defendants*.
5. What *plea* was entered by the defendants?
6. Did the defendants have any *legal representation*? Give reasons for your answer.
7. Using at least one of the rule of law principles on the wheel, explain the impact of not having *legal representation* for the accused.
8. Name the party with the *Burden of Proof* and the *Standard of Proof* that was required in R v Skaf.
9. Explain the two law reforms that occurred regarding victims giving *evidence* that arose from this case. In your response, refer to the rule of law principles and effectiveness criteria that were improved by these changes.
10. Did the defendants attempt to employ a defence? What was it?
11. Outline the role of the jury in R v Skaf. Identify two issues with the use of a jury in this case and explain how the principle of fair trial may have been affected by these.
12. What was the change in legislation regarding juries that resulted from this case? Explain how would it have improved or reduced the application of the rule of law in NSW.

## 4. Sentencing and Punishment

1. Find the *statutory guidelines* regarding *sentencing* for the crime perpetrated in the case. How did the original *sentence* compare to these?
2. Relate each of the *purposes of punishment* to the case.
3. Describe the *factors* given by the judge in the original case that affected his sentencing decision (including the impact on the victims). Do you agree with all of these? Why/ Why not? Justify your response using the effectiveness criteria (PEARRJAM).
4. Outline what happened to the *sentences* when the Skaf brothers *appealed* and the reasons given by the appellate court for any changes made. What rule of law principle was being upheld by this change and how?



5. What *type of penalty* was given? Why would this have been considered the most appropriate?
6. Describe the *post sentencing considerations* used in this case and the reasons given for them.
7. Identify two factors on the Rule of Law wheel that could be used as justifications for giving *post sentencing considerations*. Evaluate the achievement of justice for victims, offenders and society with regard to the post sentencing consideration used in this case.

### **Rule of Law Wheel**



Source: <https://www.ruleoflaw.org.au/principles/>

Refer to the source weblink for explanations of each principle on the Rule of Law Wheel.