

## HSC Legal Studies

### R v Skaf Activity

#### Activity 1 – Worksheet

**Delivery options:** This activity has been initially designed as culmination activity for the completion of the crime unit. If Crime is undertaken in term 4, this could form a revision activity for holiday homework if term time does not allow.

Alternatively, the activity could also be broken down and used at the end of each of the syllabus headings 1-4 as an application activity or could be used as a jigsaw activity for group work at the completion of part 4 of the crime syllabus, where each group is charged with the completion of a different heading. Each group would then prepare a presentation or resource to share with their peers on the aspects of R v Skaf that are relevant to their assigned section so all students have a complete picture of the relevance of the case at the end of the activity.

**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.

#### Activity 1 details:

The student worksheet is based on the following aspects of the syllabus and will ask students to answer questions on Syllabus points as highlighted in pink. Questions will be based on the associated skill highlighted in green.

Alternative Task for higher performing students/ classes: teachers could hand out clean copies of syllabus points 1 - 4 and ask students to identify relevant syllabus points, discovering and justifying the relevance of associated case information for themselves.



**HSC Crime Syllabus: Areas that should be identified by students as relevant to R v Skaf for the worksheet or alternative activity**

Students learn about:	Students learn to:
<p><b>1. The nature of crime</b></p> <ul style="list-style-type: none"> <li>the meaning of crime</li> <li>the elements of crime: actus reus, mens rea</li> <li>strict liability offences</li> <li>causation</li> <li>categories of crime including offences against the person, offences against the sovereign, economic offences (property/white collar/computer), drug offences, driving offences, public order offences, preliminary crimes (attempts and conspiracy)</li> <li>summary and indictable offences</li> <li>parties to a crime including principal in the first degree, principal in the second degree, accessory before the fact, accessory after the fact</li> <li>factors affecting criminal behaviour</li> <li>crime prevention: situational and social</li> </ul> <p><b>2. The criminal investigation process</b></p> <ul style="list-style-type: none"> <li>police powers</li> <li>reporting crime</li> <li>investigating crime: gathering evidence, use of technology, search and seizure, use of warrants</li> <li>arrest and charge, summons, warrants</li> <li>bail or remand</li> <li>detention and interrogation, rights of suspects</li> </ul> <p><b>3. Criminal trial process</b></p> <ul style="list-style-type: none"> <li>court jurisdiction</li> <li>the adversary system</li> <li>legal personnel: magistrate, judge, police prosecutor, Director of Public Prosecution, Public Defenders</li> <li>pleas, charge negotiation</li> </ul>	<p><b>Students learn to:</b></p> <ul style="list-style-type: none"> <li>describe the nature of crime</li> <li>recognise the different categories of crime</li> <li>define summary and indictable offences</li> <li>examine a range of factors that may lead to criminal behaviour</li> <li>investigate a range of situational and social crime prevention techniques</li> <li>discuss the powers of police in the criminal process</li> <li>examine the reporting and investigating of crime</li> <li>assess the effectiveness of the criminal investigation process as a means of achieving justice</li> <li>describe the role of courts in the criminal justice process</li> <li>discuss the use of the adversary system as a means of achieving justice</li> <li>examine the role of legal representation in the criminal trial</li> </ul>



<ul style="list-style-type: none"> <li>• legal representation, including legal aid</li> <li>• burden and standard of proof</li> <li>• use of evidence, including witnesses</li> <li>• defences to criminal charges:             <ul style="list-style-type: none"> <li>– complete defences</li> <li>– partial defences to murder</li> </ul> </li> <li>• the role of juries, including verdicts</li> </ul> <p><b>4. Sentencing and punishment</b></p> <ul style="list-style-type: none"> <li>• statutory and judicial guidelines</li> <li>• the purposes of punishment: deterrence (specific and general), retribution, rehabilitation, incapacitation</li> <li>• factors affecting a sentencing decision: aggravating and mitigating circumstances</li> <li>• the role of the victim in sentencing</li> <li>• appeals</li> <li>• types of penalties including: no conviction recorded, caution, fine, bond, suspended sentence, probation, criminal infringement notice, penalty units, community service order, home detention, periodic detention, forfeiture of assets, imprisonment, diversionary programs</li> <li>• alternative methods of sentencing including circle sentencing, restorative justice</li> <li>• post-sentencing considerations, including security classification, protective custody, parole, preventative detention, continued detention, sexual offenders registration, deportation</li> </ul>	<ul style="list-style-type: none"> <li>• assess the use of defences to criminal charges in achieving justice</li> <li>• evaluate the effectiveness of the jury system in the criminal trial</li> <li>• assess the effectiveness of the criminal trial process as a means of achieving justice</li> <li>• discuss factors that affect sentencing decisions, including the purposes of punishment and the role of the victim</li> <li>• evaluate the effectiveness of different types of penalties, including diversionary programs</li> <li>• assess the roles of alternative methods of sentencing</li> <li>• examine the implications of post-sentencing considerations in achieving justice</li> <li>• evaluate the effectiveness of sentencing and punishment as a means of achieving justice</li> </ul>
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## Worksheet – HSC Legal Studies – R v Skaf

### 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, you will be creating a link between the information you have been learning and R v Skaf ('the case').

### 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.



## Activity 2 – Walking Debate

**Activity purpose:** to create conditions for debate and thinking regarding the case in the context of rule of law principles and the Themes and Challenges.

**Learning Intention:** to apply R v Skaf to the Crime Themes and Challenges and for students to consider effectiveness/ ineffectiveness in the context of rule of law principles.

**Success criteria:** Students are able to articulate why they believe the legal system has been effective/ ineffective with regard the topic themes and challenges, applying R v Skaf to effectively justify their position.

### Instructions

1. Students need to pre-read the Skaf Case Notes (particularly if Activity 1 was not completed).
2. Teacher to allocate different sides of the room for effective (the green corner) or ineffective (the red corner). 6 pieces of butchers paper (or A3 paper) should be on a desk in each corner, each labelled with one of the Themes and Challenges so they are all there.
3. The teacher will then read statements related to the themes and challenges and ask students to decide if the legal system has been effective or ineffective (do not specify victims, offenders or society).
4. Students will then need to move to the corner of their choosing (the green corner or the red corner).
5. They are then given a few minutes to write why they chose effective or ineffective on the piece of paper below the relevant Theme and Challenge.
6. Teacher will then choose two people from each corner to discuss why they chose what they did.
7. This process to be repeated with each statement.

## Crime Themes and Challenges

### The role of discretion in the criminal justice system

Possible statements:

- The original sentence upheld the principle of totality.
- Aggravating factors and objective seriousness should be the primary consideration of sentencing.
- The crimes committed by the Skaf brothers were worse than murder and should have been punished as such.

**Teacher notes:** sentencing – effective in terms of the rights of the victim and society but ineffective for offenders given extremity of difference for other offenders of same category of crime. In many cases of murder, offenders receive lesser sentences than was received by the brothers. ROL Wheel link – People can only be punished in accordance with the law

### Issues of compliance and non-compliance in regard to criminal law

Possible statements:

- Extreme sentences encourage compliance in the community.
- Parole conditions provide a safe transition for offenders back into the community and uphold the rights of the offender, victim and society.

- The jury should be allowed to complete their own research to help them make a decision faster.
- Extreme sentencing allows the legal system time to achieve all of the sentencing principles.

**Teacher Notes:** want to encourage compliance with the law by others – related to sentencing and principle of totality issues. The brothers remain unrepentant despite the heavy penalty and conditions imposed upon them and have been identified as medium – high risk for reoffending due to the lack of victim empathy and and remorse. ROL wheel links – People can only be punished in accordance with the law.

### The extent to which law reflects moral and ethical standards

Possible statements:

- The case of R v Skaf demonstrates the legal system's ability to be responsive to changing community expectations.
- The appellate courts decision in R v Skaf was reflective of society's moral and ethical standards.

**Teacher notes:** some sections of the community would argue that sentence was inadequate for the crimes perpetrated, but the principles of totality and proportionality require that there must be parity for similar offences and that the punishment is proportionate to the gravity of the offence. ROL wheel link – People can only be punished in accordance with the law.

### The role of law reform in the criminal justice system

Possible statements:

- The case of R v Skaf created legal reforms that have been effective in upholding the rights of the victim and offender.
- Law reforms created should have a test that requires the interests of victims, offenders and society are equally balanced and should not be passed if they are not.

**Teacher Notes:** reforms created for victims regarding evidence and cross examination uphold rights of the victim and jury reforms uphold right to a fair trial for accused. The creation of the reforms for victims retrospectively eroded has reduced recognition of offenders rights as they lost the opportunity for cross examination when pre recorded testimony is used, eroding the fairness of the trial. The change regarding victims happened following the first trial, meaning that the defedants lawyers were working with changing law that was retrospective, so law was not known and accessible. ROL Wheel links – Fair trial; presumption of innocence; no retrospective laws should be made; the law is known and accessible, the law and its administration is subject to open and free criticism.

### The extent to which the law balances the rights of victims, offenders and society

Possible statements:

- The final outcomes in the Skaf case adequately balanced the rights of victims, offenders and society.
- Post sentencing considerations allow the opportunity for the rights of offenders to be recognised by legal processes.

**Teacher Notes:** sentencing issues – clear conflict between societal expectations (rights of society), upon appeal by victims (rights of the victim) and sentencing considerations and the principle of totality (protects the rights of the offender). Post sentencing measures (parole) tensions – conflict between safety of community (rights of society), rights of offender having



met conditions but still being without remorse (rights of offender) and the victim's feelings of safety and adequate retribution (rights of victim).

### The effectiveness of legal and non-legal measures in achieving justice

Possible statements:

- Controlling the coverage of cases by media is crucial to the achievement of a just outcome.
- The legal system effectively achieved justice for the victim, offender and society in R v Skaf.
- Without media coverage, it is not possible for a fair trial to be conducted as transparency is a key element of our democratic and legal processes.

**Teacher Notes:** law reforms generated by legal means could enhance justice going forward for victims and accused. Media coverage and involvement may have impeded the outcomes for the accused. ROL wheel links: Fair trial; the law and its administration is subject to open and free criticism; open, independent and impartial judiciary.