

Preliminary Legal Studies – Law Reform Case Study

R v Skaf

Part 1: The Legal System; 4. Law Reform – Conditions, Agencies and Mechanisms of reform

Case Study Activity – can be completed individually, in groups (allocating conditions, agencies and mechanisms across 3 or 6 groups) or as a class on whiteboard (divide whiteboard in three with students coming forward to fill in each column).

Students Learn About:	Students learn to:
<p>Law reform</p> <ul style="list-style-type: none"> • conditions that give rise to law reform including: changing social values, new concepts of justice, new technology • agencies of reform including law reform commissions, parliamentary committees, the media, non-government organisations • mechanisms of reform including courts, parliaments, United Nations intergovernmental organizations 	<ul style="list-style-type: none"> • Examine the conditions that give rise to law reform • Describe the role of agencies involved in law reform • Examine the operation of the different mechanisms of reform

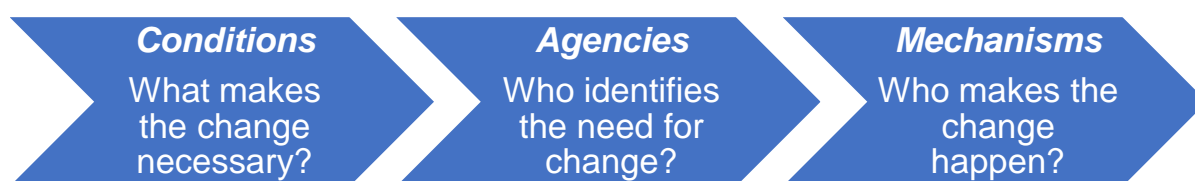
Learning Intention: to apply the elements of law reform (conditions, agencies and mechanisms) in the context of a case study – R v Skaf

Success Criteria: students will understand how R v Skaf generated law reform in order to better protect the rights of the victim and accused, upholding the principles of the rule of law.

Rule of Law Wheel Connections: presumption of innocence; fair and prompt trials; people can only be punished in accordance with the law; the law and its administration is subject to open and free criticism; open, independent and impartial judiciary; no retrospective laws should be made; laws are made in an open and transparent way by the people; the law is known and accessible.

Resources: Use the link to review the Skaf Case Notes:

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



Activity – Law Reforms Generated by R v Skaf

Instructions:

1. Use your notes and text/ references to remind yourself of the role of each of the elements of law reform before you begin (Conditions, Agencies, Mechanisms).
2. Read the Skaf Case Notes
<https://www.ruleoflaw.org.au/case-studies/crime/skaf/>
3. Answer each of the following questions. You should first use bullet points to summarise the key factors and then attempt to use a PEEL format for your response to each question.

We have used question b) on conditions as an example for you here:

Point – What are you going to discuss? Identify the elements that were causing a need for change

Sentence Starter: The conditions that gave rise to law reform during R v Skaf were...

Explanation – Explain why these elements were showing a need for change – why was this important? Why was change needed? How were elements of the Rule of Law being negatively impacted by not creating a legal framework?

Example – Use facts from R v Skaf to support your point and explanation.

Linking Sentence - link back to your original point.

Sentence Starter: Therefore, proceedings in R v Skaf identified the need for change to occur regarding

- a) **Identify** the **two** legislative changes that were caused by R V Skaf.
 - i. *Victim evidence:* Changes in way sexual assault victims evidence is used and who can cross examine them in court.
 - ii. *Jury misconduct:* Changes in the regulation of jurors to more closely regulate jury behaviour and enhance the achievement of fair trials for accused.
- b) **Explain** what **conditions** gave rise to legislative change during R v Skaf.
 - i. *Victim evidence:* New concept of justice for victims to reduce the ongoing trauma associated with trials. In R v Skaf, the victim (Ms D) refused to repeat giving evidence again in the retrial due to trauma, which would have led to the charges being dropped.
 - ii. *Jury misconduct:* New concepts of justice and recognition of right to a fair trial. In R v Skaf, attendance of jury members at the scene of the alleged incident may have affected their decision-making process by having information outside of the evidence heard during the trial, reducing the element of a fairness for the accused in the trial and impacting on the integrity of the processes and therefore the rule of law.
- c) **Describe** the **agencies** of reform in this case and their role.
 - i. *Victim Evidence:* The Crown (DPP) - the legal system recognised that the process of giving evidence for the victim causes them to relive trauma in 2 ways – recounting the alleged offences and confronting the accused in court. When the jury misconduct was identified, the victim, Ms D, advised the DPP that she would be psychologically unable to give evidence again due to the severe trauma experienced through the giving of evidence.
 - ii. *Jury misconduct:* Courts – the court of appeal recognised that the verdict in the Skaf case may have been affected the integrity of the trial process had been impacted by the jurors site visit (see page 3 of Skaf Case Notes for quotes). Non-legal: media



- d) **Identify** the **mechanism** for change. **Give** the names of the legislative changes that occurred and their purpose. **Discuss** how each acts to uphold the rights of the victim and the accused.
- i. *Victim evidence* – parliament; Criminal Procedure Amendment (Evidence) Act 2005 - purpose was to enable the courts to use previously given evidence of victims of sexual assault in order for them to avoid having to give evidence repeatedly in the presence of the accused in the case of retrial or appeal. In addition, the Criminal Procedure Amendment (Sexual Offence Evidence) Act 2004 – purpose was to avoid unrepresented accused from cross examining their victims in court so as not to further traumatise victims or cause them to inaccurately recount events in the face of the accused's questions, both of which may impact on the principle of fair trial and upholding rights of the victim.
 - ii. *Jury misconduct* – parliament; Jury Amendment Act 2004; Jury directions now cover outside experiments and the Act prohibits jurors from making inquiries for the purpose of obtaining information about the accused or issues in the trial, including internet searches or conduct of experiments. Uphold rights of offender by ensuring all jurors have equal access to evidence that is known by both defence and prosecution (ensuring transparency in the legal process)
- e) **Analyse** how the rule of law is upheld by the process of law reform in NSW.
- Students should identify that each stage of the law reform process enables the achievement of rule of law, referring to factors on the wheel and associated criteria for effectiveness.
 - The recognition of changing social values, needs in the community or factors that impact on the achievement of the rule of law (and therefore fairness, equity and access) (**conditions**) creates a need for change in the law to recognise such factors in a legal framework.
 - There can be legal and non-legal **agencies** petitioning for mechanisms to recognise and act upon the need for change. These agencies are upholding the principle that the law and its administration are subject to open and free criticism – they are publicly identifying the need for change in order to enhance legal process and increase just outcomes, thereby upholding the rights of the individual. Media can be a non-legal agency, assisting the community in publicly petitioning for change and creating transparency in the process by reporting on the perceived needed changes.
 - **Mechanisms** are responsible for enacting the change into a legal framework such that all members of the community are subject to the law and the law is applied equally and fairly. This process should happen in an open and transparent way, in a non-retrospective way, ensuring that the law is known and accessible (transparency). This will also have the effects of people only being punished in accordance with the law, fair and prompt trials should be enabled by the existence of law.
 - Students should also refer to contrasting factors where the law has not been as responsive (eg same sex marriage) as well in order to create a thorough analysis.



Extension Activity: can be completed individually or in small groups/ as a class to generate discussion.

1. Create a table with three columns – Victim, Offender and Society.
2. Use the Rule of Law Wheel to determine which principles of the rule of law existed in R v Skaf for each participant in the legal system. Populate your table with your thoughts. <https://www.ruleoflaw.org.au/principles/>
3. For each element that you do not see in the case, justify why you think it is not relevant to this particular case.

THE RULE OF LAW

All people should be ruled by just laws
subject to the following principles:



The rule of law must be supported by informed and active citizens

