

## **BLB1114 LEGAL RESEARCH METHODS ASSESSMENT TASKS 1, 2 and 3 Semester 2, 2017**

This is a skills-based unit. Skills are taught around a research theme.

The research theme for semester 2, 2017 is based on self-represented litigants and the challenges this presents both for the court and for the self-represented litigant. Included in this theme is consideration of legal aid and pro bono work by legal support services.

At the end of the semester, you will be required to write an essay (task 3) that addresses the following statement:

*'It might be said that the "playing field" of litigation is never truly level, even when both parties are represented, because of the varying skills and abilities between solicitors and counsel. However, the field is more markedly uneven in cases where a lay-person is on one side and a qualified practitioner is on the other. The disparity in skill and knowledge raises issues as to a court's duty to assist the [self-represented litigant] SRL. ... The obligation of the court to provide some advice (if not assistance) to SRLs, and an SRL's lack of understanding of the process, necessarily means more time is required to finalise the proceedings. An SRL does not only present challenges for the court; the court proceedings present challenges for the SRL.'*

Deputy Chief Justice Faulks, Family Court of Australia, 'Self-represented litigants: Tackling the challenge' (Paper presented at the Managing People in Court Conference, National Judicial College of Australia and the Australian National University, Canberra, 9-10 February 2013) 4.

Included in this theme is consideration of the following issues:

- The nature of legal representation;
- Self-represented litigants;
- The formality of hearings;
- The impact of self-representation on parties, judges/magistrates, court processes and outcomes;
- Legal aid and pro bono work.

You do not need to focus on each of these issues. It is sufficient to concentrate on one or more aspects of the topic. It is up to you to choose the issue or issues you wish to focus on. Note, however, that you will be required to think about and to address the research statement as a whole in certain aspects of Task 1.

You are required to attend at least 2 court hearings (for a minimum of 2 hours each) plus analyse and evaluate primary and secondary sources, using academic referencing (AGLC) in order to complete task 3. Tasks 1 & 2 will help you build the skills to enable you to write the final essay to an acceptable standard. More details of tasks 1-3 are set out below.

The skills we will work on throughout the semester are:

- how to do legal research (including locating and evaluating primary and secondary sources in law);
- how to correctly cite/reference secondary sources and primary sources following the rules of the Australian Guide to Legal Citation(AGLC)
- how to critically analyse secondary sources;
- how to read cases/legal judgments and how to read Statutes/Acts of Parliament; and
- how to write a research essay that addresses a research topic and is supported by primary and secondary sources which are properly referenced.

Legal research and writing demands that you consider contrasting or competing arguments and that you communicate your preferred stance in an ethical way and in accordance with scholarly conventions. It is important that you justify and substantiate your views by reference to the law and to what scholars have said about the law.

### **These skills will be taught in class and assessed by Assessment tasks 1-3**

It is very important to attend all classes. In the event that you are not able to attend a class, it is your responsibility to catch up on the work missed. Please keep in contact with your tutor.

It is very important to keep to the schedule, as each assessment task builds on the previous tasks and the work carried out in class.

Deadlines for all assessment tasks will be strictly enforced (late penalties will apply at 5% per day including Saturdays and Sundays) and extensions will only be granted in extreme circumstances (e.g. with the requirement of a doctor's certificate or counsellor's report)

## **Task 1**

### **Identification, Evaluation and Analysis of Secondary Sources with Reflection**

Remember the final research essay statement is:

*'It might be said that the "playing field" of litigation is never truly level, even when both parties are represented, because of the varying skills and abilities between solicitors and counsel. However, the field is more markedly uneven in cases where a lay-person is on one side and a qualified practitioner is on the other. The disparity in skill and knowledge raises issues as to a court's duty to assist the [self-represented litigant] SRL. ... The obligation of the court to provide some advice (if not assistance) to SRLs, and an SRL's lack of understanding of the process, necessarily means more time is required to finalise the proceedings. An SRL does not only present challenges for the court; the court proceedings present challenges for the SRL.'* Discuss.

### Objectives of task 1:

- locate two (2) secondary sources (at least one (1) must be a peer reviewed journal article) that are relevant to the final research essay statement;
- demonstrate understanding of referencing requirements using AGLC referencing rules;
- demonstrate an understanding of the difference between first person and third person writing;
- demonstrate an understanding of the differences between descriptive writing, analytical writing and reflective writing;
- explain the key points made in each of the secondary sources and explain how they are linked to the research statement;
- analyse the key points made in the two (2) secondary sources;
- compare and contrast the arguments made in the two (2) secondary sources; and
- reflect on the usefulness of the two (2) secondary sources for your final research essay, by evaluating their reliability and relevance.

**Note:** For this task you cannot use any of the secondary sources discussed in tutorials. (You should refer to the Tutorial Program to check the sources that will be discussed throughout the semester).

### **Details on Assessment Task 1:**

Due date	11.59pm Sunday 20 August 2017
Word limit	1,000 words + 10% leeway (Headings, footnotes and bibliography are not included in the word count). <b>You must include word count on first page of assessment.</b>
Total marks	30 marks = 30% of total marks for the unit.
Submission requirements	Submit electronic copy (via Assessment Drop Box on VU collaborate) (refer to Unit of Study Guide for a warning on plagiarism). No hardcopy required. <b>Please note that you are required to complete an online quiz on the Australian Guide to Legal Citation (AGLC) before you are able to submit Task 1 online. There are no marks awarded for completion of the AGLC online hurdle quiz.</b>
Late penalty	5% per day (or part thereof). ( <u>Note</u> : this will be strictly enforced). (refer to the Unit of Study Guide for information on extensions and special consideration)
Referencing requirements	AGLC compliant footnotes and an AGLC compliant bibliography must be included.

### Instructions for Assessment Task 1:

This task is **not an essay**- you do not need to write an introduction, body and conclusion. There are 2 parts to this task (Part A and Part B):

#### Part A:

**Part A requires you to discuss each secondary source separately.** This Part involves both descriptive writing and analytical writing. Make sure you address each of the requirements for both secondary sources.

#### Requirements:

- (i) Find two (2) secondary sources that are relevant to the research topic. At least one (1) of your secondary sources must be a peer reviewed journal article. Provide a fully AGLC compliant reference for each secondary source using the requirements of an AGLC bibliography entry (4 marks);
- (ii) Explain the key points made in each secondary source using the third person (6 marks);
- (iii) Provide one (1) significant quote for each secondary source, and reference the quote using a fully AGLC compliant footnote. Explain why the quote is significant, using the third person. Use of appropriate language and style will be taken into account (6 marks);
- (iv) Critically analyse each secondary source by considering the claims made by the author and the quality of the evidence used to support the claims using the third person (6 marks).

Aim to read widely and then choose the most appropriate sources to focus on for this assessment task. Keep your own record of any extra reading, as this may help with your final essay.

#### Part B:

**Part B requires you to discuss the two (2) secondary sources together using techniques of reflective writing** (please refer back to your lecture notes on reflective writing).

#### Requirements:

In Part B you are required to reflect on the usefulness of two (2) secondary sources to the research topic.

Your reflection must include:

- (i) A comparison and reflection upon the reliability and usefulness of the two (2) secondary sources, written in the first person (2 marks);
- (ii) A comparison and reflection upon the relevance of the two (2) secondary sources to the research statement (or aspects of the research statement), written in the first person (2 marks);
- (iii) A comparison and reflection upon the similarities and differences in the arguments raised by the two (2) secondary sources, written in the first person (2 marks);

- (iv) A reflection on the aspects of the research statement that are not covered by your two (2) secondary sources (and will require further research prior to submission of your final research essay), written in the first person (2 marks).

Assessment Rubric follows

### Assessment Rubric for Task 1: *Identification, Evaluation and Analysis of Secondary Sources with Reflection*

Marks	Marking criterion	HD/D	C/P	N
4	<b>PART A:</b> <i>Locates two properly referenced secondary sources relevant to research topic</i>	Locates appropriate and well-chosen secondary sources that are clearly relevant to topic and referenced in accordance with AGLC. Includes at least one peer-reviewed journal article.	Locates secondary sources- at least one of which is a peer reviewed journal article - but the sources are not entirely appropriate for the topic or are not referenced in accordance with AGLC.	Does not locate two secondary sources or neither source is a peer reviewed journal article; or the sources are not relevant to the topic or do not comply with AGLC.
12	<b>PART A:</b> <i>Describes key points made in each source, critically analyses each source in terms of reliability and quality of evidence to support author claims</i>	Describes and critically analyses <u>each</u> source, including cogent, relevant and insightful discussion of reliability & level of evidence to support author's claims.	Achieves a generally proficient result in analysing sources. There may be lapses or omissions in quality of discussion and points made about reliability of sources or level of evidence to support author's claims.	Makes an unfocused or unclear attempt to analyse each or both source(s). Makes confused or irrelevant points about reliability of sources and/or level of evidence to support author's claims.
6	<b>PART A:</b> <i>Embeds a key quotation from each source in written work and applies AGLC correctly, using footnotes; demonstrates developing legal literary skills by using appropriate language and style</i>	Embeds a quotation from <u>each</u> source appropriately in work and applies AGLC correctly, using footnotes. Writes in error-free, clearly structured and well-phrased language appropriate to a legal context that 'gets the message across' accurately and proficiently.	Does a competent job of embedding a quotation from sources in work and generally applies AGLC correctly, with minor errors. Writes in mostly correct and proficient language with generally acceptable structure and phrasing suitable for a legal context. Some defects occur.	Makes a generally poor job of embedding a quotation from sources, including deficiencies in AGLC application. Writes in poorly structured and badly-phrased language. Meaning often unclear. Does not achieve an acceptable level of written expression for a legal context
8	<b>PART B:</b> <i>Reflects on learning and the usefulness of the sources to research on allocated research topic- in one coherent piece of writing</i>	Demonstrates outstanding ability to reflect in an insightful way on learning to date and on the usefulness of chosen sources to the research topic. Structures a clear, well-focused discussion about <u>relevance</u> of sources to topic.	Demonstrates competence in reflecting on learning and on the usefulness of chosen sources to the research topic. Expresses some insight. Discusses in a mostly well-considered way <u>relevance</u> of sources to topic. A few gaps, omissions or weak points.	Provides a generally poor and unskilled attempt to reflect on learning and on the usefulness of chosen sources to the research topic. Lacks insight. Makes a poorly considered attempt at discussing <u>relevance</u> of sources to topic. There are numerous gaps, omissions and poorly made points.

## **Assessment Task 2**

### **Statutory Interpretation Quiz: Take Home**

On Monday of Week 7 (4<sup>th</sup> September), a Quiz will be posted on VU Collaborate. You must submit your answers to the Quiz questions by 11.59pm on Sunday, 10 September 2017. Late penalties will apply (5% per day or part thereof).

The Quiz will cover tutorial and lecture work from weeks 4, 5 and 6. You should set aside sufficient time during this week to work on the Quiz.

All students must submit their answers through VU Collaborate by 11.59pm on Sunday, 10 September 2017.

The Quiz will be worth 20% of your final mark.

#### **Details on Assessment Task 2:**

Due date	11.59pm on Sunday, 10 September 2017 (note that the quiz questions will be made available on Monday, 4 September 2017).
Word limit	The word count must not exceed 1000 words. <b>You must include word count on first page of assessment.</b>
Total marks	20 marks = 20% of total marks for the unit
Submission requirements	Submit electronic copy (via Assessment Drop Box on VU collaborate). (See the unit of study guide for a warning on plagiarism). No hardcopy required.
Late penalty	5% per day (or part thereof). ( <u>Note</u> : this will be strictly enforced). (See the unit of study guide for information on extensions and special consideration)
Referencing requirements	You must refer to relevant sections of legislation and relevant cases (where relevant) to support your answers to Quiz questions. Marks will be lost where students do not do this. You are not required to submit a bibliography for this task.

## Assessment Task 3

### Details on Assessment Task 3: Essay based on Research Topic and Court Observations

Due date	11.59pm Sunday, 22 October 2017.
Word limit	1,500 (not including headings, footnotes or bibliography) + 10% leeway <b>Include word count on first page of assessment.</b> NB. There is no word limit for the table summarising your court observations. The word limit applies to the essay.
Total marks	50 marks = 50 % of total marks for the unit (10% for table summarising your court visit and 40% for final essay).
Submission requirements	Submit electronic copy (VU collaborate) (see the unit of study guide for a warning on plagiarism). No hardcopy required. <b>Please note that you are required to complete an online quiz on the Australian Guide to Legal Citation (AGLC) before you are able to submit Task 3 online. There are no marks awarded for completion of the AGLC online hurdle quiz.</b>
Late penalty	5% per day (or part thereof). (See the Unit of Study Guide for information on extensions and special consideration)
Referencing requirements	AGLC compliant footnotes and an AGLC compliant bibliography must be included.

#### Instructions: Assessment Task 3

#### **Table summarising your court visit (10%) and essay incorporating court observations (40 marks). Overall 50% of your final mark**

Assessment Task 3 has 2 parts:

**Part A** (worth 10%) is a summary of two (2) court visits made by you during the semester.

Your summary must be incorporated into the table below.

See below for rules on Court etiquette - make sure you read these rules before attending court.

**Part B** (worth 40%) is an essay based on the semester research topic and incorporating your court observations where relevant.

#### **Part A (10%)**

You are required to visit court on two (2) occasions during Semester 1 2017, for at least 2 hours each visit. We suggest that you visit different courts in the court hierarchy. Attendance at a tribunal (including VCAT) is not acceptable for this assessment task. You will be awarded zero marks if you write this assessment task based on your observations of a VCAT hearing or hearings.

We have allocated week 10 for court visits and therefore no lectures or tutes will occur in week 10 (however you can visit court at any time during the semester at times to suit your own schedule).

Note: You cannot use information from visits to court prior to Semester 1, 2017 and you cannot report on court visits related to yourself or family members (as the purpose of these visits is to take an objective stance).

Table summarising court visits

You are required to complete the table below, which you will find on VU Collaborate in word format for your convenience, and submit it on VU Collaborate with your final essay.

TABLE SUMMARISING YOUR COURT VISITS (worth 10%)

<b>Requirements</b>	<b>Court Visit Number 1</b>	<b>Court Visit Number 2</b>
Date and time of visit - 2 marks		
Court attended -1 mark		
Name and title of judge/magistrate - 2 marks		
Type of proceeding (e.g. traffic offence, family matter etc) - 2 marks		
Details of legal representation -1 mark		
Observations on formality of proceedings (with example to support your observation) - 2 marks		

**Part B (40%)**

Essay addressing the semester research topic (note that there is a rubric below setting out the mark allocation for this task).

You are required to write a short essay addressing the research topic we have been discussing throughout the semester. Your essay should incorporate observations from your court visits, where they are relevant to the research topic.

*‘It might be said that the “playing field” of litigation is never truly level, even when both parties are represented, because of the varying skills and abilities between solicitors and counsel. However, the field is more markedly uneven in cases where a lay-person is on one side and a qualified practitioner is on the other. The disparity in skill and knowledge raises issues as to a court’s duty to assist the [self-represented litigant] SRL. ... The obligation of the court to provide some advice (if not assistance) to SRLs, and an SRL’s lack of understanding of the process, necessarily means more time is required to finalise the proceedings. An*



*SRL does not only present challenges for the court; the court proceedings present challenges for the SRL.' Discuss.*

Your essay must include an introduction, body paragraphs (with topic sentences) and a conclusion. Your essay must also have a clear contention which should be supported by your discussion and analysis throughout the essay.

#### Primary and secondary sources must be used in your essay

Minimum requirement:

You must refer to at least **four (4) secondary sources**. At least two of your sources must be sources other than those that you have used in Task 1 or that have been discussed in tutorials. You must also refer to at least **two (2) primary sources**. At least one (1) of your primary sources must be a source other than one which has been discussed in tutorials. At least one (1) of your primary sources must be a statute.

Students are encouraged to use more than the minimum number of primary and secondary sources, and will be rewarded by higher marks where additional sources are used and incorporated into discussion and analysis of the research topic.

#### Third person

You must write this essay in the third person.

NOTE: This essay is not intended as an opinion piece. You must support any personal views by reference to relevant scholarly literature.

#### Referencing

You are required to use AGLC compliant footnotes to reference your sources. You must also provide an AGLC compliant bibliography recording all sources used. You are expected to use headings and sub-headings in your essay, customary in law. Refer to the attached assessment rubric for further information about the criteria upon which your essay will be assessed.

### **COURT ETIQUETTE- Important !!**

**Follow court rules and etiquette.** You should introduce yourself as a student studying law, to court officials on arrival at court.

Tip: The court registrar may be able to suggest a suitable session for you to observe. Please note, however, that the registrar is a busy official and may not be able to respond to your queries.

Turn off your mobile phone; do not talk or whisper during the hearing; bow when entering or leaving the courtroom; stand when a judge or Magistrate enters or leaves the courtroom; comply with any request or suggestion a court official may make.

When writing about your court experiences, **do not identify any parties by name, nor victims of sexual assault, or any witnesses or children. This means that your essay should not refer by name to any person connected with the trial other than the**

**judge/magistrate and the legal representatives of the parties.** You will lose marks if you do not follow this requirement.

Generally proceedings in court are open to the public, and students are able to report on proceedings. This is not the case with respect to matters involving sexual assault (irrespective of the victim's age) and matters involving children. Legislation prohibits the direct or *indirect* identification of people who are the victims of sexual assaults. Students who do not pay attention to this prohibition will not have their work marked and will be required to submit a fresh copy of their essay which complies with this requirement. Marks will be deducted. It is also important to note that the names of parties are not identified in family law disputes.

There are also restrictions on what may be reported at committal hearings of sex offence cases. Do not report on committal proceedings. Do not report on cases concerning the *Children Youth and Families Act 2005* or the *Victims of Crime Assistance Act 1996*.

**If you are unclear about these requirements or restrictions please speak to the unit co-ordinator Michael Longo or your tutor.**

### Assessment Rubric for task 3

#### **Essay based on Research Topic and Court Observations**

Marks	Criterion	HD/D	C/P	N
4	<i>Observes requirements as to word limit and use of sub-headings</i>	Observes word limit, uses meaningful sub-headings that assist the structure of the essay	Observes word limit; some further work needed in use of sub-headings but mostly acceptable	Does not observe word limit, or sub-headings not used or used poorly
6	<i>Applies AGLC correctly, including footnotes and bibliography</i>	Applies AGLC correctly throughout, including in footnotes and bibliography	Generally applies AGLC correctly, with minor errors	Shows several deficiencies in AGLC application
10	<i>Demonstrates developing legal literacy skills by use of appropriate language, third person, structure and style</i>	Writes in error-free, clearly structured and well-phrased language, appropriate to a legal context, that 'gets the message across' accurately and proficiently	Writes in mostly correct and proficient language with generally acceptable structure and phrasing suitable for a legal context. Some defects occur in clarity of meaning and readability	Writes in poorly structured and badly-phrased language. Meaning often unclear. Often hard to understand. Does not achieve an acceptable level of written expression for a legal context
10	<i>Demonstrates developing ability to locate legal research, evaluate it and contextualise it in discussion of observed legal case, using both <u>primary</u> and <u>secondary</u> sources</i>	Demonstrates excellent legal research skills in context by utilising both primary and secondary sources in a mature and persuasive discussion of the case; chooses relevant authorities and sources and links them to topic and each other in a mature and considered way, explaining exactly how and why each source contributes to the discussion	Demonstrates legal research skills that are at an acceptable level and that utilise both primary and secondary sources in a competent discussion of the case; writer does not always clearly explain how and why authorities and other sources are relevant	Demonstrates poor legal research skills in choice of primary and secondary sources or in the way that they are utilised in discussion of the case. A tendency to rely on personal opinion, with writing unsupported by reference to appropriate sources
10	<i>Addresses the requirements of the task; demonstrates contextual awareness and uses research sources to support</i>	Analyses the research topic in a succinct, logical and sophisticated way, citing relevant evidence to support views expressed; demonstrates meaningful insights; well-reasoned; achieves balance in the way sources are used; findings	Analyses the research topic adequately; evidence used is mostly relevant but may not always be used with understanding and consistency; there are gaps in reasoning;	Does not show real understanding of the research topic; lack of clarity and focus evident in description of case facts and/or issues; arguments and use of evidence are

	<i>conclusions</i>	are well related to the evidence	sometimes demonstrates a lack of balance in the way sources are relied on; findings are generally competent but may have some flaws and inconsistencies	poorly expressed, hard to follow and lack conviction; report relies on unsubstantiated claims and/or demonstrates a lack of balance and consistency; major elements are missing
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End of Assessment task 3