# **LAWS 1021 Principles of public law: RESEARCH Essay- SP4 2021**

##### Rationale:

This assessment is a 2,000 word research essay that requires you to apply critical thinking skills in a structured analysis of one of the questions below. It will also test your ability to research and incorporate relevant additional primary and secondary sources into the analysis. The aim of this assessment is to demonstrate an understanding of key principles of public law explored in the course and of how the courts have interpreted and applied these principles when adjudicating on matters that concern the lawfulness of government actions. Therefore, you are expected to also demonstrate an understanding of both the *context* in which these issues have arisen, and a critical understanding of the variant judicial opinions – including dissenting decisions – in this space.

A marking rubric is included below to outline the key assessment criteria.

##### Assessment questionS

The topic of your research essay is to be selected from one of the questions below:

1. The *Australian Communist Party case* and the *Tasmanian Dams case* both demonstrate that the doctrine of parliamentary supremacy may enable the dominance of legislative powers in times of national emergencies or when issues of significant national interest arise. What consequences does this have for public law doctrines such as the rule of law, federalism or the separation of powers (chose one of these doctrines in your analysis).

*NB* You are not limited in your analysis to only these 2 cases or these doctrines.

1. Anti-terrorism measures adopted to protect the Australian community, and also the increasing ‘criminalisation’ of migration laws coupled with the ‘stop the boats’ policy, are both clear instances where the Australian government has enhanced executive powers that also appear to diminish the role of courts. Discuss this enhancement of executive powers with respect to one of these government measures.
2. Which do you think is more effective in protecting and promoting the role of courts and the exercise of judicial powers in order to protect us from intrusive or arbitrary government actions: the *Boilermakers* doctrine or the principle of legality? Why?

**IMPORTANT NOTE:** Depth of critical analysis is likely to yield greater marks than a broad approach to these questions. This means, for example, that you need not discuss every public law doctrine. Be discerning; be strategic. Identify, isolate and justify the focus of your analysis.

##### Course Objectives:

CO1. Develop an understanding and knowledge of some of the foundational principles of public law, using seminal High Court cases. Understand foundational constitutional principles. (GQ 1, 3, 5)

CO2. Equip students with the skills needed to read and analyse judicial decisions and reasoning processes. (GQ 1, 2, 3, 4)

CO3. Develop an understanding of some of the more contentious aspects of public law through analysing the relationship between the three arms of government. Express knowledge of key principles of public law through an understanding and explanation of relevant High Court cases. (GQ 1, 2, 3, 4)

CO4. Instil the capacity to read and understand complex judgements. Explain the significance of case law from a legal, social and moral perspective. (GQ 1, 2, 4, 5, 6)

##### Assessment Summary:

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| Name | WORD COUNT | weighting | Due date (Adelaide Time) | Submit via |
| Essay | 2000 words (10% + or -) | 60% | 19 July 2021, 9:00 AM | Learnonline |

##### Format/structure of RESEARCH essay

1. This assignment is a research essay so should accord with usual essay writing conventions and include an introduction and conclusion.
2. Preparation of your argument should be guided by the critical thinking approach we have explored in the course. Remember, this acts as a guide to support you in developing a logical structure and approach to critical thinking. Suggested steps to consider are:

* Decide on your key argument or position - do you agree or disagree with the proposition posed by the selected question. Work on formulating your overall argument or position in one clear statement.
* Develop a list of reasons to support your conclusion.
* Evaluate this list of reasons:
  + - * For consistency with legal authority;
      * consistency with theoretical doctrines such as, federalism or parliamentary sovereignty, etc; or
      * any other criteria you wish to identify.
    - Itemise your key points, for each point state:
      * why it is relevant to the question;
      * how it relates to the criteria you apply; and
      * how it supports your overall position or argument.
    - Write your conclusion, with reference to:
      * The position you advance;
      * The criteria you apply; and
      * The key points you have made in support of your position.

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| Good case analysis | poor case analysis |
| Identifies and explains key principles of public law raised in the decision | Fails to identify and explain key principles of public law raised in the decision |
| Identifies and explains the points of distinction between the majority and minority reasoning | Fails to identify and explain the points of distinction between the majority and minority reasoning |
| Includes additional primary and secondary sources as evidence of broader research beyond course content | Fails to include additional primary and secondary sources as evidence of broader research beyond course content |
| Appropriately references and pinpoints specific parts of the cases(s) when necessary (eg quotes, specific parts of judgment discussed) | Poorly referenced and fails to identify specific parts of the case(s) when necessary (eg quotes, specific parts of judgment discussed) |
| Independent explanation of significance of the case and the reasoning of the different judges with thoughtful and insightful comments | Lacks independent explanation of why the case is important or how the different judges reasoned to reach the particular outcome |
| Logically and clearly structured, well written | Poorly written and structured |

* Working through the critical thinking steps provides a coherent approach to your analysis. This analysis should be supported by primary authority, including case law. Some tips of how to evaluate legal decisions in support of your arguments are provided in the table below.

##### REFERENCING

This assessment requires you to ensure that all referencing is compliant with the Australian Guide to Legal Citation (AGLC).

Remember, when you use a source of information you must acknowledge and properly reference that source. The legal research workshop and library videos assist you in finding relevant resources in addition to those included in the course material.

Be discerning in what you cite as primary authority for any proposition on the law. Secondary sources are cited to explain, critique and review this law but are not usually legal authority for a statement on the law.

Please do not hesitate to contact me with any referencing inquiries while you are conducting your research.

##### extension requests

Extensions for the research essay will **only** be granted in accordance with the [UniSA Assessment Policies and Procedures Manual](https://i.unisa.edu.au/siteassets/policies-and-procedures/docs/manual/2018/appm_2018.pdf?1532673482013). This means that extensions will **only** be granted on the basis of unexpected or exceptional circumstances (for example, work commitments or other study commitments will not suffice). Students must lodge an application for an extension via the Learnonline course site **at least two days before** the due date for the assessment task (unless the reason for the extension request is a ‘last minute’ emergency) and attach supporting documentation.

##### LATE SUBMISSION PENALITY

Unless a formal application for extension of time has been granted prior to the research essay due date, a penalty of 5% of the total mark will be deducted for each day or part of a day after the deadline.

##### Feedback and weighting – assessment rubric

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|  | **Outstanding performance** | **Exceeds core requirements** | **Meets core requirements** | **Does not meet requirements** |
|  | **HD/D** | **C** | **P1/P2** | **F1/F2** |
| **Identification and application of rules,**  **principles and policies**  20% | Highly relevant rules, principles and policies are correctly identified and appropriately applied and explained in the student’s own words. | Relevant rules, principles and policies are identified, applied and justified. | Most relevant rules, principles and policies are identified, applied and justified but there may be minor omissions. | No, or too few rules principles and policies are identified, applied or justified. |
| **Analysis of the issues arising in High Court decision/public law issues**  20% | Clear identification of relevant public law issues with insightful and thorough analysis of key issues arising in a relevant High Court decision. | Clearly identifies and analyses the key public law issues arising in the decision. | Analysis is competent, identifying and covering the relevant issues arising in the decision but with some minor omissions or inaccuracies. | There is little or no clear identification of relevant issues or analysis of the High Court decision. |
| **Legal significance of decisions**  20% | Contains a unique, clear and compelling explanation of the legal significance of the decision and its wider impact. | There is a clear explanation of the legal significance of the decision. | There is an explanation of the legal significance of the decision but some details are missing or inadequate. | There is insufficient explanation on the legal significance of the decision. |
| **Use of an appropriate range of suitable secondary sources to support analysis**  10% | A wide range of high quality secondary sources are cited and are appropriate to support the analysis.  Excellent evidence of research. | Secondary sources cited are of suitable quality, appropriate and support the analysis well.  Great evidence of research. | Some secondary sources cited are of suitable quality and most appropriately support the analysis. Good evidence of research. | Secondary sources are either not cited or inadequate to support the analysis.  Poor evidence of research. |
| **Organisation and presentation of the essay**  10% | The essay is well- structured and flows logically. | The essay is appropriately structured and ideas are connected smoothly. | The essay is structured with minor omissions or lapses in logic and ideas are generally connected well. | Little structure is evident and ideas are not connected well. |
| **Written communication skills, including the use of clear, effective language, an appropriate writing style, and attention to sentence construction, paragraphing, spelling, punctuation and grammar**  10% | Writing style is formal and appropriate.  Language is clear and effective with logical paragraphing and well-constructed sentences. The essay is free of grammar, punctuation and spelling errors. | Writing style is appropriate to the task.  Language is clear with text separated into paragraphs and structured sentences. There are only minor grammar, punctuation or spelling errors. | Writing style is generally appropriate with minor lapses or areas with informal usage. Language is mostly easy to understand and divided into paragraphs. There are some sentence structure, grammar, punctuation or spelling errors but they do not detract from meaning | Writing style is informal or inappropriate. Language use is difficult to understand and there are numerous grammar, spelling or punctuation errors. |
| **Referencing (AGLC)**  10% | Fully compliant with AGLC with all footnotes and references correctly entered. | Mostly compliant with AGLC. | Somewhat compliant with AGLC but contains some referencing errors. | Poor compliance with AGLC. Referencing requires improvement. |