

Legal Studies Human Rights Notes

1. Please state the definition of Human Rights.
 - Human Rights refer to basic rights and freedoms that are believed to belong to all human beings.
 - They are a collection of fundamental standards, decided upon by the international community, for the treatment of individual.
 - They aim to protect individual from injustice, allow people to achieve their full potential in society and prevent discrimination against people because of their physical characteristics or beliefs.

2. What are the four components of the concept of human rights? What do they mean?
 - I. Universal
Human rights apply to every human being
 - II. Inalienable
A right that cannot be taken away
 - III. Inherent
People are born with human rights
 - IV. Indivisible
All rights are equally important

3. Explain what is the 'natural law' doctrine.
 - Certain laws come from an unchanging 'natural' body of moral principles that are the basis for all human conduct, and so have validity everywhere.
 - Natural law theorists argued that certain fundamental natural laws applied to humans and these couldn't be taken away by any power.
 - This doctrine underpins the concept of individual rights and later developed into human rights.

HSC Legal Studies – Core Topic – Human Rights – Its Nature and Development
Notes – Human Rights

	Slavery	Trade Unionism	Universal Suffrage
Definition	A person is considered to be a legal property of another	-An association of wage earners which exists in order to maintain and improve working conditions of its member -Platform for large numbers of employees to collectively demand for labour rights through actions like strikes and protests	-The right of all adults to vote in government election -Important to protect other rights and freedoms -Vote out government that infringes rights
Type of rights	Civil and political rights	Socio-economic Rights	Civil and political rights
Early development	-12 th century Iceland -Case of Somersett (<i>R v Knowles</i>) - <i>Slave Trade Act 1807 (UK)</i> - <i>Slavery Abolition Act 1833 (UK)</i>	-Laws were created to criminalise Trade unionism - <i>Trade Union Act 1871 (UK)</i>	-Emerged from revolutions - <i>American Declaration of Independence 1776</i> - <i>Declaration of the Rights of Man and the Citizen 1789</i>
Australia Domestic Development			- <i>Australian Constitution Act (No.1) 1842 (UK)</i> —allowed men to elect 2/3 of the NSW Legislative Council -In 1894, a year after NZ, Australia granted female suffrage=universal suffrage

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<p>International law prior WWII</p>	<p><i>-General Act of Brussels 1890</i> <i>-League of Nations Slavery Convention</i></p>	<p>International Labour Organisation after WWI: Passed numerous conventions to promote and protect labour rights</p>	
<p>After WWII</p>	<p>-UDHR specified that slavery is prohibited in all member states</p>	<p><i>-UDHR article 23 and 24 defines labour rights</i> <i>-International Covenant on Economic, Social and Cultural Rights (1966)</i></p>	<p>-All UDHR, ICCPR and ICESCR recognised universal suffrage as a fundamental human right -Article one of the ICCPR explicitly recognises one’s right to determine their political status</p>
<p>Effectiveness</p>	<p>-Effective and successful- Mauritania was the last state to abolish slavery</p>	<p>-Labour rights in less-developed countries are not protected</p>	<p>-Not effective in a lot of less-developed or developing countries (e.g. China) -In many developed countries, racial minority may not enjoy this right—Indigenous Australian didn’t have this right till 1962</p>

4. Outline the role of law reform in the abolition of slavery.

Slavery is a type of forced labour in which a person is considered to be a legal property of another. Slavery was practised legally in many parts of the world until the 20th century. The abolition of slavery is to ensure one can enjoy his/her civil and political rights. The law reform in the abolition of slavery can be traced back as early as the 12th century in Iceland. However, it was not till in the 18th century abolitionism movement that the abolition of slavery was largely discussed. In 18th century, rationalist thinkers began to criticise slavery as violating the rights of man. In Britain 1772, the court ruled in the case of Somersett (*R v Knowles*) that slavery is illegal in the common law of England. However, the decision only abolished slavery in England but not other parts of the British Empire. The *Slave Trade Act 1807 (UK)* ended importation of slaves to British colonies and the *Slavery Abolition Act 1833 (UK)* totally abolished slavery. The law reform in Britain in regards to abolition of slavery had triggered law reform in the US and later the world. By the end of 19th century, many countries found slavery no longer acceptable. The *General Act of Brussels*, signed in 1890, marked the first international states collaboration to abolish slavery. Then by the end of the Great War, the *League of Nations Slavery Convention* was signed and passed, which is a comprehensive international convention on abolishing slavery worldwide. The *UDHR* established after WWII specified that slavery is prohibited in all member states of the UN. The lengthy law reform had successfully abolished slavery in the world in 1981 when Mauritania became the last state to officially abolish slavery.

5. Discuss the how has trade unionism and labour rights developed overtime.

Trade unionism and labour rights are major component of one's socio-economic rights. The concept of trade union and labour rights protection rapidly evolved in the Industrial Revolution. Trade unions, an association of wage earners which exists in order to maintain and improve working conditions of its member, emerged during the Industrial Revolution. Trade unions provided a platform for large numbers of employees to collectively demand for labour rights through actions like strikes and protests. However, trade unions were ineffective at the beginning as laws were

created to criminalise workers' involvement in trade unions. Trade unions became more effective when their legal statuses were secured by the *Trade Unions Act 1871 (UK)*. As trade unions became more popular around the world in the late 19th century, the International Labour Organisation was created in 1919 after WWI, which has passed numerous conventions to promote and protect labour rights. After WWII, article 23 and 24 of the UDHR further defined labour rights and the *International Covenant on Economic, Social and Cultural Rights (1966)* further defined labour rights and sought to implement them around the world.

6. Define Universal Suffrage and explain its importance.

Universal suffrage means the right of all adults to vote in government election. It is a vital component of one's civil and political rights as well as the protection of other human rights. This is because when all adults have the right to vote, then they are able to elect a government that will protect their rights and freedoms. It is in this way that citizens of a nation can ensure their human rights are protected because, at the next election, they can vote out any government that infringes such rights.

7. Outline how does the right to universal suffrage develop over time both internationally and domestically in Australia.

The notion that people have the right to choose their own government can first be found in the *American Declaration of Independence 1776* and the *Declaration of the Rights of Man and the Citizen 1789*. Both documents, which arose out of revolutions, slowly enabled males in both countries to enjoy the rights to suffrage by early 19th century. In Australia, election of members to the NSW Legislative Council began in 1842, with the passing of the *Australian Constitution Act (No.1) 1842 (UK)*. This act allowed men in NSW to elect two thirds of the members of NSW Legislative Council. In less than 20 years time, NSW was granted male suffrage.

As males in western countries gradually gained the rights to suffrage, Female suffrage began in the second half of the 19th century. New Zealand was the first country to give women the right to vote in 1893 while Australia was the second nation to grant this right in 1894. The granting of women's suffrage is often regarded

as the achievement of true universal suffrage. However, in many countries, racial minorities were denied the right to vote until 20th century. For instance, Aboriginal people in Australia were not granted the right to vote until 1962.

Today, universal suffrage is recognised as one of the most important human rights by various international instrument. The UDHR, ICCPR and ICESCR all recognised that the right to vote is a fundamental human rights. Article one of the ICCPR explicit recognises one's right to determine their political status.

8. Outline the gradual development of universal education and evaluate the effectiveness of current situation.

Universal Education is the idea that all human beings have the right to education.

The push for universal education within individual countries did not really begin until the 19th century, as the increasing demands of industrialisation required a literate and educated population. At the beginning, church was generally the first to take on the role as educator. The government also provided funding for these schools. It was not until late 19th century that State took over the role as educator. The *Education Act 1870 (UK)* was an example of an individual country providing early education for children. Similarly to the UK, the *Public School Act (NSW)* established a system of state elementary schools throughout NSW, Primary education became compulsory in Australia in the 1870s.

After WWII, the right to access free education was recognised by many international instruments. Article 26 of the UDHR explicit ensures that children's elementary education should be compulsory. The Millennium Goals in 2001 also aimed to provide all children in the world to have a minimum education up to primary level by 2015. Despite the many measures implemented, the literacy rate in many undeveloped and developing countries remained low. The effectiveness of these measures was greatly limited by the resources of those countries.

9. Define the term self-determination.

Self-determination is a collective right. It means that people of a territory or national grouping have the right to determine their own political status. The group has the

right to choose how it will be governed without undue influence from another country.

10. Outline a recent example that involved the changing of self-determination.

In the past 3 decades, there is a gradual change to recognise the right of self-determination of indigenous people around the world as well as in Australia. Despite article 1 of the UDHR and ICESCR ensured the right of self-determination, indigenous people in many countries have been regularly excluded from the democratic process, forcefully assimilated and economically exploited. In 2007, the UN adopted the *Declaration of the Rights of Indigenous Peoples*, which has been drafted for 20 years. However, four states, including Australia, rejected the Declaration as the government at the time believed that there should only be one law for all Australians. In 2009, the Rudd labour government formally endorsed the declaration, marking a significant stepping-stone to greater awareness and protection of the self-determination of indigenous people.

11. Outline what is environmental rights and how have they been protected internationally.

- Environmental rights encompass the right to a clean, healthy and sustainable environment
- *Kyoto Protocol 1998*
- The effectiveness of treaties like *Kyoto Protocol* is limited as worldwide environmental problems will continue to occur unless all nations agree to prevent them
- Some countries, e.g. America and Australia, refused to sign Kyoto Protocol
- UN Climate Summit held in Copenhagen at the end of 2009 formally recognised the need for fast international action on climate change but was unable to agree on a new protocol to replace KP

12. Outline how has Peace rights emerged overtime?

- The right to peace is the right of people to have their government maintain peace and eliminate war
- The *Charter of the United Nations 1945* obliges nations to 'settle their international disputes by peaceful means' and to refrain from acts of war, except in self-defence or by resolution of the SC
- *Declaration on the Rights to Peace 1984*—non-binding resolution
- *Treaty on the Non-Proliferation of Nuclear Weapons 1968*→ works towards disarmament and hence peace

13. Explain why do we need a formal statement of human rights.

The catalyst for a formal statement recognising human rights was the horrors of the two World Wars and the sense of shared purpose of the international community at the end of these wars.

14. Discuss the contribution of the Universal Declaration of Human Rights to the development of human rights.

The Universal Declaration of Human Rights (UDHR), which was the first formal statement of human rights, was adopted by the UN in 1948. The document has 30 articles defining and listing the human rights to which every person is entitled.

Although the document is a soft law, meaning that it is officially non-binding, it has a significant impact on the development of human rights as it became the foundation for more than 200 international covenants, treaties and declarations in the past 60 years. Even though it is not enforceable, it has arguably become part of international customary law in the *Vienna Declaration on Human Rights* in 1993. This highlights that the UDHR is a vital document

15. Explain why the ICCPR and the ICESCR were needed on top of the UDHR.

It was because UDHR is a soft law, which doesn't impose legal obligations upon state. The idea of having a treaty on top of the declaration was that the treaty would be binding and would oblige nations to guarantee human rights in their domestic legislation.

16. Identify and assess the differences between the ICCPR and the ICESCR.

	ICCPR	ICESCR
Year drafted and approved	1966	1966
Year that was first ratified	1976	1976
Types of rights concerned (give examples)	Civil and Political Rights <ul style="list-style-type: none"> • Right to a fair trial • Right to vote • Right to religion 	Social and Economic Rights <ul style="list-style-type: none"> • Economic Rights • Equal Remuneration
Total Countries ratified	165	160
Countries that did not sign or ratified	Singapore, Malaysia	Singapore, Malaysia
Countries signed but did not ratify	China	US