

Introduction to Law

Definition of law:

- Principles and regulations emanating from a government that are applicable to a person in form of legislation or custom/policies and are recognised and enforced by **judicial decision**
- **Enforceable in court of law** → court hears cases and makes decisions based on statutes/common law

The purpose of law:

- Social control (conformity and compliance to the law)
- Regulate conduct (behaviour)
- Protect citizens and property
- Governs relationships between citizens, governments (and citizens), nations and nations
- Provides means to → resolve disputes, punish offenders, adjudicate and settle through court

Expectations of our legal system:

- 'rule of law' (law applies equally + no one is punished for legal matters + social control)
- 'justice' (pays regard to interests, property and safety) → hard to define, different perceptions of justice

Misconceptions:

Misconceptions about law:

- It is constant
- Law and justice are synonymous
- One right answer
- Everyone knows the law
- Law is available to all
- Everyone is equal before the law

The Australian Legal System

What type of system is it?

- Australia has a "common law" **adversarial system** → 2 advocates represent their parties arguments/evidence before an impartial judge/jury who makes the ruling
- Common law → judges use precedents from previous cases
- Role of judge in adversarial system → judge maintains independence and impartiality; role is to adjudicate rather than participate; "umpire not a player"

How did we get it?

- Introduction of English law; received it through acts of imperial parliament

The Constitution

- Constitution → supreme set of laws that governs Australia (High court is guardian). Can only be altered by referendum.
- 3 arms of the government power:
 1. *Legislative*: creation of laws
 2. *Judicial*: interpretation and application of law through courts
 3. *Executive*: carries out laws enacted by legislature

- Separation of powers doctrine “checks and balance of power” → prevents these three government arms from exercising more than one function + interfering + intruding on power of each other. Also avoids concentrating too much power in one body (this causes tension between the arms)
- Example → marriage act: parliament (legislative) tried to change definition of marriage in the constitution, however, constitution is governed by High Court (judicial) thus was not overturned → tension between legislative + judicial

How are our laws made?

- Statute law (legislation) → acts of parliament
- Common/case law (judge made law) → legal principles enunciated in judicial decisions
- Indigenous customary law

Type	Definition
Statute Law	<ul style="list-style-type: none"> ▪ Legislation, acts ▪ Made by politicians, passed by legislative powers of parliament ▪ Regulations, ordinances, rules, by laws
Case Law/ Common Law <i>‘relying on judicial precedents’</i>	<ul style="list-style-type: none"> ▪ Judge made law ▪ Made through judicial reasoning in previous cases (precedents) ▪ cases with similar circumstances

Court hierarchies

- Federal and state courts → High Court is the main boss for both
- High court → has original **AND** appellate jurisdiction
 - Original jurisdiction* = power to hear case for 1st time
 - Appellate jurisdiction* = power to review a lower court’s ruling; depends on circumstances (“special leave to appeal” → will only be heard if the case is granted permission by the court i.e. case has major legal importance)
- Federal (yellow) and state (green) courts:

