

Legal
Principles
and Skills
Notes

Topic 1- Chapter 1 and 14

Law as a Discipline

- Law is affected by morals, politics, religion but is separate from them
- Basis of law is cases and legislation
- Legal thinker follows a process of reasoning, involving addressing whether a person has committed a crime, then considering whether punishment is warranted

How is Law different from Other disciplines

- Ideas are more abstract → involved with the law and how it can be applied to a problem/situation
- Differing to science/math, law is about reasoning and in many situations, there is no one correct answer
- Journalism involved flowing articles with discussion, however law is narrow, focused and succinct, judicious and free process of thinking and writing
- There are no unsupportable presumptions
- Law has evolved to combine perspectives e.g. drink driving → Legal and sociological, sentencing → legal and psychological

Legal Reasoning

“being able to read cases and statutes and use them to develop legal arguments based on issues identified from a factual matrix.” It is also about “precise, rational, dispassionate and analytical thinking”

SIX KEY ASPECTS:

1. Non-assumptive thinking → resisting jumping to conclusions
2. Facts over emotions → detach from personal opinions and personal notions of right and wrong
3. Tolerance of ambiguity → accepting that there is no black and white answer
4. Ability to make connections between facts, documents and laws → lawyers are able to store surplus information
5. Verbal mapping and ordering → being able to structure thoughts and opinions and express them orally in a manner that is more typical of written communication
6. Automatic devil’s advocacy → intellectual flexibility to be able to convincingly reason one side of an argument and in the next breath convincingly reason the completely opposite view

Inductive and Deductive reasoning

Inductive – Specific to the general

- ➔ Identify patterns/similarities, which enable us to create hypotheses to explore
- ➔ Resulting outcomes are generalisations and theories
- ➔ Used in case analysis- we consider several individual cases in order to describe broad rules of law
- ➔ Open to question because they are based on examination of a small portion of information

Deductive- General to specific

- ➔ General theory → hypothesis, test hypothesis by specific observations to determine whether they confirm original theory
- ➔ Used for research essays in an area of law
- ➔ **SYLLOGISMS** commonplace in deductive reasoning. “a logical argument where a conclusion is inferred from two premises, one major and one minor.

Major premise- all humans are mortal

Minor premise- Socrates is human

Conclusion- Socrates is mortal

Threshold Learning Outcomes

The minimum, discipline-based learning outcomes for the Bachelor of Laws degree under the Australian Qualifications Framework (AQF) administered by the Tertiary Education Quality and Standards Agency.

TLO 1 Knowledge:

- Fundamental area of legal knowledge, the Australian legal system, underlying principles and concepts, including international and comparative concepts
- Broader contexts within which legal issues arise
- Principles and values of justice and of ethical practice in lawyers roles

TLO 2 Ethics and Professional Responsibility

- Understanding of ethical decision making
- Recognise, reflect upon, developing ability to respond to legal issues
- Recognise professional responsibility of lawyers in promoting justice and in service to community
- Developing ability to exercise professional judgement

TLO 3 Thinking Skills

- Identify and articulate legal issues
- Apply legal reasoning and research to generate appropriate responses to legal issues
- Engage in critical analysis and make a reasoned choice amongst alternatives
- Think creatively in approaching legal issues and generating appropriate responses

TLO 4 Legal research skills

- Intellectual and practical skills needed to identify, research, evaluate and synthesise relevant factual, legal policy and issues

TLO 5 Communication and Collaboration

- Communicate in ways that are effective, appropriate and persuasive for legal and non legal audiences
- Collaborate effectively

TLO 6 Self- Management

