

1/03/17

Week 1 Lecture

NATURE AND STRUCTURE:

- Legal (formal) and non-legal (informal) rules:
- Legal rule= rules of conduct or organisation that are recognised, applied and enforced by the power of the state (police, ATO, courts etc.)
- Non-legal rules= Rules of conduct or organisation enforced by:
 - Moral or philosophical beliefs
 - Religious beliefs
 - Laws of nature
 - Social values and mores
 - Customs and accepted traditions in society
- In large groups, informal laws become inadequate- organised institutions are needed to regulate conduct
- State chooses laws/rules to make through responding to new emerging problems, and refining them.
- Legislatures= primary law makers. Politicians discuss issues and ideas, codify these into law, and by virtue of an election the law is then passed and legitimised.
- Law can be passed by:
 1. Australian Federal Parliament, State Parliaments, Municipal councils (which pass by-laws and are in charge of suburbs and smaller districts)
 - These legislatures can delegate law-making power to agencies.
 2. Judges; they wait until a case that presents a new or original issue, writes written reasons as to how to solve the dispute, and this is integrated into Australian law.
- Types of law:
 - Contract Law → forming contracts
 - Tort Law → e.g. defamation, negligence
 - Property Law → transferring either tangible (e.g. houses) or intangible (e.g. patents) property between people
 - Agency Law → Hiring someone, and the duties and responsibilities of being hired (being an “agent”)

- Corporations Law → The behaviour, formation and duties of corporations
- Constitutional Law → Law as prescribed in Constitutions
- National and International Law → Agreements made between countries, e.g. treaties, emissions targets

Business Law concerns itself mainly with the principles of contract law, tort law and consumer law.

CONTRACTS:

In a contract, there must be consensus, which is achieved through a party making an offer and the second party accepting this offer. When this occurs, both parties must *intend* for the transaction to be legally binding. Intention is ascertained through objective evidence. In a contract, there must be *consideration*, which is an exchange or a trade, a.k.a. quid pro quo.

Law allows people to plan for the future with reasonable certainty, e.g. leasing the premises of a property for a certain amount of time. The strictly logical application of existing rules promotes certainty and predictability, and to also add to predictability, Judges must treat citizens equitably and fairly.

It also establishes rights, duties and powers of members of different groups, e.g. consumer law protects customers and consumers, and staff protected by their worker's rights.

It permits, encourages, forbids or discourages particular activities, e.g. disincentives such as incarceration or fines.

Law also controls the use of force and forbids unauthorised violence, e.g. individuals taking the law into their own hands and punishing a murderer (this job is reserved for the police force and the state).

The law creates rights and duties that can be enforced and provides remedies when rights are interfered with, e.g. being able to return a defective item, and individuals reserving the right to sue.

7/03/17

Week 1 E-tutorial

Law encompasses and entails the rules of conduct and organisation that are recognised and enforced by the government of a country that make up what is generally regarded as the law of that country. Laws of many modern states originate historically in the development of Roman civil law and English common law.

- **Foundational law** (constitution) sets out how government is formed, its institutions and the law making powers it enjoys.
- **Constitutional law** sets out how the government of a state or territory is established and organised. Establishes the different organs of government, lays down what powers these organs have, and what processes they must follow.

- **Jurisprudence**= science/philosophy of law
- **International Law**= treaties, conventions or pacts that are entered into between sovereign states. Establishes interactions between states.
- **National Law**= A general term that refers to all the law that is applied within the borders of a particular state.
- **Administrative Law**= provides the rules that govern the processes of official decision making
- **Criminal Law**= prohibits conduct that is considered harmful to the general community and provides for punishment by the state of persons found guilty of breaking the rules of criminal law.
- **Civil Law**= creation and enforcement of private legal rights and duties between individuals. The law that establishes private legal rights and duties enforceable between two (or more) individual persons.
- **Common Law**= Law made by the courts (case law) as distinct from legislation.
- **Tort Law**= liability for harm that is wrongfully caused by one person to another person or to their property. Allows the person harmed to claim compensation, through the courts, from the wrongdoer.
- **Contract Law**= determines which private agreements give rise to legally enforceable rights and duties.
- **Agency**= involves the use of a representative to acquire or discharge legal rights or duties.
- **Consumer protection law**= seeks to protect consumers from their special vulnerability by providing legal protection for them in their dealings with the suppliers of goods or services.
- **Corporations Law**= creation, organisation and administration of companies.
- **Property Law**= regulates the ways in which private rights in goods and land can be legally acquired and transferred from one person to another.
- **Business Law**= collects together the rules of law that are particularly relevant to business activities, taken selectively from the more traditional categories of law, such as *contract law, agency, tort law, banking law, insurance law, employment law, corporations law and tax law*.

In Australian law, the concept of contract formation is based in part on the principle that a contract is only made if the parties **intend** to be legally bound by their

agreement. It is a further principle that an intention to be legally bound is ascertained **objectively** rather than subjectively.

Legal rules provide the detailed mechanisms by which legal principles are given effect. Rules specify particular requirements or provide what should happen in specific situations.

Legal meanings are the particular meanings or significance that words or phrases have in law, which is distinct from their ordinary or natural meaning.

Legal authorities are the sources of particular legal principles, rules or meanings.

Finding and using the law to decide cases:

1. All the important material facts of the case should be ascertained. The important facts are those that reveal the origins, scope and nature of the case.
2. Relevant rules of law should be found and interpreted.