MLL110 Legal Principles
Exam Notes

Contents

Definition Case/Act Important Wording 100% Need to Know

Topic 1. The Law in Practice and Australian Legal System

Chapter 1 – Learning Law: How can I develop a legal mind?

Section 1: Law as a Discipline

- Law, in contemporary Western societies such as Australia, is formally an autonomous discipline
- A benefit of this system is that one legal system applies to all people in one country
- Law is a narrow, focused, succinct, judicious and a frill-free process of thinking and writing

Section 2: Legal Reasoning

Thinking like a lawyer:

- Non-assumptive thinking: resisting jumping to conclusions, or many assumptions
- Facts over emotions
- Tolerance of ambiguity – there is no black and white answer
- Ability to make connections between facts, documents and laws
- Verbal mapping and ordering: being able to structure thoughts and opinions, and express them orally e.g. 'I have three points to make. First…Second…'
- Automatic devil's advocacy: no position is fixed, all are arguable

Inductive Reasoning: case analysis – consider several individual cases in order to describe broad rules of law

Deductive Reasoning: used for research essays: begin with a general theory to create a hypothesis, and test by specific observations to confirm or reject original theory

Chapter 8 – How did Australian Law develop?

Section 1: Legal Systems of Indigenous Societies and their early exclusion from the Common Law

- Before Australia now; Indigenous societies had their own laws and legal systems. These were ***customary law*** systems, with law passed down through generations by oral tradition
- The English colonisation of Australia in 1788 led to the application of English law in Australia
- The issue soon arose as to whether English law should be applied to the Indigenous inhabitants
- This issue was brought before the Supreme Court of NSW in the case of ***R v Murrell***

CASE: R v Murrell (1836)

- Jack Congo Murrell, an Aboriginal man, was tried in NSW Supreme Court for the murder of Jabbingee, another Aboriginal man
- Murrell said that is he was found guilty by his people then he would submit to 'traditional punishment'
- Argued that the judgment of the Court invalid as Aboriginals were not bound by common law
- The judges cited advice from the Attorney-General, that the jurisdiction of the Court of NSW included Indigenous people as the lands the British had taken possession of bound the King to protect all living parties and thus equally bound to obey the King's law
- Murrell therefore tried for murder
- The jury (made entirely of white people) gave the verdict of not guilty
- Justice Burton's judgement: before colonisation the land was 'unappropriated by anyone' and was taken into 'actual possession by the King' and his law applied to everyone in the domain

- Aboriginal people had no recognisable laws, but only 'practices'
- Nonetheless, the Indigenous and Anglo-Australian systems have the same legal function: to regulate social relationships
- Both reflect moral norms and protect social interactions
- Therefore, we can see that there are Indigenous legal systems capable of recognition – despite the insinuations of 'irrational superstitions' in *R v Murrell*

Section 2: Displacement of Indigenous Laws

- The process of displacing Australian Indigenous legal systems, and replacing them with British common law system, needed legal justification
- 18th century international law required that states could acquire foreign land and sovereignty by three methods:
    1. Conquest (military force)
    2. Cession (usually by treaty)
    3. Occupation (of vacant land)
- Australian courts opted for occupation because it allowed for the automatic reception of English laws without the need to negotiate a treaty and concede limitations on colonial jurisdiction
- Occupation according to international law requires a finding of *terra nullius* – 'empty land' – whereby land belongs to no one
- Australia was colonised in law through occupation and it was incumbent on Australian courts to uphold this fiction of *terra nullius* – only then could the Crown assume title over the land, and English laws be applied in Australia
- The international law doctrine of *terra nullius* – a colony 'without settled inhabitants or settled law' – was confirmed in NSW in ***Cooper v Stuart (1889)***
- The landmark 1992 High Court of Australia decision of *Mabo v Queensland (1992)* would eventually dispose of the fiction of *terra nullius*
- The case of *R v Bonjon* was a precursor to Mabo, and its reasoning would be echoed by the High Court 152 years later

CASE: R v Bonjon (1841)

- The Supreme Court of NSW was presented with similar facts to those in *R v Murrell*
- Bonjon, an Aboriginal man, was accused of murdering another Aboriginal man in their own self-governing community, which possessed an identifiable justice system
- The defence submitted that NSW was occupied by the British, not conquered or ceded, and therefore the British had no jurisdiction over Aboriginal people
- A judgement by Justice Willis held that the English law of the colony applied, and accordingly Aborigines were British subjects and the parliaments and common law should regulate relations 'between Aborigines and colonists'
- Justice Willis went on to distinguish 'crimes committed by the aborigines against each other' being that the NSW court held no jurisdiction and that they would be dealt with by 'their own rude laws and customs'
- Therefore, his judgement expressly denounced the decision of Justice Burton in *R v Murrell* and accepted the defence of submission, throwing doubt on the notion of *terra nullius*
- This decision accepted that limited forms of Indigenous jurisdictions could coexist alongside the ordinary laws of the nation
- The impact of *R v Bonjon* was limited because Justice Willis declined from making a final decision on the application of *terra nullius*
- It overrode the legitimacy of the treaty by declaring that people in possession of Australian land without government authority would be trespassers

Section 3: Reception of English Law

- The *Australian Courts Act 1828* was the statutory instrument for the formal reception of English law
- **Section 24** provided that all laws and statutes' in force in England on 25th July 1828 should be applied in the administrative of justice in the courts of NSW and Tasmania
- The act gave the Supreme Court of NSW the power to decide what was 'applicable' to the colonial conditions
- There was heated debate about whether Australian law was entirely English in the early colonial period
- This represented the beginnings of a unique Australian legal culture
- The application of English law was uneven
- Australian legal history was not simply a product of English statutes and precedent
- Where the landed rights of the Crown were in question, English law prevailed

Topic 5. Statutory Interpretation

Chapter 11 – Statutory Interpretation: How do Courts Interpret Legislation?

Section 1: Introduction to Statutory Interpretation

What is Statutory Interpretation?

'Statutory Interpretation' is, in plain English, working out what legislation means. In practice, it also means applying that meaning in a specific context: a case.

- A synonym for statutory interpretation is 'statutory construction'
    a. **Statutory interpretation** = when we work out the meaning of a word or phrase
    b. **Statutory construction** = when we construe the meaning of a whole section or provision

Why is statutory interpretation important?

The law of statutory interpretation has become the most important single aspect of legal practice. Significant areas of law are determined entirely by statute. No area of the law has escaped modification. – **Chief Justice Spigelman**.

Statutory interpretation is also important because legislation is the superior source of law. This means that if there is a conflict between a statute and a judicial decision, the statute will prevail. This situation arises from two judicial doctrines – parliamentary sovereignty and separation of powers.

To every rule there are exceptions, and there are two exceptions to the primacy of statutes:

- Where the courts determine, that parliament has not power to make a particular law, that law is *ultra vires* – beyond power
- Where parliament has not complied with the proper process of making law, the legislation may be invalid

How do courts interpret statutes?

Courts look at the wording of the statute itself, and they use cases that have already considered the meaning of the words in the statute. They might also look at identical words in another statute, if the context is similar.

Section 2: Modern Statutory Approach

- The modern approach is for courts to interpret statues in accordance with rules made by parliament.
- The Interpretation Acts tell us how to discover and give effect to the intention of legislature in enacting the particular piece of legislation.

How do courts find the purpose of the Act?

***Intrinsic materials*:** looking at the legislation to determine what it means.

- Words used in the statute itself = long title, preamble, any statement of purpose/objective, headings etc.
- Commonwealth or state
- Interpretation Act 1901

***Extrinsic materials*:** documentary material outside the Act which is being interpreted.

- Second reading speeches
- Law reform commission reports
- International conventions