

Principles of Business Law BLAW10001

Contents

The Nature and Function of Law.....	3
Legislation as a source of Law.....	6
The role of courts in law-making.....	10
Contract Law	13
Circumstances that may invalidate legal transactions	35
Consumer Protection	41
Tort Law	47
Agency Law	52
Property Law	56

The Nature and Function of Law

1. Legal and non-legal rules

- **Law** is the rules on conduct or organisation that **are recognised, applied and enforced by the power of the state.**
 - Laws can be made as new social problems arise
- **Non-legal rules** are rules of conduct or organisation that are enforced by things such as peer pressure, a need for co-operation, feelings of goodwill, or convenience
 - Derived from a variety of sources
 - Moral or philosophical beliefs
 - Religious beliefs
 - The 'laws' of nature
 - Social values
 - Rules that have become customary in a community
 - Work well enough in smaller groups and communities, inadequate in larger
- Rules enforced by the state are common in all larger societies as a necessary means of regulating conduct
- Different types of law are distinguished by how they are *identified* and *enforced*
 - **Natural law** (e.g. natural responsibility of parents)
 - **Moral and religious law** (obeyed as a matter of individual conscience)
 - **Custom** (long usage, sense of community and identity)
 - **National law** (government makes and enforces)
- Overlap can exist between different types of law
- Law regulates behaviour for the good of the community
 - restricts the use of force
 - prohibit and punish wrongful behaviour
 - permit or reward beneficial behaviour (e.g. subsidy)
 - legally enforceable rights and duties (helps future planning)
- **Law ought to help achieve fair and just outcomes** (not always the case)
 - The pursuit of justice and maintaining the predictability of the law can conflict
- **Conduct may be legal but not ethical or vice versa**
 - Ethics are not created and enforced the way law is ('voluntary Codes of Conduct')
 - Many laws reflect ethical norm
 - Businesses must abide by Australian Consumer Law, but are also expected to act ethically beyond these laws

2. Who makes the law?

- In Australia, the power to make the law is exercised by the various governments that exist at **federal, state and territory** level
- Governments make law through specified agencies, following recognised procedures or processes
- The main agencies of law making at federal, state and territory level in Australia are:
 - **elected legislatures; and**
 - **the courts.**
- Judges cannot make laws - they hear disputes then produce judgements
 - Facts of the case
 - Written procedure whereby they propose to solve the problem
 - Relevant principles to apply to get resolution
 - Creates **case law** - contains the precedent by which future judges will act
- **Municipalities can make by-laws that effect their area**

3. Law in an everyday context

- Many aspects of daily life are governed or affected by the law
- **Categories of law:**
 - **Jurisprudence:** science/philosophy of law
 - **International law:** agreements (treaties) between sovereign states and internally obscured customs
 - **National law:** Law as applied within the borders of a particular country
 - **National public law:**
 - Constitutional law: organisation, powers and processes of the government
 - Administrative law: rules governing the process of official decision making
 - Criminal law: the prohibition and punishment of conduct considered harmful
 - **National private law (traditional categories of law):**
 - **Civil law:** Private legal rights and duties between individuals:
 - **Tort Law:** Liability for harm wrongfully caused from one person to another or their property
 - **Contract law:** Private agreements that give rise to legally enforceable rights and duties
 - **Property law:** the acquisition and transfer of private rights in goods and land
 - **Agency:** the use of a representative to acquire or discharge legal rights/duties
 - **Consumer protection law:** legal protections for consumers in their dealings with suppliers of goods or services
 - **Corporations law:** Creation, organisation and administration of companies
 - **Specialist categories of law**
 - **Business law:** rules particularly relevant to business activities taken from traditional categories of law
 - Each area of law is concerned with particular types of conduct or situations
 - Dividing legal rules into areas helps **clarify the nature and structure of law**

4. What is Business Law?

- **Business law consists of selected rules of law that are of particular relevance to business activities:**
 - contract law
 - tort law
 - consumer law
 - **plus selected topics** from other traditional divisions of law
- Business Law enables a person to:
 - Recognise the legal aspect of typical business situations and understand the legal rules involved
 - Know the extent to which they can rely on legal rights and duties
 - Know how to **use the law constructively to achieve desired outcomes:**
 - Enforceable agreements for goods and services can be created
 - Property rights can be acquired and protected
 - Business organisations can be created
 - How finance can be raised

5. An anatomy of law

- Categories of law: groups laws by content, situation or conduct
 - **Legal concepts:** Ideas that determine scope and nature of category
 - **Legal Principles:** Broad precepts that recognise and give effect to a particular point of view
 - **Legal rules:** Provide detailed mechanisms by which legal principles are given effect
 - **Legal meanings:** Particular meaning/significance of words/phrases in law
 - **Legal authorities:** Sources (court or Act of Parliament) of particular legal principles, rules or meaning.

The Law	Areas of law	Concepts	Principles	Rules	Meaning
<p>All the rules of organisation and conduct recognised and enforced by the government of a state.</p> <p>Examples: Australian Law English law Malaysian law</p>	<p>Categories of convenience used to group together the rules of law that are considered to be related in some way.</p> <p>Examples: Contract law Property law Tort law Business law</p>	<p>The broad ideas which determine the nature and scope of an area of law and which, when organised appropriately, provide a coherent framework and sequence if ideas.</p> <p>Example: Contract Contract formation Consensus Offer Acceptance Intention Consideration Contract obligations</p>	<p>The fundamental and non-negotiable components of concepts. Principles serve to demarcate concepts, and indicate their nature, scope and content.</p> <p>Examples: Contracts are created only when the parties to an agreement intend to be legally bound.</p> <p>An intention to be legally bound is ascertained objectively rather than subjectively.</p>	<p>The detailed mechanisms designed to give effect to particular legal principles. Rules delimit and qualify principles in specific ways, and cater for specific situations that may fall under a particular principle. Rules can be changed without destroying the underlying principle.</p> <p>Example: An intention to be legally bound is to be inferred from the known circumstances at the time of agreement.</p>	<p>The sense in which concepts, principles, rules and words are to be understood. Meaning may be assisted by definition, interpretation and context.</p> <p>Example: The word 'consideration', when used in contract formation, means something given by one party in exchange for what is being promised by the other.</p>

In a situation it is likely a number of different questions will arise.

A legal question (issue) is one which is resolved by finding and applying a rule of law.

- Is Stella's company liable to pay compensation
- Is Stella entitled to return faulty products
- Does the placement of Stella's table interfere with John's legal rights. If so, what remedies are available to John?

Finding the Law

- Knowledge of different areas of law helps knowing where to look for the law that is relevant to particular facts

Decision making in the courts

- The strictly logical application of existing rules promotes certainty and predictability
- The fair and just nature of judicial decisions promotes respect and support for the law
- By taking proper account of significant differences of fact, and finding appropriate rules to apply to each type of case
- The courts can strike a balance between the strict application of established rules and the pursuit of fair outcomes (do not have to use precedent)