

Legal Foundations

Defining law

- Rules that regulate the economic and social behaviour of individuals
- Made by the state
- Enforced by prosecution (criminal matter) or litigation (civil matter)

Purpose

- Resolves disputes
- Maintains social order
- Preserves and enforces community values
- Protects the disadvantaged
- Stabilises the economy
- Prevents the misuse of power

Australian law

- Laws made by the commonwealth, state and territory parliaments
 - Australian constitution - establishes the basic rules for the operations of the federation and sets out the power of the federal parliament to make laws, acts or legislations
 - State and territory constitutions

Characteristics of a legal system

- Certainty - predictable and clear
- Flexibility - responsive and adaptable
- Fairness
- Accessibility - should be available to everyone

Sources of the law

- Common law - created through the reported decisions of judges in the higher court
 - (also known as non-statutory law, case law, precedent or unwritten law)
- Statute law - made by the federal and state parliaments in the form of statute law, legislation or enacted law, or other government bodies in the form of by-laws, orders, rules and regulations
- Equity law - implies fairness and justice in the law by taking into account different aspects of a case
 - Developed as a result of the growing inflexibility and rigidity of the common law, however still works with it
- In the event of a conflict between equity and common law, equity would prevail

Public and private law

- Public - the organisation of government and its relationship with the people
 - Administrative
 - Constitutional
 - Criminal
 - Industrial
 - Taxation
- Private - deals with disputes over rights and obligations between people or organisations
 - Contract
 - Commercials
 - Torts
 - Property

Common and civil law systems

- Common law system - legal principles developed by judges in courts of record (ie. Supreme state and territory courts and the high court)