

70102
FOUNDATIONS OF LAW
CLASS NOTES – INTRODUCTION SUBJECT

FOUND.LAW

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<p>Australian Legal System</p> <ul style="list-style-type: none"> ○ Categories of Law ○ Criminal Law/Civil Law ○ Public Law/Private Law ○ Domestic Law/ International Law ○ Sources of Law ○ Common Law 	<p>Australian Federal System</p> <ul style="list-style-type: none"> ○ 6 separate colonies agreed to unite and form the Commonwealth of Australia ○ Establish a system of federation <ul style="list-style-type: none"> ✚ <i>Federation</i>: a system of governance in which power is divided between a central authority and constituent political units ○ Prime Minister <ul style="list-style-type: none"> ✚ The leader of the political party with the most votes in the lower house becomes PM ✚ PM who can't obtain supply/funding should seek a general election or resign ✚ A person who retains majority support in the house of representatives is entitled to remain PM ○ <i>Senators</i> – voted in by the public ○ <i>Ministers</i> – appointed by Governor General on the advice of the PM ○ <i>Governor General</i> – appointed and removed by the Monarch on the advice of the PM <p>Australian Legal System (7):</p> <ol style="list-style-type: none"> 1. Separation of powers 2. Federation 3. Responsible government 4. Rule of law 5. Liberal democracy 6. Common law system 7. Constitutional monarchy <p>Sources of law</p> <ul style="list-style-type: none"> ○ Primary sources: documents contain the actual rule <ul style="list-style-type: none"> ✚ Common law ✚ Legislation ✚ International law/treaties ○ Secondary sources: documents that summarise, critique or are useful when understanding the law <ul style="list-style-type: none"> ✚ Textbooks ✚ Journal articles ✚ Legal dictionaries ✚ Government reports ✚ Parliamentary speeches <p>Four ways the law is categorised: Substantive and procedural law, public and private law, domestic and international law, civil and criminal law</p> <p>Substantive and procedural law</p> <ul style="list-style-type: none"> ○ <i>Substantive law</i>: system of rules that set out the rights and obligations of individuals and the state, explains what the law <i>is</i>, defines crimes and punishments <ul style="list-style-type: none"> ✚ This determine what constitutes a contract, an act of omission, ✚ E.g. whether your client committed a crime or whether your client is entitled to compensation ○ <i>Procedural law</i>: system of rules that regulate the legal process <ul style="list-style-type: none"> ✚ Ensures consistency and fair practise ✚ E.g. Civil litigation and criminal prosecution ✚ This determines whether your client is entitled to an appeal or a jury, how long a person can be detained, how long a party has to sue another, the process of a lawsuit etc.
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Substantive law → Public and private law

- Public law: establishes the rights and obligations of the individual when dealing with the state and other individuals, explains *how* the law works
 - ✚ *Criminal law*
 - Establishes criminal offences and the penalties for their infringement
 - ✚ *Taxation law*
 - Law that regulates the administration and collection of tax
 - E.g. regulating the tax placed on goods and services, income tax etc.
 - ✚ *Constitutional law*
 - Regulates relationships between the various arms of government, between the government and its citizens
 - Grants legal rights and liberties
 - Law relating to the interpretation and application of the Constitution of Australia
 - If your client is accused of having committed a criminal law – you can argue that the government did not have the right to make the law your client is accused of contravening
 - ✚ *Administrative law*
 - Regulates the administrative activities of the government e.g. decision making
 - Enables judicial review of administrative decisions made by public bodies – accountability mechanism
 - Allow citizens to hold administrative bodies e.g. local governments
 - Make government more accountable for their actions
- Private law: establishes the rights and obligations of individuals within the community
 - ✚ *Tort (a wrongful act) law*
 - Laws that provide remedies for wrong doings or those who are harmed by the acts or omissions of another
 - E.g. defamation, trespass, negligence, nuisance etc.
 - ✚ *Property law*
 - Laws regulating property rights in things (personal property) and land (real property)
 - ✚ *Contract law*
 - Law regulating agreements and promises
 - ✚ *Company law*
 - Laws regulating the establishment, management and dissolution of corporations
 - E.g. if your client instructs you to set up a company for them or advise them about their legal responsibilities as a director → look at company law for guidance

Domestic and international law

- *Domestic law*: laws that regulate persons within a particular jurisdiction such as a nation or state
- *Public international law*: laws regulating the relationships between nations
 - ✚ No international government – public international law takes the forms of treaties, customs and conventions
- *Private international law*: laws regulating persons between nations
 - ✚ Determine which state's laws should be applied to resolve dispute between people in different states

Private and public law → applied to substantive law

Criminal and Civil law → applied to procedural law

Common Law

- Monarch delegated responsibility for hearing cases to the Lord Chancellor
- Decisions – based not upon common law rules and principles but his own ideas of fairness and justice
 - ✚ These decisions created legal rules known as ‘equity’
- If conflict occurs between common law and equity, the rule of equity prevails
- *Judicial Act 1873* – abolished separate court systems and established a High Court of Justice (administers common law and equity)

Liberal Democracy

- Representative democracy – laws are made by the executive government
- Liberal – individual freedom
- Larry Diamond – 11 principal characteristics for liberal democracy
 1. Citizens determine the outcomes of elections
 2. Military and other democratically unaccountable institutions (that complies with the constitution) are entitled to form a political party and contest an election
 3. Citizens have a variety of channels for expression and representation
 - ✚ E.g. independent associations and movements
 4. Citizens have substantial freedom of belief, opinion, discussion, speech, publication, assembly, demonstration and petition
 5. There are alternative sources of information, which citizens have unlimited access to
 6. Executive power is constrained by government institutions
 - ✚ E.g. Independent judiciary, Parliament
 7. Civil liberties are effectively protected
 8. Citizens are politically equal under the law
 9. Minority groups are not oppressed
 10. The rule of law protects citizens from human right abuses
 11. The constitutional is supreme

Case Law

- *Reactive* – created to address a problem that has already occurred or to resolve a dispute that already exists
- Made by courts
- Can be overridden by other sources
- Narrow application

Legislation

- *Prospective* – intended to address problems and disputes that may not yet exist but the legislature is concerned about
- Wide application
- Dominant source of law
- Made by parliament

Delegated legislation

- Parliament gives a *minister* the authority to make law, usually to make regulations generally on the advice of their department
 - ✚ E.g. Immigration law – (IL) is changed/amended frequently and the only way these changes can be made so quickly is by creating the law in regulations rather than constantly changing the act
 - ✚ Downside: reduce parliamentary scrutiny, regulations reviewed but not debated in the same way by parliament
- ‘*Parent legislation*’ – sets out the overarching principles and objectives of a particular regulatory scheme
- Parliament delegates authority to make delegated legislations
- Sunset clauses – automatic repeal of provisions

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