

Lecture 1: Introduction to the Study of Business Law

Law - enforceable set of rules that regulates/controls the behaviour of members of a society, controls the conduct of individuals in a society

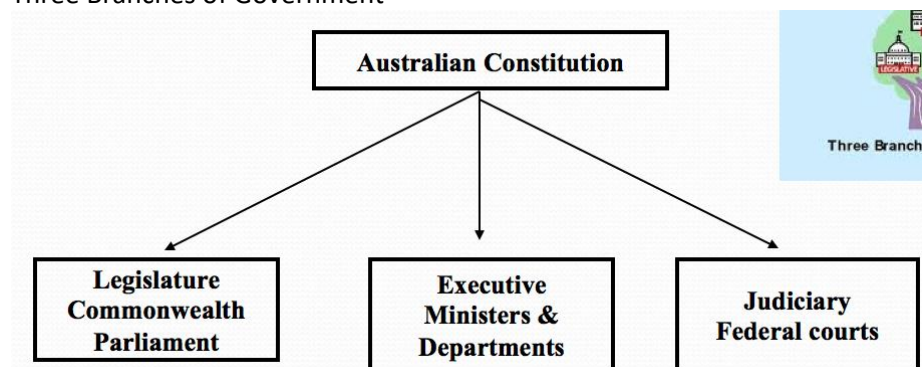
Effective Legal Characteristics:

- Certainty
- Flexibility (must be able to change with the societal differences)
- Knowledge (conveyed to the public)
- Reasonableness
- Obedience

Separation of Powers

- Functions of government are allocated to different institutions:
 - Laws are MADE by a Legislature
 - Both federal and state parliaments make laws
 - Laws are ADMINISTERED by an Executive
 - Prime Minister, Cabinet Ministers, Politicians
 - Laws are INTERPRETED by a Judiciary
 - Judges and the courts (AKA Judiciary)

Three Branches of Government



Exclusive Powers - gives the commonwealth exclusive or sole power to make laws in specific areas

- E.g. Print money, regulate interstate and international trade, make treaties and conduct foreign policy, declare war, provide an army and navy, establish post offices
- Only held by the Australian Federal Parliament (highest governing body)

Concurrent Powers - permit both federal and state governments to pass laws in the same area

- E.g. trade practices and consumer protection laws, insurance law, banking, industrial relations, income tax, bankruptcy and insolvency, post and telecommunications, company law
- Held by both federal and state levels of government

Residual Powers - any area that is not an exclusive or concurrent power

- E.g. education, housing, land development, health and transport
- Only the states may exercise residual powers

Sources of Law

- Statute Law (laws made in federal, state and territory parliaments)
 - Can include delegated legislation where the original statute allows for more regulations to be made by other persons or organisation
 - Recognizing a Statue

(a) The Competition and Consumer Act 2010 (Cth) – Section 18

Name of statute **Year in which statute first made** **Name of Parliament that made the law** **section of statute**

- Common Law (based on court decisions)
 - Decisions of superior courts in a particular case become the precedent for later cases involving similar issues and circumstances

- Recognizing a Case

(1) Cameron v Anderson (2003) 107 CLR 553

(2) (Anderson v Cameron)

(3) (Cameron v Anderson)

1. Original court finding
2. The appeal if the defendant of the first case loses and is unhappy with the decision (appellant v respondent)
3. If the respondent is unhappy with the second phase then the roles are switched

Cameron : **Plaintiff**

V : **Versus**

Anderson : **Defendant**

2003 : **Year in which case was reported in the law report**

107 : **Volume number of the law report**



CLR : **Abbreviated name for law report – Commonwealth Law Report**

553 : **page number that the court's decision begins on.**

- Statute law prevails over common law in case of conflict

Classifications of Law

- Public and Private Law
 - Public Law - allows society to take action against others
 - Private Law - involves interactions between private citizens (e.g. divorce)
- Criminal and Civil Law
 - Criminal Law - (sub division of Public Law) covers offences with which an individual can be charged by the state, enforced by the state either through the police in magistrate courts or the department of public prosecutions
 - Standard of proof is much higher in criminal law than in civil law
 - Civil Law - (sub division of Private Law) enforcement is undertaken by individual person

| | Parties | Aims | Outcome | Proof |
|--|---|------------------------------|---|---|
| Civil law  | Plaintiff commences action against Defendant | Compensation for individuals | Damages, specific performance or an injunction | On the balance of probabilities (the plaintiff must prove that the defendant is guilty) |
| Criminal law  | Prosecutor (Government) commences proceedings against Defendant | Punishment of the offender | Prison terms, fines, good behaviour bonds, community service orders | Beyond a reasonable doubt (The state must prove that the defendant is guilty) |

- Common Law System and Civil Law System
 - Common Law System (e.g. Australia, England)
 - There is not always a written constitution or codified laws
 - Judicial decisions are binding
 - Extensive freedom of contract - few provisions are implied into the contract of law
 - Civil Law System (e.g. China, Japan)
 - There is a written constitution based on specific codes
 - Only legislative enactments are considered binding for all (there is little scope for judge-made laws)
 - Less freedom of contract - many provisions are implied into a contract by law and parties cannot contract out of certain provisions

Rules of Statutory Interpretation

Literal Rule

- Whenever possible we should interpret an act literally

The Flick Knife Case (Fisher v Bell)

- Facts: Constable Fisher saw a flick knife with a price tag displayed in Bell's shop window. He charged Bell under the Restriction of Offensive Weapons Act 1959 which stated:-
 - **“Any person who sells, lends or gives an offensive weapon to any other person commits an offence”**
 - The term offensive weapon included flick knives.
- Applying the Literal Rule, what do you think was the Court's decision?
- Applying the literal rule, the **knife had not been “sold, lent or given” –it had merely been placed in the window** and so had not committed an offence under that piece of legislation.

Golden Rule

- Court can modify a literal interpretation of the statute to remedy an absurd or inappropriate result

The Stop Case (Lee v Knapp) (1967)

- **The driver in an accident stopped momentarily and then drove off before doing anything else. The driver said he stopped and so complied with the legislation.**
- **Held that the Act required the driver to stop for a sufficient time to supply information about the accident to those persons with legitimate interests.**
- **A literal interpretation would have prevented a driver being found guilty of not stopping properly after an accident.**

Purpose Rule

- This applies where the meaning of a term is ambiguous or uncertain, the courts will favour an interpretation that is consistent with the purpose of the act

Smith v Hughes [1969] 1 WLR 830

The Street Offences Act 1959 UK prohibited solicitation by prostitutes “in a street”. To get around the legislation, prostitutes stood on balconies or at their windows calling out to passers by.

Held that the mischief that the legislation was designed to overcome was to prevent people who used the street being solicited. Hence the words in the street should be interpreted to include calling out from balconies.

Statutory Guidelines to Interpretation

- Section 15AA(1) of the Acts Interpretation Act - courts must use the purpose approach to interpret statutes
- Section 15AB of the Acts Interpretation Act - allows courts to use extrinsic material when interpreting statutes

Ejusdem Generis Rule (Class Rule)

- When a list of specific items belonging to the same class is followed by general words are to be treated as confined to other items of the same class
- E.g. "any house, flat, home and unit or other building" should not apply to non-residential dwellings
- In order to apply:
 - It requires more than one specific word before the general word
 - The specific words must be in the same class

Equity vs Common Law

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- Equity Law is provided as an attempt to remedy some of the defects of the common law
- Equity is regarded as an attempt to achieve natural justice
- Introduced the concept of fairness it is more flexible and supplements the common law

Equitable Remedies

- Injunction - is an equitable remedy in the form of a court order, whereby a party is required to do, or to refrain from doing, certain acts
 - E.g. Leaving the country to avoid prosecution
- Specific Performance - an order of the court which requires a party to perform a specific act
 - A specialized remedy used by courts when no other remedy will adequately compensate the other party

Law, Moral and Ethics

Morals - rules which are concerned with what is right and what ought to be done

Ethics - a standard of behaviour which applies not only to the individual but to all persons to act in a morally correct and honorable way

Law - set of rules regulating people's interactions with each other and setting standards of conduct between each other which are enforceable through sanction