

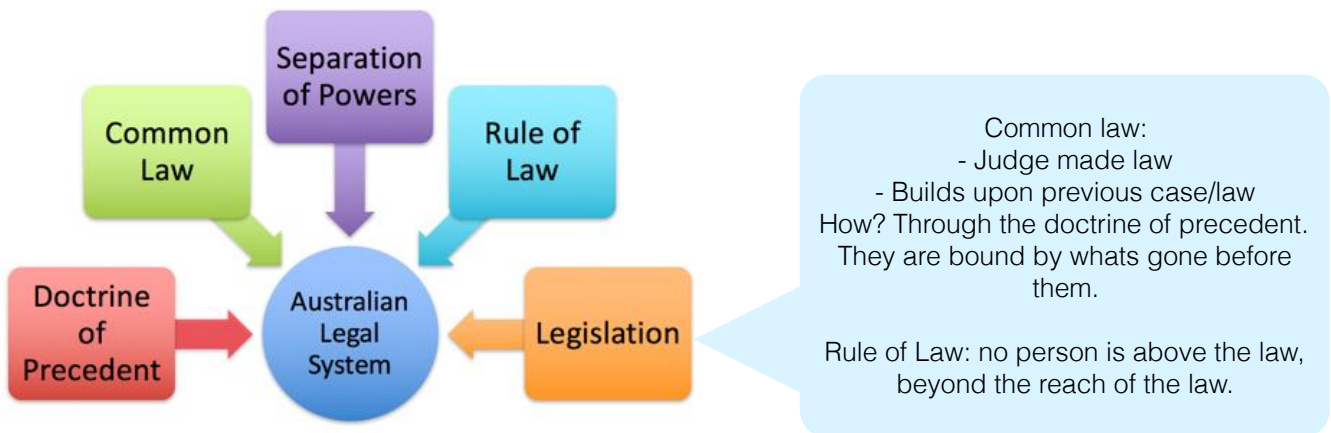
BUSINESS LAW
TOPICS INCLUDED:

- 1. The Australian Legal System (week 1)**
- 2. The Law of Contract**
 - Introduction, Offer and Acceptance (week 2)
 - Intention, Consideration, Formalities, Genuine Consent (week 3)
 - Contents and Interpretation of the Contract (week 4)
 - Termination and Remedies (week 5)
- 3. The Law of Torts**
 - Introduction. Liability for negligent acts causing physical or psychological damage or pure economic loss, Duty of care. Breach of duty. Damage. Defences. (week 6)
 - Professional negligence - the duty of care for negligent advice causing pure economic loss. Breach of duty and the statutory defence. Damage (week 7)
- 4. Consumer Protection**
 - Overview, Misleading or Deceptive Conduct. Unconscionable conduct. Specific false or misleading representations. (week 8)
 - Unfair Contract Terms. Consumer Guarantees. Enforcement, penalties and remedies under the ACL. (week 9)
- 5. Business Organisations**
 - Partnerships Overview. Agency. Rights and duties. Liability. (Week 10)
 - Corporations Overview. Corporate personality. Management and control. Director's duties. Remedies of a breach. (week 11)

BUSINESS LAW

The Legal System

Key Concepts



The Nature and Concept of Law

What is 'law'?

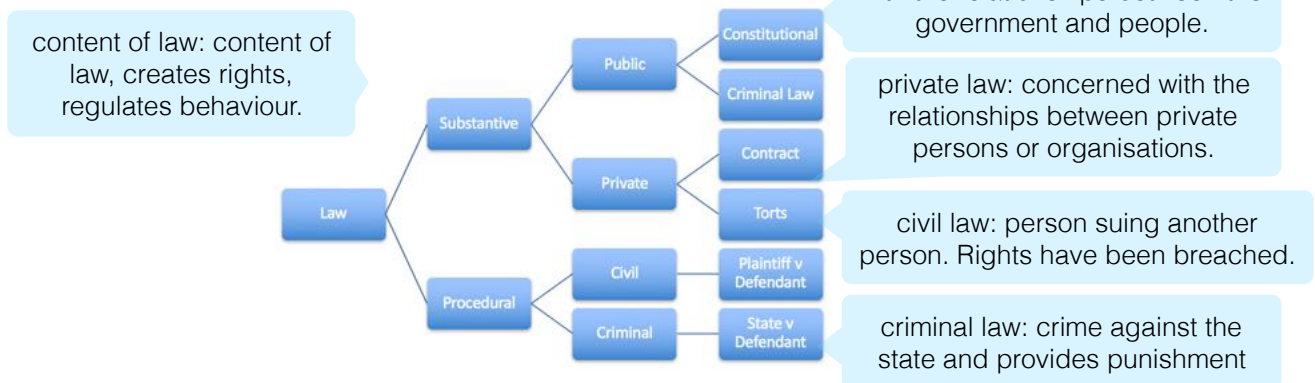
- 'Body of rules of conduct, made by parliaments and/or the courts, that regulates or controls the behaviour or relations between individuals or groups' (CACL 1.20).

What is the role of law?

Regulate behaviour:

- What we can do?
- How we should do it?

Types of Law in Australia (CACL 1.775 - 1.795)



Rule of Law (CACL 1.20)

- Key: that underpins liberal democratic societies: '**no one** is above the law'.
 - It is an essential feature of a democratic, law abiding, cohesive and functioning society.
- Four universal principles (World Justice Project):
 - Government (and officials) are accountable under the law.
 - Laws are clear, publicised, stable, just and applied evenly.
 - Process by which law are enacted, administered and enforced is accessible, fair and efficient.
 - Justice is delivered in a timely manner by competent, ethical judges who are free from interference. (CACL 1.20)
- How is this concept relevant to the private sector?
 - Without adherence to the rule of law, commercial life becomes dysfunctional.

- Systematic bribery and corruption in a society, particularly in its commercial sector erodes the certainty and stability, confidence and trust that is essential for a flourishing environment.
- Rule of law ensures that proper processes, laws, regulations are accessible and transparent.

Where Does the Law of Australia Come From?

- Pre-European (CACL 1.30)
 - Indigenous peoples have been here for over 50,000 years
 - Complex social systems and 'customary laws' – are they 'laws'?
See: *Milirrpum v Nabalco Pty Ltd* (1971) 17 FLR 141
Year: 1971, Volume 17, Federal Law Records, page 141
- British (CACL 1.40)
 - 2 February 1788: British claimed sovereignty (right to govern). As land was regarded as terra nullius, all the laws of England were 'immediately in force'.
'settled' colony – automatic reception of law (CACL 1.50) compare 'conquest' or 'cession' (treaty).

Terra Nullius and Native Title (CACL 1.50 - 1.90)

Mabo v Queensland [No 2] (1992) 175 CLR 1

- The HCA recognised that Australia was not terra nullius (land belonging to no one).
- If Aboriginal or Torres Strait Islander peoples could show that they had exercised traditional rights over land since before British colonisation, the law would recognise those traditional rights.
 - Requires a continuous connection
- Cth Parliament subsequently enshrined this in legislation:
 - Native Title Act 1993 (Cth)
 - Native Title Amendment Act 1998 (Cth)

The Mabo judgement establishes a fundamental truth and lays a basis for justice. The Commonwealth government responded with legislation to this called the Native Title Act 1993

Why Does This Matter:

In the BTF1010 context it helps us to understand:

- The (illegal) dispossession of the land of Aboriginal or Torres Strait Islander peoples and the subsequent on-going problems.
- Why we still read, and apply, cases from England.
- Why we have a federal system in Australia.

Do We Still Follow British Law?

What is significant about these Acts (CACL 1.97)?:

- Australian Courts Act (1828)
- Statute of Westminster (1942)
- Australia Acts 1986
- Commonwealth of Australia Constitution Act 1900

FEDERAL SYSTEM: KEY FEATURES (CACL 1.100)

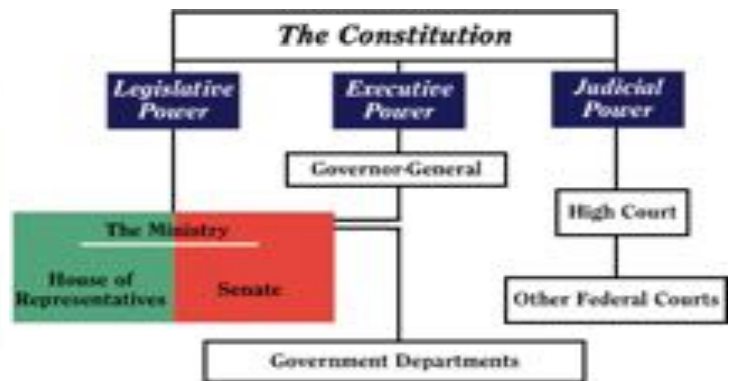
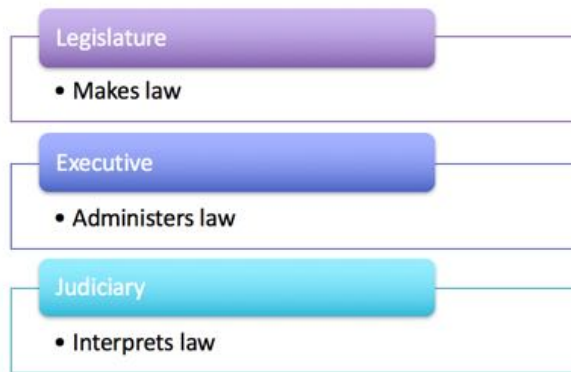
- Federation
 - Comprises of a central government which has certain law making abilities.
 - Two legal systems affecting citizens
 - There is a constitution
 - consists of 3 legal branches (Legislative, executive and judiciary).

Australia:

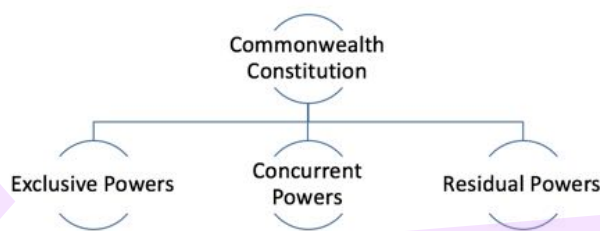
1. Central Government (Federal/Commonwealth)
2. State/ Territory Governments (ie. Victorian government)

- Constitution (sets out legal relationship between Commonwealth and States).

SEPARATION OF POWERS (CACL 1.140 – 1.180)



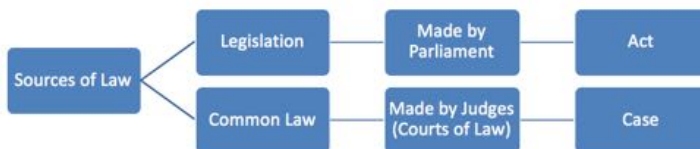
Exclusive Powers:
Only the Commonwealth Parliament can legislate on these areas.



Concurrent: both State and Commonwealth can pass laws. However, if there is an inconsistency then s.109 states that commonwealth law will overrule State.

Residual Powers: Only the state holds legislative power on these areas.

SOURCES OF LAW IN AUSTRALIA (CACL 1.200)



Parliament are considered sovereign because it is the supreme law making body. They are elected by the people, can make laws any time whereas the court's can only create law when a case is brought to them. Additionally, law making is a secondary role for the courts.

LEGISLATION (CACL 1.210)

- The Commonwealth Parliament passes approx. 180 Acts per year.
- Legislation = statute law = Act = law made by parliament

Function of legislation (CACL 1.210)

- To make new law
 - Australian Consumer Law and Fair Trading Act 2012 (Vic)
- To repeal or amend an old law
 - Trade Practices Act 1958 (Cth) → Competition and Consumer Act 2010 (Cth)
- Codify existing law
 - Wrongs Act 1958 (Vic)