

BLAW1004: Business Law 2017

Module 1: Introduction: the nature and function of the law

What is law?

- A constructed system containing a collection of rules and principles that regulate behaviour and relationships (lawful and unlawful); impose obligations (rights); impose penalties (fines, prison); create institutions (ASIF, Gov); and ensure rights.
- Working parts of law:
 - Courts (judges produce law within courts); Legislation (elected government); Police (enforce); Department of Justice (Australian states); And many more
- Law is important to Australia's infrastructure
- Australia is based on the 'common law system'

PUBLIC	PRIVATE
Administrative	Admiralty
Constitutional	Banking and negotiable instruments
Criminal	Consumer
Environmental	Contract
International	Corporation
Planning	Equity
Revenue	Family
	Insurance
	Intellectual property
	Partnership
	Private international (conflicts of law)
	Succession
	Tort
	Trusts

What is the 'common law system'?

- A system in which legal principles are developed by judges through case law
- Disputes are solved within the court system and are adversarial
 - Adversarial meaning: (of a trial or legal proceedings) in which the parties in a dispute have the responsibility for finding and presenting evidence (dictionary.com)
- Each side is responsible for presenting their case

What is civil law?

- Civil law does not rely on precedent or the development of case law by judges
- Judges take the leading role in civil law as opposed to lawyers, this is non-adversarial or inquisitorial

What is business law?

- Business law encompasses many areas of law that are relevant to business and how it is carried out, for example:
 - Contract law: regulates private transactions or agreements between two or more parties.
 - Tort law: Negligence or causing harm (financial, bodily)
 - Corporations law: Focuses on business structure: private/public, directors responsibilities
 - Consumer protection law: minimum standards for production of goods or provision of services.
 - Criminal law: Created by states to regulate socially harmful behaviours
 - Property law: acquisition or selling of property (land or goods)
 - Administrative law: Challenges to decision making power of government departments: state administrative tribunal
 - Intellectual property law: protects copyright, trademark etc
- Areas of law are umbrellas that encompass all areas of that law

Why is knowledge of business law so important?

- Law impacts all areas of business as well as life
- Understanding how laws impact business situations is imperative whether employee or employer
- Gives greater knowledge and mitigates risks
- Empowers commercial deals with others, through understanding business law employees better know their legal rights and duties and can use the law to benefit the deal when:
 - Entering into contracts for goods and services
 - Purchasing or leasing property
 - Forming and running a business
 - Dealing with financial institutions and investing in the financial market

Legal and nonlegal rules

- What is the difference?
 - Legal rules consist of rules of conduct that are recognised, applied and enforced by power of the state
 - Non-legal rules consist of rules of conduct that are enforced through peer pressure, a need for cooperation, goodwill or convenience, such as:
 - Moral or philosophical beliefs
 - Religious beliefs
 - Social values, and
 - Rules that have become customary in a community

Important Phrases

- Legal '**principles**' are statements of the broad fundamental viewpoints that set the policy and philosophical direction of an area of law
- Legal '**rules**' are the more detailed mechanisms by which the principles are given effect
- Legal '**system**' means all the legal principles and rules that exist in a particular country
 - '**Legal system**' also means all the additional things that contribute to the operation of law in society, i.e. mechanisms for
 - creating and changing the law
 - administering and enforcing the law
 - preserving and perpetuating the law

What function does the law serve?

- **Ensures reasonable predictability in daily life**
 - That if you pay for goods or services you will be provided with them (consumer law)
- **Encourages and discourages conduct**
 - Corporations law discourages directors from exploiting their position of power
- **Grants rights and powers to individuals and groups of people**
 - A party to a contract has the right to enforce that contract against the other contracting party should they refuse to honour their obligations (contract law)
 - Creditors have the power to wind up a company if it is unable to pay its debts (corporations law)
 - Consumers have the right to have defective goods replaced or receive a refund when a replacement item is not available (consumer law)
- **Imposes obligations on individuals / organisations to meet their legal responsibility**
 - Food producers must ensure that their products are safe to consume (consumer law)
 - Council members must make decisions that conform to protocol and do not extend beyond their official power (administrative law)
- **Allows for the enforcement of recognised rights and duties**
 - Police are allowed to arrest individuals who commit crimes (criminal law)
 - ATO is given the power to investigate a false declaration on a tax return (administrative law, taxation law)
 - The Commonwealth minister can impose mandatory safety standards for consumer goods or product-related services (Administrative law, consumer law)
- **Provides remedies when an injustice has been done**
 - Damages can be awarded when an individual has been harmed by negligent conduct (tort law).
 - A customer can be provided with a replacement item when the item originally purchased was defective (consumer law).
 - An order of specific performance can be made when a party to a contract refuses to honour an important term of the contract (contract law).

Key Terms

- **Civil Law:** alternative system to common law based on codification of laws - common in Europe
- **Common Law:** unwritten law developed by judges relying on precedents
- **Constitution:** the document that created the Commonwealth and the states, it sets out the powers of the Commonwealth
- **Executive:** also known as cabinet. Referred to in s 61 of the Constitution, the Executive Government administers the government of Australia
- **Federation:** the process by which the former colonies became states and were federated into a new political entity: The Commonwealth of Australia
- **High Court:** the ultimate judicial body in Australia, created by s 71 of the Constitution
- **Judicature/judiciary:** collective term for judges, who are independent of other arms of government
- **Legislation:** law made by parliament; the paramount source of law
- **Separation of Powers:** the ways in which the arms of government exercise their powers independently
- **The Law:** the body of rules to which society subscribes
- **Vicarious liability:** liable for the conduct of employees