

LEGL1001 – Final Exam notes

Week 1 – Legal Concepts and Terminology

What is law?

- **Social institution** – helps societies to function harmoniously and regulates behaviour
- **Moral institution** – derived from community values and morals
- **Justice mechanism** – ensures justice between powerful and powerless

Interpretations of the definition of law

- **Positive notion of law** – not related to justice, but is an important body of state endorsed rules
- **Tyrant's notion of law** – what the powerful can get away with and the powerless can't challenge
- **A modern cynic's definition** – whatever you can afford to pay

Characteristics of Australian law

- Principles and rules usually based on community values. Made by our government institutions
- Rules enforced by people who feel they have been wronged
- Sanction for breach of the rules: fines, apologies, compensation, prison, garnishment of wages

Types of rules

- **Legal rules** – enforceable by law
- **Moral codes** – unique to each person
- **Social rules** – etiquette

Types of laws

- **International law** – regulates relationships between countries, includes laws of war, sea, human rights, international environment and climate change laws
- **National law** – includes foreign/domestic
- **Foreign law** – the law of other countries
- **Domestic law** – the laws of the commonwealth
- **Public law** – focuses on citizens and the state. Includes constitutional, administrative, criminal and taxation law
- **Private law** – relationships between individuals, including humans/corporations and groups. This includes contract, commercial, company and torts.

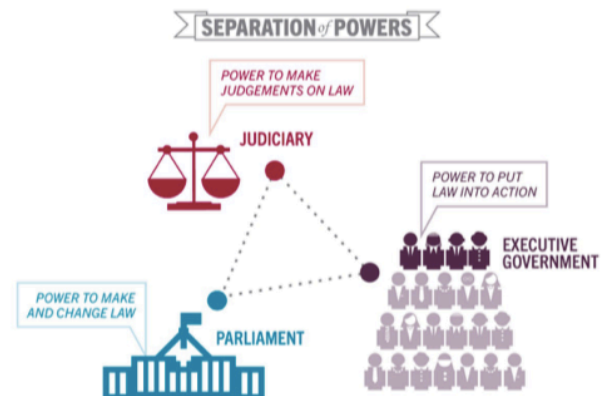


Western understanding of the rule of law was developed from European/British intellectual and political traditions. European societies have developed different ways of understanding and regulating power over time. Government and power was once exercised by village chieftains or regional rulers. Through war and conquest, areas became united under more powerful leaders such as laws/kings. The process of dividing land and uniting people has been a continuing story of Europe and the British Isles into modern times.

Rule of Law: a society which is ruled by law and not by arbitrary power. Everyone is subject to the law, including government officials

Magna Carta, 1215 “The Great Charter”

Issued by King John of England as a solution to a political crisis. Established the principle that everybody was subject to the law. Gave all free men the right to justice and fair trial.



Separation of powers

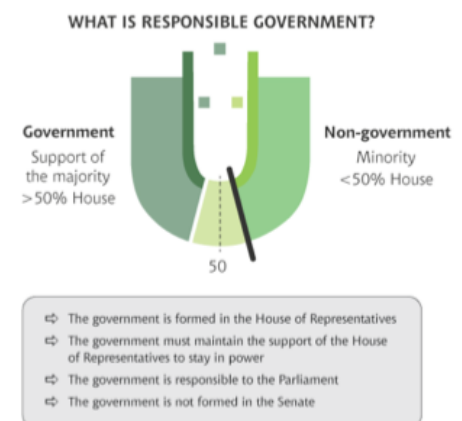
There are three basic types of government power in society: making laws, administering laws, and adjudicating on the law.

- **Parliament:** Law making power
- **Executive government:** administering laws
- **Judiciary:** Interpret the law

Parliament in Australia

Parliament in Australia is bicameral (has an upper and lower house). In NSW, the lower house is called the legislative assembly and the upper house the legislative council. For the commonwealth, the **lower house is the house of representatives**, and the **upper house is the senate**.

A senator is elected by the people of a state or territory.



Questions/Answers

Why is it important for the law to “adapt and respect changes in society?”

- To adapt to changing community values
- Maintain relevance by upholding and reflecting the values/beliefs of society
- Keep up with technological changes, and update laws with new information

What is an “act of parliament”?

An act of parliament is a law that has been made by parliament. Also known as legislation/statutes.

What is judge made law?

A law that has been created by the courts. Also known as common law.

Who are the judiciary independent from?

Other forms of government.

To whom do judges have a duty?

Society, in order to enforce justice

What is the role of the lawyer in the adversarial system?

The role of the lawyer is to provide legal representation for their client, and ensure that the evidence supporting their side is going to be presented appropriately in court. They persuade the judge that their side is correct. Lawyers owe a duty to the court to uphold justice and be honest. This is an ethical duty.

What is the role of a judge in the adversarial system?

The role of the judge is the impartial decision maker, they decide which rules are evident in solving the dispute. The judge reviews the law rules and facts and must determine that the evidence is admissible in court.

What are the advantages and disadvantages of the adversarial system?

Advantages: Fair and less prone to abuse. Observes the rights of defendant and prosecutor. Allows both parties to support their positions. Provides power to the police. Does not promote a bias, hears the stories of both sides.

Disadvantages: Obliges sides to contest with each other. May lead to injustice. Judgements are compelled by arguments rather than evidence. Issues with accessibility to good lawyers. Tedious and expensive.

The four universal principles of the law:

- Government and officials are accountable under the law
- Laws are clear, publicised, stable, just and applied evenly
- Laws are enacted, administered and enforced fairly and efficiently
- Justice is delivered in a timely manner by ethical, competent, interference free judges.

Week 2: A common law system

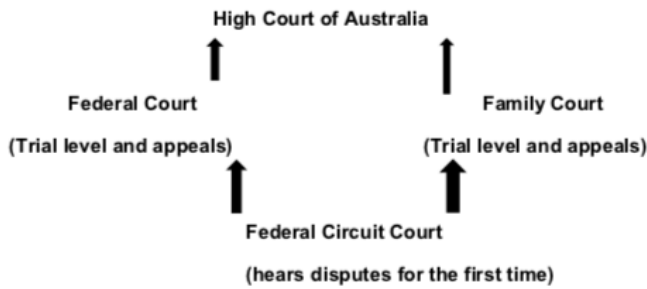
Civil law system: law contained in a civil code.

Countries where law has been drawn on the legal codes developed in the Roman Empire. Countries which law which is codified and legal procedure which is inquisitorial

Common law system: English legal system, no codification of the law. One of the ways law develops is through the King or Queen's judges. Decisions were originally based on common customs of the people. Rules of behaviour became legal rules. Common law rules have developed greatly over many centuries and can be traced back to the middle ages. Some rules of common law have many exceptions. Common law countries rely on judge-made laws to develop their legal system and legal procedure which is adversarial.



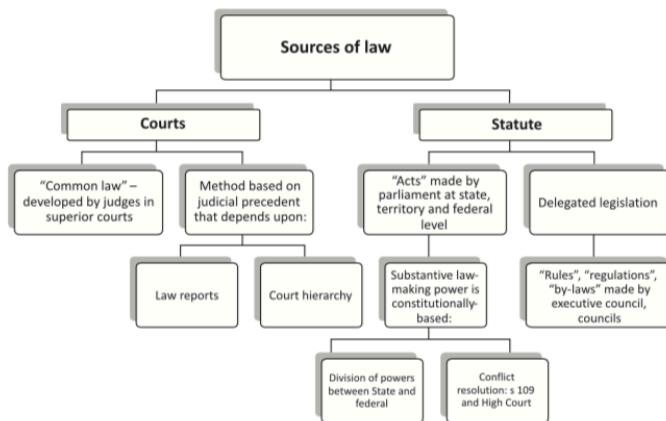
Federal Hierarchy of Courts



reports. State, territory and federal courts are organised in hierarchies.

Laws made by parliament:

- Written laws
- Proceed through an established process
- Commonwealth, state and territory parliaments are given powers to enact laws
- Laws can be challenged as unconstitutional



explains/analyses the primary source.

Statue law: a relevant statute affects all aspects of life; marriage, renting, divorce, transactions, insurance, and employment. A statute is relevant to any claim for compensation. Statutes bring new laws into existence, and repeal old laws created by earlier statutes. Statute law codifies the law to include earlier statute provisions, and common law principles derived from decisions.

Consolidating statute: purpose to assemble and re-enact earlier statute provisions

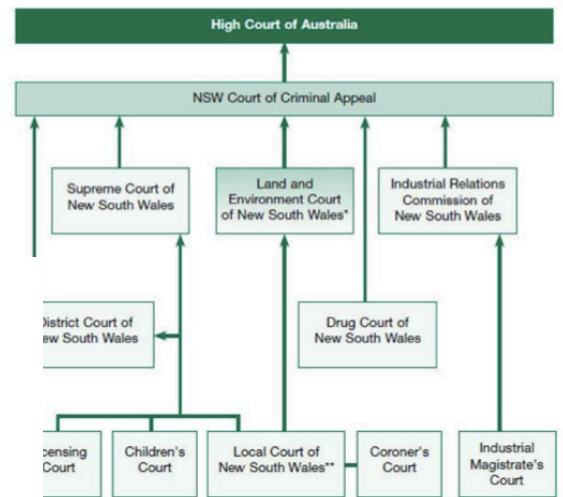
Sources of law in

Australia:

- Common law made by judges
- Acts of parliament

Common law: is derived from the decisions of judges who determine disputes. The reasons for a judge's decisions are called judgements. Judgements have been collected in law

NSW Hierarchy of Courts



Sources of law:

Primary: a document that contains the law itself (a case or statute)

Secondary: a resource that