

# COMMERCIAL LAW

Hasib.

## WEEK 1

### Learning objectives

- In what ways does the law relate to business?
- What exactly is meant by the word law? Why is it so important? What sorts of things does the law regulate? why does law keep on changing?
- Does the law have anything to do with ethics, justice and politics?

### Defining Law

- Law is:
  - o The set of rules made by the state and enforced by prosecution or litigation
- Business law is:
  - o The set of rules regulating businesses and business activities made by the state and enforced by prosecution or litigation

Litigation - the process of taking legal action.

Prosecution - the institution and conducting of legal proceedings against someone in respect of a criminal charge

### Law ideals

- Certainty
- Flexibility
- Accessibility
- Fairness

### Purpose of the law

- Resolve disputes
- Maintains social order
- Preserves and enforces community values
- Protects the disadvantaged
- Stabilises the economy
- Prevents the misuse of power

### Changing the law

- The law changes regularly because of:
  - o Political change
  - o The need to fix problems
  - o Changing community values
  - o Pressure from lobby groups
  - o Changing technology

### Law and justice

- **Justice** can be understood as fairness, such as fair compensation or punishment, a fair decision or a fair distribution of resources
- The notion of fairness has influenced the development of business law in many ways
- The relationship between law and justice may not be necessary, but is desirable
- There are three types of justice
  - o Distributive justice
  - o Procedural justice
  - o Retributive justice

### Law and ethics

- A legal choice is one that complies with the law; an ethical choice is one that is recognised as 'good' and 'right'
- Law and ethics generally correspond, but:
  - o A decision that is legal may not be ethical and vice-versa

### Law and politics

- While the law is more than merely politics, the law is shaped and influenced by power and politics
- Particular laws are usually the expression of a political ideology
- Legislation is made by politicians to implement government policies and achieve political objectives

### Six key characteristics of the Australian legal system

- **Liberal democracy:** laws are made by, and the executive government consists of, elected representatives who exercise their power subject to the rule of law and to the various Federal and State constitutions
- **Common law legal system:** our legal system is based on the British legal system, and can be contrasted with other forms of legal systems such as the civil law legal system
- **Constitutional monarchy:** the Head of State of the Commonwealth of Australia and the various States is Elizabeth II, Queen of Australia.
- **Federation:** in addition to be the national Federal (or commonwealth) government there are various state governments that are not subordinate to the federal government
- **Separation of powers:** laws are made by a parliament; administered by an Executive Council or Governor in council; and interpreted and applied to particular cases by a court system
- **Responsible government:** the Ministers comprising the executive are elected representatives who are also members of and are answerable to the legislature