

## **Week 1, Chapter 1:**

### **Legal and non-legal rules:**

Law is defined as rules of conduct or organisation that are recognised, applied and enforced by the power of the state.

Non-legal rules are rules of conduct or organisation that are enforced by things such as peer pressure, a need for co-operation, feelings of goodwill, or convenience.

Non-legal rules are derived from a variety of sources:

1. Moral or philosophical beliefs
2. Religious beliefs
3. The laws of nature
4. Social values
5. Customary rules in a community

Non-legal rules work well in smaller groups and communities but are inadequate in larger groups.

Rules enforced by the state are common in larger societies as a necessary means of regulating conduct.

The rules that the state choose to enforce are identified and made in different ways

1. Enforce rules that originate as non-legal rules e.g. philosophical beliefs, or established customs
2. Creating new rules in response to a perceived need for regulation

### **Who makes the law:**

In Australia, various governments exist at federal, state and territory level and they exercise the power to make law.

Governments make law through specified agencies, following recognised procedures or processes.

The main agencies of law making at federal, state and territory level in Australia are

1. Elected legislatures
2. The courts

Dividing legal rules into areas helps to clarify the nature and structure of the law.

Category of Law	Description
Jurisprudence	Science or philosophy of law
Contract Law	Private agreements that give rise to legally enforceable rights and duties
Tort Law	Liability for harm wrongfully caused by one person to another person or to their property
Property Law	Acquisition and transfer of private rights in goods and land
Agency Law	Use of a representative to acquire or discharge legal rights or duties
Corporations Law	Creation, organisation and administration of companies
Constitutional Law	Organisation, powers and processes of government
National Law	Law applied within borders of a country
International Law	Agreements between sovereign states and internationally observed customs

Business law consists of selected rules of law that are of particular relevance to business activities. For example, business law includes aspects of:

- contract law
- tort law
- consumer law
- plus selected topics from other traditional divisions of law.

Knowledge of business law is important because it enables a person to:

- Recognise the legal aspect of typical business situations and understand the legal rules involved.
- Know the extent to which they can rely on legal rights and duties.
- Know how to use the law constructively to achieve desired outcomes. For example:
  - Enforceable agreements for goods and services can be created.
  - Property rights can be acquired and protected.
  - Business organisations can be created.
  - Finance can be raised.

The Law	Areas of law	Concepts	Principles	Rules	Meaning
<p>All the rules of organisation and conduct recognised and enforced by the government of a state.</p> <p><b>Examples:</b>            Australian Law            English law            Malaysian law</p>	<p>Categories of convenience used to group together the rules of law that are considered to be related in some way.</p> <p><b>Examples:</b>            Contract law            Property law            Tort law            Business law</p>	<p>The broad ideas which determine the nature and scope of an area of law and which, when organised appropriately, provide a coherent framework and sequence of ideas.</p> <p><b>Example:</b>  <b>Contract</b>            Contract formation                Consensus                Offer                Acceptance            Intention                Consideration            Contract obligations</p>	<p>The fundamental and non-negotiable components of concepts. Principles serve to demarcate concepts, and indicate their nature, scope and content.</p> <p><b>Examples:</b>            Contracts are created only when the parties to an agreement intend to be legally bound.</p> <p>An intention to be legally bound is ascertained objectively rather than subjectively.</p>	<p>The detailed mechanisms designed to give effect to particular legal principles. Rules delimit and qualify principles in specific ways, and cater for specific situations that may fall under a particular principle. Rules can be changed without destroying the underlying principle.</p> <p><b>Example:</b>            An intention to be legally bound is to be inferred from the known circumstances at the time of agreement.</p>	<p>The sense in which concepts, principles, rules and words are to be understood. Meaning may be assisted by definition, interpretation and context.</p> <p><b>Example:</b>            The word 'consideration', when used in contract formation, means something given by one party in exchange for what is being promised by the other.</p>

There are 2 main sources of law in Australia:

1. Cases (legal disputes) decided by courts
2. Legislative Acts created by Parliaments

<p>Establishment of Commonwealth of Australia</p>	<p>Commonwealth of Australia was formed in 1901. Commonwealth was established by Commonwealth of Australia Constitution Act 1900, a law enacted by the British parliament.</p> <p>The Commonwealth of Australia is a confederation of states rather than a unitary state. Each new state retained the power to govern within its own borders, with responsibility for a wide range of matters. But they also agree to give specified powers to a new federal Australian government, which would have responsibilities for matters of national importance throughout the whole of Commonwealth.</p>
<p>Constitutions of Commonwealth and states</p>	<p>A Constitution consist of the rules by which state is formed and governed. The Commonwealth of Australia has its own constitution, so does each Australia state. Australian constitutions are written documents, formally enacted as law.</p> <p>The constitution of Commonwealth of Australia is contained in the British <i>Commonwealth of Australia Constitution Act 1900</i>.</p> <p>To change the provisions of the constitution requires obtaining consent of Australian voters in a national referendum.</p> <p>State governments have enacted their own constitutions, acting in terms of a power granted to them by the UK parliament. Relevant government can change state constitutions without the need for a special referendum.</p>
<p>Constitutional monarchy in Australia</p>	<p>The head of Commonwealth of Australia and various states is not democratically elected but a hereditary monarch, currently Queen Elizabeth II.</p> <p>As Australia's hereditary monarch governs according to rules and structures established by constitution, Australia's government can be described as a constitutional monarchy.</p>

Constitutional arrangement	<p>In addition to the 6 states, there are 10 territories in the Commonwealth of Australia.</p> <p>Out of the 10, 2 of the Australian territories have been given power of self-government by laws enacted by the Commonwealth (federal) government.</p> <p>Territories that are not self-governing are governed directly by Commonwealth government.</p> <p>Self-governing territories do not have a constitutional monarch: they are headed by an administrator appointed by Commonwealth government</p>
Local governments	<p>Local governments are responsible for a particular region or district within state or territory, and exist in the form of municipal councils, regional councils or district councils.</p> <p>They are established under legislation enacted by state governments.</p> <p>They have limited power to make laws known as local laws or by-laws.</p>

Organs of Government in Australia	
The Crown	<p>Also known as head of state. In Australia, most powers of government exercised by organs of government other than the Crown, or by the Crown following advice of other organs of government. The Crown also retains any powers that have not been given to other organs of government, known as reserve powers, and are used to discretion of The Crown.</p> <p>The Crown acts through appointed representatives.</p> <p>At federal level, representative is the Governor-General.</p> <p>At state level, representative is Governor.</p> <p>They are</p> <ul style="list-style-type: none"> <li>• Formal head of states of the Commonwealth and 6 states</li> <li>• Exercise certain executive powers on advice of government, such as appointing people to offices, sign treaties,</li> </ul>

	<p>grant licenses and permits</p> <ul style="list-style-type: none"> <li>• Exercise legislative powers, give royal assent to laws passed by legislatures</li> <li>• Commission judges who are appointed by governments of the day to preside over courts</li> </ul>
The Executive	<p>Consists of The Crown, chief minister, other ministers of government, statutory bodies and offices.</p> <p>The Crown is represented by Governor-General (federal level) and Governors (state level)</p> <p>The Chief Minister is represented by Prime Minister (federal level) and Premier (state level)</p> <p>Ministers and other members of executive may be given power to make legal regulations on their own authority, referred to as delegated legislation (power delegated to executive by legislature)</p>
Legislatures	<p>A body with authority to make law.</p> <p>The Commonwealth government (federal), each state, and each self-governing territory has its own legislation (total 9 legislatures)</p> <p>Persons who make up legislatures elected by winning support of majority of voters at election.</p> <p>When legislature enact law, resulting document is called legislation or Act or Act of Parliament or Statute.</p> <p>This law by legislature is distinguished from law laid down by judge when deciding cases (the common law or general law), and customary law.</p> <p>Commonwealth legislature is given legislative power by Commonwealth Constitution. Although its legislative power is only in relation to carefully specified matters, it applies throughout Australia.</p> <p>State legislatures is given legislative power by their various State Constitutions. It is a general one, but state laws are</p>

	<p>subject to limitations.</p> <ol style="list-style-type: none"><li>1. Operate only within borders of the state</li><li>2. Share some legislative power with federal power so have concurrent power in those matters, rather than exclusive.</li><li>3. In relation to a few matters, Commonwealth government has exclusive powers to legislate</li></ol> <p>Self-governing territories have a broadly expressed power to make law, so they have more governmental power than other territories. However, under Commonwealth Constitution, Commonwealth government can override any territory legislation by enacting contrary legislation, so self-governing territories have less legislative autonomy than states.</p> <p>For overlap between legislatures of Commonwealth and state/territory, if there is no conflict, both Acts co-exist, if there is conflict, Commonwealth law prevails.</p> <p>If conflicting section in state/territory legislation can be severed without unduly affecting remaining sections of Act, remainder of Act continues to be valid, if not, entire Act invalidated.</p>
Courts	<p>Function of courts is to hear and decide disputes in accordance with law.</p> <p>When case come to trial for 1<sup>st</sup> time, hearing is called original or at first instance.</p> <p>When decision of 1 court is taken to higher court or reconsidered, called appeal</p> <p>There is a separate court system for Commonwealth, each of the states, self-governing territories and for Norfolk Island.</p> <p>Power to hear and decide cases is called court's jurisdiction.</p> <p>High Court of Australia:</p> <p>Highest court in all Australian court hierarchies. Consists of 7 judges appointed by Governor General, on advice of Prime Minister. 1 of the judges is the Chief Justice.</p>



	<p>Superior Courts:</p> <p>In Commonwealth court hierarchy, superior court is called Federal Court of Australia. Federal judges appointed by Governor-General on advice of government.</p> <p>In state and territory court hierarchies, superior courts called Supreme Courts. State Judges appointed to courts by state Governor on advice of state government. Territory judges appointed by Executive branch of territory government.</p> <p>Superior Courts can either be original jurisdiction (single judge only) or court of appeal (3 to 5 judges present)</p>
How Judges decide cases	<ol style="list-style-type: none"> <li>1. Court begin trial by hearing each party's evidence, thus ascertaining material facts which include origins, scope, nature of case</li> <li>2. Court review, interpret, apply relevant rules of law to facts to work out result of trial</li> <li>3. Court makes an order in favour of 1 party or other</li> </ol> <p>Courts do not have direct power to make law, but judges create law indirectly when they decide cases.</p> <p>Law can be made by judges when they decide cases, and this is known as case law, common law, or general law.</p> <p>This is distinguished from legislation.</p>

