

Commonwealth Constitution Act 1900: changed only with a referendum
 English Common Law **vs** Roman Civil Law.
 Cth and state legislatures = *legislatures or parliaments*, but not municipal councils.

Legislation

	Lower House	Upper House
Cth	House of Representatives	Senate
VIC, WA	Legislative Assembly	Legislative Council
SA, TAS	House of Assembly	Legislative Council
QLD, ACT, NT	Legislative Assembly	-

- Legislative process: development of policy, decision to legislate, draftspersons draft bill
 - House of Origin (bill initiated in either Rep or Senate, except for financial bills): house grants permission - long title read, no debate -> motion, minister speech, **debate**, vote - 2nd reading -> committee for detailed examination of bill -> motion, vote - 3rd reading , rare to debate
 - House of review - repeat. If Bill amended, it returns to HoO. If no agreement, either abandon or double dissolution
 - royal assent by governor general (NT requires assent from Administrator of territory, ACT does not require assent to become law), published in Government Gazette, commencement (not specified, Cth and NSW – 28 days after R.A., VIC – 1 year after, others – the day it receives royal assent)
- Law-making powers of Australian parliament, and state and territory parliaments
 - Cth has exclusive powers and concurrent powers with state govts
 - Cth powers are more limited in scope
 - States have a general legislative power “to make law for peace, order, and good government”, but is limited within its borders and is shared with Commonwealth Parliament.
 - Bicameral - two separate bodies to give majority approval
 - Local governments make by-laws
- Principles of statutory interpretation, and the order in which to use them
 - literal approach ordinary natural; special meaning defined in the Act
 - golden rule to avoid absurdity
 - purpose approach - ascertain meanings looking at intrinsic and extrinsic evidence

Case/General law = Common Law + Equity

- Judges have power to declare an unwritten rule as law, establish meaning of an existing rule, or extend an established rule to a new situation. Courts typically start with legislation, then common law in the absence of legislation, then equity.
- The doctrine of precedent – principle of stare decisis – binding only if: (else persuasive)
 - material facts of the 2 cases are sufficiently similar and cannot be reasonably distinguished
 - AND previous decision is from superior court in the same hierarchy
 the court hierarchy
- Ratio decidendi = binding, consists of the situation the rule applies and the precise rule applied to the material facts.
- obiter dicta = explanatory discussion, surrounding words, historical perspective and account of judge’s reasoning
- Law Report: court, key dates - last date will be the date of judgement, any before are the date of hearing, names, catchwords, headnotes (held), judges, judgements
- Citations: name; a year; a volume number, the abbreviation of the law report series in which the law report is published; and a page number
- Procedure in a civil case: exchange of pleadings
 - exchange of pleadings
 - ascertain leading evidence and facts, witness & barrister
 - ascertain arguments and law
 - Court decides and makes an order

Commonwealth - solely for disputes that relate to commonwealth legislation	Victoria
High Court of Australia	

CASE STUDIES

Taylor v Johnson (1983) 151 CLR 422

- farm price, acres, contract, unilateral mistake concerning a fundamental term
- the contract will be made void if:
 - one party is seriously mistaken, the other party was aware that the first party is mistaken and deliberately ensures the first party did not discover their error until it was too late

Balfour v Balfour [1919] 2 KB 571

- husband and wife, monthly payment, divorce
- when married persons who are living in amity enter into domestic agreements, the reasonable assumption is they do not intend such agreements to be legally enforceable
- persuasive in Australian courts

Cohen v Cohen (1929) 42 CLR 91

- dress allowance, separation
- follow Balfour in ratio
- binding on Australian courts below high court

Merritt v Merritt [1970] 1 WLR 1211

- contract, written and signed, paying off loan on a house
- when married persons whose relationship has already broken down enter into agreements, even of domestic nature, the reasonable assumption is they do intend the agreement to be legally enforceable
- persuasive on Australian courts

Carlill v Carbolic Smoke Ball Co [1893] 1 QB 256 (p. 75, 86, 96)

- marketing smoke balls
- The court **infers an intention** from the **outward manifestation** of £1000 that is deposited, hence legally binding
- an act performed in expectation of a known promise may constitute the consideration given in exchange for that promise
- offers can be addressed to anyone in the whole world if that is what the offeror intends

Ermogenous v Greek Orthodox Community of SA Inc (2002) 209 CLR 95 (p. 79)

- appointment of the archbishop was intended to be legally binding and Ermogenous archbishop was entitled to payment for accumulated leave
- each case should be approached individually rather than domestic/commercial
- Lead to the recent shift in approach from **presumptions** to **on the basis of all relevant facts and circumstances**

Esso Petroleum Co Ltd v Commissioners of Customs and Excise [1976] 1 All ER 117 (p. 80)

- although the offer of coins was described as a **'gift'**, it could be inferred from the **commercial circumstances** that it was a **legally binding promise** and the coins were therefore subject to the purchase tax

Masters v Cameron (1954) 91 CLR 353 (p. 80)

- selling of farm, contract subject to condition
- in the circumstances, it was clear that Cameron had intended not to be bound until a formal contract was prepared and signed

Thomas v Thomas (1842) QB 851 (p. 84)

- there is no requirement that consideration be of equivalent value e.g. £1 for the house is sufficient consideration

Stylk v Myrick (1809) 170 ER 1168 (p. 85)

- shipowner, captain's promise and the crew, past consideration
- crew had given nothing in value in exchange for the captain's promise
- promise of something they are already obliged to do is insufficient to count as consideration

Musumeci v Winadell Pty Ltd (1994) 34 NSWLR 723 (p. 89)

- lease of shop, promise to reduce the rent if tenants stayed