

TOPIC 1. A BRIEF INTRODUCTION TO THE AUSTRALIAN LEGAL SYSTEM &

Law: Basis for imposing law

- Constitution: 'order peace and good government of Australia'
 - = Benefit the country
 - = Fairness is not important

In common law systems of law, there are 2 main sources of law:

- Common Law = legal principles deriving from cases decided by courts
- Statutory Law = law from Parliament (e.g. Acts = Statutes = Legislation)

2 ways to use cases

- Source of Law
e.g. 'Company is a separate legal entity from its directors and members': **Salomon v Salomon**
- To support your application of the law to the facts in a problem

'Separation of powers' doctrine

- Commonwealth of Australia ('Cth') = federated state, established 1901
- 2 levels of Government: Federal and State
Each State has its own Government and court system
Commonwealth has its (national) Government and court system
- Each State and Federal Government has 3 separate areas of power:
 - 1) Legislative – Parliament
 - 2) Executive – e.g. Government departments, headed by Ministers
 - 3) The judiciary – the courts

⇒ In practice: Judicial branch is separate
Executive & Legislative blurred, because government departments are headed by Ministers (elected members of Parliament)

Federation & Australian Constitution

- 1901 colonies agreed to become 1 nation and this occurred when the Imperial Parliament passed the Australian constitution into law, creating the 'Commonwealth of Australia'
- Australia is a constitutional monarchy, with the relationship between Cth and States governed by the Australian Constitution
- Cth has some exclusive powers – States cannot make laws in these areas
- Cth and States have some concurrent powers – both can make laws in these areas
If inconsistent: Cth prevails
- If constitution silent – States have residual power

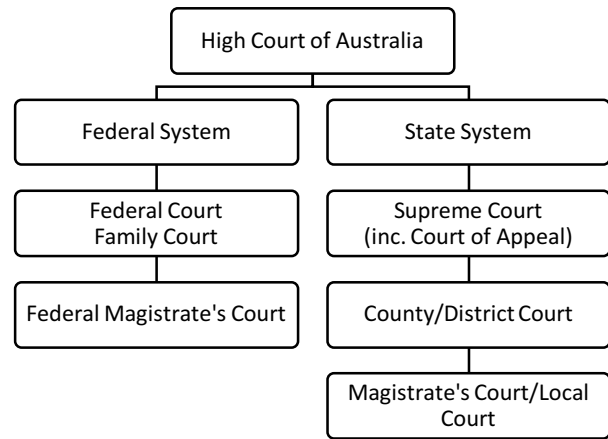
Legislatures

Process:

- BILL - Draft/Proposal
 - Debated by House of Representatives
 - Vote to support Law
 - Passed by House of Representatives
- SENATE – Makes the final decision, if agree becomes legislation
 - To be enforceable, it must get royal assent
Governor General, as a representative of Queen has to consent or agree law shall be passed and effective
- ENFORCER – Doctrine of Separation of Power
 - Someone introduces the Law = Parliament
 - Someone enforces the law = Police (Crimes Act), ASIC (Corporations Act), ATO (Income Tax), ACCC (Australian Consumer Law)
 - If person affected by law is not happy, go to = Judiciary – Judges Court
 - Role is to interpret the law: if clear and precise / if not clear and ambiguous, interpret it in your favour.

Which court do you go to?

- Judiciary: Federal Courts
 - Federal Magistrates' Court (bankruptcy, small trade practices claims)
 - Federal Court (matters under federal laws)
 - Family Court
- High Court of Australia – highest court in Australia
- Judiciary: State Courts
 - Magistrates' Court (= Local Court, lowest court in hierarchy, hears minor civil & criminal matters)
 - County Court (= District Court, Intermediate court, Hears most serious criminal offences & criminal appeals from Magistrates' court)
 - Supreme Court (highest state court, unlimited jurisdiction in civil and criminal matters)
 - Court of Appeal (part of Supreme Court, but only hears appeals from County Court)
 - Appeal to High Court only possible if High Court 'gives leave' (i.e. allows the appeal)



Court decisions = Common Law or Case Law

- Where no legislation applies: decisions made using principles developed by courts (doctrine of precedent)
- Interpreting how particular legislation applies to a particular case: decisions made using principles of statutory interpretation

Precedent in Court Decisions

- Ratio decidendi = legal reasons for decision (=binding part of a decision)
- Obiter dicta = other comments, not the legal reasons for decision (not binding)
- **Doctrine of precedent:** A court **must** follow ratio decidendi of a past case of a higher court in the same hierarchy on substantially similar facts
 - If facts different in important ('material') way, the decision can be distinguished (not followed)
 - No need to follow decisions of courts in other hierarchies or lower courts
 - No need to follow 'obiter dicta' from any court decision, although can be persuasive, and can be adopted as 'ratio' by another court in a later case

Principles of Equity

- Equity acts on the conscience – tries to ensure fairness is done
- Equity follows the law – will not depart from common law unless common law result is manifestly unfair
- If equities are equal, common law prevails & first in time prevails = if both parties have equal claims, the right arising first wins
- Person seeking equity needs clean hands – equity will not help a person guilty of misconduct
- Equity does nothing in vain – no remedy unless it solves problem
- Equity aids the vigilant – equity is more likely to aid a person who looks after their own interest & detects problem early
- Time defeats equity – plaintiff must not delay in seeking equity

Who enforces our law?

- Crimes/Criminal or Quasi-criminal conduct
 - Police – investigate crimes and report relevant findings to Director of Public Prosecutions for prosecution
 - ASIC – investigates breaches of the Corporations Act (and prosecutes or takes action if appropriate)
 - ACCC – investigates breaches of the Competition & Consumer Act 2010 (and prosecutes or takes action if appropriate)
- Civil action
 - Private person can enforce own rights by suing another:
 - Damages for breach of contract
 - Damages for negligence
 - Compensation / injunction / restitution for breach of fiduciary duty