

# PRINCIPLES OF BUSINESS LAW

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KEY:

- Headings / topics
- Legislation
- Key words

## SOURCES OF LAW - LEGISLATION:

### THE HISTORICAL ORIGINS OF AUSTRALIAN LAW

Australia was colonised about 200 years ago

- Pre-colonial Australia = governed by Aboriginal law and custom
- Post-colonisation = British settlers brought English common law

### 1. KEY JURISPRUDENTIAL STREAMS:

- > **English Law (common law)**: Based on judicial precedent
- > **Roman Law (civil law)**: Codified systems, used in many European countries

### 2. CHARACTERISTICS OF LAW:

- > **Dynamic**: Law evolves with societal change
- > **Continuity**: Core principles persist even with reforms

### 3. WHO MAKES LAW IN AUSTRALIA:

- > **Courts**: interpret the law and develop common law (case law)
- > **Legislatures**:
  - Aka the Commonwealth, State and Territory Parliaments
  - Role: make 'legislation' / 'statute law' / 'Acts of Parliament'
- > **Local councils**:
  - Created by state legislation
  - Can make by-laws (limited law-making power)

### 4. TYPES OF LEGISLATIVE POWER:

- > **State / Territory Legislatures** -> general powers to make laws for "peace, order, and good government"
- > **Commonwealth Parliament** -> Only has power over topics listed in Section 52 of the Constitution = its legislative power is less general than the State and Territory Governments -> Commonwealth legislation applies to all parts of Australia (given that its enacted properly in accordance with its constitutional powers)
- > **Exclusive Powers** -> Areas of law that only the Commonwealth has the power to legislate in (Sections 52, 90, 114, 115, 121, 122)

- > **Concurrent Powers** -> Areas of law that are shared between the Commonwealth and the State (Section 51)
- > **Section 109 of the Australian Constitution** -> notes that “When a law of a State is inconsistent with the law of the Commonwealth, the latter shall prevail, and the former shall, to the extent of the inconsistency, be invalid” (= Commonwealth will prevail but only to the extent of the inconsistency)
  - Where state law overlaps and conflicts with federal law, section 109 states that the commonwealth law will prevail BUT only to the extent of the inconsistency = the remainder of the state legislation will remain valid (so long as the remainder is not completely wrecked/ undermined by the invalidated parts)
  - = maintains legal uniformity in Australian law

## 5. LOCAL GOVERNMENTS:

- > Established by state / territory parliaments
- > Powers are specified and limited
- > By-laws cannot contradict state / federal law

## 6. WHAT IS LEGISLATION:

- > Legislation ; Statute Law ; Act of Parliament = Law made by parliaments
- > Every Act has a name -> e.g. *Spam Act 2003 (Cth)*

## 7. STRUCTURE OF LEGISLATIVE POWER IN AUSTRALIA:

	LOWER HOUSE	UPPER HOUSE
COMMONWEALTH	House of Representatives	Senate
NEW SOUTH WALES	Legislative Assembly	Legislative Council
VICTORIA	Legislative Assembly	Legislative Council
QUEENSLAND	Legislative Assembly	
SOUTH AUSTRALIA	Legislative Assembly	Legislative Council
WESTERN AUSTRALIA	Legislative Assembly	Legislative Council
TASMANIA	House of Assembly	Legislative Council
AUSTRALIAN CAPITAL TERRITORY	Legislative Assembly	
NORTHERN TERRITORY	Legislative Assembly	

## THE LEGISLATIVE PROCESS:

-> The legislative process refers to the **formal stages** through which a **proposed law** (a.k.a. 'a **Bill**') must pass to **become** an enforceable **Act of Parliament** in Australia

### OUTLINE OF THE LEGISLATIVE PROCESS:

1. Proposals for new legislation
2. Procedure in the House of Origin
3. Procedure in the House of Review
4. Final stages before the Bill becomes operational as law



#### Proposals for new legislation

<i>Identifying the need for new law</i>	Circumstances or beliefs give rise to particular ideas and policies that require changes to the law
<i>Political processes</i>	A decision is taken by those with political power to introduce new proposals into the legislature
<i>Development of specific proposals</i>	A bill is drafted by parliamentary draftspersons

### KEY TERMS:

- > **Bill** = A proposed law
- > **Act** = A Bill that has passed through Parliament and received Royal Assent
- > **Commencement** = When an Act comes into legal operation (date it becomes active)
- > **House of Origin** = The house (can be upper or lower) where a Bill is introduced (usually the lower house)
- > **House of Review** = The house that considers and debates the Bill after it has passed the House of Origin (usually the upper house)

## THE LEGISLATIVE STAGES:

### 1. Proposal and Drafting

- a. A need for a **new law** is identified due to **social, political, or legal change**
- b. The responsible minister or member **initiates a proposal**
- c. Parliamentary drafters **prepare** a Bill

### 2. Procedure in the House of Origin

- a. **Initiation** = the clerk of the house reads the Bill's title for the first time – this formally introduces the Bill
- b. **First Reading**
  - i. Proceeds after the house grants permission to introduce the bill
  - ii. Long title of the Bill is read aloud
  - iii. No debate
- c. **Second Reading**
  - i. Minister explains the purpose of the Bill + why it matters
  - ii. Full debate and vote
  - iii. If passed, the Bill moves to the committee
- d. **Committee Stage**
  - i. Detailed analysis / examination of the Bill
  - ii. Amendments can be made
  - iii. Conducted by members of the of the house or a select committee
- e. **Third Reading**
  - i. Final debate and vote
  - ii. If passed, the Bill proceeds to the other house

### 3. Procedure in the House of Review

- a. Same process as in the House of Origin:
  - i. Initiation
  - ii. First Reading
  - iii. Second Reading
  - iv. Committee Stage
  - v. Third Reading
- b. **If unamended**: The Bill returns to the House of Origin + proceeds to Royal Assent
- c. **If amended**: House of Origin must agree. If not, the Bill may fail or trigger an election

### 4. Finalisation

- a. **Royal assent**: signed by **Governor** (State) or **Governor-General** (Federal)
- b. **Publication**: printed in the Government Gazette



c. Commencement:

- i. On a **specific date** written in the Act
- ii. Or on default commencement provisions

## **STATUTORY INTERPRETATION:**

### **LAW MAKERS**

-> Sometimes the law isn't worded clearly: it might be **ambiguous**, open to different interpretations, or **hard to apply in practice** = in these situations, there is a need for **courts to interpret legislation** to figure out what Parliament *intended*

To do this, they apply established **rules of statutory interpretation**:

#### **1. The Literal Approach**

- > Courts give the words their **ordinary, everyday meaning**
- > A **dictionary** is often used to confirm this

#### **2. The 'Golden Rule'**

- > Start with the literal approach, *but*: If the that leads to an **absurd** result, or one that is **repugnant/ offensive**, or which is **inconsistent with the overall act**, **modify the literal meaning** to the extent necessary to **avoid the absurdity or inconsistency**

#### **3. The Purpose Approach**

- > Used when the literal meaning is **unclear or not straightforward**
- > Or just to help clarify the meaning of the law
- > Courts look at the **purpose behind the law**- what Parliament was trying to achieve
- > They choose the interpretation that **best fulfils that purpose**

> For the purpose approach -> 'How to find the Purpose Behind a Law':

#### **○ Intrinsic Evidence (from inside the legislation):**

- Objects clause
- Title and long title
- Structure of the Act (e.g. parts, divisions, headings)
- Schedules or annexures
- Other related sections

#### **○ Extrinsic Evidence (from outside the legislation):**

- Parliamentary materials like the Second reading Speech

- Reports from law reform bodies or committees
- Background sources like international treaties or agreements

### Case Study: Toxic Waste

Late in the afternoon on the 1<sup>st</sup> December 2019, Alex, who owns a waste removal business, collects a truckload of contaminated soil from excavations at a building site in Melbourne. He drives the full truck to his company's yard in Werribee. He leaves it parked there overnight, intending to drive it to a remote dump the next day.

A municipal inspector sees the truck in the yard and discovers that the soil in the truck is toxic waste. The inspector tells Alex that the law forbids storing materials near a riverbed without a special permit. Alex admits that the soil is contaminated and says he cannot produce a permit. The Werribee River is 3 kilometres from the haulage company's yard.

The inspector makes a report to the police, who charge Alex with a break of S3 of the Contamination Avoidance Act. Alex is given the option of admitting guilt and paying a fine of \$1,000, otherwise he will have to fight the charge in court.

Alex asks for your advice. He admits that the soil was left in the yard, but says it was only left there overnight and that he always intended to move it the next day. He says that in these circumstances, he does not think he contravened the Act.

You are asked to advise Alex on whether to pay the \$1,000 fine or defend himself in court

#### Contamination Avoidance Act 2018 (Vic)

In the name and on behalf of Her Majesty I hereby assent to this Bill.

*Governor of Victoria, 30<sup>th</sup> July 2018*

#### 1. *Objects:*

- a. To protect the water resources of Victoria; and
- b. To prevent harm caused by the accidental spread of contaminants

#### 2. *Definitions (for the purpose of this Act)*

- a. "Minister" means the Minister of Environmental Affairs
- b. "River Bed" means a river with intermittent flow
- c. "Toxic Materials" means any materials that are contaminated with or that contains substances known to cause harm to animals or plants

#### 3. *Storage of toxic materials prohibited*

A person shall not store or permit the storage of toxic materials within 5 kilometres of a river or a riverbed without first obtaining a permit from the Minister

#### 4. *Permits*

An application for a permit to store toxic waste must be made on the prescribed form at least 3 weeks before the intended storage takes place

#### 5. *Offences and Penalties*

Any person who engages in conduct in contravention of this Act, or who causes another person to engage in conduct in contravention of this Act, shall be guilty of an offence and liable to a fine not exceeding \$5,000

### **Resolving the Case**

1. Does the Act apply to the case in question? Has it commenced operation?
2. What facts must be proved to establish a breach of section 3?:
  - a) *'a person shall not store or permit the storage of toxic materials within 5 kilometres of a river or riverbed without first obtaining a permit from the Minister'*
3. On the known facts, what argument is Alex making in his defence? Is it true to say that he is suggesting that leaving the soil in the truck overnight does not constitute 'storing' that material?
4. Does Alex's arguments raise an interpretation question? If so, what is that question?
  - a) *E.g. Does the word 'store', as used in Section 3 of the Contamination*

## **ROLE OF THE COURTS IN LAW-MAKING**

### **THE CIVIL TRIAL PROCESS**

#### **1 - Starts with Pleadings (written documents exchanged by both parties):**

- a) Define the **nature and scope of the dispute**
- b) **Minimise surprises** -> the legal system encourages full transparency of legal arguments + evidence before trial
- c) Sharing this information early = **resolve or simplify the dispute** (ideally without needing a full trial) -> often leads to:
  - a. **Realisation there's no real dispute** (a party may concede that the law is not on their side and withdraw)
  - b. **Agreement on certain facts** (parties may acknowledge that some facts are not contested = allows them to focus on the real issues that require a judge's decision)
- d) Steps in the pleading process:
  1. **Plaintiff files a statement of claim** – details the facts + legal basis of their claim = submitted to: court + defendant
  2. **Defendant files a defence** – state their version of events + why they believe the law should defend their case
  3. These **documents** help both parties **understand each other's positions** clearly + allow them to prepare accordingly
- e) Setting the Direction – Directions Hearing:
  1. Once the pleadings are filed, the court schedules a directions hearing
  2. At this hearing:
    - a. **Both parties + the judge attend**
    - b. The judge sets **deadlines for submitting evidence** (e.g., “Party A must submit evidence by [Date X]; Party B by [Date Y]”)
    - c. A **witness list and timeline** for the case are also discussed
    - d. The **judge** uses this hearing to **understand the dispute** and schedule the trial date

## 2 - During Trial:

- a) Each side presents **evidence** (via witnesses or documents)
- b) They argue about:
  - e. What the law is
  - f. How it should be applied

### 1. Opening of the case:

- a. The **plaintiff** (Part A), is represented by a **barrister**, who delivers the **opening statement**, outlining their case to the judge
- b. **Solicitors** support the process by drafting documents and offering legal advice **outside the courtroom**
- c. **Barristers**, on the other hand, are **courtroom specialists**. They handle arguments, witness questioning, and trial advocacy- they don't do pre-litigation advice

### 2. Defendant's response:

- d. The **defendant's barrister** presents a **rebuttal**, introducing their own legal arguments and responding to the plaintiffs' claims
- e. Formalities such as **introducing the case and parties** are completed

### 3. Presentation of evidence:

- f. **Both parties present evidence and call witnesses** to support their case
- g. The process follows a clear structure:
  - a. **Examination-in-chief**
    - i. The plaintiff's barrister (Barrister A) gently questions their own witness to present their version of events clearly to the judge
  - b. **Cross examination**
    - i. The defendant's barrister (Barrister B) challenges that same witness- questioning **the truthfulness, accuracy, or reliability** of their testimony
  - c. **Re-examination**

- i. Barrister A may follow up with **clarifying questions** to resolve confusion or defend against challenges raised during cross-examination

**4. The process repeats:**

- h. If the **defendant calls their own witnesses**, the roles reverse:
  - a. Barrister B questions them first,
  - b. Barrister A cross-examines,
  - c. Then Barrister B may re-examine to clarify

**5. Closing submissions:**

- i. After all evidence has been presented, **both barristers make closing submissions**
- j. These speeches **summarise the key evidence and legal arguments** from each side, aiming to persuade the judge in their favour

**6. Trial concludes:**

- k. Once closing arguments are complete, the **trial ends**, and the judge will later deliver a decision (called a *judgement*)

### **3 - The Judge:**

- a) Determines **which facts are proven**
- b) Applies the **relevant law**
- c) Delivers a **decision** and **court order**

**1. Reserving Judgment:**

- a. After a trial, a **judge will often reserve judgment**, meaning they **take time to review** the case transcript and **carefully draft a written decision**.
- a. In contrast, **extempore decisions** are delivered immediately in court without delay.

**2. Written Judgment Document:**

The judge's decision is typically **detailed and written in prose**. It usually follows a clear structure:

- a. **Findings of Fact:**

The judge **determines what actually happened**, often resolving conflicting evidence by asking, "*Who do I believe?*"

**b. Application of Law:**

Once the facts are established, the judge **applies relevant legal principles**. This may involve:

- i. Identifying **applicable statutes**, or
- ii. **Referring to precedent**—past cases with similar facts—to guide the legal reasoning.

**2. Orders:**

Finally, the judge **issues orders**, which are instructions stating what each party must do.

- Example: "The defendant is ordered to pay \$800,000 to the plaintiff."
- > These orders are **enforceable and legally binding**.

## **JUDGE MADE LAW (STATUTORY INTERPRETATION)**

- The general expectation is that judges **apply existing laws** to the cases that come before them
- Judges **do not have direct constitutional authority to create new laws**
- However, they regularly **refer to previous judicial decisions (precedents)**, and reports of decided cases are routinely treated as a legitimate source of law
- In the absence of relevant statute law, a judge will **consult prior judgements to guide their decision**
- If no applicable statute or precedent exists – and the facts of the case introduce complexities not previously addressed, the judge may **interpret legal principles** in a new way. This process effectively results in the development of **common law**

## WHEN DO JUDGES ACTUALLY MAKE LAW

Judges make law when there's **no clear, existing rule**. They may:

1. Create a new rule of law for Australia
  - a) Could stem from **custom, natural law**, or a **novel** (completely new) **issue**
2. Interpret an existing rule
  - a) Clarify its **meaning and scope**
3. Extend an existing rule
  - a) Apply it to **new situation** that hasn't been addressed before

## ORIGINS OF COMMON LAW

1. Pre-14<sup>th</sup> Century England:
 

Prior to the 14<sup>th</sup> century, **different regions** in England followed their **own local laws and customs**
2. Rise of Common Law:
 

After the 14<sup>th</sup> century, a **unified system** of law- known as **common law**- began to be applied consistently by the King's courts **across England**, replacing local variations. This system was **based on judicial decisions** (case law)
3. Nature of Common Law:
 

law is traditionally applied in a **strict, formal and legalistic manner**, often focused more on procedure and precedent than on fairness
4. Origins of Equity:
 

Dissatisfied litigants who felt the rigid common law failed to deliver justice could **appeal to the King's Chancellor**, These appeals **later** became the **responsibility** of the **Court of Chancery**
5. Judges of the Court of Chancery:
 

The Chancery judges were scholars, often with theological rather than legal training, and were **more concerned with principles of morality, fairness and justice** than with strict legal rules



## 6. Development of Equitable Principles:

The Court of Chancery developed a separate body of rules – known as the *principles of equity*- which aimed to provide *fair outcomes where the common law fell short*. These principles were layered over the existing common law

## 7. Modern Application of Equity and Common Law:

Today, both *common law and equity* coexist. Equity acts as a *gap-filler*, offering remedies where common law does not provide adequate relief. However, equitable remedies are discretionary- not automatic

## 8. Application in Australia:

In modern Australia, all judges in every jurisdiction are empowered to apply both common law and equitable principles. There is no separate Court of Chancery as there once was in England

# EQUITY

- > Developed through *Chancery* decisions
- > Based on *fairness and justice*, not just strict rules
- > Courts now use a *combined system*:
  - They draw from *both common law and equity* to resolve cases
- > Both are collectively referred to as:
  - *Case-law*
  - *The general law* (distinct from legislation / statute law)

## STARE DECISIS AND THE COURT HIERARCHY

### THE DOCTRINE OF PRECEDENT ('STARE DECISIS')

-> When a court has decided a case, and a **similar case arises later**, should it be **decided the same way**? – thus the doctrine of precedent

- b. The doctrine means that **decisions of superior courts** are **binding on lower courts** in the **same judicial hierarchy** when:
  - a. A **similar legal issue** arises
  - b. The **material facts** are **not sufficiently different**
  - c. = promotes **consistency, predictability, and fairness** in judicial decisions
- 1. The principle of stare decisis – Latin for “*let the decision stand*” – means that legal decisions made in **earlier cases** establish a rule that should be followed in **future cases** with similar facts
- 2. The doctrine of precedent operates through the following core ideas:
  - d. **Binding precedent:**  
Decisions made by **superior courts** from the same court hierarchy must be followed by **lower courts** in the same judicial hierarchy, *unless* the new case can be distinguished on its **material facts**
  - e. **Judicial flexibility:**
    - > **Superior courts** set binding precedent for courts below them
    - > A judge may **distinguish** a previous case if they find the facts of the current case are sufficiently different. In doing so, the earlier decision does not need to be followed

#### Flowchart: How Stare Decisis Works

1. A judge hears and decides a case
2. Later, a similar case comes before the court
3. The judge must determine: **Is there a binding precedent from a superior court?**
  - i. **Yes:** the precedent must be followed – *unless* the current case can be distinguished based on its material facts
  - ii. **No:** The court is not bound but may still consider previous decisions as *persuasive precedent*
4. If a **binding precedent** exists, the judge asks: **are the facts materially different from their earlier case?**
  - i. **Yes:** the judge may distinguish the case and is not required to follow the precedent
  - ii. **No:** the judge is bound to apply the precedent
5. A decision is then made based on the applicable precedent or legal reasoning

## THE PRINCIPLE OF RATIO DECIDENDI

1. The *ratio decidendi* of a case is the **legal principle or rule of reasoning** the court applies to the material facts in order to reach its decision
2. It forms the **binding element** of a precedent and is the only part of a judgement that must be followed by later courts
3. Identifying the *ratio* can be complex, as it is often **not stated explicitly** and may be **spread throughout the judgement**
4. To extract the *ratio decidendi* when reading a case:
  - > Focus on **where the judge applies the law to the facts**
  - > Pay close attention to the **logical reasoning** and steps used to justify the outcome
  - > Remember: it's not always neatly packaged – it may require interpretation and synthesis

### **CASE: TAYLOR V JOHNSON (1983) 151 CLR 422**

#### **FACTS:**

1. Johnson sent a written contract to Taylor offering to sell 10 acres of land
2. She believed the price was \$15000 per acre, but mistakenly write the total as \$15,000 for all 10 acres
3. Taylor, recognising the mistake, accepted the offer quickly and remained silent

#### **INITIAL DECISION:**

1. The first court applied two key common law principles:
  - a. Contracts are enforced according to their agreed terms
  - b. Agreement is assessed objectively- what a reasonable person would believe was agreed upon
2. Based on this, the court held that the contract was enforceable: objectively. It appeared the parties had agreed to sell the 10 acres for \$15,000
3. Johnson appealed to the **New South Wales Court of Appeal**, which ruled in her favour
4. Taylor then appealed to the High Court of Australia

#### **DECISION:**

1. The High Court considered **additional facts**:
  - a. Taylor must have known the price was clearly mistaken
  - b. He deliberately acted to prevent Johnson from discovering her error until the agreement was final
2. Given this, the court held that allowing Taylor to enforce the contract would be **contrary to good conscience**- a key equitable principle
3. This was the **first time equity** was applied in this way to such a mistake

1. This case now serves as a precedent. The *ratio decidendi* is:
  - a. In equity, it is contrary to good conscience to enforce a contract when:
    - i. One party is under a **serious mistake**
    - ii. The other party is **aware** of that mistake (or its likelihood), and
    - iii. The second party **deliberately conceals** the error to take advantage of it

**IMPORTANCE:**

1. While common law might uphold a contract regardless of mistake, equity provides a check
2. In this case, because Johnson made a genuine error, and Taylor knowingly exploited it, the court found the contract unenforceable
3. Johnson won

## THE ROLE OF THE COURT HIERARCHY

**1. Purpose of hierarchy:**

Courts are intentionally organised into a **hierarchical structure** to allow for **appeals**. This ensures that if a decision is believed to be **unjust or legally incorrect**, a higher court can review and potentially overturn it

**2. Binding precedent:**

When a higher court within the same hierarchy makes a decision, lower courts are bound to follow that decision in future cases with similar or identical facts. This promotes consistency and predictability in the law

**3. Persuasive precedent:**

Decisions made by courts **outside the hierarchy** (such as courts in other states, countries, or systems) are **not binding**, but they may still be **persuasive**- especially if the reasoning is strong or the legal issue is new

**HIGH COURT OF AUSTRALIA**  
(Highest court in all jurisdictions)

[illegible]