

Module 1:

Introductions LAW1111/LAW5111 Australian Legal System

The learning objectives for this week are to:

- understand the focus of the course, its structure and essential administrative information
- understand how the course will be delivered and the resources that will support your learning
- become familiar with the course StudyDesk
- describe what 'law' is
- describe the basic sources and categories of law
- understand what is meant by 'a legal system'
- begin to understand approaches to legal problem-solving and communication

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Learning resources for week 1 Hamer et al **Laying Down the Law** (LexisNexis 12th ed 2023) chapter 1.

- Nowadays those principles – perhaps the earliest source of law – are called **customary law**.
- The essence of a common law system is that the judgments of courts operate not only to resolve the particular dispute of the specific parties before the court, but also stand as precedents for the resolution of future disputes of a similar nature.
- Jurisprudence** is the study and theory of law. It explores the nature, purpose, and functioning of legal systems, as well as fundamental legal concepts like justice, rights, and obligations.
- A commonly encountered distinction is between **public law** and **private law**. Public law governs the operation of the state and the relationship between the state and individuals, while private law is concerned with relations between individuals or entities

- **Legal systems comprising the Western legal tradition**
 1. Common law legal systems
 - Law derived from judgments of courts (also legislation)
 - Adversarial in nature (judge as umpire)
 - Importance of doctrine of precedent
 - E.g. UK, US, Canada, Australia, NZ, India, South Africa
 2. Civil law legal systems
 - Law derived from legal 'codes'
 - Inquisitorial (rather than adversarial)

- Usually based in Roman law
- Precedent, but less important
- E.g. Continental Europe, South America, Japan
- **Sources of law in common law systems**
 1. Cases
 - Decision of courts and the reasons for their decisions
 2. Legislation
 - Legal rules made by parliaments (ie principal Acts of parliament) and by those to whom parliaments delegate authority (ie delegated/subordinate legislation)
- **Legal writing should be 'CLEAR'**
- **Coherent**
 - Can the reader understand the writing?
- **Logical**
 - Does the writing proceed logically? Is it appropriately structured?
- **Evidence based**
 - Legal writing should be non-assumptive. Use facts and law.
- **Accessible**
 - Avoid 'legalese' and jargon. Use plain, formal language. Use headings.
- **Responsive**
 - Why was the legal writing requested or required? Does it respond to the need or question?
- **ILAC/IRAC method**
- An approach to legal problem-solving
- Systematically addressing each issue
- **Issue** - Identify the legal issue(s) arising in the problem
- **Law** - Identify and explain the relevant legal rules/principles (with authority)
- **Application** - Apply the law to the material facts, make reasoned arguments, reach conclusions
- **Conclusion** - State your overall conclusion (respond to the issue/question)



Exercise 1

Facts

- Police find two people in bus stop and issue notices to appear in court.
- Min:
 - Law clerk, worked late at office, missed the 11:00pm bus, waiting for next service (at 12:00am)
 - Found sitting upright on bus stop seat, dressed professionally, snoring
- Fabiano:
 - Homeless
 - Found lying on the ground, in sleeping bag
 - Reading *Laying Down the Law* by torch

Law

Bus Station Act 2018 (Qld)

Section 24 Offence of sleeping at bus stops

- 1) Any person found sleeping at a bus stop commits an offence.
- 2) An offence under this section is punishable by a fine of \$2500.00 or up to 1 year's imprisonment.

Imagine you are a judge hearing the cases against Min and Fabiano. How would you decide? Is Min guilty of the offence? Is Fabiano guilty of the offence? Are neither guilty? Are both guilty?

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- **Issue** – Identify the legal issue(s) arising in the problem **People need to use a bus station for waiting, not sleeping**
- **Law** – Identify and explain the relevant legal rules/principles (with authority) **The Bus Station Act 2018 states if you are found sleeping at a bus stop you are liable**
- **Application** – Apply the law to the material facts, make reasoned arguments, reach conclusions **The law must take into account intent, Min has insufficient intent and momentarily dozed off- she was upright, Fabiano of the other had sleeping materials and was in a sleeping position.**
- **Conclusion** – State your overall conclusion (respond to the issue/question)
- **Min has inadvertently committed crime; no punishment**
- **Fabiano is has intent, means and preparation to commit a crime; warning**

Exercise 2

Read the (very short) judgment in the case [Re: AJG \[2004\] QCA 88](#) and attempt to answer the following questions.

- 1) What was the main legal issue or question in the case?
Academic dishonesty or fraud
- 2) Can you identify any statement of legal principle or rule in the judgment that you think led to (or explains) the decision that was made? **"Failure to discharge his professional commitments"** What was the reasoning process of the court? **The public rely on solicitors to act honestly and earnestly.**
- 3) What facts were materially important, having regard to the court's decision and its reasons? **He received the work from else but lied that it was publicly available.**
- 4) What decision did the court make? He can reapply in 6 months "not to be relisted before expiration of six months

