

Week 1- Introduction and overview:

Theories of law/ jurisprudence: (purpose of LAWS)

❖ Theories of law MEANS jurisprudence

- It's branch of philosophy recognising certain rules as laws, their impact on society & what makes law invalid/ valid.

Strands of jurisprudence: (NLFEC)

Natural law theory: focus on rules confirming to ideas of MORALITY + have laws as man-made rules that adhere to ideas of goodness, righteousness & morality (relates to human characteristics → binds human population together DESPITE race, ethnicity)

- Natural laws come from = eternal order of universe + divine will + natural conditions of human life that allow survival as species & self- evident values & practical reasons
- Human nature: constant & not vary (we all feel that should have laws that're moral & right)
- **John Finnis** → There are SEVEN BASIC GOODS: life, knowledge, play, beauty, friendship, practical reasonableness & religion THUS law is said to be moral IF DOESN'T harm any of these basic goods
- **Cicero** → "Universal justice & law guides human nature to act justly & be service to others"
- **Cicero** → "An unjust law is not law"
- **St Thomas Aquinas** → natural laws available to be known thru 'natural light of reason'

Legal positivism: (no necessary connection b/w law & external standards → everything same so no morals)

- **Bentham** → Law is set of declaration of will of sovereign (person w/ supreme power or authority LIKE king/queen) supported by threat of penalty or promise of reward
 - Law is merely a human creation
 - Valid law HAS: wish, sanction (threatened penalty for disobeying law/ rule), expression of wish, generality
 - Legal positivism: DOES NOT see connection b/w morality & law → law seen as social fact (unmoral rules **still seen** as LAW)
- **Hans Kelsen** → distinctive (diff) nature of law is:
 - Statement on how people SHOULD behave in society (norm) *EXPECTATION
 - Eg: speed sign is statement on HOW ppl should behave while driving
 - Backed up by threat of sanction (punishment if don't conform to rules)
 - Eg: backed up by threat of loss of license or fine
- **John Austin (1826-1832)** → created '**command theory**' which shows law is wish expressed by sovereign (person w/ power like queen) requiring ppl to behave in certain way
 - The wish **HAS** to be communicated
 - There must be sanctions in form of punishment if wish is NOT followed
 - Sovereign: **determinate** (factor affects outcome of smth) so ppl forced to obey
- **H.L.A Hart (1907-1992)** → law is MORE than command backed up w/ threat of sanction SO law should be recognised if passed thru **established procedure** ALL agree on
 - Eg: we all agree law is present if decided by judge

QUESTIONS:

- 1) Isaac commanded Mildred to give him all her money. Rob threatened to shoot her if she did not give him her money. According to Hans Kelsen the distinctive feature of a law is that

there is a statement backed up by a threat of sanction. Isaac's command and threat could theoretically constitute a "law". How did HLA Hart refine this theory of Legal Positivism?

- It would not make sense if Isaac's command coupled with a threat constituted a "law". Hart believes that "laws" will be recognised if they have gone through an established procedure.

****Natural law theory VS legal positivism:** (if you get a driving fine ticket as go over speed limit BUT others ALSO go over speed limit)

- **Natural law theory approach:** (MORALITY, RIGHTENOUSNESS)
 - You say → "The rule allowing me to be fined is **NOT law** as it's **unjust**" (others ALSO drive over limit)
- **Legal positivism approach:** (SANCTION if RULES NOT FOLLOWED)
 - Police → "Despite fairness & moral concepts, you **SHOULD** still get speeding fine as it's valid & legitimate law passed by parliament"

Feminist jurisprudence:

- Examines **how male dominance is embodied in law**
- Argues that law has masculine perspective & privilege + focus on gender roles
- **Catherine Mackinnon** → states that law has neutralised a power r/ships that's not NATURAL so men **become norm** rather than another set of diff + it's irrelevant whether women & men same/diff, she also said the answer to this inequality is to address the power imbalance INSTEAD of working out if men or women same/diff
- LIBERAL (promotes individual rights) FEMINISM:
 - Law sometimes treats men & women diff when it should treat them same
 - Law sometimes treats men & women same when it should treat them diff
- Types of feminism (advocacy of women's rights for equality of the sexes.):
 - **Sameness feminism:** diff b/w men & women been used to DISCRIMINATE against women in past (women banned from jobs as "physically unsuited")
 - **Cultural feminism:** emphasis diff b/w women & men (women more socially & culturally connected SO needs to be better reflected in legal system)

QUESTIONS:

- 1) For many years, criminal law didn't allow women who had been subject of continual domestic violence from pleading diminished responsibility for killing spouses. Traditionally, domestic and private matters lacked regulation. This discriminated against women.
 - Feminist Jurisprudence as approach examines how male dominance is embodied in law

Economic analysis of law:

Economic concept used to: (MORE FOCUSES ON **ECONOMIC CONSEQUENCES**)

- Explain effect of laws
- Assess which legal rules economically efficient
- Predict which legal rules WILL be made

Economic efficiency: murder is punished NOT because it's moral BUT bc punishment costs offender economically or liberty (state of being free from oppressive restrictions) SO avoid it

Critical legal theory: (POWER FOR RICH & INTERESTS)

- **"All law is theory"** = Law & politics can't be separated from one another AS are mutually intertwined

1. First strand:
 - Legal materials not completely determine outcome of legal disputes
 - There are constraints & influence on those in power that INFLUENCES
2. Second strand:
 - All laws are politics
 - Law & politics are intertwined
3. Third strand: (WEALTHY!)
 - Law **serves wealthy & powerful** by protect against demands of poor & minorities from greater justice
 - What law says it does & what it actually does are two different things
4. Fourth strand:
 - Critical legal theory questions notions of autonomous ppl (ppl making own decisions)
 - Ppl are determined in large part by social & political structures surrounding them
 - Many laws SAY they aim to protect interests of poor BUT ACTUALLY can aim to protect rich ppl's interests

How was English law received into Australia?

- James Cook (had Endeavour ship) made 3 voyages
 - 1st voyage: sailed to Pacific Ocean
 - 2nd voyage: botany
 - 3rd voyage: Queensland
- **Cook had instructions if country inhabited** = take possession of convenient situations in country in name of King of Britain w/ consent of natives
- **Cook** → "They (I.A) seem to have no fixed habitation BUT move from place to place like wild beasts for food SO due to this assumption (**I.A didn't own land as hunters & gathers AND didn't grow crops or livestock**), British law brought into Aus to fill in this void
- When Cook arrived = he said land was different to what Cook used to SO did not see as "ownership" + saw land w/o dev of crops or livestock (**1770 SO claims possession of east coast of AUS by place British flag on top of Cape York Peninsula**)
- **1788** → Arrival of First Fleet & beginning of British colonisation.
- **Anthony Mason (Former chief justice of high court of Aus)** → "We were told that footing of Aborigines were ppl roaming contenting who weren't in one areas w/o r/ship w/ land" "Well, ofc we now that know that's all wrong"
- **3 ways to acquire territory (CCS): conquered** (land is not given BUT **taken**), **ceded** (land **given** by I.A thru treaty or agreement, **settled** (land acquired thru settlement – **no pre-existing** I.A SO shows not legal system, THUS British law comes to fill as not legal system)
- British colonisation said as → settlement (considered 'unhabited' & no legal system SO brought in British legal system)
- When Cook went towards Botany bay & saw human habitation (1777): Aus already occupied BUT maybe saw no legal system & evidence of habitation
- **Terra Nullius (1770)** → when first governor (Governor Philip) declare English law to be law of Australia (Aus empty land before English settlement SO terra nullius)
- Couldn't recognise legislation in I.A time so said none was present
 - **If see island & wanted to acquire BUT I.A living & cultivating crops** = CANNOT acquire land by settlement as already living & can't bring a legal system there as I.A may already have legal system (CAN conquer thru war, cede thru treaty or make agreement)

Development of Aus legal system:

- After British Settlement, Aus legal system developed
- 1st settlement: 26th Jan 1788 NSW colonisation w/ simple ceremony so governor of colony declare British crown gave independent right to control NSW
- After → British law received + existing British law BECAME Aus law

Statutes: law created & approved by legislative branch of a Gov (**ACA**)

- **Australian courts act 1828 (UK): Australian courts act 1828 (UK): British Law received by Eastern colonies of Aus SO existing British law became Aus law**
 - British law received by Eastern colonies
 - 'Responsible Government' created (Parliament responsible to ppl)
 - Each colony had bicameral parliament → The house of representative (LH) & Senate (UH)
- **Colonial Laws Validity Act 1865 (UK): State Parliaments & courts CAN: change received UK laws**
***BUT CAN'T:**
 - Change laws extending beyond State boundaries
 - Alter or REPEAL UL status w/ great force
- **Australia Act 1986: remove Aus's legislative links w/ UK + remove limitations on powers of state parliaments & stop privy Council appeal (request if decision made)**

****Westminster Model of Government:** if NSW adopted Westminster Model of Government this means → a shift from dictatorship to responsible governors & bicameral parliament (2 houses for Legislative Council – Upper House & Legislative assembly- Lower House)

****Commonwealth of Australia constitution Act 1900 (UK):** Created by statute, the commonwealth of Australia

- State matters ppl: regional institutions, states, local councils
- Federalism national matters ppl: federalism, central institutions of gov, courts
- **26th Jan 1788** → ceremony took place in Sydney where governor of colony declared British Crown assert independent right to control NSW
- **1st Jan 1901** → more centralised Aus system SO **Australian Constitution** (6 self-governing Australian Colonies of NSW, QLD, SA, Tasmania, Victoria, and WA Australia **federated** SO Aus become Unified Colony Commonwealth of Australia) + 1st Commonwealth Parliament elected & **Edmund Barton** becomes Prime Minister
- Feel uncomfy about homosexuality → made laws (morals change)
- Laws come from local council, state & federal gov
- Moses, Magna Carta, Neapolitan: contributing factors to forming law
- Religions seen as basis for forming law

Magna Carta (1215 AD): peace **treaty** that King John signed w/ barons in 1215 AD

- Seen as fundamental document of British & Australian constitutional law
- King John forced to **consult Kings council** & this was precursor (was in front; lead to) to modern parliament. HOWEVER Kings Council not elected & couldn't make statutes (laws created & approved by legislative branch of a Gov documents)
- **Established basis of modern r/ship b/w king & subjects:** gave ppl rights like security of property & liberty (freedom for rights)
- Establishes **'RULE OF LAW'** (all citizens treated fairly by law)

- **Case of prohibitions del Roy (1607):** “The **king CAN’T judge & be involved in common law** courts & cases, SO should be determined in some court of Justice, according to law & custom of England. The King may sit the King’s bench **BUT court gives them judgement**” (criminal case = Court)
****For these questions:** look at date as if asks “in 1199, the power of King John was?”, answer should be he had unlimited power & all gov actions controlled by him & appointed advisers AS still not had Magna Carta (1215 created only!!)

Roman Law: created Justinian code (legal code) that spread w/ conquest (**land NOT** given but is **taken**) of Roman empire

- **Code Napoleon:** Incorporated the French Civil Code, Code of Criminal procedure, Penal Code and the Commercial Code
- Emperor Justinian organised sources & principles of law → became Justinian Code
- **Justinian Code: formed basis of European legal systems** so known as ‘Civil Law’ (**this code** gave ppl freedom of religion, eliminated privileges based upon birth & demanded gov jobs given to most qualified)
- **Codes of Law:** based on codification so expected to be complete, coherence & limited role of judge (have significance from writing of legal, scholars & authors)

QUESTIONS:

- 1) “Sometimes law & morality are aligned, but not always” is true, shown by in Natural law theory (morals needed) & Legal positivism (no morals needed)
- 2) “All actions which are moral are also legal” is false, as maybe self defence (moral) against bad person leads to killing SO this is illegal)

Fundamentals of the Australian legal system:

Common Law of jurisprudence:

- Body of judge made law based on doctrine & precursor * principles of interpretations
- Supported by statutes so common law must be interpreted & used

Queen:

- Queen represented by Governor-General & State Governors
- Give consent to passing acts of parliament & making of regulations

Government:

- Ruling party in Parliament in which Cabinet formed & from where leader of gov was chosen

Crown:

- Describes **LEGAL PERSONALITY of Gov & litigation** (process of taking legal action) by Commonwealth or State gov SO conducted in name of Crown
- By Convention, he/ she can control the power in accordance to wishes of Government
- Australia is a Federation (6 separate British self-governing colonies agreed to form Commonwealth of Aus so federalism) SO has 6 different crowns for each state in Aus

Rule of law: constitutional principle **placing limits on gov power** (has 2 strands)

- Gov only acts according to law → gov cannot use power UNLESS points to specific rule of law that authorises to
- No man or woman is above law → despite rank & status, just subject to law so obey!!

Parliamentary Sovereignty:

UK (has 3 aspects):

- Parliament can legislate on any subject matter
- No Parliament can bind a later parliament
- No court or other person can override legislation

Australia:

- Legislation prevails over case law
- EXCEPT if it's found to be unconditional (beyond powers laid out in Aus constitution)
**AUS has written constitution so restricts legislative power of Commonwealth & state parliaments SO have to act in accordance to law & just their own power

Separation of powers:

- **French philosopher** Charles- Louis de Secondate, **Montesquieu** → saw 2 powers which were sovereign & administrative
- Administrative powers were legislative, executive & judiciary SO powers divided among 3 classes so have POWER over other (w/o being same level)
- This showed that GOV powers can be divided & categorised
- LIMITATIONS: ministers of gov drawn from parliamentarians for parliamentary responsibilities SO functions of parliament & executive **MIXED**

3 branches of government should NOT mix their roles (stick to own): (LEJ)

- **Legislature:** **makes** (enact) law
- **Executive:** administers (manage & control) & **apply** law in **individual cases**
- **Judiciary:** resolve **disputes** about law **application/ interpretation**

***Prevents abusing power & allow focus on own power in area*

****If High Court determine statute (law approved by legislative part of gov) pass constitutional power of Parliament → Have power to set aside legislation if **finds that's its unconstitutional****

Law details:

Types of laws:

- **Public law:** matters of entire comm (criminal law, civil law, administrative law)
- **Private law:** matters of individuals (property ownership, employment contracts, trusts)
- **Criminal law:** laws influence stability & peace of community (murder or theft laws)
- **Civil laws:** rights of **individuals** (property, contracts, family)
- **Common law:** law by decisions of judges in a court (they interpret law using own knowledge & common sense & facts of case for decision)
- **Statue law:** law by **parliament**
- **Constitution law:** law for how the constitution is interpreted

Three sources of law: **(LDJ)**

- **Legislation:** laws by Parliament
- **Delegated legislation:** executive authority given powers by primary legislation to make laws so implement & meet requirements of THAT primary legislation.
- **Judicial Precedent:** previous case/ legal decision that's *binding precedent* & followed by subsequent similar cases

The Australian system of Government:

- **Westminster system (UK): constitutional monarchy** w/ gov made up of Parliament, executive & crown
- **Washington (US):** presidential republic w/ strict separation b/w roles of President. The Congress & Administration
- **Wash- minister system:** unofficial way to describe hybrid (joint) AUS system → constitutional monarchy w/ modified doctrine of separation of powers **(PEJ)**

****International law:** body of laws & customs that govern relations b/w countries

- Usually Parliaments of states make laws & if ppl break them, courts enforce law w/ police
 - If driver drinks & drive & hits pedestrian, who brings criminal prosecution? **The state**
- For International legal system: no court or police force to enforce law
- International court of justice: country can accept or reject findings

National laws: laws governing relations b/w ppl in country

Criminal VS civil law:

- **Criminal law:** action by states punish wrongdoer) + criminal procedure w by Vic Majestic Courts
- **Civil law:** enforcement of rights of individuals + Civil procedure (written rules courts follow for civil action (services, pleading, how ppl must function)
- ✓ **Burden of proof** (who has burden to prove their case):

- Criminal: prosecution
- Civil: plaintiff

✓ **Standard of proof** (BRD OR BOP):

- Criminal: beyond reasonable doubt
- Civil: balance of probabilities

****Standard of burden of proof high in criminal law** → prosecution has legal & evidential burden for case

**Nicholas gets sick after mouldy bread in canteen & sues them → NICHOLAS has burden of proof (evidence) SO must prove case on balance of probabilities as relates to CIVIL & himself (individuals) SO SHOWS THAT CRIMINAL LAW & BEYOND REASONABLE DOUBT NOT ALWAYS TOGETHER!!*

QUESTIONS:

- 1) Nicolas ate a sandwich at a cafe. The sandwich made Nicholas very sick because it was made out of mouldy bread. James owned the cafe and prepared the meal. Nicholas sued James for being negligent. Who carries the burden of proof and to what standard? is referring to Nicholas suing James for negligence so this is a civil action (tort law). The standard of proof would be on the balance of probabilities.
- 2) Commonwealth Government wants to enact legislation so **allows Gov officials to ignore speed restrictions** on freeways. Can Commonwealth Government be able to do this?
 - The Rule of Law states that no man or woman is above law. The Commonwealth Government cannot enact legislation that exempts its officials' duties to obey the law **(DESPITE gov official have high rank, still must drive at correct speed!! → RULE OF LAW)**

The Legal Profession:

Many Victorian legal professions:

- **Barristers:** oral **advocates** who give legal advice & represents ppl or organisations in court + self- employed & work independently + not committed to be apart of partnership or law firm
- **Solicitors:** member of legal profession give general advice to clients & deal w/ general conflict resolution + deal w/ transactional work (lease & property sale), **conveyancing** (transfer ownership of legal land title to new owner), creation of will & other legal matters. Can work alone or in law firm + clients usually call them first + appear in courts + give general advice + paperwork for litigation (process for legal action) + advocacy in lower courts
****Barristers SPECIALISED in specific law area SO higher than solicitors**
- **Aus lawyer:** admitted to legal profession in this or other jurisdiction (field)
- **Aus legal practitioner:** people who've admitted to legal practice + have **current Aus** practicing certificate (anywhere in AUS!!)
***BE CAREFUL!!! IF Q SAYS IN VIC LEGAL PROFESSION, THEN ONLY LEGAL PRACTICE IN VIC**

How did this begin?

- **In 12th or 13th century** → hard for ppl to travel to Kings bench or Westminster when need legal advice SO Attorneys went to courts AND became barristers (specialised oral advocates gives legal advice)
- Solicitors came from attorneys

More changes:

- Sergeant (police) originally Highest ranking in profession
- Searched replaced by Queens Counsel
- Senior Counsel replaced Queens Counsel

Barristers in Victoria:

- ❖ Barrister came from common law (unwritten laws based on legal precedents established by courts – unusual cases) → can represent other ppl as ppl enter bar of court
- **1841** → First Vic barristers admitted
- **1900** → bar formally established
- **1902** → **Bar Roll introduced** (this when **barristers sign Bar Roll so no longer solicitors** SO barristers **can't be both solicitor & barrister** & just now barrister!)
****Today around 1800 practicing barristers in Vic**

TIPS:

- If says "Diana is member of Vic "Bar"" → MEANS she is admitted as Barrister in Vic

Solicitors in Victoria:

- ❖ **Solicitors:** member of legal profession qualified to deal w/ transactional work (leases, sale of property), **conveyancing** (transfer of ownership of legal title of land to new owner), creation of will & other legal matters.
- ❖ **MORE ROLES:** give general advice + resolve disputes + prepare paperwork for litigation (legal process) + engage in advocacy in lower courts + handle transactional work (sale of property, incorporation of companies, leases, contracts)

They need to keep up w/ changes n law to continue practicing law SO need to engage in **10 hrs of continuing professional dev activities** EACH YEAR

Why is it called legal profession? (CHHA)

- Commitment to **interest of social value** (want justice – think of med field where doctors focus on interests of health) *if says ‘must only make 1 commitment- to serve client’s interest’, THIS IS **WRONG** as not only focus on client!
- High degree of autonomy so **high degree of personal judgement & openness**
- **High level of training & intellectual skill**
- Accreditation requirements (**10 hrs** continuing professional dev + **need to earn CERTAIN amount of points to be solicitor each yr**) *relates to **PASSING CERTIFICATE!!!!**

How are Solicitors regulated?

- Through ‘Legal profession Uniform Law Application Act 2014’ (AKA Uniform Law)
 - Australian Solicitor Conduct Rules (rules follow): **(BBBCCCN)**
 - Be admitted to practice
 - Borrowing of client’s money
 - Be fit & proper person to practice law
 - Confidentiality
 - Conflicts of Interests
 - Courteous towards clients, the court & other lawyers
 - Not abuse court processes
- **NOT** worries about appropriate dress code for court appearances

Week 2- The Australian legal system

Common law, equity & the adversarial system:

Common law:

- ❖ **Law system based on decisions of judges, rather than from statutes, which act as binding precedents for later decisions.**
 - Individual creates law rather than the coherent law theory & content (statute)
 - **Elements:** 1 continuous hearing + Doctrine of Precedent (past cases) + lawyer looks at past judgements & legislation to show guiding legal principles in past cases!!!
 - **Adversarial system:** judge makes own laws based on case which acts as precedent for future cases) where 2 advocates represent parties' case/position before impartial (fair) person or ppl (judges) who attempt to find TRUTH & pass
 - Common law system developed along **courts of equity (solutions to legal issues based on fairness & equality)**. Decisions of courts recorded & published SO possible for judiciary to look at previous decisions (precedents) & apply them to case at hand
 - Has **Doctrine of precedent** (past cases & knowledge of judge)
- **Common law systems in countries:** Canada, English, NZ, Australia, India and USA (for countries colonised by **Britain**)

QUESTIONS:

- **If you’re Defence Barrister & have Emily as witness in criminal trial (gave testimony to prosecution’s case) → YOU can cast doubt over accuracy of Emily’s testimony by cross-examining her**

Civil law system:

- ❖ **Focus on codification of law through written statutes & other legal codes**
 - Constantly updated
 - Shows what can & can’t be in a court

- **Inquisitorial system:** Judges focus on facts of case & actively apply laws to the case
- Has accessibility of law = citizens readily access (if issue of breach of conduct → can look through law books)
- Judge just needs to apply & follow them in cases (administrative function)
- ****Civil law systems in countries:** Western Europe like Latin America & Malaysia (for countries colonised by **France, Portugal & Spain**)

Equity:

- Principles of fairness **modifying early Common law**
 - **COURTS OF EQUITY:** common law become complex & rigid (if complaint didn't fit in w/ complaint list – can't have solution so ignored) SO hearing of Lord Chancellor decided matter if common law & equity in conflict, equity PREVAILS (wins!!!!)
 - Equity based on conscience will certainly continue to shape law unless society changes
 - **Judicature Acts 1873 and 1875:** administer needs of common law & equity at same time when seen suitable to case

Adversarial system: (CERCA)

- ❖ Legal system in common law countries (judge makes own laws based on case which acts as precedent for future cases) where 2 advocates represent parties' case/position before impartial (fair) person or ppl (judges) who attempt to find TRUTH & pass
 - **Role of court: **impartial referee b/w the prosecution & defense.**

1. Conduct of litigation (taking legal action) is **only in hands of parties (before & during trial)**
2. Evidence obtained by procedure where party has witnesses whom it questions
3. Role of judge is to preside (position of authority) & act as umpire
4. 1 continuous hearing
5. Act w/ **rules of court** & only at request of one of parties

Eg: Neil is a property developer. He believes his builders have breached a contractual requirement. He does not understand the Common Law System. What is **NOT** an aspect of the Common Law System he needs to be aware of?

The judge will have the power to gather evidence, call witnesses and determine how the legal proceedings will be conducted AS **PROSECUTION & DEFENCE ONLY** do this in ADVERSARIAL SYSTEM

ADV: each party present facts & legal arguments to support case so case stronger AND **show weaknesses in other party's evidence** + effective methods for bring relevant facts for judge who gives impartial/ fair judgement

DISADV: works only when genuine equality b/w parties + works to disadv of minority groups (uneducated, I.A & migrants) so not represent legally well + lengthy & exp cases + law not gathered together in 1 code SO not accessible to public

TIPS:

- **CROSS EXAMINATION:** defence confront and undermine prosecution's case by exposing deficiencies in a witness' testimony, including complainant's testimony. (defence Barrister can cross-examine prosecution's witness in ADVERSARIAL SYSTEM)
- **Tribunals:** specialist judicial bodies who decide disputes in particular area of law

- **Benefits of civil dispute heard in Tribunal INSTEAD of court** → tribunals less formal than Court & tribunal members play active role than Judges

Australian Constitution:

- Each state has own their own written constitution
 - VIC = 'Constitution Act 1975 Victoria'
 - Australia = 'Commonwealth Constitution' = Commonwealth of Australia 1900

Role of Aus Constitution: (EGH)

- **Establish federal system of gov**
 - **Federal system = Commonwealth Parliament + State Parliaments**
- **Gives powers on 3 separate bodies (separation of powers)**
 - Legislative power on parliament
 - Executive power on Executive (manage & control law)
 - Judicial power on Judiciary (**gov who use & apply laws**)
- **Has principles of Responsible Government**
 - Executive Power on Executive is RESPONSIBLE for judicial power or judiciary

****MAKES NO REFERENCES TO = PM, Cabinet, Bill of Rights (very limited protection)**

Aus Constitution Section 1 (1900): legislative powers of Commonwealth

Aus Constitution Section 106 (1900): all State constitution preserved (each state has own constitution SO important) + enact (approve) laws in & for Australia

Aus Constitution Section 109 (1975): If law of state inconsistent w/ law of commonwealth, then COMMONWEALTH laws accepted and NOT state laws & the **LATTER** prevails (shows commonwealth GREATER POWER over state) (prevail = wins SO CW laws prevail)

Aus Constitution Section 51 (1900): states areas in which Commonwealth has power to make law (defence, marriage & divorce, taxation & immigrations)

Aus Constitution Section 92: prohibit creation of law that restricts citizens' freedom of interstate trade, commerce, travel & communications

QUESTIONS:

- In light of the French and German expansion in the Pacific in the late 1880s there was a general movement towards a more centralised system in Australia. How was this later addressed in 1901? → **Through the proclamation of the Australian Constitution**
- **If farmers living in NSW want to trade in VIC but VIC Parliament stops & has farmers paying for this** → Aus constitution PREVENTS this law as disapproves the interstate trade for citizens!!!
- **If citizen lives in Victoria:** follow both Victorian & Commonwealth Constitutions RELEVANT TO HER!!
- **Majority of power given to Commonwealth** powers Commonwealth & State parliament have
- **Can Vic Gov make laws for NSW & SA: NO!!! Vic parliament restrict to only enact laws in & for Vic**

- The Australian Constitution: Confers legislative, executive and judicial powers on the Parliament, the executive and the judiciary
- The Commonwealth Government passed legislation which conflicted with Victorian Legislation. According to the Australian Constitution which law prevails? Section 109 says that when a law of a State is inconsistent with a Commonwealth Law, the **latter** will prevail
- o The majority of powers which are given to the Commonwealth: Are powers which can be exercised by both the Commonwealth and State Parliaments

****NOT COVERS:**

- Position of prime minister
- No reference to cabinet (key decision making body of gov w/ senior & Prime Minister)
- No bill of rights (**first 10 changes to Constitution** - guarantees civil rights & liberties to the individual (freedom of speech, press, and religion etc)