

2026 Public Law & Statutory Interpretation Notes

Full Topic List:

Topic 1: Introduction and Foundational Concepts

Topic 2: Relationships and Structures

Topic 3: The Origins and Evolution of Australian Public Law

Topic 4: Parliament and Legislative Power

Topic 5: The Executive and Executive Power

Topic 6: The Courts and Judicial Power

Topic 7: Public Law and Statutory Interpretation

Topics 8 to 11: Statutory Interpretation

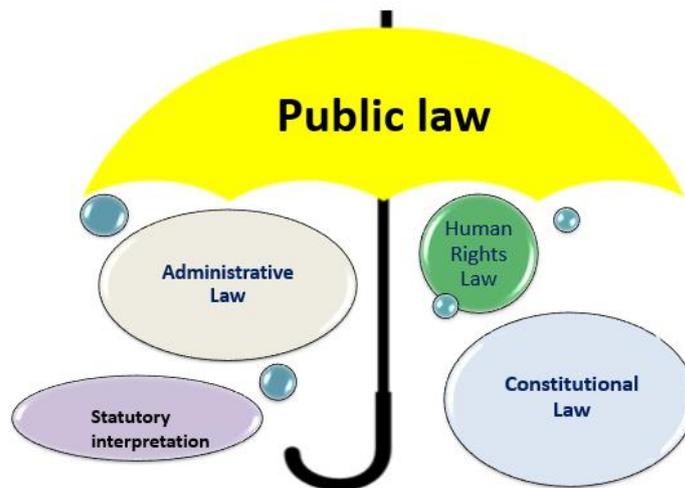
- Week 8: Statutory Interpretation
- Week 9: Presumptions and Protecting Rights
- Week 10: Principles of Statutory Interpretation
- Week 11: Principles of Statutory Interpretation (continuation from previous week)

Topics 12: My own step by step exam guide on how to complete both sections of the exam based on workshop (including my own consultations and questions) and textbook information

Topic 1 – Introduction and Foundational Concepts

1.1 What is Public Law?

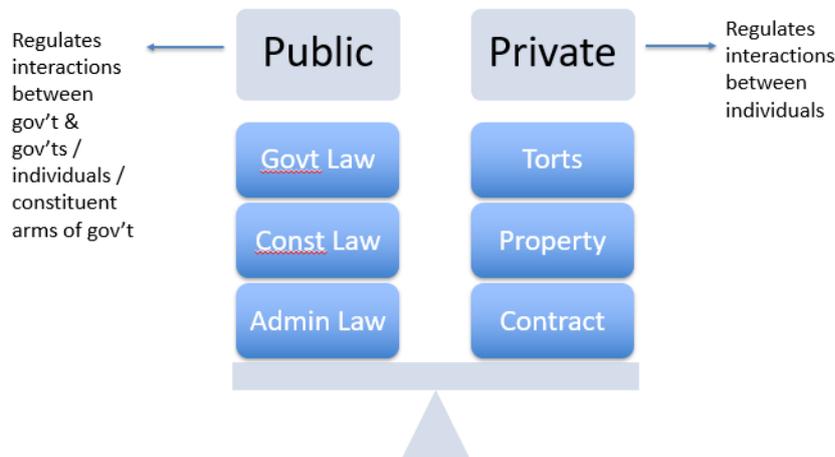
- Public law may be described as the body of legal principles, which has the primary purpose which is to constrain the exercise of public power.
- Public law principles limit the scope of public power, and this is fundamental to the way our legal system and our political system operate.
- In Australia ‘public law’ is understood as an umbrella concept, covering laws, institutions, structures, systems, principles, and processes that govern the relationship between the State and its citizens (governments and their people), and between the various constituent elements that make up the State (governments and their various arms).
- Public law determines the **scope of public power**:
 - The *nature* of public power
 - *Limitations* placed on the exercise of public power
 - The *procedures* by which public power can be exercised
 - *Who* can exercise public power → people & institutions that make up government i.e. Parliament’s, executive, judiciary



1.2 Public Law and Other Legal Disciplines

- While a distinction is often drawn between public law vs private law, public law is in fact the foundation of all law, as government cannot legislate where it has no power to do so, and determining whether such power exists is a matter of public law.
- e.g. whether the Vic Parliament had the power to pass the Property Law Act is a public law question. The content of property law is a matter of private law. Used in this way, public law is a label often used in contrast to ‘private law’.

- Private law regulates the legal relationships of individuals, sometimes it is described as ‘transactional’ in its coverage.
- Public law: government law, constitutional law, administrative law
- Private law: torts, property, contract



1.3 The Rule of Law

What is the Rule of Law?

The rule of law is firstly a foundational or fundamental concept that underpins public law. It is a principle that distinguishes a healthy, well-functioning legal system from a despotic or tyrannical regime or anarchy. It is a system where government power is both conferred and limited by law.

Purpose and Value

1. **Limitation of Arbitrary Power:** In a rule of law system, people cannot act arbitrarily; they can only do what they are legally authorized to do. This applies equally to public office holders, meaning no one is above the law.
2. **Universal Application:** Everyone, regardless of their position, is subject to the law. This ensures fairness and equality before the law.

Key Questions

- **Conformity to the Law:** What specific principles and practices need to be in place to ensure that everyone conforms to and is bound by the law?
- **Character of the Law:** What should be the nature of the laws to which everyone must be bound?

Theories of the Rule of Law

Theories of the rule of law can be broadly categorized into two types:

1. **Thin/Formal Theories:**
 - Focus on the procedures by which the law is made, carried out, and enforced.
 - Emphasize the importance of legal processes and procedural correctness.

2. Thick/Substantive Theories:

- Focus on the quality of the law itself and the overall legal system.
- Concerned with the justice or fairness of the laws that make up the legal system.

What concept is the rule of law and who are the primary rule of law theorists

- Is it a political ideal? A standard of legal validity? – Variety of opinions of this matter (per below).

Key Theorists and Their Contributions

Albert Venn Dicey (A.V. Dicey)

- **Background:** British constitutional scholar known as the father of the modern concept of the rule of law.
- **Principles:**
 1. **Supremacy of the Law:** No individual, including the government, is above the law.
 2. **Equality Before the Law:** All individuals are subject to the same law and are entitled to equal legal protection.
 3. **Predominance of Legal Spirit:** The rule of law is not merely a set of rules but a cultural and societal norm.

Joseph Raz

- **Background:** British legal philosopher with significant contributions to the understanding of the rule of law.
- **Principles:**
 - The legal system should be predictable, accessible, clear, and stable.
 - Rules should be publicly known and applied consistently.
 - Individuals should be subject to legal constraints rather than arbitrary or discretionary decisions.
 - Laws should be prospective, meaning they only take effect after being made.
 - Raz does not consider human rights as relevant to the rule of law.

Lord Tom Bingham

- **Background:** British jurist and legal scholar influential in shaping modern English law.
- **Principles:**
 - The rule of law is essential for maintaining a just and democratic society.
 - The legal system must be fair, transparent, and accessible to all.
 - The separation of powers is crucial for upholding the rule of law.