

Property Law and Practice

Australian Legal System –

Defining the law: A rule enacted or customary in a community & recognised as enjoining or prohibiting certain actions and enforced by the imposition of penalties.

Common Law – Used in Australia

Law – fixed & laid down

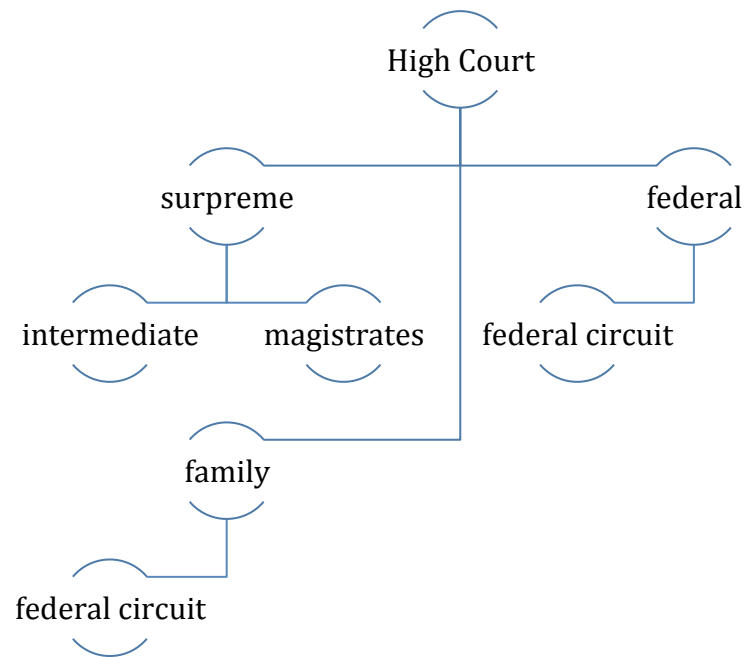
Without Laws – Chaos

The law tells people what they **can**, **can't** and **must do**.

Australian Constitution –

- Provides basic rules for government
- Binds commonwealth & state government
- Parliament cannot pass laws that are contrary to the constitution
- The constitution tells us everything
 - Federal government can only make laws by listed things in constitution e.g. marriage

Australian Court System



To make a law:

- Bill is created
- Passed to upper house
- Both houses must agree
- Law is passed

Sources of law:

- Cases / common law – law made by judges
- Legislation – law made by parliament
 - Legislation is more prolific and significant
 - Prevails

Common Law

- Judges made laws (applies to the unit)
- Strict interpretation of law
- Our legal system

Doctrine of precedents

- Lower court must follow higher courts
- Lower courts must follow existing conclusions of high court

Legislation

1. Statutes – Acts
2. Delegated legislation
 - Local council can make certain laws but council needs permission.
 - Permission comes from parliament

Key features of an act:

- Contents
- Purpose clause
- Titles
- Sections
- Schedules
- Notes etc.

Courts must interpret laws:

1. Identifying that ambiguity exists
2. Resolving the ambiguity so that the measuring is clear
 - Meaning of words

Court may:

- Extend or read down the meaning of words
- Read words into a section
- Omit words from a section