

Legal Foundations

Defining law

- Rules that regulate the economic and social behaviour of individuals
- Made by the state
- Enforced by prosecution (criminal matter) or litigation (civil matter)

Purpose

- Resolves disputes
- Maintains social order
- Preserves and enforces community values
- Protects the disadvantaged
- Stabilises the economy
- Prevents the misuse of power

Australian law

- Laws made by the commonwealth, state and territory parliaments
 - Australian constitution - establishes the basic rules for the operations of the federation and sets out the power of the federal parliament to make laws, acts or legislations
 - State and territory constitutions

Characteristics of a legal system

- Certainty - predictable and clear
- Flexibility - responsive and adaptable
- Fairness
- Accessibility - should be available to everyone

Sources of the law

- Common law - created through the reported decisions of judges in the higher court
 - (also known as non-statutory law, case law, precedent or unwritten law)
- Statute law - made by the federal and state parliaments in the form of statute law, legislation or enacted law, or other government bodies in the form of by-laws, orders, rules and regulations
- Equity law - implies fairness and justice in the law by taking into account different aspects of a case
 - Developed as a result of the growing inflexibility and rigidity of the common law, however still works with it
- In the event of a conflict between equity and common law, equity would prevail

Public and private law

- Public - the organisation of government and its relationship with the people
 - Administrative
 - Constitutional
 - Criminal
 - Industrial
 - Taxation
- Private - deals with disputes over rights and obligations between people or organisations
 - Contract
 - Commercials
 - Torts
 - Property

Common and civil law systems

- Common law system - legal principles developed by judges in courts of record (ie. Supreme state and territory courts and the high court)

- Civil law - an action brought by one individual against another (citizen vs. citizen)
- Mode of procedure is accusational and emphasis is on remedies
- Standard of proof on the balance of probabilities
- Compensation eg. Money
- Tort law - prove on balance of probabilities that D's actions caused injury or loss to P
- Contract law - P must prove that the D broke a legally enforceable promise to the P
- Criminal law - action if brought by the Crown on behalf of the people against a person for the commission of a crime that should be punishable by penalty if it can establish its case against the accused beyond reasonable doubt (state vs. accused)
- Civil law system - a complete legal system used in Europe
 - Set out in legislation, with the courts basing their judgments on the provisions of codes and statutes.

Key characteristics of Australian legal system

- Responsible government
- Liberal democracy
- Common law legal system
- Constitutional democracy
- Federation
- Separation of power

The Australian constitution

- Federation involves a division of powers between the states and the commonwealth
 - Federal or commonwealth government
 - State governments
 - Local governments
- Doctrine of separation of powers
 - Legislative functions - laws made by a parliaments
 - Executive functions - administered by an executive council or governor in council
 - Judicial functions - interpreted and applied to particular cases by a court system

Commonwealth and state powers

- Exclusive powers (commonwealth only) - exercised by the federal parliament eg. Customs, trade between states, military forces, currency
 - Commonwealth overrides the state
 - Concurrent powers (shared powers) - eg. Insurance, banking, industrial relations
 - Residual powers (state only) - eg. Education, local government and transport

Legal Systems

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Role of police

- Enforce the laws created by other authorities
- 'community guardians of the peace'

Role of the courts

- Administration of the law and resolution of disputes
- Criminal jurisdiction - crime is an act by a person that it against the interests of the community as set down by the statute and established by case law.
- Civil jurisdiction - when an individual or organisation commences an action against another individual or organisation.

The Australian courts

- Inferior courts (magistrate's or local)
 - Deal with relatively minor matters
 - Geographic limits
 - Aim to settle disputes locally, quickly and cheaply where possible
 - Criminal cases first mentioned here
 - Limited powers to hear family law and criminal matters involving children
 - All appeals from local courts go to district courts
- Intermediate courts (district or county)
 - Supervised by a judge
 - Jury maybe used
- Superior courts (supreme)
 - Highest court within state or territory
 - Unlimited original jurisdiction and can hear any matter at all but generally only hears most serious matters
 - Matters commence before a single judge, and in criminal cases, usually before a judge and jury of 12
- Specialist courts
 - Designed to relieve the workload of other courts, and establish courts with specialist expertise to deal with growing community concerns and areas of workers compensation
- Federal courts
 - Deal with almost all matters involving commonwealth civil law
 - Federal circuit court of Australia - provides simpler and more accessible alternative to litigation in the federal and family court.
 - Family court - court of record to deal with divorce, custody and contact with children, division of property, maintenance of spouse, counselling and mediation.
 - Federal court of Australia - superior court of record and a court of law and equity
 - The high court - aims to exercise a defined original jurisdiction; guard and interpret the Australian constitution; and serve as the final court of appeal.
 - Most important and authoritative court in Australia

Alternative methods to courts

- Tribunals
- Ombudsmen
- Alternative dispute resolution (ADR)
 - Facilitative processes - negotiation and mediation
 - Advisory processes - conciliation and expert determination
 - Determinative processes - adjudication and commercial arbitration

People in court

- Parties
 - Civil - action brought by P against D, and burden of proof is on P to prove the case on the balance of probabilities
 - Criminal - Crown in bringing an action against an accused (D), and the standard of proof is on the Crown to establish a case against the D beyond reasonable doubt.
- Legal profession (lawyers)
 - Solicitors - used in pre-trial matters
 - Barristers - represent the party in the courtroom and give opinions to clients on the facts presented.
- Judiciary
 - Justices of peace - witness documents for public members and issue warrants
 - Magistrates - preside over inferior courts
 - Judges - appointed from members of the bar to all courts above the inferior
 - Jury - drawn from the community and decide the verdict based on questions of fact

Contracts

Contract law

- Legally enforceable agreement
- Generally not necessary that a contract be in writing
- Contains promises made between two or more parties with the intention of creating certain legal rights and obligations, and enforceable in a court of law
- Promisor who fails to perform a non-contractual promise has no legal liability
- Derived from common, equity and statute law
- An agreement is not necessarily a contract

Issue - legal issue

Rule - rule of law and case

Apply - to the scenario

Conclude - answer the question

Essential elements:

- Intention
- Agreement (offer and acceptance)
- Consideration

Is it valid?

- Legal capacity
- Consent
- Legality of purpose
- Form

Classifications

- By promise:
 - Unilateral - promise for an act
 - Bilateral - promises for a promise
- Enforceability:
 - Valid - enforceable
 - Voidable - valid and binding unless and until it is repudiated, no more force into the future
 - Void - no legal rights or obligations, never existed
 - Unenforceable
 - Illegal
- Formation
 - Express - elements are specifically stated
 - Implied - looks at surrounding circumstances and the parties conduct

Parol evidence rule (4 corners rule)

- Courts assume that either what is written or orally said is a complete record of the contract, and are reluctant to take evidence outside.
- (Van Den Esschert v Chappell - held that specific request by purchaser, and sellers assurance before signing contract was intended to form part of the agreement.

Is there intention?

- Express intention - terms that expressly and clearly state the parties intentions
 - Honour clauses (Rose & Frank Co v Crompton Bros - contained a clause that made it clear the parties did not intend to create legal relations.)
 - 'Subject to contract' clauses (**Masters v Cameron** - agreement was not in its final form and therefore there was no intention to be immediately bound, and no contract existed.)
- Implied intention (conduct objective test, based on reasonable person)