

## Week1

The **common law system** is **adversarial** – the parties present their case and question the other side. The judge does not play an active role in how a party presents the case.

The **civil law system** is **inquisitorial** – 法官 is an active participant – 提问, calls witnesses and seeks 相关材料

A **common law system** is recognisable by the **important role played by judges** in the making and interpretation of the law. **Judges and Parliament are a source of law.** Judges 'make' law

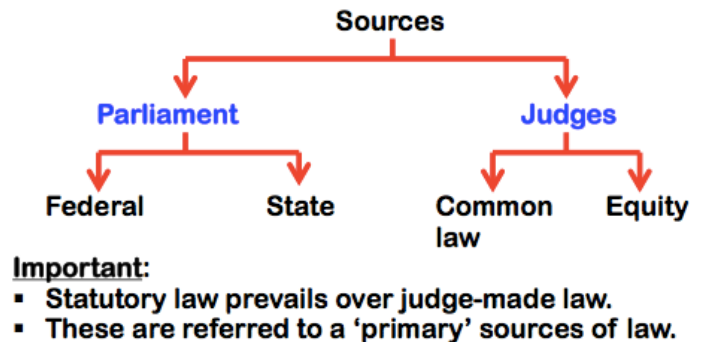
The **doctrine** is a fundamental aspect of a common law system.

### Two sources of law :

Statutory law/statute law=parliament made law

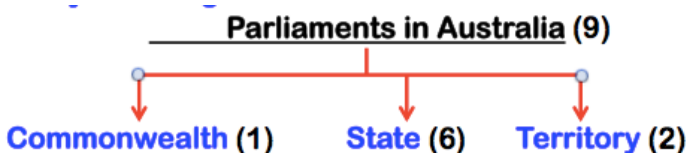
Federal=全国=commonwealth

General law=Judges



### 1.Parliament Statutes 成文法

- Parliaments enact laws 通过法规 (固定搭配) through the **legislation**.
- This is complicated by the fact that there are **many parliaments each enacting laws** 在澳洲.  
The **Australian Constitution** determines what each parliament can do.
- Reflects the fact that Australia has a **federal system of government**. (unitary 中央集权)



- When a law of a State is inconsistent with a law of the Commonwealth, the latter shall prevail, and the former shall, to the extent of the inconsistency, be invalid. **S109**

-Commonwealth 可以 overrule 驳回领地法

- The Constitution splits law-making powers between the States and the Commonwealth.
- The **Constitution** of Australia is the supreme law under which the government of the **Commonwealth** of Australia operates. **COVER 全澳洲**
- Commonwealth powers must be specifically referred to in the Constitution. Anything not covered is left to the States.
- A citizen of Australia will be subject to the statutory laws of the Commonwealth and of the State or Territory in which they live or do business.

### Statutes are divided into sections:

- S.48 **Australian Competition and Consumer Act 2010** (Cth) - S.19(a) **Goods Act 1958** (Vic)

### 2.Judges made law when deciding cases

- When deciding a case the court will be guided (and may be bound) by earlier decisions. This is known as the **doctrine of precedent**.
- The doctrine is a fundamental aspect of a common law system.

- c) Major 优-doctrine are certainty and consistency/ 困难 often the time it takes to change a bad law.  
Only the '**ratio decidendi**' is binding 有约束力. This is the real reason for the decision  
Comments 'by the way' '**obiter dicta**' are not binding but may be useful.
- d) **Hierarchy of courts in Australia** 有 State 和 Federal court systems each court **has an original jurisdiction**  
管辖权 (the power to hear a case at first instance) and an appellate jurisdiction (受理上诉权)  
在民事 matters 中 (contract) monetary amount claimed initially 决定适合的 court to hear a matter
- e) The decision of judges is found in **cases**. Masters v Cameron (1954) 91 CLR 353  
Party names/year/volume number/law report abbreviation/beginning page number

➤ 第一种 COMMON LAW

the original 法 based on local customs in 1066 England made 'common' to the whole of England by the royal 法庭.

➤ 第二种 EQUITY

developed in response to the rigidity 死板 of the common law. It is based on the notions of fairness and equity.