

MLC101 – Business Law Exam Notes

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Topic 1:

- Australian legal system; an important area – 1788 Colonisation of Australia
 - *Mabo v State of Queensland (no 2) [1992] 175 CLR 1 (The Mabo Case)* – p.9 (CA 1.34)
- Sources of law:
 - Common Law – Created by courts
 - Law of Equity – Created by courts
 - Statutory Law – Created by parliament
- Common Law:
 - Judge-made law or “case law”
 - Principle behind common law is Doctrine of Precedence – Stare Decisis (let the decision stand)
 - When the judges create law (under doctrine of precedence) – they are reported in books as case reports
 - Ratio decidendi – the main reason for the judgement
 - Obiter Dictum
- Law of Equity:
 - Created by Chancery courts in the UK
 - Based on fairness principle
- Statutory Law:
 - Law created by parliament
 - There is commonwealth parliament and state parliament;
 - Commonwealth parliament – Upper (Senate) & Lower house (House of representatives)
 - Victorian Parliament – Upper (legislative council) & Lower house (Legislative assembly)
- The rule of law:
 - First: power should be exercised according to the law, not arbitrarily on the basis of an individual’s or group’s personal whim (urge)
 - Second: All people are equal before the law
- Separation of Power:
 - **The executive** – the body which administers the law (Government)
 - **The legislature** – the body which makes written law (Parliament)
 - **The judiciary** – the body which makes common law, interprets the law, resolves disputes and determines sanctions (courts)
- Doctrine of Precedent:

- **Binding precedent** – The doctrine requires that the decision of a court in a decided case binds judges lower in the same court hierarchy in deciding cases in a similar nature.
 - **Persuasive precedent** – Cases decided in one hierarchy are not strictly binding on the courts in another hierarchy, but will be of persuasive authority only, e.g. decision in the Supreme Court (highest court in the UK) will not be binding on Australian courts, however will be generally followed unless good reason not to do so.
- Public law & private law:
- **Public law** – concerned with the organisation of the government and with the relationship b/w the government and the people. It includes;
 - Constitutional law
 - Administrative law
 - Criminal law
 - **Private law** – deals with the relationship b/w private persons or organisations. Branches of private law include;
 - The law of contract
 - The law of tort
 - The law of property
 - Corporations law
 - The law of trusts
- Civil law & Criminal law:
- **Criminal law** – defines offences against the State (that is, against the public) and provides punishment for their commission.
 - Criminal proceedings are initiated by the State. The parties are the “prosecution” and the “accused”, who is innocent until proven guilty.
 - The prosecution must prove the case against the accused *beyond* reasonable doubt.
 - **Civil law** – is the law under which a person (the plaintiff) may sue another (the defendant) to obtain redress from a wrong committed by the defendant.
 - In civil proceedings the plaintiff must prove their case on the “balance of probabilities”.
 - Civil law is not against the State, therefore is not criminal