

LAWS1502 notes

Basic principles of justice in law is found in the doctrine “the rule of law” which states that all people are subject to the law and can depend on the law to set boundaries for which people and governments function on.

Kable v Sinclair (1778) – a case regarding the separation between Australian and English law underlining “the rule of law”, where plaintiff Henry and Susannah Kable successfully sues the captain for the loss of £20 during the voyage on the First Fleet

Australia’s Legal System

Australia’s legal system traces its root to its English heritage and includes:

- A system of representative democracy using parliament to make laws
- A legal profession separated between solicitors and barristers
- A “Common Law” system

Three meanings encompass “common law” as a legal system, a source of law and within private law: derivation from the English Legal system, decision by judges (also known as case law) based on precedents to establish legal principles and different branches of law

- Decision-making in courts after an adversarial trial
- A court system for dispute resolution

The distinctiveness of Australian law

- A federal system of Commonwealth and territories

A way of distinctly allocating jurisdiction to different bodies of government and resolving common issues among different states

- Limited recognition of Indigenous customary law

International Law

Laws which apply to different states (countries), which maintain a certain standard accordingly.

Nuremberg Trials – “The international law imposes duties and liabilities upon individuals as well as upon states...”

There are two sources of international laws: customary international law and treaty/ convention law. Treaties are agreements between states and require stages before they become binding.

- i) Signing of the treaty – expresses the state’s intention
- ii) Ratification – lodging formal documents of agreement (may lodge a ‘reservation’ limiting effects pf treaty)