

LAW5000 – Australian legal reasoning & methods

Latin glossary:

- Ipso facto: by the fact itself → meaning certain phenomenon is direct consequence of the action in question
- Habeus corpus – person imprisoning another is directed to bring that other person before court of law (unlawful imprisonment)
- Mandamus: court orders someone to perform their administrative duties
- Certiorari: court orders that a record of an administrative decision be produced
- Prosecutrix: female prosecutor
- A fortiori: expresses conclusion for which there's stronger evidence than previously accepted one
- Ratio decidendi: legal principle upon which court's final decision was based (binding)
- Res judicata: a thing decided
- Obiter dicta: balance of written decision (not binding)
- Ultra vires: beyond one's legal authority
- Order: final order binding parties to dispute
- Stare decisis: stand by the thing decided (precedent)
- Prima facie: at first glance, in the first instance
- Res ipsa loquitur: it speaks for itself
- Null & void: has no effect
- No quieta movere: do not disturb the calm
- Noscitur a sociis (context rule): word known by its associates, immediate context eg stab, cut, wound → what about bite?
- Eiusdem generis (class rule): when general words follow list of specific items, general words are read as applying to other items eg wine, spirits, other liquids → means alcohol
- Reddendo singulari singulis: offences & penalties correspond
- Expression unius est exclusio alterius: express mention of 1 thing is to exclusion of others

Pre-reading (The New Lawyer, James & Field)

Chapter 1 – The life of a lawyer

Career options

- Solicitor: provide legal advice about transactions & disputes, draft legal documents & conduct legal negotiations
- Barrister: specialize in representing clients before courts/tribunals
 - Master: experienced barrister
 - Chambers: group of barrister offices

Work sectors

- Private sector
 - Private practice: law firm
 - In-house counsel: employed by organization to provide legal advice within company
- Public sector
 - Government: legal advice, manage legal transactions, draft legislation, develop legal policy
 - Judiciary: barristers asked to join to become judge
 - Legal aid: government-funded system providing legal services to those who can't afford them
- Community sector
 - Community legal centers: usually free of charge, advice/referral

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- Administrative law
- Civil procedure
- Company law
- Constitutional law (state & federal)
- Contract law
- Criminal law & procedure
- Equity (incl. trusts)
- Evidence
- Professional conduct
- Property law
- Tort law

Chapter 2 – Fundamental legal concepts

- Law: mechanism by which justice is achieved & moral principles are promoted
 - System of enforceable rules governing social relations & legislated by political system
 - System of rules made by state & enforceable by prosecution or litigation
 - Litigation: process where person may sue another if they have been harmed

Categories of law

- Substantive & procedural law
 - **Substantive law:** system of legal rules setting out rights & obligations of individuals & state eg. determines whether contract exists, whether client has committed crime, whether client is entitled to compensation after defamation
 - **Procedural law:** system of legal rules that regulate legal processes such as civil litigation/criminal prosecution eg. determines whether client is entitled to jury, entitled to appeal
- Public & private law (under substantive)

- Public law: concerned with relationship between individual & state
 - Constitutional law: regulates relationship between various arms of gov. & between gov. & citizens
 - Grants legal rights & civil liberties
 - Eg. argue that gov didn't have power to make law of which client is being accused
 - Administrative law: regulates administrative activities of gov, allows citizens to hold administrative bodies eg. local
 - Eg. permission to build hotel has been rejected you can challenge decision
 - Criminal law: establishes criminal offences & penalties for their infringement
 - Taxation law: law regulating administration & collection of tax
- Private law: concerned with relationships between persons within community, set of rules establishing rights & obligations of individuals when dealing with others
 - Tort law: provides remedy for those harmed by acts/omissions of another
 - Civil wrong other than breach of contract
 - Incl. trespass, negligence, defamation, nuisance
 - Contract law: regulates agreements & promises
 - Legally enforceable agreement
 - Property law: regulates property rights in things & land
 - Incl. intellectual property
 - Company law: regulates establishment, management & dissolution of corporations
- Domestic & international law
 - Domestic (municipal) law: regulates persons within particular jurisdiction such as nation/state
 - International law
 - Public international law: set of rules regulating relationships between states, customs & treaties
 - Eg. Vienna Sales Convention – regulates international sale of goods
 - Eg. Berne Convention – regulates international protection of copyright
 - Institutions administering public international law: UN, International Court of Justice, World Trade Org.
 - Private international law (conflict of laws): set of rules determining which state's laws should be applied to resolve dispute between people in diff states

Six purposes of law

1. Resolving disputes
2. Maintaining social order
3. Reinforcing community values

- Hart-Devlin debate: Devlin tried to get homosexuality criminalized as it went against community morals
 - Hart argued that Mills' definition of liberty goes against it
- 4. Helping disadvantaged
- 5. Stabilizing economy
- 6. Preventing misuse of power

Changing law

- Political change
- Correcting errors (loopholes)
- Changing values
- Lobby groups
- Changing technology

Law & extrinsic standards

- Certainty: people should be able to make agreements, form relationships & conduct affairs confidently aware of relevant legal rules
 - Law should be clear & certain
- Flexibility: law should be able to respond to changes in technology, community values & political contexts
 - Laws that can't adapt may become redundant
- Accessibility: ignorance of law isn't excuse for breaking it
 - People should be able to find out relevant law & access legal advice
- Fair (law & justice) & good (law & morals): consistent with moral values for common good of community
- Jurisprudence: branch of philosophy concerned with nature of law & branch of legal theory concerned with philosophy of law

Natural law theory

- Intimate & necessary relationship between law & set of objective standards external to law itself, incl.:
 - Laws of God
 - Laws of nature
 - Principles of justice
 - Moral values
 - Fundamental human rights
 - Basic goods
- Some things are universally & objectively fair & good or unfair & bad → law should be made, administered & interpreted by governments in way that corresponds with universal, unchanging standards
- If law made by government (positive law) is inconsistent with extrinsic standards (natural law) then positive law doesn't have to be obeyed
- Natural law is discoverable by human reason → positive law must be reasonable
 - Theories within theory
- Natural law theory of extrinsic standards: standards against which law can be judged have objective standing (either true or false, eg. murder is wrong not because you think it is but because it's objectively wrong)

