

Introduction to Public Law (LLW1000) Sem1 Exam Notes:

WEEK 1: Introduction to Public Law & Historical Background

What is 'Public Law'?

- The study of Public law mainly involves the study of the *Constitution*
- Why the study of the constitution? Because the *Constitution* is not a complete statement of how Australia is governed, it also:
 - Does not refer to many central features of Australian government e.g. PM, Cabinet, political parties
 - Was drafted at the end of the 20th century for a particular purpose (Federation) & in particular context (20th century values)
 - Therefore, this affects how the Constitution is interpreted – not like ordinary legislation as Constitution is ‘dynamic’ – interpretation can change over time because it:
 - (a) Difficult to change
 - (b) Drafted in general language
 - (c) ordinary legislation- special statute

There are 2 main categories of Law

- **Public law**- constitutional law, administrative law
 - Relationship between state & individuals
- **Private law** – contract, torts
 - Relationship between individuals

The Sources of Public Law:

- Constitution
- Legislation (laws made by parliament)
- Common law (laws made by judges)
- Complex relationship between these sources

Conventions:

- Public law involves consideration of unwritten principles ('conventions')
- These principles are essential to the effective functioning of government
- Not 'law' in the sense of enforceable in a court
- Conventions apply particularly to the Executive (topics 6 & 8)

Constitutions:

- Virtually all countries have a constitution:
 - Sometimes called a 'founding' document
 - Often result of revolution e.g. USA & France
 - Symbolically important – statement of values & aspirations
- 'Unwritten' constitutions e.g. United Kingdom
 - Consists of many documents
- Written constitution e.g. Australia, United States
 - Consists of one main document
- Main function of a constitution is to set out the powers of government

- Constitutionalism – define & limit powers of government
- Some essential constitutional principles are not expressly stated in the Constitution
 - E.g. Separation of powers, rule of law
- These principles were inherited from the United States & United Kingdom systems

Australia's system of Government:

- Australia's system of government can be described in many different ways:
 - 'democracy' – leaders are elected, citizens have certain rights
 - 'constitutional monarchy' – Queen is head of state, but powers limited by a constitution
 - 'representative government' – governed by elected representatives, who are accountable for their decisions
- Australia is described as a 'liberal' democracy
 - Upholds liberal values:
 - Individual freedom
 - Equality (formal, at least)
 - Respect for the individual

The three main branches of government:

- Parliament – legislative power
- Courts – judicial power
- Executive – executive power
- Separation of powers:
 - Parliament **makes** the laws
 - Executive **carries out** the laws
 - Courts **interpret** the laws