

Lecture 1: The Australian Legal System

The courts are involved in the **administration of law** as well as the **resolution of disputes**

Courts have **criminal** and **civil** jurisdiction

Jurisdiction: power and authority conferred upon the courts to hear and determine the matter

Australia = **Adversarial System** (competitive)

Crimes Act 1900 (NSW)

Original Jurisdiction: hears and decides dispute for the first time

Appellate Jurisdiction: hears and determines an appeal from a court lower in hierarchy

Two hierarchies of courts: Federal and State/ territory

High Court

- Established under Commonwealth Constitution in 1901
- Common to both hierarchies
- Chief Justice + 7 Justices
- Binding on all courts

Federal Courts (Commonwealth Civil Law)

- Federal Court Full Bench – hears only appeals from lower courts
- Federal Court Single Judge – unfair trading, corruption law
- Federal Magistrate – Family Law, Bankruptcy
- All sit in all Australian capital cities

State & Territory Courts

- All civil & criminal matters + Commonwealth criminal
- Equivalent court hierarchy in all states/ territories

NSW Supreme Court

- Highest court in NSW
- Common law (civil matters over \$750,000)
- Criminal law (most serious crimes – murder)
- Equity (specific performance & injunctions)
- Probate (wills)
- State boundaries (NSW matters only)

NSW Supreme Court of Appeal

- 2-5 judges

- Court of appeal = civil
- Court of criminal appeal = criminal

NSW District Court

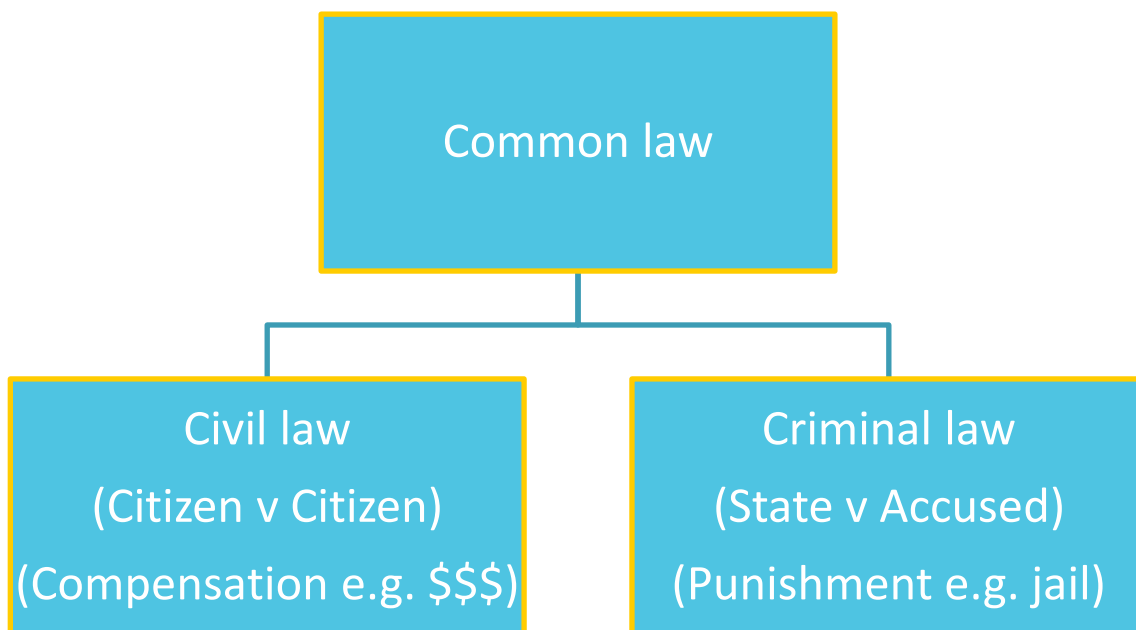
- Judge (Your Honour)
- Criminal Matters – serious – except murder/ treason
- Civil matters – GBH/ Rape etc

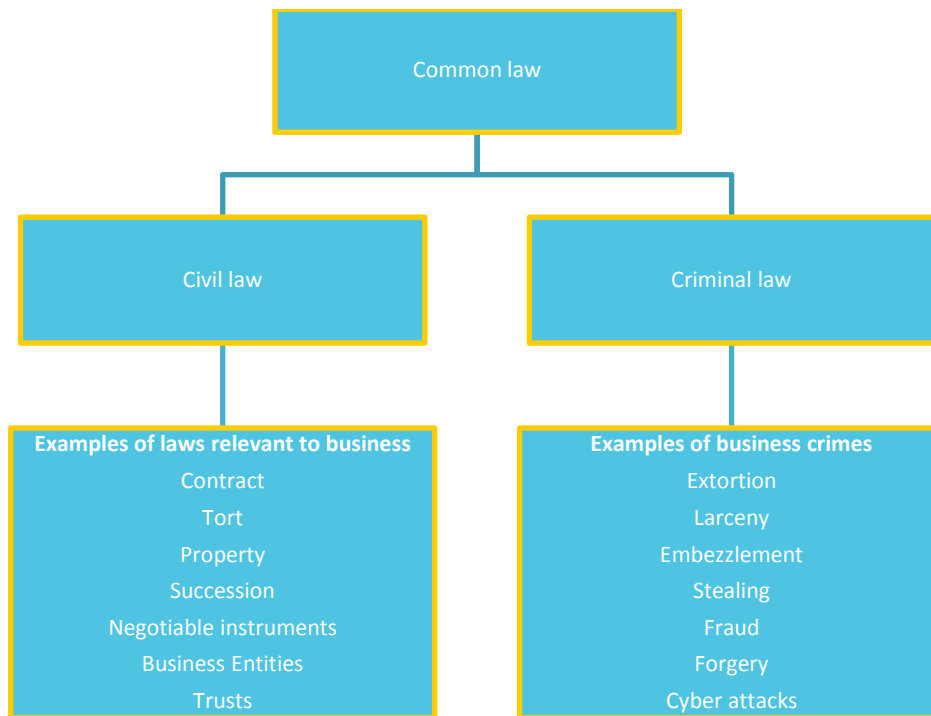
Local Courts in NSW

- Original jurisdiction
- Geographical limits
- Criminal cases – all offences first mentioned
- Summary offences – drink driving, minor offences

Criminal Procedure

- Proceedings commenced by either summons (civil) or arrest (criminal)
- Criminal = committal hearing – sufficient evidence to proceed to trial
- Indictable offences – trial takes place in District or Supreme Court
- Crown = (R)
- The **Actus Reus** (a wrongful act) + **Mens Rea** (intention)





People in Court

- Judge
 - Responsible for adjudicating the trial
 - Deciding questions of the law
 - Passing sentence
 - Hearing appeals
- Jury
 - Group of laypeople who decide questions of fact
 - Duty is compulsory
 - Selected randomly)Challenges)
 - 6 in civil/ 12 in criminal
- Lawyers
 - Barrister (rep in court)
 - Solicitor (organises paperwork)

Civil Action

1. Consideration (cost, stress, resources)
2. Commence proceedings – claim
3. Pre-trial
4. Trial
5. Evidence
6. Decision
7. Appeal

Alternative Methods to Court

- Delays, cost, ignorance & intimidation
- Tribunals (builders)
- Ombudsman (telecommunications)
- Alternative Dispute Resolution

Rules of Precedent

- Decisions of judges on the same level are not binding but may be followed for consistency
- Superior appeal courts are not required to follow their own previous decisions but tend to for consistency
- Lower courts not bound by '**obiter dicta**' of a higher court but may choose to follow it.

Obiter Dicta: a judge's expression of opinion uttered in court or in written judgement but not essential to the decision and therefore not legally binding as a precedent (by the way)

Ratio Decidendi: (the reason/ rational for the decision) a legal rule derived from; and consistent with, those parts of legal reasoning within a judgement on which the outcome of a case depends.