

Principles of Business Law

Week 1 Lecture Notes

- **Laws** are rules of conduct or organisation that are recognised, applied and enforced by the power/authority of the state
- Non-legal rules originating from moral/philosophical beliefs, social values and customs have the capacity to develop into status as law
- State may enforce rules which originate as non-legal rules or create laws in response to perceived needs for regulation
- Legislature creates law; police and courts enforce the law
- Agency law concerns the representation of entities by external entities acting on their behalf (eg. Agents for sportspeople)
- **Business law** concerns selected rules of law that are of relevance to business activities and the use of economic resources (encompasses contract law, consumer law and tort law)
- Business law is important for operation of business, understanding situations, understanding rights and duties, enforcing agreements, advertising, delegation of labour and handling of employees
- **Areas of law.** Categories of convenience used to group together the rules of law that are considered to be related Eg. Contract/property
- **Concepts.** Broad ideas which determine the nature and scope of an area of law, which provides coherent framework and sequence of ideas (Eg. Contract formation, consensus, offer and acceptance)
- **Principles.** Fundamental and non-negotiable components of legal concepts, determining nature, scope and content (Eg. Contracts are created only when an agreement is reached intending to be legally bound)
- **Rules.** Detailed mechanisms designed to give effect to particular legal principles by either catering for, qualifying or delimiting principles (Eg. Intention to be legally bound is to be inferred at time of agreement)
- **Meaning.** Sense in which concepts, principles, rules and words are to be understood and interpreted as assisted by practicalities and context
- Law as a mechanism of organisation and control: allows planning for the future with reasonable certainty; lays down rights, duties and powers; discourages/forbids particular activities and force/unauthorized violence
- Courts must balance strictly logical application of existing laws with the fair and just interpretation of cases to achieve desirable outcomes

Week 2 Lecture Notes

- Two main streams of Western jurisprudence: Roman Law (civil law) and English Law (common law)
- Two major law-making bodies in Australia: the judiciary and the legislature (including local government councils and the executive)

Exclusive powers: law-making powers set out in the constitution that way only be lawfully exercised by the Commonwealth parliament

Concurrent powers: specific law-making powers in the Constitution that may be exercised by both the Commonwealth and State parliaments

Residual powers: Law-making powers that remained with the state parliaments after Federation (not specified in Constitution)

Specific powers: legislative powers of the Commonwealth parliament stated and specified in the Constitution (exclusive and concurrent powers)

Division of powers. Systematic framework which divides legislative powers between Commonwealth and state parliaments

Separation of powers. Division of powers of government among legislative, administrative and judicial bodies to provide a system of checks and balances

- The Australian constitution was passed in 1900 by the House of Commons as The Commonwealth of

Australia Constitution Act 1900 [UK] and came into force on 1 January 1901.

- Constitution is conceived, drafted and approved by Australians. No longer an Act of British Parliament but rather a document approved by the Australian people for them to be bound by. The sovereignty of the Australian people is recognised in s.128 which provides that any change must be approved by the people via referendum.

- **Exclusive powers** refer to legislative powers granted to the Commonwealth parliament and not shared with any other jurisdiction – power only exercised by the Commonwealth

Three types of exclusive powers:

Stated as exclusive: all legislative powers detailed in s.52 of the Constitution including laws regarding the ACT, matters relating to control of the public service, and other matters declared by the Constitution to be exclusive to the Commonwealth parliament

Exclusive because states are prohibited: jurisdictional powers listed in s.51 of the Constitution are rendered exclusive due to a separate section which prohibits the states from legislating in regard to a policy area (Eg. s.51(vi) allows law-making in regard to the armed forces while s.114 prohibits states from obtaining a naval or military force)