

3.) Legal Positivism

Insist that there is no necessary relationships between the law and extrinsic standards and that the law needs to comply only with intrinsic legal standards.

C. Law and Liberal Values

1.) Liberalism

- an ideology that emphasises the importance and freedom of the individual, and views certain values such as reason, rights, equality, and private property as of paramount importance.

1.1- Liberty

Freedom is the natural entitlement of humans.

1.2- Reason

The capacity to understand or make sense of something using an ordered cognitive process such as logic.

1.3- Rights The recognition and protection of individual rights.

1.4- Private Property a bundle of rights relating to the possession, use and distribution of a wide range of possible 'things' including land, natural resources, cars, equipment, food, music, texts and so on.

1.5- Equality A fair legal system is one that treats people equally.

Week 4 Systems of Gov.

A. Australian Legal System

1.) Rule of Law

- The law will be applied equally to everyone
- The courts will uphold the legal rights of the citizens.
- No person will be punished other than for conduct that is expressly made illegal.

2.) Liberal Democracy

2.1- Democracy: a form of government in which citizens have a say in the decisions that affect their lives.

2.2- Representative democracy: the citizens vote for officials who represent them.

2.3- Liberal democracy the will of the majority and the decision-making power of the elected representatives are constrained by the rule of law and by a constitution that emphasises and protects the individual rights and liberties of citizens.

3.) Common Law System

3.1- Contrasted with civil law legal systems adversarial and inquisitorial

3.2- Common law refers to case law; statute law refers to legislation.

3.3- Contrasted with equity:

- Common law is a body of law based on precedent or court decisions.

- Equity is based on a judicial evaluation of fairness, reason, good faith and justice.

4.) Constitutional Monarchy

-monarchy: the head of the Commonwealth and of the various States is a King or Queen.

-constitutional monarchy: the monarch holds their position not by force of arms but according to the will of the Australian people as expressed in the Australian Constitution.

- Australian monarch are represented in Australia by the Governor-General, the State Governors, and a Territory Administrator.

5.) Federalism

In addition to the Federal government there are various State governments.

6.) Separation of Power

The legislature, the executive and the judiciary should as far as possible remain functionally separate.

7.) Responsible Government

The executive government is responsible to the legislature rather than to the monarch.

B. Constitutional Foundations

1.) Structure of the Constitution

- The **Australian Constitution** came into force on 1 January 1901.

- The Constitution is divided into eight Chapters

Week 7 DR and Collaboration

A. Collaboration

1.) Benefits of group work

1.1- Educational benefits

Provides opportunity to develop and practice important generic and transferable skills.

2.) Effective group

2.1- Planning

2.2- Group contracts - allocating roles and responsibilities

Leader, recorder, worker, checker.

- ##### 2.3- Effective group:
- Different strengths
 - Varied backgrounds
 - Similar goals
 - Similar expectations

B. Dispute Resolution

1.) Nature of Conflict

'A form of interaction between two or more people (or groups of people) who perceive their **interests** or **values** to be **incompatible** or **opposed**' (Wolski) - cause of conflict

5.) Dispute Resolution Process

5.1- Negotiation: Parties confer with each other for the purpose of reaching an agreement that satisfies their respective interests.

5.2- Mediation: An independent third person assists the parties to resolve the dispute.

5.3- Adjudication: An independent third person is authorised to impose a decision upon the parties to a dispute.

5.4- facilitative: mediation and negotiation. .

- advisory: conciliation. .
- determinative: Arbitrary, litigation.

5.5- Process Characteristics

Selection of third party; Type of forum (public or private); Location and time; Right to participate; Basis of participation (voluntary or involuntary); Control of process and content; Control and status of outcome; Appeals and review procedures.

5.6- Selection Criteria

Number of parties; Level of emotional content;

Willingness to maintain relationship; Willingness to compromise; Power disparity; Threat or fear of violence; Immediacy of resolution; Complexity of issues and relevant law.

5.7- Power Imbalance

Resources; Strategic; Emotional or psychological; Cultural ; Physical; Gender

C. Negotiation

1.) Effective Negotiators

Preparedness, Subject matter knowledge, Ability to operate under pressure, Logical & analytical thinking skills, Perception & intelligence, Ability to communicate clearly & concisely, Creativity & versatility, Integrity, Patience & self-control, Persistence & determination, Decisiveness, Ability to gain respect & confidence.

2.) Negotiation Styles

2.1- Competitive only concerns the interests of their clients. win-loose. short-term gain.

2.2- Cooperative win-win. a fair settlement, maintaining or building relationship.

3.) Negotiation Approaches

- **POSITIONS:** Specific solutions that a party adopts to meet his or her interests 'What parties want'.
- **INTERESTS:** Needs that a party wants to have satisfied as a result of the negotiation 'Reasons they want it'.
- Developing 'Yardsticks'
 - Bottom lines
 - BATNAs
 - WATNAs

Week 8 Oral Communication and

Advocacy

A. Legal Communication

1.) Effective Communication

- lawyers tended to write and speak in legalese in the past..
- Effective communication must be clear, concise and precise.