

UNIT DIVISION

1. THE LAW IN PRACTICE

2. LEGAL HISTORY AND THE AUSTRALIAN LEGAL SYSTEM

3. LEGAL RESEARCH SKILLS

4. STATUTORY INTERPRETATION SKILLS

5. LEGAL REASONING SKILLS

6. LAW AND JUSTICE

7. PROFESSIONAL RESPONSIBILITY

THE LIFE OF A LAWYER (CHAPTER ONE)

TRADITIONAL CAREER PATHS

- > Barristers
- > Solicitors

SOLICITORS

These provide a variety of legal services in relation to the legal aspects of both personal and business matters. The roles of a solicitor include:

- > Interviewing clients
- > Providing legal advice and recommendations
- > Drafting contracts and deeds
- > Conducting legal research
- > Preparing cases for court and arranging witnesses

BARRISTERS

Barristers are lawyers who provide legal advice and opinions, and who specialise in representing clients before courts and tribunals. The role of a barrister includes:

- > Argue cases before civil, criminal and industrial courts
- > Provide advice and opinions about difficult legal questions
- > Instruct solicitors
- > Speak with clients and witnesses prior to court proceedings
- > Draft court documents
- > Conduct legal research

WORK SECTORS

- > Private sector
- > Public sector
- > Community sector

PRIVATE SECTOR¹

A lawyer working in the private sector is employed by (or is an owner of) a non-government owned, profit seeking organisation

> PRIVATE PRACTICE

A solicitor working for a law firm and a barrister who is a self employed sole trader are both said to be in a private practice. Most law firms consist of two or more solicitors in partnership. Law firms can be large, medium or small.

SMALL SIZED FIRM

A firm is considered to be small sized if it is owned by a single lawyer or by a partnership of up

¹ James & Field "The New Lawyer" pg. 13

to five lawyers. The legal work typically carried out includes conveyancing, business law and wills and estates. The clients typically include individuals, families and small businesses

MEDIUM SIZED FIRM

A medium sized firm generally has from five to twenty partners and tends to be located in the city or the inner-city suburbs. The client base includes individual clients, small businesses but also includes larger corporations. The medium sized firms usually specialise in a particular area of law such as insurance law, personal litigation and family law

LARGE SIZED FIRM

A large sized firm will usually contain more than twenty partners and is usually located in a capital city. The work carried out is typically very focused and specialised in particular areas of law, which includes corporate and commercial law as well as mergers and acquisitions. Large firms have a strict hierarchy of partners and senior associates that you have to work within

> IN HOUSE COUNSEL

Becoming an *in-house counsel* or a corporate lawyer is an alternative to private practice. An in house counsel is a lawyer who is employed by a large organisation to provide legal advice and representation within the organisation and to liaise with law firms and barristers involved in the corporation

PUBLIC SECTOR

Lawyers working in the public sector include those employed by government and members of the judiciary

> GOVERNMENT

Various government departments and agencies at the local, state and federal levels employ large numbers of lawyers.

FUNAMENTAL LEGAL CONCEPTS (CHAPTER 2)

LAW

The law is a system of rules made by the state and enforceable by prosecution or litigation. This definition however disregards the questions of justice, ethics and politics.

> THE SYSTEM OF RULES

Most people define the law as a type of rule. A rule is a statement of behavioral expectation; it tells people how they should and should not behave. They may or may not be negative consequences that flow from failing to comply with the rule.

> MADE BY THE STATE

This is the main difference between a legal and a non-legal rule. Legal rules are made by the state. Rules made by persons or organisations other than the state cannot be said to be laws. The term 'state' refers to the government generally.

NOTE: // State and the government can be used interchangeably

> ENFORCEABLE BY PROSECUTION OR LITIGATION

Legal rules are backed by the threat of punishment or coercion. If a person does not obey a legal rule, there are legal consequences. If the legal rule is of criminal law then they may be accused of the state of having committed a criminal offence by the process known as prosecution. If the legal rule is of civil law, the person may then be sued which is done by a process known as litigation.

THE CATEGORIES OF LAW

- > Substantive and procedural law
- > Public and private law
- > Civil and criminal law
- > Domestic and international law

SUBSTANTIVE LAW

This is the system of legal rules that set out the rights and obligations of individuals and the state. It is substantive law that determines, for example, whether a contract exists or whether your client has committed a crime.

PROCEDURAL LAW

This is the system of legal rules that regulate legal process such as civil litigation or criminal prosecution. It is the procedural law, for example, that determines whether your client is entitled to a jury at their trial.

NOTE: // The distinction between substantive and procedural law is concerned with the difference between what the law is and how the law works.

PUBLIC LAW

This is concerned with the relationship between the individual and the state. It is the set of legal

rules that establish the rights and obligations of individual when dealing with the state and the rights and obligations of the state when dealing with the individual

Examples: Subcategories include constitutional, administrative, criminal and taxation law

PRIVATE LAW

This is concerned with the relationships between persons within the community. It is the set of legal rules that establish the rights and obligations of individuals when dealing with or interacting with other individuals.

Examples: Subcategories include torts, contracts, property and company law

DOMESTIC LAW

This can be referred to as municipal law. It is the law that regulates persons within a particular jurisdiction such as a nation or a state.

INTERNATIONAL LAW

There are two types of international law: public international law and private international law.

> Public international law

This is the set of rules regulating the relationships between states. There is no international government, so the sources of public international law are customs, and increasingly treaties and conventions between states.

> Private international law

This can be referred to as 'conflict of laws'. It is the set of rules that determine which state's laws should be applied to resolve a dispute between people in different states.

PURPOSES OF LAW

There are a total of 6 purposes of law:

- > Resolves disputes
- > Maintain social order
- > Reinforce community values
- > Helps the disadvantaged
- > Stabilises the economy
- > Prevents the misuse of power

NOTE: // Refer to pages 49-52 for full definitions of these purposes

CHANGING THE LAW

There are many reasons why a particular law or category of laws might be changed:

- > Political change
- > Correcting errors
- > Changing values
- > Lobby groups
- > Changing technology

NOTE: // Refer to pages 52-52 for full definitions of these changes

THE LAW AND EXTRINSIC STANDARDS

The law is more than a simple set of rules and is something that impacts on people's lives in different ways. The standards that we are expected to comply with are:

- > Certainty
- > Flexibility
- > Accessibility
- > Fair
- > Jurisprudence

NOTE: // Refer to page 54 for further information on standards

NATURAL LAW THEORY

Some legal philosophers insist that there is an intimate and necessary relationship between the law and a set of objective standards external to the law itself. This approach is referred to as *the natural law theory*.

The natural law theory consists of two theories:

- > A theory about extrinsic standards
- > Theory about law

THEORY ABOUT EXTRINSIC STANDARDS

According to this theory, the standards against which law can be judged (such as the laws of nature, moral values and human rights) have 'objective standing'; that is they can be true or false. Murder is wrong not because you happen to think that it is wrong but because *it is objectively and absolutely wrong*.

THEORY ABOUT THE LAW

According to this theory, there is no clear division between law and extrinsic standards. The authority of a particular legal rule depends upon the relationship between that legal rule and certain extrinsic standards.

NOTE: // Refer to pages 55-58 on legal theories

LAW AND LIBERAL VALUES

In this consideration is taken to the extent to which the Western legal systems – including the Australian legal system – in fact is reflect the certain fundamental values, namely liberal values.

LIBERAL

This term has a variety of meanings. This is an ideology that emphasis the importance and freedom of the individual and views certain values such as reason, rights, equality and private property as of paramount importance.

Liberalisms fundamental liberal values:

- > Equality
- > Liberty
- > Reason
- > Rights
- > Private property

NOTE: // Refer to pages 68-79 for details on the fundamental liberal values.

Types of liberty:

- > Positive liberty
- > Negative liberty
- > Domestic liberty
- > Economic liberty

NOTE: // Refer to pages 66-68 for the types of liberty.