At the completion of Topic 1 students should be able to:

◊ Explain the myths and realities of legal practice.

Myths:
- All lawyers earn a lot of money
- There is a right side and a wrong side in every legal dispute
- A lawyer needs only to be good at arguing
- Legal work is glamorous and exciting

Realities:
- Lawyers help people
- Lawyers give clear advice about complicated problems
- Lawyers are negotiators and advocates
- Lawyers read a lot

◊ Describe the various career paths of a law graduate.

Traditional Career paths:

Solicitors:
Solicitors provide a variety of legal services in relation to the legal aspects of both personal and business matters. This work is generally office based, although solicitors sometimes represent their clients in court, especially in the lower courts.

Responsibilities of a solicitor include:
- Interview clients about their needs and problems
- Provide legal advice and recommend appropriate courses of action
- Draft contracts, deeds, trusts, wills, leases and other documents
- Carry out investigations on behalf of a client
- Prepare cases for court and arrange witnesses
- Act as a trustee, a guardian or the executor of a client’s will
- Conduct legal research
- Keep up to date with legal developments by reading court decisions and law journals
Barristers:
Barristers are lawyers who provide legal advice and opinions and who specialize in representing clients before courts or tribunals. Barristers do not deal directly with members of the public, instead, they take ‘briefs’ from solicitors.

Responsibilities of a Barrister include:
- Argue cases before civil, criminal and industrial courts
- Argue cases before tribunals and arbitrators
- Provide advice and opinions about difficult legal questions
- Confer with instructing solicitors
- Speak with clients and witnesses prior to court proceedings
- Draft court documents such as pleadings and affidavits
- Draft a range of other legal documents
- Conduct legal research
- Keep up to date with legal developments by reading court decisions and law journals.

How do their roles differ?
A solicitor spends most of their time out of court and is involved in the day-to-day legal affairs of their clients. Such day-to-day affairs can include telephone and email communication, taking instructions from clients, drafting letters and court documents, conveyancing, out of court negotiations and the administrative conduct of the legal file. A solicitor can appear on behalf of their client in court however a solicitor mainly appears for preliminary and interim hearings, before the parties engage in formal argument.

On the other hand a barrister spends most of their time in Court conducting Court appearances, primarily appearing in Court applications and trials. A barrister is also commonly retained for a matter in order to provide specialist advice on a particular issue, or to be involved in the drafting of court documents with the solicitor. By not being involved in as much of the direct day to day running of a file of a client, barristers are able to specialise in and become better skilled at conducting arguments and knowing intricate parts of the law. To avoid unnecessary duplication, barristers are often engaged for specific tasks, when their

Generally speaking, a barrister:
(a) is self employed;
(b) cannot be a member of a partnership or operate through a company;
(c) works from a room in “chambers”, a term used to describe a building or floor in a building occupied by barristers;
(d) has specialist skills in advocacy and will often specialise in particular areas, somewhat like a physician or surgeon in the medical field who specialises in particular areas;
(e) is engaged (or “briefed”) by a solicitor to act for a client, but in some cases is able to accept instructions direct from the client;
(f) undertakes appearance work (such as presenting a case in court) and advice work (such as advising a client on a particular issue);
(g) is bound by specific professional conduct rules, including the “cab rank principle”, which means that if a barrister is requested to act for a client, the matter is within the barrister's expertise, the fee is acceptable to the barrister and the barrister has the capacity to undertake the work, then usually the barrister must accept the work.

Generally speaking, a solicitor:
(a) can be a member of a partnership or operate through a company;
(b) is the first port of call for clients and, if required, will engage the services of a barrister;
(c) has a right of audience in courts and tribunals, but generally will engage a barrister to present and argue cases;
(d) prepares cases for trial, including locating documents, marshalling witnesses, taking proofs of evidence;
(e) provides the barrister with their instructions;
(f) is not bound by the cab rank principle.
skills are most needed.

Legal graduate:

Career paths of a legal graduate can include: entering the Private, Public or Community Sector.

Private Sector:
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 self-employed sole trader are both said to be in ‘private practice’. Three types of private practice, small, medium & large

A law firm is generally considered to be a small firm if it is owned by a single lawyer or by a partnership of up to five lawyers. Most small firms are in suburban or country areas. The legal work done by small firms tends to be in the areas of conveyancing (facilitating the transfer of real estate, including residential properties), business law, wills and estates, family law and criminal law.

Clients include: individuals, families and small businesses who value a close solicitor-client relationship and who are looking for a cost-efficient and practical solution to their legal concerns.

Medium sized firms generally have from five to twenty partners and tend to be located in the city or the inner-city suburbs. The client base of medium sized firms is usually somewhat broader than that of small firms in that, it often includes larger corporations. Allows you to get work with a wider range of partners, senior associates and solicitors across different areas of the law and you will often deal with more complex issues. Many medium sized firms have a specific area of specialisation and expertise such as insurance law, personal litigation or family law.

Large firms usually have more than twenty partners and are usually located in one or more capital cities. Their work is often very complex and focussed upon specialised areas of law such as corporate and commercial law, intellectual property law, and mergers and acquisitions. Likely rotated around different areas of the firm to give you a broad range of experience and help you to decide upon the area of law in which you would like to specialise. Usually will work under close supervision of a partner or other experienced lawyer, and until you acquire some experience of your own, will usually assist with large and complex legal matters rather than be expected to run your own matters.
**In-House counsel**

Becoming an in-house counsel or ‘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 engaged by the organisation. *Provide a broad range of commercially oriented, relatively technical and detailed advice.*

Publicly listed companies such as BHP, Shell and IBM employ in house counsel, as do major banks (CBA, NAB). To be successful you would generally need at least 3-5 years of post admission experience with a large law firm in the area of commercial and corporate law.

**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. Government lawyers provide a broad range of legal services including the provision of legal advice, management of legal transactions, drafting of legislation and development of legal policy. Government lawyers often contribute to efforts to improve the legal and justice systems and to the operation of the law in a range of areas such as housing, education and defence. They engage in legal research, legal writing and liaising with lobby groups and stakeholders.

May be employed within the Australian Law Reform Commission and various State Law Reform Commission - as ministerial advisers or researches in parliamentary libraries, or as court registrars assisting in the administration of the courts.

Government lawyer are usually solicitors, although barristers also work in government in a range of specialist advocacy roles such as public prosecutors (prosecuting criminal defendants on behalf of the Crown), public defenders (defending criminal defendants for the Legal Aid office) and Crown lawyers (representing the Crown in civil litigation).

**Judiciary**

Judges are usually appointed by the State Governor (or, at the Federal level - the Governor-General) acting on the advice of the relevant Attorney General. With a few exceptions, judges are appointed from the ranks of practising barristers. As such, becoming a member of the judiciary is not really a career option for new graduates. First become a barrister, after years of practice may then be approached join the judiciary.

More realistic is to become a judge’s associate:

- Every judge in the intermediate and superior courts has an associate, as do many magistrates in the lower courts. A judge’s associate can be generally seen as a judge’s personal assistance and research officer.
- They undertake:
  - a lot of the administrative work involved with running the judges chambers, such as completing necessary paperwork,
- managing the listing of cases, and liaising with barristers, court staff and other members of the legal profession.
  - Depending on the judge, they might also do legal research and help with the writing of the judge’s speeches and the drafting of judgements.

Usually appointed for a period of 1 year.

**Legal aid**

Some lawyers work for legal aid commissions. Legal aid is a government funded system for the provision of legal services to those who cannot afford to pay for them. Pioneered by the Federal government in 1973 with the establishment of the Australian Legal Aid office. The Australian Legal Aid office has since been abolished and instead the Federal Government provides funding to State Legal Aid Commissions to be applied towards the provision of legal services in matters involving federal jurisdictions.

State legal aid schemes rely on State Government funding, and legal aid commissions are often underfunded. While the provision of legal assistance to those in need can be enormously satisfying on a personal level, the funding constrains can make legal practice quite frustrating.

**Community Sector:**

**Community Legal Centres:**

Community legal centres were first established in Australia in the early 1970’s. The services they provide include, usually free of charge, include:

- Advice and referral
- Some limited representation in special cases
- Research into legal problems for the purposes of law reform
- Community legal education

Some provide general advice services to people from a range of backgrounds, and others provide specialist advice services to certain members of the community such as women, immigrants or Indigenous Australians.

**Alternative Legal Careers:**

- Alternative/‘Appropriate’ dispute resolution (ADR)
  - For those committed to working in non-adversarial ways to resolve legal issues and disputes, who are creative problem solvers and who have outstanding communication skills.
    - ADR refers to a range of techniques – including mediation, conciliation and arbitration – that seek to resolve disputes without the need to resort to litigation (court). ADR can help to reduce the legal costs associated with resolving a dispute and thereby make justice more accessible.
- Legal academic
  o Three key areas of academic practice are research, teaching and service (to the university, the profession and the community). A Masters of Laws is often expected of applicants for academic positions, even for the lowest academic level in a law school, that of an Associate Lecture – Highest = Professor.

- Law librarian
  o If you are a well-organised person who thrives on legal research and enjoys helping others find information. Work in law libraries in universities, State and Federal courts, State and Federal Parliaments.

- Legal publishing
  o If you have strong writing and analysis skills, excellent people skills and a propensity for sales, marketing or promotions.

- Legal consultant
  o Self employed lawyers who provide specialist legal advice as well as research, writing and analysis support to other lawyers in the private and public sectors. May be brought in to assist with very complex legal matters or with a diverse spectrum of legal work, including the drafting of legal memoranda, briefs and submissions, the provision of policy-related research and analysis or the undertaking of specific research into a particular product, litigant or company. Expected to be creative problem solvers.

- Paralegal
  ‘Paralegal’ or ‘law clerks’ work in law firms, with barristers, in government, in the legal department… while they are completing their degrees.
  o Responsibilities include:
    - Conducting routine legal searches relating to, land titles, companies, business names and bankruptcies
    - Completing routine property settlements
    - Conducting basic legal research and investigations
    - Filling in and lodging legal firms
    - Conducting follow-up interviews with clients
    - Drafting pro forma letters and clauses for contracts
    - Assisting with administrative matters such as accounts and record keeping
    - Preparing statements of evidence by witnesses
    - Organizing witnesses to attend court
    - Putting together briefing papers when a barrister is being briefed
    - Assisting lawyers appearing in court.

◊ Articulate the key features of a contemporary legal education.

Priestly II is a list of eleven areas of law that an individual must cover before being allowed to be admitted to practice:
- Administrative law
- Civil procedure
- Company law
- Constitutional law (State and Federal)
- Contract Law
- Criminal law and procedure
- Equity (including trusts)
- Evidence
- Professional conduct (including trust accounting)
- Property law (real and personal)
- Tort law

In December 2010, The Australian Learning and Teaching Council published the Bachelor of Laws Learning and Teaching Academic Standards Statement.
The statement set out six ‘Threshold Learning Outcomes’ (TLOs). The six TLOs represent what a Bachelor of Laws graduate is expected to ‘know, understand and be able to do as a result of learning.

1. **TLO1 – Knowledge**
   a. Graduates of the Bachelor of Laws will demonstrate an understanding of a coherent body of knowledge that includes:
      i. The fundamental areas of legal knowledge, The Australian legal system, and underlying principles and concepts, including international and comparative contexts
      ii. The broader contexts within which legal issues arise
      iii. The principles and values of justice and of ethical practices in lawyers’ roles.

2. **TLO2 – Ethics and professional responsibility**
   a. Graduates of the Bachelor of Laws will demonstrate:
      i. An understanding of approaches to ethical decision-making
      ii. An ability to recognise and reflect upon, and a developing ability to respond to, ethical issues likely to arise in professional contexts
      iii. An ability to recognise and reflect upon the professional responsibilities of lawyers in promoting justice and in service to the community
      iv. A developing ability to exercise professional judgement.

3. **TLO3 – Thinking Skills**
   a. Graduates of the Bachelor of Laws will be able to:
      i. Identify and articulate legal issues
      ii. Apply legal reasoning and research to generate appropriate responses to legal issues
      iii. Engage in critical analysis and make a reasoned choice amongst alternatives
      iv. Think creatively in approaching legal issues and generating appropriate responses

4. **TLO4 – Research Skills**
   a. Graduates of the Bachelor of Laws will demonstrate the intellectual and practical skills needed to identify, research, evaluate and synthesise relevant factual, legal and policy issues.

5. **TLO5 – Communication and collaboration**
   a. Graduates of the Bachelor of Laws will be able to:
      i. Communicate in ways that are effective, appropriate and persuasive for legal and non-legal audiences
      ii. Collaborate effectively

6. **TLO6 – Self management**
   a. Graduates of the Bachelor of Laws will be able to:
      i. Learn and work independently
      ii. Reflect on and assess their own capabilities and performance
      iii. Make use of feedback as appropriate, to support personal and professional development
◊ Explain the importance of developing a positive professional identity.

A ‘professional identity’ according to identity theory, includes your self-concept as a member of the legal profession and internalized beliefs, values, expectations, motives and behaviours that arise form how you perceive yourself in your professional role. It’s not just how you see yourself as a lawyer, but how others see you.

Importance:
In first year it has been suggested that ‘students’ personal and professional identities are particularly mutable and adaptable, and that this is also a time when the salience of identities can change.
A positive professional identity might be influenced by a positive view of the role of lawyers as defenders of rights, as upholders of duties, as champions of the rule of law and as resolvers of disputes.

◊ Articulate the importance of academic integrity.

Academic integrity means that you do not make use of other people’s words, ideas, research findings or information without acknowledging the source.

It is the cornerstone of the academic enterprise. If you claim someone else’s work as your own, you are in effect lying about your authorship. If you fail to acknowledge the sources that inform your thinking and theorising, you are effectively stealing those ideas and falsely holding out that you came up with them on your own.

Legal practitioners must exhibit a degree of integrity which engenders in the Court and in clients unquestioning confidence in the completely honest discharge of their professional commitments.

◊ Explain what law is

The law is a system of rules made by the state and enforceable by prosecution or litigation.

In Australia there are two primary sources of law;
1. Case law
   a. Law made by courts (Federal/State/Territory)
      i. Common law/Precedent
2. Legislation
   a. Law made by parliament (Federal/State/Territory/Local)
      i. Statutes/Acts

System of rules:
A rule is a statement of behavioural expectation; it tells people how they should or should not behave.
There are of-course may different types of rules:
- the rules of a game
- the rules of an organisation
- moral rules
- social rules
- mathematical rules
- traffic rules

**Made by the state:**
Legal rules are made by the state. Rules made by persons or organisations other than the state cannot be said to be laws.

- State refers to the government –

  ‘Government refers to the group of individuals and institutions charged with constitutional authority to make, administers and interpret the law.

  State can refer to either the government or to the governed territory.

The most appropriate way to distinguish between a legal and non-legal rule is to consider the source of the rule.

A sovereign is a supreme rule of a state. In a traditional monarchy, the king or queen (or ‘monarch’) is the sovereign. In Australia the parliament is seen as sovereign – hence ‘parliamentary sovereignty.

**According to Professor Dicey:**
The rule of law means the absolute supremacy of government by law as opposed to government by arbitrary fiat; second it means governments can operate only if they have specific legal authority to do so; and third, that a particular person can be punished only for a breach of the law, and not otherwise.

**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.

Criminal rule broken – prosecution is process ✗ fine/imprisonment
Civil rule broken – litigation is process ✗ remedy

◊ Explain the categories of law.

**Categories of law:**
- Substantive and procedural law
- Public and private law
- Civil and criminal law
- Domestic and international law

1. Substantive and procedural law
a. Substantive law is the system of legal rules that set out the rights and obligations of individuals and the state. It is this that determines, whether a contract exists, whether your client has committed a crime or whether your client is entitled to compensation because another person has defamed them.

b. Procedural law is the system of legal rules that regulate legal process such as civil litigation or criminal prosecution. It is this that determines whether your client is entitled to a jury at their trial and whether they are entitled to appeal to a higher court.

2. Public and Private law

a. Public law is concerned with the relationship between the individual and the state. It is a set of legal rules that establish the rights and obligations of the individual when dealing with the state and the rights and obligations of the state when dealing with the individual. EG: Constitutional law, Administrative Law, Criminal Law and Taxation law
   i. Constitutional law regulates the relationship between various arms of government and between the government and its citizens and grants legal rights and civil liberties to citizens.
   ii. Administrative law regulates the administrative activities of the government. It allows citizens to hold administrative bodies such as local governments and government departments accountable for their actions, and gives citizens the right to seek judicial review of administrative decisions.
   iii. Criminal law establishes criminal offences and the penalties for their infringement
   iv. Taxation law is the law regulating the administration and collection of tax

b. Private law is concerned with the relationships between persons within the community. It is a set of legal rules that establish the rights and obligations of individuals when dealing with or otherwise interacting with other individuals. EG: Tort law, Contract law, property law and company law.
   i. Tort law provides a remedy for those harmed by the acts or omissions of another. A ‘tort’ is a civil wrong other than a breach of contract. Range of recognised torts: trespass, negligence, defamation, nuisance and passing off.
   ii. Contract law is the law regulating agreements and promises.
   iii. Property law regulates property rights in things (personal property) and the land (real property). The law of personal property includes intellectual property law (copyright, trade marks, patents). Real property includes the rules regulating title to land, mortgages, leases and licenses.
   iv. Company law regulates the establishment, management and dissolution of corporations
3. Civil and criminal law
   a. Criminal law establishes criminal offences and the penalties for the infringement. In a criminal trial, the dispute is between the state, represented by the prosecutor, and the individual
   b. Civil law equates with private law. In a civil trial the dispute is between two or more individuals.

4. Domestic and international law
   a. Domestic law (municipal law) is the law that regulates person within a particular jurisdiction such as a nation or state.
   b. International law – two types
      i. Public international law 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.
      ii. Private international law (sometimes referred to “conflict of laws”) is the set of rules that determine which state’s laws should be applied to resolve a dispute between people in different states. With the development of the internet, this is becoming a important area of law.

◊ Explain the need for law and the purposes of law.

Need:
There is evident need for person who will articulate and enforce standards of conduct, which will tend to promote the common good of bodily security, stable access to resources, cooperation in economic and educational activities, and rectification (by punishment, compensation and restitution) of at least the grosser inter-personal injuries of commission and neglect. To notably state government and law, on condition that these institutions carry on their legislative, executive and judicial activities substantially for the common good of the inhabitants of the relevant territory, rather than in the interest of a segment of the population unfairly indifferent or hostile to the interests and wellbeing of other segments – John Finnis, Natural Law Theories.

Six purposes of law:
...Resolving disputes
- The law provides a way for disputes to be resolved. The parties to a dispute can refer to the relevant legal rules directly, and if the rules are clear enough, resolve the dispute themselves

Maintaining social order…
- Many insist societies need laws to keep the peace and to prevent chaos and anarchy. Insist that laws maintain social order because without law, everybody would be in perpetual conflict with each other. (Thomas Hobbes claimed in the absence of law – existence would be a ‘war of all against all’.

Reinforcing Community values…
- Purpose of aw is to ensure that community values are applied equitably and respected by all members of the community

Helping the disadvantaged…
- The law can be seen as a mechanism for ensuring resources and opportunities are distributed fairly within a community. Without such laws – the strong would take advantage of the weak and the rich would take advantage of the poor

Stabilising the economy…
- Tax law – an increase in the rate of personal income tax will result in members of the community having less spending money which will have an impact on prices, inflation and interest rates.

Preventing misuses of power…