Law and society

You have probably never committed a serious crime. Hopefully, you are not planning a robbery or an assault. Most likely you are not wanted by the police and have not been required to attend a court hearing. Like the vast majority of Australians, you are a law-abiding citizen.

Why, then, do you need to know about the law? The answer is because laws affect everything you do: the wearing of a helmet when riding a bike, the age you can leave school, the movies you are permitted to watch and the rights you have as a citizen. Therefore, you should know something about the law. Ignorance is no excuse. You can be found guilty of breaking a law even if you didn’t know about it.

The law is a set of legal rules that the government and the courts have made for everyone to follow.

Focus

On completion of this chapter, you will have developed an understanding of how laws affect individuals and groups and regulate society.
access equal opportunity for all people to make use of the legal system
adversarial system system in which two opposing parties present their arguments to a magistrate or judge
anarchy disorder or confusion due to the absence of government or laws
appeal an application for a legal decision to be reviewed in a higher court
bail to release an accused person who is awaiting trial
balance of probabilities the standard of proof in civil trials
beyond reasonable doubt the standard of proof required in a criminal trial
committal hearing a hearing in a Local Court to decide whether there is enough evidence to put a person on trial for an indictable (serious) offence
common law system of law based on the previous decisions of judges, or precedents
constitution a document which sets out how an organisation or a country will be governed
court a place where people can resolve disputes relating to law
defendant the party in a criminal or civil trial against whom an action has been brought
discriminate to treat somebody differently or less favourably because of her or his personal characteristics such as gender, ethnicity or religion
double dissolution a decision made by the head of state to dissolve both houses of parliament
Executive Council in Australia, a group that comprises the head of state and selected government ministers
hierarchy any system of things in a graded order
indictable offence a serious criminal offence
judge a court official who has the power to make decisions on matters brought before a court of law
jury a group of people (either 12 or six) selected to hear the evidence in a court case
kinship traditional indigenous rules that outline the correct way of living
laws a set of legal rules
magistrate a court official who hears cases in the lowest court of law
military law rules applicable to people in the armed forces
plaintiff the party that commences a civil action
precedent a previous legal decision that serves as a rule or pattern in future cases
private law deals with disputes between private citizens
public law deals with disputes that affect the community
statute law laws made by parliaments
sue to bring a civil action against another person for causing damage or injury
tort a civil wrong
trial a process to determine whether someone committed a criminal act or caused another person a loss
3.1 Reasons for laws

You have to obey rules at school or on the sporting field. Society also has a set of rules called laws, which everyone in the community is expected to obey. For example, motorists have to obey traffic laws. There are also laws to stop people under a certain age from entering premises where alcohol is served. The difference between a rule and a law is that the police and the courts can enforce laws. Laws, therefore, are legal rules. This means that a person can be taken to court and penalised if he or she breaks the laws.

The law-breakers

‘We can’t cross now,’ said Jamahl. ‘The “Don’t Walk” sign is showing.’

‘It’s okay, just hurry,’ yelled Ben. ‘There are no cars coming.’

When they reached the other side of the busy intersection, a police officer approached them. ‘Do you realise that it is illegal to disobey a “Don’t Walk” sign? If I see you breaking the law again, I will have to fine you.’

Jamahl and Ben were apologetic. ‘Everyone does it so we thought it would be okay,’ said Ben. ‘We won’t do it again.’

‘That’s good,’ said the police officer. ‘The law is there to protect you as well as drivers.’

As they walked away, Ben and Jamahl both realised they knew very little about ‘the law’. They wanted to know more.

Why do we need laws?

Imagine what could happen if there were no laws and people could do whatever they liked. Confusion and chaos would occur. In extreme cases of conflict, a state of anarchy would develop. The person with the most strength would start to dominate, and the weak and helpless would suffer. However, when people obey the law, a sense of order is created, resulting in a society where people can live peacefully.

The law therefore has three main roles:

1. Protection from the actions of others as well as our own behaviour. It does this by telling society what people cannot do. For example, we cannot commit assault, murder or robbery. We cannot drive while drunk or ride a bike without a helmet. In this role, the law restricts our individual freedom but provides safety for all individuals in society.

2. Freedom to do many things by telling society what people can do. For example, the law allows us to own and operate a business, drive a car, get married or divorced, or leave school.

3. Resolving disputes in order to stop people taking the law into their own hands. The legal system provides a police force (or service), court system and correctional centres (jails and juvenile detention centres) to enforce and administer the law.
If society has too many laws, people’s freedoms are severely restricted. However, a society that does not have enough laws turns to chaos, and people become very unhappy. So it is important for society to achieve a balance between too many and too few laws.

The police force, like the courts and correctional centres, is part of our legal system.

**Activities**

**Understand**
1. What are laws?
2. How are laws of the land different from school or sport rules?
3. What can happen to a person who breaks the law?
4. What is meant by the term ‘anarchy’?
5. Why does society need laws?
6. List the law’s three main roles.
7. Provide three examples of things the law says you (a) cannot do, and (b) can do.

**Think**
8. Do you think Jamahl and Ben should have been fined for breaking the law instead of being given a warning? Give reasons for your answer.
9. Imagine you have been elected ruler of Australia. What three laws would you introduce to make sure people live in harmony? Explain why you would choose these particular laws.
10. Write a short story or create a cartoon about a city that has no traffic laws.

**Communicate**
11. Obtain a copy of your school rules. In small groups, answer the following questions:
   (a) Do you think your school rules are laws? Why?
   (b) Who makes these rules?
   (c) What happens if someone breaks the rules?
   (d) Are there too many or too few rules? Why?
   (e) What rules would you like to get rid of? Why?
   (f) What rules should be introduced? Why?
12. Are there situations in which breaking a law could be acceptable? For example, what do you think about a group of environmental activists who break the law when protesting against tree clearing?
   With this in mind, debate the following topic: ‘It is acceptable to break the law sometimes’.

**eBookplus**
13. Use the internet to find out the age at which a person in Australia can legally:
   (a) drive a car on a public road
   (b) drink in licensed premises
   (c) get married
   (d) buy cigarettes
   (e) sign a contract.
   You will find the information you need by using the LawAccess weblink in your eBookPLUS.

**Glossary**

- **anarchy** disorder or confusion due to the absence of government or laws
- **laws** a set of legal rules
Origin of Australia’s laws

Aboriginal law

Before the arrival of Europeans in 1788, law in Australia existed as traditional Aboriginal law, passed on by word of mouth. This oral law was very important and helped maintain a stable society. It was a legal system based on customs and rituals, and varied between the approximately 600 different indigenous groups living in Australia.

Incorrectly, the early white colonists thought that Aboriginal society had no law because there were no written rules, parliaments, courts, police and prisons. However, traditional Aboriginal peoples lived according to a complex set of customary laws that outlined the correct or appropriate way of living. A group of elders who knew the customs administered this law and could punish offenders. When a law was broken, the person who had committed the offence (the accused) would meet in public with the person who had been affected by the conduct (the victim). Members of the tribe would witness the meeting. Once a penalty was decided, the tribe would carry out the punishment. Punishments ranged from being banished from the tribe to death.

Aboriginal law was, and is, based on kinship — rules that outline the correct way of living in everyday situations such as the sharing of food, marriage, education and trade. The British colonists did not understand the system of kinship, which made it difficult for English law and Aboriginal law to coexist.

With the arrival of Captain Cook at Botany Bay in 1770, who took possession of ‘The Great Southern Continent’ for England, Aboriginal law was displaced and English law established. The clash between two different legal systems has caused much conflict over the years.

Aboriginal customary law is largely expressed through the obligation of kinship.

The arrival of English law

The first British settlement in Australia began with the arrival of the First Fleet on 26 January 1788, when a penal colony was established at what is now Sydney Cove. The First Fleet brought the English legal system to Australia. This is why our laws are very similar to those of England.

The early settlement was under the command of a British Governor, Arthur Phillip, who ruled according to military law rather than the general law of England. The governor had ultimate authority within the colony and was the administrator of justice. This was especially so in the early years, as there were very few free settlers and most of the population were either convicts or soldiers.

Gradually, as the population grew, the increasing number of free settlers began to demand their rights under English law as well as the right to govern themselves.

In 1828, the colony of New South Wales achieved some measure of self-government. It adopted all the English law that was in existence at that time. From 1828 onwards, however, the colony had the power to make its own laws.

Comfact

The British Parliament most probably intended that English law should apply to the colony of New South Wales as the continent was regarded as terra nullius (uninhabited territory) since Captain Cook’s east coast voyage.
The First Fleet, therefore, brought with it more than convicts and soldiers. It brought the English legal system and transplanted it in the new continent. English law had become Australian law.

**Activities**

**Understand**

1. Where do Australia’s laws come from?
2. Why did the British colonists not understand the traditional Aboriginal system of law?
3. Traditional Aboriginal law had no written record. (a) How did Aborigines know what their laws were? (b) How was a ‘trial’ of an accused person conducted? (c) What types of punishment were used?
4. What is meant by the terms (a) kinship, and (b) military law?

**Think**

5. What impact did Captain Cook’s arrival have upon Aboriginal customary law?
6. Why do you think Governor Phillip used military law rather than the general law of England?

**Communicate**

7. In small groups, prepare a list of the rules that you think would have been necessary in the penal colony at Sydney Cove to preserve law and order. Keep in mind that there was no regular contact with England, food was in short supply and convicts outnumbered soldiers and free settlers. Compare your list with other members of the class.
8. Set up a class debate to consider the following topic: ‘Indigenous people should be able to live under their tribal laws if they so wish’.

**Glossary**

*kinship* traditional indigenous rules that outline the correct way of living

*military law* rules applicable to people in the armed forces
The legal system

The law affects almost everything you do. If you buy a mobile phone and it does not work properly, there are laws that can help you get it fixed, get an exchange or receive a refund. If you rent a flat, there are laws that say what you and the landlord can and cannot do. If you have an accident at work, there are laws that say who has to pay your doctor’s bills.

In each of these situations, the law is there to protect you. The law therefore empowers you to seek a solution to your problem. Without the protection of a legal system, enforcement of a person’s rights would be based on physical violence: ‘might is right’. In this situation, most people would be powerless. Of course, the law operates in the background, waiting for you to access it if you should need its assistance.

The legal system consists of a number of institutions such as parliaments, courts and prisons. It also includes people who work within this system: judges, lawyers, police officers, prison officers and politicians.

**Legal advisers specialise in the law**
- Lawyers (solicitors and barristers) provide legal advice and assistance.
- They represent their clients and conduct their cases at a court hearing.

**Politicians make laws**
- Parliament is our main law-making institution.
- It can make new laws and change existing ones.
- These laws are binding on all courts and judges.

*The people and institutions that make up Australia’s legal system*
Law-breakers are punished by courts
- Prisons hold people convicted of a crime.
- Prison staff manage the prison.
- All offenders must be given the opportunity of rehabilitation.

**Activities**

**Understand**
1. In the past, disputes were often resolved with the belief that ‘might is right’. 
(a) What is meant by this expression? 
(b) Why is this system of resolving disputes unfair to most people? 
(c) What advantages are there for individuals and society in having a comprehensive legal system? 
2. What is the role of police in our society? 
3. What do you think would happen in our society if police went on strike? 

**Think**
4. Vigilantes, private citizens who take on the role of guardian of society, take enforcement of law into their own hands. Explain why it is better that the police and courts, rather than individuals, resolve disputes. 
5. Why should offenders be given the opportunity of rehabilitation? 

**Communicate**
6. As a class, brainstorm how laws empower individuals and groups in our society. 
7. Add extra elements to the mind map started below to summarise the people and institutions that make up the legal system.

**Courts interpret laws**
- Courts settle disputes according to strict rules of evidence and procedure. 
- Court officials are responsible for the administration of the court and the efficient running of a case. 
- Judges have the ability to create law through the decisions they make when hearing a case: an act of precedent. 

**Police enforce laws**
- Police do not make the laws; they only enforce the laws that all people must obey. 
- They also prevent and detect crime, protect life and property, and maintain peace and order. 

**Investigate**
8. Research the legal system of another country and compare it with what you know of the Australian legal system. What are the similarities and differences? 
Present your information either as a PowerPoint presentation or a word-processed report.

**Worksheet 3.1** Investigate a career in the police force.
3.4

The court structure: hierarchy

Often, the parties in a dispute will settle the issues themselves without going to court. However, many disputes eventually require the legal system to help resolve the issues. This is the role of the court system.

**Court hierarchy**

If you break a minor rule during a lesson, your teacher will decide your ‘guilt’ and ‘punishment’. For a more serious classroom offence, either your Year coordinator or the deputy principal will deal with the matter. For very serious offences you will be sent to the principal. The court system operates under a similar hierarchy, which also relates to the seriousness of the offence.

There are many courts at the bottom of the hierarchy. The number decreases the further up you go until you reach the High Court, of which there is only one. A serious issue facing our society is the cost of a trial, which becomes more expensive if the trial is held in a court that is higher up the hierarchy.

**Inside a Local Court**

The Local Court deals with minor civil disputes, for instance, where people sue other people for damage to property or for injury claims of up to $40,000. This court also hears minor criminal matters such as stealing, drink-driving, indecent language and assault charges. A magistrate presides over committal hearings dealing with major criminal offences such as armed robbery, manslaughter and homicide to decide if there is enough evidence for the case to go to trial in a higher court. A magistrate also hears bail applications. The Local Court hears approximately 80 per cent of all cases, both civil and criminal.

The Coroner’s Court is a special Local Court that investigates deaths by unnatural causes and suspected arson. The Children’s Court deals with cases involving young people who committed offences when under the age of 17. This court is closed to the public and the media.

**The District Court**

In the District Court of NSW, cases are heard by judges. The District Court deals with more serious civil cases for claims of up to $750,000, and serious criminal matters such as armed robbery, rape and burglary. It also hears appeals from the Local Court. In some cases a jury will decide whether the accused is guilty or not. If the accused is found guilty, the judge will decide on an appropriate sentence.

The court system filters cases according to their seriousness.

**The Local Court**

In the Local Court there is no jury. Instead, it is a magistrate who hears the cases, decides the verdict and sets any punishment. Magistrates are qualified legal practitioners who have many years experience in dealing with legal matters.
The Supreme Court

This is the highest court in NSW. It deals with the most serious civil cases involving large sums of money. As well, the most serious criminal cases such as murder are heard in this court. The Supreme Court also deals with appeals from the two lower courts.

The High Court

Located in Canberra, this court deals with appeals from the state or territory Supreme Courts. It also hears cases concerning the interpretation of the Australian Constitution. Because it is the highest court in Australia, its decisions are final. The High Court is a federal court, which means that any decision it makes applies to the whole country.

Activities

Understand

1. What is the role of the court system?
2. On a triangle divided into four equally spaced horizontal sections name the four different levels of courts. Start with the lowest court at the bottom.
3. Why do we have a number of courts?
4. Explain the difference between a judge and a magistrate.

Think

5. Why are courts necessary in our society?
6. In which court are the following likely to be heard?
   (a) A murder trial
   (b) An appeal from the NSW Supreme Court
   (c) A hearing for a minor traffic offence
   (d) An investigation into a suspicious death
   (e) An armed robbery trial
   (f) The preliminary hearing of a rape case
   (g) A civil dispute between business partners involving $100 million
   (h) A case dealing with an aspect of the Australian Constitution

Investigate

7. Imagine you are a magistrate hearing a case against a person accused of assault. What evidence would you require in order to reach a decision? To help you answer this question, collect some newspaper articles dealing with similar cases.

Worksheet 3.2 Investigate the hierarchy of Australia’s courts and decide where a series of cases would be heard.

Glossary

appeal an application for a legal decision to be reviewed in a higher court
bail to release an accused person who is awaiting trial
committal hearing a hearing in a Local Court to decide whether there is enough evidence to put a person on trial for an indictable (serious) offence
court a place where people can resolve disputes relating to law
hierarchy any system of things in a graded order
judge a court official who has the power to make decisions on matters brought before a court of law
jury a group of people (either 12 or six) selected to hear the evidence in a court case
magistrate a court official who hears cases in the lowest court of law
sue to bring a civil action against another person for causing damage or injury
trial a process to determine whether someone committed a criminal act or caused another person a loss
The role of court personnel

After being arrested, you may end up in court if the police feel they have a strong case against you. If you plead not guilty, a trial will be conducted. It will take place in a courtroom. In Australia, the method of trial used is called the **adversarial system**. This means two opposing sides will present their arguments to an independent umpire — a judge or a magistrate.

Courts can be very tense places. The decisions made in them can have an enormous impact on people’s lives. Courts and the officials who work in them deal with real-life dramas. While each courtroom official has a specific role to play, they are all attempting to achieve the same objective: justice. The main roles include magistrate, judge, juror, prosecutor, and counsel for the defence.

**Magistrate as umpire**

A magistrate is in charge of the lowest court, where the atmosphere is much more informal. He or she does not wear a wig or a robe, and is a qualified legal practitioner. People address a magistrate as ‘Your Honour’.

After hearing the cases presented by both sides, the magistrate decides whether a person is guilty or innocent. If people are found guilty, the magistrate decides the punishment or (in civil cases) how much money to award as damages. A magistrate will refer very serious criminal offences to the District Court.

In criminal cases, the counsel for the defence represents the accused, the **defendant**. If the accused pleads guilty, the counsel for the defence presents arguments to try to lessen the punishment. If the accused pleads not guilty, defence counsel must convince the judge or jury that their client is innocent. In a civil case, the counsel for the defence attempts to convince a judge (and occasionally a jury) that no wrong has been committed. If successful, the accused does not have to pay damages.

Anyone whose name is on the electoral roll can be called as a juror. In a criminal case, the jury consists of 12 people. In a civil matter, only six people decide how much money should be paid for damages. In a criminal trial, the jury must decide **beyond reasonable doubt** whether a person is guilty.

The judge’s associate is a trained lawyer who manages much of the paperwork.

*Judge as umpire — who’s who in a judge’s court (criminal trial)*
Activities

Understand
1. List the main courtroom officials.
2. How many jurors are there for (a) a civil case, and (b) a criminal case?
3. How are magistrates and judges addressed in court?
4. When can a judge question a witness?
5. What is the jury’s responsibility in a criminal trial?
6. What is the difference between the:
   (a) magistrate and judge
   (b) defendant and plaintiff
   (c) prosecution and counsel for the defence?

Think
7. Finish the following sentence:
   The adversarial system is a bit like a game of tug-of-war because ___________.

Worksheet 3.3 Identify the players in a courtroom then research a real court case.

Glossary

*adversarial system* system in which two opposing parties present their arguments to a magistrate or judge

*beyond reasonable doubt* the standard of proof required in a criminal trial

*defendant* the party in a criminal or civil trial against whom an action has been brought

*plaintiff* the party that commences a civil action
Juries

Although juries are used in less than 5 per cent of all legal cases, they are often what people find most intriguing about the law. Being on a jury is the one opportunity for the average person to play an integral part in the operation of the legal system.

As a juror, I help decide on a verdict in a specific case. If your name is on the electoral roll, you are eligible to be selected for jury duty. A court officer called the sheriff selects names at random and those selected are notified by mail. Juries are used in *indictable offence* cases and are optional in civil trials. In a criminal case, the jury consists of 12 people but, in a civil matter, only six people decide how much money should be paid for damages. In a criminal trial, I have to listen to all the evidence and to the judge’s instructions and then decide beyond reasonable doubt whether a person is guilty or not. The decision must be either unanimous; that is, all 12 jurors must come to the same decision or a majority verdict of 11 out of 12 jurors before a judge can hand down a sentence. Sometimes a hung jury occurs, which means the jury cannot decide on a verdict and a new trial is ordered. My main task then is to decide upon the truth from all the information presented. This is not always easy to do. Some people such as doctors or people over 65 years of age can be excused from jury duty. Other people, such as anyone who works in the legal system or has a criminal record are ineligible.

The main role of a jury is to weigh up the evidence on both sides. In a civil trial the jury must decide on the **balance of probabilities** whether the defendant is liable, and in a criminal trial on whether the accused is innocent or guilty beyond reasonable doubt.
Empanelling a jury

Once the jury panel is in the courtroom, empanelment — the process of selecting a jury — begins. Potential jurors must walk past the accused and his or her counsel, as well as the prosecution. This is so counsel can look at them and decide whether they are the type of people they want on the jury. They have from the time each juror stands until he or she reaches the jury box to make a challenge. Challenged jurors return to the jury pool and may still be called on for jury duty at some other time.

Arguments for and against the jury system

Some people say that juries are the best and most accepted method to use in a trial. Others argue that they are outdated and prejudiced, and should be replaced with either trial by judge alone or professional, specialist jurors.

Arguments for the jury system

1. A jury is a cross-section of society and therefore reflects society’s values and attitudes.
2. There is widespread acceptance of the jury system.
3. The final decision is made by more than one person.
4. Juries are independent and impartial decision makers who are not controlled by the government.
5. Ordinary citizens are given the opportunity to play an active role in the administration of justice.
6. It provides an opportunity for the community to understand the final decision.

Arguments against the jury system

1. Because some people are exempt from serving, the jury is not a true cross-section of society.
2. Ordinary people may not understand complex legal technicalities.
3. Juries do not have to give reasons for their decisions.
4. Juries can be persuaded by the skills of clever lawyers.
5. It is difficult for people to remain completely impartial, especially if they are influenced by the media coverage of the trial.
6. It costs a lot of money to operate and the jury selection process can be time-consuming.

Glossary

balance of probabilities  the standard of proof in civil trials
indictable offence  a serious criminal offence

Activities

Understand
1. What is the role of the jury?
2. Distinguish between the standard of proof required for a civil trial and a criminal trial.
3. What does the term ‘indictable offence’ mean?
4. In a criminal matter, how many jurors are on a jury? What must they decide?
5. In a civil case, what are juries mainly concerned with?
6. Who may be called upon to do jury duty? What exemptions are there to this?
7. Explain the difference between a majority verdict and a unanimous verdict.
8. What is a hung jury and what effect does it have on a trial?

Think
10. Select the advantage and the disadvantage of the jury system, from the list on this page, which you consider to be the most important. Give reasons for your selection.
11. Why does a criminal trial require a higher standard of proof than for a civil trial?

Communicate
12. In small groups, discuss these questions.
   (a) Should the membership of a jury be restricted by age and/or education?
   (b) Under the American legal system juries are allowed to publicly discuss the reasons for their decision after a case has finished. Should this be allowed under the Australian legal system?
Areas of law: private and public

There are two main ways of classifying the law: private and public law. The **private law** deals with how individuals interact with other individuals; the rights and duties people have towards each other. **Public law** is concerned with regulating people’s behaviour within society as a whole and protects the freedom of individuals. It also deals with the conduct society expects from its government (the state). Private and public law have a number of branches.

**Constitutional law**
This set of laws deals with the set of rules by which a country is governed. It is concerned with the powers and authority of parliament and the rights of each citizen, and the powers between the federal and the state governments.

**Administrative law**
Administrative law deals with the decisions and powers of these government departments. This law allows courts to review and change the decisions of government if necessary.

**Family law**
This law regulates family relationships. It sets out rules about the process of getting married; who can get married; de facto relationships; divorce; custody and other aspects involving family members.

**Criminal law**
Criminal laws are needed to keep the community safe from harm, to provide for an orderly society and to provide a way of dealing with a crime when it occurs. Offenders will be punished if they choose to put people and property at risk.

**Contract law**
This set of laws is concerned with legal agreements between two or more people. If one party fails to carry out his or her side of the agreement, that person can be sued for breach of contract.
Chapter 3

Law and society

Glossary

private law deals with disputes between private citizens

public law deals with disputes that affect the community

tort a civil wrong

Activities

Understand
1 Outline the difference between private and public law.
2 What is meant by the term ‘tort’?
3 Which branch of the law mainly applies in each of the following situations?
   - (a) Manuela purchases a diary from a newsagent.
   - (b) Two armed robbers hold up a bank.
   - (c) Shanii and Angelo announce their engagement.
   - (d) Mr Preston disagrees with the decision made by his local government planning department and wants it changed.
   - (e) The Concerned Action Group wants the federal government to take control of the state national park in their area.
   - (f) Joe Zappadi tells his eight employees who are on strike that he will not agree to their demands.
   - (g) Kristin Wroe, a real-estate agent, sells a factory to Letitia Chung.
   - (h) Moshe reverses his car and accidentally scrapes the door of the parked car next to him.

Think
4 Why do you think the law has been divided into different branches?
5 Joanne is fed up with the loud music coming from her neighbour’s house. Do you think she should have the right to:
   - (a) make a complaint
   - (b) sue?
   Give reasons for your answer.

Investigate
6 (a) Using newspapers and the internet, collect and paste in your notebook a portfolio of three articles dealing with one of the branches of law that interests you.
   (b) Select one article and prepare a dot point summary of the content.
   (c) Outline what most interested you in this particular article.

Property law
This law recognises two broad types of property: real property (land and buildings) and personal property (goods and services we purchase). Specifically, property law provides regulations about the sale, leasing, and hiring of property.

Tort law
The law of tort deals with situations when one person infringes the rights of another, resulting in distress or injury; for example, the mental distress caused by being bullied. The person injured may claim financial compensation from the other party for any loss suffered.

Industrial law
This law is concerned with the rights and obligations of employers and employees. Much of the law deals with the legal way of resolving industrial disputes, workers’ compensation, occupational health and safety, and discrimination in the workforce.
Areas of law: civil law

Civil law, which is part of private law, deals with non-criminal matters. It allows an individual to bring actions against other members of the public for a civil wrong done to them. It therefore plays an important role in the creation and protection of our individual rights.

The two main areas of civil law are the law of tort and contract law. The law of tort includes:
- negligence — where a person fails to take reasonable care and, as a result, injures another person
- defamation — where a person injures another person’s reputation
- nuisance — where a person causes unreasonable interference with another person’s right to quiet enjoyment of their property
- trespass — where a person interferes with another person, or that person’s property rights.

Civil law gives the person whose rights have been infringed (the plaintiff) the ability to initiate action to sue the wrongdoer (the defendant). Where a civil wrong is successfully proven in court, the wronged party will seek damages — money — as compensation.

Sometimes the judge decides that the plaintiff is in the wrong and can order him or her to pay the defendant’s costs. Alternatively, the judge can look at contributory factors in the case. For example, it might be determined that the plaintiff was held partly responsible, say 40 per cent, and the defendant 60 per cent responsible for the injury that has occurred. In such a situation the damages are reduced accordingly. In civil cases juries are optional, but if one is used, it is their role to determine both the outcome and the amount of damages. Not all civil cases end up in court. Often the parties reach an out-of-court settlement.

Following are some recent civil law cases.

Civil cases

Cricketer Shane Warne sued the Herald Sun for running a story accusing him of match fixing. The case did not go to trial as a confidential settlement (monetary compensation) was made and an apology was published in the newspaper. The apology ended with this statement, ‘the Herald Sun accepts that this assertion was incorrect and unreservedly withdraws it and apologises to Shane Warne for the hurt and upset caused by the article’.

Jason Ballerini receives a hug from his mother after leaving the Supreme Court with a compensation payout worth over $5 million. Jason became a quadriplegic in 1996 after diving from a log into the Murray River in Barooga (a town near the Victoria–New South Wales border). Jason sued the Berrigan Council and the Forestry Commission for negligence, saying he was owed a duty of care to ensure the swimming hole was safe.
Activities

Understand
1. What is the purpose of civil law?
2. What are the two main areas of civil law?
3. List the four most common torts.
4. Explain the difference between plaintiff and defendant.
5. Ben is awarded $200,000 in compensation. However, the court decided that he contributed to his injuries 25 per cent. How much will Ben receive in his final payout?
6. What is the role of a jury in a civil case?
7. Indicate whether the following statements are True or False:
   (a) The term 'defendant' refers to the person who is claiming his or her civil rights have been breached.
   (b) The most common remedy in a negligence case is an award of damages.
   (c) Often, the parties in civil cases reach an out-of-court settlement.

Think
8. Why do you think the most common remedy in civil cases is an award of damages?
9. Give an example of where one person might infringe the rights of another (a) on the roads (b) in a theatre review (c) as a neighbour and (d) in a restaurant.
10. Examine the civil cases on these pages.
    (a) Which cases involve a tort?
    (b) Identify the relevant tort in each case.
11. Rearrange the following steps (a to d) in a logical order:
    (a) plaintiff suffered damage
    (b) duty of care owed
    (c) compensation awarded
    (d) failed in duty of care.

Communicate
12. In small groups, discuss whether you agree or disagree with the decision in the following cases. Give reasons for your answer.
   (a) Holly Valance case
   (b) Jason Ballerini case
   (c) Francine Parrington case
In simple terms, a crime involves behaviour that is considered by the state to be unacceptable, deserving of prosecution, conviction and punishment. From ten years of age, a person can be prosecuted for committing an offence. This is considered the ‘age of reason’ when the offender knows the difference between right and wrong.

Serious crimes, such as armed robbery, homicide, child abuse, murder and rape, are called indictable offences. These offences are heard in the District and Supreme Courts. For these offences, the guilt of the defendant is determined by a judge and jury.

Less serious crimes, such as minor assaults, petty theft, vandalism and traffic infringements, are called summary offences. They are dealt with relatively quickly and cheaply by a magistrate in a Local Court.

The purpose of criminal law, which is part of public law, is to protect individuals from others doing the wrong thing; to make the community feel safe from harm. If, for example, a person went around killing other people or stealing their property, and was not punished, people would live in fear.

Under our system of criminal law, if a person commits a crime, the police force and the judiciary are the way in which the state (society) deals with criminal behaviour. For example, if you rob a bank, it does not remain just a dispute between you and the bank. Instead, your action is regarded as an offence against the state (society). The bank does not have to try to catch you. Rather, the state organises its police to do this. The bank does not take you to court — the police or representatives of the government do. They will also be the ones to prosecute you. During the court case you will have the opportunity to tell your side of the story. If you are found guilty, you will be punished with either a fine and/or imprisonment.

Following are some recent criminal law cases.

**Criminal cases**

Noa Nadruku (pictured holding the ball) was a professional rugby player with the Canberra Raiders Rugby League football team, when he assaulted two women outside a Canberra nightclub. Both women were punched in the face. The evidence indicated that Nadruku had consumed a very large volume of alcohol, 28 schooners of beer, six stubbies, and half a bottle of wine. Consequently, at the time of committing the offences, he was barely conscious. The magistrate acquitted him saying, ‘the degree of intoxication is so overwhelming to the extent that the defendant, in my view, did not know what he did and did not form any intent as to what he was doing’. The decision caused outrage in the community and the federal Attorney-General at the time called for all states to review the defence of intoxication.

Imagine being only 19 years old and being jailed for nine years because you killed two of your friends in a road accident. That is the reality for Michael James Cowden who was jailed for nine years in 2005 after being convicted of culpable driving. Before the crash, Michael had been doing ‘burnouts’ and high-speed drifting manoeuvres. He was doing at least 108 km/h in a 70 km/h zone when he lost control of his car, killing two of his passengers instantly and injuring a third.
Bradley John Murdoch, a motor mechanic, was found guilty of the murder of the British backpacker, Peter Falconio, who was on holiday with his girlfriend, Joanne Lees, in 2001. The court heard evidence that Murdoch had flagged down an orange Kombi van the couple were driving along the Stuart Highway north of Alice Springs. Murdoch was also charged with depriving Joanne Lees of her liberty as she was detained in the boot of a car but managed to escape.

Kathleen Megan Folbigg, 37 years of age, is either Australia’s worst female serial killer, or her case is a serious miscarriage of justice in which an innocent mother has been wrongfully convicted of infanticide. In the New South Wales Supreme Court on 21 May 2003, Kathleen Folbigg was found guilty of murdering her children Patrick, Sarah and Laura at Newcastle and Singleton between 1991 and 1999. She was also found guilty for the 1989 manslaughter of her firstborn Caleb, and of inflicting grievous bodily harm on Patrick in 1990. Folbigg, who had pleaded not guilty to all charges, broke down in visible shock as the verdicts were read out. Justice Graham Barr sentenced her to 40 years’ imprisonment with a non-parole period of 30 years.

Activities

Understand
1. Are the following statements True or False?
   (a) A crime is defined as an offence against the police.
   (b) The community expects to be kept safe from harm.
   (c) Crimes do not affect the wider community, only the victim.
   (d) The community expects offenders who break the law to be punished.
   (e) Criminal laws reflect the values and morals of the community.
2. At what age can a person be charged with a criminal offence? Why is this age called the ‘age of reason’?
3. Explain the difference between indictable offences and summary offences. Provide three example of each.
4. What is the purpose of criminal law?
5. Why is the state involved in all aspects of criminal law?
6. Rearrange the following steps (a to d) in a logical order.
   (a) police investigate crime
   (b) court imposes a penalty
   (c) police prosecute
   (d) criminal offence committed

Think
7. How should society deal with children under ten years of age who (a) commit vandalism, or (b) badly injure other children?
8. Why do you think the judge’s decision in the Noa Nadruku case (page 88) caused outrage in the community?
9. Do you think Michael Cowden’s sentence (page 88) was adequate? Why or why not?

Communicate
10. Select a partner and cut out five newspaper articles describing criminal law cases. Paste these on a large sheet of paper and then list the laws being broken in each case.

Worksheet 3.4 Recreate a text message conversation between a criminal lawyer and a civil lawyer.
There are two ways of making laws. Those laws that are written down beforehand are called **statute law**, or Acts of Parliament. Alternatively, they can be developed piece by piece by judges as they come across new problems in the cases they hear. These laws are referred to as **common** (judge-made or case) **law**. In Australia, the law is a combination of both types.

**The beginnings of common law**

The justice system in England and Australia is based on common law. When Henry II became King of England in 1154, in medieval times, people were tried at a number of different courts. Most had to prove their innocence by trial by ordeal or trial by combat. Henry II decided his people should all have the opportunity for royal justice (that is, the justice of the king’s court). Though the other courts continued, the king’s court began travelling around, hearing cases. Judges started keeping records of their decisions, referring back to them when hearing similar cases.

**Common law**

Common law today continues to mean the decisions given by judges. It may occur because a judge has to decide on a case where there is no existing law that regulates it. Consequently, it is up to the judge to make a decision. A record of these decisions will be placed in books called **Law Reports** so that they can be referred to when needed. These decisions are known as legal **precedents**.

Judges do not deliberately attempt to change or make a law but this may happen as they try to resolve the dispute before them.

If there is no existing relevant law, judges can create a new rule to settle a dispute.

**Precedent**

If your uncle bought your eldest sister a digital camera for her eighteenth birthday, you might expect to receive a digital camera for your eighteenth birthday, or at least a present of equivalent value. This is because your uncle set a precedent and you expect to be treated the same. Precedent works the same way in law.

Traditionally, judges will give similar decisions in cases that are alike. This is known as the act of precedent. Precedent helps the legal system achieve fairness and justice as similar cases are dealt with in the same way.
Statutory interpretation

Courts also make laws when they interpret (decide on the meaning of) words in a law made by Parliament. Laws made by Parliament often use complicated language. This language is used in an attempt to fully explain what the law means, and to try to cover all the possible situations to which the law is relevant. Consequently, the language can be difficult to understand.

Although only Parliament can change the wording of a law, when a court interprets a word, this new meaning applies as law from then on. The principle of precedent applies to interpretation as well. Therefore, once a judge decides on the meaning of a word or phrase, that meaning becomes law and must be followed by other judges in lower courts.

Glossary

- **common law** system of law based on the previous decisions of judges, or precedents
- **precedent** a previous legal decision that serves as a rule or pattern in future cases
- **statute law** laws made by parliaments

Activities

**Understand**
1. What is the difference between statute law and common law?
2. How did common law begin?
3. What is the purpose of the *Law Reports*?
4. What is meant by the term ‘precedent’? How does precedent help the legal system achieve fairness and justice?
5. Explain how courts use statutory interpretation to create new laws.

**Think**
6. Provide two examples of precedents that are used in your classroom or family. What is the advantage of having such precedents?
7. In small groups, read the information about Dr Grant and then answer the following questions:
   - (a) Which case was used as a precedent?
   - (b) Explain how precedent assisted Dr Grant in winning his case.
   - (c) Why might the court in Dr Grant’s case be bound by the decision of the *Donoghue v. Stevenson* case? After all, they were about different things — snails and underpants.

**Communicate**
8. Conduct a class discussion, the topic being: ‘Courts should determine all cases on their merit and should not have to follow precedent’. Compile a list of the main points on the board.

**Case Study**

Dr Grant’s itchy underpants

In 1936, Dr Grant of Adelaide purchased a pair of knitted underpants from a retailer. The underwear was contaminated with a chemical residue and after wearing them Dr Grant developed dermatitis, a skin irritation, which caused him great discomfort and pain.

At that time, there was no law stating that a manufacturer must produce a good suitable for the purpose for which it is being sold. Dr Grant sued the manufacturer of the underwear, Australian Knitting Mills, for compensation for suffering, relying on a decision made in a previous case in a higher court. This case, *Donoghue v. Stevenson* (1932), involved a woman who, after drinking some cordial from an opaque green bottle, noticed the rotting remains of a decomposed snail at the bottom. She became violently ill and successfully sued the drink manufacturer for injuries. Where, after all, was the rest of the snail?

She was the first person in our legal system to use successfully the duty of care principle for an action in negligence.
How laws are made: statute law

The beginnings of parliament

Our parliamentary system of government originated in England. In 1215, King John was forced by his barons to sign a document called the Magna Carta. He promised to call up all his lords by name (to discuss important matters) and to have ordinary people elected to similar meetings in certain communities. His actions gave rise in time to what are known today in England as the House of Lords and the House of Commons.

These meetings of lords and commoners were first referred to as ‘parliaments’ in 1236 (from the French word parler, meaning ‘to speak’). They were usually held to discuss the king’s need for extra taxes. At this stage, the king still always had the final say.

By 1265, the Great Council was enlarged to include two community representatives from every city and county in England.

By around 1350, parliaments were divided into two groups. The lords met in a separate place (or ‘house’) to the elected community members. In 1407, Henry IV decided that the community members (House of Commons) had to approve requests for grants of money before these requests were considered by the lords (House of Lords). By the fifteenth century, formal requests of the House of Commons, known as bills, were part of the law-making process.

Statute law

In Australia, the laws created by parliament have the highest status and must be obeyed by all people. Parliament makes most of the laws. We have one parliament at the federal level that makes laws on issues that affect the whole country. This is the Federal or Commonwealth Parliament situated in Canberra. Each state and territory has its own parliament. The New South Wales Parliament, situated in Macquarie Street, Sydney, makes laws that are applicable to New South Wales only. The State Parliament delegates some of its law-making power to local councils, which look after areas directly related to the suburbs in which people live. Once each law has been passed, it is binding on all courts and judges. Most laws in Australia are made this way.

Parliament is often referred to as the supreme law-making authority because it can virtually make laws on whatever it likes, change laws when it wants to and pass an Act to overcome the effects of precedent. Statute law will always succeed over common law and no court has the power to change it. The only exception is the High Court, which has the power to overturn a law, but only if it is unconstitutional.

Compact

Laws made by parliament are also called Acts, statutes and legislation.
Federal and state constitutions

Each parliament has a constitution, which is a document that outlines the powers of the parliament and any restrictions to its law-making authority. The constitution, therefore, is essentially the rulebook for how a parliament is to operate and a country governed. The Australian Constitution limits the powers of the Federal Parliament. State Parliament is restricted by the state’s Constitution and, to some extent, the Australian Constitution as well.

Comfact

The Australian Constitution was drawn up just before Australia became a Federation in 1901.

Parliaments can make new laws and change existing ones.

Activities

Understand
1. Draw a timeline and record the significant events in the early beginnings of parliament.
2. Where does the word ‘parliament’ come from? Why is it appropriate?
3. List the three levels of government that have law-making powers.
4. Why is parliament often referred to as the supreme law-making authority?
5. Who may overrule a statute law? What is the only reason this may occur?
6. What is the purpose of a constitution?
7. Which court has the power to settle disagreements concerning constitutional issues?

Think
8. Why do you think Section 109 was written into the Australian Constitution?

Investigate
9. Find an example of a constitution that affects you. It might be the constitution of your SRC, School Council or a sporting team. Use a word-processing application to present some of the important sections of the document. Be sure to include:
   (a) the name of the group represented by the constitution
   (b) any specific rules
   (c) the procedures involved in altering the constitution
   (d) any powers conferred to others.

10. Find a newspaper article that reports on a new law being made by parliament. Underline the key words in the article and provide a brief outline of the article.

Glossary

constitution  a document which sets out how an organisation or a country will be governed
How a bill becomes a law

Without a set of rules in a society, there would be chaos. Rules usually exist to create and maintain a sense of order. However, rules must work, or they are useless. Every country has its own laws — legal rules that can be enforced by a court of law. These laws vary according to the beliefs, attitudes and culture of a country. Most laws in Australia are made by the federal and state parliaments. In fact, making laws is their main job.

There are very definite procedures for how laws are made or changed. Before any proposed laws can become Acts of Parliament, they have to be debated and passed by parliament, and then approved by the Executive Council. During the debate, the government explains why the law is needed and why it will be good for Australia. The Opposition tries to argue why this is not the case. Let’s see, step by step, how all of this happens in Federal Parliament.

**Step 1**
A proposed new law, or changed law, is discussed in Cabinet. Often, people in Australia put pressure on the government to change something. A decision is then made on what to do.

**Step 2**
If the government decides to proceed, government lawyers are asked to draft a bill. A bill is basically a ‘first draft’ of an Act of Parliament.

**Step 3**
Copies of the bill are given to all members of the House of Representatives. The members read the material in their own time. This is known as the ‘first reading’.

**Step 4**
The bill goes through a ‘second reading’. During this stage, the responsible minister (for example, the Minister for Immigration if the bill is to do with migrants) describes the main purpose and likely benefits of the bill. Speakers from the government and Opposition say what they think about it. Debates may take weeks. Then there is a vote. If the majority vote in favour, the bill moves to the next stage.
The bill is debated again, this time bit by bit. This stage is known as the committee stage, as the debate occurs in parliamentary committees. Changes to the bill may be made.

Similar processes to those outlined in steps 3 to 6 occur in the Senate. If the Senate decides to change something, the bill is referred back to the House of Representatives for another debate and vote. Sometimes the Senate may refuse to approve a bill. If it is a money supply bill, the Governor-General calls a double dissolution of parliament (as the government cannot govern without money). If the Senate votes to approve the bill, it is sent to the Governor-General for royal assent.

**Activities**

**Understand**

1. Why do you think it is so important for a bill to be debated so often?
2. Would you say the process by which laws are made in Australia is fair? Does it give full opportunity for the people, through their elected representatives, to have their say? Justify your answer.
3. Explain the ‘readings’ a bill has to go through before it becomes an Act of Parliament.

**Communicate**

4. Roleplay the second reading in the House of Representatives of a bill for a proposed new law that the class decides is important.

**Glossary**

**double dissolution** a decision made by the head of state to dissolve both houses of parliament

**Executive Council** in Australia, a group that comprises the head of state and selected government ministers

(a) Divide up the different roles and responsibilities. Debate the bill after all class members have read a typed copy of it. Remember to ask the Speaker’s permission to speak, and to obey his or her instructions if called to order.

(b) After the debate conduct a vote by moving to the right (yes) or the left (no) of the room. Did the bill pass its second reading? How much was your opinion altered by the comments of others? Is this a good or a bad thing?
The relationship of laws to values, morals and ethics

Rules of morality and ethics
We develop a sense of what is right and wrong from the moral and ethical values of our society. For example, murder is considered a serious crime because our society believes human life is precious and should be protected. Usually society’s moral and ethical values reflect the beliefs, attitudes and values of religious institutions.

Different country, different values, different laws
Our laws in Australia are sometimes very different to those of other countries. For example, in Australia, adultery is considered morally wrong and not desirable behaviour; but because we do not consider such behaviour bad enough or damaging enough to the rest of society, it is not illegal. However, in some countries it is considered a serious threat to the stability of the family and society as a whole. In these countries, a woman found guilty of committing adultery can face the death penalty.

THE TEN COMMANDMENTS
You shall have no other gods but me.
You shall not make any graven images and worship them.
You shall not take the name of the Lord in vain.
Remember the Sabbath [seventh day] and keep it holy.
Honour your father and mother.
You shall not murder.
You shall not commit adultery.
You shall not steal.
You shall not bear false witness.
You shall not covet.

Before the arrival of Europeans in 1788, law in Australia existed as traditional Aboriginal law, passed on by word of mouth. This oral law was very important and helped maintain a stable society.

The First Fleet brought the English legal system to Australia. The British did not recognise any pre-existing Aboriginal law. Aboriginal people were expected to obey English laws, which created many misunderstandings and problems for everyone.

THE FIVE PILLARS OF ISLAM
There is only one god, Allah, and Mohammed is his Messenger.
You shall pray five times a day facing Mecca.
Fast for one month every year.
You must pay zakat [tax on property].
You must visit Mecca at least once in your life.

Christians adopted the Ten Commandments, a set of laws written down by the Hebrew lawgiver Moses in the thirteenth century BC.

Muslims adopted the Five Pillars of Islam based on the teachings of the prophet Mohammed during the seventh century BC.
Laws reflect changes in society

The law is a set of dynamic legal rules. This means that new laws develop and old ones are scrapped due to changes in social values, technology and political circumstances. For example, in the late nineteenth century, laws banned swimming in public between the hours of 6 am and 8 pm. For a woman to swim without ‘neck to knee’ bathers was also against the law.

Changing political circumstances can bring about radical changes to the law. The terrorist attacks on the World Trade Center and the Pentagon in the United States of America on 11 September 2001 sparked major changes to security laws around the world. In Australia, we now have in place strict anti-terrorism laws that give federal police significant powers to detain suspects.

New technology, which is developing at a rapid rate, can force changes to the law. For example, mobile phones that have cameras can lead to invasions of privacy. In 2003 in New South Wales, many public swimming pools banned these types of phones from change rooms because of privacy fears. Law-makers sometimes struggle to keep pace with the impact technology has on our society. Change can be so rapid that the new laws may be outdated by the time they come into force.

Often, citizens will pressure the government to amend an existing law or introduce a new one. If the government is convinced of the citizens’ argument, it will do this.

Activities

Understand
1. Using examples, explain why it is difficult to create a set of laws to reflect everyone’s values.
2. Examine the drawings showing the Christian and Muslim sets of rules.
   (a) Identify and list any of these laws you think might be found in Australia today.
   (b) List any laws that they have in common.
3. List three new laws that you would like the government to introduce in order to deal with
   (a) under-age binge drinking
   (b) violent computer games.
4. What impact did the introduction of British law have upon traditional Aboriginal law?

Think
5. Outline what you believe to be the most ethical way to behave in the following situations:
   (a) A customer is unaware that you have accidentally overcharged her. Do you inform the customer and give back the money, or do you keep it yourself?
   (b) A friend gives you the answers to the next Commerce test. He took them from the teacher’s desk. Would you accept such information?
6. When technological advances are thought to pose a threat, people expect laws to be introduced to control them. A recent example of this is stem-cell research.
   (a) Investigate the current laws dealing with stem-cell research.
   (b) Why do you think it is difficult for law-makers to deal with technological change?

Investigate
7. Research the laws of a non-Western country. Contrast Australia’s laws with those of the non-Western one. Present your information either as a PowerPoint presentation or a word-processed report.
8. Research traditional Aboriginal laws. Explain three of these laws that are different to British Australian laws.
How laws are changed

Throughout Australia’s history, people have applied pressure, through a variety of methods, to change laws. This is one of the best things about living in a democracy: individuals, either alone or as members of an organised group, have the right to pressure for change.

**Eureka Stockade and democratic rights**

During the 1840s, only males who were 21 years old and over, and who owned or rented property, were allowed to vote in the elections in the Australian colonies. Therefore, many people were prohibited from voting. The system of government was far from democratic. However, over time, as more people arrived and settled here they campaigned for change.

The pressure for change finally came to a head at dawn on 3 December 1854 at the Eureka Stockade, situated on the Ballarat goldfields. Led by Peter Lalor, the actions of the diggers (miners) at the Eureka Stockade were one of Australia’s earliest instances of a group of people joining together to apply pressure on the authorities to change the law.

The Eureka battle and the political reforms demanded by the miners eventually led to the principle of one person one vote, voting by secret ballot and voting rights for all men aged 21 and over.

**The vote for women**

During the 1880s, the vote for women became a basic demand in Australia. Thousands of women and many men participated in rallies, demonstrations and political campaigns in an attempt to change the law in order to provide equality of voting. Women’s suffrage — the right to vote — was actively pursued and, in 1884 the first women’s suffrage organisation was formed in Victoria. These suffragists — the people who supported votes for women — claimed the right to vote was a matter of justice and equality.

Eventually, in 1894, after a long and hard struggle, a new law was passed which gave women 21 years old and over the right to vote in South Australia. Other colonies followed but it was not until 1902 that women in New South Wales gained the right to vote.

**Indigenous land rights**

Sometimes laws can be changed due to the actions of one person who gains popular support for his or her cause. For example, in the late 1970s the Queensland Government claimed the Murray Islands of Torres Strait as a part of Queensland, and prohibited Islanders the use of their land and from practising traditional law. In 1982, Eddie Koiki Mabo, along with other Islanders, challenged the right of the
Queensland Government to do this. Eventually, Eddie Mabo took his case to the High Court. He argued that his people had occupied the Murray Islands for generations; well before the arrival of the British.

In 1992, in what has become known as the ‘Mabo decision’, the High Court overruled the terra nullius notion. The idea of terra nullius was a declaration in the nineteenth century by the British Parliament that Australia was not inhabited by anybody who could claim to have ownership of the land. The ‘Mabo decision’ meant that Aborigines could lay claim to Crown land where it could be proven that continued occupation and use had occurred. This new form of land ownership is known as ‘native title’.

Eddie Mabo (1936–1992). The result of the court case he initiated changed 200 years of law relating to Aboriginal land rights.

### Australia’s 2005 anti-terrorism laws

Sometimes a new law can be introduced which is not supported by everyone. For example, the London terrorist bombings in July 2005 motivated the Australian Howard government to pass some anti-terrorism laws which significantly expand police and intelligence powers.

Defending human rights: protesters against anti-terrorism laws

Many people supported the new laws. However, numerous Australians questioned the necessity of such measures, especially since they restrict some basic human rights. They fear that the government has granted the Australian Security Intelligence Organisation (ASIO) wide-ranging powers with fewer safeguards controlling their use. People suspect there will be violations of some fundamental human rights including the right to a fair trial, the presumption of innocence, and freedom from arbitrary detention. Recently, opponents to this law have campaigned to have it amended.

### Activities

#### Understand

1. What is one basic right of all people who live in a democracy?
2. (a) List the changes to the law that the diggers of the Eureka Stockade gained.
   (b) The official government flag at the time was the Union Jack. To fly any other flag was an act of defiance. What did the Southern Cross flag represent to the diggers?
3. What new law did the suffragists want introduced?
4. Which court brought down the Mabo decision? Explain why this was a landmark decision.
5. (a) What motivated the Australian government to introduce the 2005 anti-terrorism legislation?
   (b) What is the aim of the legislation?
   (c) Identify the reasons why some people are critical of the legislation.

#### Think

6. Do you support or reject the anti-terrorism legislation? Why? Share your answer with the rest of the class.
7. In small groups, imagine you were living in the 1890s. Brainstorm the arguments you would present to:
   (a) support the suffragists
   (b) oppose the suffragists.
   Select a spokesperson to present your arguments to the rest of the class.

#### Communicate

8. Design a poster from the 1890s supporting equal voting rights for women. Create a slogan and symbol that represent your cause. Display your posters in the classroom.

#### eBookplus

9. In small groups, use the library and the internet to research the following aspects of the Eureka Stockade battle. Use the Eureka weblink in your eBookPLUS to find the answers.
   (a) Write out the oath taken by the diggers.
   (b) Do you think it was appropriate that the miners used civil disobedience to achieve their objectives? Why?
   (c) Present some arguments to (i) justify, and (ii) refute, the actions taken by the miners at the Eureka Stockade.
   (d) Do you regard the Eureka Stockade as the beginnings of democracy, a short-lived glorious rebellion or a futile bloody massacre? Give reasons for your answer.
Accessing the law

One of the main functions of the legal system is to safeguard people’s rights. The legal system can perform this protective role only if people have equal access to the law. **Access** means equal opportunity for all people to make use of the legal system. If some people are unable to access the law, then they are **discriminated** against and consequently denied justice. Ideally, everyone should have equal access. Most lawyers perform a significant amount of pro bono work. This means that they represent some clients for very low fees (or even no fee at all) on the basis that underprivileged members of society deserve representation. Governments also provide the community with a range of alternative dispute resolution processes such as mediation and conciliation, which are both inexpensive and accessible. However, in reality there are a number of factors that create barriers to accessing the law.

**Cost**

Not everyone can afford legal advice and representation. Obtaining legal advice can be very expensive. Fees charged by lawyers and barristers are very high. If a legal case is prolonged or is subject to appeal, the legal costs can very quickly mount up. Often, legal aid can be difficult to obtain. This may deter people from exercising their legal rights to solve their problems.

The waiting game. Melissa Hardham, a lawyer, waits for a case to be called.

The barriers to justice
Time

The prospect of a lengthy trial is another barrier to equal access to the law. The saying ‘justice delayed is justice denied’ means that if a trial drags on for a long period then people are not treated fairly. For example, a woman who sued a tobacco company for compensation for the terminal cancer she argued was caused by cigarette smoking died before the lengthy case was settled. The case had dragged on through the court system for nine years!

While some delays are inevitable, particularly in terms of police investigation of crime scenes and the gathering of forensic material, cases should be settled promptly once all the evidence is assembled.

Procedures

When confronted with a legal issue, you face a number of problems. Firstly, because of your limited knowledge of the law, you may not even be aware that you have certain rights or responsibilities. Your access may be restricted because of your ignorance of the law. If you have to go to court, the procedures can be intimidating and confusing.

People can also be denied access to the law because they perceive that the legal system is insensitive to their needs. This is most often seen in sexual offence cases.

Language

If English is not your first language, it may be difficult to understand the legal terminology and procedures. Without the assistance of an interpreter, you may not understand what is going on during a court hearing. Even finding help from a lawyer or the translation of legal documents may pose a problem. Not being able to communicate your needs can limit your access to the law.

Activities

Understand
1. What is meant by the terms:
   (a) access
   (b) discriminate?
2. Why do some lawyers offer a pro bono service?
3. List the four barriers that people face in accessing the law.
4. Explain in your own words the expression ‘justice delayed is justice denied’.
5. Why is it important for people to have equal access to the law?

Think
6. Refer to the Comfact at left about the Aboriginal boy. Do you think the outcome of his case was unjust? Give reasons for your answer.
7. How does the present legal system unintentionally discriminate against some people?

Communicate
8. In small groups, propose some solutions to overcome the barriers that hinder people from accessing the law. Share your solutions with the rest of the class. You may wish to prepare this as a PowerPoint presentation.

Comfact

A case highlighting the problem of communication and understanding involved an Aboriginal boy who spoke only Luritja and could not understand English. The lawyer struggled with the absurdity of processing people through a system that has little meaning for them. Since the boy did not understand community service, he was unfairly jailed instead.

Glossary

access equal opportunity for all people to make use of the legal system
discriminate to treat somebody differently or less favourably because of her or his personal characteristics such as gender, ethnicity or religion
Imagine you and your friend are discovered cheating during an exam. After an investigation, the school decides to punish you by deducting 30 marks from your final score. However, your friend has only 10 marks deducted. You would probably feel unfairly treated because of the injustice of the two punishments. This example shows that the law should ensure that people who break the same law are treated in a similar way. This is known as justice.

Justice

There is an old saying that ‘all people are equal before the law’. For this to happen, laws should treat all people equally, regardless of whether they are male or female, rich or poor, white or black, young or old. This means that the interpretation and enforcement of the law should not discriminate unjustly.

However, in reality, the legal system may not always be able to provide justice for all. Consequently, there are certain groups in society that may experience difficulties in achieving equal access to the law. The main groups to experience this type of discrimination include: people in poverty; young people; indigenous peoples, especially those living a traditional lifestyle; non-English speaking migrants; women; and disabled people.

Ned Kelly — justice or injustice?

It would appear that justice should be an easy term to define. However, it can have different meanings depending on a person’s point of view. For example, take the case of the Australian bushranger Ned Kelly.

Ned Kelly had his first brush with the law at the age of 12. At 17, he had his first jail sentence. Over 13 years he stole cattle and horses, robbed two banks, and killed three police officers.

Yet, after Ned was sentenced to hang in 1880, 60,000 Victorians signed a petition to save his life. They saw him as a person who had been treated unfairly by the legal system. They respected him because they felt he fought for the rights of people who had no power. To kill him, they argued, would be unjust.

As the hood was put over his head just before he was hung, Ned is reported to have said, ‘Such is life’.

Symbols of justice

The symbols of justice attempt to reinforce the idea of fairness and equality. The symbols are:

1. the scales, which represent the legal system weighing up both sides of the argument equally
2. the sword, which symbolises the punishment to be imposed on any guilty party
3. the blindfold, which demonstrates that justice is impartial — it is not influenced by wealth, race, religion, gender or status — and that all people will be treated as equal.

Addressing issues of unequal access

Laws are often complex and you may find the legal system confusing. Therefore, when you have a legal problem you may require help, especially if you are required to appear in court. If you are in such a situation, where do you go to find the law or legal advice that may apply to your circumstances? Fortunately, there are a number of government departments that provide a wide range of services to help you access the law.
Understand

Generally, the word ‘justice’ means ‘fairness’. However, fairness is a personal idea: what is ‘fair’ depends on what each person believes is fair in a particular situation. Consider the following cases and decide whether you think the punishment is fair or unfair.

Give reasons for your answers then discuss them with other class members.

(a) A Year 8 student is suspended for three months for smoking at school.
(b) A 15-year-old is let off with only a police caution when caught shoplifting.
(c) An 11-year-old boy is not allowed to join the under-13 girls’ ice hockey team.

What has to happen so that ‘all people are equal before the law’?

Explain the symbolism attached to the:
(a) scales (b) blindfold (c) sword.

Identify those groups that may experience difficulties in achieving equal access to the law.

Think

As a class, discuss whether it is fair that you can be found guilty of breaking a law that you did not even know about.

Examine the cartoon below.

(a) Does the cartoon suggest some form of discrimination and injustice? What might this be?
(b) Write a caption for the cartoon.

Legal Information Access Centre (LIAC)
The Legal Information Access Centre (LIAC) is based at the State Library of New South Wales and operates through the state-wide public library network. The aim of LIAC is to provide access to quality legal information for the general public in New South Wales.

LawAccess NSW
LawAccess is a free service providing a wide range of information on legal and related assistance services in New South Wales. LawAccess can be contacted by phone or via their website. This free service can also be provided to people with hearing or speech difficulties, and people requiring interpreting assistance.

LawLink NSW
Use LawLink to access information provided by the New South Wales Attorney General’s Department on legal issues including:
- going to court
- resolving disputes
- the law and young people
- victims of crime
- your rights.

Legal Aid NSW
Legal Aid NSW provides legal advice and representation to people who would otherwise not be able to afford court proceedings.

Regardless of a person’s income, Legal Aid NSW will provide the applicant with free legal advice, but legal representation is available only to people on low incomes or with few assets.

One law for the rich and another for the poor

7 Use the LawLink, LIAC and LawAccess weblinks in your eBookPLUS to find out more about these services. Present a two-minute oral presentation on one area of interest selected from any of these websites.
# The legal framework

1. Match the following definitions to the words underneath the grid.

<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>The party that commences a civil action</td>
</tr>
<tr>
<td>2.</td>
<td>A process to determine whether someone committed a criminal act or caused another person a loss</td>
</tr>
<tr>
<td>3.</td>
<td>An application for a legal decision to be reviewed in a higher court</td>
</tr>
<tr>
<td>4.</td>
<td>To bring a civil action against another person for causing damage or injury</td>
</tr>
<tr>
<td>5.</td>
<td>Disorder or confusion due to the absence of government or laws</td>
</tr>
<tr>
<td>6.</td>
<td>The standard of proof required in a criminal trial</td>
</tr>
<tr>
<td>7.</td>
<td>A court official who hears cases in the lowest court of law</td>
</tr>
<tr>
<td>8.</td>
<td>To release an accused person who is awaiting trial. Another person usually guarantees to pay a large sum of money if the accused does not later appear in court on a certain date.</td>
</tr>
<tr>
<td>9.</td>
<td>A court official who has the power to make decisions on matters brought before a court of law</td>
</tr>
<tr>
<td>10.</td>
<td>A hearing in a Local Court to decide whether there is enough evidence to put a person on trial for an indictable (serious) offence</td>
</tr>
</tbody>
</table>

2. Which sort of society would you prefer to live in — one with too many laws, or one with too few? Explain.

3. List the basic rules that apply within your home. How are these rules different to laws?

4. What is the role of the court?

5. Write a brief report of a criminal court case using the following words:

   - beyond reasonable doubt
   - prosecution
   - judge
   - guilty
   - appeal
   - counsel for the defence
   - murder

6. (a) Draw a diagram to show the structure of the court hierarchy.
   (b) Explain why a hierarchy is necessary for the system of appeals to operate.

7. In a court, who wears a wig and is addressed as ‘Your Honour’?

# Areas of law

8. What is the difference between:
   (a) criminal and civil law
   (b) indictable offences and summary offences
   (c) common law and statute law?

9. Provide examples of two laws that reflect the values of our society.

10. Explain how laws can be changed.

11. Should decisions made by judges 50 years ago set a precedent for what happens today?

# Using the legal system

12. What is meant by the term ‘access’?

13. What factors create barriers to accessing the law?

14. Identify those groups in society that may have trouble in achieving equal access to the law.

15. You can be found guilty of breaking a law even if you did not know about it. Is this fair? Why?

16. List three government websites that provide information about legal issues.

17. What is meant by the statement, ‘justice delayed is justice denied’?

18. Draw the figure used to represent justice. Highlight and explain the three symbols of justice.

19. What is the role of the Legal Aid Commission?
20 Explain the meaning of the terms in italics in the following passage.

Under Australian law, the burden of proof is on the prosecution. A person is presumed innocent until his or her guilt is established at the trial. Therefore, while the prosecution must prove the guilt of the accused, the defence does not have to prove the accused’s innocence. In addition, for the jury members to convict the accused, they must be satisfied of guilt beyond reasonable doubt.

If the jury returns a verdict of not guilty, the defendant is free to leave the court. If the verdict is guilty, consideration is given to the most appropriate sentence. If there is a hung jury another trial is conducted.

21 Examine the following diagram.

(a) What is meant by the statement ‘justice delayed is justice denied’?

(b) What injustices might occur if a criminal case runs for an extended period?

(c) Identify the problems excessive delays may cause the victim and the accused.

22 Examine the following illustration of a criminal proceeding. Outline the role of each person named.

23 ‘Whenever the legal system discriminates against people it has failed in its main duty.’ Discuss.

24 Some people can be excused from jury duty, such as those who are too ill or cannot travel. Others, such as those who work in the legal system, are not allowed to be jurors. Who else, do you think, should be excused from jury duty or should not be allowed to sit on a jury? Give reasons for your choice.

25 Over a two-week period, collect four newspaper articles that cover a range of offences in the District and Supreme courts and complete the table, as shown below.

26 There are many different punishments that can be used, depending upon the severity of the crime, the circumstances and the age of the offender. One punishment used in the Australian Capital Territory was called ‘shaming’. It involved a 12-year-old charged with shoplifting being forced to wear a T-shirt with the message ‘I am a thief’ on it. Do you think this is an appropriate method of punishment? Why?
Making laws

Scenario and task
You are a Member of Parliament. The local council responsible for much of your electorate has recently opened a new sporting ground in the area. Although it should have been a positive addition to your electorate, the new sporting ground has brought with it a range of new issues. The biggest issue is that of the significant increase of alcohol-related offences by young people under the age of 25. These offences are being highlighted in the local media. Unfortunately, the number of offences has risen so much that, now, the details are being used by the country’s media networks as the best example of the urgent need to increase the legal age of drinking from 18 to 21.

To satisfy your constituents and your political party, you must take action. You will need to develop a policy for your party on the issue of ‘Increasing the legal drinking age from 18 to 21’. You might not agree that the drinking age should be increased to 21, but your party needs to be seen to be making positive change. So, if you don’t support this suggestion, you must introduce a different party policy that will target binge drinking in Australia’s youth. As a Member of Parliament you must provide a report to your party detailing the arguments for and against your policy. You will also need to make sure that a new or amended law is passed — so you will be required to describe the process that will have to be followed to secure the passage of this law through parliament.

You are provided with a newspaper article published on the issue, an excerpt from a radio talkback show and letters from two of your constituents who are passionate about different sides of this argument.
**Process**

1. Open your ProjectsPLUS application for this chapter, located in your eBookPLUS. View your Project Brief, click the ‘Start Project’ button and then set up your project group. You can complete this project individually or invite other members of your class to form a group. Save your settings and the project will be launched.

2. Navigate to your Media Centre and read the newspaper article and letters from your constituents, and then listen to the talkback radio segment.

3. You now need to complete research on the topic of ‘Increasing the legal age of drinking from 18 to 21’, and enter your findings as articles in your Research Forum under each of the following preloaded topics:
   - **Medical** reasons for increasing the age of drinking
   - **Social** consequences of alcohol abuse
   - **Financial** repercussions of alcohol abuse
   - **Political** reasoning

   The information that you gather will be presented as **for** and **against** arguments. If working in a group, you can rate and comment on each other’s articles. You may also like to add additional topics to your Research Forum.

   When your research is completed, print your Research Report, and then open the ‘Party Policy’ template in your Media Centre and decide on a policy for your party. Use your Research Report to summarise the key issues for and against your policy and outline these on the ‘Party Policy’ template.

Next, write a speech based on your research. Your audience will be the political party that you represent. In the speech, you will need to present your new policy and the reasoning behind it. This should be approximately 1 page long. Your speech needs to be no longer than three minutes. It could be delivered to the class at the end of your project.

Finally, complete an annotated diagram demonstrating the procedures your bill will go through in order to become a law. On the last page of your ‘Party Policy’ template, a properly referenced **Bibliography** needs to be completed. An example is provided.

Hand in your completed ‘Party Policy’ document to your teacher, along with a print out of your Research Report.

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**Media Centre**

Your Media Centre contains:
- a newspaper article
- a talkback radio segment
- letters from two constituents
- a ‘Party Policy’ template

Your Project Brief includes a video lesson with a Member of Parliament.

Your ProjectsPLUS application is available in this chapter’s Student Resources tab inside your eBookPLUS. Visit [www.jacplus.com.au](http://www.jacplus.com.au) to locate your digital resources.