

Week 2 Lecture Notes

Part 1 - Legal Foundations

Law: a device to regulate the economic and social behaviour society

Characteristics of a legal system:

- Clarity and certainty
- Flexibility
- Fairness
- Accessibility

Sources of the law:

Common Law

- Case law
- Precedent
- Unwritten law

Statute Law

- Legislation
- Acts of parliament
- Enacted law

Statute law overrules common law in a clash

International law

Public international law: regulates the conduct between nation states

Private international law: private individuals engaged in international transactions

Substantive law: actual rights and duties that people have under the law

Procedural law: concerned with the rules of civil and criminal procedure and evidence that must be followed

Common Law

Civil law

- An action brought by one individual against another
- The emphasis is on remedies
- The standard of proof is 'on the balance of probabilities'

Criminal law

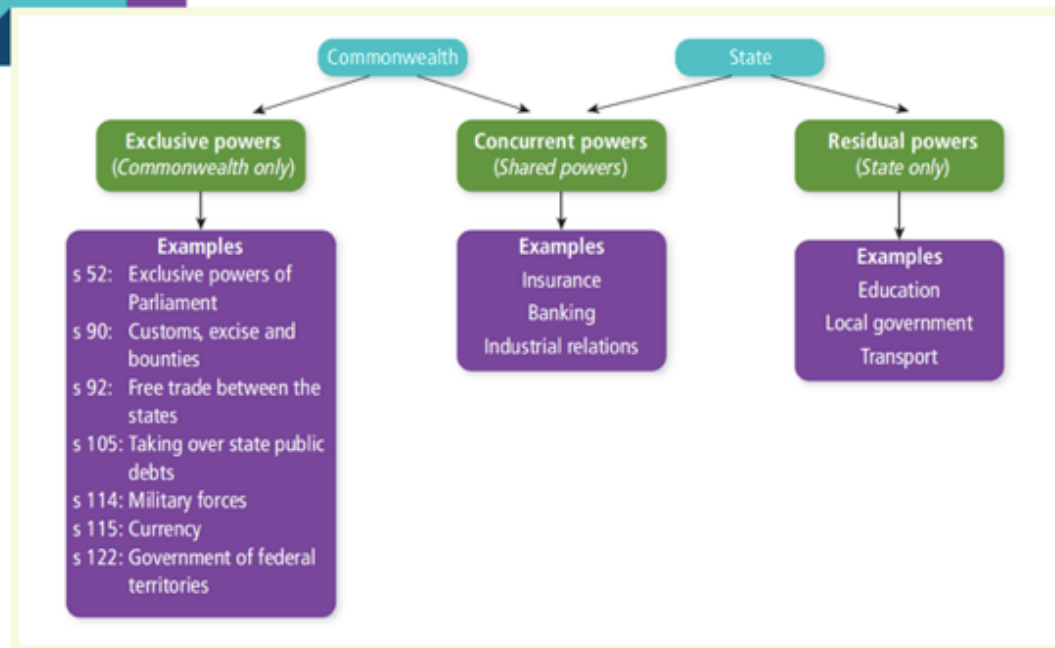
- Actions brought by the Crown/prosecution (state) against an accused individual
- Emphasis on punishment and deterrence
- The standard of proof is 'beyond reasonable doubt'

Part 2 - Origins of Australian Law

Section 51: Cth Parliament has power to make laws in 39 areas. Most are concurrent powers, i.e. they can also be exercised by States

If there's conflict with State laws, **Section 109** applies

Section 52: Cth Parliament has some exclusive powers e.g. defence



Changing the constitution:

To change the Constitution requires a referendum: **section 128**

- Approved by absolute majority of both Houses of Parliament or passed twice in one House; and
- Approved by a majority of the voters and there is majority approval in at least four states; and
- The Governor General gives the royal assent

The power of the territories:

- Have a form of self-government and an elected Legislative Assembly
- But have not achieved state status

The doctrine of separation of powers:

- Seeks out the exercise of the legislative, executive and judicial branches of government exclusively to their respective institutions (Parliament, Cabinet (executive), and the courts)
- Provides that the legislature is the supreme law-maker