

Foundation Studies Business Environments

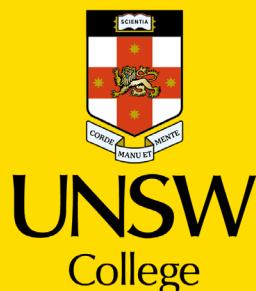
Part 2: The Legal Environment of Business

Unit 2

The Australian Legal System

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Overview

- The Australian legal system
 - Common law legal system
 - Australian court hierarchy
 - Doctrine of precedent
- Introduction to the IPAC method

The Australian Legal System

- Common law system as a system of law
- Distinct from civil law systems
- Developed in the United Kingdom
- Main feature: Judges' decisions in pending cases are informed by the decisions of previously settled cases (See *Doctrine of precedent*)
- Australia was a British colony

What is a Court?

- Place where legal disputes are heard and resolved through a legal process
- Courts are ranked in a hierarchy from the lowest to the highest level of authority in the legal system

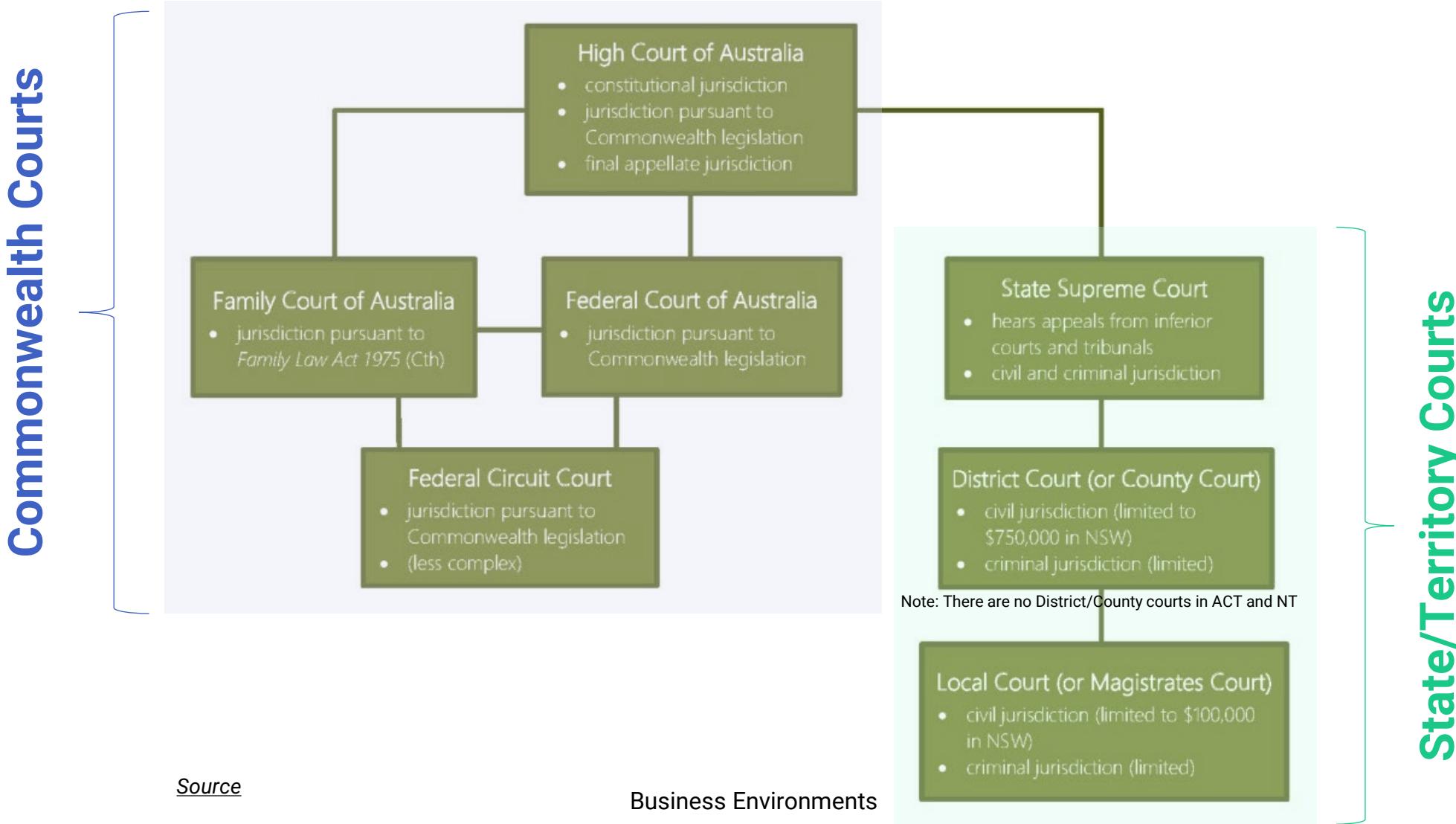


Court Hierarchy

The court hierarchy has three significant purposes:

- Allows different forms of hearing according to the seriousness of the case
 - Administrative convenience and economy of operation
- Provides a system of appeals
- Instrumental in building up precedent

Basic Court Hierarchy in Australia



Overview of Australia's Court Hierarchy

- The court hierarchy in Australia has its roots in the country's colonial history and the legal traditions inherited from the United Kingdom.
- In Australia, **each state and territory has its own judiciary hierarchy**, which operates independently of the federal judiciary.
- When Australia became a federation in 1901, the Constitution established a **federal judiciary**, including the **High Court of Australia**, to oversee matters of federal law and to serve as the **ultimate appellate court**.
- Despite the creation of a federal judiciary, **each state and territory retained its own court system**, maintaining a hierarchy that includes Local/Magistrates' Courts, District/County Courts, and Supreme Courts.
- The **High Court** is at the **top of the hierarchy of federal courts**. It is also at the **top of the hierarchy of state courts**.
 - Decisions of state Supreme Courts may be able to be appealed to the High Court.

Overview of Australia's Court Hierarchy

Commonwealth courts

- **High Court of Australia**
 - The highest Court in the Australian Court hierarchy.
 - The final Court of Appeal in Australia.
 - Hears matters involving disputes about the interpretation of the Australian Constitution as well as final appeals of criminal and civil matters from all Courts in Australia.
- **Federal Court of Australia**
 - A superior Court with jurisdiction to hear civil disputes governed by Federal laws.
 - Hears matters on a range of different subject matter including bankruptcy, corporations, industrial relations, native title, taxation and trade practices laws, and hears appeals from decisions (except family law decisions) of the Federal Circuit Court.
- **Federal Circuit and Family Court of Australia**
 - Hears less complex disputes than the Federal Court of Australia.
 - Its jurisdiction extends to matters including family law and child support, administrative law, admiralty law, bankruptcy, copyright, human rights, industrial law, migration, privacy and trade practices.

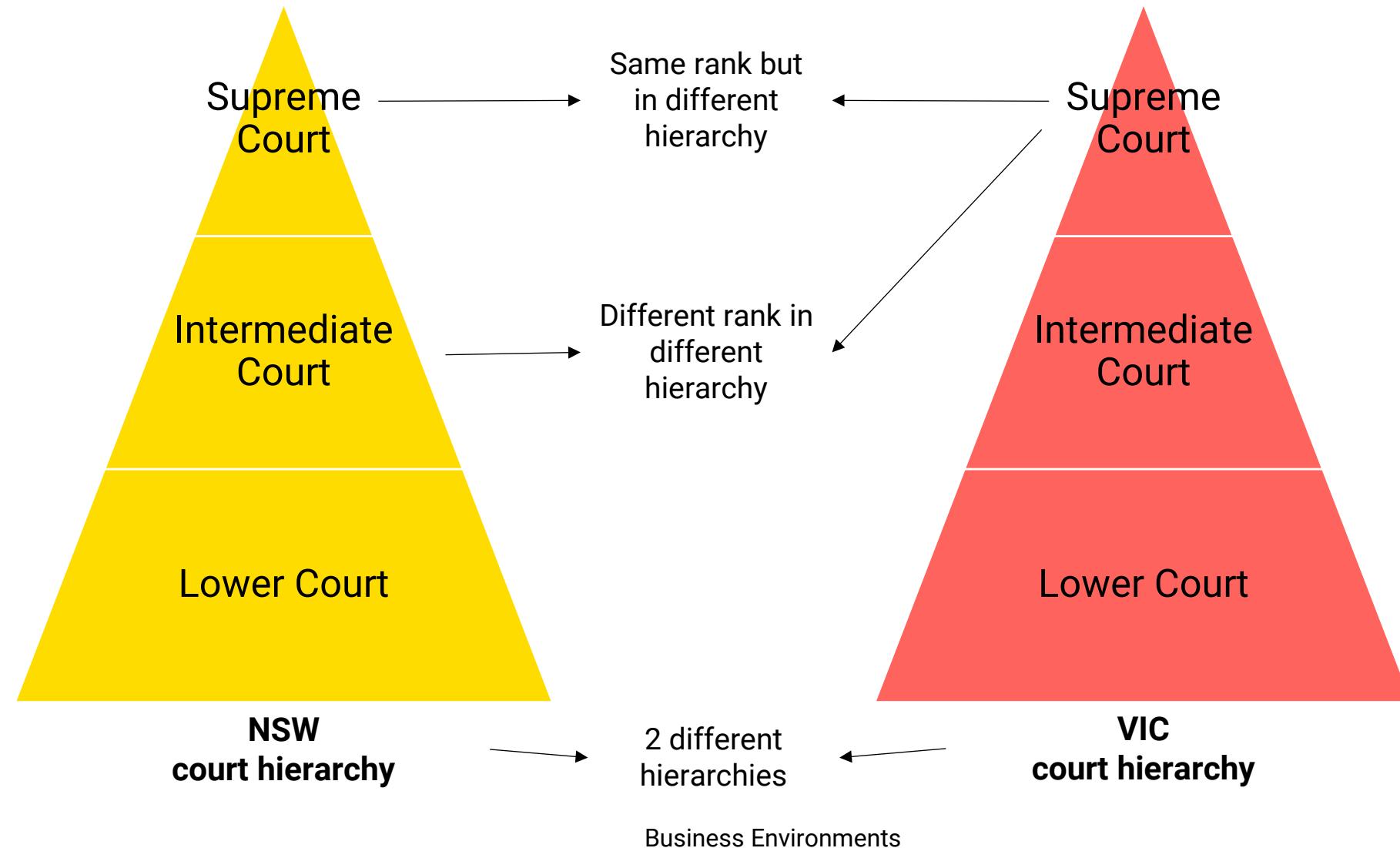
Overview of Australia's Court Hierarchy

State and territory Courts and Tribunals

The Court hierarchy in each state and territory in Australia varies. All states and territories have a Supreme Court, which is the highest Court within that state or territory. These Courts also have appeal divisions, known as the Court of Appeal (in civil matters), or the Court of Criminal Appeal (in criminal matters). In most Australian states and territories, the Court hierarchy is as follows:

- **Supreme Court**
 - The highest State Court (in NSW it deals with all civil claims over \$750,000). It also hears serious criminal matters.
- **District Court (or County Court)**
 - Deals with civil claims (in NSW between \$100,000 and \$750,000) and all motor accident cases.
 - Hears less serious indictable criminal offences (except murder, treason and piracy).
 - Determines all appeals from the Local Court.
- **Local Court (or Magistrates Court)**
 - Has criminal and civil jurisdiction, dealing with lesser value civil claims (of up to \$100,000 in NSW) and criminal summary offences.

Overview of Australia's Court Hierarchy



Doctrine of Precedent

Rules of the Doctrine of Precedent

1. Lower courts in a judicial hierarchy are *bound* by earlier decisions of courts higher up in the **same** judicial hierarchy
2. A decision of a court in a different hierarchy or lower in the same hierarchy may be *persuasive* but will not be binding
3. Generally, a court is not bound by its own decisions (*persuasive*)
 - A court can overrule its previous decisions – when a decision is clearly wrong or in the interest of justice

Doctrine of Precedent

- Promote **certainty**, **consistency** and **predictability** within the legal system/in judicial decision-making

Doctrine of Precedent

Binding precedent

- Decisions of a previous case of a higher court in the same judicial hierarchy that the lower court is obliged to follow
- Example:
 - Decisions of the High Court are binding on all courts in Australia

Doctrine of Precedent

Persuasive precedent

- Decisions of a superior court in a different/same level of hierarchy have persuasive value
- Seriously considered; may or may not be followed
- Examples:
 - Decisions of Supreme Court of NSW persuasive but not binding on decisions of Supreme Court of Victoria
 - Decisions of overseas courts (e.g. UK) are persuasive in Australia

Doctrine of Precedent

Ratio decidendi

- ‘The reason for the decision’
- Binding

Obiter dicta

- ‘Remarks in passing’
- Not binding; may be persuasive

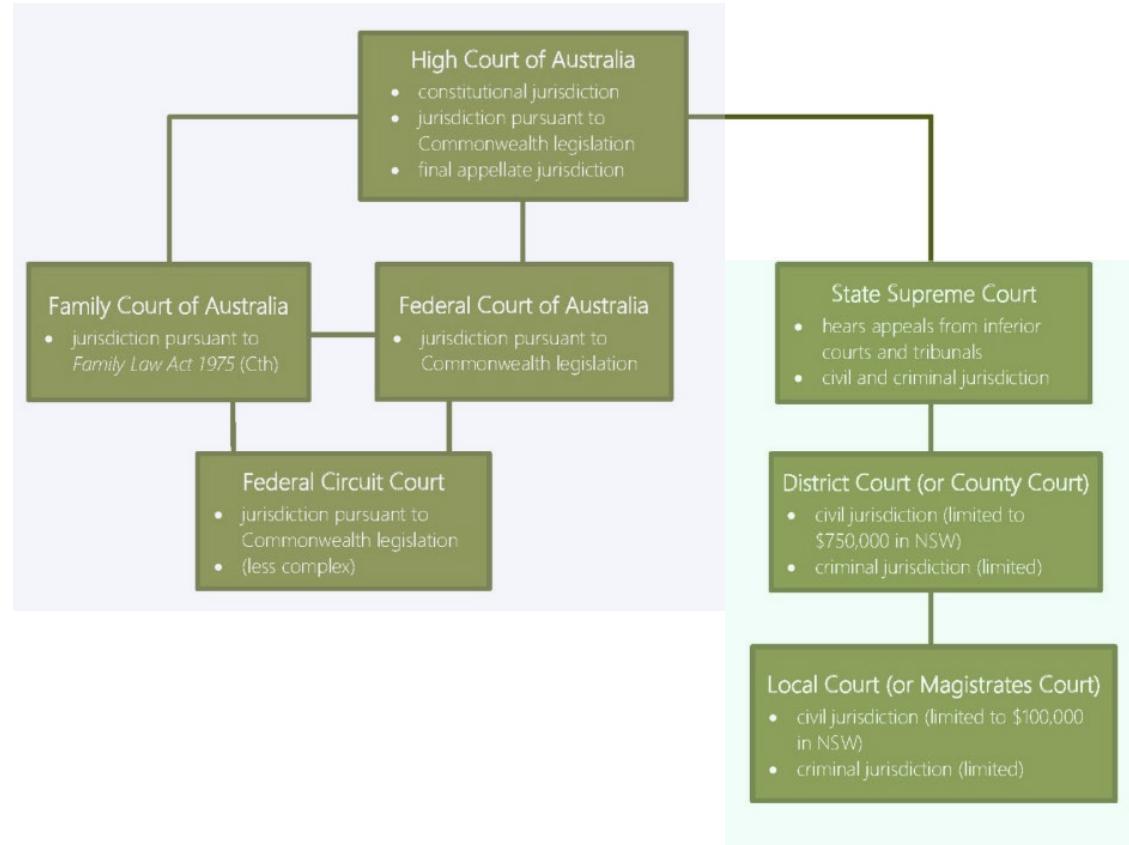
Doctrine of Precedent

Binding or Persuasive?

A case came before the Supreme Court of Victoria which handed down a decision.

The impact this decision has on later decisions by:

1. the Victorian District Court is _____.
2. the Supreme Court of NSW is _____.
3. the High Court of Australia is _____.



Answering Problem-Type Legal Questions



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Answering Problem-Type Legal Questions

- Legal problem questions:
 - Hypothetical fact situations
 - Resolve issue/s involve more application of more than one legal principle
- The **IPAC (Issue, Principles, Application, Conclusion)** method is a structured approach used in legal studies to analyse and answer legal problem questions. It helps ensure that your responses are clear, logical, and comprehensive.
- This method helps ensure that your answers are organised, thorough, and demonstrate a clear understanding of the legal concepts involved.

IPAC

Issue/s (I)

- Identify the legal issue or question that arises from the facts of the case. This involves pinpointing the specific legal problem presented by the facts of the case.
- This step is crucial because it sets the direction for your entire analysis.
- **How to identify:** Look at the facts of the case and determine what legal question arises. Ask yourself what the main legal problem is. Sometimes, there might be multiple issues, so it's important to identify and address each one separately.

IPAC

Principle/s

- State the relevant legal principles or rules that apply to the issue/s. This includes citing statutes and/or case law that govern the issue/s.
- **How to state:** Once you have identified the issue, determine which laws or legal principles are relevant. This might include sections of legislation, judicial precedents, or legal principles that govern the issue.

IPAC

Application

- Application is the heart of your legal analysis. This is where you apply the legal principles to the facts of the case. This is where you analyse how the rules interact with the specific circumstances presented. It's about demonstrating how the law operates in the context of the given facts.
- **How to Apply:**
 - Match facts to law: Compare the facts of the case to the requirements of the legal principles. Discuss how the facts meet or do not meet these requirements.
 - Use evidence: Refer to specific facts from the case to support your analysis. This might include actions, statements, or circumstances that are relevant to the legal principles.
 - Analyse both sides: Consider arguments for both sides if the issue is contentious. This shows a balanced and thorough analysis.
 - *Integrating Principles and Applications: Immediately follow the principle with an application. For each new principle, repeat the process.*

IPAC

Conclusion

- The conclusion is where you provide a conclusion based on the application. This should answer the legal question posed in the issue section, summarising the outcome based on your analysis.
- **How to conclude:** Based on your application, state the likely outcome. This should be a clear and concise statement that directly answers the issue.

IPAC

- An effective answer to a legal problem question requires **application** of legal rules to a given factual scenario.
- A logical and persuasive **application** of law should provide a **conclusion** that is supported by legal authority that is, cases and/or statutory provisions.

Why Application is Key

- A good application involves critical thinking as the process encompasses evaluating different perspectives, considering counterarguments, and making reasoned judgments.
- In legal problem-solving assessments, the Application section typically carries the most marks.
- Breakdown of Marks
 - Issue:
 - Marks: Usually a smaller portion.
 - Reason: Identifying the issue is crucial but often straightforward. It sets the stage for your analysis.
 - Principle:
 - Marks: Moderate portion.
 - Reason: Stating the relevant legal principles shows your understanding of the law. It's important but generally involves citing established rules or precedents.
 - Application:
 - Marks: Largest portion.
 - Reason: This is where you demonstrate your analytical skills. Applying the law to the facts requires critical thinking, detailed analysis, and the ability to argue both sides if necessary. It's the most complex part and shows your depth of understanding.
 - Conclusion:
 - Marks: Smaller portion.
 - Reason: Summarising your findings is important for clarity, but it's usually a brief section that directly follows from your application.

Tips for Using the IPAC Method

- Be methodical: Follow the IPAC structure strictly to ensure your analysis is logical and easy to follow.
- Practice: The more you practise using the IPAC method, the more natural it will become. Try applying it to different legal scenarios to build your confidence.

Why You Should Not Rely on AI

Reasons why relying on AI to write for you can be detrimental to your learning

- While AI can be a helpful tool, it's crucial for students to engage in the writing process themselves.
- Development of critical thinking skills
 - Analytical abilities: Writing assignments require students to analyse information, form arguments, and draw conclusions. This process is essential for developing critical thinking skills.
 - Problem-solving: Engaging with complex topics and figuring out how to articulate thoughts clearly helps students become better problem-solvers.
- Improvement of writing skills
 - Practice makes perfect: Writing is a skill that improves with practice. The more students write, the better they become at organising their thoughts, structuring their arguments, and expressing themselves clearly.
- Understanding and retention
 - Deep learning: Writing about a topic requires a deep understanding of the material. This process helps students retain information better than if they were to simply read or listen to it.
 - Engagement: Actively engaging with the course material through writing helps students connect with the course content on a deeper level.
- Academic integrity
 - Original work: Submitting work written by AI is considered academic dishonesty. It's important for students to produce their own original work to maintain academic integrity.

End of Lecture

Next week:

The Legal Environment of Business: Choice of Business Structure



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