

The Australian Legal System

Part 2: The Australian Legal Environment for Business

Unit 2: Week 3 Tutorial

Learning Objectives

At the end of this tutorial, you should be able to:

- Outline the operation of the Australian legal system.
- Understand the basic layout of the Australian court hierarchy.
- Explain and apply the doctrine of precedent.
- Identify and understand the components of the IPAC method.
- Apply the IPAC method to resolve a legal problem.
- Develop critical thinking and collaboration skills through group work and presentations.

Before this tutorial, you should have:

- Attended Unit 2 lecture
- Read the assigned Readings
- Completed the Tutorial Questions
- Read the In-Class Collaboration and Presentations questions

During this tutorial, you will:

- Demonstrate an understanding of the topic in the unit
- Participate in tutorial activities by:
 - Contributing to group discussions
 - Asking questions
 - Listening actively
 - Working collaboratively with other students
- Complete the In-Class Collaboration and Presentations activity

After this tutorial, you should:

- Consider attending one of the scheduled consultations and attempt to resolve any questions that you have as soon as possible.



Readings

The Australian Legal System

The legal system is the framework within which the law operates. It is a broad term that describes the laws we have, the process for making those laws, and the processes for making sure the laws are followed. All countries have a legal system of some sort. Different legal systems have evolved in different parts of the world. Australia is a common law country – its legal system is based on the English common law system because Australia was settled as a British colony in 1788.

The Australian political and legal system is based upon a parliamentary democracy in which elected representatives make laws on behalf of the citizens. The people of Australia elect representatives from among Australian citizens who will have the role to make, change as well as vote on laws in parliament. It is these laws that are the basis of the legal environment within which business is conducted. The Australian legal system is based on a fundamental belief in the rule of law, justice and the independence of the judiciary. All people, Australians and non-Australians alike, are treated equally before the law and safeguards exist to ensure that people are not treated arbitrarily or unfairly by governments or officials.

Principles such as judicial precedent and the separation of powers are fundamental to Australia's legal system. (See Unit 1)

The **common law system**, as developed in the United Kingdom, forms the basis of the Australian legal framework. It is distinct from the civil law systems that operate in Europe, South America and Japan, which are derived from Roman law. Other countries that employ variations of the common law system are the United States of America, Canada, New Zealand, Malaysia and India. The chief feature of the common law system is that judges' decisions in cases before them are informed by the decisions of previously settled cases. (See below, Doctrine of Precedent)

Hierarchy of Courts

Courts are central to the system of law in Australia as they provide a forum for resolution of legal disputes between individuals (including corporate entities), or individuals and the government. Legal matters and legal disputes are heard in a wide variety of courts. The court structure provides that the most serious and costly cases (in terms of seriousness of offence or value of money involved) are heard at the highest level by the 'superior' courts, while minor offences, which can be solved quickly, are dealt with in readily accessible 'inferior' courts. In between there are the 'intermediate' courts.

The hierarchy of courts exists for several reasons:

1. For administrative convenience and operational efficiency, cases of a similar nature are handled by specialised courts.
2. The hierarchical structure allows each court to focus on specific types of cases.
3. It provides a mechanism for correcting errors made by judges and juries, as appeals can be made to higher courts. This also ensures that superior courts oversee and supervise the functioning of inferior courts.

Magistrates' courts – or inferior courts, local courts, courts of summary jurisdiction or courts of petty sessions – are set up under Commonwealth, state and territory Acts to handle small civil and criminal matters. They handle most of the legal disputes going before Australian courts and provide an accessible location for civil and criminal cases.

Intermediate courts – the District Court or County Court – exist in all jurisdictions except Tasmania, the Northern Territory and the Australian Capital Territory (ACT).

The state supreme courts are 'superior' (higher) courts, compared to the 'inferior' (lower) courts. Supreme courts handle the most serious criminal cases such as murder and drug charges.

The Commonwealth Government has developed the federal court system including the:

- Family Court of Australia
- Federal Circuit Court of Australia
- Federal Court of Australia, and
- High Court of Australia.

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, because decisions of state Supreme Courts may be able to be appealed to the High Court.

The higher in the hierarchy a court is, the greater the authority their decisions have for other courts. (See below, *The Doctrine of Precedent*)

Judicial Decisions

In common law systems, like Australia's, the legal system is shaped not only by statutes passed by Parliament but also by court decisions. This aspect of law is referred to as **unenacted law** (See Unit 1, *Sources of Law*), where legal principles and rules are developed through judicial rulings. Judges interpret existing laws and apply them to cases that come before them, and these decisions, once published as law reports, form part of the legal framework.

To ensure consistency and fairness, court decisions are published in law reports. These reports provide information on how courts interpret laws, setting a foundation for future decisions. Judges issue written decisions that include both the reasoning behind their verdict and additional commentary. Understanding how these components function within a judgment is essential for understanding the way courts establish legal precedents.

Ratio Decidendi and Obiter Dicta

Within a judgment, there are two critical components: ratio decidendi and obiter dicta.

Ratio decidendi

The ratio decidendi (Latin for 'the reason for the decision') is what the case stands for (its proposition). This makes the case a precedent for the future. This part of the judgment establishes the legal principles applied to the facts of the case and serves as the binding precedent for future cases. Courts are required to

follow this reasoning when dealing with cases that have similar facts or legal issues, ensuring that the law is applied consistently.

Obiter dicta

In addition to the ratio decidendi of a case, the judgment may contain observations or statements by the judge that are not essential to the decision. These are known as obiter dicta (sayings by the way), often abbreviated as 'dicta'. A judge can hypothesise in dicta, and can also raise examples and comparisons in dicta. Because dicta are observations, they are not binding as precedents. While obiter dicta is not binding on future cases, it can still be influential and may be referenced in later judgments for its persuasive value, especially when it is written by a superior court.

The doctrine of precedent

The doctrine of precedent is a fundamental principle in common law systems, ensuring that legal decisions are consistent and predictable over time.

According to this doctrine, a court lower in the same court hierarchy is bound to follow a precedent established in earlier cases when deciding new cases with similar facts or issues (like cases should be determined in a like manner). A precedent (the ratio decidendi of a previous case decision) will be used as an authority for deciding a later legal case which involves a similar set of facts. A judge who does not apply a relevant precedent is legally 'wrong' and the judge's decision may be reversed if there is an appeal to a higher court. A decision which does not follow precedent may be overruled if there is an appeal to another court of the same or higher status in the court hierarchy

The doctrine relies heavily on two key types of precedent: binding or persuasive precedents.

- **binding** – a binding precedent is the ratio of a case decided by a court of a higher level in the court hierarchy. For example, decisions made by the High Court of Australia are binding on all lower courts.
- **persuasive** – a persuasive precedent does not bind the court but can influence its decision. Courts may consider decisions from lower courts, courts in other jurisdictions, or legal commentary, especially if they provide useful insights. This is how decisions of overseas courts (e.g., the USA and Europe) can influence Australian law, but they are not binding precedents in Australia.

The doctrine of precedent upholds the principle of **stare decisis**, meaning "to stand by things decided." This ensures stability and fairness in the legal system by maintaining that like cases are treated alike.

Guidelines for Answering Problem-Type Questions

When answering legal problem questions, students will be required to use the **IPAC (Issue/s, Principle/s, Application, and Conclusion) method**. IPAC is a well-established method that is widely used to solve legal problem type questions often used in assessments. It is also referred to as IRAC (Issue/s, Rule/s, Application, and Conclusion) and MIRAT (Material facts, Issue/s, Rule/s, Application, and Tentative conclusion).

IPAC

Problem questions are usually hypothetical fact situations sometimes involving more than one area of the law or more than one legal principle in a specific area of the law. When you are confronted with a legal problem in an examination situation or in an assignment, it is recommended to write the answer in a systematic way. There is a helpful acronym that can be used to describe the basic approach to solving a legal problem: **IPAC**, which stands for: **Issue/s, Principle/s, Application** and **Conclusion**. This is how the IPAC approach works:

Issue/s: Identify the key legal issue or issues, that is, what the parties are arguing about. To do that you have to have a clear picture of the order of events, and how they fit together. A question in an examination or assignment comprises a set of facts followed by instructions (e.g.: “Advise John”). It is possible that not all facts are relevant to answering the question. You have to ascertain which facts are relevant and the types of law (for example, contract law or which aspect of contract law) that apply to those facts.

Principle/s: The second major step in legal problem solving is to state the legal principle or principle/s that are applicable to the facts. Students should define the general concept before stating the relevant legal principle/s. You need to make a decision about which legal principle or principle/s are relevant here. Discuss, where applicable, the legal authority for statements of legal principle/s you have made. This can be done by reference to the appropriate section of a relevant statute and/or appropriate case law.

Application: The third step is applying the law to the facts. This step involves explaining how the law or legal principle/s apply/ies to the facts given in the current problem. This is an important step as it explains why and how the law applies to the facts. The facts of a given problem may not be sufficiently detailed to fit neatly within a given rule or principle/s. You may not have to consider the merits of one party’s case and also consider the arguments of the other side even though the question requires you to advise only one party. Here you have an answer that is not clear-cut so that alternative applications are recommended.

Conclusion: A conclusion should be provided and affirmed on the basis of your answer. A good conclusion is a proposition inferred from the answer you have made. This is where you give your overall summing up, linking facts and legal principle/s together. The examiner is interested in the way you deal with points of law and arguments raised by the question and you are assessed on this basis. It is a good idea to have your conclusion firmly in your mind and then make sure each step of your argument leads to that conclusion. Link the conclusion to the issue identified earlier in the response.

It is nevertheless important to point out that there is often no right or wrong answer to a question. You are assessed on your ability to identify the key issues and your analysis of the relevant principle/s of law that apply to those issues. A problem question may not give you all the facts you require to solve the problem, although you should make these in the context of the facts given in the problem.

Writing a Response Using IPAC

When answering problem questions using the IPAC method, students should **not** write the headings “Issue”, “Principle”, “Application” and “Conclusion” in their responses.

These headings are merely a way to guide students to structure their answers when answering problem-based legal questions. These headings appear in the tutorial to help students understand how to use the IPAC method. These headings no longer appear in the *Tutorial Guides* from Unit 6 onwards. Students should be familiar with the use of the IPAC method by Week 6, structuring their response to a problem question in a clear logical manner.

For example:

Students should <u>not</u> write like this:	Students should write like this:
<p>Issue/s:</p> <p>Is there an agreement between X and Y for the sale of the computer?</p> <p>Principle/s:</p> <p>Acceptance must be made in reliance on the offer.</p>	<p>The issue is whether there is an agreement between X and Y for the sale of the computer.</p> <p>The first requirement for a valid contract is an agreement, which consists of an 'offer' and an 'acceptance'...</p> <p>Acceptance must be made in reliance on the offer...</p>

How to Use Case Law / Precedent

When **answering** problem questions using the **IPAC method**, students need **not** explain the entire relevant case (facts, issue and decision) each time when they are answering **problem questions** in the **assessments** and **examination**.

The following are required:

Under **Principle**:

- define the general concept,
- identify the relevant case, and
- state the legal principle established in the case, and
- able to state the rule as applicable to the facts in *the* case (similar to decision but the decision is explained)

Under **Application**:

- apply the legal principle to the given facts in the problem/question

For example:

Under **Principle**:

Salomon v Salomon & Co Ltd established that a company, upon incorporation, is generally considered to be a legal entity separate from its shareholders, owners and members. In that case, Salomon & Co Ltd was properly incorporated, it was a separate legal entity, the corporate veil blocked creditors from accessing Mr Salomon's private funds/assets to repay the company's debts.

2. **Full case citation** is **not required** for **assessments, including final examination**.

For example:

"Donoghue v Stevenson" would suffice.

A Worked Example Using IPAC

Fact scenario:

XYZ Ltd was incorporated by Mr. A, who owns 90% of the shares, and his family members, who own the remaining 10%. The company was established to operate a retail business. Over the years, XYZ Ltd took out several loans to expand its operations. Unfortunately, due to poor market conditions and mismanagement, the company started incurring significant losses.

Eventually, XYZ Ltd went into liquidation, unable to pay off its debts. The creditors, facing substantial financial losses, sought to hold Mr. A and his family members personally liable for the debts of the company. They argued that Mr. A's significant control over the company and the close family ownership structure should make the shareholders personally responsible for the company's obligations.

Issue:

- What is the main legal question or problem that needs to be resolved?
- Identify the specific issue in dispute.
- **Example:** Can the shareholders of XYZ Ltd be held personally liable for the debts of the company?

Principle:

- What are the relevant laws or legal principles that apply to this issue?
- State the rules or legal principles that govern the issue. This includes relevant statutes and/or case law.
- **Example:** The principle established in *Salomon v Salomon & Co Ltd* states that a company is a separate legal entity from its shareholders. The court held that the Salomon & Co Ltd is a separate legal entity, and Mr. Salomon was not personally liable for the company's debts. This means that the company itself is responsible for its debts and obligations, not the shareholders.

The **Application** section is crucial as it bridges the gap between the legal principles and the facts of the case. Here are some guidance and examples to help you understand how to effectively write this part:

Application

- How do the legal principles apply to the facts of the case?
- Analyse how the rules interact with the specific facts. Clearly explain how each fact relates to the legal principles you have identified.
- *Integrating Principles and Applications: Immediately follow the principle with an application. For each new principle, repeat the process.*

Detailed Guidance to Application

1. Restate the facts:

- Begin by briefly restating the relevant facts of the case in your own words. This helps to set the context for your analysis.
- **Example:** In this case, XYZ Ltd was incorporated by Mr. A, who owns 90% of the shares, and his family members, who own the remaining 10%. The company has recently gone into liquidation, owing significant debts to various creditors.

2. Link facts to principles:

- Clearly explain how each fact relates to the legal principles you've identified.
- **Example:** According to the principle of separate legal entity, XYZ Ltd is considered a distinct legal person from Mr. A and his family members. This means that the debts of XYZ Ltd are the responsibility of the company itself, not its shareholders.

3. Analyse each element:

- Break down the legal principle into its elements and apply the facts to each element.
- **Example:** XYZ Ltd was duly incorporated and thus is a separate legal entity. The shareholders, including Mr. A, are not personally liable for the company's debts because the company is a separate entity.

4. Consider counterarguments:

- Address any potential counterarguments that could be raised.
- **Example:** Creditors might argue that Mr. A should be personally liable due to his significant control over the company. However, unless there is evidence of fraud or improper conduct (such as using the company as a mere façade), the principle of separate legal entity will generally protect Mr. A from personal liability.

5. Draw logical connections:

- Ensure that your analysis logically flows from one point to the next.
- **Example:** Given that XYZ Ltd is a separate legal entity and there is no evidence of fraud or improper conduct, the shareholders, including Mr. A, are not personally liable for the company's debts. The creditors must seek repayment from the company's assets, not the personal assets of the shareholders.

Conclusion:

- What is the outcome based on your analysis?
- Summarise your analysis and state the final decision. Conclude whether the issue is resolved in favour of one party or another based on the application.
- **Example:** Based on the application of the legal principles to the facts, the shareholders of XYZ Ltd are not personally liable for the company's debts, in accordance with the principle established in *Salomon v Salomon & Co Ltd*.

References

admin n.d., *New South Wales Courts and Tribunals*, Courts and Tribunals.

Chew, C 2014, *Business Law Guidebook*, OUP, Melbourne, Australia.

Latimer, P 2016, *Australian Business Law 2016*, CCH Australia, Sydney, NSW, Australia.



Tutorial Questions

Students must complete the following questions before coming to class

Terms and Concepts

The following terms and concepts must be understood in the context of the tutorial.

Provide written explanations of these terms and concepts in the space provided.

Terms/Concepts	Explanation
Court hierarchy	
Binding precedent	
Persuasive precedent	
Ratio decidendi	
Obiter dicta	

Doctrine of Precedent

1. Explain the doctrine of precedent. How does it operate in Australia?

Court Hierarchy and the Operation of the Doctrine of Precedent

2. Complete the following table.

	Court #1	Court #2	Are the courts in the same judiciary hierarchy?	Which court is higher up in the Australian judiciary hierarchy?	Impact of Court #1's decision has on later decisions by Court #2. Binding? Persuasive?
a)	Supreme Court of NSW	Supreme Court of Victoria			
b)	High Court of Australia	Supreme Court of WA			
c)	Supreme Court of South Australia	District Court of South Australia			
d)	Supreme Court of Queensland	District Court of NSW			
e)	Supreme Court of NSW	High Court of Australia			
f)	United Kingdom Supreme Court	Supreme Court of Victoria			

Court Hierarchy and the Operation of the Doctrine of Precedent

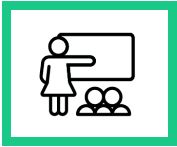
3. A decision has been handed down by the Supreme Court of NSW.
 - a) How does the decision by the Supreme Court of NSW impact later decisions by the Supreme Court of Queensland?

- b) How does the decision by the Supreme Court of NSW impact later decisions by the District Court of NSW?

Court Hierarchy and the Operation of the Doctrine of Precedent

4. A decision has been handed down by the Supreme Court of NSW.
 - a) How does the decision by the Supreme Court of NSW impact later decisions by the High Court of Australia?

- b) How does the decision by the Supreme Court of NSW impact later decisions by the Supreme Court of NSW?



In-Class Collaboration and Presentations

Students must read the following questions before coming to class.

Analysing a Case Using the IPAC Method

The IPAC 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.

Instructions:

1. Form small groups:

- Your tutor will divide the class into small groups of 3-5 students.

2. The IPAC method

- a) In your group, summarise in your own words each of the steps involved in the IPAC method.

IPAC	What does this step involve?
Issue/s	
Principle/s	
Application	
Conclusion	

- b) Read the given facts below. Use the IPAC method to analyse the case.

Maria, a 20-year-old international student from Brazil, was studying for a Bachelor's degree in Business at an Australian university. The Migration Regulations 1994 provides that all international students must adhere to specific visa conditions. Condition 8105 requires that student visa holders must not work more than 48 hours per fortnight during the academic term. Condition 8202 requires student visa holders to maintain full-time enrolment, achieve satisfactory academic progress, and maintain at least 80% attendance in their course. Failure to comply with visa conditions can result in the cancellation of the student visa.

Due to financial difficulties, Maria took on additional part-time work, working 60 hours per fortnightly during the term. Consequently, she struggled to keep up with her studies and failed several subjects. The university reported this to the Department of Home Affairs. As a result, the Department initiated the process to cancel her student visa.

Maria wishes to know whether she can continue to stay in Australia and continue her studies.

IPAC	Complete each of the steps involved in the IPAC method
Issue/s	
Principle/s	
Application	
Conclusion	

c) Presentation:

- Each group will present their answer to the class. Students should compare and contrast the level of analysis and application of each group's answer.

3. Self-reflection (Individual)

Reflect on the activity and write a short paragraph on what you learned about the IPAC method.

Consider the following questions in your reflection:

- How well did you understand each step of the IPAC method?
- How effectively were you able to apply the IPAC method to the case?
- What could you do differently next time to improve your use of the IPAC method?
- How can you apply the IPAC method to other legal problems or real-world scenarios?