

SCIENCE

Law



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University Code of Conduct

- **Respect for Law**
 - incl. University Governance
- **Respect for Persons**
 - courtesy, equity, fairness
 - do not discriminate, harass, bully, intimidate
- **Personal Integrity**
 - honesty, confidentiality, declare conflicts
 - do not accept gifts, favours
- **Professionalism**
 - carry out duties diligently, conscientiously
 - strive for high standards of performance

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Breaches of Conduct

Take for example; misuse of IT

- Criminal felony (e.g. threat) – police – jail
- Libel/slander/defamation – lawyers – fines
- University – expulsion
- Faculty – fail program
- School – fail course
- Course – academic penalty

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Governance in Australia

Constitutional Monarchy (Queen, Governor-General)

Parliamentary Democracy (Lower/Upper Houses)
(Representatives/Senate)

Federation of States (Federal Government)



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Constitution

- *Commonwealth of Australia Constitution Act 1990*
- Head of State of Australia is the Queen, who is represented by the Governor-General (and Governors in the States) who sign all legislation before they can become enforceable
- The powers of the Commonwealth are listed in the Constitution. If Parliament makes laws outside these powers, the laws can be contested and found to be unconstitutional.
- The High Court hears disputes about the Constitution

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Charter

Charter of Human Rights and Responsibilities Act 2006

This parliament-made law seeks to ensure that certain human rights are taken into account when developing, interpreting and applying law and policy. Rights in Charter come mainly from the *International Covenant on Civil and Political Rights*

Rights include:

- right to life;
- freedom of movement;
- freedom of expression and assembly;
- the right to liberty; and
- the right to a fair hearing and protection from *retrospective* laws.

The Charter requires courts and *tribunal*/to interpret and apply legislation. If this is not possible, the Supreme Court can issue a Declaration of Inconsistent Interpretation.

Parliament can create Acts or amendments to override the common law created by judges

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Australian Legal System

Based on democratic principles (fundamental commonly held values and beliefs of community)

System of laws developed over time from:

- Rules
- Customs
- Religious beliefs or Creeds
- Codes
- Customary law
- Common law
- Received law (the Acts of Parliament of Britain)

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Australian Legal System

Rules are either legal or non-legal. Courts cannot enforce non-legal rules which are usually of a social nature e.g. the rules of a club. Legal rules can be in the form of Acts of Parliament (statutes), regulations, by-laws or judge-made case law. Courts can enforce legal rules.

Customs are the socially acceptable conduct of a group. Religious **beliefs** are often reflected in **creeds** such as the Ten Commandments.

Codes are a written form of the laws of a society. They may also indicate appropriate sanctions for a breach of the code.

Customary law is based on long-established traditions of behaviour that form the basis of acceptable behaviour in a society. Such law may include religious beliefs.

Common law or case law is the body of judgments made by judges in courts over time. These decisions can be distinguished from the statutes or Acts of Parliament that were received by the early colonies in Australia and known as **received** law.

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Functions of Law

<p>Social cohesion</p> <ul style="list-style-type: none"> • Values of society • Acceptable conduct • Dispute resolution • Changing laws • Rights (individuals or groups) 	<p>Social progress</p> <ul style="list-style-type: none"> • Formulation • Enforcement • Reform • Inter-generational (long-term protection)
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Where does law come from?

Laws are primarily made by:

- Legislature (parliament)
- Executive (Cabinet)
- Judiciary (judges)

} Doctrine of Separation of Powers

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Where does law come from?

Parliament and Cabinet

Both State (and Territories) and Commonwealth Parliaments make laws.

Commonwealth laws override state laws when they conflict on an issue.

Parliament can delegate some of its power to create laws to other bodies, such as local councils.

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Where does law come from?

Judiciary

Judges make laws by comparing similar situations and following sets of principles to determine outcomes. This is known as the *doctrine of precedent* and it creates *common law*.

Judges in lower courts must follow decisions of higher courts.

Judges *may* also take into consideration decisions of lower courts, equal courts and courts from other countries.

The common law also fills in gaps where there is no parliamentary Acts and interprets Acts to apply them to specific cases.

A person can *appeal* a decision of the court. The High Court is the highest appeal court in Australia.

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Types of law

Public law:

- Constitutional
- Criminal*
- Industrial
- Administrative
- International

Private law:

- Tort
- Contract
- Family
- Property
- Succession

*summary or indictable (against person, property, public order)

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Contemporary dilemmas

Plagiarism
 Drink driving
 Recreational drugs
 Tax evasion
 Capital punishment
 Corporal punishment
 Euthanasia
 Genetic selection
 Abortion
 Stem cell research
 Cloning
 Genetically modified foods

Covered by rules,
 regulations, laws...

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