

The Legal System

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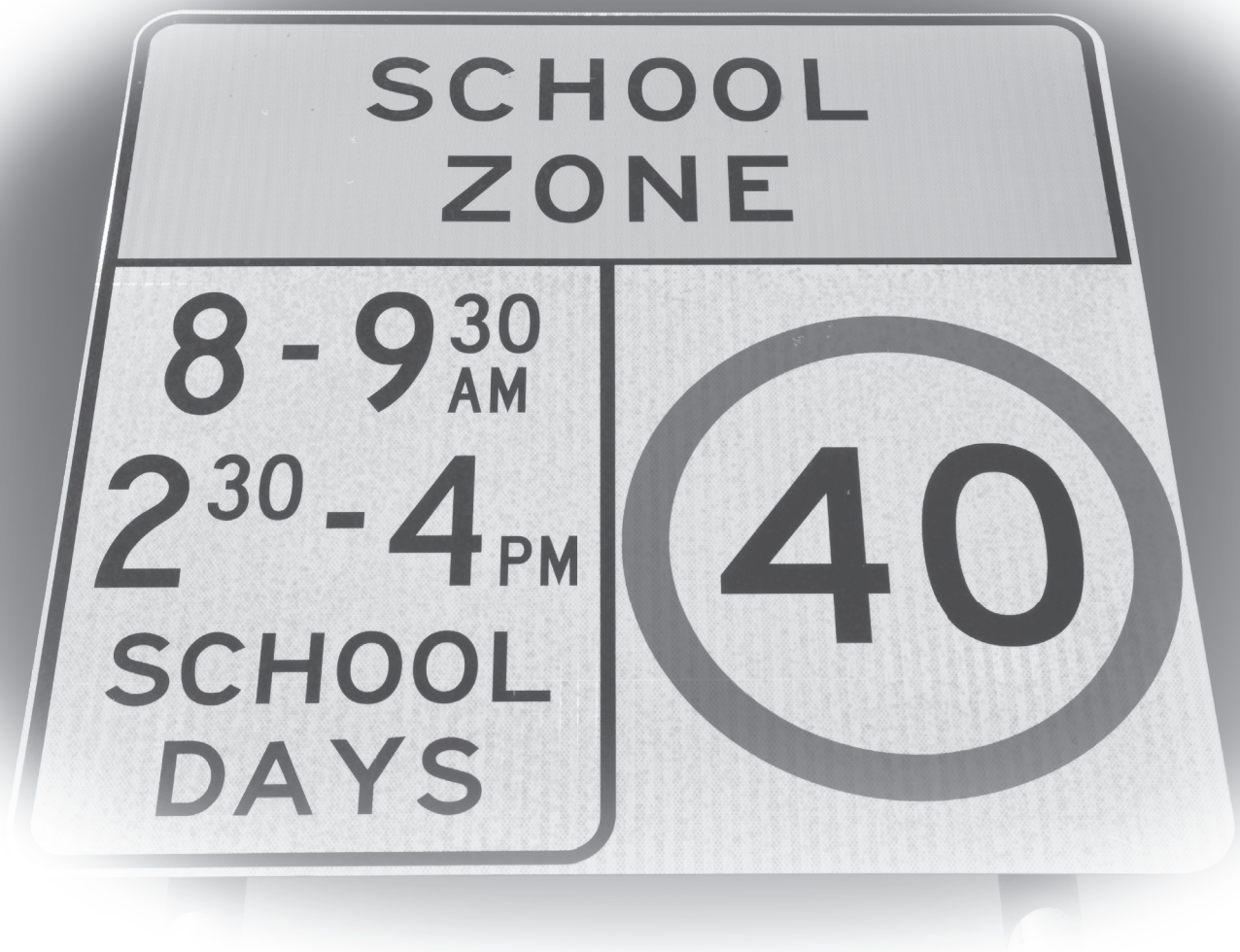
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DOT POINT

The Legal System



1. Basic legal concepts.

1.1 The meaning of law.

1.1.1 Define law.

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1.1.2 Outline the following purposes of law.

Create a sense of security/protection

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Create certainty

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Communicate broadly held values and expectations

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To regulate and order

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1.1.3 Explain why laws vary from place to place.

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1.1.4 Outline the importance of each of the following statutes.

Crimes Act 1900 (NSW)

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Summary Offences Act 1988 (NSW)

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Crimes Act 1914 (Cth)

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Criminal Code Act 1995 (Cth)

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1.1.5 Identify two problems arising with respect to inconsistencies in criminal laws between the states and territories.

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1.1.6 Why are criminal laws written into statute?

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1.1.7 Distinguish between statute law and common law as sources of criminal law in Australia.

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- 1.1.1** Law means the body of legal rules emanating from the state and upheld and enforced by the state.
- 1.1.2** Create a sense of security/protection: As the law is enforced by law enforcement officials people tend to feel as though it acts to protect them from harm. Laws create in people a sense of security as they see the law as a shield.
- Create certainty: Laws articulate legal rules – what can and cannot be done. They therefore provide a sense of certainty and predictability.
- Articulate broadly held values and expectations: The people who make the laws are elected officials. Such officials are voted in on the basis of their reflecting what constituents (voters) want. Thus, the laws made should reflect widely held social values and be consistent with community standards, values and expectations.
- To regulate and order: Laws shape the conduct of people and make them consistent. Thus laws create order and regulate – in the sense that they make certain behaviours the norm ('regular').
- 1.1.3** Laws vary from place to place (jurisdiction to jurisdiction) because they reflect the social values and expectations of the citizens. As people in all areas have their own customs, languages, history and sense of what they believe and value the laws of any particular place will be reflective of such things. In this way laws vary from place to place.
- 1.1.4** *Crimes Act 1900* (NSW): This is the main criminal law that regulates the activities of people in NSW. It is extremely important as it provides the basis of legal protections in NSW.
- Summary Offences Act 1988* (NSW): This law details offences in NSW that are to be tried summarily (in the NSW Local Court before a magistrate) and thus constitute a range of relatively minor offences.
- Crimes Act 1914* (Cth): This is the main law that regulates Commonwealth offences and thus are subject to the enforcement by the Australian Federal Police, AFP.
- Criminal Code Act 1995* (Cth): This law unifies the range of offences nationally that are Commonwealth offences, many of which relate to conduct that affects Australia's borders (such as drug trafficking, money laundering, piracy, child sex offences and the like).
- 1.1.5** When there are inconsistencies between criminal laws between the states and territories then the law is unjust and unequal. This makes the law unfair and favours people from particular locations. When people travel interstate or between jurisdictions the inconsistencies can lead them to breaching the law unknowingly.
- 1.1.6** Criminal laws are written into statute as it is important that the law be discoverable – which means that people must be able to know the law if they are to follow it.
- 1.1.7** Statute law refers to the body of laws made by parliament and called legislation whereas common law refers to the body of law created by the decisions of judges in courts.
- 1.2.1** Customs: These apply to social groups and are not binding in the legal sense. When people breach social customs or usual codes of behaviour then they are normally shunned, excluded or marginalised by the social group.
- Rules: There are formal codes that are generally written and apply in a specific context such as in a sporting match, debate or other form of human activity. Breaches of rules carry a sanction that is written but they have no legal effect.
- Laws: These are legal rules that guide the conduct of people in society. Breaches of laws carry a prescribed range of penalties which are imposed by the state in proceedings brought by the state.
- 1.2.2** Sanction: A sanction is a penalty and thus the term refers to punishments that arise when people breach the law and are imposed by the state.
- Enforcement: This refers to the role of policing and other authorities that have the responsibility to ensure that the law is upheld through compliance.
- 1.2.3** Customs, rules and laws are related as follows: A custom is a way of behaving that is based on social norms. Customs can shape rules, which are more formal and carry specified sanctions for breach. Sanctions, however are confined only to those who take on the activity to which those rules apply. Rules can become laws when they are encoded into regulation and thus become subject to enforcement by the state. An oft-quoted example is that the custom of stopping smoking in enclosed places became a widely held rule and has now become a law. Thus, they are different though often related.