

- **How laws are made**

Laws can be made in different ways. Laws can be made by judges (also known as Common Laws) and by parliament (also known as Statue Law and legislation). Parliaments are the supreme law makers in Australia. Their authority comes from our constitution which sets out their powers. The Federal and State governments constitutions differ in the extent in which they guide law making.

1. Common law (judge made law)

The following points provide information on Common Law, however, they all mixed up. Rearrange, then rewrite, the points in the space provided to create a passage that gives this information in an organised and logical manner. Remember, you should always begin with a topic sentence (what the topic is about, perhaps a definition), then explain the topic with additional sentences providing more detail and finally finish with an example to illustrate any points you have been making.

- *Donoghue v Stevenson (1932)* is a good illustration of judge-made law.
- The judge found that there should be a general duty of care by the manufacturer to the consumer.
- Judges can make laws and influence law making in two main ways.
- Precedents are used by other judges in future similar cases to provide consistency in the operation of the court system.
- Before this case a consumer could not recover damages from a manufacturer.
- She suffered from severe gastroenteritis.
- Firstly, they create a legal principle when deciding on a case which is new to the court system.
- In court, the judge upheld her claims against the manufacturer.
- In August, 1928, Ms Donoghue discovered the decomposed remains of a snail in an opaque bottle of ginger beer she had already half drunk.
- This test case established that a person could be liable for injuring someone through negligent actions that show a lack of general duty of care.
- This new decision is called a **precedent** and becomes a part of **case law**.
- She also claimed for shock, depression, illness and loss of wages.
- They also need to interpret and give meaning to an act (a law made by parliament).

2. Statute law (parliament made law)

Parliament makes laws known as statutes. They do this to meet the current and changing needs of society. This process of law making by parliament is known as legislation. Legislation in its initial stages, when first introduced to the parliament, is referred to as a bill. It must then go through both houses of parliament (in both Federal and State parliaments, excluding those states which only have one house) as illustrated in the diagram below.

Steps involved in making a law:-

- STEP 1: First reading: A bill (proposed law) is introduced to parliament.
- STEP 2: Second reading: Reasons for the introduction of the bill are given stating the intentions of the bill.
- STEP 3: Committee stage: The bill is considered in detail and may be debated. Amendments to the bill may be made.
- STEP 4: Third reading: Involves the formal reading of the bill and it is then voted on.
- STEP 5: Other house: Bill is sent to the other house for review.
- STEP 6: Royal assent: If the house accepts the bill, the Governor-General signs it.
- STEP 7: The bill becomes an Act of Parliament.
- STEP 8: Act becomes law.

Refer to the information on Statute Law to complete the following questions:-

- a. Using the information as a guide, write a paragraph explaining how a bill (proposed law) can become an Act (law).

b. As seen in the previous diagram, a bill must be passed in both houses of parliament before it can become a law. What would happen in the following cases?

i. A political party held a majority in the House of Representatives but did not hold a majority in the Senate.

ii. A political party held a majority in both houses of parliament.

c. What is the current parliamentary situation in Australia and in NSW? How may this impact on law making at both State and Federal level?

i. Australia

ii. NSW

d. "Through statute law parliament tries to meet the needs of Australian society and make laws which reflect the community's changing attitudes".

Do you agree? Explain your answer.

AREAS OF LAW

- **Classifying laws**

1. The difference between public and private laws

- a. What is the difference between something that is public and something that is private?

The same ideas apply to the different areas of law.

- b. Categorise the following points into the table below, according to whether they are public or private laws.

- Regulates relations between individuals
- Includes such laws as criminal laws, workplace laws and constitutional law.
- Includes such laws as contracts, property law and other areas of civil law.
- Regulates relations between the general society and individuals.

PUBLIC LAW	PRIVATE LAW

2. The difference between criminal and civil law

The following table shows the differences between civil and criminal law.

CRIMINAL LAW	CIVIL LAW
<p>State verses citizen. Where only the state can prosecute an individual for conduct the law recognizes as criminal (generally violent offences against a person or property, although it also includes traffic offences.</p> <p>Criminal law can further be divided into summary offences (less serious offences) and indictable offences (more serious offences). Most crimes require the presence of 2 elements:- actus reus (the physical act of committing the crime); and meus reu (the mental act or guilty mind).</p> <p>The person charged with the crime is known as the defendant (or the accused) and is considered innocent until proven guilty.</p> <p>The onus of proof is on the prosecution to prove the defendant guilty.</p> <p>The defendant must be found guilty beyond reasonable doubt. This means there can be no doubt in the jurors' minds as to the guilt of the accused person.</p> <p>If the defendant is found guilty he/she faces punishment which can be in the form of fines and/or imprisonment (a custodial sentence).</p>	<p>Citizen versus citizen. Where a plaintiff sues another person for alleged injuries or damages.</p> <p>Civil law can be further divided into torts (being the infringement of the legal rights of one person by another and includes trespass, negligence, nuisance and defamation) and breaches of contract.</p> <p>The person complaining that a wrong has been committed against them by somebody else is known as the plaintiff.</p> <p>The burden of proof is on the plaintiff to provide their case.</p> <p>The plaintiff must prove his/her case on the balance of probabilities. This means that if it is more probable that the plaintiff's version of the events took place are more probable than the other side's version of events.</p> <p>If the case is found in favour of the plaintiff he/she will most likely be awarded damages (money) from the other person as compensation for the injury incurred.</p>

Complete the following activities by referring to the table on the differences between criminal and civil law.

a. Define the following legal terms:-

- Defendant _____

- Prosecution _____

- Plaintiff _____

b. What two elements must be present for an act to be considered a crime?

c. Are the following crimes summary of indictable offences?

- Minor assault _____
- Murder _____
- Rape _____
- Armed theft _____
- Driving under the influence of alcohol _____

d. What is meant by the terms:-

“...beyond reasonable doubt”

“...on the balance of probabilities”

e. YOU BE THE JUDGE! Are the following actions criminal or civil? If civil which Tort do they refer to?

- i. A party at home that goes until 5am with loud music _____
- ii. Hitting another driver in a car rage incident _____
- iii. Using your neighbour’s pool while they are out _____
- iv. Writing an article stating untruthful facts about a well-known identity _____
- v. Failure by your employer to provide safety gloves resulting in serious injury to you at work _____

f. Compare the possible outcomes of civil and criminal cases.

g. Can an act be both a crime and a civil wrong? Explain your answer using examples.

h. Newspaper research

Find two newspaper articles in current legal cases and categorise them into civil or criminal cases. Complete the summary below on each article.

Article 1

Source: _____

Date: _____

Summary:

Article 2

Source: _____

Date: _____

Summary:
