

# **LEGAL STUDIES – PRELIMINARY COURSE**

## **PART I – THE LEGAL SYSTEM**

### **TOPIC 1: BASIC LEGAL NOTIONS**

#### **1.1.1 Perceptions of the law and the legal system:**

- Conflicting images
- Affected by socioeconomic, cultural and ethnic background; experiences of the legal system

#### **1.1.2 The need for law:**

- Enforces values of society
- Regulates and protects rights
- Provides means for dispute resolution
- Restricts some freedoms while allowing others
- Anarchy results from lawlessness

#### **1.1.3 Customs, rules and laws:**

- Customs:
  - traditional ways of behaving
  - enforced by social pressure
- Rules:
  - regulate behaviours in particular areas or situations
  - displayed in written/symbolic form
  - enforced through use of penalties
- Laws:
  - rules made by sovereign power
  - apply to everyone equally
  - enforced by sanctions (fines, indictment, etc)
- Important customs become rules; important rules become laws

#### **1.1.4 Equality, fairness and justice:**

- Equality:
  - object concept
  - formal equality: equal treatment regardless of circumstance, background, status, beliefs, etc., as opposed to institutional inequality
- Fairness (Equity):
  - subjective concept
  - focuses on achieving equal outcomes
- Justice:
  - aims to achieve both equality and fairness

#### **1.1.5 Values and ethics:**

- Values reflect society's judgement on the importance of different things
- Ethics define what society considers to be right and wrong
- Laws must reflect both values and ethics of society
- Laws must be capable of reformation to reflect the constantly changing values and ethics of society

## **TOPIC 2: SOURCES OF LAW**

### **2.1 ABORIGINAL & TORRES STRAIT ISLANDER CUSTOMARY LAW**

#### **2.1.1 Spiritual nature:**

- Closely related to religion and belief in the spiritual importance of the land
- The Dreamtime is the basis of ATSI spirituality

#### **2.1.2 Diversity:**

- Each clan has its own territory, traditions, rituals, customary laws
- The Dreamtime is central to all

#### **2.1.3 Ritual and oral traditions:**

- Oral law passed down by word of mouth
- Remembered through story, dance, song, etc

#### **2.1.4 Dispute resolution:**

- Conciliation and mediation most common
- Involves elders assisting persons in conflict to come to resolution through discussion

#### **2.1.5 Enforcement:**

- Revenge:
  - family of victim given right to take revenge against perpetrator or family/clan of perpetrator
- Trial by ordeal:
  - bladeless spears thrown and verbal abuse shouted at accused by victim and relatives of victim
  - accused forgiven if speared in the thigh
- Inquest:
  - elements of supernatural involved in determining murderer
- Social ridicule/isolation
- Death

#### **2.1.6 Significance of land and bodies of water:**

- Valued for spiritual significance
- Central to ATSI cultures
- Form basis of religious belief and customary law
- *Terra nullius* deprived ATSI of native title rights (Ward & Ors v. State of WA & Ors)

### **2.2 SOURCES OF CONTEMPORARY AUSTRALIAN LAW**

#### **2.2.1 Common law**

- Common law:
  - collection of legal principles and rules derived from
- decisions of judges ('judge-made law')
  - assist judgement when no relevant statute law exists
- Common law system/English law (AMBIGUITY):
  - developed in England in the 11<sup>th</sup> century
  - adversarial system: each party presents evidence and has opportunity to cross-examine evidence of opposing side

#### **2.2.2 The system of precedent**

- Precedent is a judgement made by court that establishes a point of law
- Aims to achieve just judgement by limiting judge's power to make new ruling when past examples exist
- Making precedent:
  - the court's arrival at a decision in a case for which there is no existing common nor statute law for guidance
  - a judge's interpretation of legislation
- Rules of precedent:

- binding precedents (created by higher courts) must be followed (by lower courts)
- persuasive precedents may or may not be taken into account; persuasiveness of a precedent is determined by the judge who made it and the court in which it was made
- Precedents can be avoided by:
  - distinguishing the case
  - reversing a judgement
  - overruling a judgement
  - disapproving a decision

### 2.2.3 Statute law and delegated legislation

- Statute law:
  - body of law developed by parliaments
  - known as legislation
  - contained in Acts of Parliament
  - has precedence when in conflict with common law
- Parliamentary structure:
  - bicameral structure: federal & all State (except Qld)
  - House of Representatives: lower house (150 members)
  - The Senate: upper house (76 members: 12 per State; 2 per territory)
  - The Governor-General: representative of the monarch to ensure that the processes of parliamentary democracy are maintained
- Making of statute law:
  - Bill: a piece of proposed legislation
    1. *Initial Formation*: (private member's or government sponsored)
    2. *First Reading*: introduced into house of parliament in which the person responsible for the proposal sits
    3. *Second Reading*: bill debated; opinions expressed
    4. *Committee Stage*: each individual clause debated; amendments proposed
    5. *Third Reading*: formal reading after amendments; voted on by House; passed to other House if voting successful
    6. *Other House*: all procedures repeated; sent for assent from the Governor-General (federal bill)/Governor (State bill) or returned for further amendment or rejected outright
    7. *Assent*: bill becomes law once Royal Assent has been given
- Delegated legislation:
  - made by bodies subordinate to parliaments, to which law-making authorities have been delegated
  - regulations: made by the Governor-General, State Governors or members of the Executive Council
  - ordinances: made by for the territories, usually made by the governing body of the territory
  - rules: made for government departments, usually by the departments
  - by-laws: made by local councils to apply within a local government area

### 2.2.3 The constitution

- Outlines the rules for the governing body of a nation
- Controls the power, authority and operation of a parliament
- Each State has its own constitution
- The Australian Constitution governs the Parliament of the Commonwealth of Australia
- The *Magna Carta* (1215) was the first constitutional document developed; first effective restraint on the authority of the monarchy

#### 2.2.4 Criminal law and civil law

- Criminal law:
  - concerns with wrongs committed against all of society
  - focuses on maintaining public safety and order
  - criminal offences brought before court by the Crown
  - prosecution conducted by Crown prosecutor or police prosecutor
- Civil law:
  - aims to regulate the relationship between individuals
  - ensures that the rights of individuals are maintained
  - civil law matters brought before court by the plaintiff
- Civil law system/Roman law (AMBIGUITY):
  - inquisitorial system: parties do not openly argue the case; the judge questions each party's submission of evidence and makes a decision accordingly

#### 2.2.5 Other influences

- Ecclesiastical law: developed by the church
- Mercantile law: regulates dealings among traders

### 2.3 SOURCES AND FRAMEWORKS OF INTERNATIONAL LAW

#### 2.3.1 Origins and sources of international law:

- International law regulates the relationships between nations.
- Treaties (primary source):
  - voluntary agreements between nations
  - signatory nations agree to be bound by certain conditions and responsibilities
  - bilateral or multilateral
  - also: conventions, protocols, covenants, declarations
- Customs:
  - foundation of international law
  - becoming less common
- Legal decisions of the ICJ:
  - considered subsidiary means of international law making
  - becoming important source of international law
- Philosophical concepts of law:
  - natural law (16<sup>th</sup> – 18<sup>th</sup> century): derived from God; above the authority of the State
  - positive law (19<sup>th</sup> century): generated by parliaments, monarchs and courts
  - 20<sup>th</sup> century: declining importance of legal philosophers

#### 2.3.2 Principal international organisations:

- United Nations:
  - formed at the conclusion of WW-II
  - principal aim of establishing and maintaining world peace
  - key UN bodies:
    - \* *The General Assembly*:
      - 190 member nations
      - main role is to consider resolutions in relation to operations of the UN and conflicts between nations
      - has power to create new UN bodies
    - \* *The Security Council*:
      - 5 permanent members: Great Britain, US, Russia, China and France; power to veto
      - 10 non-permanent members: each serving two years
      - main responsibility is to maintain peace
- International Court of Justice:
  - main judicial organisation of the UN

- 15 judges each representing a different geographical region
- decides on disputes brought before the court
- offers legal advice on international law matter
- resolves disputes before they can escalate into international incidents, e.g. wars

### **TOPIC 3: THE CONSTITUTIONAL SYSTEM OF AUSTRALIA**

#### **3.1.1 Constitutional division of power:**

- The Constitution divides power between the Commonwealth and State parliaments
- Exclusive powers:
  - federal powers
  - includes authority and legislative rights in trade, foreign affairs and defence
- Residual powers:
  - State powers
  - retained by States after federation
  - outlined in the constitutions of each State
  - diversity between States
- Concurrent powers:
  - shared between Commonwealth and State governments
- Federal laws have precedence over State laws
- Changing the Constitution requires a referendum; majority of votes in at least four of six States

#### **3.1.2 The High Court:**

- Established in 1901
- Highest court in Australia
- Main functions:
  - protects the Constitution by ensuring that government bodies act within their constitutional powers
  - interprets the Constitution
  - exercise its original jurisdiction: i.e. hear certain categories of cases and act as the final court of appeal

#### **3.1.3 Separation of power:**

- The constitution separates power between:
  - the Parliament – legislative (who make the law)
  - the Executive (who enforce the law)
  - the Judicature (who judge the law)
- Ensure that authority is evenly distributed between separate entities and there is no abuse of constitutional power

#### **3.1.4 Transfer of legislative power:**

- 1788 – 1823: Australian colonies subject to control of the British government under martial law
  - 1823: *New South Wales Act (UK) introduced the first NSW parliament (the Legislative Council) and established a court system and judiciary*
  - 1828: *Australian Courts Act (UK) required the Governor to consult with the 'Legislative Council' and allowed English law to be modified to meet local conditions*
  - 1842: *New South Wales Constitution Act (UK) was a significant step to self-government*
  - 1850: *Australian Colonies Government Act (UK) created SA, Tas and Vic*
  - 1855: *New South Wales Government Act (UK) revised the constitution and established a bicameral government*
  - 1865: *Colonial Laws Validity Act (UK) granted colonies the right to amend own constitutions and enact own legislation without seeking approval from the British parliament*
  - 1900: *Australia Government Act (UK) transformed the Australian*

*colonies into a dominion within the British Empire*

*1931: Statute of Westminster (UK) granted dominions the right to amend/repeal legislations made by the British and removed the right of the British to pass laws for dominions*

- 1986: Australia Acts (Cwlth) removed the last legislative relations with the British parliament and completed the total autonomy of Australia by removing the right of Australians to appeal matters from Australian courts to the Privy Council – the highest court of appeal in Britain.

## **TOPIC 4: THE OPERATION OF THE LEGAL SYSTEM**

### **4.1 OPERATION OF THE LEGAL SYSTEM**

#### **4.1.1 Structure of State courts:**

- *Inferior:*
  - The Local Court:
    - \* criminal jurisdiction: summary offences; committal hearing
    - \* civil jurisdiction: \$3000-\$40000
  - Coroner's Court
  - Children's Court
  - Land and Environmental Court
- *Intermediate:*
  - The District Court:
    - \* criminal jurisdiction: majority of indictable offences
    - \* civil jurisdiction: \$40000 - \$750000
    - \* appellate jurisdiction: appeals from inferior courts
- *Superior:*
  - The Supreme Court:
    - \* criminal jurisdiction: most severe indictable offences
    - \* civil jurisdiction: \$750000+
    - \* appellate jurisdiction: sufficient reasons must be demonstrated in order to appeal; dealt within a special division called The Court of Appeal

#### **4.1.2 Structure of federal courts:**

- The Federal Magistrate's Service:
  - jurisdiction: family law, bankruptcy, trade practices law, administrative, immigration, human rights
  - appellate: appeals from Commonwealth tribunals
- The Family Court of Australia:
  - jurisdiction: family law (particularly divorce, child custody, maintenance and division of property)
- The Federal Court of Australia:
  - jurisdiction: broad (incl.: trade practices, intellectual property, taxation, immigration)
  - appellate: appeals from State Supreme Courts
- The High Court of Australia:
  - deals with matters involving the Constitution
  - acts as final court of appeal
  - deals with disputes between States

#### **4.1.3 The adversary system:**

- Main characteristic of the common law system
- Two opposing sides argue before a court
- Each side introduces evidence/witnesses
- Cross-examination
- Decision formed by presider (judge/magistrate), or jury
- Presider or jury may not test the evidence

#### **4.1.4 The legal profession:**

- *Judges & magistrates:*
  - preside over courts
  - judges:
    - \* intermediate/superior courts
    - \* main role to adjudicate (decide on points of law and issue instructions to jury)
    - \* determine case in civil matters without jury
  - magistrates:
    - \* inferior courts
    - \* determine case; hand down rulings and sentences
- *Solicitors:*
  - legal counsellors/advisors
  - mostly non-litigious work
  - represent cases in inferior courts
  - prepare briefs for barristers
- *Barristers:*
  - represent cases before court
  - provide legal advice

#### **4.1.5 Court procedures in civil proceedings:**

- Plaintiff issues statement of claim
- Defendant replies with statement of defence
- Winning plaintiff receives relief made by defendant in form of damages or injunctions
- Stand of proof: balance of probabilities
- Burden of proof: plaintiff

#### **4.1.6 Court procedures in criminal proceedings:**

- Prosecution represents community
- Heard before jury of twelve
- Standard of proof: beyond reasonable doubt
- Burden of proof: prosecution

#### **4.1.7 Observations in the local court:**

- All criminal matters begin in the Local Court
- Summary offences dealt with by magistrates
- Committal hearings conducted for indictable offences
- Civil matters involving <\$40000
- Saves time and expense

#### **4.1.8 Enforcement agencies:**

- The police:
  - prevents crime, investigates crime, arrests perpetrators of crimes
  - each State/Territory has its own police force
  - the Australian Federal Police deals with interstate criminal offences and breaches of federal law
- Other government departments have powers to enforce specific laws:
  - the Australian Taxation Office: investigates and prosecutes matters in relation to taxation
  - the Environmental Protection Agency; the National Parks and Wildlife Service; the Fisheries Department

#### **4.1.9 Legal aid:**

- Provides legal assistance to people unable to afford their own legal representation
- Applicant must satisfy the following criteria:
  - have a legal matter within the area of law dealt by
- Legal Aid (esp. criminal law & family law):

- pass the merit test (have reasonable chance of winning)
- pass the means test (genuinely low financial status)

#### **4.1.10 Alternatives to the court system:**

- Quasi-judicial tribunals
- Aim to deal with matters outside of courts
- Informal; less expensive e.g. Administrative Appeals Tribunal, Australian Competition and Consumer Commission, NSW Fair Trading Tribunal, NSW Administrative Decision Tribunal

#### **4.1.11 Alternative dispute resolution:**

- Also as Primary Dispute Resolution (PDR)
- Access to Community Justice Centres
- Self-help remedies:
  - mediation
  - conciliation
  - facilitation

### **4.2 OPERATION OF THE LEGAL SYSTEM IN RELATION TO NATIVE TITLE:**

#### **4.2.1 The doctrine of *terra nullius* in Australia:**

- *Terra nullius*: land belonging to no one
- Any land whose inhabitants had no recognised system of law or government was subject to the Doctrine of Reception
- In these circumstances, English law applied automatically to everyone in the colony
- Negotiations of treaties with local inhabitants failed due to language barriers
- The principles of *terra nullius* deemed legally binding and enforceable in the 19<sup>th</sup> century by law courts

#### **4.2.2 Growth of recognition of native title:**

- Hunting, fishing, native title rights returned to many indigenous groups in different nations
- The Saami of Lapland gained native title rights in Sweden, Finland and Norway
- The Maori of New Zealand:
  - ownership of land recognised by British colonists due to structure of Maori society
  - Treaty of Waitangi Act gave the Treaty, which guaranteed possession of lands, forests, estates and fisheries, full status in NZ law

#### **4.2.3 Mabo case:**

- Mabo v. Qld (No.2) 1992 175 CLR 1
- Recognised the existence of native title rights under common law
- Removed the declaration of *terra nullius* from Australia

#### **4.2.4 Wik case:**

- The Wik People v. The State of Qld & Ors, The Thayorre People v. The State of Qld & Ors 1996 187 CLR 1
- Established the possibility that native title could exist on pastoral lease land

#### **4.2.5 Subsequent legal developments:**

- Native Title Act 1993 (Cwlth):
  - enacted after the Mabo case
  - recognised the existence of native title in Australia
  - created the Native Title Tribunal
- Native Title Amendment Act 1998 (Cwlth):
  - passed in response to the Wik case
  - criticised for being too supportive of pastoralists' rights over rights of native title claimants
  - provisions:
    - \* native title extinguishment (on land privately owned, or pastoral leases issued,



before 1 Jan 1994)

\* the rights to pastoralists (prioritised for using land for primary production)

\* native title test (tougher tests for determining the validity of native title claims)

#### **4.2.6 Native title as a collective right:**

- Collection of rights and interests held by the indigenous people
- Shared by all members of the group
- Individuals may make claims on behalf of group
- All members of the community will benefit if claim is Successful

## **PART II – THE INDIVIDUAL AND THE STATE**

### **TOPIC 5: POWER AND AUTHORITY**

#### **5.1.1 Concepts of Power:**

- The ability to influence and control people/resources/legal processes/etc.
- Associated with one's position rather than the person as an individual
- Social power:
  - possessed due to influential status in society
  - e.g. media, lobby groups, NGOs, trade unions, etc
  - also in forms of cultural power: churches, ethnic minority groups, etc
- Economic power:
  - determined by amount of wealth owned
  - has potential to influence not only the nature, but also the enforcement of law
- Political power:
  - wielded by those with ability to control the policy making processes
  - ultimate political power held by the voting public
- Legal power:
  - power to create law or influence its creation, or
  - ability to use the law to protect/defend one's own rights

#### **5.1.2 Concepts of Authority:**

- The legitimate/legal right to exercise power
- Customary authority:
  - developed through traditions and customs
  - mostly informal
  - e.g. parents' authority over children, employer over employees
- Statutory authority:
  - Granted to individual or organisation by parliament
  - e.g. the Australian Taxation Office, the Australian Customs Service, the Australian Transport Safety Bureau
- Common-law authority:
  - Granted to individual or organisation by courts
  - Played important role in development of law in Australia
- Delegated authority:
  - Granted to individual or organisation by individual or organisation with statute/common-law authority
  - Usually with aim of improving efficiency
  - e.g. the Dept. of Education, local councils (delegated legislative authority)

#### **5.1.3 Relationship of individual to power and authority:**

- Authority of the State exercised through the legal system
- The power of the State can be seen in its ability to enforce law

- Conflict can arise between the State's need to exercise authority and maintain power and the needs and wishes of individuals
- The legal systems aims to balance the needs to protect
  - society and to protect the rights of the individual

## **TOPIC 6: LEGAL CONTROLS ON STATE POWER**

### **6.1.1 Official duties and discretionary powers:**

- Official duties:
  - actions required by legislation to perform
  - failure to comply may result in prosecution
- Discretionary power:
  - allows government employees to make certain decisions using their own judgement
  - ensures that the unique circumstances of individual matters can be taken into consideration
  - offers opportunity for corruption: mandatory sentencing introduced in WA and NT to prevent abuse of discretionary power

### **6.1.2 Parliamentary control of the executive:**

- The executive:
  - the Constitution divides political power into three categories: executive, judiciary, legislative
- – The executive arm has a powerful position within the
  - Australian political system
  - Limits and controls are placed upon this power
- Ministerial responsibility:
  - Australia uses the Westminster system of government
  - ministers are held accountable for the actions of their departments
- Parliamentary committees:
  - review government policies and statutory laws, and keep government departments accountable for their actions
  - power to call government ministers and public servants to give evidence and account for actions

### **6.1.3 Individuals' right to access information:**

- Common-law rights:
  - courts may hand down subpoenas to order the release of information (non-government)
  - courts may decide on the lawfulness of the government's retainment of information
- Statutory rights:
  - 'the freedom of information legislation' includes a number of acts
  - rights are granted to individuals by these acts to access government information
  - the information held by government departments may be requested or challenged through the Administrative Appeals Tribunal, the Federal Court, or the Ombudsman

### **6.1.4 Informal means of challenging State power:**

- Media: ability to influence the political and social views of the general public
- MP: ability to use their influence with government agencies to provide assistance
- Trade unions: ability to influence governments by using collective economic and political power of the members
- Interest groups/NGOs: ability to mobilise the media to increase public awareness about issues of their concern

### **6.1.5 Formal means of challenging State power:**

- Internal review: performed by government agency responsible for the decision to ensure it was correct and fair
- External review:
  - tribunals: Administrative Appeals Tribunal (federal); Administrative Decisions Tribunal (NSW)

- privacy bodies: established by State/Cwlth governments to ensure that personal information is not mishandled
- courts: considerable power to conduct judicial review of government decisions
- Ombudsman: hear complaints about government ministers, agencies and employees; independent of the government
- – commissions of inquiry: established when there is need to investigate a particular area of public interest
- ICAC: investigates allegations of corruption made against NSW public officials and agencies

## TOPIC 7: DUTIES

### 7.1.1 Domestic duties:

- Obligations owed to people in one's own country
- Legal duties:
  - created and enforced by the State
  - *common-law duties*: non-legal duties acknowledged as the basis for a decision in a court case; e.g. duty of care
  - *statutory duties*: stated in legislations; e.g. duty to pay for the maintenance of spouses if they are unable to support themselves
- Social and cultural duties:
  - created by society to define roles of its members
  - based on customs/traditions/expectations
  - e.g. to recycle and conserve water
- Ethical duties:
  - concerned with concepts of right and wrong
  - relate to generally accepted rules of behaviour
- Moral duties:
  - personal and unique to all
  - concerned with personal distinction between good and bad
  - e.g. vegetarianism
- Religious duties:
  - created by religious authorities and apply to all followers
  - linked to moral duties but less personal
  - e.g. Christians worship every Sunday; Muslims dress in modest fashion

### 7.1.2 Interrelationship of legal and non-legal duties:

- Differences:
  - *legal duties*:
    - \* obligations that have become part of law
    - \* apply to everyone equally
  - \* enforced by the State
  - \* failure of compliance may result in sanctions or imprisonment
  - *non-legal duties*:
    - \* created by individual circumstance
    - \* enforced informally by social pressure (exception: breach of professional ethics may lead to fines and remission of license to practise)
- Connections:
  - frequently overlap
  - many non-legal duties become legal-duties
  - e.g. religious duty to not kill others is a legal duty; social duty to recycle is a legal duty under delegated legislation of some councils
- Conflicts:
  - chance of conflict sparse as legal laws reflect values of society

- arise due to the unique and varying nature of each individual's non-legal duties

### 7.1.3 International duties:

- A government's responsibilities towards other members of the international community
- Exist under international law
- Defined by treaties/conventions/protocols/declaration/etc
- Common goal of preventing governments from making decisions that will impact unfairly on other countries
- Two main categories of responsibility:
  1. Restrictions on the use of force:
    - explicitly prohibited by the UN Charter
    - resolve international disputes peacefully
    - refrain from using or threatening to use force against another country
  2. Practise tolerance and promote the advancement of all people:
    - require countries to work cooperatively with shared goal of improving the lives of humans around the world
    - ensure intergenerational equity
    - acknowledge the responsibility to protect the environment, endangered species, World Heritage
- Enforcement:
  - difficult due to principles of State sovereignty
  - options include:
    - \* UN declaration/recommendations
    - \* pressure from other nations
    - \* economic/political sanctions
    - \* ICJ ruling

## TOPIC 8: RIGHTS

### 8.1.1 Domestic rights:

- Customary rights:
  - arise from traditional behaviour
  - enforced by social pressure
- Moral rights:
  - appeal to generally accepted notions of right and wrong
  - entitlements that are considered fundamentally wrong/bad to be denied
- Legal rights:
  - *constitutional rights*
  - *common-law rights*
  - *statutory rights*
  - basis of legal protection:
    - \* signifies importance
    - \* prevents incomppliance
    - \* provides effective enforcement

### 8.1.2 Types of legal rights:

- Constitutional rights:
  - recognized under the Australian Constitution
  - most secure rights (require referendum to repeal/amend)
  - limited number of rights protected
  - e.g:
    - \* s.51: right to compensation upon compulsory acquisition of property
    - \* s.80: right to trial by jury for indictable offences
    - \* s.92: right to freedom of interstate trade and travel

- \* s.116: right to freedom of religion
- \* s.117: right to freedom from discrimination
- the High Court is responsible for interpreting ‘implied rights’: e.g. freedom of speech Common-law rights:
  - recognised in judicial decisions
  - recognition of a right becomes binding precedent
  - residual freedom allowed: i.e. the right to do anything that is not expressly forbidden by law
  - mostly related to procedural fairness
  - limited and unclear
- Statutory rights:
  - created by parliament legislation
  - most legal rights are statutory rights
  - *federal legislation*: restricted to areas outlined in s.51 of the Australian Constitution
  - *State legislation*: anything provided it does not conflict with valid federal legislation

### 8.1.3 Relationship between rights and duties:

- Every right creates a corresponding duty, and vice versa
- Some claim that individuals must discharge duties before being, or in order to be, entitled to rights

### 8.1.4 International rights:

- Granted to all people
- Protected under international law
- *International rights of nation States*:
  - right to State sovereignty
  - right to defend against attack
  - right to attend international conferences
- *International rights of individuals (human rights)*:
  - extended to all people regardless of nationality
  - reflect values outlined in the Universal Declaration of Human Rights
  - allow people to live with dignity
  - protect people from becoming victims of oppressing government (e.g. right to vote/fair trial/religion/etc)
  - allow people access to basic needs (right to shelter/education/employment/etc)
- *The right to self-determination*:
  - right for people who share common culture/heritage to freely determine their own political status (self-government)
  - right to pursue economic/social/cultural development and maintain cultural/social practices without interference
  - collective right
  - important for minority groups and indigenous communities
- International treaties and declarations of rights:
  - 1945: the UN Charter; bound its signatories to respect human rights (first recognition)
  - 1948: the Universal Declaration of Human Rights; identified 30 fundamental human rights
  - 1966: the UN Covenant on Civil and Political Rights
  - 1966: the UN Covenant on Economic, Social and Cultural Rights
- Limitations of international law in protecting rights:
  - the right to State sovereignty prevents enforcement of human rights
  - the UN High Commissioner for Human Rights investigates suspected abuses of human rights
  - social pressure exercised by NGOs, e.g. Amnesty International, are only effective to an extent in democratic nations, not autocratic nations
  - citizens are only guaranteed those human rights their nation chooses to ratify by incorporating into domestic legislation

### **8.1.5 Differences between domestic and international rights:**

- Domestic rights:
  - apply to people of a particular country
  - aim to regulate society
  - entitlements and responsibilities clearly stated
  - certainty of nature and boundary of rights
  - enforced by sanctions/imprisonment/etc

International rights:

- apply globally
- include rights of nation states and individuals
- aim to protect human dignity
- phrased generally; entitlements vague
- enforcement mechanisms relatively ineffective: pressure, public condemnation, economic sanctions