

Cultural influences

.....

.....

Example:

Moral influences

.....

.....

Example:

Political influences

.....

.....

Example:

Economic influences

.....

.....

Example:

□ **Nature of Law**

1. Briefly explain how the legal system in Australia is a reflection of past and present society

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

2. Explain the Doctrine of Reception

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

3. Why was English law automatically implemented in the Colony of *New South Wales*?

.....

.....

.....

.....

.....

4. What impact did the doctrine of **TERRA NULLIUS** have on the indigenous peoples of this land?

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

5. Explain the significance of the **Mabo Case**.

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

6. What is Native Title?

.....

.....

.....

.....

7. When the doctrine of reception allowed English law to prevail in the colony of New South Wales, legislation was passed in England to allow English law to be practiced and then for greater law making power to be transfer to the colony. Briefly explain the impact of the following legislation.

Acts of Parliament that have had a fundamental impact on the legal system in Australia

Act	Impact
Letters Patent First Charter of Justice	
New South Wales Act 1787	
New South Wales Act 1823	
Australian courts Act 1828	
New South Wales Governments Act 1855	
Colonial Law Validity Act 1985 (Imp)	
Commonwealth of Australia Constitution Act 1900 (UK)	
Statute of Westminster 1931 (UK)	
Privy Council (Appeals from the High Court) Act 1975 (Cth)	
Australia (Request and Consent) Act 1985 (Cth) Australia Act 1986 (UK)	

8. List the different types of **legal systems**:

1 2 3

9. Use the table to give an explanation of the main features of **customary law, common law** and **civil law systems**.

Legal System	Examples	Main Characteristics
1. Customary law		
2. Common law system		
3. Civil law system		

10. Explain the doctrine of **natural justice**.

.....
.....
.....
.....
.....

11. In what ways does the trial system used in Australia allow for the principles of natural justice to be put into place?

.....
.....
.....

12. Complete the following table to summarise the purpose of different types of law.

Types of Law	Definition/Purpose	Example
Domestic law		
International law		
Public law		
Private law		
Civil law		
Criminal law		
Contract law		
Tort law		
Property law		
Aboriginal and Torres Strait Islander customary law		

13. Explain the difference between:

Domestic and international law

.....

.....

.....

.....

.....

.....

.....

.....

.....

Public and private law

.....

.....

.....

.....

.....

.....

.....

.....

.....

Civil and criminal law

.....

.....

.....

.....

.....

.....

.....

.....

.....

14. Complete the following table to compare Civil and Criminal Law

	Criminal Law	Civil Law
Aim		
Standing		
Burden of proof		
Standard of proof		
Procedure		
Outcome		
Liability		

□ **Nature of Justice**

1. What is justice?

.....

.....

.....

.....

.....

.....

.....

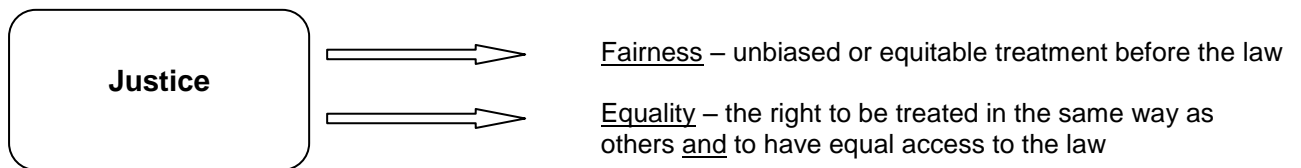
.....

.....

.....

.....

Justice, Fairness and Equality



Social Justice – an idea in which all people in society are treated equally and fairly

Ideal justice – level of justice that would be possible in a perfect world.

Attainable justice – the best justice that can be obtained in the real world

Are laws always just?

2. Think about this and write some ideas:

.....

.....

.....

.....



3. Explain the following concepts and the effect of each in achieving justice:

Concept of Justice	Explanation	Relationship to achieving justice
Access		
Equity		
Fairness		
Equality		
Human rights		

Key Questions/Issues

- To what extent is the law influenced by the society in which it operates? Use examples in your answer.

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

- What characterises a just law?

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

What constitutes a just law?

The meaning of justice has varied across time and cultures. It had a wider meaning than law. It is related to concepts of fairness of equality. It is a very subjective term as it may mean different things to different people from the same community, because it involves the application of values.

Characteristics of a just law or decision may include the following:

- Treats all people equally – **equality** before the law i.e. the law is fair and free from bias
- Based on **religious/ethical principles** accepted by the majority
- Ensures the greatest happiness for the majority – the principle of **utilitarianism**
- Ensures community survival through **social cohesion** and consensus – aims to ensure community well being and the smooth functioning of society through democratic process
- The law is **equitable** and treats each individual case on its merits – allows consideration of individual cases and allows for mercy to be applied in individual cases to override general principles – discretion to consider mitigating factors
- Aims to **redress inequality** by positive action – improve situation for disadvantaged groups
- Leaves people free – **individual freedom** as long as the law is not broken – sanctions apply only to those who break the law. It allows for **human rights** to be upheld
- Takes into account material limitations of society – resources must be conserved and shared
- Is assessable to all – no undue delay or financial barriers
- The law is **public** – the law is known and open to public scrutiny and debate
- The legal system operates **quickly and efficiently** without undue delays
- Law **changes** to reflect the morals of the majority of society

- Does formal equality hide institutionalised inequality?
(Read the following notes to assist with your answer)

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

Notes:

Today the concept of equality permeates all areas of life and the law **attempts to redress inequality** in several ways: eg regulations requiring wheelchair access to public buildings, anti-discrimination legislation and Taxation and Social Security laws all reflect society’s attempts to create a more equitable community.

Although the law is meant to treat all people equally, in reality the law is not truly equitable. Different people have different degrees of access to the legal system.

- The wealthy can afford expensive barristers that are more likely to convince juries and judges to find in their favour
- Well-educated people have a better knowledge of the legal system and are therefore more aware of their legal rights and how to enforce them.
- Influential lobby groups are able to gain greater access to political leaders and possibly alter political decisions.

Such situations lead to a legal system that is not always equal.

There are several different notions of equality:

- **Formal equality** – means all persons have the **same set of legal rights** and obligations regardless of race, religion, gender, etc.
- **Equality of opportunity** – every person is given the same **chance** to achieve something through his or her efforts, and not be barred by discrimination.
- **Equality before the law** – the law treats all persons who come before it **equally** and **without prejudice**.
- **Equality of outcome** – this allows for people to be treated differently (i.e. positive discrimination) by the legal system to ensure that the **outcome or results are equal** or the same as those in the community (e.g. very poor people may receive free legal representation so that they are represented just as well as a person who can afford to
- Pay for legal representation

Does formal equality before the law hide institutionalised inequality?

When an idea or relationship becomes widely accepted in society it is often said to be institutionalised. For example, marriage is often referred to as the 'institution of marriage'.

There are some forms of inequality that have existed in society for so long that they have almost become accepted, or institutionalised. This type of inequality is therefore referred to as 'institutionalised inequality'.

In Australia there are several examples of institutionalised inequality, such as the poor educational outcomes, lower economic status and restricted power base held by certain groups such as indigenous Australians and migrants. Society's acceptance of the limited opportunities available to these groups reinforces the inequality and can even establish a sense among the disadvantaged that their situation is inevitable.

One of main reasons why our society is so willing to accept this institutionalised inequality is that it is hidden behind formal equality of the law. This type of equality refers to the fact that everyone is equal before the law, with no single group being given favourable treatment. As a result of this formal equality a sense develops that we live in a society where there is equality for all.

However, the law is not equal in reality. Those with greater power, better education and more wealth are more able to access the legal system and use it to their advantage. Therefore, while in theory the law is equal, in reality the problems of institutionalised inequality mean that it is often quite unequal.

Formal equality cannot guarantee equality of outcome or opportunity. It is very difficult for the legal system to obtain ideal justice as this would only be possible in a perfect world. The legal system aims for the best justice that can be obtained in the real world ie. **attainable justice**.