



CHAPTER ONE LAW & COMMUNITIES

RULES & LAWS

In society, we have different boundaries which regulate our behaviour. These are usually enforced through rules and laws. Boundaries are necessary to help avoid conflict and create a peaceful society. Rules and laws protect people's rights and freedoms.



Rules are a set of principles which control our behaviour within a given organisation or activity, for example at school or at home.

Sets of rules differ from one another and have been developed according to backgrounds, values and beliefs. Rules and expectations may be informal (oral) or formal (written). Rules are developed to create safety, equity and harmony in an environment. If a rule is broken there are often consequences for this behaviour, however these consequences are not legally binding.

Unlike rules, laws are legally binding and have legal consequences. The purpose of laws are to regulate or govern a whole society (state or country) control behaviour and protect people's rights. Laws are developed according to an expected standard of behaviour of society and aim to achieve and a good standard of living and harmony. Laws are communicated through legislation. Laws have been developed not only to regulate behaviour and maintain social control, but also to preserve freedoms and ensure equity in society. Additionally, laws provide guidelines for disputes to be resolved. If laws are broken there are legal consequences.

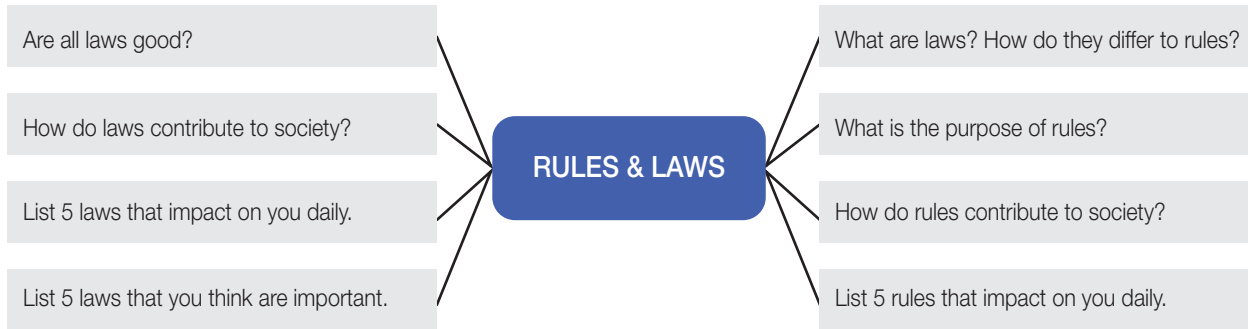
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For further information on Rules and Laws watch:

- | | | |
|---|----|---|
|  YouTube | 1. | Youtube: Why we have rules? https://www.youtube.com/watch?v=rhWVQQQ5hVU |
|  ClickView
<small>The standard in digital video learning</small> | 2. | Clickview: Legal Briefs – What is Law? |

 Collaborative Activity

In groups use the mind map below to discuss and brainstorm concepts related to rules and laws. Then consider the statement “Laws are rules but not all rules are laws”. Use examples to support your point of view.



Why do we need laws?

Laws aims to reflect what the majority of citizens in a society consider as an appropriate standard of behaviour. If there were no laws, then people could do anything they wished, this may result in disorder and chaos. Laws are required for a range of reasons, including;

Why we need Laws?

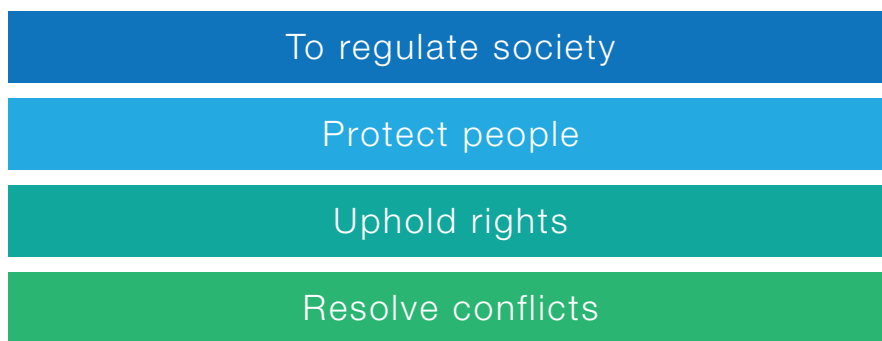


Figure 1.1.1: Key reasons why we need laws.

Laws seek to prevent or deter people from behaving in a manner that negatively affects the quality of life for other people and infringes on their rights. In Australia, there are different reasons why we punish people who break laws. Punishment is the consequence of breaking a law. The main aims of punishment include:

- **Deterrence** – to discourage an action through the fear of consequences.
- **Retribution** – to give a punishment considered to be morally right based upon the nature of the crime.
- **Rehabilitation** – actions which improve (through skills and attitude changes) offenders in an attempt to avoid future crime.
- **Incapacitation** – protecting the community from the offender by making the offender incapable of committing further offences, usually through imprisonment or home detention.

Globally, the aims and types of punishments differ significantly, due to the values and beliefs of the society.

List different types of punishments that are used in Australia? Provide an example of the crimes and punishment that differ from Australia.



**Collaborative Activity**

In groups complete the following task:

Imagine an island with a community of about 50 men, women and children. The island is self-sufficient and does not rely on any other human contact. The community is sustainable with its own resources: fishing, hunting, growing/gathering fruit and vegetables, etc. The community operates with a bartering system. Your task is to make up 10 rules for this community in order to maintain safety and avoid conflict. You may wish to include consequences for each rule if it is not followed.

Once you have formulated and noted your 10 rules, share them with the class. Justify your reasoning for the rules you have written. Compare the similarities and differences in the rules that have been made. What does this demonstrate about the importance of rules?



1

**Review Activity**

1. Define the key differences between rules and laws?

2. Explain why laws are essential for the well-being of society.

3. Conceptualise a world without laws; describe what might it look like? What might be some problems with this world?

4. Using an example, where in history has a breakdown in laws been evident? What was the result of this?

5. Using examples, why is it necessary for different crimes to have different punishment? Could laws without consequences be successful?

Rights and Responsibilities in Australian Society

As Australians, we enjoy fundamental rights and freedoms which have maintained prosperity and peace in our society. Many of our rights have been incorporated into laws to guarantee that they are upheld and to ensure our safety. Citizens have the responsibility to act in a way that upholds these rights.

Australia's core rights include:

- A constitutional government
- Respect for the freedom and dignity of individuals
- Freedom of speech and religion
- Commitment to the rule of law
- Allegiance to Australia
- Parliamentary democracy
- Equality of opportunity for all

The rights, privileges and freedoms of living in Australia are balanced by responsibilities. All Australians are responsible for respecting and protecting our country and ensuring that our commitment to a decent society embraces all Australians.

Australian citizens have the responsibility to:

- Uphold Australia's democratic beliefs
- Respect Australian rights
- Obey Australian laws
- Vote in elections and referendums
- Defend Australia, if required
- If summoned, fulfil jury duty

Are the range of rights and responsibilities inclusive for all Australians? Why/Why not? Are there any additional rights and responsibilities you might add?



Australian rights and responsibilities have been influenced and shaped by our history, beliefs, values and morals. Due to this, the rights we enjoy are not universal and differ significantly globally.



Collaborative Activity

Rights and responsibilities differ globally. Select a country, research and prepare 6 key points on the similarities and differences regarding your selected country's rights and responsibilities. Share and discuss your findings with the class. Finally discuss how global harmony can occur with differing rights and responsibilities?



Country:

Similarities	Differences

Types of Rights

Bill of Rights

Unlike most similar democracies, Australia does not have an explicit Bill of Rights. A Bill of Rights is a list of fundamental rights that citizens of a country have. It exists to prevent any confusion and to protect the rights of individuals.

In Australia, our rights are formally protected through laws (legislation and Acts) and international conventions. The issue of Australia adopting a Bill of Rights is one that is often debated



View



YouTube

For further information on Australia and a Bill of Rights watch:

<https://www.youtube.com/watch?v=kc1sJWPNjlk>



Research Activity

Using the link for American Bill of Rights:

<https://www.archives.gov/founding-docs/bill-of-rights/what-does-it-say>,

familiarise yourself with it. Then, using the table below, research the arguments for and against Australia adopting a Bill of Rights.



Bill of Rights

Arguments For	Arguments Against

Summarise your own justified decision on whether or not Australia should adopt a Bill of Rights. Include what you believe Australia might include if it were to adopt one.

International Human Rights Obligations

Established in 1945, the United Nations cited its key aim is to 'maintain international peace and security; to develop friendly relations among nations; to cooperate in solving international economic, social, cultural and humanitarian problems and in promoting respect for human rights.' The United Nations is currently composed of 193 member states, with Australia being one of the founding members. The United Nations, outlines global expectations in regards to human rights standards. Australia upholds seven international human rights agreements which have been incorporated into domestic law, these being:

United Nations	Australia
International Covenant on Civil and Political Rights (ICCPR)	Australia has adopted a range of legislation in the areas of discrimination, privacy and freedom of information which include some elements of the ICCPR.
International Covenant on Economic, Social and Cultural Rights (ICESCR)	Various legislation relating issues such as: human rights, discrimination, immigration
International Convention on the Elimination of All Forms of Racial Discrimination (CERD)	Racial Discrimination Act 1975

United Nations	Australia
Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)	Various Acts including: Sex Discrimination Act 1984
Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)	Human Rights and Equal Opportunity Commission Act 1986 (Cth)
Convention on the Rights of the Child (CRC)	Various Acts including: Family Law Act 1975 (Cth) and Children's Protection Act 1993 (SA)
Convention on the Rights of Persons with Disabilities (CRPD).	Disability Discrimination Act 1992)

Table 1.1.1: Treaties and Domestic Law

Based upon these standards set down by the United Nations, Australian Federal and State Parliaments have incorporated these principles into domestic law to ensure that these rights are protected and laws are legally binding. This is important because it upholds universal standards and strengthens global relationships and reputation.



Research Activity

For further information use the link below about Australia's international human rights obligations.

<https://www.ag.gov.au/RightsAndProtections/HumanRights/Pages/International-Human-Rights-System.aspx>.

Then provide an analytical response to:

1. To what extent should Australia be a signatory to international human rights agreements?"
2. Which key aim of the UN do you think is most important? Are there any you would substitute?

Common Law & Statutory Rights

In Australia, citizens have their rights protected under two different areas of law, these being common law and statutory law.

- **Common law** is the law that has been developed through courts and judges making decisions in order for disputes to be resolved.
- **Statutory law** is the law that Parliament make and adopt as a new law.

The key difference between common and statute law is how the legal system creates these laws. Through the protection of statutory and common law there is significant provision for the protection of human rights.


	Common Law	Statutory Law
Meaning	Law which is made by judicial decisions	Laws made by Parliament
Other names	Case Law	Legislation/Acts
Nature	Instructive	Prescriptive
Based upon	Judicial precedent	Statutes enforced by legislature

Table 1.1.2: Common and Statute Law Comparison



Review Activity

1. Can rights exist without responsibilities? Justify your response.

2. List 5 different factors that have influenced Australian core rights and responsibilities.

3. What is the importance of incorporating relevant human rights treaties into domestic laws?

4. Are the rights of all Australians adequately protected? Justify your response

5. Research a Federal or State law that protects the rights of Australian citizens for each method of law and outline how it protects rights.

 Common Law:

 Statute Law:

Historical Influences on Laws

Throughout history, laws have played an important part in establishing order and punishing those who do not conform to this order. More recently, laws have been instrumental in promoting equality and maintaining harmony in a democratic society.

A democratic system of government simply refers to when citizens of a country can freely elect a government that represents them. Both historically and currently in other nations, other systems of government operate, including communist government and dictatorships.

Our laws have been shaped and influenced by our backgrounds, values, and beliefs. Historically, these have been shaped through;

- **Customs** – this is an accepted way of behaving within a given context, for example, place, society, or time.
- **Codes** – a method used by some societies to set down rules on how citizens should conduct themselves.
- **Credo**s – are often based on religious or moral beliefs and are used to guide actions

These have been established over time and handed down through generations, attempting to maintain traditions whilst adapting to changing circumstances.

 What is a 'code of conduct'? Provide an example of when this is used in today's society.

Like other democratic societies, past legal decisions help to shape current decisions. This is achieved through **common law** where throughout history the decisions of judges were recorded. This was so they could be referred to in future cases – known as **precedent**. This means that similar cases are treated in a similar manner (equal before the law), further upholding core Australian rights.

The foundation of the Australian legal system has been influenced by global democratic countries, namely, the United Kingdom and the United States of America.

The basis can be traced back to 1215 with the establishment of the Magna Carta. Translated as 'The Great Charter', it is one of the most famous documents in the world. Originally issued by King John of England (r. 1199–1216) as a practical solution to the political crisis he faced at this time. The Magna Carta established for

the first time the principle that everybody, including the king, was subject to the law. Some of Magna Carta's core principles have been incorporated into many constitutional documents around the world.

 View



For further information on the Magna Carta watch:

What is the Magna Carta – British Library, <https://www.youtube.com/watch?v=7xo4tUMdAMw>

Research and outline at least 5 Australian laws which have used the Magna Carta principles as its foundation.

Principles demonstrated in the Magna Carta, were further solidified through the formation, by the United Nations, of the Universal Declaration of Human Rights (1948). This document established a common standard of human rights to be universally protected.

 View



For further information on the Universal Declaration of Human Rights watch:

The Universal Declaration of Human Rights: <https://www.youtube.com/watch?v=5RR4VXNX3jA>

Review Activity

1. Give an example of where a group of people have used customs regulate their behaviour.

2. To what extent are social and religious customs an influence on our legal system.

3. How does the past influence law in Australian society?

4. Explain the significance of the Magna Carta to democratic legal systems.

5. Discuss the role that the Universal Declaration of Human Rights (1948) has had on Australian laws.

Background to the Australian Legal System

From the mid 1800's, British Parliament permitted the six Australian colonies to establish a local system of government. Each colony was given the power to establish and develop its own set of laws and legal systems to ensure colonial harmony.

In 1901, the six Australian States joined together to establish a nation. During the mid to late 1800's there was a growing feeling of national pride, which led to **Federation**. It was during this time that the Australian legal system was developed. The process of Federation was a complex negotiation between the colonies. These negotiations ensured that after Federation, both the new Federal parliament and the State parliaments would have specific powers or areas of decision making protected. This ensured that a system would be in place so that power could not be abused. Federation presented a range of benefits and challenges.

 Federation	
Benefits	Challenges
Defence	Disagreements between colonies
Immigration	Colonial pride
Free trade between States	Fear of changing relationship with England
National pride	Compromise on issues such as transport

Table 1.1.3 Federation Benefits and Challenges

The foundation of our legal system is in the Australian Constitution (*Commonwealth of Australia Constitution Act 1900 (UK)*). This written document sets out the original laws of our nation and can only be changed through a Referendum. A referendum is simply a vote which supports changes to a constitution. It is compulsory for all Australian citizens, over 18 years of age to vote in a referendum. In order for a referendum to be passed it must achieve dual criteria – this is the support of the majority of the states with the majority of the people. If the dual criteria is not met a referendum will not be successful. In Australia's history there have been 44 referendums held with only 8 being successful. The key objectives of the Australian Constitution is to outline how the institutions of government are to operate. There are 6 foundation principles.

Research Activity

Use the following link Australian Constitution Centre: <https://www.australianconstitutioncentre.org.au/the-six-principles.html>

Research and then summarise the 6 foundation principles.

View

The Journey: How Australia Came To Be

<https://www.australianconstitutioncentre.org.au/>

Then deepen your knowledge of Federation and the Constitution by exploring the Australian Constitution Centre website. Take the online quiz to confirm your understanding, using the following link: <https://www.australianconstitutioncentre.org.au/take-the-knowledge-quiz.html>

Australia's system of government was largely based on the British and American systems. This was due to Australia originally being a British colony and our relationship with America. As a result of this, a number of elements were mirrored from these systems, including;

- The parliamentary system
- An adversarial court system involving trial by jury and the principle of innocent until proven guilty.

Before 1901 the British Parliamentary model was very influential in Australian colonies. This influence can still be seen in the appearance and function of the bicameral (two chambers) system of the Australian Parliament; these being the House of Representatives and the Senate. The idea of **responsible government** – a government elected by the people and accountable to the Parliament – is a significant British component of our system. Finally, the **separation of powers**, which divides the roles and functions of the 3 institutions of government. They are Parliament, the Executive and the Judiciary.

A major influence of the American system can be seen in the overall model of Australian federation – particularly independently governed states working together under a central federal government structure. Also, the **representative** structure of the Australian Senate was heavily influenced by the American model of their Senate.



Collaborative Activity

In small groups prepare a short presentation, on one of the topics below. Consider the role or influence that your topic has had on Australia. It is recommended that your presentation has a teaching or interactive element to it. This could include a kahoot or quiz.

- British Parliament
- USA Parliament
- The Australian Constitution
- Federation – timeline and events
- Federation – influential people

Your presentation should make reference to the foundation and history of the Australian Legal System. You need to explain what it is, where it came from and the influence that it has had on the Australian legal system.



Aboriginal and Torres Strait Islander Law

Customary law relates to the processes and procedures used to regulate behaviour among Aboriginal and Torres Strait Islanders over many generations. This has been developed over time, particularly through customs and is evidenced in the Dreamtime. Its foundation is based on the connection that people have with each other and their environment.

The Aboriginal and Torres Strait Islanders developed a dynamic and effective system of law before the arrival of the British law system into Australia at the time of settlement. Disputes and law resolution were traditionally handled by the Elders of a community, rather than through a formalised British system such as the use of courts. Despite the systems of law that these people had in place, the concept of **Terra Nullis** was declared at British settlement. Terra nullis was recognized as land that nobody owned. Effectively this did not recognize the laws and traditions of the Aboriginal and Torres Strait Islanders. A result of this was that they people were expected to follow and were bound to British law.

Aboriginal and Torres Strait Islanders customary law did not play a part in the development of Australia's legal system. 1967 was significant in terms of Indigenous recognition with a Referendum being held and successfully passed. This resulted in two changes to the Australian Constitution, these being in Section 51 and Section 127.

It was not then until 1992 the historic Mabo v Queensland No 2 (1992) case that legal recognition acknowledged Aboriginal and Torres Strait Islanders as lawmakers. This decision overturned the concept of Terra Nullis. This decision recognized that customary laws and traditions were acknowledged by accepting Aboriginal and Torres Strait Islanders law into the common law system.