

# Basic legal concepts



- MEANING OF LAW
- RULES AND LAW

# Introduction



- Create a mind map: What is the law?



- **Law is defined as:**

A set of legal principles imposed on all members of the community that are officially recognised, binding and enforced by organisations such as the Police and the court system.

***What do you think is considered when making laws?***



- **Customs are:**
  - Established behaviours of a particular group within society, for example different ethnic or cultural groups.
- **Values are:**
  - Principles, standards, or qualities considered worthwhile or desirable within a society.

***Then, what are the differences between a law and a rule?***



- A rule is defined as:
  - Guidelines to follow that are specific to a particular situation, for example a school.

# Lesson 3: Nature of justice



- Justice incorporates a range of main concepts including equality, fairness and access.
- Equality refers to equal treatment or equal opportunity
- Fairness aims to achieve equal outcomes.
- Access refers to being able to benefits from something or someone (e.g. The law, legal representation)
- Justice refers to moral "rightness".

# What is justice?



- Brainstorm characteristics of a just law.

# What is justice?



- Brainstorm characteristics of a just law
- Ethics, morality, rationality, law, natural law, religion, equity, fairness, administration of the law, rights of humans, protection before the law, without discrimination, social justice, benevolence, charity, mercy, generosity, compassion.



# Just laws



- Examine a hypothetical law (a 8pm curfew for all under-18s). Outline why it is not a "just" law.

# Just laws



- Has the law discriminated against anyone?
- Do people have access to the courts?
- Is the law enforced?
- Does the law have a particularly harsh effect on some people?
- Are legal proceedings going to be cost- and time-effective?
- Are there opportunities for appeal?

# Equality



- What are different types of discrimination?
- What cases relate to discrimination? Marsden v. HREOC et al, Mc Bain v. State of Victoria

# Fairness



- What examples can you think of where the same outcome (e.g. punishment) may not be fair?
- Fairness is subjective. What does this mean?
- Corey Davis case study - doli incapax - a ten year old boy was charged with the manslaughter of a six year old boy. Corey Davis drowned on March 2 1998, after the accused dropped him into the George's River, knowing that he was unable to swim. The jury supported the defence case that the drowning had been a childish prank gone wrong. Doli incapax presumes a child between 10-14 is incapable of criminal intent unless proven otherwise.

# Access



- Define access
- What is the significance of access to the law and limitations to access?
- How would each of the following improve access: legal aid, translators, self-help and education guides?

# Lesson 4



## **PROCEDURAL FAIRNESS**

# What is procedural fairness?



Procedural fairness is also known as natural justice. It refers to the integrity of the processes involved in resolving disputes of a legal nature.



# What is procedural fairness?



Key principles related to procedural fairness are:

- fairness
- transparency
- equality before the law
- freedom from bias
- the right to be heard
- a decision being based on relevant evidence.



# Procedural fairness



Discuss procedural fairness in different situations:

- the Courts
- the workplace
- school
- immigration

# Procedural Fairness

## Case Law: David Hicks



[http://www.amnesty.org.au/hrs/comments/david\\_hicks\\_the\\_story\\_so\\_far/](http://www.amnesty.org.au/hrs/comments/david_hicks_the_story_so_far/)



# Procedural Fairness

## Case Law: David Hicks

Australian citizen

Convicted by the military commission act 2006

Captured in Afghanistan in December 2001 by the afghan northern alliance who later sold him to the US military for US\$1000

Designated an "enemy combatant"

First charge filed in 2004 under a military commission system newly created.

Proceedings failed in 2006. The Supreme Court ruled that the military commission was unconstitutional.



# Procedural Fairness

## Case Law: David Hicks

- held at Guantanamo Bay without charge for a considerable time (“indefinite detentions” common)
- couldn’t challenge being held on US soil because GB is not US soil.
- not called prisoners as this would imply they were “prisoners of war” and would require protection under the Geneva Conventions
- special military commissions rather than courts, limiting the amount of evidence admissible, and challenging the idea of a fair trial.
- use of torture to gain evidence/ confessions



# Procedural Fairness

## Case Law: David Hicks

Note that an examination of this case is not intended to explore the innocence or guilt of the accused, but rather to examine the legal process.

Issues:

- legal representation
- a right to know the charges
- to have a hearing before the court
- the right to test evidence in cross examination



# Procedural Fairness Written Activity



- Using examples, discuss the importance of procedural fairness and its relationship to justice.

# Rule of law



The rule of law means that everyone (citizens, the government, etc), is bound by and entitled to protection from the law.

The law must be:

- clear, predictable and accessible
- publicly made
- determined by community participation in the law making process
- publicly adjudicated in courts independent from the executive arm of government
- able to result in dispute resolution that is fair and efficient.

# Rule of law



**Discussion:**

Explain why rule of law is important for society.



# Rule of law



Explain why rule of law is important for society.

- create order
- sense of security
- reinforces the values of the majority of society
- protection for individuals

# Rule of law



## Relevant case:

- ICAC - Eddie Obeid, Ian Macdonald
- <http://www.dailytelegraph.com.au/icac-exposes-bribery-allegations-in-obeid-corruption-case/story-e6freuy9-1226572153980>

# Lesson 5



## **ANARCHY AND TYRANNY**

# Anarchy



- Anarchy refers to a society without a publicly enforced government, where there is political disorder and lawlessness.

# Historical background of Anarchy



- There is a long philosophical history of debate about concepts such as the role of freedom, citizens and natural law beginning with philosophers such as Socrates, Plato and Aristotle. Anarchy is the absence of these things.
- Later philosophers like Emmanuel Kant dealt with issues of western governance as we know it more specifically. He defined the state as the "union of men under law".
- Examples of anarchy: English Civil War, French Revolution.

# Recent examples of anarchy: Somalia



- In 1960 northern Somalia and Southern Somalia United to form the Somali Republic under a civilian government. Mohamed Siad Barre took power in 1969, establishing the Somali democratic republic. The government collapsed in 1991 and the Somali civil war broke out. A coalition of clan-based armed opposition groups ousted the military government.

# Tyranny



- Tyranny refers to a cruel and oppressive government or rule.
- Examples of tyrants include: Kim Jong Un and Kim Jong Il (North Korea), Joseph Stalin (Soviet Union), Benito Mussolini (Italy), Augusto Pinochet (Chile).

# Tyranny : Zimbabwe - a recent example



- Robert Mugabe's party, Zimbabwe African National Union, has won every election since 1990 amid allegations of vote rigging, intimidation and fraud.
- There are widespread reports of human rights abuses under the Mugabe administration.
- Opposition gatherings are often subject to brutal attacks by the police force (including in 2007 the severe beating of opposition party leader Tsvangirai).
- In 2008 Mugabe signed a power-sharing deal with Tsvangirai but Mugabe retained control of the military.



# Mind map of topic so far

