CONCEPTS in VCE

GAL STUDIES

UNITS 3 & 4
KEY CONCEPT Rules tell people what they can and cannot do. In our society we have both legal rules (law) and non-legal rules. Parliament makes law. Courts also have a role to play in law making as well as settling disputes. Two distinct branches of law are criminal and civil law.

...ed Legal Studies before? Even if you have studied Legal Studies, this will refresh your memory on some of the basic points you need to know for your exams.

and non-legal rules

The difference between ‘stealing’ a biscuit from a jar at home and stealing biscuits from the supermarket. We are all governed by rules that set what is acceptable behaviour. Non-legal rules provide guidelines for acceptable behaviour within a particular group, such as a family or sporting clubs. Legal rules are laws that each member of the community must follow and are enforceable through the courts. Laws are made by law-making bodies. A person who breaks the law may go to court.

Non-legal rules are rules that are not enforceable through the courts.

Legal rules are made by parliament, subordinate bodies (such as your local council) and the courts. If a legal rule is broken the offender may go to court.

'vestealing' a biscuit from the jar at home broken a legal or non-legal rule? How is it's behaviour different to the behaviour of the woman who has just attempted to shoplifting?

Legal system

A legal system is a structure or system that sets boundaries for behaviour. The system requires institutions to make, administer and enforce laws, and to adjudicate when laws are broken.

Parliament is the supreme law-making body. The Commonwealth Parliament consists of the Governor-General (Queen’s representative), the Senate and the House of Representatives. The Victorian Parliament consists of the Governor (Queen’s representative), the Legislative Council and the Legislative Assembly.

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Criminal and civil law

Civil and criminal law are two distinct branches of law. **Criminal law** establishes what behaviour is acceptable by prohibiting certain actions. If the law is broken the consequence is punishment of some kind. Examples of behaviour prohibited under criminal law include murder, theft, rape and fraud.
Laws that are concerned with the infringement of a person’s rights are called **civil laws**. For example, if someone does not fulfil the terms of a contract, does something that damages your reputation, or acts, or fails to act, in a manner that causes an injury to you or your property, then you can take legal action against that person. In civil law, the aim is not to punish the other party but, rather, to restore the affected person to his or her original position (as far as possible), or compensate that person for his or her loss. This area of law includes contracts, negligence, defamation and trespass (see page 330). The differences between criminal and civil law are outlined in the table below and further explained on page 186–8.

<table>
<thead>
<tr>
<th>Feature</th>
<th>Criminal law</th>
<th>Civil law</th>
</tr>
</thead>
<tbody>
<tr>
<td>Purpose</td>
<td>Protection of the community as a whole</td>
<td>Protection of individual rights</td>
</tr>
<tr>
<td>Parties involved</td>
<td>The state, acting on behalf of the community, prosecutes the accused.</td>
<td>The injured party, the plaintiff, sues the wrongdoer, the defendant.</td>
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<tr>
<td>Burden of proof (the party who has the task of proving the accuses is guilty of the criminal charge)</td>
<td>The prosecution has the task of proving the accused is guilty.</td>
<td>The plaintiff has the task of proving the defendant breached his or her civil rights.</td>
</tr>
<tr>
<td>Standard of proof (the degree of proof required)</td>
<td>The prosecution must prove beyond reasonable doubt that the accused is guilty.</td>
<td>The plaintiff must prove on the balance of probabilities that the defendant is liable.</td>
</tr>
<tr>
<td>Use of a jury</td>
<td>A jury of 12 is used in criminal trials before the county and supreme courts.</td>
<td>Either party may request that a jury of six be used in the county or supreme courts.</td>
</tr>
<tr>
<td>Possible court finding</td>
<td>Guilty, not guilty, or no decision (hung jury)</td>
<td>Defendant liable for the injuries suffered by the plaintiff, or defendant not liable</td>
</tr>
<tr>
<td>Possible outcomes</td>
<td>A penalty such as a fine or imprisonment in order to punish the offender</td>
<td>A civil remedy such as compensation, in order to return the plaintiff to their original position as far as possible</td>
</tr>
</tbody>
</table>

**TEST your understanding**

1. What is the difference between a legal and non-legal rule?
2. Give two reasons why non-legal rules are important.
3. Name three law-making bodies.
4. What is another name for legislation?
5. We have a Commonwealth Parliament and a state parliament. The Commonwealth Parliament makes laws for the _____ and the state parliament makes laws applicable to _____.
6. What is the name of the injured party taking civil action?
7. How does the purpose of civil law differ from the purpose of criminal law?

**APPLY your understanding**

8. Explain whether a legal or non-legal rule has been broken in the following scenarios.

   (a) John picks his nose in a public place.
   (b) Lee sneaks out of a shop with a T-shirt she hasn’t paid for.
   (c) Jo ‘borrows’ her sister’s T-shirt without asking her.
   (d) Tan punches one of his classmates, causing serious injury.

9. In each of the following fictitious cases, state whether the case is criminal, civil or both.
   (a) Jan slipped on a wet floor at the supermarket and received minor injuries.
   (b) Troy was speeding when he crashed into another car.
   (c) Donna was caught spraying offensive words on a fence near her home.
   (d) Sam kept receiving an unemployment benefit even though he had commenced working for his uncle.
There is growing pressure on the Commonwealth Government to change the Marriage Act 1961 (Cwlth) to give lawful recognition to same-sex marriage. Those who favour a change to the law argue that the law should not discriminate on the ground of sexual orientation. Same-sex marriage is a big issue for law-makers. Protesters try to influence the law by making their message known to the law-makers — the parliamentarians we voted for to represent our views. Chapters 1 to 4 focus on parliament as the major law-maker and the role the courts play in the law-making process. At the end of this unit it is hoped that you will be able to evaluate the effectiveness of these law-making bodies and how they make law to reflect a changing society.
CHAPTER 1

Parliament and the citizen

WHY IT IS IMPORTANT
Parliament is the primary law-making body of the land. In a democratic society, parliament is elected to create laws that reflect the values and expectations of the people. It must also be able to respond effectively to changing circumstances, both global and local, and to change laws as the need arises. As citizens in this society, we have the ultimate power to influence the work of parliament, and a strong understanding of its structure and operation will improve our ability to perform this role.

WHAT YOU WILL LEARN
Use each of the points below from the Legal Studies study design as a heading in your summary notes.

KEY KNOWLEDGE

- Strengths and weaknesses of parliament as a law-making body
- The legislative process for the progress of a Bill through parliament
- The means by which individuals and groups influence legislative change, including petitions, demonstrations and use of the media
- The structure of the Australian parliamentary system: representative government, responsible government and the separation of powers
- The structure of the Victorian Parliament and the Commonswealth Parliament and the roles played by the Crown and the houses of Parliament in law-making
- The role of the Victorian Law Reform Commission
- The reasons laws may need to change

KEY SKILLS
These are the skills you need to demonstrate:
- define legal terminology and use it appropriately
- discuss, interpret and analyse legal information and data
- explain the principles and structures of the Australian parliamentary system
- use contemporary examples to explain the influences on legislative change
- evaluate the effectiveness of methods used by individuals and groups to influence change in the law
- critically evaluate the law-making processes of parliament.

Can you demonstrate these skills?
On 15 October 2011, a group of protesters moved into Melbourne's City Square in Swanston Street. This action was part of a worldwide movement, which began in New York City in September 2011, to occupy important areas of major cities. Participants in the Occupy movement have been protesting about inequality in society. Their belief is that our democratic institutions increasingly represent the interests of the wealthy while ignoring the needs of the majority.

Throughout our history, protest movements have been an important means by which ordinary people can highlight issues and concerns, raise public awareness and ultimately hope to influence decisions made in parliament. While protest movements have had varying levels of success, participation in such activities is recognised as an essential way in which the ordinary citizen can influence the laws that govern us.
Introduction to our parliamentary system

Key Concept: Parliament is a law-making body, or legislature. Our national parliament is called the Commonwealth Parliament or federal parliament. Australia’s parliamentary system is based on the Westminster system of government in Britain.

Background to the parliamentary system

Australia’s parliamentary system has been inherited from the Westminster system of government in Britain. Like most European countries, England in the Middle Ages was a monarchy, with the king having absolute power, supported by the wealthy landowners, or barons. These barons usually formed a council that would advise and help the king in his rule. This gathering became known as the parliament. As the barons refused to meet in the same place as the common people, two separate groups or houses of parliament evolved. These became known as the upper house or House of Lords and the lower house or House of Commons. This was the origin of the principle of bicameral parliaments that has spread to most countries that have adopted the Westminster system of government.

The Westminster system of government is the parliamentary system of Great Britain, which has been copied and adapted by other countries around the world. It is so-called because the British Parliament meets in a building known as the Palace of Westminster.

A bicameral parliament is one that has two houses, traditionally known as an upper house and a lower house.

A constitutional monarchy is a form of government in which the monarch’s powers are limited and the main law-making power resides with a parliament or similar democratically elected body.

Throughout the centuries, monarchs relied increasingly on parliament, particularly in raising taxes for them. In the seventeenth century, conflict between the king and parliament over their respective powers led to Britain becoming a constitutional monarchy, with parliament having supreme law-making power and the monarch having a relatively minor role in the law-making process.

Colonial Australia

When the British established the colony of New South Wales, all laws made by the British parliament automatically applied in the colony, although early governors had very wide powers and could exercise discretion when applying those laws. As more convicts gained their freedom there was pressure for some form of representative government. In the 1850s the British parliament passed laws to divide New South Wales, leading to the creation of separate governments in Victoria, Tasmania and South Australia. Each colony had its own governor and two houses of parliament.
Federation

By the 1880s more than three-quarters of the inhabitants of the colonies were born in the colonies, and a distinct national identity began to develop. The 1880s and 1890s saw strong moves towards unifying the colonies into one country, with constitutional conventions meeting to develop a constitution for the new country. It was decided to opt for a federation model — the colonies becoming states within the new country of Australia, retaining their separate state parliaments, but passing some law-making powers to the Commonwealth Parliament.

In 1900 the British Parliament passed the Commonwealth of Australia Constitution Act 1900 (UK), which established the system of government in Australia — two houses of parliament and a Governor-General to represent the British monarch. This structure reflected the British structure, with some differences. The lower house is known as the House of Representatives, and the upper house is known as the Senate. Unlike the House of Lords, the Senate is an elected body.

The Commonwealth of Australia came into existence on 1 January 1901 and elections for the first parliament were held in March of that year. The Commonwealth Parliament was opened on 9 May 1901 in the Royal Exhibition Building in Melbourne.

The Australian parliamentary system today

Australia has a total of nine parliaments or legislatures. These include the Commonwealth Parliament (or federal parliament), six state parliaments and two territory legislatures. The Commonwealth and all states except Queensland have bicameral parliaments. Queensland, the Australian Capital Territory and the Northern Territory all have unicameral parliaments, each consisting only of one house, known in each case as the Legislative Assembly.

Our structure of government can be classified in a number of different ways:

- We are a representative democracy because we elect members of parliament to make laws on our behalf.
- We are a constitutional monarchy because we have a monarch (currently Queen Elizabeth II) as our head of state, with powers limited by a Constitution.
- We are a federation because our country arose as a result of the combination of previously autonomous colonies.

Under s. 1 of the Australian Constitution, legislative (or law-making) power is vested in a parliament, consisting of the Queen, a Senate and a House of Representatives.

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TEST your understanding

1. On what system is our system of government in Australia based?
2. Another name for a parliament is a __________ because parliament is the primary law-making body.
3. Parliaments that have two houses are said to be __________. The Commonwealth Parliament has the __________, which is the upper house, and the __________, which is the lower house.
4. Explain what is meant by the term constitutional monarchy.

APPLY your understanding

5. Australia adopted a federal parliamentary model. What does this mean?
6. Why do we have representative democracy in Australia?