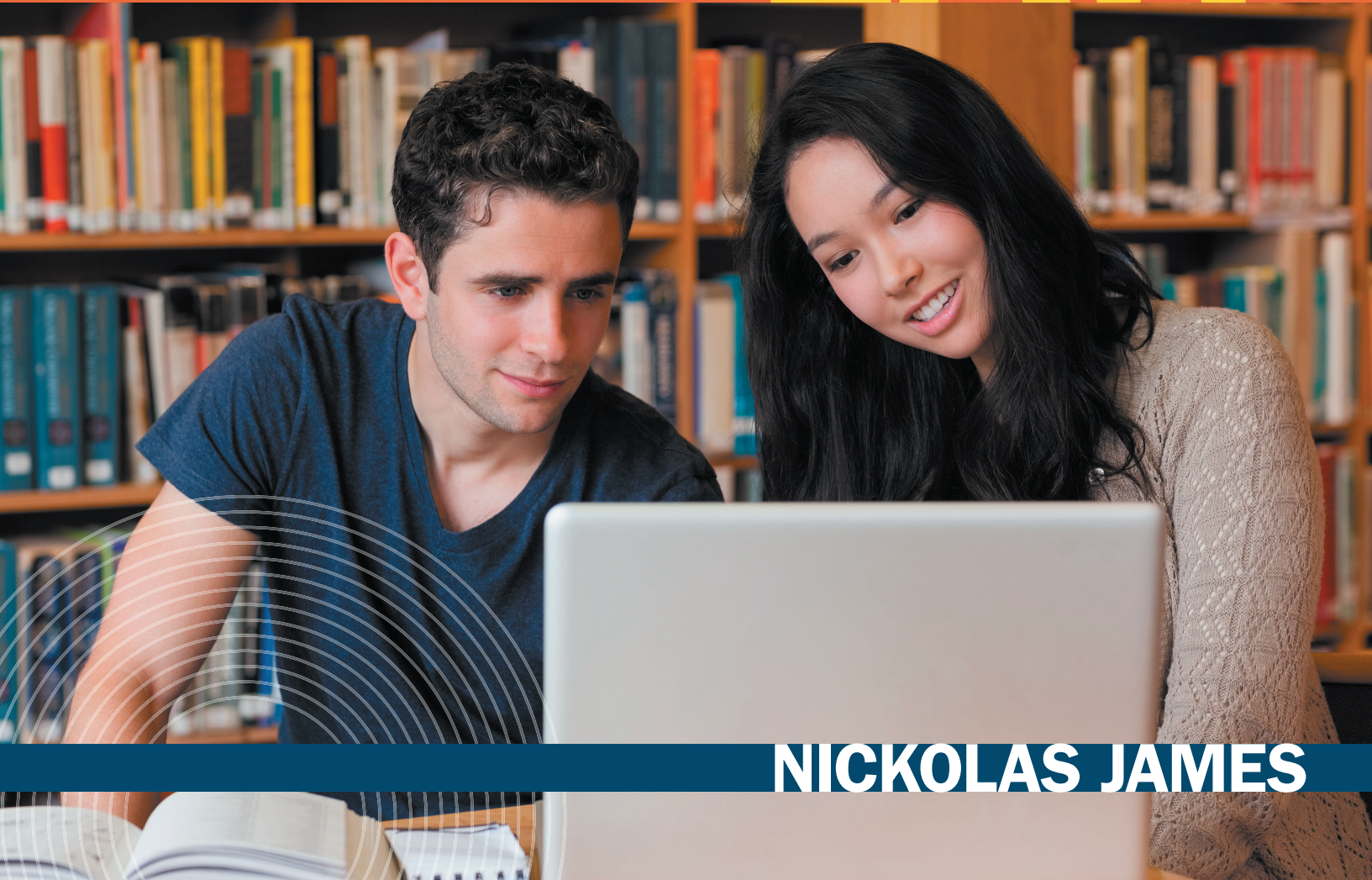


4TH EDITION

# BUSINESS

# LAW



**NICKOLAS JAMES**

**WILEY**



# Business Law

4TH EDITION

Nickolas James

**WILEY**

Fourth edition published 2017 by  
John Wiley & Sons Australia, Ltd  
42 McDougall Street, Milton Qld 4064

Typeset in 10/12pt Times LT Std

© Nickolas James 2010, 2012, 2014, 2017

The moral rights of the author have been asserted.

National Library of Australia  
Cataloguing-in-Publication entry

---

Author:	James, Nickolas.
Title:	Business law / Nickolas James.
ISBN:	9780730328315 (ebook)
Subjects:	Commercial business law — Australia.
Dewey Number:	346.9407

---

#### **Reproduction and Communication for educational purposes**

The Australian *Copyright Act 1968* (the Act) allows a maximum of 10% of the pages of this work or — where this book is divided into chapters — one chapter, whichever is the greater, to be reproduced and/or communicated by any educational institution for its educational purposes provided that the educational institution (or the body that administers it) has given a remuneration notice to Copyright Agency Limited (CAL).

#### **Reproduction and Communication for other purposes**

Except as permitted under the Act (for example, a fair dealing for the purposes of study, research, criticism or review), no part of this book may be reproduced, stored in a retrieval system, communicated or transmitted in any form or by any means without prior written permission. All inquiries should be made to the publisher.

The authors and publisher would like to thank the copyright holders, organisations and individuals for their permission to reproduce copyright material in this book.

Every effort has been made to trace the ownership of copyright material. Information that will enable the publisher to rectify any error or omission in subsequent editions will be welcome. In such cases, please contact the Permissions Section of John Wiley & Sons Australia, Ltd.

*Cover image:* © wavebreakmedia / Shutterstock.com

Typeset in India by Aptara

10 9 8 7 6 5 4 3 2 1

# CONTENTS

*Preface* ix  
*About the author* xiii  
*How to use this text* xiv  
*Abbreviations* xvii  
*Cases* xxi  
*Statutes* xxvii

## **PART 1**

### **Foundations 1**

#### **CHAPTER 1**

### **Business and the law 2**

#### **Introduction 3**

##### **1.1 Law and the business person 4**

Law and personal life 4  
Law and business 4  
Law in the media 5  
Law in popular culture 5

##### **1.2 The nature of law 6**

Defining law 6  
The purpose of law 9  
The categories of law 13  
The changing law 17

##### **1.3 Justice, ethics and politics 18**

Law and justice 18  
Law and ethics 22  
Law and politics 24  
Too much law? 25

#### **In conclusion 27**

Quiz 28  
Exercises 29  
Key terms 30  
Acknowledgements 31

#### **CHAPTER 2**

### **The Australian legal system 32**

#### **Introduction 33**

##### **2.1 The Australian legal system 34**

Key characteristics of the system 34  
The history of the system 43

##### **2.2 The Australian Constitution 50**

Structure of the Constitution 51  
Constitutional conventions 52  
Federal and State relations 52

Regulating the Territories 58

Changing the Constitution 59

##### **2.3 The executive government 60**

The Governor-General and the State  
Governors 61

The Executive Council and the Cabinet 63

Challenging the executive government 64

Delegated legislation 68

#### **In conclusion 70**

Quiz 72  
Exercises 73  
Key terms 74  
Acknowledgements 76

#### **CHAPTER 3**

### **Politicians and judges 77**

#### **Introduction 79**

##### **3.1 The legislature 79**

The nature of parliament 79

##### **3.2 Parliament in operation 84**

How laws are made 84  
Resolving deadlocks 88  
Types of legislation 90

##### **3.3 The judiciary 92**

The Australian court system 92  
Court processes 102

##### **3.4 The doctrine of precedent 114**

Do judges make law? 114  
Precedent 115  
Common law and equity 118

##### **3.5 Alternative dispute resolution 119**

#### **In conclusion 120**

Quiz 122  
Exercises 123  
Key terms 124  
Acknowledgements 127

#### **CHAPTER 4**

### **How to find, understand and use the law 128**

#### **Introduction 129**

##### **4.1 Finding the law 130**

Legal research 130  
Primary legal materials 131  
Secondary legal materials 135

- 4.2 Reading the law 136
  - The relevant elements 136
  - Interpreting the law 143
- 4.3 Thinking like a lawyer 159
  - Inductive and deductive reasoning 160
  - How to solve a legal problem 160
- 4.4 Writing like a lawyer 164
  - Legal writing 164
  - Drafting a letter 165
  - Drafting a simple contract 167
- In conclusion 170
  - Quiz 171
  - Exercises 172
  - Key terms 173
  - Acknowledgements 175

## PART 2

# Legal consequences 176

## CHAPTER 5

# Deliberately causing harm 177

- Introduction 178
- 5.1 Causing harm 178
  - Criminal liability 179
  - Tortious liability 180
  - Contractual liability 180
  - Statutory liability 181
  - Vicarious liability 181
- 5.2 Deliberately causing harm to person or property 182
  - Criminal liability 182
  - The tort of trespass 185
  - The tort of nuisance 190
  - The tort of defamation 194
- 5.3 Deliberately causing financial harm 199
  - Criminal liability 199
  - The tort of deceit 203
  - The tort of passing off 204
  - The tort of intimidation 204
  - The tort of interference with contractual relations 205
- 5.4 The consequences of causing harm 206
  - Criminal consequences 206
  - Civil consequences 206
- In conclusion 209
  - Quiz 211
  - Exercises 212
  - Key terms 213
  - Acknowledgements 215

## CHAPTER 6

# Carelessly causing harm 216

- Introduction 217
- 6.1 Carelessly causing harm to person or property 217
  - The tort of negligence 218
- 6.2 Carelessly causing financial harm 244
  - Harm to the person or property of a third party 244
  - Defective products 245
  - Negligent misstatement 245
- In conclusion 248
  - Quiz 250
  - Exercises 250
  - Key terms 252
  - Acknowledgements 253

## CHAPTER 7

# Contract law: formation of the contract 254

- Introduction 255
- 7.1 Contracts 256
- 7.2 Requirement 1: agreement 257
  - Offer 257
  - Acceptance 262
  - Conditional agreements 266
- 7.3 Requirement 2: intention 266
  - Presumptions 267
  - Preliminary agreements 269
  - 'Mere puff' 269
- 7.4 Requirement 3: consideration 270
  - Consideration need not be adequate 271
  - Consideration must be sufficient 272
  - Deeds 275
  - Practical benefits test 275
  - Promissory estoppel 276
- 7.5 Formalities 278
- 7.6 Capacity to contract 279
  - Minors 280
  - Persons lacking intellectual capacity 282
- 7.7 Legality 283
  - Illegality under common law 283
  - Statutory illegality 283
- In conclusion 284
  - Quiz 287
  - Exercises 288
  - Key terms 289
  - Acknowledgements 290

## CHAPTER 8

# Contract law: terms of the contract 291

## Introduction 292

### 8.1 Express terms 293

- In writing and signed 293
- Reasonable notice 295

### 8.2 Terms implied by the court 298

### 8.3 Statutory terms 300

- Contracts for the sale of goods 301
- Terms that protect the buyer 301
- Ownership, delivery, payment and acceptance 306

### 8.4 Disclaimers 310

- Do disclaimers work? 310

### 8.5 Unenforceable terms 312

- Terms limiting the court's jurisdiction 313
- Terms imposing an unreasonable restraint of trade 313

### 8.6 Non-contractual representations and promises 314

- Parol evidence rule 315
- Breach of collateral contract 316
- Misrepresentation 316
- Breach of the ACL 317
- Unenforceable promises 318

## In conclusion 318

- Quiz 320
- Exercises 321
- Key terms 322
- Acknowledgements 323

## CHAPTER 9

# Contract law: enforcement of the contract 324

## Introduction 325

### 9.1 Entitlement to enforce 325

- Privity of contract 326
- Time limits 327

### 9.2 Unenforceable contracts: lack of consent 328

- Mistake 329
- Duress 331
- Undue influence 333
- Unconscionability 335

### 9.3 Remedies 338

- Rescission 338
- Damages 342
- Equitable remedies 344
- Statutory remedies 346

### 9.4 The end of the contract 347

- Agreement 347
- Frustration 347

## In conclusion 349

- Quiz 351
- Exercises 352
- Key terms 353
- Acknowledgements 355

## CHAPTER 10

# Contract law: working with agents 356

## Introduction 357

### 10.1 Getting someone else to do it 358

### 10.2 Scope of authority 361

- Express actual authority 361
- Implied actual authority 362
- Apparent authority 363
- Agency of necessity 366
- Authority by ratification 366

### 10.3 The agent's duties 367

- Duty to follow instructions 368
- Duty to communicate information 368
- Duty to act personally 369
- Duty of care 369
- Duty to act in the best interests of the principal 370
- Duty of confidentiality 371
- Duty to account 371

### 10.4 The agent's entitlements 372

- Remuneration 372
- Indemnity 373
- Lien 373

### 10.5 Liability of agent and principal 373

- Personal liability of agent 374
- Vicarious liability of principal 375

### 10.6 Concluding the agency 376

- Termination by the parties 376
- Automatic termination 376

## In conclusion 377

- Quiz 379
- Exercises 381
- Key terms 382
- Acknowledgements 384

## CHAPTER 11

# Dealing with consumers 385

## Introduction 386

### 11.1 Protecting consumers 386



- 11.2 Dealing with consumers 389
  - Consumer protection regulation 389
  - General protections 392
  - Specific protections 404
- 11.3 Consequences of contravention 417
  - Offences and penalties 417
  - Defences 418
  - Enforcement 418
  - General remedies 418
  - Consumer guarantees 419
  - Codes of conduct 421
  - Industry ombudsman 421
- 11.4 Consumer privacy 422
  - What is information privacy? 422
  - Information privacy protection 423
- In conclusion 430
  - Quiz 431
  - Exercises 432
  - Key terms 433
  - Acknowledgements 435

## CHAPTER 12

### Dealing with competitors 436

- Introduction 437
- 12.1 Protecting competition 437
- 12.2 Dealing with competitors 438
  - Competition regulation 438
  - Key concepts 440
- 12.3 Prohibited conduct 443
  - Cartel conduct 443
  - Other prohibitions 447
- 12.4 Consequences of breach 456
  - Remedies 456
  - Penalties 456
  - Authorisations and notifications 457
- In conclusion 459
  - Quiz 461
  - Exercises 462
  - Key terms 463
  - Acknowledgements 464

## CHAPTER 13

### Protecting IP 465

- Introduction 467
- 13.1 Intellectual property law 467
  - Rationale for protection 468
  - Commercialising IP 468
- 13.2 Copyright 469
  - What is copyright? 469
  - Requirements for copyright protection 470

- Extent of copyright protection 474
- Infringement 479
- 13.3 Trade marks 486
  - What is a trade mark? 486
  - Requirements for trade mark protection 487
  - Extent of trade mark protection 491
  - Infringement 492
  - Unregistered trade marks 494

### 13.4 Patents 496

- What is a patent? 496
- Requirements for patent protection 497
- Extent of patent protection 501
- Infringement 503

### 13.5 Designs 503

- What is a design? 504
- Requirements for design protection 504
- Extent of design protection 505
- Infringement 506

### 13.6 Breach of confidence 507

#### In conclusion 508

- Quiz 511
- Exercises 512
- Key terms 513
- Acknowledgements 514

## PART 3

### Managing a business 515

## CHAPTER 14

### Managing a business: start-up 516

- Introduction 517
- 14.1 Preparation 518
  - Do some research 518
  - Protect the IP 519
  - Prepare a plan 519
  - Select a business structure 519
  - Raise some money 521
  - Take out insurance 522
- 14.2 Licences and registration 523
  - Registering the business name 523
  - Complying with licensing requirements 524
- 14.3 Renting or buying the premises 525
  - Property concepts 525
  - Buying and owning real property 528
  - Leases 534
- 14.4 Opening for business 539
  - Shop trading hours 539
  - Setting up a website 540



**In conclusion 542**

- Quiz 544
- Exercises 545
- Key terms 545
- Acknowledgements 549

**CHAPTER 15**

**Managing a business: business ownership 550**

**Introduction 551**

**15.1 The sole trader 551**

**15.2 The partnership 552**

- Forming a partnership 553
- Authority of partners 559
- Liability of partners 563
- Rights and duties of partners 565
- Partnership property 569

**15.3 The trust 571**

- Types of trust 572
- Trustees and beneficiaries 573

**15.4 The franchise 575**

- What is a franchise? 575
- The Franchising Code of Conduct 578

**In conclusion 582**

- Quiz 583
- Exercises 584
- Key terms 585
- Acknowledgements 587

**CHAPTER 16**

**Managing a business: companies and corporate governance 588**

**Introduction 589**

**16.1 The company 590**

- Key features of the company 591
- Types of companies 592
- How to form a company 594

**16.2 Corporate finance 595**

- Borrowing by companies 595
- Share capital 596
- Issuing shares 597
- Disclosure documents 597
- Equity capital maintenance 598
- Listing the company 599

**16.3 Corporate governance 600**

- Company constitution 601
- Company directors 602

- Board meetings 604
- Corporate contracting 604
- Directors' duties 606
- Shareholders 611

**In conclusion 616**

- Quiz 617
- Exercises 619
- Key terms 620
- Acknowledgements 622

**CHAPTER 17**

**Managing a business: making payments and recovering debts 623**

**Introduction 624**

**17.1 Making payments 624**

- Cash payments 625
- Cheques and bills of exchange 626
- Credit and debit cards 630
- Electronic funds transfer 631

**17.2 Recovering debts 634**

- The debt recovery process 635
- Secured debts 638
- Consumer credit 644

**In conclusion 650**

- Quiz 652
- Exercises 653
- Key terms 654
- Acknowledgements 656

**CHAPTER 18**

**Managing a business: insurance and taxes 657**

**Introduction 658**

**18.1 Taking out insurance 658**

- Types of insurance 659
- Insurance regulation 660
- Insurance contracts 661
- Dispute resolution 667

**18.2 Paying tax 668**

- Forms of tax 669
- Tax administration 673
- Tax implications of different business structures 674

**In conclusion 676**

- Quiz 677
- Exercises 678
- Key terms 678
- Acknowledgements 679

**CHAPTER 19****Managing a business:  
employing workers 680****Introduction 681****19.1 Employee or independent contractor? 684****19.2 Employer obligations 687**

Common law duties 687

Statutory entitlements and obligations 688

Fair Work Ombudsman 691

Tax and superannuation 691

**19.3 Workplace conditions 692**

Workplace health and safety 692

Workers compensation 695

Discrimination, harassment and equal  
opportunity 696**19.4 Termination of employment 700**

Unfair dismissal 701

Unlawful termination 702

**In conclusion 703**

Quiz 704

Exercises 705

Key terms 705

Acknowledgements 706

**CHAPTER 20****Managing a business:  
closing down 707****Introduction 708****20.1 Financial difficulty 708**

Receivership 709

**20.2 Personal insolvency 710**

Bankruptcy 710

Alternatives to bankruptcy 719

**20.3 Corporate insolvency 722**

Liquidation 722

Administration 729

**20.4 Closing the business 731**

Dissolving the business structure 731

Selling the business 735

**In conclusion 737**

Quiz 739

Exercises 740

Key terms 741

Acknowledgements 743

# PREFACE

When I began teaching business law at the University of Queensland in 1996, only a handful of Australian business law textbooks were available. These textbooks were often well written, comprehensive and scholarly, but none of them were well suited for the type of student who studies business law. They were usually stereotypical law textbooks: weighty bricks of dense monochromatic text, enormously detailed, and written in a formal language with a small font and no diagrams. The abilities and requirements of business law students were apparently assumed to be no different to those of students enrolled in a law degree.

Of course, this was not, and is not, the case. Business law students have a number of typical characteristics which cannot be ignored by a business law teacher.

- For the majority of business law students, the business law course is their first exposure to the law and the first time they have been obliged to think deeply about the legal system. They, therefore, need a clear and accessible introduction to this entirely new discipline.
- Legal doctrine and legal reasoning are very different to the types of knowledge and skills business law students are expected to acquire in their other courses. Accounting, economics, business management, science, engineering and other non-law students are all learning how to think in a particular way in their other courses, and learning how to think like a lawyer is not something that comes to most of them naturally or easily. An ability to do so must be taught to them explicitly and not be viewed as something that business law students learn how to do behind the scenes or along the way.
- An increasing proportion of business law students are from overseas and/or non-English speaking backgrounds. A business law textbook must be written in a clear and comprehensible writing style, and cannot assume that Australian culture is one with which the students are intimately familiar.
- For many business law students, the business law course is not only the first but also the *only* time during their studies that they will be obliged to engage with the law. Their time studying business law is their only opportunity to acquire useful legal knowledge and skills. In addition to learning about basic legal doctrine, they need to acquire practical legal knowledge and develop practical skills that will serve them well in their other courses and in their future careers.

Since 1996, every couple of years has seen the publication of one or more new business law textbooks, each of which has to a greater or lesser degree sought to address one or more of these issues. Today a course coordinator has more than 15 Australian business law textbooks to choose from. In 2010, I nevertheless decided to write my own because it was still the case that none of the business law texts available was entirely satisfactory.

What is it about this resource that distinguishes it from the many other business law textbooks presently available? This textbook includes the following distinguishing features.

## 1. The range of topics

We business law teachers have only 12, 13 or 14 weeks in which to teach our students everything they need to know about the law of business. Most business law textbooks assume that the best way to do this is to spend most of the semester teaching our students about the Australian legal system and the law of contract, and the rest of that time teaching about a small selection from a long list of other topics such as tort law, sale of goods, consumer protection law, competition law, business structures, property law, insurance law, and so on. The textbooks are organised accordingly: a set of core chapters about the Australian legal system and contract law, and a set of optional chapters on each of the other business law topics, giving the business law teacher the ability to choose which topics will be included and which will be ignored.

A business law student, however, needs to know something about *all* of these topics, and reference to all of them can and should be included in a business law course. By identifying and omitting the sort of

legal doctrine that is really only of interest and relevance to students studying to become lawyers, it is possible to provide business law students with the breadth of coverage that they will need in order to be informed business practitioners.

This resource is comprised of 20 chapters, and a business law teacher may elect to omit some of these chapters from their business law course. However, the level of detail in these chapters is such that it is in fact possible for all 20 chapters to be covered in a 13-week course. The following is one way in which this might be done.

CHAPTER	WEEK
Business and the law	1
The Australian legal system	2
Politicians and judges	2
How to find, understand and use the law	3
Deliberately causing harm	4
Carelessly causing harm	4
Contract law: formation of the contract	5
Contract law: terms of the contract	5
Contract law: enforcement of the contract	6
Contract law: working with agents	6
Dealing with consumers	7
Dealing with competitors	7
Protecting IP	8
Managing a business: start-up	9
Managing a business: business ownership	10
Managing a business: companies and corporate governance	10
Managing a business: making payments and recovering debts	11
Managing a business: insurance and taxes	11
Managing a business: employing workers	12
Managing a business: closing down	13

## 2. The organisation of topics

A business law textbook is usually divided into chapters corresponding to the traditional doctrinal legal categories: contract law, tort law, agency law, company law and so on. It seems to me that these categories are of little or no relevance to business law students. Instead, they need to know the laws relevant to particular decisions, problems or situations. What is the relevant law if a person wants to start a business, or if they have caused someone harm, or if they have failed to keep a promise, or if their business is in financial difficulty?

The chapters in this resource are therefore organised according to *practical* rather than doctrinal topics. The text is divided into three parts. The first part — titled ‘Foundations’ — contains four chapters intended to provide students with the fundamental knowledge and skills needs to understand business law in Australia:

- Chapter 1: Business and the law
- Chapter 2: The Australian legal system
- Chapter 3: Politicians and judges
- Chapter 4: How to find, understand and use the law.

The second part — titled ‘Legal consequences’ — contains nine chapters exploring in detail the legal rules regulating common business practices, activities and problems:

- Chapter 5: Deliberately causing harm
- Chapter 6: Carelessly causing harm
- Chapter 7: Contract law: formation of the contract

- Chapter 8: Contract law: terms of the contract
- Chapter 9: Contract law: enforcement of the contract
- Chapter 10: Contract law: working with agents
- Chapter 11: Dealing with consumers
- Chapter 12: Dealing with competitors
- Chapter 13: Protecting IP.

The third and final part is titled ‘Managing a business’. It explores the practical legal consequences of particular aspects of owning and operating a business:

- Chapter 14: Managing a business: start-up
- Chapter 15: Managing a business: business ownership
- Chapter 16: Managing a business: companies and corporate governance
- Chapter 17: Managing a business: making payments and recovering debts
- Chapter 18: Managing a business: insurance and taxes
- Chapter 19: Managing a business: employing workers
- Chapter 20: Managing a business: closing down.

### 3. The inclusion of a chapter on legal skills

The objective of a business law course is not simply to give students knowledge of Australian business law. Rather, the objective is to ensure that students acquire enough knowledge of the law of business that they can (1) recognise and solve simple legal problems, (2) recognise and organise their affairs in order to avoid more complex or serious legal problems, and (3) communicate effectively with legal practitioners about business law issues. Further, business law students need to not only acquire knowledge but also to develop certain skills: research skills, reading and interpretation skills, thinking skills and writing skills. Business students need to know more than what the law *is*, they need to know where to find it, how to read it and how to use it. This text includes an entire chapter — chapter 4 — devoted to the description and development of these important legal skills.

### 4. The writing style

Many law textbooks are written in an extremely formal and technical style, a style with which law students are likely to be familiar but which business law students frequently find difficult if not impenetrable. This text is deliberately written in a style that is clear and accessible, proving that it is possible to explain doctrine and procedures accurately and in adequate detail without sacrificing readability.

### Changes to the fourth edition

I am satisfied that with the first edition we created a business law textbook that was engaging, informative, practical and ideally suited to the needs of the modern business law student. The second edition improved upon the first edition by updating the text to reflect subsequent changes in the law and by including additional features such as Caution! boxes and checklists to improve student comprehension of difficult concepts. The third edition of the text incorporated:

- more detail regarding the categories of law and the relationship between law and justice in chapter 1
- more detail about the Australian Constitution, constitutional conventions, cross-vesting and criminal procedure
- a completely revised explanation of statutory interpretation
- new coverage of the ‘practical benefits test’
- updated and expanded coverage of the Australian Consumer Law and new coverage of ‘cartel conduct’
- incorporation of changes made by the *Intellectual Property Laws (Raising the Bar) Act 2012* (Cth) and the *Privacy Amendment (Enhancing Privacy Protection) Act 2012* (Cth)
- updated coverage of franchising and trading hours

- new coverage of personal property securities and the new ePayments Code
- revised coverage of modern awards, workplace health and safety, and workplace gender equality
- updated and expanded coverage of consumer credit, bankruptcy and liquidation
- a substantially expanded glossary of terms.

This latest edition of the text includes a wider range of case summaries from all Australian jurisdictions, and updated online resources, hyperlinks, media items and case studies. Each chapter now begins with a specific chapter problem. The most significant change, however, is the expansion in the number of chapters. The Australian legal system has been expanded from one to two chapters; tort law has expanded from one to two chapters; and contract law has expanded from two to four chapters. Consumer law, competition law, business structures and corporate governance all now have their own chapters.

During the development period for this resource, many colleagues provided guidance and input over the editions. I appreciate the feedback and ideas provided by each and thank Reeta Verma and Keith Kendall (La Trobe University), Sophie Riley and Jason Harris (University of Technology, Sydney), Fred Rollo (University of Sydney), Keturah Whitford (Australian National University), Michael Spisto and David Parker (Victoria University) and Kristy Richardson (CQ University). I am especially grateful to Charlotte Hayden, Robert Cooper, Alana Peters, Colin Fong, Kate Curnow, Suppiah Murugesan and Leanne Gordon, all of whom helped with research and the preparation of support materials for the various editions.

I would also like to thank Lori Dyer (Publisher) at Wiley for steering this fourth edition to completion and publication, and Kylie Challenor (Managing Content Editor), Jessica Carr (Project Editor), Tara Seeto (Publishing Administrator), Renee Bryon (Copyright and Image Research Supervisor), Delia Sala (Graphic Designer) and Tony Dwyer (Production Controller) at Wiley for their invaluable support.

Finally, I would like to thank my wife Rochelle for her patience, support and inspiration and for keeping me sane and centred. Thanks Ash!

*Nickolas James*  
August 2016

# ABOUT THE AUTHOR

Professor Nick James is the Executive Dean of the Faculty of Law at Bond University. He is a former commercial lawyer, and has been practising as an academic since 1996. His areas of teaching expertise include business and commercial law, 'law in society' and legal theory, company law, the law of succession and property law. He has won numerous awards for his teaching including a National Citation for Outstanding Contribution to Student Learning, and he is the author of three texts: *Business Law*, *Critical Legal Thinking* and *The New Lawyer* (with Rachael Field). He has written numerous journal articles, book chapters and conference papers in the areas of legal education, critical thinking and critical legal theory. Professor James is the Director of the Centre for Professional Legal Education, Editor-in-Chief of the *Legal Education Review* and a member of the Executive Committee of the Australasian Law Teachers Association (ALTA).





# HOW TO USE THIS TEXT

This resource has been designed with you — the student — in mind. It is written in a clear, easy-to-read style with an emphasis on making law relevant to you. The design is our attempt to provide you with a resource that both communicates the subject matter and facilitates learning. We have tried to accomplish these goals through the following elements.

**JOHNNY AND ASH**

*[Johnny Bristol, 25 years old, scruffy and morose, sits by himself in a nearly empty bar nursing a beer. He looks up when a young woman calls his name as she approaches from the other side of the bar: Ashwina Redcliffe, smartly dressed and immaculately groomed.]*

**Ash** — Johnny! Hey, Johnny!

**Johnny** — Hey, Ash.

**Ash** — *[She sits down at the table, carefully placing her glass of white wine on a coaster, and looks at Johnny.]* Johnny Bristol, well, well, well. I haven't seen you since high school. It's been, what, seven years? I heard you moved to New Zealand.

**Johnny** — I did. I'm back. I heard you went to law school.

**Ash** — I did. And now I'm a lawyer. Working for Gibson & Gaiman in the city. Loving it. And doing quite well for myself, thanks. So what brings you back to town?

**Johnny** — Well, my dad got sick last year, and so I came back to help mum look after him and to set up a business back here. You know The Lame Duck restaurant? Vegan restaurant over on Kerouac Avenue? I own the place now.

**Ash** — Oh, I'm so sorry to hear about your dad. He's a nice man. A friend of mine ate at The Lame Duck just last week. She had the tofu burger I think.

**Johnny** — Yeah? What did she say about it?

**Ash** — She said it was awful, actually. Sorry! *[They both laugh.]* Apparently the organic cola was wonderful though.

**Johnny** — That's a relief. *[He pauses.]* Things really aren't going that well. I'm having heaps of problems just keeping the place running. I'm a good cook — well, I thought I was — but I've never run a business before. I've got suppliers who don't do what they say they are going to do, employees who show up late if they show up at all, and a competitor who keeps stealing my recipes. My landlord wants to sell the building, and I don't have enough savings to move to another location.

**Ash** — Sounds like you need a friend to talk to. And a lawyer.

**Johnny** — Thanks. I definitely need a friend. A lawyer, I'm not so sure. What do my problems have to do with the law?

**Ash** — Are you kidding? It's all about the law! How can you possibly run a business without being aware of the law? How can you play a game without knowing the rules? Here, let me get you another beer, and I'll tell you a thing or two about the law.

**Johnny** — Thanks, Ash. I guess you are right. I have always been more concerned with doing what is 'right' than with doing what is 'legal'. I don't know much about the law at all. Maybe that's the problem. And the tofu burger, of course.

**Ash** — Of course! Actually, you might be surprised how much you already know about the law...

← **Johnny and Ash** Chapters open and close with these fictitious characters and scenarios that contextualise law in everyday situations and introduce and resolve the legal topics addressed in each chapter.

**Activity** appears throughout the chapters and focuses on developing research, reflection and application skills.

## ACTIVITY 5.2 — REFLECT

Refer to 'Johnny and Ash' at the beginning of this chapter. Is Johnny liable for Cathy's conduct?

**Revision questions** provide an opportunity to revise key concepts before proceeding on in the chapter. These questions appear within and at the end of each chapter.

## REVISION QUESTIONS

Before proceeding, ensure that you can answer each of the following questions.

- 5.1 What is criminal liability?
- 5.2 What is tortious liability?
- 5.3 What is contractual liability?
- 5.4 What is statutory liability?
- 5.5 What are the similarities and differences between these four forms of legal liability?
- 5.6 When is an employer liable for the conduct of an employee?

**Checklist** appears in some chapters to reiterate key legal concepts and processes.

## CHECKLIST

X will owe Y a duty of care if all of the following requirements are satisfied.

- X gives Y business or serious advice.
- X knows or should know that Y intends to rely on the advice.
- It is reasonable in the circumstances for Y to rely on the advice.

**Caution!** draws your attention to important points of law that potentially can be misinterpreted or confusing.

## CAUTION!

Not only accountants, lawyers and other professional advisers owe a duty of care. Any person who gives advice or provides information on an 'occasion of seriousness' may be seen to owe a duty of care to the person to whom they are providing the advice or information.

**Law in context** highlights a range of interpretations and perspectives of law in popular culture, media, ethics, politics and philosophy. Appears throughout all chapters.

**LAW IN CONTEXT: LAW IN PRACTICE**

**Copyright and licensing**

The granting of licences and the collection of licence fees for the use of copyrighted materials can be a complex process, particularly where there are large numbers of people who want to use the copyrighted creation. For example, every time a radio station wants to play a song it must pay licence fees to the owners of the copyright in (1) the music and lyrics, and (2) the sound recording.

Fortunately the process of licensing is facilitated by the assistance of certain organisations that collect licence fees (usually referred to as royalty fees) on behalf of the copyright owners:

- *Copyright Agency* represents authors, journalists, visual artists, surveyors, photographers and newspaper, magazine and book publishers as their non-exclusive agent to license the copying of their works to the general community: [www.copyright.com.au](http://www.copyright.com.au).
- The *Australasian Performing Rights Association (APRA)* represents the interests of songwriters and publishers. It collects and distributes licence fees for the public performance and communication of its members' musical works. The *Australasian Mechanical Copyright Owners Society (AMCOS)* collects and distributes mechanical royalties for the reproduction of its members' musical works: [www.apraamcos.com.au](http://www.apraamcos.com.au).
- The *Phonographic Performance Company of Australia (PPCA)* represents the interests of record labels and recording artists. It grants licences for the broadcast, communication or public playing of recorded music or music videos, and distributes the licence fees to its members: [www.pcca.com.au](http://www.pcca.com.au).

What about airspace? How high above the land is still the owner's land? According to various case law decisions, there is no fixed height to which a person owns the airspace above their land. Rather, they own the airspace above their land to the height reasonably necessary for the ordinary use and enjoyment of their land. This means that if, for example, a crane or a billboard on neighbouring property intrudes above the land, the tort of **trespass to land** is committed.<sup>5</sup> On the other hand, a plane or a satellite that passes over the property is not trespassing since it is above the height necessary for the owner's ordinary use and enjoyment of the land.

**Lord Bernstein v Skyviews & General Ltd [1978] QB 479**

Skyviews & General Ltd tried to sell Baron Bernstein an aerial photograph of his home. Bernstein sued Skyviews for trespass, arguing that it had invaded the airspace above his property. The court decided that the flight of an aircraft many hundreds of feet above the ground did not constitute a trespass because the rights of the owner of the surface to the airspace above should be restricted 'to such height as is necessary for the ordinary use and enjoyment of his land and the structures upon it, and ... above that height he has no greater rights in the airspace than any other member of the public'.

← **Key terms** are bolded where first mentioned and defined at the end of each chapter.

← **Cases** are relevant, interesting and provide a summary of the legal issues.

**In conclusion** provides an overview of all the key law concepts and principles in the chapter.

**In conclusion**

- Generally speaking, a consumer is a person who purchases a product for personal use. Consumers are granted additional protection under Australian law because of the fundamental inequality of bargaining power that exists between a consumer and a business, and because of the tendency of some business people to take advantage of consumers' ignorance for their own benefit.
- Marketing and selling to consumers is regulated primarily by the Australian Consumer Law. The ACL contains three general prohibitions: misleading and deceptive conduct, unconscionable conduct, and unfair contract terms. The ACL also prohibits a range of specific marketing and selling practices.
- A business found to be in breach of these prohibitions may be subject to civil action and/or penalties.
- A business covered by the *Privacy Act 1988* (Cth) must comply either with the Australian Privacy Principles (APPs) or with an approved privacy code. The APPs aim is to ensure that businesses that hold information about individuals handle that information responsibly. They also give individuals some control over the way information about them is handled.

**JOHNNY AND ASH**

*[Ash and Johnny are still at the restaurant. Johnny looks devastated.]*

**Johnny** — So, let me see if I understand this right. Maria's brilliant scheme to describe all of the meals distributed by Lame Duck Organics Pty Ltd as 'organic', even though technically we are not lying, will still be misleading or deceptive conduct which means a customer could sue us for breaching s 18 of the Australian Consumer Law?

**Ash** — That's right.

**Johnny** — And it's also possibly a breach of the sections that prohibit false representations about our products, which could also lead to prosecution by the ACCC and a fine of more than ONE MILLION DOLLARS?

**Ash** — Well, the \$1.1 million is a maximum amount, but yes.

**Johnny** — How are we supposed to make any money?

**Ash** — Have you considered the possibility that you can still make a profit behaving ethically and honestly?

**Johnny and Ash** provides a resolution to the scenario introduced at the beginning of the chapter.

## QUIZ

- 1 Members of which of the following forms of organisation enjoy the benefits of limited liability?**
  - (a) Companies.
  - (b) Unincorporated associations.
  - (c) Sole traders.
  - (d) General partnerships.
  - (e) All of the above.
- 2 The purpose of requiring a business to register its business name is**
  - (a) to protect its interest in the name.
  - (b) to protect the business by making the identity of the person or company behind the business name confidential.
  - (c) to protect the public by avoiding the potentially misleading situation of having two businesses with the same business name.
  - (d) all of the above.
- 3 The owner of land is also the owner of the**
  - (a) fittings.
  - (b) fixtures.
  - (c) tenant's fixtures.
  - (d) all of the above.
- 4 Ownership of Torrens system land is established by**
  - (a) good chain of title.
  - (b) the name on the registered title.
  - (c) payment of the purchase price to the vendor of the land.
  - (d) possession of the land.

← **Quiz** presents up to 20 multiple-choice questions in each chapter with the correct answer provided at the end of the chapter.

**Exercises** will help you learn the key concepts and require you to complete different tasks.

## EXERCISES

### EXERCISE 14.1 – PROPERTY OWNERSHIP

Johnny has found a property for sale in Martens Street that would be ideal for the Organicola factory and offices. Assume that the property is on Torrens system land located in your own State or Territory. What is the process by which Johnny and Ash will become the owners of the Martens Street property?

### EXERCISE 14.2 – PROPERTY OWNERSHIP

Johnny and Ash have decided to purchase the Martens Street property in their own names and to rent the property to their company Organicola Pty Ltd. Should Johnny and Ash own the property as joint tenants or as tenants in common?

### EXERCISE 14.3 – PROPERTY OWNERSHIP

When Johnny initially inspected the Martens Street property he was impressed by the air-conditioning throughout the factory, the large refrigerated room at the rear of the factory, the polished timber floorboards in the offices, the satellite dish on the roof, and the outdoor seating on the lawn to the side of the factory. When he again inspects the property on the morning of the day of settlement he is alarmed to discover that the seller has removed all of these items. None of the items were expressly referred to in the contract of sale. Can Johnny insist that any of these items be included in the sale?

### EXERCISE 14.4 – PROPERTY OWNERSHIP

After settling the purchase of the Martens Street property, Ash instructs Jodi, one of the trainee lawyers in her law firm, to register the transfer of the property in the local Land Title Registry. Why this is such an important step in the conveyancing process?

### EXERCISE 14.5 – LEASES

List what you consider to be the five most important provisions of the commercial/retail shop lease legislation in your jurisdiction in terms of protecting the interests of the lessee. Explain why you think each provision is important.

# ABBREVIATIONS

## Law report abbreviations

The following list of law report series includes only those series referred to in the case citations throughout this textbook. There are many other law report series not included in this list.

Abbreviation	Series title	Jurisdiction	Description
AC	Law Reports: Appeal Cases	UK	Decisions of the House of Lords 1891–present
ACTSC	Australian Capital Territory Supreme Court	ACT	Decisions of the ACT Supreme Court, published online
ACTLR	Australian Capital Territory Law Reports	ACT	Select decisions of the Court of Appeal and the Supreme Court of the ACT 2008–present
ACTR	Australian Capital Territory Reports	ACT	Decisions of the Supreme Court of the ACT 1973–present
AIPC	Australian Industrial and Intellectual Property Cases	Australia	Select intellectual property decisions of Australian courts 1983–present
ALJR	Australian Law Journal Reports	Australia	Select decisions of the High Court of Australia 1958–present
All ER	All England Law Reports	UK	Select decisions of the UK House of Lords, Court of Appeal and High Court 1558–present
ALR	Australian Law Reports	Australia	Select decisions of the High Court, Federal Court of Australia and the State and Territory Supreme Courts 1973–present
ANZ Insurance Cas	Australian and New Zealand Insurance Cases	Australia, NZ	Select insurance decisions of Australian and NZ courts 1979–present
App Cas	Law Reports: Appeal Cases	UK	Decisions of the House of Lords 1875–1890
ASAL	Australian Sales and Fair Trading Law Reports	Australia	Select sales and fair trading law decisions of Australian courts 1998–present
ASC	Australian Consumer Sales and Credit Law Cases	Australia	Select consumer sales and credit law decisions of Australian courts 1978–present
ATC	Australian Tax Cases	Australia	Select tax decisions of Australian Courts and Administrative Appeals Tribunals
ATPR	Australian Trade Practices Reports	Australia	Select trade practices decisions of the High Court, Federal Court of Australia and the State and Territory Supreme Courts 1974–present
Aust Torts Reports	Australian Torts Reports	Australia	Select torts decisions of Australian courts 1984–present

*(continued)*

(continued)

Abbreviation	Series title	Jurisdiction	Description
BPR	Butterworths Property Reports	Australia	Select property decisions of Australian courts 1950–present
Ch	Law Reports: Chancery Division	UK	Decisions of the UK High Court — Chancery Division 1891–present
Ch D	Law Reports: Chancery Division	UK	Decisions of the UK High Court — Chancery Division 1875–1890
CLR	Commonwealth Law Reports	Australia	Authorised reports of decisions of the High Court of Australia 1903–present
CPR (2d)	Canadian Patent Reporter — Second series	Canada	Select patent decisions of Canadian courts 1971–1984
E&B	Ellis & Blackburn’s Queen’s bench Reports	UK	Decisions of the UK High Court — Queen’s Bench Division 1852–1858
EGLR	Estates Gazette Law Reports	UK	Select property law decisions of English and Welsh courts 1985–present
EngR	English Reports Online	UK	Select decisions of English courts published online
EOC	Equal Opportunity Cases	Australia	Select equal opportunity decisions of Australian courts 1984–present
ER	English Reports	UK	Select decisions of English courts 1220–1867
EWCA	England and Wales Court of Appeal	UK	Decisions of the UK Court of Appeal, published online
EWHC	England and Wales High Court	UK	Decisions of the UK High Court, published online
FCA	Federal Court of Australia	Australia	Decisions of the Federal Court of Australia, published online
FCAFC	Full Court of the Federal Court of Australia	Australia	Decisions of the Full Court of the Federal Court of Australia, published online
FCR	Federal Court Reports	Australia	Decisions of the Federal Court of Australia 1984–present
FLR	Federal Law Reports	Australia	Decisions of the Federal Courts other than the High Court 1956–present
HCA	High Court of Australia	Australia	Decisions of the High Court of Australia, published online
IPR	Intellectual Property Reports	Australia	Select intellectual property decisions of Australian Courts 1982–present
IR	Irish Reports	UK	Decisions of the superior courts of Ireland 1878–present
KB	Law Reports: King’s Bench	UK	Decisions of the UK High Court — King’s Bench Division 1901–1952
LGERA	Local Government and Environment Reports of Australia	Australia	Select local government and environmental law decisions of Australian courts 1988–present

Abbreviation	Series title	Jurisdiction	Description
LJ Ex	Law Journal Reports: Exchequer	UK	Decisions of the UK High Court — Exchequer Division 1832–1846
LR CP	Law Reports: Common Pleas	UK	Decisions of the UK High Court — Common Pleas Division 1865–1875
LR Ex	Law Reports: Exchequer	UK	Decisions of the UK High Court — Exchequer Division 1865–1875
LR (NSW)	New South Wales Law Reports	NSW	Decisions of the NSW Supreme Court 1880–1900
LT	Law Times Reports	UK	Select decisions of the superior courts of UK 1859–1947
NSWADT	New South Wales Administrative Decisions Tribunal	NSW	Decisions of the NSW Administrative Decisions Tribunal, published online
NSWCA	New South Wales Court of Appeal	NSW	Decisions of the NSW Court of Appeal, published online
NSW Conv R	New South Wales Conveyancing Law Cases	NSW	Select conveyancing decisions of NSW courts 1980–present
NSWLR	New South Wales Law Reports	NSW	Decisions of the NSW Supreme Court 1971–present
NSWR	New South Wales Reports	NSW	Decisions of the NSW Supreme Court 1960–1970
NSWSC	New South Wales Supreme Court	NSW	Decisions of the NSW Supreme Court, published online
NZLR	New Zealand Law Reports	NZ	Decisions of the NZ Court of Appeal and High Court 1883–present
QB	Law Reports: Queen's Bench	UK	Decisions of the UK High Court — Queen's Bench Division 1891–present
QBD	Law Reports, Queen's Bench Division	UK	Decisions of the UK High Court — Queen's Bench Division 1875–1890
QCA	Queensland Court of Appeal	Qld	Decisions of the Qld Court of Appeal, published online
Qd R	Queensland Reports	Qld	Decisions of the Qld Supreme Court 1992–present
QSC	Queensland Supreme Court	Qld	Decisions of the Qld Supreme Court, published online
RPC	Reports of Patent, Design and Trade Mark Cases	UK	Select intellectual property decisions of UK Courts 1884–present
SASC	South Australia Supreme Court	SA	Decisions of the SA Supreme Court, published online
SASR	South Australian State Reports	SA	Decisions of the SA Supreme Court 1921–present
SR (NSW)	New South Wales State Reports	NSW	Decisions of the NSW Supreme Court 1901–1970
TasLR	Tasmanian Law Reports	Tas	Decisions of the Tas Supreme Court
TASSC	Tasmania Supreme Court	Tas	Decisions of the Tasmania Supreme Court, published online
TLR	Times Law Reports	UK	Select decisions of the superior courts of UK 1884–1952
UKHL	House of Lords	UK	Decisions of the House of Lords, published online

(continued)

(continued)

Abbreviation	Series title	Jurisdiction	Description
UKPC	Privy Council	UK	Decisions of the Privy Council, published online
VCAT	Victorian Civil and Administrative Tribunal	Vic	Decisions of the Victorian Civil and Administrative Tribunal 1998–present
VLR	Victorian Law Reports	Vic	Decisions of the Vic Supreme Court prior to 1885–1956
VLR[E]	Victorian Law Reports (Equity)	Vic	Decisions of the Equity Division of the Vic Supreme Court 1875–1884
VR	Victorian Reports	Vic	Decisions of the Vic Supreme Court 1957–present
VSCA	Victoria Supreme Court Appeals	Vic	Appeal decisions of the Victoria Supreme Court, published online
WAR	Western Australia Reports	WA	Decisions of the WA Supreme Court 1960–present
WASC	Western Australia Supreme Court	WA	Decisions of the WA Supreme Court, published online
WLR	Weekly Law Reports	UK	Decisions of UK superior courts 1953–present
WN	Weekly Notes	UK	Decisions of UK superior courts 1900–1952

## Other abbreviations

AAT	Administrative Appeals Tribunal
ABS	Australian Bureau of Statistics
ACCC	Australian Competition and Consumer Commission
ACL	Australian Consumer Law
AGIS	Attorney-General's Information Service
AIRC	Australian Industrial Relations Commission
AMCOS	Australasian Mechanical Copyright Owners Society
APRA	Australian Performing Rights Association
APRA	Australian Prudential Regulation Authority
ASIC	Australian Securities and Investments Commission
ASX	Australian Securities Exchange
auDA	Australian Domain Name Administrator
AUSTRAC	Australian Transaction Reports and Analysis Centre
BCA	Business Council of Australia
CAL	Copyright Agency Ltd
CCA	Competition and Consumer Act
EOWA	Equal Opportunity for Women in the Workplace Agency
ITSA	Insolvency and Trustee Service Australia
PPCA	Phonographic Performance Company of Australia
TPA	Trade Practices Act
TPC	Trade Practices Commission (now the ACCC)
WIPO	World Intellectual Property Organization



# CASES

- A & M Records Inc v Napster Inc* 239 F 3d 1004 (9th Cir, 2001) Chapter 13
- ACCC v Alice Car and Truck Rentals Pty Ltd* (1997) ATPR 41–582 Chapter 12
- ACCC v Cadbury Schweppes Pty Ltd* (2004) ATPR 42–001 Chapter 11
- ACCC v Chaste Corp Pty Ltd (in liq)*[2005] FCA 1212 Chapter 12
- ACCC v Dermalogica Pty Ltd* (2005) 215 ALR 482 Chapter 12
- ACCC v Jetplace Pty Ltd* [2010] FCA 759 Chapter 11
- ACCC v Powerballwin.com.au Pty Ltd* [2010] FCA 378 Chapter 11
- ACCC v Telstra Corporation Limited* (2010) 188 FCR 238 Chapter 12
- ACCC v Visy Industries Holdings Pty Ltd (No 3)* (2007) 244 ALR 673 Chapter 12
- Adams v Lindsell* (1818) 1 B & Ald 681; 106 ER 250 Chapter 7
- Adler v George* [1964] 2 QB 7 Chapter 4
- Agar v Hyde* (2000) 201 CLR 552 Chapter 6
- Alexander Stenhouse Ltd v Austcan Investments Pty Ltd* (1993) 112 ALR 353 Chapter 18
- Allcard v Skinner* (1887) 36 Ch D 145 Chapter 9
- Anderson Ltd v Daniel* [1924] 1 KB 138 Chapter 7
- Ansett Transport Industries (Operations) Pty Ltd v Wardley* (1984) EOC 92 003 Chapter 19
- Anstis v FCT* [2010] HCA 40 Chapter 18
- ASIC v Adler* (2002) 168 FLR 253 p. 622
- ASIC v Hellicar* [2012] HCA 17 Chapter 16
- Associated Newspapers Ltd v Bancks* (1951) 83 CLR 322 Chapter 9
- Australian Associated Motor Insurers Ltd v Ellis & Ellis* (1990) 54 SASR 61 Chapter 18
- Australian Securities and Investments Commission v Healey* [2011] FCA 717 Chapter 16
- Australian Securities and Investments Commission v Accounts Control Management Services Pty Ltd* [2012] FCA 1164 Chapter 17
- ACCC v Telstra Corporation Limited* (2007) 244 ALR 470 Chapter 11
- Australian Provincial Assurance Co Ltd v Coroneo* (1938) 30 SR (NSW) 700 Chapter 14
- Australian Safeway Stores Pty Ltd v Zaluzna* (1987) 162 CLR 479 Chapter 6
- Australian Telecommunications Commission v Hart* (1982) 65 FLR 41 Chapter 19
- Automatic Self-Cleansing Filter Syndicate Co Ltd v Cuninghame* [1906] 2 Ch 34 Chapter 16
- Balfour v Balfour* [1919] 2 KB 571 Chapter 7
- Balmain New Ferry Co Ltd v Robertson* (1906) 4 CLR 379 Chapter 8
- Barton v Armstrong* [1973] 2 NSWLR 598 Chapter 9
- Battye v Shammall* (2005) 91 SASR 315 Chapter 15
- Beecham Group plc v Colgate-Palmolive Co* (2001) 58 IPR 161 Chapter 13
- Bettini v Gye* [1876] 1 QBD 183 Chapter 9
- Bevan v Webb* [1901] 2 Ch 59 Chapter 15
- Birtchnell v Equity Trustees, Executors and Agency Co Ltd* (1929) 42 CLR 384 Chapter 15
- Bisset v Wilkinson* [1927] AC 177 Chapter 5
- Bjelke-Peterson v Warburton* [1987] 2 Qd R 465 Chapter 5
- Blomley v Ryan* (1956) 99 CLR 362 Chapter 9
- Bojczuk v Gregorcowicz* [1961] SASR 128 Chapter 7
- Bolton Partners v Lambert* (1889) 41 Ch D 295 Chapter 10
- Bolton v Stone* [1951] AC 850 Chapter 6
- Bourhill v Young* [1943] AC 92 Chapter 6
- BP plc v Woolworths Ltd* (2004) 212 ALR 79 Chapter 13
- Brace v Calder* [1895] 2 QB 253 Chapter 9
- Bree v Lupevo Pty Ltd* [2003] EOC 93–267 Chapter 19
- Bridgewater v Leahy* (1998) 194 CLR 457 Chapter 9
- Buckenara v Hawthorn Football Club Ltd* [1988] VR 39 Chapter 9
- Burger King Corp v Hungry Jack's Pty Ltd* (2001) 69 NSWLR 558 Chapter 8
- Burger King Corporation v Hungry Jack's Pty Limited* [2001] NSWCA 187 Chapter 15

- Canny Gabriel Castle Jackson Advertising Pty Ltd v Volume Sales (Finance) Pty Ltd* (1974) 131 CLR 321 Chapter 15
- Carlill v Carbolic Smoke Ball Co* [1893] 1 QB 256 Chapter 7
- Causser v Browne* [1952] VLR 1 Chapter 8
- Cehave NV v Bremer Handelsgesellschaft mbH; The Hansa Nord* [1976] QB 44 Chapter 9
- Central London Property Trust Ltd v High Trees House Ltd* [1947] 1 KB 130 Chapter 7
- Century Insurance Co Ltd v Northern Ireland Road Transport Board* [1942] AC 509 Chapters 5, 10
- Chan v Zacharia* (1984) 154 CLR 178 Chapter 15
- Chapman v Hearse* (1961) 106 CLR 112 Chapters 6, 15
- Chaudhry v Prabhakar* [1989] 1 WLR 29 Chapter 10
- Clarendon Homes (Aust) Pty Ltd v Henley Arch Pty Ltd* (1999) 46 IPR 309 Chapter 13
- Coca-Cola Co v All-Fect Distributors Ltd* (1999) 96 FCR 107 Chapter 13
- Codelfa Construction Pty Ltd v State Rail Authority (NSW)* (1982) 149 CLR 337 Chapters 8, 9
- Cody v Live Board Holdings Limited* [2014] NSWSC 78 Chapter 16
- Commercial Bank of Australia v Amadio* (1983) 151 CLR 447 Chapter 9
- Commissioner of Taxation v Stone* (2005) 215 ALR 61 Chapter 18
- Commonwealth v Tasmania* (1983) 158 CLR 1 Chapter 2
- Concrete Constructions (NSW) Pty Ltd v Nelson* (1990) 169 CLR 594 Chapter 11
- Construction Engineering (Aust) Pty Ltd v Hexyl Pty Ltd* (1985) 155 CLR 541 Chapter 15
- Cook v ACT Racing Club Incorporated and the Australian Jockey Club Inc* [2001] ACTSC 106 Chapter 6
- Cook v Cook* (1986) 162 CLR 376 Chapter 6
- Corpe v Overton* (1833) 10 Bing 252; 131 ER 901 Chapter 7
- Cox v Coulson* [1916] 2 KB 177 Chapter 15
- Crouch and Lyndon (a Firm) v IPG Finance Australia Pty Ltd* [2013] QCA 220 Chapter 15
- Cuckmere Brick Co Ltd v Mutual Finance Ltd* [1971] Ch 949 Chapter 17
- Cuisenaire v Reed* [1963] VR 719 Chapter 13
- Cundy & Lindsay* (1877–78) LR 3 App Cas 459 Chapter 9
- Curtis v Chemical Cleaning and Dyeing Co* [1951] 1 KB 805 Chapter 8
- Cutter v Powell* (1795) 6 Term R 320; 101 ER 573 Chapter 9
- David Jones Ltd v Willis* (1934) 52 CLR 110 Chapter 8
- Davis Contractors Ltd v Fareham Urban District Council* [1956] AC 696 Chapter 9
- Dawson v World Travel Headquarters Pty Ltd* (1981) 53 FLR 455 Chapter 11
- De Lasalle v Guildford* [1901] 2 KB 215 Chapter 8
- Deatons Pty Ltd v Flew* (1949) 79 CLR 370 Chapters 5, 10
- Degiorgio v Dunn* [2004] NSWSC 767 Chapter 15
- Derry v Peek* (1889) 14 App Cas 337 Chapter 8
- Desktop Marketing Systems Pty Ltd v Telstra Corporation Ltd* (2002) 119 FCR 491 Chapter 13
- Director of Consumer Affairs Victoria v AAPT Limited* [2006] VCAT 1493 Chapter 11
- Director of Consumer Affairs Victoria v Trainstation Health Clubs Pty Ltd* [2008] VCAT 2092 Chapter 11
- Doherty v Traveland Pty Ltd* (1982) 4 ATPR 40–323 Chapter 11
- Donoghue v Allied Newspapers* [1938] Ch 106 Chapter 13
- Donoghue v Stevenson* (1932) AC 562 Chapter 6
- Dougan v Ley* (1946) 71 CLR 142 Chapter 9
- Dow Jones & Company Inc v Gutnick* (2002) 210 CLR 575 Chapter 1
- Durant v Greiner* (1990) 21 NSWLR 119 Chapter 11
- Eastman Photographic Materials Co Ltd v John Griffiths Cycle Corp Ltd* (1898) 15 RPC 105 Chapter 13
- Ermogenous v Greek Orthodox Community of SA Inc* (2002) 209 CLR 95 Chapter 7
- Esanda Finance Corporation Ltd v Peat Marwick Hungerfords* (1997) 188 CLR 241 Chapter 6
- Essington Investments Pty Ltd v Regency Property Pty Ltd* [2004] NSWCA 375 Chapter 10
- Evans v Federal Commissioner of Taxation* (1989) 89 ATC 4540 Chapter 15

*Fairfax Media Publications Pty Ltd v Reed International Books Australia Pty Ltd* (2010) 189 FCR 109 Chapter 13  
*Farah Constructions Pty Ltd v Say-Dee Pty Ltd* [2007] HCA 22 Chapter 15  
*Fisher v Bell* [1961] 1 QB 394 Chapter 4  
*Fitzgerald v FJ Leonhardt Pty Ltd* (1997) 189 CLR 215 Chapter 7  
*FNH Investments Pty Ltd v Sullivan* [2003] 59 IPR 121 Chapter 13  
*Foakes v Beer* (1884) 9 App Cas 605 Chapter 7  
*Forster & Sons Ltd v Suggett* (1918) 35 TLR 87 Chapter 8  
*Fraser v Thames Television Ltd* [1984] QB 44 Chapter 13  
*Freeman & Lockyer v Buckhurst Park Properties (Mangal) Ltd* [1964] 2 QB 480 Chapter 16  
*Frewin v Emmdale Sports Club & Anor* [2004] NSWSC 860 Chapter 18  
*G Scammell & Nephew Ltd v HC & JG Ouston* [1941] AC 251 Chapter 8  
*Gerald Mahony v Dr Daniel J White T/A Catholic Education Office Sydney* [2015] FWC 1593 Chapter 19  
*Gillette Australia Pty Ltd v Energizer Australia Pty Ltd* [2002] 193 ALR 629 Chapter 11  
*Giumelli v Giumelli* (1999) 196 CLR 101 Chapter 7  
*Given v Pryor* (1980) 30 ALR 189 Chapter 11  
*Gold Coast Oil Co Pty Ltd v Lee Properties Pty Ltd* [1985] 1 Qd R 416 Chapter 9  
*Goldberg v Jenkins & Law* (1889) 15 VLR 36 Chapter 15  
*Goldsborough Mort & Co Ltd v Quinn* (1910) 10 CLR 674 Chapter 7  
*Grant v Australian Knitting Mills Ltd* [1936] AC 85 Chapter 8  
*Grant v Commissioner of Patents* (2006) 154 FCR 62 Chapter 13  
*Great Northern Railway Co v Swaffield* (1873–74) LR 9 Exch 132 Chapter 10  
*Hackshaw v Shaw* (1984) 155 CLR 614 Chapter 6  
*Hadley v Baxendale* (1854) 9 Ex 341; 156 ER 145 Chapter 9  
*Hamilton v Lethbridge* (1912) 14 CLR 236 Chapter 7  
*Handbury v Nolan* (1977) 13 ALR 339 Chapter 8  
*Hardoon v Belilos* [1901] AC 118 Chapter 15  
*Hart v O'Connor* [1985] AC 1000 Chapter 7  
*Hartley v Ponsonby* (1857) 7 El & Bl 872; 119 ER 1471 Chapter 7  
*Hartnell v Sharp Corporation of Australia Pty Ltd* (1975) 5 ALR 493 Chapter 11  
*Harvey v Harvey* (1970) 120 CLR 529 Chapter 15  
*Hawke & Sons (London) Ltd v Paramount Film Service Ltd* [1934] Ch 593 Chapter 13  
*Hawker Pacific Pty Ltd v Helicopter Charter Pty Ltd* (1991) 22 NSWLR 298 Chapter 9  
*Hedley Byrne & Co Ltd v Heller & Partners Ltd* [1964] AC 465 Chapters 4, 6  
*Henderson v Pioneer Homes Pty Ltd* (No 2) (1980) 29 ALR 597 Chapter 11  
*Henjo Investments Pty Ltd v Collins Marrickville Pty Ltd* (No 2) (1989) 40 FCR 76 Chapter 11  
*Hewson v Sydney Stock Exchange Ltd* [1968] 2 NSW 224 Chapter 10  
*Hill v Water Resources Commission* (1985) EOC 92–127 Chapter 19  
*Hollis v Vabu Pty Ltd* (2001) 207 CLR 21 Chapters 10, 19  
*Hurd v Zomojo Pty Ltd* [2015] FCAFC 147 Chapter 16  
*Imbree v McNeilly* (2008) 236 CLR 510 Chapter 6  
*Ingram v Britten* [1994] Aust Torts Reports 81–291 Chapter 6  
*Ipex Software Services Pty Ltd v Hosking* [2000] VSCA 239 Chapter 7  
*John D Wood & Co (Residential & Agricultural) Ltd v Knatchbull* [2002] EWHC 2822 (QB) Chapter 10  
*John Fairfax and Sons Pty Ltd v Australian Consolidated Press Ltd* [1960] SR (NSW) 413 Chapter 13  
*John McCann & Co v Pow* [1974] 1 WLR 1643 Chapter 10  
*Johnson v Buttress* (1936) 56 CLR 113 Chapter 9  
*Joyce v Morrissey* [1998] TLR 707 Chapter 15  
*JT International SA v Commonwealth* [2012] HCA 43 Chapter 13  
*Junior Books Ltd v Veitchi Co Ltd* [1983] 1 AC 520 Chapter 6  
*Kelly v Tucker* (1907) 5 CLR 1 Chapter 15  
*Kelsen v Imperial Tobacco Co* [1957] 2 QB 334 Chapter 5

- Kendall v Hamilton* (1879) 4 App Cas 504 Chapter 15
- King v AG Australia Holdings Ltd* [2003] FCA 1420 Chapter 1
- Kondis v State Transport Authority* (1984) 154 CLR 672 Chapter 6
- Koompahtoo Local Aboriginal Land Council v Sanpine Pty Ltd* (2007) 233 CLR 115 Chapter 9
- Koowarta v Bjelke-Petersen* (1982) 153 CLR 168 Chapter 2
- Koufos v C Czarnikow Ltd; The Heron II* [1969] 1 AC 530 Chapter 9
- Krell v Henry* [1903] 2 KB 740 Chapter 9
- L Shaddock & Associates Pty Ltd v Parramatta City Council [No 1]* (1981) 150 CLR 225 Chapter 6
- L'Estrange v F Graucob Ltd* [1934] 2 KB 394 Chapter 8
- Latimer v AEC Ltd* [1953] AC 643 Chapter 6
- Law v Law* [1905] 1 Ch 140 Chapter 15
- Le Mans Grand Prix Circuits Pty Ltd v Iliadis* [1998] 4 VR 661 Chapter 8
- Leaf v International Galleries* [1950] 2 KB 86 Chapter 9
- Lee v Knapp* [1967] 2 QB 442 Chapter 4
- Lee v Lee's Air Farming Ltd* [1961] AC 12 Chapter 16
- Lord Bernstein v Skyviews & General Ltd* [1978] QB 479 Chapter 14
- Louth v Diprose* (1992) 175 CLR 621 Chapter 9
- Lumley General Insurance Ltd v Delphin* (1990) 6 ANZ Insurance Cas 60–986 Chapter 18
- Lumley v Wagner* (1852) 1 De G M & G 604; 42 ER 687 Chapter 5
- Lynch v Stiff* (1943) 68 CLR 428 Chapters 15
- Mabo v Queensland (No 2)* (1992) CLR 1 Chapters 2
- Makawe Pty Ltd v Randwick City Council* [2009] NS WCA 412 Chapter 6
- Manley v Alexander* (2005) 223 ALR 228 Chapter 6
- Marmax Investments Pty Ltd v RPR Maintenance Pty Ltd* [2015] FCAFC 127 Chapter 15
- Masters v Cameron* (1954) 91 CLR 353 Chapter 7
- McHale v Watson* (1966) 115 CLR 199 Chapter 6
- McWilliams Wines Pty Ltd v McDonald's System of Australia Pty Ltd* (1980) 49 FLR 455 Chapter 11
- Mercantile Credit Co Ltd v Garrod* [1962] 3 All ER 1103 Chapter 15
- Mercer v Commissioner for Road Transport and Tramways (NSW)* (1936) 56 CLR 580 Chapter 6
- Milpurrurru v Indofurn Pty Ltd* (1994) 54 FCR 240 Chapter 13
- Mirror Newspapers Ltd v Queensland Newspapers Pty Ltd* [1982] Qd R 305 Chapter 13
- Modbury Triangle Shopping Centre Pty Ltd v Anzil* (2000) 205 CLR 254 Chapter 6
- Moneywood Pty Ltd v Salamon Nominees Pty Ltd* (2001) 202 CLR 351 Chapter 10
- Musumeci v Winadell Pty Ltd* (1994) 34 NSWLR 723 Chapter 7
- Nagle v Rottnest Island Authority* (1993) 177 CLR 423 Chapter 6
- Narich Pty Ltd v Commissioner for Pay-roll Tax (NSW)* [1983] 2 NSWLR 597 Chapter 19
- National Commercial Banking Corp of Australia Ltd v Batty* (1986) 160 CLR 251 Chapter 15
- Nelson v Nelson* (1995) 184 CLR 538 Chapter 15
- Network Ten Pty Ltd v TCN Channel Nine Pty Ltd* (2004) 218 CLR 273 Chapter 13
- New South Wales v Commonwealth* (1990) 169 CLR 482 Chapter 2
- Newton-John v Scholl-Plough (Aust) Ltd* (1986) 11 FCR 233 Chapter 5
- Nordenfelt v Maxim Nordenfelt Guns and Ammunition Co Ltd* [1894] AC 535 Chapter 8
- North Ocean Shipping Co Ltd v Hyundai Construction Co Ltd* [1979] QB 705 Chapter 9
- NP Generations Pty Ltd v Feneley* (2001) 80 SASR 151 Chapter 13
- NV Philips Gloeilampenfabrieken v Mirabella International Pty Ltd* (1995) 183 CLR 655 Chapter 13
- Orb Holdings Pty Ltd v Lombard General Insurance Co Australia Ltd* [1995] 2 Qd R 51 Chapter 18
- Oscar Chess Ltd v Williams* [1957] 1 WLR 370 Chapter 8
- Overseas Tankship (UK) Ltd v Morts Dock & Engineering Co Ltd (The Wagon Mound No. 1)* [1961] AC 388 Chapter 6
- Pacific Dunlop Ltd v Hogan* (1989) 23 FCR 553 Chapter 5

*Palermo v Palermo [No 2]* [2014] WASC 6  
Chapter 15

*Panorama Developments (Guildford) Ltd v Fidelis Furnishing Fabrics Ltd* [1971] 2 QB 711 Chapter 10

*Papas v Bianca Investments Pty Ltd* (2002) 82 SASR 581 Chapter 9

*Paris v Stepney Borough Council* [1951] AC 367  
Chapter 6

*Perre v Apand Pty Ltd* (1999) 198 CLR 180  
Chapter 6

*Perri v Coolangatta Investments Pty Ltd* (1982) 149 CLR 537 Chapter 8

*Petelin v Cullen* (1975) 132 CLR 355 Chapter 8

*Pfizer Overseas Pharmaceuticals v Eli Lilly & Co* (2005) 225 ALR 416 Chapter 13

*Phillips v Daly* (1988) 15 NSWLR 65  
Chapter 6

*Placer Development Ltd v Commonwealth* (1969) 121 CLR 353 Chapter 7

*Plimer v Roberts* (1997) 80 FCR 303 Chapter 11

*Powell v Lee* (1908) 24 TLR 606 Chapter 7

*Provincial Insurance Australia Pty Ltd v Consolidated Wood Products Pty Ltd* (1991) 25 NSWLR 541 Chapter 10

*Public Service Employees Credit Union Cooperative Ltd v Champion* (1984) 56 ACTR 39 Chapter 7

*R v Clarke* (1927) 40 CLR 227 Chapter 7

*R v Harris* (1836) 7 Car & P 446; 173 ER 198  
Chapter 4

*Ramsgate Victoria Hotel Co Ltd v Montefiore* [1866] LR 1 Ex 109 Chapter 7

*Rank Film Production Ltd v Dodds* [1983] 2 NSWLR 553 Chapter 13

*Re HIH Insurance Ltd and HIH Casualty and General Insurance Ltd; ASIC v Adler* (2002) 168 FLR 253 Chapter 16

*Re Garwood's Trusts; Garwood v Paynter* [1903] 1 Ch 236 Chapter 15

*Re Gunns Plantations Limited (In Liquidation) (Receivers & Managers Appointed)* [2015] VS C 102 Chapter 20

*Re Mineworkers Pension Scheme Trusts; Cowan v Scargill* [1985] Ch 270 Chapter 15

*Re Warumungu Land Claim; Ex parte Attorney-General (NT)* (1988) 77 ALR 27 Chapter 4

*Rentokil Pty Ltd v Channon* (1990) 19 NSWLR 417 Chapter 6

*Reynolds v Turner* (1989) ASC 55–922  
Chapter 8

*Rixon v Star City Pty Ltd* [2001] 53 NSWLR 98  
Chapter 5

*Roadshow Films Pty Ltd v iiNet Ltd (No 3)* (2010) 263 ALR 215 Chapter 13

*Robinson v Ashton* (1875) LR 20 Eq 25  
Chapter 15

*Robinson v Graves* [1935] 1 KB 579 Chapter 8

*Romeo v Conservation Commission of Northern Territory* (1998) 192 CLR 431 Chapter 6

*Rookes v Barnard [No 1]* [1964] AC 1129  
Chapter 5

*Rootes v Shelton* (1967) 116 CLR 383  
Chapter 6

*Roscorla v Thomas* [1842] 3 QB 234; 114 ER 496  
Chapter 7

*Rose and Frank Co v JR Crompton & Brothers Ltd* [1925] AC 445 Chapter 7

*Rowe v McCartney* [1976] 2 NSWLR 72  
Chapter 6

*Said v Butt* [1920] 3 KB 497 Chapter 10

*Salomon v Salomon & Co Ltd* [1897] AC 22  
Chapter 16

*Samuel Taylor Pty Ltd v Registrar of Trade Marks* (1959) 102 CLR 650 Chapter 13

*Seear v Cohen* (1881) 45 LT 589 Chapter 9

*Silservice v Supreme Bread Pty Ltd* (1949) 50 SR (NSW) 207 Chapter 5

*Smith v Anderson* (1880) 15 Ch D 247  
Chapter 15

*Smith v Hughes [1960]* 2 All ER 859 Chapter 4

*Smythe v Thomas* [2007] 71 NSWLR 537 Chapter 7

*Snow v Eaton Shopping Centre Ltd* (1982) 70 CPR (2d) 105 Chapter 13

*Southwark LBC v Williams* [1971] Ch 734  
Chapter 5

*Springer v Great Western Railway Co* [1921] 1 KB 257 Chapter 10

*Spyer v Phillipson* [1931] 2 Ch 183 Chapter 14

*Stanley v Powell* [1891] 1 QB 86 Chapter 5

*Steele v Tardiani* (1946) 72 CLR 386  
Chapter 9

*Stilk v Myrick* (1809) 2 Camp 317; 170 ER 1168 Chapter 7

*Sullivan v Moody* (2001) 207 CLR 562  
Chapter 6

*Summers v Solomon* (1857) 7 El & Bl 879; 119 ER 1474 Chapter 10

*Sydney City Council v West* (1965) 114 CLR 481  
Chapter 8

*Taco Company of Australia Inc v Taco Bell Pty Ltd* (1982) 42 ALR 177 Chapter 11

*Tame v New South Wales* (2002) 211 CLR 317  
Chapter 6

*Tarling v Baxter* (1827) 6 B & C 360; 108 ER 484 Chapter 8

*Taylor v Caldwell* (1863) 3 B & S 826; 122 ER 309 Chapter 9

*Taylor v Johnson* (1983) 151 CLR 422  
Chapter 9

*TCN Channel Nine Pty Ltd v Network Ten Pty Ltd (No 2)* (2005) 145 FCR 35 Chapter 13

*The People (Director of Public Prosecutions) v Farrell* [1978] IR 13 Chapter 4

*Thomas v Thomas* (1842) 2 QB 851; 114 ER 330  
Chapter 7

*Thompson v London, Midland and Scottish Railway Co* [1930] 1 KB 41 Chapter 8

*Thornton v Shoe Lane Parking Ltd* [1971] 2 QB 163 Chapter 8

*Tobacco Institute of Australia Ltd v Australian Federation of Consumer Organisations Inc* (1992) 38 FCR 1 Chapter 11

*Toll (FGCT) Pty Ltd v Alphapharm Pty Ltd* (2004) 219 CLR 165 Chapter 8

*Tooth v Laws* (1888) 9 LR (NSW) 154  
Chapter 10

*Torpedoes Sportswear Pty Ltd v Thorpedo Enterprises Pty Ltd* (2003) 132 FCR 326  
Chapter 13

*TPC v Australia Meat Holdings Pty Ltd* (1988) 83 ALR 299 Chapter 12

*TPC v Email* (1980) 43 FLR 383 Chapter 12

*TPC v JW Bryant Pty Ltd* (1978) ATPR 40–075 Chapter 12

*TPC v Massey Ferguson (Australia) Ltd* (1983) 67 FLR 364 Chapter 12

*TPC v Sony (Australia) Pty Ltd* (1990) ATPR 41–031 Chapter 12

*TPC v TNT Australia Pty Ltd* (1995) ATPR 41–375 Chapter 12

*Trident General Insurance Co Ltd v McNiece Bros Pty Ltd* (1988) 165 CLR 107 Chapter 9

*Van den Esschert v Chappell* [1960] WAR 114  
Chapter 8

*Virgin Enterprises Ltd v Klapsas* [2002] AIPC 91–760 Chapter 13

*Wakeling v Ripley* (1951) 51 SR (NSW) 183  
Chapter 7

*Wallis v Downard-Pickford (North Queensland) Pty Ltd* (1994) 179 CLR 388 Chapter 2

*Waltons Stores (Interstate) Ltd v Maher* (1988) 164 CLR 387 Chapter 7

*Watt v Hertfordshire County Council* [1954] 1 WLR 835 Chapter 6

*White v Bluett* (1853) 23 LJ Ex 36 Chapter 7

*White v John Warwick & Co Ltd* [1953] 1 WLR 1285 Chapter 8

*Whywait Pty Ltd v Davison* [1997] 1 Qd R 225  
Chapter 15

*Willemstad* (1976) 136 CLR 529 Chapter 6

*Wilson v Horne* (1999) 8 Tas R 363 Chapter 5

*Windsurfing International Inc v Petit & Borsimex Ltd* (1983) 3 IPR 449 Chapter 13

*Woods v Multi-Sport Holdings Pty Ltd* (2002) 208 CLR 460 Chapter 6

*Yates v Jones* [1990] Aust Torts Reports 81–009  
Chapter 6

*Zeccola v Universal City Studios Inc* (1982) 67 FLR 225 Chapter 13

*Zuijs v Wirth Bros Pty Ltd* (1955) 93 CLR 561  
Chapter 19

# STATUTES

## Commonwealth

*A New Tax System (Goods and Services Tax) Act 1999*  
*Acts Interpretation Act 1901*  
*Administrative Appeals Tribunal Act 1975*  
*Administrative Decisions (Judicial Review) Act 1977*  
*Age Discrimination Act 2004*  
*Anti-Money Laundering and Counter-Terrorism Financing Act 2006*  
*Australia Act 1986*  
*Australian Securities and Investments Commission Act 2001*  
*Bankruptcy Act 1966*  
*Bills of Exchange Act 1909*  
*Cheques Act 1986*  
*Commonwealth Acts Interpretation Act 1901*  
*Commonwealth Volunteers Protection Act 2003*  
*Competition and Consumer Act 2010*  
*Competition Policy Reform Act 1995*  
*Copyright Act 1968*  
*Corporations Act 1989*  
*Corporations Act 2001*  
*Corporations Act 2001*  
*Crimes Act 1914*  
*Criminal Code Act 1995*  
*Designs Act 2003*  
*Disability Discrimination Act 1984*  
*Disability Discrimination Act 1992*  
*Electronic Transactions Act 1999*  
*Euthanasia Laws Act 1997*  
*Fair Work Act 2009*  
*Fair Work Amendment (State Referrals and Other Measures) Act 2009*  
*Family Law Act 1975*  
*Federal Court of Australia Act 1976*  
*Financial Transactions Reports Act 1988*  
*Freedom of Information Act 1982*  
*Health Insurance Act 1973*  
*High Court of Australia Act 1979*  
*Human Rights and Equal Opportunity Commission Act 1986*  
*Income Tax Amendment Act 1936*  
*Income Tax Assessment Act 1936*  
*Independent Contractors Act 2006*

*Insurance Acquisitions and Takeovers Act 1991*  
*Insurance Act 1973*  
*Insurance Contracts Act 1984*  
*Intellectual Property Laws (Raising the Bar) Act 2012*  
*Judiciary Act 1903*  
*Legislative Instruments Act 2003*  
*Life Insurance Act 1995*  
*Marine Insurance Act 1909*  
*Motor Accidents Compensation Act 1999*  
*National Consumer Credit Protection Act 2009*  
*Patents Act 1990*  
*Personal Property Securities Act 2009*  
*Plant Breeder's Rights Act 1994*  
*Privacy Act 1988*  
*Privacy Amendment (Enhancing Privacy Protection) Act 2012*  
*Privy Council (Appeals from the High Court) Act 1975*  
*Privy Council (Limitation of Appeals) Act 1968*  
*Racial Discrimination Act 1975*  
*Radio Licence Fees Amendment Act 2007*  
*Safety, Rehabilitation and Compensation Act 1988*  
*Sex Discrimination Act 1984*  
*Tax Assessment Act 1936*  
*Telecommunications (Interception and Access) Act 1979*  
*Telecommunications Act 1997*  
*Tobacco Plain Packaging Act 2011*  
*Trade Marks Act 1995*  
*Trade Practices Act 1974*  
*Trade Practices Amendment (Australian Consumer Law) Act (No. 1) 2010*  
*Work Health and Safety Act 2011*  
*Workplace Gender Equality Act 2012*  
*Workplace Relations Act 1996*  
*Workplace Relations Amendment (WorkChoices) Act 2005*

## Australian Capital Territory

*Administrative Decisions (Judicial Review) Act 1989*  
*Crimes Act 1900*  
*Criminal Code 2002*



*Discrimination Act 1991*  
*Federal Magistrates Court Act 1999*  
*Human Rights Act 2004*  
*Jurisdiction of Courts (Cross-vesting) Act 1987*  
*Legislation Act 2001*  
*Limitation Act 1985*  
*Sale of Goods Act 1954*  
*Work Health and Safety Act 2011*  
*Workers Compensation Act 1951*

## **New South Wales**

*Anti-Discrimination Act 1977*  
*Contracts Review Act 1980*  
*Crimes Act 1900*  
*Interpretation Act 1987*  
*Limitation Act 1969*  
*Retail Trading Act 2008*  
*Sale of Goods Act 1923*  
*Subordinate Legislation Act 1989*  
*Work Health and Safety Act 2011*  
*Workers Compensation Act 1987*  
*Workplace Injury Management and Workers Compensation Act 1998*

## **Northern Territory**

*Aboriginal Land Rights (Northern Territory) Act 1976*  
*Anti-Discrimination Act*  
*Criminal Code Act 1983*  
*Information Act 2002*  
*Interpretation Act 1978*  
*Limitation Act 1981*  
*Rights of the Terminally Ill Act 1995*  
*Sale of Goods Act 1923*  
*Sale of Goods Act 1972*  
*Water Act 1992*  
*Work Health and Safety (National Uniform Legislation) Act 2011 (NT)*  
*Workers Rehabilitation and Compensation Act (NT)*

## **Queensland**

*Acts Interpretation Act 1954*  
*Anti-Discrimination Act 1991*  
*Carriage of Goods by Land (Carrier's Liabilities) Act 1967*  
*Criminal Code 1899*  
*Information Privacy Act 2009*

*Judicial Review Act 1991*  
*Limitation of Actions Act 1974*  
*Queensland Coast Islands Declaratory Act 1985*  
*Sale of Goods Act 1896*  
*Statutory Instruments Act 1992*  
*Trading (Allowable Hours) Act 1990*  
*Work Health and Safety Act 2011*  
*WorkCover Queensland Act 1996*  
*Workers Compensation and Rehabilitation Act 2003*

## **South Australia**

*Acts Interpretation Act 1915*  
*Criminal Law Consolidation Act 1935*  
*Equal Opportunity Act 1984*  
*Limitation of Actions Act 1936*  
*Racial Vilification Act 1996*  
*Sale of Goods Act 1895*  
*Shop Trading Hours Act 1977*  
*Subordinate Legislation Act 1978*  
*University of South Australia Act 1990*  
*Work Health and Safety Act 2012 (SA)*  
*WorkCover Corporation Act 1994 (SA)*  
*Workers Rehabilitation and Compensation Act 1986*

## **Tasmania**

*Acts Interpretation Act 1931*  
*Anti-Discrimination Act 1998*  
*Criminal Code Act 1924*  
*Judicial Review Act 2000*  
*Limitation Act 1974*  
*Personal Information Protection Act 2004*  
*Sale of Goods Act 1896*  
*Shop Trading Hours Act 1984*  
*Subordinate Legislation Act 1992*  
*Work Health and Safety Act 2012*  
*Workers Rehabilitation and Compensation Act 1988*

## **Victoria**

*Accident Compensation (WorkCover Insurance) Act 1993*  
*Accident Compensation Act 1985*  
*Administrative Law Act 1978*  
*Charter of Human Rights and Responsibilities Act 2006*  
*Crimes Act 1958*

*Equal Opportunity Act 2010*  
*Goods Act 1958*  
*Information Privacy Act 2000*  
*Interpretation of Legislation Act 1984*  
*Limitation of Actions Act 1958*  
*Occupational Health and Safety Act 2004*  
*Racial and Religious Tolerance Act 2001*  
*Subordinate Legislation Act 1994*  
*Victoria Charter of Human Rights and  
Responsibilities Act 2006*

## **Western Australia**

*Criminal Code Act 1913*  
*Equal Opportunity Act 1984*  
*Interpretation Act 1984*  
*Limitation Act 2005*  
*Occupational Safety and Health Act 1984*  
*Retail Trading Hours Act 1987*  
*Sale of Goods Act 1895*  
*Workers Compensation and Injury Management  
Act 1981*

## **United Kingdom**

*Australia Act (Cth) and Australia Act (UK) 1986*  
*Australian Constitutions Act 1850*  
*Australian Courts Act 1828*  
*Colonial Laws Validity Act 1865*  
*Commonwealth of Australia Constitution Act  
1900*  
*Constitution Act (NSW) 1902*

*Constitution Act (SA) 1856*  
*Constitution Act (Tas) 1855*  
*Constitution Act 1867*  
*Constitution Act Amendment Act (Qld) 1922*  
*Federal Council of Australasia Act 1885*  
*Letters Patent 1787*  
*Letters Patent 1803*  
*Letters Patent 1814*  
*Letters Patent 1836*  
*Letters Patent 1859*  
*New South Wales Act 1823*  
*New South Wales Constitution Act 1842*  
*New South Wales Constitution Act 1855*  
*Offences Against the State Act 1939*  
*Official Secrets Act 1920*  
*Partnership Act 1890*  
*Pharmacy and Poisons Act 1933*  
*Privy Council (Appeals from the High Court) Act  
(Cth) 1975*  
*Privy Council (Limitation of Appeals) Act (Cth)  
1968*  
*Road Traffic Act 1960*  
*Sale of Goods Act 1893*  
*South Australia Act 1834*  
*Statute of Westminster (Imp) 1931*  
*Statute of Westminster Adoption Act (Cth) 1942*  
*Street Offences Act 1959*  
*Victoria Constitution Act 1855*  
*West Australia Constitution Act 1890*  
*Western Australia Act 1829*

# PART 1

## Foundations

- 1 Business and the law 2
- 2 The Australian legal system 32
- 3 Politicians and judges 77
- 4 How to find, understand and use the law 128

# CHAPTER 1

# Business and the law

## LEARNING OBJECTIVES

---

- 1.1** In what ways does the law relate to business?
  - 1.2** What exactly is meant by the word 'law' anyway? Why is it so important? What sorts of things does the law regulate? And why does the law keep changing?
  - 1.3** Does the law have anything to do with ethics, justice, and politics?
-

## JOHNNY AND ASH

*[Johnny Bristol, 25 years old, scruffy and morose, sits by himself in a nearly empty bar nursing a beer. He looks up when a young woman calls his name as she approaches from the other side of the bar: Ashwina Redcliffe, smartly dressed and immaculately groomed.]*

**Ash** — Johnny! Hey, Johnny!

**Johnny** — Hey, Ash.

**Ash** — *[She sits down at the table, carefully placing her glass of white wine on a coaster, and looks at Johnny.]* Johnny Bristol, well, well, well. I haven't seen you since high school. It's been, what, seven years? I heard you moved to New Zealand.

**Johnny** — I did. I'm back. I heard you went to law school.

**Ash** — I did. And now I'm a lawyer. Working for Gibson & Gaiman in the city. Loving it. And doing quite well for myself, thanks. So what brings you back to town?

**Johnny** — Well, my dad got sick last year, and so I came back to help mum look after him and to set up a business back here. You know The Lame Duck restaurant? Vegan restaurant over on Kerouac Avenue? I own the place now.

**Ash** — Oh, I'm so sorry to hear about your dad. He's a nice man. A friend of mine ate at The Lame Duck just last week. She had the tofu burger I think.

**Johnny** — Yeah? What did she say about it?

**Ash** — She said it was awful, actually. Sorry! *[They both laugh.]* Apparently the organic cola was wonderful though.

**Johnny** — That's a relief. *[He pauses.]* Things really aren't going that well. I'm having heaps of problems just keeping the place running. I'm a good cook — well, I thought I was — but I've never run a business before. I've got suppliers who don't do what they say they are going to do, employees who show up late if they show up at all, and a competitor who keeps stealing my recipes. My landlord wants to sell the building, and I don't have enough savings to move to another location.

**Ash** — Sounds like you need a friend to talk to. And a lawyer.

**Johnny** — Thanks. I definitely need a friend. A lawyer, I'm not so sure. What do my problems have to do with the law?

**Ash** — Are you kidding? It's all about the law! How can you possibly run a business without being aware of the law? How can you play a game without knowing the rules? Here, let me get you another beer, and I'll tell you a thing or two about the law.

**Johnny** — Thanks, Ash, I guess you are right. I have always been more concerned with doing what is 'right' than with doing what is 'legal'. I don't know much about the law at all. Maybe that's the problem. And the tofu burger, of course.

**Ash** — Of course! Actually, you might be surprised how much you already know about the law...

## CHAPTER PROBLEM

As a business owner, Johnny is confronted by a number of challenges. As you make your way through this chapter, consider the reasons why a better understanding of business law might be helpful for Johnny. With which specific areas of the law should Johnny become more familiar? Is Johnny correct in thinking that questions about 'what is right' and questions about 'what is legal' are unrelated?

## Introduction

Ash is right. You can't play a game without knowing and understanding the rules, and you can't participate in business — whether as a business owner, manager, professional adviser or employee — without knowing and understanding the law. In this chapter we consider the law in a very general sense.

We explain the relevance of the law to business, what makes the law different from other types of rules and regulation, why it is important that the law keeps changing, and what the law has to do with ethics, justice and politics.

After working through this chapter you will better appreciate the importance of the law and of being aware of your legal environment.

## 1.1 Law and the business person

---

**LEARNING OBJECTIVE 1.1** In what ways does the law relate to business?

Johnny may never have studied law or read a legal textbook, but there is little doubt that he already knows something about the law. He has encountered the law many times: in his personal life, in his business activities, in the media and in popular culture.

### Law and personal life

There are very few aspects of Johnny's personal life that are not regulated by law, either directly or indirectly. His house was purchased in compliance with property laws and built in compliance with building laws. When he makes a cup of coffee for his breakfast, he has the coffee in his cupboard because he has entered into a **contract** for the sale of goods with his local supermarket, and he is able to access the electricity that powers the kettle because he has an ongoing contract with the power company. Driving to work in his car — the loan for which is regulated by **consumer credit** law — he is subject not only to statutory traffic laws but also the general duty to take care imposed by **tort** law. The music that he listens to on his smartphone is protected from unauthorised copying by **intellectual property** law, and consumer protection law regulates the advertisements he sees on television in the evening.

Johnny already knows that different laws impact different aspects of his life in different ways. Some laws give him rights that he can enforce against others, and some laws impose obligations upon him to do or refrain from doing certain things. When some laws are broken (e.g. when a contract is breached) the person harmed may have the right to commence **litigation** against (or 'sue') the person who caused the harm for compensation. There are other laws (e.g. traffic laws) that, if broken, will lead to the police or some other government authority **prosecuting** the law breaker with a view to punishing them in some way.

#### ACTIVITY 1.1 – REFLECT

List five ways that the law has impacted on your own life in the past 24 hours.

### Law and business

As a business owner, Johnny knows that he must pay income tax on his business earnings to the **Federal** government. He knows that as an employer he must pay payroll tax to the **State** government. He knows that as an owner of land he must pay rates to the **local authority**. Johnny is also aware of the many other Federal, State and local government laws he must comply with as a business owner: laws about licensing, advertising, industrial relations, workplace health and safety, and so on. He therefore knows that there are three levels of government in Australia:

- a Federal government that regulates national matters,
- State and Territory governments that regulate State and Territory matters, and
- local governments that regulate local matters.

He knows that each government makes its own laws and has its own requirements.

Legal regulation sometimes seems to be more of a hindrance than a help to people engaging in business activities, but the law serves a very important purpose. Business would not be possible without a system of legal regulation. It is the law that ensures that promises are kept and agreements are enforceable. It is the law that tells business people what they can and cannot do in marketing and delivering their goods and services. And it is the law that enables business people to resolve disputes with customers, suppliers and competitors.

### ACTIVITY 1.2 – REFLECT

List three reasons why an understanding of the law is essential for the successful business person.

## Law in the media

Johnny hears something new about the law every day. Many of the news stories Johnny sees on the television and reads about in the newspaper and online are about the law or at least related to law. The government's latest industrial relations reforms, the jailing of a prominent politician, and the investigation of an assault outside a nightclub all involve the legal system in some way. Johnny has seen many examples of politicians talking about new **legislation** either positively (if the politicians are members of the government) or negatively (if they are members of the opposition), lawyers and parties to litigation talking about controversial **case law**, police talking about criminal prosecutions, and a variety of bureaucrats and other people talking about legal problems, legal rules, legal investigations and legal solutions.

After watching the news and current affairs programs Johnny knows that many people and organisations form a legal system: politicians, judges, lawyers, police, bureaucrats and citizens; and parliaments, courts, the police force, government departments and corporations.

### ACTIVITY 1.3 – RESEARCH

Go to a news website such as [www.news.com.au](http://www.news.com.au) or [www.afr.com.au](http://www.afr.com.au) and make a list of today's law-related items.

## Law in popular culture

It seems to Johnny that any night of the week he can switch on the television and watch stories about lawyers, law firms, prosecutors and police investigators, and the dramas associated with the practice of law and with police investigation: *Suits*, *The Good Wife*, *Law & Order*, *Rake*. And an enormous number of popular movies feature a lawyer as the principal character, or a trial as the central dramatic device, including Australian films such as *The Castle*, US films such as *The Lincoln Lawyer*, *Erin Brockovich* and *The Firm*, and Chinese films such as *Lawyer*, *Lawyer*.

After seeing the law portrayed in films and on television, Johnny knows that the law is much more than a system of abstract rules and principles. It is something that manifests in and shapes the lives of real people.

### ACTIVITY 1.4 – RESEARCH AND REFLECT

Watch an episode of a television program that is related to the law in some way. In what ways are the law, the legal system or lawyers referred to, either directly or indirectly? Do you think the way the law is portrayed is realistic?



---

## REVISION QUESTIONS

Before proceeding, ensure that you can answer the following questions.

- 1.1 In what ways does the law impact upon your personal life?
  - 1.2 In what ways does the law impact upon business activities?
  - 1.3 What can the news and other media stories tell you about the law?
  - 1.4 What can popular culture tell you about the law?
- 

## 1.2 The nature of law

---

**LEARNING OBJECTIVE 1.2** What exactly is meant by the word ‘law’ anyway? Why is it so important? What sorts of things does the law regulate? And why does the law keep changing?

Johnny already knows something about the law. But he is still not sure he understands the difference between law and other kinds of rules, why knowing about the law is so important, or why the law, apparently, keeps needing to be changed.

### Defining law

The question ‘What is the law?’ is much harder to answer than one might think. It is a question that legal theorists and philosophers have been debating for hundreds of years, and there is relatively little consensus.

Here are just a few of the many possible definitions and descriptions of law.

- Law is a system of enforceable rules governing social relations and legislated by a political system. (*Stanford Encyclopaedia of Philosophy*)
- Law is the essential foundation of stability and order both within societies and in international relations. (J William Fullbright)
- Law: an ordinance of reason for the common good, made by him who has care of the community. (Saint Thomas Aquinas)
- The law is but words and paper without the hands and swords of men. (James Harrington)
- Law and order exist for the purpose of establishing justice, and...when they fail to do this purpose they become dangerously structured dams that block the flow of social progress. (Martin Luther King, Jr)
- In its majestic equality, the law forbids rich and poor alike to sleep under bridges, beg in the streets and steal loaves of bread. (Anatole France)
- The law is an ass, an idiot... (Charles Dickens)
- I am the law! (Judge Dredd)

There is a distinction between ‘a law’ and ‘the law’: you would use the term ‘a law’ to refer to a particular legal rule, and you would use the term ‘the law’ to refer to the legal system generally.

A simple and practical definition of the **law** is as follows: *the law is a system of rules made by the state and enforceable by prosecution or litigation.* The corresponding definition of business law is *a system of rules regulating businesses and business activities made by the state and enforceable by prosecution or litigation.*

These definitions disregard questions of justice, ethics and politics, and focus upon what law is, without considering whether it is fair or right and without considering the political origins and implications of law. We consider the relationship between law, justice, ethics and politics in detail below. For now, we examine each of the elements of our simple definition in turn.

## A system of rules

Most people who attempt to define law will use the word ‘rule’ somewhere in their definition. A law is a type of rule. A rule is a statement of behavioural expectation; it tells people how they should or should not behave. There may or may not be negative consequences that flow from failing to comply with the rule.

There are of course many different types of rule, including:

- the rules of a game, e.g. the rules of poker or cricket,
- the rules of an organisation, e.g. the membership rules of a football association or the internal governance rules of a corporation,
- moral rules, e.g. the rule that you should not tell lies,
- social rules, e.g. the rule that you should say ‘please’ when asking for something,
- mathematical rules, e.g. the rules regulating multiplication and division, and
- traffic rules, e.g. the rule that you should drive on the left-hand side of the road.

Not all of these rules are laws. Traffic rules can be categorised as laws, but the rules of cricket cannot. The difference between legal rules (i.e. laws) and non-legal rules is not that only legal rules incur penalties; there are penalties incurred if you breach the rules of a game or of an organisation, and even the disapproval that follows from a breach of a social or moral rule can be seen as a type of penalty. The most appropriate way to distinguish between a legal rule and a non-legal rule is to consider the *source* of the rule.

## Made by the state

Legal rules are made by the state. Rules made by persons or organisations other than the state cannot be said to be laws.

The term ‘state’ is used throughout this text, and is a very common legal term. In lower case, the term ‘state’ refers to the government generally. If it starts with a capital letter, the term refers to a State within a federation, e.g. New South Wales. In the context of our simple definition of law, the term has the former meaning: a law is a rule made by the government. In the context of the Australian legal system, a law is a rule made by either the legislature (the parliament) or the judiciary (the court system).

The words ‘state’ and ‘government’ are often used interchangeably, although they do not mean precisely the same thing. The word ‘government’ refers to the group of individuals and institutions charged with constitutional authority to make, administer and interpret the law. The word ‘state’ can refer to either the government or to the governed territory (e.g. the State or the nation) as an organised political community.

Another term used in similar contexts is ‘sovereign’. A sovereign is a supreme ruler of a state. In a traditional monarchy, the king or queen (or ‘monarch’) is the sovereign. In modern liberal democracies, including constitutional monarchies such as Australia, it is the parliament that is seen as sovereign — hence the term ‘parliamentary sovereignty’ (a term explained in more detail in a later chapter).

## Enforceable by prosecution or litigation

Legal rules are backed by the threat of punishment or coercion: if a person does not obey a legal rule, there will be consequences.

If the legal rule is a rule of **criminal law**, a person who contravenes the rule may be formally accused by the state of having committed a criminal offence, a process known as *prosecution*. For example, if a person contravenes the criminal law prohibiting assault by punching a stranger in the nose, they may be charged and prosecuted, and if they are found guilty they will be subjected to a penalty such as a fine or imprisonment.

If the legal rule is a rule of **civil law**, a person who contravenes the rule may be sued by the person they have harmed, a process known as *litigation*. For example, if a person contravenes the law of contract by failing to pay for a car that they have signed a contract to purchase, they may be sued by the seller; if the seller ‘wins’ the trial, the person may be obliged to provide a remedy to the seller such as the payment of monetary compensation.

## Natural law versus legal positivism

Our definition of law as the set of rules made by the state and enforceable by prosecution or litigation disregards what law ought to be and focuses upon what law is. As such it is a 'positivist' definition of law, and can be contrasted with the sorts of definitions offered by natural law theory. Natural law theory and legal positivism are two of the major branches of the philosophy of law, or **jurisprudence**.

### Natural law theory

In seeking to describe the nature of law, some legal philosophers insist that there is an intimate and necessary relationship between the law and a set of higher values. These higher values may be the 'laws of God', or they may be universal principles of morality and justice. This approach to defining law is often referred to as **natural law theory**.

Advocates of a natural law approach insist that some things are objectively right or fair, that some things are objectively wrong or unfair, and that the law should be made, administered and interpreted in such a way that it corresponds with these objective standards. Some even go so far as to insist that if a law made by government (positive law) is inconsistent with these objective standards (natural law), the positive law does not have to be obeyed.

The concept of natural law was very important in the development of the English common law. In the struggles between the parliament and the monarch (described in a later chapter), parliament often referred to the 'fundamental laws of England' that were said to embody natural law principles since time immemorial and to set limits on the power of the monarchy.

Today natural law theory is relied upon by those seeking to establish a system of universal moral values according to which technically 'legal' wartime atrocities and other abuses of human rights can be objectively criticised and condemned.

### Legal positivism

*Legal positivists* insist that one should focus not upon what the law ought to be, but upon what the law *is*. Consistency with universal standards of morality and justice — which may or may not exist — is not necessary. The only question one needs to ask about the law is whether or not it is a legitimate law; that is, whether it has been made properly and in accordance with requirements of the relevant **constitution**.

The practical difference between a natural law approach and a positivist approach can be illustrated using a simple example. Imagine that you are driving a car along a motorway at a speed of 120 kilometres per hour, which is 20 kilometres per hour in excess of the 100 kilometres per hour speed limit. There are three cars in front of you driving in the same direction and at the same speed. All four cars drive past a police officer operating a hand-held speed camera. The police officer ignores the first three cars but pulls you over. When the police officer gives you a speeding ticket, you point out the injustice of the situation. You argue that although it is true that you were speeding, it is not fair that the other motorists will get away with something for which you are being punished. You argue that therefore you should not be given a speeding ticket. You are taking a natural law position; you are arguing that the law must be made and applied in accordance with universal principles of justice, including the principle that the law should be applied equally to all. The police officer, however, will be more likely to take a positivist approach and insist that since you have broken the law that limits the speed at which you are permitted to drive to 100 kilometres an hour, you should be punished, and universal principles of justice have nothing to do with it.

## ACTIVITY 1.5 – REFLECT

Search the internet for a picture of a statue of lady justice, an important symbol of law and the legal system. What do you think is symbolised or represented by (a) the blindfold, (b) the scales, and (c) the sword?

## The purpose of law

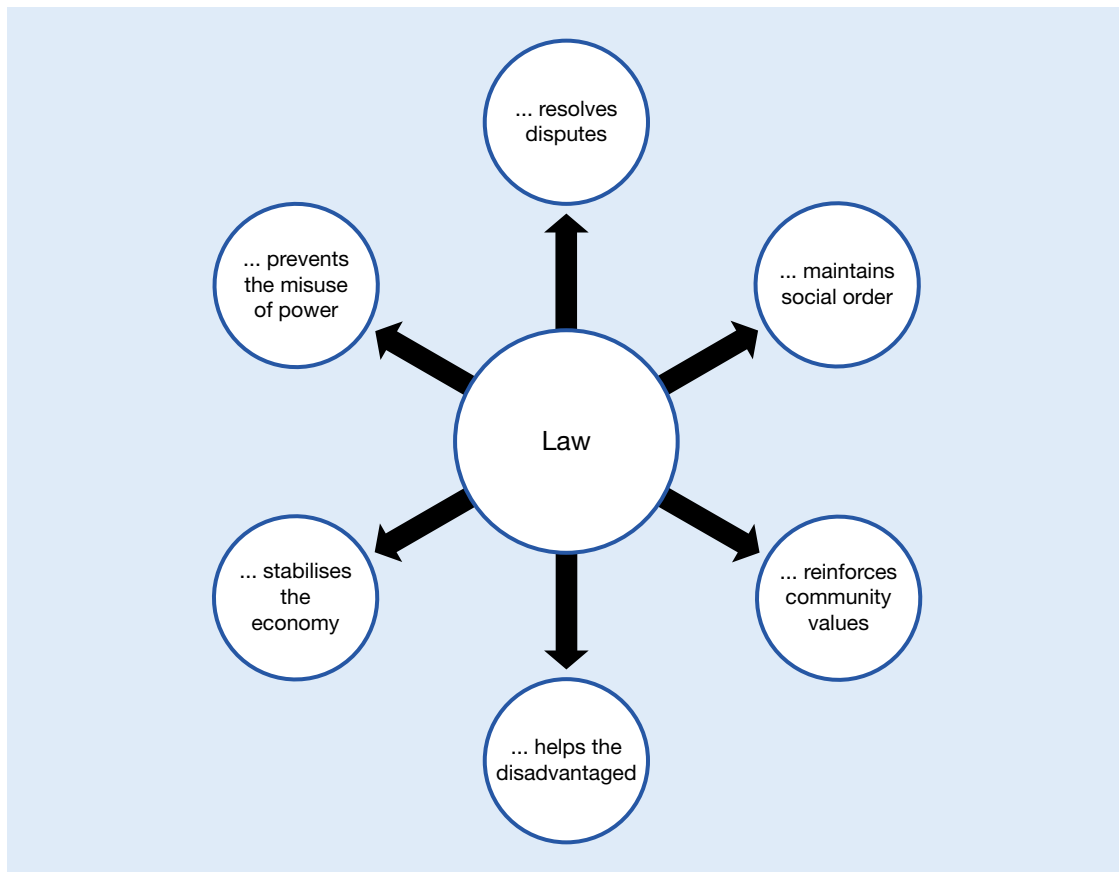
We have considered the definition of law. We now consider the purpose of law: What does law seek to *do*? By understanding the wide range of possible uses to which laws are put, you will better appreciate the importance of law.

In this section we explain six purposes of law (see figure 1.1).

### Resolving disputes

Business lives and personal lives are frequently characterised by conflict and by differences of opinion. A homeowner may not agree with their neighbour about the location of the boundary between their properties. A businessperson may not agree with one of their business competitors about whether or not it is appropriate for their advertising to refer to the competitor by name. Two motorists may disagree about who is responsible for a motor vehicle accident.

The law provides a way for these disputes to be resolved. The parties to the dispute can refer to the relevant legal rules directly and, if the rules are clear enough, resolve the dispute themselves. If the application of the relevant rules to the dispute is not clear, the parties can seek legal advice. And if the legal advisers cannot resolve the dispute, the parties can take the dispute to court and resolve it by litigation.



**FIGURE 1.1** The purposes of law