

Week 6 – Finding and Using the Law

SOURCES OF LAW:

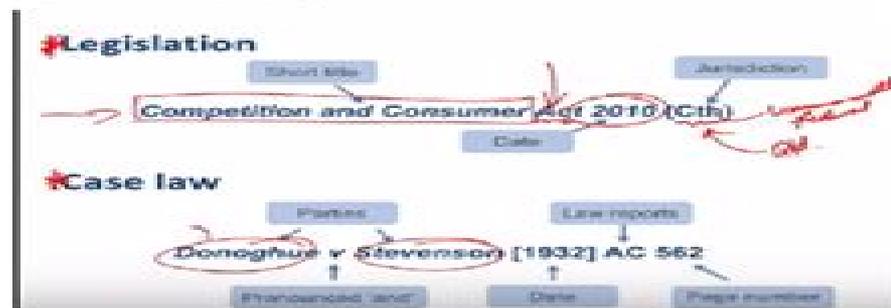
1. Law made by Parliament (the legislature)
 - Called legislation, statute or an act of parliament
 - Parliament can delegate its law-making power to another body – called delegated legislation
2. Law made by the courts (the judiciary) – Common Law (sense 2)
 - Recorded decisions of judges are usually published
 - The doctrine of precedent says that other courts need to follow what the other judges decided in a superior court
 - When the courts make a decision, they are making law
 - if there is a conflict between legislation and case law, legislation prevails.

Relationship between the sources:

- Some areas of law rely on legislation; however some rely on case law, and some are a mix
- Australian consumer law – legislation
- Contract law – case law
- Negligence – mix of both

Legal material: (we focus on) Sources of law → Primary legal materials → legislation and case law

READING THE LAW:



Case law – plaintiff then defendant (Nick vs Smith; Appeal = 1st appellant, 2nd respondent (Smith vs Nick

Case reports:

- Can be anything from half a page to more than 500 pages – length depends on how many judges are expressing their own opinion, and the complexity of case
- When a judge makes their decision, they give the decision AND how they reached the decision (important as it leads to ratio/doctrine of precedent)

Finding Reading And Using The Law

AN Whitehead



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