

# SECTION A: Framework of Law (A s1-2)

Monday, 26 August 2013 12:48 p.m.

## Part A: The Legal System

### 1. The Nature and Function of Law

#### a. Law compared to other concepts

- law is **differentiated from social etiquette and habits** because it is **enforceable** and **coercion** can be used.
- there are **consequences** (or **legal sanctions**) for those who do not obey the law.
  - o consequences include **finances** and **imprisonment**.

#### b. Law and ethics in business

- law is generally obeyed because of consequences (see above).
- **breach of ethical/moral principles** are normally **not subject** to legal sanctions but there may be overlap.
  - o **economic sanctions/repercussions** exist for businesses who breach ethical principles.
  - o **adverse consequences** include loss of reputation and therefore profit.

#### c. Importance of ethics for professions

- **code of ethics**: code of behaviour or guidelines, commonly found in professions.
- consequences for breach of ethics include disqualification from practice.  
eg. lawyers are 'struck off the roll'

#### d. Interface between law and ethics in business

- **constraints** on business include the **Fair Trading Act**, advertising standards and other business codes of ethics.
- factors such as **employment law**, **environmental law** and **corporate social responsibility** also affect decision makers in business.

- ★ **FIDUCIARY DUTY**: the obligation to act in utmost good faith and in the interests of others.  
Notions of **fair dealing**, **trust** and **confidence**: in some cases the law requires us to serve interests of others rather than our own.
  - eg. Board of Directors work in shareholders' interests
  - eg. Notifying a party of any viable cost savings (especially when increases own profit)

### 2. Our Legal and Business Framework

- **laws** are made by **Parliament**.
- **Government departments, executive bodies/agencies** administer and enforce law.  
eg. Ministries, police.

# Framework of Law (A s3-4)

Monday, 26 August 2013 12:48 p.m.

## 3. Sources of Law

💡 Three broad sources of law:

### 1. Legislation.

- primary source of law
- certain and made by **Parliament**
- **primary legislation**: known as **acts** or **statutes** (same thing)
- Parliament can authorise others to make **delegated (secondary) legislation**  
eg. council bylaws, university regulations.

### 2. The Courts (Judiciary)

- make **case (judge-made) laws**
- courts are **independent and interpret the law, not create them**
- case laws are made up of decisions and judgements
- only some part of judgements make new law.

### 3. Conventions and Customs

- practices recognised over time
- **cannot be enforced** (courts cannot uphold convention)

## 4. Law as a guide



💬 Conflict between two or more laws

- if **statute and case law conflict**, the **statute prevails**.
- if **two statutes conflict**, the **later prevails**.
  - o earlier statutes may be **repealed**.
- if **two case laws conflict**, the **ruling of the higher court prevails**.

# Framework of Law (B s1-3)

Tuesday, 27 August 2013 11:46 a.m.

## Part B: The Constitution of New Zealand

### 1. Introduction

The **Constitution** outlines:

- the democratic state's **duties to its citizens**
- the **limits of the state's power**
- **rules governing powers of governmental institutions.**

★ the **STATE**: is not the same as the government and has a legal monopoly on force.

### 2. Nature of New Zealand's Constitution

- New Zealand has an unwritten Constitution (unlike countries such as the United States) -- it is found in court decisions, statutes, doctrines and conventions.
- the Constitution is **not higher law**.
  - o **legislation cannot be overturned on the basis of constitutional statutes.**  
eg. NZBORA cannot be used to strike down acts that may be considered an infringement of human rights.

### 3. New Zealand's Constitutional Statutes

#### a. Bill of Rights 1688 (UK) gave Parliament:

- the **sole right to make or unmake law**
  - o this overrode the traditional **royal prerogative**
- **complete freedom of speech** for Members of Parliament
- the **sole right to suspend or dispense laws**
  - o eg. Fitzgerald v Muldoon - no legislation overturned.
- the **sole right to give consent to taxation**

#### b. New Zealand Bill of Rights 1990 (NZBORA)

- is **not meant to repeal existing laws** (laws cannot be struck down by NZBORA s 4)
- bills are checked for compatibility with the NZBORA by the Governor-General.
- includes rights and freedoms:
  - o s 14: freedom of expression
  - o s 17: freedom of association
  - o s 20: rights of minorities
  - o s 21: right to be secure against unreasonable search and seizure
  - o s 23: rights of persons arrested or detained

#### c. Constitution Act 1986

- consolidates statutory rules governing the structure of government in New Zealand
  - o **Separation of Powers** between arms of government (see B s4)
- outlines arms of government:
  - o the Sovereign (Queen, Governor-General)
  - o the Executive (Cabinet)
  - o the Legislature (Parliament)
  - o the Judiciary (Courts)

#### d. Electoral Act 1993

- provides rules on conduct of elections, voting age and electoral term.
- s 268 prohibits repeal or amendment of some sections, unless a
  - o 75% vote in Parliament OR
  - o majority in popular referendum is achieved.

# Framework of Law (B s4)

Tuesday, 27 August 2013 12:51 p.m.

## 4. Constitutional Doctrines

- a. **Parliamentary Supremacy** is the doctrine that states that Parliament has **plenary power**.
  - **judicial subordination to Parliament**: courts must follow relevant acts, statutes or legislations as passed by Parliament.
- b. **Prerogative powers** are now mostly ceremonial and traditional powers have been removed by Parliament through the Bill of Rights 1688 (UK) and Constitution Act 1986 (NZ).
- c. **Rule of law**
  - **nobody is above the law; everybody is subject to the same law.**
  - does **not affect** the power of Parliament, which still holds **Parliamentary sovereignty**.
  - concept of **due process** - fair trials must be given for offenders.
  - **retrospection**: something cannot be made illegal retrospectively.
- d. **Separation of powers**
  - separate institutions carry out functions of government:
    - o the **legislature makes the law,**
    - o the judiciary **interprets the law,**
    - o and the executive **implements the law.**
  - separation of powers prevents individual powers from becoming too powerful.

## 5. Constitutional conventions

A convention is a **non-legal rule of a political or constitutional nature**. It is **non-justiciable**.

Examples of conventions include:

- the **caretaker convention** -- newly-elected governments cannot be influenced by previous governments.
- the Governor-General always gives the **Royal Assent** to turn bills into acts.
- amity between branches of government.

# Framework of Law (C Treaty of Waitangi)

Tuesday, 27 August 2013 1:07 p.m.

## Part C: The Treaty of Waitangi

### 2. The text

#### a. Article 1: "the transfer of sovereignty from Maori to the British Crown"

- the Maori text distinguished between:
  - o **te tino rangatiratanga (chieftanship)** - this was retained
  - o **kawanatanga (governance)** - this was transferred

#### b. Article 2: "the Crown should protect Maori property rights"

- the Crown would protect lands, villages and treasures (**taonga**)
- the Maori text states that the Maori retain autonomy of Maori within their own spheres.
- **prime source of Maori grievances**: the Maori thought that they were giving away less than what was actually taken.  
eg. land confiscation.

#### c. Article 3: "extends to Maori all rights and privileges of citizenship"

- state has duty to take affirmative action to address negative social indicators  
eg. Te Whanau o Waipareria Report
- Crown must take special measures to ensure Maori attain equal enjoyment of social rights and benefits.

#### d. Ratification

- under common law, treaties must be ratified to be part of local law.
- the Treaty of Waitangi has **not been ratified** by either British or NZ Parliament.
- **principles of Treaty** have been adopted into legislation.

#### e. Waitangi Tribunal

- the role of the Tribunal is to make **non-binding recommendations** for both historical grievances and contemporary claims.
- the four **main principles of the Treaty** are:
  - o analogy to fiduciary duty/trusteeship.
  - o spirit of co-operation -- no unreasonable demands.
  - o honour of the Crown -- acting in good faith.
  - o fair and reasonable redress.
- major Treaty settlements include:
  - o Sealord settlement (1992)
  - o Wai 262 - note acknowledged failures such as Tohunga Suppression Act (1907) in force until 1967.

★ The principles of the Treaty are only enforceable when adopted in domestic law.