

# Why study law?

- To become a more effective business operator by:
  - recognising and managing risks
  - being aware of the law and the legal environment and how they impact on decision making
- To become a more resourceful consumer
- Everyone is presumed to know it, so it will be beneficial to know the basic concepts
- The law is a reflection of community values (Do you agree?)
- Law not only shapes the business environment, but is shaped by business

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# What is law?

- A definition: law is the system of control (i.e. a set of rules) through which society operates (i.e. citizens must obey or suffer a penalty)
  - Law declares how we must behave and consists of those rules which are enforced through the legal system (particularly the courts)
  - The system is more complex in reality as the 'rules' are affected by social, economic, political and international considerations
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# Law, order, morality & justice

- Preservation of order within the community (e.g. road rules)
  - Society's values:
    - changing
    - competing
    - 'victimless' crimes
  - Fair treatment
  - The rule of law
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# What is a legal system?

- The totality of laws that regulate a state (i.e. a legally organised community)
  - Types of legal systems:
    - common law legal systems
    - civil law legal systems
    - other legal systems – e.g. Islamic legal system, Hindu Act
    - International Laws
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# Genesis of a legal system

- The basic requirements are that there should be:
    - a body of laws
    - some source with the power necessary to create and alter those laws
    - some institution or process with the authority to administer and enforce them
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# Genesis of a constitution

- A *constitution* is the basis of the legal system of any state

‘[A constitution is] the system of laws, customs and conventions which define the composition and powers of the organs of the state and regulate the relations of the various state organs to one another and to the private citizen.’

Professor Hood Phillips, *Constitutional and Administrative Law*, 5th ed, 1973

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# The sources of law

- *Customary law*
    - The law established by the habitual use of a group of people over a long period of time
  - *Common law*
    - The law developed by the courts
  - *Legislation*
    - The laws made by the body recognised by the legal system as having the supreme power and authority to make laws (usually the Parliament)
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# Characteristics of the law: certainty

- People in both their personal and business lives should be able to:
  - form relationships with others
  - enter into contracts, such as those relating to marriage and the acquisition and disposal of property

reasonably secure in their knowledge of what they are doing and their understanding of its effects

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# Characteristics of the law: flexibility

- The law must be able to respond without undue delay to the challenge of change at all levels of society



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# Characteristics of the law: fairness

- The effectiveness of law depends upon its acceptance by members of society and that will not be available where a law is inequitable, unfair or unreasonable



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# Characteristics of the law: accessibility

- All should have access to knowledge of the law, either directly or through intermediaries

‘[T]o bind the citizen by a law, the terms of which he has no means of knowledge, would be a mark of tyranny.’

Sir Garfield Barwick, *Watson v Lee* (1979) 144 CLR 374 at 379

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# Classification of the law: public law and private law

- Public law

- regulates the interaction of citizens with the state (e.g. criminal law, constitutional law, administrative law)

- Private law

- regulates the relationship between individuals within a state (e.g. contract law, tort law, property law)
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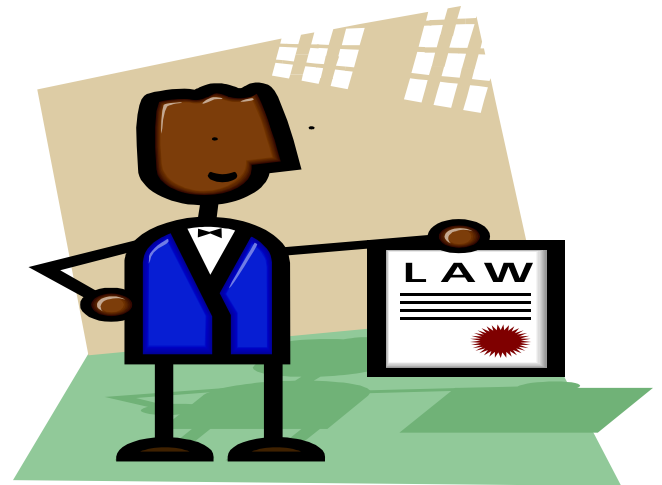
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# Public law

- administrative law
  - company law (some)
  - constitutional law
  - criminal law
  - industrial law (some)
  - taxation and revenue law
  - trade practices law (some)
  - Cyber laws
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# Private law

- banking law
- company law (some)
- contract law
- equity law
- family law
- property law
- succession law
- tort law
- trust law



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# Classification of the law: criminal law and civil law

- **criminal law**
    - generally aims to punish
  
  - **civil law**
    - generally aims to compensate
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# Civil law

- contract law
  - tort law
    - negligence
    - trespass
    - defamation
    - nuisance
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# Civil law

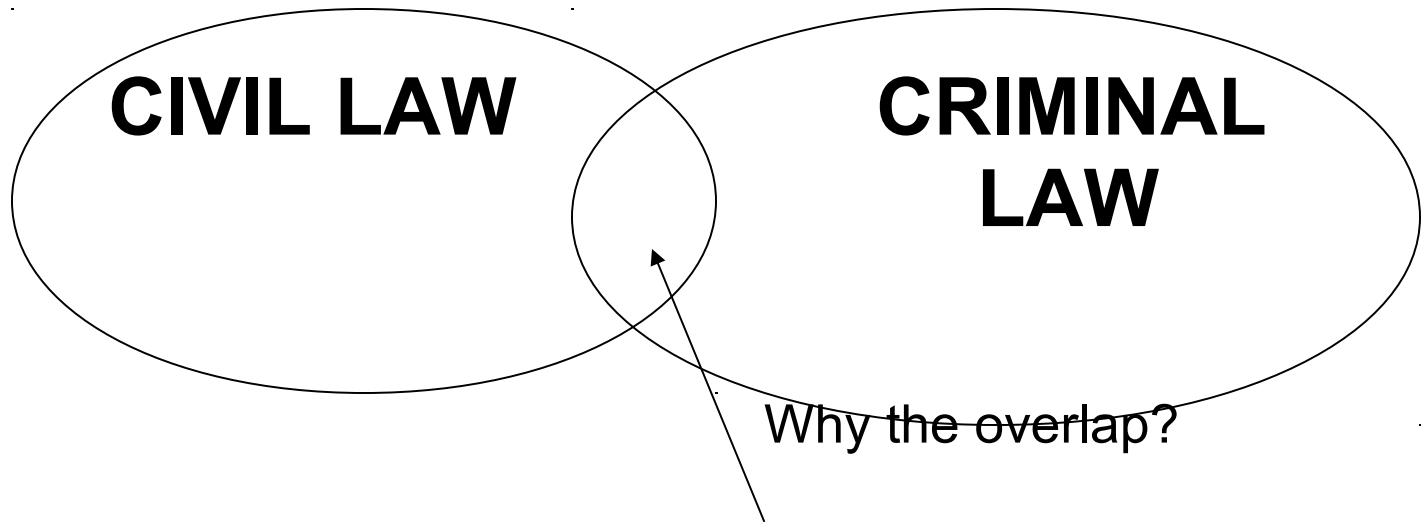
- corporations law
  - trade practices law
  - administrative law
  - family law
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# Criminal law

- offences against the person
- offences against property



# Types of law



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# Constitution

- Article 38,39,42 & 43-43A are the constitutional directives to the State.
  - Article 38 declares that the State shall strive to promote the welfare of the ppl by securing & protecting as effectively as it may a social order in which justice, social, economic & political shall inform all the institutions of national life.
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- Article 39(a) – provides that the state shall in particular direct its policy towards securing –
  - That the citizens, men & women equally have the right to an adequate means of livelihood.
  - That there is an equal pay for equal work for both the men & women,
  - That the child & youth are protected against exploitation & against moral & material abandonment.
  - Article 42 – the state shall make provisions for securing just & humane conditions of work.
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# Fundamental Rights

- **'Part III – Fundamental Rights'** is a charter of rights contained in the Constitution of India. It guarantees civil liberties such that all Indians can lead their lives in peace and harmony as citizens of India. These include individual rights common to most liberal democracies, such as equality before law, freedom of speech and expression, and peaceful assembly, freedom to practice religion, and the right to constitutional remedies for the protection of civil.
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- Violation of these rights result in punishments as prescribed in the IPC or other special laws, subject to discretion of the judiciary. The Fundamental Rights are defined as basic human freedoms which every Indian citizen has the right to enjoy for a proper and harmonious development of personality. These rights universally apply to all citizens, irrespective of race, place of birth, religion, caste, creed, colour or gender.
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- Aliens (persons who are not citizens) are also considered in matters like equality before law. They are enforceable by the courts, subject to certain restrictions. The Rights have their origins in many sources, including England's Bill of Rights, the United States Bill of Rights and France's Declaration of the Rights of Man.
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# 6 basic fundamental rights

- **Right to equality**, including equality before law, prohibition of discrimination on grounds of religion, race, caste, sex or place of birth, and equality of opportunity in matters of employment, abolition of untouchability and abolition of titles.
  - **Right to freedom which includes speech and expression**, assembly, association or union or cooperatives, movement, residence, and right to practice any profession or occupation (some of these rights are subject to security of the State, friendly relations with foreign countries, public order, decency or morality), right to life and liberty, **right to education**, protection in respect to conviction in offences and protection against arrest and detention in certain cases.
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- **Right against exploitation**, prohibiting all forms of forced labour, child labour and traffic in human beings;
  - **Right to freedom of religion**, including freedom of conscience and free profession, practice, and propagation of religion, freedom to manage religious affairs, freedom from certain taxes and freedom from religious instructions in certain educational institutes.
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- **Cultural and Educational rights** preserving Right of any section of citizens to conserve their culture, language or script, and right of minorities to establish and administer educational institutions of their choice.
  - **Right to constitutional remedies** for enforcement of Fundamental Rights.
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# Article 32 in The Constitution Of India 1949

- 32. Remedies for enforcement of rights conferred by this Part
- (1) The right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by this Part is guaranteed
- (2) The Supreme Court shall have power to issue directions or orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, whichever may be appropriate, for the enforcement of any of the rights conferred by this Part
- (3) Without prejudice to the powers conferred on the Supreme Court by clause ( 1 ) and ( 2 ), Parliament may by law empower any other court to exercise within the local limits of its jurisdiction all or any of the powers exercisable by the Supreme Court under clause ( 2 )
- (4) The right guaranteed by this article shall not be suspended except as otherwise provided for by this Constitution

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# Article 226

- 1. Article 226 empowers every High Court to issue the writs.
  - 2. Article 32 is itself a fundamental right. Article 226 is not a fundamental right.
  - 3. The President of India cannot suspend Article 226 during the period of Emergency
  - 4. Article 226 is not a right as that of Article 32. The High Court may issue writs according to its discretionary power.
  - 5. Article 226 enables the High Court to issue orders to writs in the nature of habeas corpus, mandamus, prohibition, certiorari, quowarranto, to protect aggrieved and any other purpose.
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# WRIT

- An official court document, signed by a judge or bearing an official court seal, which commands the person to whom it is addressed, to do something specific
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  - *An order issued by a court requiring that something be done or giving authority to do a specified act.*
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# TYPES OF EVIDENCES

- There are different types of evidences under the Indian Evidence Act, 1872. These are mentioned below-
  - 1) Oral Evidence
  - 2) Documentary Evidence
  - 3) Primary Evidence
  - 4) Secondary Evidence
  - 5) Real Evidence
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# TYPES OF EVIDENCES

- 6) Hearsay Evidence
  - 7) Judicial Evidence
  - 8) Non- Judicial Evidence
  - 9) Direct Evidence
  - 10) Indirect Evidence or Circumstantial Evidence
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# Oral Evidence- Section 60

- Oral Evidences are those evidences which are personally seen or heard by the witness giving them and not heard or told by some one else. All the statements which are permitted by the court or the court expects the witness to make such statements in his presence regarding the truth of the facts, are called as Oral Evidences. Oral evidences must always be **direct**. An Evidence is direct when it establishes the main fact in issue.

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# Documentary Evidences

- Are defined under section 3 of the Indian Evidence Act. All those documents which are presented in the court for inspection regarding a case, such documents are known as documentary evidences
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# Primary Evidence – Section 62

- Primary evidences are the most superior class of evidences. These are those evidences which are expected by the law and admissible and permissible at the first place. These are those evidences which in any possible condition gives the vital hint in a disputed fact and establishes through documentary evidence on the production of an original document by the court.
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# Secondary Evidences -section 63

- These are those evidences which are entertained by the court in the absence of the Primary evidences. Therefore it is known as secondary evidences.
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# Real Evidences

- Real evidences are those evidences which are real or material evidences. Real evidence or proof of a fact is brought to the knowledge of the court by an inspection of a physical object rather than by deriving an information by a witness or a document
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# Hearsay Evidences

- Hearsay evidences are the ones which the witness has neither personally seen nor heard, nor has he perceived through his senses, but are those which have come to his knowledge through some other person. These are the most weak category of evidences.
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# Judicial Evidence

- Judicial evidences are those which are given before the magistrate in the court. For example- a confession made by the accused before the magistrate in the court is an Judicial Evidence
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# Non- Judicial Evidence

- Any confession made by the accused outside the court and not in front of the magistrate but in the presence of some other person are termed as Non- Judicial evidences.
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# Direct Evidence

- Direct evidences are those evidences which establishes a fact. The best example of a direct evidence would be statement or confessions made by the witnesses.
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# Indirect or Circumstantial Evidence

- Circumstantial or indirect evidence are the ones which attempts to prove the facts in dispute by providing other facts. Circumstantial evidences are not definite proof. They only provide a general idea as to what occurred at the crime scene
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# Burden of Proof

- The responsibility to prove a thing is called burden of proof.
  - When a person is required to prove the existence or truthfulness of a fact, he is said to have the burden of proving that fact.
  - In a case, many facts are alleged and they need to be proved before the court can base its judgment on such facts.
  - The burden of proof is the obligation on a party to establish such facts in issue or relevant facts in a case to the required degree of certainty in order to prove its case
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- **Section 101** defines burden of proof as follows
    - When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person.
  - The rules for allocation of burden of proof are governed primarily by the provisions in Section 101 to 105. The rules propounded by these sections can be categorized as General rules and Specific rules.
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# Section 137- Examination-in-chief

- The examination of a witness, by the party who calls him, shall be called his Examination-in-chief.
  - Cross-examination - The examination of a witness by the adverse party shall be called his Cross-examination.
  - Re-examination - The examination of a witness, subsequent to the cross-examination by the party who called him, shall be called his Re-examination.
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# Section 138- Order of examinations

- Witnesses shall be first examined-in-chief then (if the adverse party so desires) cross-examined, then (if the party calling him so desires) re-examined.
  - The examination and cross-examination must relate to relevant facts but the cross-examination need not be confined to the facts which the witness testified on his examination-in-chief.
  - Direction of re-examination - The re-examination shall be directed to the explanation of matters referred to in cross-examination, and if new matter by permission of the Court, introduced in re-examination, the adverse party may further cross-examine upon that matter.
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