

Justice and the law

An important part of any society is its legal system. The legal system creates and keeps the rules or laws that each member of society must follow. This is important when living with any group of people as it sets the boundaries for what is and is not acceptable. Imagine if you had no rules at home. How long would you last before things started to get chaotic? Any group of people will need some kind of system of rules, from family groups, to schools, to entire nations, to help people live together in harmony.

At the heart of Australia's legal system is the idea of justice, ensuring that all people are treated equally in the eyes of the law. In doing so, it helps to create a safer and fairer society where people behave in a way that does not intentionally cause harm to others.



chapter 25

Source 1 The statue of Lady Justice represents the idea that the law should treat all people equally and without bias.

25A

How does Australia's legal system protect the individual's right to justice?

- 1 Why do you think it is important that the legal system treats everyone equally?
- 2 How did it make you feel the last time you were treated unfairly?

25B

How are laws made and applied in Australia?

- 1 Who do you think is in charge of making a law?
- 2 Who do you think decides what happens when a law is broken?

25.1 Principles of Australia's legal system

There are several key ideas, or principles, that guide Australia's legal system. They focus on our responsibility as individuals to obey the law, as well as our right to fair treatment within the legal system.

The rule of law

We don't just make up the rules as we go along; the legal system creates and enforces the laws that determine our rights and responsibilities. This is known as the rule of law.

Laws are the rules we must follow within a society. These rules are designed to protect our way of life by defining our rights and responsibilities. For example, we have the right to live and work in a safe environment, free from **discrimination**. This means that we also have the responsibility not to harm or discriminate against others.



Source 1 Lawyers such as barristers are highly skilled professionals who use their knowledge of the law to represent people in court.

The right to a fair trial

A person accused of breaking the law must stand before the courts to prove their innocence, or face the legal consequences of their actions. In a just society, this person will be judged fairly on the crime that they are accused of committing. This means that the person's race, sex, characteristics or any other irrelevant factors will not change the outcome of their trial. They will be given a fair chance to prove their innocence.

The right to legal representation

Australia's legal system is complicated. It is made up of many laws that determine how they are to be applied in certain situations. Understanding these laws and cases is the role of legal professionals who use this knowledge to represent people in court. Each Australian has the right to represent themselves or to hire a legal professional such as a lawyer to represent them. In some instances, the government will even provide a lawyer, known as a legal aid, to those that cannot afford one. The right to legal representation ensures that people are not left at the mercy of a complicated legal system that they don't understand.

Presumption of innocence and burden of proof

The idea that someone is innocent until proven guilty is an important part of any legal system. It means that a person who is accused of a crime is not required to prove their innocence. Instead, the **prosecutor** must prove that the person is guilty of the crime, beyond a reasonable doubt. This means that the **burden of proof** is on the prosecutor, as they are the one required to prove or disprove a disputed fact in court.



Source 2 Trials take place in courtrooms in one of Australia's many courts (see Source 2 on page XX).

Check your learning 25.1

Remember and understand

- 1 How does the rule of law protect our way of life?
- 2 What is meant by the right to a fair trial?
- 3 Why might someone need legal representation if they are legally allowed to represent themselves in court?
- 4 Why do you think that the burden of proof is on the prosecutor and not the defendant?

Apply and analyse

- 5 Look at the photograph of the barristers in Source 1.
 - a Why do you think they might be wearing that type of wig?
 - b Search the internet to find out why barristers wear wigs. Was your initial answer in close?

Evaluate and create

- 6 Have you ever felt like you were being judged unfairly? Has someone accused you of doing something wrong even though they had no proof? Write a diary entry explaining the situation and how that made you feel. In your diary entry, reflect on the importance of following principles such as the right to a fair trial and the burden of proof.

25A Rich task

The code of Hammurabi

Laws have existed for thousands of years. Without laws or rules people would do whatever they liked, leading to chaos. As ancient tribes grew into complex societies, the need to determine the rights and responsibilities of people became greater. One of the oldest known group of laws comes from Babylon between 1792 BCE and 1754 BCE. Legend has it that the laws were given to King Hammurabi by Shamash, the god of justice.

The code of Hammurabi had many laws that covered everyday life in that society. One of the most famous laws translates loosely to:

If a man destroys the eye of another man, they shall destroy his eye. If one breaks a man's bone, they shall break his bone.

The ancient Babylonian laws, as enacted by King Hammurabi, were used to govern his fast-growing empire of citizens. There were as many as 300 laws, which covered a wide range of issues, including murder, assault, divorce, debt, adoption, trade and agricultural practices.

Not only did the code stipulate the rules that all citizens must follow, it also dictated what actions must be taken by the judges, accuser and accused.



Source 1 Ancient Babylonia was one of the first great civilisations. Its capital Babylon was located in modern-day Iraq.

skilldrill: Reasoning and interpretation

Interpreting a law in a court case

To interpret a law we must read and understand what it intends to achieve. We must then apply that to the facts of the case before us.

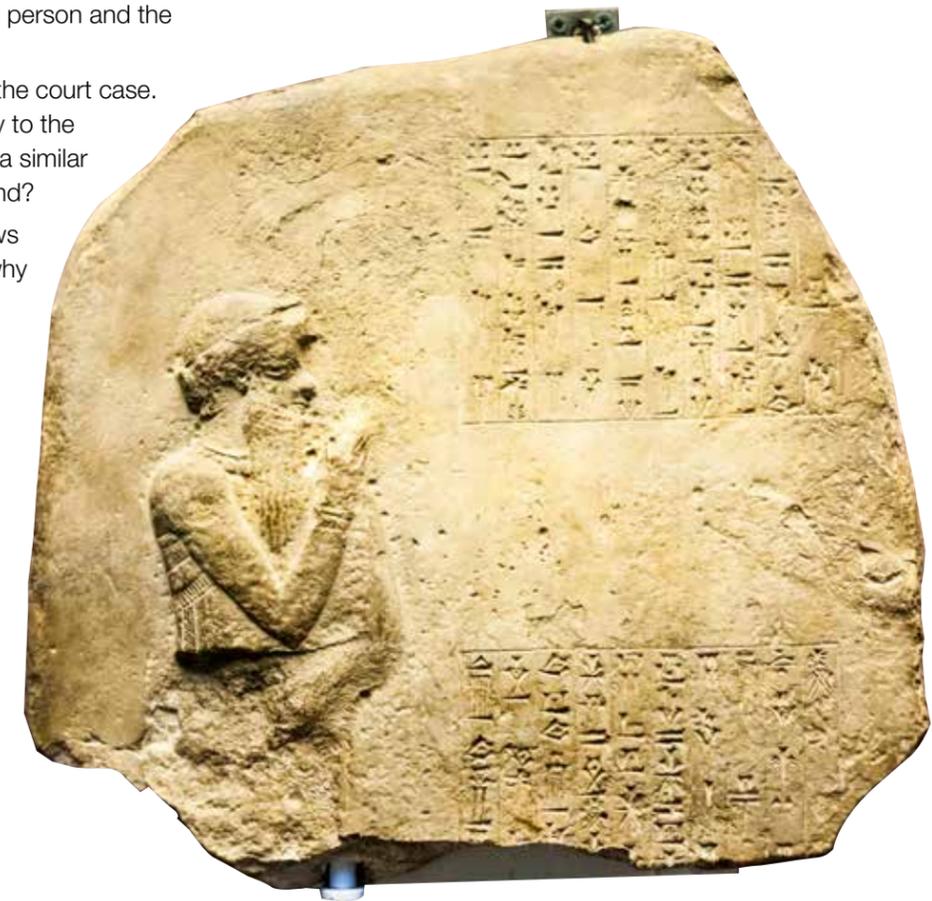
- Step 1** Read and understand the law thoroughly. What is the context of the law? From what perspective is the law written? What is it trying to achieve?
- Step 2** Carefully consider all of the factors of the court case. This will include factors like evidence, witnesses, and the circumstances of the accused person and the accusing person or group.
- Step 3** Consider how the law applies to the court case. Consider which other laws might apply to the case. Has there been another case of a similar nature or is this the first case of this kind?
- Step 4** Identify and apply the relevant laws to the court case. Explain and justify why the relevant laws have been applied.

Apply the skill

- 1 Consider the law described from the code of Hammurabi. What do you think it is trying to achieve?
- 2 Explain how you think the law would apply to a situation where a person physically attacked someone.
- 3 Do you think the law could apply to a situation whereby someone destroyed another person's property? Explain why or why not?
- 4 Do you think this law is just? Why or why not?

Extend your understanding

- 1 Use the internet to research more laws from the code of Hammurabi. Make a list of the laws in your notebook and state your opinion on whether or not you think each law is a good way of dealing with such issues. Give reasons for your answer.



Source 2 The code of Hammurabi was carved into stones, which were then placed around the city of Babylon for the public to see.

25.2 Statutory law

Australia's laws can come about in two ways.

Statutory laws are those that are made and passed by parliament. **Common law** is created when a judge has to make a ruling about a case that is not covered by statutory law.

Statutory laws can be passed by both state and federal parliaments. The state parliament can only pass laws affecting their own state, such as the legal driving age in that state. The federal parliament, on the other hand, can pass laws that apply to the entire nation, such as the rules about becoming an Australian citizen.

Passing a statutory law

Both federal and state parliaments follow similar steps to pass a statutory law. The following looks at how a Bill is passed through federal parliament.

Preparation of a Bill

A Bill is a formal document that is prepared as a draft Act, or law. It is proposed by a member of parliament (MP) when people feel the need to change an existing law or establish a new one. The Bill only becomes a law if and when it has been approved in the exact same form by both houses of parliament and the Governor-General.



Source 1 On 1 June 2015 Leader of the Opposition Bill Shorten introduced the Marriage Equality Bill, which proposed to amend the Marriage Acts current definition of marriage being exclusively between a man and a woman. The Bill was voted down in the House of Representatives by 98 votes against to 42 in favour.

First reading

After giving prior notice to parliament that a Bill will be discussed, the MP who is introducing the Bill will provide a copy of the draft Act to every other MP. At this stage, only the title of the Bill is read, giving the other members a chance to read the Bill in their own time.

Second reading debate

In the second reading, the member who introduced the Bill explains why the Bill has been introduced. The other members are then allowed to ask questions, make suggestions for changes and debate whether the Bill is the right way to tackle the issue that it aims to address. Because laws are such an important part of how our society functions, this debate can often get quite heated with members passionately arguing their different opinions on the issue. In the end, the members will vote on the Bill and any changes to it, which if passed goes on to the third reading.

Third reading

After having some more time to consider the details of the Bill and any changes resulting from the second reading, the House of Representatives will vote on the Bill. If the majority vote to pass the Bill, it will move to the Senate for consideration.

The Senate

Once it reaches the Senate, the Bill will go through the three reading stages again. The Bill will be passed to and from the upper and lower houses until both agree to any changes in the Bill, or until the Senate rejects the Bill completely.

The Governor-General

If the Bill is passed by both houses, the Governor-General as the Queen's representative will review and approve the law by giving the Bill **royal assent**. Assenting the law is usually just a formality, as none of the Queen's Governor-Generals have ever refused to assent a law in the past.



Source 2 The Australia Act 1986 was passed in the parliaments of both Australia and the United Kingdom. It eliminated any possibility of UK legislation affecting Australian law.

Check your learning 25.2

Remember and understand

- 1 What are the two types of laws in Australia and how do they come about?
- 2 Who can pass statutory laws?
- 3 What is the role of the Governor-General when it comes to passing a law?
- 4 Why do you think the Governor-General needs to provide a royal assent?

Apply and analyse

- 5 Why do you think that only the title of the Bill is read out in the first reading?
- 6 What is the purpose of a third reading if the members have already voted on the Bill during the second reading?
- 7 Look at Source 2. What was the purpose of the Australia Act 1986?

25.3 Common law

The role of a judge is to interpret the statutory laws passed by parliament and apply them to individual cases. New and unusual cases come up every day and, in some instances, statutory law is not clear about how a particular case should be dealt with. If an issue goes to court, a judge from a superior court must make a decision on how to resolve the issue in a just way. This decision sets a **precedent**, which in this context means that any similar cases in the future should be dealt with in the same way.

While common law in many ways fills the gaps left by statutory laws, in some instances the parliament will pass law based on common law. This is known as codification.

The Supreme Court in each state, the High Court of Australia and the Federal Court are superior courts that can set a precedent. Once this precedent is set, all of the lower courts such as the magistrates courts, district courts and family courts must follow the precedent.



Source 1 The High Court of Australia is the nation's highest ranking court. Any decision it makes will set a precedent that all other courts must follow.

Check your learning 25.3

Remember and understand

- 1 What is the difference between common law and statutory law?
- 2 What is a precedent?
- 3 Which courts have the power to set a precedent?

Apply and analyse

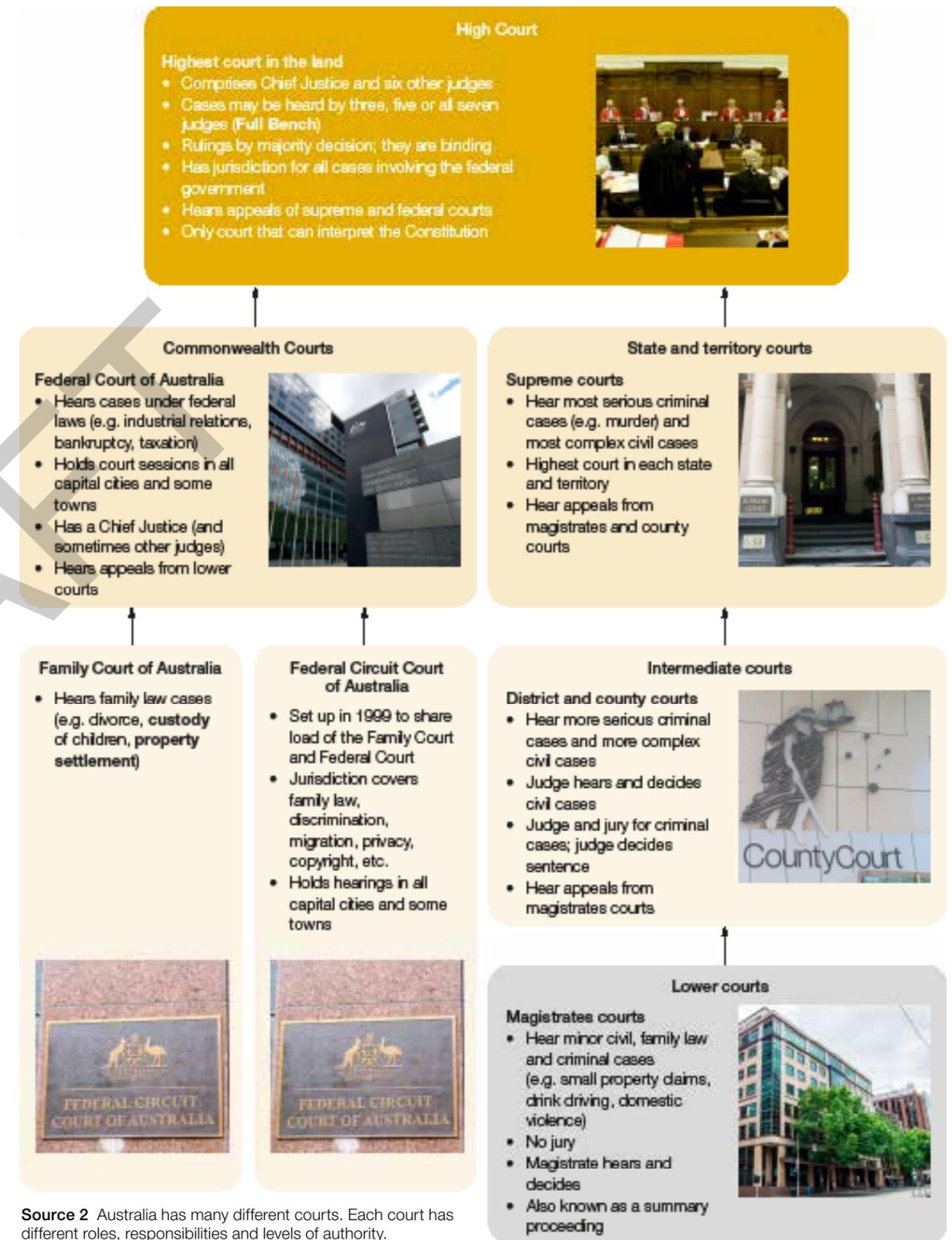
- 4 Consider Source 2 and decide which court would be best suited to hear the following cases:
 - a a murder case?
 - b a shoplifting case?

- c an armed robbery?
- d divorce proceedings?

5 Which court has the highest level of authority?

Evaluate and create

- 6 Create a poster showing the role, responsibility and authority of each court.



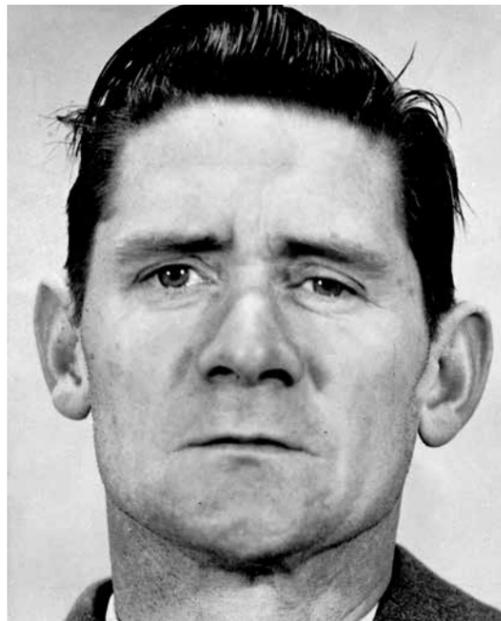
Source 2 Australia has many different courts. Each court has different roles, responsibilities and levels of authority.

25.4 Different types of law

In Australia, we can place law into different categories. Civil law generally deals with disputes between people or organisations, as well as acts that cause loss to others. Criminal law on the other hand, deals with acts that intentionally cause harm to others. **Customary law** refers to the law of Aboriginal and Torres Strait Islander peoples and, while it does not apply to all Australians, can be of great significance to Indigenous Australians.

Criminal law

Criminal law can be generally divided into more serious indictable offences such as murder, and less serious summary offences such as fare evasion. This was an important difference in the past when people could be sentenced to death for serious offences. Today, although Australia does not issue the death penalty, summary offences are generally heard by a judge in the magistrates court, while indictable offences are heard by a judge and **jury** in the district and Supreme courts.



Source 1 Ronald Ryan was found guilty of killing a police officer during an escape from Melbourne's Pentridge prison. He was hanged on 3 February 1967 in what was Australia's last legal execution.

In Criminal law, the main objective is to punish the wrongdoer and keep society safe. This is done in the hope that it will deter others from committing a similar crime. To convict someone of a crime, there must be proof beyond a reasonable doubt that the person has in fact committed the crime. This means that if there is a chance a person could be innocent, they must be found not guilty.

Each crime has a specific minimum and maximum punishment or sentence that a person can receive for the given crime. A judge will decide on a sentence based on a number of considerations, such as whether the person is likely to reoffend, their personal circumstances and the severity of their crime. In recent times, the legal system has made a much bigger effort to try and rehabilitate criminals rather than simply punish them. A rehabilitated criminal is one who can return to society without a likelihood of reoffending. The government offers training and support to help criminals gain the skills and knowledge needed to be a constructive member of society.



Source 2 In Australia, more serious cases can be heard before a judge and jury. Juries are made up of citizens who are chosen at random to hear a case. At the end of the case, the jury must work together to decide whether or not the accused is guilty or not guilty.

Civil law

Civil law deals with disagreements or acts that breach the rights of others. It covers problems relating to contracts, accidents, money and property as well as many other issues.

Civil law generally aims to right the wrongs done by compensating, or paying for, the person's loss. Unlike criminal law, the aim is not to punish the wrongdoer by any more than is needed to repair the damage done to the victim. Unlike criminal law, civil cases are judged on the balance of probabilities. This means that the judge will uphold the claim if it is more likely than not that the person caused harm.



Source 3 Monika Samaan was awarded eight million dollars compensation after contracting severe salmonella poisoning from a KFC twister. The ordeal left her brain damaged and unable to speak but KFC is appealing the decision, claiming that she had not purchased a twister from KFC that day.

Aboriginal and Torres Strait Islander customary law

Customary law still has major significance for many of Australia's Aboriginal and Torres Strait Islander peoples. Traditionally passed down by word of mouth, the customary law of Indigenous Australians varied from clan to clan as did their language and other customs. These tribal laws have developed over generations to determine a system of order and discipline for Aboriginal and Torres Strait Islander peoples.

Customary law has not been officially recognised as Australian law completely but there have been some legal movements made to recognise customary law alongside the current legal system.

An example of this was seen in the Northern Territory in 1998. Michael McRostie was taking photos of Galarrwuy Yunupingu's family without a permit and contrary to Yolngu law. Yunupingu, a senior elder of the Gumatj clan who was responsible for upholding Yolngu law, took the camera off McRostie to destroy the film, and in doing so knocked the photographer who was still attached to his camera by a strap. When McRostie took Yunupingu to court for assault and criminal damage, a judge found that Yunupingu was well within his rights to take the camera off McRostie in order to fulfil his responsibilities as elder and protector of Yolngu land and law. The case against Yunupingu was dismissed in favour of customary law over criminal law.

Check your learning 25.4

Remember and understand

- 1 What are the two main categories of law in Australia?
- 2 What kind of offences are covered by criminal law?
- 3 What kind of offences are covered by civil law?
- 4 What is customary law?

Apply and analyse

- 5 Explain how the objectives of criminal law and civil law are different.

- 6 Explain the difference between making a judgement based on the 'balance of probabilities' and 'proof beyond reasonable doubt'.
- 7 Do you think damage caused by food poisoning is a civil or criminal case? Why?
- 8 Why might it be important for Aboriginal and Torres Strait Islander peoples to be able to follow their own customary law?

Evaluate and create

- 9 Create a chart showing the similarities and differences between criminal and civil law.

25B Rich task

School bullying

Bullying has become a significant problem in schools across Australia. Government research suggests that around one in four students are affected by bullying. Victims of bullying are far more likely to have serious mental health problems even after they leave school.

Bullying involves repeatedly making someone feel less valuable. There are three main types of bullying:

- verbal – using words to hurt another person’s feelings, such as teasing or name-calling
- social – hurting someone’s reputation or relationships by spreading rumours about them or excluding them from group activities
- physical – hurting a person’s body or property by kicking, punching, pushing them or breaking their belongings.

Bullying can happen anywhere at any time. Around one in five people aged eight to 15 experience cyberbullying or bullying over the internet or mobile phones. Access to mobile phones and social media such as Facebook or Twitter has made the problem worse than ever. This has left many Australians demanding tougher laws on bullying and government funding to develop programs to fix the problem.



Source 1 Sending hurtful text messages to or about another person is a form of cyberbullying.



Source 2 If you are experiencing or have witnessed bullying, be sure to notify your parents or a teacher at the school so that they can help stop the bullying from happening in the future. You can also call Kids Helpline on 1800 55 1800 for a friendly chat about any problems that you might be having.

skilldrill: Reasoning and interpretation

Drafting a Bill

In 25.2 we looked at how a law is made from a proposed Bill. Now we will look at how a Bill is drafted before it is presented to parliament. A Bill often requires many drafts before it is ready to be presented.

Step 1 Identify the problem that you would like to address; for example, bullying.

Step 2 Decide whether the Bill will change an existing law or if it will be a completely new law.

Step 3 Write a short title that reflects what the Bill is about and why it is being proposed.

Step 4 Write a detailed list of rules that would help fix the problem.

Step 5 Write who would be responsible for enforcing those rules.

Step 6 Write what the penalties would be for not following the rules listed.

Step 7 Write a list of definitions explaining what any tricky words mean. This way the Bill can be easily understood by everyone.

Apply the skill

- 1 In groups of three to four, use the steps above to prepare a draft Bill to help solve the issue of bullying (for step 2, assume there is no existing law related to bullying).
- 2 Propose your draft Bill to the class. Allow the class members to make suggestions as to how the Bill could be changed.
- 3 Make the suggested changes that the majority agree on and take a class vote on whether the Bill should be passed or not.

Extend your understanding

- 1 Have you ever experienced or witnessed bullying? Write a diary entry explaining how it would or did feel being the victim of bullying.
- 2 Use the internet to research another issue such as marriage equality or the treatment of asylum seekers. Use the information to prepare a draft Bill on changes to the law you would like to see made on the issue you have chosen. Present the draft bill to your class as you have done with your anti-bullying Bill.



Source 3 Before being presented to parliament, a Bill goes through several drafts.