

**NZ LEGAL METHOD /
REASONING AND
WRITING CASE NOTES**



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Source

What is it?

- In common law systems there are several sources that combine to form “the law”.
- In New Zealand, the archetypal common law country, there is a hierarchy of sources, as follows:
 - Legislation (primary and secondary)
 - The case law rules of common law and equity
 - Parliamentary conventions
 - General customs
 - Books of authority.
- Legislation –
 - Legislation is the prime source of law and consists in the declaration of legal rules by a competent authority.
 - Legislation can have many purposes:
 - to regulate;
 - to authorise;
 - to enable;
 - to proscribe;
 - to provide funds;
 - to sanction;
 - to grant;
 - to declare; or
 - to restrict.
 - A parliamentary legislature frames new laws, such as Acts of Parliament, and amends or repeals old laws.
 - The legislature may delegate law-making powers to lower bodies.
 - In NZ, such delegated legislation includes Statutory Instruments, Orders in Council, & Bye-laws.
 - Delegated legislation may be open to challenge for irregularity of process; and the legislature usually has the right to withdraw delegated powers if it sees fit.
 - Most legislatures have their powers restricted by the nation's Constitution, and Montesquieu's theory of the separation of powers typically restricts a legislature's powers to legislation.
 - Although the legislature has the power to legislate, it is the courts who have the power to interpret statutes, treaties and regulations.

- Similarly, although parliaments have the power to legislate, it is usually the executive who decides on the legislative programme.
- The procedure is usually that a bill is introduced to Parliament, and after the required number of readings, committee stages and amendments, the bill gains approval and becomes an Act.
- Case Law -
 - Judicial precedent (aka: case law, or judge-made law) is based on the doctrine of stare decisis, and mostly associated with jurisdictions based on the English common law, but the concept has been adopted in part by Civil Law systems.
 - Precedent is the accumulated principles of law derived from centuries of decisions.
 - Judgements passed by judges in important cases are recorded and become significant sources of law.
 - When there is no legislature on a particular point which arises in changing conditions, the judges depend on their own sense of right and wrong and decide the disputes from first principles.
 - Authoritative precedent decisions become a guide in subsequent cases of a similar nature.
 - A judicial precedent as a judgement or decision of a court of law cited as an authority for deciding a similar state of fact in the same manner or on the same principle or by analogy.
 - Another definition of precedent would be a decision in a court of justice cited in support of a proposition for which it is desired to contend.
 - Compared to other sources of law, precedent has the advantage of flexibility and adaptability, and may enable a judge to apply "justice" rather than "the law".
- Equity -
 - Equity is a source of law peculiar to common law.
 - Equity is the case law developed by the (now defunct) Court of Chancery.
 - Equity prevails over common law, but its application is discretionary.



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