

LEGAL SYSTEMS/ LAW AND SOCIETY SUMMARY



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Sample

Legal Systems and “The Law”

The place of Law in society

Law is a system of structures and processes designed to ensure the smooth functioning and ordering of society. The term *The Law* is a wide one; it encompasses statues and rules, New Zealand’s governance and leadership, New Zealand’s relationship with other countries and authoritative bodies, principles and codes, conventions and ethics, a vast array of differing considerations and history. It includes the laws passed by Parliament and delegated legislation created by local government bodies and regulations. When looking at the scope of the New Zealand legal system, we can see how it forms the basis and structure of an ordered society and its true importance in the every-day lives of every person in New Zealand regardless of age, status or background.

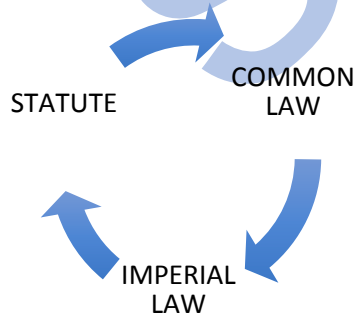
Structure of Laws

How then is the law structured to adequately cover these vast areas of everyday life and the ordering of society? We can divide laws into categories based on their theme or subject as Public, Private, or International Law. International Law covers those relationships between different jurisdictions and countries. Public and Private Law are more diverse. We can understand the relationships between the two by looking at the divisions below:

PUBLIC LAW			PRIVATE LAW		
CONSTITUTION	ADMINISTRATION	CRIMINAL	PROPERTY	OBLIGATIONS	PERSONS
Governance	Judicial Review	Sanction	Land	Contract	Marriage
Legislation			Personal	Tort	Family
Conventions			Trusts and Wills	Equity	Children
International				Employment	Adoption

Sources of Law

There are three principle sources of law in New Zealand;



New Zealand’s laws are created in two ways: Through statute, which is created by the legislative branch of government, and through the common law is created by the **Judicial branch** of government and Imperial Legislation that legislation that resides from New Zealand’s connection to the United Kingdom’s Westminster System of government. There is a fourth source of remedy available to New Zealander’s through the courts and that is the doctrine of **equity**.

- Those who seeks equity must do equity.
- Those who seek equity must come with clean hands.
- Equity follows the law.
- Equity will not suffer a wrong to be without a remedy.
- Whoever is first in time takes precedence.
- Where the equities are equal, the law will trump.
- Equity assists the diligent, not the tardy.
- Equity is equality.
- Equity looks to the intent, rather than to form.
- Equity looks on that as done which ought to be done.
- Equity creates an positive intention to fulfil an obligation.

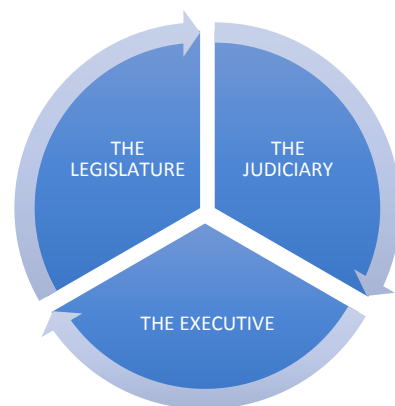
Equity is a legal remedy available to all through the courts however it is not, of itself, a law. It was created in England in the Court of Chancery. This was a court dedicated to the speedy and accessible means of legal remedy, for everyday people, without the long wait times and excessive costs or inequitable decisions associated with the black and white application of existing English laws. The Court of Chancery had a wide jurisdiction and was very flexible to suit the growing needs and of the English public that came before it. It developed a series of principles to be applied to any situation that would allow justice to be done in a fair and straightforward manner. The principles of equity that still remain are called the maxims of equity.

The New Zealand Government

New Zealand’s governmental structure is one of three parts.

One branch cannot exist on its own. It must have the support of the others however all three branches maintain a certain level of independence to be a check on the others. As we will soon see, this is termed the doctrine of the **Separation of Powers**.

The Legislature is the branch of government that is known as Parliament. Parliament create and enact laws for New Zealand. It consists of the whole of the House of Representatives and the Governor-General (the Sovereign’s representative in New Zealand). The **Legislative branch** is supreme, in that creates the laws of the land and thus we have the term Parliamentary Sovereignty.



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