Unit 1: Criminal law in action.

Students examine the need for laws in society. They investigate the key features of criminal law, how it is enforced and adjudicated and possible outcomes and impacts of crime. They learn about different types of crime and explore rights and responsibilities under criminal law. Students also consider the role of parliament and subordinate authorities in law making, as well as the impact of the Victorian Charter of Rights and Responsibilities on law enforcement in Victoria.

Students investigate the processes and procedures followed by courts in hearing and resolving criminal cases. They explore the main features and operations of criminal courts and consider the effectiveness of the criminal justice system in achieving justice.

Area of study 1:

Law in society:

Societies have rules and laws that govern the behaviour of individuals and groups:

Students will:

* develop an understanding of the role of the law and the need for effective laws, as well as the concept that the law confers the rights and responsibilities on members of society.

* investigate the difference between legal and non-legal rules.

* students gain an understanding of the role of parliament and subordinate authorities in law making:

Outcome 1:

On completion of this unit students will be able to explain the need for effective laws and describe the main sources and types of law in society.
Outcome 2

On completion of this unit students should be able to explain the key principles and types of criminal law, apply the key principles to relevant cases, and discuss the impact of criminal activity.

Key knowledge:

* principles of criminal liability, including elements of a crime, the presumption of innocence, the burden and standard of proof, age of criminal responsibility and participants in crime

* crimes against the person and related defences

* crimes against property and related defences

* the criminal investigation process, including police powers and individual rights and responsibilities in dealing with police

* sanctions and their effectiveness

* trends in crime and sentencing

* impact of criminal acts

* compensation for victims

Key skills:

* define key legal terminology and use it appropriately

* explain principles of criminal liability

* research and gather information about criminal cases

* apply legal principles to relevant cases and issues

* discuss the effectiveness of sanctions

* analyse data on sentencing and crime trends in Victoria

* discuss the impact of criminal activities.
The legal maze

A maze is a type of puzzle made up of an intricate web of passages. The challenge of a maze is to work your way through it and find the exit. There are many parallels between a maze and the legal system. In a maze the individual is presented with a number of paths to follow. At each turn there are decisions to be made. Which path to follow? Which way to turn? The legal system can be seen in the same way. We call this complex system ‘the legal maze’.

The law sets out basic rights and responsibilities that provide us with pathways through this maze. However, no matter which path we choose there will be times when we are faced with conflicts. We will need to make decisions about the type of action we should take. We will be presented with a range of responsibilities—driving a car, leaving home, starting work, renting a home, getting married—all of which have legal implications.

To work our way through the legal maze we need to understand our rights and responsibilities, the different roles of the courts and tribunals, criminal law and civil law, sanctions and remedies.

The legal system

The decisions we make and the actions we take in the legal system have very real consequences and we have to live with them. For this reason it is important to have a basic understanding of our rights and responsibilities, and of how the legal system functions so that we can make the right decisions when it is necessary.

Non-legal rules

Rules can be either legal rules (laws) or non-legal rules. Non-legal rules apply to a group of individuals, but not to society as a whole. The members of the group agree to be bound by the rules, which do not have the force of law. The easiest way to understand this is by looking at some examples.

As a toddler, you became aware of what was safe or dangerous and right or wrong through the rules set down by your parents. These rules may have been enforced by praise for ‘good’ behaviour or some form of punishment for ‘bad’ behaviour. You quickly learnt that there were consequences that resulted from breaking rules.

Even though you are now older, your family probably still has some household rules that you are expected to follow. These rules may relate to the time you must be home at night or to telling someone where you are going when you go out. Household rules are rarely written down but they are binding on individual members of the family. Although these rules may be important for the smooth functioning of the family, they are not legal rules.

All sporting and non-sporting games have rules. Sometimes the rules of a game may be quite complex and written down in a rulebook or code. These clearly defined rules set out the type of action individual players may take and how the winner is eventually determined.

Churches and other institutions have rules that establish the expected behaviour of individuals. For instance, churches establish moral or religious codes of behaviour. These rules can guide us in making a decision about what is right or wrong.

Schools also have written rules setting out the expected behaviour of students. These rules may relate to the time classes start, behaviour in class or the type of uniform worn. Your school may also set punishments that will be imposed if you do not abide by the rules.

There are also rules of social behaviour. These rules set down the way people are expected to cooperate in certain situations. They are usually developed by custom and non-legal rules. The examples on the following page are of non-legal sets of rules: a code of conduct for soccer referees and the Melbourne City Council’s Skatesafe program.

Non-legal rules are often a very strong influence on behaviour, although they may vary from one group to another or change with time. For example, rules of etiquette (particularly those concerned with eating) are well developed in most cultures. It may be that within your group of friends there are rules about supporting each other or keeping in contact. These rules are called norms—the normal, expected way of behaving that is understood by the group.

Provide definitions of non-legal and legal rules

What codes of behaviour do rules set for us?

* Next page.
Legal rules

Legal rules are laws. Articles you read in newspapers or programs on television give you some understanding of criminal law. Crimes such as murder, theft or rape are widely reported by the media. However, the law is not only concerned with criminal behaviour.

The law deals with other aspects of our relationships with each other. For example, civil law deals with the agreements made between individuals (contract law) and with ownership of property. You may have heard about a person going to court to obtain compensation for injuries suffered as a result of another person’s carelessness. This is an area of civil law known as negligence. There are also family laws that govern how and when people may marry or how and when people may divorce.

By establishing our rights, the law ensures that all individuals are free to act. By establishing our responsibilities, the law imposes limits on the actions of individuals that may infringe upon the rights of others. For example, defamation laws not only give us the right to freedom of speech, but also impose a responsibility on us to ensure that the public statements we make do not damage the reputations of others.

What is the difference between legal and non-legal rules?

All rules are concerned with establishing codes of behaviour for people. They do this in three ways.

- **Rules may demand that we behave in a certain way.** For example, school rules may compel all students to wear a uniform. Similarly, legal rules can compel us to behave in a certain way. For example, road laws state that we must drive on the left-hand side of the road.

- **Rules may place restrictions on our behaviour.** For example, the rules in your family may state that you have to be home by a set time at night. Similarly, legal rules can restrict the behaviour of individuals in the community. For instance, the traffic regulations set speed limits that motorists are expected to observe.

- **Rules may prohibit certain types of behaviour.** For example, some religions may prohibit work on the Sabbath or holy day. Legal rules also prohibit behaviour that may be considered dangerous to others. For example, the law prohibits most forms of violence.

However, there are a number of important differences between the operation of legal and non-legal rules. These key differences are found in the answers to the questions in the table below.

### 1.1 Differences between legal and non-legal rules

<table>
<thead>
<tr>
<th>Legal rules</th>
<th>Non-legal rules</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Who must obey the rules?</strong></td>
<td>Legal rules deal with the conduct of individuals in society. Legal rules apply to all members of the community.</td>
</tr>
<tr>
<td><strong>Who makes the rules?</strong></td>
<td>Legal rules (laws) can only be made by four groups: parliaments, subordinate authorities, local councils and courts.</td>
</tr>
<tr>
<td><strong>Who enforces the rules?</strong></td>
<td>The consequences of breaking legal rules may be the imposition of a sanction, such as imprisonment or a community-based order. If we violate another person’s civil rights we may be required to pay damages. Legal rules are enforced by the court system or by tribunals. Law enforcement agencies and the courts enforce criminal laws. When a conflict occurs between individuals concerning their rights under civil law, a court or a tribunal may be asked to resolve the dispute.</td>
</tr>
<tr>
<td><strong>Who interprets the rules?</strong></td>
<td>The meaning of a legal rule can only be interpreted by a judge or magistrate in a court, or by a member of a tribunal.</td>
</tr>
</tbody>
</table>
Why do we need laws?

The main function of law is to maintain social cohesion; in other words, having a community where people are able to live with each other in a peaceful manner. The law enables us to live together by recognising the rights of ourselves and others. The law places responsibilities on individuals to ensure that their actions don't hurt others. The law also provides ways to resolve disputes when they do happen.

For the law to work, we need organisations with the authority to make the law. We also need ways of ensuring that people obey it. The different bodies and procedures developed by our society to create and enforce the law are part of what we call the legal system. A legal system is a system of rules made by recognised bodies or developed through recognised means, and enforced in a manner acceptable to the community.

Functions of the law

The main function of the law is to provide a framework in which the community can exist in freedom and harmony. At its most general level, the law defines clearly the kind of community the majority of people want.

The law reflects community values

The law recognises the political values of the community. In Australia, the law requires that we are governed by democratically elected parliaments. The law also sets out the powers to be exercised by each of these parliaments.

The law reflects the social and moral values of the community. For example, the values that the community places on the ideals of equality are recognised in our anti-discrimination laws.

Laws also reflect the economic values of a community. Laws control the conduct of businesses, which to some extent ensures the freedom of the marketplace. Laws attempt to ensure that trading is generally carried out cooperatively. Laws provide that individuals are treated fairly in their dealings with others. For example, the Fair Trading Act 1999 (Vic) establishes rights of consumers. In recent times the law has moved into areas such as changes to technology and protection of the environment.

The law establishes codes of conduct

To achieve a peaceful and cooperative community, the law needs to set down boundaries of acceptable conduct. Many specific laws are made to guide people's behaviour. These specific laws include both criminal and civil law. For example, criminal law prohibits specific acts, such as murder, theft and rape.

The law resolves disputes

The law must establish ways to resolve disputes when they arise. It is the role of courts and tribunals to interpret and apply the law. These bodies operate with the aid of other organisations, such as the police. Laws have been developed to describe how the courts will carry out their functions and, where a criminal offence has been committed, the law lays down the sanction that may be appropriate.

The law provides for change

Finally, laws need to be able to meet the changing needs of society. The types of laws we have today are very different from those that existed early last century. For example, the motor car was a novelty then and there were few laws to regulate who could drive a car or how fast. Today the motor car is the main form of transport throughout Australia. As a result of the increased number of vehicles, we need a number of laws to govern their use, their ownership, and even their impact on society.
How far can the law go to enforce expected behaviours?

Spitters beware
Spitting has a long history in China. It is an accepted traditional practice, and some people believe that if they do not spit they will not be popular. However, times are changing. With the spread of diseases, such as the SARS virus and highly contagious tuberculosis, China has legislated to stop spitting.

The World Health Organization estimates that more than five million Chinese have tuberculosis and that 500 Chinese have been inflicted with SARS. Policed by an army of 1000 sanitary workers, fines of 50 yuan are imposed on those found spitting or urinating in public.

Droopy drawers
In the United States, the state of Virginia considered legislation that would make young people pull up their pants. The proposed law would have imposed a fine of $50 on offenders found to be wearing their boxer shorts or G-strings in a 'lewd or indecent manner'.

Homework and reasonable expectations
In the 1880s, the US state of Texas made it compulsory for parents to send their children to school. A student, who was about to be strapped for refusing to do homework, stabbed his teacher in the leg. As part of his defence, he claimed that the act was provoked by the teacher's expectation that he complete homework. His lawyer stated that the state could not expect to regulate the behaviour of students outside school hours.

Not so, said the court. The judge concluded that the teacher's authority to set homework could not be ignored and that it was a reasonable demand that homework be completed.
Characteristics of an effective law

Just because a law has been made does not mean that it will be enforced or will effectively control the behaviour of individuals. How can we judge whether a law is effective? In order for a law to be effective it must satisfy the following criteria.

- The law must be **known**. Knowledge of the law means that we are less likely to break the law. This does not mean that we need to know every law ever made in Australia—that would be impossible—but we do have a duty to know the law as it relates to our activities. Remember, according to the law, ‘ignorance of the law is no excuse’.
- The law must be **easy to understand**. To be easily understood it needs to be written in a way that most people in the community can see what the law means and how it affects them as citizens. It must clearly set out rights and responsibilities.
- The law must be **acceptable** to the community. In order for the law to operate effectively it must also be acceptable to the majority of people. If people do not accept the law they will not obey it. The law will be seen as acceptable if it reflects the morals and values of the community.
- The law must be **stable**. The law cannot be constantly changing. If the law was constantly changing, individuals could not be expected to know what the law is. This does not mean that the law should never change—it should change to meet the changing needs of society. Although the law must be stable, it must also be sufficiently flexible to overcome problems that may occur in the future, or to change to meet new needs.
- The law needs to be **applied consistently**. In most cases, a law is considered unfair if it is not applied consistently from one case to the next. Individuals should be able to see how the law has been applied in the past to judge how it may be applied to their situation.
- The law must be **enforced**. If the law is to regulate behaviour, then it must be capable of being enforced.
- The law needs to be **accessible**. By providing access to legal knowledge and avenues for dispute resolution, people have the opportunity to exercise their rights and responsibilities.

*What are the characteristics of an effective law?*

Criminal law and civil law

The two main areas of law we will look at in this book are criminal law and civil law. Unit 1 will focus on criminal law in action and Unit 2 on issues in civil law.

*Copy into your book*
1.2 The key differences between criminal and civil law

<table>
<thead>
<tr>
<th>Criminal law</th>
<th>Civil law</th>
</tr>
</thead>
<tbody>
<tr>
<td>Criminal law is concerned with the protection of the community as a whole and punishment of offenders.</td>
<td>Civil law is concerned with the protection by the law of the private rights of the individual.</td>
</tr>
<tr>
<td>When an individual breaks the criminal law they will be prosecuted by the state (represented by the police or Director of Public Prosecutions).</td>
<td>People who feel that their rights have been infringed by others may sue to obtain a remedy. The outcome of the case can be seen in terms of liability or responsibility.</td>
</tr>
<tr>
<td>The court will establish guilt or innocence beyond reasonable doubt.</td>
<td>On the balance of probabilities, the court will determine whether a person's rights have been infringed.</td>
</tr>
<tr>
<td>The court will determine an appropriate sanction, such as imprisonment, a fine or a community-based order.</td>
<td>When an individual suffers damage due to the actions of another, civil law aims to restore the injured party to their former position by providing a remedy, such as a monetary award.</td>
</tr>
</tbody>
</table>

A single event may involve criminal law and civil law. When a car crash occurs there may be criminal and civil consequences. If it is the result of one driver breaking the criminal law by driving under the influence of alcohol, they will be regarded as a risk to the community. A criminal prosecution will take place and they will be sanctioned. However, this action does not resolve all the conflicts that could arise from this event.

What about the damage to the car and the suffering of the other driver or passenger? These issues relate to the private civil rights of the individual. The law provides the innocent driver or passenger with the right to take legal action to obtain compensation from the driver responsible for the accident.

In the illustration below both criminal law and civil law are involved. Criminal law provides the basis for the prosecution of the drunken driver, while civil law provides the other driver with the right to sue for damages. The two actions take place independently. To resolve the conflict, the criminal offence will be investigated by the police (provided that it is reported) and the civil action will be initiated by the injured party.
Apply your understanding

Case study

Absenteeism

Consider the case study below, then answer the questions that follow.

A day off school

Sarah and Jenny were both Year 11 students. They had decided to take the day off school in order to avoid taking a Legal Studies test they had not studied for. Sarah’s parents had told her previously that if she failed another test she would be grounded for one month.

Instead of going to school, the two girls headed to the shopping centre in the next suburb as there would be less chance of them being seen there. They intended to go shopping and see a movie. Because the two of them had little money they decided to sneak into the movies through the back door. Approximately half way through the movie Sarah’s mobile phone started to ring loudly and they were told to be quiet by other moviegoers. Sarah answered the phone and talked loudly to her friend who rang to see why Sarah was not at school.

After Sarah finished her phone call she and Jenny decided to leave the movie and go shopping. They headed to the cosmetics counter. Sarah saw a lipstick she liked. After checking that no-one was looking she popped the lipstick in her pocket and then they quickly left. They headed to the food court.

Sarah went and bought them both sushi and drinks. Jenny went to find them a table. Once she had sat down Jenny put her feet up on the other seat and took a thick texta from her bag and started to write on the table. After eating their food and drawing some portraits of their teachers on the table top the pair headed off to the tram stop, leaving their food wrappers on the table.

Both took out their myki tickets and pretended to scan them and took their seat down in the back row. The driver was not really paying attention as he was watching the road so he failed to notice the two had not validated their tickets. The driver continued to drive the tram and headed off towards the next stop.

1. Explain the difference between legal and non-legal rules.
2. Identify three legal and three non-legal rules from the case study.
3. Identify the possible sanctions (penalties) for each of the legal and non-legal rules broken.

*Answer the 3 questions.*
Case study

Witchcraft

Read the article below, then answer the questions that follow.

**Tradition rules on 'witchcraft' laws**

According to villagers and Papua New Guinea law, East Sepik Province villager Augustine Pohou was killed by black magic.

Two men were jailed for a year by a district court for killing Pohou with sorcery. The court ruled that the two men took his spirit from his body, killed it, and returned it to his body, leaving Pohou physically alive but spiritually dead.

A week later Pohou became physically ill and died in hospital. Pohou's family confronted the two men—paid $27 by a third man—who admitted killing him by sorcery. Their one-year sentences were the maximum available under the *Sorcery Act 1971*.

The Act accepts that people in some regions believe in sorcery and makes the use of sorcery a criminal offence. The Act, in an attempt to reconcile Western law with traditional Papuan beliefs, allows courts to consider the use of sorcery in criminal cases. It does not accept the validity of sorcery but accepts that people, both perpetrators and victims, believe the sorcery and that its use is criminal.

Papua New Guinea has a history of witchhunts and brutal deaths. In 2007 four women accused of causing a fatal road accident were tortured with hot metal rods until they confessed to witchcraft. They were then murdered. In another recent case, 15 women were hacked to death with machetes for allegedly practising witchcraft.

In one province of PNG the number of witch killings is estimated at 200 a year. Exact figures are difficult—witnesses rarely speak to authorities. The resurgence of black magic can be attributed to two factors. There has been an AIDS epidemic in PNG. Many villagers do not understand why Western medicine cannot stop people dying from AIDS and are looking to the old beliefs in magic to explain the epidemic. There has also been an increase in marijuana use in some regions.

Violence against alleged sorcerers by superstitious clans has not been confined to the highlands provinces. Allegations of witchcraft have spread to urban centres and a woman from the highlands province of Chuave was recently hacked to death in the Port Moresby suburb of Six-Mile because she was suspected of being a sorcerer.

There is little that the police can do to investigate these killings. Such cases are extremely difficult to bring to court. People are scared of giving evidence and many accept the assaults and killings as part of their culture that recognises the power of sorcery.

1. How does the *Sorcery Act 1971* reflect the needs of society in Papua New Guinea?
2. What are the characteristics of an effective law? Do you think that sorcery law in Papua New Guinea is effective?
3. What factors do you think limit the effectiveness of this law?

![Note: This is an author written article](image)
Extension activity

Rules and laws

1. Draw up a table similar to the following. Choose 10 incidents from the cartoon following.
   For each incident you have selected, describe what appears to have happened, what the conflict is about, how it can be resolved, and the people or groups involved.

<table>
<thead>
<tr>
<th>Describe the incident</th>
<th>What is the conflict about?</th>
<th>How can it be resolved?</th>
<th>People or groups involved</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
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</tr>
</tbody>
</table>

2. How many other incidents can you find in the cartoon?

* Complete the above questions.