

Introduction: what is law:

[Law](#), [Constitution](#)



Introduction: What is Law: Functions of the Law: -A code for the regulation of people's conduct. -To provide a means for enforcing the rules prohibiting anti-social conduct. -To provide a process for resolving disputes. -Social control: a deterrent to certain kinds of behaviour. -Structured systems of rules — regulation of different areas of life such as commerce. -Community welfare- taxation, income supports. -Enforcement of moral or ethical standards? — is it illegal to tell a lie? Should it be illegal to sell lottery tickets on Sundays in NZ? Difference between Law and Rules: In NZ, for a rule to be law it must have been made 1. By parliament in the form of an Act (statute). 2. Under authority delegated or conferred by an Act of the NZ parliament (regulation or a bylaw). 3. By a judge in a NZ court in the course of deciding a case. Law and Morals or Ethics: e. g. A law is passed that declares persons who have blue eyes to be sub-human and enemies of the state and requires all citizens to report the presence of such people to authorises who will arrange to have them exterminated. -Joe and Pat are climbing Mt Cook. At a difficult point in the climb Jo, who is leading, slips and falls. Pat realises that Jo's weight will almost certainly drag them both off the mountain and they will be killed. Is Pat legally and ethically justified in cutting the rope? Law as compromise between competing interests: The constitution and constitutional Law: 1. By whom are we to be governed: rules and conventions 2. How is the power of the government to be exercised? 3. What is the relationship between the state and the individual? Democratic government. The Rule of Law: -Defines the relationship between the government and the people. -An ideal standard- characteristic of democratic societies. Principles of the Rule of Law in NZ: 1. Society should be free from

arbitrary power (statute law). 2. All are equal before the law. 3. The courts are open to all (for all to use). 4. The judiciary is independent (set procedures to be followed). The NZ constitution: -No single written document -Includes statutes: - The constitution Act 1986 - The NZ Bill of Rights Act 1990 - The Electoral Act 1993 -The Habeas Corpus Act 2001 -Judicial decisions -Treaty of Waitangi -Constitutional Conventions -Cabinet -Governor General Sources of the NZ constitution: The New Zealand constitution 1. Imperial (UK) legislation 2. Decisions UK and Commonwealth courts 3. The Treaty of Waitangi 4. NZ legislation 5. Decisions NZ Courts 6. Constitutional conventions The Characteristics features of a Westminster style of democracy: -The monarch of his/her representative (Governor General)acts on advice of elective ministers (the executives) -The supremacy or sovereignty of parliament. Rule by the People- democracy: -The people can exercise ultimate control over what happens to them and their state. -The extent to which people ' truly' exercise control is a matter of degree. Four ' accepted' requirements for a ' true' democracy include the following: 1. All adult citizens (and permanent residents) are entitled to vote. -The ballot shall be secret. -The election process shall be conducted free of improper influences. -Any citizen can be candidate for election. 2. In addition, the citizens in a democracy should have the rights" -to freedom of expression, including expressions of dissent from government policy or action; -to meet and associate with other as they see fit. 3. A free press, including other news media such as TV radio. 4. Some form of ' separation of powers' within the state. The separation of Powers: - Within the government of the state there are three powers: * The Executive - The legislature -The Judiciary -The three powers should be separate i. e.

exercised by completely distinct groups. -In order that the power of each is limited by a system of checks and balances. The Executive: -Appoints Judges -Controls majority of Legislature The Legislature: -Can cut off funds to the Executives -Can remove High Court, Court of Appeal and Supreme Court Judges. The Judiciary: -Cannot strike down legislation -Can review Executives decisions -Interpret legislation (make it less cruel) Conventions of the constitution: These are unwritten rules that are not law. Despite this, there is normally considerable political pressure to observe them. -The collective responsibility of the council. -Ministerial responsibilities -Outgoing ministers should Act on the instructions of the incoming government. Sources of Law: The law in NZ is derived from 2 sources: -Common law: the body of law that is "judge made". It has been built up by decisions of the Courts over many years. -Statute law: the law made by Parliament in the form of Acts of Parliament. Parliament is Supreme: -Statute law is the source of law that is created by parliament. It cannot be overridden by a Judge's decision. - Conversely, statute law can override the common law (Judicial decisions). Judicial Review: -Control of the executive by the judiciary. -Used if there has been an abuse of statutory power or an error made. -A very important remedy for businesses (and individuals). Recent Judicial Review- Report decisions 1. Seaton vs. Minister for Land Information -Road widening project - Minister ordered a compulsory acquisition of a piece of Ms Seaton's land in order to permit Energy Companies to relocate 3 electricity towers onto her land. -Ms Seaton applied to the High Court for judicial review of the Minister's actions in ordering compulsory purchase of her land. -High Court finds that the Minister had exercised his powers under the Public Works Act 1981 for an

improper purpose. -The acquisitions of Ms Seaton's land were not for road making but for the purpose of the Energy companies. -However the High Court's overturned by the Courts of Appeal. -The definition of ' public work' in the Public Works Act 1981 included anything directly or indirectly for government work.

2. PS vs. North Shore Family Court -PS held under a compulsory treatment order made by a District Court Judge under the Mental Health Act 1992. -PS applied for judicial review of the order because the Judge failed to examine her in person, as is required by the Act. -PS's application was granted. -The Court declared the compulsory treatment order was issued ultra virus (outside the powers of the judge).

3. McGarth Vs. Accident Compensation Corporation -Mrs McGarth has accident & severely injured ankle. She is in constant pain & capable of only working 15 hours a week. -Receives weekly compensation from ACC for 6 years. -ACC sends her a notice requiring her to undergo a vocational independence assessment. - Ms McGrath applies for judicial review of the decision to require her to undergo vocational assessment. -She is unsuccessful in the High Court and the Court of Appeal. -The Supreme Court rule that ACC had failed to comply with the Accident Compensation Act 2001. -S110(3) of the Accident Compensation Act sets a threshold for the exercise of ACC's power to require a vocational independence assessment. -The purpose of s110(3) was to protect claimants from unnecessary assessments where there was no real prospect of vocational independence. -ACC has not carried out any up to date medical assessments and had no information, which supported its actions. -Notice quashed.