**Chapter 1**

Legal Foundations

**Choose the one alternative that best completes the statement or answers the question.**

1) Law is most accurately described by which of the following?

A) Law is basically a device to regulate the economic and social behaviour of society.

B) In society as a regulatory tool, the law informs people of what they can and cannot do and that if they break the law, they could be punished.

C) The law as a regulatory device provides a mechanism for society to function in an orderly fashion, by prioritising needs and desires of that society through Acts and Regulations of Parliament.

D) All of the above.

Answer: B

Difficulty: Basic

Topic: Introduction

Objective: LO 1.1 Explain the importance of the law as a regulatory tool in society and business.

AACSB: Application of knowledge

2) The Australian *Constitution* is a significant legal document that is:

A) the story of the Australian legal system.

B) the law that regulates how Australia is governed.

C) a set of citizen rights.

D) the law which regulates commercial transactions.

Answer: B

Difficulty: Basic

Topic: What is law?

Objective: LO 1.1 Explain the importance of the law as a regulatory tool in society and business.

AACSB: Application of knowledge

3) Which of the following is considered a main source of Australian law?

A) Case law which is found in decisions of the US Supreme Court.

B) Legislation which is passed by State and Commonwealth parliaments.

C) The common law and statute law of England that has not been repealed.

D) All of the above.

Answer: B

Difficulty: Basic

Topic: Sources of law

Objective: LO 1.1 Explain the importance of the law as a regulatory tool in society and business.

AACSB: Application of knowledge

4) Which of the following terms is NOT used to describe the common law?

A) Precedent.

B) Case law.

C) Statute law.

D) Unwritten.

Answer: C

Difficulty: Basic

Topic: Sources of law

Objective: LO 1.1 Explain the importance of the law as a regulatory tool in society and business.

AACSB: Application of knowledge

5) In Australia, the law is derived from several sources. Which of the following are the two main sources of the law in Australia?

A) Private and Public law.

B) Common law and Statute law.

C) International law and Treaties.

D) All of the above.

Answer: B

Difficulty: Basic

Topic: Sources of law

Objective: LO 1.1 Explain the importance of the law as a regulatory tool in society and business.

AACSB: Application of knowledge

6) In the event that common law and statute law conflict one another:

A) statute law will prevail.

B) either could prevail depending on the circumstances of the case.

C) common law will prevail.

D) statute law prevails but only if the court allows it to.

Answer: A

Difficulty: Moderate

Topic: Sources of law

Objective: LO 1.1 Explain the importance of the law as a regulatory tool in society and business.

AACSB: Application of knowledge

7) Laws made by parliaments are called statute law.

A) True

B) False

Answer: A

Difficulty: Basic

Topic: Sources of law

Objective: LO 1.1 Explain the importance of the law as a regulatory tool in society and business.

AACSB: Application of knowledge

**Write your answer in the space provided or on a separate sheet of paper.**

8) How would you describe the law?

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Answer: Law is a set of rules developed over a long period of time regulating people’s interactions with each other and which sets standards of conduct between individuals and other individuals and individuals and the government.

Difficulty: Basic

Topic: What is law?

Objective: LO 1.1 Explain the importance of the law as a regulatory tool in society and business.

AACSB: Analytical thinking

9) Are rules always laws? If not, how do they differ?

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Answer: While it is generally true to say that the law is a set of rules, it doesn’t automatically follow that all ‘rules’ are or will be ‘law.’ To try to determine when a ‘rule’ becomes ‘law’ is not always an easy task. It is necessary to consider:

• Where the rule comes from

• How an offender will be dealt with when the rule is broken

• How the offender will be punished and

• By whom

Difficulty: Basic

Topic: Are rules always law?

Objective: LO 1.1 Explain the importance of the law as a regulatory tool in society and business.

AACSB: Analytical thinking

**Choose the one alternative that best completes the statement or answers the question.**

10) Which of the following characteristics describes an effective and acceptable legal system?

A) Seen to be fair by most people.

B) Able to change and adapt to changing circumstances.

C) Easy for people to learn about.

D) All of the above.

Answer: D

Difficulty: Complex

Topic: Characteristics of a legal system

Objective: LO 1.2 Recognise and explain the characteristics of a legal system and the main sources of Australian law.

AACSB: Reflective thinking

**Write your answer in the space provided or on a separate sheet of paper.**

11) Describe how the law and justice are linked in society.

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Answer: Law embodies what society believes is right and fair. Justice in our society means that everyone is entitled to a fair trial under a set of rules that applies equally to both sides in an open court.

Difficulty: Basic

Topic: Characteristics of a legal system

Objective: LO 1.2 Recognise and explain the characteristics of a legal system and the main sources of Australian law.

AACSB: Analytical thinking

**Choose the one alternative that best completes the statement or answers the question.**

12) Which of the following major legal systems is based on the doctrine of proper behaviour and is followed by approximately 20 per cent of the world’s population?

A) The Hindu law system.

B) The civil law system.

C) The common law system.

D) The Islamic legal system.

Answer: A

Difficulty: Basic

Topic: Classification of laws

Objective: LO 1.3 Identify characteristics of different legal systems and define civil and criminal law under the common law system.

AACSB: Application of knowledge

13) Since Federation, Australia has ratified a large number of international treaties and conventions including which of the following?

A) The Asia Pacific Economic Cooperation (APEC).

B) The Vienna Sales Convention.

C) The General Agreement on Tariffs and Trade (GATT).

D) All of the above.

Answer: D

Difficulty: Basic

Topic: Classification of laws

Objective: LO 1.3 Identify characteristics of different legal systems and define civil and criminal law under the common law system.

AACSB: Application of knowledge

14) When describing a nation’s legal system, the term: ‘Common law’ can be distinguished from which of the following terms?

A) Equity law.

B) Civil law.

C) Canon law.

D) Statute law.

Answer: B

Difficulty: Moderate

Topic: Classification of laws

Objective: LO 1.3 Identify characteristics of different legal systems and define civil and criminal law under the common law system.

AACSB: Application of knowledge

15) Which is the best definition of Civil Law as a legal system?

A) Laws based on the Koran.

B) Codified laws.

C) Laws based on the Bible.

D) Laws made by sovereigns.

Answer: B

Difficulty: Moderate

Topic: Classification of laws

Objective: LO 1.3 Identify characteristics of different legal systems and define civil and criminal law under the common law system.

AACSB: Application of knowledge

16) A significant feature of the civil law (code) system is:

A) law made by Judges.

B) law based on the Roman law and the Napoleonic Code

C) adversarial based legal process.

D) law made by civil institutions.

Answer: B

Difficulty: Moderate

Topic: Classification of laws

Objective: LO 1.3 Identify characteristics of different legal systems and define civil and criminal law under the common law system.

AACSB: Application of knowledge

17) In the context of the common law system, the term ‘Civil law’ contemplates:

A) a legal action where the emphasis is on remedies for the plaintiff.

B) a legal action brought by an individual against another.

C) a legal action where the mode of procedure is non-adversarial.

D) all of the above.

Answer: D

Difficulty: Moderate

Topic: Classification of laws

Objective: LO 1.3 Identify characteristics of different legal systems and define civil and criminal law under the common law system.

AACSB: Application of knowledge

18) Individuals may litigate which types of law in State Court?

A) Contract law.

B) Tort law.

C) Property law.

D) All of the above.

Answer: D

Difficulty: Complex

Topic: Classification of laws

Objective: LO 1.3 Identify characteristics of different legal systems and define civil and criminal law under the common law system.

AACSB: Application of knowledge

19) Public law does NOT include this body of law:

A) negotiable instruments law.

B) criminal law.

C) taxation law.

D) administrative law.

Answer: A

Difficulty: Basic

Topic: Classification of laws

Objective: LO 1.3 Identify characteristics of different legal systems and define civil and criminal law under the common law system.

AACSB: Application of knowledge

20) Procedural law:

A) ensures that the rules of procedure and evidence are strictly followed.

B) ensures fairness in terms of remedy.

C) overrules substantive law.

D) is concerned with disputes between people or organisations.

Answer: A

Difficulty: Basic

Topic: Classification of laws

Objective: LO 1.3 Identify characteristics of different legal systems and define civil and criminal law under the common law system.

AACSB: Application of knowledge

21) International treaties and conventions automatically become part of domestic law.

A) True

B) False

Answer: B

Difficulty: Basic

Topic: Classification of laws

Objective: LO 1.3 Identify characteristics of different legal systems and define civil and criminal law under the common law system.

AACSB: Application of knowledge

22) For civil law, the emphasis is on remedies, while the emphasis is on penalties for common law.

A) True

B) False

Answer: B

Difficulty: Basic

Topic: Classification of laws

Objective: LO 1.3 Identify characteristics of different legal systems and define civil and criminal law under the common law system.

AACSB: Application of knowledge

23) The main objective of criminal law is to seek compensation for the victim.

A) True

B) False

Answer: B

Difficulty: Basic

Topic: Classification of laws

Objective: LO 1.3 Identify characteristics of different legal systems and define civil and criminal law under the common law system.

AACSB: Application of knowledge

**Write your answer in the space provided or on a separate sheet of paper.**

24) In Chapter 1, the following useful definition of law is offered: ‘A set of rules, developed over a long period of time regulating people’s interactions with each other and which sets standards of conduct between individuals and other individuals, and individuals and the government and which are enforceable through sanction.’ Can you identify and explain any problems with or omissions from this definition?

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Answer: *The question seeks personal opinion.*

Difficulty: Complex

Topic: Classification of laws

Objective: LO 1.3 Identify characteristics of different legal systems and define civil and criminal law under the common law system.

AACSB: Analytical thinking

25) Explain how international law is having an increasingly important impact upon domestic Australian law and upon the lives of Australians generally. Why do you think this is occurring?

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Answer: *The question seeks personal opinion.*

Difficulty: Complex

Topic: Classification of laws

Objective: LO 1.3 Identify characteristics of different legal systems and define civil and criminal law under the common law system.

AACSB: Analytical thinking

**Choose the one alternative that best completes the statement or answers the question.**

26) Which of the following statements is NOT true?

A) Common law rights are enforceable at any time.

B) Common law is a comprehensive system.

C) Common law rights are valid against the whole world.

D) Common law remedies are discretionary.

Answer: D

Difficulty: Basic

Topic: Major and minor types of laws in the Australian legal system

Objective: LO 1.4 Discuss the main types of law in Australia.

AACSB: Application of knowledge

27) The law of equity originated as the collection of *rules and principles* that were developed and administered by which of the following bodies?

A) The British Parliament.

B) The Courts of Chancery.

C) The Privy Council.

D) The Common Law Courts.

Answer: B

Difficulty: Basic

Topic: Major and minor types of laws in the Australian legal system

Objective: LO 1.4 Discuss the main types of law in Australia.

AACSB: Application of knowledge

28) Equity law:

A) provides a wider range of remedies than the common law.

B) complements the common law.

C) is based upon the concept of fairness.

D) all of the above.

Answer: D

Difficulty: Basic

Topic: Major and minor types of laws in the Australian legal system

Objective: LO 1.4 Discuss the main types of law in Australia.

AACSB: Application of knowledge

29) The reason statute law takes priority over the common law is because:

A) common law principles come from old English cases.

B) politicians are more accessible to the electorate.

C) judges are accountable to the parliament.

D) politicians are accountable to the electorate.

Answer: D

Difficulty: Moderate

Topic: Major and minor types of laws in the Australian legal system

Objective: LO 1.4 Discuss the main types of law in Australia.

AACSB: Reflective thinking

30) Which of the following statements is true?

A) The law of Equity applies to all civil disputes.

B) The law of Equity only applies to criminal matters.

C) The law of Equity does not apply to all criminal matters.

D) The law of Equity does not apply to all civil disputes.

Answer: D

Difficulty: Basic

Topic: Major and minor types of laws in the Australian legal system.

Objective: LO 1.4 Discuss the main types of law in Australia.

AACSB: Application of knowledge

31) Which of the following statements is NOT true?

A) Equity applies to all civil disputes.

B) Equity provides a wider range of remedies than the common law.

C) Equitable remedies have to be specifically requested.

D) Equity is a discretionary remedy.

Answer: A

Difficulty: Basic

Topic: Major and minor types of laws in the Australian legal system

Objective: LO 1.4 Discuss the main types of law in Australia.

AACSB: Application of knowledge

32) If there is a conflict between common law and Equity:

A) equity will prevail.

B) either could prevail depending on the circumstances of the case.

C) equity prevails but only if the court allows it to.

D) common law will prevail.

Answer: A

Difficulty: Moderate

Topic: Major and minor types of laws in the Australian legal system

Objective: LO 1.4 Discuss the main types of law in Australia.

AACSB: Application of knowledge

33) Roman law, Canon law and Merchant law are major sources of English law.

A) True

B) False

Answer: B

Difficulty: Basic

Topic: Major and minor types of laws in the Australian legal system

Objective: LO 1.4 Discuss the main types of law in Australia.

AACSB: Application of knowledge

34) Equity is a system of fairness that applies to all legal disputes in Australia.

A) True

B) False

Answer: B

Difficulty: Moderate

Topic: Major and minor types of laws in the Australian legal system

Objective: LO 1.4 Discuss the main types of law in Australia.

AACSB: Application of knowledge

35) Common law and equity law are administered in different areas of the Supreme Court.

A) True

B) False

Answer: A

Difficulty: Moderate

Topic: Major and minor types of laws in the Australian legal system

Objective: LO 1.4 Discuss the main types of law in Australia.

AACSB: Application of knowledge

36) The Australian Constitution gives the Federal Parliament exclusive power to make laws with respect to:

A) education.

B) business.

C) health.

D) defence.

Answer: D

Difficulty: Basic

Topic: Commonwealth and state powers

Objective: LO 1.4 Discuss the main types of law in Australia.

AACSB: Application of knowledge

37) Which of the following is NOT a concurrent power of the Commonwealth under s 51 of the Commonwealth *Constitution*?

A) Insurance

B) Customs.

C) Industrial relations.

D) Banking.

Answer: B

Difficulty: Moderate

Topic: Commonwealth and state powers

Objective: LO 1.4 Discuss the main types of law in Australia.

AACSB: Application of knowledge

**Choose the one alternative that best completes the statement or answers the question.**

38) The main function of the Australian Parliament is to:

A) determine State government policies.

B) protect the rights of the citizens.

C) inform the citizens of their rights.

D) enact laws according to the Australian *Constitution*.

Answer: D

Difficulty: Basic

Topic: Commonwealth and state powers

Objective: LO 1.5 Explain the division of powers under the Commonwealth Constitution.

AACSB: Application of knowledge

39) Section 109 of the Commonwealth *Constitution* provides that where there is an inconsistency between a Commonwealth law and a State law:

A) the law which was made first shall prevail.

B) the Commonwealth law shall prevail.

C) the State law shall prevail.

D) the law which was made most recently shall prevail.

Answer: B

Difficulty: Basic

Topic: Commonwealth and state powers

Objective: LO 1.5 Explain the division of powers under the Commonwealth Constitution.

AACSB: Application of knowledge

40) The ‘concurrent’ powers of the Commonwealth are those powers which are:

A) able to be exercised only by the States.

B) able to be exercised only by the Commonwealth.

C) able to be exercised by neither the Commonwealth nor the States.

D) shared by the Commonwealth and the States.

Answer: D

Difficulty: Basic

Topic: Commonwealth and state powers

Objective: LO 1.5 Explain the division of powers under the Commonwealth Constitution.

AACSB: Application of knowledge

41) In the Australian context, the division of power refers to:

A) the division of power between the Commonwealth and the States.

B) the division of power between Britain and Australia.

C) the division of power between the legislature and the executive.

D) the division of power between the courts and the government.

Answer: A

Difficulty: Basic

Topic: Commonwealth and state powers

Objective: LO 1.5 Explain the division of powers under the Commonwealth Constitution.

AACSB: Application of knowledge

42) Which of the following statements is correct?

A) The Commonwealth of Australia has exclusive powers in respect of some aspects of government.

B) The Commonwealth of Australia has all those powers with regard to government in Australia which are not exercised by the States.

C) The Commonwealth of Australia has overriding powers in all aspects of Australian government.

D) The Commonwealth of Australia has reserve powers which override all aspects of Australian government.

Answer: A

Difficulty: Moderate

Topic: Commonwealth and state powers

Objective: LO 1.5 Explain the division of powers under the Commonwealth Constitution.

AACSB: Application of knowledge

43) The Constitution gives the Federal Parliament absolute power to make laws to govern Australia.

A) True

B) False

Answer: B

Difficulty: Basic

Topic: Commonwealth and state powers

Objective: LO 1.5 Explain the division of powers under the Commonwealth Constitution.

AACSB: Application of knowledge

**Choose the one alternative that best completes the statement or answers the question.**

44) The decision of the High Court in the case *Commonwealth v Tasmania* (1983) 158 CLR 1, was based upon which head of constitutional power?

A) The reserve power.

B) The external affairs power.

C) The environmental power.

D) The conciliation and arbitration power.

Answer: B

Difficulty: Basic

Topic: Commonwealth and state powers

Objective: LO 1.6 Explain the ways in which federalism has expanded and the role of the High Court in that expansion.

AACSB: Application of knowledge

45) In order to amend the Commonwealth *Constitution* which of the following is NOT one of the requirements which must be satisfied?

A) The amendment must be approved by an absolute majority of members in both Houses of Parliament or be passed twice in either the House of Representatives or the Senate.

B) The amendment must be approved by a majority of voters in a majority of the States and by the Governor General.

C) The amendment must be approved by a majority of Australian voters.

D) The amendment must be approved by the High Court of Australia.

Answer: D

Difficulty: Moderate

Topic: Commonwealth and state powers

Objective: LO 1.6 Explain the ways in which federalism has expanded and the role of the High Court in that expansion.

AACSB: Application of knowledge

46) Since Federation, very few proposed amendments to the Australia *Constitution* have been successfully passed. This is because of the requirement that:

A) the proposed amendments must be approved by a majority of voters in a majority of States.

B) the proposed amendments must be passed by a majority of voters or a majority of States.

C) the approval of the Governor-General on behalf of the Queen is required.

D) the proposed amendments must be passed by an absolute majority of all elected members in both Houses of Parliament.

Answer: A

Difficulty: Moderate

Topic: Commonwealth and state powers

Objective: LO 1.6 Explain the ways in which federalism has expanded and the role of the High Court in that expansion.

AACSB: Application of knowledge

47) Since Federation in 1901, there have been 44 proposals to amend the Commonwealth *Constitution.* How many have been successful?

A) Only 35 of the proposals.

B) All of the proposals.

C) Only 8 of the proposals.

D) None of them.

Answer: C

Difficulty: Moderate

Topic: Commonwealth and state powers

Objective: LO 1.6 Explain the ways in which federalism has expanded and the role of the High Court in that expansion.

AACSB: Application of knowledge

48) When a Commonwealth act clashes with a State act, the State act must be followed.

A) True

B) False

Answer: B

Difficulty: Basic

Topic: Commonwealth and state powers

Objective: LO 1.6 Explain the ways in which federalism has expanded and the role of the High Court in that expansion.

AACSB: Application of knowledge

49) The attitude of the High Court of Australia to the interpretation of the *Constitution* has been to expand the power of the Commonwealth Government.

A) True

B) False

Answer: A

Difficulty: Moderate

Topic: Commonwealth and state powers

Objective: LO 1.6 Explain the ways in which federalism has expanded and the role of the High Court in that expansion.

AACSB: Application of knowledge

**Write your answer in the space provided or on a separate sheet of paper.**

50) In a number of constitutional cases that have been heard by the High Court, the powers of the Federal Government have been expanded at the expense of the States. Explain fully why the High Court has taken this approach, and in your answer provide one case example to support your argument and discussion.

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Answer: *The question seeks personal opinion.*

Difficulty: Complex

Topic: Commonwealth and state powers

Objective: LO 1.6 Explain the ways in which federalism has expanded and the role of the High Court in that expansion.

AACSB: Reflective thinking

**Choose the one alternative that best completes the statement or answers the question.**

51) According to the doctrine of the separation of powers, which branch or arm of government actually makes the law?

A) The Legislature.

B) The Judiciary.

C) The Executive.

D) All of the above.

Answer: A

Difficulty: Basic

Topic: Separation of powers

Objective: LO 1.7 Define the doctrine of the separation of powers and discuss its theoretical and practical functions.

AACSB: Application of knowledge

52) Which of the following statements supports the philosophy of the doctrine of separation of powers?

A) The power to interpret law is exercised by the Judiciary.

B) One limb of Government should not exercise the functions of another limb.

C) The Legislature and the Executive must remain separate.

D) All of the above.

Answer: D

Difficulty: Complex

Topic: Separation of powers

Objective: LO 1.7 Define the doctrine of the separation of powers and discuss its theoretical and practical functions.

AACSB: Application of knowledge

53) The doctrine of separation of powers:

A) is a constitutional requirement of federalism in Australia.

B) is based on the idea that no one person or body should exercise more than one power.

C) requires that there is a separation of power between the state and federal governments.

D) refers to the division of power between the House of Representatives and the Senate.

Answer: B

Difficulty: Complex

Topic: Separation of powers

Objective: LO 1.7 Define the doctrine of the separation of powers and discuss its theoretical and practical functions.

AACSB: Application of knowledge

54) Which section of the Australian *Constitution* vests Judicial Power in the High Court of Australia?

A) Section 71 of the *Constitution.*

B) Section 51 of the *Constitution.*

C) Section 1 of the *Constitution.*

D) Section 61 of the *Constitution.*

Answer: A

Difficulty: Basic

Topic: Separation of powers

Objective: LO 1.7 Define the doctrine of the separation of powers and discuss its theoretical and practical functions.

AACSB: Application of knowledge

55) The supreme law making power in Australia is exercised by:

A) the Parliament.

B) the High Court.

C) the Government.

D) the Ministers in the Cabinet.

Answer: A

Difficulty: Moderate

Topic: Separation of powers

Objective: LO 1.7 Define the doctrine of the separation of powers and discuss its theoretical and practical functions.

AACSB: Analytical thinking

56) Separation of powers is a reference to the division of powers between the Commonwealth and the states.

A) True

B) False

Answer: B

Difficulty: Basic

Topic: Separation of powers

Objective: LO 1.7 Define the doctrine of the separation of powers and discuss its theoretical and practical functions.

AACSB: Application of knowledge

57) Executive power in Australia is vested in the Queen.

A) True

B) False

Answer: A

Difficulty: Moderate

Topic: Separation of powers

Objective: LO 1.7 Define the doctrine of the separation of powers and discuss its theoretical and practical functions.

AACSB: Application of knowledge

58) The High Court interprets legislation created by Parliament.

A) True

B) False

Answer: A

Difficulty: Basic

Topic: Separation of powers

Objective: LO 1.7 Define the doctrine of the separation of powers and discuss its theoretical and practical functions.

AACSB: Application of knowledge

**Write your answer in the space provided or on a separate sheet of paper.**

59) Describe the three arms or functions of government, who they are held by and whether the separation is real or artificial.

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Answer: Three arms or functions of government are:

• Legislative power, to enact or make law, which is held by Parliament

• Executive power, formulation of policy and administration, which is held by the federal Executive Council or Cabinet

• Judicial power, for interpretation application and enforcement of the law, which is held by the Courts

The Australian Constitution provides for the separation between the legislative, executive and judicial powers of the Commonwealth. This gives effect to the doctrine of separation of powers.

In theory the doctrine of the separation of powers means that no one person or body shall exercise more than one power and is a limitation on the powers of the Commonwealth Parliament. However, in reality, there is no separation between the executive and legislative functions of federal or state government in Australia. This is because members of the executive must also be elected members of Parliament.

However, the separation between the judicature on the one hand and the executive and legislature is strict. Judges are not allowed to be members of either the executive or legislative arms of government. There is then a clear separation of the judicial power from both the executive and legislative powers.

Difficulty: Moderate

Topic: Separation of powers

Objective: LO 1.7 Define the doctrine of the separation of powers and discuss its theoretical and practical functions.

AACSB: Reflective thinking