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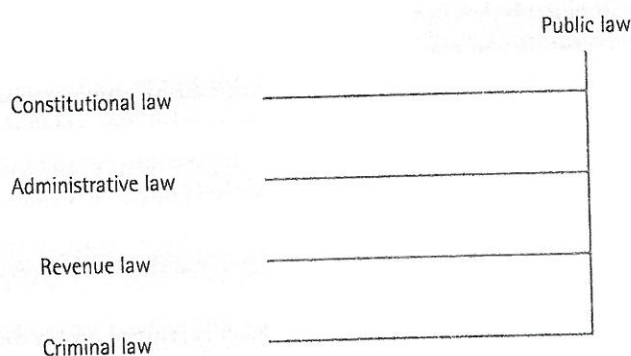
1.3 Classifications of the law

Before embarking on our journey through the different aspects of the New Zealand legal system, it is important to outline the various branches of law that form the basis of this system. These branches can be divided in several ways, including public and private, criminal and civil, domestic and international, procedural and substantive. Public law involves the government in some way while private law deals with situations between private individuals or groups. In criminal law, the state prosecutes a defendant, while in civil law a private party, the plaintiff, takes an action against another private party. Domestic law covers the jurisdiction of New Zealand while international law is made by global bodies and varies in its effect on different nations. Finally, substantive law is the actual content of law whereas procedural law refers to the processes governing the treatment of legal content. This section examines the key components of public and private law and also some other classifications that do not fit neatly into these two categories.

1.3.1 Public law

Constitutional and administrative law: Public law deals with the actions of government and the relationship between the state and individual. Chapter 4 is concerned with constitutional law, which sets out the roles of the different branches of government and how they interact with each other and with citizens. The New Zealand Bill of Rights Act 1990 outlines the rights of individual citizens in relation to the state.

FIGURE 1.1 Classification of the law—public



ultra vires:
beyond the powers
or authority of the
decision-maker.

Another very important but less high-profile branch of public law is administrative law. This branch allows for the judicial review of state actions, whether at central or local level. It allows judges to review government decisions to ascertain whether or not they are **ultra vires**. Important natural law principles are woven into the fabric of administrative law. These principles include the presumption that the adjudicating official will be free from bias.

Revenue law: Revenue law, or taxation law, is also defined as public law because it regulates individuals' payment of taxes to the state.

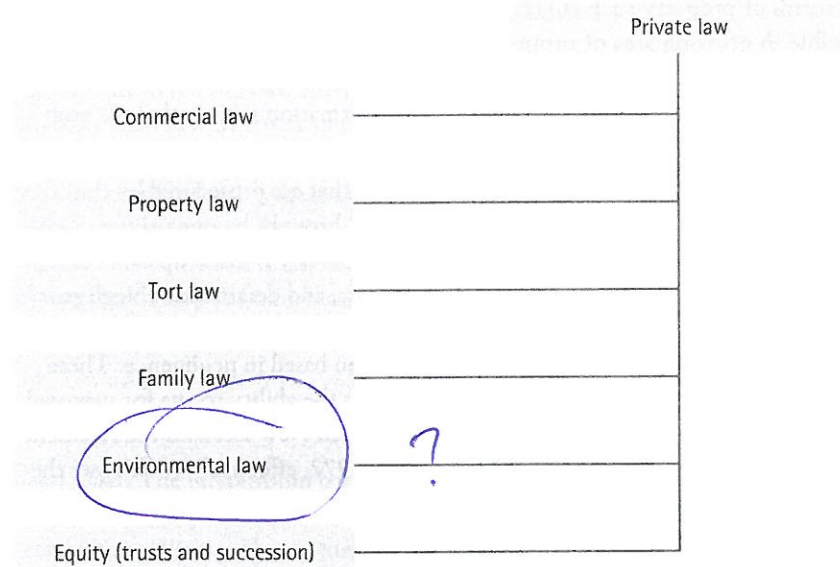
Criminal law: Criminal law involves the enforcement of laws by the state. This is often the form of law we are exposed to through television and film, and that we read about in literature, in newspapers, and on the internet. Criminal law is the most dramatic and controversial area of law. It involves gruesome crimes, dishonesty, betrayal, violence, and mystery. It also places defence lawyers in the position of defending clients who could well be guilty. The difficult and misunderstood role that the criminal defence lawyer plays is partly responsible for the low opinion that many people have of lawyers. To an outsider it seems as though the defence lawyer is trying to help guilty people escape justice in return for money. The fact that everyone is entitled to be represented by a lawyer, whether innocent or guilty, is sometimes forgotten, as is the fact that everyone is innocent until proven guilty in a court of law.

Only a small minority of lawyers practise criminal law. Compared to some other practice areas it is not particularly lucrative. The fact that much of the work revolves around the courtroom differentiates this area from most others. The laws of evidence are vital in criminal procedure and the disciplines of criminology and psychology are often relevant. The criminal trials that make headlines are usually only the most violent or bizarre. Most criminal work is not high profile, as it deals with issues such as possession of cannabis, drink driving, and minor assault charges. Criminal law is largely codified in New Zealand. That means it can be found in a few comprehensive statutes such as the Crimes Act 1961 and the Summary Offences Act 1981. There are a few Acts that deal with specific criminal offences, such as the Misuse of Drugs Act 1975.

1.3.2 Private law

Commercial law: Commercial law can involve contractual issues, questions surrounding the formation and management of corporations, competition (anti-monopoly) law, and securities law. Contracts form the basis of commerce and have to follow a set pattern, with the essential elements of an offer, acceptance, and consideration. The limited liability company is a legal construct and these entities dominate the New Zealand economic landscape. The power of the largest companies is restrained by competition law, which breaks up monopolies. A very common form of commercial law is consumer law. In New Zealand this includes the Fair Trading Act 1986 and the Consumer Guarantees Act 1993. These statutes are often relied on by individuals who have been allegedly 'ripped off' in the process of buying goods and services.

FIGURE 1.2 Classification of the law—private



So you want to be a lawyer?

Commercial law may not be as glamorous as many other areas of law, but it is both the most common area of practice and the most lucrative. Lawyers are expensive and many individuals and not-for-profit organisations have difficulty affording legal fees. Businesses are the wealthiest entities in New Zealand, and supply lawyers with much of their work. The only institution that rivals business in its spending on legal fees is the government.

Property law: New Zealand's greatest obsession (besides rugby) is the buying, renovating, and selling of residential property. Most of the wealth of New Zealand citizens is tied up in real estate. Farming the land has traditionally been our most important export industry. Therefore the law that governs land ownership and use is of great importance. The majority of New Zealanders will see a lawyer only a few times during their lives. One of these times will be when buying a home and obtaining a mortgage. New Zealand's land ownership system is based on the Torrens registration system, which began in South Australia. Details are held in a central registry that anyone can check. Once title has been obtained over a property it is effectively indefeasible; that is, no one can challenge it. A very common form of ownership is fee simple, a form of freehold ownership. The fee simple owner has very few restrictions on the way in which he or she can use the land, relative to other forms of ownership. Another common form is leasehold, where a tenant uses a landlord's property in return for rent payment.

Real estate is only one form of property. Personal property includes all other forms of property such as vehicles, jewellery, and shares. Not all property is tangible. A growing area of property law is that of intellectual property. Copyright, trade marks, and patents protect people's ideas from those who would steal and exploit them for financial gain. In the information society that we now live in, ideas are easily as valuable as tangible objects.

Tort law: While criminal law deals with wrongs that are prosecuted by the state, tort law covers wrongs that relate to an action brought by one private individual against another—that is, civil wrongs. Tort law is made up of a number of different branches, including negligence, nuisance, and defamation. Negligence involves situations where a party owes a duty of care to another party and breaches this duty, causing loss. Personal injury cases are often based in negligence. These cases are popular topics in American legal dramas, as the ability to sue for personal injury in the United States is relatively unrestricted. In New Zealand the Accident Compensation Corporation (ACC), established in 1972, effectively took away the ability to sue for personal injury, compensating injured parties from a communal fund instead.

Nuisance is property interference, committed by another party. An example of nuisance is pollution from a factory drifting over a residential area and causing respiratory problems. Defamation is concerned with unjust damage to a person's reputation. It includes written damage (libel) and spoken damage (slander). There are a number of defences to defamation, the strongest being the defendant's proof that the statement is in fact true.

Family law: Along with criminal law, the most emotionally charged legal arena to work in is family law. While certain areas of family law deal with positive aspects of domestic life, much of family law is designed to sort out the situations when things go wrong. Whether it is divorce, matrimonial property separation, child custody, adoption or domestic violence, law has to intervene in the private family sphere when the non-legal cultural bonds that hold families together break down. The concept of family is changing in New Zealand and recently de facto relationships and civil unions have been included in the same legislative regimes as marriage. Examples from family law can be found later in this textbook.

Environmental law: Environmental law is a relatively new area that deals not only with the prevention of environmental disasters but also with planning ahead to make sure the environment is used in a productive and sustainable way. The massive Resource Management Act 1991 has revolutionised this area of law in New Zealand by creating new legal obligations to ensure the environment is protected. It remains one of our most controversial statutes. Chapter 7 has a case study that explores the issue of climate change and its relationship to law.

Equity (trusts and succession): Equity was developed as an alternative to the common law in England, starting in the thirteenth century. This historical development is outlined in Chapter 2. An understanding of equity's history is necessary to appreciate how it fits into the New Zealand legal system. Equity

ameliorates the harshness of the common law. When a common law precedent would create an unfair result, equity can be used instead.

Today equity is applied in the same courts as the common law and sometimes it is difficult to tell the two apart. Equity has traditionally dominated certain specialist areas such as trusts and succession law and breach of confidence. Equity has its own remedies (such as the injunction), but few plaintiffs seeking these remedies would identify them as being different from the 'common law'. If a celebrity provides confidential information to a friend only to find that the friend is about to leak the information to the media, the celebrity can apply for an **injunction** to stop the information from going to print. This would constitute a 'breach of confidence' action which is based in equity.

injunction: an equitable remedy preventing a party from taking a particular action.

1.3.3 Other areas

Maori issues: The relationship between Maori and the law is a vital aspect of our legal system. Chapter 3 looks at the Treaty of Waitangi and its place in New Zealand's constitutional structure. Other vital legal issues specifically relating to Maori include native title and Maori land law. As outlined in Chapter 3, special provisions in statutes dealing with health, education and resource management recognise the unique role that Maori play in our society.


International law: Chapter 7 of this book provides information on this pivotal area of law. International law is separate from domestic law. International law governs the relations between nations, whereas domestic law governs the actions of entities and individuals within those nations. Domestic legislation is always enforceable, whereas international law relies to a large extent on the goodwill of nations to be enforced. The major international legal bodies, such as the United Nations, the International Court of Justice, and the International Criminal Court, attempt to regulate world affairs, with some success and some failures.

Procedure: Legal procedure is not a substantive area of law but rather makes up the processes that regulate the substantive areas. Criminal procedure and civil procedure are different in many ways. For example, the specific procedures governing a criminal trial differ from those governing a Maori Land Court hearing. It is often in navigating the maze of procedure that lawyers really earn their money. Most laypeople would have little idea where to start in filing a claim for an injunction to prevent the publication of defamatory information. They may understand the concept of defamation and the defences available to justify it, but that would not be enough to mount a successful case if they had no idea how to file a statement of claim or an **affidavit**.

affidavit: a signed statement used as evidence in a court trial.

Not surprisingly, the different areas of law overlap. Property law appears in family law in the area of relationship property, and in Maori law in the special classifications of Maori land. Many criminal offences deal with property damage, while the tort of nuisance specifically focuses on property. Assets such as shares, which play an important role in commercial law, are a type of property. Law should be seen as a web of intersecting rules, rather than fenced-off areas isolated from each other.

Law alive!



Law is everywhere. Imagine you are sitting in a bar having a pint of beer. While this situation may seem far removed from the drama of a courtroom, it has many legal features. If you are 18 years old or over, you can enter the bar and consume the alcohol. If you are 17, then you would not be able to enter the bar or purchase alcohol (though some exceptions exist). This area of law is controlled by the Sale of Liquor Act 1989 passed by the elected legislature in accordance with constitutional processes. The drinking age has been the subject of nationwide debate in 1999, 2006, and 2011. Interested organisations and concerned private citizens made submissions to select committees as to what the drinking age should be. This particular issue is discussed in Chapter 4 of this text.

The Sale of Liquor Act 1989 also stipulates when and how the bar can sell alcohol. The person who just sold you the beer is an employee and his or her presence in the bar is regulated by employment law, in particular, the Employment Relations Act 2000. The bar staff will be on contracts that set out rates of pay, working conditions, holiday entitlements, and dispute resolution procedures in the event of a grievance. Health and safety legislation is in place to make sure staff and patrons are protected from harm. If a personal injury did occur in the workplace, the New Zealand Accident Compensation Scheme would cover the medical costs, funded through ACC levies.

If a fight erupts in the bar, criminal law will come into play. The police may make an arrest for assault or drunk and disorderly behaviour. While doing so they must respect the rights of the person being arrested, as affirmed in the Bill of Rights Act 1990. If there is a breach of one of these rights, then case law precedents may be relevant in determining what the court should do. Any court case is governed by the rules of evidence and criminal or civil procedure.

The building that houses the bar is situated on land owned by someone. The bar owner may well lease the land and buildings and pay rent as a tenant. This relationship is outlined in the Property Law Act 2007. If the bar owner owns the land, then the Land Transfer Act 1952 will be relevant. The owner would have to cover rates and building repair costs set by local government regulations and building codes respectively. The bar owner probably owns the bar as a limited liability business set up under the Companies Act 1993. The taxes paid by owner, staff and company are specifically set out in taxation statutes.

All this law, just to be able to have a beer!