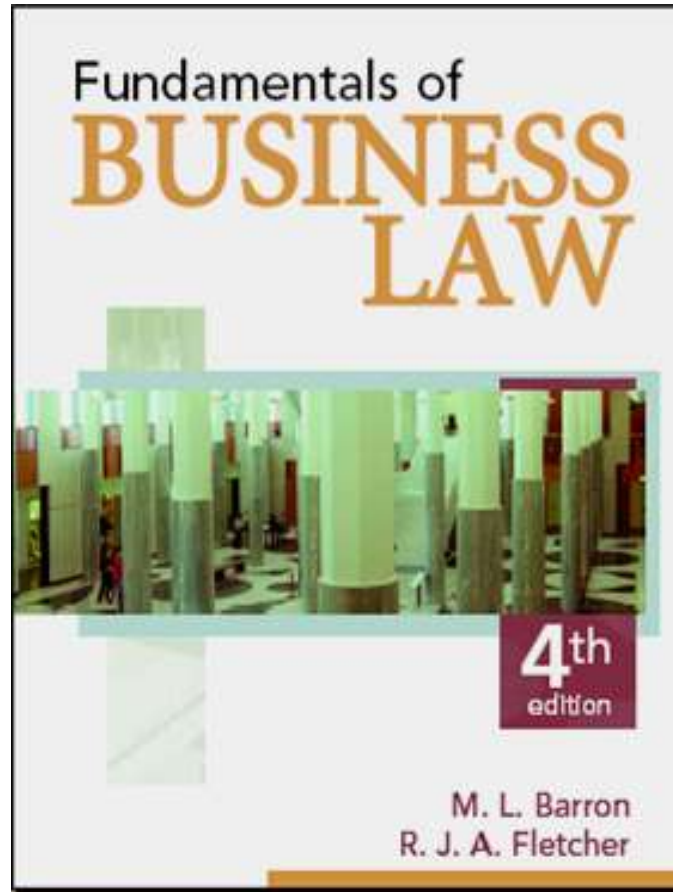
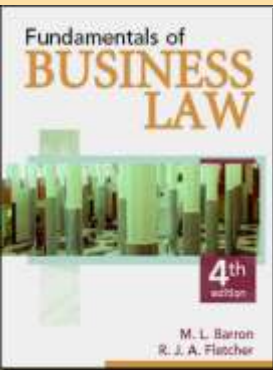
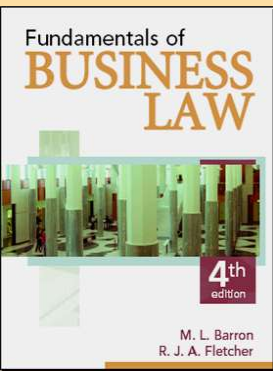


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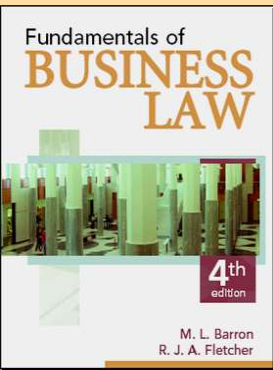


# Introduction to the legal system

## Chapter 1

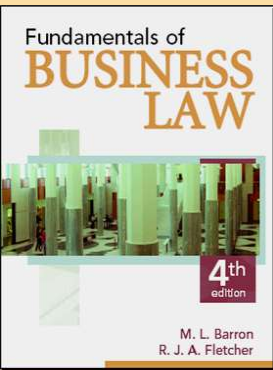
# The law

- The law is a set of legal rules that governs the way members of a society act towards one another.



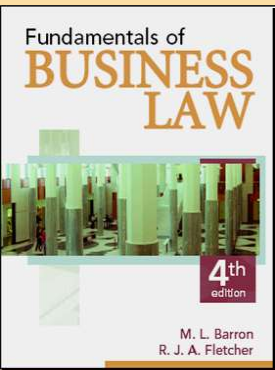
# The need for laws

- Laws are required in society to regulate the behaviour of the individual, to correspond with what is acceptable to the majority of individuals,

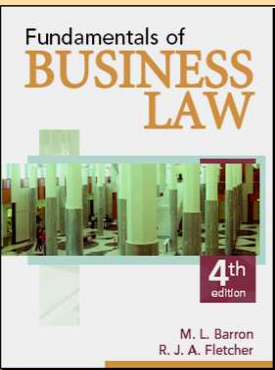


# Classification

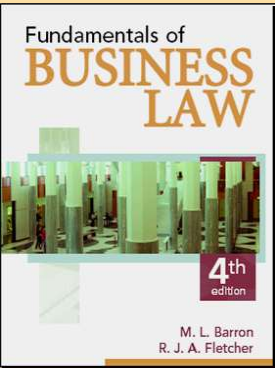
- ***Private Law*** allows individuals to take action against others (i.e. to sue one another).
- ***Public Law*** allows society (via the Public Prosecutor) to take action against others.



# Classification



- *Civil Law* - laws falling into the private law category
  - Law of Torts
  - Contract Law
  - Property Law
- *Criminal Law* - laws covering offences with which an individual can be charged



# Civil

# Criminal

**Person commencing the action:**

Plaintiff

Government

**Outcomes:**

- Damages
- Specific performance
- Injunction

- Imprisonment
- Fines
- Good behaviour bonds
- Community service order

**Standard of proof:**

On the balance of probabilities

Beyond a reasonable doubt

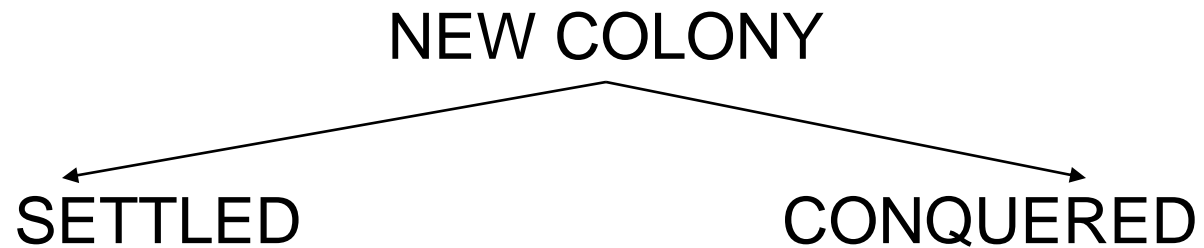
**Burden of proof:**

Plaintiff

Prosecutor

# Doctrine of reception

- To determine laws to be applied

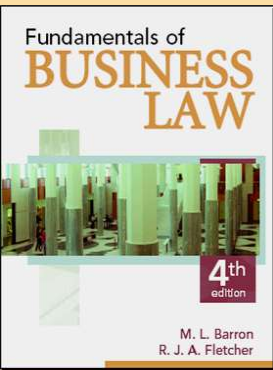


- Laws of settlers (English) would apply

- Law of the conquered would apply



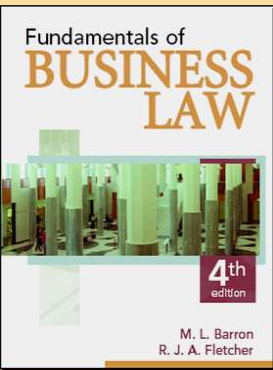
# Legislation dealing with reception of English law



## 4 Geo IV c96 - 1823:

- Created legislative council
- Members nominated by governor
- Enact legislation consistent with English law
- Executive council created
- Authorised the issue of letters patent

# Legislation dealing with reception of English law (continued)



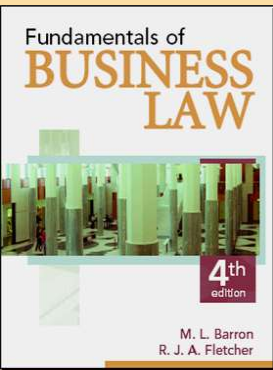
## **The Third Charter of Justice - 1824:**

- Established Supreme Court of New South Wales

## ***Australian Courts Act 1828:***

- All suitable statutes and common law in force in England as at 25 July 1828 should be applied in New South Wales
- Laws passed after 25 July 1824 did not automatically apply to colonies and Van Diemen's Land

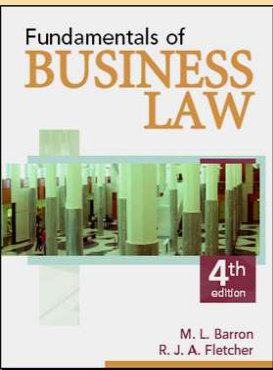
# Legislation dealing with reception of English law (continued)



## ***Colonial Laws Validity Act 1865 (UK):***

- Colonial legislation would be void only if it was repugnant with British laws extending to the colonies

# Legislation dealing with reception of English law (continued)



## ***Commonwealth of Australia Constitution Act 1900 (UK):***

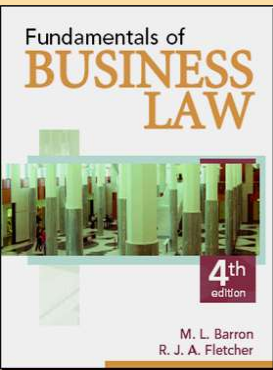
- Created the Commonwealth of Australia
- Created Commonwealth Parliament

### *Section 51:*

Subject matters in respect of which the Commonwealth Parliament has power to legislate. (State Government has these powers also.)

- Taxation
- Defence
- Currency, coinage and legal tender

# Legislation dealing with reception of English law (continued)

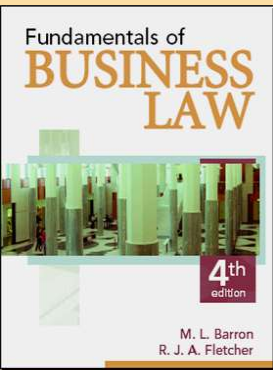


## **Commonwealth of Australia Constitution Act 1900 (UK) (continued):**

- Bills of exchange and promissory notes
- Bankruptcy and insolvency
- Copyright, patents of inventions and designs, and trade marks
- Marriages
- External affairs

Section 109 of Federal legislation overrules State legislation.

# Legislation dealing with reception of English law (continued)



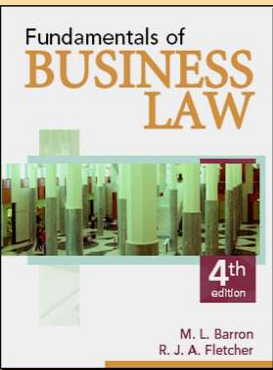
## **Statute of Westminster 1931 (UK):**

- Adopted in Australia by the *Statute of Westminster Adoption Act 1942* (Cwlth)

## ***Statute of Westminster Adoption Act 1942 (Cwlth):***

- Independence of the Commonwealth Parliament from the British Parliament, as no British Act should extend to a dominion unless it had requested and consented to the statute.

# Legislation dealing with reception of English law (continued)



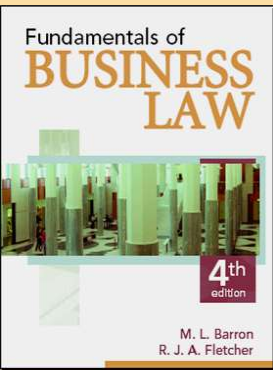
## ***Privy Council (Appeals from the High Court) Act 1975*** **(Cwlth):**

- Abolished appeals from the High Court to the Privy Council

## ***Australia Act 1986 (Cwlth and UK):***

- Repealed *Colonial Laws Validity Act 1865*
- Abolished appeals from Australian courts to the Privy Council in England
- States could not legislate on Foreign Affairs

# Legislation dealing with reception of English law (continued)



## **Mabo v Queensland (No.2) (1992) 175 CLR:**

- Overturned Doctrine of *terra nullius*
- Form of native title to land recognised

## **Native Title Act 1993 (Cwlth):**

- Statutory recognition of native title
- Established the Native Title Tribunal

## **Native Title Amendment Act 1997 (Cwlth):**

- Native title rights could co-exist with pastoral leases
- Where conflict, the rights of pastoralists survive



# Law making power

## *Concurrent power*

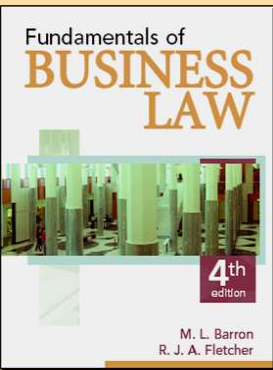
- **S51**: Allows Commonwealth and States to share powers e.g. taxation, banking
- **S109**: If conflict, Federal legislation stands

## *Exclusive power*

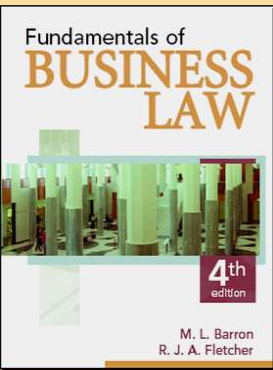
- **S52 (i)**: Commonwealth has sole authority in some areas to legislate
- **S90**: Specific areas of customs, excise and bounties

## *Residual power*

- States have sole power to legislate in other areas not prohibited by Constitution



# Sources of law



## Case law/judge-made law

- **Common law** - Judges follow decisions that had been made in similar, previously decided cases, with the remedy of damages.
- **Equity** - Judges follow decisions that had been made in similar, previously decided cases, with remedies based on fairness.

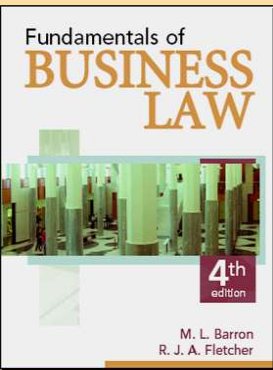
## Statute law

- Acts passed by Parliament

# Bill → Act

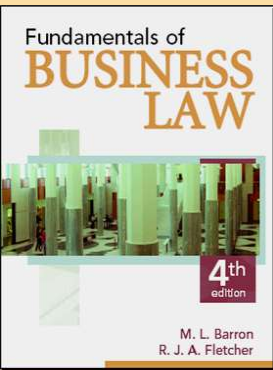
## Introduction of Bill by Minister in House 1

- First reading
  - Name of Bill
  - Date of second reading
- Second reading
  - Minister explains general principles of Bill
  - General debate
- Committee Stage
  - Committee formed to examine and debate
  - Amendments made
- Third reading
  - Vote on Bill
- Second House of Parliament



# Bill → Act

- Second House of Parliament
- First reading
  - Name of Bill
  - Date of second reading
- Second reading
  - Minister explains general principles of Bill
  - General debate
- Committee Stage
  - Committee formed to examine and debate
  - Amendments made
- Third reading
  - Vote on Bill



# Bill → Act

Second House of Parliament

*Acceptance*

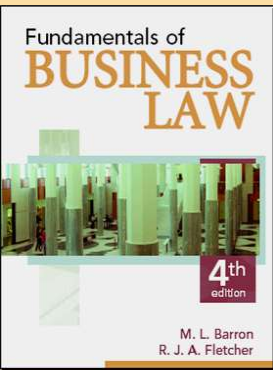
- Royal Assent > Act of Parliament



Notified in Gazette (Govt. bulletin)

*Non acceptance*

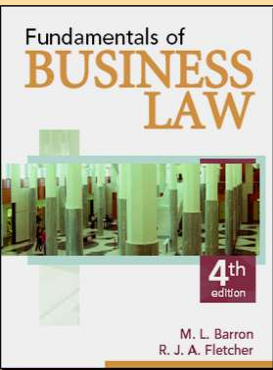
- could lead to a  
Double Dissolution



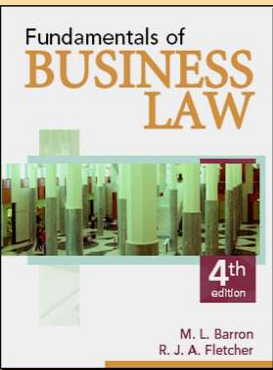
# Delegated legislation

Made under the authority of an Act of Parliament - subordinate legislation

- Due to:
  - Time limitations
  - Expertise limitations
- May be:
  - Overruled by Government which enacted legislation giving authority



# Case law



- Interpretation of statute
- Apply common law principles