

INTRODUCTORY ACTIVITIES



Work with a partner to come up with **TWO FACTS** about the **LAW!** Any two facts! Record them! Then – come up with a statement that is not **100% factual** at law. Be prepared to read these statements to your classmates. The idea is for it to be hard for your class to determine which statement is not **100% factual**.

FACT:

FACT:

FALSE:

Investigate the nature of laws and the reasons for laws in society in relation to values, morals and ethics

How are rules in this class the same as our school rules?

How are rules in this class different to school rules?

How do you behave thanks to your family teaching, modelling to you, training you?

Describe the roles and responsibilities of the three levels of government, including the division of powers



TEXT BOOK WORK!!!

Pages: 232-234

1. **Define** these key terms:

a) Federation

b) Constitutional monarchy

c) Referendum

d) Portfolio

2. **Differentiate** between the House of Representatives and the Senate.

3. List 5 key areas of responsibility of each level of government.

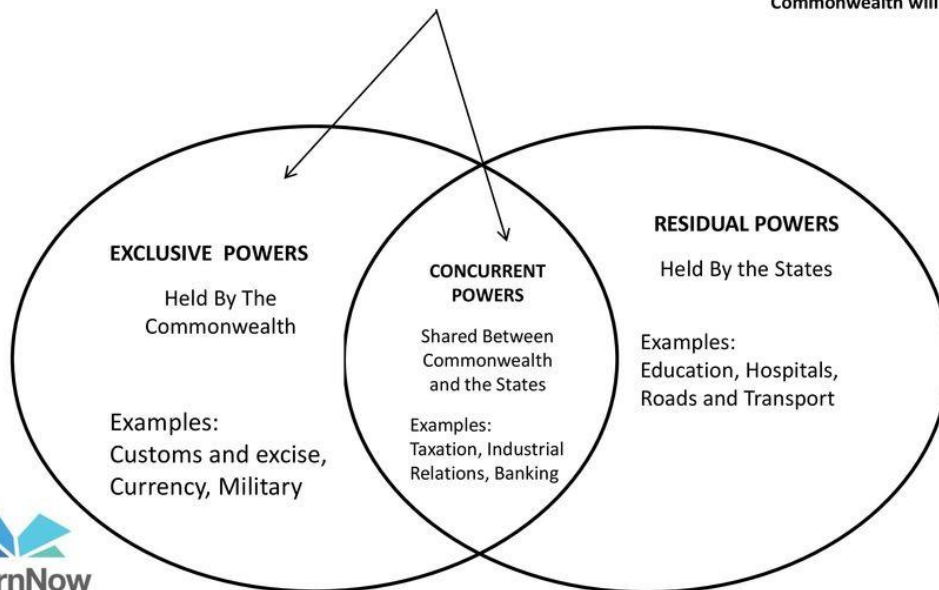
LOCAL	STATE	FEDERAL (Commonwealth)

The DIVISION of POWERS

Division of Powers

S. 51 Specific Powers

S.109 states that if there is a conflict between Commonwealth, the Commonwealth will prevail.



The division of powers refers to the way the [Constitution](#) has allocated law-making powers to Commonwealth and/or state [parliaments](#). The founders of the Constitution ensured that the powers of each parliament were clearly established in order to ensure that federation would succeed. There are four types of law-making powers.

Specific powers

Specific powers are those clearly outlined in the written words of the constitution. For example, section 51(i) establishes that the Commonwealth has the power to make law with regard to trade and commerce.¹ Specific powers will also be either exclusive or concurrent powers.

Exclusive powers

Exclusive powers are law-making powers that solely belong to Commonwealth Parliament and therefore cannot be legislated on by the states. Law-making powers may be exclusive by their nature (i.e. by common sense, the area should be legislated on by the Commonwealth alone). An example of this is section 51(xix), which outlines that the Commonwealth has the power to legislate on 'naturalisation and aliens' (immigration).² Alternatively, law-making powers may be made exclusive by way of prohibitions being placed on the states. This means that the Constitution, in one section, gives a certain power to the Commonwealth, and, in another, prohibits the state from making law on that area. For instance, section 51(vi) gives the Commonwealth the power to make law on defence, and section 114 prohibits the states from raising armies or navies.

Concurrent powers

Concurrent law-making powers are those, which are specifically outlined in the Constitution, and, are shared between the Commonwealth and the states. For example, section 51(ii) states that the Commonwealth has the power to legislate on issues of taxation.³ However, this power is shared. The Commonwealth legislates and regulates income tax, whereas the states legislate and regulate land tax.

Section 109

Section 109 deals with the situation of conflicting laws made by the Commonwealth and the states. This section states that the Commonwealth law will always prevail, and the state law, to the extent of the inconsistency, will become invalid.⁴ For instance, as of 2004 the Marriage Act has explicitly stated that legal marriages can only take place between one man and one woman.⁵ Therefore, despite family law being a concurrent law-making power, states can not legislate to contravene this.

Residual powers

Residual law-making powers are not mentioned in the Constitution. Therefore, they solely belong to the states. Crime and education are examples of areas in which the states solely can legislate. This can lead to inconsistent laws between the states.

SOURCE:

<http://wiki.engageeducation.org.au/legal-studies/unit-3/area-of-study-2-the-constitution-and-the-protection-of-rights/division-of-law-making-powers/>



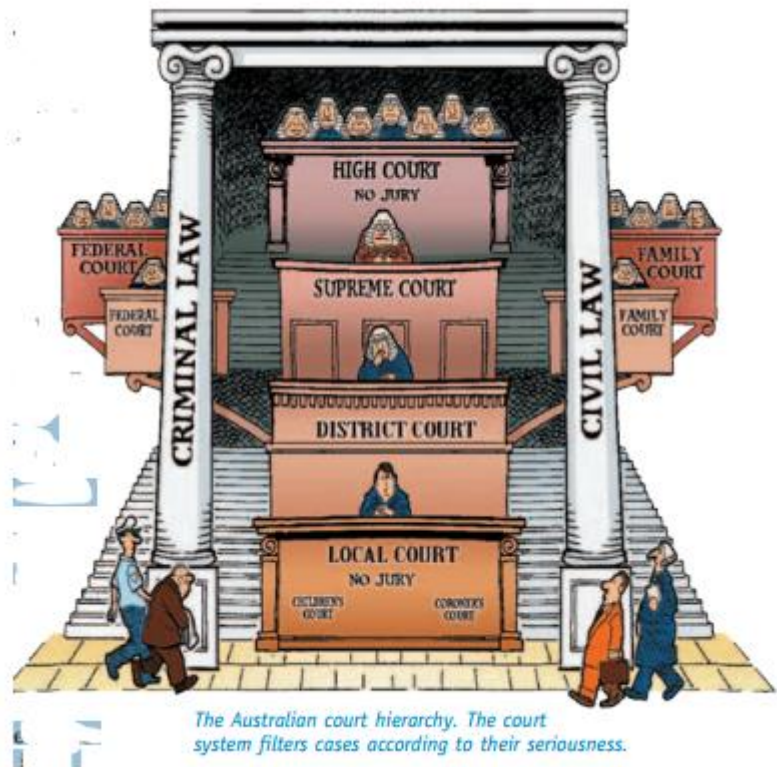
Watch the 3.35min embedded video.

Identify key features of Australia's court system, including the High Court and its role in

The courts structure: hierarchy

The **court** system operates under a similar **hierarchy**, which also relates to the seriousness of the offence. The higher courts, which hear the most serious matters, are at the top of the hierarchy, and the lower courts, which hear less serious matters, are at the bottom of the hierarchy. Each court deals, therefore, with specific legal matters over which it has authority or jurisdiction. Consequently, each court becomes 'expert' in dealing with a particular area of law.

In **criminal cases**, the higher courts deal with the most serious crimes. In **civil cases**, the higher courts hear cases that will affect many people or involve large sums of money. If an individual is unhappy with the ruling of a lower court, they can appeal the decision and have their case reviewed in a higher court. A serious issue facing our society is the cost of a trial, which becomes more expensive if the trial is held in a court that is higher up the hierarchy.



The Local Court

The Local Court is at the bottom of the hierarchy. There are over 160 Local Courts in New South Wales. All criminal cases and more than 90 per cent of civil cases begin in the Local Court. In the Local Court there is **no jury**. Instead, it is a **magistrate** who hears the cases, decides the verdict and sets any punishment. A magistrate can imprison an offender for up to two years. Magistrates are qualified legal practitioners who have many years' experience in dealing with legal matters.

The Local Court deals with minor civil disputes; for instance, where people sue other people for damage to property or for injury claims of up to \$100 000. This court also hears **summary offences** (minor criminal matters) such as stealing, drink-driving, assault, possession of drugs and indecent language.

A magistrate presides over committal hearings dealing with **indictable offences** (major criminal matters) such as armed robbery, manslaughter and homicide to decide if there is enough evidence for the case to go to trial in a higher court. A magistrate also:

- hears bail applications
- issues arrest warrants and search warrants
- hears applications for Apprehended Violence Orders (AVOs).

Two other specialist courts on the same bottom level of the court hierarchy as the Local Court are the Children's Court and the Coroner's Court.

Children's Court

The Children's Court deals with cases involving the care and protection of children and young people. It also deals with criminal cases concerning children and young people who committed offences when under the age of 18. This court is closed to the public and the media. The Children's Court has much the same personnel as the Local Court, but personnel in this court are specifically trained to deal with young people.

Coroner's Court

The Coroner's Court is a special Local Court that investigates deaths by unnatural causes in order to determine the identity of the deceased and the date, place, circumstances and medical cause of death. Coroners in NSW investigate approximately 6000 reportable deaths annually. Coroners also investigate the cause and origin of fires or explosions.

The District Court

The District Court is the 'middle court' in the state legal system. They are located in Sydney and in some regional centres. In the District Court of NSW, cases are heard by judges, who are addressed in court as 'Your Honour', and who conduct the trial. The District Court deals with more serious civil cases for claims over \$100 000 up to \$750 000 and all motor vehicle accident cases.

Its criminal jurisdiction deals with serious criminal matters such as armed robbery and burglary. In some cases a jury will decide whether the accused is guilty or not. If the accused is found guilty, the judge will decide on an appropriate sentence. In general, the District Court cannot hear offences which carry long sentences. The District Court also hears appeals from the Local Court.

The Supreme Court

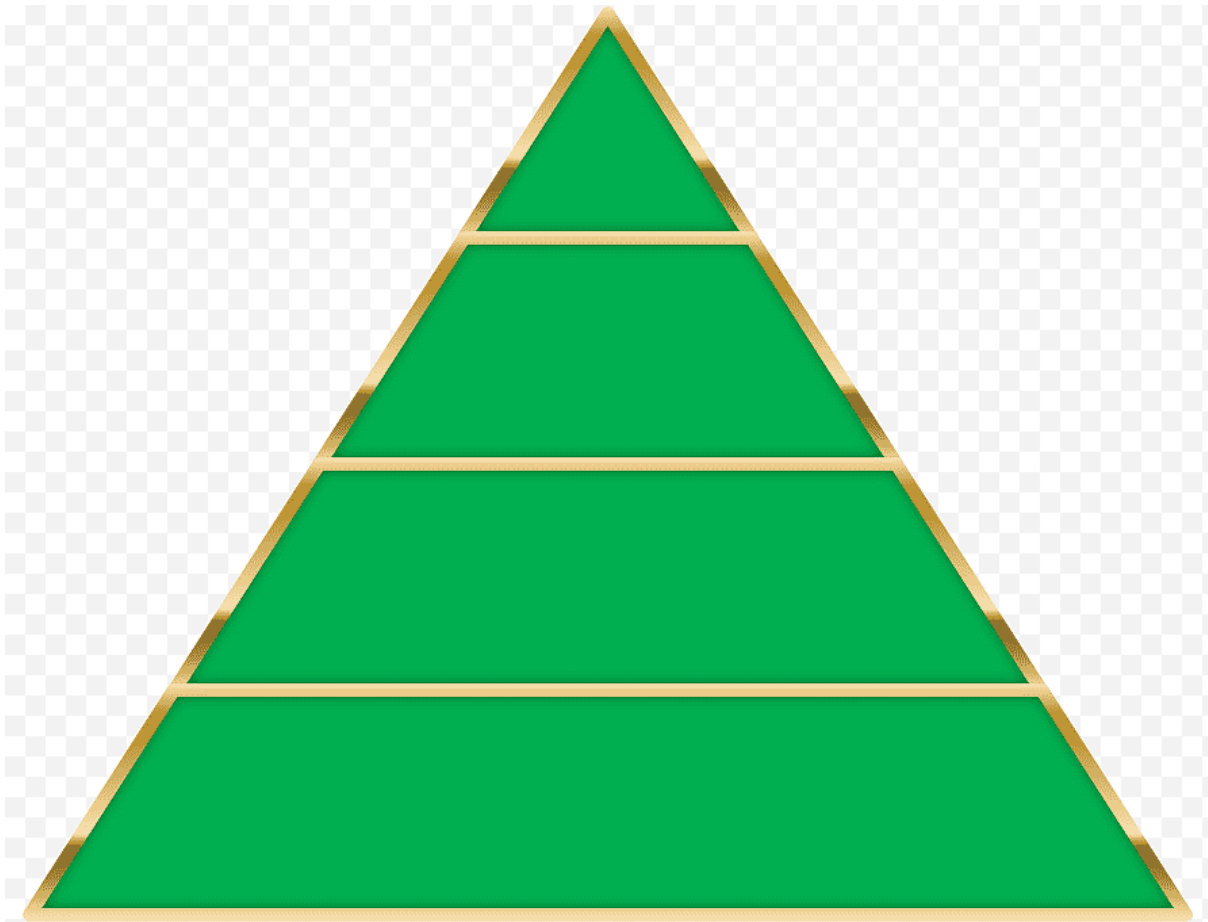
The Supreme Court is the highest in NSW and deals with the most serious criminal cases such as murder, treason and serious sexual assault. As well, the most serious civil cases involving more than \$750 000 are heard in this court. The Supreme Court is located in Sydney and headed by the Chief Justice. However, the judges of the Supreme Court (and of the District Court) hold sessions of their courts in major regional centres. This is known as 'going on circuit'. The Supreme Court also deals with appeals from the two lower courts. The judgements of the Supreme Court are binding (compulsory) on all lower courts. The Supreme Court can impose a wide range of sentences.

The High Court of Australia

The High Court of Australia Located in Canberra, the High Court deals with appeals from the state or territory Supreme Courts. It also hears cases concerning the interpretation of the Australian Constitution. It reads, interprets and applies the Constitution and, in reaching verdicts, it creates laws that then affect the powers of parliaments. The High Court, through its interpretation of the Constitution, has shifted the balance of power away from the states and towards the Commonwealth. Because it is the highest court in Australia, its decisions are final. The High Court is a federal court, which means that any decision it makes applies to the whole country. The High Court has seven judges, although no jury is used in High Court decisions.

TASKS

1 In the triangle below, name the four different levels of courts. Start with the lowest court at the bottom.



2 Why do we have a number of courts?

3 Which courts can hear appeals from Supreme Court cases?

4 Do you think that a court hierarchy is necessary? Why?

5 In what type of cases might a person seek an appeal?

6 Explain the difference between a *judge* and a *magistrate*.

7 Complete the following table to show the differences between the Local, District and the Supreme Court.

	Local Court	District Court	Supreme Court
Location			
Civil case claim amounts \$ \$			
Types of criminal cases			
Appeals to			

8 What is the role of the High Court of Australia?

9 In which court are the following likely to be heard?

(a) A murder trial

(b) An appeal from the NSW Supreme Court

(c) A hearing for a minor traffic offence

(d) An investigation into a suspicious death

(e) An armed robbery trial

(f) The preliminary hearing of a rape case

(g) A civil dispute between business partners involving \$100 million _____

(h) A case dealing with an aspect of the Australian Constitution _____

10 What is court etiquette and why is it important for all people appearing in court to follow it? Discuss this notion with your classmates.

Casestudy

Court etiquette

All parties who attend court are expected to follow court etiquette and behave in an appropriate manner.

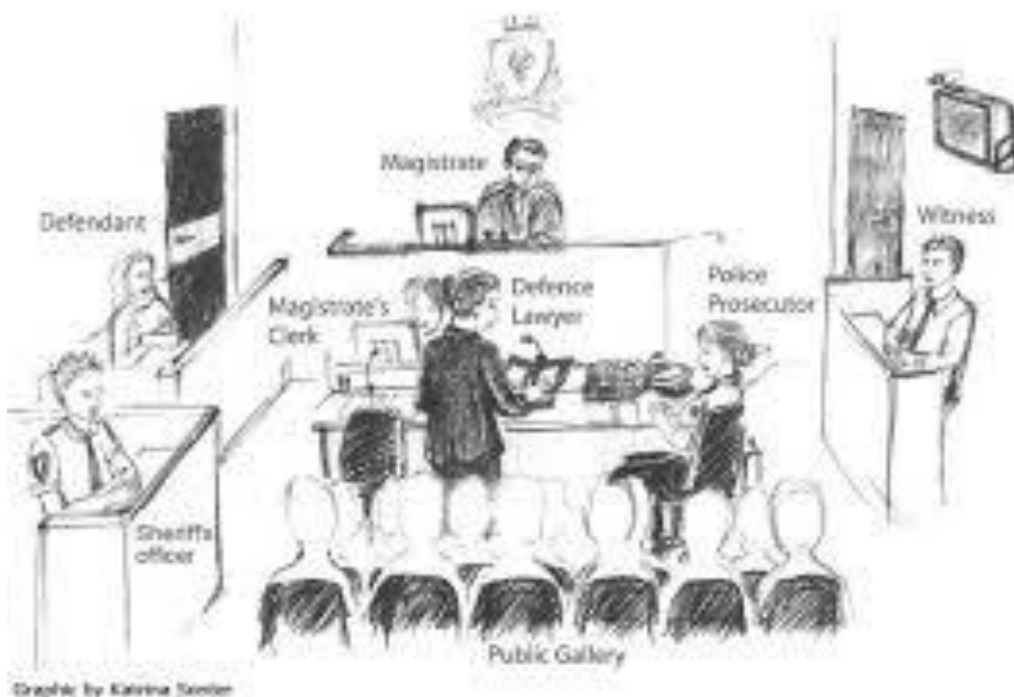
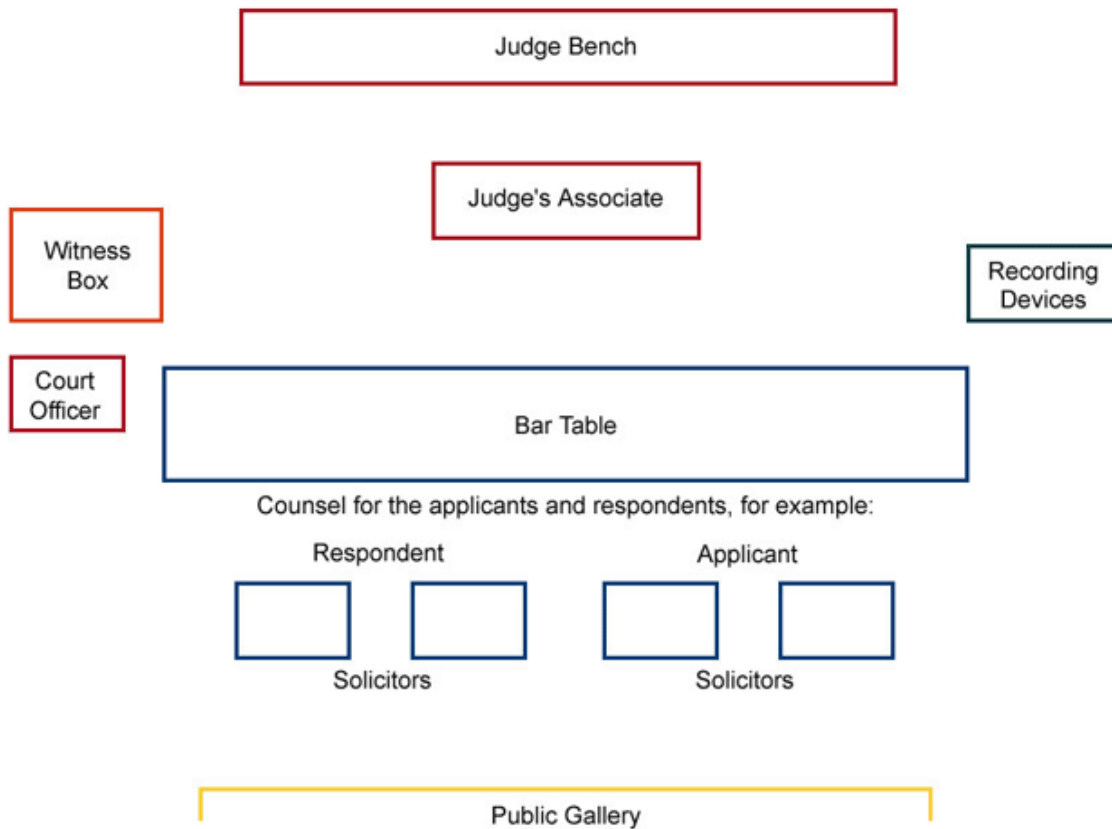


Rules of court

etiquette must be followed when court is sitting, such as:

- standing when the magistrate or judge enters the courtroom
- bowing or nodding to the magistrate or judge when entering or leaving the courtroom
- referring to the magistrate or judge as 'Your Honour'
- silence and no movement when the oath is being administered
- dressing appropriately. Thongs and singlets are not permitted
- no unnecessary talking, eating, drinking or reading in the courtroom
- no weapons in court
- no using cameras, mobile phones or recording devices in the courtroom
- all hats should be removed before entering the courtroom
- no notes can be taken in the courtroom.

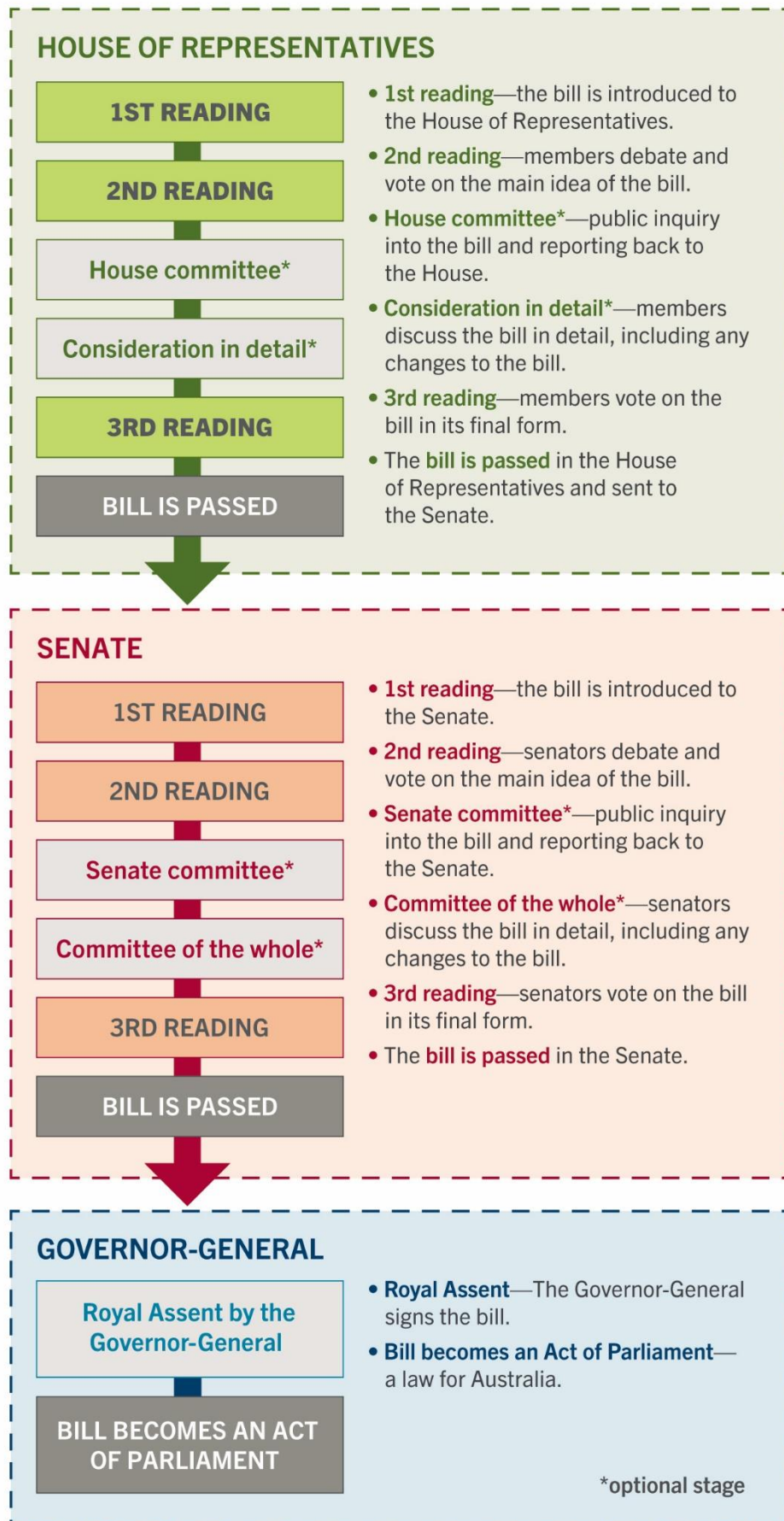
Describe the role of legal personnel and the role and selection of juries



Complete the table!

PEOPLE	Description	PLACES ITEMS	Description
Judge		Crest	
Magistrate		Bench	
Court officer		Bar Table	
Police Prosecutor		Witness box	
Defendant		Dock	
Defence barrister		Gallery	
Magistrate's Clerk / Judge's Associate			
Witness			

THE PATH of a BILL



Investigate the significance of customary law for Aboriginal and Torres Strait Islander Peoples and changes in its recognition over time



TEXT BOOK WORK!!! PP 223-225

DEFINE these key terms / DESCRIBE these key people / acts.

1. actual Aboriginal customary laws

2. kinship

3. Native Title Act

4. Eddie Mabo

5. Meriam people

6. Circle sentencing



TEXT BOOK WORK!!!

1. Read and discuss the case studies pp. 218-222.
2. Complete the table with definitions from page 216 of the text book and from pages 217-225.

TYPE of LAW	DEFINITION
public	
private	
criminal	
civil	
domestic	
international	
administrative	
constitutional	
contract	
family	
industrial	
property	
tort	
customary law	