| **What is law?** | Law is a set of rules that are seen as binding on the community as a whole. It is a set of rules that can be enforced and is officially recognised.  
This definition embodies some characteristics that distinguish a law from a rule:  
(a) **Laws are binding on the whole community**  
Other rules such as church rules or school rules are seen as binding on (or apply only to) those people who belong to the particular church or school.  
(b) **Laws can be enforced**  
This means laws are backed by sanctions (punishments). If a person or organisation disobeys a law, he/she can be punished, made to follow the law or made to pay for the damage caused by the illegal behaviour. The law is enforced through the court system, the police force and various government bodies.  
(c) **Laws are officially recognised**  
The court system and governments will recognise and enforce laws. They will not recognise and enforce other rules. For example, a court will not order someone to wear a school uniform to school, as this is not a law.  
(d) **Law is accessible (discoverable)**  
This means that people can find out what the law says about a particular situation. The law is detailed enough to be applied to different, individual situations.  
(e) **Laws relate to public interest**  
Laws will only exist and be enforced in areas of sufficient public importance. There are no laws about who should wash the dishes in your own home because it is not an area of sufficient public importance.  
(f) **Laws reflect rights and duties**  
| A duty is something that a person is required to do or to stop doing  
A right is something to which a person is entitled | The law imposes duties on people and gives them rights. For example, a person has the right to quiet enjoyment of his or her home. To enable this right to be fulfilled, the law imposes duties on people not to make loud noise at certain times of the day. |

| **Why are laws necessary?** | Every society, no matter how small or how scattered, makes laws of some sort. This is because certain rules must be followed by people if they are to live with each other for any length of time. If there are no laws, there is a condition of anarchy.  
**Anarchy** is a state of lawlessness.  
In a condition of anarchy, that is, without any laws at all, social order breaks down. People need laws in order to keep relationships between |
them reasonably harmonious.

In order to maintain an orderly society, law has several functions:

(a) **Recognition of values and ethics**
   A legal system exists to serve society, so it must reflect the values and ethics of the society.

(b) **Establishment of patterns of conduct**
   A second function of the law is to establish ways of behaving that are acceptable and that encourage the smooth running of society. It does this by establishing explicit rules. For example, the law states that one person must not assault another. Most people will not drive on the wrong side of the road or steal because the law has established rules which forbid this kind of conduct.

(c) **Provision of dispute settlements**
   The law has a major function in setting disputes between people and disputes between a person and the state when that person is accused of moving outside the acceptable rules of conduct established by the law. The law provides for dispute settlement through the adversarial system of trial, through the court system, through special tribunals and through complex rules of evidence and procedure.

(d) **Adaptation to change**
   The law needs to change as society changes. On the other hand, it must be consistent so that people have confidence in the law. As the values of a society change, the law must change so that it is still appropriate for the society. For example, homosexuality was decriminalised in NSW in 1984 because it had become more accepted by society.

| Law, Values and Ethics | Values are principles or attitudes that we hold as important. Ethics are ‘a set of moral beliefs governing behaviour’. Ethics are concerned with choosing between values. They are concerned with what we ought to do, what is right, in a particular situation. Values and ethics are closely interrelated. They are both concerned with what is good or right or fair. Thus both values and ethics are closely linked with ideas of justice. Questions of ethics arise in everyday life on a personal level as well as in society as a whole. For example, a value that many of us hold is that one should accomplish one’s goals. Another commonly held value is that one should behave honestly. These two values could easy come into conflict. If, for instance, to accomplish the goal of becoming an elected politician, a person decides to lie to the voters, then there is a conflict of values. The ethical choice that most people in our society would make in this example is that lying should not occur even if the goal is not accomplished. The legal system has the role of reflecting the ethical choices and values of society as a whole. There are many different types of values and ethics that the legal system recognises. Some areas where the law reflects the values and ethics of society are: |
| **Politics** | Our law states that all people over the age of 18 are compelled to vote in parliamentary elections. This law reflects the value of democracy, that is, that all adults have a right and an obligation to participate in the organisation of society as a whole. |
| **Sexuality** | Our laws make it illegal to force another person to engage in sexual intercourse. This reflects the ethic that sexual intercourse should be consented to by both parties. |
| **Economics** | Our laws require people who earn above a certain income to pay taxes, and those who earn more income pay proportionally more tax. Taxes are then used to provide services to the community as a whole and to provide income to people who cannot earn their own. These laws reflect the values that everyone should contribute to society as a whole, and that all people are entitled to a reasonable standard of living, even those who cannot provide it for themselves. |
| **Medicine** | One of the most controversial areas in which the law intervenes is the area of medicine. In this field, many difficult questions of ethics arise because society has developed the technology to prolong and end life in a way that was not available in past eras. Questions of ethics in this area are called questions of bioethics. Laws which outlaw euthanasia reflect the value that human life is extremely valuable. |

Laws, then, often reflect the values and ethics of society as a whole. Sometimes, however, the law does not intervene in areas of ethics. For example, there is no law about adultery in Australia, but many people see this as wrong. Sometimes, there are laws made that conflict with people’s ethical beliefs or values. For example, some people see abortion as wrong in any circumstances, while others think our laws about this matter are ethically correct. Because society is diverse, there are many differing values held, and the law cannot reflect all of these. The law tries to reflect the values held by the dominant culture in society.

**Law and Justice**

There have been many attempts throughout the ages to define justice. The idea of justice relates to ideas of equality and fairness. It is closely related to the values and ethics that people hold. The law attempts to be just, but a legal system can only be as just as the society from which it stems. For example, if a society finds it quite acceptable for young children to work long hours in factories, then the law will probably do nothing to prevent this from happening.

It is very difficult for the law to be just, because different people have different ideas about what justice means. This is because different people have different values and different ideas about what is ethically correct.

**Law, custom and culture**

A custom is a type of behaviour that has emerged over time and is followed by a group by mutual consent.

Law grew out of customary behaviour and, today, law often embodies the
customs of a society. In a multicultural society such as Australia, laws can come into conflict with customs of a particular cultural group.

Culture means the shared knowledge and way of thinking and behaving that give a group its distinctive way of life. Culture is shown by the beliefs, customs, values, arts, technology and history of a particular group.

Different cultures have different customs and it is often impossible for the law to accommodate these different customs.

For example, in some cultures it is customary for parents to arrange marriages. The parties to the marriage may have little or no say in the selection of a wife or husband. Under Australian law, however, a person must consent to a marriage for it to be valid. Thus Australian law, while it reflects the culture and thus the customs, values and ethics of Anglo-Australians who make up the dominant culture, may conflict with the customs of other cultural groups within Australia.

<table>
<thead>
<tr>
<th>Why do people obey the law?</th>
</tr>
</thead>
<tbody>
<tr>
<td>People obey the law for many reasons, including:</td>
</tr>
<tr>
<td>• A persons beliefs, values or customs means they would follow the legal behaviour anyway</td>
</tr>
<tr>
<td>• Many laws simply regulate behaviour which we generally agree should be regulated, for example traffic offences.</td>
</tr>
<tr>
<td>• We are educated to think that certain behaviour should not be allowed, for example consuming alcohol in the streets.</td>
</tr>
<tr>
<td>• Because of fear of punishment</td>
</tr>
<tr>
<td>• Because of fear of public shame or condemnation</td>
</tr>
<tr>
<td>• Because of a general desire for protection, which means that people want a legal system to protect them and will thus comply with its restrictions.</td>
</tr>
</tbody>
</table>

People disobey the law for the following reasons:
• The temptation to break the law is sometimes too strong
• Some people find it thrilling or exciting to break the law
• They do not see their illegal actions causing any real harm to anyone, for example, drug use.
• They believe that the law is wrong. Disobeying the law for this reason is called civil disobedience.

Civil disobedience arises from ethics. People who deliberately break the law because they believe the law is wrong are making an ethical decision. They are choosing the path that they believe is right, despite the fact that it is illegal.

Sometimes people continue to break the law frequently and seriously. This is usually in the area of criminal law.