Legal Systems in Australia: overview

Australia has a formal written constitution called the Commonwealth of Australia Constitution Act 1900. It is also referred to as the "Commonwealth Constitution", "the Constitution" and the "Australian Constitution".

The primary source of the constitution is section 9 of the Commonwealth of Australia Constitution Act 1900, which is an Act of the UK Parliament.

The constitution is a federal constitution and is the supreme law and framework for the federal government and its relationship with the states and territories of Australia.

Section 107 of the Commonwealth of Australia Constitution Act 1900 preserves the right of states to maintain their own state constitutions. State constitutions are referred to using the name of the state to which they apply, such as the "New South Wales Constitution" or the "Victorian Constitution".

There are two further sources of constitutional law in Australia.

- The Statute of Westminster 1931 (an Act of the United Kingdom Parliament) allowed Australia to repeal UK legislation and to legislate extra-territorially. It also removed the UK's power to make law for Australia. Prior to this, Australia was recognised as a 'de facto' independent dominion of the UK and but did not have legislation granting legal recognition of independence. The passage of this legislation prohibited the UK Parliament from making laws for Australia unless by consent.
- The Australia Act 1986 (joint statutes between the United Kingdom and Australian Parliaments) broke ties between the UK and Australian Parliaments by ending the UK Parliament's power to make laws for Australia and empowering state Parliaments to repeal UK legislation.

General constitutional features

2. **What system of governance is provided for?**

System

The constitution provides for a system of government that is responsible to the people, and representative of the people through the institution of the Commonwealth Parliament.

The system of representative and responsible government was highlighted when the Australian public in late 2017 indicated by a postal survey plebiscite to legalise same-sex marriage prompting the Federal Government to enact legislation reflecting the will of the majority of votes. The Australian Parliament enacted the Marriage Amendment (Definition and Religious Freedoms) Act 2017. This was the fourth plebiscite in the history of Australia when the public has been asked to decide on a matter of significance.

Head of state

The head of state is the Queen, whose powers are exercised by the Governor-General. The Governor-General is "Her Majesty's representative in the Commonwealth" (section 2, Commonwealth of Australia Constitution Act 1900). Important powers exercised by the Governor-General include summoning and dissolving Parliament and assenting to legislation.

Structure
The constitution provides for a three-part federal parliament comprising the Queen, the Senate and the House of Representatives:

- The Queen is the Crown and reflects that Australia is a constitutional monarchy with prerogative and executive powers vested in the head of state.
- The House of Representatives reflects the popular will of the citizens.
- The Senate reflects the concerns of each state.

3. **Does the constitution provide for a separation of powers?**

The Commonwealth of Australia Constitution Act 1900 is divided into chapters providing for a vesting and strict separation of powers between the executive, legislative and judicial branches of government.

Chapter I defines the powers of Parliament as the legislative branch, Chapter II defines the powers of the executive and Chapter III defines the powers of the judiciary.

Violation of the separation of powers is made difficult by the constitutional machinery and the safeguards involved in the exercise of each branch's powers, such as bills being tabled and the requirement for formal sealed court orders to effect legal process.

The High Court of Australia has been swift to declare attempted encroachments on the power of another branch unconstitutional and invalid. The important decision in the Boilermakers' Case: R v Kirby; Ex parte Boilermakers' Society of Australia (1956) 94 CLR 254left no doubt as to the applicability of the doctrine of separation of powers to the Australian government.

The supremacy of the Australian Constitution and the separation of powers were recently upheld by the High Court of Australia in the "dual citizenship cases" Re Canavan & Ors ([2017] HCA 45) Under section 44 (i) of the Australian Constitution, a member of Parliament cannot hold citizenship of another country. Certain members of Parliament including the Deputy Prime Minister were found to have citizenships of other states. The High Court declared that such members of Parliament were incapable of being chosen for parliament and disqualified. In practice, this resulted in the relevant members of Parliament stepping down and by-elections occurring.

4. **What is the general legislative process?**

Proposal and drafting
Any member of the House of Representatives may propose a bill. A bill proposed by a minister is defined as a government bill. Bills proposed by members who are not government ministers are defined as private member's bills.

A matter of local public concern can be raised by the public with their relevant local member of parliament who can speak about the matter in parliament and thereby start the process of proposing a draft bill if the matter requires the change of law.

Most bills are drafted by the Office of the Parliamentary Counsel, based on instructions issued by government departments.

A minister who wishes to introduce a bill gives notice to the Clerk of the House, who in turn causes a notice to be listed in the House's Notice Paper of agenda for business at the next sitting of Parliament.

At the next sitting of Parliament when government business is listed to be considered, the Clerk of the House will announce the notice of the bill. The responsible minister will then present the bill by making a short announcement of its title and handing a copy of the signed bill and its explanatory memorandum to the Clerk of the House.

The Clerk of the House then reads out the long title of the bill, and copies are given to all members and made available to the public. This is known as the first reading of a bill.

Scrutiny
After the Clerk of the House concludes the first reading, the responsible minister will move that the bill be read a second time. The minister will explain the purpose, principles and effect of the bill. This is known as the second reading speech.

After the second reading speech, the proposed bill is adjourned for a second reading debate. This gives members time to read and study the bill and allows for public debate and discussion.

The second reading debate is the crucial forum where the bill is debated and discussed. Alternative measures are proposed, changes to the bill are suggested, and it is usual for a member of the opposition to state their position on the bill. If the bill is agreed to in principle, the House will vote that the bill has passed its second reading.

The bill then moves to a consideration in detail stage. Each clause of the bill is examined and may be amended, removed or substituted. If the bill is agreed to, it moves to the third reading stage.

The third reading stage is usually a formality, and in some cases a minister may immediately propose a motion for the third reading after a bill has passed the consideration in detail stage. If the motion is passed, the bill has passed the House of Representatives.

The Clerk of the House then issues a certificate that the bill has passed the House of Representatives and the passed bill and its certificate are delivered by the Sergeant-at-Arms to the Senate for consideration.

The Senate undertakes three readings of the bill and returns the bill, either with or without amendments, to the House.

Enactment
If a bill has passed both Houses in exact form and this has been certified by the Clerk of the House, it is presented to the Governor-General for assent. If the Governor-General in the name of Her Majesty assents to the bill, the bill becomes an Act of Parliament and part of the law of Australia.

5. **Is there a doctrine by which the judiciary can review legislative and executive actions?**

The judiciary can review legislative and executive actions. Australia has both common law judicial review and specific statutory enactments providing for judicial review.

The High Court of Australia is the highest court created under the constitution and has original jurisdiction in judicial review matters involving the Commonwealth of Australia (section 75, Commonwealth of Australia Constitution Act 1900).

The Federal Court of Australia has jurisdiction to hear matters concerning judicial review pursuant to the Administrative Decisions (Judicial Review) Act 1977 (Cth) and the Judiciary Act 1903 (Cth).

Courts may declare unconstitutional and invalid laws and actions that are incompatible with the constitution, and therefore render them inoperative. Where there has been an error of process, the courts can also remit a matter back to a government department or body for reconsideration and fresh determination according to law.

6. **Are certain emergency powers reserved for the executive?**

The constitution does not expressly reserve any emergency powers to the executive.

However, in Pape v Commissioner of Taxation (2009) CLR 1, the High Court expressed the opinion that section 61 of the Commonwealth of Australia Constitution Act 1900 preserved the monarch's prerogative powers, and that there remained a nationhood power which could be exercised in emergencies. The court did not define the scope and limits of this power.

Australia has been very fortunate to not have faced a national emergency such as a military coup or unlawful overthrow of government. However, if such a situation did occur, there is scope to empower the executive to act in time of emergency through the reserved prerogative powers, nationhood powers and the duty to maintenance of the constitution, as stated in the AAP Case (1975) 134 CLR 338.

7. **Are human rights constitutionally protected?**

The constitution does not contain express provisions positively protecting human rights. The framework for the constitution is to create a supreme law establishing and regulating federal government and its relationship with the states and territories. It is not intended as a bill of rights.

The constitution does provide for the right to vote, just acquisition of property by the Crown, right to trial by jury, freedom of religion and prohibition of discrimination based on residency in a state.

Human rights are left to other legislation at federal and state level such as the Racial Discrimination Act 1975 (Cth), Sex Discrimination Act 1984 (Cth) and the Charter of Human Rights and Responsibilities Act 2006 (Vic).

Amendment

8. **By what means can the constitution be amended?**

The constitution can only be altered by a referendum in which the amendment is approved by a majority of electors in a majority of states. A proposed law to alter the constitution must first be passed by Parliament and then put to the electors of each state for their approval through a referendum process (section 128, Commonwealth of Australia Constitution Act 1900).

Legal system

Form

9. **What form does your legal system take?**

Australia and all its states and territories including New South Wales follow the common law legal system.

Main sources of law

10. **What are the main domestic sources of law?**

The main sources of law, in their order of hierarchy, are:

- The Commonwealth of Australia Constitution.
- Commonwealth legislation.
- Decisions of the High Court and Federal Courts of Australia interpreting the Constitution and Commonwealth legislation.
- State Constitutions.
- State legislation and decisions of the state courts interpreting state legislation.

11. **To what extent do international sources of law apply?**

Australia's membership of the international community and global citizenry is evidenced by its membership of international treaties and institutions.

Negotiation and execution of a treaty is the function of the executive (section 61, Commonwealth of Australia Constitution Act 1900). The treaty will be signed by the Minister for Foreign Affairs and Trade under authority of the Executive Council.

Although local statutes must comply with the constitution, they are not required to comply with international law to which Australia is a party, unless it has been incorporated into domestic law.

International law forms a part of local Australian law at a domestic level when it has been incorporated by statute through the Parliamentary process (Minster for Immigration and Ethnic Affairs v Teoh (1995) 183 CLR 273).

The Commonwealth has an external affairs power, allowing it to pass laws to bring international treaty obligations into effect as domestic law (section 51, Commonwealth of Australia Constitution Act 1900). See also Commonwealth v Tasmania (the Tasmanian Dam case) (1983) 158 CLR 1.

Court structure and hierarchy

12. **What is the general court structure and hierarchy?**

The federal courts are the:

- High Court of Australia.
- Federal Court of Australia.
- Family Court of Australia.
- Federal Circuit Court of Australia.

The New South Wales state courts are the:

- Court of Appeal and Court of Criminal Appeal.
- Supreme Court of New South Wales.
- Industrial Relations Commission and Industrial Court of New South Wales.
- Land and Environment Court.
- District Court of New South Wales.
- Local Court of New South Wales.
- Coroners Court.
- Drug Court of New South Wales.
- Children's Court of New South Wales.

The constitution preserves a right to appeal from the state's highest court to the High Court of Australia.

13. **To what extent are lower courts bound by the decisions of higher courts?**

Decisions of superior courts are binding on lower courts.

Only the ratio decidendi becomes precedent. Dissenting judgments and general obiter do not form part of precedent (Garcia v National Australia Bank Ltd (1998) 194 CLR 395).

The High Court, as the highest court of the land, is not bound by its own prior decisions (Imbree v McNeilly [2008] HCA 40).

State courts of appeal should follow precedent from corresponding state courts of appeal (Farah Constructions Pty Ltd v Say-Dee Pty Ltd [2007] HCA 22).

14. **Are there specialist courts for certain legal areas?**

At the commonwealth federal level the Family Court of Australia hears matters under the Family Law Act 1975 (Cth).

At the New South Wales state level there are the Industrial Court of New South Wales, the Land and Environment Court of New South Wales, the Drug Court of New South Wales, and the Children's Court.

15. **Are other quasi-legal authorities commonly used?**

Federal level

The following quasi-legal authorities are commonly used at federal level:

- The Administrative Appeals Tribunal (AAT) handles a broad range of reviews from government department decisions as authorised by various legislation specifying that an appeal lies to the AAT. For example, a refusal by a visa officer in the Department of Immigration to grant a visa may be appealed to the AAT (Migration Act 1958 (Cth)).
- The Fair Work Commission is the commonwealth federal workplace relations tribunal hearing workplace matters.
- The Fair Work Ombudsman promotes compliance with workplace laws and investigates complaints of breaches of workplace law.
- The National Native Title Tribunal is the commonwealth federal tribunal dealing with native title rights applications by Aboriginal and Torres Strait Islander groups.
- The Australian Competition Tribunal is the commonwealth federal tribunal dealing with anti-competitive authorisations and trade practice matters.
- The Copyright Tribunal deals with matters of royalty payable for music works and licence matters.

- The Defence Force Discipline Tribunal deals with appeals in relation to service force offences under court martial.
- The Social Security Appeals Tribunal deals with reviews of decisions made by departments handling veterans' payments, family assistance, parental leave pay, education or training and child support payments.
- The Australian Human Rights Commission administers the Racial Discrimination 1975, the Sex Discrimination Act 1984, the Disability Discrimination Act 1992, the Age Discrimination Act 2004, the Australian Human Rights Commission Act 1986 and international treaties to which Australia is a signatory.
- The Australian Competition and Consumer Commission handles competition matters to ensure compliance with competition, fair trading and consumer protection laws. These include product safety, anti-competitive practices and regulation of essential industries.

New South Wales state level

The following quasi-legal authorities are commonly used at New South Wales state level:

- The Industrial Relations Commission of New South Wales deals with local aspects of employment law and industrial disputes, mainly with state employees.
- The New South Wales Civil and Administrative Tribunal handles many matters including tenancy, guardianship, small claims and review of government decisions. This Tribunal is widely accessed by the public.
- The Independent Commission Against Corruption investigates public sector corruption.
- The Judicial Commission of New South Wales assists local courts with achieving consistency in sentencing, continuing education and training of judicial officers, and handles complaints against the judiciary.

Judiciary

16. **Does the constitution provide for an independent judiciary?**

Section 72 of the Commonwealth of Australia Constitution Act 1900 sets out express provisions on the manner of appointment, removal and retirement age for judges of the High Court and other federal courts created by Parliament. The purpose of these provisions is to ensure independence of the federal judiciary.

17. **How are members of the judiciary typically appointed?**

Appointment

Federal court judges are appointed by the Governor-General in Council on advice of the Cabinet on recommendation of the Attorney General.

Judges and magistrates in New South Wales are appointed by the Governor in Council of New South Wales on advice of the Cabinet on recommendation of the New South Wales Attorney General.

Qualifications

A judge of the High Court must have been a federal or state judge or a barrister, solicitor or legal practitioner with at least five years' experience.

A judge in a local New South Wales court must have been an Australian lawyer for five years or more. Higher courts require a person to have been an Australian lawyer for seven years or more.

Litigation (civil and criminal)

18. **Do the courts use an adversarial, non-adversarial or other system?**

New South Wales and all other Australian federal and state jurisdictions have an adversarial system for civil law. The party raising the issue has the burden of proof.

Criminal proceedings by their nature are inquisitorial. The accused does not have to assist the Crown or state. It is not a dispute resolution process.

19. **Who is responsible for gathering evidence?**

In criminal cases, the state or Crown as the relevant prosecuting authority must disclose all evidence gathered in the matter against the accused person. This includes evidence that may exonerate the accused. The burden of proof is on the state.

In civil cases, each party must gather their own evidence to support their claim or defence. Each party must make discovery on the other, so that there is no element of surprise or trial by ambush in civil proceedings. The requirement for mutual disclosure encourages fair litigation and allows each party to fairly weigh up settlement and conduct of the matter. Even if the defendant has no evidence to disclose, the plaintiff will be required to disclose all evidence it relies on to succeed in its claim against the defendant.

20. **Is evidence independently examined before a trial?**

Generally, all evidence must be tested at trial by adducing the evidence, having the evidence subjected to cross-examination and re-examination and ultimately making closing submissions on evidence. If evidence is not formally disallowed, it is admitted for judicial consideration as part of the process of reasoning and judgment of the court.

In civil matters, the parties have various options in terms of evidence, including:

- Gathering and tendering expert opinion.
- Issuing a notice to admit.
- Seeking interrogatories.
- Filing affidavits and witness statements.
- Issuing subpoenas for documents and testimony.

In particular, it may be open to a party to subpoena a piece of evidence to be deposited for inspection in court and then uplifted or copied to have the evidence examined before trial.

In criminal matters, evidence disclosed by the state or Crown is often tested and scrutinised by the accused. However, any results of independent testing will still need to be offered in trial in defence of the accused.

Practitioners in this area should take note of the New South Wales Evidence Act 1995 (NSW), the Civil Procedure Act 2005, the Criminal Procedure Act 1985 (NSW) and the Uniform Civil Procedure Rules 2005.

21. **Are trials/hearings open to the public?**

Civil law
All civil trials are open to the public, unless there is a court order for a closed court. For example, family court and children's court matters may be heard in closed court.

Criminal law
All criminal trials are open to the public, unless there is an order for a closed court. For example, when a complainant of sexual assault is giving evidence, arrangements may be made for a closed court.

There is no common law right to exclude the public from courts, as open public hearings ensure that justice is seen to be done (John Fairfax Publications Pty Ltd v District Court of New South Wales (2004) 61 NSWLR 344 (CA)).

The law on closed courts is found in section 71 of the Civil Procedure Act 2005 (NSW). Generally the court may be closed if the presence of the public will defeat the ends of justice.

22. **Are reporting restrictions typically imposed in relation to a trial?**

Civil and criminal law
Reporting restrictions are not imposed pre-trial, during the trial and post-trial in either civil or criminal trials.

Suppression and non-publication orders
Generally, court proceedings can be reported by the media and discussed by the public unless there is a suppression or non-publication order in place. The Court Suppression and Non-Publication Orders Act 2010 (NSW) contains provisions on the making of suppression and non-publication orders in particular circumstances. Most of these provisions have the purpose of:

- Protecting the parties from identity and information theft and abuse.
- Protecting the safety of a person.
- Safeguarding the administration of justice.

The essential test is one of necessity.

23. **What is the main function of the trial and who are the main parties to it?**

Essentially, a trial is the testing of the allegations before the law courts, which are constitutionally empowered with judicial power and therefore the only legitimate source of determining disputes according to law.

All trials are fact finding missions. Pleadings are merely allegations and a trial must adduce evidence so that findings of fact can be made in relation to the allegations.

All parties have the right to test evidence and make submissions on the evidence and law before an independent and impartial judiciary. All witnesses and their evidence, whether oral or by exhibits, are subject to examination-in-chief, cross-examination by the opposing party and re-examination. Parties may call expert witnesses to give their opinion on matters in issue. Parties may address the courts by making submissions on the law and the evidence.

Each court has rules and practice directions which prescribe the particular manner of procedure for conducting matters. Most cases begin with the issue of a writ of summons, statement of claim or originating application, to which the opposing party files a defence or response. Trial directions are made at close of pleadings for the conduct of the hearing.

24. **What is the main role of the judge and counsel in a trial?**

Role of judiciary
Judges are impartial. They hear the parties adduce evidence and make submissions on the law. It is for the parties to select their strategy and method of trial conduct, as long as these are not outside the scope of the court rules, practice and procedure.

It is rare for judges to question a witness. This can happen in a few limited circumstances where a judge may seek limited clarification on a matter, or where the witness may be vulnerable, such as a child or sexual assault complainant. A judge would usually question a witness to ensure the witness is adequately safeguarded and that evidence is clarified.

Judges do not examine the evidence before trial. If a judge had occasion to mediate over the dispute or test the evidence before trial, this judge would not preside over the trial unless all parties consented.

Role of legal counsel
Counsel are advocates for their clients, but their first duty is to be officers of the court. Counsel must:

- Ensure that the court is not provided with incorrect or inapplicable legal authorities.
- Never mislead the court.
- Always be fair and ethical.
- Uphold the highest professional standards.
- Assist the court to discharge its functions.

Counsel should be independent, skilled and aware that they perform a public service.

Counsel represent clients and ensure that the client's position including evidence, testing the opposing case and legal arguments are effectively placed before the court.

Counsel may be involved from a very early stage in litigation. This may include giving a legal opinion, drafting and settling pleadings, raising and responding to allegations, advising on the evidence and proof required, and ultimately conducting hearings and any possible appeals.

Please see the Legal Profession Uniform Law Application Act 2014 (NSW), Legal Profession Uniform Law, and the applicable Rules of conduct for barristers and solicitors.

25. **To what extent are juries used?**

Civil law
New South Wales District and Supreme Courts provide for jury trials in civil proceedings.

Usually the jury comprises four individuals (section 20, Jury Act 1977 (NSW)). In certain civil proceedings in the Supreme Court a party may apply for a 12-person jury trial.

In civil trials, if a jury cannot reach a verdict after deliberating for at least four hours, a majority verdict of three jurors may be permitted by the court. In a 12-person jury civil trial, a consensus between eight jurors may be accepted.

If a jury is not able to agree on a fact in issue, the parties may jointly agree to the judge deciding that issue of fact. If a jury is not able to agree to a unanimous or majority verdict, the jury may be discharged and a retrial ordered.

Criminal law

New South Wales District and Supreme Courts provide for jury trials in certain indictable serious offence proceedings (Criminal Procedure Act 1986 (NSW)). Usually the jury comprises 12 individuals (section 19, Jury Act 1977(NSW)).

In criminal trials, if a jury of 12 cannot reach a unanimous verdict after deliberating for at least eight hours, a majority verdict of 11 jurors may be permitted by the court.

If a jury is not able to agree to a unanimous or majority verdict, the jury may be discharged and a retrial ordered.

The Jury Act 1977 (NSW) governs the jury trial process. Jurors are selected randomly from the New South Wales electoral list. Certain classes of person may be exempted due to religion, profession or disability.

More individuals than the number of jurors required are summoned for jury duty, and each party may challenge a potential juror. In criminal trials, each party has three pre-emptory challenges. In civil proceedings, each party may make a number of pre-emptory challenges equal to half the number of jurors (for example, two challenges for a jury of four).

Employers may not penalise their employees for being away from work on jury duty. Employees are usually able to claim allowances and payments for jury service.

26. **What restrictions exist as to the evidence that can be heard by the court?**

Evidence that is relevant to the matter in issue may be heard. The court has a general discretion to exclude evidence that is more prejudicial than probative and to limit the use of evidence if it may be prejudicial or unfairly misleading to a party. The court must refuse to admit evidence in criminal proceedings whose prejudicial value far outweighs its probative value.

The court will not admit evidence obtained improperly or illegally unless it is desirable to admit such evidence despite the way it was obtained due to its high probative value.

A witness is presumed to be competent and compellable. The spouse of an accused in criminal proceedings may object to being compellable. A co-accused in criminal proceedings is not compellable to give evidence against their co-accused. A party calling an unfavourable witness may seek permission to treat the witness as hostile and cross-examine the witness. The court may curtail and disallow questions to vulnerable witnesses.

Original documents do not have to be tendered; copies may be used. The court may allow for demonstrations, inspections and experiments.

Hearsay evidence may be heard in civil proceedings if the original maker of the statement is not available, or if they are available but calling them would involve undue hardship and expense. Exceptions to the restriction on hearsay evidence in criminal proceedings are allowed in limited circumstances, such as if the maker had a duty to make the statement, and it was made in reliable circumstances shortly after facts asserted. The accused may present hearsay evidence intended to show their innocence.

The opinion of a lay person is admissible if it goes to what they saw, heard or perceived. Expert opinion may be used to prove facts about which the opinion is expressed, if the opinion is relevant for a purpose other than proof. The ultimate issue rule is also abolished.

Tendency and coincidence evidence is not admissible unless its high probative value outweighs its prejudicial value. Exceptions apply to credibility evidence. Credibility evidence is allowed only by leave of the court. The accused can only be cross-examined on credibility in limited circumstances, such as reputation and prosecution character.

Special rules apply to visual and picture identification, to safeguard the accused.

Please see Evidence Act 1995 (NSW) and the Uniform Evidence provisions.

27. **Which party has the burden of proof in a trial and at what standard is this burden met?**

Civil law
The burden of proof is on the plaintiff. The standard of proof is the balance of probabilities (section 140, Evidence Act 1995 (NSW)).

Criminal law
The burden of proof is on the Crown or state. The standard of proof is proof beyond reasonable doubt (section 141, Evidence Act 1995 (NSW)). The accused has a fundamental right to remain silent and not assist in their prosecution.

In certain specified criminal issues, such as drug trafficking, the accused has the burden to prove certain matters on a balance of probabilities, such as that they possessed drugs for a purpose other than supply.

In a partial defence of substantial mental impairment seeking to reduce murder to manslaughter, the accused has the burden of proving the substantial mental impairment.

The accused also has the onus of seeking to prove mental illness in an insanity defence on the balance of probabilities.

28. **What verdicts can the court give?**

Civil law
In civil cases the verdicts are generally either:

- Judgment for the plaintiff or applicant.

- Judgment for the defendant on the counter-claim.
- Action dismissed where the plaintiff was unable to succeed on claim.

Criminal law

Generally, in criminal law the only appropriate verdicts are:

- Guilty.
- Not guilty and acquitted.
- Not guilty by reason of insanity or substantial mental impairment.
- Alternate verdicts of attempts and lesser convictions.

29. **What range of penalties/relief can the court order upon a verdict?**

Civil law

In civil cases, the courts have a wide scope in terms of relief including:

- Monetary damages including general, special and exemplary damages.
- Summary judgment and default judgment.
- Proportionate and split liability between multiple parties.
- Orders for indemnity.
- Legal costs, including costs between solicitors (solicitor client) and all costs incurred in litigation (indemnity).
- Injunctions.
- Declarations, including mandatory and prohibiting declarations.
- Judicial review orders including mandamus and prohibition.
- Orders for accounts of financial matters.
- Return of property.
- Rectification of official registers such as land titles.

Criminal law

In criminal cases, the penalties issued by courts are very much guided by sentencing laws and decisions of the superior courts, along with the mitigating and aggravating factors. Penalties can include:

- Recording a conviction and not recording a conviction if the circumstances warrant.
- Imprisonment.
- Reduction of prison term for time served in remand while awaiting trial.
- Mental treatment orders including residing at psychiatric facility.
- Minimum term of prison before eligibility for parole.
- Registration on sex-offenders register.
- Suspended sentences.
- Discharges and diversions.
- Suspension and cancellation of driving licences.
- Destruction of seized drugs and illicit substances.
- Costs orders in favour of the accused, if the accused was successful in their defence.