

LEGAL STUDIES 2018 BRIEF OVERVIEW OF UNIT 3

AREA OF STUDY 1 – THE VICTORIAN CRIMINAL JUSTICE SYSTEM

DOT POINT 1:

THE PRINCIPLES OF JUSTICE, FAIRNESS AND EQUALITY

The principles of justice are a recurring theme in Unit 3 and so you will be constantly referring back to them during your studies and your revision.

Justice is a difficult concept to define and so each person may have been provided with a different definition.

Once acceptable definition is: Justice is the legal or philosophical theory by which fairness is administered.

In the Victorian criminal justice system there are determined to be three principles of justice:

- Fairness
- Equality
- Access

FAIRNESS

Fairness can be defined as 'impartial and just treatment or behaviour without favouritism or discrimination'.

However, like justice, fairness can mean different things depending on a person's values and perspectives. It does not necessarily mean that everyone 'gets the same thing'.

In terms of your studies, fairness can be achieved through a variety of processes and procedures within our criminal justice system. Some of the aspects of the criminal justice system that relate to fairness include:

- was the dispute heard and resolved in a timely manner – were there unnecessary delays that negatively impacted the victim or the accused.
- did the system provide appropriate legal representation for both parties.
- the opportunity for the accused to present their case and know the evidence that will be brought against them.
- the opportunity for either party to appeal (review) a decision made.
- whether the accused and victims can understand legal processes and terminology, and have adequate assistance where necessary.

- whether laws and court rules have been properly applied.
- whether people have been treated impartially and without fear or favour (including victims).

There may be other aspects to this principle that students may be introduced to during class.

EQUALITY

In society, equality means that everyone should be treated equally regardless of their different personal characteristics or beliefs (such as age, gender, religion, ethnicity, cultural background, disability or sexuality).

In the criminal justice system, equality means that all people should be treated equally before the law, with an equal opportunity to present their case. This means that no person or group should be treated advantageously, or disadvantageously, because of a personal attribute or characteristic.

Some of the aspects of the criminal justice system that relate to equality include:

- the use of a judge to oversee the conduct of a criminal case.
- the use of jury when deciding indictable criminal cases.
- the way differences are treated (e.g. cultural differences, socio-economic differences and religious differences).
- does the system provide for those in society who may be at a disadvantage in criminal proceedings such as people with mental health issues or people who are unable to understand English.
- the availability of legal representation for persons of a low socio-economic background (is there a system of legal aid available for people to access).
- the biases that may be inherent when certain groups of the community are confronted by the criminal justice system.
- the extent to which laws apply equally to everyone.

ACCESS

Access is the ability to approach or make use of something. It is generally accepted that members of society should be able to access education, health, food and shelter. People should also be able to access justice.

Access to the criminal justice system means that all people should be able to understand their legal rights and pursue their case. This includes more than being able to access the institutions that hear criminal cases (i.e. the courts). It also means being able to approach bodies and institutions that provide legal advice, education, information and assistance, and receive from them information about criminal cases, processes and outcomes.

Access to the criminal justice system does not necessarily mean that the person seeking access will get the outcome they want, but it does mean parties should have the opportunity to make use of the processes and institutions within the criminal justice system, and that these are not beyond their reach.

Some of the aspects of the criminal justice system that relate to access include:

- the availability of a range of means used to finalise criminal cases, such as plea negotiations and sentence indications.
- the availability of legal advice and assistance to an accused and victims who may not be able to afford legal representation.
- the costs and delays associated with defending a criminal case or accessing information about legal rights.
- the extent to which members of the community understand legal rights and processes.
- the availability of the courts and legal processes.
- the formalities associated with a hearing or trial.

QUESTION 1

Define the following terms:

Fairness

Equality

Access

QUESTION 2

Provide one example of how our criminal justice system provides:

Fairness

Equality

Access

DOT POINT 2:

KEY CONCEPTS IN THE VICTORIAN CRIMINAL JUSTICE SYSTEM, INCLUDING: - THE DISTINCTION BETWEEN SUMMARY AND INDICTABLE OFFENCES, THE BURDEN OF PROOF, THE STANDARD OF PROOF, THE PRESUMPTION ON INNOCENCE

The distinction between summary and indictable offences

Criminal disputes are concerned with the suppression of behaviour that disturbs the peace and wellbeing of the community. **A crime is an offence against the community or a breach of society's laws**; that is prosecuted and punished by the State. Such offences are usually associated with conduct that is of an anti-social nature. The **protection of the public** is the paramount justification for prohibiting such activity.

Criminal cases concern breaches of the criminal law, from **jaywalking, careless driving, stalking to assault, burglary, murder and treason**. The State prosecutes the offender for allegedly breaking the law.

There are numerous ways to classify crimes – who they impact, seriousness, who they were committed by? In Unit 1 you would study Crimes against the person and crimes against property.

In Unit 3 Crimes can be classified as either:

- Summary offences – a minor criminal offence heard in the Magistrate's Court. The court will issue a summons as a means of bringing the accused to court. The matter is resolved using a Magistrate sitting alone with no jury.
- Indictable offences – more serious offences generally heard in the County or Supreme Courts using a judge and a jury of 12. Accused persons are often held on remand while awaiting trial. There is usually a committal proceeding that will occur prior to the case being sent to trial in these courts.
- Indictable offences triable summarily – in certain circumstances some indictable offences can be dealt with summarily. While not technically part of the course it is worthwhile knowing that this can occur. The accused will usually choose to have an offence heard summarily, mainly because it is quicker and cheaper to have a case heard in the Magistrates' Court, and the maximum penalty that can be handed down is far less than if it were heard as an indictable offence. The court, however, must agree that the offence is appropriate to be heard summarily

THE BURDEN OF PROOF

In any trial there are two parties – both hoping to be successful. Regardless of the type of trial there is generally one party who has the responsibility of proving their case – this is known as the burden of proof.

The burden of proof generally rests with the party that brings the dispute to court – in a criminal trial this is the prosecution.

However, the burden of proof can shift to the defendant in some cases, for example: where the defendant is pleading an 'affirmative defence' such as self-defence or mental impairment.

It is also reversed for summary offences such as being caught speeding or going through a red light (caught on camera) where the defendant must prove it wasn't them, they weren't speeding, etc.

THE STANDARD OF PROOF

The "standard of proof" is a legal concept. It is the level of proof that must be met by the person who has the burden – generally the prosecution.

Therefore, guilt must be established 'beyond reasonable doubt.'
This is proof that leaves you with an abiding conviction that the charge is true.

If the standard is not met, that is, if there is some doubt as to the guilt of the accused then the accused must be found not guilty.

THE PRESUMPTION OF INNOCENCE

Every person accused of a crime is presumed to be innocent until they have gone before a court and have been found guilty. The presumption of innocence is one of the key principles of the rule of law, and is one of the most important concepts on which the criminal justice system is based.

The presumption of innocence is a very old common law right, but is now guaranteed in Victoria by Charter of Human Rights and Responsibilities Act.

There are a number of features of our criminal justice system that uphold the presumption of innocence. Some of these have been mentioned before, some are introduced here. These include:

- The burden of proof – the fact this rests with the prosecution means the defendant is presumed to be innocent.
- The standard of proof – it is considerably higher for a criminal matter than for a civil matter.
- Bail – where an accused person is released into society to continue their normal life while awaiting trial. This is opposed to remand where the accused would be held in custody.
- The right to silence – this operates during police questioning and during a trial. Beyond providing certain minimum information, a person being interviewed by police is under no obligation to answer questions.
- During a trial, an accused person does not have to testify or give evidence unless they deem it necessary or the burden of proof has been reversed.

QUESTION 3

Define the following terms:

Summary Offences

Indictable offences

Indictable offences heard summarily

QUESTION 4

Explain what is meant by beyond reasonable doubt.

QUESTION 5

Explain how the presumption of innocence meets one of the principles of justice.

QUESTION 6

Explain why the party bringing the dispute to court must carry the burden of proof.

DOT POINT 3:

THE RIGHTS OF AN ACCUSED, INCLUDING THE RIGHT TO BE TRIED WITHOUT UNREASONABLE DELAY, THE RIGHT TO A FAIR HEARING, AND THE RIGHT TO TRIAL BY JURY

An accused person is a person who is a suspect in a crime or has been charged by the police. In preparing their case for court, an accused person is granted certain rights including:

- The right to be tried without unreasonable delay
- The right to a fair hearing
- The right to a trial by jury

THE RIGHT TO BE TRIED WITHOUT UNREASONABLE DELAY

The right to be tried without unreasonable delay means that an accused is entitled to have his or her charges heard in a timely manner, and that delays should only occur if they are considered reasonable. This right is 'without discrimination'. Every accused is entitled to this right regardless of their prior history or personal attributes such as age, breastfeeding, disability, gender identity, marital status or pregnancy.

The right recognises that there may be a delay in the case, but that delay must not be unreasonable. The term 'unreasonable delay' is not defined, but the reasonableness of any delay will depend on factors such as the complexity of the case and the legal issues involved.

Any unnecessary delay can affect access – an accused may have limited funds and cannot employ the use of a legal representative if the dispute exceeds a certain time frame.

Unnecessary delays can affect fairness as the accused may be held on remand (in custody), unable to work, interact with the family or meet regularly with their legal representative.

Unnecessary delays can affect equality as some parties to a dispute may be well-prepared and ready for their trial to commence but may lose interstate or international witnesses if the trial is delayed.

THE RIGHT TO A FAIR HEARING

The right to a fair hearing - a person charged with a criminal offence to have the charge decided by a competent, independent and impartial court after a fair and public hearing.

There are two parts to this right:

- A competent, independent and impartial court must decide the proceeding or charge. In a jury trial, jurors will be excused or stood aside if the juror has knowledge of the accused or a pre-existing relationship.
- A hearing must be fair, and public. Most court hearings are open to the public. This ensures that the trial and trial processes are transparent and not hidden in secrecy. Sometimes a court will be closed due to the nature of the crime (sex offences involving vulnerable witnesses) and the evidence presented (Carl Williams murder trial).

THE RIGHT TO A TRIAL BY JURY

The right to trial by jury - the jury system provides for a trial by others in the community. The jury system provides the opportunity for community participation in the legal process, and for the law to be applied according to community standards.

The right to trial by jury is not protected by the Human Rights Charter, but rather protected in part by the Australian Constitution:

80. The trial on indictment of any offence against any law of the Commonwealth shall be by jury, and every such trial shall be held in the State where the offence was committed, and if the offence was not committed within any State the trial shall be held at such place or places as the Parliament prescribes.

In Victoria, trial by jury is guaranteed in part by statute law.

QUESTION 7

How does a right to a trial by jury uphold the principle of fairness?

QUESTION 8

Explain why it is important to resolve criminal disputes in a timely manner.

QUESTION 9

Explain one right of an accused that can lead to equality in our criminal justice system.

DOT POINT 4:

THE RIGHTS OF VICTIMS, INCLUDING THE RIGHT TO GIVE EVIDENCE AS A VULNERABLE WITNESS, THE RIGHT TO BE INFORMED ABOUT THE PROCEEDINGS, AND THE RIGHT TO BE INFORMED OF THE LIKELY RELEASE DATE OF THE ACCUSED

Every criminal act involves two key participants – the perpetrator and the victim. However, the victim is not responsible for bringing the dispute to court. As the perpetrator has been charged with breaching one of society's laws, then society brings that perpetrator to court.

Although the victim is not a party in a criminal case, there has been widespread recognition that not only should there be rights for an accused, but victims of crime and their rights should also be recognised in a criminal case.

The rights of victims are recognised by a number of statutes in Victoria, including the Victims' Charter Act 2006 (Vic), known as the Victims' Charter.

There are three key rights for a victim of a crime included in the Study Design:

- The right to give evidence as a vulnerable witness
- The right to be informed about the proceedings
- The right to be informed of the likely release date of the accused

THE RIGHT TO GIVE EVIDENCE AS A VULNERABLE WITNESS

The right to give evidence as a vulnerable witness - in some criminal cases, a victim may be a witness in the criminal case. If so, they will have to give evidence in support of the prosecution's case against the accused.

A number of sections in the Criminal Procedure Act aim to protect vulnerable witnesses. In particularly sensitive cases (e.g. cases involving a sexual offence) giving evidence may make the victim uncomfortable, therefore possibly jeopardising the evidence that they give and adding to the trauma they may have already suffered. These people are particularly vulnerable, impressionable or at risk, and the laws provide some protections to them for when they give evidence.

The protections available under the Criminal Procedure Act can be broken down into the following:

- alternative arrangements that can be made for a witness to give evidence in particular cases (e.g. sexual offence case).
- a declaration that a person is a protected witness.
- special arrangements that can be made for witnesses under the age of 18 years or with a cognitive impairment.

Alternative arrangements:

The court can direct alternative arrangements to be made for a witness to give evidence in criminal proceedings for:

- a sexual offence.
- a family violence offence.
- an offence for obscene, indecent, threatening language or behaviour in public.
- an offence for sexual exposure in a public place.

Types of alternative arrangements include:

- the witness may give evidence from a place other than the courtroom by means of closed circuit television (or other like facilities)
- screens may be used to remove the accused from the direct line of vision of the witness
- a support person may be chosen by the witness to be there while giving evidence
- only certain persons may be allowed in court when the witness is giving evidence
- legal practitioners may be required not to be formally dressed in robes, or may be required to be seated while asking the witness questions.

THE RIGHT TO BE INFORMED ABOUT THE PROCEEDINGS

The Victims' Charter requires investigatory agencies, prosecuting agencies and victims' services agencies (which includes police officers, the DPP, and the Victims of Crime Commissioner) to provide clear, timely and consistent information about support services, possible compensation entitlements, and the legal assistance available to persons adversely affected by crime. In addition, the Victims' Charter requires an investigatory agency (a body which conducts a criminal investigation, such as the Victoria Police) to inform a victim, at reasonable intervals, about the progress of an investigation into a criminal offence.

Once a prosecution has commenced, the Victims' Charter requires the prosecution to give a victim the following information:

- details of the offences charged against the person.
- if no offence is charged, the reason why.
- how the victim can find out the date, time and place of the hearing of the charges.
- the outcome of the criminal proceeding, including any sentence imposed.
- details of any appeal.

The victim must also be told that they are entitled to attend any court hearings. These requirements recognise that victims may wish to be kept informed about a criminal case that has affected them. Often they will want to know what offences the accused has been charged with, the verdict, and the sanction imposed, as they want to see justice done.

THE RIGHT TO BE INFORMED OF THE LIKELY RELEASE DATE OF THE ACCUSED

The right to be informed of the likely release date of the accused A person who is a victim of a criminal act of violence may apply to be included on the Victims Register.

A person who is registered on the Victims Register may receive certain information about an offender who has been imprisoned, including their likely date of release, and (if applicable) their release on parole. The information must be provided at least 14 days before the release of the prisoner. The offender's release date is likely to be of interest to a victim who has suffered violence from that person. Other rights may be available to a victim on the Victims Register, including the right to know the length of sentence, the right to be told if the offender escapes from prison, and the right to make a submission if the imprisoned offender may be released on parole.

QUESTION 10

Why should victims be entitled to certain rights?

QUESTION 11

Why do you think it is important that we have a victim's charter?

QUESTION 12

State the name of the Act of Parliament that created the victim's charter.

QUESTION 13

List the three key rights of victims.

DOT POINT 5:
**THE ROLE OF INSTITUTIONS AVAILABLE TO ASSIST AN
 ACCUSED, INCLUDING VICTORIA LEGAL AID AND
 VICTORIAN COMMUNITY LEGAL CENTRES**

In resolving a criminal dispute, there are a number of institutions that operate.

COURTS

The most obvious institution are the courts. The Victorian court system is the only institution with the power to resolve criminal matters.

The Victorian criminal courts are arranged in a hierarchy to allow for specialization – specific courts, by virtue of their jurisdiction, only deal with certain criminal matters, allowing them to develop specialist knowledge of those areas.

The Victorian court system, as well as having a hierarchy, also has a number of specialist divisions to deal with even more specific cases so as to better improve the attainment of justice. Courts such as the Drug Court, Koori Court and Children’s Court are all focused on small areas of criminal activity and so even more specialization occurs.

In addition to specialization, the court hierarchy also allow for appeals to be made if one party feels that justice has not been attained.

The Study Design does not expect students to know the jurisdiction of individual courts but the table below is useful for assisting students in understanding the need for a hierarchy and how courts can assist an accused person through specialisation in their selected jurisdictions.

	Magistrates Court	County Court
Original Criminal	<ul style="list-style-type: none"> • Summary offences • Indictable offences heard summarily • Committal Hearings • Bail hearings • Warrant applications 	Indictable offences such as rape and armed robbery
Criminal Appellate	No appellate jurisdiction	Appeals from the Magistrates Court on grounds of: <ul style="list-style-type: none"> • Question of fact (conviction) • Sentence

	Supreme Court (Trial Division)	Supreme Court (Court of Appeal)
Original Criminal	Only the most serious indictable offences such as murder, treason and attempted murder	No jurisdiction
Criminal Appellate	Appeals in all cases on a point of law from the Magistrates Court	Appeals in all cases from a single judge of the County and Supreme Court

VICTORIA LEGAL AID

VLA is a government agency that provides free legal advice to the community, and low-cost or no-cost legal representation for people who can't afford to pay for a lawyer. VLA helps people with legal problems, and focuses on people who need it the most and cannot get legal assistance any other way.

VLA's vision is a fair and just society where rights and responsibilities are upheld. Its purpose is to make a difference by resolving and preventing legal problems, and encouraging a fair and transparent justice system.

The objectives of VLA are to:

- provide legal aid in the most effective, economic and efficient manner.
- manage its resources to make legal aid available at a reasonable cost to the community and on an equitable basis throughout Victoria.
- provide the community with improved access to justice and legal remedies.
- pursue innovative means to provide legal aid to minimise the need for individual legal services in the community.

The most critical role VLA plays is to provide legal aid to accused people. In the 2015–16 financial year, VLA helped 86847 different clients. Of these, 48511 clients were assisted in criminal cases (being those clients who accessed one or more legal services).

In addition to providing legal aid, the VLA plays other roles, including:

- Managing the legal aid fund – the money provided to VLA needs to be managed so it is used to assist as many people as possible.
- Lobby the government to increase funding and identifying legal aid needs in certain areas so funding and resources are directed to the appropriate areas>
- Participate in law reform.
- Research legal aid issues.
- Develop educational resources for use in the community.

VICTORIAN COMMUNITY LEGAL CENTRES

Community legal centres (CLCs) are one type of legal assistance service provider in Australia. As independent organisations, they provide free legal services, including advice, information and representation, to people who are unable to access other legal services.

There are two types of community legal centres:

- generalist CLCs provide broad legal services to people in a particular local geographical area (e.g. Barwon Community Legal Service Inc and Monash Oakleigh Legal Service are generalist CLCs that serve their respective local areas).
- specialist CLCs focus on a particular group of people or area of law (e.g. YouthLaw provides free legal services for people under 25).

There are approximately 50 CLCs in Victoria. The Federation of Community Legal Services Inc. is the peak contact and referral body for people seeking legal advice and assistance from CLCs. Many of the workers at CLCs are volunteers.

CLCs receive their funding from a range of sources: state, Commonwealth and local governments and private donations. A large portion of its funding comes from VLA.

CLCs provide people with:

- information, legal advice and minor assistance
- duty lawyer assistance
- legal casework services including representation and assistance.

As with VLA, each CLC will have its own criteria to determine which people are provided with assistance. In general these people are:

- Low income earners
- Refugees
- People with a disability
- Homeless

QUESTION 14

Explain why the VLA is necessary.

QUESTION 15

Explain the role of courts in criminal disputes.

QUESTION 16

Describe one benefit of the role of a CLC.

QUESTION 17

Explain why it is beneficial to the legal system for VLA to develop educational resources.

DOT POINT 6: THE PURPOSES OF COMMITTAL PROCEEDINGS

Aim of the criminal law:

The criminal law attempts to regulate behaviour that is considered a threat to the well-being of the community and so criminal offences are investigated by the police and the case against the accused is conducted by the prosecution on behalf of the Crown.

Prior to a criminal matter coming to court there are a number of pre-trial procedures that occur. The first procedure is a bail hearing. This procedure is not part of the Study Design and so not assessable. It is included here as background information only:

BAIL / REMAND

Once an individual has been formerly charged with an indictable offence they have the right to apply for bail so as to be released from custody while awaiting trial. If bail is refused or they do not have the financial means to meet the bail requirements they will be detained in the remand section of a prison.

Bail is usually granted by the police at the station where the accused is charged, however, if the police oppose bail the accused can apply to a bail justice or a magistrate at a bail hearing in the Magistrates' Court.

If the accused is denied bail, or bail was granted but they could not make the necessary payments or locate a surety, they are remanded in custody until their guilt or innocence is determined. In Melbourne, such people are detained in the Remand Centre until their court appearance; elsewhere they are placed in the remand section of a prison. In some cases people may be remanded for several months or even years. In recent years, there has been an increase in the number of people remanded in custody resulting in poor conditions due to overcrowding. If a person on remand is found guilty at trial and receives a custodial sentence, the period already spent in prison is deducted from the sentence. People who are either found not guilty or who receive a non-custodial sentence are not entitled to any compensation for the period served on remand.

COMMITTAL PROCEEDINGS

Once a person has been formally charged with committing an indictable offence and either released on bail or remanded in custody, a committal proceeding occurs in the Magistrates' Court. The aim of a committal proceeding is to:

- **Clarify the issues prior** to attending trial in the County Court or the Supreme Court, thereby avoid taking a matter to trial when the evidence is not strong.
- **Determine whether a prima facie case exists**, that is, whether the evidence is of sufficient weight to support a conviction.

If there is not sufficient weight to support a conviction the Magistrate will discharge the defendant. The committal proceeding also allows the defendant to see the prosecution's evidence against them.

There are two types of committal proceeding:

1. The **traditional method**, which relies on oral evidence given under oath by prosecution witnesses. Rarely used except for the most serious indictable offences, such as, murder and attempted murder.
2. The **hand-up brief procedure**, where the evidence is given through the delivery of sworn statements. Most committals now use this procedure including rape cases where its use is mandatory.

The strengths and weaknesses of committal proceedings	
Strengths	Weaknesses
Hand-up brief procedure allows flexibility to suit the needs of the parties involved. For example, sexual assault matters conducted by way of hand-up brief offers protection to the victim from unnecessary cross-examination at this early stage. It also saves time and the possible trauma associated with a criminal hearing.	Even with hand-up brief processes, a victim may still be required at the committal stage to testify under cross-examination, possibly resulting in added trauma for that person.
Committal proceedings allow for early and full disclosure of crown evidence. This encourages an early plea of guilty from a defendant where the crown case is considered to be strong. Where the accused does change their plea before the trial, this may result in a reduction in the eventual sentence at the trial.	The use of committal proceedings leads to delays in the eventual trial, causing increased stress for remand prisoners who may be found not guilty at trial. In such instances, the suspect's essential rights are at risk if he or she is held in custody for an unnecessarily lengthy period.
Where the magistrate dismisses the case at the committal stage, this saves the time and expense of having such cases proceed to the county or supreme courts, where the outcome of the case would most likely have been a finding of not guilty.	In spite of committal proceedings occurring, there is still a significant incidence of defendants being found not guilty at the trial where it was clear that the prosecution case was weak. In these instances, the value of having a committal hearing is questionable.

QUESTION 18

Alex has just been granted bail after being charged with armed robbery. Explain what is meant by bail and its purpose.

QUESTION 19

After a person has been granted bail for a serious criminal offence, identify and explain the next stage in the criminal proceedings against an accused person and explain the purpose of this pre-trial procedure.

QUESTION 20

Discuss how a committal proceeding limits a fair and unbiased hearing.
