

## UNIT 4 AOS 1- COURT HIERARCHY

### Key Dot Point #1: The reasons for a court hierarchy

Differences between criminal cases and civil disputes		
	CRIMINAL CASE	CIVIL DISPUTE
<b>Person bringing the action</b>	prosecution, on behalf of the state	plaintiff (the wronged party)
<b>Person defending the action</b>	accused*	defendant
<b>Case name</b>	DPP v. accused (also R v. accused)	plaintiff v. defendant
<b>Aim</b>	to protect society, to punish offenders, to denounce the crime, to deter the offender or others and to rehabilitate	to regulate conduct between parties and to provide compensation to an injured party to restore, as far as possible, the plaintiff back to where they were before the infringement occurred
<b>Consequences of the action</b>	sanction or sentence	remedy
<b>Burden of proof at trial</b>	prosecution	plaintiff
<b>Standard of proof at trial</b>	beyond reasonable doubt	on the balance of probabilities
<b>Evidence/ investigations</b>	the police investigate on behalf of the state	the plaintiff gathers their own evidence
<b>Pre-trial procedures</b>	the main purpose is to see whether there is sufficient evidence to support a conviction	the main purpose is to clarify issues and let each party know the other party's evidence
<b>Jury</b>	<ul style="list-style-type: none"> <li>no jury in the Magistrates' Court</li> <li>jury of 12 in higher courts when the accused pleads guilty</li> </ul>	<ul style="list-style-type: none"> <li>no jury in Magistrates' Court</li> <li>jury of six in higher courts is optional</li> </ul>
<b>Verdict</b>	guilty or not guilty	finding for the plaintiff or the defendant
<b>Judicial outcome</b>	sanctions, e.g. imprisonment, community-based order, fine	remedies, e.g. damages, order of specific performance, injunction
<b>Resolution process</b>	heard in court, although victim/offender mediation can be used in the process	could be resolved in court, tribunals, other methods of dispute resolution such as mediation, conciliation or arbitration, or another dispute-solving body such as the Dispute Settlement Centre
<b>Examples of laws</b>	<ul style="list-style-type: none"> <li>offences against the person: homicide, assault, sexual offences</li> <li>offences against property: theft, arson, fraud</li> <li>offences against the state: treason, sedition</li> <li>offences against the legal system: perjury, contempt</li> </ul>	<ul style="list-style-type: none"> <li>tort law: negligence, defamation, nuisance, trespass</li> <li>contract law</li> <li>constitutional law</li> <li>property law</li> <li>family law</li> <li>wills and estates</li> </ul>
<b>Common words used in cases</b>	accused, prosecution, victim, arrest, police, bail, remand, guilty, sentence, punishment	sue, plaintiff, compensation, damages, negligence, tort, litigation

\* Following the passage of the *Criminal Procedures Act 2009* (Vic.) a person charged with a criminal offence is to be referred to as the accused, regardless of the court in which they appear. (Previous laws referred to the 'defendant' in the Magistrates' Court and the 'accused' in the County Court and Supreme Court.)

**Jurisdiction-** the power that courts have to hear cases arising from particular areas of law. It indicates the type of cases that courts can hear and adjudicate on.

**Original Jurisdiction-** When a matter is taken to court for the first time, it is known as the court of first instance. The Court that is sitting this matter is in its original jurisdiction. A case heard in the Magistrates' Court is a hearing, and a case heard in higher courts is known as a trial.

## UNIT 4 AOS 1- COURT HIERARCHY

**Appellate Jurisdiction-** When a court is hearing on appeal, it is sitting in its appellate jurisdiction. The **person bringing the appeal is known as the appellant**, the **other party is the respondent**. There is **no jury** when a court is sitting in its appellate jurisdiction. Not all courts can hear appeals.

### Reasons for a Court Hierarchy

#### Doctrine of Precedent

Decisions made in higher courts are binding on lower courts in the same hierarchy. The ratio decidendi (reason for the decision) in the higher court, part of the judgment given, establishes a precedent that is to be followed in the future.

This provides consistency and predictability in that similar cases are treated in a similar manner. Solicitors are able to inform their clients of what the law is and the decision that is likely to be made in a particular case. **This system would not be possible without a court hierarchy because there would be no higher courts to make precedents for lower courts to follow.**

#### Appeals

Some who is dissatisfied with a decision can, if there are grounds for appeal, take the matter to a higher court. This provides fairness and should allow any mistakes to be corrected. If there were no higher courts in the court hierarchy, a system of appeals could not operate and this may create unfairness if cases were incorrectly determined by a court.

#### Administrative convenience

The system of a court hierarchy allows for the distribution of cases according to their level of seriousness. The more complex cases are heard in the higher courts. These take longer to hear and require judges who are expert in complicated points of law.

Minor cases can be heard quickly and less expensively in lower courts. In this way delays are reduced in the lower courts, and higher courts can more easily manage the allocation of time for the longer, more complicated cases.

#### Specialisation

Within the system of a hierarchy of courts, the courts have been able to develop their own areas of expertise. Lower courts are familiar with the smaller cases that need to be dealt with quickly and efficiently. The higher courts develop expertise in hearing complex cases involving major crimes or large sums of money. Other specialist courts such as the Children's Court and the Family Court have been developed to deal with specialised areas of law.

### Problems with a Court Hierarchy

Advantages	Disadvantages
Allows the doctrine of precedent to operate, which creates consistency and predictability	A precedent from a higher court may be distinguished by a lower court, or a binding precedent from a higher court may not be appropriate to the circumstances before the lower court.
Allows the operation of appeals to superior courts	Appeals add to the legal cost of cases for both parties involved and the legal system.
Administrative convenience- more serious and complex cases heard in higher courts by more experienced judges	More administrative personnel are needed to run the different courts

## UNIT 4 AOS 1- COURT HIERARCHY

Specialisation- the courts are able to specialise in their particular area of law	There are more courts- a single court would be easier for people to find, as all matters would be heard at the same place
Fewer delays are likely because less complicated cases are heard in the lower courts and are not mixed in with the more complex cases	Parties to cases in the lower courts are not receiving the same high level of judicial expertise as parties in higher courts.

Key Dot Point #2: Original and appellate jurisdictions of the Victorian Magistrates' Court, County Court, and the Supreme Court (Trial Division and Court of Appeal)

### Magistrates' Court

#### Original Criminal:

The original criminal jurisdiction of the Magistrates' Court includes summary (minor) offences, eg. Traffic offences, indictable offences heard summarily eg. Theft, assault. They also include committal hearings, issuing warrants and bail applications.

#### Original Civil:

The original civil jurisdiction of the Magistrates' Court includes matters where up to \$100,000 is claimed for either personal or property claims.

#### Appellate Civil/Criminal:

The Magistrates' Court has no appellate criminal or civil jurisdiction.

### County Court

#### Original Criminal:

The original criminal jurisdiction includes indictable (serious) offences such as drug trafficking and sexual offences. It is heard by a single judge and jury of 12 when a 'not guilty' plea is entered.

#### Original Civil:

The County Court has an unlimited original civil jurisdiction in all civil matters and is heard by a single judge and optional jury of six (usually).

#### Appellate Criminal:

The appellate criminal jurisdiction includes appeals from the Magistrates' Court against conviction and/or sentence and is heard by one judge.

#### Appellate Civil:

No appellate civil jurisdiction

### Supreme Court (Trial Division)

#### Original Criminal:

## UNIT 4 AOS 1- COURT HIERARCHY

The original criminal jurisdiction includes serious indictable offences such as murder and manslaughter. It is heard by a single justice and jury of 12 when a 'not guilty' plea is entered.

### Original Civil:

Unlimited original civil jurisdiction meaning it is heard by a single justice and optional jury of six.

### Appellate Criminal:

The appellate criminal jurisdiction involves appeals on points of law from the Magistrates' Court. It is heard by one justice.

### Appellate Civil:

The appellate civil jurisdiction includes appeals on points of law from the Magistrates' Court (heard by one justice) and VCAT when heard by a member.

## Supreme Court (Court of Appeal)

No original jurisdiction

### Appellate Criminal:

With leave on points of law, conviction or on the severity or leniency of sanction. Heard by a single judge of the County or Supreme Courts (trial division), provided the leave to appeal has been given. It is heard by three to five justices.

### Appellate Civil:

With leave on points of law, on a question of fact or on an amount of damages. It is heard from a single judge of the County or Supreme Courts and VCAT when heard by the president/vice-president. It is heard by 3 justices.

## Magistrates' Court Division- Koori Court Division

- ✚ Aims to provide **culturally relevant justice** to the Aboriginal community by operating with a **Koori elder or respected person** to **advise the court on cultural issues in sentencing**.
- ✚ **Proceedings are less formal**, using a round table for discussion, and are **aimed at ensuring the understanding of the accused, their family and the Aboriginal community**.
- ✚ It is a **sentencing court** that can hear cases that fall within the jurisdiction of the Magistrates' Court (except sexual offences and domestic violence), **where the offender has/intends to plead guilty**.

## UNIT 4 AOS 1- COURT HIERARCHY

### Appeals

If a party to a case is dissatisfied with the outcome of their case, they may decide to appeal the decision to a higher, more superior court. This provides an opportunity for unfair or incorrect decisions to be reassessed and corrected by a superior court.

The appellant must state the grounds of their appeal on a point of law (where a law has not been followed eg. Court was allowed to hear inadmissible evidence), on conviction or on the severity or leniency of the sentence/remedy awarded.

Appeal courts can dismiss the appeal, order a new trial (if criminal) or impose a different sentence/remedy.

### Comparison of the Operation of Courts and VCAT

I agree to a large extent that VCAT offers a number of advantages over the courts when resolving minor disputes and is therefore more effective. However, some problems still exist, and in some instances a court hearing could be more appropriate (such as for major civil claims).

VCAT provides a faster means of dispute resolution than going through the courts. Parties can avoid the delays associated with going to court since most minor cases can be resolved by VCAT within nine weeks from the date of application. However, the avenues for appeal in VCAT are limited to only those relating to a point of law. The appeal process in the courts is much more flexible, allowing parties who are dissatisfied with the decision of their case to appeal to a more superior court. In this way, incorrect decisions may be reversed. Nonetheless, overall it is much more efficient to go to VCAT for smaller civil claims.

VCAT provides a more cost-effective means of dispute resolution, as there are low application fees and no need for legal representation. The courts however, attract higher court listing fees and legal representation is generally required, which adds to the expense of pursuing a civil claim. Hence, VCAT is much more accessible to Victorians as a dispute resolution body. However, its effectiveness is hindered by the fact that VCAT hearing costs have increased in some lists and more parties are using legal representation, thereby adding to their costs.

The operation of VCAT uses much less formal methods of resolving disputes compared to courts, due to the absence of strict rules of evidence and procedure in tribunals; this may benefit parties who find formality intimidating. This is beneficial in resolving disputes for parties whom require an ongoing relationship after the dispute. The fact that VCAT is less formal means that it is a much faster process than going through court procedures, thereby making it much more efficient for minor cases.