



Swinburne Senior Secondary College

2020 Holiday Homework

Unit 3 Legal Studies

2020 will see the introduction of full integration into the Edrolo Learning Program in Legal Studies. At the beginning of the school year, students will be given their textbook and access to the online learning portal.

Edrolo utilises short topic videos that connect directly to the textbook, as well as online quizzes and questions, which will be part of your coursework for the subject.

During the holidays, students should complete the **QUESTIONS** relating to the first four topics, the textbook pages for which follow.

This should be completed in your own notebooks and provided in hard copy to your teacher in the first class of 2020.

Topic Name	Page Number
Principles of Justice	4
Key concepts in the criminal justice system	9-10
Rights of the accused	13-14
Victims' rights	19-20

Students should also start a GLOSSARY of key terms and concepts.

At the end of this booklet is a guide from the textbook "Justice & Outcomes" which you should read carefully. It gives tips for study success in Legal Studies, exam tips, understanding task words (**which is critical in this subject**) and a guide to legal citation. Please familiarise yourself with this and keep it as a handy reference throughout 2020.

Legal Studies is a content heavy but fascinating subject which, with **consistent** work throughout the year will be very rewarding. Good luck for 2020 and beyond!

3.1.1 Principles of justice (AOS 1)

There is no universal definition of 'justice' or conversely 'injustice'. Therefore, what one person considers a 'just' outcome may be very different from another person. This can explain why there are such varied opinions on the appropriateness of many institutions and mechanisms that exist in the criminal justice system.

To explore this further, the following comments from former Chief Justice of the Supreme Court of Victoria, the Hon. Marilyn Warren AC, are relevant:

'What is justice? For different people at different times it means different things.

To the ordinary person "justice" will often mean due punishment when a criminal is sentenced for a crime. To the popular media "justice" will generally mean harsh punishment primarily focused on strong retribution and deterrence.

To the accused person justice means fairness: a fair hearing, a fair sentence that punishes not too harshly and offers hope.

Immediately after delivery of sentence it often happens that the victim's family and supporters will express their satisfaction or dissatisfaction with the sentence. We sometimes hear the statement "justice has been done". We also hear "justice has been denied to the victim" because the punishment was too lenient.

But the tension for victims is not just between victims' rights and the rights of accused persons, there are also the rights of society enshrined in sentencing laws, for example, the goal of rehabilitation and the mercy shown to young offenders balanced by the goal of deterrence.'

Source: What is justice? Remarks of the Hon. Marilyn Warren AC Chief Justice of Victoria 20 August 2014 <http://classic.austlii.edu.au/au/journals/VicJSchol/2014/12.pdf>

We will revisit these comments in Lesson 3.1.13

The principles of justice are three key ideals that will help you determine whether justice has been achieved in a particular case or whether specific institutions or processes in the criminal justice system uphold or achieve justice. These principles are fairness, equality and access.

This lesson covers VCAA key knowledge point: 'The principles of justice: fairness, equality and access', which we have broken down into the following concepts:

Fairness	3.1.1.1
Equality	3.1.1.2
Access	3.1.1.3

Fairness 3.1.1.1

'Fairness' is defined in the VCAA Legal Studies Study Design as 'fair legal processes are in place, and all parties receive a fair hearing'.

In Victoria's criminal justice system this means (in practice):

- All hearings being conducted in public.
- Decision makers being independent and unbiased, with decisions based solely on the law and the facts.
- Accused persons being presumed innocent.
- Prejudicial and irrelevant evidence not influencing courts' decisions (such as an accused person's prior convictions).
- Accused persons having the ability to test the evidence presented against them, and to present evidence in their own defence.
- Resolution of cases with minimal delay, as delay add to the stress and anxiety of victims, witnesses, accused persons awaiting trial (and these parties' families).
- A right to legal representation to present one's case its best light.

- Accused persons having their personal characteristics taken into account. For example in sentencing:
 - A young first-time offender who has shown remorse should be treated differently to a middle-aged career criminal.
 - Victims of crime should have the impact of them reflected in sentencing, as individuals will respond differently to crime.

Equality 3.1.1.2

‘Equality’ is defined in the VCAA Legal Studies Study Design as ‘all people treated equally before the law, with an equal opportunity to present their case’.

In Victoria’s criminal justice system this means (in practice):

- All accused persons having access to a fair trial and fair treatment (as described above) regardless of personal characteristics such as wealth, language background, ethnicity, religion and so on.
- All victims of crime being able to remain informed about proceedings and contribute to the sentencing process, regardless of personal characteristics such as wealth, language background, ethnicity, religion and so on.
- Procedures in the courts being applied in the same manner in all cases.
- All members of the community are subject to the standards of behaviour set by the criminal law; those in more powerful positions in society (members of parliament, police officers, the very wealthy) are not entitled to preferential treatment by the courts (either as a victim of crime or an accused person).

Access 3.1.1.3

‘Access’ is defined in the VCAA Legal Studies Study Design as individuals in society – including accused persons, victims of crime and witnesses giving evidence in a trial – having an ‘understanding of legal rights and ability to pursue their case’.

In Victoria’s criminal justice system this means (in practice):

- Understanding the court system.
- Understanding the criminal law and legal defences an accused person is able to present; knowing how to present evidence to disprove the prosecution’s case.
- Victims of crime understanding their legal entitlements in the criminal justice process.
- Being able to engage with services to support those in the court system, such as legal representation, support for victims and so on.

USEFUL TIP

Revisit this lesson throughout your study of the criminal justice system in Unit 3, AOS1 – it provides a way to evaluate the strengths and weaknesses of Victoria’s courts and criminal processes.

Need extra assistance with this topic?

Remember to check out Edrolo’s video lessons:

Lesson 3.1.1: Principles of justice (AOS1)

Keen to learn more?

Rule of Law Institute of Australia, www.ruleoflaw.org.au/guide/index.html

VGSO – Right to a fair hearing,

humanrights.vgso.vic.gov.au/charter-guide/charter-rights-by-section/section-24-fair-hearing

Hon. Warren, M (2014) What is Justice? 2014 Newman Lecture,

classic.austlii.edu.au/au/journals/VicJSchol/2014/12.pdf

QUESTIONS

3.1.1 Principles of justice (AOS 1)

LEVEL 1:
Define and understand

1. Which of the following does not promote the achievement of 'fairness' in the criminal justice system?
 - A. Accused persons having the ability to test the evidence presented against them, and to present evidence in their own defence.
 - B. Decision makers being independent and unbiased, with decisions based solely on the law and the facts.
 - C. All accused persons are guaranteed legal representation in Victorian courts.
 - D. Prejudicial and irrelevant evidence not influencing courts' decisions.
2. The rule of the law states that all members of society are equally subject, and accountable to, the law. In which scenario(s) below is the principle of 'equality' not upheld?
 - A. A member of parliament uses their position to avoid paying outstanding parking fines.
 - B. A teenager who did not know it was illegal to trespass is charged.
 - C. A migrant who speaks very little English cannot explain her behaviour to the police because she does not understand their questioning. She is therefore charged with an offence.
 - D. Both A and C
3. Fill in the blank spaces:
 'Legal institutions like courts and tribunals exist to provide solutions to _____ problems. When people cannot access these institutions, or if their ability to access them is limited they cannot receive _____ outcomes. Access to justice is fundamental to the working of the legal system – a state can have the fairest and best laws in the world, but if people cannot use them to seek solutions to problems and just outcomes, then the law is _____. A significant part of access to justice is having access to legal _____ from _____ who can use their expertise to present a legal matter to the court in the _____ way possible.'

Source: Rule of Law Institute of Australia, www.ruleoflaw.org.au/guide/index.html

- A. legal; good; effective; advice; the police; fastest
- B. legal; just; useless; advice; a lawyer; best
- C. legal; just; useless; advice; a lawyer; fastest
- D. legal; good; useless; information; a lawyer; cheapest

LEVEL 2:
Describe and explain

4. Define 'fairness' as a principle of justice and identify two ways the criminal justice system achieved fairness. (3 MARKS)
5. Define 'equality' as a principle of justice, and identify two ways the criminal justice system achieves equality. (3 MARKS)
6. Define 'access' as a principle of justice, and identify two ways the criminal justice system achieves access. (3 MARKS)

3.1.2 Key concepts in the criminal justice system

To explore how criminal proceedings are conducted in the Victorian justice system, we first must understand critical terminology and concepts within criminal proceedings.

This lesson covers VCAA Key Knowledge point: 'Key concepts in the criminal justice system including: the distinction between summary offences and indictable offences, the burden of proof, the standard of proof and the presumption of innocence', which we have broken down into the following concepts:

Summary offences	3.1.2.1
Indictable offences	3.1.2.2
Burden of proof	3.1.2.3
Standard of proof	3.1.2.4
Presumption of innocence	3.1.2.5

Summary offences 3.1.2.1

Summary offences are a type of criminal offence, minor in nature (that is, not very serious) that are usually resolved in the Magistrates' Court by a single magistrate (or by infringement notice).

Examples of summary offences

Some summary offences are set out in the *Summary Offences Act 1996* (Vic) and include:

- Disorderly conduct (s.17A)
- Common assault (s.23)
- Tattooing of juveniles (s.42)
- Food or drink spiking (s.41H)

Sanctions imposed for summary offences are usually less severe (such as small fines or short periods of imprisonment).

Indictable offences 3.1.2.2

Indictable offences are a type of criminal offence that is serious in nature heard by a judge and a jury (if the accused pleads 'not guilty') in a higher court.

Examples of indictable offences

Unless otherwise stated all offences in the *Crimes Act 1958* (Vic) are indictable offences and include:

- s.3: Murder
- s.5: Manslaughter
- s.63A: Kidnapping
- s.21A: Stalking
- s.254: Destruction of evidence
- s.318: Culpable driving causing death

Sanctions imposed for indictable offences are usually much more severe than those imposed for summary offences (such as larger fines and extended periods of imprisonment).

USEFUL TIP

The *Summary Offences Act* and the *Crimes Act* are not the only pieces of legislation that set out summary and indictable offences.

Indictable offences triable summarily are a subset of indictable offences that may be heard like a summary offence as they are heard by a magistrate (without a jury) instead of a judge and jury in a higher court (such as the County Court).

When may an indictable offence be tried summarily?

An indictable offence may be triable summarily if:

- The offence is eligible to be tried summarily (an indictable offence is triable summarily if it is punishable by a term not exceeding 10 years imprisonment)
- The court determines it appropriate
- The accused agrees: *Criminal Procedure Act 2009* (Vic) s.29

Examples of indictable offences triable summarily

- s.17 *Crimes Act*: Recklessly causing serious injury
- Sections 81 & 82 *Crimes Act*: Obtaining property or financial advantage by deception (if the value of the property/financial gain does not exceed \$100,000)
- Sections 74–76 *Crimes Act*: Theft, robbery and burglary (if the value of the property stolen does not exceed \$100,000)

Burden of proof 3.1.2.3

The burden of proof refers to the responsibility of proving the facts of a case (or the party who is responsible for meeting the standard of proof).

Who does the burden of proof rest with in a criminal case?

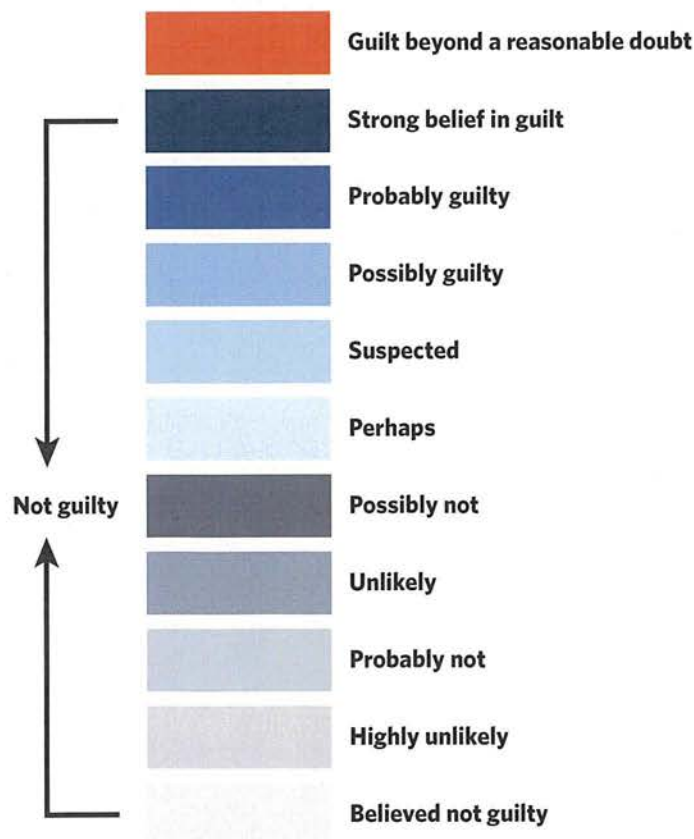
The burden of proof rests with the **prosecution** in criminal cases.

Standard of proof 3.1.2.4

The standard of proof refers to the strength of the evidence or level of confidence required to support a case.

What is the standard of proof in criminal proceedings?

The standard of proof in criminal proceedings is '**beyond reasonable doubt**'. This means the presiding magistrate/jury in a particular case are so confident that the accused is guilty that it would be **unreasonable** to return a verdict of 'not guilty'. This does not mean, however, that someone should only be convicted if no doubt exists.



CASE STUDY THE QUEEN v DOOKHEEA [2017] HCA 36

In this case Mr. and Mrs. Dookheea were accused of beating and strangling Mr. Zazai to death. Mr. Dookheea was convicted but his appeal made its way all the way to the High Court on the ground that the judge in his first trial incorrectly advised the jury of the meaning of 'beyond reasonable doubt'.

See comments from the court below to enhance your understanding of the criminal standard of proof:

- 'If you [the jury] are not satisfied beyond reasonable doubt of the elements of the offence, then you should find Mr Dookheea not guilty of that offence'
- 'If you [the jury] are not sure – and that is the collective state of your minds: did he, didn't [he], we don't know – you will acquit him because you would not be satisfied beyond a reasonable doubt'
- 'A reasonable doubt is not just any doubt that jurors might entertain, but rather what a reasonable jury considers to be a reasonable doubt'
- 'Beyond reasonable doubt is not something that is capable of expression on some sort of percentage basis'

See here for the full High Court judgement: www.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/HCA/2017/36.html

Presumption of innocence 3.1.2.5

The presumption of innocence refers to a guarantee made to all accused persons (regardless of who they are and the circumstances of the case in which they are implicated) that they are innocent until it is proven, beyond reasonable doubt, that they are guilty. This principle guards against self-incrimination:

- An accused person does not need to/cannot be pressured to give evidence to prove their guilt;
- An accused person does not need to prove their innocence (the magistrate/jury assumes they are innocent until their guilt is proven); and
- Accused persons can (in general) remain silent.

Section 25 of the Victorian *Charter of Human Rights and Responsibilities* states:

A person charged with a criminal offence has the right to be presumed innocent until proved guilty according to law.

The presumption of innocence, the burden and standard of proof taken together:

- A magistrate or jury in a criminal proceeding must assume an accused person is innocent;
- The prosecution present their evidence of the accused person's guilt; an accused does not need to prove their innocence; **then**
- The magistrate or jury can only return a 'guilty' verdict if persuaded beyond reasonable doubt that the accused committed the offence.

USEFUL TIP Accurate use of legal terminology is critical! Be sure to use the terms prosecution, accused, beyond reasonable doubt, etc correctly in your responses.

Need extra assistance with this topic?

Remember to check out Edrolo's video lessons:

Lesson 3.1.2: Key concepts in the criminal justice system

Keen to learn more?

Judicial College of Victoria – Criminal Charge Book: 1.7 Onus and Standard of Proof, www.judicialcollege.vic.edu.au/eManuals/CCB/index.htm#1290.htm

Rule of Law: Presumption of Innocence www.ruleoflaw.org.au/education/videos/innocence/

QUESTIONS

3.1.2 Key concepts in the criminal justice system

LEVEL 1:

Define and understand

1. Fill in the blank spaces:

Summary offences are _____ offences, heard in the _____ Court, where the decision will be made by a _____. _____ criminal offences committed in Victoria are summary offences, an example of them is being drunk in a public place. It is _____ for a person convicted of a summary offence to go to jail.

- A. minor; criminal; Magistrates; judge; Most; impossible
- B. minor; both civil and criminal; Magistrates; few; Frequent; possible
- C. minor; criminal; Magistrates'; magistrate; Most; possible
- D. all; both civil and criminal; County; jury; Most; impossible

2. Read the following statements and determine which are incorrect:

- I. Indictable offences are a type of criminal offence that is serious in nature heard by a judge and a jury (if the accused pleads 'not guilty') in a higher court.
- II. Sanctions imposed for indictable offences are usually much more severe than those imposed for summary offences.
- III. The Magistrates' Court cannot conduct trials for indictable offences.
- IV. Most offences tried by the courts are for indictable offences.

- A. II, III and IV
- B. III and IV
- C. II and IV
- D. III

3. The police believe Sophie has stolen a car. Sophie denies this when defending herself in the Magistrates' Court. With respect to the burden of proof, which party would need to provide evidence first.

- A. As Sophie is arguing she did not commit an offence, she would face the burden of proof have to provide evidence for her side of the story.
- B. The police and Sophie must answer the magistrate's questions, to help the magistrate discover the truth of who stole the car.
- C. Because the police allege that Sophie has committed an offence, they would face the burden of proof and have to provide evidence for their side of the story.
- D. None of the above is correct regarding the burden of proof.

4. Which of the following statements are true?

- I. The standard of proof in criminal cases is beyond reasonable doubt.
- II. A magistrate or jury must be 100% confident the accused is guilty for the standard of proof to be met.
- III. The standard of proof prevents the accused person being convicted with insufficient evidence.
- IV. The accused must prove beyond reasonable doubt the truth of any defence they raise.
- V. The standard of proof upholds the principle of fairness.

- A. I, III, IV and V
- B. I, II, III and V
- C. I, III and V
- D. I and III

5. Which of the following is not true with respect to the presumption of innocence?
- A. The presumption of innocence means the accused does not need to present evidence.
 - B. The presumption of innocence prevents accused persons from having to give self-incriminating evidence.
 - C. The presumption of innocence applies only to those charged with indictable offences.
 - D. The presumption of innocence means the accused will be considered innocent until the standard of proof has been met.

LEVEL 2:
Describe and explain

6. Rosie, 18, has been charged with being drunk in a public place. Rosie does not understand the criminal justice system.
Using an example, explain to Rosie the concept of summary offences. (2 MARKS)
7. Distinguish between indictable offences and indictable offences triable summarily. (2 MARKS)
8. Explain how the burden of proof relates to the presumption of innocence. (2 MARKS)
9. Define the standard of proof and explain how it contributes to the element of fairness in the criminal justice system. (2 MARKS)
10. Define the term 'presumption of innocence'. (2 MARKS)

LEVEL 3:
Apply and compare

11. Your friend Steve has been charged with an indictable offence and is awaiting trial. He thinks that:
- his case must be heard in the County or Supreme Court
 - he should pressure his lawyers to prove he is innocent
 - a jury will only acquit him if they know he is definitely innocent
- Outline why each of these statements is incorrect. (4 MARKS)
12. The following information relates to Bob's trial in the Supreme Court:
- Bob has been charged with murder
 - the jury concludes that they are 'more sure than unsure' that Bob is guilty
 - the jury believes that the standard of proof is more strict in murder cases
- Based on the information provided determine:
- What kind of offence has Bob been accused of?
 - Who does the burden of proof rest with?
 - Is it likely that Bob will be acquitted, based on the jury's comments?
 - Is it correct that the standard of proof is more strict in murder cases?
- Justify your determinations. (8 MARKS)

3.1.3 Rights of the accused

As an accused person has certain rights and entitlements in the Victorian justice system. In addition to the presumption of innocence (see Lesson 3.1.2) the law provides important safeguards to protect those charged with criminal offences.

This lesson covers VCAA Key Knowledge point: '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', which we have broken down into the following concepts:

Right to be tried without unreasonable delay	3.1.3.1
Right to a fair hearing	3.1.3.2
Right to trial by jury	3.1.3.3

Right to be tried without unreasonable delay 3.1.3.1

The right to be tried without unreasonable delay is the right of an accused person to have their case heard/decided in a timely fashion unless there are reasonable reasons why their case should be delayed.

The right to be tried without unreasonable delay is protected by s. 25(2)(c) of the *Charter of Human Rights and Responsibilities Act 2006* (Vic).

What is considered an 'unreasonable' delay or an 'unreasonable' reason for delay will depend on a number of factors. What is 'unreasonable' will vary from case to case, particularly depending on the complexity of the police investigation. The ACT case of *R v Upton* found that relevant factors in determining the 'unreasonableness' of a delay may include the length of the delay, the reasons for the delay, the complexity of the case. Other factors may include case backlogs in the courts, availability of resources, impact on the victim and the accused.

A court is likely to intervene only to protect an individual who can demonstrate that the delay causes unacceptable injustice or unfairness (such as being on remand for an unreasonably long time before a trial). Such an intervention is likely to be releasing an accused person on bail.

Although there is no 'rule' we can look to case law to better understand what Australian courts have previously considered an 'unreasonable' delay.

CASE STUDY *R v AHMAD NIAZI* [2008] VMC 22

The accused was charged with significant drug offences (if convicted, he faced a lengthy prison sentence); given there was likely to be a two year delay prior to trial (at least), the accused was granted bail while awaiting trial.

CASE STUDY *GRAY v DPP* [2008] VSC 4

The Supreme Court considered the impact of a trial delay that could mean the accused would spend longer on remand than any sentence that might be imposed (if convicted). The Court determined that Gray's continued remand was not justified because of the delay in the trial, and he was released on bail (with strict conditions).

These accused persons still faced trial; the delay between arrest and trial was significant, so the Court removed them from remand to minimise the negative impact of this delay. There will be circumstances where granting bail is not appropriate, even in when significant delays occur (for further information see *Dinh v DPP* [2015] VSC 318).

A court has the power to permanently stay a trial (that is, to order the accused not stand trial at all) in response to an unreasonable delay, but this a highly unlikely step for a court to take.

Does it matter who is being tried?

This right applies to every accused person irrespective of their personal circumstances or the facts of their case.

Right to a fair hearing 3.1.3.2

The right to a fair hearing is the right of an accused person to have their case heard fairly, publically and presided over by a competent, unbiased and independent court.

Section 24(1) of the *Charter of Human Rights and Responsibilities Act 2006* (Vic):

A person charged with a criminal offence or a party to a civil proceeding has the right to have the charge or proceeding decided by a competent, independent and impartial court or tribunal after a fair and public hearing.

Is anyone excluded from the 'public'?

A court may, at their discretion, exclude certain individuals/groups from attending a particular hearing. This may be because a certain individual/group's presence may distress/intimidate a witness while giving evidence, may detract attention away from the proceedings etc.

How is the right of to a fair hearing reflected in criminal proceedings?

- Consistent rules of evidence of procedure to ensure guilty verdicts are based only on reliable, relevant evidence – not evidence that is prejudicial or cannot be verified.
- Directions to the jury to base their verdict solely on the facts of the case, not on any bias or preconceived ideas of the accused person's guilt.
- The ability to cross-examine prosecution witnesses, to test the accuracy of the prosecution's evidence.
- The ability to select legal representation, to have an expert cross-examine witnesses, address the jury and raise lawful defences – these allow the accused to present their case in its best light.
- Public hearings, to ensure those administering justice do so in a way that the public can see is fair (providing public scrutiny of the work of the courts, prosecutors and the police).
- The accused is given an opportunity to present evidence in their defence, to ensure equality of opportunity to present 'their side' of the case.
- Judges (and juries) must be independent of the parties, witnesses and victims, to ensure decisions are based on the facts and the law, not prejudice or bias.
- An accused person does not need to prove their innocence; they do not need to answer questions (in general) and exercising this right to silence may not be used by a court to infer the accused is guilty.

Right to trial by jury 3.1.3.3

The right to a trial by jury is the right to be tried by an unbiased jury comprising the accused person's peers who have been randomly selected from the electoral roll. This right applies where an accused person pleads not guilty to an indictable offence (this right does not apply to summary offences).

Juries determine the guilty/not guilty verdict in County Court and Supreme Court trials for indictable offences (see Lesson 3.1.9 for further information).

The right to a jury trial applies to a small proportion of cases:

- **The majority of offences committed in society are summary offences**, determined by a magistrate sitting alone (or penalised through an infringement notice); and
- **Many offenders charged with indictable offences plead guilty**, meaning no jury is required and the offender moves straight to a sentencing hearing (judge alone);
- **Therefore**, while those charged with an indictable offence have a right to jury trial (randomly selected from within the community), very few offenders are subject to a jury trial:
 - Jury trials make up a very small proportion of court cases in Victoria. There were a total of 584 Supreme and County Court jury trials in 2012–13. Of those, 501 were criminal matters and 83 were civil matters. 448 jury trials were held in Melbourne and 136 were held in regional Victoria.
Source: www.lawreform.vic.gov.au/content/2-jury-trials-victoria-0#toc-the-number-of-jury-trials-in-victoria-6 POWGPh
 - In 2014/15 the County Court concluded 349 jury trials; a further 288 matters were scheduled to be resolved using a jury trial but the accused changed to a plea of guilty part-way through; and 1299 matters resolved with a guilty plea by the offender (about 70% of all matters in the County Court).
Source: www.countycourt.vic.gov.au/sites/default/files/publication-documents/CCV%20Annual%20Report%202014-15_Single%20P

How rights of the accused uphold fairness, equality and access

	How this right upholds fairness	How this right upholds equality	How this right upholds access
Right to be tried without unreasonable delay	Upholds fairness as accused persons/victims of crime do not have to endure prolonged anxiety and stress of waiting for the resolution of their case.	Upholds equality as all accused persons, irrespective of the circumstances of their case/the crime they are accused of will not have to endure unreasonable delays.	Upholds access as if cases are resolved in a timely manner case backlogs may be relieved, enabling other matters to move through the criminal justice system more swiftly.
Right to a fair hearing	Upholds fairness as accused persons are given the best possible opportunity to defend charges brought against them and test the accuracy of evidence presented by the prosecution, for victims to have their say and for legal representatives to build the best case for their clients. Ensures decisions based on the law and the facts, not bias or prejudice.	Upholds equality as the same fundamental rules of evidence and procedure apply to all accused persons. All accused persons are entitled to a decision-maker free from bias, and the ability to test the evidence led against them.	Upholds access as accused persons are given the best possible chance to achieve a just outcome.

USEFUL TIP

Please see Lesson 3.1.9 for further information about the extent to which jury trials promote the achievement of the principles of justice.

Need extra assistance with this topic?

Remember to check out Edrolo's video lessons:

Lesson 3.1.3: Rights of the accused

Keen to learn more?

Victorian Government Solicitors' Office: Charter Guide,
humanrights.vgso.vic.gov.au/charter-guide/charter-rights-by-section/section-24-fair-hearing

Judicial College of Victoria: Charter of Human Rights Bench Book,
www.judicialcollege.vic.edu.au/eManuals/CHRB/BB/index.htm#57449.htm

QUESTIONS

3.1.3 Rights of the accused

LEVEL 1:

Define and understand

1. Which of the following is the most accurate description of the right to be tried without unreasonable delay?
 - A. The right to be tried without unreasonable delay refers to the right that the accused and prosecution parties have for their case to be heard in a reasonable period of time.
 - B. The right to be tried without unreasonable delay refers to the principle where victims of crime will not have to wait an unreasonable amount of time for a case to commence proceedings.
 - C. The right to be tried without unreasonable delay refers to the right accused parties have for their case to be heard in a reasonable time period.
 - D. The right to be tried without unreasonable delay refers to the right every individual has for their case to be heard in a fixed time period.
2. Which of the following is not an element of the right to a fair hearing?
 - A. having accused persons giving evidence so the whole truth emerges
 - B. ensuring criminal trials are conducted in public
 - C. the ability of an accused person to test the reliability of the evidence presented against them
 - D. having an independent decision-maker
3. Identify which of the following are true of the right to a trial by jury.
 - I. Jurors are selected at random.
 - II. Juries are used for all criminal offences in Victoria.
 - III. An accused charged with murder can ask to not have a jury.
 - IV. Juries are designed to provide trial by the accused person's peers.
 - V. Juries are independent of all parties to a case.
 - A. I, II, III and V
 - B. I, III and IV
 - C. I, IV and V
 - D. I, III, IV and V

LEVEL 2:

Describe and explain

4. Bob is an ex-prime minister who is being charged with robbery. Bob has never committed a crime and has been a law abiding citizen all his life.
 Scott is a 20 year old and has also been charged with robbery. However, Scott has been convicted of many crimes before and has spent time in prison.
 With regards to the right to be tried without unreasonable delay, explain how and why these cases will be treated differently or similarly. (2 MARKS)
5. Describe the accused person's right to a fair hearing. (4 MARKS)
6. All accused persons in Victoria have the right to a jury trial, to be tried by a group of six individuals randomly selected from the community.
 Is this correct? Justify your response. (3 MARKS)

LEVEL 3:

Apply and compare

7. Steve and Jess have recently got into trouble with the law. Steve has been charged with common assault (a summary offence) while Jess has been charged with kidnapping (an indictable offence). Both have pleaded 'not guilty' to these charges.

Based on the information provided compare Steve and Jess's rights as accused persons. (6 MARKS)

8. Matthew has been accused, and pleaded 'not guilty' to, a murder charge. Describe two rights that Matthew has as an accused person. (4 MARKS)

LEVEL 4:

Discuss and evaluate

9. Section 25(2)(c) of the *Charter of Human Rights and Responsibilities Act 2006* (Vic) states that a person charged with a criminal offence has the right to be tried without unreasonable delay.

Explain how this right upholds the principle of fairness and access. (5 MARKS)

Time for some exam practice!

You're ready for Progress Check 1 (online), covering these lessons:

- Lesson 3.1.1 Principles of justice
- Lesson 3.1.2 Key concepts in the criminal justice system
- Lesson 3.1.3 Rights of the accused

Check with your teacher when it's time to complete this progress check.

3.1.4 Victims' rights

In the Victorian criminal justice system, laws exist to protect the rights of victims of crime and their families. The challenges facing a victim of crime as the offence is investigated and prosecuted are described here by the Chair of the Victorian Law Reform Commission, The Hon. Philip Cummins AM (a former judge in the criminal division of the Supreme Court):

Every victim matters. From the commission of the criminal offence, victims undergo a pathway through the criminal justice process. Each victim's pathway is intensely personal; and yet there are significant commonalities. Too often, the trauma suffered by victims is then compounded by their experience of the criminal trial process. There is an abundance of evidence that this is so.

The criminal trial process needs to respect the legitimate rights of accused persons. These should not be lessened or deflected. But the criminal trial process needs also to respect and fulfil the rights of victims and of the community. These sets of rights, properly viewed, are not exclusive one of the other. They are not in competition. They co-exist.

Source: VLRC Victims of Crime Consultation Paper (2015)

In Victoria the *Victims Charter Act 2006* (Vic) creates various rights of victims regarding how crimes are prosecuted and offenders are sanctioned.

This lesson covers VCAA key knowledge point: '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', which we have broken down into the following concepts:

Right to give evidence as a vulnerable witness	3.1.4.1
Right to be informed about the proceedings	3.1.4.2
Right to be informed of the likely release date of the accused	3.1.4.3

Right to give evidence as a vulnerable witness 3.1.4.1

The right to give evidence as a vulnerable witness provides that where someone who is considered 'vulnerable' is required to give evidence in court that certain arrangements, deemed allowable and appropriate by the court, should be made to accommodate them in light of their vulnerability.

How do we define 'vulnerable'?

Like most legal definitions, who is considered a 'vulnerable' witness will depend on a number of factors including whether the witness is a victim of crime, the nature of crime they witnessed, their relationship to the accused etc. However, witnesses will generally be considered vulnerable where they are particularly 'at risk' when giving evidence, such as if the witness:

- Is a child, under the age of 18
- Suffers from a mental disability
- Is an alleged victim of a sexual offence
- Is the victim of family violence

Accommodations can be made for 'vulnerable' witnesses include:

- Witnesses may be able to give evidence via closed-circuit television as they may be intimidated by the atmosphere of a courtroom.
- Witnesses may give evidence behind a screen so they do not have to face the accused.
- Certain individuals may be barred from the courtroom if there is reasonable belief that they could intimidate a witness by their presence alone.
- The court must prevent the defence from asking improper questions to protected witnesses. Improper questions are those that are:
 - Misleading or confusing;
 - Asked in an insulting or belittling tone;

- Overly annoying, intimidating, offensive, repetitive or humiliating; or
- Based on a stereotype (such as the victim's gender, sexuality, race, religion)
- The court may order that, in the event the accused represents themselves, the vulnerable witness cannot be questioned by the accused.

USEFUL TIP

Please note these protections only apply to some witnesses, in criminal proceedings only. These protections do not apply to witnesses or parties to civil disputes.

Right to be informed about the proceedings 3.1.4.2

The right to be informed about the proceedings provides that victims of crime should be knowledgeable about the case in which they are involved.

What does a 'right to be informed' include?

The victim has a right to know:

- The offences with which the accused has been charged
- If the charges were withdrawn or changed (and the reasons why)
- Key developments in the case, such as:
 - If bail has been granted to the accused
 - The date and time a trial is set down for
 - Whether an appeal has been lodged following a trial
- Outcomes of a trial, including the verdict and any sanction imposed by the court

This information will be provided to victims of crime by the Office of Public Prosecutions and Victoria Police.

Right to be informed of the likely release date of the accused 3.1.4.3

The right to be informed of the likely release date of the accused provides that victims of some crimes will be notified about the likely release date of the offender.

The Victims Register is a government record of victims of particular crimes. Those who are placed on the Victims Register will be notified about the likely release date of the offender.

A person can be placed on the Victims Register if they (or their family member) are a victim of a serious offence, such as:

- Assault
- Armed robbery
- Murder/manslaughter
- Family violence
- Sexual offences
- Kidnapping
- Threats to kill

Regarding an offender's release date, a victim on the Victims Register will be advised of:

- the length of the offender's sentence (and any changes to the length of the sentence).
- the earliest possible release date.
- whether the offender applies for/is released on parole (and any conditions attached to parole).
- if the offender is on parole, whether parole is cancelled.

How victims' rights uphold fairness, equality and access

Right	How this right upholds fairness	How this right upholds equality	How this right upholds access
Right to give evidence as a vulnerable witness	Upholds fairness as accommodations are made in light of the fact that such witnesses are particularly sensitive ensuring that they are comfortable.	Upholds equality as all vulnerable witnesses are treated with sensitivity.	Upholds access as it enables witnesses who may otherwise be too intimidated to participate in a trial a means by which they can still be involved; avoids prosecutions being discontinued due to victims' fear of giving evidence.
Right to be informed about proceedings	Uncertainty about criminal proceedings (the process and outcomes) will add to the suffering of victims and their families; these legal entitlements to be informed ensure police and prosecutors minimise this suffering through keeping victims informed, promoting more fair treatment of victims.	All victims are provided with this information about proceedings, regardless of their personal characteristics – promoting equality.	Access includes understanding the legal process and legal rights; the right to this information ensures victims (and their families) can understand and therefore access the criminal justice system. The Office of Public Prosecutions publishes information for victims and witnesses in multiple languages other than English, promoting access to justice by ensuring understanding of the process and such rights to be informed for all victims/witnesses.
Right to be informed of the likely release date of the accused	Uncertainty about an offender's release date may add to the suffering of victims of crime; this right ensures victims don't face this uncertainty, which is fair.	All victims of serious offences (and their families) can be placed on the Victims Register, regardless of their personal characteristics – promoting equality.	Information about the Victims Register is published in many languages other than English, promoting access to all victims of crime (regardless of background).

Need extra assistance with this topic? _____

Remember to check out Edrolo's video lessons:

Lesson 3.1.4: Rights of victims

Keen to learn more? _____

VLRC Victims of Crime Consultation Paper – The Role of Victims in the Trial,

www.lawreform.vic.gov.au/content/8-role-victims-trial

Office of Public Prosecutions – Information for Victims & Witnesses,

victimsandwitnesses.opp.vic.gov.au/victims/commitment-to-you

The Victims' Support Agency, www.victimsofcrime.vic.gov.au

Victims' Support Agency – Victims Register, www.victimsofcrime.vic.gov.au/getting-information-about-the-offender-the-victims-register

QUESTIONS

3.1.4

Victims' rights

LEVEL 1:

Define and understand

1. Jackson walks home from primary school everyday and has noticed that someone has been following him lately so he tells his parents. Jackson's parents fear for his safety, because he is only 10 years old, and report it to the police. The man is taken into custody and charged with stalking.

Just as the accused has the right to be tried without unreasonable delay, Jackson has which of the following rights as a witness?

- A. Jackson is the alleged victim of a serious offence against the person which means he has the right to give evidence as a prime witness.
- B. Jackson is under the age of 16 and therefore will be allowed to have a parent or guardian give evidence on his behalf.
- C. Jackson is the alleged victim of a serious offence against the person which means he has the right to give evidence under protection.
- D. Jackson is a child and therefore will be allowed to apply to give evidence via closed circuit television as it could be too daunting to be in the courtroom which means he has the right to give evidence as vulnerable witness.

2. Alessandra was attacked when walking home from the bus stop almost six years ago. She gave evidence in court as to what her attacker looked like and what he said to her. She was scared, but decided it was worth it to get him off the streets.

Which of the following is Alessandra not entitled to be informed of?

- A. the details of her attacker's appeal of the initial decision
- B. information about new charges that have been made against her attacker
- C. the outcome of her attacker's bail proceeding
- D. Both A and B

3. Fill in the blank spaces:

The _____ Act 2006 states the Department of Justice may give to a person included on the _____ certain information concerning the offender. This could include information such as the _____, the _____, and whether the offender has been _____.

- A. *Victims' Protection*; victims register; length of sentence; likely release date; granted parole
- B. *Victims' Protection*; victims index; length of sentence; likely defence barrister; granted parole
- C. *Victims' Charter*; victims register; length of sentence; likely defence barrister; granted parole
- D. *Victims' Charter*; victims register; length of sentence; likely release date; granted parole

LEVEL 2:

Describe and explain

4. Identify two considerations that may be allowed for a 'vulnerable witness' when giving evidence and explain the process of how these considerations may be implemented. (3 MARKS)
5. It has been argued that victims are 'left in the dark' about the criminal cases of their alleged offender.

Explain why this is not true with respect to the Victorian criminal justice system. (3 MARKS)

6. The right 'to be informed of the likely release date of an offender' covers a range of facts a victim may be provided. Which victims are entitled to this information?

Provide specific examples of the information a victim can receive. (3 MARKS)

LEVEL 3:

Apply and compare

7. Lisa (35), Brianna (8) and Tom (40) have been called to give evidence in a rape trial. We know the following information about them:

- Lisa was the alleged victim of the rape that is the subject of the trial
- Her daughter, Brianna, witnessed the incident
- Tom is the brother of the accused

Based solely on the information provided: (6 MARKS)

- For each witness identify whether they would be considered 'vulnerable'. Justify your conclusions.
- For each of the witness(es) you have identified as vulnerable provide one example of an arrangement that courts could make to accommodate them when giving evidence.

8. Leina pressed charges against her ex-boyfriend, Nick, for aggravated assault (an indictable offence). At the conclusion of his trial Nick is sentenced to a term of imprisonment, but is released early on parole due to his good behaviour in prison.

Describe the right that Leina has as a victim being referred to in this scenario. In your answer, describe one right that Nick had prior to being convicted. (4 MARKS)

LEVEL 4:

Discuss and evaluate

9. Explain how the right to be informed about proceedings upholds the principles of fairness and access. (5 MARKS)

SETTING YOURSELF UP FOR SUCCESS IN VCE LEGAL STUDIES

Successfully completing your VCE is not an easy thing to do. For many people it can be a challenging and stressful time. This topic is designed to help you plan and prepare for success. Some of the tips provided below relate specifically to VCE Legal Studies, but others are more general and apply to all of your other VCE subjects.

These tips are just a starting point. You might already have your own strategies. If so, stick with those. Your friends and teachers might have some great study tips too, so be sure to ask them, and implement the strategies that work best for you!

Top 10 tips for study success

Tip 1 – Get hold of key documents and read them carefully

One of the quickest and simplest things you can do to set yourself up for success in VCE Legal Studies is to get your hands on key documents and read them carefully.

- The most important document in VCE Legal Studies is the Study Design. It sets out all of the information you are expected to learn and provides important details about the way you will be assessed. The current Study Design has been accredited from 1 January 2018. You can download a copy from the VCAA website link on your [obook assess](#).
- The VCAA also make a number of other useful documents available at no charge on its website. These include past exam papers, examination reports and other support materials.
- You should also make sure you keep all documents from your teacher relating to assessment tasks, and read them carefully. Understanding exactly what is required in an assessment task is your first step towards doing well on it. Make sure you also get copies of any assessment advice related to assessment tasks (e.g. marking criteria or assessment rubrics). These are the documents that your teacher will use to assess your level of achieving, so understanding mark allocation and high-scoring responses will ensure that you give yourself the best chance of success.

Tip 2 – Study

Success in VCE Legal Studies doesn't just begin and end in the classroom. If you're going to perform at your best, you will need to make time for regular periods of study and revision outside school hours. This doesn't mean you have to study for hours every day, but it does mean you should incorporate short periods of revision into your daily routine. Studying daily will help you to continually reinforce new concepts in your mind and help you avoid the stress of last-minute cramming. Here are some tips to help you study effectively:

Choose the best place to study

- Everyone has their own idea about the best study environment. Whether it's in your bedroom, at your local library, or at your favourite café, you need to find a regular study space that works for you. Ideally, your study space should be quiet, comfortable, bright and airy, and free from distractions.
- Make sure your study space is stocked with the things that you need (such as stationery) and decorated with things that make you feel calm (such as artworks or plants).



Source 1 Understanding exactly what is required in an assessment task is your first step towards doing well on it. Make sure you also get copies of any assessment advice related to assessment tasks (e.g. marking criteria or assessment rubrics).

- If you like to listen to music while you study, make sure you are able to do this without disturbing others.

Choose the best times to study

- Choosing the best time of day for regular study is important. Some people find it easier to concentrate early in the morning while other people find it easier to concentrate at night. Decide what works best for you and plan for regular study sessions at this time of day. Don't work too late into the evenings though, as this can make you tired for school the next day.

Remember that studying can take many different forms

- Finding time for study can sometimes be difficult, so keep in mind that effective studying can take different forms and happen almost anywhere:
 - you might read over your notes for 10 minutes on the bus on your way to school
 - you might have a chat to your friends at lunch about a concept that you found difficult in class or organise regular group study sessions with your friends.
 - you might make an audio recording of your notes and listen to them while you're exercising.



Source 2 Whether it's in your bedroom, at your local library, or at your favourite café, you need to find a regular study space that works for you.

Tip 3 – Manage your study time effectively

Now that you have your study space set up and have chosen a regular time to study, it helps to put some practical strategies in place to stay on track. Try one or more of the following time management strategies.

TIME MANAGEMENT STRATEGY	DETAILS
Create a study timetable	<ul style="list-style-type: none"> • Creating a study timetable that helps you schedule periods of regular study and revision in all your subjects is key to your success. • Once you set your study timetable, be sure to stick to it. If your timetable isn't working, revisit it and make a new one.
Use a diary, wall planner or calendar to record key dates	<ul style="list-style-type: none"> • Recording key dates is essential to your success. Adding due dates for assessment tasks and assignments will help you manage your time effectively and meet your deadlines (especially in weeks when you have multiple assessment tasks due). • Recording the dates of tests and exams will also help you keep your preparations on track.
Make lists	<ul style="list-style-type: none"> • A simple 'to do' list can be a great tool to help you manage your time and achieve your goals. Creating a short list of daily goals for each study session can also be a great way of keeping you on track each day. • A separate list of weekly or monthly goals can help you keep the bigger picture in mind. • Using lists is a great way to help you break big tasks down into smaller, more manageable tasks, so that you gain a sense of achievement.
Set reminders	<ul style="list-style-type: none"> • Setting a regular alarm to remind you it's time to study can keep you on track.

Source 3 Time management strategies

Tip 4 – Discover your learning style

Everyone learns differently, so getting to know the way you learn can help you to focus on strategies for study that are most effective for you.

TYPE OF LEARNER	WAYS IN WHICH YOU LEARN	BEST LEARNING STRATEGIES AND TOOLS
Visual learner	you learn by seeing and looking	you learn best by using pictures, images, diagrams, colour coding and mind maps
Auditory learner	you learn by hearing and listening	you learn best by using sounds, music, audio recordings and mnemonics (songs, rhymes or phrases designed to aid memory)
Verbal learner	you learn best by using words, both in speech and writing	you learn best by reading content aloud, engaging in discussions, using word-based memory techniques (such as scripting)
Physical learner	you learn best by touching and doing	you learn best by drawing diagrams and using physical objects and role-playing situations

Source 4 Strategies for different learning styles

Tip 5 – Take care of yourself

Once of the most important things you can do during your VCE is look after yourself. Staying healthy is key to your success. Make sure you:

- eat a balanced diet – try to avoid too much caffeine and junk food
- get enough sleep – ideally around 7–8 hours per night
- stay hydrated – try to drink lots of water and limit your intake of soft drinks and energy drinks
- get regular exercise – a brisk 30-minute walk every day is a great place to start and any more is a bonus.

Tip 6 – Use different strategies to review and revise

At the end of each week of class, it's a great idea to summarise your notes so that you can review and revise what you've learned ahead of any assessment tasks, tests or exams. Regular revision will help you understand concepts more fully and recall key information when you need to. A range of common revision strategies and ideas are provided below. Try one or more of the following revision strategies:

REVISION STRATEGY	DETAILS
Create detailed revision notes	<ul style="list-style-type: none">• creating your own revision notes can be time consuming, but it's time well spent!• taking the time to create your revision notes reinforces what you've learned and means that they will be written in language that makes sense to you, not someone else
Dot-point summaries on index cards	<ul style="list-style-type: none">• detailed revision notes are great, but you may also benefit from creating really brief study notes in the form of dot-point summaries• copy these summaries onto index cards so you can carry them with you and revise on your way to school or at home on the couch
Record your revision notes and listen to them	<ul style="list-style-type: none">• record yourself as you read your revision notes or dot-point summaries aloud• listen to yourself

REVISION STRATEGY	DETAILS
Quiz yourself	<ul style="list-style-type: none"> quizzes are quick, fun, and a good way to test what you know and find out your areas of weakness use your textbook, revision notes or quiz cards to quiz yourself ask friends or family members to quiz you on key legal terms and key concepts
Do practice questions, essays and exams	<ul style="list-style-type: none"> practice makes perfect, so the more you test your knowledge and develop your skills by completing practice questions, essays and exams, the better ask your teacher to provide feedback on your practice responses to help you improve

Source 5 Revision strategies



Source 6 Detailed revision notes are great, but you may also benefit from creating really brief study notes in the form of dot-point summaries. Copy these summaries onto index cards that you can carry with you, and use them to revise on your way to school or at home on the couch.

Tip 7 – Stay up to date with current events

This course focuses on our law-makers and our justice system, which are constantly evolving and reforming. So are our laws. It's important to stay up to date with developments in our legal system so you can incorporate current details and facts into your coursework and assessment tasks.

Newspaper articles, digital news feeds, television programs and journal articles are all good sources of current information. Keep your eye out for ongoing developments in legal cases and current events and file these away for later! One way to do this is by creating an automatic internet search. Alert services (such as Google Alert) can send you emails when they find results that match your search terms – such as web pages, newspaper articles, blogs, or even legal cases.

As you collect current information, make sure you label and save it carefully so you can find it when you need it.

Study tip

Setting up automatic alerts is a great way of keeping up to date with developments in legal cases and legislation. Just enter the keywords you want to search for and enter your email address. You'll receive regular updates on anything you're interested in – and it's free!

A link to Google Alerts is provided on your [obook](#) [assess](#).



Tip 8 – Make time for breaks

Regardless of where or when you study, make sure you plan to take regular study breaks. You should aim to work in 50-minute blocks and then take a meaningful 10-minute break.

Make sure your break has nothing to do with your studies. Get up from your desk and leave your study space. Take the dog for a quick walk, make something to eat, or chat to your family or friends.

Some days are tough, so if you're feeling tired, upset or frustrated you might need to take a break or take a night off from study. Just make sure you don't do this too often!

Tip 9 – Ask for help

- Completing your VCE can be a challenge sometimes – especially if you have other commitments like work, sport, or music outside school hours. If you're feeling stressed or overwhelmed, make sure you talk to people around you and get support if you need it. Your teachers, friends and family are there to help you and many schools have services and programs set up to help you.
- If you're having problems understanding a particular concept or completing a certain task, make sure you ask for help! Your teacher is there to help you in class and will make time to explain things you don't understand. If your teacher isn't available, talk to your friends and other students in your class to see if they can help.



Source 7 Some people find it motivating to decorate their study space with inspirational quotes or pictures of the people they care about. These things can help you stay motivated by reminding you of your goals and the reasons why you are working so hard.

Tip 10 – Stay motivated

- Staying motivated and keeping a positive attitude is important during your VCE. Make sure you reward yourself for achieving your daily and weekly goals!
- Try not to compare yourself to other students in your class. Instead, set goals that are right for you and focus on achieving those.
- Many parts of the VCE Legal Studies course require repetition, practice and resilience to master. Many of the concepts are complex, and you may not understand them the first time you come across them, so don't give up! Try some of the different tips and strategies listed above to understand them.
- Some people find it motivating to decorate their study space with inspirational quotes or pictures of the people they care about. These things can help to remind you of your goals and the reasons why you are working so hard.



Check your obook assess for these additional resources and more:

» Weblink
VCAA

» Weblink
Google alerts

» Study timetable
Study timetable template

TIPS FOR SUCCESS ON SACs AND THE END-OF-YEAR EXAMINATION

As you work your way through the VCE Legal Studies course, your teacher will use a variety of learning activities and SACs to assess your understanding of key knowledge and key skills. In order to give yourself the best chance of success on these SACs – and the end-of-year examination – be sure to follow these tips.

Tip 1 – Use key legal terminology

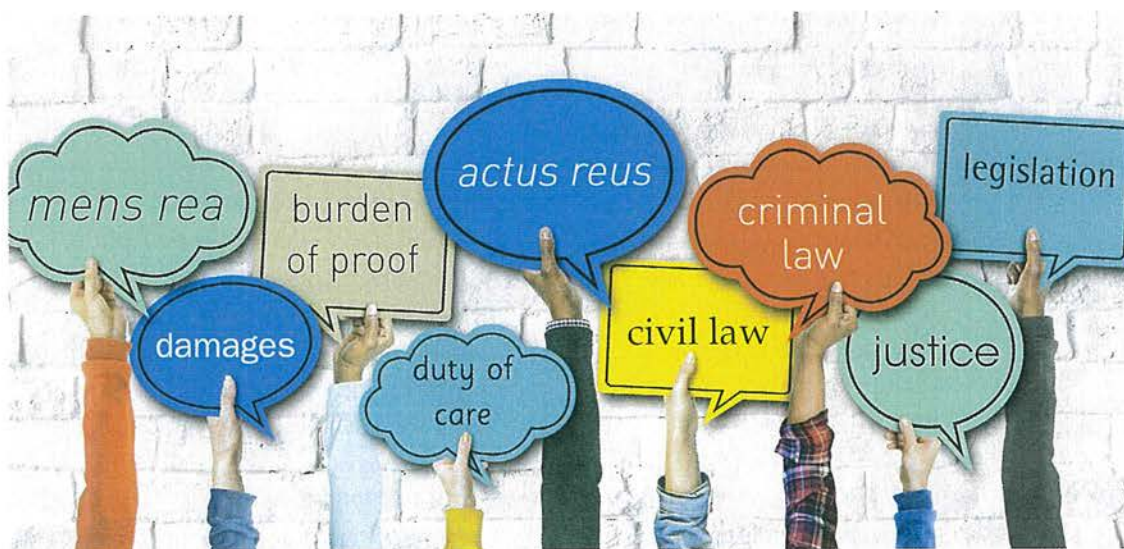
One of the key skills you are expected to demonstrate throughout Units 3 & 4 is the ability to define and use key legal terminology.

A list of key legal terms (with definitions) is provided at the start of every chapter of this student book. These words then appear throughout each chapter and are also listed in the glossary at the end of the book.

Learning these key legal terms and using them correctly in your assessment tasks will show your teacher that you understand them – and will help you achieve a great result.

Some simple strategies to help you learn and remember key legal terms include:

- writing words and definitions on Post-it notes and sticking them around your room or house
- making flashcards that you can carry with you and use to quiz yourself and others
- using the digital flashcard glossary interactive provided on your obook assess to quiz yourself and others
- getting into the habit of adopting and using legal terminology in your everyday language (e.g. use 'plaintiff' instead of 'a person who is suing another person').



Source 1 Learning key legal terms and using them correctly in your assessment tasks will show your teacher that you understand them. Getting into the habit of adopting and using legal terminology in your everyday language will help you learn key terms quickly!

Tip 2 – Understand task words

In the assessment tasks you are asked to complete throughout the year, it's likely that questions and tasks will include a 'task word'. In Legal Studies, task words are words that tell you how to demonstrate the knowledge you have learned.

Task words range in level of difficulty. Some (such as **identify** or **define**) are simple to understand and master. Others (such as **evaluate** or **justify**) are more challenging to understand and will take practice to master. Source 2 lists a range of common task words and their definitions. It also provides example questions so you can see each task word in context.

All of these questions have come from exam papers for past Study Designs, so they may or may not reflect key knowledge and key skills that are not in the current Study Design. You should check with your teacher about this.

TASK WORD	DEFINITION	EXAMPLE QUESTION FROM PAST EXAMS*
Advise	To offer suggestions about the best course of action or make recommendations	Question 7 (2008) James and his friends were celebrating James' 35th birthday at a local restaurant. At the end of the night, James decided that he may have had too much to drink and called a taxi. On the way out, James tripped on some worn carpet and fell to the floor, causing him a serious injury. After consulting his lawyer, James decides to sue the restaurant for compensation. Advise James on the purpose of two pre-trial procedures which his lawyer might use in this case.
Analyse	To examine a complex feature, issue or concept by breaking it down into smaller parts and showing how they relate to one another	Question 12 (2013) Using one successful referendum and one High Court case, analyse the impact of referendums and the High Court's interpretation of the Commonwealth Constitution on the division of law-making powers.
Comment on	To express an opinion or reaction (in order to demonstrate your understanding of it)	Question 5 (2009) 'Pre-trial procedures are designed to speed up the resolution of civil disputes.' Comment on this statement. In your answer, describe one civil pre-trial procedure.
Compare	To explain or discuss how concepts, definitions or features are similar and different (by identifying the qualities or features they have in common as well as those they don't)	Question 5 (2010) Jane and David have been involved in an ongoing dispute. They have been advised to use either mediation or arbitration as a dispute resolution method. Compare mediation and arbitration as methods of dispute resolution.
Examine	To consider in detail and establish the key facts and important issues related to a topic or issue.	Question 9 (2010) The doctrine of precedent allows for both consistency and flexibility. Critically examine these two strengths of the doctrine of precedent.
Define	To state the exact nature, features, or meaning of a term, feature or concept	Question 1 (2015) A plaintiff is seeking an injunction and damages of \$1 million in the Supreme Court of Victoria. Define the term 'injunction'.
Describe	To give a detailed account of a system, process or feature	Question 9a (2016) Describe one reason why a law may need to change.

TASK WORD	DEFINITION	EXAMPLE QUESTION FROM PAST EXAMS*
Discuss	Give a reasoned argument for and against a particular issue (and provide strengths and weaknesses if applicable). You can also give your opinion, and should do so if the question asks you to give it	Question 7c (2016) Provide one sanction that may be imposed if Sam is found guilty and discuss the ability of that sanction to achieve its purposes.
Distinguish	Explain the differences and distinctive characteristics	Question 1 (2011) Distinguish between exclusive and residual powers.
Evaluate	To identify key features and assess their relative merits by discussing the strengths and weaknesses and providing a concluding judgment about the (overall) benefit or worth of what is being evaluated	Question 10 (2013) Evaluate the effectiveness of two methods that are used by individuals or groups to influence a change in the law.
Explain	To clarify a point, feature or concept by describing it in more detail or revealing relevant facts about it	Question 5b (2015) Explain the role of the VLRC in recommending a change in the law.
Identify	To state or recognise a feature or factor (and possibly provide some basic facts about it)	Question 3 (2013) Identify the two types of law-making powers of the state parliaments. In your answer, provide an example of each.
Illustrate	To provide examples in order to better describe or explain a feature or concept	Question 4 (2005) Use one example to explain and illustrate how the law-making powers of the Commonwealth Parliament and the State Parliaments have been changed by High Court interpretation of the Commonwealth Constitution.
Justify	To show (or prove) a statement, opinion or contention to be right or reasonable by providing evidence or examples	Question 3 (2016) A referendum proposal was voted on by the electors of Australia. Fifty-six per cent of all voters in Australia voted in favour of the proposal and the majority of voters in all states, except Victoria, Tasmania and New South Wales, voted in favour of the proposal. Was the referendum passed? Justify your answer.
Outline	To give a brief summary of the key features	Question 1 (2014) Outline one effect of the interpretation of statute by judges.
Provide	To give, supply or specify	Question 5 (2014) Audrey has commenced civil proceedings in the Supreme Court of Victoria (Trial Division). The court will resolve the dispute at trial after mediation was unsuccessful. Provide one reason for the existence of a court hierarchy. Refer to Audrey's dispute in your answer.
To what extent	To describe the degree or level to which a statement, opinion or contention is (or is believed to be) correct or valid	Question 12 (2015) The author of a journal article wrote the following opinion: 'Juries should not decide matters of fact. It should all be left up to the judge.' To what extent do you agree with this opinion? Justify your answer.

*Selected VCE Legal Studies examination questions (2008–2016) are reproduced by permission, © VCAA.

Source 2 Common VCE Legal Studies task words, definitions and examples.

Study tip

A short video explaining the structure of Legal Studies exam questions is provided on your ebook assess. It gives you more tips and examples of the best ways to answer questions and will help you maximise your chances of performing well on tests, assessment tasks and exams!

Study tip

It's important to keep an eye on the clock during tests or exams to make sure you have enough time to answer every question.



Source 4 It is important to keep an eye on the clock during exams.

Tip 3 – Understand the structure of exam questions

To give yourself the best chance of doing well in VCE Legal Studies exams, it's important for you to become familiar with types of questions that typically appear. Like assessment tasks, exam questions assess your understanding of key knowledge and key skills. The only difference is that exams are completed under exam conditions.

Legal Studies exam questions typically contain a defined set of items arranged in different orders. Once you understand what each component of the question is asking or telling you, answering the question becomes much simpler. Source 3 explains the most common items that make up exam questions and Sources 5 provides some examples of these in action.

QUESTION COMPONENT	PURPOSE
Question number	This indicates the number of the question on the exam paper.
Mark allocation	This indicates the total number of marks available for the question. The total marks available gives you an idea of how long to spend answering the question.
Quote or extract	Exam questions may include statements or extracts from key pieces of legislation.
Task word	Task words are words that tell you how to demonstrate the knowledge you have learned.
Quantifying words	Quantifying words state the specific numbers (i.e. quantities) of examples or definitions you should provide in your answer. Follow quantifying words carefully and provide exactly what is asked.
Content words	Content words provide specific details and facts for you to consider in your answer (i.e. the context).

Source 3 Legal Studies exam questions are typically made up of tasks based on these items

Question 13 (10 marks)

Discuss the ability of parliament to change the law. In your answer, provide one recent example of an individual or group influencing legislative change.

Question 1 (7 marks)

Nathan commences proceedings in the Magistrates' Court against his employer and is seeking \$90 000 in damages.

- a. Describe one purpose of damages.

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Source 5 Examples of the common items that make up exam questions



Check your ebook assess for these additional resources and more:

» Video tutorial

Understanding the structure of Legal Studies exam questions

» Flashcard glossary

Digital interactive to help you learn key legal terms

MASTERING LEGAL CITATION

As you work your way through the VCE Legal Studies course, you will be learning about many different laws and legal cases. To be able to recognise laws and legal cases, and to reference them in your notes and assessment tasks, you should master the basics of legal citation.

What is legal citation?

legal citation
the system used to refer to legal documents and sources such as cases and statutes

Act of Parliament
a law made by parliament; a bill which has passed through parliament and has received royal assent (also known as a statute)

Legal citation is the system used to refer to legal documents and sources such as cases and Acts of Parliament in a consistent and accurate way. The most commonly cited legal documents are:

- **Acts of Parliament** (also known as statutes and legislation)
- judgements from legal cases (also known as court decisions).

The following information will help you in reading and understanding legal citations. It will also help you cite legal documents correctly in your coursework and assessment tasks.

Citing Acts of Parliament

Acts of Parliament (often called just 'Acts') are laws made by the various parliaments in Australia (i.e. state and territory parliaments and the Commonwealth Parliament) and in other countries around the world.

Acts of Parliament generally feature the following pieces of information in this order:

- **The name of the Act or statute** – This is the title that has been given to the statute. It is always written in *italics*.
- **The year that it was made by parliament** – This is also written in *italics*.
- **The parliament that passed it** – This will be either a state or territory parliament, or the Commonwealth Parliament. The name of the parliament is never written in full; instead, abbreviations for each parliament are used (e.g. Vic or Cth).

Example 1 – an Act made by the Victorian Parliament

Crimes Act 1958 (Vic)

Title Year Parliament

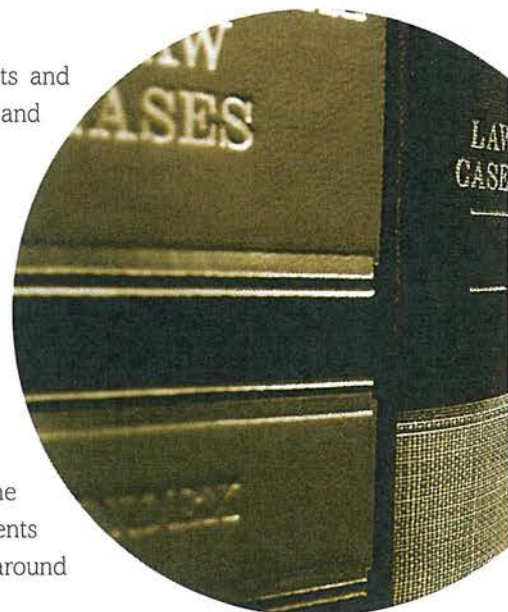
This Act (i.e. the *Crimes Act*) was made in 1958 by the Victorian Parliament.

Example 2 – an Act made by the Commonwealth Parliament

Competition and Consumer Act 2010 (Cth)

Title Year Parliament

This Act (i.e. the *Competition and Consumer Act*) was made in 2010 by the Commonwealth Parliament.



Source 1 Legal citation is a system designed to help people cite (i.e. refer to) specific laws and legal cases in a consistent and accurate way.

Study tip

If you are looking for an act in a database such as the Australasian Legal Information Institute (AustLII), and you can't find it in the list called 'Victorian current acts', it might be an amending act rather than a main act (called the 'principal act'). If you know the year, you can look it up under 'Victorian numbered acts'. However, for your purposes, you will generally be citing the principal act anyway.

Study tip

A short video with tips and examples of how to cite legal cases and Acts of Parliament is provided on your gbook assess. Watch it to help develop your skills!

Citing amending acts

Amending acts are a type of statute that amend (i.e. change or update) a statute that already exists. Amending acts are repealed (i.e. cancelled) once the amendments are made to the existing statute.

For example, the *Sentencing (Community Correction Order) and Other Acts Amendment Act 2016* (Vic) is an amending Act which amends the *Sentencing Act 1991* (Vic), the *Bail Act 1977* (Vic) and various other Victorian Acts. The sole purpose of the *Sentencing (Community Correction Order) and Other Acts Amendment Act* is to amend (i.e. change or update) those Acts. For example, it might result in certain sections of the existing Acts being deleted, added and amend certain words or phrases being changed.

An amending act is cited in the same way as other acts. Sometimes the title will let you know that is an amending act, as in the above examples, but not always.

Example 3 – an amending act passed by the Victorian Parliament

Sentencing (Community Correction Order) and Other Acts Amendment Act 2016 (Vic)

Title

Year

Parliament

This amending act (i.e. the *Sentencing (Community Correction Order) and Other Acts Amendment Act*) was made in 2016 by the Victorian Parliament.

Once the amending act has done its work, it is repealed, and it will no longer appear in the list of current Acts. That will occur once the changes it makes to the principal act (the act it is amending) commence. In this example, the *Sentencing (Community Correction Order) and Other Acts Amendment Act* states that it will be repealed on 2 October 2018. That is because the changes it makes to various principal acts take effect on 1 October 2018.

Citing bills

Bills are drafts of proposed laws that have been presented to parliament but haven't been passed into law. When citing bills, you should adopt the same approach as acts, except the word 'Act' is replaced by the word 'Bill', and the title of the bill is not italicised.

Example 4 – a bill being presented to the Victorian Parliament

Disability Amendment Bill 2004 (Vic)

Title

Year

Parliament

This Bill (i.e. the Disability Amendment Bill) was presented in 2004 by the Victorian Parliament.

Citing legal cases

Like acts, decisions from legal cases that are heard in a tribunal or court also have citations. Whenever a written decision or judgment has been handed down by a tribunal or court, it is given a citation so that people can refer back to it.

Legal case citations generally feature the following pieces of information in this order:

- **The names of the parties** – The name of the person who starts the case (usually called the plaintiff, prosecutor or applicant) goes first. The names of the parties are separated with the word 'v' (e.g.

Smith v Jones). The names are written in italics. If there are multiple parties, the case name is generally shortened to include just the first party in the list.

- **The year of the decision** – This is the year that the decision or judgment is published. It might be in square brackets or round brackets, depending on the report in which the decision is published.
- **The citation it has been given** – All Australian court cases now have a 'medium neutral citation', which is the court's own unique identifier for the decision in its online database.

These citations are given by the court, and they always use an abbreviation that shows the court that heard the case. The most common abbreviations are set out below.

COURT IDENTIFIER	COURT
HCA	High Court of Australia
FCA	Federal Court of Australia
FamCA	Family Court of Australia
VSCA	Victorian Supreme Court (Court of Appeal)
VSC	Victorian Supreme Court (Trial Division)
VCC	County Court of Victoria
VMC	Magistrates' Court of Victoria
VCAT	Victorian Civil and Administrative Tribunal

Source 2 Court identifiers in legal citations make clear which court a case was heard in

Examples of ways cases can be cited are as follows.

Example 5 – a civil case

<i>Commonwealth v Tasmania</i>	(1983)	158 CLR 1
Parties	Year	Law report

- The parties in this civil case were the Commonwealth of Australia and the State of Tasmania.
- The 'v' between the names of the parties is short for versus, but is pronounced 'and'.
- The decision was published in 1983.
- This is an example of a written judgment published in a law report. It was published in Volume **158** of the Commonwealth Law Reports (**CLR**) on page **1**.

Example 6 – a criminal case

<i>DPP v Styles</i>	[2017]	VCC 96	(9 February 2017)
Parties	Year	Court identifier	Date of judgment

- The parties in this criminal case were the **Director of Public Prosecutions (DPP)** and a man called Christian Patrick Styles.
- The 'v' between the names of the parties is short for versus, but it is pronounced 'against' or 'and'.
- The case finished in 2017, and the written judgment was given by the court on 9 February 2017.
- The decision was handed down in the **County Court of Victoria (VCC)**.
- The case was No. 96 in the Court's list for that year.

Smith v Jones). The names are written in italics. If there are multiple parties, the case name is generally shortened to include just the first party in the list.

- **The year of the decision** – This is the year that the decision or judgment is published. It might be in square brackets or round brackets, depending on the report in which the decision is published.
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Citing other laws, rules and regulations

The parliament can authorise other bodies to make regulations and rules. These are described as 'delegated legislation' or 'secondary legislation'. To cite them, you use the name they have been given ('Rules' or 'Regulations') and follow the same format as citing an Act of Parliament.

Example 7 – rules passed by the Victorian Parliament

Supreme Court (General Civil Procedure) Rules 2005 (Vic)

Title

Year

Parliament

These rules (i.e. *Supreme Court (General Civil Procedure) Rules*) were passed in 2005 by the Victorian Parliament.

Example 8 – regulations passed by the Commonwealth Parliament

Native Title (Federal Court) Regulations 1998 (Cth)

Title

Year

Parliament

These regulations (i.e. *Native Title (Federal Court) Regulations*) were passed down in 1998 by the Commonwealth Parliament.

Local laws

Local laws are passed by local councils. They are easily identifiable because they will contain the words 'Local Law' in the title.

Example 9 – a local law passed down by the Melbourne City Council

Melbourne City Council Activities Local Law 2009

Title

Year

This Local Law (i.e. the *Melbourne City Council Activities Local Law*) was passed down in 2009 by the Melbourne City Council.



Check your book assess for these additional resources and more:

» **Video tutorial**

Citing legal cases and
Acts of Parliament

» **Worksheet**

How to find and
understand acts and
cases

» **Weblink**

Australasian Legal
Information Institute
(AustLII)