

LEGAL STUDIES HOLIDAY HOMEWORK 2022



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Holiday Homework Required:	Questions on the principles of justice Questions on the key concepts in the criminal justice system
Recommended Work:	Follow the news – look out for legal cases currently happening in the courts, political news and anything to do with law reform.
Resources Required for the Subject:	Justice and Outcomes VCE Legal Studies Units 3 & 4 textbook Login & password for Edrolo online
Key Links:	https://edrolo.com.au/ http://www.austlii.edu.au/ https://www.abc.net.au/news/justin/
Additional Resources:	https://theaimn.com/ (or any other news) https://www.thelegalstudiesguy.com/

Unit 3 AOS 1: The Victorian Criminal Justice System



The Victorian criminal justice system is used to determine whether an accused person is guilty beyond reasonable doubt of an offence for which they are charged, and to impose sanctions where guilt has been found or pleaded. The system involves a range of institutions including courts (the Magistrates' Court, County Court and Supreme Court) and others available to assist an accused. In this area of study students explore the criminal justice system, its range of personnel and institutions and the various means it uses to determine a criminal case. Students investigate the rights of the accused and of victims, and explore the purposes and types of sanctions and sentencing considerations. Students consider factors that affect the ability of the criminal justice system to achieve the principles of justice. They examine recent reforms from the past four years and recommended reforms to enhance the ability of the criminal justice system to achieve the principles of justice. Students synthesise and apply legal principles and information relevant to the criminal justice system to actual and/or hypothetical scenarios.

Key knowledge covered in this booklet:

- the principles of justice: fairness, equality and access
- key concepts in the Victorian criminal justice system, including:
 - the distinction between summary offences and indictable offences
 - the burden of proof
 - the standard of proof
 - the presumption of innocence

Unit 3 AOS 1 Dot Point 1: The Principles of Justice



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.

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**.

Access

'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 an **ability** to pursue their case'.

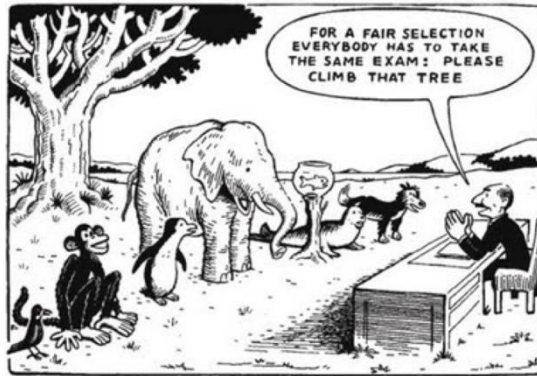


In Victoria's criminal justice system this means (in practice):

- Understanding the court systems.
- 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.

Fairness

'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 Victoria are open to the public.
- Decision makers being independent and unbiased, with decisions based solely on the law and the facts.
- Accused persons being presumed innocent until proven guilty.
- 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 delays add to the stress and anxiety of victims, witnesses, accused persons awaiting trial (and these parties' families).
- A right to access legal representation to present one's case in 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 on them reflected in sentencing, as individuals will respond differently to crime.

HOT TIP

In your responses, avoid using the word 'fair' to define 'fairness'. Instead try using words such as 'impartial', 'unbiased' or 'equitable' in the definition. 'Fairness' is defined as ensuring unbiased legal processes are in place, and all parties receive an impartial hearing.

Equality

'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).

HOT TIP

In your responses, avoid using the word 'equal' to define 'equality'. Instead try using words such as 'the same', 'like' or 'equivalent' in the definition. 'Equality' is defined as ensuring all people are treated the same before the law, with a like opportunity to present their case.

HOT TIP

When discussing the strengths and weaknesses of legal bodies and processes, you will often also need to consider how these bodies/processes contribute to the achievement of the principles of justice.

HOT 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.

Questions on the principles of justice

1. Which of the following does not promote the achievement of 'fairness' in the criminal justice system? **Highlight your answer**
 - 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? **Highlight your answer**
- A member of parliament uses their position to avoid paying outstanding parking fines.
 - A teenager who did not know it was illegal to trespass is charged.
 - 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.
 - Both A and C

3. Fill in the blanks for the following statement:

'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.'

Key terms

useless, a lawyer, legal, just, best, advice

4. Define 'fairness' as a principle of justice, and identify two ways the criminal justice system achieves 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)

Unit 3 AOS 1 Dot Point 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.



Summary offences

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).



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

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.



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).

HOT 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

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

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, only if no reasonable 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.'

Presumption of innocence

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 presents 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.

HOT TIP

In an exam, students may be asked to make a connection between the burden of proof and the presumption of innocence.

For example, the 2018 VCAA Sample Exam included the following question:

Describe the relationship between the burden of proof and the presumption of innocence. (3 MARKS)

This question required students to explain that the burden of proof in a criminal trial upholds the presumption of innocence by placing the responsibility on the prosecution to prove that the accused has committed a crime. The accused does not need to prove that they are not guilty, because they are presumed to be innocent until proven guilty by the prosecution.

HOT TIP

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

Questions on the key concepts in the criminal justice system

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.

Key terms

Magistrates'; possible; minor; magistrate; criminal; Most

2. Read the following statements and determine which are incorrect (**Highlight your answer**):

- 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.

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.

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

4. Which of the following statements are true (**Highlight your answer**)?

- 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.

5. Which of the following is not true with respect to the presumption of innocence? **Highlight your answer**

- The presumption of innocence means the accused does not need to present evidence.
- The presumption of innocence prevents accused persons from having to give self-incriminating evidence.
- The presumption of innocence applies only to those charged with indictable offences.
- The presumption of innocence means the accused will be considered innocent until the standard of proof has been met.

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. Describe the term 'presumption of innocence'. (2 MARKS)

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