

Legal Studies% Lesson 1

Principles of Justice

- Fairness – Impartial and just treatment without favouritism due to court processes e.g. rules of evidence and procedure, impartial judge, presumption of innocence
- Equality – Individuals are treated equally before the law without being treated differently due to a personal characteristic or attribute (no discrimination or bias) e.g. impartial judge, interpreters, pro-bono lawyers (VLA)
- Access – Opportunity to understand legal rights and pursue a case through legal institutions (TIME & MONEY)

Summary Offences

- Less serious offences
- Outlined in Summary Offences Act 1966 (Vic)
- Heard in the Magistrates' Court by Magistrate only
- Maximum of 2 years' imprisonment for a single offence or 5 years for multiple offences
- 'Hearing'
- Traffic Offences, Shop-Lifting, Minor Assaults

Indictable Offences

- More serious criminal offences
- 'Trial'
- Rape, Murder, Drug Trafficking, Terrorism
- Outlined in Crimes Act 1958 (Vic)
- Heard in County or Supreme Court
- Unlimited Sanctions – range of sanctions outlined by Acts of Parliament depends on severity of crime
- Heard by a Judge & Jury

Indictable Offences heard Summarily

- Accused has choice to have case heard as either summary or indictable
- Maximum term of imprisonment of 20 years or fine of \$120,000
- Advantages of having case heard in Magistrates' Court – Less Time and Money, Less risks of sanctions, no jury fees
- Weaknesses of having case heard in Magistrates' Court – No jury trial/chance of acquittal

Elements of Crime

- Mens Rea – Criminal Intent
- Actus Rea – Criminal Act
- Burden of Proof – Responsibility of the party initiating the case to prove the claims made – ONUS ON PROSECUTION
- Standard of Proof – Quality of the evidence that the prosecution must present to discharge burden of proof and gain a guilty conviction – BEYOND REASONABLE DOUBT

- Presumption of Innocence – Assumption that the accused is innocent of all allegations unless and until the Prosecution proves their guilt through presenting evidence and discharging the burden and standard of proof e.g. opportunity for bail, right to silence, onus on prosecution, prior convictions not heard until sentencing, appeals

Rights of the Accused #1 Right to Fair Hearing

- Fairness - Impartial and just treatment without favouritism due to court processes e.g. rules of evidence and procedure, impartial judge, presumption of innocence
- Competent & Independent Judge
- Impartial Hearing
- Legal Representation (understand rights)
- Public Hearing
- Section 24 Charter of Human Rights and Responsibilities (Victoria)

Rights of the Accused #2 Right to Trial by Jury

- Individuals accused with indictable offences have right to have trial judged by their peers
- Ensures community values considered
- 12 members of community randomly selected off electoral role
- Reach verdict
- Spread burden of decision making
- Section 80 of the Australian Constitution & Criminal Procedure Act

Rights of the Accused #3 Right to Trial Without Unreasonable Delay

- Trials held as quickly as possible avoiding all unnecessary delays
- Delays are inevitable
- Ensure adequate preparation for trial
- Avoid unfair disadvantage for accused who may be held in remand, reduces costs, reduces mental stress and uncertainty
- All criminal matters commence with a committal hearing 3-6 months after charging
- Section 21 and 25 of Charter of Human Rights and Responsibilities (Victoria)

Rights of the Victim – Definition of Victim

- A person who has suffered injury as a direct result of a criminal offence ('primary victim')
- A family member of a person who has died as a direct result of a criminal offence
- A family member of a person who is under 18 years of age or is incapable of managing his or her own affairs because of mental impairment, and that person has suffered injury as a direct result of a criminal offence
- A child under the age of 16 years who has been groomed for sexual conduct, as well as that child's family.

Rights of Victim #1 – Right to Give Evidence as a Vulnerable Witness

- Victims of sexual offences and family violence OR violent, obscene, indecent behaviour
- Avoid intimidation of victim to ensure evidence/testimony is accurate
- Avoid re-victimisation
- Alternative arrangements provided e.g. give evidence via CCTV, use screens to obstruct line of vision, support persons, limit public viewing
- Declare protected witness ensures victim cannot be cross-examined by accused, if accused self-represented given VLA representation
- Section 41 of the Evidence Act 2008 gives the court power to disallow the improper questioning of a vulnerable witness e.g humiliating, intimidating, repetitive questions

Rights of Victim #2 – Right to be informed about proceedings

- Prosecution must give the victim essential information regarding the trial in a timely manner
- Information regarding bail applications, offences charged, reasons for acquittal, appeals
- Outline when victim is required to give evidence at court

Rights of Victim #3 – Right to be Informed of Likely Release Date of Accused

- Section 17 of the Victims Charter Act enables the victim to be included on a register kept for victims of criminal act of violence in Victoria
- Outline the length or sentence and likely release date
- Victim can provide submissions to Adult Parole board to prevent release

QUESTIONS

- Explain each of the principles of justice (3 marks)
- Differentiate between summary and indictable offences (4 marks)
- Explain the advantages and disadvantages of having an indictable offence heard summarily (4 marks)
- Explain the burden and standard of proof in criminal law (2 marks)
- Explain how the presumption of innocence upholds fairness (2 marks)
- Explain 2 rights of the accused and explain how each upholds fairness and equality (6 marks)
- Explain 2 rights of the victim and explain how each upholds fairness and access (6 marks)

Legal Studies 3/4 Lesson 2

Victorian Legal Aid (VLA)

- Funded by Government but operates independently
- Provides free legal advice to the community and low or no cost representation
- Improve access to justice
- In 2017 32,000 people denied VLA
- Income Tests, Means Test (Assets), Merits Test (likelihood of success)
- Duty Lawyers – VLA Lawyer rostered on at Children's or Magistrates' Court (income tests & priority given based on circumstances)
- Free legal information on website
- Over the phone information and advice

VLA & POJ's

- Fairness (+) Eligible individuals provided with advice and a better understanding of their legal rights. VLA acts as an advocate to uphold individual's rights and ensure court processes are followed
- Equality (+) Ensures the accused has the same opportunity to present their case as the DPP and ensures accused is not disadvantaged due to lack of funds
- Access (+) Provides accused with opportunity to rebut the charges against them through court institutions at a low/no cost or provide them with advice about how to better represent themselves
- Fairness (-) Trial may be delayed in order to allow self-represented party to obtain legal representation which may reduce accuracy of evidence -
- Equality (-) Inequality because the DPP has vast resources available as opposed to VLA
- Access (-) Means, Merits & Income test limits ability to provide access to individuals who cannot afford legal representation due to high threshold

Community Legal Centres (CLC's)

- Independent community organisations which provide free legal advice and casework but rarely representation
- Government funded
- 50 CLC's in Melbourne
- Generalist CLC's – Provided to people in a geographical area e.g. Fitzroy Legal Service
- Specialist CLC's – Provide advice to a particular group of people or a particular area of law e.g. refugees, YouthLaw, women
- Visit without appointment
- Forced to turn away over 160,000 people in 2017
- Rarely take on indictable criminal cases

CLC's & POJ

- Fairness (+) Eligible individuals provided with advice and education to ensure they understand court processes and can therefore ensure their rights are upheld in court
- Equality (+) Ensures the accused has the same opportunity to present their case as the DPP and ensures accused is not disadvantaged due to lack of funds
- Access (+) CLC's provide advice about how accused's can better represent themselves at no cost, CLC's are easily accessible without an appointment
- Fairness (-) – CLC's rarely take on criminal cases especially indictable offences – do not act as an advocate to ensure individuals are treated fairly in court
- Equality (-) Prioritises individuals based on circumstances – Lack of funds in comparison to DPP causing disadvantage to self-represented party on the basis of socio-economic status
- Access (-) Must be eligible and rarely represent individuals limiting opportunity to make use of courts at a low cost

Committal Proceedings

- Pre-trial procedures for all indictable offences where accused pleads not guilty
- Heard in Magistrates' Court
- Prosecution presents evidence and accused can question witnesses and make submissions
- Key Purpose – Determine whether a prima facie case exists – Does the Prosecution have enough evidence to secure a guilty verdict at trial?
- Key Purpose – Facilitate early guilty plea
- Magistrate can consider whether possible to have case heard summarily
- Filtering process - Saves court resources
- Purpose – Provide accused with better understanding of case against them

Committal Proceedings Evaluation

- Strength – Saves time & money by facilitating early guilty plea
- Strength – Gives Accused opportunity to prepare
- Strength – Upholds presumption of innocence
- Weakness – Adds to costs & delay
- Weakness – Can be seen as unnecessary
- Weakness – DPP can proceed with trial even if Magistrate decides no prima facie case
- Weakness – Can cause victims unnecessary stress as required to give evidence on 2 occasions

Committal Proceedings & POJ

- Fairness (+) – Upholds presumption of innocence because Prosecution required to present evidence to show prima facie case exists
- Equality (+) – Both parties can test the strengths and weaknesses of their opponent's case and prepare
- Access (+) – Facilitates an early guilty plea by highlighting the strength of Prosecution's case therefore improving opportunity to timely and low-cost court processes
- Fairness (-) Adds to delay, DPP can continue with their case even if no prima facie case undermining presumption of innocence
- Equality (-) Legal representation required which may disadvantage accused, Accused does not have to present evidence thus may at an advantage
- Access (-) Increases costs and delay

Plea Negotiations

- Private discussion between prosecution and accused
- Prosecution provides accused with incentives to plead guilty
- Prosecution determines what charges accused is willing to plead guilty to by combining number of charges or diminishing severity of charges
- If an agreement is formed the case only goes to court for sentencing
- Occurs prior or during trial
- Usually only successful in cases where Prosecution does not have a very solid case or strong evidence as compromising
- Purpose – Facilitate early guilty plea – reduce costs, time and stress
- Purpose – Secure a guilty plea which reflects the severity of the accused's actions
- If unsuccessful, discussions are without prejudice – cannot be used as evidence
- Victims should be consulted

Plea Negotiation Evaluation

- Strength – Reduces costs, time and stress for parties & court resources
- Strength – Victims avoided inconvenience and trauma of trial
- Strength – Reduced sentence for the accused
- Weakness – Victim/Community may feel accused has been let off if sentence too lenient
- Weakness – Self-represented accused may be forced to plead guilty to a deal they do not understand
- Weakness – Avoids need for Prosecution to fulfil burden and standard of proof which may undermine presumption of innocence
- Weakness – Discussions are private

Plea Negotiation & POJ

- Fairness (+) Discussions cannot be used as evidence (without prejudice), Achieved if the sentence reflects the severity of the accused's actions, Victim's input can be considered
- Equality (+) Both parties have equal involvement in discussions to achieve mutually beneficial outcome
- Access (+) Facilitate early guilty plea – reduces cost and time of trial
- Fairness (-) Prosecution avoids discharging burden and standard of proof therefore undermining presumption of innocence, lack of transparency as private discussion, Unfair if sentence does not reflect crime
- Equality (-) Self-represented accused may be manipulated to accept a deal they do not understand
- Access (-) If unable to reach an agreement merely adds to delay

Sentence Indications

- Judge provide the accused with information regarding the likely sentence they would receive if they pleaded guilty at that moment
- Judge must impose a less severe sentence than what they indicated if accused chooses to plead guilty
- Sentencing discount
- Indictable Offences – Less information given – Judge only tells whether the sentence would be custodial (imprisonment) or non-custodial
- Indictable Offences – Prosecution must give permission
- Summary Offences – Magistrates' give more detail – specific sentence & length of imprisonment
- If Accused does not accept the next Judge will not be informed of indication
- Purpose – Encourages accused to plead guilty – saves time, money, stress
- Purpose – Prompt justice to bring closure for victims

Sentence Indication - Evaluation

- Strength – Early guilty plea – saves court resources
- Strength – Early guilty plea – less time, money & stress for parties
- Strength – Open court & given by impartial Judge – more transparent
- Strength – Accused not forced to accept indication
- Strength - Victim impact statement can be considered by a judge when giving an indication
- Weakness – Prosecution must consent for indictable offences
- Weakness – Often given before all facts of case presented – may not reflect severity of crime
- Weakness – Delay if accused does not accept and new judge/jury empaneled

Sentence Indication & POJ

- Fairness (+) - Given by Judge/Magistrate in open court, If accused does not accept the indication new judge is not informed and indication cannot be used as evidence
- Equality (+) Indication given by impartial Judge
- Access (+) Encourages early guilty plea which reduces costs and time
- Fairness (-) Given before all the facts are presented to court which may mean indication does not reflect severity of crime
- Equality (-) Prosecution can refuse an indication for indictable offences
- Access (-) Delays if accused does not accept indication and new Judge empaneled

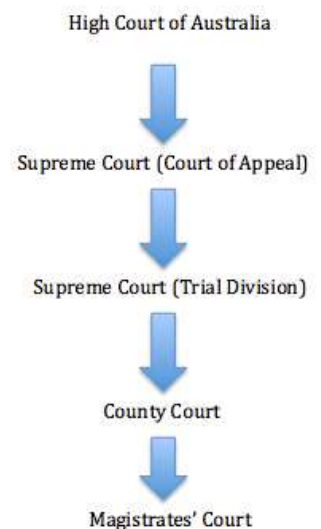
QUESTIONS

- Evaluate the ability of VLA to uphold the principles of justice (6 marks)
- Discuss the ability of CLC's to provide access to all Victorians (4 marks)
- Explain the purposes of a committal proceeding (4 marks)
- Evaluate the ability of committals proceedings to uphold the principles of justice (6 marks)
- Evaluate the use of a plea negotiation (6 marks)
- Evaluate the ability of sentence indications to uphold the principles of justice (6 marks)
- Identify the difference between providing sentence indications in the Magistrates' Court vs higher courts (4 marks)

Legal Studies 3/4 Lesson 3

Court Hierarchy

Court	Criminal Original Jurisdiction	Criminal Appellate Jurisdiction
Court of Appeal	- No Original Jurisdiction	- Point of Law from County Court - Supreme Court Trial Division and County Court on conviction, sentence and point of law
Supreme Court	- Most serious Indictable Offences - (Murder, Treason, Terrorism)	- Appeals on Point of Law from Magistrates' Court
County Court	- Indictable Offences - Assault, Rape	- Appeals from Magistrates' Court on conviction or sentence
Magistrates' Court	- Summary Offences - Traffic offences, shoplifting - Indictable offences heard summarily - Committal Hearings - Bail and Warrant Applications	



Reasons for Court Hierarchy

- Appeals – Without court hierarchy there would be no system to outline which Judge has the authority to review and change a decision of another judge - More experienced judges of courts higher in the hierarchy can review decisions and correct mistakes of lower court Judges
- Precedent – Without the court hierarchy there would be no system to outline which Judge is bound by another's decision – Lower court Judges are bound by higher court decisions – Higher court Judges persuaded by lower court decisions
- Administrative Convenience – Cases are allocated based on severity and complexity to legal issues – resources allocated to type of case –e.g. jury rooms in County and Supreme Court but not Magistrates' Court - Fees and delays proportionate to the severity and complexity of issues
- Specialisation – Judges hear cases regarding similar legal issues or crimes on a daily basis therefore gain expertise in the area of law – allows more efficient decisions to be made and more appropriate sanctions – e.g. Supreme Court with murder or Magistrates' Court with traffic offences

Key Personnel - Jury

- Randomly selected off electoral roll
- No connection to parties (impartial)
- 12 members
- Remain objective
- Reach a shared decision regarding accused's culpability – spreads burden – limits bias
- Listen to all evidence presented
- Follow Judge's directions
- Do not give reasons for their decisions
- Are not experienced in the law – may not understand evidence
- May have inherent bias

Key Personnel - Judge

- Impartial arbiter
- Ensure court processes carried out and parties' rights upheld
- Direct jury
- Do not overly interfere despite legal expertise
- Can assist self-represented parties
- Determine type and length of sanction

Key Personnel - Parties

- Prosecution & Defendant
- Party Control – choose what evidence and legal arguments to present
- Prosecution assists the court to reach the truth
- Prosecution must fulfil burden and standard of proof

Key Personnel – Legal Practitioners

- Represent client in best light
- Assist the court in reaching truth
- Cannot mislead the court
- Defend the accused despite personal beliefs or opinions regarding their culpability
- Increase costs
- May disadvantage the accused if cannot afford high quality legal representation
- Solicitor – Prepare legal documents and arguments
- Barrister - Advocate for the party in court and present arguments to Judge/Jury

Purposes of Sanctions

- Punish – Hold accused accountable for their criminal behaviour – notion of retribution
- Protection – Safeguard the community from the offender
- Deter – General Deterrence – deter community from undertaking similar behaviour
– Specific Deterrence – discourage specific accused from reoffending
- Rehabilitate – Treat the accused for any underlying reasons causing their criminality
- Denunciation – Court shows disapproval for the accused's actions and shows that the community does not tolerate such behaviours

Fine

- Monetary penalty imposed on the accused to be paid to the court fund
- If not paid can be imprisoned or forced to undertake community service
- Punish – financial penalty but depends on amount
- Specific deterrence – amount has to be high enough in order to prevent reoffending
- General deterrence – community discouraged as do not want to pay fine
- Denunciation – Shows behaviour is not tolerated and warrants penalty
- Some protection, no rehabilitation

Community Corrections Order (CCO)

- Supervised sentence served in the community including condictions such as drug treatment, alcohol treatment, community service
- Non-custodial
- Opportunity to stop criminal behaviour
- If accused does not comply will be imprisoned
- Maximum 2-5 years
- Not for serious offences such as rape murder or manslaughter
- Punish – limits their freedoms
- Rehabilitation – drug and alcohol treatment
- Specific Deterrence – forced to undertake undesirable conditions
- No protection, little general deterrence or denunciation

Imprisonment

- Accused is removed from society with their freedoms and civil liberties limited and placed in prison for a pre-determined period of time
- Punishment – loss of liberty and freedom
- Protection – removes criminals from society
- Rehabilitation is minimal due to high recidivism rates (44%)
- Denunciation if court imposes harsh term of imprisonment
- General Deterrence high
- Specific deterrence low due to high recidivism rates

Sentencing Factors

- Aggravating Factors – increase the seriousness of the offence or accused's culpability e.g. violence, use of weapons, victims were vulnerable, motivated by prejudice, act took place while on CCO
- Mitigating Factors – reduce the seriousness of the offence or the accused's culpability e.g. no prior convictions, showed remorse, complied with police, chance of rehabilitation
- Early Guilty Plea – Earlier the accused pleads guilty the greater the sentencing discount – saves court and parties time, money and inconvenience therefore rewarded
- Victim Impact Statements – Court takes into consideration the impact of the accused's actions upon the victim and their families

Factors

- Cost Barrier Legal Representation
- Cost Enhancement – Increased Assistance to Self-Represented Parties e.g. VLA
- Time Barrier – Court Delays
- Time Enhancement – Court Hierarchy
- Cultural Barrier – Problems during questioning and giving evidence
- Cultural Enhancement - Interpreters

Recommended Reforms

- Abolishing Committal Proceedings
- Trial by Judge Alone – removal of juries

Recent Reforms

- Expansion of Koori Court in 2016 to Mildura
- Removal of time limit for jury deliberation – removes 6-hour period

QUESTIONS

- Explain 2 reasons for the court hierarchy (4 marks)
- Discuss the role of a Judge in criminal trials (4 marks)
- Discuss the role of the Jury in a criminal trial (4 marks)
- Explain the roles of legal practitioners and parties in criminal trials (4 marks)
- Describe the 5 aims of sanctions (5 marks)
- Evaluate the ability of fines to achieve the 5 purposes of sanctions (4 marks)
- Evaluate the ability of CCO's to achieve the 5 purposes of sanctions (4 marks)
- Evaluate the ability of imprisonment to achieve the 5 purposes of sanctions (4 marks)
- Distinguish between aggravating and mitigating factors and give 3 examples of each (6 marks)
- Evaluate how one recent reform in the criminal justice system upholds the principles of justice (4 marks)
- Explain how one recommended reform to the criminal justice system could better achieve the principles of justice (4 marks)