

Chapter 3: Introduction to the Victorian criminal justice system (SD1), Chapter 4: Determining a criminal case (SD 2), Chapter 5: Reforming the criminal justice system (SD3)

Quizlet

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1. What is a criminal justice system?	A criminal justice system is a set of processes and institutions used to investigate and determine the outcomes of criminal cases.
2. What are two purposes of a criminal justice system?	Two of the key purposes of the criminal justice system are to decide whether an accused is guilty of an offence, and to impose a sanction in cases where an accused has been found guilty of a crime (or pled guilty).
3. What is the 'timeline' of the key stages in a criminal case?	 <p>Source 1 An overview of some of the key stages in a criminal case. Over the course of Unit 3 – Area of Study 1, you will primarily be learning about the three key stages shown in pink above.</p>
4. Is there a unified criminal justice system in Australia?	There is no single, unified criminal justice system in Australia – this is due to the fact that under the Australian Constitution, the Commonwealth parliament does not have the power to make laws about crime in general. Instead, it is the states that have power to maintain public order and protect citizens. As a result, each state and territory in Australia has its own law that establish crime, such as what is considered a crime.
5. What courts hear criminal cases in Victoria? For what cases does the Children's Court hear criminal cases?	In Victoria, the courts that determine criminal cases are the Magistrates', County and Supreme Courts. Also, the Children's Court hears criminal cases in Victoria, where a child between the ages of 10-17 has been accused of committing a crime.
6. What criminal matters does the Commonwealth handle?	Although the administration of criminal justice is a power held by the states, the Commonwealth Parliament has the power to pass criminal laws if they relate to constitutional powers in some way – e.g avoiding customs duties, because customs is a Commonwealth power. This is because criminal offences like this have the potential to affect the whole of Australia, not just a particular state or territory.
7. What types of crime could be prosecuted by both the states and the Commonwealth?	Commonwealth offences, that is, offences that break a law passed by the Commonwealth Parliament, have expanded over time and there is now a great deal of overlap – some crimes, such as drug dealing, could be prosecuted by either Commonwealth or state police.
8. What are some examples of Commonwealth offences, and where are these contained?	Many of the Commonwealth offences are contained in the Commonwealth Criminal Code, a statute passed by the Commonwealth Parliament – the Code includes offences such as assisting enemies at war with Australia (treason) and advocating terrorism.
9. Give a brief explanation for each of the two parties to a criminal case.	A criminal case involves two parties – the state, i.e. the government, which is represented by a prosecutor, also called the prosecution, which acts on behalf of the people and with the authority of the Crown. Also, another party is the accused, i.e. the person or institution that is alleged to have committed a crime.
10. Who prosecutes a criminal case?	In Victoria, the Office of Public Prosecutions (OPP) works with the Director of Public Prosecutions (DPP) and the Crown Prosecutors to prosecute serious crime on behalf of Victorians in the County and Supreme Court of Victoria. In less serious cases, Victoria Police officers will ordinarily prosecute a case in the Magistrates' Court – other organisations such as local councils, VicRoads and WorkSafe Victoria also have the power to prosecute less serious offences.
11. What is the DPP?	The DPP is an independent officer responsible for commencing, preparing and conducting prosecutions against the offender of indictable offences on behalf of the Crown.
12. What is the OPP?	The OPP is the Victorian public prosecutions office which prepares and conducts criminal proceedings on behalf of the DPP.

13. Who can an accused be in a criminal case?	The person charged with a crime is known as the accused. There can be multiple accused persons in a criminal case – depending on the crime that is alleged to be committed. Companies can also be charged with offences such as taxation fraud and environmental offences.
14. What is the definition of justice?	Justice is difficult to define as it means different things to different people – it is more accurate to define justice in terms of considering the three principles of justice: fairness, equality and access. A 'just' outcome is one that is fair, provides equal treatment towards all parties, and where all members of the community have effective access to the legal system, without discrimination.
15. What is fairness?	Fairness is one of the principles of justice – it requires requires a level of impartiality and a lack of bias in legal processes, systems and institutions. It also requires that all parties to a case receive an unbiased hearing, meaning that the person exercising administrative power, such as the judge, is objective and impartial.
16. What are three factors may affect the ability of the criminal justice system to achieve fairness?	Aspects of the criminal justice system that relate to fairness may include: the time it takes for a criminal case to be heard and completed, and whether any delays have occurred; the availability of competent legal representation for an accused and for victims; and the opportunity for the accused to present their case and to appeal a decision made if they are unsatisfied with the result.
17. What are two ways in which our justice system helps to ensure fairness is achieved?	Firstly, because of the presumption innocence, all criminal defendants are considered innocent until they have been proven guilty -- this approach is fairer than adopting an approach where a person is presumed guilty and punished until they prove their innocence. Additionally, a person who believes an error was made in their hearing has the right to appeal their case, or at the very least, apply for leave to appeal (such as to the Court of Appeal). This helps check for mistakes, and ultimately ensuring that a fair outcome has been reached.
18. What is equality?	Equality is one of the principles of justice – it means that the legal system should strive to achieve non-discriminatory outcomes, including equal protection for all who come before it. However, the system acknowledges, that, invariably, there are differences, and so there should be resources that exist to provide balance – seeking equal rights and responsibilities, and ensuring that no individual is disadvantaged.
19. What are three factors that may affect the ability of the legal system to achieve equality?	Some of the aspects of the criminal justice system that relate to equality include the way differences are treated, such as cultural and religious differences; whether the system disadvantages certain groups in society (those who are incompetent at English, vulnerable witnesses); and the extent to which laws apply equally to everyone.
20. What are two ways in which our justice system helps to ensure equality is achieved?	Firstly, various forms of disadvantage are recognised, and targeted assistance or support mechanisms are legislated for to try to achieve substantive equality. For instance, a range of mental disabilities and psychological disorders are supported in criminal proceedings through the Assessment and Referral List in the Magistrates' Court, and interpreters are provided during police questioning and Magistrates' Court criminal proceedings. Additionally, judicial proceedings are governed by strict rules of procedure that are consistently applied to both parties equally. For instance, each party's evidence can be tested equally through cross-examination of witnesses, ensuring that all evidence is reliable.
21. What is access?	Access to the legal system is one of the principles of justice – it requires that all people should be able to understand their legal rights and pursue their cases. This more than just being able to access the institutions that hear criminal cases, but also for people to be able to approach bodies that provide legal advice, education, information and assistance about the various criminal proceedings that occur.
22. What are three factors that may affect the ability of the legal system to achieve access to the legal system?	Some of the aspects of the criminal justice system that relate to access include: the availability of the courts and legal processes; the costs and delays associated with defending a criminal case or accessing information about legal rights; and the availability of legal advice and assistance to an accused and victims who may not be able to afford legal representation.

23. What are two ways in which our justice system helps to ensure access is achieved?	Firstly, Neighbourhood Justice Centres (such as in the City of Yarra), for example, aim to improve the justice system by addressing social disadvantage and improving access to justice services. It combines to support services such as drug counselling and childcare with community initiatives, and mixes the legal system with the local community. Additionally, in many situations, the accused has an opportunity to receive interpreter services in the Magistrates' Court, for instance, should they have language difficulties. In this way, they are able to access the court system much better.
24. What are the four key concepts in the Victorian criminal justice system?	The four key concepts in the Victorian criminal justice system are: the distinction between summary and indictable offences, the burden of proof, the standard of proof and the presumption of innocence.
25. What are summary offences?	Summary offences are minor criminal offences that are generally heard in the Magistrates' court. They are considered to be less serious types of crime, and include offences such as drink driving, disorderly conduct and minor assaults. There is no right to trial by jury for summary offences, at all.
26. In what statute are some summary offences listed?	The Summary Offences Act 1966 (Vic.) .
27. What is the proceeding, where both parties will put their cases before a magistrate called, for a summary offence?	The final hearing at which both parties will put their cases before a magistrate is known as a hearing, as opposed to a trial in the County and Supreme Courts.
28. What are indictable offences?	Indictable offences are serious criminal offences that are heard by a judge, and also by a jury if the accused pleads not guilty, in the County or Supreme Court of Victoria. Final hearings are known as trials, and examples of indictable offences include homicide offences such as murder and drug trafficking.
29. What statute lists some of the indictable offences in Victoria?	As a general rule, offences in the Crimes Act 1958 (Vic.) are indictable offences unless the offence is stated in the Act to be a summary offence.
30. What are indictable offences heard and determined summarily?	Some indictable offences are known as indictable offences heard and determined summarily – these are indictable offences, but they can be heard in the Magistrates' Court as if they were summary offences, with the consent of the accused. The court must also agree that the offence is appropriate to be heard summarily.
31. What indictable offences are eligible to be heard and determined summarily?	Firstly, the Criminal Procedure Act 2009 (Vic) states that indictable offences punishable by imprisonment of 10 years or less and/or a fine of \$120,000 or less can be heard summarily. In addition, Schedule 2 of the Act lists a range of offences, such as theft and burglary in the amount of less than \$100,000, or perjury, that can be tried summarily.
32. Why would an accused want to have their case heard summarily?	The accused will usually choose to have an offence heard summarily, mainly because it is quicker and cheaper to have a case heard in the Magistrates' Court, and the maximum penalty that can be handed down is far less than if it were heard as an indictable offence – the maximum sentencing power of the Magistrates' Court is two years for a single offence (three years for drug offences), with a total sentence of five years. This may be particularly helpful if they are planning to plead guilty.
33. Are summary offences or indictable offences more common in Victoria?	Most crimes that are committed in Victoria are summary offences – according to an annual report from the Magistrates', County and Supreme Courts, the vast majority heard each year in Victoria – around 90%, are heard in the Magistrates' Court, which generally hears summary offences.

34. What is the definition of a burden of proof – and what is the burden in a criminal case?	The burden of proof refers to the responsibility of a party to prove the facts of the case – the burden of proof lies with the person or party who is bringing the case. In a criminal case, this is the prosecution. This means that the prosecution has the onus to prove that the accused is guilty.
35. What is the justification of the burden of proof being on the prosecution in a criminal case?	The burden of proof is justified by the fact that, if the prosecution is accusing a person of having committed a crime, then the responsibility should be on the prosecution to establish the facts.
36. In what cases can the burden of proof be reversed?	In a few cases, the burden of proof can be reversed, such as if the accused is pleading a defence such as self-defence. Drug cases are another example – people are presumed to possess a substance if the substance is on their property, for example, and it is in this case, that the onus will be on the accused to prove the drug was not in their possession.
37. What is the definition of a standard of proof, and what is the standard in a criminal case?	The standard of proof refers to the strength of evidence needed to prove the case. In a criminal case, this standard is beyond reasonable doubt – that is, the prosecution must prove the case to this standard. To prove that an accused is guilty beyond reasonable doubt, means that no reasonable doubt support the claim that the accused is guilty is possible, from the evidence presented – the judge or jury may still be able to think of fanciful, imaginary or unreasonable doubts, but these do not count.
38. What is the presumption of innocence?	The presumption of innocence is one of the key principles of the rule of law, and is one of the most important concepts on which the criminal justice system is based – it is a guarantee by the state to its citizens that if they are accused of a crime, they will be treated, as far as possible, as innocent, until the charge has been proved beyond reasonable doubt.
39. Where does the presumption of innocence originate from, and which statute currently protects this right?	The presumption of innocence is a very old common law right – but now, it is also guaranteed by the Charter of Human Rights and Responsibilities Act (Human Rights Charter).
40. What are three ways in which the presumption of innocence is upheld?	One of the critical ways in which the presumption of innocence is maintained, is by imposing a high standard on the prosecution to prove its case – this is ensured through both the burden of proof and standard of proof in our criminal justice system; accused persons do not have to prove they are innocent. In addition, the presumption of innocence is also upheld through the system of bail – unless there are good reasons why an accused should be deprived of their liberty, they are entitled to receive bail while they are waiting for their court date. Finally, the presumption of innocence is also guaranteed by the accused's right to silence – meaning they do not need to answer any questions, and do not have to give evidence in court – in addition, their silence is not to be taken as a sign of guilt.
41. What are human rights?	Human rights are the basic freedoms and protections available to every single person. Examples of human rights include the right to liberty, and the right to live free without discrimination.

42. What are three human rights available to all Australians?	Three human rights available to every single Australian would include a right to freedom of political expression, freedom of movement within Australia and the right for an individual to enjoy their own cultural and religious practices.
43. What is the Charter of Human Rights and Responsibilities, and what is the formal title of the statute?	The Victorian Charter of Human Rights, or the Human Rights Charter, or the Charter of Human Rights and Responsibilities Act seeks to protect and promote human rights – it is designed to ensure that any statute passed by the Victorian Parliament is compatible with the human rights set out in the Charter.
44. Where do the rights of the Human Rights Charter originate from?	The rights protected by the Human Rights Charter are based on those contained in the International Covenant on Civil and Political Rights 1966 – this is an international treaty to which Australia is a signatory. Many of the rights in the Human Rights Charter mirror those in the covenant, but a number have been modified slightly to suit Australia's existing laws.
45. What are three rights of an accused?	Three rights of an accused are the right to be tried without unreasonable delay, the right to a fair hearing and the right to a trial by jury.
46. What is the right to be tried without unreasonable delay, and where does it originate from?	Pursuant to S25 of the Human Rights Charter, a person charged with a criminal offence is entitled, without discrimination, to a guarantee that he or she will be tried without unreasonable delay. This means that an accused is entitled to have his or her charges heard in a timely manner, and that delays should occur only if they are reasonable.
47. What does the term 'unreasonable delay' refer to? What is an example of a delay that would be reasonable?	The right to trial without unreasonable delay recognises that there may be delays in any given case, but these delays must not be unreasonable – the term unreasonable delay is not actually defined, but the reasonableness of any delay will depend on factors such as the complexity of the case and the legal issues involved – an example of a reasonable delay may be the time it takes to locate a key witness. For example, in DPP v Debs & Roberts (2003) , the two accused of murdering two police officers in 1998 were charged in 2001, and only then sentenced in 2003. This significant time gap was considered reasonable due to the difficulty in processing and establishing evidence.
48. Give two ways in which the criminal justice system tries to avoid unreasonable delays.	Firstly, all criminal matters in Victoria commence with a committal hearing in the Magistrates' Court, usually between three and six months after charging, which will determine whether the prosecution's evidence is strong enough to support a conviction by a jury at trial. Additionally, all criminal cases are listed for directions hearings within 24 hours of the completion of the committal hearing in the Magistrates' Court -- at this hearing both parties may identify any problems that might prevent a trial proceeding quickly, and advise the court of the anticipated issues at the trial.
49. How could it be seen that there is a tension between an adequate amount of time to prepare for trial and the right to trial without unreasonable delay?	It is often difficult for courts to strike a perfect balance between ensuring all accused persons are tried without unreasonable delay, and ensuring both the prosecution and defence have sufficient time to gather evidence and prepare their cases for the court, in order to ensure a fair and unbiased hearing. Therefore, it can be seen that there is a tension that exists between the right to be tried without unreasonable delay, and the principle of fairness in the justice system, as rushed trials can often result in unfair results, due to the lack of time that both parties have to prepare their case.
50. Why is there an inherent need for a right to trial without unreasonable delay for the accused?	The right seems natural, because under the Human Rights Charter, people have a basic right to liberty and security, and accused persons are presumed innocent until proven guilty – so people should not be held for an unreasonable amount of time while awaiting trial.
51. What does the Human Rights Charter state with reference to the timeliness of children being brought to trial?	The Human Rights Charter states that an accused child (under 18) must be brought to trial as quickly as possible. Having a trial 'as quickly as possible' for an accused trial, rather than 'without unreasonable delay', which places a greater burden on the prosecution, is justified because of the impact that a trial may have on a child.
52. What is the right to a fair hearing?	S24 of the Human Rights Charter entitles a person charged with a criminal offence to have the charge decided by a competent, independent and impartial court after a fair and public hearing.