

Chapter 1: Legal Toolkit

1.3: Legal Studies Task Words

Task Word	Definition/Process Required
Advise	To offer suggestions about the best course of action
Analyse	Examine a complex feature/issue/concept by breaking it down into smaller parts by showing how they relate to each other
Comment On	To express an opinion/reaction in order to demonstrate your understanding of it
Compare	Explain/discuss how concepts/definitions/features are similar and different
Examine	To consider in detail and establish the key facts and important issues related to a topic or issue
Define	Explain the exact meaning of a term/feature/concept
Describe	Give detailed account of a system/process/feature
Discuss	Give a reasoned argument for and against a particular issue (and provide S+W if possible). Can also give your opinion
Distinguish	Explain differences and distinctive characteristics
Evaluate	Identify key features and assess relative merits by discussing S+W and provide concluding judgement
Explain	Clarify a point by describing it in more detail
Identify	State or recognise a feature or factor (basic facts to reinforce)
Illustrate	Provide examples in order to better explain a concept
Justify	Show/prove a statement, opinion or contention to be right by providing evidence/examples
Outline	Give brief summary of key features
Provide	Give/supply/specify what question asks
To What Extent	Describe the degree or level to which a statement/opinion/contention is believed to be valid or correct

Chapter 3: Introduction to the Victorian Criminal Justice System

3.1: Introduction to the Criminal Justice System

- Criminal Justice System: a set of processes and institutions used to investigate and determine criminal cases
- Key purposes of the Criminal Justice System (CrJS):
 - Decide if the accused is guilty
 - Impose a sanction if found/pleaded guilty

- Accused: person charged with a criminal offence
- Sanction: a penalty imposed by a court on a person guilty of a criminal offence
- There is no one CrJ in Australia because [the Australian Constitution](#) says that the Commonwealth doesn't have the power to make laws about crime in general. Each state can establish:
 - What is considered crime
 - Ways of determining a criminal case
 - Max. penalty for specific crimes
- The Australian Constitution: set of rules/principles that guide the way Australia is governed. Was passed by British Parliament and is known as the [Commonwealth of Australia Constitution Act 1900 \(UK\)](#)
- Children's Court: between the ages of 10 and 11 has been accused of committing a crime
- Commonwealth has the power to pass laws relating to constitutional powers
- Parties to a criminal case are:
 - i. The State
 - ii. The Accused
- Prosecutor: crown in its role of bringing a criminal case to court
- Office of Public Prosecutions (OPP): Vic. PPO which preps/conducts criminal proceedings on behalf of the DPP
- Director of Public Prosecutions (DPP): Independent officer responsible for commencing, preparing and conducting prosecutions of indictable offences on behalf of the Crown

3.2: The Principles of Justice (PoJ)

- Justice (dictionary definition): quality of being fair and reasonable

Fairness

- Fairness: having fair (just, even) processes and a fair hearing. The parties in the case should have the opportunity to know the facts, present their side, etc.
 - (Dict.) "Impartial/just treatment without favouritism or discrimination"
- Fair processes and a fair hearing mean:
 - Everyone has their case heard impartially without fear or favour
 - Understand court processes
 - Opportunity to present defence/rebuttal prosecution case
- Rule of Law: the principle that everyone in society is bound by law and must obey the law, and that the law should be fair and clear

Equality

- Equality: people should be equal (even) before the law and have the same opportunities to present their case as anyone else without disadvantage
 - (Dict.) "The state of being equal...in status, rights or opportunities"
- All should be treated the same regardless of any characteristic
- [Charter of Human Rights and Responsibilities Act 2006 \(Vic\)](#) is a statute aimed at human rights protection (all are equal before the law)

Access

- Access: all people should be able to understand their legal rights and pursue their case
 - (Dict.) "Ability to approach or make use of something"

- People should be able to understand their rights and be able to actively engage in their case – including access to institutions that hear cases and provide information and assistance

3.3: Key Concepts in the Victorian Criminal Justice System

- There are two types of criminal offences:
 - i. Summary Offences: a minor offence generally heard in the MC
 - ii. Indictable Offences: a serious offence generally heard before a judge and jury in the CC or SC of Victoria
- Summary offences:
 - No right to a jury, final hearing is called a “hearing”
 - Types include: drink driving, disorderly conduct, some assaults etc.
- Indictable offences:
 - Heard by a judge and a jury, final hearing called a “trial”
 - Types include: homicide, drug trafficking etc.
- Indictable Offence Heard and Determined Summarily: a serious offence which can be determined as a minor offence if the accused agrees
 - The *Criminal Procedure Act 2009 (Vic)* states that indictable offences punishable by 10 years or less in prison can be heard summarily in the MC
- Burden of Proof: obligation of a party to prove a case. This usually rests with the party who initiates the case (usually the prosecution), however, this can be reversed if pleading defence (e.g. self-defence) or in some drug possession cases
 - On appeal, the burden of proof lies with the appellant
- Standard of Proof: degree or extent to which a case must be proved in court
 - Beyond Reasonable Doubt (criminal cases): requires prosecution to prove there is no reasonable (can still be fanciful) doubt that the accused committed the offence
 - Balance of Probabilities (civil cases **or** if the burden is on the accused): requires the plaintiff (or accused) to establish that it is more likely than not that his or her side of the story is right
- Presumption of Innocence: right of a person accused of a crime to be presumed not guilty unless otherwise proven.
 - It is a very old common law right also assured in the *Charter of Human Rights and Responsibilities Act*
 - Maintained by: high standard of proof, bail, right to silence, burden lies with prosec.
- Common Law (case/judge-made law): law made by judges through decisions made in cases

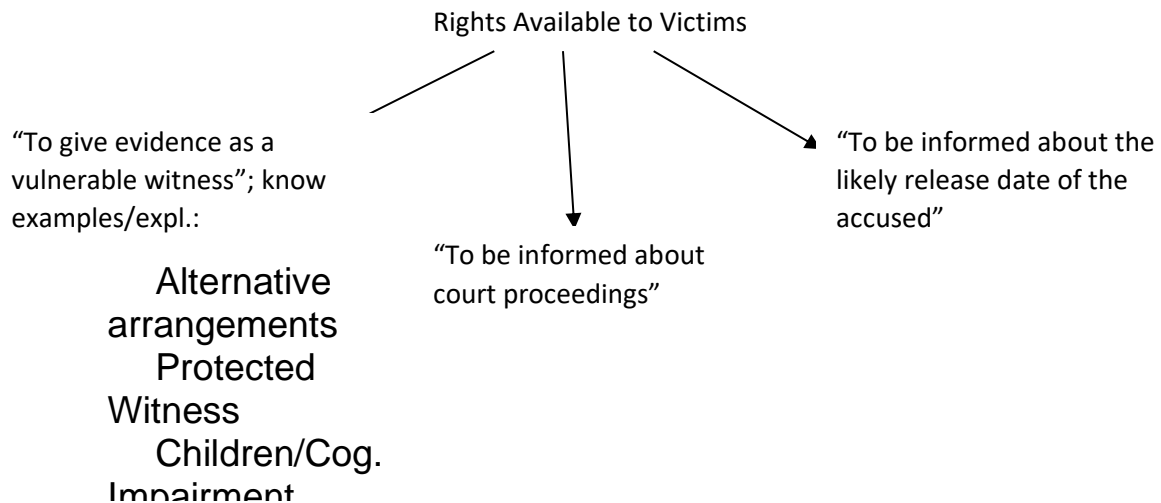
Chapter 3.4: The Rights of the Accused

Summary:

Right	Description	Source of Right
“To be tried without unreasonable delay”	Entitled to have charges heard in a timely manner. Any delay should be reasonable. Case by case basis.	Sect. 21 and 25 of <i>the Human Rights Charter</i>
“To a fair hearing”	Have charge heard by competent, independent and impartial court. Fair & public.	Sect. 24 of <i>the Human Rights Charter</i>

"To trial by jury"	(Indictable offences) Entitled to be tried by a group of peers.	Sect. 80 of <i>Australian Constitution</i> and <i>Vic. Statute Law</i>
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3.5: The Rights of Victims



- Vulnerable Witness: person who is required to give evidence in a criminal case and is considered to be impressionable or at risk. E.g. child, cognitive impairment, sexual offence etc.
- Protected Witness: person who is to give evidence in a sexual, family violence or other offence case and is either the complainant, a family member of complainant/accused or another witness
 - Alternative arrangements such as skype, screens when giving evidence can be used
- Victim Impact Statement (VIS): statement filed with the court by the victim and is considered by court when sentencing
- All recognised in the *Victims’ Charter Act 2006* (Vic)

Chapter 4: Determining a Criminal Case

4.1: The Role of Institutions Available to an Accused

- Victorian Legal Aid (VLA): a government agency that provides free legal advice to the community and low-cost or no-cost legal rep. to people who can’t afford a lawyer
- Community Legal Centre (CLC): an independent organisation that provides free legal services to people who are unable to pay for those services
 - Generalist: provides a broad range of legal services to people in a particular geographical area of Victoria
 - Specialist: focuses on a particular group of people or area of law

Victorian Legal Aid

- Objectives of VLA:
 - Provide effective/economic/efficient legal aid