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**USING ACCESS & JUSTICE**

Legal Studies for VCE Units 1 & 2

*Access & Justice Legal Studies for VCE Units 1 & 2* (13th edition) has been fully revised and updated to meet the requirements of the VCE Legal Studies Study Design 2018–2022. It offers complete support for teachers and students completing Units 1 & 2 of VCE Legal Studies.

**Key features of the Student book**

**Legal toolkit**

The legal toolkit at the front of the book is a stand-alone reference section for students that includes:

- tips for success assessment tasks
- advice on mastering legal citation
- information about careers in the law
- an overview of the structure of the VCE Legal Studies course
- a range of helpful study tips.

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**1.4 MASTERING LEGAL CITATION**

Citing Acts of parliament

To get the most out of your studying, it is important to cite any source of reference you use in your research. This means you need to provide clear and consistent information about the source, including:

- **Title**: The title of the Act (e.g., the Competition and Consumer Act).
- **Year**: The year the Act was enacted (e.g., 2002).
- **Parliament**: The body that enacted the Act (e.g., Commonwealth Parliament).

Example 1: The Competition and Consumer Act 2002 (Cth) provides a framework for the regulation of competition and consumer affairs. It is a comprehensive and significant piece of legislation that addresses a range of issues, including anti-competitive conduct and misleading and deceptive practices.
Chapter openers
Each chapter begins with a chapter opener that includes:

- an engaging and relevant image that links to core content in the chapter

Clear topic-based approach
Content is sequenced in structured topics that are aligned to the Study Design. Each topic contains the following elements:

- Legal case
  Relevant legal cases with accompanying legal citation provide real-world examples of the law in action.

- Study tip
  Targeted study tips are provided in the margin where relevant. These are designed to explicitly help students to achieve better results on school-based and external assessment tasks.

- Key legal terms
  Key legal terms are clearly identified in text the first time they appear in each chapter. Definitions are provided in the margin to support student understanding. All key terms also appear in the glossary at the end of the book.

- In the news
  Relevant and recent media articles are provided to show real-world applications of concepts being studied.

- Using Access & Justice
  Additional background information and opportunities for extension are clearly identified in text and support students who want to gain a richer understanding of the subject matter.

- Going further
  • a summary of outcomes, key knowledge and key skills dot points from the VCE Legal Studies Study Design 2018–2022
  • a list of key legal terms that appear in the chapter (with supporting definitions)
  • a list of key legal cases that appear in the chapter.

THE ROLE OF THE JURY IN A CIVIL TRIAL

13.8

The role of the jury in a civil trial is to decide the amount of damages to be spent if the jury needed to be discharged.

Key points about the role of the jury:

- Jurors are not required to give reasons for their decision (unlike a judge or magistrate). Therefore, the jury system also enables the community to participate in the administration of justice, which can enhance fairness and impartiality.

- There are usually six jurors in a civil jury in the County Court and the Supreme Court. Each juror is randomly selected from a list of potential jurors.

- Jury challenges arise when the defendant requests that the jury be replaced. These challenges can be made because of: the enthusiasm of a juror, the opposite views of the parties, or any reason the defendant believes will prevent the jury from being fair and impartial.

- If a person is arrested, under the Human Rights Charter they must be informed at the time of arrest of the reasons for their arrest and of their rights to remain silent or to seek legal advice. The Human Rights Charter also states that an arrested person must be promptly brought before a court or other tribunal. The reasonable time depends on the circumstances.

- The following case study highlights a recent incident in which Victoria Police made numerous arrests.

  The Daily Telegraph

  Police have charged a Victorian man, 63, with murder after one of the most sensational cold case arrests in Australian criminal history. Cheryl Grimmer, 17, disappeared from a Fairy Mt Penang boys’ home.

  Detectives arrested the man in Frankston after a two-year cold case investigation into the disappearance of Cheryl Grimmer’s brothers Paul, Ricki and Stephen.

  It is the oldest cold case arrest made in Australia.

  After this was reported to Sydney police, he was taken to Wollongong and interviewed.

  He is expected to be extradited to Sydney tomorrow.

- A list of key legal cases covered in this chapter is provided.

- A jury box in the Supreme Court – there are six jurors in a civil jury.

- A list of key legal cases is provided.

- The defendants sought an order that the jury be discharged.

- The jury challenges arise when the defendant requests that the jury be replaced. These challenges can be made because of: the enthusiasm of a juror, the opposite views of the parties, or any reason the defendant believes will prevent the jury from being fair and impartial.

- Going further
  • a summary of outcomes, key knowledge and key skills dot points from the VCE Legal Studies Study Design 2018–2022
  • a list of key legal terms that appear in the chapter (with supporting definitions)
  • a list of key legal cases that appear in the chapter.
In society, disputes are common. The interaction between different people, groups and organisations can lead to conflicts, often resulting in civil disputes, and may be able to use a variety of dispute resolution mechanisms to seek a remedy in a civil context.

For example, Penny is a 27-year-old woman who works as a supermarket employee. She recently found out that she was being seriously underpaid. The minimum wage in her state is $15 per hour, but Penny's employer was only paying her $9.50 per hour. She wants to know whether she is being paid the right amount.

In this case, Alex has pleaded not guilty to the charge of possession of a prohibited drug, commonly known as ice. Alex is a 19-year-old man who has spent many late nights and on weekends working at the supermarket where he was employed. He has been charged with a number of property offences, and the judge will take into account these convictions when determining an appropriate sentence.

Discuss the extent to which a therapeutic approach would be taken into account in this case, and evaluate the impact it might have on the appropriate sentence. Consider the role and civil jurisdictions of the Victorian courts and the influence of international declarations and treaties on the protection of rights in Australia.

The way in which Australia protects rights is complex and multifaceted. Rights are protected via:

- A constitutional bill of rights
- Implied rights
- Statute law
- An act of Parliament
- Agreements
- A collective agreement
- Enterprise agreements
- Fair Work Act
- Fair Work Act 2009
- Fair Work Act 2009 (Cth)
- Fair Work Act 2009 (Cth) 2009
- Fair Work Act 2009 (Cth) 2009
- Section 61 The National Employment Standards
- Requests for flexible working arrangements
- Maximum weekly hours of work
- Northern Territory
- Western Australia
- Tasmania
- South Australia
- The three main types of ways that a person's pay is set.
- The influence of international declarations and treaties on the protection of rights in Australia.

Explain how most rights are protected in Australia.
Key features of digital support

Access & Justice Legal Studies for VCE Units 1 & 2 is supported by a range of engaging and relevant digital resources provided via obook assess.

**obook assess**

Students receive:
- a complete digital version of the Student book with notetaking and bookmarking functionality
- case study videos (with supporting worksheets) from some of Australia's finest news and current affairs outlets (including ABC and SBS)
- targeted instructional videos by some of Victoria's most experienced Legal Studies teachers, designed to help students prepare for exams and assessment tasks
- a range of engaging worksheets for every chapter, designed to consolidate and extend understanding on key points from the study design
- additional case studies and examples for extension
- access to interactive auto-correcting multiple-choice quizzes.

**TEACHER obook assess**

Teachers receive:
- access to all student resources
- detailed course planners, teaching programs and lesson plans
- answers to every question in the Student book
- chapter summary PowerPoint presentations ideal for whole-class revision
- practice exams and SACs with answers.

**SAMPLE**
Source 1  Lady Justice (shown here) is a common sight in courthouses around Australia. She represents the law and is commonly shown with a blindfold (to indicate impartiality), scales (to indicate the weighing of evidence) and a sword (to indicate that justice is swift and final). In Chapter 3, you will explore what justice means and the principles of justice: fairness, equality and access.
OUTCOME

By the end of Unit 1 – Area of Study 1 (i.e. Chapter 3), you should be able to describe the main sources and types of law, and assess the effectiveness of laws.

KEY KNOWLEDGE

In this chapter, you will learn about:

- the role of individuals, laws and the legal system in achieving social cohesion and protecting the rights of individuals
- the principles of justice: fairness, equality and access
- characteristics of an effective law, such as it reflects society’s values; is enforceable; is known; is clear and understood; and is stable
- sources of law such as common law and statute law
- an overview of the relationship between parliament and the courts
- types of law such as criminal law and civil law
- the distinction and relationship between criminal law and civil law
- an overview of, and reasons for, the Victorian court hierarchy.

KEY SKILLS

By the end of this chapter, you should be able to:

- define key legal terminology
- research and analyse relevant information about the sources and types of laws
- explain the role of individuals, laws and the legal system in achieving social cohesion and protecting the rights of individuals
- classify a law according to its source and type
- assess whether a law is effective
- explain the relationship between parliament and the courts, using examples
- justify the existence of the Victorian court hierarchy.

KEY LEGAL TERMS

access one of the principles of justice; access means that all people should be able to understand their legal rights and pursue their case

binding precedent the legal reasoning for a decision of a higher court that must be followed by a lower court in the same jurisdiction (i.e. court hierarchy) in cases where the material facts are similar

civil law an area of law that defines the rights and responsibilities of individuals, groups and organisations in society and regulates private disputes (as opposed to criminal law)

common law law made by judges through decisions made in cases; also known as case law or judge-made law (as opposed to statute law)

criminal law an area of law that defines a range of behaviours and conduct that are prohibited (i.e. crimes) and outlines sanctions (i.e. penalties) for people who commit them (as opposed to civil law)

equality one of the principles of justice; equality means people should be equal before the law and have the same opportunity to present their case as anyone else, without advantage or disadvantage

fairness one of the principles of justice; fairness means having fair processes and a fair hearing (e.g. the parties in a legal case should have an opportunity to know the facts of the case and have the opportunity to present their side of events; and the pre-hearing and hearing (or trial) processes should be fair and impartial)

government the ruling authority with power to govern, formed by the political party that holds the majority in the lower house in each parliament. The members of parliament who belong to this political party form the government

House of Representatives the lower house of the Commonwealth Parliament

Legislative Assembly the lower house of the Victorian Parliament

Legislative Council the upper house of the Victorian Parliament

persuasive precedent the legal reasoning behind a decision of a lower (or equal) court within the same jurisdiction, or a court in a different jurisdiction, that may be considered relevant (and therefore used as a source of influence) even though it is not binding (see binding precedent)

precedent a principle established in a legal case that is followed by courts in cases where the material facts are similar. Precedents can either be binding or persuasive

ratio decidendi a Latin term meaning ‘the reason’; the legal reasoning behind a judge’s decision. Ratio decidendi forms the binding part of a precedent

Senate the upper house of the Commonwealth Parliament

social cohesion a term used to describe the willingness of members of a society to cooperate with each other in order to survive and prosper

statute a law passed by parliament, also known as an act of parliament or legislation

KEY LEGAL CASES

A list of key legal cases covered in this chapter is provided on pages vi–vii.

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SOCIETY COHESION AND THE RIGHTS OF INDIVIDUALS

A functioning and productive society is one in which there is social cohesion, and the rights of individuals are protected.

The Scanlon Foundation is an organisation that was established in 2001 to undertake research and make financial grants that would help to unite Australian society. It describes social cohesion as the willingness of members of a society to cooperate with each other in order to survive and prosper. This means individuals are free to make choices in society, and are keen to cooperate with other members of society so that they may live in harmony.

A society that is socially cohesive has a number of benefits. Its members are unified and are provided with opportunities in work, education and in their social life. People feel a sense of belonging, and individuals work together to challenge disharmony and to promote theirs and others' wellbeing.

source 1 Social cohesion is about individuals working together and living in harmony.

In addition to achieving social cohesion, a functioning society ensures that the rights of individuals are protected. Individual rights are varied. They include rights to freedom of speech and freedom of religion, the right to vote and the right to silence. Individual rights are fundamental to a cohesive society. Without them, individuals may be manipulated or taken advantage of, and would have no recourse to justice.

In this topic you will explore the role of laws, individuals and the legal system in achieving social cohesion and protecting the rights of individuals.

The role of laws

Laws provide guidelines on what is acceptable behaviour, and what is not. They set expectations about the way individuals should behave. For example, laws in Australia make murder a crime. If there were no such laws, some members of society might believe that killing another person is acceptable.

Laws are fundamental to achieving social cohesion. They establish a framework in which people live, set boundaries for behaviour, and allow individuals to make choices about how they live. For example, some laws specify what we must do (e.g. pay for goods or services, respect others) and what we should not do (e.g. steal, interfere with a person's goods). Laws apply to everybody, regardless of their position in society. This principle that laws apply to all upholds the rule of law, which is a central part of our legal and political systems.

Laws also protect the rights of individuals. A number of laws establish individual rights, and say what happens if those rights are infringed. For example, a number of laws in Australia state that people must...
not discriminate against others based on a personal attribute such as age, race, religion, gender identity or pregnancy. Consequences can occur if a person acts contrary to (inconsistent with) those laws.

In all societies, conflicts are inevitable. Laws also set out how disputes are resolved, so that they are resolved in a peaceful way. The penalty imposed or compensation awarded in cases help to prevent future conflict, as people are aware of the consequences if they engage in unacceptable behaviour.

The role of individuals

Once laws are in place which enable social cohesion and protect the rights of individuals, it is the responsibility of individuals to ensure that they are aware of the laws, and abide by them.

While no one person will know about every law in Australia, or the source of those laws, it is the responsibility of every person to obey the law. Before taking any important action, they need to find out what the law is, particularly if it impacts on them. For example, a person who decides to open up a business is expected to familiarise themselves with laws about businesses, such as registering a business name, and obligations imposed on them to keep books and records for a certain period of time.

Further, individuals are expected to respect human rights, and not act in a way that is contrary to those rights. Doing so may lead to disharmony, and ultimately to a fractured society.

Individuals can also help to achieve social cohesion and protect individual rights by assisting the police with their investigations, reporting crime, and using the legal system to resolve their disputes when their rights have been infringed. All of these acts help to ensure a society which is cohesive, and in which rights are upheld.

The role of the legal system

The legal system is a set of methods and institutions which makes, administers (implements) and enforces laws. It includes courts, tribunals, and enforcement bodies (e.g. Victoria Police) which aim to deal fairly and justly with individuals who have broken the law or breached someone else’s rights.

Applying the law and enforcing it are two of the roles of the legal system that help to achieve social cohesion and protect the rights of individuals when a dispute arises. For example, there is a law in Victoria which states that a person who sells goods to another guarantees that those goods are of an acceptable quality. If a vendor sells a TV that is defective and does not work, but then refuses to refund the purchaser or replace the TV, a dispute will arise which will need to be resolved.

There are a number of dispute resolution bodies, such as courts, which exist. The role of these bodies is to try and help people settle these disputes in a way that avoids further conflict or disruption to society.
If a system of laws existed without being applied and enforced, there would be no consequences if an individual breached a law. Therefore, having the legal system to help enforce the law will ensure that rights are upheld, and that society continues to function effectively.

3.1 CHECK YOUR LEARNING

Define and explain
1 Explain what is meant by social cohesion. Provide two benefits of a society which is socially cohesive.
2 What role do you play in ensuring a socially cohesive society?
3 Do courts have a role to play in protecting individual rights? Explain your answer.

Synthesise and apply
4 Look at Source 3 on page 39.
   a Make a list of the laws that could apply to the picture (try to think beyond road laws).
   b Explain how each of the laws help to achieve social cohesion. What individual rights is each one protecting?
   c Do you think that each of those laws would be accepted in the community? Explain your answer.
   d Explain one possible consequence of a breach of each of those laws, and justify why you have chosen that consequence.
5 The TV series The Walking Dead is based on a comic book series in which the world has been overrun by zombies. There is no government, no law and no legal system.
   a Make a list of the five most critical laws that you think need to be established by the survivors. They can be new laws, or old laws.
   b How would you seek to establish those new laws?
   c If each of the laws were infringed what would be the consequences?

Analyse and evaluate
6 Consider each of the following statements and write down whether you agree or disagree with them.
   a If there were no laws in society, then individuals would still aim to achieve social cohesion. (agree/disagree)
   b If there were no laws in society, then most people's possessions would still be safe. (agree/disagree)
   c If there was no legal system, then people would be able to work out their conflicts between themselves. (agree/disagree)
   d The human race is basically ‘good’ by nature, so there is no need for laws. (agree/disagree)
   e If there were no laws in society, then humans would use their animal instincts to survive. (agree/disagree)
   f If there were no laws in society, then I would be fearful most of the time. (agree/disagree)
   g If there were no laws in society, then there would be no respect for individual rights. (agree/disagree)

Choose one of the statements and find someone in the class who has written down the opposite answer. Engage in a debate with them about the statement.

Check your obook assess for these additional resources and more:
» Student book questions 3.1 Check your learning
» Video tutorial Introduction to Chapter 3
» Weblink Scanlon-Monash Index of Social Cohesion
3.2 THE PRINCIPLES OF JUSTICE

The word ‘justice’ is often used when people discuss laws and the legal system. People recognise that laws should be fair, and that there should be justice when a law is broken. But what does justice mean?

Justice is a difficult concept to define, and its definition can vary from person to person, and from society to society. For example, if a person who has a substance addiction steals money to buy illegal drugs, some people might think a just penalty is imprisonment. Others, however, might see justice achieved through a focus on the deeper social issues. That could mean a penalty that recognises that the reasons for the theft are related to substance abuse, considers the needs and circumstances of the offender, and aims to address the underlying reasons for the crime. This may be a penalty which requires the offender to seek assistance, like counselling and professional support, to overcome their substance addiction.

When considering whether there is justice when a law has been broken or when a case needs to be resolved, rather than trying to apply a single definition, you should consider the following three principles:

- **fairness**
- **equality**
- **access**

These three principles are known as the **principles of justice**, and should be used as a way to determine whether justice has been achieved in a particular case.

**Fairness**

Fairness is the first principle of justice. A dictionary definition is ‘impartial and just treatment or behaviour without favouritism or discrimination’. But like justice, fairness can mean different things depending on a person’s values and perspectives.

Laws must be fair. A law which allows big businesses to threaten small businesses when entering into contracts would be considered unfair, as it would mean that one group with power in society is getting an unfair advantage over. Similarly, a law that makes imprisonment the penalty for jaywalking would generally be considered unfair, as the penalty would not fit the crime.

When disputes arise, fairness means there are fair legal processes in place, and all parties receive a fair hearing. People should be able to understand court processes and have an opportunity to present their case and rebut (challenge) the other side’s case, and the processes involved in determining a case should be fair and impartial.

---

**Study tip**

In Unit 2, you will look at these principles more closely; however, you should have an understanding of what these principles are, and what they mean, in Unit 1. Start to refer to the principles of justice in your answers to questions in your assessment tasks when you are looking at different cases.
The right to a fair trial or hearing is a right protected by the Charter of Human Rights and Responsibilities Act 2006 (Vic) (the Human Rights Charter), a law which aims to promote and protect human rights in Victoria. The right is also protected by the courts through a series of cases, which recognises that a fair trial is a fundamental part of our legal system.

However, fairness doesn’t just apply to the final trial or hearing – it applies to all aspects of our legal system, including our interaction with the police and our right to understand allegations made against us.

Fairness does not necessarily mean that people are treated the same – but if they are treated differently, it should be because of the laws that have been applied, and because of the circumstances of the case, and not because the person has been discriminated against because of a personal attribute or characteristic.

Equality
Equality is the second principle of justice. A dictionary definition is ‘the state of being equal, especially in status, rights or opportunities’. It means all people should be treated equally before the law regardless of their characteristics or attributes, such as status, race, religion, marital status, or culture.

Laws should not be discriminatory (they should apply to everyone, and not single out one group), and there should be laws which prohibit discrimination against a person or group because of some particular characteristic.

Equality in the legal system means that all people should be treated equally before the law. No person or group should be treated advantageously, or disadvantageously, and people should be given an equal opportunity to present their case. The processes should be free from bias or prejudice, and those who make the decision should be impartial when that decision is being made. This includes judges, who must act impartially, and jury members, who must be unbiased and have no links with the parties.

Equality and fairness, while overlapping, are two different concepts. The best way to contrast the two is by considering the following example.

**EXAMPLE**

**Fire at shopping centre**

Late last year there was a major fire outbreak in a local shopping centre, and 40 people were injured. The injuries ranged from severe to minor.

A paramedic officer handed out gauze and bandages and had exactly 40 of each. He wanted to treat everybody equally, and so decided to hand out one gauze and one bandage to each of the 40.

A second paramedic officer disagreed with this and thought that this was unfair even though it was equal treatment. The second officer believed that to be fair, they should hand out the gauze and bandages according to need, depending on the severity of a person’s injuries. The first paramedic officer didn’t like this. He thought that this would create inequality.

Fairness and equality may need to be balanced. Sometimes it can be impossible to be perfectly fair and equal at the same time. For example, if you were handing out treats, everyone should get the same. That would be fair and equal. But in the above example, providing gauze and bandages based on the person’s injuries would be fairer. People are not being treated equally (in the number of bandages) but other kinds of equality are also important. If the distribution was decided based on something other than injuries (say, the age or attractiveness of the injured people) it would mean some people would miss out simply because of some personal characteristic. Then there would be both inequality and unfairness.
Access

Access is the third principle of justice. A dictionary definition is ‘the ability to approach or make use of something’. It is generally accepted that all members of society should have access to education, health, food and shelter.

Access means that the laws and the legal system should make it possible for people to use the procedures, methods and institutions that help to resolve a civil dispute or determine a criminal case. This not only includes being able to access the institutions that will make a final decision in a case, but also being able to have contact with bodies and institutions that provide legal advice, education, information and assistance, and have the ability to be informed about cases. It also means that people should have access to information about their legal rights so they can understand when they may have been infringed.

Access to justice is an essential principle of the rule of law. People need to be able to access the law and the legal system to be able to enforce their rights, and people who have been harmed because of someone else’s actions should be able to seek compensation.

Source 2 Former Chief Justice Marilyn Warren of the Supreme Court of Victoria. The use of unbiased and impartial judges is one of the ways in which the legal system tries to achieve justice.

3.2 CHECK YOUR LEARNING

Define and explain

1. Identify and explain the three principles of justice.
2. Identify five possible attributes that a person may suffer discrimination over.
3. Describe what is meant by the term ‘access’.
4. Is fairness limited to a fair hearing? Explain your answer.

Synthesise and apply

5. List three different categories of people who might be affected by a sentence imposed on someone found guilty of an offence. How might people in those categories define what is meant by a ‘fair sentence’? Would their ideas of fairness differ?
6. Read the example ‘Fire at shopping centre’. Identify another scenario where the law has been broken and provide a solution which is both fair and upholds equality.
7. Conduct some research on ‘Lady Justice’. Who is Lady Justice, and what do the three symbols that she is sometimes associated with mean?

Analyse and evaluate

8. Judges often take into account individual circumstances when sentencing. Do you think that this achieves both fairness and equality? Do you think that this achieves both fairness and equality? Be prepared to share your opinions with the class.

Check your obook assess for these additional resources and more:

» Student book questions
3.2 Check your learning

» Weblink
Charter of Human Rights and Responsibilities Act 2006 (Vic)

» Weblink
What is justice? Speech by Former Chief Justice Marilyn Warren

» Worksheet
The principles of justice
CHARACTERISTICS OF AN EFFECTIVE LAW

For society to function properly and for there to be social cohesion, laws must be effective. To be effective, laws must have the following five characteristics:

- reflect society’s values
- be enforceable
- be known
- be clear and understood
- be stable.

If one of these characteristics is missing, then it is possible that the law is not as effective as it could be.

Laws must reflect society’s values

For a law to be effective, it must reflect society’s current values. If a law is in line with society’s current values, then members of society are more inclined to follow that law than disregard it. This means that laws need to change when society’s values change.

For example, in late 2016, changes were made to adoption laws in Victoria to allow couples to adopt children regardless of their sex or gender identity. This means that any two people who are living together as a couple, on a genuine domestic basis, are now able to adopt a child. Society’s views and values about de facto relationships and same-sex couples have changed over time, and the law has also changed to recognise this.

Laws must be enforceable

An effective law must be enforceable. That is, if people break the law, it must be possible to catch and punish them, or sue them in a civil case. If this is not possible, people may be less inclined to follow the law.

Imagine if there was a law which stated that it is an offence to dream of going on a holiday. Such a law would be ineffective, because the police could never find out whether people are breaking the law.

On the other hand, it is an offence in Victoria to behave in a disorderly manner in a public place while drunk. This type of law is more likely to be effective because it requires the behaviour to occur in public; therefore, the behaviour is more likely to be visible to police officers and members of society, and the police will be able to enforce the law.

Laws must be known

For a law to be effective, the public must know about it. If people do not know about a new law, they will not be able to follow it.

It is the responsibility of individuals to find out what the law is on any particular matter. If someone breaks a law, saying ‘I didn’t know it was breaking the law’ is not an acceptable answer. This principle is commonly expressed as ‘ignorance of the law is no excuse’.

However, law-makers also need to keep the public informed of any new laws that are passed. Major changes in the law, or new laws, are usually reported in the media, and many are debated in the media and in society before they are introduced. For example, in 2015 a Victorian law was passed which requires every childcare facility to ensure that children who go to that facility have been immunised. The law,
known as the ‘no jab, no play’ law, is aimed at increasing immunisation rates for young children in the community after there was concern raised about Victoria’s immunisation rates. It was widely discussed before and after its introduction, largely because there are strong ‘anti-vaccination’ feelings in a small section of the community.

**Laws must be clear and understood**

It is important for a law to be written in a way that means that people can understand it, and it is clear what its intent is. If a law is ambiguous, unclear, or written in language or in jargon that people don’t understand, it is possible people won’t follow it and the law will be ineffective.

For example, in some states of Australia, including Queensland, there have been calls for changes to be made to abortion laws which are considered unclear, outdated and ambiguous. Even though women in Queensland can receive an abortion, anybody who assists (such as a doctor) can be prosecuted under the Queensland Criminal Code Act 1899 (Qld).

**Decriminalising abortion laws**

In some states abortion is a crime. Recent parliamentary debates in Queensland and New South Wales have called for abortion law reform. In these states, medical practitioners who provide, or assist with, an abortion, can be prosecuted under criminal law. This includes the woman accessing the procedure herself, unless it could be proven the pregnancy poses danger to the woman’s physical or mental health.

The Medical Journal of Australia published an article in October 2016 pressing for reform. Authors, Heather Douglas and Caroline de Costa said ‘Most Australian states have introduced significant legislative modifications since 2000; however, in NSW and Queensland, the legislation, and specifically the offences, are more than 100 years old and well overdue for reform’. They also argued that these laws created fear and uncertainty about when an abortion might be considered legal or illegal.

Abortion laws are different in every state and territory. Douglas and de Costa argue for the decriminalisation of abortion everywhere, and for abortion to be treated as a health issue, not a criminal matter.

**Laws must be stable**

For a law to be effective, it must be stable. If the law were constantly changing, no one would be certain what the law was, and it may not be as effective as a law that has remained constant for some time.

For example, there have been very few changes to the law relating to theft in Australia. It has always been a crime, and so there is certainty that stealing is against the law.
3.3 CHECK YOUR LEARNING

Define and explain
1. Identify and describe three characteristics of an effective law.
2. Explain why the ‘no jab, no play’ law would generally be known by:
   a. people who send their children to childcare
   b. the general public.
3. Identify one law in Victoria that you think reflects society’s current values. Give reasons for your answer.

Synthesise and apply
4. Identify one law in Australia that you consider to be unclear or ambiguous (or that you don’t understand). What is about the law that you don’t understand, or that you think is unclear or ambiguous?
5. Do you think a law making it an offence to smoke in private homes would be easy to enforce? Justify your answer.
6. Access the news article ‘Abortion laws ‘ambiguous, outdated’ in Qld and NSW, doctors argue’. A link is provided on your obook assess. a. What is it about the laws that Professor de Costa says is unclear? b. Why does this make doctors cautious when providing abortions? c. When would an abortion be legal in New South Wales and in Queensland? d. Conduct some additional research. Since this article was published, have there been any changes to abortion laws in New South Wales or in Queensland, or are there any changes on the horizon?

Analyse and evaluate
7. Access the webpage Legislation & Bills from the Victorian Parliament website. A link is provided on your obook assess. Find a law that has been passed this year. Prepare a short report or PowerPoint presentation on why you think this law will be effective, addressing each of the five characteristics of an effective law.
8. Look at each of the statements below and write down whether you think each one is fact or fiction. Then access the Summary Offences Act 1966 (Vic). A link is provided on your obook assess. See whether you are correct (hint: use the search button to find particular words in the Act).
   a. It is illegal to sing an obscene song within earshot of someone.
   b. It is illegal to roll a drum in a public place in all circumstances.
   c. It is an offence to drive a dog or goat harnessed to a vehicle in a public place.
   d. It is illegal to burn rubbish shavings in a private house.
   e. It is illegal to fly a kite in a public place to the annoyance of another person.
   For those statements that are incorrect, find a law in the Summary Offences Act which is similar. Be prepared to discuss with your class whether you think that each of the laws is effective.

Check your obook assess for these additional resources and more:
» Student book questions
   3.3 Check your learning
» Video tutorial
   How to assess whether a law is effective
» Weblink
   Abortion Laws ‘ambiguous and outdated’ in Qld and NSW, doctors argue
» Weblink
   Legislation and Bills, Victorian Parliament

AN EFFECTIVE LAW MUST

| reflect society’s values | be enforceable | be known to the public | be clear and understood | be stable |

Source 2 Characteristics of an effective law
INTRODUCTION TO PARLIAMENT AND THE COURTS

The next few topics in this chapter require an understanding of parliament and the courts. This topic provides you with an overview of the Commonwealth Parliament, the Victorian Parliament, government and opposition, and the courts.

Commonwealth Parliament

The Parliament of Australia, otherwise called the Australian Parliament or the Federal Parliament, is a bicameral parliament. It consists of:

- the Queen (often referred to as the Crown), represented by the Governor-General
- the Senate (upper house)
- the House of Representatives (lower house).

The role of the Commonwealth Parliament is to pass laws for the good government of Australia in its area of law-making powers.

House of Representatives

The main roles of the House of Representatives are to represent the people, introduce and pass proposed laws (bills), review bills passed by the Senate and form government. The political party that has the majority of members in the lower house will form government for the whole of Australia. You will learn more about how bills are passed in the next topic.

At the federal level, each state is divided into geographical areas known as electoral divisions. Each division has approximately the same number of electors. The voters in each division elect their representative, who takes a seat in the House of Representatives. There are 150 electoral divisions in Australia, and therefore 150 members of the House of Representatives. All members of the House of Representatives are elected for a period of up to three years.

Senate

The main roles of the Senate are to represent the interests of the states and territories of Australia, introduce and pass bills, and review bills passed by the House of Representatives.

The Senate consists of 76 senators. Each of the six states in Australia is represented in the Senate by 12 senators, and each of the two mainland territories (Northern Territory and Australian Capital Territory) is represented by two senators. All senators are elected for six years (except for the territory senators, who are elected for three years). A half-Senate election is held every three years (only half the senators stand for election).

The Senate is often called the house of review (because most bills are introduced in the House of Representatives and reviewed by the Senate) and the states’ house (because each state has equal representation).
The Victorian Parliament consists of:
• the Queen, represented by the Governor of Victoria
• the Legislative Council (upper house)
• the Legislative Assembly (lower house).

The role of the Victorian Parliament is to pass laws for the good government of Victoria in areas of its law-making powers.

The main role of the Legislative Assembly is to introduce and pass bills and to form the Victorian Government. The government consists of the members of the political party that have the majority of members in the lower house. The Legislative Assembly can also review bills passed by the Legislative Council.

Each member of the Legislative Assembly represents one electoral district. There are 88 electoral districts in Victoria, and therefore 88 members of the Legislative Assembly. Each member of the Legislative Assembly holds his or her seat in parliament for a fixed term of four years.

The role of the Legislative Council is to introduce bills and review bills passed by the Legislative Assembly. Bills passed by the Legislative Assembly can be rejected or amended by the Legislative Council.

For the purposes of appointing members to the Legislative Council, the state of Victoria is divided into eight large regions, and five representatives are elected from each region. There are therefore 40 members of the Legislative Council. Members of the Legislative Council hold their seats for four years.
Government and opposition

The political party with the majority of members elected to seats in the lower house of each parliament will form government. Sometimes, a political party will join forces with another political party to form government. This is known as a coalition. Historically at a federal level, political parties which have included the Liberal Party and the National Party have joined together to form government. The Prime Minister is the leader of the Federal Government (also known as the Commonwealth Government), and the Premier of Victoria is the leader of the Victorian Government.

The Premier of Victoria and the Prime Minister will choose senior members of his or her party who have been elected to parliament (referred to as ministers) to be responsible for different areas of government, such as education and health. The Cabinet is made up of the Prime Minister and senior ministers (at federal level) and the Premier of Victoria and senior ministers (at state level), and decides the government’s policy program and what proposed laws should be put to the parliament.

The next largest political party will form the opposition, whose role it is to challenge and question the government on policy matters. The opposition will also appoint some of its parliamentarians as ‘shadow ministers’ in various areas such as health and defence. These shadow ministers will hold the government ministers accountable for decisions they make in their relevant portfolios.

Parliament and government are not the same thing. The government is the political party (or coalition of parties) that has the majority of seats in the lower house, whereas the parliament consists of all elected members of both the upper house and lower house of parliament and the Queen’s representative. The main role of the parliament is to make the law, whereas the main role of the government is to administer or implement the laws made by the parliament.

The courts

The main role of the courts is to resolve the disputes and cases brought before them. There are many different courts in Australia, some of which are federal courts and some of which are state courts. Federal courts generally deal with issues that arise under federal law, and state courts generally deal with issues that arise under state law.

The four federal courts are the High Court, the Federal Court, the Family Court and the Federal
Circuit Court. The High Court was established by the **Australian Constitution** and is the highest court in Australia.

The three main Victorian courts are the Supreme Court, the County Court and the Magistrates’ Court. There are also two specialist courts: the Children’s Court and the Coroners Court.

The courts in Australia and in Victoria are arranged in a **court hierarchy**. The highest court in Victoria is the Supreme Court, and the lowest court is the Magistrates’ Court. You will learn more about the Victorian court hierarchy, including the reasons why a hierarchy exists, later in this chapter.

The courts are independent of the parliament. That means judges and magistrates are free to interpret and apply the law, and resolve cases, independently and without interference or influence from parliament or government.

Keeping judges and magistrates independent of parliament and government upholds the rule of law, and also ensures fairness in deciding cases (the people who make the law aren’t deciding whether the law has been broken).

### 3.4 CHECK YOUR LEARNING

**Define and explain**

1. Explain what is meant by a bicameral system of parliament.
2. What is the difference between parliament and government?
3. Create a visual diagram or table which shows the members in each of the houses of the Commonwealth Parliament and the Victorian Parliament, the names of each house, and the name of the Queen’s representative for each of the parliaments.

**Synthesise and apply**

4. Access the Commonwealth Parliament website. A link is provided on your obook assess.
   a. Which political party is currently in government, and which political party is in opposition?
   b. Who is Australia’s current Premier?
   c. Who is Australia’s current Governor-General?
   d. Identify four political parties who currently have senators in the Senate.
   e. When will the next federal election be?

5. Access the Victorian Parliament website. A link is provided on your obook assess.
   a. Which political party is currently in government, and which political party is in opposition?
   b. Who is Victoria’s current Premier?
   c. Who is Victoria’s current Governor?
   d. Identify four political parties who currently have members in the Legislative Council.
   e. When will the next state election be?

6. Create a quiz or crossword for another person in your class about the courts, the Commonwealth Parliament and the Victorian Parliament.

**Analyze and evaluate**

7. “Parliament should be able to interfere with the way that courts resolve disputes. This is particularly so because courts these days are giving lenient sentences.” Do you agree with this statement? Share your thoughts with the rest of your class members.

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**Australian Constitution**
a set of rules and principles that guide the way Australia is governed. The Australian Constitution was passed by the British Parliament and its formal title is the **Commonwealth of Australia Constitution Act 1900** (UK).

**court hierarchy**
the ranking of courts from lowest to highest according to the seriousness and complexity of the matters they deal with.
There are many laws in Australia. They can be classified or grouped in different ways, including:

- **the source of law** – (i.e. who made the law). In this topic you will consider two main sources of law: *statute law* (i.e. laws made by the parliament) and *common law* (i.e. laws made by the courts).
- **the type of law** – (i.e. what area the law covers). In particular, this means the behaviour the law is trying to regulate and the possible consequences if the law is broken. In topic 3.7 you will consider two types of law: criminal law and civil law.

### Statute law

The main role of parliament is to make laws. Laws made by parliaments are referred to as statutes. Statutes are also called *Acts of Parliament* or legislation. Our parliamentary system is based on the concept of *supremacy of parliament* – this means that parliaments are able to override laws made by other bodies, including the courts, and the final law-making power rests with the parliament.

The government generally decides what laws should be made, but the whole of the parliament is responsible for passing the law. If the government decides a law is needed, a bill is drawn up and presented to parliament.

Before a bill can become law it must pass through both houses of parliament. It will go through a number of stages through each of the houses, and must receive a majority vote from the members of each house.

Most bills are introduced into the lower house first. Bills (other than bills raising taxes or allocating funds) can also be introduced into the upper house and then proceed to the lower house.

Once a bill has been passed by both houses, it must be presented to the Queen’s representative to receive *royal assent*. Following a certain period of time after royal assent, the bill will become law.

Individual members of parliament, who are not a member of the political party which forms government, may also introduce proposed laws (or bills) in the hope that they will be passed by the parliament and become law, although it is unlikely that non-government proposals (or bills that do not have the support of the government) will pass both houses because the government has the majority of votes in the lower house. A bill introduced by a member of parliament who is not a party of the government is referred to as a *private member’s bill*.

### Sources of Law

- **statute law**
  - law made by parliament; also known as legislation or Acts of Parliament (as opposed to common law)
- **common law**
  - law made by judges through decisions made in cases; also known as case law or judge-made law (as opposed to statute law)
- **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]
- **supremacy of parliament**
  - the concept that the final law-making power rests with parliament, which can repeal and amend its own statutes and pass legislation to override common law. Also referred to as sovereignty of parliament
- **royal assent**
  - the formal signing and approval of a bill by the Governor-General (at the Commonwealth level) or the governor (at the state level) after which the bill becomes an Act of Parliament (i.e. a law)
- **private member’s bill**
  - a bill introduced into parliament by a member of parliament who is not a government minister

### Stages of the legislative (law-making) process

1. **Introduction and first reading** – the bill is introduced to the house
2. **Second reading** – when the purpose of the bill is explained and it is debated and voted on. In Victoria the bill is considered with respect to its compatibility with the Victorian Charter of Human Rights and Responsibilities
3. **Committee stage/consideration in detail** – the bill is considered in detail, clause by clause. Amendments are most likely to occur at this stage – adoption of the committee report
4. **Third reading** – the bill is voted on in its final form
5. **The bill passes the first house**
6. **Same procedure in the second house**
7. **The bill passes the second house**
8. **Royal assent** – the Governor-General (federal) or the governor (state) approves the bill before it becomes law
9. **Proclamation** – the act comes into operation
10. **The act becomes law**
Common law

A court’s primary responsibility is to apply existing laws to the facts in cases that are brought before them and make a determination (decision) on the case based on those laws. In this way, it is often said that the main role of courts is to apply the law to resolve the dispute at hand.

As a secondary role, and as part of their determination of cases, courts also occasionally make laws. Court-made law is known as common law, case law or judge-made law.

Courts can make law in two situations or circumstances:

• by interpreting the meaning of the words in a statute (or legislation) when applying them to a case the court is hearing (this is known as statutory interpretation)

• by deciding on a new issue that is brought before them in a case where there is no legislation in this area, or when a previous principle of law requires expansion to apply to a new situation.

In each type of situation, because the court must still resolve the dispute, the judge will make a decision and provide reasons for the decision. Common law is created through the reasons for decisions of courts, which are then followed by courts in future cases where the facts are similar.

Interpreting statutes

An Act of Parliament is often written in general terms to apply to all types of situations. Sometimes an unusual situation arises and the courts have to interpret words within the act. This process, where a judge clarifies or interprets the laws written by parliament, is known as statutory interpretation.

Sometimes the interpretation supports the prosecutor’s case. At other times, the interpretation helps the defendant, as in Deing v Tarola [1993] 2 VR 163.

**LEGAL CASE**

**Is a studded belt a weapon?**

***Deing v Tarola [1993] 2 VR 163***

In this well-known case of statutory interpretation, a man aged 20 pleaded not guilty to possessing a regulated weapon under the *Control of Weapons Act 1990* (Vic). The weapon in this case was alleged to be a black leather belt with raised silver studs, which he used to hold up his trousers. The magistrate found him guilty of the charge. The accused appealed against the finding of guilt and the confiscation of his belt.

The Supreme Court, hearing the appeal, had to decide what a regulated weapon was, in the context of the Act and the regulations made under the Act, to determine whether a studded belt used to hold up trousers was in fact a regulated weapon.

The regulations contained a list of regulated weapons which included ‘any article fitted with raised pointed studs which is designed to be worn as an article of clothing’. Justice Beach, however, decided that the studded belt was not a regulated weapon, as a regulated weapon should be defined as ‘anything that is not in common use for any other purpose but that of a weapon’.

The decision of the Magistrates’ Court was quashed and the confiscated belt was returned, because the accused could not be found guilty of carrying ‘a regulated weapon’ when the article he was carrying was not a weapon.

The definition of a regulated weapon has now been removed from the Act.

Source 2 In *Deing v Tarola* the Supreme Court was required to decide on appeal whether wearing a studded belt could be interpreted as carrying a weapon.
Precedent

When a court makes a decision in a case that is the first of its kind, and in doing so establishes or creates a legal principle, the court is said to be setting a precedent. A precedent may be followed in similar cases that come before the courts in the future. These precedents then form part of the law.

For example, imagine you were leaning back on your chair and your class teacher decided to punish you because your deliberate behaviour was unsafe and unacceptable. The teacher should, in an effort to remain consistent, also punish other students who do the same thing in the future.

However, if in a future case, another student accidentally trips another student in class, rather than deliberately, the teacher may decide the two cases are different, and may choose not to punish the student in the second scenario in the same way as the others. In such a case, the teacher is distinguishing between the facts of the case at hand and the facts of the earlier case, in which the behaviour was deliberately unsafe. The most important aspect of the teacher’s decision is the reason given for the decision – that deliberate unsafe behaviour is unacceptable. The precedent created in the past should be a guide to teachers in similar situations.

Similarly, legal precedents are established through court decisions. The most important part of the judgment is the reason for the decision. This is known as the ratio decidendi.

The operation of precedent means that lower courts in the same court hierarchy will follow the ratio decidendi in similar or like cases. This is known as stare decisis, meaning to stand by what has been decided. This ensures that there is consistency with the way that like cases are decided.

Snail in the bottle

*Donoghue v Stevenson* [1932] All ER Rep 1

One of the most famous precedents set in common law is the British case of *Donoghue v Stevenson*. It is commonly known as the snail in the bottle case.

May Donoghue, the plaintiff, went to a café where she was given a ginger beer. It was bought by a friend and poured into a glass for her. After Donoghue had drunk half the contents of the bottle, a decomposed snail was poured out into her glass. The snail could not be seen before the ginger beer had been consumed. Donoghue became ill as a result and later suffered from severe gastroenteritis.

Donoghue did not have a contract with the café or the manufacturer because she did not buy the bottle of ginger beer herself. This meant she could not sue for breach of contract. Instead, Donoghue claimed the manufacturer of the ginger beer, David Stevenson, had been negligent in the washing of the bottles before filling them with ginger beer. She sued Stevenson, alleging he had failed in two ways:

- It was the duty of the manufacturer to provide a system which would stop snails from getting into his ginger beer bottles.
- It was the duty of the manufacturer to inspect the bottles before filling them with ginger beer and selling them to customers.

*Source 3* A decomposed snail was found in the bottom of a ginger beer bottle manufactured by Stevenson.
Donoghue’s initial case failed, however she was granted leave to appeal to the House of Lords, where it was found that the manufacturer had been negligent. Because the bottle was opaque, Donoghue did not have any opportunity to check the bottle’s contents before drinking it.

The Court ruled that Stevenson failed to take reasonable care in supplying a product which he knew would be consumed with no reasonable opportunity for the distributor, retailer or consumer to inspect the goods before consumption.

In this case, the Court established the neighbour principle as a way of explaining a person’s duty of care. In the eyes of the law, a neighbour is someone you ought to have had in contemplation when carrying out an action. In his judgment, Lord Atkin said:

You must take reasonable care to avoid acts or omissions which you can reasonably foresee would be likely to injure your neighbour. Who, then, in law, is my neighbour?

The answer seems to be persons who are so closely and directly affected by my act that I ought reasonably to have them in contemplation as being affected when I am directing my mind to the acts or omissions which are called in question.

Precedent does not apply to a sanction (the sentence in a criminal case) or a remedy (compensation in a civil dispute) handed down by the court; it is the reason given for the decision that is the precedent. Using the example above, a teacher may set a precedent by deciding that deliberate unsafe behaviour is unacceptable when a student is leaning back on the chair, but students may be given different sentences or penalties depending on the circumstances of the case (e.g. one student may lean back in a much more deliberate and dangerous way than another, and therefore may get a harsher penalty than another).

**Binding precedent**

A binding precedent is one that must be followed by courts lower in the same court hierarchy. A precedent is considered to be binding on a new case when:

- the material facts of the precedent are similar to the material facts of the new case
- the precedent was set in a higher court in the same hierarchy as the new case.

**Persuasive precedent**

A precedent can be persuasive (that is, the court is not bound by it, but can choose to follow it or can be persuaded by it) on a Victorian court in the following circumstances:

- where a court in another state or country established the precedent (as they are not in the same hierarchy)
- where a lower court set the precedent. Therefore, the High Court, which is the highest court in Australia, does not have to follow a precedent set in any of the other courts in Australia.
- where the same court set the precedent. Therefore, the Supreme Court is persuaded by previous decisions made by that court.

Sometimes a judge will make a statement that is not part of the reason for the decision, but is an important statement relating to the main issue of the case. This statement, known as an obiter dictum – a statement made ‘by the way’, in passing – can influence decisions in the future. An obiter dictum is only ever persuasive on all the courts, regardless of which court made the statement, as it does not form part of the reason for the decision.
The case below is an example of an Australian court following a British precedent.

**Dr Grant’s underpants**

*Grant v Australian Knitting Mills Ltd*

[1936] AC 85

A man (Dr Grant) purchased a pair of long underpants. When he wore them, he got a rash. He had the underwear tested and discovered that the chemical residue from the manufacturing process was still in the finished garment.

At this time, the ‘buyer beware’ principle applied to the purchase of all goods. It was the purchaser’s responsibility to look for defects in goods before buying them. However, in this case the purchaser could not have detected the fault even if he inspected the goods. The Court followed the precedent set in *Donoghue v Stevenson* and ruled that the actions or omissions of the manufacturer directly caused Grant an injury and that the ‘manufacturer owed a duty of care to the ultimate consumer’.

**Developing or avoiding earlier precedents**

There are four main ways courts can develop or avoid earlier precedents:

- If the material facts of a case are sufficiently different from the material facts in a binding precedent, a lower court may not have to follow the precedent. Instead they may **distinguish** the material facts in the present case from those in the previous case and make a different decision. For example, a person found in the front seat of a car, over the legal alcohol limit, with his keys in his hands was found guilty of being in control of a car while over the legal alcohol limit. The accused appeared to be about to drive the car. This case was distinguished from a previous case, where the accused was found asleep in the car with the engine running, trying to keep warm. He did not appear to be about to drive the car.

- A precedent can be **overruled** by a higher court in a **different case**. For example, the High Court may overrule a decision of an earlier case decided in the Court of Appeal (which is lower than the High Court). When a precedent is overruled, it no longer applies.

- A precedent can be **reversed** when the **same case** is taken to a higher court on appeal. For example, a case may have been decided in the Supreme Court (Trial Division) and then appealed to the Court of Appeal (which is higher than the Trial Division), where the decision is changed. When a precedent is reversed, it no longer applies.

- In some instances a court is bound by a precedent but expresses its disapproval of or disagreement with the precedent. This is known as **disapproving**. This does not change a precedent, but a higher court, when deciding a later case, may choose to agree with the court that disapproved of the precedent and decide to overrule it.
3.5 CHECK YOUR LEARNING

Define and explain

1 Define the term ‘common law’ and give two other names for common law.
2 Explain what is meant by the term ‘statute law’ and give two other names for a statute.
3 Explain what is meant by the term ‘statutory interpretation’.
4 What is a precedent?
5 What is meant by the term ‘royal assent’ and at what stage of the legislative process does this occur?

Synthesise and apply

6 Read the legal case *Donoghue v Stevenson*.
   a What incident occurred in this case and where did it occur?
   b Why could Donoghue not sue the café or the manufacturer at that time?
   c What was the *ratio decidendi* in this case and why is it still important today?
   d Devise a modern-day scenario where something like this might happen, and which might give rise to you being able to sue a manufacturer.

7 Read the legal case *Grant v Australian Knitting Mills Ltd*.
   a What facts are similar in this case to that of *Donoghue v Stevenson*?
   b Do you think this case is still considered important today? Why?
   c Do the precedents in this case and in *Donoghue v Stevenson* apply in the following situations? Justify your answer.
      i Emma bit into a hazelnut cream chocolate that contained a piece of metal which was not visible. She broke her tooth and suffered severe pain as a result.
      ii A hospital gave Taylor the wrong drug. As a direct result, he suffered a stroke which left him paralysed on one side.

8 Read the legal case *Deing v Tarola*.
   a Outline the key facts of the case.
   b What was the issue that needed to be decided in this case?
   c Identify the statute that needed to be interpreted, and the word or phrase in that statute that needed to be interpreted.
   d What was the decision of the Magistrates’ Court?
   e Why was the case heard again in the Supreme Court and who heard the case?
   f What was the Supreme Court’s ruling on the issue, and what reasons did it give for the decision?

9 Classify each of the laws below based on their source. For the laws that you have classified as statute law, identify the parliament that passed them.
   a The *Migration Legislation Amendment (Cessation of Visa Labels) Act 2016* (Cth).
   b The maximum term of imprisonment for committing the common law offence of kidnapping is 25 years.
   c The Family Violence Reform Implementation Monitor Bill 2016 (Vic) has just become law.
   d The *Public Health Act 2016* (WA) aims to promote and improve public health and wellbeing.

Analyse and evaluate

10 Identify and examine two strengths and two weaknesses of statutory interpretation (i.e. the process undertaken by judges when they are required to interpret the meaning of statutes in cases). If required, conduct some internet research to help you.
What does it mean to 'manufacture drugs'?

**R v Bucic** [2016] NSWCCA 297 (14 December 2016)

In **R v Bucic**, Bucic was charged with knowingly taking part in manufacturing cocaine, which is an offence under the *Drug Misuse and Trafficking Act 1985* (NSW). The case against Bucic was that he and a co-accused were in possession of a number of sheets of A4 paper impregnated with cocaine, and that he and his co-accused took a number of steps to separate the cocaine from the paper. One of the issues that the Court had to decide was what was meant by the term 'manufacture', to determine whether Bucic was involved in manufacturing cocaine.

Manufacture was defined in the Act as including 'the process of extracting or refining the prohibited drug'. A further section in the Act states that a person takes part in the manufacture of a prohibited drug if the person takes part in any step, or causes any step to be taken, in the process of that manufacture.

The New South Wales Court of Appeal was required to determine what was meant by the word 'manufacture', and found that the process of separating the cocaine from the paper was a process of extraction, and therefore the accused took part in the manufacture of the drug. Justice Campbell said, as part of his interpretation of the word:

> It is interesting to note that none of the range of meanings attributed to the word 'manufacture' in either the *Macquarie Dictionary* or the *Oxford Dictionary online* editions
Because parliament is the supreme law-making body, it can make law that confirms a precedent set in a court by passing an Act of Parliament that reinforces the principles established by the court. This is known as codification of common law, because the common law is now ‘codified’ or put together in one or more statutes.

The case study below further explains the codification of common law in relation to complicity.

**Codification of common law**

Because parliament is the supreme law-making body, it can make law that confirms a precedent set in a court by passing an Act of Parliament that reinforces the principles established by the court. This is known as codification of common law, because the common law is now ‘codified’ or put together in one or more statutes.

The case study below further explains the codification of common law in relation to complicity.

**Codification of common law principles of complicity**

‘Complicity’ is being involved in a crime that was committed by another person, knowing it is wrong. For example, where a person assists or encourages another person to commit an offence, they can be charged as well. Previously, common law set down the principles as to when someone might be complicit in a crime.

In 2014 the Victorian Parliament passed laws that amended the *Crimes Act 1958* (Vic). The amendments codified most of the common law principles in relation to complicity.

**Abrogation of common law**

Parliament, as the supreme law-making body, is able to change or override (abrogate) common law. It does this by passing a law which specifically abrogates or abolishes the common law principle.

Parliament may decide to do this for a number of reasons. On occasion, the courts may interpret the meaning of the words in a statute in a way that was not the intention of parliament, or in a way that does not reflect the current meaning of the act. Courts may also develop precedent in a way that the parliament does not agree with. If this occurs, parliament can pass a statute which overrides the common law principles. The following case study further explains the abrogation of common law in relation to wilful exposure.

Source 1 An individual who is complicit is said to be a partner in crime – an accomplice.
**Abrogation of common law wilful exposure**

Wilful exposure was an offence created over the years through the courts. Wilful exposure makes it an offence for a person to unlawfully, wilfully and publicly expose his naked person. It was a limited offence, in that it was limited to exposure by a man of his penis, and did not make any sexually suggestive acts beyond exposure a crime.

A review by the Department of Justice in 2013 of sexual offences recommended that the offence be abrogated, as the offence would no longer be necessary if a proposed new sexual offence law was created.

In 2016 the Victorian Parliament passed a law which amended the *Crimes Act*. A new Section 54C was inserted into the *Crimes Act*, which states that ‘the offence of wilful exposure at common law is abolished’. In addition, new sexual offences were created as part of the amendments, including a new offence prohibiting sexual exposure.

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**Ability of courts to influence parliament**

Courts can also influence changes in the law by parliament through their comments made during court cases. That is, they can make the need for a change in the law known to parliament through their decisions.

Courts might want to do this for a number of reasons. For example, they may indicate in a judgment that they think the law should be changed by parliament. Courts may be reluctant to change the law themselves. This could be because the judge thinks parliament is in a better position to look at a wider area of law. Parliament can carry out investigations that courts cannot. Even so, statements made by a judge within a court decision may influence parliament to change the law.

This occurred in the case of *State Government Insurance Commission v Trigwell* (1979) 142 CLR 617.

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**High Court reluctant to change old common law**

*State Government Insurance Commission v Trigwell* (1979) 142 CLR 617

Mr and Mrs Trigwell were injured when a vehicle collided with their car after hitting two sheep. They sued the driver of the other car and the owner of the sheep for damages.

The High Court decided to follow the old common law that a landowner did not owe a duty of care for their stock straying from their land onto the highway. This followed an old common law principle inherited from Britain that allowed animals to roam free.

Justice Mason said:

> Even though there have been changes in conditions and circumstances, there are powerful reasons for the court to be reluctant to engage in changing the rule; such law-making should be left to parliament.

The Victorian Parliament subsequently passed the *Wrongs (Animals Straying on Highways) Act 1984* [Vic], which abolished the common law immunity and made owners of land liable for damage negligently caused by their animals straying on highways.
Define and explain
1. Describe two ways that courts and parliament work together in law-making.
2. How might courts fill in the gaps left by parliament?
3. Copy the following table in your notes and fill in the blanks.

<table>
<thead>
<tr>
<th>RELATIONSHIP BETWEEN PARLIAMENT AND COURTS</th>
</tr>
</thead>
<tbody>
<tr>
<td>FEATURE</td>
</tr>
<tr>
<td>Statutory interpretation</td>
</tr>
<tr>
<td>Courts can highlight the need for parliament to change the law.</td>
</tr>
</tbody>
</table>

Synthesise and apply
4. ‘The main role of the courts is to make laws.’ Is this statement correct? Justify your answer.
5. Create a mind map starting with the word ‘courts’ as the central word. In your mind map, cover each of the four features of the relationship between courts and parliament in law-making.
6. Read the legal case R v Bucic.
   a. What was the charge in this case?
   b. What was the relevant statute that was in question?
   c. What was the critical issue that needed to be determined by the Court?
   d. How does this case show the relationship between parliament and the courts?
   e. Is parliament restricted from changing the relevant statute so that the word ‘manufacture’ is defined in a different way? Justify your answer.
   a. What was the common law before the parliament changed the law?
   b. Do you think this is an appropriate law for 100 years ago? What about now?
   c. What was the outcome of the case, and why do you think it might be seen to be unfair?
   d. What is the law now that parliament has passed a statute?

Analyse and evaluate
8. Conduct some research on the common law offence of embracery.
   a. What is the nature of this offence?
   b. Do you think that this offence should be codified or abrogated? Justify your answer.

Check your obook assess for these additional resources and more:
» Student book questions
3.6 Check your learning
» Video tutorial
How to respond to a ‘justify’ question
» Going further
The baseline sentencing regime
CHAPTER 3  LEGAL FOUNDATIONS

3.7 TYPES OF LAW

Other than classifying laws by their source, laws can also be classified based on the behaviour they are trying to regulate and the possible consequences involved if the law is broken.

There are two main types of laws in Australia that regulate behaviour: criminal law and civil law.

Criminal law

Criminal law is a body of law which protects the community by establishing crimes and setting down sanctions for people who commit crimes. A crime is an act or omission that breaks an existing law, harmful to an individual or society as a whole and punishable by law. Examples of crimes include murder, theft and assault.

One of the distinct features of criminal law is the consequence that can flow if a crime is committed. If a crime is committed, and a person is guilty of that offence, a sanction may be imposed on that person. The sanction could be minor, such as paying a small fine, or could be more serious, such as imprisonment.

In a case involving criminal law, there are two parties: the state, which brings the action against the person alleged to have committed the crime (represented by the prosecution), and the accused.

An example of a criminal case is DPP v Hughes [2016] VCC 1762 (8 November 2016), in which the County Court of Victoria handed down a sentence for a crime involving a mother and a daughter.

Sad case of violence

DPP v Hughes [2016] VCC 1762 (8 November 2016)

On 28 November 2015, in a drug-induced psychosis, Michelle Hughes for over an hour subjected her 79-year-old mother to a terrifying and violent attack in their home.

Hughes followed her mother into her bedroom and held her down to prevent escape. Hughes brandished a knife at her mother, repeatedly trying to stab her in the chest and neck. Hughes told her mother that she didn’t want to kill her, but the voices were telling her that she had to do it, and that if she didn’t, ‘they’ would burn the house down.

After about an hour, Hughes’ mother managed to escape. Hughes followed her and again attacked her as she ran into the driveway. A neighbour managed to disarm Hughes.

Hughes pleaded guilty to four charges: false imprisonment, intentionally causing injury, making threats to kill, and reckless conduct endangering life.

Hughes was sentenced in the County Court of Victoria on 8 November 2016, at which time Her Honour Judge Hampel stated that this was ‘one of the saddest cases of violence within a family that I have had to deal with’. Hughes was sentenced to a term of 18 months in prison. Hughes had already been in custody for 346 days, which Judge Hampel reckoned to be a period of imprisonment already served and which was to be deducted from the sentence. In addition, Hughes was required to serve a community corrections order (a type of sanction served in the community) for a period of 30 months. Several conditions were imposed as part of the community correction order, including a requirement that Hughes undergo assessment and treatment including testing for drug abuse or dependency as directed, and a requirement that she must not commit another offence while the order is in force.
Civil law

Civil law is an area of law that regulates disputes between individuals and groups and seeks to enforce rights where harm has occurred. Examples of areas of civil law include tort law (negligence, defamation, trespass and nuisance) and contract law. Civil disputes are private disputes, and do not involve the police or the state (unless the state government is a party to the civil dispute, which can occur). The two parties to a civil dispute are the plaintiff (being the party who makes a claim), and the defendant (who the plaintiff alleges has infringed the plaintiff’s rights).

The main aim of civil law is to remedy a civil wrong, by returning the person whose rights have been infringed to their original position. This is done through civil remedies. The most common civil remedy is damages, which is a sum of money awarded to the person who has suffered harm.

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The legal case below is a famous High Court case where the plaintiff sued for negligence.

Source 1 Examples of crimes and words commonly used in criminal cases

<table>
<thead>
<tr>
<th>Examples of crimes</th>
<th>Words commonly used in criminal cases</th>
</tr>
</thead>
<tbody>
<tr>
<td>• crimes against person – assault, rape, manslaughter, murder</td>
<td>• prosecution, the Crown, the state – the party bringing the case on behalf of the state</td>
</tr>
<tr>
<td>• crimes against property – theft, property damage, robbery, deception</td>
<td>• accused – the person who has been charged with an offence</td>
</tr>
<tr>
<td>• crimes against morality – prostitution, illegal use of drugs</td>
<td>• suspect – the person who is suspected of having committed a crime</td>
</tr>
<tr>
<td>• crimes against the legal system – perjury, contempt of court</td>
<td>• guilty/not guilty – the person can be found guilty or not guilty</td>
</tr>
<tr>
<td>• crimes against the state – treason</td>
<td>• charge – when the police formally allege that a person has committed a crime</td>
</tr>
</tbody>
</table>

**Wyong Shire Council v Shirt (1980) 146 CLR 40**

In January 1967, Brian Kenneth Shirt was water-skiing at Tuggerah Lakes in New South Wales. The lake was regularly used by water-skiers.

Shirt fell and struck his head on the bed of the lake. He suffered quadriplegic paralysis as a result of the fall. It was found that the water where he fell was shallow. Shirt thought it was safe to ski in that particular spot because there were signs that said ‘deep water’.

He sued Wyong Shire Council and the case went all the way to the High Court.

The Council argued that ‘deep water’ meant before the signs, not around the signs. The High Court found that the Council breached its duty of care to Shirt, because it should have foreseen that this sort of harm could occur in the lake, and that the harm was very serious.
The legal case below provides an example of a Hollywood actor, Rebel Wilson, making a defamation claim against a publisher of magazines. A defamation claim involves an allegation that a person’s reputation has been damaged because of statements made about them.

Jury finds Rebel Wilson defamed

*Wilson v Bauer Media Pty Ltd* [2017] VSC 521 (13 September 2017)

Rebel Wilson, an Australian actor who has starred in films such as *Bridesmaids* and *Pitch Perfect*, had a legal victory in the Supreme Court of Victoria in June 2017. In 2015, Bauer Media, which publishes well-known magazines such as *Woman’s Day*, *The Australian Women’s Weekly* and *Harper’s Bazaar*, published articles about Rebel Wilson, which she claimed contained false statements about her. In particular, the articles claimed that Rebel Wilson had lied about her age and many parts of her upbringing.

Rebel Wilson sued the publisher for defamation, a type of civil law which aims to protect people’s reputation and character from false statements. She claimed that as a result of the articles she had lost the opportunity to earn income by acting in feature films during a period after the publication of the articles. Bauer Media denied the claim and the case went to trial before a jury, which lasted three weeks.

In June 2017 a jury found in favour of Rebel Wilson, deciding that she had been defamed in the articles. In September 2017, Justice Dixon awarded over $4.5 million in damages to Wilson, who had earlier suggested she would donate the money to charity or scholarships.

Wilson and many parts of the film industry have considered the claim a victory over publishers which they believe often publish false stories about celebrities.

Source 2 Rebel Wilson successfully sued Bauer Media after it published articles about her which ruined her reputation. She was awarded a record payment of over $4.5 million in damages.


**Examples of civil law**

- **tort law** – negligence, trespass, nuisance, defamation
- **family law** – marriage, divorce, adoption, de facto relationships
- **industrial and workplace laws** – occupational health and safety, working conditions, work contracts, workplace agreements, union disputes
- **consumer law** – tenancy agreements, sale of goods, advertising laws
- **property law** – wills, planning laws, real estate purchases

**Words commonly used in civil cases**

- **plaintiff** – the person bringing the case
- **defendant** – the person defending the case
- **sue** – taking civil action against another
- **compensation** – what the plaintiff seeks
- **damages** – a civil remedy
- **civil wrong** – a tort
- **defamation** – a civil law, under which a person can claim their reputation has been damaged
- **negligence** – a civil law (also a criminal law) under which a person can claim that they have been injured as a result of someone acting negligently towards them

Source 3 Examples of civil law and words commonly used in civil cases

### 3.7 CHECK YOUR LEARNING

**Define and explain**

1. Explain what is meant by criminal law.
2. Which area of law deals with private disputes between individuals?
3. Provide two examples of crimes, and two examples of civil law.

**Synthesise and apply**

4. Read the legal case **DPP v Hughes**.
   - a. Identify all of the key words that indicate that this is a criminal case.
   - b. Describe the key facts of the case, including the charges that Hughes pleaded guilty to.
   - c. Do you agree with the outcome of the case? Give reasons for your answer.

5. Read the legal case **Wilson v Bauer Media Pty Ltd**.
   - a. Who was the plaintiff in this case, and who was the defendant?
   - b. What was the main issue in dispute in this case?
   - c. How was this dispute resolved?
   - d. What was the outcome in this case, and who decided the outcome?

**Analyse and evaluate**

7. Access a criminal judgment from this year from the County Court of Victoria published on the AustLII website. A link is provided on your obook assess.
   - a. How do you know this is a criminal case?
   - b. Who are the parties in this case?
   - c. What were the charges, and did the offender plead guilty?
   - d. Describe the facts that gave rise to the charges.
   - e. What factors were taken into account in sentencing?
   - f. What was the sentence that was imposed?
   - g. Do you agree with the sentence? If not, why not, and what sentence would you have imposed?

Check your obook assess for these additional resources and more:

- Student book questions 3.7 Check your learning
- Weblink Australasian Legal Information Institute (AustLII)
- Weblink Types of law
CHAPTER 3
LEGAL FOUNDATIONS

THE DISTINCTION AND RELATIONSHIP BETWEEN CRIMINAL LAW AND CIVIL LAW

There are a number of differences between criminal law and civil law.

The main differences are the aim of each area of law, and the consequences if the law is not followed.

The aim of criminal law is to protect society and sanction offenders who have committed a crime, whereas the main aim of civil law is to regulate conduct between the parties and remedy a wrong that has occurred.

If an accused is found guilty, or pleads guilty, to committing a crime, then the consequence in a criminal case is a sanction – a penalty imposed by the court on the person, such as a fine or imprisonment.

If a defendant is found liable in a civil case, then the possible consequence is a remedy such as damages.

Source 1 below sets out the other main differences between a criminal case and a civil dispute. You will learn more about these concepts in Units 1 and 2.

### Study tip

‘Distinguishing’ between two things means you are showing how they are different. To do this, you should use words such as ‘whereas’, ‘on the other hand’, ‘in contrast’ or ‘this is different to’ when pointing out their differences.

<table>
<thead>
<tr>
<th>CRIMINAL LAW</th>
<th>CIVIL LAW</th>
</tr>
</thead>
<tbody>
<tr>
<td>Aim of the law</td>
<td>To protect society and sanction offenders</td>
</tr>
<tr>
<td>Examples of crimes/laws</td>
<td>• Crimes against the person: homicide offences, assault, sexual offences • Crimes against property: theft, arson, fraud • Crimes against the state: treason, sedition • Crimes against the legal system: perjury, contempt</td>
</tr>
<tr>
<td>Possible consequences</td>
<td>Sanction</td>
</tr>
<tr>
<td>Person bringing an action under the law</td>
<td>Prosecution, on behalf of the state</td>
</tr>
<tr>
<td>Person who has the responsibility (burden) of proving the case</td>
<td>Prosecution</td>
</tr>
<tr>
<td>Person defending the action</td>
<td>Accused</td>
</tr>
<tr>
<td>Police involvement in an action</td>
<td>Yes</td>
</tr>
<tr>
<td>Common words used in cases</td>
<td>Accused, prosecution, crime, victim, arrest, police, bail, remand, guilty, innocent, sentence, punishment</td>
</tr>
</tbody>
</table>

Source 1  The main differences between criminal law and civil law

The relationship between criminal law and civil law

The same behaviour can give rise to a civil dispute and a criminal case. For example, a person who hits another person can be charged with assault, and if it goes before a court, that person may be found guilty and sanctioned. The victim of the assault may also sue the offender for assault (trespass to the person). If the victim is successful, the offender may have to pay damages to the victim to compensate the victim for any injury suffered as a result of the assault.
In other circumstances, a victim may sue someone else who they believe is responsible for a crime. The article below provides an example where a mother has sued the State of Victoria in relation to a crime committed against her daughter.

**IN THE NEWS**

Mother sues Victoria after teenage daughter allowed to work as sex predator’s cleaner


A convicted paedophile was moved from a sex-offender facility into the same crisis housing as a 15-year-old girl, who the man then preyed on after he hired her as a cleaner.

The girl’s mother is suing the State of Victoria after the paedophile had regular access to her daughter, despite the offender himself believing he did not have ‘the ability to cope’ outside custody.

The man had been convicted of having sex with two 14-year-old girls.

The legal action forms part of an explosive series of lawsuits launched by the families of victims of sex offenders, rapists and murderers, including five people killed by offenders released on parole.

The family of one homicide victim is also taking Telstra to court, alleging that the company’s triple-0 operators failed to put the desperate calls of a mother through to police on the day she was murdered.

The state’s beleaguered parole system is set to come under increased scrutiny as part of the proceedings, which could cost taxpayers millions of dollars if the plaintiffs are successful.

The County Court civil action brings together the victims of five parolee killers – Joanne Wicking, Evan Rudd, Raechel Betts, Sarah Cafferkey and Douglas Phillips – as well as two victims of sex offenders, including the 15-year-old girl.

The recently released paedophile, who had been angry to leave sex-offender facility Corella Place because he believed he wasn’t ready, was moved to a block of flats in regional Victoria in 2013.

Soon after, he offered a 15-year-old girl who lived with her mother in the same block of flats $10 an hour to clean his flat.

The girl was soon attending the flat regularly, once visiting when the man and another convicted sex offender were present.

Over three months, from February to April 2013, the man gave the girl a key to his flat, touched her leg, tried to hug her and touch her hair and encouraged her to come over to play Xbox.

He was jailed for eight months in November 2014 for 13 charges of breaching his supervision order.

The girl’s mother is suing the State of Victoria, claiming that the registered sex offender had not been properly monitored, despite being on a supervision order.

A court that is hearing a criminal matter is also able to order an offender, on having been found guilty or convicted of an offence, to pay compensation to a victim. This is known as a **compensation order**.

The case of *DPP v Hitchiner* [2016] VCC 1844 (1 December 2016) provides an example of where a court has made a compensation order.
Guilty plea for theft

*DPP v Hitchiner [2016] VCC 1844 (1 December 2016)*

Stuart Hitchiner was employed by Red Hill Motors for approximately 31 years until November 2015. Between 2009 and 2015, he processed 1985 false refund transactions, each of which were paid into his personal bank account. A total of $619,338.40 was taken from the business.

Hitchiner was arrested on 16 November 2015 after his offending was detected by his employer and reported to police. Hitchiner pleaded guilty to seven charges of theft.

On 1 December 2016, Judge Grant of the County Court of Victoria convicted Hitchiner and sentenced him to a sentence of imprisonment of three years and six months. Hitchiner will need to serve a minimum sentence of 21 months before he is eligible for release on parole.

The County Court also ordered that Hitchiner pay compensation of $619,338.40 to the owner of Red Hill Motors.

### 3.8 CHECK YOUR LEARNING

**Define and explain**

1. Describe two differences between criminal law and civil law.
2. Would the police be involved in a civil dispute? Explain your answer.
3. What is a compensation order and what is its purpose?

**Synthesise and apply**

4. Read the article ‘Mother sues Victoria after teenage daughter allowed to work as sex predator’s cleaner’. 
   a. Is this article describing a criminal case, or a civil case, or both? Give reasons.
   b. Who are the parties in this case?
   c. Why is the offender not the defendant?
   d. What are the allegations against the State of Victoria?
   e. The article refers to a series of lawsuits launched by the families of other victims. Conduct some research and identify at least one of those other cases. Describe the facts of the case.
5. Read the legal case *DPP v Hitchiner*.

**Analyse and evaluate**

7. Conduct some research on the case of Sarah Cafferkey. 
   a. What are the allegations that Ms Cafferkey’s mother is making?
   b. Explain how the tragic circumstances of Ms Cafferkey’s murder is an example of the relationship between criminal law and civil law.
   c. What is the current status of Ms Cafferkey’s mother’s case?
   d. Do you think that Sarah and her family were let down by the parole system? Discuss.

Check your obook assess for these additional resources and more:

» Student book questions
  3.8 Check your learning

» Going further
  Other cases in civil and criminal law
The law provides individuals in society with guidelines for acceptable behaviour. Most people grow up with an understanding that for people to live in harmony, they must obey the law. In any society, however, there are people who break the law and infringe other people’s rights.

The court system provides a means of resolving disputes and enforcing the law peacefully and without resorting to violence. It includes a variety of courts that have different areas of expertise and are suitable for different types of cases.

As you have learnt, the main Victorian courts are as follows:
- the Magistrates’ Court
- the County Court
- the Supreme Court, which is divided into two divisions: the Trial Division and the Court of Appeal.

There are also two specialist courts: the Coroner’s Court (which investigates suspicious deaths and fires) and the Children’s Court (which deals with criminal and family matters involving children).

The Victorian courts are ranked in a court hierarchy with the higher courts hearing the more serious and complicated cases and the lower courts dealing with the everyday issues. The Victorian court hierarchy extends from the Magistrates’ Court (the lowest state court) to the Supreme Court (the highest state court). The High Court is a federal court, but it can hear appeals from the Supreme Court (Court of Appeal). In fact, the High Court can hear appeals from courts in every Australian state.

Each of the courts has its own jurisdiction, which is the right or power of a court to hear or deal with particular cases. Most of the courts in Victoria have the jurisdiction to hear both civil and criminal cases, and some courts have the power to hear appeals. For example, the Magistrates’ Court can hear minor criminal offences, and the Supreme Court can hear serious offences such as murder. You will learn more about the jurisdiction of courts in Unit 2.

### Reasons for a court hierarchy

There are four main reasons for a court hierarchy:

- The court hierarchy allows for specialisation or expertise, with the courts developing expertise in dealing with the types of cases that come before them. For example, the Magistrates’ Court hears minor offences, and so will be specialised in offences such as drink driving. The Supreme Court hears serious offences such as murder, and so will have developed expertise around the principles relating to murder.
• The court hierarchy enables the parties to a court case to appeal to a higher court if they are not satisfied with the decision in a lower court. This means that a person who believes that an error has been made in the lower court can appeal the case to a higher court for the higher court to review that decision.

• The court hierarchy is a necessary part of the doctrine of precedent (law-making through courts) because the process of law-making through courts depends on a decision being made in a higher court which is binding on lower courts. This enables individuals and lawyers to predict the likely outcome of a case. Judges and magistrates can be guided by the wisdom of the more experienced judges in the higher courts.

• Finally, a court hierarchy allows for administrative convenience. Because the courts have different jurisdictions to hear different matters, it allows smaller and minor cases (of which there are more) to be heard in the Magistrates’ Court (of which there are a number in the state), and more complex and larger cases to be heard in the County Court and the Supreme Court. This allows for some efficiency or convenience with the way that cases are heard.

**CHECK YOUR LEARNING**

**Define and explain**

1. Explain what is meant by a court hierarchy.
2. Identify and explain two reasons for a court hierarchy.
3. What is the highest court in Victoria? What is the lowest court?

**Synthesise and apply**

4. For each of the scenarios below, write down why you think the court hierarchy is important.
   
a. Samantha’s civil dispute was heard in the Magistrates’ Court, and she was found liable for $60 000. She does not agree with the magistrate’s decision.
   
b. Hanna has been charged with murder. She is concerned about getting a judge that knows what she or he is doing.
   
c. Anil is suing Jessica for $20 000. He knows it’s a small claim and doesn’t want to wait for years to have his case heard.
   
d. Harriet is suing her employer. She has been told by her lawyers that her case is strong because of past decisions that are similar to her case.
   
e. Conduct some research on the Magistrates’ Court of Victoria. Identify the closest Magistrates’ Court to where you live. Explain the benefits of this.

**Analyse and evaluate**

6. ‘The court hierarchy system is just way too confusing. There are courts everywhere, and nobody knows where their case should be heard. They should just create one court for all cases.’ Discuss the extent to which you agree with this statement.
CHAPTER SUMMARY

Social cohesion and the rights of individuals
> Social cohesion is the willingness of members of society to cooperate with each other in order to survive and prosper.
> The law, individuals and the legal system all have a role to play in achieving social cohesion and protecting the rights of individuals.

Principles of justice
> Fairness
> Equality
> Access

Characteristics of an effective law
> Reflects society’s values
> Enforceable
> Known
> Clear and understood
> Stable

Parliament and courts
> The Commonwealth Parliament consists of the Governor-General, the House of Representatives and the Senate.
> The Victorian Parliament consists of the Governor of Victoria, the Legislative Assembly and the Legislative Council.
> Government consists of members of the political party that has the majority in the lower house. Parliament consists of all members of both houses of parliament and the Queen’s representative.
> There are federal courts and state courts.

Sources of law
> Statute law – made by parliament
> Common law – made by courts

The relationship between parliament and the courts
> Courts can interpret statutes made by parliament.
> Parliament can codify common law principles.
> Parliament can abrogate or abolish common law.
> Courts can also influence parliament through its judgments.

Types of law
> Criminal law
> Civil law

Distinction and relationship between criminal law and civil law
> The main difference between criminal law and civil law is the consequence of the action.
> The same behaviour can give rise to a civil dispute and a criminal case.

Victorian court hierarchy
> The Victorian courts are set up in a court hierarchy. The highest court is the Supreme Court, followed by the County Court, then the Magistrates’ Court.
> There are four reasons for a court hierarchy: appeals, specialisation, administrative convenience and doctrine of precedent.

REVISION QUESTIONS

1. Using an example, define the term ‘statute law’. [2 marks]

2. Would the Supreme Court of Victoria be bound by a decision in the Magistrates’ Court? Justify your answer. [2 marks]

3. What is meant by the word ‘appeals’? Why is a court hierarchy needed for appeals? [3 marks]

4. Classify each of the following laws according to their source and type: [4 marks]
   a. The Crimes Act 1958 (Vic) makes rape an offence.
   b. The sanction for common law kidnapping is set out in the Crimes Act 1958 (Vic).
c Vince is required to pay $50,000 after being found liable under the common law tort of negligence.

d In Victoria, intentional murder is not defined in the Crimes Act 1958 (Vic) but by various case law.

5 Using examples, describe two features of the relationship between parliament and the courts. [5 marks]

6 Describe two principles of justice. [4 marks]

7 How is it that one act or omission can relate to both criminal law and civil law? Use an example to demonstrate your answer. [4 marks]

8 ‘The Victorian court hierarchy is critical to ensuring that courts are decided efficiently’. Do you agree with this statement? Give reasons for your answer. [6 marks]

9 In your view, what are the two most important characteristics of an effective law? Justify your answer. [8 marks]

10 Describe the role and structure of the Victorian Parliament and the Commonwealth Parliament. Is one parliament more powerful than another? Give reasons. [10 marks]

PRACTICE ASSESSMENT TASK
Students should read the information at the beginning of the chapter relating to the learning outcome, key knowledge and key skills before attempting this assessment task.

Practice assessment task questions

Part 1 [20 marks]

1 Collect two newspaper articles. One of the articles must relate to a criminal case, and one of the articles must relate to a civil dispute.

2 For each of the articles:
   a Identify and define the legal terminology that is used in the newspaper article. [6 marks]
   b Identify the crime that is alleged to have been committed, or the area of civil law that is alleged to have been breached. Explain how making that act or omission a crime, or how that area of civil law, aims to achieve social cohesion. [10 marks]
   c For the criminal law article, explain how the committing of the crime could give rise to a civil dispute. [4 marks]

Part 2 [30 marks]

3 You have been asked to write an article which is to be published in a newsletter for Year 6 students. The purpose of the article is to explain parliament and the courts, and their relationship. Prepare the newspaper article. You can use a variety of multimedia tools if you wish. You will need to address in that article, in appropriate language for Year 6 students:
   a The role of parliament and the courts. [5 marks]
   b The main sources of law, being statute law and common law, and how to distinguish between the two. [5 marks]
   c An overview of the Victorian court hierarchy, and two reasons for a hierarchy of courts. [6 marks]
   d Two features of the relationship between parliament and courts, using examples. [6 marks]
   e How a person could assess whether a law is effective. At least two examples must be included for the students. [8 marks]

Total: 50 marks