

Chapter 4 Notes and Questions Part 1

4.1

Victorian Legal Aid

Victorian Legal Aid is a government agency with the key purpose of providing close free legal aid in addition to free legal information and advice.

Victorian Legal Aid provides a Duty Lawyer in both the Children's Court and Magistrates Court to give legal advice if accused person that passes the Income Test, or said person is in custody. The Duty Lawyer can also represent an accused person if they pass the Income Test, are facing a significant charge, or are considered a priority due to mental illness or other factors.

Textbook Questions

Q1. Does legal aid always include legal representation? Explain.

Legal aid does not always include legal representation as it can also include legal advice in addition to providing legal information and representation

Q2. Are you entitled to any assistance from the VLA if you have enough money to pay for your own lawyer? Explain your answer.

You are not entitled to any assistance from the VLA if you have enough money to pay for your lawyer and is gauged through the 'means' test

4.2

Victorian Community Legal Centres

Around 50 in Victoria

Primary role is providing free legal advice and information

Focus on people who need help the most

Can provide duty lawyers and services including representation (usually funded by a grant of legal assistance from VLA)

Can be generalist (covering a geographic area) or specialist (eg. YouthLaw for under-25s)

Textbook questions

Q1. Explain the difference between generalist CLCs and specialist CLCs.

A generalist CLC provides broad legal advice and information to an larger geographical area or set of people whereas a specialist CLC provides more focused legal advice and information to a smaller geographical area and / or set of people

Q2. Provide two similarities and two differences between VLA and CLCs

Victorian Legal Aid is a service that offers legal information,

legal advice to everyone and legal representation to those who pass the means test.

Q4. How does government funding to CLCs affect the ability of the criminal justice system to achieve the principles of justice? Give reasons for your answer.

Government funding to CLCs affects the ability of the criminal justice system to achieve justice by allowing more people to have access to legal information and advice. If for example, CLCs got less funding, it would limit the amount of people who would have access to the free legal information and advice which may inhibit their ability to defend themselves in court

4.3

Committal Hearings

Committal hearings are the final and main stage in the committal proceedings. In this stage, the prosecution calls witnesses to present evidence against the accused. The accused can question witnesses and present counter-arguments. The magistrate decides if there is sufficient evidence to support a conviction

Purposes of committal proceedings

The purpose of committal proceedings is to decide if there is sufficient evidence to support a conviction in addition to finding out how the accused pleads (guilty or not guilty). Committal proceedings also serve as the place where it is

decided whether it is appropriate to hear the charges summarily and to ensure that there will be a fair trial by allowing the accused to prepare their case.

Strengths and Weaknesses of a Committal Proceeding

Strengths	Weaknesses
Saves time and money by eliminating weak cases	Complicated and expensive
Informs the accused of the case against them	Requires legal representation
can lead to pre-emptive guilty pleas when evidence is presented	can add to delays and be a waste of time for stronger cases
supports the presumption of innocence	stressful for witnesses

Textbook questions

Q3. What happens if the Magistrate decides there is insufficient evidence? Can the accused be charged again for the same offence? Explain your answer

If a Magistrate decides that there is insufficient evidence, the criminal case can be dismissed. The accused cannot be charged for the same offence unless new evidence is presented and the Magistrate decides that there is now enough evidence.

Q4. Provide two strengths and two weaknesses of committal proceedings by reference of the above scenario

Two strengths of committal proceedings are that allow for cases without enough evidence to be thrown out in addition to allowing the accused to see what evidence the prosecutors have against them. Two weaknesses of committal proceedings are that they can force witnesses to give evidence multiple times, and it can be time-wasting for strong cases.

Q5. Read the "Melbourne Doctor" scenario above and answer

a. What is the allegation in this case?

Allegedly forcing an asylum seeker to work in their bakery among other tasks.

b. Who will go to trial?

The doctor and his wife will go to trial.

c. Discuss the benefits and downsides of a committal proceeding from the perspective of the DPP, accused and victims

4.4

Plea Negotiations

Plea negotiations are pre-trial discussions between the accused and the prosecution with the aim of resolving a case more quickly by achieving a plea of guilt

The prosecution offers a lesser charge, or fewer charges in exchange for a guilty plea

Plea negotiations are done privately without the

involvement of the court

The sentencing for any guilty pleas is decided independently by the court

Prosecutors cannot offer a reduced or lesser sentencing, but a guilty plea does usually lead to this

Strengths	Weaknesses
Saves time and resolves cases more quickly	Perception of leniency for the accused
Reduces the workload of courts	Is a private negotiation
Victims do not need to give evidence in court	Undermines legal principles

Purposes of a Plea Negotiation

The purpose of a plea negotiation is to resolve a criminal case quickly by encouraging the accused to plead guilty, and to achieve a prompt resolution to the case without the cost, time, stress, and inconvenience of the trial

Appropriateness of Plea Negotiations

Plea negotiations must be in the public interest

Factors that determine if a plea negotiation is appropriate include:

Whether the accused is willing to give evidence against other offenders

The strength of the prosecution's case

Whether the accused is already willing to plead guilty

Whether witnesses are willing or able to give evidence

Time and / or expenses of the trial

The views of the victim/s

Q2 Is the court involved in the plea negotiations? Explain your answer

The court is not involved in the plea negotiations as it is a private and external matter between the accused and the prosecution

Q3 Describe two possible outcomes of a plea negotiation

The two possible outcomes of a plea negotiation are that the parties agree on a charge or set of charges and the accused pleads guilty, or no outcome is reached and both parties continue the court proceedings.

Q4 Read the scenario above.

a. What was the agreement that was reached between the parties

An agreement was reached between the two parties in which the prosecution dropped the most serious charged so that the accused would plead guilty to the other charges

b. Why did the magistrate no longer have to do anything in the case?

The magistrate did not have to do anything else in the case as the accused pleading guilty made the committal proceedings unnecessary

c. What were they ultimately sentenced?

The accused pleaded guilty to two counts of intentionally causing injury

4.5

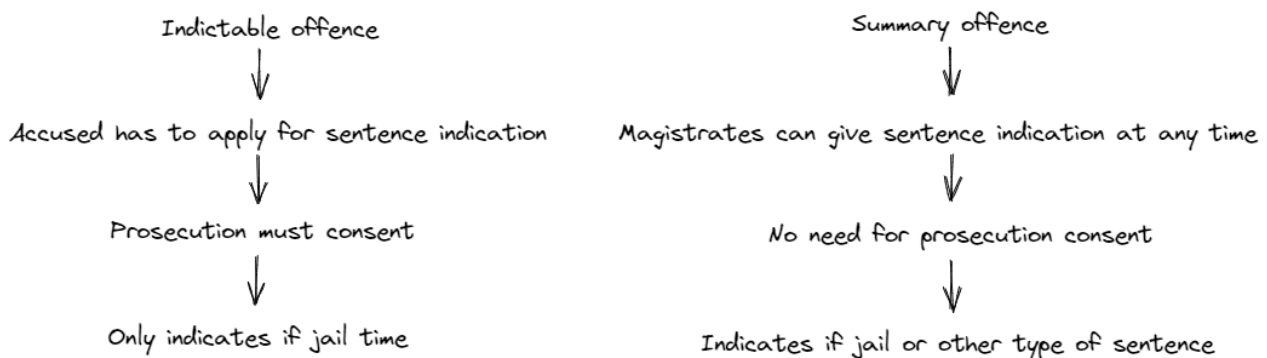
Sentence Indications

A statement made by a judge to an accused about the sentence they could face if they plead guilty

Can be given for both a summary and indictable offence

Can encourage the accused to plead guilty

If the accused receives a sentence indication, and pleads guilty at the next available opportunity, they cannot be given a more severe sentence than the one indicated



Purposes of Sentence Indications

To provide the accused with clarity about the likely sentence

To encourage guilty pleas by alleviating fear of imprisonment

Saves the time, costs, resources, stress and inconvenience of trials

Provides earlier closure for victims

Signifies the accused's willingness to take responsibility

Frees up court time for other trials

Offenders receive a shorter sentence

Appropriateness of Sentence Indications

Factors to determine whether a sentence indication is appropriate include:

Whether the accused has applied for a sentence indication

The seriousness of the offence

Whether there is sufficient information for the judge to make an indication

Whether the prosecution consents (for indictable offences)

Textbook questions

Q1. Who gives a sentence indication? When is it given? Who is it given to?

The judge or the Magistrate gives the sentence indication.

A sentence indication is given when the accused applies for it. A sentence indication is given to the accused in a criminal case.

Q2. Explain two differences between sentence indications for summary offences sentence indications for summary offences, the Magistrate

Q3. Is the court bound by a sentence indication if the accused continues to trial and is found guilty? Justify your answer

The court is not bound by a sentence indication if the accused continues to trial and is found guilty as the sentence indication is discarded if the accused does not plead guilty at the next opportunity to do so.

Q4. Describe the role of the prosecutor, if any, in the sentence indication process for both summary offences and indictable offences

4.6

Textbook questions

Q3. Referring to indictable offences, explain how the Victorian court hierarchy provides for specialisation

The Victorian court system hierarchy provides for specialisation by allowing the courts to develop their own areas of expertise.

Q5. Read the scenario DPP v Ristevski

a. Which court sentenced the offender?

The appeals court sentenced the offender.

b. Which court heard the appeal?

The appeals court heard the appeal

c. Which party appealed, and on what grounds?

The prosecution appealed on the grounds that the sanction was too lenient

d. What was the original sentence, and what was the sentence handed down on the appeals

The original sentence was nine years imprisonment with a six year non-parole period. The appealed sentence was thirteen years imprisonment with a non-parole period of ten years

4.7

Textbook questions

Q1. Explain two circumstances that are needed for a criminal trial to be heard in the Supreme Court of Victoria
For a criminal trial to be heard in the supreme court, the charges against the accused need to be in the jurisdiction of the supreme court in addition to the accused pleading not guilty.

Q2. The judge does not have investigatory powers. Explain how this upholds the principles of justice

Q3. Describe one way in which the responsibilities of the judge upholds the principles of justice

4.8

Textbook questions

Q3. Explain what is meant by party control

The term 'party control' refers to the way in which each party has control over how they develop and present their case.