

20.13 Review

20.13.1 Key knowledge summary

20.2 The court hierarchy

- Courts have both civil and criminal jurisdiction.
- All courts fit within a court hierarchy. The lower courts deal with less serious matters, and intermediate and higher courts have jurisdiction over more serious matters.
- A court hierarchy allows for a person to appeal to a higher court if he or she is unhappy with the ruling in a lower court.

20.3 The roles of particular courts

- The Victorian Supreme Court has both original and appellate jurisdiction.
- Magistrates' Courts are located in metropolitan Melbourne and in regional cities and towns, and hear around 90 per cent of all cases.
- As well as hearing less serious cases, Magistrates' Courts conduct committal hearings on more serious criminal matters to test whether the prosecution has a strong case against the accused.
- Magistrates' Courts also make decisions in relation to the granting of bail to those accused of crimes.
- The Family Court of Australia has jurisdiction over all matters relating to divorce and relationship breakdown.

20.4 Different courts, different jurisdictions

- Disputes relating to consumer law can be heard by the Victorian Civil and Administrative Tribunal, which will usually attempt to resolve the matter through mediation before conducting a formal hearing.
- The Victorian Equal Opportunity and Human Rights Commission provides a complaint resolution procedure to help resolve issues of discrimination. The Commission attempts to use a process of conciliation to resolve these disputes.
- The Victorian Environmental Protection Authority has the power to order individuals or organisations to stop polluting and to clean up, but can also initiate civil or criminal proceedings if the polluter does not comply with the orders.

20.5 How the courts make laws

- Judges will follow precedents set in previous cases, particularly those precedents set in a higher court.
- When there is no relevant legislation and no existing precedent, judges can make new law when they decide a case brought before them.
- Once new common law has been developed within a court hierarchy, judges in future cases will tend to follow the precedent that has been set.

20.7 Equality before the law

- Equality before the law means that people who come into contact with the justice system should be treated equally and fairly, and be able to see that this is the case.
- There are several approaches that courts can take to deal with people from different backgrounds, such as those with minority racial, ethnic or cultural backgrounds, to ensure they are treated fairly.

20.8 The independence of our courts

- The Australian Constitution supports the concept of three separate arms of government — the legislative, executive and judicial arms.
- The separation of powers ensures that judges (the judicial arm) are not subject to political influence from the legislative arm or the executive arm of government.
- Judges have security of tenure once appointed, so that they cannot be influenced by government or politics when making their decisions.

20.9 The right of appeal

- A party may appeal a court's decision when they are dissatisfied with the decision on the grounds of a question of fact, or if they disagree with the court on a point of law.
- In a civil case, any party can appeal a decision, but some appeals can only be heard if the court gives permission to the person wanting to appeal.
- In a criminal case, only the people who are directly involved in the case can appeal (the accused and the prosecution), and the prosecution can only appeal against a sentence.

20.10 When the system fails

- The courts attempt to ensure that everyone who comes before them receives justice, but this does not always work perfectly.
- Factors undermining the application of the principles of justice include bribery, coercion of witnesses, trial by media, and court delays.

20.13.2 Reflection

Complete the following to reflect on your learning.

20.13 ACTIVITIES

Revisit the inquiry question posed in the Overview:

Content to come

1. Now that you have completed this topic, what is your view on the question? Discuss with a partner. Has your learning in this topic changed your view? If so, how?
2. Write a paragraph in response to the inquiry question outlining your views.

Resources

-  **Interactivity** Australia's justice system and the courts crossword (int-xxxx)
-  **eWorkbooks** Reflection (doc-xxxx)
Crossword (doc-xxxx)

KEY TERMS

adversary system a system of trial in which the two sides argue their case and the judge or magistrate acts as an independent umpire

appellate jurisdiction the power of a court to review a lower court's decision

arbitration the process of resolving a dispute by an independent third party, such as a court or tribunal, where the decision is legally binding on the parties

bail an agreement to release an accused person into the community while awaiting trial

common law judge-made law, or law developed by judges through the decisions in actual cases brought before the courts

conciliation a process of settling disputes in which a neutral third party (a conciliator) assists the parties to reach agreement. It differs from mediation in that the conciliator can suggest solutions to the parties.

consent order a written agreement reached by the parties to a dispute and approved by the court

defendant a person against whom a legal action has been brought

duty of care a responsibility to ensure the safety of any persons whom we can reasonably foresee might be affected by our actions

industrial relations refers to the laws and processes that govern the relationships between employers and employees

judge a court official who presides over cases in courts higher than a magistrates court or Local Court

jurisdiction the power or authority of a court to hear specific types of disputes and cases

jury in criminal cases, the 12 people who are randomly selected to decide the guilt or innocence of an accused based on the evidence presented in court

magistrate a court official who hears cases in the lowest court in the legal system

manslaughter the accidental or unintentional killing of one person by another person

mediation a process of settling disputes in which a neutral third party (a mediator) assists the parties to reach agreement. Mediators do not offer solutions; they help the parties to reach agreement through their own suggestions.

negligence failure to take reasonable care when a person or organisation is legally required to do so

original jurisdiction the power of a court to hear and decide a case for the first time

plaintiff a person who commences a legal action in a civil case

precedent a legal principle that is established by a court in resolving a dispute and is expected to be followed in later cases

prosecutes to take legal action against a person accused of a crime

recklessness continuing on a particular course of action despite realising that doing so might result in harm to others

remanded in custody to be held by the authorities until a case is heard in court

remedial action action taken to restore a site to its previous or natural condition, or to an equivalent condition

surety when bail is granted, a sum of money deposited with a court as a guarantee that an accused will abide by the conditions of bail and will appear in court when required to do so