

# UNIT 1 AOS 2

## Proving guilt

The presumption of innocence is a fundamental principle of criminal law and provides a guarantee that an accused is presumed innocent until proven guilty beyond reasonable doubt. In this area of study, students develop an understanding of the purposes of and key concepts in criminal law, as well as the types of crime. They also investigate two criminal offences in detail. For each offence, students consider actual and/or hypothetical scenarios in which an accused has been charged with the offence, use legal reasoning to determine possible culpability and explain the impact of the offence on individuals and society.

### Outcome 2

On completion of this unit the student should be able to explain the purposes and key concepts of criminal law, and use legal reasoning to argue the criminal culpability of an accused based on actual and/or hypothetical scenarios.

*Reproduced from VCAA VCE Legal Studies Study Design 2024-2028*

### KEY SKILLS

- define and use legal terminology
- research and analyse relevant information about criminal law and offences
- distinguish between types of crime, and summary and indictable offences, using examples
- explain the purposes and key concepts of criminal law
- use legal reasoning and principles to identify and argue the elements of an offence, possible defences
- and culpability in relation to actual and/or hypothetical scenarios
- synthesise and apply legal information to actual and/or hypothetical scenarios in relation to two criminal offences.

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# CHAPTER 2

## Criminal Law

### LESSONS

- 2A** The purposes of criminal law
- 2B** The presumption of innocence
- 2C** Key concepts of criminal law
- 2D** Types of crime
- 2E** Summary offences and indictable offences
- 2F** Possible participants in a crime

### KEY KNOWLEDGE

- the purposes of criminal law
- the presumption of innocence
- key concepts of criminal law, including:
  - the elements of a crime: actus reus and mens rea
  - strict liability
  - the age of criminal responsibility
  - the burden of proof
  - the standard of proof
- types of crime, such as crimes against the person and crimes against property
- the distinction between summary offences and indictable offences
- possible participants in a crime such as principal offenders and accessories.

# 2A The purposes of criminal law



Image: Jan Wehnert/Shutterstock.com

In the dystopian movie 'The Purge', a crime-ridden America decides to host an annual, 12-hour period in which all criminal activity is legal. During these 12 hours, the concept of criminal law fails to exist. As a result, chaos, bloodshed, and horror ensue. The movie sends a clear message to audiences about the utter disaster that would occur in a world without criminal law, and the key purposes that act to promote and maintain social harmony.

## STUDY DESIGN DOT POINT

- the purposes of criminal law

2A 2B 2C 2D 2E 2F

### 1.2.1.1

#### The purposes of criminal law

- 1.2.1.1.1 Protection of society
- 1.2.1.1.2 Deterrence of crime
- 1.2.1.1.3 Protect justice and the rule of law
- 1.2.1.1.4 Set minimum standards of behaviour

## LESSON LINK

You learnt about social cohesion and the protection of society in **1A Social cohesion and the rights of individuals**.

## LEGAL VOCABULARY

**Criminal law** an area of law that aims to protect society from harm by defining prohibited behaviours and outlining sanctions for those who participate in illegal conduct.

## LESSON LINK

You learnt about criminal law in **1G Criminal and civil law**.

## Lesson introduction

One of the major branches of the justice system is criminal law. Criminal laws exist to assist society in functioning and promote feelings of safety for citizens. These laws serve several purposes, not only to protect society from harm and promote social cohesion, but to also prevent people from committing crimes in the first place. According to the World Population Review, in 2023, Australia had the 75th highest crime rate in the world. This is indicative of Australian criminal laws being relatively effective at keeping crime rates low, when compared to the rest of the world.

## The purposes of criminal law 1.2.1.1

To determine whether the legislation establishing Australia's **criminal law** is operating effectively, the purposes of this type of law must be considered.



Figure 1 The purposes of criminal law

## Protection of society 1.2.1.1.1

Society relies on criminal law to enforce and maintain social cohesion and order. By striving to ensure the **protection of society**, criminal laws can allow citizens to live peacefully within their community. For example, driving to school or work might be a highly dangerous activity without drink-driving laws and speed limits acting as protection. The protection of society by criminal laws can ensure people can leave the house and function in society without intense feelings of fear, paranoia, and anxiety.

### LEGAL VOCABULARY

**Protection of society** a purpose of criminal law that aims to reduce danger and chaos in society and prevent individuals from experiencing harm.

### HYPOTHETICAL SCENARIO

#### The thief of joy

Keeran was sitting at his desk, studying for his VCE Legal Studies test, when suddenly two men waltzed in and stole his computer, his food, and caused other damage in his home. He was petrified, frozen in his desk chair, just hoping the intruders would leave without hurting him.

In a world where criminal laws do not exist, people would be allowed to freely enter another person's property and take whatever goods they please. As a result, feelings of safety within homes would be threatened.



**Figure 2** In the absence of criminal laws, Keeran would be helpless against intruders who could steal his property as they please

## Deterrence of crime 1.2.1.1.2

Another major purpose of criminal law, and its enforcement by legal authorities, is to deter criminal behaviour. **Deterrence** aims to demonstrate to members of society that the potential gains are far outweighed by the consequences of committing a crime. Offenders who have pleaded guilty or found guilty of committing a crime are sentenced. The threat of a **sanction**, such as a fine or imprisonment, acts to deter criminal activity and discourage an offender from repeatedly committing offences.

### LEGAL VOCABULARY

**Deterrence** to discourage an offender, or other individuals, from reoffending or committing similar crimes through the imposition of a criminal sanction.

**Sanction** a penalty imposed by the court on an offender when they plead guilty or are found guilty of a crime.

### REAL WORLD EXAMPLE

#### Fraudster freak out!

In 2021, UK's Financial Conduct Authority reported that three white-collar criminals who had been committing investment scams were sentenced to prison for their crimes. The Authority predicted that by imposing these prison sentences, reoffending would be reduced by nearly 50% for these offenders. In addition, they claimed people who had not yet committed financial crimes but may have been considering doing so, would be deterred, out of fear that they too may face prison. Sentencing criminals to tough sanctions is one method of discouraging reoffending, and general society more broadly, from committing crimes.

*Adapted from 'Fraudsters feel the fear: why prison sentences may deter white collar crime' (Bell, 2023)*

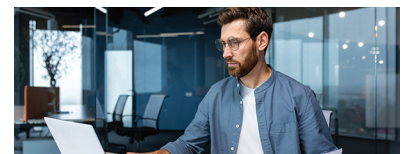


Image: voronaman/Shutterstock.com

**Figure 3** By imposing prison sentences for financial crimes, both the offenders and members of society, who may have committed similar offences in the future, are deterred from doing so

### LESSON LINKS

You will learn more about deterrence in **5A Purposes of sanctions**.

You will learn more about white-collar crime in **2D Types of crime**.



**LEGISLATION***Crimes Act 1958 (Vic)***LEGAL VOCABULARY**

**Justice** the idea that a person who received the burden of another's actions should receive a fair outcome, such as their offender being reasonably punished.

**Rule of law** the principle that the law applies to everyone equally regardless of status.

**Protect justice and the rule of law 1.2.1.1.3**

When a crime occurs, there is an accused, the person who committed the crime, and a victim, the person who suffered harm as a result of the crime. One purpose of criminal law is to provide **justice** for the victim of the crimes, alongside their friends and family. To uphold fairness in society, those who commit a crime must face consequences for their actions. Accused persons also deserve a certain degree of justice. For example, if a person has been wrongly accused of a crime, their innocence should be established so they are not unfairly punished. Criminal laws, such as the *Crimes Act 1958 (Vic)*, set out maximum and minimum punishments for certain offences to guarantee that justice, to some extent, is provided for victims.

The concept of justice is closely related to the **rule of law**, a legal principle that aims to ensure the law is applied to everyone in society in the same manner, regardless of personal characteristics, such as socioeconomic status or career. To uphold the rule of law, society must ensure that:

- laws that are known and accessible
- trials are fair and prompt
- all accused persons are presumed innocent until proven guilty.

**Table 1** The relationship between criminal law and the rule of law

Feature of criminal law	How it upholds the rule of law
Most criminal hearings and judgments are accessible to the public	The public nature of criminal trials ensures the presentation of facts is open and accessible to all members of the community. This provides transparency and accountability for the legal decisions made in the court system.
Resolution of cases with minimal delay	The criminal justice system strives to minimise delays to reduce prolonged stress and anxiety for victims, their families, witnesses, and accused persons awaiting trial. As delays may impact the reliability of evidence, due to lost or forgotten facts, minimising delays improves chances of a just outcome to the case.
An independent judge and jury	The judge and jury must act impartially and without bias, basing their decisions solely on the facts of the case.
The characteristics of an offender and the circumstances surrounding the crime are considered when sentencing	When determining an appropriate and fair sentence for the offender, the court must consider certain factors. For example: <ul style="list-style-type: none"> <li>• a young, first-time offender who has shown remorse should be treated differently to a middle-aged criminal with a number of past convictions.</li> <li>• the degree to which a victim was impacted by a crime will be taken into consideration during sentencing, as the more severe the impact of the crime was, the higher the sentence received by the guilty person should be.</li> </ul>
The presumption of innocence	A person accused of a crime does not have to prove their innocence, but rather, the prosecution always has the duty to prove the accused is guilty beyond reasonable doubt.
The burden of proof lies with the prosecution	Given the prosecution is pursuing the case against the accused, the onus is on them to prove the facts and claims against the accused. It would be unfair for the accused to have to prove their own innocence.

**LESSON LINKS**

You will learn more about the presumption of innocence in **2B The presumption of innocence**.

You will learn more about the burden of proof in **2C Key concepts of criminal law**.

## Set minimum standards of behaviour 1.2.1.1.4

**Minimum standards of behaviour** are set out in statute and common law. These standards are upheld by the punishment prescribed to offenders who violate these behavioural expectations. For example, there is a standard established under Section 21A of the *Crimes Act 1958* (Vic) stating that members of Victorian society should not stalk each other. To set this standard and guide people to abide by it, the Act also establishes the maximum penalty of 10 years imprisonment that a person may be sanctioned to if they are found guilty of stalking someone.

### REAL WORLD EXAMPLE

**Content warning** This example depicts content that is sensitive in nature, relating to sexual assault.

#### If the answer isn't 'yes', it's 'no'

In 2020, affirmative consent modifications to the *Crimes Act 1958* (Vic) were passed in Victoria to clearly define that consent could include either an explicit 'yes', a physical gesture, such as a nod, or a move reciprocating interest to engage in sexual activities, such as removing their own clothes.

By enshrining these affirmative consent laws in Victorian legislation, the minimum standards of behaviour regarding physical and verbal communications of consent were established. When consent is not provided and a person still proceeds to sexually touch another, the penalty may be up to 10 years imprisonment under s 40 of the *Crimes Act 1958* (Vic).

### LEGAL VOCABULARY

**Minimum standards of behaviour** the expectations established in criminal law that intend to regulate how each person in society should act and establish the punishments they will receive if they do not act in a certain way.

### LESSON LINK

You learnt about statute and common law in **1E Sources of law**.

## Lesson summary

The purposes of criminal law include:

- protection of society
- deterrence of crime
- protect justice and the rule of law
- setting minimum standards of behaviour.

In Australian society, by considering these purposes, laws have been modified with the aim of creating a safe and functioning society with limited crime.

## 2A Questions

### Check your understanding

#### Question 1

Which of the following is **not** a purpose of criminal law?

- A. Protection of society
- B. Prevention of recent civil breaches
- C. Protect justice and the rule of law
- D. Set minimum standards of behaviour

#### Question 2

Protection of society is a purpose of criminal law that aims to:

- A. ensure danger and chaos are avoided by preventing individuals from experiencing harm.
- B. discourage an offender, or other individuals, from reoffending or committing similar crimes through the imposition of a criminal sanction.

**Question 3**

Jamie and Liam, members of an internet hacking crime group, stole data from their university and sold it online. They both received a prison sentence of six years for their crimes and have since left their crime group and committed to never participating in cybercrimes again.

The main purpose of criminal law that has been achieved in this scenario is:

- A. the rule of law.
- B. deterrence of crime.

**Question 4**

Which of the following statements are correct about features of the criminal justice system that uphold the rule of law? **(Select all that apply)**

- A. Most criminal hearings and judgments are accessible to the public.
- B. An independent judge and jury are used in criminal trials.
- C. Cases are resolved with minimal delays.
- D. The accused person is presumed guilty until they can prove their innocence.

**Question 5**

Fill in the blank with **one** of the following phrases:

set minimum standards of behaviour

prevent all crimes

When statute and common law establish expectations that society should follow and determines the punishments a person will incur if they do not follow these expectations, the purpose of criminal law that is being achieved is to

\_\_\_\_\_.

**Question 6**

In a futuristic society, Xavier is flying through the sky in his SkyHigh Mobile. He is speeding and crashing into multiple other flyers in the air, causing their death. However, there are no criminal laws regulating his actions so he will not be punished for killing others, and will continue doing so in the future.

In this scenario, the purposes of criminal law are all being achieved.

- A. True
- B. False

**Question 7**

The main purpose of criminal law is to ensure there is no crime in Australia.

- A. True
- B. False

**Preparing for exams****Standard exam-style****Question 8**

(2 MARKS)

Describe 'protection of society' as a purpose of criminal law.

**Question 9**

(3 MARKS)

Distinguish between deterrence of crime and setting minimum standards of behaviour as purposes of criminal law.

**Question 10**

(3 MARKS)

Explain how criminal law protects justice and the rule of law.

**Question 11**

(3 MARKS)

In August 2017, the Victorian Government banned smoking in all commercial outdoor dining areas throughout the state. This included all restaurants, cafes, take-away shops, and any other licensed dining premises. The change was introduced with the aim of reducing public acceptance and prevalence of smoking in communities.

Other than the protection of society, identify **one** other purpose of criminal law that is achieved by the smoking regulations. In your answer, describe how the law works to achieve this purpose.

**Extended response**

Use your answer to question 12 to support your response to question 13.

Use the following information to answer questions 12 and 13.

Cam became obsessed with his work colleague, Mitchell. He would follow him around everywhere, hack into his phone to read all of his texts, and would sit outside Mitchell's house to watch him while he slept. Mitchell found out about Cam's behaviour after catching him outside his home one night. Cam has since been found guilty of stalking and sentenced to seven years in prison. However, Cam is determined to continue stalking Mitchell upon release, claiming 'if I stalk him long enough he'll realise he actually loves me'.

**Question 12**

Tick the box to indicate whether the following statements are ways the purposes of criminal law are **achieved** or **not achieved** in the scenario.

Statement	Achieved	Not achieved
I. Society is protected as Cam has been imprisoned for seven years so can no longer cause harm to Mitchell or anyone else.	<input type="checkbox"/>	<input type="checkbox"/>
II. The purpose of protecting justice for the victim has been achieved as Cam is facing consequences for the psychological harm he has inflicted on Mitchell due to his stalking.	<input type="checkbox"/>	<input type="checkbox"/>
III. Despite Cam not being deterred, the harsh punishment he received for stalking Mitchell may cause broader society to be discouraged from committing a similar crime.	<input type="checkbox"/>	<input type="checkbox"/>
IV. Cam has clearly not been deterred from committing the offence of stalking again as he has asserted that he will continue stalking Mitchell upon his release.	<input type="checkbox"/>	<input type="checkbox"/>

**Question 13**

(7 MARKS)

Have the purposes of criminal law been achieved in this scenario? Justify your response.

**Linking to previous learning****Question 14**

(5 MARKS)

Casey was driving along a dark street without their headlights on, under the influence of alcohol. They hit a person who was walking home, killing them on impact. After being tried in the Supreme Court of Victoria in front of an impartial judge and jury, they were sentenced to 15 years imprisonment for culpable driving.

- a. Identify whether Casey's actions would be regulated by criminal law or civil law. 1 MARK
- b. Describe **two** purposes of criminal law that have been achieved in Casey's case. 4 MARKS



# 2B The presumption of innocence



Image: Billion Photos/Shutterstock.com

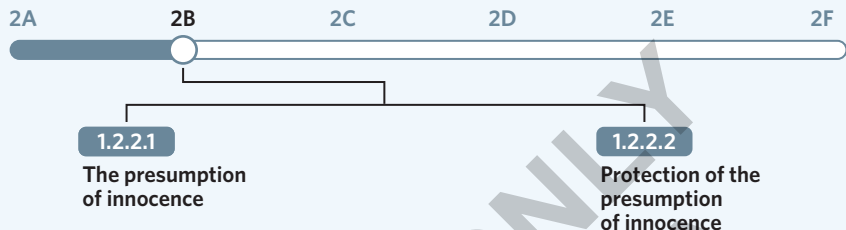
*'It is better that 10 guilty persons escape, than that one innocent suffer.'*

—Sir William Blackstone (English jurist, justice, and politician)

The presumption of innocence upholds this notion that it is more important in a just society to protect the innocent than strive to punish guilty persons at all costs.

## STUDY DESIGN DOT POINT

- the presumption of innocence



## Lesson introduction

The Australian legal system relies on key principles to ensure each individual engaging with the system is treated fairly. One core principle underpinning all legal proceedings is the presumption that all individuals are innocent of any criminal accusations until proven guilty. Various procedures and processes are implemented throughout the criminal justice system to ensure this principle is upheld for all accused individuals. The justice system, in upholding fairness and equality, does not burden those accused of a crime with having to justify and disprove an accusation against them. Instead, it is those who make such accusations who bear the burden of collecting and presenting evidence to prove guilt.

## The presumption of innocence 1.2.2.1

The **presumption of innocence** refers to the guarantee made to all accused persons that they are to be treated as innocent individuals until it is proven, beyond reasonable doubt, that they are guilty of a criminal offence. This guarantee is afforded to all accused persons, regardless of their personal situation or the circumstances of the case. Therefore, this promotes the principle of equality before the law as everyone is afforded this presumption. Whilst this is an old common law principle, it is also protected by Section 25 of the *Charter of Human Rights and Responsibilities Act 2006* (Vic). This principle guards against **self-incrimination**.

### KEY TERM

**Presumption of innocence** the right for all accused persons to be presumed innocent until it is proven otherwise beyond reasonable doubt.

### LEGISLATION

*Charter of Human Rights and Responsibilities Act 2006* (Vic)

### LEGAL VOCABULARY

**Self-incrimination** an accused person providing evidence or testimony that proves they are guilty of a crime.

### LESSON LINK

You will learn more about the *Charter of Human Rights and Responsibilities Act 2006* (Vic) in **10C Australia's protection of human rights – statute and common law**.

## Protection of the presumption of innocence 1.2.2.2

Within Australia, laws exist to uphold the presumption of innocence throughout the entirety of a criminal proceeding. For example, police officers have the power to interrogate suspected offenders, however, they must ensure the presumption of the individual's innocence is still respected, and there is no abuse of power that could potentially lead to a miscarriage of justice. The presumption of innocence is enhanced by various aspects of a police investigation and the trial proceedings.

**Table 1** How the presumption of innocence is upheld during a police investigation

Police investigation procedure	How it upholds the presumption of innocence
The police must have reasonable grounds to arrest an individual.	Each person has the right to not be wrongfully arrested, therefore, the police must have adequate evidence and reason for suspicion before arresting an accused person.
The <b>right to silence</b> means an accused person does not have any obligation to respond to police questioning and cannot be pressured to give evidence that may prove their guilt.	A person suspected of committing an offence does not usually need to answer police questions, other than providing their name and address, as they must be presumed innocent until proven otherwise. This is known as the right to silence.
Police officers can only collect forensic evidence, such as fingerprints or a blood sample, from a person when they reasonably suspect the person has committed a serious offence. The suspect must also be informed of the offence they are believed to have committed.	This procedure ensures an individual is presumed innocent and is not subjected to a rigorous and potentially distressing evidence-gathering process unless absolutely necessary.



**Figure 1** The presumption of innocence

### LEGAL VOCABULARY

**Right to silence** a common law right that allows a person to remain silent when questioned or asked to supply information by a person in authority.

### LESSON LINK

You will learn more about police powers and individual rights in **4C Institutional powers and individual rights**.

### HYPOTHETICAL SCENARIO

#### Silent stand

Declan was questioned by police after being involved in a fight on the football field. He remembered from his VCE Legal Studies class that in order to uphold the presumption of innocence, he is not required to answer any questions. However, he does have to provide his name and address.

Before going to court, he engages a lawyer who assists him in determining the best way forward with his case. They confirm that he does not need to prove that he is innocent, rather, those bringing the case against him will have to prove he is in the wrong.



**Figure 2** Declan used his right to silence to protect his innocence

Trial procedures operate in a way that upholds the presumption of innocence. There are various rights provided to an individual suspected of committing a crime to ensure they are treated as innocent throughout the entire criminal justice process.

**Table 2** How the presumption of innocence is upheld during trial proceedings

Criminal trial procedure	How it upholds the presumption of innocence
The right to apply for <b>bail</b> and, if granted, await their trial in the community.	The presumption of innocence requires that no punishment is given to an accused before they are found guilty of a crime. The right to apply for bail ensures, in most cases, that individuals merely suspected of a crime are not <b>punished</b> prior to their trial. However, this right can be refused if the accused poses a serious risk of not appearing in court, interfering with witnesses, or endangering society.
The right to seek legal representation.	An accused person can have a legal expert present their defence and challenge the accuracy of the evidence presented by the prosecution. For those unable to afford legal representation, the presence of <b>Victoria Legal Aid (VLA)</b> allows these individuals to still access legal support and in some cases, representation.
Accused persons only face a trial for serious offences if the prosecution has substantial evidence and has established a solid case.	Being an accused person in a trial can be a very stressful and intimidating experience. To avoid unnecessary stress on accused persons, the law ensures only strong cases proceed to trial by first conducting a <b>committal proceeding</b> .
The right to not have prior <b>convictions</b> revealed during the trial.	Prior criminal offences cannot be considered when determining whether the accused is guilty, this can only be considered during sentencing if the accused has been found guilty. To have a court determine guilt based on past conduct, rather than relevant evidence, would be unfair.
The presumption of innocence is explained to a jury before it considers the verdict in a criminal matter.	All judges must explain the presumption of innocence to the jury. The jury will be instructed that the <b>burden of proof</b> rests with the prosecution, they must assume the accused is innocent, and they can only return a 'guilty' verdict if the evidence presented by the prosecution is reliable and persuasive.
The responsibilities of the prosecution	The prosecution has the responsibility to present evidence that may prove the accused is guilty. They must also present this evidence to a strict <b>standard of proof</b> in order for it to prove the accused as guilty.

**LEGAL VOCABULARY**

**Bail** the process whereby a person who has been arrested and charged with a crime is released from police custody and allowed in the community whilst awaiting their trial.

**Victoria Legal Aid (VLA)**

a government-funded agency that provides free legal advice, information, and free or low-cost legal representation.

**Committal proceeding** a hearing in the Magistrates' Court used to determine whether there is sufficient evidence against an accused person, charged with an indictable offence, for a trial in a higher court.

**Conviction** the fact of pleading guilty to a criminal offence or being found guilty by a judge and/or jury to a criminal offence.

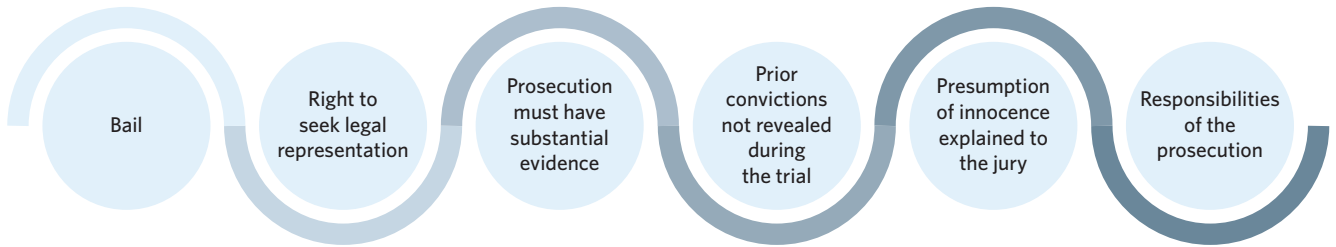
**Burden of proof** the responsibility of a party to prove the facts of a case.

**Standard of proof** the degree to which the facts of the case must be proven in court.

**LESSON LINKS**

You will learn more about the jury in a criminal trial in **4E The jury in a criminal trial**.

You will learn more about the burden of proof and standard of proof in **2C Key concepts of criminal law**.



**Figure 3** Features and principles that uphold the presumption of innocence

#### DEEP DIVE

##### Exceptions to the presumption of innocence

As parliament is the supreme law-maker, it is able to pass legislation that operates in a way that is contradictory to the presumption of innocence in certain circumstances.

The *Bail Act 1977* (Vic) states that individuals charged with particular offences will be presumed to not be entitled to bail, unless they can prove exceptional circumstances apply. Proving these exceptional circumstances is difficult and the court will decide on a case-by-case basis whether a particular accused person meets this requirement.

#### LEGISLATION

*Bail Act 1977* (Vic)

## Lesson summary

The presumption of innocence refers to a guarantee made to all accused persons that they are to be treated as innocent until it is proven, beyond a reasonable doubt, that they are guilty of a criminal offence. It is protected by various aspects of police investigations and trial proceedings, including:

- the right to apply for bail
- the right to seek legal representation
- the right to not have prior convictions revealed during the trial.

## 2B Questions

### Check your understanding

#### Question 1

The presumption of innocence is:

- the right to remain silent.
- the right to a fair trial.
- the right to be considered innocent until proven guilty.
- the right to legal representation.

#### Question 2

Fill in the blank with **one** of the following terms:

victims

accused persons

defendants

plaintiffs

The presumption of innocence refers to the right for all [ ] to be presumed not guilty until it is proven otherwise, beyond reasonable doubt.



**Question 3**

Which of the following statements refers to the presumption of innocence being protected by police investigation procedures?

- A. Victoria Police are trained in how to investigate crimes.
- B. Police questioning is intimidating, considering the seriousness of the outcomes of criminal offences.
- C. Police have to inform an accused person about their rights.
- D. The police force has access to forensic experts who can take blood samples for less serious criminal offences.

**Question 4**

Which of the following statements is the best example of how the presumption of innocence is protected during trial proceedings?

- A. Accused people have the right to not have prior convictions considered during their criminal trial when determining their guilt.
- B. Accused people have the right to not be wrongly arrested.
- C. Accused people have the right to remain silent during police questioning.
- D. None of the above.

**Question 5**

One way the presumption of innocence is upheld is through an accused's right to silence, which is guaranteed through the *Charter of Human Rights and Responsibilities Act 2006* (Vic).

- A. True
- B. False

**Preparing for exams****Standard exam-style****Question 6**

(2 MARKS)

Define the presumption of innocence.

**Question 7**

(4 MARKS)

Following police investigations, Jasmine has been charged with manslaughter. Jasmine has pleaded 'not guilty' and refuses to answer any police questions out of fear she will unintentionally incriminate herself.

- a. Describe **one** reason the presumption of innocence must be upheld during police investigations. 2 MARKS
- b. Outline **one** way the presumption of innocence may have assisted Jasmine during police investigations. 2 MARKS

**Question 8**

(3 MARKS)

Other than the right to legal representation, explain **one** element of trial proceedings that upholds the presumption of innocence.

**Question 9**

(6 MARKS)

Jorge, 19, has pleaded 'not guilty' to a charge of drug trafficking at trial. The judge directed the jury to not rule out the possibility that Jorge could be guilty, especially considering his two prior convictions, which indicate his guilt in this instance. Jorge is ultimately found guilty as he was unable to prove his innocence to the jury.

Identify **three** errors in the above scenario and provide the correct procedure for each.

## Extended response

Use your answer to question 10 to support your response to question 11.

Use the following information to answer questions 10 and 11.

Kai has been arrested by the police outside a nightclub after being accused of starting a fight with another woman. She was put in handcuffs after the police saw incriminating footage of the fight, despite Kai insisting the woman in the footage was not her. Kai was asked to provide details of the evening and where she was during the fight. After she had answered these questions, the police informed her of her rights, including the right to silence.

### Question 10

Tick the box to indicate whether each of the following statements is **protecting** or **breaching the presumption of innocence**.

Statements	Protecting the presumption of innocence	Breaching the presumption of innocence
I. Each person has the right to not be wrongfully arrested, therefore, the police must have adequate evidence and reason for suspicion before arresting a suspect.	<input type="checkbox"/>	<input type="checkbox"/>
II. A person suspected of committing an offence does not usually need to answer police questions, other than providing their name and address, as they must be presumed innocent until proven otherwise, giving them the right to silence.	<input type="checkbox"/>	<input type="checkbox"/>
III. Kai was asked to provide details of the evening and where she was during the fight, without knowing that she had a right to silence.	<input type="checkbox"/>	<input type="checkbox"/>

### Question 11

(5 MARKS)

Evaluate how effectively the presumption of innocence was protected in this scenario.

## Linking to previous learning

### Question 12

(2 MARKS)

Describe how the presumption of innocence upholds the legal principle of equality.

# 2C Key concepts of criminal law

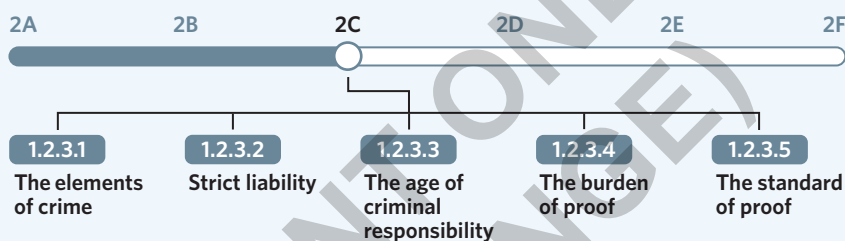


Image: Valery Sidelnykov/Shutterstock.com

Imagine you are stuck in an escape room, about to be locked in a small space with two strangers. One person is blindfolded, the other has been instructed to remain silent, and you have been given noise-cancelling headphones. No one can escape without the assistance of the other, so you must all work together and play your part to avoid being trapped forever. Like the members of this escape room, key concepts of the criminal justice system must operate together to ensure the smooth and efficient delivery of justice.

## STUDY DESIGN DOT POINT

- key concepts of criminal law, including:
  - the elements of a crime: *actus reus* and *mens rea*
  - strict liability
  - the age of criminal responsibility
  - the burden of proof
  - the standard of proof



## USEFUL TIP

Remember, the two parties in a criminal case are known as the prosecution and the accused. The prosecution represents the Commonwealth, or the state, and is the party pursuing the case against the accused. On the other hand, the accused is the party being charged with a criminal offence.

## KEY TERMS

**Actus reus** a Latin term meaning 'guilty act' that forms the physical element of a crime and refers to the physical acts or omissions the offender must have undertaken as part of a crime.

**Mens rea** a Latin term meaning 'guilty mind' that forms the mental element of a crime and refers to an offender's awareness of their criminal behaviour and its potential consequences.

## Lesson introduction

The foundation of the Victorian criminal justice system includes various key principles that ensure its smooth and effective operation. In order to understand how criminal proceedings are conducted and how justice is delivered to the community, the fundamental concepts of the criminal justice system must first be understood.

## The elements of a crime 1.2.3.1

For an accused to be found guilty, there are two elements of a crime that must be proven: **actus reus** and **mens rea**.



Figure 1 The elements of a crime

Actus reus is a Latin term translating to 'guilty act'. For the actus reus element of a crime to be made out, it must be proven that the accused physically acted, or failed to act, in a manner that resulted in a criminal offence being committed. For example, for the offence of causing injury intentionally, the actus reus of the crime includes physically imposing force onto another person, such as punching them.

Mens rea is a Latin term translating to 'guilty mind'. For the mens rea element of a crime to be made out, the prosecution must prove either the accused had the intention of committing a crime or were, at least, in a reckless or negligent state of mind when completing the physical actions of the crime. For example, for the offence of causing injury intentionally, the mens rea of the crime includes intentionally punching someone so they suffer bruising and pain to their stomach.

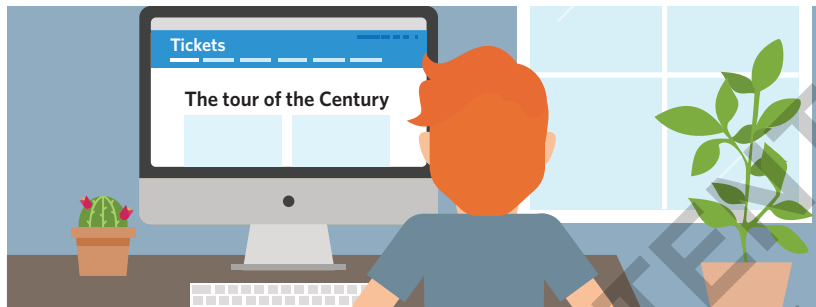
Generally, both mens rea and actus reus elements need to be proven beyond reasonable doubt for an individual to be found guilty. However, there can be exceptions for strict liability crimes, where both elements are not required to find an accused guilty.

### HYPOTHETICAL SCENARIO

#### What if I told you I'm a mastermind?

Yaye, a deeply dedicated Tracy Swank fanatic, was absolutely devastated when he was unable to purchase tickets to Swank's concert in Melbourne. Naturally, he was enraged when he found out his nemesis, Kimi, had been able to score herself tickets. Yaye decided to hatch a mastermind plan to hack into Kimi's ticket account and steal her tickets.

In this scenario, if Yaye successfully stole the tickets but was then caught, the elements of 'theft', a crime set out under s 74 of the *Crimes Act 1958* (Vic), would be satisfied. Yaye completed the physical element of the crime, also known as the actus reus, by hacking into Kimi's account and stealing her property, the tickets. He also possessed the requisite mental intent, also known as the mens rea, to be charged with theft as he hatched a plan to commit the crime and intentionally took Kimi's tickets to use as his own.



**Figure 2** Desperation takes over as Yaye resorts to criminal activity for Tracy Swank tickets

### LEGISLATION

*Crimes Act 1958* (Vic)

### REAL WORLD EXAMPLE

#### Young woman abuses fast-food workers

A young woman was sentenced to an 18-month good behaviour bond after an abusive rampage at an Adelaide McDonald's left staff with deep emotional trauma. Caught on CCTV and phone footage, the offender was seen 'throwing drinks and food at staff, spitting at them and punching them', returning multiple times to assault staff in a horrifying ordeal.

In this case, both mens rea and actus reus can be made out. There were many witnesses who saw the young woman physically commit the abusive acts, alongside video footage, hence fulfilling the actus reus element of a crime. Additionally, her repeated and explosive actions demonstrate her intention to intimidate and threaten the workers, aiming to inflict physical and emotional harm.



Image: Tama2u/Shutterstock.com

**Figure 3** Fast-food workers face abhorrent abuse in a violent rampage

## Strict liability 1.2.3.2

**Strict liability** offences do not require the mens rea element of a crime to be satisfied in order to find the accused guilty. In such cases, it is enough for the person to have committed the actus reus, the physical act that is against the law, for them to be found guilty and punished. Strict liability offences are generally summary offences, which are less serious in nature, and examples of strict liability offences include:

- speeding or running a red light
- serving an underage person alcohol at a licensed venue
- not wearing a seatbelt
- public transport fare evasion.

### KEY TERM

**Strict liability** criminal activity that does not require the mens rea element of a crime to be proven for the offender to be found guilty.



**Table 1** Reasons for strict liability offences

Reasons for strict liability offences
Offenders can be charged solely for the physical act of committing the offence. This aims to protect society from types of crimes where, regardless of the offender's intent, recklessness, or negligence, their conduct is dangerous and must be discouraged and punished by the law.
It is easier to find a person guilty of strict liability offences. The prosecution only needs to prove beyond reasonable doubt that the physical acts of the crime occurred, which there is usually concrete evidence for, as opposed to also needing to prove the mentality of the accused, which can be more difficult to make out. Therefore, the number of people that can be found guilty and punished for these offences is higher, thus acting to deter more people from committing them.
The need to prove the mens rea element for every crime would greatly compound the court backlog and unnecessarily exhaust court resources. For strict liability offences, such as speeding, the offence is typically addressed with a fine as there is no need for a court to find the accused guilty as, if a person is caught speeding, they clearly committed the physical act of speeding.

It is possible to raise the defence of ‘honest and reasonable mistake of fact’ in cases where a person has been charged with a strict liability offence. In order to successfully raise this defence, the accused must demonstrate:

- the mistake was genuinely honest
- the mistake could reasonably occur in the given circumstances
- the mistake is one of fact not law; not knowing the law is not an excuse for breaking the law, rather, the accused must establish that they were aware of the law and believed they were acting in accordance with the law at the time.

**HYPOTHETICAL SCENARIO**

**Should we just keep driving?**  
Niall has been charged with driving with a disqualified licence. Niall is adamant that it was a genuine mistake as he had no idea his licence was suspended. The majority of driving offences, including driving with a disqualified licence, are strict liability crimes, meaning the prosecution does not need to prove the accused intended to break the law. Therefore, Niall could be found guilty of this strict liability offence even if he did not know he was committing a crime and may be sanctioned if he cannot raise a successful defence.

**WANT TO KNOW MORE?**

If you fail to stop at a children's crossing and are caught doing so, you will receive a fine worth 2.5 penalty units. In 2023, this equates to \$480.78. You can find out more about the punishments for road and traffic offences by searching 'VicRoads Fines and Fees' on the internet and clicking the relevant webpage.

**KEY TERM**

**Age of criminal responsibility**  
the age at which the law considers a child capable of understanding their wrongful actions and can consequently face criminal charges.

**The age of criminal responsibility 1.2.3.3**

The **age of criminal responsibility** is the age at which a child is deemed, by the law, to have the ability to comprehend right from wrong and understand actions that are against the law. In other words, it is the age at which a child can be criminally charged for an offence. In Australia, the age of criminal responsibility for Commonwealth offences is 10 years and older. For state and territory-governed offences, each state and territory is responsible for establishing its own age of criminal responsibility.

**Table 2** The criminal responsibility of children between the ages of 10 and 14

Children under 10 years old	Children between 10 and 14 years old	Children over the age of 14
<ul style="list-style-type: none"> <li>Children under the age of 10 cannot be arrested, charged, or found guilty of a criminal offence.</li> <li>They are considered <b>doli incapax</b>, a Latin term meaning they are 'incapable of wrong' and are considered too young to understand the criminal nature of their actions. Therefore, the mens rea element of a crime cannot be satisfied and the child cannot be held criminally responsible.</li> </ul>	<ul style="list-style-type: none"> <li>If a child between the ages of 10 and 14 is charged with an offence, the prosecution must prove they understood the act was a crime and their behaviour was wrong. If this cannot be established, the child will be released on the grounds they are doli incapax.</li> </ul>	<ul style="list-style-type: none"> <li>Children over the age of 14 but under the age of 18 can still be charged with a criminal offence, with the matter being dealt with in the Children's Court. It may progress to the superior courts, such as the Supreme Court – Trial Division, depending on the severity of the crime.</li> </ul>

**LEGAL VOCABULARY**

**Doli incapax** a Latin term meaning 'incapable of wrong' that deems children incapable of possessing criminal intent, therefore preventing them from being charged with a crime as the mens rea element cannot be satisfied.

**WANT TO KNOW MORE?**

Many advocate groups, academics and the broader Australian community have campaigned to raise the age of criminal responsibility to 14 across the states and territories. While some territories, like the Northern Territory, have already raised the age of criminal responsibility to 12 years old, states like Victoria have pledged to raise the age to 12 years old, with pressure mounting on the remaining states and territories to take action. You can find out more about the campaign to raise the age of criminal responsibility by searching 'Why we should raise the age of criminal responsibility' and clicking on the Amnesty International webpage for the article titled 'Why we need to raise the minimum age of criminal responsibility'.

## The burden of proof 1.2.3.4

The **burden of proof** refers to the onus of proving the facts of a case. In a criminal case, the prosecution has the burden of proof. As the prosecution is pursuing the case against the accused, it is their role to prove the facts and charges against the accused. In some circumstances, the burden of proof will be reversed, such as when an accused raises the defence of self-defence or in some drug possession cases.

**KEY TERM**

**Burden of proof** the responsibility of a party to prove the facts of a case.

**WANT TO KNOW MORE?**

You can find out more about how the burden of proof can be reversed when the defence of self-defence is raised, by searching 'The defence of self-defence (Vic)' and clicking the 'Go To Court' webpage for the article titled 'The Defence of Self-Defence (Vic)'.

**HYPOTHETICAL SCENARIO****Phoney bags on the market**

Phoenix, the owner of Phake Fashion and Co, has been accused of selling fake versions of high-end, designer bags, scamming thousands of customers by marketing the brands' products as authentic, whilst providing false letters of authenticity. In this case, the prosecution has the responsibility of proving the facts of the case and providing evidence to support the charges against Phoenix.



**Figure 4** Phoenix does not have the burden of proof

**KEY TERMS**

**Standard of proof** the degree to which the facts of the case must be proven in court.

**Beyond reasonable doubt** the standard of proof in criminal proceedings, which requires the prosecution to prove that there is no reasonable doubt that the accused is guilty of the crime(s) they have been charged with.

**USEFUL TIP**

The burden of proof and the standard of proof are fundamental concepts in legal proceedings and operate together to ensure that justice can be delivered effectively. Remember, the burden of proof is the responsibility of proving the facts of the case and rests with the prosecution in criminal cases. On the other hand, the standard of proof is the degree to which the facts of the case must be proven in court and in a criminal case the standard is 'beyond reasonable doubt'. Therefore, the prosecution has the responsibility of proving the facts of the case beyond reasonable doubt in order to find the accused guilty.

## The standard of proof 1.2.3.5

The **standard of proof**, in the context of criminal law, refers to the strength of the evidence required to prove the guilt of the accused. In criminal proceedings, the standard of proof is **beyond reasonable doubt**. This means the judge or jury must have no reasonable doubt, based on the evidence presented, that the accused is guilty. If there are any alternative, logical, or reasonable conclusions that do not find the accused responsible for the crime, the case against them has not been proven beyond reasonable doubt and therefore, the accused cannot be found guilty.

**HYPOTHETICAL SCENARIO****The flowery feud**

Fleur and Fiore are competing florists who own flower shops across the road from one another. After a fiery incident where Fleur found out Fiore was secretly poaching her clients and spreading nasty rumours about her, Fiore's shop was mysteriously set alight, resulting in all of her products being destroyed and putting her out of business. Fleur was found at the crime scene with suspicious materials, including gasoline and a set of keys to Fiore's shop. Fleur has been charged with arson, amongst other charges, and is set to face trial soon. At the trial, the prosecution must provide evidence that proves beyond reasonable doubt that Fleur is responsible for the arson attack in order for her to be found guilty. If the evidence proves there is a reasonable possibility that another individual could be responsible for the crimes, Fleur cannot be found guilty as her guilt would not be proven beyond reasonable doubt.



Figure 5 Is Fleur guilty beyond reasonable doubt?

## Lesson summary

The Victorian criminal justice system is composed of various elements that operate together to ensure justice can efficiently and effectively be delivered to the community.

The elements of  
a crime (actus reus  
and mens rea)

Strict liability

The age of criminal  
responsibility

The burden of proof

The standard of proof

Figure 6 A summary of the key concepts of criminal law

## 2C Questions

### Check your understanding

#### Question 1

The key concepts of criminal law operate individually and are not dependent on one another.

- A. True
- B. False

#### Question 2

Fill in the blanks with the following terms:

act

mind

The two key elements of a crime are actus reus and mens rea. Actus reus refers to a guilty [ ], while mens rea refers to a guilty [ ]. Generally, both of these elements need to be satisfied to find an accused guilty.

#### Question 3

Strict liability offences require:

- A. both mens rea and actus reus to be proven.
- B. neither mens rea or actus reus to be proven.
- C. only the actus reus element of a crime to be satisfied.
- D. only the mens rea element of a crime to be satisfied.

#### Question 4

Tick the box to indicate whether each of the following statements are **true** or **false** about the age of criminal responsibility.

Statement	True	False
I. Each state and territory is responsible for establishing its own age of criminal responsibility.	<input type="checkbox"/>	<input type="checkbox"/>
II. The age of criminal responsibility refers to the age at which the law deems a child to have the ability to comprehend right from wrong and what actions are against the law, meaning they can therefore, be criminally charged for an offence.	<input type="checkbox"/>	<input type="checkbox"/>
III. A minor who is 17 years old cannot be charged with a criminal offence.	<input type="checkbox"/>	<input type="checkbox"/>
IV. If a child is deemed 'doli incapax' it means they are capable of differentiating between right and wrong, and can therefore be charged with a criminal offence.	<input type="checkbox"/>	<input type="checkbox"/>

#### Question 5

Which of the following statements are correct about the burden of proof?

(Select all that apply)

- A. It is defined as the responsibility of a party to prove the facts of the case.
- B. The accused has the responsibility to prove the charges against them.
- C. The prosecution has the burden of proof.
- D. The burden of proof can never be reversed.



**Question 6**

Examples of strict liability offences include:

(Select all that apply)

- A. murder.
- B. speeding.
- C. theft.
- D. serving an underage person alcohol at a licensed venue.

**Question 7**

The standard of proof in a criminal case is:

- A. beyond moderate doubt.
- B. on the balance of probabilities.
- C. beyond reasonable doubt.
- D. dependent on the crime the accused has been charged with.

**Question 8**

Which of the following statements are correct about key concepts of criminal law?

(Select all that apply)

- A. The standard of proof only applies to strict liability offences.
- B. Actus reus refers to the physical element of a criminal offence.
- C. The burden of proof is beyond reasonable doubt.
- D. Mens rea refers to the mental element of a criminal offence.
- E. Strict liability offences do not require an accused to have completed a crime intentionally, negligently, or recklessly.

## Preparing for exams

### Standard exam-style

**Question 9**

(2 MARKS)

Identify the **two** elements of a crime.

**Question 10**

(2 MARKS)

Define 'the age of criminal responsibility'.

**Question 11**

(4 MARKS)

Using an example, explain **one** reason for strict liability crimes.

**Question 12**

(3 MARKS)

Distinguish between mens rea and actus reus as elements of a crime.

**Question 13**

(3 MARKS)

Lightning McQueen has been caught speeding and given a hefty fine. However, McQueen believes they should not have been given a punishment because it was not their intention to break the law.

Is McQueen correct? Justify your response.

## Extended response

Use your answer to question 14 to support your response to question 15.

Use the following information to answer questions 14 and 15.

Sunitha walked into an expensive cosmetics store and deliberately distracted the shop assistant by asking her to check for a product in the stock room. While the shop assistant was busy looking for the product, Sunitha snuck two lipsticks and a bottle of perfume into her bag. Sunitha was caught on the CCTV camera in the store and is now facing theft charges.

### Question 14

Tick the box to indicate whether each of the following statements are **true** or **false** about the burden and standard of proof in relation to Sunitha's case.

Statement	True	False
I. Sunitha will have the burden of proof if her case goes to court.	<input type="checkbox"/>	<input type="checkbox"/>
II. The standard of proof in criminal cases is beyond reasonable doubt.	<input type="checkbox"/>	<input type="checkbox"/>
III. To prove the case beyond reasonable doubt, based on the evidence, there must be no reasonable or logical doubt that Sunitha is guilty.	<input checked="" type="checkbox"/>	<input type="checkbox"/>
IV. As the prosecution is pursuing the case against Sunitha, they have the responsibility of proving the facts of the case.	<input type="checkbox"/>	<input type="checkbox"/>

### Question 15

(5 MARKS)

Presuming Sunitha's case goes to court, analyse the operation of the burden and standard of proof in her case.

## Linking to previous learning

### Question 16

(2 MARKS)

Describe the relationship between the burden of proof and the presumption of innocence.

# 2D Types of crime



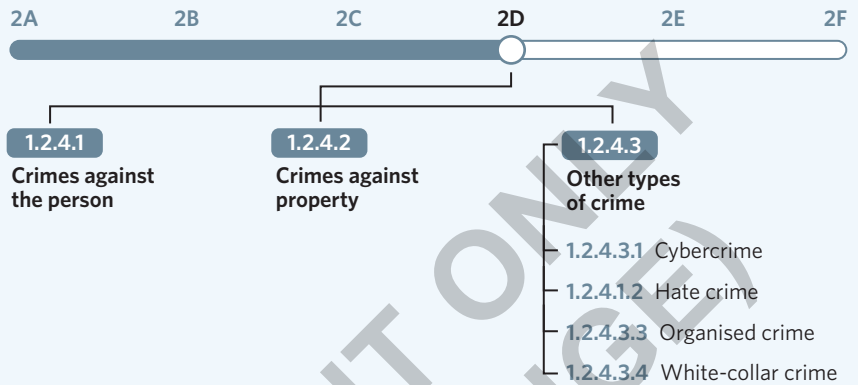
Image: Teerachai Jampanak/Shutterstock.com

*'You have a \$150 voucher that is about to expire. Click the link to use it before it's too late.'*

Have you ever received a message like this? Or maybe it was a message claiming your parcel could not be delivered and to click the link to rectify the situation. Australians lost a record \$3.1 billion to scams in 2022, and with the rise of digital technology and artificial intelligence, such texting scams are becoming more frequent and insidious. Yet, aside from crimes associated with digital devices, what other types of crime exist?

## STUDY DESIGN DOT POINT

- types of crime, such as crimes against the person and crimes against property



**CONTENT WARNING** This lesson explores content that is sensitive in nature, relating to violence, death, and marginalised groups.

## KEY TERM

**Crime** an act or omission that violates an existing law, causes harm to an individual, or society as a whole, and is punishable by law.

## LEGAL VOCABULARY

**Malice** wrongful intention that contributes to the degree of the offender's guilt.

## Lesson introduction

A **crime** refers to an action or failure to act that results in harm to an individual or, more generally, society and carries legal consequences. Criminal activity can be categorised in various ways. Often criminal offences are categorised by the type of crime, including crimes against the person and crimes against property. Crimes against the person are usually perceived as having greater **malice** and, therefore, are more reprehensible and typically carry greater punishments than property crimes. Other categories of crime include cybercrimes, hate crimes, organised crimes, and white-collar crimes.

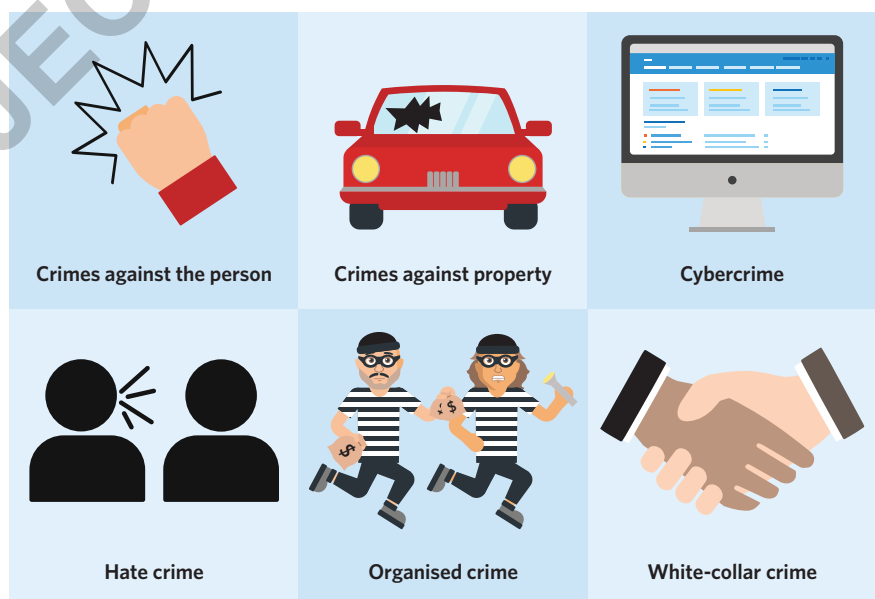


Figure 1 Types of crime

## Crimes against the person 1.2.4.1

**Crimes against the person** refer to criminal acts that either cause harm to another individual or pose a threat of harm to them. If an individual makes a threat to harm but this never actually eventuates, such an action is still classified as a crime against the person. Examples of crimes against the person include:

- murder
- attempted murder
- threats to kill
- manslaughter
- culpable driving
- assault
- kidnapping
- robbery.

### KEY TERM

**Crimes against the person** criminal offences where a person is harmed or harm is threatened.

### USEFUL TIP

Robbery, theft, and burglary are all different offences.

A person will be charged with robbery if, at the time of stealing, they use force or threats of force. Thus, robbery is a crime against the person and a property crime.

A person will be charged with theft if they dishonestly take property belonging to another with the intention of permanently depriving the individual of it. Therefore, this is not a crime against the person as it does not involve harming another individual.

A person will be charged with burglary if they enter any building as a trespasser with intent to steal anything in the building or to commit an offence involving an assault. Thus, burglary can be categorised as a crime against the person.

### DEEP DIVE

**Table 1** Victorian statistics from 2021 to 2023 for 'crimes against the person'

	2021	2022	2023
<b>Homicide and related offences</b>	175	162	181
<b>Assault and related offences</b>	41,432	41,132	42,926
<b>Sexual offences</b>	8,390	8,917	9,149
<b>Abduction and related offences</b>	424	413	423
<b>Robbery</b>	1,922	1,775	2,058

Adapted from 'Recorded Criminal Incidents' (Crime Statistics Agency, 2023)

### HYPOTHETICAL SCENARIO

#### Taken hostage

Griffin was found guilty of kidnapping Estelle. Griffin lured Estelle into his car and demanded \$25,000 from her family for her safe return. If the \$25,000 was not paid within three days, Griffin threatened to cause serious injury to Estelle. Griffin committed a crime against the person as his actions involved causing harm to Estelle by holding her against her will for ransom. Regardless of whether he followed through and committed the threatened harm to Estelle, he already committed an offence by verbalising this threat.



**Figure 2** Kidnapping is classified as a crime against the person

## Crimes against property 1.2.4.2

**Crimes against property** refer to criminal acts that employ force or deceit to acquire, damage, or demolish property. Such crimes may involve money, personal property, or land. Examples of crimes against property include:

- burglary
- fraud
- identity theft
- arson
- trespassing
- vandalism.

### KEY TERM

**Crimes against property** criminal offences that involve using force or deception to obtain, damage, or destroy property.

LEGISLATION

Crimes Act 1958 (Vic)

HYPOTHETICAL SCENARIO

Burned bridges – Tom’s revenge plot against his local pub

In an act of revenge, Tom started a fire inside his local pub, The Topsy Gnome, after he was banned from entering the premise due to his repeated poor behaviour. Following his arrest, Tom was charged with arson. Section 197(6) of the *Crimes Act 1958 (Vic)* defines arson as ‘destroying or damaging property by fire’. Therefore, Tom has committed a crime against property as force, being the fire, was used to damage property.



Figure 3 Tom committed arson, which is a crime against property

DEEP DIVE

Table 2 Victorian statistics from 2021 to 2023 for ‘crimes against property’

	2021	2022	2023
Arson	1,927	1,955	1,935
Property damage	31,666	31,561	32,646
Theft	109,790	107,596	119,095

Adapted from ‘Recorded Criminal Incidents’ (Crime Statistics Agency, 2023)

Other types of crime 1.2.4.3

Crimes can also be classified into more specific groups. Whilst crimes against the person and crimes against property serve as overarching categories into which nearly all criminal offences can be organised, other types of crime include:

- cybercrime
- hate crime
- organised crime
- white-collar crime.

KEY TERM

**Cybercrime** crimes directed at computers and where the use of computers and ICT technologies are key components of an offence.

Cybercrime 1.2.4.3.1

In Australia, **cybercrime** encompasses criminal activities aimed at computer systems, such as introducing viruses, as well as those conducted using computer networks, such as email scams or internet-based fraud. With the rise of technology, these types of crimes are becoming increasingly common.

REAL WORLD EXAMPLE



Figure 4 Cybercrime is on the rise in Australia

Family or faux?

Online scammers are becoming more sophisticated and have started to effectively impersonate family members. They send messages such as: ‘I’m at the petrol station and forgot to bring the right card. Can you please send me \$150? I’ll repay you once I get back.’ The ‘Hi Mum’ scam has reached new heights, as scammers have been able to appear in their targeted victim’s phones under the name of ‘Mum,’ or ‘Dad.’

Adapted from ‘Australians have lost at least \$7.2 million to the ‘Hi Mum’ scam. How does it work and why is it so lucrative for cybercriminals?’ (McElroy, 2022)

## Hate crime 1.2.4.1.2

Acts of violence that stem from prejudice against a person's gender, ethnicity, religion, or sexual orientation are commonly known as **hate crimes** or prejudice motivated crime. There are statutes that aim to protect Australians from hate crimes, including the *Sex Discrimination Act 1984* (Cth) and the *Equal Opportunity Act 2010* (Vic).

### LEGISLATION

*Sex Discrimination Act 1984* (Cth)  
*Equal Opportunity Act 2010* (Vic)

### WANT TO KNOW MORE?

The Victoria Police uses the term 'prejudice motivated crimes' to refer to 'hate crimes', and are essentially equivalent in their meaning. You can find out more about prejudice motivated crimes by searching 'Prejudice motivated crime - Victoria Police' and clicking the relevant link.

### KEY TERM

**Hate crimes** acts involving violence that are motivated by prejudice on the basis of gender, ethnicity, religion, or sexual orientation.

### REAL WORLD EXAMPLE

#### Outlawing hate – Victoria banned the Nazi salute after anti-transgender protests

Victoria has banned the Nazi salute after an anti-transgender protest in Melbourne, organised by a far-right wing group, featured demonstrators performing the anti-Semitic gesture. Demonstrators utilised the gesture to promote hatred towards the transgender community, highlighting the intersection of two hateful ideologies and prejudices. The State's premier said the salute was an 'affront to democracy' and that the amendments to the law aim to reduce hate and discrimination. The use of Nazi symbols and gestures is also illegal in Germany and Austria. Critics of the ban have argued that it could restrict freedom of expression, but the majority believe it is necessary to combat hate speech.

*Adapted from 'Victoria to ban Nazi salute after 'disgusting' scenes at anti-trans protest' (Ore, 2023)*



Image: Korkusung/Shutterstock.com

**Figure 5** Neo-Nazi protesters targeted the transgender community on the steps of Parliament House

### USEFUL TIP

A hate crime is not an offence listed under the *Crimes Act 1958* (Vic), rather it is an aggravating factor that a judge will consider when sentencing a guilty offender. You will learn more about aggravating factors in Unit 1 AOS 3 of the VCE Legal Studies course.

## Organised crime 1.2.4.3.3

Criminal activity that is carried out in a systematic and premeditated manner by organised groups is known as **organised crime**. Such crimes often include money laundering and drug trafficking that are operated under the guise of legitimate businesses.

### KEY TERM

**Organised crime** a crime committed in a planned and methodical way by criminal syndicates, gangs, or crime families.

### REAL WORLD EXAMPLE

#### Cracking down on the Calabrian Mafia

The notorious Calabrian mafia has operated mostly undetected in Australia for years while conducting money laundering and drug trafficking syndicates. The Australian Federal Police believe there are an estimated 5,000 members of the mafia in Australia, and the syndicate is believed to be responsible for 70 to 80 percent of the world's cocaine and other illicit drugs. Nigel Ryan, the Australian Federal Police Assistant Commissioner, ensures the Australian Federal Police work with the Italian, US, Spanish, and Brazilian authorities to protect Australians from these organised crime syndicates. The new *Surveillance Legislation Amendment (Identify and Disrupt) Act 2021* (Cth), grants the federal police the opportunity to identify and disrupt organised crime operations.

*Adapted from 'Thousands of Italian mafia operating in Australia, federal police say' (Australian Associated Press, 2022)*



**Figure 6** The Australian Federal Police take aim at organised crime



**KEY TERM**

**White-collar crime** financially motivated crimes that are non-violent.

**LEGAL VOCABULARY**

**Ponzi schemes** a white-collar crime that results in unsuspecting individuals investing their money with the false promise of high returns.

**Pyramid schemes** a fraudulent business model in which participants are promised profits primarily from recruiting others into the scheme, rather than from the sale of legitimate products or services.

**White-collar crime 1.2.4.3.4**

The term 'white-collar' refers to people who usually work in office jobs, whilst 'blue-collar' refers to people who generally work in manual labour. **White-collar crime** refers to non-violent crimes that are driven by financial motives. Common types of white-collar crime are fraud, embezzlement, **Ponzi scheme**, and **pyramid scheme** where unsuspecting individuals are persuaded to invest their money.

**REAL WORLD EXAMPLE****The vanishing act of the Ponzi Princess**

Melissa Caddick established a Ponzi scheme over many years, before going missing the day the police were granted a search warrant at her Sydney mansion. She convinced 72 investors that her business was legitimate enough for them to invest in, telling them she was setting up accounts with a well-known, online, share-trading facility. The investors would transfer money to Caddick's accounts for her to invest on their behalf. Caddick used the money to buy mansions, motor vehicles, artworks, and jewellery for herself, whilst continually giving the investors enough money in returns to ensure they kept investing and recommending her company to others. Caddick is still missing, and the only trace of her is the skeletal remains of her foot, which was found washed up on a Sydney Beach.

*Adapted from 'What happened to Melissa Caddick? Accused conwoman's final days explained' (Chapman, 2022)*



Image: Jaromir Chalabala/Shutterstock.com

**Figure 7** Melissa Caddick created a Ponzi scheme in order to maintain her luxurious lifestyle

**Lesson summary**

Criminal activities are classified based on the nature of the offence, with the most common categories being:

- crimes against the person
- crimes against property.

Additionally, other categories of criminal activity include:

- cybercrimes
- hate crimes
- organised crimes
- white-collar crimes.

**2D Questions****Check your understanding****Question 1**

There are many different types of crime which can be categorised based on the nature of the offence.

- A. True
- B. False

**Question 2**

Which of the following is **not** an example of a crime against the person?

- A. Assault
- B. Kidnapping
- C. Culpable driving
- D. Arson

**Question 3**

Which of the following are examples of a crime against property? **(Select all that apply)**

- A. Vandalism
- B. Culpable driving
- C. Trespassing
- D. Shoplifting

**Question 4**

Fill in the blank with **two** of the following terms:

organised crimes

cybercrimes

hate crimes

white-collar crimes

Crimes that are motivated by prejudice towards a specific minority group are called . On the other hand, crimes that operate in a corporate environment with the goal of financial gain are called .

**Question 5**

Tick the box to indicate whether each of the following are **crimes against the person** or **crimes against property**.

Crime	Crimes against the person	Crimes against property
I. Kidnapping	<input type="checkbox"/>	<input type="checkbox"/>
II. Shoplifting	<input type="checkbox"/>	<input type="checkbox"/>
III. Culpable driving	<input type="checkbox"/>	<input type="checkbox"/>
IV. Arson	<input type="checkbox"/>	<input type="checkbox"/>

**Question 6**

Tick the box to indicate whether each of the following statements refer to **organised crime** or **cybercrime**.

Statements	Organised crime	Cybercrime
I. Committed in a planned and methodical way by criminal syndicates, gangs, or crime families.	<input type="checkbox"/>	<input type="checkbox"/>
II. Often involves drug trafficking or money laundering.	<input type="checkbox"/>	<input type="checkbox"/>
III. Directed towards computers.	<input type="checkbox"/>	<input type="checkbox"/>
IV. Often involves fraud or online scams.	<input type="checkbox"/>	<input type="checkbox"/>

**Question 7**

The only type of crimes are crimes against the person as any issues with property, such as trespassing, are classified under civil law, not criminal law.

- A. True
- B. False

## Preparing for exams

### Standard exam-style

#### Question 8

(2 MARKS)

Samantha has been charged with a criminal offence after she created a hacking software that could steal personal computer data and sold it on the black market and to various companies for a large profit.

Outline the type of crime Samantha has committed.

#### Question 9

(3 MARKS)

Define the term 'crimes against the person' and provide **two** examples.

#### Question 10

(3 MARKS)

Using an example, describe the term 'crimes against property'.

#### Question 11

(3 MARKS)

Louis has been convicted of a criminal offence after he broke the window of a service station that was owned by a queer couple. He was heard yelling homophobic slurs as he fled the scene.

Identify a type of crime Louis could have been convicted of and provide reasons for your answer.

#### Question 12

(5 MARKS)

Distinguish between organised crime and white-collar crime, providing an example of each in your answer.

### Extended response

Use your answer to question 13 to support your response to question 14.

#### Question 13

Which of the following statements are correct? **(Select all that apply)**

- A. Crimes against the person involve a situation where an individual is directly harmed or there is a threat to harm.
- B. Crimes against property always involve harm to both property and individual victims.
- C. Crimes against property and crimes against the person both involve harm or loss due to the crime committed by an offender.
- D. Some crimes against property may not involve individual victims.
- E. Crimes against property do not involve direct harm to an individual person, but a victim may still suffer through loss or damage to their property.

#### Question 14

(5 MARKS)

'Crimes against property are essentially the same as crimes against the person, therefore, there should not be two different categories of crime.'

Is this statement correct? Justify your answer by comparing crimes against the person and crimes and against property.

### Linking to previous learning

#### Question 15

(5 MARKS)

After jumping the fence and entering through a window, Samarth ransacked Brielle's house before stealing thousands of dollars worth of valuable jewellery and handbags.

Identify the type of crime Samarth could be found guilty of and outline **two** purposes of criminalising this type of behaviour with reference to the scenario.

# 2E Summary offences and indictable offences

## STUDY DESIGN DOT POINT

- the distinction between summary offences and indictable offences

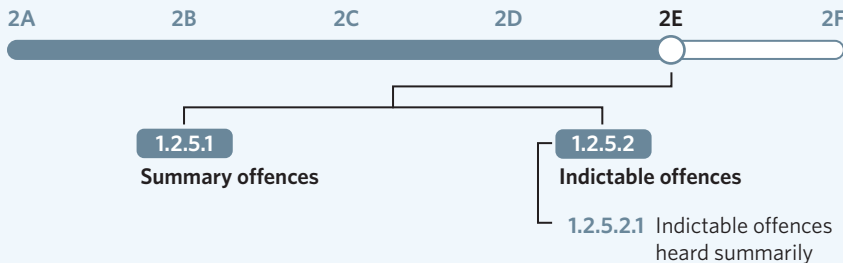


Image: sonnem/Shutterstock.com

Imagine you have just graduated high school and are deciding your career path. You could choose to apply for a hairdressing course, a path with cheaper tuition and less intense studying requirements. Alternatively, you could apply for an undergraduate medicine program, a degree with greater tuition costs and more intense studying requirements. In the same way different tertiary studies vary in costs and study requirements, the criminal justice system has different categories of offences, that vary in their punishments, outcomes, and severity.

## Lesson introduction

There are two main categories of criminal offences: summary offences and indictable offences. Crimes are classified into one of these categories based on their severity and impact on victims and society. The court in which the case is heard and determined, and the punishment imposed on an offender if they are found guilty, can vary based on whether the committed offence is categorised as a summary or indictable offence.

## Summary offences 1.2.5.1

A **summary offence** is a criminal offence that is considered less serious in nature. They are heard in the Magistrates' Court, where there is no option for a trial by jury. Sanctions for persons found guilty of summary offences include fines, community correction orders, or short terms of imprisonment. The *Summary Offences Act 1966* (Vic) includes most summary offences, such as disorderly conduct, driving offences, common assault, and damage to property. The maximum penalty that can be imposed by the Magistrates' Court for a single summary offence is two years imprisonment or a fine not exceeding 240 **penalty units** for a single charge.

### KEY TERM

**Summary offence** a minor criminal offence usually resolved in the Magistrates' Court.

### LEGAL VOCABULARY

**Penalty units** a measurement used to define the amount that offenders are required to pay for certain offences.

### LESSON LINKS

You will learn more about community corrections orders in **5B Types of sanctions**.

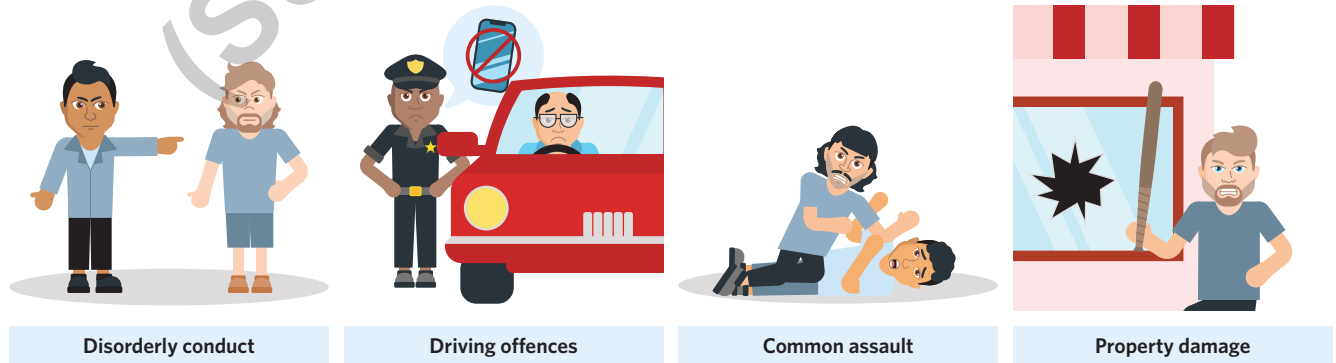


Figure 1 Examples of summary offences in Victoria

When responding to summary offences, law enforcement, such as the police, have the power to exercise their own judgement on a situation. For example, if a person is found singing an obscene song or ballad in a public place, a police officer may choose to give the offender a warning or deal with the matter without pressing charges.

**Table 1** Maximum penalties for different summary offences

Type of summary offence	Section of the <i>Summary Offences Act 1966 (Vic)</i>	Maximum penalty
Obstructing a footpath, canal, or waterway in such a way that could cause injury or death to any person	s 7(a)	25 penalty units, six months imprisonment, or both
Wilfully damaging any property to a damage valuing less than \$5000	s 9(1)(c)	25 penalty units or six months imprisonment
Singing an obscene song or ballad in a public place	s 17(a)	10 penalty units or two months imprisonment
Common assault, such as beating another person	s 23	15 penalty units or three months imprisonment
Food or drink spiking	s 41H	Two years imprisonment

**LEGISLATION**

*Summary Offences Act 1966 (Vic)*

**LESSON LINKS**

You learnt about the Magistrates' Court in **1F The Victorian court hierarchy**.

You will learn more about trial by jury in **4E The jury in a criminal trial**.

**WANT TO KNOW MORE?**

There are many summary offences that a person can be charged with. You can learn more about the different types of summary offences in Victoria by searching 'Summary Offences Act 1966' on the internet and clicking the 'Victoria legislation' webpage.

**HYPOTHETICAL SCENARIO**

**Johnny may have to start walking**

Johnny was driving his car along the West Gate Bridge when he was pulled over by Sergeant Walker for drink-driving. The police officer witnessed Johnny consume alcoholic beverages whilst operating his motor vehicle. Following a breath test, Johnny's blood alcohol concentration was above the legal limit.

Sergeant Walker issued an on-the-spot fine of \$770 and Johnny's licence was suspended immediately for six months. Johnny was not required to attend court for his summary offence of drink-driving. However, he was warned that if future incidents were to occur, he would be tried in the Magistrates' Court and would face much harsher penalties.



**Figure 2** Johnny was caught drink-driving by the police

**REAL WORLD EXAMPLE**

**CONTENT WARNING** This example depicts content that is sensitive in nature, relating to Nazism.

**Landmark reform to prohibit Nazi glorification**

On 26 August 2022, the *Summary Offences Amendment (Nazi Symbol Prohibition) Act 2022 (Vic)* was passed, meaning the intentional display of the Nazi swastika in public is considered a criminal offence. If a person is found guilty of displaying this symbol they can be sanctioned with a maximum fine of 120 penalty units, 12 months imprisonment, or both.

The Nazi swastika has been used to glorify 'one of the most hateful ideologies in history', being the reign of Adolf Hitler and the Nazi regime from 1933 to 1945, and can trigger feelings of fear and trauma for many people.

However, there is an exception to this Act where the symbol is being used for a 'genuine academic, artistic, religious or scientific purpose'.

*Adapted from 'Victoria to become first state to ban the Nazi swastika' (Kolovos, 2022)*

## Indictable offences 1.2.5.2

**Indictable offences** are criminal offences that are considered more serious than summary offences. They are normally heard by a judge and a jury in the County or Supreme Court. However, judge-only trials can also occur. Sanctions for persons found guilty of indictable offences include large fines, community correction orders, and lengthy terms of imprisonment. Unless otherwise stated, all indictable offences are included in the *Crimes Act 1958* (Vic), such as murder, kidnapping, stalking, causing serious injury intentionally, and culpable driving causing death. The maximum penalty that can be imposed for indictable offences is life imprisonment.

### KEY TERM

**Indictable offence** a criminal offence that is serious in nature and generally heard by a judge and jury in the County or Supreme Court.

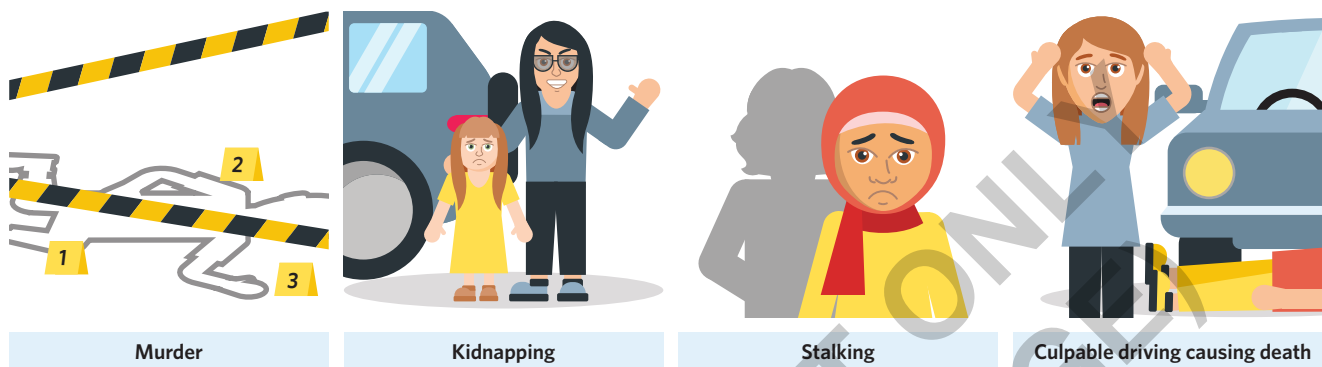


Figure 3 Examples of indictable offences in Victoria

Table 2 Maximum penalties for different summary offences

Type of summary offence	Section of the <i>Crimes Act 1958</i> (Vic)	Maximum penalty
<b>Murder</b>	s 3	Life imprisonment
<b>Threats to kill</b>	s 20	10 years imprisonment
<b>Rape</b>	s 38	25 years imprisonment
<b>Kidnapping</b>	s 63A	25 years imprisonment
<b>Theft</b>	s 74	10 years imprisonment

### LEGISLATION

*Crimes Act 1958* (Vic)

### LESSON LINK

You will learn more about murder, assault, and culpable driving in **Chapter 3: Criminal offences**.

### LEGAL CASE

**CONTENT WARNING** This example depicts content that is sensitive in nature, relating to death.

#### **Guode v R [2020] VSCA 257**

##### **Facts**

On 8 April 2015, a mother, Guode, drove a car carrying her four children into a lake with the intent to kill. As a result, three of the children died, including an infant. Guode pleaded guilty to one charge of infanticide, two charges of murder, and one charge of attempted murder.

##### **Legal issue**

The sentencing judge in the Supreme Court of Victoria had to determine an appropriate sentence for the indictable offences of infanticide, murder, and attempted murder as established in the *Crimes Act 1958* (Vic).

##### **Decision**

The sentencing judge in the Supreme Court of Victoria sentenced Guode to 26 years and six months imprisonment with a non-parole period of 20 years.

##### **Significance**

Following the imposition of this sentence, Guode appealed the decision in the Supreme Court of Appeal and a sentence of 18 years imprisonment with a non-parole period of 14 years was handed down. This sentence was later appealed in the High Court of Australia. Guode's case demonstrates the severity of indictable offences and the lengthy prison sentences that can be imposed if a person is guilty of such a crime.

### USEFUL TIP

To help you remember the difference between summary and indictable offences you can think about a summary of a book, which is brief in the same way that summary offences generally have shorter trials and less severe sanctions. Alternatively, you can remember indictable offences as being important (as both words begin with the letter 'I') and therefore, having more severe sentences and consequences.



**KEY TERM****Indictable offences heard summarily**

a subset of indictable offences that can be heard in the Magistrates' Court in a similar manner to a summary offence. Only eligible offences can be heard summarily.

**LEGAL VOCABULARY**

**Committal proceeding** a hearing in the Magistrates' Court used to determine whether there is sufficient evidence against an accused person, charged with an indictable offence, for a trial in a higher court.

**LEGISLATION**

*Criminal Procedure Act 2009 (Vic)*

**USEFUL TIP**

When analysing case studies and categorising criminal offences, it is important to remember that some indictable offences can be heard summarily. For example, theft is a serious crime and you may instantly think it is an indictable offence. However, some indictable offences are eligible to be heard in the same manner as a summary offence in the Magistrates' Court, including some theft offences. Therefore, the categorisation of crimes is dependent on a range of factors and can be subjective to each case.

**Indictable offences heard summarily 1.2.5.2.1**

**Indictable offences heard summarily** are indictable offences that are considered less serious and, consequently, can be heard in the Magistrates' Court, similar to the way in which summary offences are heard. For an accused person, having an indictable offence heard summarily can be beneficial as it is less costly and court time and resources can also be saved.

This is because having an offence heard summarily means an accused does not have to wait for a jury to be arranged since trial by jury is not an option in the Magistrates' Court. Furthermore, the Magistrates' Court specialises in hearing a high number of less serious offences, meaning delays in the court system can be minimised.

A magistrate will determine whether an indictable offence can be heard summarily during a **committal proceeding**. For an indictable offence to be heard summarily:

- the offence must not be punishable by a maximum term exceeding 10 years of imprisonment
- the court must agree and determine it is appropriate
- the accused must consent to having their offence(s) heard summarily.

The maximum imprisonment sentence that can be imposed in the Magistrates' Court for one offence is two years, with a maximum of five years for two or more offences. The *Criminal Procedure Act 2009 (Vic)* establishes which indictable offences can be heard summarily, including theft, property damage, and indecent assault.

**HYPOTHETICAL SCENARIO****Like a thief in the night**

Michael and Clancy are robbers who were recently charged with theft after stealing from a house in Toorak. It was determined the duo stole \$5,000 worth of items, including jewellery, silverware, and clothes.

Prior to their committal proceeding, Michael and Clancy's lawyer informed them that their theft is considered an indictable offence under s 74 of the *Crimes Act 1958 (Vic)* and holds a maximum penalty of 10 years imprisonment. However, their lawyer also suggested that there was a possibility their offence could be heard summarily, meaning they could only receive a maximum penalty of two years imprisonment. Michael and Clancy both consented to having their crimes heard in this manner.

The magistrate conducting the committal proceeding concluded that it was appropriate for Michael and Clancy to have their indictable offence heard summarily, as the theft was not violent and the value of the property stolen was not extremely significant. Therefore, the overall severity and seriousness of the sanction imposed on this robbing duo is likely to be lessened as a result of having their case heard in the Magistrates' Court.

## Lesson summary

**Table 3** The distinction between summary offences, indictable offences, and indictable offences heard summarily

Type of offence	Summary offences	Indictable offences	Indictable offences heard summarily
Nature of the offence	Minor criminal offence	Serious criminal offence	Less serious indictable offence
Court(s)	Magistrates' Court	County or Supreme Court	Magistrates' Court
Availability of trial by jury	No	Yes	No
Statutes related to the offences	<i>Summary Offences Act 1966</i> (Vic)	<i>Crimes Act 1958</i> (Vic)	<i>Criminal Procedure Act 2009</i> (Vic)
Examples	<ul style="list-style-type: none"> <li>Driving offences</li> <li>Disorderly conduct</li> <li>Damage to property</li> </ul>	<ul style="list-style-type: none"> <li>Murder</li> <li>Rape</li> <li>Kidnapping</li> <li>Culpable driving causing death</li> </ul>	<ul style="list-style-type: none"> <li>Theft</li> <li>Burglary</li> <li>Recklessly causing injury</li> </ul>

## 2E Questions

### Check your understanding

#### Question 1

The two main categories of criminal offences are:

- summary and indecent offences.
- summary and indictable offences.
- stationary and indecent offences.
- stationary and indictable offences.

#### Question 2

Fill in the blanks with the following terms:

Magistrates' Court

County or Supreme Court

Indictable offences are heard in the , whilst summary offences are heard in the .

#### Question 3

Tick the box to indicate whether each of the following are **summary** or **indictable** offences.

Statement	Summary	Indictable
I. Disorderly conduct	<input type="checkbox"/>	<input type="checkbox"/>
II. Murder	<input type="checkbox"/>	<input type="checkbox"/>
III. Stalking	<input type="checkbox"/>	<input type="checkbox"/>
IV. Property damage	<input type="checkbox"/>	<input type="checkbox"/>
V. Culpable driving causing death	<input type="checkbox"/>	<input type="checkbox"/>

**Question 4**

Indictable offences heard summarily are considered more serious than indictable offences but less severe than summary offences.

- A. True
- B. False

**Question 5**

For an indictable offence to be heard summarily:

(Select all that apply)

- A. the offence must be punishable by a maximum term exceeding 10 years imprisonment.
- B. the offence must not be punishable by a maximum term exceeding 10 years imprisonment.
- C. the court must agree and determine it is appropriate.
- D. the accused must make a statement to the court requesting for their offence to be heard summarily for the judge or magistrate to consider it.

**Question 6**

Fill in the blanks with the following terms:

**Summary Offences Act 1966 (Vic)**

**Crimes Act 1958 (Vic)**

**Criminal Procedure Act 2009 (Vic)**

In Victoria, most indictable offences are included in the , whilst indictable offences heard summarily are established in the . Alternatively, the  sets out summary offences in Victoria.

**Question 7**

Summary offences, indictable offences, and indictable offences heard summarily are all civil offences and, therefore, are dealt with in the civil justice system.

- A. True
- B. False

## Preparing for exams

### Standard exam-style

**Question 8**

(2 MARKS)

Identify the **two** categories of offences in the criminal justice system.

**Question 9**

(2 MARKS)

Describe indictable offences heard summarily.

**Question 10**

(3 MARKS)

Distinguish between summary and indictable offences.

**Question 11**

(4 MARKS)

Elsa was caught drink-driving after consuming alcohol at a music festival. The police officer who caught her issued a fine and immediately suspended her licence for five months.

Identify the type of offence Elsa has committed and explain the features of this type of offence.

## Extended response

### Question 12

Which of the following statements are correct about indictable offences heard summarily? **(Select all that apply)**

- A. An indictable offence heard summarily is a subset of summary offences that can be heard in the Magistrates' Court.
- B. It can be beneficial for an accused to have their indictable offence heard summarily as the maximum imprisonment sentence given in the Magistrates' Court for one offence is two years.
- C. Having an indictable offence heard summarily can minimise delays in an accused's case and reduce their overall court expenses.
- D. Indictable offences are considered less serious than an indictable offence heard summarily.

### Question 13

(6 MARKS)

'It is more beneficial for an accused to have their indictable offence tried in a higher court rather than having it heard summarily in the Magistrates' Court.'

To what extent do you agree with this statement? Justify your answer.

## Linking to previous learning

### Question 14

(2 MARKS)

Joshua graffitied the fence of his neighbour, Sabrina, after she refused to trim hedges that were impeding upon his property.

Identify the type of crime and offence that Joshua has committed.

# 2F Possible participants in a crime



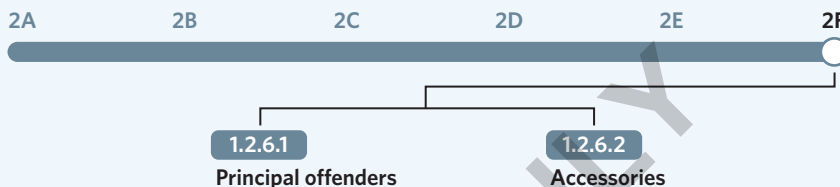
Image: Digital Storm/Shutterstock.com

'You were drivin' the getaway car.  
We were flyin', but we'd never get far.'  
—Taylor Swift (Singer and Songwriter,  
Getaway Car, 2017)

But who was driving the getaway car  
and could they be found guilty of an  
indictable offence?

## STUDY DESIGN DOT POINT

- possible participants in a crime such as principal offenders and accessories



## Lesson introduction

When an offence is investigated by the police or in a trial, all participants in the crime must be considered. Whilst there is always at least one culprit who committed the offence, there are also often individuals who are guilty of participating in, or aiding, the offence in some way.

## Principal offenders 1.2.6.1

If a person was directly involved in an offence and/or held the most responsibility in committing the crime, they may be considered a **principal offender**. In most cases, the principal offender is the person who physically committed the wrongful act or omission in addition to holding the mens rea. There may be more than one principal offender when a crime is committed, including those who perform the actus reus elements of the crime and those who assist or encourage a person to commit a crime.

As per the *Crimes Act 1958* (Vic), a second person could also be considered a principal offender, even if they are less directly involved in the commission of the offence.

To be 'involved in the commission of an offence', a person may:

- assist, encourage, or direct the commission of an indictable offence by another person.
- enter into an agreement, arrangement, or understanding with another person to commit an offence.

In these situations, the person does not have to be physically present when the offence is committed.

A principal offender can be subject to the maximum penalty for the offence. This is regardless of whether they committed the actus reus elements of the offence or were involved in the commission of the offence in some other way.

### KEY TERM

**Principal offender** the individual who actually commits the offence and/or is directly linked to the enactment of the crime.

### LEGISLATION

*Crimes Act 1958* (Vic)

### LESSON LINK

You learnt about mens rea and actus reus in **2C Key concepts of criminal law**.

## REAL WORLD EXAMPLE

**Ghost train up in flames**

The 1979 Ghost Train Fire at Luna Park Sydney killed seven people: six children and one adult. The initial investigation blamed an electrical fault for the blaze, but an ABC true-crime series challenged this, presenting strong evidence in support of the claim that the arson was initiated by Abe Saffron.

Abe Saffron is a well known Sydney crime organiser and it was alleged that he had his men start the fire so he could later develop the land that housed Luna Park.

In this case, Abe Saffron would be the principal offender, even though he did not commit the act or arson himself, he instructed his men to do so, demonstrating a guilty mind.

It is likely the people who actually started the fire would also be principal offenders as they committed the act. If someone was driving a getaway car or made efforts to cover up the arson, which was suspected by the police, they would be considered accessories to the crime.

*Adapted from 'How Ghost Train Fire exposed remarkable police corruption, yet also failed ABC's high journalistic standards' (Tsikas, 2021)*



Image: Sarawut Konganantdech/Shutterstock.com

**Figure 1** A Sydney crime boss was suspected of being the principal offender in the 1979 Ghost Train Fire at Luna Park Sydney

## Accessories 1.2.6.2

An **accessory** is any person who is aware of a crime occurring and contributes to the concealment or execution of the offence. An accessory to a crime can be found guilty of an offence even where the principal offender is found not guilty.

Examples of ways an individual can be an accessory to a crime include:

- hiding a principal offender
- hiding, destroying, or tampering with evidence
- providing an alibi for a friend who has been charged with driving under the influence
- driving a getaway car after a robbery
- helping a criminal suspect escape arrest.

The *Crimes Act 1958* (Vic) outlines the penalties that can be imposed on an accessory to a crime. The penalty imposed on an accessory will vary depending on the crime the principal offender committed.

**Table 1** Penalties for accessory offenders

Sentencing practice	Example
Where the maximum penalty is life imprisonment, an accessory can be sentenced to a maximum of 20 years imprisonment.	The maximum penalty for murder is life imprisonment. An accessory to a murder case could be liable to a maximum of 20 years imprisonment.
In all other cases, the penalty cannot exceed five years imprisonment or be more than half of the maximum penalty that could be imposed on the principal offender.	The maximum penalty for graffitiing private property without consent is two years imprisonment. An accessory to this offence could be liable to a maximum penalty of one year imprisonment.

### KEY TERM

**Accessory** any person who knows or believes that a person is guilty of a serious indictable offence and acts to prevent the arrest, prosecution, or punishment of that person.



**LESSON LINK**

You will learn about culpable driving in **3G Culpable driving – elements**.

**WANT TO KNOW MORE?**

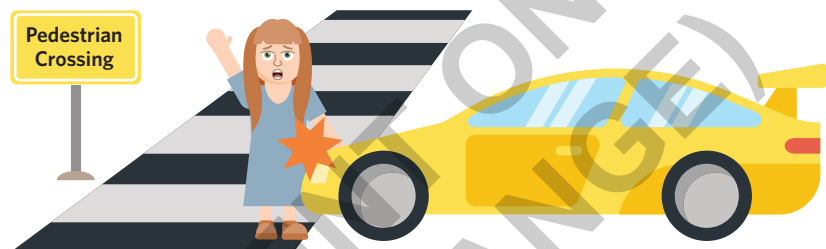
You can find out more about accessory offenders and what type of conduct constitutes being an accessory to a crime by searching 'Joint responsibility for criminal offences – an overview of criminal complicity in Victoria' on the Internet and clicking the 'Pascoe Criminal Law' webpage.

**HYPOTHETICAL SCENARIO****No body, no crime**

Kale accidentally hit and killed a pedestrian with his car after failing to stop at a pedestrian crossing. In a panic, Kale put the body in his car and drove to Vickie's house. Kale explained the incident to Vickie and was extremely unsettled about the prospect of being caught and going to prison. Kale insisted they hide the body and clean the car to remove all traces of the accident, to which Vickie reluctantly agreed. The next day police arrested Kale as there was video footage of the incident. During investigations prior to Kale's trial, the police discovered that Vickie assisted Kale in disposing of the evidence following the event. Vickie was then arrested for her involvement.

In this situation, Kale is the principal offender, and Vickie is an accessory. She knew Kale had likely committed a serious indictable offence and then helped destroy evidence to help Kale avoid criminal charges. Vickie can be found guilty for her involvement regardless of the outcome of Kale's trial.

Culpable driving causing death, which Kale may be convicted of, carries a maximum prison sentence of 20 years. Therefore, if this is the crime Kale is being convicted of, Vickie may face a penalty of up to five years imprisonment.



**Figure 2** Kale acted as a principal offender to the crime, whilst Vickie was an accessory as she helped Kale dispose of the evidence

**Lesson summary**

Individuals involved in a crime, either directly or indirectly, can be considered a participant in the offence. These types of participants are:

- principal offenders
- accessories.

A principal offender is directly involved in either committing the crime or instigating the offence and usually carries the mens rea or guilty mind for the actions committed. Alternatively, an accessory is someone who is aware of a plan for a crime, or the fact a crime was committed, but does not take action to aid the arrest or conviction of a guilty person.

**2F Questions****Check your understanding****Question 1**

Fill in the blanks with **two** of the following terms:

a principal offender

an instigator

an accessory

A person who is involved, either directly or indirectly, with the commission of an offence is [ ] .

However, a person who was less involved but had knowledge of an individual committing an indictable offence is considered [ ] .

**Question 2**

There can only be one principal offender convicted for any one crime, however, there can be multiple accessories convicted for the same crime.

- A. True
- B. False

**Question 3**

Jasmine, a notorious gang leader who is currently under police surveillance, plans a large bank robbery through an online group chat. One of her gang members is working with the police. While Jasmine is not physically present at the crime scene, she is arrested following the incident.

Which of the following statements is correct about the type of participant Jasmine is in the crime?

- A. Jasmine is a principal offender as she committed all actus reus elements of the criminal offence.
- B. Jasmine is a principal offender as she directed and orchestrated the criminal offence.
- C. Jasmine is an accessory because, although she was not involved in the criminal act, she had some involvement in planning the offence.
- D. Jasmine cannot be charged with a criminal offence as she had no physical involvement in the crime and was never at the scene.

**Question 4**

Which of the following is **not** an example of how an individual can be an accessory to a crime?

- A. Commissioning another person to commit a criminal offence.
- B. Dishonestly telling the police that a suspect was with them at the time they had committed a crime.
- C. Destroying evidence to cover up an offence.
- D. Hiding an offender in their house knowing the police are looking for them.

**Question 5**

Diego was charged with murdering his neighbour. Joaquin, one of Diego's friends, was charged as an accessory to the crime, as he took the murder weapon from the scene and hid it in his car. After a criminal trial, Diego was found not guilty.

As Diego was found not guilty of murder, Joaquin's charges of being an accessory are also dropped.

- A. True
- B. False

## Preparing for exams

### Standard exam-style

**Question 6**

(2 MARKS)

Outline the term 'accessory'.

**Question 7**

(2 MARKS)

Provide **two** examples of ways an individual can be an accessory to a crime.

**Question 8**

(3 MARKS)

Distinguish between the principal offender and the accessories in a crime.

**Question 9**

(3 MARKS)

Sally decided to plan a bank robbery and recruited two of her friends to break into and steal money from the bank. During the robbery, Sally told her friends exactly what to do. However, the police arrived on the scene quickly and arrested Sally's friends. Sally was later arrested and charged with the maximum penalty for the crime, even though she did not physically commit the offence.

Explain why Sally can be sentenced with the maximum penalty for the bank robbery.

**Question 10**

(4 MARKS)

The police allege that Jael had an agreement with his girlfriend, Eisha, to rob a grocery store and share the money. According to police, on the day of the offence, Jael entered a local grocery store and demanded \$5,000 from the cashier. Jael then drove to the home of his friend, Lucia, and described what he had done. The police believe Lucia advised Jael on how to dispose of his clothing so he was not recognised by police.

In Jael's trial, the jury delivered a 'not guilty' verdict, which means Lucia's trial cannot proceed – she cannot be an accessory to an offence where the principal offender is acquitted. However, Eisha is found guilty as an accessory because she was in an agreement to commit an offence.

Identify **two** errors in the scenario above and, for each error, explain the correct process or procedure that should have occurred.

**Extended response**

Use your answer to question 11 to support your response to question 12.

Use the following information to answer questions 11 and 12.

Jenny, Harold, and Robert decide to book a trip to Bali, but do not have enough money to pay for it. Jenny suggests they find a car to steal at a dealership nearby and then sell it. She devises a plan for the crime and on the day of the offence, Jenny communicates to Robert and Harold via ear-piece. After finding the car they want, Harold pretends to choke, causing the staff to panic and take him inside for water. Robert then drives away with the car and takes it back to their house. Later that night the police find the car in their driveway and Jenny, Harold, and Robert are arrested for their involvement in the crime.

**Question 11**

Which of the following statements is correct about Jenny, Harold, and Robert's crime?

- A. Jenny is the principal offender as she committed the primary actus reus of the plan to steal the car.
- B. Harold did not want the money for the Bali trip and, therefore, would only be an accessory to the crime.
- C. Robert was pressured into the crime and only knew about the plan on the day, therefore he is only an accessory.
- D. Jenny, Harold, and Robert all had a high level of involvement in the crime and are, therefore, all principal offenders.

**Question 12**

(6 MARKS)

Analyse the type of participant Jenny, Harold, and Robert are in this crime.

**Linking to previous learning****Question 13**

(3 MARKS)

Aaron ran a red light and must pay a fine.

- a. Identify the type of offender Aaron is. 1 MARK
- b. Outline whether this is a summary or indictable offence. 2 MARKS

# ANSWERS

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## 2A The purposes of criminal law

### Check your understanding

1. B. **Explanation:** Protection of society, protecting justice and the rule of law, and setting minimum standards of behaviour are all purposes of criminal law.
2. A. **Explanation:** If an offender, or general society, is discouraged from committing a crime, deterrence is primarily the purpose of criminal law that has been achieved.
3. B. **Explanation:** In this scenario, Jamie and Liam have been deterred from committing cybercrimes due to the significant prison sentence they incurred as a result of their offence.
4. A; B; C. **Explanation:** An accused person is considered innocent in criminal law until the prosecution is able to prove they are guilty.
5. When statute and common law establish expectations that society should follow and determines the punishments a person will incur if they do not follow these expectations, the purpose of criminal law that is being achieved is to **set minimum standards of behaviour**.
6. B. False. **Explanation:** The purposes of criminal law are not being achieved in this scenario. For example, the protection of society has not been achieved as Xavier has killed people without any consequences.
7. B. False. **Explanation:** There is no broad purpose of criminal law that aims to eliminate crime. It is acknowledged that crime will likely always exist, therefore, the purposes of criminal law relate to protecting society and aiming to deter people from committing crime to reduce, but likely not eliminate, crime rates.

### Preparing for exams

#### Standard exam-style

8. [Protection of society is a purpose of criminal law that aims to reduce danger and chaos in society and prevent individuals from experiencing harm.<sup>1</sup>] [By creating criminal laws, people who commit crimes can be removed from society, ensuring they are no longer threatening the community and establishing greater feelings of safety amongst members of society.<sup>2</sup>]  
☒ ☐ I have defined 'protection of society' as a purpose of criminal law.<sup>1</sup>  
☒ ☐ I have provided information about the 'protection of society'.<sup>2</sup>
9. [Deterrence of crime is a purpose of criminal law that aims to discourage an offender, or other individuals, from reoffending or committing similar crimes through the imposition of a criminal sanction.<sup>1</sup>] [On the other hand, setting minimum standards of behaviour is a purpose of criminal law that involves establishing expectations that intend to regulate how each person in society should act and establish the punishments they will receive if they do not act in a certain way.<sup>2</sup>] [One key difference between these two purposes is that while deterrence is focussed on imposing sanctions with the intent of ensuring offenders, or other members of society, do not commit crimes out of fear of punishment, minimum standards are set so that everyone is aware, and can understand, how they should behave in society.<sup>3</sup>]

☒ ☐ I have defined 'deterrence of crime' as a purpose of criminal law.<sup>1</sup>

☒ ☐ I have defined 'to set minimum standards of behaviour' as a purpose of criminal law.<sup>2</sup>

☒ ☐ I have provided one key difference between 'deterrence of crime' and 'to set minimum standards of behaviour' as purposes of criminal law.<sup>3</sup>

☒ ☐ I have used signposting in my response, such as 'One key difference'.

☒ ☐ I have used comparison words, such as 'On the other hand', when distinguishing.

10. [One way criminal law is able to protect justice and the rule of law is that most criminal hearings and judgments are accessible to the public.<sup>1</sup>] [The public nature of criminal trials ensures the presentation of facts is open and available to all members of the community. This provides transparency and accountability for the legal decisions made in the court system.<sup>2</sup>] [Another way the rule of law can be achieved by criminal law is through the presumption of innocence as this guarantees an accused person does not have to prove their innocence, but rather, the prosecution has this burden to prove the accused is guilty beyond reasonable doubt.<sup>3</sup>]

☒ ☐ I have provided one way criminal law is able to protect justice and the rule of law.<sup>1</sup>

☒ ☐ I have provided information about my chosen way criminal law is able to protect justice and the rule of law.<sup>2</sup>

☒ ☐ I have provided a second way criminal law is able to protect justice and the rule of law.<sup>3</sup>

☒ ☐ I have used signposting in my response, such as 'One way' and 'Another way'.

11. [One purpose of criminal law that is being achieved as a result of the new smoking laws is 'to set the minimum standards of behaviour'.<sup>1</sup>] [Using criminal law to discourage smoking in particular places enshrines these standards into legislation by punishing offenders who violate these behavioural expectations.<sup>2</sup>] [The law would also likely prescribe a punishment that offenders would face if they are caught smoking outside of restaurants or cafes, therefore setting minimum sentences in the case that a person does not abide by the standards established by the law.<sup>3</sup>]

☒ ☐ I have identified one purpose of criminal law that is achieved by the smoking regulations.<sup>1</sup>

☒ ☐ I have provided information about my chosen purpose of criminal law.<sup>2</sup>

☒ ☐ I have provided examples from the scenario and linked them to my chosen purpose of criminal law.<sup>3</sup>

☒ ☐ I have used signposting in my response, such as 'One purpose'.

### Extended response

12. Achieved: I; II; III  
Not achieved: IV

13. [In this scenario, some but not all purposes of criminal law have been achieved, due to the fact that Cam has not been deterred from stalking Mitchell, despite being sentenced for his criminal behaviour.<sup>1</sup>]

[One purpose of criminal law that has been achieved is the protection of society, which refers to a purpose of criminal law that aims to ensure society avoids danger and chaos by preventing individuals from experiencing harm.<sup>2</sup>] [As Cam has been imprisoned for seven years, and therefore removed from society, he can no longer stalk and cause psychological harm to Mitchell, providing safety to both Mitchell and any other people that Cam could potentially stalk.<sup>3</sup>]

[Another purpose of criminal law that has been achieved is justice for Mitchell, which is the idea that a person who received the burden of another's actions should receive a fair outcome, such as their offender being reasonably punished.<sup>4</sup>] [Since Cam has been imprisoned for seven years, he has been punished fairly, therefore providing a degree of justice to Mitchell as Cam faced the consequences for his actions.<sup>5</sup>]

[However, one purpose of criminal law that has been achieved to a lesser extent is deterrence, which is the purpose of criminal law that aims to discourage an offender, or other individuals, from reoffending or committing similar crimes through the imposition of a criminal sanction.<sup>6</sup>] [When released from prison, Cam intends to continue stalking Mitchell until he falls in love with him. Therefore, he has not been deterred from committing the crime of stalking.<sup>7</sup>] [Despite Cam not being deterred, the harsh punishment he received for stalking Mitchell may cause broader society to be discouraged from committing a similar crime, fearing the punishment they may face if they do so. Therefore, deterrence is still likely to be partially achieved.<sup>8</sup>]

[Overall, although deterrence is not completely achieved in this criminal scenario, other purposes of criminal law have been successfully upheld.<sup>9</sup>]

- ✓ ✗ I have provided an introduction to my response.<sup>1</sup>
- ✓ ✗ I have identified one purpose of criminal law that has been achieved in the scenario.<sup>2</sup>
- ✓ ✗ I have provided an example from the scenario and linked it to my chosen purpose of criminal law.<sup>3</sup>
- ✓ ✗ I have identified a second purpose of criminal law that has been achieved in the scenario.<sup>4</sup>
- ✓ ✗ I have provided an example from the scenario and linked it to my chosen purpose of criminal law.<sup>5</sup>
- ✓ ✗ I have identified one purpose of criminal law that has not been achieved in the scenario.<sup>6</sup>
- ✓ ✗ I have provided an example from the scenario and linked it to my chosen purpose of criminal law.<sup>7</sup>
- ✓ ✗ I have provided information about my chosen purpose of criminal law.<sup>8</sup>
- ✓ ✗ I have provided a conclusion to my response that links back to the question.<sup>9</sup>
- ✓ ✗ I have used paragraphs to organise my response.
- ✓ ✗ I have used signposting in my response, such as 'One purpose' and 'Another purpose'.
- ✓ ✗ I have used connecting words, such as 'However' and 'Despite'.

## Linking to previous learning

14. a. [Casey has committed the criminal offence of culpable driving, which is regulated by criminal law.<sup>1</sup>]

✓ ✗ I have identified that Casey's actions would be regulated by criminal law.<sup>1</sup>

- b. [One purpose of criminal law that has been achieved in Casey's case is the protection of society.<sup>1</sup>] [Casey has been sentenced to 15 years imprisonment, therefore removing them from society for this period of time. By not being in society for 15 years, Casey will be unable to commit such an offence again, protecting society from their reckless behaviour.<sup>2</sup>]

[Another purpose of criminal law that has been achieved in Casey's case is that justice has been provided and the rule of law has been upheld.<sup>3</sup>] [Their case was heard in front of an impartial judge and jury. This upholds the rule of law as it means that Casey was convicted of culpable driving as a result of a fair and impartial trial, instead of due to Casey's personal characteristics or biases held by jurors.<sup>4</sup>]

✓ ✗ I have identified one purpose of criminal law that has been achieved in Casey's case.<sup>1</sup>

✓ ✗ I have provided an example from the scenario and linked it to my chosen purpose of criminal law.<sup>2</sup>

✓ ✗ I have identified a second purpose of criminal law that has been achieved in Casey's case.<sup>3</sup>

✓ ✗ I have provided an example from the scenario and linked it to my chosen purpose of criminal law.<sup>4</sup>

✓ ✗ I have used paragraphs to organise my response.

✓ ✗ I have used signposting in my response, such as 'One purpose' and 'Another purpose'.

## 2B The presumption of innocence

### Check your understanding

1. C. **Explanation:** The presumption of innocence may contribute to a fair trial and the right to silence, but it refers to the right to be considered innocent until proven guilty.
2. The presumption of innocence refers to the right for all **accused persons** to be presumed not guilty until it is proven otherwise, beyond reasonable doubt.
3. C. **Explanation:** The police must inform the accused person of their rights before questioning them, upholding the presumption of innocence as it may prevent an accused from unintentionally incriminating themselves.
4. A. **Explanation:** By not revealing prior convictions to a jury, the innocence of an accused is protected.
5. A. True. **Explanation:** Section 25 of the *Charter of Human Rights and Responsibilities Act 2006* (Vic) outlines both the presumption of innocence and the right to silence.



## Preparing for exams

### Standard exam-style

6. [The presumption of innocence refers to the guarantee made to all accused persons that they are to be treated as innocent until it is proven, beyond a reasonable doubt, that they are guilty of a criminal offence.<sup>1</sup>] [This guarantee is afforded to all accused persons, regardless of their personal situation or the circumstances of the case, therefore, upholding the principle of equality before the law.<sup>2</sup>]

☒ ☐ I have provided a concise definition of the 'presumption of innocence'.<sup>1</sup>

☒ ☐ I have provided information about the presumption of innocence.<sup>2</sup>

7. a. [One reason the presumption of innocence should be upheld during police questioning is to ensure accused people do not feel pressured by police to confess, or unintentionally provide incriminating evidence against themselves.<sup>1</sup>] [Police need to ensure the presumption of the individual's innocence is still respected and there is no abuse of power that could potentially lead to a miscarriage of justice.<sup>2</sup>]

☒ ☐ I have identified and defined one reason why the presumption of innocence should be upheld during police questioning.<sup>1</sup>

☒ ☐ I have provided information about my chosen reason.<sup>2</sup>

☒ ☐ I have used signposting in my response, such as 'One reason'.

- b. [One way the presumption of innocence may have assisted Jasmine is that she was able to remain silent to protect her innocence.<sup>1</sup>] [The right to silence is an aspect of the presumption of innocence that can assist an accused person and help them avoid incriminating themselves.<sup>2</sup>]

☒ ☐ I have identified one way the presumption of innocence may have assisted Jasmine.<sup>1</sup>

☒ ☐ I have provided information about my chosen way.<sup>2</sup>

☒ ☐ I have used signposting in my response, such as 'One way'.

8. [One element of criminal trial proceedings that upholds the presumption of innocence is the right to apply for bail and, if granted, await the trial in the community.<sup>1</sup>] [This right can only be refused if the accused poses a serious risk of not appearing in court, interfering with witnesses, or endangering society.<sup>2</sup>] [The presumption of innocence requires there to be no punishment before a person is found guilty of a crime. This right to apply for bail ensures, in most cases, that individuals merely suspected of a crime are not punished prior to their trial.<sup>3</sup>]

☒ ☐ I have identified one element of criminal trial proceedings that upholds the presumption of innocence.<sup>1</sup>

☒ ☐ I have provided information about my chosen element.<sup>2</sup>

☒ ☐ I have provided further information about my chosen element.<sup>3</sup>

☒ ☐ I have used signposting in my response, such as 'One element'.

9. [One error in the scenario is that the judge misdirected the jury on the presumption of innocence.<sup>1</sup>] [The judge is required to outline the presumption of innocence to the jury, explaining that the accused is assumed to be innocent until proven otherwise.<sup>2</sup>]

[The second error in the scenario is that the judge spoke about Jorge's prior convictions during the trial.<sup>3</sup>] [The court does not consider prior convictions until sentencing, as it would be unfair to determine a person's guilt based on past conduct rather than evidence.<sup>4</sup>]

[A third error in the scenario is that Jorge had to prove his innocence.<sup>5</sup>]

[The burden of proof in criminal trials rests with the prosecution and police, and they are required to prove Jorge's guilt. Jorge does not need to prove he is innocent.<sup>6</sup>]

☒ ☐ I have identified the first error in the scenario.<sup>1</sup>

☒ ☐ I have provided the correct procedure for the first error in the scenario.<sup>2</sup>

☒ ☐ I have identified the second error in the scenario.<sup>3</sup>

☒ ☐ I have provided the correct procedure for the second error in the scenario.<sup>4</sup>

☒ ☐ I have identified the third error in the scenario.<sup>5</sup>

☒ ☐ I have provided the correct procedure for the third error in the scenario.<sup>6</sup>

☒ ☐ I have used paragraphs to organise my response.

☒ ☐ I have used signposting in my response, such as 'One error' and 'The second error'.

### Extended response

10. Protecting the presumption of innocence: I; II  
Breaching the presumption of innocence: III

11. [Each person has the right to not be wrongfully arrested, therefore, the police must have adequate evidence and reason for suspicion before arresting a suspect.<sup>1</sup>] [The police had reasonable grounds to arrest Kai as they believed she had instigated a fight. The police had seen footage of the fight and believed Kai was the woman in the footage, meaning they had adequate evidence to arrest her.<sup>2</sup>]

[However, the police failed to inform her of her right to silence.

A person suspected of committing an offence does not usually need to answer police questions, other than providing their name and address, as they must be presumed innocent until proven otherwise, giving them the right to silence.<sup>3</sup>] [Kai was asked to provide details of the evening and where she was during the fight, without knowing she had a right to silence, thus breaching the presumption of innocence.<sup>4</sup>]

[The presumption of innocence, while somewhat upheld in Kai's case, was not fully delivered due to the inaction of the police who arrested her in informing her of her rights. Therefore, Kai has been treated unfairly and has not had full access to justice.<sup>5</sup>]

☒ ☐ I have provided one way the presumption of innocence was protected in the scenario.<sup>1</sup>

- ☒ ☐ I have provided an example from the scenario and linked it to the presumption of innocence.<sup>2</sup>
- ☒ ☐ I have provided one way the presumption of innocence was breached in the scenario.<sup>3</sup>
- ☒ ☐ I have provided an example from the scenario and linked it to the presumption of innocence.<sup>4</sup>
- ☒ ☐ I have provided a conclusion to my response that summarises the discussion and links back to the question.<sup>5</sup>
- ☒ ☐ I have used paragraphs to organise my response.
- ☒ ☐ I have used connecting words, such as 'However'.

### Linking to previous learning

12. [The presumption of innocence upholds the principle of equality as it ensures an accused person is not discriminated against.<sup>1</sup>] [The right to have prior convictions withheld from the jury allows accused people to be portrayed in a neutral light, with the aim to remove any prejudices held by the jurors.<sup>2</sup>]
- ☒ ☐ I have identified and defined one way the presumption of innocence upholds the principle of equality.<sup>1</sup>
  - ☒ ☐ I have provided information about my chosen way.<sup>2</sup>

## 2C Key concepts of criminal law

### Check your understanding

- B. False. **Explanation:** In order for justice to be effectively achieved, the various foundational components of the criminal justice system must work together.
- The two key elements of a crime are actus reus and mens rea. Actus reus refers to a guilty **act**, while mens rea refers to a guilty **mind**. Generally, both of these elements need to be satisfied to find an accused guilty.
- C. **Explanation:** For strict liability offences, only the actus reus element of a crime needs to be proven for an accused to be found guilty.
- True: I; II  
False: III; IV
- A; C. **Explanation:** The accused does not have the responsibility of proving the facts of the case against them as the prosecution is the party initiating the proceedings, and therefore has the burden of proof. Additionally, there are situations, such as if the accused raises the defence of self-defence, where the burden of proof may be reversed.
- B; D. **Explanation:** Murder and theft are not classified as strict liability offences as these crimes require both the mens rea and actus reus to be proven in order to find an accused guilty.
- C. **Explanation:** The standard of proof in criminal cases is beyond reasonable doubt, meaning that based on the evidence, there can be no reasonable or logical doubt that the accused is guilty.
- B; D; E. **Explanation:** The burden of proof is on the prosecution in criminal cases as this concept refers to who bears the responsibility of proving the facts of the case. Alternatively, the standard of proof

is beyond reasonable doubt in criminal law and applies to all cases, not only to strict liability offences

### Preparing for exams

#### Standard exam-style

9. [One element of a crime is actus reus.<sup>1</sup>] [The second element of a crime is mens rea.<sup>2</sup>]
- ☒ ☐ I have identified actus reus as an element of a crime.<sup>1</sup>
  - ☒ ☐ I have identified mens rea as an element of a crime.<sup>2</sup>
  - ☒ ☐ I have used signposting in my response, such as 'One element' and 'The second element'.
10. [The age of criminal responsibility refers to the age at which the law considers a child capable of understanding their wrongful actions and can consequently face criminal charges.<sup>1</sup>] [If a child is considered doli incapax, they cannot be charged with a crime as they are considered 'incapable of wrong' and the mens rea element of a crime cannot be established.<sup>2</sup>]
- ☒ ☐ I have defined the term 'age of criminal responsibility'.<sup>1</sup>
  - ☒ ☐ I have provided information about the age of criminal responsibility.<sup>2</sup>
11. [One reason for strict liability crimes is to protect society.<sup>1</sup>] [Even if an offender does not intend to cause harm, these acts can still be dangerous and threaten the safety of the community.<sup>2</sup>] [For example, running a red light is considered a strict liability crime.<sup>3</sup>] [Therefore, though an offender may not have intended to break the law and commit a crime, this sort of activity must be discouraged to protect the community from the potential harm that could occur if drivers do not abide by the road laws.<sup>4</sup>]
- ☒ ☐ I have identified one reason for strict liability crimes.<sup>1</sup>
  - ☒ ☐ I have provided information about my chosen reason.<sup>2</sup>
  - ☒ ☐ I have provided an example of a strict liability crime.<sup>3</sup>
  - ☒ ☐ I have provided information about my chosen example.<sup>4</sup>
  - ☒ ☐ I have used signposting in my response, such as 'One reason'.
12. [Mens rea translates to a 'guilty mind' and forms the mental element of a crime.<sup>1</sup>] [On the other hand, actus reus translates to a 'guilty act' and forms the physical element of a crime.<sup>2</sup>] [One key difference is that mens rea requires an offender to have an awareness of their criminal behaviour and its potential consequences, whereas, it must be proven that the offender physically undertook an action that constitutes a crime in order for actus reus to be satisfied.<sup>3</sup>]
- ☒ ☐ I have provided information about mens rea as an element of a crime.<sup>1</sup>
  - ☒ ☐ I have provided information about actus reus as an element of a crime.<sup>2</sup>
  - ☒ ☐ I have provided one key difference between mens rea and actus reus.<sup>3</sup>

- ✓ ✗ I have used signposting in my response, such as 'One key difference'.
- ✓ ✗ I have used comparison words, such as 'On the other hand' and 'whereas', when comparing.

13. [No, McQueen is not correct.<sup>1</sup>][Speeding is considered a strict liability crime, meaning an individual can be found guilty of this offence without mens rea needing to be proven.<sup>2</sup>][Even though McQueen may not have intended to break the law, their physical act of speeding in itself is enough to find them guilty and have them punished accordingly.<sup>3</sup>]

- ✓ ✗ I have identified that McQueen is not correct.<sup>1</sup>
- ✓ ✗ I have provided information about strict liability crimes.<sup>2</sup>
- ✓ ✗ I have provided an example from the scenario and linked it to the concept of strict liability crimes.<sup>3</sup>

### Extended response

14. True: II; III; IV  
False: I

15. [If Sunitha's case goes to court, the burden and standard of proof would be fundamental in determining her guilt.<sup>1</sup>]

[In this case, the prosecution has the burden of proof as they are pursuing the case against Sunitha.<sup>2</sup>][This means the prosecution has the responsibility of proving the facts of the case and the charge of theft against Sunitha. They will do this by presenting facts and evidence, such as the CCTV footage, to prove that Sunitha is guilty of stealing from the store.<sup>3</sup>]

[Moreover, the standard of proof in a criminal case is beyond reasonable doubt.<sup>4</sup>][In order to find Sunitha guilty, the prosecution must prove there is no reasonable or logical doubt that Sunitha is guilty of stealing cosmetics. This could be established through the CCTV footage and the employee's witness testimony recounting how Sunitha deliberately asked them to check the stock room before proceeding to steal the products.<sup>5</sup>]

[Therefore, the prosecution must satisfy the criminal standard of proof, beyond reasonable doubt, in order to prove Sunitha is guilty.<sup>6</sup>]

- ✓ ✗ I have provided an introduction to my response.<sup>1</sup>
- ✓ ✗ I have provided one aspect of the burden of proof.<sup>2</sup>
- ✓ ✗ I have provided an example from the scenario and linked it to the burden of proof.<sup>3</sup>
- ✓ ✗ I have provided one aspect of the standard of proof.<sup>4</sup>
- ✓ ✗ I have provided an example from the scenario and linked it to the standard of proof.<sup>5</sup>
- ✓ ✗ I have provided a conclusion to summarise my response.<sup>6</sup>
- ✓ ✗ I have linked my answer to the scenario where appropriate.
- ✓ ✗ I have used paragraphs to organise my response.
- ✓ ✗ I have used connecting words, such as 'Moreover' and 'Therefore'.

### Linking to previous learning

16. [The presumption of innocence is upheld by the burden of proof.<sup>1</sup>][As the burden of proof rests with the prosecution and refers to the responsibility of proving the facts of the case, the accused's presumed innocence is maintained as they are not required to prove the charges against them or their innocence.<sup>2</sup>]

- ✓ ✗ I have identified the relationship between the burden of proof and the presumption of innocence.<sup>1</sup>
- ✓ ✗ I have provided information about the relationship between the burden of proof and the presumption of innocence.<sup>2</sup>

## 2D Types of crime

### Check your understanding

- A. True. **Explanation:** Crimes can be broadly categorised based on the different characteristics of each offence.
- D. **Explanation:** Arson is categorised as a crime against property, as it involves deliberately setting fire to property to damage it.
- A; C; D. **Explanation:** Culpable driving is not an example of a crime against property. It is a crime against the person as it involves the death of another individual.
- Crimes that are motivated by prejudice towards a specific minority group are called **hate crimes**. On the other hand, crimes that operate in a corporate environment with the goal of financial gain are called **white-collar crimes**.
- Crimes against the person: I; III  
Crimes against property: II; IV
- Organised crime: I; II  
Cybercrime: III; IV
- B. False. **Explanation:** Crimes against property can be criminal offences as well as civil breaches.

### Preparing for exams

#### Standard exam-style

8. [Samantha committed a cybercrime.<sup>1</sup>][As she created a hacking software that targeted computers and sought to steal personal data, Samantha's offence can be classified as a cybercrime. Offences, like that of Samantha's, are becoming more common with the rise of technology.<sup>2</sup>][Cybercrimes are crimes directed at computers and where the use of computers and ICT technologies are key components of an offence.<sup>2</sup>][Hence, as Samantha's crimes were directed at computers and she stole online data, the crime can be classified as a cybercrime.<sup>3</sup>]

- ✓ ✗ I have identified the crime Samantha type of crime committed as a cybercrime.<sup>1</sup>
- ✓ ✗ I have provided information about cybercrimes.<sup>2</sup>
- ✓ ✗ I have provided an example from the scenario and linked it to cybercrimes.<sup>3</sup>
- ✓ ✗ I have used connecting, such as 'Hence'.

9. [Crimes against the person are criminal offences where a person is harmed or harm is threatened.<sup>1</sup>] [For instance, assault is a crime against the person since it involves the use of force to harm an individual.<sup>2</sup>] [Another example of a crime against the person is attempted murder, since it involves the threat of causing fatal harm to the victim.<sup>3</sup>]

☒ ☐ I have provided the definition of the term 'crimes against the person'.<sup>1</sup>

☒ ☐ I have provided one example of a crime against the person.<sup>2</sup>

☒ ☐ I have provided a second example of a crime against the person.<sup>3</sup>

☒ ☐ I have used signposting in my response, such as 'Another example'.

10. [Crimes against property are criminal offences that involve using force or deception to obtain, damage, or destroy property.<sup>1</sup>] [Generally, crimes against property involve the acquisition of money, personal property, or land.<sup>2</sup>] [For example, burglary is a crime against property as it involves trespassing in order to steal.<sup>3</sup>]

☒ ☐ I have defined the term 'crimes against property'.<sup>1</sup>

☒ ☐ I have provided information about crimes against property.<sup>2</sup>

☒ ☐ I have provided an example of a crime against property.<sup>3</sup>

☒ ☐ I have used connecting words, such as 'Generally'.

11. [Louis' crime could be categorised as a hate crime.<sup>1</sup>] [This is demonstrated through the homophobic slurs Louis was heard yelling, as hate crimes involve acts motivated by sexual orientation.<sup>2</sup>] [Additionally, his act of breaking the service station window was motivated by his hatred and prejudice against the queer community, hence classifying this offence as a hate crime.<sup>3</sup>]

☒ ☐ I have identified the type of crime Louis could have been convicted of.<sup>1</sup>

☒ ☐ I have provided one reason why Louis' offence can be categorised as a hate crime.<sup>2</sup>

☒ ☐ I have provided a second reason why Louis' offence can be categorised as a hate crime.<sup>3</sup>

12. [Organised crime is criminal activity that is generally carried out in a systematic and premeditated manner by an organised group. It can operate in a similar way, or under the guise of a legitimate business and involve criminal syndicates, gangs, or crime families.<sup>1</sup>] [One example of organised crime is drug trafficking.<sup>2</sup>] [On the other hand, white-collar crimes are non-violent crimes that are generally financially motivated.<sup>3</sup>] [One example of a white-collar crime is embezzlement.<sup>4</sup>] [One key difference between organised crimes and white-collar crimes is that organised crimes tend to involve a large network of individuals, whereas white-collar crimes can be conducted by a sole individual.<sup>5</sup>]

☒ ☐ I have provided information about organised crime.<sup>1</sup>

☒ ☐ I have provided an example of an organised crime.<sup>2</sup>

☒ ☐ I have provided information about white-collar crime.<sup>3</sup>

☒ ☐ I have provided an example of a white-collar crime.<sup>4</sup>

☒ ☐ I have provided one key difference between organised crimes and white-collar crimes.<sup>5</sup>

☒ ☐ I have used signposting in my response, such as 'One example' and 'One key difference'.

☒ ☐ I have used comparison words, such as 'On the other hand' and 'whereas', when distinguishing.

### Extended response

13. A; C; D; E

14. [This statement is incorrect. Whilst there are similarities between crimes against property and crimes against the person, there remain distinct differences between the categories of offences.<sup>1</sup>]

[One similarity is that both crimes against the person and crimes against property may involve a victim.<sup>2</sup>] [Both of these offences can result in victims suffering in some way due to the offender's actions.] [For example, kidnapping is a crime against the person, which causes suffering to a victim by depriving them of their personal freedom. Similarly, theft is a crime against property that causes suffering to a victim by depriving them of financial or other resources.<sup>3</sup>]

[However, one difference between these types of crime is the type of harm caused.<sup>4</sup>] [For crimes against the person, like assault, the harm is physically, emotionally, or mentally suffered by the victim. Comparatively, a victim of a crime against property may not be physically injured but their property could be harmed.<sup>5</sup>]

[Therefore, whilst there are similarities between crimes against the person and crimes against property, they remain separate categories of crimes that can have differing impacts on victims.<sup>6</sup>]

☒ ☐ I have stated that the statement is incorrect and provided a summary of my response.<sup>1</sup>

☒ ☐ I have provided one similarity between crimes against the person and crimes against property.<sup>2</sup>

☒ ☐ I have provided information about my chosen similarity.<sup>3</sup>

☒ ☐ I have provided one difference between crimes against the person and crimes against property.<sup>4</sup>

☒ ☐ I have provided information about my chosen difference.<sup>5</sup>

☒ ☐ I have provided a conclusion to my response that links back to the question.<sup>6</sup>

☒ ☐ I have used signposting in my response, such as 'One similarity' and 'one difference'.

☒ ☐ I have used connecting words, such as 'Therefore'.

☒ ☐ I have used comparison words, such as 'However' and 'Comparatively', when comparing.

## Linking to previous learning

15. [Samarth could be found guilty of burglary, which is a crime against the person.<sup>1</sup>] [One purpose of criminalising burglary is to protect people's property and personal safety.<sup>2</sup>] [This promotes a sense of security to individuals, such as Brielle, who have the right to enjoy their property and privacy without the threat of others illegally entering and stealing from them.<sup>3</sup>] [Another purpose of criminalising behaviour, like burglary, is to use the threat of punishment as a deterrent to others and stop other individuals from committing similar crimes.<sup>4</sup>] [The severity of the punishment for crimes against the person is intended to dissuade individuals like Samarth from trespassing and stealing the property of others.<sup>5</sup>]

- ☒ ☐ I have identified that Samarth could be found guilty of burglary.<sup>1</sup>
- ☒ ☐ I have provided one purpose of criminalising burglary.<sup>2</sup>
- ☒ ☐ I have provided information about my chosen purpose and linked it to the scenario.<sup>3</sup>
- ☒ ☐ I have provided a second purpose of criminalising burglary.<sup>4</sup>
- ☒ ☐ I have provided information about my chosen purpose and linked it to the scenario.<sup>5</sup>
- ☒ ☐ I have used signposting in my response, such as 'One purpose' and 'Another purpose'.

## 2E Summary offences and indictable offences

### Check your understanding

- B. **Explanation:** Summary and indictable offences are the two main categories of criminal offences in the justice system.
- Indictable offences are heard in the **County or Supreme Court**, whilst summary offences are heard in the **Magistrates' Court**.
- Summary: I; IV  
Indictable: II; III; V
- B. False. **Explanation:** Indictable offences heard summarily are considered less serious than indictable offences, but are more severe than summary offences.
- B; C. **Explanation:** For an indictable offence to be heard summarily the offence must not be punishable by a maximum term exceeding 10 years of imprisonment, the court must agree and determine it is appropriate, and the accused must consent to having their offence(s) heard summarily.
- In Victoria, most indictable offences are included in the **Crimes Act 1958 (Vic)**, whilst indictable offences heard summarily are established in the **Criminal Procedure Act 2009 (Vic)**. Alternatively, the **Summary Offences Act 1966 (Vic)** sets out summary offences in Victoria.
- B. False. **Explanation:** Summary offences, indictable offences, and indictable offences heard summarily are heard and determined within the criminal justice system.

## Preparing for exams

### Standard exam-style

8. [One category of criminal offences is summary offences, which are minor criminal offences usually resolved in the Magistrates' Court.<sup>1</sup>] [Additionally, another category of offences is indictable offences, which are criminal offences that are serious in nature and generally heard by a judge and a jury in the County or Supreme Court.<sup>2</sup>]

- ☒ ☐ I have identified and defined one category of offences in the criminal justice system.<sup>1</sup>
- ☒ ☐ I have identified and defined a second category of offences in the criminal justice system.<sup>2</sup>
- ☒ ☐ I have used signposting in my response, such as 'One category' and 'another category'.
- ☒ ☐ I have used connecting words, such as 'Additionally'.

9. [Indictable offences heard summarily are a subset of indictable offences that can be heard in the Magistrates' Court in a similar manner to a summary offence. Only eligible offences can be heard summarily.<sup>1</sup>] [For an indictable offence to be heard summarily, the offence must not be punishable by a term exceeding 10 years of imprisonment, the court must agree and determine it is appropriate, and the accused must consent to having their offence(s) heard summarily.<sup>2</sup>]

- ☒ ☐ I have defined the term 'indictable offences heard summarily'.<sup>1</sup>
- ☒ ☐ I have provided information about indictable offences heard summarily.<sup>2</sup>

10. [Summary offences are minor criminal offences usually resolved in the Magistrates' Court.<sup>1</sup>] [Alternatively, indictable offences are criminal offences that are serious in nature and generally heard by a judge and a jury in the County or Supreme Court.<sup>2</sup>] [One key difference between summary and indictable offences is that summary offences are established in the *Summary Offences Act 1966 (Vic)*, whereas, indictable offences are set out in the *Crimes Act 1958 (Vic)*.<sup>3</sup>]

- ☒ ☐ I have provided information about summary offences.<sup>1</sup>
- ☒ ☐ I have provided information about indictable offences.<sup>2</sup>
- ☒ ☐ I have provided one key difference between summary and indictable offences.<sup>3</sup>
- ☒ ☐ I have used signposting in my response, such as 'One key difference'.
- ☒ ☐ I have used comparison words, such as 'Alternatively' and 'whereas', when distinguishing.

11. [As Elsa was caught drink-driving, this is considered a summary offence.<sup>1</sup>] [One feature of summary offences is that they are less severe and are, consequently, heard in the Magistrates' Court where a fine or small term of imprisonment would be issued as the sanction to Elsa if she were found guilty.<sup>2</sup>] [Another feature of summary offences is that they are mostly established in the *Summary Offences Act 1966 (Vic)* and include driving offences, like driving whilst under the influence of alcohol in the case of Elsa.<sup>3</sup>]



[Finally, a third feature of summary offences is that there is no option to trial by jury, meaning the magistrate will determine the guilt of Elsa if her case is taken to court.<sup>4</sup>]

- ✓ ✗ I have identified the type of offence Elsa has committed.<sup>1</sup>
- ✓ ✗ I have provided one feature of summary offences.<sup>2</sup>
- ✓ ✗ I have provided a second feature of summary offences.<sup>3</sup>
- ✓ ✗ I have provided a third feature of summary offences.<sup>4</sup>
- ✓ ✗ I have linked my answer to the scenario where appropriate.
- ✓ ✗ I have used signposting in my response, such as 'One feature' and 'Another feature'.

### Extended response

12. B; C

13. [I agree with this statement to a moderate extent. Whilst the Magistrates' Court does not facilitate jury trials, if the accused has their indictable offence tried summarily, they would face a less severe sanction.<sup>1</sup>]

[Firstly, it can be beneficial for the accused to have their offence heard summarily as less severe sanctions are handed down in the Magistrates' Court.<sup>2</sup>] [The maximum imprisonment sentence that can be imposed by a magistrate for one indictable offence is two years, and five years for two or more offences. Therefore, if an accused is found guilty in the Magistrates' Court there are less severe maximum sentences that can be handed down, compared to higher courts which can impose longer imprisonment sentences.<sup>3</sup>]

[Furthermore, hearings in the Magistrates' Court are more cost and time efficient.<sup>4</sup>] [As the Magistrates' Court specialises in hearing a high number of less serious offences, cases are heard more frequently and delays to having a case resolved may be minimised. This can reduce the cost of legal representation for the accused and allow the case to be determined in a more timely manner, compared to if it were to be heard as an indictable offence in a higher court where there are greater delays.<sup>5</sup>]

[However, a trial by jury is not available for indictable offences heard summarily. If an accused wishes to have a jury trial they cannot have their offence heard summarily as the Magistrates' Court does not conduct jury trials.<sup>6</sup>] [Therefore, some accused persons may not consent to having the matter determined summarily, although this may increase the cost and time associated with the case.<sup>7</sup>]

[Overall, it is more beneficial in terms of sanctions, time, and costs, to have an indictable offence tried summarily rather than as an indictable offence in a higher court.<sup>8</sup>]

- ✓ ✗ I have provided an introduction to state the extent to which I agree or disagree with the statement.<sup>1</sup>
- ✓ ✗ I have provided one reason why I agree or disagree with the statement.<sup>2</sup>
- ✓ ✗ I have provided information to support my chosen reason.<sup>3</sup>
- ✓ ✗ I have provided a second reason why I agree or disagree with the statement.<sup>4</sup>
- ✓ ✗ I have provided information to support my chosen reason.<sup>5</sup>

- ✓ ✗ I have provided a third reason why I agree or disagree with the statement.<sup>6</sup>
- ✓ ✗ I have provided information to support my chosen reason.<sup>7</sup>
- ✓ ✗ I have provided a conclusion to my response that links back to the question.<sup>8</sup>
- ✓ ✗ I have used paragraphs to organise my response.
- ✓ ✗ I have used signposting in my response, such as 'Firstly' and 'Overall'.
- ✓ ✗ I have used connecting words, such as 'Therefore' and 'Furthermore'.

### Linking to previous learning

14. [The type of crime Joshua committed is a crime against property.<sup>1</sup>] [Additionally, the type of offence Joshua committed is a summary offence.<sup>2</sup>]

- ✓ ✗ I have identified the type of crime Joshua has committed.<sup>1</sup>
- ✓ ✗ I have identified the type of offence Joshua has committed.<sup>2</sup>
- ✓ ✗ I have used connecting words, such as 'Additionally'.

## 2F Possible participants in a crime

### Check your understanding

- A person who is involved, either directly or indirectly, with the commission of an offence, is a **principal offender**. However, a person who was less involved but had knowledge of an individual committing an indictable offence is considered an **accessory**.
- B. False. **Explanation:** There can be multiple accessories and multiple principal offenders to a crime.
- B. **Explanation:** Jasmine is still the principal offender even though she was not at the crime scene, as she planned and instigated the offence.
- A. **Explanation:** Commissioning someone to commit a criminal offence indicates that person has the mens rea of the offence and thus, may be found to be the principal offender.
- B. False. **Explanation:** An accessory to a crime can be found guilty of an offence even where the principal offender is found not guilty.

### Preparing for exams

#### Standard exam-style

- [An accessory is any person who knows or believes that a person is guilty of a serious indictable offence and acts to prevent the arrest, prosecution, or punishment of that person.<sup>1</sup>] [Even where the principal offender is found not guilty of a crime, an accessory to a crime can be still be found guilty of an offence.<sup>2</sup>]



☒ ☐ I have defined the term 'accessory'.<sup>1</sup>

☒ ☐ I have provided information about an accessory as a possible participant in a crime.<sup>2</sup>

7. [One way an individual can be an accessory to a crime is if they lie to the police about a principal offender's whereabouts at the time of an offence.<sup>1</sup>] [A second way an individual can be an accessory to a crime is if they hide a principal offender from the police or other investigators.<sup>2</sup>]

☒ ☐ I have identified one way an individual can be an accessory to a crime.<sup>1</sup>

☒ ☐ I have identified a second way an individual can be an accessory to a crime.<sup>2</sup>

☒ ☐ I have used signposting in my response, such as 'One way' and 'A second way'.

8. [Principal offenders are those considered to be immediately linked to the crime.<sup>1</sup>] [On the other hand, an accessory is any person who knows or believes a person is guilty of a serious indictable offence and acts to prevent the arrest, prosecution, or punishment of that person.<sup>2</sup>] [One key difference between principal offenders and accessories is that principal offenders can be sentenced to the maximum penalty, whereas, accessories have altered sentencing guidelines that are less severe.<sup>3</sup>]

☒ ☐ I have provided information about principal offenders.<sup>1</sup>

☒ ☐ I have provided information about accessories.<sup>2</sup>

☒ ☐ I have provided one key difference between principal offenders and accessories.<sup>3</sup>

☒ ☐ I have used signposting in my response, such as 'One key difference'.

☒ ☐ I have used comparison words, such as 'On the other hand' and 'whereas', when distinguishing.

9. [Sally can be sentenced to the maximum penalty for the bank robbery because she was the principal offender, which is the individual who actually commits the offence and/or is directly linked to the enactment of the crime.<sup>1</sup>] [The principal offender does not have to physically carry out the crime in order to be found guilty.<sup>2</sup>] [As Sally planned the crime, it is likely the actus reus and mens rea elements could be proven beyond reasonable doubt. Consequently, Sally could be found guilty of and sentenced to the maximum penalty for the bank robbery crime.<sup>3</sup>]

☒ ☐ I have identified why Sally can be sentenced to the maximum penalty in this case.<sup>1</sup>

☒ ☐ I have provided one reason why Sally can be sentenced to the maximum penalty in this case.<sup>2</sup>

☒ ☐ I have provided information about my chosen reason why Sally can be sentenced to the maximum penalty in this case.<sup>3</sup>

10. [The first error in the scenario is that Lucia's trial did not proceed due to Jael being found not guilty.<sup>1</sup>] [An accessory's trial is able to proceed regardless of the outcome of the principal offender's trial, meaning Lucia's trial would still proceed even though Jael was acquitted.<sup>2</sup>]

[The second error in the scenario is that Eisha was found guilty as an accessory.<sup>3</sup>] [A person who enters an agreement to commit an offence is involved in the commission of that offence and can be found guilty as a principal offender, not an accessory. This means Eisha would be tried as a principal offender as opposed to an accessory.<sup>4</sup>]

☒ ☐ I have provided one error in the scenario.<sup>1</sup>

☒ ☐ I have provided the correct procedure for the first error in the scenario.<sup>2</sup>

☒ ☐ I have provided a second error in the scenario.<sup>3</sup>

☒ ☐ I have provided the correct procedure for the second error in the scenario.<sup>4</sup>

☒ ☐ I have used paragraphs to organise my response.

☒ ☐ I have used signposting in my response, such as 'The first error' and 'The second error'.

### Extended response

11. D

12. [In this scenario, Jenny, Harold, and Robert are participants in the crime of stealing the car and would each be considered principal offenders, despite their differing involvement.<sup>1</sup>]

[A principal offender is the individual who actually commits the offence and/or is directly linked to the enactment of the crime.<sup>2</sup>]

[Jenny would be considered a principal offender in this case as she devised the plan associated with executing the crime and, thus, she likely had both mens rea and actus reus.<sup>3</sup>] [Whilst she was not present at the crime scene on the day of the offence, she was still involved in its execution and instigated the actions of Robert and Harold via earpiece.<sup>4</sup>]

[Moreover, Harold would also be considered a principal offender as he also wanted the money for the Bali trip and directly committed the crime.<sup>5</sup>] [Through Harold's acting, Robert was able to steal the car, therefore, directly assisting and enabling the execution of the crime.<sup>6</sup>]

[Finally, Robert would also be considered a principal offender as he was responsible for carrying out the actus reus component of the offence by stealing the motor vehicle.<sup>7</sup>] [Robert was the individual who drove the motor vehicle and therefore, directly stole it from the dealership, committing the offence.<sup>8</sup>]

☒ ☐ I have provided an introduction to my response.<sup>1</sup>

☒ ☐ I have defined the term 'principal offender'.<sup>2</sup>

☒ ☐ I have identified Jenny as a principal offender in this scenario.<sup>3</sup>

☒ ☐ I have provided information about Jenny as a principal offender.<sup>4</sup>

☒ ☐ I have identified Harold as a principal offender in this scenario.<sup>5</sup>

- 
- ✓ ✕ I have provided information about Harold as a principal offender.<sup>6</sup>
- 
- ✓ ✕ I have identified Robert as a principal offender in this scenario.<sup>7</sup>
- 
- ✓ ✕ I have provided information about Robert as a principal offender.<sup>8</sup>
- 
- ✓ ✕ I have used paragraphs to organise my response.
- 
- ✓ ✕ I have used signposting in my response, such as 'Finally'.
- 
- ✓ ✕ I have used connecting words, such as 'Moreover'.
- 

### Linking to previous learning

13. a. [Aaron is the principal offender in this case as he committed the offence himself.<sup>1</sup>]

- ✓ ✕ I have provided an example from the scenario and linked it to the principal offender.<sup>1</sup>
- 

- b. [Aaron has committed a summary offence.<sup>1</sup>] [This is because it is a minor offence that will likely result in a fine.<sup>2</sup>]

- ✓ ✕ I have identified that Aaron would be charged with a summary offence.<sup>1</sup>
- 

- ✓ ✕ I have provided information about summary offences.<sup>2</sup>
- 

SAMPLE CONTENT ONLY  
(SUBJECT TO CHANGE)