

Week 1 — Foundations of Criminal Procedure

Key provisions. Key provisions: Criminal Procedure Act 2009 (Vic) ss 27-30, 197, 254-259, 272-294; Crimes Act 1958 (Vic) s 2B, s 325(6); Sentencing Act 1991 (Vic) ss 109, 112; County Court Act 1958 (Vic) s 36A; Youth Justice Act 2004 (Vic) s 10; Evidence Act 2008 (Vic) ss 55, 56, 138; Charter of Human Rights and Responsibilities Act 2006 (Vic) ss 24-27.

1. Why Week 1 matters in the exam

Week 1 supplies the framework for almost every later problem question. The sources treat criminal procedure as a system concerned with fairness, proper allocation of power, and correct choice of court. The exam is problem-based and open-book, so the task is not to recite abstract theory but to identify the procedural issue raised by the facts, locate the correct statutory route, and apply it in an organised way.

EXAM TIP. Exam angle: the revision page says the exam contains problem-based question(s) and requires Victorian law only, careful identification of the applicable Act, application of law to facts, and succinct logical structure. The seminar questions should be treated like practice exams.

2. Adversarial criminal procedure: who does what?

The lecture presents Australian criminal procedure as adversarial. The proceedings are in the hands of the parties, while the judge is constructed to referee. This matters because many Week 1 and Week 2 issues ask who bears responsibility at each stage.

Actor	Role from the sources	Why it matters
Police	Investigate, gather evidence, decide whether charges should be laid, and in Week 2 may arrest with or without warrant.	Problem questions often begin with police conduct; legality of that conduct can affect liberty and admissibility.
Prosecution / Crown	The prosecution must prove the case; it brings the charge on behalf of the State. The victim is not the prosecutor.	Supports presumption of innocence and explains why the accused bears no burden of proving innocence.
Defence	Gathers evidence, chooses witnesses, cross-examines, and may plead guilty or contest the charge.	Shows why representation matters to fairness and why lack of counsel may jeopardise a serious trial.
Judge / magistrate	Impartial neutral fact finder or legal referee depending on the proceeding; oversees admissibility and fairness; may order Victoria Legal Aid to provide representation under s 197 CPA if fair trial cannot otherwise be ensured.	Central to fair trial questions and jurisdiction questions.

Actor	Role from the sources	Why it matters
Jury	May be the fact finder in appropriate matters; the trial/hearing is the exclusive forum for determining guilt through independent evaluation of evidence.	Explains why the sources emphasise proper disclosure and admissibility rules.
Victim	Largely relegated to the role of witness; has no recognised status in the pre-trial investigation or the trial itself.	A common misconception is to treat the victim as controlling the prosecution.
Victoria Legal Aid	Provides representation to eligible accused; courts can direct it to fund representation where necessary for a fair trial.	Important in fairness questions involving unrepresented accused.

THE LAW. Core adversarial features from the lecture: (1) responsibility for gathering evidence rests with prosecution and defence; (2) guilt is determined in the trial/hearing by an impartial fact finder; (3) the parties retain substantial discretion, including prosecutorial discretion not to proceed and the accused's option to plead guilty; (4) parties choose witnesses and evidence, with cross-examination by the opposing party; (5) the victim is largely a witness and prosecution is brought on behalf of the State.

TRAP. Do not say the judge investigates the case for the parties. The sources describe the judge's role as referee/arbitrator, not primary investigator.

3. Fair trial: the organising principle

The seminar materials say the right to a fair trial is a fundamental concept of the adversarial system. The lecture and podcast broaden this: fairness is not only about what happens inside the courtroom, but about fair process across the criminal proceeding. The transcript identifies presumption of innocence as first and foremost, and explains that the Crown must prove the case; the accused does not need to prove anything.

The Gertie's Law transcript adds practical content to fairness: an accused has the right to know the charge, the right to know the evidence the prosecution brings, the right to test that evidence in front of the jury, and the right to representation so the accused is not disadvantaged. The transcript also says there should be no trial-by-ambush: every piece of evidence should be known by both sides, and complete disclosure is critical.

THE LAW. Fair trial points repeatedly stated in the sources: presumption of innocence; prosecution bears the burden of proof; accused must know the charge; accused must know the prosecution evidence; accused may test that evidence; accused should not be disadvantaged by lack of representation in a serious matter.

EXAM TIP. How fairness is tested in class materials: the lecture poses scenarios about late disclosure of CCTV, trying unrelated charges together, and refusing to adjourn a complex fraud trial where

Legal Aid is refused. In each, ask whether the accused lost a real chance of acquittal or whether representation/process might have affected the outcome.

Dietrich and statutory follow-through

The seminar slides treat *Dietrich v The Queen* (1992) as the key authority. The common law does not recognise an absolute right to counsel at public expense, but the High Court held that if trial of an accused for a serious crime is going to be unfair because the accused is unrepresented, the trial judge should stay the proceedings until legal representation can be obtained. The slides express unfairness as loss of a real chance of acquittal, or the possibility that representation might have affected the outcome.

CASE. *Dietrich v The Queen* (1992) — accused for serious crime lacked representation; held there is no absolute common-law right to publicly funded counsel, but if the trial would be unfair because the accused is unrepresented, the judge should stay the proceedings until representation can be obtained; principle: fair trial may require halting the case.

CASE. *R v Chaouk* — used in the seminar as the proposition that the judge must grant an adjournment if the trial is likely to be unfair because of lack, or insufficiency, of legal representation.

THE LAW. Section 197 CPA 2009 (Vic): refusal of legal assistance does not by itself provide a ground for adjournment or stay, s 197(2). But the court may order Victoria Legal Aid to provide legal representation if it is satisfied that the court is unable to ensure the accused will receive a fair trial unless represented, and the accused is unable to afford private representation: s 197(3) (as paraphrased in the seminar slides).

EXAM TIP. Seminar Question 3 structure: (1) identify fairness as the issue; (2) say refusal of legal aid alone is insufficient under *Dietrich* and s 197(2) CPA; (3) assess whether the lack or insufficiency of representation makes the trial likely unfair; (4) consider whether the court can order representation under s 197(3); (5) if so, adjourn until representation is provided.

TRAP. Do not write that every refusal of Legal Aid automatically stops the trial. The sources say the legal question is whether the trial is likely to be unfair.

4. Admissibility and fairness: unlawful evidence does not automatically disappear

Although detailed search powers are treated later in the subject, Week 1 already uses unlawful police conduct to teach fairness and admissibility. The seminar question about Constable McGuire assumes the search was unlawful and asks whether the evidence about the dead body is admissible.

The seminar answer structure is clear. First, relevant evidence is admissible in principle: ss 55 and 56 Evidence Act 2008 (Vic). Secondly, illegally or improperly obtained evidence may be excluded under s 138, but is not automatically excluded. The seminar slides say the party seeking exclusion bears the onus initially, and then the other party must establish that the desirability of admitting the evidence outweighs the undesirability of admitting it, having regard to the s 138(3) factors. The balancing factors specifically highlighted in the slides are probative value, importance of the evidence, nature of the offence, and gravity of the impropriety or contravention.

CASE. *R v Ireland* — cited in the seminar to show that improperly obtained evidence is not automatically excluded and to connect this principle with s 138 Evidence Act 2008 (Vic).

THE LAW. Illegally or improperly obtained evidence: start with relevance (ss 55, 56 EA). Then apply s 138 EA: evidence is not to be admitted unless the desirability of admitting it outweighs the undesirability of admitting evidence obtained in that way, considering the s 138(3) factors.

EXAM TIP. Practice method from Seminar Question 2: separate prosecution and accused arguments. For the prosecution: stress probative value, importance of the evidence, and seriousness of the offence. For the accused: stress lack of warrant, no consent, locked boot, and awareness of wrongdoing. Conclude only after balancing.

TRAP. Do not jump from “illegal search” to “inadmissible.” The slides expressly say exclusion is discretionary, not automatic.

5. Determining jurisdiction

The lecture identifies several variables relevant to jurisdiction: alleged offence, whether the offence is state or federal, crime classification, and the age of the offender. Week 1 is foundational because later questions assume you can identify the correct court before analysing procedure.

Variable	Source rule	Practical consequence
State or federal offence	Most criminal law and procedure is state-based in Victoria; the unit focuses on state law.	Use Victorian legislation unless the source expressly raises a Commonwealth offence for comparison.
Age	Under 12: no jurisdiction, Youth Justice Act 2004 (Vic) s 10. Age 12–17: Children’s Court (criminal division). Age 18+: Magistrates’ Court.	Always check age before assuming ordinary adult process.
Classification	Summary offences, indictable offences heard summarily, indictable offences, and serious indictable offences are treated differently.	Classification controls forum and available procedure.

The lecture also notes an exception to the Children’s Court criminal division: it may deal with all charges except murder, attempted murder, manslaughter, child homicide, homicide by firearm, arson causing death, culpable driving causing death, or a designated offence committed when the child was 15 or above.

TRAP. Ages are not decorative facts. In problem questions, age may change the court entirely.

6. Classification of offences

The central Week 1 classification task is to decide whether an offence is summary or indictable, and whether an indictable offence may nonetheless be heard summarily. The sources provide several routes.

6.1 Starting points for classification

1. Check whether the offence section itself states the classification.
2. If not, check whether the statute states a default rule.
3. If classification is not express, use the penalty level scale in ss 109 and 112 Sentencing Act 1991 (Vic).

THE LAW. Routes to classification from the lecture: offence section may specify; statute may specify; otherwise use penalty level under s 112 Sentencing Act 1991 (Vic), read with the scale in s 109.

6.2 Statutory default rules and examples

The seminar and lecture emphasise s 2B Crimes Act 1958 (Vic): offences under that Act are, unless the contrary intention appears, deemed to be indictable offences. The lecture also gives the contrasting example of s 34BB Crimes Act 1958 (Vic), where subsection (3) says the offence is a summary offence. The lecture directs attention as well to s 52 Interpretation of Legislation Act 1984 (Vic).

EXAM TIP. Seminar Question 4 is a direct exam model: ask first whether the offence sits in the Crimes Act 1958 (Vic); if yes, state the s 2B default unless a contrary intention appears.

6.3 Penalty levels

Type	Penalty level	Maximum imprisonment	Maximum fine
Indictable	1	Life	-
Indictable	2	25 years	3,000 penalty units
Indictable	3	20 years	2,400 penalty units
Indictable	4	15 years	1,800 penalty units
Indictable HS	5	10 years	1200 penalty units
Indictable HS	6	5 years	600 penalty units
Summary	7	2 years	240 penalty units
Summary	8	1 year	120 penalty units
Summary	9	6 months	60 penalty units
Summary	10	-	10 penalty units
Summary	11	-	5 penalty units
Summary	12	-	1 penalty unit

EXAM TIP. Seminar Question 5 uses the penalty-level route. A hypothetical Victorian offence with a level 7 penalty is a summary offence, so it must be heard in the Magistrates' Court under s 27 CPA 2009 (Vic).

6.4 Examples used in the seminar

- s 16 Crimes Act 1958 (Vic) — Causing serious injury intentionally: expressly stated to be an indictable offence; penalty level 3 (20 years maximum).
- s 326 Crimes Act 1958 (Vic) — Concealing offences for benefit: stated to be a summary offence and liable to level 8 imprisonment (1 year maximum).

7. Indictable offences heard summarily

Not every indictable offence must go to a higher court for trial. The lecture sets out a separate pathway for indictable offences heard and determined summarily in the Magistrates' Court.

THE LAW. Eligibility under s 28 CPA: the offence must be a level 5 or 6 offence or an offence listed in Schedule 2. Procedural requirements under s 29(1) CPA: the court must be satisfied the charge is appropriate to be heard and determined summarily, and the accused must consent to summary hearing.

THE LAW. Section 29(2) CPA factors identified in the lecture: seriousness of the offence, including nature of the offence, manner of commission, degree of organisation, aggravating circumstances, whether it forms part of a series, complexity of the proceeding, adequacy of available sentences having regard to seriousness and criminal record, whether a co-accused is charged with the same offence, and any other relevant matter.

THE LAW. Section 30 CPA: prosecutor or accused must apply for the case to be heard summarily, or the court may offer to deal with the matter summarily.

The lecture gives Schedule 2 examples: theft under s 74 Crimes Act 1958 (Vic) where the value does not exceed \$100,000 or the property is a motor vehicle, and robbery under s 75 where value does not exceed \$100,000.

TRAP. Do not assume every indictable offence may be heard summarily. You must deal with both eligibility and procedure.

8. Court hierarchy in Victoria

Court	Original jurisdiction from the sources	Appeal role from the sources
Magistrates' Court	Summary offences; indictable offences heard summarily; committal proceedings.	None listed as an appellate court in the lecture table.
County Court	Indictable offences except murder, attempted murder, treason and certain conspiracies: s 36A County Court Act 1958 (Vic).	Appeals from Magistrates' Court against conviction and/or sentence on questions of fact.
Supreme Court (Trial Division)	Murder, treason, complex indictable offences.	Appeals from Magistrates' Court on questions of law.
Court of Appeal (Supreme Court)	None listed as original jurisdiction in the lecture table.	Appeals from County Court and Supreme Court (Trial Division) against conviction or sentence.
High Court of Australia	Original jurisdiction noted by reference to s 75 Constitution and s 30 Judiciary Act 1903 (Cth).	Appeals from State/Territory Supreme Courts and appeal against High Court original jurisdiction.

The lecture also separately identifies Koori Court divisions in the Magistrates', Children's and County Courts. The accused must be an Aboriginal or Torres Strait Islander person, and the person must have pleaded guilty or been found guilty; no sexual offences. Sentencing occurs through a conversation around a table, but sentence is imposed by the magistrate or judge.

EXAM TIP. If a problem asks where a matter goes, move in order: age, classification, then court hierarchy. If the question is about appeals, distinguish fact appeals from law appeals exactly as the lecture does.

9. Appeals framework highlighted in Week 1

The lecture gives specific Criminal Procedure Act appeal routes:

- Convicted person: from Magistrates' Court to County Court under ss 254-256 on questions of fact.
- Convicted person: from Magistrates' Court to Supreme Court under ss 272-273 on questions of law.
- From County Court or Supreme Court (Trial Division) to Court of Appeal: conviction appeals under ss 274-277; sentence appeals under ss 278-286.
- The Crown may appeal sentence from Magistrates' Court to County Court under ss 257-259, and from County Court or Supreme Court to Court of Appeal under ss 287-294.

EXAM TIP. Practice Exam 1 tests appeal thinking later in the unit by asking whether Leo's conviction appeal is likely to succeed after problematic judicial remarks and a majority verdict scenario. Even though the detailed jury law is later, Week 1 teaches you to identify the appellate pathway and the institutional role of appellate courts.

10. How Week 1 themes are tested in practice materials

- Fairness / representation: Seminar Question 1 and 3 ask whether lack of representation makes the trial unfair, pushing students to use Dietrich, R v Chaouk, and s 197 CPA.
- Admissibility / fairness: Seminar Question 2 asks whether unlawfully obtained evidence is admitted, requiring relevance plus s 138 balancing.
- Classification: Seminar Questions 4 and 5 ask whether an offence is summary or indictable and which court hears it.
- Fair trial and jury concerns in practice exam materials: Practice Exam 2 asks whether a person worried about a fair trial can exclude biased jurors; Practice Exam 1 asks about conviction appeal after a judge's comment and majority verdict; the Practice Exam 3 answer guide shows fair trial language again when discussing juror misconduct and whether a fair trial can no longer be guaranteed.

TRAP. Week 1 is not "just background." The same ideas reappear as threshold issues in arrest, evidence, jury, and appeal questions.

11. Problem-solving checklist

1. Identify the procedural issue: fairness, classification, jurisdiction, summary hearing, admissibility, or appeal route.
2. Identify the governing Act and exact section number from the source materials.
3. If classification is in issue, check first for express wording in the offence section, then the statute default, then penalty level under ss 109 and 112 Sentencing Act.

4. If jurisdiction is in issue, address age, offence type, and classification before naming the court.
5. If an indictable offence may be heard summarily, address s 28 eligibility, s 29 appropriateness and consent, and s 30 application pathway.
6. If fairness is in issue, explain what aspect of fair trial is engaged: presumption of innocence, disclosure, ability to test evidence, representation, or impartial process.
7. If the accused lacks representation, state the Dietrich principle, then apply s 197 CPA.
8. If unlawfully obtained evidence is involved, start with relevance (ss 55, 56 EA), then apply s 138 and balance the competing factors.
9. State the likely conclusion in the language of the issue: fair/unfair, summary/indictable, proper/improper forum, admissible/inadmissible or likely admitted/excluded.
10. Finish with a short reason tied directly to the facts, not just a recitation of the rule.