

Legal Studies Unit 4

AOS 1 Dispute Resolution Methods.



Key knowledge #1

The reasons for a court hierarchy

The court hierarchy:

Jurisdiction

- **Jurisdiction** refers to the power, or authority of a court to _____
- **Original jurisdiction** refers to the power to hear a case _____
- For example the original jurisdiction of the Magistrates' Court is:
 - criminal:
 - civil:

Federal Courts

Federal Courts operate at a national level.

These include:

- the _____ Court
- the _____ Court
- the _____ Court (operate within each state except WA)
- Courts within the Victorian hierarchy may interact with these courts depending on the nature of the case they are hearing.
- All courts in the Victorian hierarchy are bound by precedent set by the _____

You do not need to know the jurisdiction of these courts for the exam

The Court Hierarchy

- The different courts in Australia are ranked in a hierarchy with the _____ courts hearing the more serious or _____ cases.
- We do this for a number of reasons....

Robert Farquharson case

- Farquharson was convicted of murdering his 3 sons of Father's day 2005.



Robert Farquharson Case

- 2007 – Farquharson was charged with murder, pleaded not guilty and the trial was heard at the Supreme Court in front a Judge and Jury.
- He was found guilty by the jury
- Sentenced to life imprisonment without parole
- Farquharson appealed the verdict on the grounds of conviction

Reasons for a hierarchy

A court hierarchy enables the workload of the courts to be divided. This allows each court to develop a level of expertise .

The court processes are also _____ to provide for specialised legal personnel and legal procedures.

Judges and Magistrates in each court have a _____ understanding of the law in relation to the types of cases that they hear. This promotes _____ of disputes.

eg: Supreme Court Trial Division- _____
Family Court- _____

Reasons for a hierarchy

A court hierarchy makes efficient use of the limited financial and physical resources available. This _____ the amount of _____ by providing a means for allocating cases according to their seriousness and complexity.

The jurisdiction of each court is clearly established and people do not need to waste _____ initiating an action in an inappropriate court.

eg minor cases are heard by the Magistrates' Court

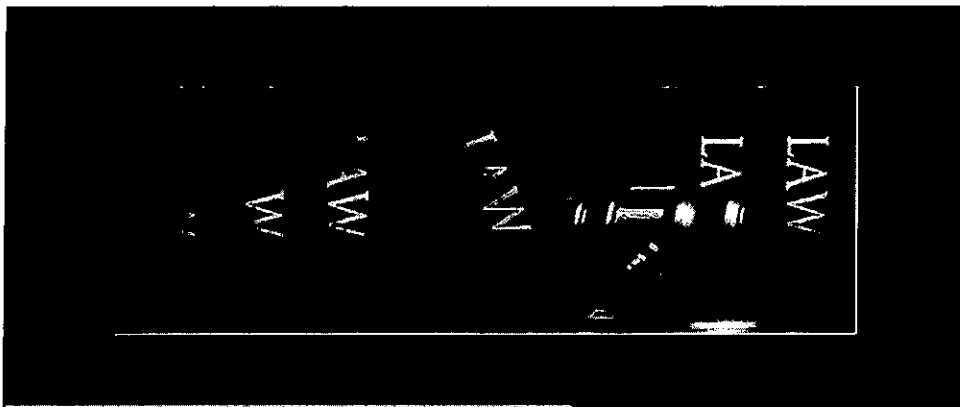
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AOS 1 Dispute Resolution Methods



Key knowledge #2

Original and appellate jurisdictions of the Victorian Magistrates' Court, County Court, and Supreme Court (Trial Division and Court of Appeal)



Victorian Court Hierarchy

Magistrates' Court



Magistrates' Court

Criminal Jurisdiction

- _____
- _____
- _____
- _____
- _____

The maximum sentence that can given by the Magistrates' Court is two years for a single offence

Hears Summary Offences: Minor offence



Magistrates' Court

Indictable offences heard summarily

For an indictable offence to be tried summarily three elements must be satisfied:

- The prosecutor or the defendant must _____ to have the case heard summarily
- The court must be satisfied that the matter is _____ to be determined summarily; the court may decide that the offence is too serious or too complex to be heard by a magistrate
- The defendant must _____ on the day of the hearing the court will ask the defendant "do you consent that charges against you shall be tried by us or do you desire that it shall be sent to trial by jury?"

Magistrates' Court

Indictable offences heard summarily

Advantages:

- The matter will be dealt with relatively _____
- If the defendant is found guilty the _____ is less than if it were heard by the County Court
- The Magistrates' Court is less _____
(legal representation is not required)

Magistrates' Court
Civil Jurisdiction

- Hears civil disputes up to \$_____
- Matters worth less than \$_____ are referred to arbitration (this is still *via* the Magistrates' Court as the arbitrator may be a magistrate or a court registrar)
- The Magistrates' Court has the jurisdiction to operate as a Family Court in certain matters
 - eg urgent injunctions, Child Support Agency applications, family violence matters

Magistrates' Court

The Magistrates' Court has NO APPELLATE JURISDICTION for either civil or criminal cases.

This is because:

County Court



**Indictable offence:
A Serious offence**



County Court

Civil Jurisdiction

- _____ to hear all civil disputes, irrespective of the amount claimed
- Hears claims against _____ (eg where loss or injury occurred from use of roads, buildings etc.)
- Plaintiff, defendant and judge are present (_____)

County Court

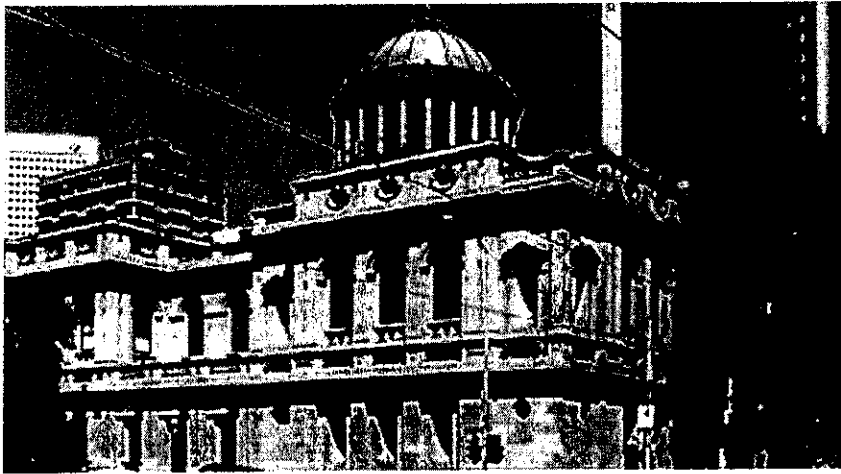
Appellate criminal jurisdiction

- Against _____ or _____ from the Magistrates' Court

Appellate civil jurisdiction

- The County Court has NO civil appellate jurisdiction

Supreme Court



Supreme Court

- The Supreme Court is the highest Victorian court. The Supreme Court is presided over by a judge referred to as a 'Justice'.
- The Supreme Court consists of:

- _____
- _____

Supreme Court- Trial Division

Appellate criminal jurisdiction

- Appeals on **points of law** from the Magistrates' Court

Appellate civil jurisdiction

- Appeals on **points of law** from the Magistrates' Court and VCAT.

Supreme Court- Court of Appeal

- The Court of Appeal is a division of the Supreme Court.
- Judges in the Court of Appeal are referred to as 'Justice of Appeal'
- Is usually presided over by _____ (sometimes 2) judges. At the court's discretion, it can sit with up to _____ justices on matters of 'significant importance'
- The Court of Appeal has _____ and can only hear cases brought to it from a lower court.

The Court Hierarchy

	Original Criminal Jurisdiction	Appellate Criminal Jurisdiction	Original Civil Jurisdiction	Appellate civil jurisdiction
Supreme Court (Court of Appeal)				
Supreme Court (Trial Division)				
County Court				
Magistrates' Court				

The Magistrates' Court

Function

Deals with less _____ offences and less _____ civil claims

Handles _____% of court appearances.

Structure

- Presided over by a _____
- No _____
- _____ determines the outcome

Original Criminal Jurisdiction

- Hears less serious criminal offences known as _____ offences

Examples include:

- _____
- _____
- _____

- Can hear _____ offences if they are heard _____

Must satisfy 3 conditions:

- _____
- _____
- _____

Original Civil Jurisdiction

- Can hear claims of up to \$ _____
- Matters of less than \$ _____ are referred to _____

Appellate Jurisdiction

The Magistrates' Court has _____ appellate jurisdiction, this is because: _____

Specialist Divisions

Specialist courts include:

_____	_____
_____	_____
_____	_____

- Hears claims against _____ (where loss/injury from use of roads, buildings etc)
- Heard by a judge (a jury is _____ and consists of _____ members)
- Plaintiff, defendant or a judge may request a _____ (the party who requested it must pay)
- Jury decides in favour of the defendant or the plaintiff and can determine the _____ to be awarded
- If there is no jury, the _____ will determine the outcome

Appellant Criminal Jurisdiction

- Hears appeals from the _____ Court against a _____ or _____
- Appeal must be lodged within a _____ of sentencing

The County Court has _____ Appellant Civil Jurisdiction

Appeals from the County Court

- In both criminal and civil cases, appeals go to the _____ of _____

The Supreme Court

Function

- Is a superior court of record which means that _____
- Deals with _____
- Has an extensive _____

Structure

- Two divisions: _____ and _____
- Judges are addressed as ' _____ '

Original Criminal Jurisdiction

- Hears most serious criminal cases such as _____
- When pleading not guilty, heard by a _____ and _____ similar to County Court

- When an appeal is against a sentence, the court may:
 - _____ or _____ an appeal
 - _____ the sentence imposed at trial and impose a _____ one

- Appeals against a conviction may be because
 - The trial judge made a wrong decision on a _____
 - The trial judge did not observe the rules of _____ or procedural fairness
 - The judge _____ on a question of law or fact
 - The verdict of the jury was _____

- When an appeal is against a conviction, the court may:
 - _____ the conviction or penalty
 - Order a _____
 - If not successful, the conviction will stand—the penalty may be _____

Appellate Civil Jurisdiction

- Appeals from _____ and _____
- Appeals from _____ when order made by the president or Vice President on:
 - _____
 - _____
 - _____

Appeals from the Court of Appeal

- Heard by the _____

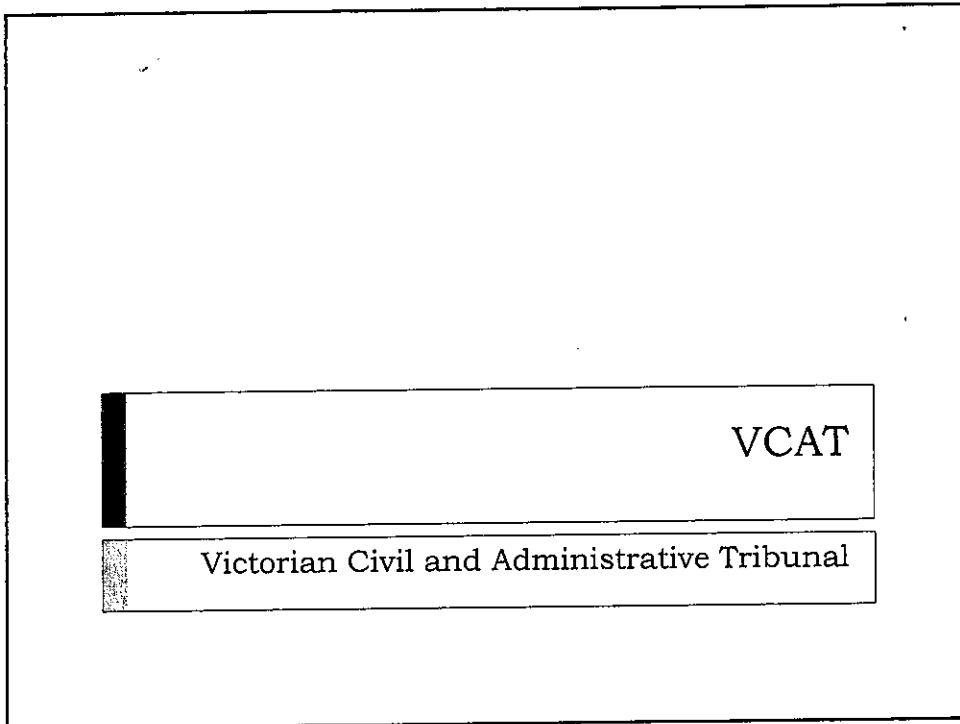
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AOS 1 Dispute Resolution Methods



Key knowledge #3

The role of VCAT



Tribunals

- ▶ Tribunals are a _____ method of dispute resolution for **civil disputes** than taking a matter to court
 - ▶ They usually deal with a limited area of the law and build up expertise in that area
 - ▶ Tribunals tend to focus on social issues, rather than legal issues, therefore reaching a more equitable decision in many instances
-

VCAT

- ▶ VCAT hears more civil cases than all Victorian Courts combined (_____ cases per year)
- ▶ Established to overcome the problem of having too many separate tribunals
- ▶ Its role is to deal with disputes between people and disputes between people and government agencies.

“

_____”

VCAT Annual Report 2008-09

VCAT

▶ **President:**

▶ **A number of vice presidents and deputy presidents:**

▶ **Senior and ordinary members**

- ▶ These members may be full time, part time or sessional

▶

VCAT

Low Cost

- ▶ Fees will be waived if parties experience _____

 - ▶ Parties are able to _____
 - ▶ Victoria Legal Aid will provide assistance where required
-

VCAT

Timely Resolution

- ▶ Usual delay is around _____ (Residential
Tenancies List)
 - ▶ Usual delay is around _____ (Civil
Claims List)
-

VCAT

Original jurisdiction

- ▶ *Victorian Civil and Administrative Tribunal Act 1998 (Vic.)*

- ▶ **Orders**

VCAT can:

- ▶ Require a party to _____
 - ▶ Require a party to _____
 - ▶ Require a party to _____
 - ▶ Declare that a debt is or is not owing
 - ▶ Review, vary or cancel a contract
 - ▶ Dismiss a claim
-

▶

VCAT

Compulsory Conferences

- ▶ VCAT may direct parties to attend a compulsory conference. This may be held to:

- ▶ _____ the nature of the issues in dispute
 - ▶ _____
 - ▶ Identify the questions of fact and law to be decided
 - ▶ Allow directions to be given concerning the conduct of the hearing, such as the filing and serving of witness statements
-

▶

Fill in the blanks

Complete the following cloze exercise by filling in the blank spaces with the correct word from the list below. Read the entire extract before filling in the blanks. When you have completed the exercise, re-read the final passage.

lists	settlement	negotiation	members
tribunal	arbitration	administrative	resolution
mediated	appeal	president	divisions
government	compulsory	streamline	hearing
questions	mediation	individuals	civil
discrimination	human rights	conciliation	directions

VCAT stands for Victorian Civil and Administrative _____. VCAT was established in 1998 to _____ the operation of various administrative tribunals in Victoria. VCAT is divided into three _____. These are the _____ Division, which deals with matters relating to disputes between _____, the _____ Division, which deals with matters relating to disputes between an individual and the _____, and the _____ Division, which deals with cases involving _____ and other areas. Each division has sections known as _____, which hear particular types of cases.

VCAT is headed by a _____, who is also a Supreme Court judge, and Vice-Presidents, who are County Court judges. VCAT _____, who are responsible for conciliating and arbitrating individual disputes, are allocated to each list. VCAT generally uses _____, _____ and _____ to resolve disputes. However, the dispute _____ processes used by VCAT can vary from list to list, as different types of disputes require different approaches. Sometimes VCAT will direct parties to attend a _____ conference, which is an informal pre-hearing conference, in order to identify and clarify the nature of the issue and _____ of fact and law; to promote a _____; and allow for _____ to be given. VCAT can arrange for a case to be _____ to help to settle a dispute. If this is not successful, the matter will be referred back to VCAT for a _____, which is conducted in a relatively informal atmosphere. A party who is not satisfied with VCAT's decision can lodge an _____ to the Court of Appeal or the Trial Division of the Supreme Court.

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AOS 1 Dispute Resolution Methods

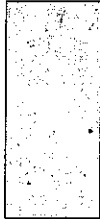


Key knowledge #4

Dispute resolution methods used by the courts and VCAT, including mediation, conciliation, arbitration and judicial determination.

**DISPUTE RESOLUTION
METHODS**

MEDIATION, CONCILIATION, ARBITRATION AND
JUDICIAL DETERMINATION



DISPUTE RESOLUTION METHODS

- Both the courts and VCAT use a variety of methods to resolve criminal and civil disputes
- Most _____ are resolved through _____ where a judge or magistrate determines the outcome of the case
- In _____, it is often cheaper, quicker and more suitable to attempt to resolve a case through _____ (alter native dispute resolution)

IMPORTANT!!!
ADR is now a _____ step in most state courts before civil matters reach a hearing before a court or VCAT

MEDIATION

Purpose

- The aim of mediation is to allow the parties to have their say without being restricted by the _____

- It also allows parties to investigate the underlying reasons for the problem
- It promotes a _____ solution where both parties are happy with the outcome

USE OF MEDIATION

- **Dispute Settlement Centre of Victoria** individuals may contact this centre to attempt mediation at any time
- **VCAT**
 - Encourages parties to resolve their disputes via mediation to reduce cost and disruption to parties.
 - Approx _____ of VCAT disputes are resolved through mediation
 - If a settlement is not reached, the matter will proceed to a _____.

RESTRICTIONS

- Will only work when both parties are willing to _____
- Mediation is unsuitable in situations where:
 - Parties have no ongoing relationship
 - The dispute is highly _____
 - The dispute involves violence or threatening behaviour
 - there is an _____ between parties
- The outcome is not legally binding (_____)

CONCILIATION

- Conciliation is a process of dispute resolution where a third party _____ the parties in reaching a resolution.
- Conciliation differs from mediation in that the conciliator exercises a greater _____ over the outcome.
- The conciliator, who is someone with _____, suggests options and possible solutions and is more directive than a mediator.
- The decisions made by the parties is _____ but is more likely to be followed because it has been made with the assistance of a third party

WEAKNESSES

- _____
- _____ (if they do not attend, the matter will have to be pursued through the courts)
- _____ (may mean that parties do not feel represented)

ARBITRATION

- Arbitration is a method of resolving disputes without having to access the court system
- An independent arbitrator will listen to both sides and _____ on the parties.
- This may be _____ (such as in the Magistrates' court) or parties may have previously agreed to settle their dispute via arbitration

USE OF ARBITRATION

- Arbitration is used in some VCAT lists, such as the Residential Tenancies List, which deals with disputes between _____
- The **Victorian Bar Dispute Resolution Scheme** has trained arbitrators available for use in private or commercial situations.

STRENGTHS

JUDICIAL DETERMINATION

- During trials or hearings, parties are given the opportunity to present evidence, question witnesses and make submissions
- Cases are bound by the strict _____
- _____
- Legal representation is advisable due to _____ nature of court proceedings
- Legal representation should present their case in the best possible light.
- At the end of the case, the judicial officer will make a _____ binding decision

USE OF JUDICIAL DETERMINATION

- **Victorian court hierarchy**
- **VCAT** in some instances

Dispute Resolution Methods

	What is it?	Role of the third party?	Legally Binding?	When is it used? Provide examples
Mediation				
Conciliation				
Arbitration				
Judicial Determination				

Evaluating Dispute Resolution Methods

Definition	Strengths	Weaknesses
Mediation		
Conciliation		
Arbitration		
Judicial Determination		

Alternative Dispute Resolution

Case 1- Alex and Jess are disputing over \$20,000. Jess claims Alex sold her a 'dud' car.

They have attempted to engage in mediation to assist them in resolving their dispute. What does this entail?

What skills would the mediator possess? _____

Outline the process the mediator would use

Would the decision be legally binding? _____

If this fails, and they choose to attend court, which court would hear the dispute? _____

What is the full civil jurisdiction of this court?

Who would adjudicate this case? _____

Would the decision be legally binding? _____

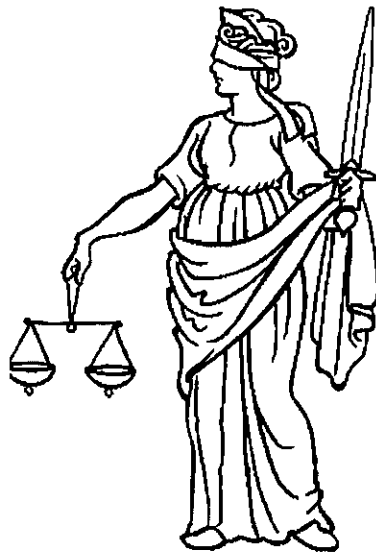
Case 2- Elle and Lily are disputing over \$2,000 to repair Elle's car after Lily crashed it

Why might Elle be tempted to abandon this dispute? _____

Someone suggested they try conciliation, what does this involve?

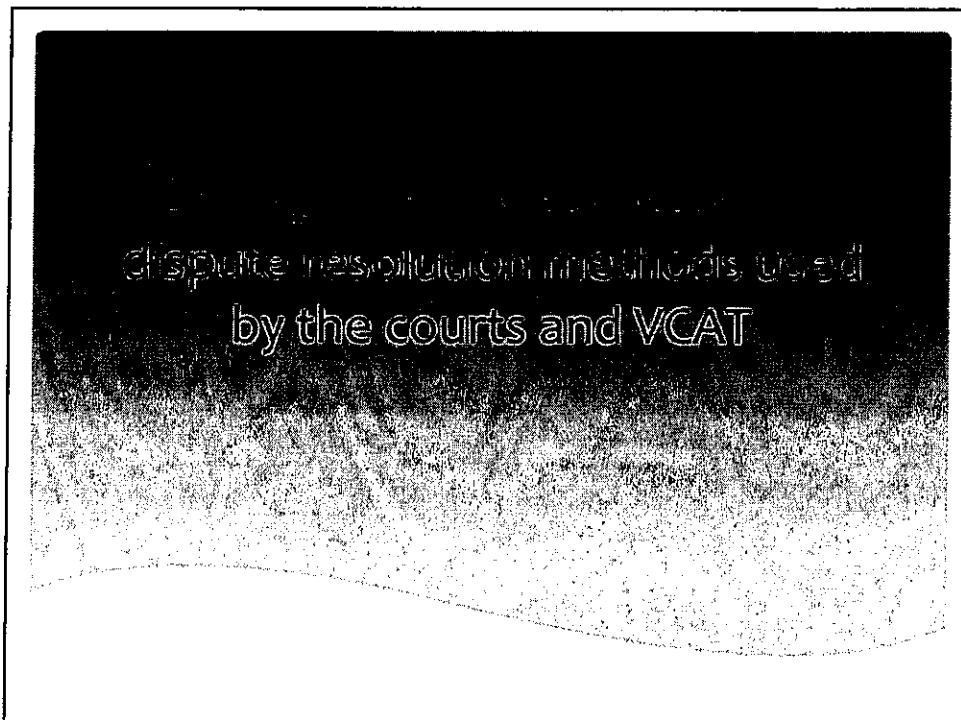
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AOS 1 Dispute Resolution Methods



Key knowledge #5

Strengths and weaknesses of dispute resolution methods used by courts and VCAT



Strengths of ADR

- * _____ not bound by strict rules of evidence and procedure. This makes it less intimidating and cheaper (do not have to hire legal representation)
- * Conducted in a _____
- * Cheaper than litigation
- * _____ - unlike court system which is open to the public
- * **Voluntary**- which means parties can leave at any time

Weaknesses of ADR

- * One party may **choose** _____ the resolution process if it is voluntary
- * It is not appropriate in most _____
- * If a decision cannot be reached it may have to _____

Strengths of judicial determination

- * **Decision is binding** and can be enforced through the courts
- * **Judicial officers are experienced professionals**
- * Parties may feel **more satisfied** with the formality of having a judge decide a case
- * It is appropriate for **both civil and criminal cases**

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AOS 1 Dispute Resolution Methods



Key knowledge #6


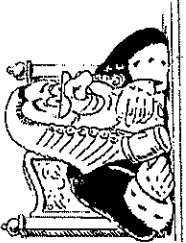

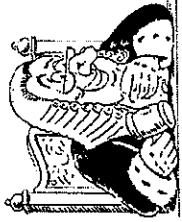
Strengths and weaknesses of the way courts and VCAT operate to resolve disputes.



Judicial Determination

Strengths of Courts	Weaknesses of Courts

Evaluating the way in which courts and VCAT operate to resolve disputes

	STRENGTH - VCAT 	STRENGTH - COURT 	WEAKNESS - VCAT 	WEAKNESS - COURT 
Attendance				
Cost				
Legal Representation				
Decision				
Confidentiality				
Formality				
Adversarial Nature				

Legal Studies Unit 4

AOS 1 Dispute Resolution Methods



Revision

Revision Questions

1. What are the main reasons for a court hierarchy?
2. Explain two reasons why tribunals with specialist jurisdictions were introduced
3. If an appeal was lodged as a result of a VCAT list, where would it go and under what circumstances?
4. How does VCAT help to keep the costs low when settling a dispute?
5. Suggest why VCAT has grown in importance in the Victorian legal system
6. What problems could arise if parties attempted to take matters into their own hands rather than negotiate a settlement to the problem?
7. Explain the operation of two methods of alternative dispute resolution
8. Compare and contrast mediation and conciliation as alternative methods of dispute resolution.
9. Describe the process of arbitration and explain one way in which it differs from a formal court proceeding
10. Critically evaluate using ADR as a means of resolving civil disputes
11. Why do we need alternative methods of dispute resolution?
12. Explain two reasons why there has been a rapid growth of alternative dispute resolution methods.
13. "Mediation is only used by tribunals, and has no place in the court system." To what extent do you agree with this statement? Explain.
14. Are some methods of dispute resolution more appropriate for criminal or civil cases? explain
15. "A party in a civil dispute is more likely to receive justice if their dispute is resolved through the court system than if it is resolved through ADR" discuss this statement, and indicate the extent to which you agree.
16. Discuss the main reasons for the use of tribunals
17. Why might someone feel more satisfied with an outcome if it has been decided by a judge?
18. Why is a system of appeals necessary?
19. Distinguish between arbitration and judicial determination
20. When is arbitration used in the Magistrates' Court?
21. Recently a critic of the Australian legal system commented that a hierarchy of courts is not necessary. Outline one reason to justify the existence of the hierarchy
22. Explain the civil and criminal jurisdiction of the County Court of Victoria
23. Bruce, aged 18, has been charged with breaking into a house and stealing an HD television. He has decided to plead not guilty to the charge and have it hear in the Magistrates' Court. His friend, Danni, tells him that Bruce could have this case tried in another court if he wanted to; and if Bruce is convicted in the Magistrates' Court, there is more than one possible appeal available to him. Do you agree with Danni's advice? Give reasons for your answer. (2007 exam)
24. Victorian Attorney-General, Rob Hulls has said that he prefers the term ADR to mean 'Appropriate Dispute Resolution,' rather than 'Alternative Dispute Resolution.' Suggest reasons why he might prefer this term.
25. 'Tribunals should be used in preference to courts.' Discuss

CRIMINAL CASES AND CIVIL DISPUTES - TRIBUNALS

\$10,000 civil Opportunity Access Evidence Three	Tenancies compensation courts discrimination Administrative conciliation	procedure costs landlords \$10,000 consumers Civil	work Human Rights Anti-Discrimination specialise Supreme Administrative
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1. Tribunals have developed as an alternative method of dispute resolution as they are able to take some of the _____ load from the traditional _____. Tribunals tend to _____ in one area, for example, equal opportunity, and they can provide _____ to dispute resolution in matters too small to be considered by the courts.
2. The Victorian _____ and _____ Tribunal (VCAT) is a tribunal created in 1998 to reduce _____ and simplify access. It is divided into _____ divisions, the _____ division, the _____ division and the _____ division.
3. VCAT is headed by a President who is a _____ Court judge.
4. VCAT provides an informal method of dispute resolution. Strict rules of _____ and _____ are not used. Costs are kept down.
5. The Anti-Discrimination List of VCAT hears claims of unlawful _____. It hears those disputes that cannot be solved through the Equal _____ Commission. It can order a sum of money to be paid in _____.
6. The Equal Opportunity Commission uses _____ processes to solve disputes involving discrimination. Most disputes are solved and this stage and do not get to the _____ List.
7. The Civil Claims List of VCAT offers a cheap way of resolving disputes between _____ and traders, where the claim does not exceed _____.
8. The Residential _____ List of VCAT deals with disputes between _____ and tenants where the amount claimed does not exceed _____.

Briefly explain each of the specialist divisions

Koori Court Division	
Drug Court Division	
Neighbourhood Justice Centre	
Family Violence Division	

County Court

Original Criminal Jurisdiction	Original Civil Jurisdiction
Appellate Criminal Jurisdiction	Appellate Civil Jurisdiction

Where do appeals from the County Court go?

Against sentence _____

Amount of damages _____

Against conviction _____

On a question of fact _____

A point of law _____

Who hears a criminal case? _____

Who hears a civil case? _____

Dispute Resolution Review

Name the third party for each of these types of dispute resolution

Mediation _____

Conciliation _____

Arbitration _____

Judicial
Determination _____

Give an example of when each type of method is used

Mediation _____

Conciliation _____

Arbitration _____

Judicial
Determination _____

Explain why each of these is an advantage of ADR

Less formal	
Cheaper than court	
Voluntary	
Not adversarial	

Short answer and extended response questions

Specific instructions to students

Answer all questions in the spaces provided.

QUESTION 1

Describe the types of cases heard by the Victorian Civil and Administrative Tribunal (VCAT).

Answer:

Lined writing area for Question 1.

3 marks

QUESTION 2

VCAT aims to increase accessibility to the legal system for parties in civil disputes. Explain how VCAT achieves this.

Answer:

Lined writing area for Question 2.

3 marks

QUESTION 3

Explain *two* differences between a court and a tribunal such as VCAT.

Answer:

Lined writing area for Question 3.

4 marks

