

SUPREME COURT EDUCATION PROGRAM

COMPANION
GUIDE



NOTES TO THE TEACHER

This student booklet accompanies the Supreme Court's VCE Education Program and complements a school's visit to the Supreme Court of Victoria.

It has been produced for Year 11 and 12 VCE Legal Studies students and covers a range of skills that include:

- evaluative writing skills
- creative tasks, and
- research tasks.

This booklet explains the roles of people who work in the courtroom, the procedures of a trial and provides for discussion of how a trial reaches the Supreme Court.

Key knowledge areas include:

- an overview of the criminal jurisdiction of courts in the Victorian court hierarchy
- the features of a fair trial and rights in criminal proceedings guaranteed by the *Charter of Human Rights and Responsibilities Act 2006*
- an overview of the adversarial nature of a criminal trial, and
- the role of court personnel.

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Enquiries:

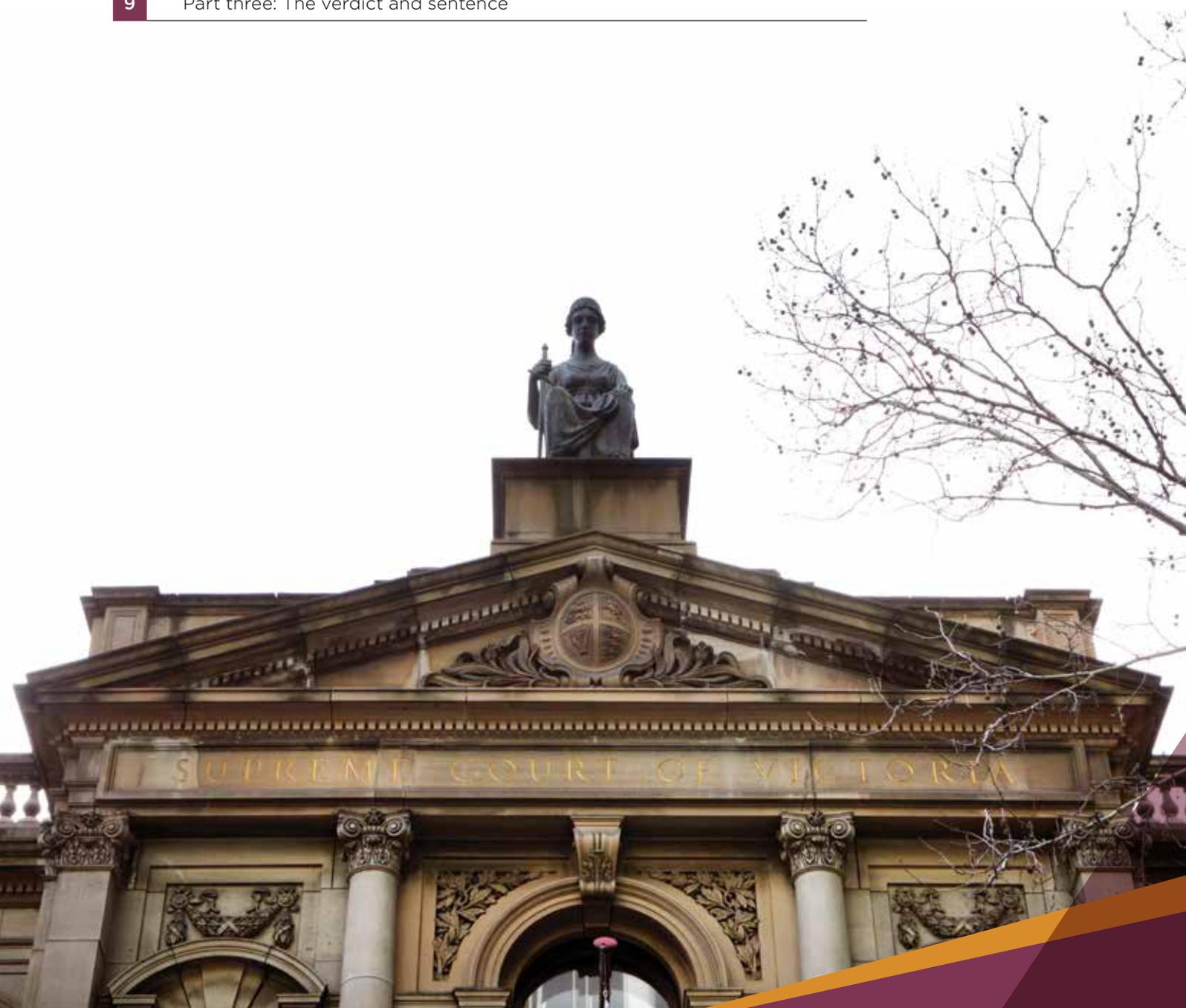
Supreme Court of Victoria
210 William Street
Melbourne Victoria 3000

Tel: 03 9603 6111
Email: info@supremecourt.vic.gov.au

www.supremecourt.vic.gov.au

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ABOUT THE SUPREME COURT OF VICTORIA

The Supreme Court of Victoria is the highest court in Victoria, hearing among the most serious criminal and complex civil cases in the state, as well as appeals from Victorian courts and tribunals.



The Supreme Court has two divisions; the Trial Division and Court of Appeal. The Trial Division, comprised of the Commercial Court, Common Law and Criminal Divisions, hears civil and criminal cases, while the Court of Appeal hears appeals from Supreme and County Court decisions. The Court of Appeal also hears some appeals from decisions made by the Victorian Civil and Administrative Tribunal (VCAT).

The Court of Appeal determines whether a trial was conducted fairly, and whether the law was applied correctly. Upon hearing an appeal, judges in the Court of Appeal may order a retrial, change the decision (for example, increase or reduce a sentence of imprisonment) or conclude that there was no error and that lower court's decision stands.

HEARING CASES

Most Supreme Court trials are heard in Melbourne at 210 William Street.

The Court also visits many regional locations to hear matters originating from the district, including Ballarat, Bendigo, Geelong, Hamilton, Horsham, Morwell, Mildura, Sale, Shepparton, Wangaratta, Warrnambool and Wodonga.

A fundamental principle of Australia's legal system is open justice, which ensures transparency and a fair trial for all who come before the courts. Students and members of the public are welcome to visit the Supreme Court during business hours to observe proceedings.

A list of all Supreme Court matters being heard on a particular day is published on the Court's website.

It's very important to be aware of your surroundings in the Court precinct. It's best not to discuss or make comments about proceedings until well away from the courtroom as witnesses, parties or relatives of those involved in cases might be nearby.

WHAT HAPPENS IN A CIVIL TRIAL?

In civil cases, a party (an individual or organisation) takes action against another party who they believe has infringed their legal rights. The party bringing the action or 'suing' the other party is known as the 'plaintiff', while the party defending the case or being 'sued' is known as the 'defendant'.

In civil matters, a case is decided 'on the balance of probabilities'. This is a lower standard of proof than the criminal standard of 'beyond reasonable doubt'.

Civil trials may be heard and decided by a judge sitting alone or with a jury of six. In jury trials, the judge rules on points of law and the jury decides factual issues.

During the trial, each party presents their arguments and evidence, taking it in turns to call and question witnesses. After closing addresses, the judge (or jury) reaches a conclusion which is decided on the evidence presented throughout the trial, and according to the law (as explained to the jury, by the judge). If the trial was heard by the judge sitting alone, the judge will hand down a written judgment containing the judge's reasons for their decision. In jury trials, a verdict is delivered by the jury. This usually takes the form of short answers to questions formulated by the judge and, unlike a judgment, no reasons are given.

Nearly all of the Supreme Court's work involves civil cases, with many civil matters settling before reaching trial. The Court encourages parties to resolve issues in private or judicially-facilitated mediation. Mediation is a confidential process for settling disputes that avoids the need for a lengthy or expensive civil trial. Judicially-facilitated mediation in the Supreme Court is conducted by associate judges and judicial registrars.

In the Supreme Court, civil matters are heard in the Commercial Court and in the Common Law Division.

The Commercial Court deals with disputes arising out of trade or commercial transactions, including arbitration, taxation, insurance, banking and finance and intellectual property, as well as technology, engineering and construction matters.

The Common Law Division decides cases that fall into two main areas:

1. Claims in tort or contract law, including claims involving professional negligence, personal injury and defamation.
2. Proceedings relating to the Court's supervisory jurisdiction over other Victorian courts, tribunals and public officials such as applications for judicial review and appeals on a question of law.

Class actions are proceedings brought on behalf of seven or more people where the claims arise out of the same, similar or related circumstances and which raise common factual and legal questions.

Class actions are heard both in the Commercial Court and Common Law Division of the Court. They are also referred to as 'group proceedings' or 'representative proceedings'.



WHAT HAPPENS IN A CRIMINAL TRIAL?

The Criminal Division hears criminal cases of the most serious nature, such as murder, manslaughter and attempted murder.

In addition to its original jurisdiction to hear criminal trials and pleas, the judges of the Criminal Division also hear applications and reviews under various criminal legislation. For example, bail applications where the charge is murder or the review of supervision orders made when a person has established the defence of mental impairment.

INNOCENT UNTIL PROVEN GUILTY

In Australia's legal system, an accused person is innocent until proven guilty. A criminal charge laid by the police is only a formal accusation and it is up to the prosecution to prove in court the accused's guilt 'beyond reasonable doubt'. This is called the 'burden of proof'.

In the Supreme Court of Victoria a criminal trial is held before a judge and a jury of 12 people. The prosecution and defence present all relevant and admissible evidence to the jury. The jury decides whether the accused person is guilty or not guilty.

Throughout the trial, each side will call witnesses and take it in turns to question, cross-examine and re-examine them.

Once all of the witnesses have given their evidence and closing addresses have been made, the judge will 'charge' the jury. This involves explaining the legal issues and summarising the evidence and arguments from both sides to the jury.

When a jury has reached a unanimous decision, the jury foreperson will tell the court whether they find the accused person guilty or not guilty. If a unanimous verdict cannot be reached after a reasonable time, the judge may also accept a majority verdict (11 out of 12 jurors). A majority verdict cannot be considered if the offence is murder, treason, an offence against section 71 or 72 of the *Drugs, Poisons and Controlled Substances Act 1981* or a Commonwealth offence.

If the jury fails to reach either a unanimous or majority verdict after a reasonable amount of time, the presiding judge may declare a mistrial due to a hung jury. In this instance the jury will be dismissed. The case may be retried at a later date, as decided by the judge and prosecution.

If the jury finds the accused person not guilty, the accused is acquitted. The prosecution cannot appeal to a higher court against an acquittal. If the jury finds the accused guilty, the accused will be sentenced by the judge.

TRIAL BY JURY

A jury is an independent group of people randomly chosen from the Victorian electoral roll and empanelled to decide on the evidence in a case and reach a verdict.

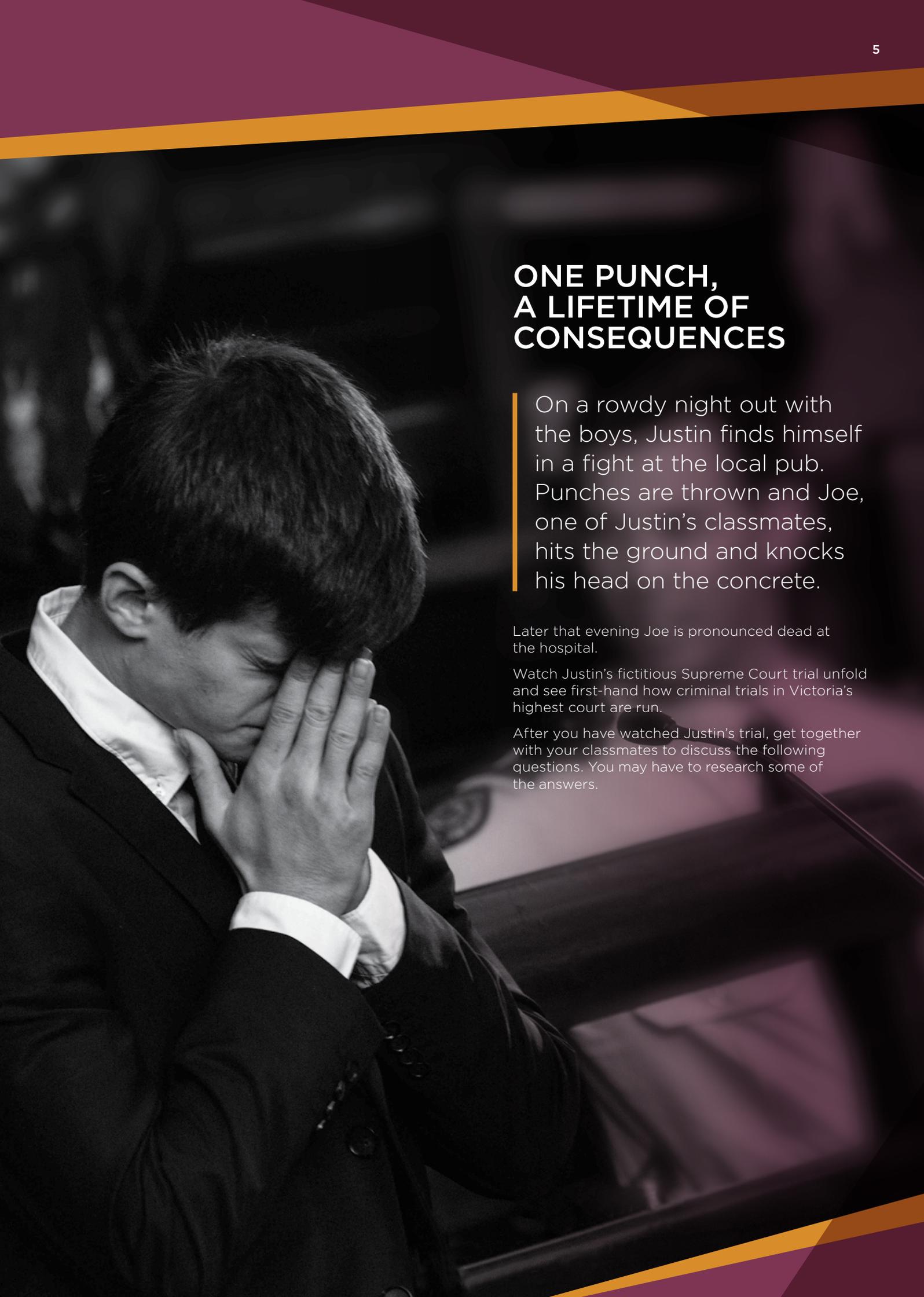
Juries are required for all criminal trials, and some civil trials, in the Supreme Court.

SENTENCING

At the sentencing hearing, the judge will tell the offender what their sentence is and explain his or her reasons for the sentence.

When deciding on the appropriate sentence the judge takes into account the facts and circumstances of the offence. This includes the maximum penalty that can be ordered for such an offence, the sentences imposed in previous similar cases as well as any aggravating and mitigating factors.





ONE PUNCH, A LIFETIME OF CONSEQUENCES

On a rowdy night out with the boys, Justin finds himself in a fight at the local pub. Punches are thrown and Joe, one of Justin's classmates, hits the ground and knocks his head on the concrete.

Later that evening Joe is pronounced dead at the hospital.

Watch Justin's fictitious Supreme Court trial unfold and see first-hand how criminal trials in Victoria's highest court are run.

After you have watched Justin's trial, get together with your classmates to discuss the following questions. You may have to research some of the answers.



What is the role of a jury?

What are some of the reasons why the prosecution or defence might 'stand aside' or 'challenge' a potential juror?

What happens if the prosecution or defence uses their six challenges or stand asides?



THE TRIAL

Can witnesses giving testimony in a trial sit and watch proceedings? Why/why not?

In what situations would a video link be required for witness testimony?

What does 'beyond reasonable doubt' mean?



THE VERDICT AND SENTENCE

What happens if a jury can't reach a decision?

Can a judge overturn a jury's verdict if he/she disagrees with them?

What factors must the judge consider when sentencing Justin?

What do you think Justin's sentence should be? Why?

What can Justin or the prosecution do if they think the sentence is too long or too short?

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Bite Visual Communications Group
www.bitevisual.com.au

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Supreme Court of Victoria

210 William Street
Melbourne VIC 3000

www.supremecourt.vic.gov.au