

COMMONWEALTH OF AUSTRALIA

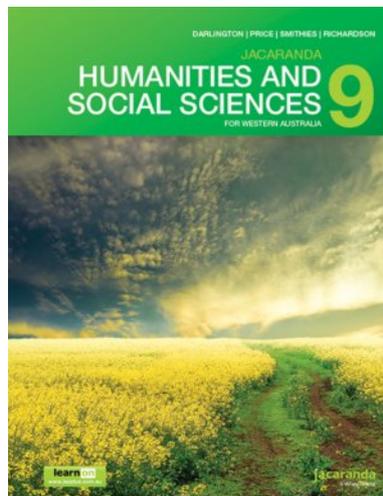
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Parties not satisfied with the outcome of their case would have no opportunity to ask a higher authority to review a decision made by a lower court. The appeal process is therefore important for correcting any mistakes made by lower courts. This supports a democratic and just society.

3.4 Activities

To answer questions online and to receive **immediate feedback** and **sample responses** for every question, go to your learnON title at www.jacplus.com.au. *Note:* Question numbers may vary slightly.

Remember

1. What is the right of appeal?
2. Why might a party appeal a court's decision?
3. Who can appeal a decision and under what circumstances?
4. Briefly outline what happens in an appeal.

Explain

5. Describe the difference between original and appellate jurisdiction.
6. Explain the process for appealing a court's decision.

Discover

7. Using the internet or newspapers, look up a case that has gone to appeal. Summarise in writing what the appeal was about and what result was achieved.
8. Find the website of a court in your state or territory's court hierarchy. Research the process for appealing a court's decision. Present this process in the form of a diagram.

Think

9. 'The right of appeal is an important principle of Australia's justice system.' Do you agree or disagree with this statement? Give reasons for your answer.

Predict

10. Imagine you have been found guilty of a crime that you did not commit. What would happen to you if there was no right of appeal?

3.5 What happens when the system fails?

3.5.1 Factors that can undermine the system

Our legal system is based on a number of principles which exist to make sure that anyone who makes contact with a court is treated fairly and receives justice. However, the system does not always work perfectly. Several factors can undermine the application of these principles. These include bribery, coercion of witnesses, trial by media and court delays.

3.5.2 Bribery

Bribery might occur in the justice system if someone tries to offer money, a gift or any other item of value to a judicial officer (such as a judge) or any other public official (such as a police officer) in the expectation that the person receiving the bribe will alter his or her behaviour and act in the briber's interests. A person might bribe a juror to make a certain decision, or bribe a witness to present a false testimony or withhold the truth. Note that it is illegal to give or receive a bribe.

Bribery is an offence under common law in many of the states and territories in Australia. Some states also have legislation referring to bribery. Under the Commonwealth *Criminal Code Act 1995*, the offence of bribing a public official is punishable by ten years in prison or a fine of up to \$1 million.

Bribery can undermine the principles of our system of justice. Judges who accept a bribe are no longer independent. They have agreed to alter their behaviour and act in someone else's interests. Witnesses who have been bribed may not present the truth or the full truth, which means that a fair trial will not occur. A jury that reaches a decision after receiving a bribe may reach the incorrect decision.

CASE STUDY

The bribe's in the mail

Police investigated a possible attempt to bribe judges in Victoria after several cheques were received in the mail in July 2012. The mail was addressed to judges and court officials at the Victorian Supreme Court. The cheques were discovered through the court's mail-handling security protocols. A court spokeswoman said, 'All envelopes were similar in appearance. Court staff opened one envelope, revealing a cheque made out to the addressee.' It is believed that all the suspicious envelopes opened were found to contain cheques.

FIGURE 1 Bribery can involve money, a gift or any other item of value. It undermines the principles of justice because it prevents the truth or interferes with a correct decision being made.



3.5.3 Coercion of witnesses

Coercion of witnesses is against the law. A person must not coerce or attempt to influence a witness in a court case to provide a false testimony, withhold the truth, or avoid turning up to court at all. Witnesses could be intimidated or bullied while attending court; or at their home or place of work by an offender, a family member of the accused or an accomplice of the offender who knows or discovers where the witness lives or works. A court might make an order to stop the threatening or intimidating behaviour, or to stop the person attempting the coercion from coming near the witness again. The justice system can also offer protection programs if necessary, including protecting the identity of a witness and even relocating a witness.

Coercion of witnesses is covered by different legislation in each state and by the federal *Crimes Act 1914*, where it is referred to as 'corruption of witnesses'. Depending on the state, the charge of threatening, corrupting or influencing a witness can result in sanctions including a fine, good behaviour bond, suspended sentence or prison sentence.

Influencing or coercing a witness can undermine the principles of our justice system. Evidence presented in court will become misleading and an incorrect verdict could result. An accused person who should be found guilty may instead be found not guilty. Conversely, an innocent person may be found guilty. A court trial would not hear the truth and therefore the trial would not be fair. Justice would not be served.

CASE STUDY

Please don't go to court

An 18-year-old Woollamia man was committed for sentence in the District Court in February 2014 for influencing a witness to not give evidence in court. He was also charged with perverting the course of justice. Recordings produced by the police revealed that the accused was contacted by an inmate at the South Coast Correctional Facility. The police alleged that the prisoner asked the accused to go to another man's house and tell him not to appear in court to provide evidence relating to another inmate's matter before a court. The man who was the subject of the coercion was ordered to appear in the District Court in March.

FIGURE 2 It is illegal to contact witnesses in order to influence them to change what they say in court or even to not appear in court.



3.5.4 Trial by media

The media, including television and newspapers, will cover court cases. At times, this coverage can have an impact on the accused's reputation by creating widespread opinion regarding the person's guilt or innocence before the trial has occurred or before a verdict has been delivered. This is referred to as **trial by media**. A high-publicity case, where the reporting of events can create a frenzy, can make a fair trial nearly impossible.

In Australia, strict laws regarding contempt of court restrain the media from what it can report after a person is formally arrested or charged. These laws are designed to make sure that a defendant receives a fair trial in front of a judge or jury that has not formed an opinion biased by prior media coverage.

Courts take contempt laws very seriously. This is because justice can only occur when courts are able to operate independently, unhindered by outside interference, and are free to make a fair judgement. If the media publishes information about the accused's prior convictions before the end of a trial, disobeys a court order or interviews witnesses, the judge or jury may be prejudiced against the defendant. The opportunity to have a fair trial would therefore be lost.

CASE STUDY

Trial by media

3AW radio broadcaster Derryn Hinch was found guilty of contempt of court in 2013 for breaching a suppression order made by a Victorian Supreme Court Justice. Hinch published tweets and blog entries about Melbourne woman Jill Meagher's murderer during court proceedings, referring to the accused's parole status. Melbourne newspapers then published front-page stories outlining the defendant's past, claiming that he was going to plead guilty. Hinch was ordered to pay a \$100 000 fine, but he refused to pay the fine and spent 50 days in prison instead.

FIGURE 3 Radio broadcaster, Derryn Hinch



3.5.5 Court delays

There is an old saying in law: 'Justice delayed is justice denied'. It suggests that if a person is wronged in some way and a dispute needs to go to court but does not do so in a timely fashion, then there might as well have been no court case at all. Justice has not taken place. A **court delay** can undermine the application of the principles of justice. Yet there is no right in Australia, either under common law or in legislation, to have a court case conducted within a reasonable amount of time.

However, the International Covenant on Civil and Political Rights, to which Australia is a signatory, states that anyone charged with a criminal offence is entitled 'to be tried without undue delay.' Numerous reviews and inquiries into court delays have been undertaken to explore why they happen and what can be done about the problem. Some of the problems caused by court delays are illustrated in figure 4.

Unnecessary delays can occur before the trial starts (between the date the case is committed to go to trial and the actual commencement date), or during the trial itself, making the court case drag on longer than necessary.

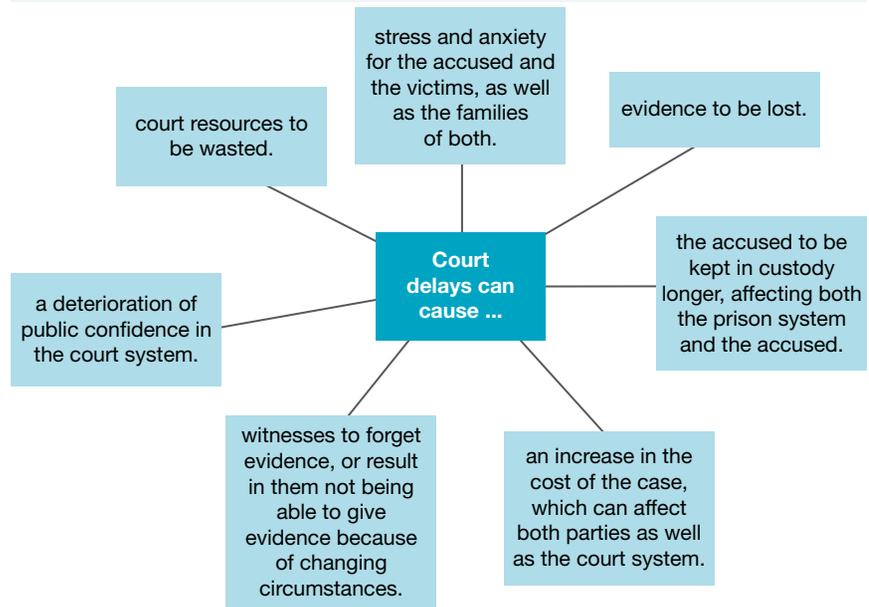
There are many reasons for delays that can cause a trial to last longer than necessary. These include:

- either side insufficiently or inadequately preparing its case
- lack of legal representation
- complex evidence and complex cases
- witnesses facing difficulties in getting to court
- either party using delaying tactics when in court.

Delays can also occur simply because the courts have more cases to deal with. This can happen for many reasons, including:

- a rise in the crime rate
- an increase in police numbers
- changes in population
- availability of legal aid
- changes in government policy
- changes in the law.

FIGURE 4 Problems caused by court delays



CASE STUDY

Can't find an interpreter when you need one

At Sydney's Central Local Court in March 2014, a man was accused of setting his former partner, a 34-year-old woman, on fire. He was charged with causing grievous bodily harm with intent to murder and breaching an apprehended violence order. Police alleged that he poured flammable liquid over the woman and then set her alight. The hearing was adjourned until later in the week because a court interpreter was not available. The man's lawyer did not apply for bail and it was formally refused.

3.5 Activities

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Remember

1. Identify the factors in the following diagrams that can undermine the principles of justice.

(a)



(b)



(c)



(d)

