

Overview

In each of the areas of Criminal Law, Civil Law and Administrative Law, it is important to consider allegations, evidence and the burden of proof. These are words that have specific legal meanings.



Allegations

An **Allegation** is a claim or assertion that someone has done something illegal, wrong, or caused harm to another person. You may find clients are very emotional about the way an allegation is written, or what it alleges. However, it is important to remember that an allegation is not proof that an event occurred.

In Criminal Law, the allegation would be contained in the 'criminal charge' or 'indictment' against a person, and is sometimes written in a 'summary' provided by the Police.

In Civil Law, the allegation is often first included in a written letter, called a Letter of Demand, and if the case continues to Court, in a document called a Complaint, or Statement of Claim, or Application. The allegation will often include that another person or business is the cause of a loss or damage – this is sometimes spoken about by Lawyers as 'liability'.

In Administrative Law, although less important, an allegation could be made against a person, in the form a document that states a Government decision, or against a Government agency, in the form of an official complaint or request for an appeal or review.

Evidence

Evidence is needed to prove that an allegation made is true or false. Evidence can take many forms, including a person's own memory of what they have seen, heard or done, or documents or records, or electronic evidence. The rules of evidence are complicated, and different Courts or Tribunals apply them differently – for example the Magistrates' Court of Victoria when it hears cases about Family Violence Intervention Orders is not bound to follow all of the strict rules of evidence. On the other hand, for Criminal Law cases, the rules of evidence are followed more closely.

The important thing to remember is that your client should keep or save anything that could be considered evidence. Even if your client thinks they do not have enough evidence about a particular issue they should still get legal advice.



Burden of Proof

Burden of proof means that when someone makes an allegation, they must use the evidence they have to prove it is true. Generally, the person who makes the claim has to satisfy the burden of proof.

- In Criminal Law, generally the evidence must prove the allegation (the 'criminal charge') to the standard of 'beyond reasonable doubt';
- In Civil Law, generally the evidence must prove the allegations (the 'claim') to the standard of 'on the balance of probabilities' – so more likely than not;
- In Administrative Law, there are different requirements of the standard of proof needed depending on the type of issue involved.

