

LEGAL STUDIES

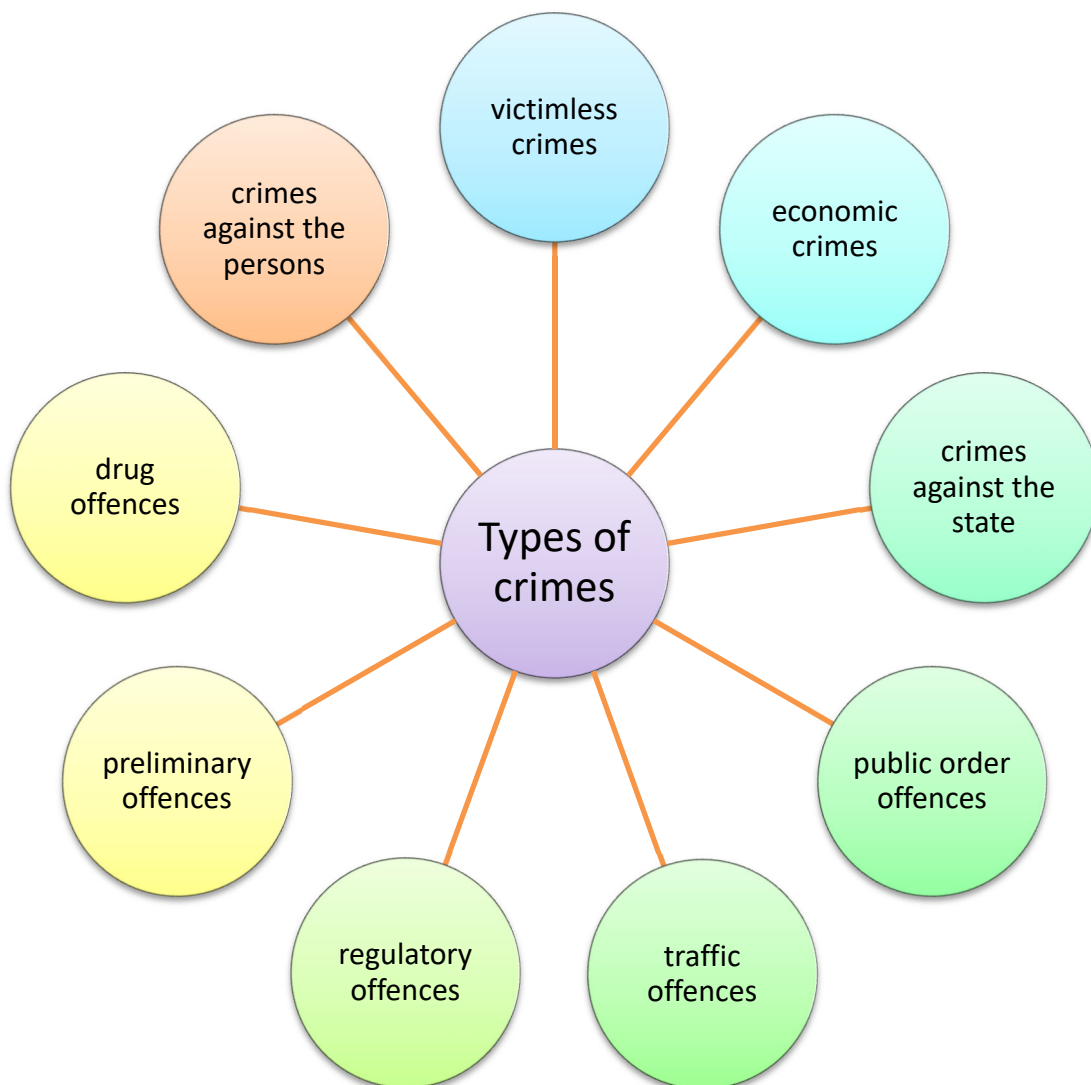
Crime Topic Notes

A crime is defined as any act or omission of duty that results in harm to society and which is punishable by the state.

Legal characteristics of a crime are:

- There must be an act of failure which breaks the law
- The act or omission must be seen as harmful to the individual or society
- The act or omission is punishable by the state
- The state is able to take the person who committed the crime into court and prove guilty under correct criminal proceedings

Types of Crimes



Crimes against persons



Barton v. Armstrong (1973) 47 ALJR 781

- Barton rung up by Armstrong who would claim that he and his friends were going to murder Barton's family
- Barton believed threat to be true
- Armstrong was then charged with assault

SMH article February 2004

- Schoolboy Rodney Harris charged with manslaughter after verbally abusing Harris at Redfern Station 2002
- Harris was so frightened of Kerr's words that he tried to escape and was run over by train.
- Sentenced to juvenile detention centre coz he was 4 days shy of 18yr.

SMH article September 2004

- February 2001, sniffer dog sniffed Glen Paul Darby outside Oxford St nightclub
- Dog nudged pocket to indicate drugs however Darby stated that this was a trespass a person
- Court reserved decision

R v. Postik (1973) 6 SASR 389

SA police charged Mr Postik with larceny after bank teller gave him too much money accidentally. However Supreme Court ruled that tellers mistake was not induced by Postik and while Postik was dishonest, no larceny had been involved

Economic offences

Refers to damage or result in the loss of a victim's property

Crimes against property:

Larceny: Removal of another person's property without consent

Breaking and entering: Person illegally enters a building or part of a building to commit an offence

Robbery: Most serious economic crime: accused takes persons' property directly from person or persons vicinity, often involves use of or threat of violence

Armed robbery: Robbery where violence or threat involves the use of a weapon

Receiving: One accepts or possesses property that's stolen and person fails to acquire origin of goods

Extortion: Threats and blackmail to extort money or some favour

Vandalism: Deliberate destruction or damaging of property

Embezzlement: Stealing assets belonging to employee or employer

Arson (maliciously destroying property): Deliberate and unlawful setting of fires

White Collar crime: Is defined as dishonest taking of money or property from business by fraudulent means or non-compliance of law (most involved where business suits as name suggests)

Tax evasion: Deliberate falsification of income to reduce tax liability

Fraud: Attempt to obtain cash or material advantage by unfair or deceitful means

Insider trading: Use of confidential information to manipulate share prices for personal gains

Forgery: Counterfeiting or altering any part of a signature or die by any means

Computer crime: Illegal activities done via computer

SMH article February 2010

Gamer must pay Nintendo \$1.5 million after uploading game on the internet before it was available in stores. He breached copyright law by hacking into it and illegally making it available on the Internet, causing the company to lose thousands of sales

Offences against the state

Treason: Breach of allegiance to the crown by trying to:

- Kill monarch or relations
- Going to war against Australia
- Assisting enemy war against Australia (David Hicks however he was acquitted)
- Inciting a foreign power to invade Australia

Sedition: Incitement of hatred against sovereign or government or intention to incite violence in order to overthrow government

R v. Sharkey (1949) 79 CLR 121

General Secretary of communist party of Australia, stated that Aust. Workers would welcome the invasion by the Soviet Union. Also encouraged workers to use force against current government. Charged with inciting to overthrow government and sedition and found guilty. He appealed but appeal dismissed

SMH article October 2006

New terrorism laws going to change current terrorism laws:

- Control orders for unlimited duration (allows power to hold person suspicious of terrorism indefinitely)

Bill strongly criticised by Human rights activists and Muslim leaders claiming it to be draconian (harsh)

Drug offences

In NSW, Poisons Act 1966 (NSW) and Drug Misuse and Trafficking Act 1985 (NSW) cover most drug offences. Main legislation is Customs Act 1901 (Cwth.)

Include:

- Possession: Intention to possess or locate an illegal drug
- Use: Consumption of any illegal drug by any means
- Trafficking: Federal offence to import drugs for sale or use

Public order offences

A public order offence is a behaviour which results in a disturbance of order that directly or indirectly affects the public in some way. Public order offences involve a moral element because the conduct of one person in public may be acceptable to one person but may be offensive to others in a public place. People may be offended or disturbed by such conduct and therefore, may be considered a crime against public order.

Public order offence includes:

- Obscene exposure
- Offensive language or conduct
- Possession of liquor by minors
- Prostitution
- Unauthorised public assembly
- Misconduct while drunk
- Rioting
- Violent disorder
- Possession of a knife

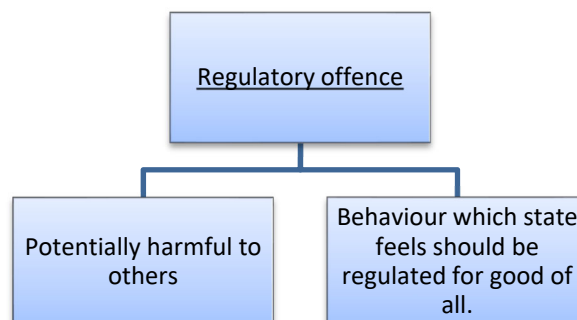
Kartinyeri v. Faehrmann (1982)

K pleaded guilty to 3 accounts of drunkenness in public place. Sentenced to ten days in jail. However he appealed punishment to severe, judge suspended sentence for eight months on the condition he entered rehab

R v. Caird (1970)

Example of public disorder due to rioting

Regulatory offence



Regulatory offences are both statutory and strict liability offences. Therefore, a person doesn't have to have intention to be found guilty. Defence against strict liability is an honest and reasonable mistake of fact.

Strict Liability

The legal concept which requires prosecution only to prove actus Reus.

Traffic offences

These may be statutory and strict liability offences and are most commonly committed offences. Most serious traffic offence is **culpable driving**.

- Negligent driving that causes death/ serious injury
- Driver
 - Intoxicated
 - Under influence of drugs
 - Speeding dangerously
- Legislation that covers traffic offences
 - Crimes Act 1900(NSW)
 - Road Transport (Safety and Traffic Management) Act 1999 (NSW)

Victimless crimes

Victimless crimes are crimes which do not involve a direct victim. The behaviour doesn't always harm anyone apart from the offenders themselves. They don't harm a person or their property. Victimless crimes are considered criminal activities because the behaviour is seen as damaging to society's sense of right and wrong.

R v Mohan 1976

Mohan was charged with attempting to cause grievous bodily harm to police officer who stopped him for a traffic offence. Was convicted and sentenced to 12 months imprisonment.

Preliminary offences

Two broad categories of preliminary crimes

- Attempt
 - Attempt to commit a crime.
 - Covered by the Crimes Act 1900 (NSW)
 - Attempt is same as if crime was successfully carried out. Except for murder
 - Prosecution will have to prove mens rea and that actus reus would've occurred had not police intervened or that they did it but failed.
 - Difficult to gain conviction for attempt. Easier if arrested closer to where crime would take place.
- Conspiracy
 - 2 or more people agree to commit unlawful act.
 - For conspiracy charge, person must have required intention to join party.
 - Once offence is committed, 2nd person is guilty of complicity in the commission of a crime.
 - Complicity is where 2 or more people cooperate in commission of a crime.
 - If other people in party had agreed to carry out part of offence but failed to do so, they would be charged with conspiracy.

Sources of criminal law

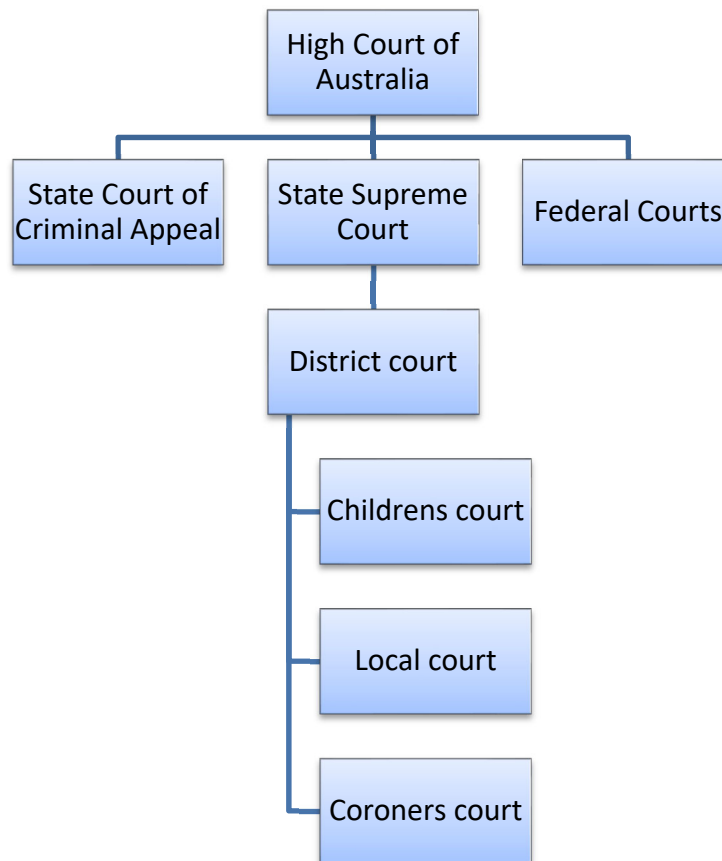
Criminal Law

- Statute Law (Made by parliaments)
 - Section 5 of the NSW Constitution Act 1902 (NSW) gives NSW the power to make laws in relation to criminal offences unless it conflicts with federal law.
- Common Law(Made by judges)
 - when no appropriate statute courts may use discretion to set precedent binding on lower courts may become Acts of Parliament

Role of Australian Constitution

Established by Commonwealth of Australia Constitution Act 1900 (UK). Constitution is the divisor of power. This concept outlines which powers the state and federal governments are in charge of. The Constitution gives majority of the power to make criminal law to the state and territory parliaments. The federal government is only granted a few areas in which they can make laws which are outlined in section 51 of the constitution.

The Court Structure



The Local court

- Is presided over by a magistrate addressed as “your honour”
- Created under Local Courts Act 1982 (NSW)
- Hears and decides cases involving summary offences without the use of a jury
- Conduct committal hearings to decide whether serious indictable offences have a prima facie (reasonable case)

Saffron v. DPP (1989) 16 NSWLR 397

Abe saffron and Bill Allen both charged with conspiring to bribe Bill Molloy to act against his duty as a police officer

At the committal hearing evidence that Allen had paid him \$500 on each of five occasions when he was in charge of the Special Licensing Squad. The squad’s activities had begun to affect the operation of nightclubs owned by Abe Saffron. The DPP also produced evidence that Saffron had visited Allen at Police Headquarters for private meetings throughout 1981...The magistrate had to decide whether a jury could consider the evidence convincing enough to find Saffron and Allen guilty beyond reasonable doubt. On appeal to the Supreme Court, it was found that the evidence of the various witnesses was so different and so questionable that a jury refused to convict. It was pointed out that the magistrate should have dismissed the charges during the committal hearing.

The Children's Court

- Was established in 1905 by Children's court Act 1987 (NSW)
- Court has jurisdiction over cases where alleged offender
 - Less than 18 years old
 - Less than 21 when charged with an offence alleged to be committed before the age of 18
- More serious indictable offences heard in the supreme court
- Young Offenders Act 1997 (NSW) provides alternatives to court proceedings
- Most severe punishment is juvenile detention

Coroner's Court

- Presided over by a magistrate known as coroner
- Jurisdiction involving:
 - Manner of death was by act of violence
 - Death occurred under suspicious circumstances
 - Cause of fires that damaged or destroyed property
- Procedures carried out in coronial inquiry in court
- Example of inquisitorial system applied

District Court

- Established by District Court Act 1975 (NSW)
- Courts presided over by judge appointed by governor
- Court exercises jurisdiction in all indictable offences except murder, treason, kidnapping, or attempted murder
- Most cases heard before judge and jury
- Has appellate jurisdiction (appeals from lower courts)

Supreme Court

- Composed of chief justice and number of junior judges
- Justices appointed by governor from barristers/solicitors long standing
- Has original and appellate jurisdiction with respect to both civil and criminal matters
- Most serious crimes

- Original criminal jurisdiction heard in front of single judge and jury of twelve
- Three judges head the appellate procedure

High Court

- Highest court of appeal due to Australia Act 1986 (CTH.)
- Original jurisdiction on matters set out by the constitution
- Mainly hears appeals from:
 - Federal court
 - Supreme court of each state
- No automatic right to appeal in the high court

Factors affecting definition of crime and criminal behaviour

Social and economic factors

- People who are socially disadvantaged may not feel compulsion to obey law
- Material well being does not remove criminal tendencies
- Violent crimes show no tendencies towards socio-economic factors as such

Differential association

- States that criminal behaviour is learned and is normal adaptation to the environment which the offender lives
- Learning criminal behaviour occurs through social interaction
- Association with groups separated from society-gangs

Genetic theories

- Suggests that criminality is genetically determined
- Also based on chromosomal abnormalities – abnormal chromosome structure

Political motives

- Certain people in society may not agree with laws and consequently break them
- Some show opposition to govt through crime
- Disgruntled groups demonstrate civil disobedience with laws or certain laws

Self interest or greed

- Many people who commit crimes simply motivated by greed (white collar)
- Desire to act out

Elements of crime

Mens rea

- Means guilty mind or guilty thought
- Accused person, except in the case of strict liability, needs to have the intention to commit the crime to be found guilty of the offence
- Must coincide with actus reus
- Offender must be capable of mens rea

McConnell v R (1977)

The accused McConnell, McFarland and Holland appealed to murder charge on grounds that they did not have mens rea when they threw man into river with his hands tied. Assumed man was already dead.

Judges dismissed the appeal as he noted that if deceased was alive; he couldn't swim and consequently would've drowned.

DDP V Morgan (1975)

Army officer commented that his wife like having sex with several men, stimulating a sexual assault.

Four men took turns having sex with her despite her pleas to stop.

They believed that they had her consent

Were found guilty due to judge said reasonable person would know she didn't give consent.

Actus rea

- Refers to the performance of a wrongful act or omission that breaks criminal law
- May take the form of failure to perform a duty or omission of a duty

Causation

- The act that was performed must also have caused the crime to take place
- Must be operative and substantial cause of the crime
- Even if other factors contributed to the crime, the crime could not have occurred without initial act and so chain of causation is broken

Blaue v R 1975

Blaue stabbed a woman 4 times after she refused to have sex with him.

She lost so much blood that a blood transfusion was required but she refused to have them based on her religion.

As a result, she died and Blaue was found guilty of manslaughter and sentenced to 2 life terms.

His appeal was dismissed because justice Lawton believed that stabbing was 'substantive' cause of death.

Strict Liability

The legal concept which requires prosecution only to prove actus reus.

E.g. driving overloaded truck

Recklessness and negligence

- Recklessness occurs when a person foresaw or was aware of the danger of their actions and acted anyway
- Negligence occurs when a person fails to foresee the risk of their actions, a risk that an ordinary person would have foreseen
- In such cases the prosecution doesn't have to prove mens rea

Absolute and strict liability

- Do not have to prove mens rea
- Often used in relation to driving offences
- State assumes in these situations that everyone knows the law and “ignorantia iuris neminem excusat” (ignorance of the law excuses no one)
- Usually no defence for strict liability cases

Distinguishing summary and indictable offences

- Disputes will normally be referred to different courts in the court hierarchy based on the severity of the offence
- Indictable offences are dealt with a judge and possibly a jury while summary offences are dealt with a magistrate in a local court
- Guilty pleas don't go to trial

Parties to a crime

Perpetrators

- Is the person who is the principle offender of the crime
- They are also referred to as the principle of the first degree
- If they are found guilty they receive the harshest punishment

Accessory

- Those who assist the crime are called accessory or accomplices
- If they help plan the crime they are accessory before the fact
- If they help during the crime they are accessory after the fact

Defences to criminal charges

Defences fall into three main categories:

- A denial of the action or the voluntariness of the action (insanity)
- An excuse for the action
- Justification for the action (self defence)

Complete defences

Involuntary behaviour: involves accused claimed that they did not intend to do what they did or could not control their actions

- Mistake or accident
 - Involves admitting the actus reus
 - Defendant must prove that the action was a mistake, honestly and reasonably made
 - The state has to prove to prove that there was intent to commit the act
 - A person cannot be charged if it can be proved that it was beyond their control
- Automatism
 - Cannot control an action
 - Performed actus rea but did not develop mens rea
- Intoxication
 - Can only be used as a limiting defence in NSW
 - Defendants may claim they had no control over the act if the intoxication was involuntary
 - May plead that intoxication was so severe that they could not perform mens rea to perform the crime
- Insanity
 - The onus of the proof lies with the defence while the jury decides whether insanity has been proven
 - If the accused are pronounced insane they are not responsible as they could not have developed the necessary mens rea
 - If an insanity plea is successful then the defendant is held in an institution and placed under control by Mental Health Review Tribunal

McNaughten v The Queen 1843 (UK)

McNaughten attempted murder of PM of England but shot secretary instead.

The ruling states that if a defendant displays a defect of reason resulting from disease of the mind, does not know the nature and quality of the act, then an insanity plea should be accepted

Self defence

- The law allows a person to exercise reasonable force in defending themselves, those in their care and their property and to prevent serious crime occurring
- Amount of force depends on the situation
- Prosecution must prove self-defence beyond reasonable doubt
- “battered wife syndrome” not defence in NSW – however increasingly used as mitigating circumstances

R v. Porter (1936) 55 CLR 182

Porter had separated from his wife-repair the marriage fell into a deep depression She told Porter that she did not want him or their child. He poisoned the child with a lethal dose of strychnine and was preparing to commit suicide. At the time of the killing he had not slept for three nights.

The jury was asked to consider whether Porter was guilty of murder or if the crime had been due to temporary insanity.

The judge informed the jury that a lack of self-control, passion, impulsiveness or stupidity did not constitute insanity.

Insanity was instead defined as a disease or disorder of the mind.

In this case the medical evidence of the near breakdown and deep depression were enough for the jury to acquit Porter on the grounds of insanity.

Compulsion

- Necessity
 - Where crime committed was not as bad as the outcome if the crime had not been committed

R v. Dudley and Stephens (1884) 14 QBD 273

In 1884 the ship *Mignonette* was abandoned by her crew after it had begun to sink. Dudley, Stephens, Brooks and Parker (a seventeen-year-old cabin boy) found themselves together on a lifeboat. On the twentieth day Dudley killed Parker, who was by now close to death. All three men fed on his body. Dudley and Stephens were charged with murder. The men pleaded not guilty, claiming they had acted out of necessity. Evidence showed that all the men would have died had they not eaten Parker. However, the court ruled that necessity was no defence to murder. The men were initially found guilty and sentenced to death, but the penalty was later reduced

- Duress
 - The defendant claims that the criminal act was committed under genuine threat or intimidation
 - The person must have believed the threat to be real
 - Cannot be used as defence for murder or treason
- Consent
 - Is not an absolute or justifiable defence in NSW for murder
 - The consent of the victim does not prevent the accused from being held criminally liable for their action
 - E.g. Euthanasia

Partial defences

- **Provocation**
 - Involves the accused stating that the victim provoked them into committing the crime
 - The prosecution has the onus of proving that the act was without legal excuse
 - In NSW only defence for murder

Marwey v R [1977] 138 CLR 630 High Court of Australia

Defendant was charged with murder. He killed a man who had, unprovoked, attacked him violently. Marwey successfully used the defence of self-defence and was charged with manslaughter. This was a QLD case, in NSW he would have been acquitted.

- **Diminished responsibility**
 - It is now referred to as substantial impairment by abnormality of mind
 - Accused must show that they were suffering from abnormality of mind at the time of the offence
 - Used in murder and results in manslaughter charge
 - Jury decides whether diminished responsibility exists

The Criminal Process

Reporting a crime

- Police rely on public to report crimes which leads to a great amount of crime going unreported due to a number of factors
- Fear of consequences of reporting, Victim of the report or is unable to report a crime are the main reasons

Investigation of a crime

- Police are the primary investigators
- Once a report has been filed with the police they decide whether to investigate or not (discretion for resource efficiency)
- The role of the police is to establish if a crime has been committed and collect evidence to establish an arrest
- The police have the power by law:
 - (a) Detain and question any subjects
 - (b) Search property and seize evidence with a search warrant
 - (c) Use invasive devices such as phone tapings with a court order
 - (d) Recommend whether bail should be granted or not
- Police discretion- allows police to choose whether to investigate or not, enforce the law, make an arrest or not or to reduce charges

Rights of suspects

- If arrested can be searched and have their property searched, fingerprint taken and to be questioned
- Suspects have the right to:
 - Silence
 - Privacy (may demand to see a valid search warrant)
 - Freedom
 - Bail (unless otherwise determined)
 - Have recordings of interview and confessions
 - Legal representation (during trial not interrogation) or guardian in case of minor)

Search and seizure

- Relates to a person's body, clothes, possessions, property and premises
- If there is no arrest there can be no search
- Search warrants:
 - Legal document issued by judge/magistrate to enter stated premises and search for stated items – Search warrant Act 1985 (NSW)
 - Items may be seized under reasonable grounds

Arrest

The police can lawfully arrest someone if:

- The suspect has committed or is about to commit a crime
- They catch the suspect committing the crime
- The suspect is loitering at night or there is reasonable suspicion that they will commit a crime
- They have an arrest warrant

Summons

- The police must commence the prosecution process by issuing a summons or court attendance notice
- Summons- document stating offence and time and date of appearance in court

Interrogation

- Suspect has the right to silence
- If suspect is minor (under 18 years) they have the right to have a guardian or parent
- Statement- unbroken description of events given by the suspect
- Confession- anything taken down in writing by the police or an admission by the suspect that they committed the crime

Bail

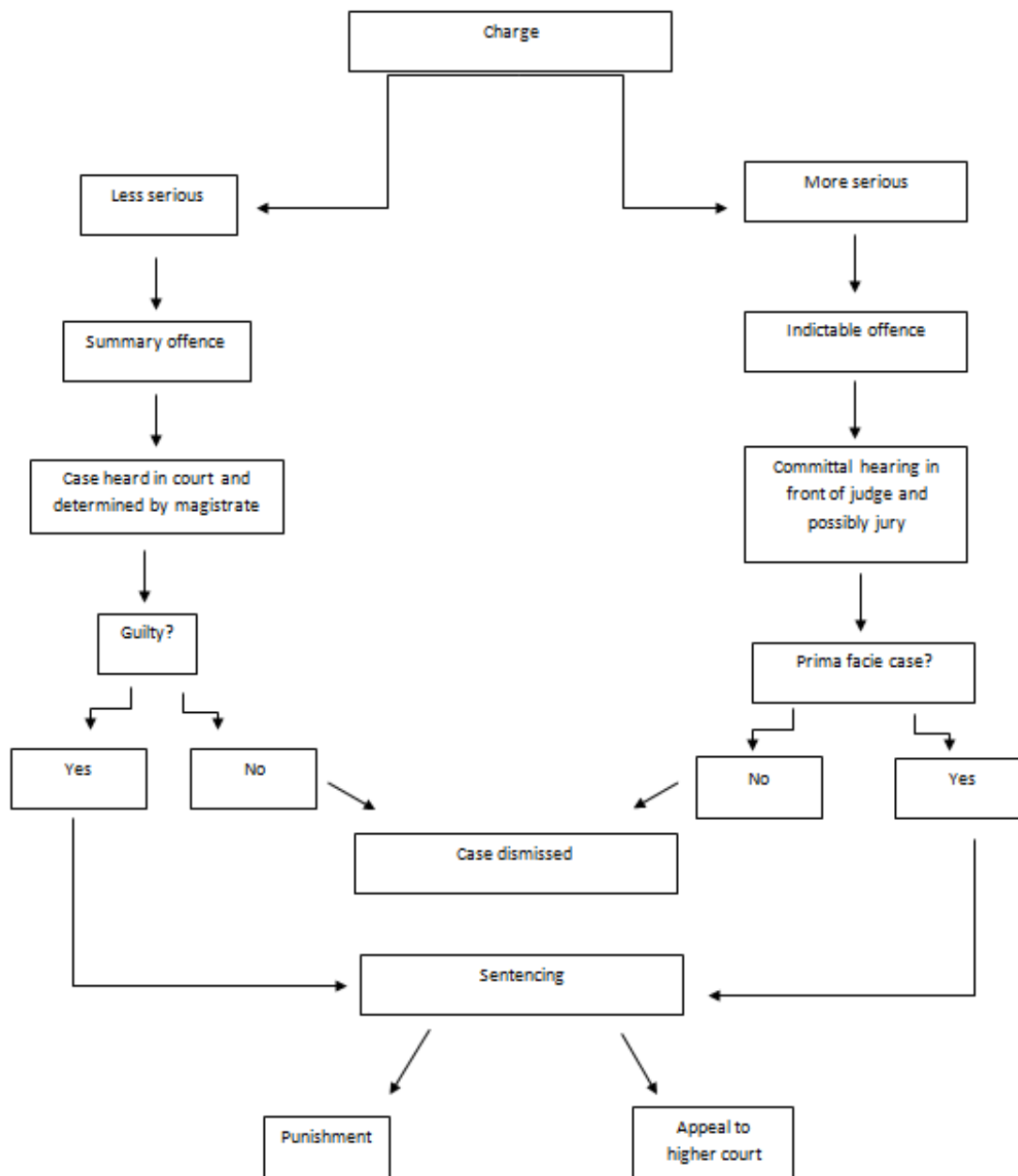
- Bail Act 1987 (NSW)
- Conditions on bail include
 - Payment of deposit (refunded if offender does not abscond)
 - A restriction on movement

- A requirement to report to a police station regularly
- Surrender of passport
- An order not to contact victim or families

Remand

- If the court refuses bail the offender is held on remand
- People in remand wait lengthy time before their case comes up
- No compensation if found not guilty

The Criminal Trial Process



The adversarial system

- Under this system the prosecution and then the defence present their cases to an impartial court. The judge has no role in gathering evidence, but instead relies on both sides calling witnesses and presenting evidence to both judge and jury
- Criticisms include:
 - Delay of cases going to court
 - Enormous cost of system
 - Increasing costs faced by accused
 - Often swayed by barristers arguments rather than evidence

Summary hearing

- Is the legal process of dealing with a summary or less serious offence
- In local court with magistrate

Committal hearings

- To determine whether there is a prima facie case or not

The plea

- The law requires the accused to make a plea in relation to the charges they are facing
- Guilty plea: a plea of guilty means that the case will be dealt with quickly. The matter goes straight to sentencing.
- Not guilty plea: a plea of not guilty means that the guilt of the accused is not assured. Therefore, the case must go to trial

Evidence

- Burden of proof requires that accused is innocent until proven guilty
- Standard of proof lies with prosecution in proving accused guilt beyond reasonable doubt

Jury

- Jurors are selected from a jury roll made up of random selections from the electoral rolls
- Legislation – Jury Act 1977
- The jury must listen to the evidence presented and then must decide beyond reasonable doubt if the accused is guilty of the offence beyond reasonable doubt
- Verdict must be unanimous if jury can't decide verdict judge dismisses them

Plea bargaining

- Involves the DPP and accused forming a deal on a charge and possible sentence
- *New legislation requires DPP to present document stating the necessity plea bargaining and to be presented to the judge (SMH 2009)*

Arguments for	Arguments against
Increases rate of conviction	Result in offender receiving no real punishment or punishment not matching crime
Decreases costs	Allows certain crimes to go unpunished
Decreases court delays	Victims may feel that they have been treated unjust
Leads to conviction on lesser charge better than no conviction at all	Accused bullied into guilty plea
	Manipulation of plea bargaining by defence

Personnel

- (a) **Police:** The role of police is to investigate alleged crimes and gather evidence to support the prosecution case. Evidence must be gathered legally otherwise there is a risk that a judge or magistrate will rule that the evidence is inadmissible. In summary matters police liaise with witnesses and arrange (via subpoena) for their attendance at court. Police also give evidence in court in support of the prosecution case.
- (b) **Prosecutors:** Prosecutors act on behalf of the state to prosecute the crime in court. Students should remember that this is because a criminal act is one which HARMS SOCIETY. Accordingly, prosecutors DO NOT act on behalf of victims in the manner in which defence lawyers act on behalf of their client, the accused.

Under the adversary system the role of the prosecutor is to raise a reasonable doubt in the mind of the magistrate or jury as to the guilt of the accused.

In NSW indictable matters are prosecuted by the Director of Public Prosecutions (DPP). As a safeguard against political interference and corruption – the DPP is independent of the police and of the Government.

- (c) **Defence Lawyers:** Like prosecutors, defence lawyers (both solicitors and barristers) are officers of the court and owe a duty to the court to act in an ethical manner. They must also act in accordance with their client's (the accused's) instructions and maintain client confidentiality. The defence lawyer's role is to present evidence and argument to the court in support of the defence case (both at first instance and on appeal). Usually solicitors appear primarily in Local Court proceedings (although barristers can and do) and barristers (specialist advocates) appear for the defence in more complex and serious criminal matters in the District Court, Supreme Court, Court of Criminal Appeal and High Court. It is also part of their role to conduct any relevant negotiations with the prosecution (e.g. charge negotiation).

The role of legal aid

In NSW the Legal Aid Commission plays a vital role in facilitating access to justice. Defendants have a right to a fair trial and legal representation is integral to this. Legal aid is available to people who cannot afford legal representation. The role of legal aid is also to provide advice and education. Students should remember however, that defendants do not have an absolute right to legal representation. This was determined in the case of *McInnis v R* (1979) by the High Court. However, in *Dietrich VR* (1991) the High Court accepted that if a person could only receive a fair trial with legal representation then it should be provided as a right of Common Law.

Legal aid is funded by the Government. As their budget is limited, it is necessary for Legal Aid to apply selection criteria to determine whether an applicant qualifies for Legal Aid. The selection criteria are:

- Means: income and asset test
- Merit: does the matter have a reasonable prospect of success?
- Jurisdiction: is the case of a type that Legal Aid can fund?

So far as criminal law is concerned, the merit test does not apply to criminal matters at first instance. This perhaps reflects the defendant's right to the presumption of innocence and a fair trial. The means test does not apply for matters in the Children's Court. This is because the vulnerable position of children and young persons is recognised by the state.

A problematic aspect of the granting of legal aid is that if the means test applies - its low threshold rules out many people who still cannot afford to meet the costs of paying for private legal representation. Students should consider how this would impact upon the ability of such people to obtain access to justice.

Types of international crime

Just as domestic crime can be categorised into different TYPES so too can international crime. The three TYPES of international crime are:

- **Crimes committed outside the jurisdiction:** that is, an Australian commits a crime while in another country e.g. an act of piracy or the hijacking of an aircraft.
- **Transnational Crimes:** involve breaking the law in more than one country. These crimes cross national borders e.g. drug trafficking.
- **Crimes against the international community:** These are crimes recognised by the majority of countries in the world and ratified by numerous conventions and treaties. They often include actions considered to be abuses of human rights e.g. slavery. Genocide is another example of a crime against the international community.

Sources of Law for International Crimes

There are a number of sources of law for international crimes. They reflect the variety of ways in which international law is made.

Sources of law for international crime are as follows:

- i. **International Treaties and Conventions:** e.g. Convention Against Torture (1984) and Convention on the Prevention and Punishment of Genocide (1948).

International treaties and conventions are the principal sources of international law. Treaties are written agreements between states that are legally binding while conventions are agreements between many states that once ratified are legally binding on those signatory states.

- ii. **Custom:** laws which evolve from widespread acceptance by the international community over a period of time. The Universal Declaration of Human Rights 1948 has become part of international law because of its widespread acceptance in the international community. Decisions of the United Nations or the International Court of Justice and the actions of states can contribute to international common law or customary international law. Over time certain actions can become binding internationally for example the outlawing of piracy and unprovoked state aggression.
- iii. **Judicial Decisions and Teachings of those Highly Qualified in International Law:** e.g. Decisions of the International Court of Justice (ICJ) and the International Criminal Court (ICC).

(The ICC issued its first indictment in August 2006 when it officially charged a war lord from the Republic of Congo for forcefully recruiting children as soldiers. The Republic of Congo's civil war began in 1998 but the ICC could only indict Thomas Lubanga for crimes he committed after 2002 when the court was set up.)

- iv. **General Principles of Law:** these are general principals recognised by the international community – and common to a majority of legal systems. Where there aren't treaties that apply or consistent decisions on an international level by states to draw upon then courts may look to general principles of law made in various jurisdictions. A court could also draw on reports written about general legal principles or on the writings of scholars considered to have expertise in areas of international law.
- v. **Agreements between nation states,** both bilateral (signed by two nation states) and multi lateral (signed by many nation states)