

Legal Studies

The criminal trial process – Lesson 1

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Syllabus Dot Points:

- Court jurisdiction
- The adversary system
- Legal personnel

You will learn to:

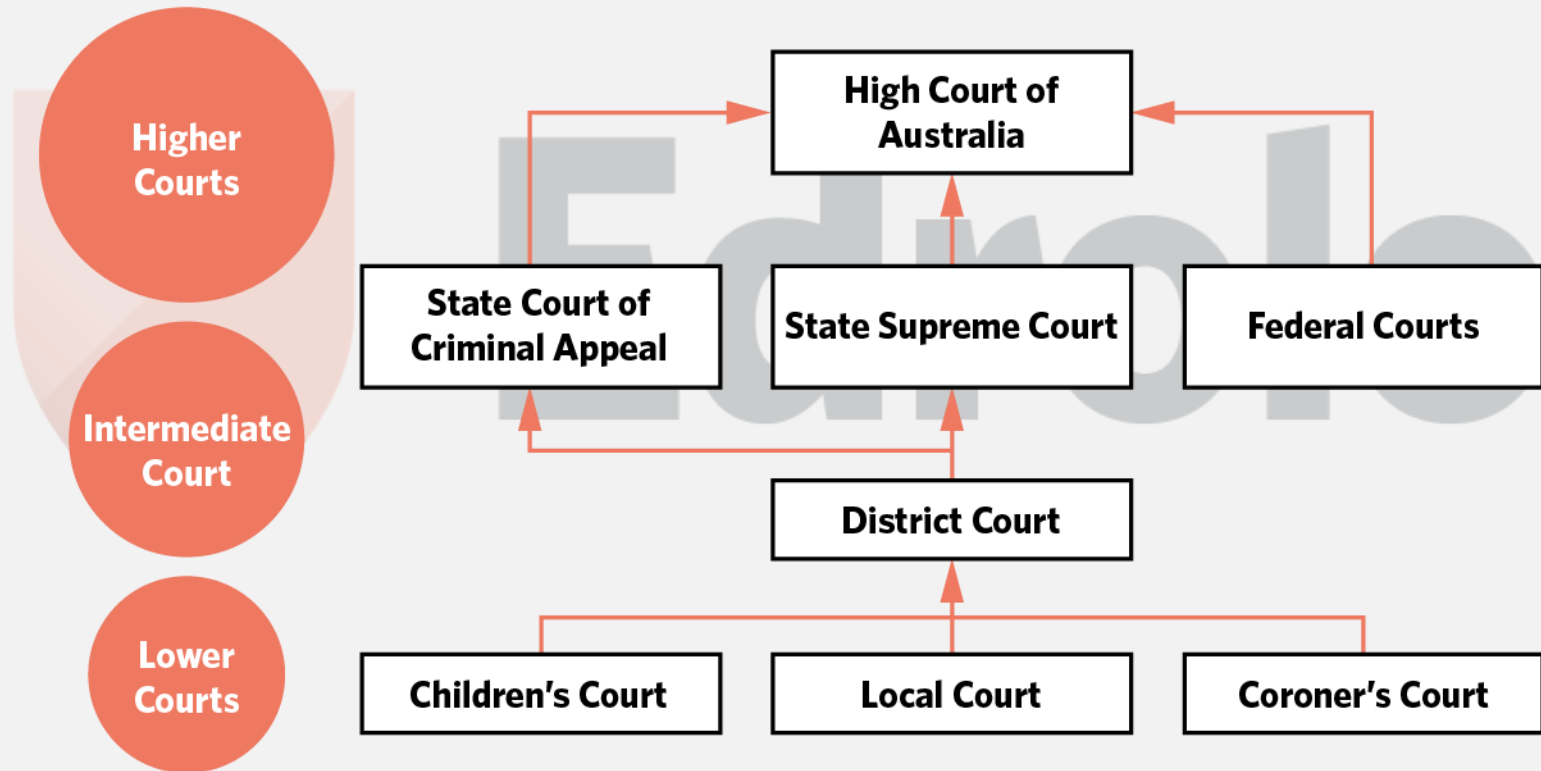
- Describe the **role of the courts** in the criminal justice process
- Discuss the use of the **adversary system** as a means of achieving justice
- Examine the **role of legal representation** in the criminal trial
- Assess the use of **defences** to criminal charges in achieving justice
- Evaluate the **effectiveness of the jury system** in the criminal trial
- Assess the **effectiveness of the criminal trial process** as a means of achieving justice

Court Jurisdiction

(discretion, compliance, morals and ethics, law reform, balancing rights and effectiveness)

- **Court structure** - 3 levels = lower, intermediate and higher
- **Jurisdiction**
 - 'the scope of a court's authority to examine and determine the facts, interpret and apply the law, make orders and declare judgment' Source: Becklegal. Com.au
 - Original = hear first time
 - Appellate = review of lower court decision
- **Which court** hears the matter depends on:
 - Original hearing or appeal
 - Type of offence (summary/indictable)
 - Division of power between state and federal governments

Australian Court Structure



Relevant Statistics

Local Court hears the vast bulk of criminal matters

In 2009-2010 NSW prosecutions:

- 91% Local Courts

We have a court hierarchy because:

- **Fairness** = appeals correct mistakes/ensures justice
- Resource **efficiency**
- Importance of **committal hearing** = prima facie case
- Specialisation e.g. Coroner's Court

Case Study – Wood v R (2012)



Source
<http://www.dailytelegraph.com.au/news/nsw/gordon-wood-speaks-from-his-cell/story-e6freuzi-1111118179490>

- 13 years after his girlfriend's death at The Gap in Sydney, jury found guilty of murder.
- Sentenced to 17 years and 4 months
- Always maintained innocence = she jumped
- Conviction overturned on appeal due to unreliability of expert evidence
- **Tension** = safeguarding the rights of the accused (*requiring guilt beyond reasonable doubt*) **versus** protecting society against crimes (*allowing guilty parties to go free*)
- It is not always clear cut so the **system of appeals** builds in further safeguards to assist with the balancing of rights

1. NSW Lower Courts

Are different types with specialist jurisdiction:

- a. Local Court
- b. Coroner's Court
- c. Children's Court
- d. Land and Environment Court

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a. Local Court

- Created under *the Local Courts Act 1982 (NSW)*
- Presided over by a **magistrate**
- Two main functions for crimes –
 1. **Summary Hearings**
 - hears **summary offences** e.g. drink driving
 - magistrate decides verdict and sentence = **no jury**

a. Local Court

2. Committal hearings

- first time courts hear a matter relating to an **indictable offence**
- magistrate determines whether there is a **prima facie (reasonable) case** before the case goes to full trial in District or Supreme Courts before a judge and jury
- process helps **resource efficiency** (cost and time) = keeps cases where a conviction is very unlikely out of the intermediate and higher courts

b. The Coroner's Court

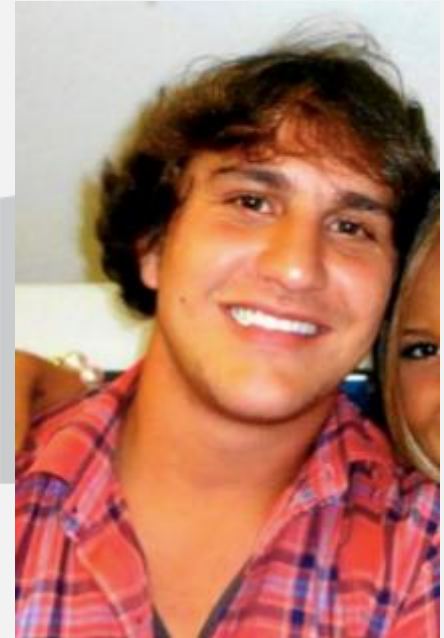
- Specialist court – **magistrate** conducts coronial inquests
 - 6000 reportable deaths/year
- *Coroners Act 2009 (NSW)*
- **Jurisdiction** to **inquire** into:
 1. Deaths where the cause and manner has involved **violence** or is **suspicious**

b. The Coroner's Court

2. Fires damage property.
- Not responsible hearing trials – neither civil or criminal
 - Procedures are inquisitorial not adversarial e.g. can order seizure of property or exhumation of a body.
 - Makes recommendations
 - DPP consider matter to determine if criminal charges need to be laid e.g police in Roberto Curti case
 - to improve laws/procedures to prevent future occurrences e.g. police use of tasers

Case Study – Roberto Curti

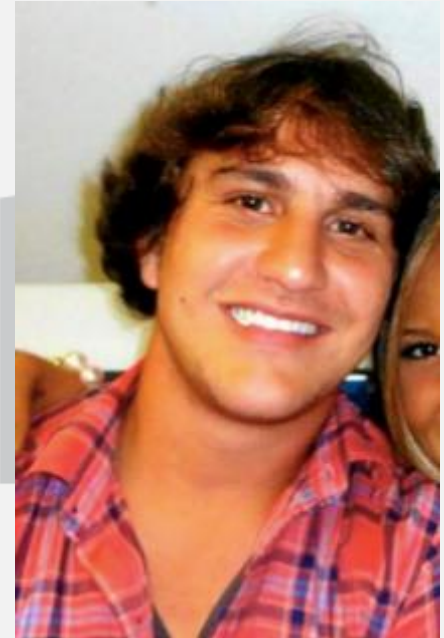
- Repeatedly **tasered** by up to 11 police in an attempt to arrest him on suspected robbery charge = **died** at scene
- **Coronial Inquest** to:
 - Establish exactly what happened that night – using CCTV, witness statements
 - Consider
 - the lawfulness of the arrest
 - reasonableness of suspicion justifying arrest
 - degree of force used in exercise of police duty
 - Whether police complied with operating procedures
 - police procedures, focusing on use of tasers



Source
<http://www.smh.com.au/nsw/police-union-criticises-turf-war-as-ombudsman-wades-into-curti-case-20130228-2f94p.html>

Case Study – Roberto Curti

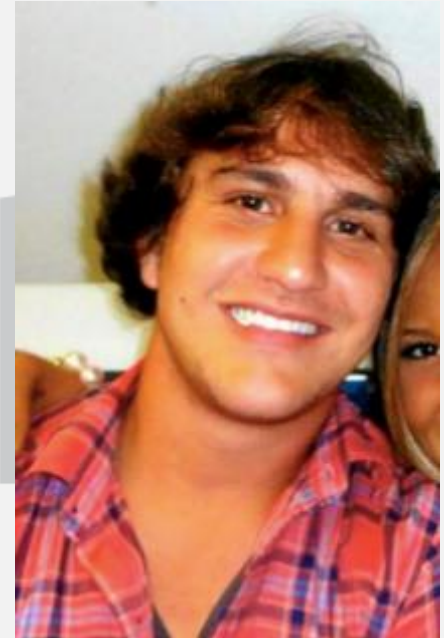
- **Found:**
 - Was a proper basis for arrest but manner of arrest was of concern
 - No thought given to mental state of accused, who was not acting aggressively but merely trying to get away
 - Some officers had discarded their responsibility to use force reasonably when arresting Curti = acted carelessly and recklessly and in some cases, abused their powers in a 'thuggish' manner
 - Junior and inexperienced officers were able to use tasers and their training had been inadequate
 - Cause of death = uncertain but unlikely to have died but for the actions of police



Source
<http://www.smh.com.au/nsw/police-union-criticises-turf-war-as-ombudsman-wades-into-curti-case-20130228-2f94p.html>

Case Study – Roberto Curti

- **Recommended:**
 - 4 police officers be charged with assault and GBH
 - Improvements to the training of police to use tasers and implement restrictions on use



Source
<http://www.smh.com.au/nsw/police-union-criticises-turf-war-as-ombudsman-wades-into-curti-case-20130228-2f94p.html>

c. The Children's Court

- Powers and responsibilities in *Children's Court Act 1987* (NSW)
- **Specialist court** = hears summary and indictable offences when accused under:
 - 18 when charged or
 - 21 years old when charged for a crime committed when under 18.

c. The Children's Court

- **Exceptions** = homicide and aggravated sexual assault (Supreme Court) and some traffic offences (Local Court)
- Aim = achieve **rehabilitation**
- Closed sessions
- Maximum sentence = 2 year control order/juvenile justice centre

d. Land and Environment Court

Deals with environmental issues e.g. polluting and dumping



Source

https://commons.wikimedia.org/wiki/File:PikiWiki_Israel_6297_Environment_of_Israel.jpg

Adult Drug Court

- Specialist **diversionary** court = *Drug Court Act 1998 (NSW)*
- Attempts to **address** underlying **drug dependency** which has resulted in criminal offending = long term solution to cycle of drug use and crime by offering
- Takes **referrals** from the Local and District Courts of offenders who are on drugs and who are eligible for a Drug Court Program
- **BOSCAR Report** on Drug Court Effectiveness - shows that NSW Drug Court is more cost-effective than prison in reducing the rate of recidivism
- **Youth Drug Court** = now disbanded as considered resource inefficient

MERIT Program

- Available most Local Courts = opportunity adult defendants with **substance abuse problems** to work, on a voluntary basis, towards **rehabilitation** as part of the bail process.
- Have to meet eligibility criteria
- Closely managed by MERIT team
- Final hearing and sentence generally coincide with the completion of the MERIT Program
- Magistrates consider defendant's progress in treatment as part of final sentencing.
- BOSCAR Report 2009 - program **reduces the risk of reconviction** for a further offence.

2. NSW District Court

- *District Court Act 1973 (NSW)*
- Jurisdiction
 - **Indictable offences** e.g. drug trafficking
 - **Exception** = murder, attempted murder, treason, serious sexual assault, kidnapping
- **Judge and jury**
- Proceedings - longer than Local Court, cost the accused more

3. The Supreme Court & The Court of Criminal Appeal

- Established = *Charter of Justice* (1823).
- Jurisdiction
 - most serious indictable offences
 - appeals from lower courts – highest appeal court in NSW
- Supreme Court
 - single judge
 - a jury of 12
 - hears serious indictable offences for the *first* time e.g. murder, manslaughter, rape

3. The Supreme Court & The Court of Criminal Appeal

- Court of Criminal Appeal
 - 3 judges but maybe 5 if legal issue is significant (original judge can't sit in appeal court)
 - no jury
 - hears appeals relating to a person *convicted* of an indictable offence in either District Court or single judge Supreme Court decisions
 - prosecution appeal = not an acquittal but leniency of sentence e.g. Thomas Kelly case
 - defence appeal = miscarriage of justice/error of law made in original hearing

4. High Court of Australia

- Highest court of appeal in Australia
- Jurisdiction:
 - Original = interpretation of the Constitution e.g. Separation and Division of Powers issues
 - Appellate = criminal appeals; special leave to appeal must be given; only be granted if:
 1. relates to a matter of public importance
 2. is required in order for justice to be served, and
 3. is required because of confusion between earlier rulings of various courts.
- Appeals come from::
 - State/Territory Courts of Criminal Appeal
 - Full Court of the Federal Court (hears federal law matters)

Concept Explorer

In which court does a magistrate have jurisdiction to hear cases ?

A. High court

B. Local court

C. District court

D. Supreme court

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(BOS 2013 Exam Q2)

Concept Explorer

A person is convicted of a drug offence in the District Court. The person wishes to have this conviction reviewed.

Which court would the person go to?

- A. Drug Court
- B. High Court
- C. Federal Court
- D. Court of Criminal Appeal

(BOS 2013 Exam Q9)

Concept Explorer

What is the purpose of a committal hearing?

- A. To charge the accused
- B. To establish the state's case
- C. To enter into charge negotiation
- D. To empanel a jury from the electoral roll

Courts – Recent Law Reform

- Youth Drug Court axed
- Coroner's recommendations e.g. Roberto Curti/Police use of tasers in exercise of their duty
- Note the new *Criminal Procedure (Mandatory Pre-trial Defence Disclosure) Act 2013 NSW*:

Courts - Recent Law Reform

- For all District and Supreme Court cases, makes both the defence and prosecution provide details of their case to each other before the trial;
- Failure to comply by a defendant with a pre-trial disclosure requirement allows an **unfavourable inference** to be drawn by a jury against a defendant
- Aim is to allow police to **deal more effectively with the 'wall of silence'** they encounter when prosecuting criminal organisations;
- Complements *Evidence of Silence* legislation

Law Reform 2006 – Double Jeopardy Rule & Majority Verdicts

- 2006 = 2 major changes in the NSW criminal justice system:
 - The introduction of majority verdicts
 - Limited exception of the double jeopardy rule
- Huge debate = changes threatened long standing common law principles.
- Look at majority verdicts when consider *Juries*
- Rule of double jeopardy
 - You can't be charged again with an offence which you have already been acquitted or convicted of committing.
 - Usually applies regardless of the circumstances of the acquittal or the emergence of fresh evidence (e.g. a confession, tainted evidence at the trial or new forensic evidence)

Double Jeopardy

The Crimes (Appeal and Review) Act 2001 (NSW) amended in 2006 = for **very serious crimes** (penalty = life or 15 years' imprisonment or more), an **acquittal may be quashed** and the case **re-tried** if:

1. fresh and compelling evidence is brought to light e.g. via DNA
2. the acquittal was tainted e.g. justice was perverted by bribery, juror or witness interference/intimidation, perjury etc.

Government = **changes** to the double jeopardy rule **warranted** because not bringing a previously acquitted person back to trial would cause a **greater injustice** than upholding the rule of double jeopardy.

Case Study – R v Carroll (2002) HCA

- 1985 = found guilty of murdering a baby girl
- CCA = acquitted on appeal
- Forensic dental evidence = conclusively linked him to the murder
- Tried for perjury (lying under oath) relating to the original trial ;
- Found guilty; appealed to The High Court = quashed his conviction, stating that he had effectively been tried twice for the same crime.

Source: LIAC, NSW State Library

Case Study – R v Carroll (2002) HCA

Community concerns = pressured government to reform the law = The *Crimes (Appeal and Review) Amendment (Double Jeopardy) Act 2006* (NSW) passed enabling a person who is acquitted of a serious crime to be retried in certain circumstances.

Controversial = civil libertarians argued it reduced common law protections of rights of the accused.

The Adversary System

Australia has an **adversarial** not inquisitorial system:

- two opposing sides arguing their case – responsible for preparing and arguing own case and what evidence/witnesses to use
- each side tests the evidence – using examination/cross-examination of witnesses and other evidence; decision maker has no role in testing the evidence (e.g. can't examine witnesses)

The Adversary System

- strict rules of evidence = must be obtained legally or inadmissible; often oral
- neutral third party (judge, magistrate or jury) decides the verdict = guilty/not guilty – depending on which version of events they believe
- Judge determines questions of law and procedure; jury decides the verdict

The Adversary System - Criticisms

Key criticisms:

1. **Juries** don't have technical skill and understanding to hear and decide some cases e.g. complex tax and fraud
2. Skilled **lawyers** can sometimes **argue and persuade** the jury more convincingly than the evidence submitted
3. **Witnesses** can be subjected to **difficult cross-examination** e.g. sexual assault

Concept Explorer

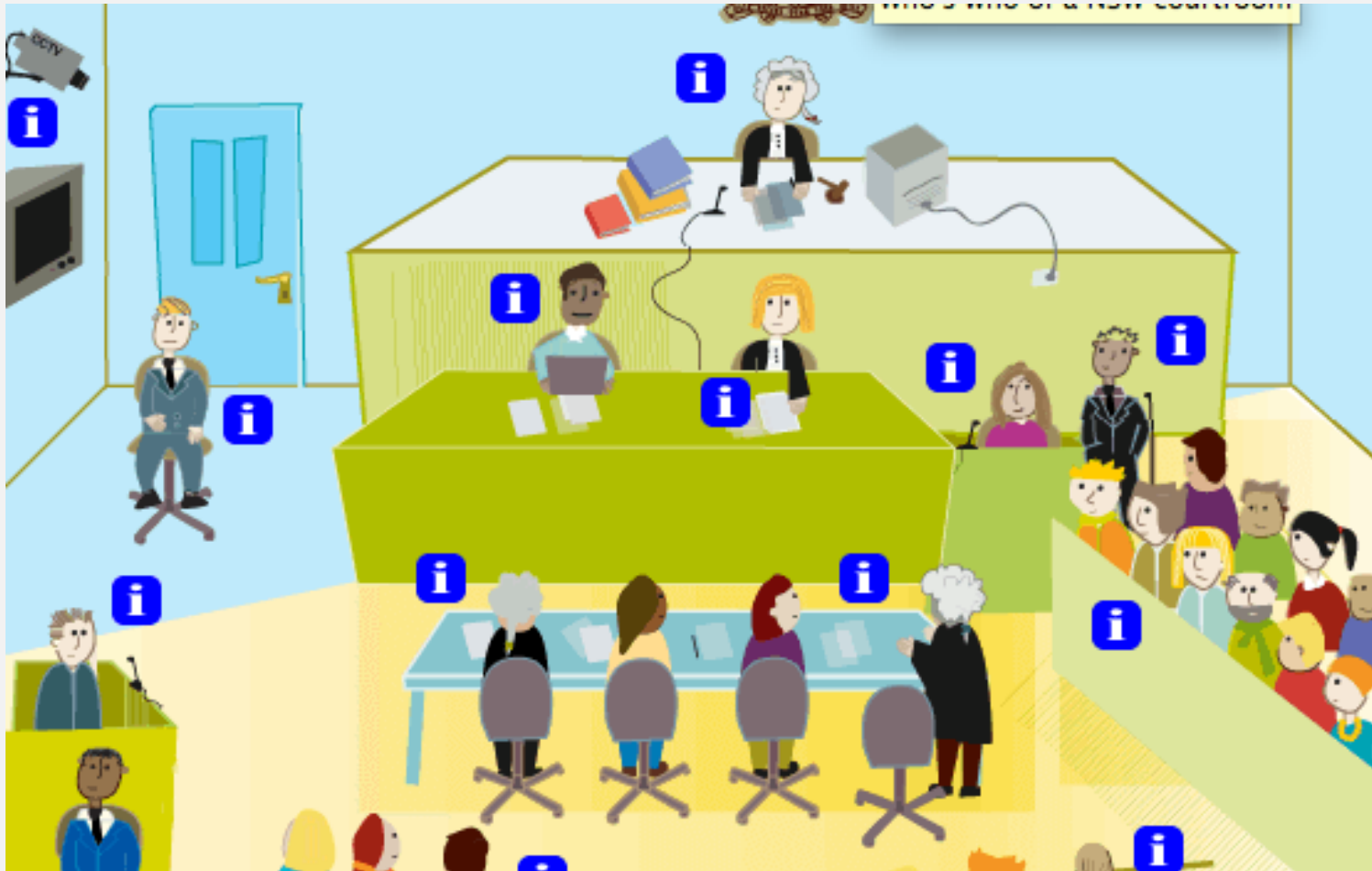
Who decides a question of law in a criminal case in the NSW Supreme Court?

- A. The jury
- B. The judge
- C. The defence
- D. The prosecutor

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(BOS 2011 Exam Q2)

Legal Personnel – Criminal Trial



Source
http://www.courts.justice.nsw.gov.au/Pages/cats/courtguide/whos_who/criminal_trial.aspx

Legal Personnel

Consists of :

1. Magistrates

- preside over Local Court
- hear summary offences
- independent from government
- Decides verdict and sentence

Legal Personnel

2. Judges

- District Court and above
- Controls trial using legal rules and principles e.g. excludes illegally obtained and irrelevant evidence
- Rules on points of law
- Advises jury on their role and points of law but can't instruct about verdict to reach
- Must remain impartial
- If guilty verdict by the jury, decides sentence

Legal Personnel

3. Prosecutors

- Represent **state/society** in the court to prove the guilt of the accused
- Once a conviction is gained, presents arguments relating to **punishment**
- Decides whether to appeal
- **Police prosecutors** conduct most prosecutions in Local Court (summary prosecutions/many committal hearings for indictable offences) = specially-trained police officers (resource efficiency)
- **Director of Public Prosecutions** (DPP):
 - a. eminent criminal lawyer appointed by Parliament
 - b. heads up team of **Crown prosecutors**/barristers = required to help the court discover the truth, not to gain a conviction at any cost;
 - c. Decides to prosecute and appeal (e.g. inadequacy of sentence and acquittals)

Legal Personnel

4. Defence Lawyers

- Represent **accused**
- Counters prosecution's evidence by **casting doubt** in the minds of the jury/magistrate about the reliability of the prosecution's case.
- **Public Defenders:**
 - a. Represent accused on serious criminal charges who have legal aid;
 - b. Salaried lawyers paid by government but act independently

Fact Check

Which of the following legal personnel has responsibility for presiding over cases in the local court?

- A. Judge
- B. Magistrate
- C. Public Defender
- D. Director of Public prosecutions

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(BOS 2011 Exam Q2)

Fact Check

In the criminal justice system, decisions of higher courts are binding on lower courts.

Which of the following terms is this statement describing?

- A. Adjournment
- B. Adjudication
- C. Jurisdiction
- D. Precedent

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(BOS 2012 Exam Q 4)

Fact Check

In the District Court, 25-year-old Morgan is convicted of drug trafficking. What is the highest court that could hear an appeal by Morgan against the conviction?

- A. Drug Court
- B. High Court of Australia
- C. Supreme Court of NSW
- D. Court of Criminal Appeal of NSW

Fact Check

Use the following information to answer Question

25-year-old Jordan and 23-year-old Darcy stole cigarettes from a shop. As they were leaving the shop, Jordan and Darcy forced 18-year-old Ariel to hide the cigarettes under her shirt. They were then apprehended by police, taken to the local police station and charged.

Which court has original jurisdiction to hear these charges?

- A. Drug Court
- B. Local Court
- C. District Court
- D. Supreme Court

(BOS 2012 Exam Q 10)

Fact Check

What is the first step in a criminal trial process for murder?

- A. A jury is empanelled.
- B. An arrest warrant is issued.
- C. A committal hearing is held.
- D. The offender is charged by police.

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(BOS 2011 Exam Q 10)



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