

Legal Studies

The criminal trial process – Lesson 2

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Syllabus Dot Points:

- Pleas, charge negotiation
- Legal representation, including legal aid
- Burden and standard of proof
- Use of the evidence including witness

Pleas, Charge Negotiation

- The charge
 - An accusation against a person
 - Laid by police or law enforcement officer e.g. Customs Officer
 - Does not imply guilt = court/trial determines this.

Pleas, Charge Negotiation

- The plea
 - An accused is **required to make a plea** to the charges against them e.g. guilty/not guilty/unfit to stand trial/failure to plea = not guilty
 - Determines how the trial proceeds:
 1. **Guilty plea** – no trial just sentencing; quicker as no question about the accused's guilt
 2. **Not guilty plea** – accused's guilt must be proven via trial
 - Pleas affect the sentencing process = benefit of early guilty plea can lead to discount in sentencing; 25% if before committal and 12.5% if after as per *Criminal Case Conferencing Trial Act 2008*

Case Study – R v Abrahams 2013

- Manslaughter guilty plea by accused was rejected by DPP
- Abrahams charged with murder (and convicted)



Source <http://www.smh.com.au/nsw/kiesha-weippearts-stepfather-seeks-reduced-sentence-over-killing-20140917-10ibg3.html>

Charge Negotiation

- **Negotiation of charges** between the defence and the prosecution;
- Occurs either via –
 - a. Multiple charges for the same crime - prosecution will drop some charges in return for guilty plea by accused;
 - b. Charge reduced to a lesser one if accused pleads guilty = murder to manslaughter e.g. Thomas Kelly case

Charge Negotiation

- Used to get the accused to **plead guilty** to an offence – complex issue as concern that police over charge in order to encourage a charge negotiation
- Issues of:
 - **balancing of rights** of victims, offenders and society = victim has no control over negotiations
 - **resource efficiency** = guilty plea avoids need for costly trial/justice achieved quickly

Charge Negotiation – Pros & Cons

For	Against
More resource and time efficient	Some offences can go unpunished
Increases rate criminal convictions	Accused might plead guilty to a charge they are innocent of
Lesser charge conviction better than none at all	Undue pressure could result in accused not having a trial

Law Reform - Charge Negotiation

- Charge negotiations previously criticised for leaving victim out of the process = disenfranchised
- Amendments to *Crimes (Sentencing Procedures) Act 1999* effective in 2011 = requires their to be consultation between police and victim; victim must be notified of negotiation process but doesn't have to agree to it

Fact Check

Drew and three other men were involved in a murder. The three men agreed to a lesser plea in return for giving evidence against Drew.

In which of the following processes have the three men participated?

- A. Restorative justice
- B. Charge negotiation
- C. Pre-trial negotiation
- D. Inquisitorial justice

(BOSTES 2011 Exam Q11 Multiple choice)

Fact Check

Drew and three other men were involved in a murder. The three men agreed to a lesser plea in return for giving evidence against Drew.

How does the fact that the men agreed to a lesser plea assist the operation of the criminal justice system?

- A. It promotes fairness.
- B. It supports the rights of the victim.
- C. It protects the rights of parties to a crime.
- D. It improves the efficiency of the legal system.

(BOSTES 2011 Exam Q12 Multiple choice)

Legal representation, including legal aid

- No automatic right for accused to be legally represented but injustice can result if not
- Limited right to legal representation = common law established in *Dietrich v. The Queen* (1992)
 - Accused charged with drug offences = denied legal aid due to overwhelming evidence/no merit in case
 - Represented himself; convicted
 - Appealed conviction arguing did not get a fair trial due to lack of legal representation
 - High Court agreed = changed the way Legal Aid administered; must be given for all serious indictable offences subject to eligibility tests

What is legal aid?

The Legal Aid Commission (LAC):

- Established 1979
- Provides people **unable to afford** legal representation with access to a lawyer
- Focus is providing marginalised/disadvantaged groups with equitable **access to the law**
- Funded by the NSW Government
- Subject to **eligibility tests**

What is legal aid?

- Jurisdictional: Does it fit into Legal Aid area of law and type of case?
- Means test: Does applicant's assets and income fall below the Legal Aid level?
- Merit test: Is there a chance of the case being successful?

Free 15 minutes general advice.

Legal Aid is an important **mechanism for equality** (between the State and the accused) and matching the power/resources of the state.

Fact Check

What is the aim of legal aid in the criminal justice system?

- A. To promote self-representation
- B. To promote the welfare of citizens
- C. To overcome cultural disadvantage
- D. To overcome institutional inequality

(BOSTES 2011 Exam Q13 Multiple choice)

Burden and Standard of Proof

- **Presumption of innocence**
 - fundamental underpinning of criminal justice system
 - means accused is innocent until proven guilty beyond reasonable doubt by the prosecution
- **Burden/onus** of proving guilt
 - on the prosecution
 - accused has no responsibility to prove not guilty
- **Standard** of proof
 - level to which decision-maker must be satisfied of guilt
 - beyond reasonable doubt
 - very high because implications of guilty verdict
 - All aspects of the crime must be proven to this standard = mens rea, actus reus, causation
 - Critical for **police** to **gather compelling evidence** otherwise very hard to reach this high standard

Defences – standard of proof

- If accused argues a **defence** to their crime, they have the **burden** of proving that defence to the standard of the **balance of probabilities**.
- *R v Silva* 2015 – argued self defence to murder charge; accepted only partially, convicted of manslaughter
- *R v Cullen* 2015 – raised self defence and provocation as defences to charge of murdering wife; failed to prove defences to standard required, convicted of murder

Exceptions to Burden and Standard of Proof

Defence must prove:

- **Insanity**
 - accused was insane on the balance of probabilities
- **Drug offences** over certain quantity
 - accused not supplying drug but personal use only
- **Substantial impairment of the mind**
 - accused suffering from an '*abnormality of the mind*' that '*impaired their mental responsibility*'

Fact Check

What is the standard of proof in a criminal case?

- A. Beyond any doubt
- B. Beyond reasonable doubt
- C. On the balance of possibilities
- D. On the balance of probabilities

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Fact Check

Who has the burden of proof in a criminal case?

- A. Jury
- B. Plaintiff
- C. Defendant
- D. Prosecution

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Use of evidence, including witnesses

- The collection, presentation and interpretation of evidence are crucial to justice being achieved
- Must be collected according to *Evidence Act 1995* (NSW) or inadmissible
- Judge decides on whether evidence can be presented to the jury (i.e. is admissible)
- Admissible evidence = relevant and obtained legally
- Witnesses
 - called by either prosecution or defence
 - provide crucial verbal evidence in case by giving police statements about what they heard/saw/experienced at crime
 - Must be accurate in recalling events -will be examined and cross-examined to ensure accuracy

Different Forms of Evidence



EVIDENCE

Source
<http://www.fameimages.com/evidence>

- **Witness testimony** = seen crime or interviewed by police; can be subpoenaed to give evidence later in court
- **Physical evidence** = tape recordings, charts, photographs
- **Documentary evidence** = crime scene
- **Expert witness** = forensic/DNA, doctor



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