

MLL218 Criminal Procedure Exam Notes

Contents

General Info – Page 3

- Summary v indictable offences
- Children and Witness indemnity
- Procedure for hearing indictable offence summarily
- Penalties for offences

Appeals – Page 4

Right to Legal representation – Page 5

Evidence – s138 and 139 EA – Page 5 -6

Commencing proceedings – Page 6-7

- Notice to appear and summons
- Time limits

Arrest (law) - Page 8-9

- Process – Page 10
- Entry and search to arrest – Page 11 - 14

Search and seizure – Page 15

- Inadvertent discovery – Page 16 - 18

Fingerprinting – Page 19 - 24

Forensic procedures –Page 25 - 28

- Compulsory procedure – Page 29
- Admissability – Page 31

Police Questioning – Page 32

- Rights in custody – Page 33 - 34
- Confessional evidence – Page 35
- Excluding confessional evidence – Page 36
- Multiple Interviews – Page 37

ID evidence – Page 38-40

- Jury directions
- S 114 – visual id
- S 115 – photos
- Duty to warn – Page 41
- Excluding ID evidence – s 137 and 138 – Page 41

Machinery of the Prosecutions – Page 42-45

- Plea negotiations – Page 46
- Sentencing – Page 46-47
- Trial of Indictable offences – Page 48
- Duties – Page 48-49

Other Procedures

- Judicial Bias – Page 50
- Pre-trial Processes (committal process, changing pleas etc) – 50-52
- Double jeopardy and exceptions – Page 52 -58
- Reinvestigation – Page 59 - 60

Jury Process – Page 62

- Challenges- Page 63 -65
- Jury Behaviour – Page 66
- Sanctity – Page 67 - 68
- Verdicts – Page 69

General

Children - conclusively presumed that children under 10 can not be capable of committing a crime s344 youth child family act 2005

Common law: *doli incapax* - 10-14 : rebuttable presumption that children can not commit a crime. Not only do prosecution need to prove elements of the crime but also that the child knew that their conduct was seriously wrong in the criminal sense: ALH 2003 6 vr 276

Statutory: criminal code s 7.2

Witness indemnity

- DPP or attorney general have discretion to give witness indemnity from being prosecuted in return for giving evidence. Must be in public interest. Have they exhausted every other means to gain evidence. Generally it is a co-accused who doesn't want to self-incriminate but has been less liable than the principal offender.
- Evidence must be truthful otherwise can be charged for perjury.

Summary v Indictable

Indictable – **sentencing 112(1)** - indictable offences are levels 6 and above (5 years imprisonment, 600 penalty)

Offences in the *Crimes Act 1958* and the *Wrongs Act 1958* are deemed to be indictable, unless the contrary intention appears (*Crimes Act 1958* s2B)

S 160 CPA – tried in county or supreme

Summary – **Sentencing 112 (2)** - offences other than above are summary unless contrary appear

S 27 CPA – tried in magistrates

- Must be commenced within 12 months – cpa s 7 (1)

Indictable heard summarily -

S 28 – level 5 or 6 offences (5-10 years maximum term) or schedule 2, if s 29 complied with.

S 29 – can hear an eligible offence if (a) the magistrate considers it appropriate considering the circumstance in s 29 (2); seriousness of the offence, adequacy of sentencing, aggravating factors, number of offences, co-accused etc.

(b) the accused consents

- Prosecutor or accused can apply to have it heard summarily or court may offer
- If no consent, then proceeds as indictable offence.

Maximum penalties

S 113A – single summary offence: 2 years

S 113 – IOTS- 2 years or fine

S 113 B -Multiple offences: cumulative 5 years

Appeals – MCA 1989

S 274 – right to appeal to court of appeal

S 276 – appeal allowed only where the applicant can establish a miscarriage of justice in relation to trial or other matter, verdict of the jury is unreasonable or cannot be supported having regard to the evidence

A convicted person can appeal against sentence and/or conviction:

↳ From Magistrates' Court to County Court: ss254-256

↳ From County Ct / Supreme Court to Ct of Appeal:

÷ Against sentence: ss278-286

÷ Against conviction: ss274-277

The Crown may appeal against sentence:

↳ From Magistrates' Court to County Court: ss257-259

↳ From County Ct / Supreme Court to Ct of Appeal: ss 287-294

S 242 - Hearing both related summary offence and indictable in county or supreme

- Can be heard in the higher court if the accused consents
- Impose sentence that magistrate court
- Admit same evidence from indictable

S 243 Hearing both unrelated summary offence and indictable in county or supreme

- Can be heard in the higher court if the accused consents and they plead guilty to the summary offence

S 168 - (1) can transfer an indictable offence heard summarily back to magistrate if appropriate considering factors in s 29

- (2) If magistrate previously refused, can't transfer back unless change in prosecution case or charges

Right to Legal Representation

Dietrich v The Queen

- Accused unable to afford or secure legal representation is not grounds for adjournment unless it would be unfair to continue without representation.
- Unfair means loss of real chance of acquittal and legal rep would affect the outcome of the case.
- In future cases, if d accused of serious crime and it would be unfair for trial to continue without legal rep, then proceedings should be adjourned until legal rep obtained.

S 197 (2) CPA – refusal of legal rep not grounds for adjournment or staying the trial unless

(3)(a) - unfair trial without representation and

(b) The accused needs rep due to being unable to afford rep.

Court may order legal aid to represent the accused, on what conditions, and adjourn until received.

Court does not specify the extent to which legal rep is granted by legal aid; e.g. instructing solicitor – R v Chaouk

Evidence

Improperly/illegally obtained evidence

S 138 CPA – Not to be admitted unless its desirability outweighs its undesirability of admitting the evidence in the way it was obtained.

(3) Without limiting the matters that the **court** may take into account under subsection (1), it is to take into account—

(a) the **probative value** of the evidence; and

(b) the importance of the evidence in the proceeding; and

(c) the nature of the relevant **offence**, cause of action or defence and the nature of the subject-matter of the proceeding; and – **R v em – A mere breach will not be sufficient to exclude evidence where the offence is serious**

(d) the gravity of the impropriety or contravention; and

(e) whether the impropriety or contravention was deliberate or reckless; and Parker v general customs – **degree of deliberation = more likely to be excluded = Bunnings v Cross**

(f) whether the impropriety or contravention was contrary to or inconsistent with a right of a person recognised by the International Covenant on Civil and Political Rights; and

(g) whether any other proceeding (whether or not in a **court**) has been or is likely to be taken in relation to the impropriety or contravention; and

(h) the difficulty (if any) of obtaining the evidence without impropriety or contravention of an **Australian law**.

Evidence continued

R v Ireland - inadmissible evidence improperly obtained

D had photographs of hands taken + recording after repeating he didn't want to answer more questions. Police asserted they had power which they didn't. Inadmissible, requires balancing act of convicting criminals and public interest in protecting individuals from unlawful treatment.

S 139 – cautioning is improperly obtained evidence

Time Limits

Summary offences : adults < 1 year for prosecution to file

Children < 6 months

Indictable offences - any time. However some offences have limitation like sex offences. If precondition or limitation period passed or not met, then cannot prosecute even if the accused enters plea of guilty - R v Tait

Retrospectivity

- Cannot be prosecuted for offences that were legal at the time of commission. I.e. if a new law is passed after the date of commission.
- But procedure and evidentiary laws are applied at the date of trial, not commission. I.e. you are tried according to the current evidentiary and procedural laws at the time of trial. **Rodway 1990**

Commencing Proceedings

Infringements

Infringements act 2006 – on the spot fine, fixed penalty, avoid court, have 28 days. No conviction **recorded**. Can pursue the case at magistrates courts, becomes a summary offence.

Commencement of proceeding is considered to have occurred when

CPA 6(1)

- a. Charge sheet is filed with magistrates registrar or
- b. If an accused arrested without a warrant and released on bail, by filing a charge sheet with the bail justice
- c. If a summons is issued under s 14, when the charge sheet is signed

Requirements of charge sheet

6(3) (a) must be in writing

(b) must be signed by informant personally (police officer in magistrates, or crown prosecutor in higher courts)

© must contain sufficient information about charge