

Introduction To Criminal Procedure

Court hierarchy, jurisdiction and the distribution of criminal matters

THEORY

Procedural law come from multiple sources — legislative instruments (Evidence Act 1995, Criminal Procedure Act), court rules, common law process, etc. in administering and enforcing the judicial system. Procedural law is **important** because it provides **fairness since it allows people to be heard**.

- **Opportunity to participate** — Capacity to shape outcome. Person being accused can raise issues, seek safeguards
- **Neutrality of the form** — Prosecutor/judge/magistrate will be impartial and not have any predetermined view of either side of the case. This is to ensure no bias
- **Trustworthiness of the authority** — Applying the law in a neutral way.
- **Degree to which people receive treatment with dignity and respect** — Being able to participate in a way that you are afforded basic human rights and courtesies to speak up

This is differentiated from **substantive law** which defines the actual crimes such as murder, and larceny.

Guiding Principles in Criminal Pleadings

- Anyone who has criminal charge against them has equality to be informed promptly and in detailed language of the nature and cause of the charge against them
- Prosecutor's pleadings — indictment, information, can remain vital because they define courts' jurisdiction
- Pleadings must have completeness, accuracy and clarity — clarity is not just a professional pride but a legal obligation
- *Woolmington v DPP* raises the notion of '**the golden thread**' — Even where the prosecution must prove subjective awareness and beyond reasonable doubt on the part of the accused, it is still the duty of the defence to still frequently give evidence to raise a reasonable doubt about the prosecution's case

The Two Tiers of Justice

- There is somewhat an existence of two tiers of justice where there are lower criminal courts and the more severe, higher criminal courts. Time and resources spent more on serious cases, and lower less serious cases are quickly dispensed.
- The purpose of committal hearings is to: eliminate weak cases; disclose prosecution's case; identify guilty pleas early; release the case and clarify issues

Local Courts

- Summary Offences (Maximum penalty of 2 years. No jury)
- Quicker & Less Costs
- May infringe upon right to trial as it is decided by a sole judge

Higher Courts

- Indictable offences (Maximum penalty of >2 years. Can have jury, though jury can be swayed by persuasiveness of emotions rather than the logical aspect of law. Could also possibly be harsh

LEGISLATION & CASE LAW

General Jurisdiction Provisions for the Respective Courts

- *Supreme Court Act 1970 (NSW) s 23*
- *District Court Act 1973 (NSW) ss 9, 166*
- *Local Court Act 2007 (NSW) s 9*

Criminal Procedure Act (CPA) s3 — Definitions

- "Indictable offence" means an offence that may be prosecuted on indictment, that is a more serious offence in which the defendant has the right to trial by jury
- "Summary offence" means an offence that is not an indictable offence, that is an offence that is not as serious

CPA s 5 — Certain offences to be dealt with on indictment

- (1) An offence **must be dealt** with on indictment **unless** it is an offence that under this or any other Act is **permitted or required to be dealt with summarily**.
- (2) An offence **may be dealt** with on indictment if it is an offence that under this or any other Act is permitted to be dealt with **summarily OR on indictment**.

CPA s 6 — Certain offences to be dealt with summarily

- (1) Offences which must be dealt with summarily:
 - (b) Required to be dealt with summarily
 - (c) Described as a summary offence
 - (d) Maximum penalty is < 2 years
- (2) Offence may be dealt with summarily if permitted to be dealt with summarily or on indictment

CPA s 7 — Certain summary offences may be dealt with by Local Court

- (1) An offence that is permitted or required to be dealt with summarily is to be dealt with by the LC
- (2) This does not apply to an offence that is required to be dealt with summarily otherwise than by the LC

CPA s 8 — Prosecution of indictable offences

- (1) Indictable offences to be dealt with by SC or DC

CPA s 46 — Jurisdiction of Courts

- (1) SC has jurisdiction in respect of all indictable offences
- (2) DC has jurisdiction in respect of all indictable offences, other than such offences as may be prescribed by the regulations for the purposes of this section

CPA s 260 — Offences dealt with summarily unless elected for indictment

- (1) Indictable offence in **Table 1** Schedule 1 to be dealt with summarily by LC **unless prosecutor or person charged elects for indictment**
- (2) Indictable offence in **Table 2** Schedule 1 to be dealt with summarily by LC **unless prosecutor elects** for indictment

CPA s 267 — Maximum penalties for Table 1 Offences

- (1) This section prescribed max penalty that may be imposed for indictable offence listed in Table 1 to Schedule 1 **dealt with summarily** under this chapter where max offence not provided by law
- (2) Max term that LC can impose is **2 years or the maximum term provided by law**, whichever is shorter
- (3) Max fine that LC can impose is **100 penalty units or the maximum fine provided by law**, whichever is smaller

CPA s 268 — Maximum penalties for Table 2 Offences

- (1) Section prescribes max penalty that may be imposed for indictable offence listed in Table 2 to Schedule 1 **dealt with summarily** under this chapter where max offence not provided by law
- (2) Max term that LC can impose is 2 years or the maximum term provided by law, whichever is shorter (3)
- (3) Maximum fine depends on the offence – long list

CPA sch 1 — Indictable offences triable summarily

- Table 1 – indictable offences to be dealt with summarily unless prosecutor or person charged elects otherwise
- Table 2 – indictable offences to be dealt with summarily unless prosecutor elects otherwise

Munday v Gill

- Dixon J draws a ‘great distinction in history, in substance, and in present practice’ between two tiers
 - Summary trials
 - **Expedient** for efficient enforcement of statutory regulations
 - Maintenance of **quiet and good** order of society
 - Magistrate
 - Trial upon indictment
 - Highest crimes, gravest liabilities
 - **Formally and solemnly** determined
 - Judge and jury