

Criminal Procedure		
Principles Underlying	Prosecution bears the onus of proof and the accused cannot be compelled to give evidence for the prosecution	Justice Kiefel in Lee v NSW
	Duty of the prosecution to prove the prisoner's guilt	Woolmington v DPP
	1. Right to personal liberty	Common Law Principles Source: NSWLRC Bail Report 2013
	2. Presumption of innocence	
	3. No punishment without conviction by due process	
	4. A fair trial: Dietrich v The Queen	
5. Individualised justice and consistency in decision making		
6. Special provision for young people		

Topic 1

Court Hierarchy	Criminal Jurisdiction in NSW	Type of offence	Decision Maker
Supreme Court	All Jurisdiction (Supreme Court Act 1970 NSW s23), all indictable offences (CPA s46)	Indictable offences that not required be dealt with summarily	Judge and jury(depends)
District court	Jurisdiction by Criminal Procedure Act (District Court Act 1973 NSW ss99, 166); All indictable offences except murder and treason (CPA s46, Crim Proc Reg 115)	Same as Above	Same as Above
Local Court	As conferred by law Local Court Act 2007 NSW s9	Offences permitted or required dealt summarily (CPA ss 6&7)	Magistrate
Choose Court			
1) Types of offence	2) Check provision of offences	3) if indictable	
Strictly Indictable	note the Maximum Penalty . E.g. Summarily: offensive language; Indictable: murder	Check table 1 and 2 of CPA 1986, see Whether it's a hybrid offence	
Hybrid(or 'elective')			
Summarily			
Description			
Strictly Indictable	Dealt by Supreme Court or District court (Murder and treason, query manslaughter) - Not in district court -> ss12 (treason), 19A(murder) CA1900 NSW; 46(2)CPA; Reg 115 CPR 2017		
Hybrid(or 'elective')	Offences must be dealt with on - Indictment unless required to be dealt with summarily under CPA (CPA 1986 s5) or another ACT - Summarily unless positive elect be dealt indictment (s260 CPA, table 1 & 2) Table 1: Both P and D have power (More serious offences) Table 2: Only P have power (Less serious)		
Summarily Significant reduce Penalty - Max 2 ys (CPA ss 267 & 268) - Max 5 ys collective (ss 53B, 58 CSPA 1999)	When dealt Summarily? CPA s6: - Required by CPA or other Act, or election - Labelled as summary offences - maximum penalty 2 years (unless " required or permitted on indictment ", listed in CPA schedule 1, table 1 or 2, are dealt by Local Court (CPA s7))		
Summary Hearing	Underlying principle - Munday v Gill 1930, Dixon J		
	efficient enforcement of statutory regulation Maintenance of quiet and good order of society		
Indictment Trail	Highest crimes, gravest liability		
	Formally and solemnly determined		

2. Police power & Discretion

Underlying principles	Gareth Griffith, LEB 2001: -lack of discretionary power is near useless -free from check is dangerous	
	Spigelman Cj in Rondon , Balanced manner: -efficacy of police investigation -respecting the fights of citizens	Rondon
	Consent to assist inquiries - Given: no issue of police power (S&J 1983) Determining whether has consented: Circumstances, background of a person, words	S & J 1983 arrest without warrant
	- Not Given, consider: Reasonable suspicion? Warrant?	
Reasonable Suspicion	A police officer may without warrant , if suspect on reasonable grounds (Rondo, hyder) : - require ID - stop, search, detain a person - stop, search, detain a vehicle - Arrest a person if (a) reasonable grounds (b) Necessary if reason listed in legislation (i) stop committing or repeating (ii) stop fleeing (iii) enable inquiries ID or believe false ID (iv) ensure appears court (v) obtain possession if connect to offence (vi) Preserve evidence (vii) Prevent harassment/interfere evidence (viii) Protect safety of any person (ix) Nature of seriousness of offence	LEPRA s11(1) s21(1) s36(1) s99(1)
	Arrest as a last resort: - Inappropriate used for minor offences where def's name and address are known - no risk of departing or summon not be effective - Arrest is an additional punishment	Williams v DPP DPP v Carr 2002 arrest without warrant
	<u>Reasonable suspicion</u> (Per Smart AJ): - not belief, more possibility -not arbitrary -Whole circumstances, in the limited time with available info <u>Held</u> : initial stop was unlawful, evidence is inadmissible under the evidence Act - discretionary	Rondo 2001 reasonable suspicion
	Requires existence of facts , which are sufficient to induce that state of mind in a reasonable person	George v Rockett reasonable suspicion
	Reasonable belief -> lead you to think more in affirmative than the negative (1) requires facts (2) state of mind must be formed (3) factual basis (4) Reasonable known at the relevant time (5) entitled to form a belief based on what they have been told	Hyder v Commonwealth of Australia reasonable suspicion
Search power:	Power to carry out arrest	ss 23 LEPRA
	How to search	ss 30 LEPRA
	Domestic violence search	ss 28 LEPRA
	power to apply for search warrant	ss 47 LEPRA
	Authrise power to search	ss 47A LEPRA

Consequences of improperly or illegally obtained evidence	(1) obtained: (a) improperly/contravention of an Aus Law (b) in consequence of (2) is not to be obtained unless: desirability of admitting outweighs the undesireability. *Improperly, e.g. not necessary also not broken the Aus law	Evidence Act 1995 s138
	(3) under (1) also take into account: (a) Probative value of evidence (b) Importance of the evidence (c) Nature of offence (d) gravity of impropriety or contravention (e) d is whether deliberate or reckless (f) d inconsistent rights by international Covn (h) difficult to obtain without d	
	No duty engage unlawful conduct. If officer acts outside his/her duty, element of offence is missing	Coleman v Power 2004
	Words may be sufficient, but not always necessary	O'Donoghue 1988
Police's Defence for unlawful arrest	Execution of duty, e.g: -Resisting police is liable on conviction -Assault Police is liable	s546C Crimes Act 1900 s60 Crimes Act 1900
	Not enforce the law, but to secure broader objectives: - Imposition of order - Assertion of authority - Acquisition of information	McConville in Brown p 428
Due Process	A police officer must provide : - evidence that he/she is a police officer - name and duty (Not to do so is not unlawful, unless the person asked) - reason, etc	s202 LEPRA
	After Arrest: (1) took in custody, custody manager must: - (a) Caution does not have to say or do otherwise may be used for evidence - (b) max investigation may beyond 6 hrs	s 122 LEPRA
	(1) Custody manager must inform the person: (a) can/attempt to communicate with a friend, relative, guardian or independent person: (i) whereabouts the detained person (b) can/attempt to communicate with an Aus legal practitioner do either or both following: (i) attend where detained (ii) Present him/her	s123 LEPRA
	Power to question: - once arrested, person maybe questioned - max investigation period: >6 hrs or detention warrant for extent - determine reasonable time: P prove, probability - Recorded (Only table 1, not summary offences) - No power to arrest purely for investigation - Right to remain silent	s114 LEPRA s115 LEPRA s116 LEPRA s 281 ERISP Williams v The Queen 1986 s89A EA 1995, Maiden 1991