

Criminal Law

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Week 1 - The Criminal Justice System

The Vital Right to a Fair Trial

A person cannot be convicted except after a fair trial for any crime.

Dietrich v The Queen (1992) 177 CLR 292 'every person has a right not to be tried unfairly'.

Fair trial is encompassed in International Human Rights.

R v Hpbson (182) 1 Lew CC 261. I 'it is a maxim of English law that ten guilty men should escape rather than one innocent man should suffer.'

Common law also consistent with this.

Others Involved

Attorney-General's Reference (No 3 of 1999) [2000] 2 AC 91 at 118 'The purpose of the criminal law is to permit everyone to go about their daily lives without fear of harm to person or property. And it is in the interests of everyone that serious crime should be effectively investigated and prosecuted. There must be fairness to all sides. In a criminal case this requires the court to consider a triangulation of interests. It involves taking into account the position of the accused, the victim and his or her family, and the public.'

Lawyer's Duty

Rondel v Wosley [1966] 2 AllER 657: Lord Denning: 'I say 'all he honourably can', because his duty is not only to his client. He has a duty to the court which is paramount. It is a mistake to suppose that he is the mouthpiece of his client to say what he wants or his tool to do what he directs. He is none of these things. He owes allegiance to a higher cause. It is the cause of truth and justice.'

Lord Reid: 'As an officer of the court concerned in the administration of justice, he has an overriding duty to the court, to the standards of this profession, and to the public, which may and often does lead to a conflict with his client's wishes or with what the client thinks are his personal interests.'

R v Boucher [1955] SCR 16: firmly and fairly.

Jurisdiction and Sources

Federal Crimes

Investigated by Federal Police, Prosecuted by Commonwealth DPP in Federal Courts

Types of crimes:

- Aircraft, airport and aviation crimes
- Child sex offences by Australians overseas
- Cybercrime against Commonwealth departments or information systems of national significance
- Drug importation and exportation
- People smuggling
- Human trafficking, including trafficking for slavery, organ harvesting, sexual, domestic and/or labour servitude and forced marriage
- Online Child Exploitation
- Terrorism
- Fraud against the Commonwealth government
- Theft from the Commonwealth government
- Assault on a Commonwealth official