

1) Bail

a) Bail

- i) The temporary release of an accused person awaiting a hearing or trial, usually upon certain conditions
 - (1) Personal undertakings, monetary deposits, surrender of certain liberties – i.e. handing over a passport, reporting to Police, etc.
- ii) Alternatively, **remand** is 'continued detention in custody'.
- iii) At common law, **all crimes were open to bail**, with this premise largely unaffected by enactment of the *Bail Act 1977 (Vic)*.
- iv) Some people may have the impression that bail is granted to anyone that is accused of a criminal offence, however, there is no actual common law right to bail.
 - (1) *Chau v DPP (1995) 3 NSWLR 639 ALR 430* → Gleeson CJ said "There is no common law right in a person who has been arrested and charged with a serious crime to be at liberty or on bail pending the resolution of the charge. In any event if there were such a right, it could be modified by statute."

b) Liberal Democratic Society

- i) Based upon the **ideas of liberty and equality**
 - (1) Implicit in this is the 'Freedom of movement' and protection against authorities (i.e. Police and the State) – being able to hold an individual against their will without a justifiable reason.
- ii) The **process in remanding and/or bailing** someone under a liberal democratic society **must therefore be open, consistent and transparent**.
 - (1) Essentially, Political power is divided in a liberal democratic society in order to **prevent abuse of power** by a single person or party.
 - (2) "**Separation of Powers**" → Executive (government and public administration) legislative (law) and judicial (court rulings).
- iii) Therefore, the laws/processes concerning bail **must be consistent** with the underlining principles of a liberal democratic society.

2) Summary Offences

a) Overview

i) Crimes which can only be heard and decided by a Magistrate in the Magistrates Court are called summary offences.

(1) Less serious than indictable offences and the penalties imposed are not as great.

(2) Summary offence charges may be heard and determined summarily in accordance with Chapter 3 of the *Criminal Procedure Act 2009 (Vic)*, 27.

b) Courts of Summary Jurisdictions

i) The Magistrates' Court and Children's Court are courts of summary jurisdiction.

ii) Magistrates' Court hears summary or simple offences.

(1) Inferior courts that depend upon the statutes which created them for their jurisdiction and exercise those powers that are expressly conferred by the legislature or are necessary for the exercise of their functions.

(2) Jurisdiction of the court is primarily the summary hearing of less serious offences and the conduct of committal or preliminary hearings.

iii) The Children's Court generally determines all offences summarily although it also conducts preliminary examinations or committal proceedings in respect of matters where it has no jurisdiction or where the person elects to have the matter dealt with in that way.

c) Summary Case Conference

i) A meaningful discussion between the prosecution and the accused regarding pre-trial disclosure, the issues in dispute and the prospects of resolving the charges.

ii) Provides significant opportunities for the timely resolution of matters through negotiation with a prosecutor at an early stage in the proceedings.

iii) Can be conducted in any manner, including in person, over the phone or by email.

- *Criminal Procedure Act 2009 (Vic)* s54.

iv) Evidence of anything said or done in the course of a case conference is not admissible in any later proceeding or judicial inquiry.