

Essay Questions (discuss big picture):

- **Always mention the gap between law and practice.** Use Christian White case (shows multiple problems), Discuss how body cameras changed everything. Note that they are good but don't work
- **Key Cases to Drop:** *R v Rondo*: What reasonable suspicion means, *Lawless v R*: When arrest is unnecessary *Christian White*: Use of force gone wrong, *Curtis Scott*: Police abuse caught on camera
 - Police refuse bail → accused is brought before a court of authorised justice.
- **Authorised Justice** = register of Local/Circuit Court, employees of Department of Communities, and Justice authorised as a justice for purposes of *Bail Act 2013* (NSW)
- **Court bail options** (s 4, s 10):
 1. Dispense with bail (released to await trial, no conditions apply).
 2. Grant bail (with or without conditions)
 3. Refuse bail.
 - a. Bail **must be decided on normal court times** (not by authorised justices).

Week 11 - Bail

- Bail allows an **accused or convicted individual** to remain at liberty, often on conditions.
- Preserves the **presumption of innocence** until proven guilty.
 - Rooted in medieval English law (referencing *R v Collins* [1968] 1 All ER 106, A Crim R 95).
- **Decision-Makers Considerations in Granting Bail** (under *Bail Act 2013* (NSW) s17(2))
 - a) fail to appear at any proceedings for the offence, or
 - b) commit a serious offence, or
 - c) endanger the safety of victims, individuals or the community, or
 - d) interfere with witnesses or evidence.

First Bail Decision made by police (must be rank >Sergeant)

- **Right to Release Offences - BAIL MUST BE GRANTED** (under s23(2) *Bail Act 2013* (NSW))
 - a) a **fine-only offence**,
 - b) an **offence under the Summary Offences Act 1988**, other than an **excluded offence**,
 - c) an offence that is being dealt with by conference under Part 5 of the *Young Offenders Act 1997*
- **Excluded Offences** (s21(3))
 - a) an offence under section 5 (obscene exposure) **if the person has previously been convicted of an offence under that section**,
 - b) an offence under section 11A (violent disorder) if the person has **previously been convicted of an offence under that section or of a personal violence offence**,
 - c) an offence under section 11B, 11C or 11E (offences relating to knives and offensive implements) if the person has **previously been convicted of an offence under any of those sections or of a personal violence offence**,
 - d) an offence under section 11FA (custody or use of laser pointer in public place),
 - e) an offence under section 11G (loitering by convicted child sexual offenders near premises frequented by children).
- **No right to bail** under s23 provisions **if accused has previously failed to comply with terms of his/her bail** (*Bail Act 2013* (NSW) s21(4)).

- Accused **can ask for review of Police bail** - **Senior office may affirm/vary decision** (ss 43,44; ss 8, 9)

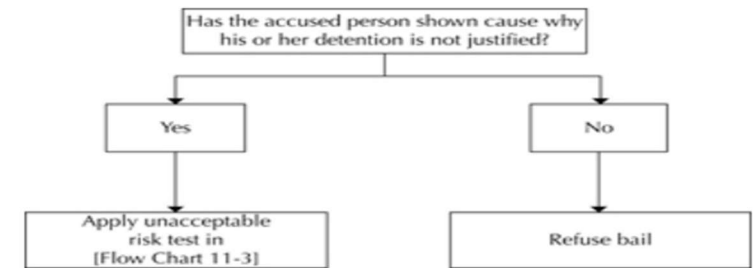
Only Types of Bail Applications possible under *Bail Act 2013* (NSW)

1. **release application**: which may be made **only by the accused person** under s 49 for bail to be granted or dispensed with
2. **detention application**: which may be made **only by the prosecutor** under s 50 for the refusal or revocation of bail or for the grant of conditional bail, or
3. **a variation application**: which may be made **only by any "interested person"** as set out in s 51 for a variation in bail conditions

- Court Considerations when deciding Bail:

STEP 1: IS IT A SHOW CAUSE OFFENCE?

- **Show cause offence** = Offences **punishable by life in prison**, various offences in s 16B *Bail Act*. AND Pt 3/3A *Crimes Act 1900* (NSW) (offences from sections 17 - 93 (inclusive))
- Bail authority **must refuse bail**, unless accused **satisfies bail authority that his/her detention is unjustified (ON BALANCE OF PROBABILITIES)**
- If the accused satisfies Bail Authority **detention is unjustified, move to unacceptable risk test**
 - Use **exceptional circumstances test if the offence is terrorism related**.



Show Cause Offences (Exceptional Circumstances)

- **Exceptional Circumstances Test** - s 22A(2) *Bail Act 2013* NSW
 - a. applies to **show cause offences to which s 22(A) applies (Terrorism related)**
 - b. bail **must not be granted, unless in exceptional circumstances**.

Exceptional Circumstance = the youth of an accused person: *R v NK* at [34], [40]; the strength of the Crown's case (where that may be sensibly assessed); the question of delay to committal and/or trial, and principles of parity (insofar as they are applicable to a bail application): *DPP v Cozzi* [2005] VSC 195 at [22].

- **Exceptional Circumstances Test** - s 22C(1) *Young Offenders Act 1997* (< 18 years of age)

- **Bail Authority must not grant bail to a relevant young person** for a relevant offence alleged to have been committed **while the person is on bail for another relevant offence unless the bail authority has a high degree of confidence (HDC)** the young person will not commit a serious indictable offence while on bail subject to any particular bail conditions.

PT 2: THE UNACCEPTABLE RISK TEST

