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 safeguards look good but don't work

Key Cases to Drop: ***R v Rondo***: What reasonable suspicion means, ***DPP v Carr***: 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 or an authorised justice.**

- **Authorised Justice** = registrar of Local/Children's Court, employee of Department of Communities, and Justice authorised as a justice for purposes of *Bail Act 2013* (NSW)

- **Court bail options** (s 4, ss 8, 10):
  1. Dispense with bail (released to await trial, **no conditions apply**).
  2. Grant bail (with or without conditions).
  3. Refuse bail.
     a. Bail **may be decided outside normal court times** (registrars or authorised justices).

- Week 11 - Bail

- Bail allows an a**ccused or convicted individual to remain at liberty**, often with conditions.
- Preserves the **presumption of innocence** until proven guilty.
  - Rooted in medieval English law (referencing *R v Collins* (2002) 127 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 1988*** other than a **excluded offence**,
  c) an offence that is being dealt with by conference under Part 5 of the *Young Offenders Act 1997*.

  i) 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).

  ii) **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)

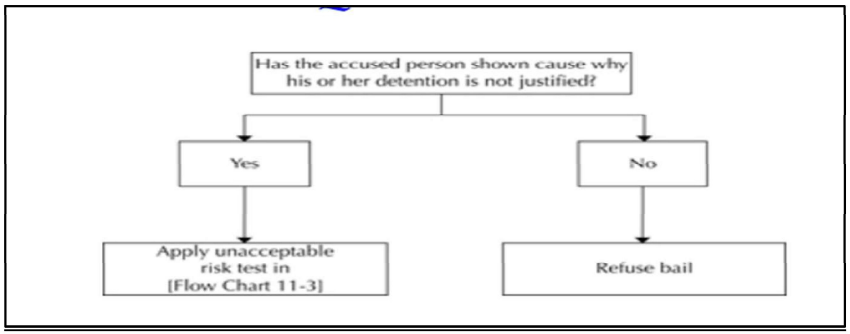
- **Only Types of Bail Applications possible under *Bail Act 2013* (NSW)**

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?

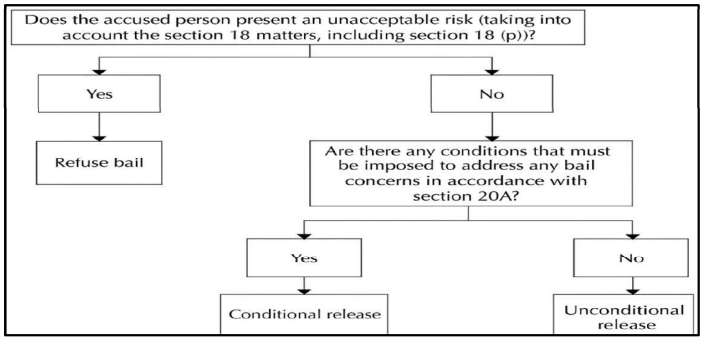
- **Show cause offence = Offences punishable by life in prison**, various offences in s 16B *Bail Act. AND* Pt 3/3A *Crimes Act 1900* (NSW) (offences from **sections 17 - 93 (inclusive))**
- Bail authority **must refuse bail**, unless accused **satisfies bail authority that his/her detention is unjustified (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 Offence (Exceptional Circumstances)**
- **Exceptional Circumstances Test - s 22A(1) *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.**
     i. 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].

- **Matters under Section 22C(1) - For Young Offenders (< 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 young 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 proposed bail conditions.

PT 2: THE UNACCEPTABLE RISK TEST



SAMPLE ONLY