

Police, Courts and Criminal Law

WEEK 1

Aims of the Criminal Law

Why do societies have criminal law?

How does society decide what behaviour is 'criminal'?

- Moral wrongness approach
- Individual autonomy approach
- Community welfare approach

Functions of Criminal Law

To distinguish civil wrongs from criminal wrongs.

Stipulate the degree of seriousness of criminal conduct:

- Impact on victims
- Extent of culpability of offender
- Degree of likely of harm

Sources of Criminal Law

1. **Legislation** = Statutes of Acts of Parliament

e.g. Criminal Code Act 1995, Criminal Code 1899, Crimes Act 1900

2. **Case Law** = Judge-made law (also referred to as the 'common law')

e.g. Thomas v Mowbray, R V Suleman

A Federal System of Government

- Means that we both have a national government and multiple state governments
- Not all governments are federal
- Advantages and disadvantages to having a federal system of government? Or to having a uniform criminal code?

Jurisdiction

A court's power to hear matters

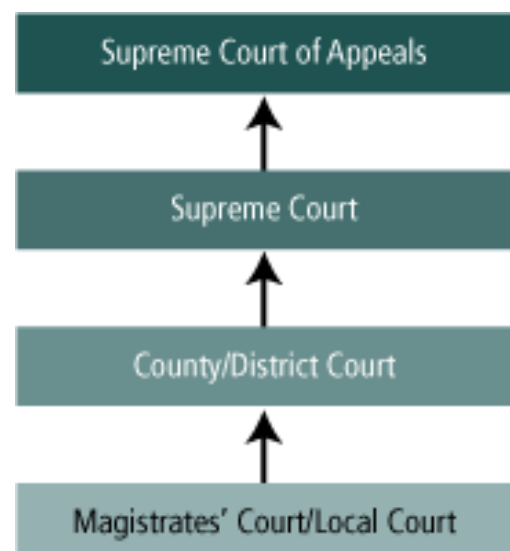
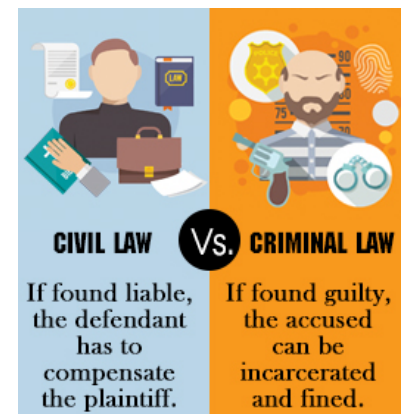
Original jurisdiction vs appellate jurisdiction

- **Original jurisdiction** = a court's inherent power to hear a matter, which means it has the power to hear a matter for the first time
- **Appellate jurisdiction** = a court's power to hear an appeal from a decision of a lower court (can either be a different court, or the same court where a single judge – not the full bench – delivered first decision)

Civil vs Criminal Jurisdiction

Cross vesting of jurisdiction between state and Federal courts

(i.e. State courts conduct trials for Commonwealth offences, such as for terrorism)



Burden of Proof

Criminal Courts = BEYOND REASONABLE DOUBT

Civil Courts = ON THE BALANCE OF PROBABILITY

Local Courts

Bottom of the hierarchy

Criminal and civil jurisdiction

Criminal = summary offences, indictable offences heard summarily, and committal proceedings for indictable offences

No appellate jurisdiction (except technically for some minor things like challenging parking fines etc.)

District Courts

Criminal and civil jurisdiction

Hears most indictable offences (criminal jurisdiction) with a jury

Limited appellate jurisdiction = can hear matters from Local (Magistrates) Court

State Supreme Courts

Trial Division:

Original civil and criminal jurisdiction, but only hears most serious criminal cases (e.g. murder terrorism)

Court of Appeal

Hears appeals from District Court and Supreme Court Trial Division (occasionally from local court)

Usually hears appeals on questions of law (not fact)

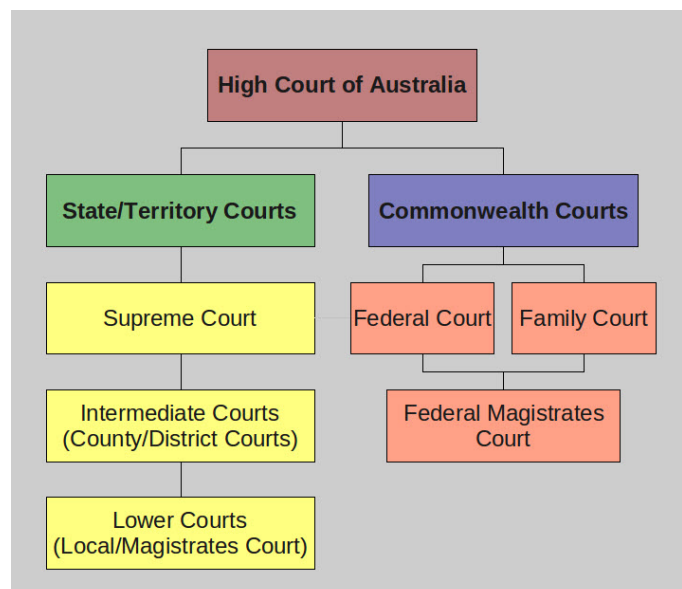
High Court

Original Jurisdiction:

Section 75 of the Australian Constitution (e. g. matters in which Commonwealth is a party) and additional matters assigned by Parliament under s76 of the Constitution (constitutional matters)

Appellate Jurisdiction:

Section 73 of the Australian Constitution
Appeals from State and other Federal Courts (Federal Magistrates Court, Federal Circuit Court, Family Court)
Requires 'special leave to appeal' (where of 'public importance' or 'in the interests of the administration of justice')



The 'Rule of Law'

AV Dicey:

Society is ruled by laws rather than arbitrary power

No person is above the law (i.e. criminal laws still apply to members of the government)