WEEK 5: Chapter 8: Judicial Decision-making

Obstacles to fact-finding (pg. 215-218)

- Circumstantial evidence: evidence which, even if accepted, provides only a basis from which a material fact can be inferred.
- Fact finding is governed by the rules of evidence and procedure, however, much of the reasoning remained unconstrained by the legal rules.
- Factual reasoning of the courts is not purely a legal matter.
- Standard of proof: beyond reasonable doubt/on the balance of probabilities
- Many other rules of evidence applied in the courts govern whether certain types of evidence should be admitted or excluded, and how the fact finder is permitted to use them.
    - Witnesses should give evidence only of what they have witnessed – it should not contain 'heresay'.
    - Evidence should, as much as possible, relate what the witness has observed; and be free of opinion and judgement. An exception however is made for 'expert evidence'
    - In criminal trials, things such as prior convictions will generally be excluded.
- There is a general trend in evidence law for exclusionary rules to narrow and exceptions to exclusions to grow.
    - The trend is for proof to become increasingly free.
- To a degree evidence was excluded in the past because juries were not trusted to use it appropriate, but times have changed and courts have more faith in 'better educated and more literate juries.'
- Double jeopardy: if a defendant has been tried of an offence and convicted or acquitted he/she should not be exposed to the further jeopardy of a fresh prosecution arising out of the same facts.

Appeals (pg. 218-221)

- A party that loses a trial may have grounds for appeal.
- Appeal courts generally have a greater scope for overturning the trial court's decision on matters of law than matters of fact.
- Under legislation, a criminal appellate court should overturn a conviction where is considers that 'a jury, acting reasonably… must have entertained a reasonable doubt as to the guilt of the accused.'
- Due to the defendant having more at stake in a criminal case, and often has fewer resources than the state, the law of criminal procedure tends to favour the defendant.
- Prosecution also has the right to appeal in a criminal case.
- In relation to double jeopardy, the prosecution IS able to appeal an acquitted case if it was originally held by a judge without a jury.
- A civil appeal is called a rehearing.

Distinction between matters of fact and matters of law (pg. 221-223)

- Questions of fact do not constitute precedent (generally); whereas questions of law do.
- Question of fact are generally reserved for the jurors (when present), whereas questions of law are reserved only for the judge.
- Decisions on questions of law are generally required to be supported by public justifications, whereas there is no general requirement for determinations of fact.
- In the case of appeals against findings on criminal liability, both the grounds of appeal and the conditions under which an appeal may be allowed tend to be more favourable to the convicted person where the appeal involves a question of law than where it involves a question of fact alone or a question of mixed fact and law.

- Appeal courts will not reverse a finding of fact, unless the finding reached by the lower court was not sustainable by the evidence presented to it, or it was so unreasonable as to suggest that it did not really understand what the rules requirements are.
- With some issues, the distinction between fact and law is easily seen
- As found in *Ruddock v Taylor* (2005) 222 CLR 612, 627: many cases… in which a distinction between mistake of law and mistake of fact could not readily be drawn, if drawn at all … Errors about the conclusion cannot safely be divided between errors of law and errors of fact. Often, perhaps much more often than not, the error will be one of mixed law and fact.
- The fact/law issue arises in many contexts, perhaps most frequently where words in a legislative provision have to be interpreted.

How does the judge identify the binding legal rule? (pg. 224-225)

- A trial judge will have relatively little discretion in the law to be applied to the disputes that come before him or her.
- Stare decisis
- The ever-growing body of legislation continues to present trial courts with cases of first impression.
- A contributing factor is that modern statutes are long, complex, not always well-drafted, frequently amended, and sometimes repealed and re-enacted in a slightly different form'
- Where no strictly binding authority exists, there may still be a precedent in another closely related hierarchy – this could be highly persuasive.
- If there is no prior authority? The judge will create a new authority/precedent on the issue however, there is still 'never an absence of law'
- The judges charged with making the law tend to be those in the superior courts.