

Crime summary: legal studies

[Law](#), [Common Law](#)



Study Notes - CRIME 1. 1 -Types of Crimes Victimless Crimes - Crimes; Type | Example | Legislation | | Against the Person | Homicide, assault | The Crimes Act 1900 (NSW) | | Economic Offences -against property -White collar crime | larceny, theft, break+enter tax evasion, embezzlement | The Crimes Act 1900 (NSW) The Crimes Act 1914 (Cth) | | Against the State | treason, sedition | The Australian Constitution The Crimes Act 1900 (NSW) | | Drug Offences | possession, use | Customs Act 1901 (Cth) The Poisons Act 1966 (NSW) Drug Misuse and Trafficking Act 1985 (NSW) | | Public order Offences | indecent behaviour, offensive language | Summary Offences Amendment Act 1997 (NSW) The Crimes Act 1990 (NSW) | | Regularoty Offences | lighting fire during ban, no train ticket | The Summary offences Act 1988 (NSW) | | Traffic Offences | culpable driving, speed limit | The Crimes Act 1900 (NSW) The Road Transport (General) Act 1909 (NSW) | | Preliminary Crimes |, conspiracy | The Crimes Act 1900 (NSW) | | 1. 2 - Sources of Criminal Law 1. STATUTE LAW: -Laws made in parliament -In NSW most criminal offences are found in the Crimes Act 1900 (NSW) -Under Section 5 of the NSW Constitution Act 1902 (NSW) the NSW Parliament has the right to make laws in relation to criminal offences -However if there is a conflict between state and federal law, Federal overrules in accordance to Section 109 in the Australian Constitution Some Importance Legislation to remember is: -FEDERAL Crimes Act 1914 (Cth) Criminal Code Act 1955 (Cth) Customs Act 1901 (Cth) Migration Act 1985 (Cth) -NSW Crimes Act 1900 (NSW) Children (care and Protection) Act 1987 (NSW) Summary Offences Act 1998 (NSW) 2. COMMON LAW: -Referred to as 'judge-made law' -Requires a judge to use their discretion in making judgments -Made when there is no existing Statute Law

-Common Law may set a precedent for cases in lower courts -Judge-made law must follow precedent (if any) from higher courts -Codification exists in WA, NT, QLD etc which uses Acts of Parliament only

3. CONSTITUTIONAL SEPARATION OF POWER: -outlines the separation of power between; LEGISLATIVE - making law JUDICIARY - interpreting law EXECUTIVE - enforcing law

4. DIVISION OF POWER -Is classified under Section 51 of the Australian Constitution -Outlines the Federal Government Powers and State Government Powers -Federal Powers are called Exclusive -State Powers are called Residual -Shared Powers are Concurrent -If there is a conflict between State and Federal powers, in accordance to section 109 of the Constitution, the federal power overrules

1. 3 - The Court Structure

1. Local, Children's and Coroner's Court
2. District and Drug Court
3. Supreme Court
4. Court of Criminal Appeal
5. High Court of Australia

THE LOCAL COURT: -magistrate, no jury -The judge is impartial and cannot probe etc -The Local court has two main functions -to hear and decide summary offences -to conduct committal hearings to determine -prima facie

-PAGE 73 case - Saffron v. DPP (1989) - case to be used in regards to prima facie

SAFFRON v DPP [1989] 16 NSWLR 397 -Abe Saffron and Bill Allen, former assistance commission of police were charged with conspiracy to bribe Bill Molloy to act against his duty as a police officer -Committal hearing, Molloy claimed that Saffron had paid him \$500 on 5 occasions -Laws of the Special Licensing squad affected nightclubs that Saffron owned -The DPP also proved that Saffron had visited Allen at the police headquarters throughout 1981 -There was a conflict in evidence provided, and in relation to the 'meetings' -3 witnesses all had different stories, and all doubted the other's evidence -At the Supreme court level, the

evidence was so confusing and varying that the jury could not convict -It was ruled that the magistrate should've dismissed the charges during the committal hearing

THE DISTRICT COURT: -cases include all indictable offences apart from murder, attempted murder, treason, serious sexual assault and kidnapping -judge and jury

THE SUPREME COURT & COURT OF CRIMINAL APPEAL: -Hears serious indictable offences and appeals -the supreme court consists of a chief justice and other senior judges -also hears states cases - appeals from the local court when the magistrate has made an interpretation of the law -a judge in the previous case cannot hear the appeal

THE HIGH COURT: -the final court of appeal -the Australia Act 1986 (Cth) which removed the right to appeal to the Privy Council in England -The High Court has no original jurisdiction but can hear appeals and matters relating to the constitution -Appeals in the high court need to be of public importance; maintains justice and clears up confusion from earlier ruling -We can hear issues relating to the constitutions but they are ISSUES not CASES thus there is no original jurisdiction

1. 4 - Factors Affecting Crime and Criminal Behaviour

SOCIAL AND ECONOMIC FACTORS: -Behaviour theory or theory of differential association -People who are socio-economically disadvantaged may turn to crimes against property to increase wealth - White collar criminals may also be influenced by economic factors and tempt people into crimes like sabotage, theft, embezzlement and computer hacking -Addiction to drugs, alcohol and gambling can contribute to economic crimes as people feel a need to steal to support their addiction -You are a product of your environment -Why people who are brought up with parents who smoke end up smoking themselves

GENETIC FACTORS: -At one point in time

criminologists linked physical features such as skin colour, a person's look, skull size, and even a difference between people's eyes be linked to a propensity to commit a crime, No longer applied -There are currently studies to see if there is a link between DNA and a person's capacity to commit a crime

POLITICAL FACTORS: -In Australia political factors can include crimes targeting the government where there is a difference in ideology -Crimes against the government can include spying; treason; violence against publicly elected officials & sedition -Protests about APEC or Melbourne's S11 (against globalisation) were politically motivated. If these protests turn violent they can be considered political crimes. Civil Disobedience -Crimes where politics or ideology is the motive include where a member of a trade union commits the property offence of sabotage, theft etc to get back to their bosses 'Bourgeois'

SELF-INTEREST OR GREED: -Arguably, all crimes occur because of self-interest. -This is people putting themselves first while not caring about the victims of their actions

1. 5 - Elements of a Crime

CAUSATION: -there must be a link between the act and the crime -did the act cause the crime, was it the 'operative and substantial' cause of the crime? -

E. g. tripping someone over and they hit their head and die 25/09/07 - **BLAUE**

V R [1975] 3 All ER 446 -Blaue came to a girl's house and asked for sexual intercourse, She refused and he attacked her with a knife, one of four serious blows cutting her lung. She went outside and a neighbour called an ambulance, At the hospital an operation was deemed necessary, She had lost a lot of blood, she required a blood transfusion and she refused to have it. She said she was a Jehovah's Witness and a transfusion was against her beliefs, She said she'd rather die than have one. She died the following day

and it was admitted by the prosecution at the trial that if she had accepted the treatment she would not have died. At the trial a jury found Blaue guilty of manslaughter on the basis of diminished responsibility [ISSUE] -Was Blaue guilty of the murder of the girl when she has refused treatment that would have saved her life? [ARGUMENT] -Blaue argued that the jury should have been directed that '... if they thought the girl's decision not to have a blood transfusion was an unreasonable one, then the chain of causation would have been broken' [DECISION] -Lawton LJ: 'It has long been the policy of the law that those who use violence on other people must take their victims as they find them ... The question for decision is what caused her death. The answer is the stab wound. The fact that the victim refused to stop this end coming about did not break the casual connection between the act and death.' -The appeal is dismissed STRICT LIABILITY: -Only required actus reus e. g. traffic laws LEGAL CAPACITY: -It is generally assumed that people are responsible for their own actions. The exception to this rule is children or those suffering from a mental illness, also drug and alcohol. -At common law, children under the age of 7 years are not criminally responsible for a criminal act. This is ruled under the doctrine of doli incapax. the doctrine of doli incapax applies to children between the ages of 7 and 14 years and is a latin term meaning 'incapable of wrong'. Because it is assumed that children under 14 cannot form an intention to commit a crime, they do not have the capacity to form mens rea. ACTUS REUS: -This term is difficult to define and is said to be everything that mens rea is not. -This part of an offence identifies the behaviour that the criminal law prohibits. -Generally, actus reus will involve doing or not doing something. MENS REA: -This part of criminal

liability refers to the mental state required for a person to be criminally responsible for an offence. -Mens rea can be determined under. 1. Statute Law: with was prescribing fault elements for specific offences e. g. Negligence, reckless, intentionally etc. 2. Common Law: relying on general principles to assign mens rea to common law offences or to imply mens rea for statutory offences. e. g. He Kaw Teh (1985) the high court implies a requirement that an offence of importing narcotics should be committed knowingly or intentionally.

1. 6 - Summary and Indictable Offences SUMMARY OFFENCES: -minor assaults -traffic law breaches e. g. speeding and drink driving -Regulatory offences -Strict liability (traffic offences) INDICTABLE OFFENCES: -murder -manslaughter -robbery -sexual assault -assault

1. 7 - Parties to a Crime PERSON IN THE FIRST DEGREE: -CRIME IS COMMITTED - Actual perpetrator -e. g. fires gun and kills victim PERSON IN THE SECOND DEGREE: -CRIME IS COMMITTED -Person who was present assisting the perpetrator to carry out a crime -Hand a gun to a murderer ACCESSORY BEFORE THE FACT: -CRIME IS PLANNED -Person who helped plan the crime - e. g. arranging stolen car for bank robbery ACCESSORY AFTER THE FACT: - CRIME IS COVERED UP -Person who, knowing about the crime, helped the offender afterwards -Dispose of car used in bank robbery

1. 8 - Defences to a Crime COMPLETE DEFENCES: -mental illness: challenges the mens rea of a crime, the defendant will argue that they had defective reasoning power due to a mental illness or disease of the mind. It is argued that the defendant was incapable of having an awareness of their actions. If proven they will be acquitted and detained in a psychiatric institution. mens rea not present -self defence: allows the defendant to argue that they carried out their actions in

order to protect themselves or others from harm. The restriction is that the defence must be equal to the threat or perceived threat. mens rea not present

Marwey v R [1977] 138 CLR 630 High Court of Australia -Defendant was charged with murder -He killed a man who had, unprovoked, attacked him violently -Marwey successfully used the defence of self-defence and was charged with manslaughter -This was a QLD case, in NSW he would have been acquitted. -necessity: This occurs when the person believes there is no option, they must do it. **Dudley and Stephens v R (1884) 14 QBD 273** Divisional Court -A group of men were adrift on a boat for 20 days with seemingly no prospect of rescue -In order to survive they killed a boy close to death and ate his flesh -The men would have died if they hadn't eaten the boy -The court ruled that the defence of necessity didn't apply as the men may have been rescued before they boy died. -Convicted of murder and life imprisonment -In reality the men were released after a short period of time in gaol -duress: This is when the defendant is under severe stress and feels compelled to commit a crime in order to save their life. Jail Break... -In the case of John Killick's escape from Silverwater Correctional Complex in March 1999, a joyride helicopter pilot was forced at gun point by Killick's Girlfriend, Lucy Dudko to fly over the complex. -The pilot was then ordered to land while Killick got in -Still at gun point the pilot was forced to fly to an area where a car was waiting -The pilot's actions were caused by being under duress -consent: the defendant uses this when they believe the victim has consented to the action, hence no crime is committed. Can't be used in murder but is often used in sexual assault charges, if accepted it leads to acquittal. -automatism: people who claim they were not in control of their

actions at the time. e. g. sleep walking. PARTIAL DEFENCES: -provocation: the defence is used when the defendant suddenly loses control of their actions as a result of the victim. the victim must have provoked to the point that an 'ordinary person' would be. -diminished responsibility/substantial impairment by abnormality of the mind: this is different to insanity, it was when at the time they suffered an abnormality of the mind. 1. 9 - The Criminal Process REPORTING THE CRIME: -police rely on members of the community to report crime If not, offenders cannot be brought to justice - 25% of sexual crimes are not reported INVESTIGATION, ARREST and CHARGE: -This is where police discretion is used. The decision to investigate a crime depends on its seriousness and manpower/resources available to the police -Police can apply for a search warrant to search premises seize evidence such as drugs, documents, banking or investment records -Without a warrant the police would be prevented from obtaining this evidence, as privacy law and the law of confidentiality would prohibit its release -An Arrest is depriving someone of their liberty and must be done according to the law. An arrest can occur if: -there is an arrest warrant issued for that person - There are reasonable suspicions that the person is about to commit, has recently committed, or is committing a crime -The arrested person may be held for up to four hours although the police can make an application to extend this. At the end of this period the suspect must either be charged or released. INTERROGATION: -right to silence: means that a citizen cannot be forced to answer police questions. However this does not extend to traffic offences where drivers are bound to give their name or show of licence -A Person under 18 must have a responsible adult present at all times during

questioning SUMMONS: -In minor matters (such as summary offences) a summons can be issued which required a person to attend court. BAIL: -An agreement to attend court to answer the charge. If bail is granted the person is free to go after complying with certain conditions. If refused, suspect is held in remand until trial -Some factors in considering to issue bail include: - the likelihood of the defendant appearing in court -the interests of the defendant -the protection of the community -the protection of the victim or victims -Some of the conditions placed on bail may be; -surrender of a passport -report to police on a regular basis -stay away from a certain area - A sum of money may also be required THE CRIMINAL TRIAL: -The Adversarial System: prosecution and defence presents their case to an impartial judge and jury -Summary Hearing: These are dealt with quickly in the local court - Committal hearings: To determine prima facie -The Plea: This determines the trial process -Evidence: Burden of proof lies with the prosecution/plaintiff - The Jury: 4 in civil cases, 12 in criminal (11-1 verdicts - 2005) THE APPEAL: -If a person is convicted of a crime they have a right of appeal, the circumstances differs depending in which court they were convicted -The local court - an appeal can be made to the District court on two ground: -The conviction was wrong -That the sentence imposed was too severe -The appeal must be made within 28 days of conviction and sentencing PERSONNEL: -The Police -NSW Police aim to -prevent, detect and investigate crime -monitor and promote road safety -maintain social order -perform and coordinate emergency operations -further responsibilities - the anti-terrorist legislation -Prosecutors: -in the local court are attaches to the prosecution branch -District and Supreme courts the office of the DPP conducts -The DPP

are independent and outside political controls. -Defence Lawyers -Role is to represent the client to the best of their ability -always do so within the law - solicitors and barristers -Magistrates -appointment by the government -their role is to preside over civil and criminal cases in the local court and determine guilt/innocence and sentence -Judges -appointed by the judiciary, come from law backgrounds -role is to follow points of law, advising the jury of points of law and sentencing

1. 10 - The Role of Legal Aid -The NSW Legal Aid Commission was established under the Legal Aid commission Act 1979. - The legal system is there to protect individual rights and a person without funds will not have the ability to defend those rights in court. -Role is to improve access to the legal system by those disadvantaged. If legal aid is granted in a criminal case a lawyer will be appointed to represent the person. To obtain a grant of Legal aid an applicant will have to pass a number of tests. -Jurisdiction test -Merit test -Means test

1. 11 - International Crime

CRIMES COMMITTED IN OTHER JURISDICTIONS: -An Australian citizen can now be convicted of an offence committed in another country, including: -The Crimes (Child Sex Tourism) Amendment Act 1994 -The Crimes (Foreign Incursions & Recruitment) Act 1978 -Crimes (Torture) Act 1988

TRANSNATIONAL CRIMES: -One group, corporation or individual breaks the law in a number of countries e. g. trafficking

CRIMES AGAINST INTERNATIONAL LAW: -Genocide -Crimes Against humanity -War crimes

1. 12 - Sources of International Law -The international law concerned with crime involves crime of genocide, war crimes and crimes against humanity. -The International Criminal Court (established 2002) was the result of a multi-national treaty between countries throughout the world. -Treaties can either

be bilateral (between two countries) or multilateral (between several countries). -Examples of treaties dealing with criminal matters -Rome Statute of the International Criminal Court (1998) -International Convention for the suppression of acts of nuclear terrorism (2005) -A Sovereign nation cannot be forced to sign or ratify an international treaty; thus there is a limited capacity to regulate.

2. 1 - Creating Social Order

1. EDUCATION: -When people need to be taught to know what the law is, why is it important and how does it affect what they do. -teaching people to see how society is shaped - giving people a sense of power.

2. REGULATION: -Laws made in the courts and parliament can create social order. The laws created need to be reflective of the society they aim to protect. Regulations include; -Crimes Act 1914 (Cth) -Crimes Act 1900 (NSW) -The regulation of behaviors that so not fit social norms are not necessarily involve a criminal act. -Some offenders are wrong and dealt with by administrative bodies rather than the criminal legal system. -Administrative bodies tend to have strict liability e. g. RTA. Administrative tend to come from delegated legislation.

3. COERCION: -

Meaning to Force -Social order can be created by forcing standards of behaviour -Coercion is applied with harsh penalties in the attempt to deter people from committing crime.

2. 2 - Crime Prevention

Situational Crime Prevention: -This refers to the steps taken to prevent or reduce criminal activity at the place it may occur. -In doing this it makes it more difficult for criminals to act illegally by increasing the risk of them being caught. -Often called opportunity reduction -Doesn't always prevent crime... it shifts the crime to other areas e. g. Dundas to Telopia

Examples: Video Surveillance
Speed Cameras
Lights in Dark Alleys
Neighbour hood watch
Social Crime

Prevention: -People are products of their environment -Social crime prevention aims to prevent crime that can arise from social factors -Socio-economic status can have a direct bearing on criminal activity -Factors such as poverty, poor education, disturbed and disrupted family life 2. 3 - Enforcing the Law WHY PUNISH? -Rehabilitation -To restore or make better - This assumes that criminal behaviour is deviant or not normal -Punishment is therefore aimed at restoring the criminal to behaviour accepted in society - This is done through education and counseling etc. -Retribution -Avenge a wrong; to seek revenge -The state will do this so there is no need for the individual to get personal revenge -Victim impact statements can be used in courts - magistrates/judges can consider when choosing appropriate sentences. -Deterrence -Where the threat of punishment stops criminal behaviour GENERAL DETERRENCE: e. g. when media cover a case where severe punishment is imposed to discourage others from repeating behaviour. Such as seeing a huge sentencing on TV the public is discouraged. -SPECIFIC or INDIVIDUAL: imposing a punishment on the offender that will make the offender not repeat that criminal act. -Restorative justice (Reintegrative shaming) -This is a type of shaming where offenders are faced with their victims who express the pain and suffering the offenders actions have caused. -e. g. face to face conferencing -Offender must meet with the victim(s), apologies and redress the damage they have caused. - Incapacitation (gaol) -This refers to gaoling an offender to protect society - The removal of freedom -Whilst in gaol, the criminal can be further isolated in solitary confinement -While gaol can traumatize offenders so much that they never re-offend, it can also harden them. 2. 4 - The Sentencing Process

1. The Sentencing Hearing: -The judge considers the facts of the case, how well the standard of proof has been met and the roles and conduct of the parties during the trial. -Judge will also consider criminal record, state of mind and if remorse has been shown -If the defendant has pleaded guilty the judge will consider a sentence discount for their early plea (usually around 10-25%) 2. Evidence: -Evidence can include witness statements, police interview records, physical evidence e. g. weapons, medical evidence such as DNA sampling and technological evidence e. g. calls to emergency numbers e. g. 000 3. Roles of the Prosecutor: -role at a sentence hearing is to make sure the defendant gets the highest appropriate punishment/penalty -Present ALL evidence even if it benefits the defendant - Refer to case law -Refer to the rights of the victim(s) to have justice served - Try to convince the judge that a general deterrent will stop other criminals 4. Roles of the Defence Counsel: -Reduce the severity of the sentence -Call character witnesses to attest to the defendants good nature -Show the court that the defendant had a good reason which explains their criminal behaviour (defences and mitigating circumstances) -Sum up the case and evidence 5. Factors Affecting the Sentence: PURPOSE OF PUNISHMENT: -The judge needs to consider the need to protect society, the need to create a deterrent with the rights of the defendant. -The judge will need to consider WHY they are punishing the offender. E. g. if it is a young offender the judge may consider rehabilitation. A harsh sentence will be considered for recidivists (re-offenders) esp. in violent assaults. -Retribution -Deterrence - Rehabilitation MITIGATING OR AGGRAVATING CIRCUMSTANCES: - AGGRAVATING factors are those that make the offence worse or more

serious -A victim is young, elderly or disabled -Offender is in a position of trust -Gratuitous violence is involved. -MITIGATING factors reduce the seriousness of the offence or partly explain the offender's conduct. -Remorse -Age of the offender and their criminal experience -Background (e. g. from abuse or poverty) -Influence of drugs/alcohol CIRCUMSTANCES OF THE OFFENCE: -The Judge will consider: -What happened during the offence? -The degree of seriousness of the offence -The use or threat of use of any weapons etc -Of the offence (objective features) -Of the defendant (subjective features) SUBJECTIVE OR OBJECTIVE: -mens rea elements of offences can be either subjective or objective. -A subjective element refers to the state of mind of a defendant. -An objective element refers to the state of mind of the hypothetical reasonable or ordinary person -Subjective criminalize the person for what they actually thought at the time of the prohibited act -An objective standard punishes a person for their failure to act or think as a reasonable or ordinary person would in particular circumstances. -Subjective standards include intention reckless (incl. indifference to risk), willful blindness (failure to make an inquiry or deliberately refrain from making an inquiry to avoid discovering an unwanted truth) and transferred malice (e. g. intending to kill person A, missing and shooting person B). -Objective standards include negligence and strict liability and absolute liability. -SL offences require nothing more than a perpetration of the actus reus and therefore lack the mens rea element. -AL offences require only the perpetration of the actus reus and exclude the defence of honest and reasonable mistake of fact. Liability therefore is absolute. CIRCUMSTANCES OF THE OFFENDER: -A judge will consider the:

circumstances of the offender e. g. age, character incl. prior convictions), gender, cultural background etc. -The level of remorse shown -Level of cooperation with police and courts -Mental/or physical disabilities -If other people are dependent on the offender for their care. JUDICIAL DISCRETION AND ITS LIMITS: -This refers to the judge's power to make decisions based on what they consider to be right -The judge must follow legislative guidelines allowed sentences and provides guidelines on the length of non-parole periods. This is set by higher courts and parliament -Mandatory Sentencing is not a consideration for NSW judges - however there has been discussion and guidelines suggesting minimum sentences. 2. 5 - Penalties FINES: -most common -imposed for less serious (summary) offences -statutory limit on the amount -In NSW they are based on penalty units each worth \$120 -more serious crimes, more units of penalty -easy to enforce -source of revenue for the government -based on the offence, not the capacity of the offender to pay -deterrent value of fines is debatable due to the variation of offenders income, e. g. it is easier for someone earning \$1500 a week to pay a \$500 fine than a person earning \$210 per week -Sometimes fines are just seen as an operative charge, they are not deterring offenders BONDS: -referred to as 'recognisances', used extensively by the courts -most common = good behaviour bond; lasts for a period of time, no longer than 3 years -this means complying with conditions, attending meetings/counselling etc - failure to comply with the bond subjects the offender to harsher conditions e. g. short term imprisonment -those who re-offence whilst on a bond will have their previous sentence re-assessed and a new/harsher one put in place PROBATION ORDERS: -imposed by courts -offender is put under supervision

of a probation officer, does not serve imprisonment -rules of the order is to stay within conditions, make regular contact with the officer and not commit new offences -those who obey this are discharged upon the end of their time and no conviction is recorded -those who do not obey and re-charged for previous and new offences -the key to effectiveness of these orders is the quality of the probation officer/supervision. COMMUNITY SERVICE ORDERS: - CSOs are a recent addition to punishment (est. 1980) -commonly used to punish petty criminals e. g. vandals -required the offender to spend a number of hours servicing the community (maximum is 500) -failure to comply results in harsher punishment -CSO may inherit benefits for the community, they're carried out at no expense to society. -the work can rehabilitate offenders especially when learning new skills etc. -CSOs keep young offenders away from brutal prison systems which may cause them to commit harsher crimes -offenders are often forced to confront their offence e. g. vandals cleaning their vandalism HOME DETENTION: -new form of imprisonment e. g. fraud, drink-driving. -various forms, involving intensive monitoring and confinement to homes or restricted areas. -trial of home detention was initiated in 1992 with the Intensive Community Service Scheme (ICS) -Home detention Act 1996 (NSW) -participants must wear electronic tracking devices -random signals are sent to the offender from an officer and they have 10 seconds to make contact with a verifying device otherwise the officer will visit the home to check. -offenders must look for work or enter an education program -regularly/randomly tested for drugs and alcohol (these are forbidden under the program) -have similar benefits to CSOs PERIODIC DETENTION: -'weekend detention' -allows offenders to serve

their prison sentence on a periodic basis i. e. every weekend. -this allows offenders to maintain family or work life -studies show loss of employment as a result of imprisonment is a major cause of family breakdown -usually required to serve supervised community service during detention

IMPRISONMENT: -most severe penalty -there are degrees of harshness - maximum and minimum security -attracts criticism due to violence or leniency. 2. 6 - Post Sentencing POST-SENTENCING DECISIONS: -Breaches of the Crimes Act 1914 (cth) and Crimes Act 1900 (NSW) are both heard in state courts -There are no separate Federal and State prisons. The Dept. of Correctional Services makes the decision where to send the offender.

SECURITY CLASSIFICATION: -NSW has 4 security classifications ranging from reception, minimum, medium and maximum security -Cost of prison increases as security required increases -In NSW, security classification is determined in Silverwater Correctional Complex. -Many Metropolitan centers are maximum security. PROTECTIVE CUSTODY: -Persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person -international covenant on civil and political rights (Article 10) -Sometimes prisoners who are at risk of being attacked by other prisoners due to the nature of their offence, will need to be protected. - In protective custody inmates have their own yards and separate eating arrangements to avoid contact with inmates that could be dangerous. -

Inmates can be put at risk for a number of reasons. E. g. Sexual assaulters, former police officers/judges etc. PAROLE: -This is conditional release from gaol before the completion of a sentence. -Crimes (Sentencing Procedure) Amendment (Standard Minimum Sentencing) Act 2002 (NSW) - established

non-parole periods for sentenced for a range of serious offences. EKE: 'bottom up sentencing'. -The right to parole is NOT automatic and determined by the parole Board -Parole can have conditions e. g. reporting regularly to police, counseling, living with family or undergo job training programs.

2. 7 - International Court and Sanctions -International crime has increased due to advancements in transport and communications technology

International Criminal Court - est. 1st July 2002. -previously international crimes were trialed in temporary courts formed on the bases of need e. g. war crimes -First international criminal court was formed in 1946 and dealt with crimes committed in WW2. -1998 = virtually all nations agreed to set up a permanent international criminal court which resulted in the official establishment -it tries individuals who commit serious offences of international concern e. g. genocide

2. 8 - Extradition -transfer of offenders from the jurisdiction in which they apprehended to jurisdiction in which the crime was committed in order to be trialed under their laws. -e. g . Christopher Skase -also occurs within states of a country and must be authorised at an extradition hearing -an extradition treaty must exist between countries for extradition to occur -this is a bilateral agreement - even when a treaty occurs a extradition hearing must occur -during the hearing, it must be ensured that; -the offence has been committed in both nation -the defendant will receive a fair trial upon their return

2. 9 - Domestic Violence (Criminal Justice Issue) WHAT IS DOMESTIC VIOLENCE? -D. V is a significant issue facing law makers and the police -defined in the Crimes Act 1900 (NSW) as violence committed by a person who is currently or previously associated with the victim by being in a relationship with them,

living in the same household or being a relative. -Women are far more likely to be victims of D. V -involves physical and sexual violence (the most common), emotional and social abuse e. g. not allowing contact with family/friends as well as economic abuse e. g. denying access to money/funds -many cases go unreported because of fear and belief in the inability of the police and legal system as well as embarrassment and shame. -the victim may also not see the violence as a criminal act

THE EXTENT OF DOMESTIC VIOLENCE: (from the NSW Bureau of Crime statistics and research) -the rate of D. V in NSW has increased from the late 1990s although has now stabilised -number of reported D. V cases increased by 39.5 in Sydney as 50.7% in rural NSW (1997 - 2004) -Highest rates of D. V occur in rural NSW; e. g. Bourke, Walgett, Coonamble -75% of all reported incidents occur in the home -the most common times are between 3 p. m and midnight. -increased by 150% on the weekends.

ALCOHOL AND DOMESTIC VIOLENCE: -more than 35% of D. V in 2004 in NSW were alcohol related -debate about what causes D. V -the highest number of reported D. V incidents occurs on the 1st of January each year -this corresponds with large levels of alcohol consumption

DEALING WITH DOMESTIC VIOLENCE: -reducing D. V is not an easy task -reducing alcohol consumption -Federal govt. ad. campaigns reinforce the criminal nature of D. V and highlights the protection that the law can provide to victims

Juvenile Justice (Criminal Justice Issue)

WHAT IS JUVENILE JUSTICE AND FACTS? -Generally the types of crimes committed are neither serious nor violent -in NSW, daily there are over 500 under 18s incarcerated in juvenile institutions (52% of Australian) -69% are 15-17 -94% are male -indigenous youth offenders represent the largest

group of juveniles in custody -NSW Department of Juvenile Justice strives to break the juvenile crime cycle -aims to provide services and opportunities for juvenile offenders to meet their responsibilities and lead a life free of further offending. -10-16 make up 10% of population and 20% of offender population -1995/6 = 4092/100000 to 2002/3 = 3130/100000 -dropped 20% between 2000 and 2003 6 most common offences: -theft and related offences -acts intended to cause injury -offences against justice procedures, govt. security and operations -public order offences -unlawful entry with intent -robbery, extortion and related offences DIVERSIONARY SCHEMES: -Young Offenders Act 1997 (NSW) - sets out options for youth offenders besides court hearings and detentions -established to divert young offenders from formal court processes -entitled to be dealt with in the most appropriate punishment based on circumstances of the offender. -WARNINGS: -police have the discretion to give warnings -cannot be given if violence is involved - CAUTIONS: -cautions are given for more serious offenders -YOUTH JUSTICE CONFERENCING: -to encourage youth to take responsibility for their actions - discourage from re-offending -family, community and victims are also involved -allows issues to be addressed in a non-threatening environment DETENTION: -sometimes offenders still do not respond to different preventative and rehabilitation methods -or some matters are too severe for these -in this case, youths are incarcerated -counseling and educational centers are available in these centers -these facilities provide the following services: -drug and alcohol counseling services -educational opportunities - vocational programs -health programs and services -recreational programs - independent living programs -arts and craft courses -cultural programs -legal

services POST-RELEASE SCHEMES AND REINTEGRATION: -to promote successful outcomes of rehabilitation, services and programs are available post release -gov. and non-gov agencies provide support and counseling services -help find accommodation and work upon release -monitoring as well

RECIDIVISM AMONG JUVENILE OFFENDERS: -only 30% re-offend as youth or adult offenders -there is a strong relationship between severe punishment and higher levels of re-offending If a young person is found guilty of a criminal offence, the court has the option to release him/her on the condition that he/she: -agrees to be supervised by parents/others -participates in programs/activities -lives with parents/other -or other specifications The court also has the option to release a young person on the basis that the parents: -ensure their child refrains from a prohibited act for a certain period of time -ensure that the child complies with the conditions of his/her release -takes action to assist their child's development, guard against him/her committing further offences and reporting on progress -give security (financial bond or other) in relation to their child's behaviour

POLICE POWERS: -they can remove a youth from a public area if they believe the person is; -not under supervision or control of a responsible adult -in circumstances that place him/her at risk -under the Act, 'at risk' means the person is: -in danger of being physically harmed/injured -in danger of being abused (e. g. assault, sexual assault, ill-treatment or exposed to possible psychological harm.) -about to commit an offence

CRIME PREVENTION PLANS: -Aboriginal community development -non-english speaking background community development -crime prevention -drug and alcohol management -open space planning and management -parental education

and family support programs -youth development strategies -consultation -
arrangements for reporting and co-ordination KNIVES AND OFFENSIVE

IMPLEMENTS: -the onus is on the person found with the knife or implement to
prove that they have a reasonable excuse which includes; -lawful

occupation, entertainment, recreation or sport -preparation or consumption
of food or drink -exhibition for retail or other trade -an official uniform -

genuine religious purposes -traveling to/from these activities -self defence is
not a reasonable excuse SEARCHES: -before searching a person, the police

must: -provide evidence that they are a police officer -give their name and
station -give the reason for the search -warn the person that failure to

comply is an offence -failure to comply with the search results in another
warning MOVE ON DIRECTIONS: -police have power to give directions to

persons in public places to prevent: -obstruction of others or traffic -

harassments or intimidation of others -fear in other people -buying/selling of
illegal drugs 3. 1 Morality and Ethics in Criminal Law -the law is a reflection

of the ethical and moral values of the society in which it is developed -

standards of behaviour encoded in criminal law are determined by the moral
values of the community -morality can be public or private PUBLIC

MORALITY: includes those values that the society as a whole considers to be
rights thus a basis of law PRIVATE MORALITY: the values held by individuals -

problems arise when there is conflict between public and private morality -

public morality constantly changes -Ethics impose a problem for the law -

Morals are the 'good things' whether ethic are the 'right thing' which differs
amongst people and groups within society. MORALITY AND THE LAW IN

OTHER CULTURES: -in many other societies, religion rather than morality is

the basis of law e. g. Saudi Arabia and Iran -problems arise when a moral view is held by people who live in a society not holding the same views e. g. 2001; 2 australians and 6 other westerners were arrested and tried for preaching Christianity in Afghanistan - at the time it was ruled by the Taliban, an Islamic fundamentalist group

COMMITMENT TO THE LAW: -for most members of society - the law is something to be valued and obeyed because it offers protection and rights -willingness to follow the law is often referred to the habit of obedience; obeying the law - most of the time - is something that comes naturally to people -the answer lies in education and upbringing that most members in the society have in common and reinforces the importance of law and obedience of it. -the law is respected by society as a whole however this respect is conditional -laws must reflect what society want and those laws considered to be 'wrong' by the majority are subject to criticism and disobedience e. g. in some Aboriginal societies their law has been replaced by European law thus there is a reluctance to follow such laws.

COMMITMENT TO UNJUST LAWS: -Philosophy of natural law by Thomas Aquinas in the 13th century suggests that a person has a moral obligation to obey laws that are just. A just law he said is one that; -serves a common good -evenly distributes the burden -shows no disrespect to God -does not exceed the power of the law maker -However, natural law is not a concept underpinning our legal tradition -We are not given the opportunity to judge if a law is just, it is implemented and THEN if we have issues against such a law we take it up with our local representative -what happen if these representative no longer serve the needs of the society? -Nelson Mandela broke the laws of his country to fight for a cause. Did he have an moral or

ethical obligation to break them or was he right to break them? Homosexual Law Reform: -until the last decades of the 20th century, it was a crime to engage in homosexual activity -the definition of this was in accordance to public morality at the time -public morals have evolved and it is no longer considered immoral -thus the law has changed and it is no longer considered an illegal act -there are still some who have private morality against this issue however the majority do not

3. 2 - Effectiveness of Criminal Law

EFFECTIVENESS FOR INDIVIDUALS: -the law must find a balance between maintaining the rights of the accused and not abusing the rights of the victim EQUALITY: -important aspect of our legal system; everyone is equal before the law -we must consider if this is reality... e. g. a rich v. poor person is finding defence to a crime -legal aid v. expensive lawyers - does this system really allow for equality? -the nature of our adversarial system promotes inequality -ability of the legal team is more important in determining the outcome of the case than the evidence itself especially with jury trials -plea bargains offer inequality ACCESSIBILITY: -must be accessible to all members of society -must provide people with the equal opportunity to defend themselves -Accessibility it dependent on; 1. Cost (legal representation is expensive) 2. Time (lengthly trials cost more and waiting increases anxiety) 3. Knowledge of the system and its procedures -defence is expensive and often beyond reach -Dietrich v. The Queen (1992) -Legal aid is available but not a right -it's directed at the MOST needy -main criticism of the system is it takes a lengthy amount of time to trial -delays are an issue to those held in remand -there is no way to repay an innocent person held in remand for 2 years -victim and accused need help to understand the

complexity of the legal system ENFORCEABILITY: -law must be enforceable if it is to be effective in protecting individuals -if the nature of the offence is almost undetectable then the value of the law is questionable -e. g. laws in society such as those relating to offensive language etc are used by police to intimidate particular groups e. g. youths RESOURCE EFFICIENCY: -ideal world; everything would be fair and accessible and free, quick court procedures and compensation to the falsely accused -these could be possible if there was more govt. funding, this would take away from other things though or taxation would increase -some measures are therefore needed to cut costs e. g. plea bargaining -police forces and maintenance consume the majority of the billions of dollars spent on the legal system annually -diversionary and crime prevention receive little funding in comparison RECOGNITION OF INDIVIDUAL RIGHTS: -law has the responsibility to protect the rights of the individual, accused and victim -at times these create conflict, Rights of Victim: -to have their allegations investigated -to be informed of the progress of the investigation -to be informed of their role as a witness -to be protected from the accused -to make a victim impact statement Rights of the Accused: -not to be illegally searched -to remain silent -to apply for bail -to have interviews recorded -to be detained only if arrested -not to have prior charges or convictions detailed before the verdict is given -not to have illegally obtained evidence used against them EFFECTIVENESS FOR SOCIETY: -law primarily protects individual rights, also considers collective values and traditions of society -if these who breach individual rights are not punished quickly, the law is viewed as failure -however the rights of individuals are often breached in order to achieve 'justice' for society -e. g. we could live in

a world with a lower crime rate if repeat offenders were imprisoned for life however this threatens individual rights Collins v. The Queen (1980)

MEASURES OF RESOURCE EFFICIENCY: -justice is expensive to achieve - different legal measures of efficiency can be applied to different sectors of the legal system, e. g. Police= crime clearance rates, legal professions= conviction rates etc -Recent cases brought before the Police Integrity Commission have exposed illegal acts by members of the police service e. g. October 2001; detectives from Manly police

THE LAW AS A REFLECTION OF COMMUNITY STANDARDS: -society will pay respect to laws which keep within societies norms. -is it possible to determine community standards? -mass media is a source of info - sometimes flawed -Three key questions when considering community standards: 1. What standards is the law expected to uphold? Do we expect the law to regulate public morality as well as protecting property and ensuring personal safety? 2. Does the law respond effectively to changed in community attitudes? 3. Are those people charged with making, interpreting, an enforcing the law really in touch with the community they are there to represent? 3. 3. Criminal Law Reform

AGENCIES OF REFORM: The Australian Law Reform Commission: -responsible for reforming federal law -responsible for examining the mechanisms of the federal judicial process and ensuring that federal laws are up-to-date and relevant to society. -The commonwealth Attorney-General refers matters (known as 'references') to the commission for consideration -does not initiate its own enquiries -does make recommendations to the govt. 75% are adopted NSW Law Reform Commission: -NSW Law reform commission est. 1966 is the oldest law reform agency in Aust -role is similar to the aust. law

reform commission -has an interest in individual cases and reform by the commission are outlined here: -NSW Attorney-general refers matter to NSW law reform commission -Commission appoints commissioners to investigate referral -Commissioners begin research and publicise that the law is under review -Action plan for researching the reform requirements made -Research conducted -Research report written -Report released to public, who are invited to make submissions -Final report including all the public submissions written -Report sent to attorney-general for consideration Parliaments and courts as sources of law reform: -main lawmaking body thus plays an important role in reforming the law -when the law reform commission makes a suggestion this is usually enacted into legislation -parliamentary law reform is also a reflection of the party in power of the govt. at the time -role of courts is to interpret the laws made by parliament -rules of common law allow judges to reform it by setting new precedents -also the role of courts to make new (statute) law in relation to criminal matters - judges rarely engage in this

CONDITIONS THAT GIVE RISE TO THE NEED FOR REFORM: Changing social values and composition of society: -law is reflected in values of society, needs reform as values change -two paths: 1. Decriminalisation of many offences e. g. public order offences 2. 'Tough on crime' approach - - calls upon politicians to reduce crime or create harsher deterrence and punishment has resulted in reform -changing matter of society itself creates reform; aust. society today is different to 40 years ago -e. g. diversity in ethnic groups, family and civil law changes. -criminal law there is little reform for changing values but civil there is plenty. e. g. drug addicts, young offenders

NEW CONCEPTS IN JUSTICE: -complexity of society changes so

does the debate of what criminal justice should achieve -debate is centered largely on punishment -high recidivism, prison is not effective in deterrence or rehabilitation. -in response; new forms of punishment exist e. g. home detention etc or trial venues e. g. drug court -other changes include; victim impact statement, victim-offender conferencing -these involve criminals at a personable level Failure of existing laws: -when laws become obsolete they must be amended, replaced or abolished. -parliament's responsibility to do this -often on advice of law reform commissions -ensuring that current laws do not fail International law reform: -under the Aust. constitution, commonwealth govt. has the power to sign international agreements thus entering aust. in international law -these agreements must be ratified by federal govt. before int. law is binding -when state/territory govt. pass laws contrary to the int. law the int. law has precedence -e. g. NT and WA introduced mandatory sentencing laws in 1990s it was argued these were unfair to youth offenders thus contrary to int. law of children's rights The impact of new technology: -main driver of law reform -e. g. computerised share trading - changed to corporate criminal law -recently laws have been made to combat credit card fraud, intro of viruses etc -reform is urgently needed in laws relation to genetic testing and gene technology -enhanced the capacity of the police to solve crimes e. g. DNA -phone tapping, listening devices, etc are made available to the police -useful tools however they pose serious questions about the rights of the accused.