

# Burden of Proof

The burden of proof is the responsibility to prove the facts of the case. The burden of proof rests with the initiators of the case. In a criminal case, the prosecution holds the burden of proof, meaning that they must prove that the accused person is guilty. This in term means that the accused does not have to prove their innocence.

# Principles of Justice

## Fairness:

- Fair processes and fair hearings in court
- Parties are informed and have the opportunity to present their side of events
- Independent, impartial judge and jury

## Equality:

- People are treated equally by the court regardless of age, gender, religion, ethnicity,

sexuality, disability, etc..

- People can present their case without advantage or disadvantage

## **Access:**

- People should understand and be informed of their legal right
- people can pursue and present their case
- this often requires access to legal representation (lawyers)

# **Rights of the Accused**

In a criminal case, three rights are available to an accused person. These include:

- The right to be tried without unreasonable delay
- The right to a fair hearing
- The right to a trial by jury

## **TLDR:**

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Right	Description	Main source of right
Tried without unreasonable delay	An accused is entitled to have his or her charges heard in a timely manner. Any delay should be reasonable.	Sections 21(5) (b) and 25(2) (c) of the Human Rights Charter
Fair hearing	A person charged is entitled to have that charge decided by a competent, independent and impartial court, and the hearing must be both fair and public.	Section 24(1) of the Human Rights Charter

Right	Description	Main source of right
trial by jury	A person charged with an indictable offence is entitled to be tried by his or her peers.	Section 80 of the Australian Constitution and Victorian statute law (including the Criminal Procedure Act)

## The right to be tried without unreasonable delay

It is stated by the Human Rights Charter that a person that has been charged with a criminal offence is entitled, without discrimination, to a guarantee that said person will be tried without unreasonable delay. The right recognises that there may be a delay in the case, but that delay must not be unreasonable. The term 'unreasonable delay' is not defined, but the reasonableness of any delay will depend on factors such as the complexity of the

case and the legal issues involved. For example, it would be reasonable for the prosecution to need more time to prepare for a case involving multiple crime scenes, multiple crimes and multiple accused people with few or no witnesses, as opposed to a case where there was a single incident with multiple witnesses. This right is supported by Section 21(5) of the Human Rights Charter, which states that a person who is arrested or detained on a criminal charge has the right to be brought to trial without unreasonable delay. This is because, under the Charter, people have a basic right to liberty and security, and accused persons are presumed innocent until proven guilty. Therefore, people should not be held for an unreasonable amount of time while they are awaiting trial.

## **The right to a fair hearing**

The Human Rights Charter entitles a person charged with a criminal offence to have the charge decided by a competent, independent and impartial court after a fair and public hearing. There are two parts to this right:

1. A competent, independent and impartial court must decide the proceeding or charge. That means, for example, that every person has the right to have their case heard by a qualified and experienced judge or magistrate in an unbiased and objective manner.
2. A hearing must be fair, and public. Most court hearings are open to the public. This ensures that the trial and trial processes are transparent and not hidden in secrecy. If criminal cases were conducted in secret, there would be no way for the public to know whether laws are applied properly and processes are fair. An open courtroom allows for public and media scrutiny of processes. In some circumstances a court may exclude members of media organisations or the general public from all or part of a hearing. For example, the Magistrates' Court has the power to make an order that proceedings are closed to the public if they will cause undue distress or embarrassment to a victim in a sexual offence case.

## **The right to trial by jury**

A trial by jury is where a person's peers within the community decide the outcome of the case – i.e. in a criminal case, whether or not the accused is guilty. This right dates back to well before the Magna Carta in England, established in 1215, which said that no free man shall be imprisoned except by lawful judgment of his peers. The jury system provides the opportunity for community participation in the legal process, and for the law to be applied according to community standards. The right to trial by jury is not protected by the Human Rights Charter, but rather protected in part by the Australian Constitution, and in part by statute law in Victoria. Section 80 of the Australian Constitution states that any person who is charged with a Commonwealth indictable offence is entitled to a trial by jury. However, section 80 of the Australian Constitution provides only a limited right to trial by jury, because most indictable offences are crimes under state law, and this section only applies to Commonwealth offences. In addition, the Commonwealth Parliament can determine by statute which offences are 'indictable'. For Victorian indictable offences, the Criminal Procedure Act 2009 (Vic) requires a jury to be empanelled where the

accused pleads not guilty to the indictable offence. There is no right to a jury trial for summary offences. If a jury trial is required (i.e. an accused has pleaded not guilty to an indictable offence), then the Juries Act 2000 (Vic) sets out the requirements in relation to the composition and responsibilities of the jury. A criminal jury is made up of 12 jurors. The jury will hear the case and will need to reach a verdict on whether the accused is guilty or not guilty. The jurors must make a decision beyond reasonable doubt.

## **Standard of Proof**

The standard of proof refers to the strength of the evidence needed to prove the case. In a criminal case, the standard of proof is *beyond reasonable doubt*, and as such, the prosecution must prove to the jury or magistrate that the accused is guilty *beyond reasonable doubt*.

## **The Presumption of Innocence**



The presumption of innocence ensures that any person that is accused of a crime is presumed to be innocent until they have either admitted guilt or pleaded guilty, or been found guilty by a jury or a magistrate.

# **Types of Offences**

## **Summary Offences**

Summary offences are less serious crimes that are heard in the Magistrates' Court. The Magistrate decides the verdict and the sanction of the case without a jury. The summary process is shorter than cases in higher courts. Examples include offensive behaviour and drinking offences

## **Indictable Offences**

Indictable offences are more serious offences that are heard in higher courts such as the County or Supreme court. Unlike the Magistrates' Court, a jury decides the verdict and the judge decides the sanction. Some less serious offences can be heard

summarily by a magistrate, such as theft. Example include murder

## **3.2 Textbook Questions**

Q3. Is access to information limited to access for the parties of a criminal case? Justify your answer

Access to information is not limited to access for the parties of a criminal case due to the Victims Charter Act of 2006 which provides the legal right for victims to access information about their ongoing criminal trial.

## **3.3 Textbook Questions**

Q1. Provide two differences between summary offences and indictable offences.

Summary offences differ from indictable offences in that a summary offence is considered to be an offence of lesser impact and is heard by a magistrate in the Magistrates Court whereas an indictable offence is considered to be of a higher impact than a summary offence and is heard by a judge in either a County or Supreme Court.

Q2. Who has the burden of proof in a criminal case?  
What is the reason for this?

In a criminal case, the burden of proof falls on the prosecution. the reason for this is the idea of the 'presumption of innocence'. The presumption of innocence ensures that any accused person is presumed to be innocent of any crimes they are accused of. Due to this, the accused person does not have to provide evidence and / or prove their innocence, and as such, the burden of proving the guilt of the accused falls to the prosecution.

Q3. Define the term 'the presumption of innocence' and explain three ways it is upheld in a criminal case. The term "Presumption of innocence" refers to the idea that in a court of law, anyone who is accused of a crime is presumed to be innocent of the crime until said person has been proven guilty of the crime. In a criminal case, the "Presumption of innocence" is upheld in three ways, including the burden of proof falling on the prosecution, the setting of bail, and the high standard and scrutiny of proposed evidence and the case as a whole.

## 3.4 Textbook Questions

Q1. -

a. Describe three rights available to an accused in a criminal proceeding.

In a criminal proceeding, an accused person has three rights available. These include the right to be tried without unreasonable delay which ensures that said person's case is heard within a reasonable timeframe, the right to a fair hearing which ensures that an accused person's criminal charge decided by a competent and impartial court after a fair and public hearing, and the right to a trial by jury that ensures that any persons accused of a indictable criminal offence is provided the option to be heard by a jury.

b. Explain any exemptions or exceptions that apply to each right.

In regards to exceptions and exemptions, the right to be tried without unreasonable delay states that any accused under 18 years of age "must be brought to trial as quickly as possible".

Q2. How does a right to a trial by jury for an

indictable offence uphold equality?

The right to a trial by jury for an indictable offence uphold equality through ensuring that the outcome an an accused persons' case is decided by a wide group of individuals with the intention of eliminating as much bias as possible.

Q3. What is meant by the term 'unreasonable delay', and what delays may be considered 'reasonable'?

In regards to the rights of the accused, the term "unreasonable delay" refers to the period of time between the arrest of an accused and the beginning of their court proceedings. How 'reasonable' a delay is dependant upon the complexity of the case and as such is decided on a case-by-case basis.

Q4. Your friend has been charged with drink driving, and believes she is entitled to a jury trial under the Australian Constitution. Is she correct? Justify your answer.

Drunk driving is a summary offence, summary offences are not eligible for the right to a trial by jury.

Q5. In Gray v DPP , how did Justice Bongiorno attempt to remedy the fact that there may not be a timely trial?

To remedy the fact that the right to a timely trial could not be upheld in the Gray v DPP criminal case, Justice Bongiorno made the decision to release the accused on bail.

## **3.5 Textbook Questions**

Q1. Is a victim entitled to receive information about the likely release date of a prisoner? Explain your answer.

As stated by section 17 of the Victims' Charter, Any victim is entitled to receive information in regards to the potential release date of the offender.

Q2. Will a victim always be entitled to information about an investigation? Justify your answer.

As stated by sections 7, 8 and 9 of the Victims' Charter, Victims are entitled to receive information about the investigation related to the criminal case with a few exceptions. These exceptions include times when it could inhibit the investigation, or when the victim requests to not be informed.

