

Practise Outcome Task 1

Nathan Le Brun

1. Identify the complainant, the prosecution, the accused and the primary victim in the above scenario.

The complainant and the primary victim in this scenario is Judith. The prosecution in this scenario is the DPP and the accused is Simon.

2. Has Simon been charged with a summary offences or an indictable offences? justify your answer.

Simon has been charged with indictable offences. This is due to the sexual nature of the offences that he has been accused of.

3. Identify the party that has the burden of proof in this case, and the extent to which the party needs to prove the case.

In regards to this case, the prosecution holds the burden of proof. In addition to this, the prosecution will need to prove the case *beyond reasonable doubt*

4. Simon believes that he is entitled to a right to trial by jury because of the Australian Constitution. Is this true? Justify your answer.

Simon is correct in his belief that he, as an accused person, is entitled to a trial by jury. This is due to the Australian Constitution, which states that any persons accused of an indictable commonwealth offence is entitled to a trial by jury, as well as Victorian Statute Law, which states that any persons accused of an indictable state offence is entitled to a trial by jury.

5. Will Andrew be able to give evidence by way of a recording? Give reasons for your answer.

Assuming that Andrew is not a minor, and / or cognitively impaired, he is not eligible to give evidence by way of a recording as stated by the

Criminal Procedures Act. Although not eligible to give evidence by recording, Andrew still has other options available to him such as giving evidence through a 'closed-circuit' television system or having the accused hidden from view.

6. Simon wants a quick trial that is closed to the public. Explain whether he would be entitled to both of these rights under the Human Rights Charter.

In regards to a quick trial, Simon is entitled to a trial without unreasonable delay under the Human Rights Charter, but this does not ensure that the court proceedings will be quick. In addition to this, the Human Rights Charter also provides the accused with the right to a fair and public trial. Due to the nature of the case, Simon may be eligible to request that his case be closed to the public.

7. Explain whether there are rights available to Sally and Judith to give evidence in a way that alleviates their concerns.

Due to the nature of the offences, Sally and Judith, are both entitled to the right to give evidence as a vulnerable witness as stated by the Criminal Procedures Act. In regards to Sally's concerns about the formalities of a trial, she may request for the legal practitioners to be seated and / or not formally dressed in robes. In regards to Judith's concerns about seeing and being in communication with the accused, she may request to give evidence from another location through the use of a 'closed-circuit' television, or other such means.

8. Discuss the extent to which you believe the principle of access has been achieved so far in this case.

The principle of access outlines that any persons should be able to understand and / or be informed of their legal rights, as well as be able to pursue and present their case. In regards to this case, access has been achieved to a moderate degree. Access had been achieved as seen through Simon, who understood his rights as an accused persons, and was able to afford legal representation. Access was not achieved in regards to the Sally, Judith and

Andrew. This is due to the fact that the victim and witnesses were not given information by police during investigation in addition to not be aware of their legal rights as a vulnerable witness.

Access:

- People should understand and be informed of their legal rights
- people can pursue and present their case
- this often requires access to legal representation (lawyers)
- Witnesses not given information by police during investigation -
- Judith could not afford legal representation -
- Judith confused by legal terminology -

- Witnesses unaware of their legal rights as vulnerable witnesses -
- Witnesses provided information about upcoming trial +
- Judith found OPP staff members were helpful +
- Simon is aware of his legal rights as an accused person +
- Simon is able to afford legal representation +