

CRIMINAL LAW PRACTICE PRACTICAL GUIDE



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HOW TO USE THIS PRACTICAL GUIDE

This practical guide has been developed for your assistance in the practical legal training elective unit Criminal Law Practice. This guide is structured in a way that aims to aid your development of practical knowledge and application skills in three key areas of:

1. Making a bail application;
2. Making a plea of guilty and appearing for a client in a sentencing matter;
3. Appearing for a client in a defended Hearing.

Criminal law demands a high degree of analytical skills, as a legal practitioner ought to exercise best judgement in advising a client about the likely range of outcomes in a criminal matter as well as in how to best represent them in Court. This requires careful interviewing skills to elicit client instructions, as well as the careful development of submissions to put before the Court in order to obtain the best possible outcome for the client.

The types of assessment in this practical legal training unit currently include participation in tasks and an oral assessment. Lawskool Pty Ltd recommends that you follow this practical guide in the order as it appears, and work through the fact scenarios to each practical task in a way that ensures you understand the steps taken along the way.

Throughout your studies, you may adopt an engaged learning style which enables you to actively explore ideas and issues about a topic, and connect with your peers and mentors about real life situations and how they apply to the topic. Lawskool Pty Ltd hopes that you may use this practical guide as a tool in your engagement about Criminal Law Practice in your practical legal training course.

PART 1: BAIL APPLICATIONS

1.1 GENERAL PRINCIPLES OF BAIL

- The principles of bail vary across Australian jurisdictions. However, generally speaking, a **presumption in favour of bail** operates for people who have been charged with a criminal offence (defendants).
- However, in “**show cause**” matters, the defendant has the onus to satisfy the court that there is not an unacceptable risk. This displaces the presumption.
- In determining bail, the court will make an **assessment of risk** as a balancing exercise between:
 1. The **risk to the community**; and
 2. The **risk posed to the individual’s freedom**.
- In the event that bail is granted, the defendant will generally be required to enter into an **undertaking** to appear at the next court appearance.
- **Cash bail** is permitted in some circumstances of minor offences by way of the defendant making a deposit of money. This deposit acts a security.
- Bail may be granted with **special conditions**. These may be varied and include:
 1. Reporting to a police station;
 2. Surrendering a passport;
 3. Not driving;
 4. Not leaving the jurisdiction; and
 5. Not entering a premises that is licensed to sell liquor.

1.2 PREPARATION FOR A BAIL APPLICATION

- It is essential to get the bail application ‘right’ the first time as defendants usually only get one chance at bail! In order to do this, a number of steps ought to be carefully followed which are outlined over the page.



1.3 MAKING A BAIL APPLICATION

- Generally, a number of steps are made when making a bail application, including the following:
 1. The defence lawyer formally asks for bail;
 2. If bail is granted, the defendant signs an undertaking;
 3. If bail is contested, the prosecution makes objections;
 4. The defence lawyer makes submissions for bail, which are often required to be supported by evidence such as letters and references.

- Submissions for bail may cover areas including the following:
 1. The client's age and personal circumstances, particularly community ties which would argue against them absconding the jurisdiction such as family, employment and education;
 2. An address of each allegation, such as by attacking the strength of the prosecution's evidence;
 3. Factors that make the client a good bail risk, such as cooperation with police;
 4. An address of contentious issues, such as the client's lengthy criminal history by stressing that they have, for example, appeared at all court appearances in the past;
 5. Proposals for conditions to be imposed on bail, such as how often the client will report to police and where they will reside.

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