**Key Cases for HSC Legal Studies: Crime**

by [Frances Tso](https://www.artofsmart.com.au/author/francestso/) |

You have pages and pages of notes on possible cases to use for the Crime section of HSC Legal Studies. At times, it can be a bit overwhelming to choose from hundreds of cases on the same topic. We have cut it down for you to all of the VERY BEST cases for HSC Legal Studies to help you bring home that Band 6!

**Criminal Investigation Process**

|  |  |
| --- | --- |
| **Right to Silence** | * [Bikies busted under right-to-silence laws (The Australian October 2013)](http://www.theaustralian.com.au/news/nation/bikies-busted-under-right-to-silence-law/news-story/7371644ff49e103639cabf2a3e739a99) – Can also use this to talk about interrogation and the rights of suspects * **Legal issue to explore:**Infringement of right to silence has proved to be ineffective as a means of achieving justice |
| **Police Powers: Tasers and Terrorism** | * Tasers:   + [Roberto Curti (2010)](http://www.smh.com.au/nsw/police-used-excessive-unnecessary-unlawful-force-on-brazilian-student-roberto-curti-court-hears-20141117-11o3tr.html) – Ineffective use of Tasers by police; Curti tasered 14 times; *“reckless and excessive”* (Coroner Mary Jerram)   + [Man arrested in Sydney sword-off (SMH 2014)](http://www.smh.com.au/nsw/man-arrested-after-sydney-sword-standoff-20140323-35b52.html) – Effective use of Tasers in protecting violence from the community   + **Legal issue to explore:** Are Tasers used in accordance with the [2012 Ombudsman Report](https://www.ombo.nsw.gov.au/__data/assets/pdf_file/0004/6970/How-are-Taser-weapons-used-by-NSW-Police-Force-Special-report-to-Parliament-October-2012-.pdf) or do police misuse and abuse their powers? Link this to Section 18 of the *Law Enforcement (Powers and Responsibilities) Act 2002 (NSW)*, which outlines the appropriate use of force by police * Terrorism: [Parramatta shooting of Curtis Cheng by Farah Jabar (2015)](http://www.abc.net.au/news/2015-11-14/parramatta-shooting-man-charged-curtis-cheng-death/6940668) – Can also use this case to talk about Detention |
| **Reporting Crime** | * [Ashlee Savins Case (2015)](http://www.heraldsun.com.au/news/law-order/images-of-a-bloodied-ashlee-savins-have-been-shared-thousands-of-times/news-story/471f0b18c087991a4146d684eba894d8)– Domestic Violence (DV) victim initially faced a*“passive dismissive police attitude”*; only eliminated through media outcry * **Legal issue to explore:** Inadequate police investigations of DV creates issues of non-disclosure as victims lose faith in the criminal justice system. Is it worth reporting crime anymore? |
| **Investigating Crime: Gathering Evidence** | * [R v Wood (2012)](http://guides.sl.nsw.gov.au/content.php?pid=242811&sid=2094994) – Ineffective use of police discretion where police failures at the crime scene resulted in an unfair trial that led to Wood’s acquittal of murdering his girlfriend Caroline Byrne * [R v Gittany (2014)](http://guides.sl.nsw.gov.au/content.php?pid=242811&sid=4470050) – Effective gathering of evidence and use of technology. Successful prosecution of the murderer of Lisa Harnum in where police collected evidence including text messages, CCTV footage and eyewitness statements under the *Evidence Act 1995 (NSW)* * **Legal issue to explore:** Inconsistencies in the collection of evidence due to police discretion |
| **Investigating Crime: Use of Technology – DNA Samples** | * [R v Crowe (2016)](http://www.abc.net.au/news/2015-09-03/richard-john-crowe-who-raped-five-children-sentenced-to-jail/6746322)– Effective; Cold Case Justice Project was able to identify the offender from DNA left at 5 different crime scenes, ultimately securing a conviction * [R v Anderson (2015)](http://www.smh.com.au/nsw/crucial-evidence-flawed-in-allira-green-stabbing-death-case-20150609-ghk2w8.html) – Miscarriages of justice have been demonstrated by the major trial setback in where the jury was provided with evidence of misleading DNA samples (SMH June 2015) * [Farah Jama case (2008)](http://www.smh.com.au/national/wrongfully-accused-20140323-35cga.html)– Jury found Jama guilty of raping a woman in 2006 solely on the basis of DNA evidence. Although this case happened in Victoria, such a “substantial miscarriage of justice” such as this could also happen in NSW (prosecutor Brett Sonnet). The Jama case has been described “a stain upon the justice system” (opposition police spokesman Peter Ryan)   + Since this happened in VIC, make sure you bring it back to NSW * **Legal issue to explore:**how effective, really, are DNA samples? |
| **Bail** | * [Murderers granted bail under new laws (SMH 2014)](http://www.smh.com.au/nsw/accused-murderer-granted-bail-under-new-laws-20140616-zs9di.html) – Alleged murderers Stephen Fesus and Mahmoud Hawi received bail under the reforms by showing how strict conditions could mitigate any risk to the community * [R v Hawi (2014)](https://www.caselaw.nsw.gov.au/decision/54a63daa3004de94513dbf9f)– Accused was released on bail whilst being charged with murder. However, this immediately received heavy criticism due to its leniency towards the accused and the risk this posed to society * [Man Monis (2014)](http://www.smh.com.au/nsw/man-monis-granted-bail-six-days-after-controversial-bail-laws-brought-in-20141215-127zoe.html) * **Legal issue to explore:** Since the eruption of public outcry in 2014 due to Hawi and Man Monis, harsher bail conditions have been introduced for more than 900 offences. Although this protects the right of the community to feel safe, the adult prison population grew by 9% in 2015–2016 (ABS 2016). This raises the question of the rights of the accused in this process |

**Criminal Trial Process**

**Legal Personnel: Director of Public Prosecutions (DPP)**

* [Lynette Daley’s death in 2011 (ABC April 2016)](http://www.abc.net.au/4corners/stories/2016/05/09/4456354.htm) – Whilst the DPP’s consideration of the nature of crime and type of offence is generally effective in bringing offenders to trial, the DPP has recently faced heavy criticism due to the failure to prosecute Attwater and Maris

**Charge Negotiation**

* [R v Koch (2009)](http://www.smh.com.au/national/forced-to-take-on-the-system-20090807-eczb.html) – Attempted murder was downgraded to grievous bodily harm as a result of charge negotiation
* **Legal issue to explore:** The legal system may struggle to balance a fair conviction with wider community standards due to variegated moral and ethical standards held across society

**Legal Representation and Legal Aid**

* [Dietrich v The Queen (1992)](http://www.ruleoflaw.org.au/education/case-studies/access-justice/dietrich-v-the-queen/)– Set the precedent for the limited right to legal representation in Australia. (This is also a useful case for Human Rights)
* **Legal issue to explore:** How can self-representation often result in unjust outcomes?

**Defences**

|  |  |
| --- | --- |
| **Insanity and Mental Illness** | * [Daniel Dunn case (2012)](http://www.abc.net.au/news/2014-11-19/elderly-man-who-killed-wife-to-be-released-to-aged-care-facility/5903178) – South Australian Supreme Court found defendant ‘mentally incompetent of the murder’. This have sparked concerns across Australia, particularly NSW on the need to update laws. This has thus served as a catalyst for law reform to meet community standards * NSW Law Reform Commission recommended the M’Naughten test be updated to be in line with modern research (NSW Courts, 2015) – need for law reform to reflect changing values within the community * [Darcey Freeman (2015)](http://www.abc.net.au/news/2015-07-15/doctors-knew-freeman-was-violent-before-bridge-murder/6620082) – Defence of insanity is not always a secure acquittal. This is highlighted by the fact that Freeman was sentenced to life imprisonment after throwing his 4-year-old daughter off Westgate Bridge, Melbourne in 2009 (ABC, 2015). A tough stance was maintained across Australia to ensure effective achievement of justice * [R v Farrow (2014)](http://www.dailytelegraph.com.au/news/nsw/ice-addict-colin-maxwell-farrow-found-guilty-of-linda-stevens-carboot-murder/news-story/a19773c3678e54ed89fbb1aa11b57d88) – Farrow accused of murdering his ice-dealer, the judge rules that despite Farrow bring under psychosis when performing the act, he was still aware that the *‘acts were wrong’*and hence was charged with murder * **Legal issue to explore:** Was law reform effective in meeting the standards of the community? |
| **Provocation** | * [R v Singh (2012)](http://guides.sl.nsw.gov.au/content.php?pid=242811&sid=3924417) – Downgraded a murder charge on the ground of provocation * **Legal issue to explore:** This raises the question of moral and ethical values as justice was not achieved for the victims. By providing excuses to justify criminal behaviour, effectiveness of justice may be limited drastically. This has engendered extensive debate in society. Provocation is seen to justify abuse within relationships, arguably limiting its effectiveness of achieving justice by providing loopholes for abusive partners |
| **Self-defence** | * [Zecevic case (1987)](http://www.findlaw.com.au/articles/5022/self-defence-law-in-australia.aspx) – Led the High Court of Australia to decide that the defendant must be proven beyond reasonable doubt that self-defence was necessary * [R v Silva (2015)](http://www.abc.net.au/news/2015-03-06/jessica-silva-avoids-jail-for-manslaughter-of-abusive-partner/6285488) – Justice Peter Johnson ruled the force used by the offender as “excessive” and thus only granted a partial defence to murder. In this case, the nature of crime was further considered through mitigating circumstances, as the “unlikely chances of reoffending and good character” resulted in a reduced manslaughter sentence of 17 months’ imprisonment |

**Role of Juries**

* [R v Rogerson and R v McNamara (2016)](http://www.smh.com.au/nsw/trial-of-roger-rogerson-and-glen-mcnamara-for-the-murder-of-student-jamie-gao-begins-in-the-nsw-supreme-court-20160201-gmiwor.html) – Jurors dismissed after 2 days due to potential prejudice (ABC May 2016). This demonstrates lack of time and resource inefficiency, as it costs $92 million a year to fund juries (ABS)
* Further fine inefficiencies were highlighted in the [Robert Xie case](http://www.smh.com.au/nsw/robert-xie-trial-jury-discharged-after-failing-to-reach-verdict-over-lin-family-murders-20151130-glc39o.html), where the verdict of the Lin family murders took over 9 months to secure. It was resource inefficient, costing $7.8 million per year to administer jurors (BOCSAR)
* **Legal issue to explore:** Resource efficiency vs. effectiveness of juries in achieving just outcomes

**Judge Alone Trials**

* [R v Gittany (2014)](http://guides.sl.nsw.gov.au/content.php?pid=242811&sid=4470050) – Presents an attempt to mitigate juror bias. The judge was able to deliver a guilty verdict whilst providing reasons for his decision, effectively representing societal values
* **Legal issue to explore:** In a society where trial by one’s peers in the form of a jury trial is a constitutional right and regarded as sacrosanct in each of our state and territory jurisdictions, the Gittany case raises a question whether or not trial by jury should be abolished or at least be the exception rather than the rule. While judge-only trials are more resource efficient, and can mitigate unfair juror bias in high-publicity trials, there is always the possibility that they can facilitate an unjust outcome

**Sentencing and Punishment**

|  |  |
| --- | --- |
| **Statutory and Judicial Guidelines and Judicial Discretion** | * [R v Silva (2015)](http://www.abc.net.au/news/2015-03-06/jessica-silva-avoids-jail-for-manslaughter-of-abusive-partner/6285488) – Effective as it reduced manslaughter sentence to 18 months of imprisonment. This was effective in achieving justice for the offender * “The offender is unlikely to reoffend and has good prospects of rehabilitation” (Justice Clifton Hoeben) * **Legal issue to explore:** the lack of certainty and consistency in sentencing fails to achieve justice for victims and the wider community. However, judicial discretion is nevertheless fundamentally important as a protection against political and media pressures (NSW Courts, 2016) |
| **Mandatory Sentencing: One-Punch Deaths** | * Catalysed by the deaths of [Daniel Christie (2013)](http://www.smh.com.au/nsw/shaun-mcneil-guilty-of-manslaughter-for-onepunch-kings-cross-attack-on-daniel-christie-20150611-ghlhik.html) and [Thomas Kelly (2012)](http://guides.sl.nsw.gov.au/content.php?pid=242811&sid=4420653) by Shaun McNeil and Kieran Loveridge, respectively * Both cases involve the death of victim as a result of an intoxicated, single strike attack * **Legal issue to explore:** mandatory sentencing removes the discretion of judges. Is this necessarily a good thing all the time? |
| **Victim Impact Statements (VIS)** | * [R v Loveridge (2014)](http://guides.sl.nsw.gov.au/content.php?pid=242811&sid=4420653) – The original sentence reflected the need for retribution to ensure a just outcome for the victim. The judge also considered aggravating factors, for example: violent nature of the crime. He also considered mitigating factors, such as the offender’s disadvantaged background and his remorse * However, on appeal, the sentence was doubled to a non-parole period of 10 years. This has been described as “trial by media” (Thomas Kelly death was never murder SMH 2014) * **Legal issue to explore:** The above case highlights the controversy surrounding Victim Impact Statements as the legal system must attempt to balance a consideration of the impact on the victim with a just outcome for the accused |
| **Types of Penalties: Suspended Sentence** | * [R v Bui (2008)](http://guides.sl.nsw.gov.au/content.php?pid=242811&sid=2189488) – Effective penalty communicated, where the offender was given a suspended sentence because she had 4 young children to care for * However, the reintroduction of suspended sentences have resulted in the exponential increase in prison populations * **Legal issue to explore:** Due to the increase in prison populations, it is clear that magistrates are abusing the “last resort” option (SMH 2014). Suspended sentences are overused despite having little impact on recidivism and have been declared a “serious failure” |
| **Post-sentencing: Continued Detention and Extended Supervision Orders** | * [Terry Williamson case](http://www.illawarramercury.com.au/story/2394027/bulli-rapist-terry-williamsons-supervision-order-extended-five-years/?cs=298)– Serial rapist whose Extended Supervision Order was extended for another 5 years. This demonstrates how the law responds to community pressures for incapacitation, as Williamson is extensively monitored, has to take anti-libidinal medication and must report to police to leave a restricted area or begin any new relationships * “Orders are granted by the Supreme Court of NSW and allow Corrective Services NSW to force criminals into compliance with the strictest conditions” (Emma Partridge, court reporter SMH July 2015) * [Basikbasik case (2015)](https://www.humanrights.gov.au/sites/default/files/document/publication/Basikbasik%20v%20Commonwealth%202014%20AusHRC%2077_WEB.pdf) – Australian Human Rights Council found that the 7-year continued detention of the offender in the Villawood Detention Centre a breach of the ICCPR (Gillian Triggs, SMH January 2015) * **Legal issue to explore:** While they can protect the community, Extended Supervision Orders have been criticised by NSW Council for Civil Liberties as “grossly unfair”, as they violate individual rights and freedoms. There seems to be a difficulty in balancing community interests and the rights of the offender |
| **Post-sentencing: Protective Custody** | * Protective custody was implemented in order to protect prisoners at risk of harm * [R v Hughes (2015)](http://www.abc.net.au/news/2015-12-21/hey-dad-star-robert-hughes-loses-appeal/7044746) – Highly publicised case case due to offender being former star of TV series ‘Hey Dad!’ * **Legal issue to explore:** Protective custody is generally effective in protecting inmates from personal harm in jail. It has been reported that protective custody is generally effective in ensuring personal safety. However, other inmates were able “to throw boiling water” at Hughes whilst he was in protective custody at Goulburn Jail (SMH October 2015). Is it really as safe as they make it out to be? |

**Young offenders**

|  |  |
| --- | --- |
| **Age of Criminal Responsibility** | * Under NSW common law, the rebuttable doctrine of doli incapax provides extra safeguard which presumes any child aged 10 to 14 is incapable of criminal intent unless proved otherwise * Effective in[R v LMW (1999)](http://guides.sl.nsw.gov.au/content.php?pid=242811&sid=2100433)where the Magistrate dismissed the committal hearing as a jury would be “uncomfortable with the concept of trying a 10-year old” for manslaughter in the Supreme Court * This reinforces community standards in dealing with young offenders * LMW not guilty of manslaughter as they were not satisfied beyond reasonable doubt that LMW understood the consequences of his actions. He was also deemed to have an intellectual age of 8 |
| **Rights of Children When Questioned or Arrested** | * [R v Phung and Huynh (2001)](http://www.criminalcle.net.au/attachments/Evidence_as_it_relates_to_Children_and_Young_People__Angela_Cook.pdf) – Judge ruled that the police’s failure to follow the correct procedure (due to denial of an interpreter for Phung) when interviewing a minor, compromised the fairness of the trial and thus, could not be submitted as evidence * This upholds the legal principle of natural justice and protects the rights of minors |
| **Penalties for Children** | * Control Orders – refer to [Parramatta shooting](http://www.smh.com.au/federal-politics/political-news/terrorrelated-evidence-could-be-kept-from-control-order-subjects-20151013-gk86w5.html) |

**International crime**

|  |  |
| --- | --- |
| **Drug Trafficking** | * [AFP v Antonio di Pietro, Pino Varallo & Frank Molluso](https://www.magistratescourt.vic.gov.au/sites/default/files/afp%2Bv%2Bdi%2Bpietro%2B%26%2Banors.pdf)– Defendants were each charged with trafficking a commercial quantity of MDMA in 2008 under the ***Commonwealth Criminal Code Act***, along with 18 others facing similar charges who formed part of an AFP investigation and prosecution named Operation Inca * The operation resulted in the world’s largest seizure of MDMA with 4.4 tonnes or almost 15 million pills being detected by Customs in June 2007, and led to 30 people being charged in Australia and one person charged in Belgium |
| **International Criminal Court (ICC)** | * The International Criminal Court (ICC) has shown success in prosecuting two prominent war criminals, thus evidencing the beginnings of an effective mechanism for combatting international crime * [Prosecutor v Lubanga Dyilo (2012)](https://www.icc-cpi.int/drc/lubanga) * [Prosecutor v Katanga (2014)](https://www.icc-cpi.int/drc/katanga) * **Legal issue to explore:** The ICC is easily paralysed by state sovereignty and yields extremely high costs (over $1 billion USD), probably too high to justify the current progress. It has been argued that the ICC is essentially powerless due to state sovereignty |