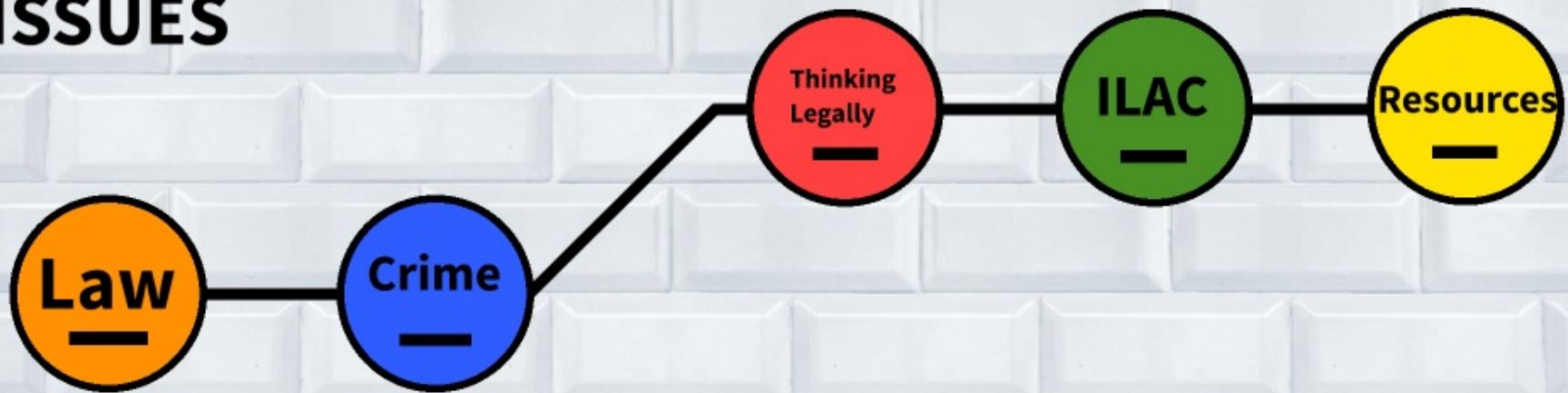


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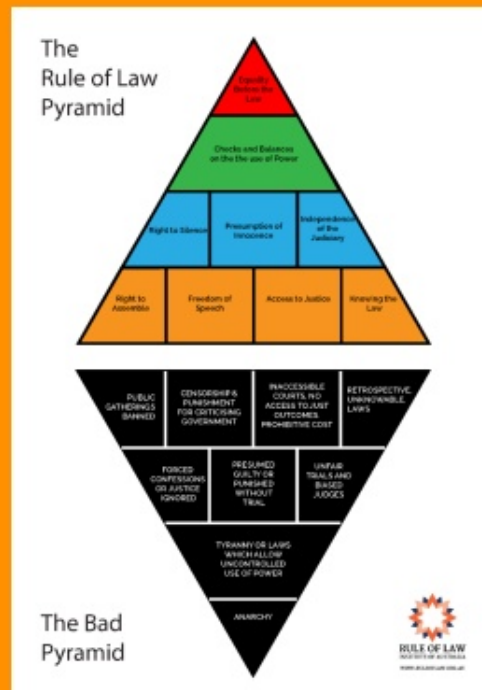


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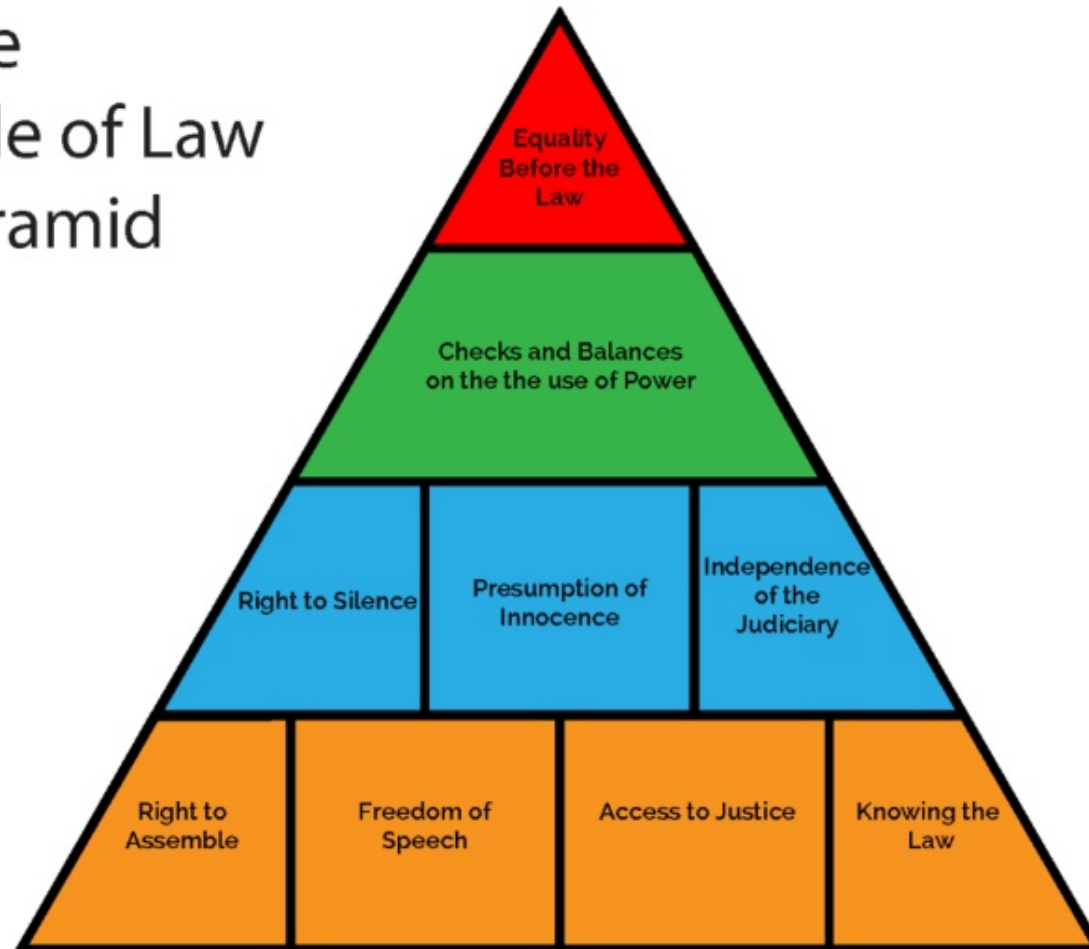
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The Rule of Law

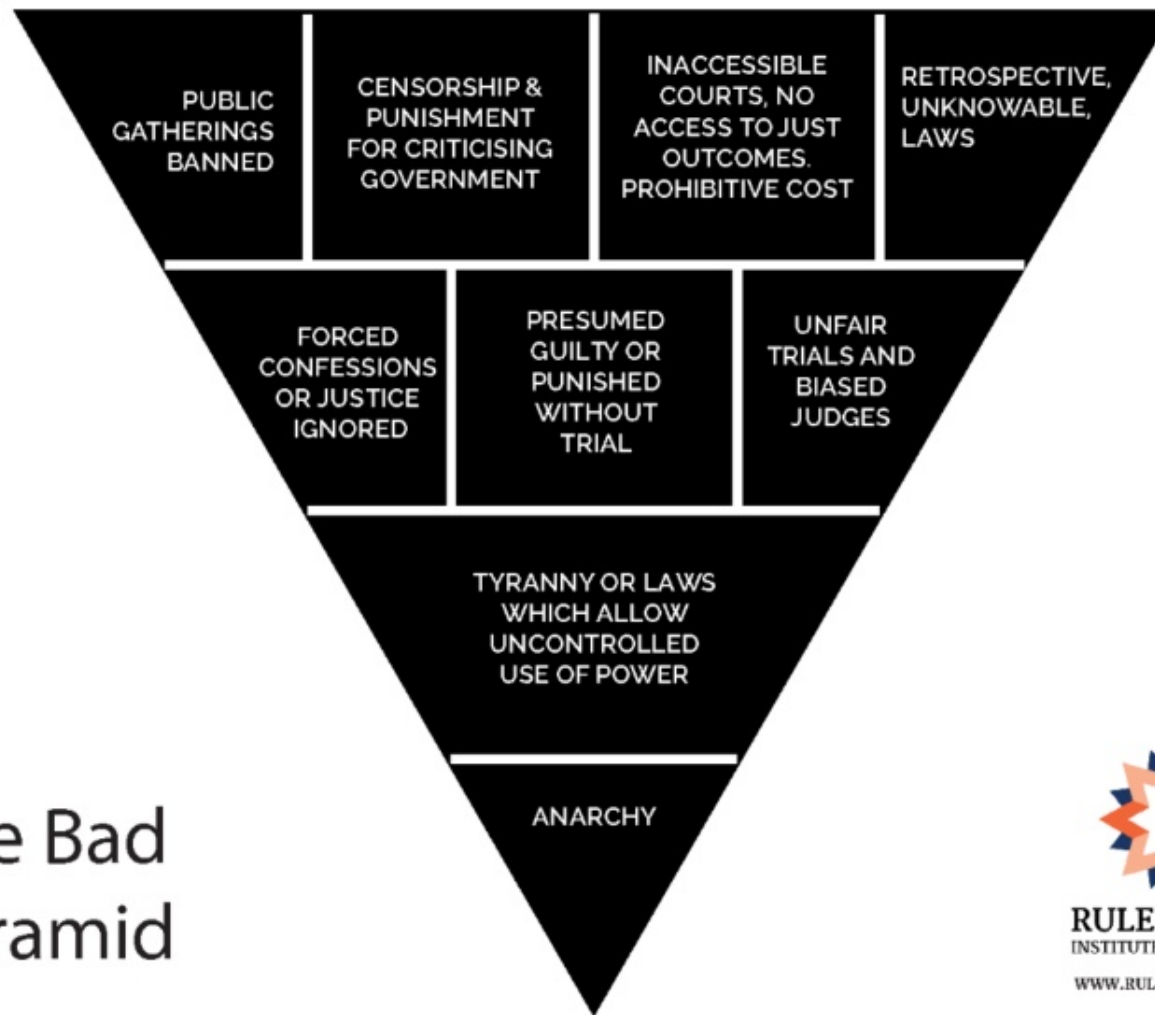


How to
'Legal'

The Rule of Law Pyramid



The Bad Pyramid





● Crime

- Bail
- Double Jeopardy
- Sentencing

● Skills

- Legal Literacy
- Themes and Challenges

● Resources

- Blogs
- Websites
- Excursions

Crime

- Bail
- Double
Jeopardy
- Sentencing



Skills

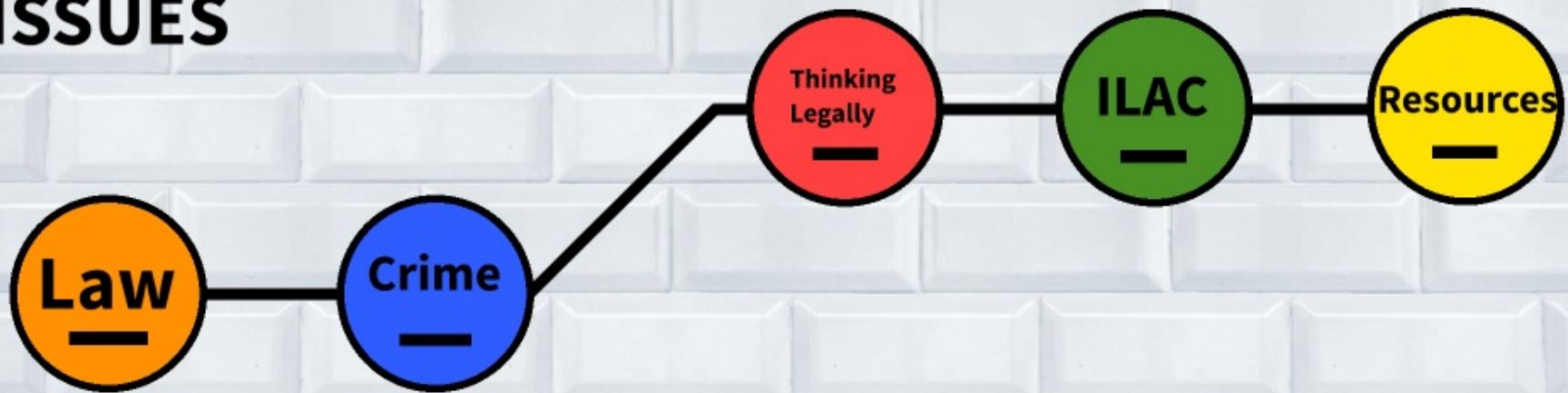
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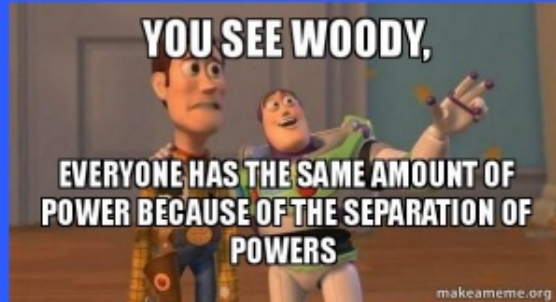


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How does Law work?



Executive

Governor General,
Prime Minister and
Ministers

Parliament

Member of the
House of
representatives
and the Senate

Judiciary

The High Court
and the State
and Federal
courts

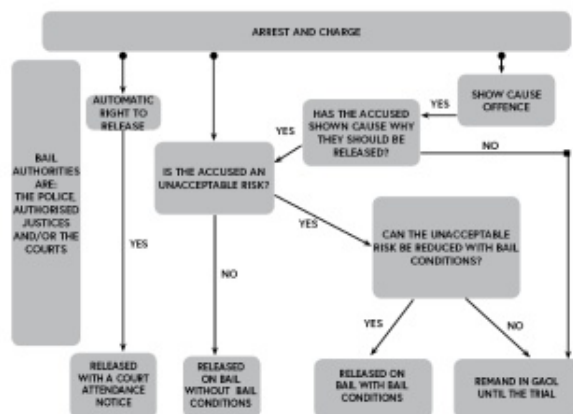
What does this mean for Criminal law?

**Current
Issues**

Bail

**Double
Jeopardy**

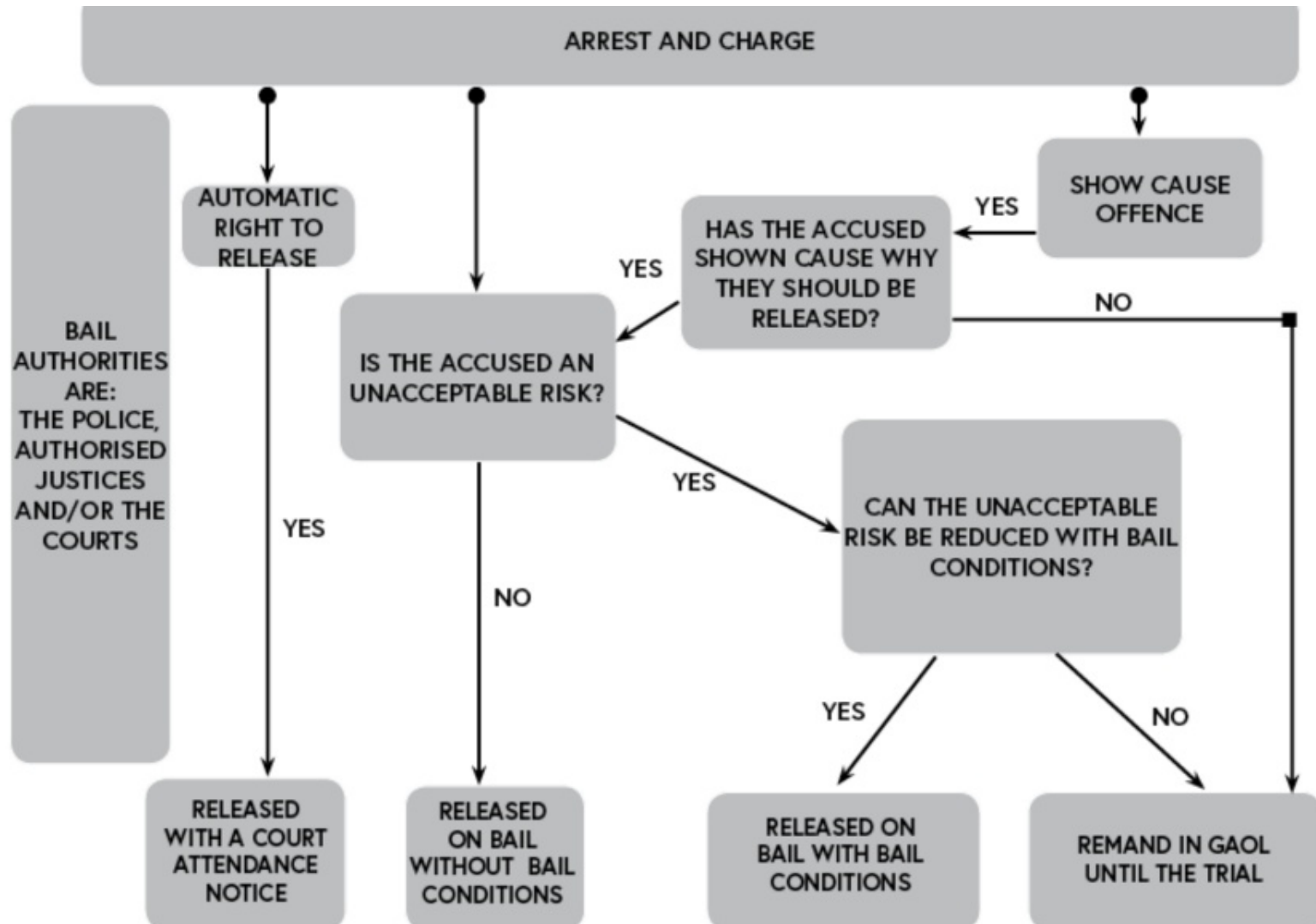
Current Criminal Law Issues



Bail



Double Jeopardy



**FOUND INNOCENT OF A CRIME I
COMMITTED**



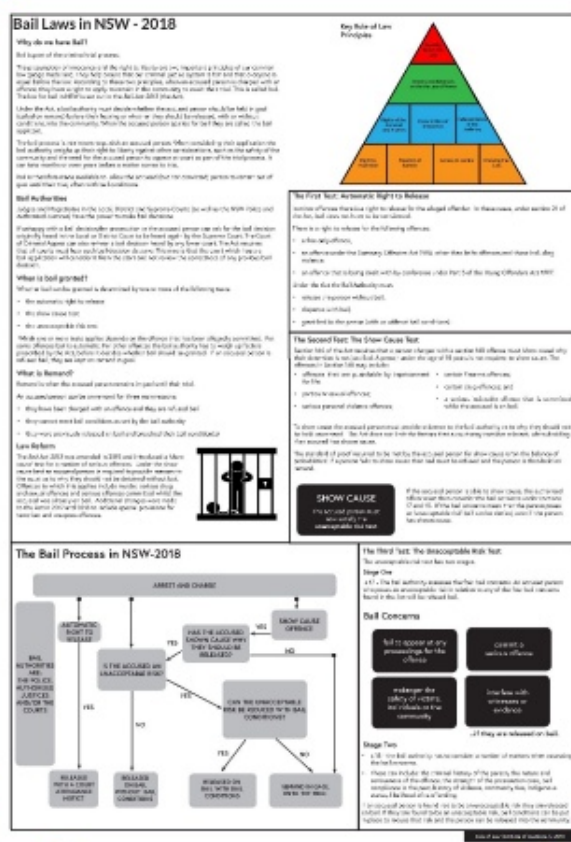
**CAN'T BE TRIED AGAIN BECAUSE OF
DOUBLE JEOPARDY**

generator.net

Bail Diagram

Davis Case

Themes and Challenges



Bail Laws in NSW - 2018

Why do we have Bail?

Bail is part of the criminal trial process.

The presumption of innocence and the right to liberty are two important principles of our common law (Judge made law). They help ensure that our criminal justice system is fair and that everyone is equal before the law. According to these two principles, when an accused person is charged with an offence, they have a right to apply to remain in the community to await their trial. This is called bail. The law for bail in NSW is set out in the *Bail Act 2013* (the Act).

Under the Act, a bail authority must decide whether the accused person should be held in gaol (called on remand) before their hearing or whether they should be released, with or without conditions, into the community. When the accused person applies for bail they are called the bail applicant.

The bail process is not meant to punish an accused person. When considering their application the bail authority weighs up their right to liberty against other considerations, such as the safety of the community and the need for the accused person to appear at court as part of the trial process. It can take months or even years before a matter comes to trial.

Bail is therefore made available to allow the accused (but not convicted) person to remain out of gaol until their trial, often with bail conditions.

Bail Authorities

Judges and Magistrates in the Local, District and Supreme Courts (as well as the NSW Police and Authorised Justices) have the power to make bail decisions.

If unhappy with a bail decision, the prosecution or the accused person can ask for the bail decision originally heard in the Local or District Court to be heard again by the Supreme Court. The Court of Criminal Appeal can also re-hear a bail decision heard by any lower court. The Act requires that all courts must hear each bail decision *de novo*. This means that the court which hears a bail application will consider it from the start and not review the correctness of any previous bail decision.

When is bail granted?

Whether bail can be granted is determined by one or more of the following tests:

- the automatic right to release
- the show cause test
- the unacceptable risk test

Which one or more tests applies depends on the offence that has been allegedly committed. For some offences bail is automatic. For other offences the bail authority has to weigh up factors prescribed by the Act, before it decides whether bail should be granted. If an accused person is refused bail, they are kept on remand in gaol.

What is Remand?

Remand is when the accused person remains in gaol until their trial.

An accused person can be on remand for three main reasons:

- they have been charged with an offence and they are refused bail
- they cannot meet bail conditions as set by the bail authority
- they were previously released on bail and breached their bail condition(s)

Law Reform

The *Bail Act 2013* was amended in 2015 and introduced a 'show cause' test for a number of serious offences. Under the show cause test an accused person is required to provide reasons to the court as to why they should not be detained without bail. Offences to which this applies include murder, serious drug and sexual offences and serious offences committed whilst the accused was already on bail. Additional changes were made to the Act in 2017 and 2018 to include special provisions for terrorism and weapons offences.



Key Rule of Law Principles



The First Test: Automatic Right to Release

In minor offences there is a right to release for the alleged offender. In these cases, under section 21 of the Act, bail does not have to be considered.

There is a right to release for the following offences:

- a fine-only offence;
- an offence under the *Summary Offences Act 1988*, other than knife offences and those including violence;
- an offence that is being dealt with by conference under Part 5 of the *Young Offenders Act 1997*.

Under the Act the Bail Authority must:

- release the person without bail;
- dispense with bail;
- grant bail to the person (with or without bail conditions).

The Second Test: The Show Cause Test

Section 16A of the Act requires that a person charged with a section 16B offence must 'show cause' why their detention is not justified. A person under the age of 18 years is not required to show cause. The offences in Section 16B may include:

- offences that are punishable by imprisonment for life;
- particular sexual offences;
- serious personal violence offences;
- certain firearms offences;
- certain drug offences; and
- a serious indictable offence that is committed while the accused is on bail.

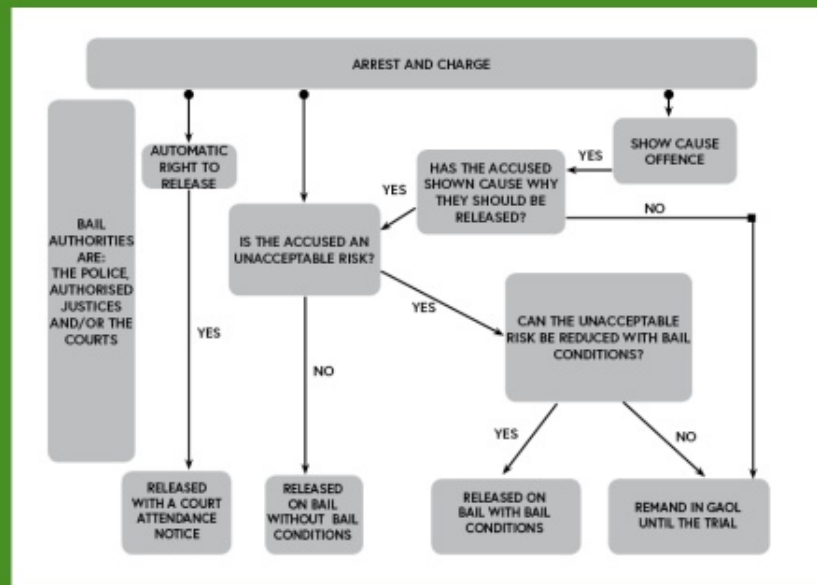
To show cause the accused person must provide evidence to the bail authority as to why they should not be held on remand. The Act does not limit the factors that a court may consider relevant, when deciding if an accused has shown cause.

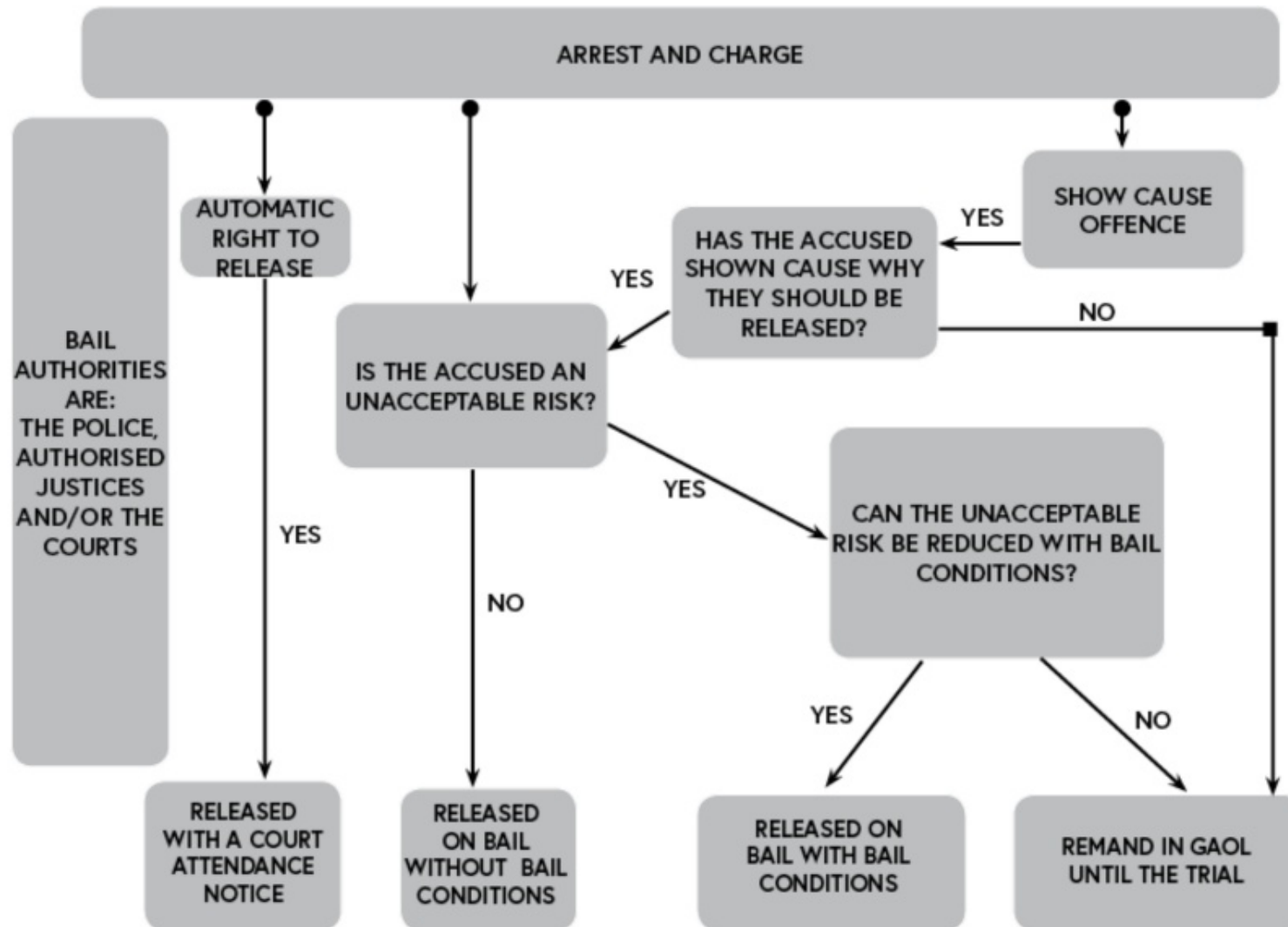
The standard of proof required to be met by the accused person for show cause is 'on the balance of probabilities'. If a person fails to show cause then bail must be refused and the person is then held on remand.

SHOW CAUSE

The accused person must now satisfy the unacceptable risk test

If the accused person is able to show cause, the authorised officer must then consider the bail concerns under sections 17 and 18. If the bail concerns mean that the person poses an 'unacceptable risk' bail can be denied, even if the person has shown cause.





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Sydney hip-hop artist Scepaz 'punched man with knuckle dusters' before alleged sword attack

By Mark Reddie

Updated 14 Aug 2018, 7:02pm

The Sydney hip-hop artist allegedly attacked with a samurai sword in the middle of a Sydney street broke into a Forest Lodge home and punched a man with knuckle dusters before his death, the ABC understands.

New details of Friday's alleged incident resulting in the death Jett McKee — also known as hip-hop artist Scepaz — have emerged, with the 30-year-old understood to have been chased down the street before being tackled to the ground by the woman who was today charged with his murder.

The ABC understands it is alleged her 28-year-old boyfriend, Blake Davis, then grabbed a Samurai sword and attacked McKee in the middle of the road.



PHOTO: Jett McKee, also known as Scepaz, died after a suspected home invasion gone wrong. (Supplied)

RELATED STORY: Sydney hip-hop artist found dead in street may have been involved in 'botched home invasion'

Teaching Bail

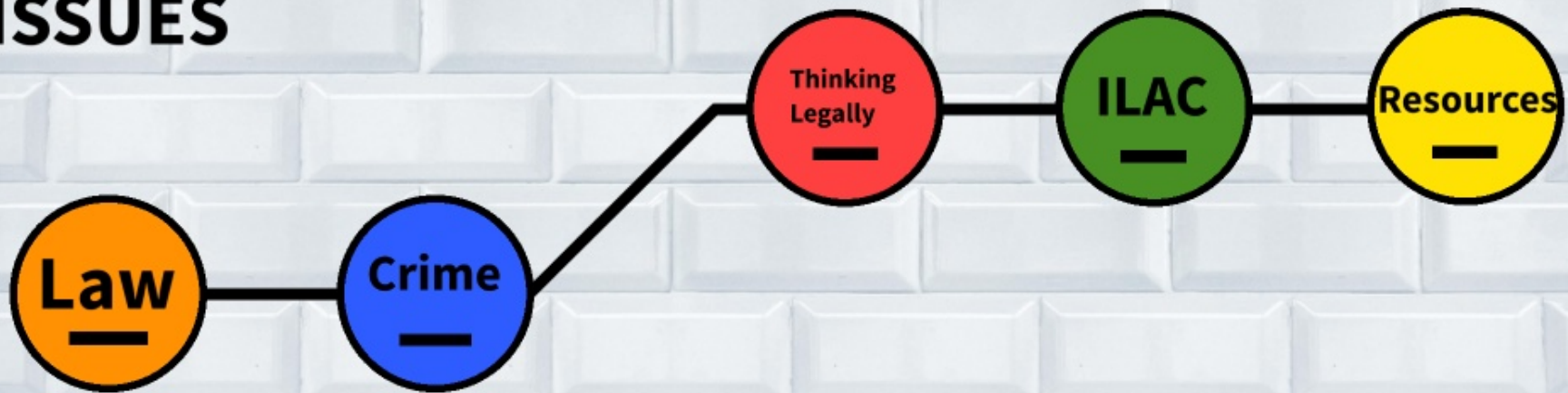
- Year 11 - Law Reform
- Year 12- Themes and Challenges
- the role of discretion in the criminal justice system
- issues of compliance and non-compliance in regard to criminal law
- the extent to which law reflects moral and ethical standards
- the role of law reform in the criminal justice system
- the extent to which the law balances the rights of victims, offenders and society
- the effectiveness of legal and non-legal measures in achieving justice.



<https://www.ruleoflaw.org.au/double-jeopardy-bowraville-murders/>

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Thinking Legally

I Identify the legal ISSUE

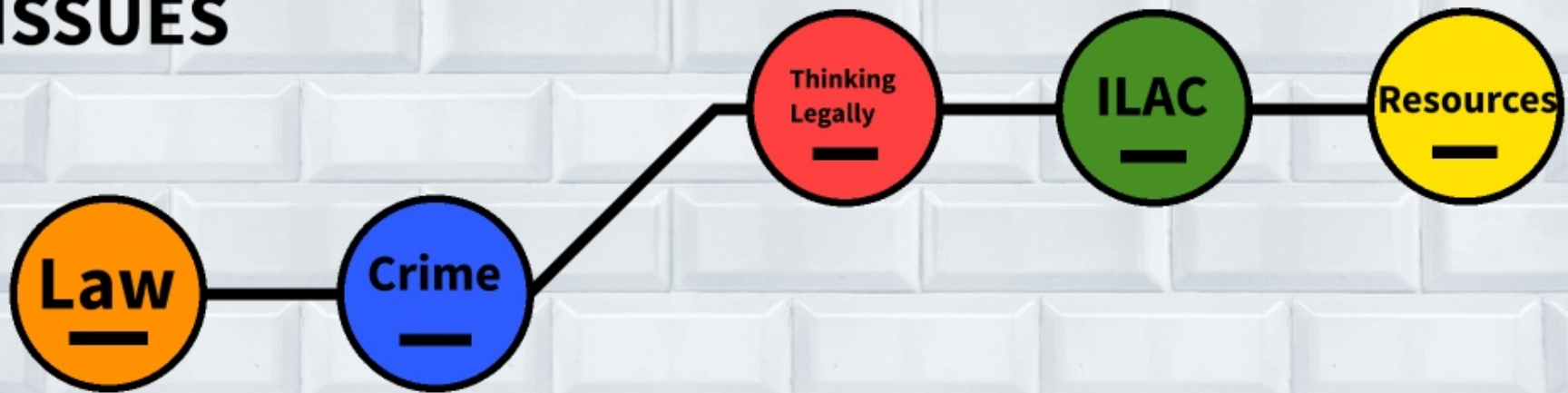
L State the relevant LAW

A APPLY the law

C CONCLUDE on how the law applies to the issue

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Doing ILAC

The Legal Issue:

Should 16 year olds be able to vote?

The current voting age in Australia is 18 years of age.

Law

Apply the Law

Conclusion

What is the Law?

Commonwealth Electoral Act 1918 s 93

(1) ...all persons:

(a) who have attained 18 years of age; and

(b) who are:

(i) Australian citizens; ...

shall be entitled to enrolment.

Apply the Law

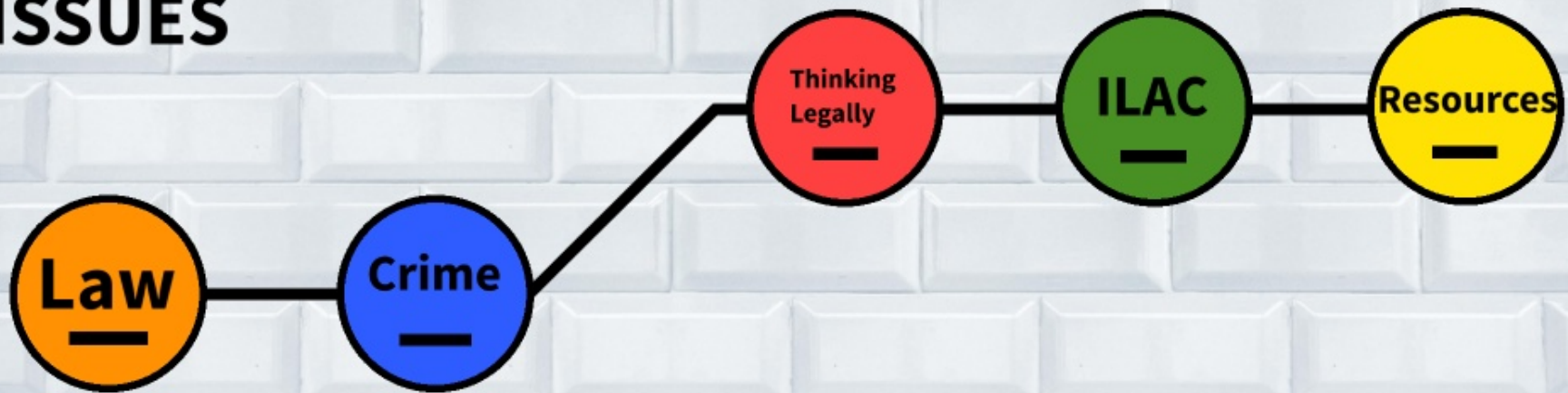
What do we have to do
to allow 16 year olds
to vote?



**What do you
think?**

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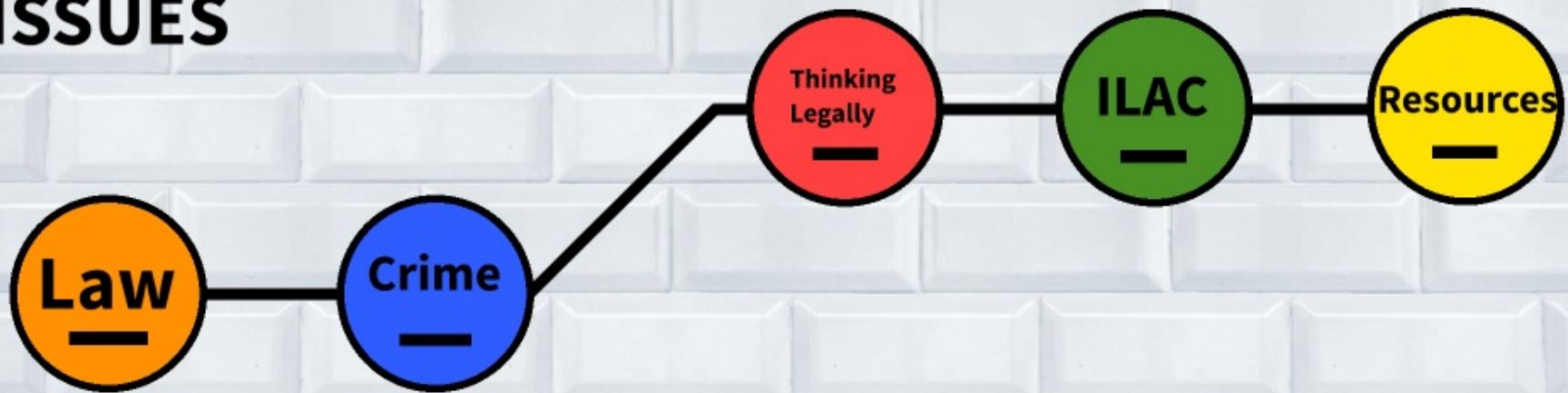
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Resources

- <https://www.ruleoflaw.org.au/>
- Law Day Out - <https://www.ruleoflaw.org.au/lawdayout/lawdayout.html?rol=asd201d#/about>
- https://www.facebook.com/LegalStudiesAU/?ref=br_rs
- <https://twitter.com/JCharRoL>

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