



Criminal Procedure: First appearance

Procedural ‘housekeeping’ at first appearance

The following matters should be dealt with by you at first appearance:

- Appearances, or non-appearance, by the parties and legal representation
- Whether you have jurisdiction to hear the matter
- Identification of the defendant
- Putting the charge to the defendant
- Taking pleas
- An application for bail, if one has been made
- An application for name suppression, if one has been made.

At first appearance, the matter will generally be adjourned to a fixed date. This adjourned hearing is usually called a callover.

Elements of an offence: What are they and why are they important?

Elements of an offence are components of an offence. Every element must be proved beyond reasonable doubt before a charge can be proved (see Standard of proof in criminal cases below).

Elements of offences form the basis of many key aspects of the criminal trial process, including a decision whether a defendant is guilty of a charge or not.

Standard of proof in criminal cases

The standard of proof is the level of proof that must be reached in order to prove what a person wants the court to accept.

The criminal standard of proof the prosecution must reach is beyond reasonable doubt. This is different from the lower civil standard of proof the prosecution must reach – that is, on the balance of probabilities.

Onus/burden of proof

Onus or burden of proof is the duty or responsibility of proving what a person wants the court to accept.

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The prosecution has the onus or burden of proving every element of the offence to standard of beyond reasonable doubt at all times during a criminal trial.

If the defendant raises a defence, they have the onus/burden to establish the defence on the balance of probabilities.