Should Prominent People Give References to Sex Offenders?

Luke Lazarus, son of prominent nightclub owner Paul Lazarus, has had a tumultuous few weeks.

After being found guilty of sexually assaulting an 18-year-old girl in an alleyway behind his father's nightclub earlier this year, Lazarus was sentenced in Downing Centre District Court to five years imprisonment with a non-parole period of three years. This means that he must spend at least three years in prison before being eligible for release.

During the hearing, the court heard that Lazarus had approached the young woman at Soho nightclub and offered to take her to a VIP area. Instead, he led her to an alleyway behind the club where they kissed before he demanded that she put her hands on a fence and bend over. He then pulled down her underwear and engaged in anal sex with her, during which she informed him that she was a virgin.

He bragged to his friends the following day about taking the girl's virginity.

Prominent Figures Criticised for Giving Character References

Following the outcome of the case, the 'spontaneous and opportunistic' attack was widely condemned by the media and general public, with several women's advocacy groups campaigning for Mr Lazarus' sentence to be reviewed on appeal.

But the matter took on another element of controversy when it emerged that prominent public figures lent their names to Mr Lazarus by writing 'glowing' character references that were handed-up during his sentencing hearing.

Amongst those who reportedly penned references were Waverley

Mayor Sally Betts, South Sydney Rabbitohs chairman Nick Pappas,and the secretary of the Honorary Consul-General of Greece, Tsambico K Athanasas.

The distinguished figures have since faced a public backlash after Minister for the Prevention of Domestic Violence and Sexual Assault, Pru Goward, publicly slammed their actions.

Ms Goward beieves that the character references could potentially discourage other victims from coming forward, and that 'glowing references about [victim's] attackers will not help justice to be done.'

Several others have expressed the view that people should not receive favourable treatment simply because their family is well-connected.

However, key members of the Bar Association have hit back, with Junior Vice President Arthur Moses SC saying that while Mr Lazarus' actions should not go unpunished, 'no member of the community should be deterred from providing evidence in a criminal matter.'

Mr Moses went on to say that humiliating or victimising those who give references may constitute a contempt of court.

What Is A Character Reference?

Criminal lawyers often advise clients who are pleading, or who have been found guilty, to obtain character references to be handed up to the court, or call witnesses to give testimony of good character during sentencing proceedings.

This is because evidence that the offending conduct was out of character and that the defendant is unlikely to reoffend can be taken into account during the sentencing process.

A written character reference is a letter from another person, known as a 'referee,' which sets out who they are, how they know the defendant and which contains positive observations

about the defendant’s conduct, personality and character.

The letter should also state that the referee is aware of the nature and seriousness of the offence, and of any previous offences that the defendant has committed.

The referee may also discuss any concerns about the possible impact of a particular penalty – for example, ‘John is very concerned about losing his licence as it would prevent him from working as a truck driver,’ but most criminal lawyers will strongly recommend that they refrain from telling the magistrate or judge what penalty to impose.

This is because it is for the court to assess all relevant factors and decide the most appropriate penalty, not the referee. Magistrates and judges will have many years of legal education and experience practising the law. They will consider a wide range of information during the sentencing process which will assist in the determination of sentence.

Were Lazarus’ Referees Out of Line?

Unfortunately in Luke Lazarus’ case, it appears that some of the referees went one step too far, assuming that they are in a better position than the judge to know the appropriate sentence.

For example, it has been reported that Father Gerasimos Koutsouras, a priest at Mr Lazarus’ church, stated that ‘the possibility of imprisonment is completely undeserved for this promising young man.’

Waverley Mayor Sally Betts has reportedly been inundated with requests to stand down, with some alleging that she broke the councillors Code of Conduct by providing the reference. However, Ms Betts has stood by her decision, arguing that she provided the reference in a personal capacity, and that she did not deny that Lazarus should be punished for his actions.

Despite the public backlash, the Bar Association maintains that all offenders – regardless of their crimes – are entitled to present material in their own support, and that prominent figures should not be prohibited from providing character references or testimony just because of their position in the community

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What Should I Wear To Court?

If it's your first time in court, you may have a lot of questions about the day including: when to turn up, what to bring, where to go, what to say and even what to wear.

If you are representing yourself, working out the complex rules of going to court can be tricky, and while clothing may seem trivial, turning up in the wrong attire may just compound your feelings of stress or discomfort.

And if you come across certain magistrates, inappropriate clothing may even earn you a lecture.

You're a grub!

This is what happened in Victoria to 23-year-old Jai Russell Eliott who turned up to court wearing thongs, shorts and a singlet.

Eliott turned up to plead guilty to the charge of "assault or obstruct police and committing a public nuisance"; but before he got to the sentencing, the magistrate gave him a lecture on his poor wardrobe choice, telling him that if he behaved like a "grub" he would be treated like one too.

These are not exactly the words you want to hear from a person who is about to decide what penalty you will be given.

Whether pleading guilty or not guilty, you want the court to concentrate on what you (or your lawyer) has to say, not your outfit.

Dressing inappropriately for court can give the magistrate or judge the impression that you do not respect the court, or don't take the process seriously. Some magistrates may take offence to defendants who do not dress appropriately or find it disrespectful.

If you intend, for example, to tell the magistrate about your genuine remorse and acceptance of responsibility, you do not want the magistrate forming the opposite opinion based on how you dress.

Appropriate dress

So what should you wear if going to a District or Local court in New South Wales?

Court is a formal environment, but this doesn't mean you need to wear a tuxedo.

If you have a dark coloured suit, this is the time to wear it. If not, men should wear pants, a long sleeved shirt and a tie if you have one.

Women should wear pants, or a skirt that is not too short, and a shirt or conservative top. A dark coloured, plain dress is also acceptable.

If you don't have those things, wear clothing that is neat, clean and ironed.

Needless to say, you should not wear anything that could be considered provocative – for example, a t-shirt with marijuana leaves or profanity printed on it – and it is best to avoid visible tattoos and excessive piercings.

Keep bright colours to a minimum and don't show too much skin,

and try not to wear anything that is ripped.

Remove your hat and sunglasses before entering the courtroom and make sure you aren't chewing gum, or carrying a newspaper, magazine, food or drinks.

Does clothing really make a difference?

Your parents probably told you that it is what's inside that counts – but unfortunately, the reality is that people judge others based on their outward appearance – and courts are no exception.

Psychologists have found that how you dress can significantly affect your outcome in given situations, and those who dress appropriately have a better chance of success.

Of course, what you wear to court should never be an indication of your guilt or innocence, but fair or not, how you look can have an impact on the outcome.

Should I wear my glasses?

Glasses are often associated with intelligence or 'geekiness', but did you know that studies have found them to have a marked impact on the outcome of criminal trials?

They suggest that wearing glasses can have either a positive or negative effect on perceptions of the wearer, depending on the crime they are accused of. It was found that glasses may help a person accused of a violent crime, whereas they could have the opposite effect when it comes to white-collar crime.

This is because glasses – regardless of race or gender – give the impression of diminished forcefulness and increased sophistication. This explains why they may help a person appear less likely to commit a violent crime, but hurt a person accused of complex corporate fraud.

Studies have also found that a person's attractiveness can

influence jurors, and that an attractive person is more likely to receive a “softer” punishment than a less attractive individual for certain crimes. Conversely, it was found that attractiveness can be harmful if it assisted in the commission of the crime itself – for example, swindling someone – and can lead to harsher penalties.

So when you have your day in court, make sure you look tidy and act respectful in order to give yourself the best shot at the outcome you want.

What Happens if I Refuse a Breath Test?

Random breath testing (RBT) met with a great deal of criticism before it was first introduced, as many people saw it as an unjustified intrusion into privacy and individual freedom.

Critics of RBTs argued that police should not be allowed to pull people over and sujecting them to a test without having a solid reason to do so.

But most of us now accept that being pulled over for an RBT is part-and-parcel of driving, and that the scheme has contributed significantly to reducing road fatalities.

If you’ve made the mistake of drinking and driving, you might wonder if it’s worth refusing a breath test or failing to exhale hard enough.

Well the short answer is: it is never a good idea because the penalties are severe – the same as high range drink driving.

Power to perform a breath test

Schedule 3, clause 16 of the Road Transport Act 2013 gives police the power to require a person to submit to a breath test or analysis, or a sobriety assessment.

However, police are not permitted breath test you if:

- You have been admitted to hospital for medical treatment, unless your medical practitioner is notified and does not object;
- The authorised sample taker believes that to do so would be dangerous to the person's health;
- The police officer believes that because of the injuries sustained, it would be dangerous to the persons medical condition;
- It has been over two hours after you were driving; or
- You are on your own residential property.

In other situations, police have a wide discretion when it comes to conducting breath tests.

What is the difference between a breath test and a breath analysis?

There are two types of breath tests that police can perform.

The first is often called a "roadside breath test" – which, as the name suggests, usually occurs at the roadside after you have been pulled over or involved in an accident.

Roadside breath tests give an indication of your blood alcohol concentration (BAC), and give police a basis to arrest you for the purpose of a breath analysis if you blow a prescribed reading. However, the reading from the roadside breath test is not permissible in court to prove a certain BAC.

The second type of breath test is called a "breath analysis". It is carried out after you have blown a positive roadside breath test, or refused or failed to submit to a breath test. It usually occurs at the police station or in a 'booze bus'.

The results of a breath analysis can be used in court.

What are the penalties for refusing?

Refusing a breath test comes with a maximum penalty of $1,100.

The penalties are more severe if you refuse a breath analysis.

For a first offence, the penalty for refusing a breath analysis is a fine of $3,300 and/or imprisonment for up to 18 months. There is also an 'automatic' 3 year licence disqualification. This can be reduced to a minimum of 12 months if there are good reasons to do so.

If it is your second or more major traffic offence in 5 years, the penalty jumps to a $5,500 fine and/or 2 years imprisonment. The automatic disqualification period increases to 5 years. This can be reduced to 2 years if you can convince the magistrate that there are good reasons to do so.

If you are guilty, the only way to avoid a criminal conviction against your name, and also avoid a licence disqualification, is to persuade the magistrate to grant you what's known as a 'section 10 dismissal or conditional release order'; which means guilty but no criminal record.

What if I drive after I have been suspended or disqualified?

Driving whilst suspended is when you drive after police have issued you with a suspension notice or after you have been suspended by the RMS.

For a first major traffic offence within 5 years, the automatic period of disqualification is 12 months.

If it is your second or subsequent major traffic offence, the period increases to 2 years.

Driving whilst disqualified is when you drive after a court has disqualified you from driving, or during a 'habitual

offender disqualification period’.

If you are caught driving whilst disqualified in NSW, the courts also have the option to send you to prison; but prison is considered to be as a last resort.

What is a ‘habitual offender declaration’?

If it’s your third or more major traffic offence within a 5 year period, the RMS can declare you a ‘habitual traffic offender’ and add an extra 5 year disqualification on top of what the court imposed.

What should I do if I am charged by police?

If you have been charged with refusing to submit to a breath test or analysis, or driving whilst suspended or disqualified, your best bet is to seek legal advice immediately.

An experienced traffic lawyer will be able to advise you about your options and the best way forward.

In certain circumstances, they may be able to have the charges withdrawn or thrown out of court or, if you wish to plead guilty, help you to avoid a criminal conviction and a licence disqualification by pushing for a ‘non conviction order’.

Are Hotel Lock-Out Laws Effective?

The licensee of a prominent Sydney bar has been fined $2,000 and given a criminal conviction in Downing Centre Local Court

after he pleaded guilty to breaching strict lockout laws introduced last year.

The venue also accrued one 'strike' under the 'three strikes and you're out' regime.

Chady Khouzame, who is the licensee of Hotel Chambers in Martin Place, allowed two women into the venue at around 1.40am on the 1st of June last year.

It is believed that one of the women was the girlfriend of a DJ who was playing at the venue that night, yet Khouzame claimed that she was a 'staff member' who was working for the DJ.

Inspectors from the Office of Gaming and Liquor entered the premises around the same time as part of a compliance check and observed Khouzame letting the women in.

Khouzame's criminal lawyer argued for a 'non conviction order', which is a finding of guilt that does not result in a conviction on that person's criminal record.

But the Magistrate rejected that request, stating that Khouzame's conduct was particularly serious as he had made the decision to admit the patrons himself, not a bouncer or another employee. In handing down the sentence, Her Honour noted that there is a strong need for 'general deterrence' to ensure that other licensees do not similarly flout the lock-out laws.

The sentence has been welcomed by the Office of Liquor and Gambling, with a spokesperson saying that the outcome sends a clear message to other licensed venues in the area who are subject to the laws.

Lockout Laws: A Brief Summary

The lockout laws, introduced early last year, make it an offence for a licensee to admit or re-admit patrons into

premises after 1.30am. The laws also impose a 3a.m cut-off period for the service of alcohol which prohibits them from serving alcohol to patrons after this time.

Licensees found in breach of these laws face fines of up to $11,000 and / or 12 months imprisonment. They will also be automatically issued with a first ‘strike’.

However, where a licensee already has a strike on their record, a magistrate may choose whether or not to issue a second or third strike if that licensee is convicted or is made to pay a penalty notice or comply with an enforcement order under the Liquor Act.

Strikes accumulated under the scheme are active for a period of three years. Where three strikes are accumulated, conditions may be imposed on the licensee’s licence or it may be suspended altogether.

Operators of the venue may also be prevented from obtaining another liquor licence for a period of up to 12 months.

One Year On: Have the Lockout Laws Worked?

This February marked the one-year anniversary of the controversial lockout laws, which were introduced by former Premier Barry O’Farrell following a number of highly-publicised alcohol-fuelled assaults.

BOSCAR statistics have shown that non-domestic violent assaults have been on the decline for some time now, however surprisingly in the months immediately following the introduction of the laws, there was a slight increase in the number of assaults in the Kings Cross and CBD areas.

However, across the whole year, BOSCAR reports a 40% decrease in the number of alcohol-related assaults at venues in the Kings Cross area.

But the director of the BOSCAR research project cautioned that

the sharp fall in alcohol-related assaults is not because of a lower consumption of alcohol per person, but rather a massive decline in the number of visitors to the Kings Cross area. He suggests that the laws may have just transferred crime to other areas in Sydney, and have had little impact on overall violent crime trends.

Since the laws were introduced, 42 venues in the precinct have closed their doors, including the once-popular Flinders Hotel. Business owners have reported a fall in profits of up to 40%, while foot traffic in the area has decreased by 84%.

Brisbane Destined for Harsher Lockout Laws

With some politicians declaring the Sydney lockout laws a resounding success, Brisbane looks set to embrace their own lockout laws in the near future.

The proposed laws seek to impose a 1am lockout on businesses in the Brisbane CBD, along with a 3am closing time and a ban on serving shots after midnight.

Police will also be granted greater powers to breath test people who appear intoxicated. It is suggested that evidence obtained from breath tests will then be used to prosecute licensees for breaking the laws.

But it’s unclear when Brisbanites are likely to be subjected to the new laws – as a start date has not yet been set.

In the meantime, NSW Premier Mike Baird has promised to undertake a review of the Sydney lockout laws in a move that has won support from suffering businesses in the CBD area.

Licensees hope that the review will reverse some of the negative economic effects they have experienced thus far

Clarkson's Anger goes into Top Gear

Missing out on your favourite meal at the end of a hard day at work is enough to make anyone a bit grumpy. But for 54-year-old Top Gear presenter Jeremy Clarkson, finding out that he couldn't order his steak and chips after finishing a day of filming reportedly caused him to lose the plot.

The nearby hotel where he had planned on having dinner had stopped serving food by the time he was ready to order.

The target of his anger was his producer, Oisin Tymon. Clarkson reportedly yelled and threatened to fire Tymon in a tirade lasting for about 20 minutes before punching him in the face. Tyson then took himself to hospital after suffering swollen and bleeding lips.

And although Tymon did not make a formal complaint, the BBC has decided that it will drop Clarkson from the Top Gear team.

Clarkson quickly admitted his wrong-doing and apologised for his conduct, but it was not enough to save his job. Clarkson's current contract is due to expire at the end of this month and the BBC has announced that it will not be renewed.

Former Top Gear host Quentin Wilson said that Clarkson was a difficult man to work with. He believes that success may have gone to Clarkson's head, and hitting a co-worker because he didn't get his dinner was not acceptable.

The BBC defended its decision to fire the popular presenter, although fans have started a petition in an attempt to change the broadcaster's mind. The 'Bring Back Clarkson' petition has

already been signed by more than 1 million fans, who believe that the show will not be the same without him.

In fairness, Clarkson has been instrumental in turning Top Gear into the popular and well-known show it is today. But many support the BBC's decision and are happy to see the back of Clarkson, saying that stars should not be allowed to get away with inappropriate behaviour in the workplace no matter how popular they are.

Clarkson may also face assault charges after police investigate the confrontation and its criminal implications. Witnesses have been interviewed and police have also asked the BBC for a report that details their internal findings.

Assaults in NSW

If this attack had taken place here in NSW, there is certainly a possibility that Clarkson could have faced assault charges; with or without a formal complaint or statement from the alleged victim.

Assault is divided up into several categories, depending on the nature of the conduct and the injuries inflicted (if any).

The available facts in the Clarkson case would leave open the possibility of at least 3 types of assault charges:

1. Common assault,
2. Assault occasioning actual bodily harm
3. Reckless wounding

What is common assault?

Common assault is an offence under section 61 of the Crimes Act 1900("the Act") and is the least serious of assault charges. It includes any action that causes a person to fear immediate and unlawful personal violence, even if no physical contact is actually made. If physical contact is made, it will include minor injuries that heal quickly, like scratches or

grazes, but not more serious injuries.

In NSW, the maximum penalty for common assault will depend on which court it is heard in. If it is heard in a Local court, such as the Downing Centre court, the maximum penalty is twelve months imprisonment and/or a $2,200 fine. If the case is heard in the District court, the maximum penalty is two years imprisonment.

What is assault occasioning actual bodily harm?

Assault occasioning actual bodily harm (AOABH) is an offence under section 58 of the Act and is the next most serious assault charge. It involves injuries that are more than just "transient or trifling". This may include, for example, scratches, bruising and grazes that last more than just a couple of days. And in terms of mental health, psychological injury must be something more than transient emotion, feeling and states of mind.

The maximum penalty for AOABH in NSW if heard in the Local court is two years imprisonment and/or a $5,500 fine. If heard in the District court, the penalties are higher: five years imprisonment.

What is reckless wounding?

Reckless wounding is an offence under section 35(4) of the Act, and it is more serious than AOABH. In order to constitute reckless wounding, the injury must involve the cutting of the interior layer of the skin (the dermis). Breaking only the outer layer is not sufficient; however a split lip may constitute reckless wounding.

The maximum penalty for reckless wounding is seven years imprisonment in the District Court or two years if the case remains in the Local Court.

Will types of penalties can I expect for an assault charge?

Common assault, AOABH and Reckless wounding all come with a criminal record if you are convicted. The penalties that a court may impose also includes good behaviour bonds, community service orders, intensive correction orders, fines, suspended sentences and prison.

However, it is possible to escape a criminal record and a penalty if you are able to beat the charge by arguing that there is not enough evidence to prove your guilt or if you have a valid legal defence, such as 'self-defence'.

Even if you wish to plead guilty, you will be able to avoid a criminal record if you can convince a magistrate or judge to order a 'section 10 dismissal or conditional release order'; which mean that you are guilty but a criminal conviction is not recorded against your name.

Clarkson defiant

Back to the UK, it is reported that Clarkson is unhappy with BBC's decision to sack him and that he has vowed not to go down without a fight.

Legal action may even be on the cards from Clarkson's corner.

And adding to the BBC's woes, it has also been reported that Top Gear co-stars James May and Richard Hammond may turn down the offer to continue as presenters of the show if Clarkson is not reinstated.

Should proof of identity be required when voting?

The NSW State election is coming up, and while many of us are deciding who to vote for, we may not have considered whether or not to bring our identification along. Interestingly, while we may be asked for ID to purchase alcohol, enter a bar or board a flight, it is not required to vote on NSW election day.

You will, however, be asked:

- Your full name
- Your address; and
- Whether or not you have already voted in the present election

When you consider how many Australians are sceptical of politicians, as well as the stakes involved, it may seem strange that our voting system relies on trust when taking votes.

Is election fraud a significant problem?

Nearly 2,000 Australians actually admitted voting more than once in last year's Federal election, and the Australian Electoral Commission investigated 19,000 instances of multiple voting. Several thousand of these turned out to be clerical errors, but a proportion was also found to be double-voting. This can be a problem, as just a few hundred votes could potentially change the outcome of a vote, especially in close seats.

Section 112 of he Parliamentary Electorates and Elections Act of 1912 makes election fraud a criminal offence that could expose you to a maximum penalty of three years imprisonment and / or an $11,000 fine.

Five types of multiple voting have been identified in the current electoral system:

- Enrolling to vote using false names and identification;
- Enrolling to vote using the real names of other eligible voters who haven't enrolled themselves;
- People who vote using their own identity, but at multiple polling booths;
- People who vote using the identity of other eligible voters that have agreed to that course of action; and
- People using the identity of other eligible voters without their knowledge

Proof of Identity or Trust?

Requiring proof of identity has been suggested as a solution to the problem of election fraud.

Queensland introduced such a requirement last year, and it is the only Australian state or territory to have done so. In January 2015, the first Queensland state election was held since the change in law.

Proof of identity in Queensland includes any of the following:

- Current drivers licence;
- Current Australian passport;
- Voter information letter;
- Proof of age card;
- Medicare card or other identification card issued by the Commonwealth or state that evidences a person's entitlement to a financial benefit;
- Recent account or notice issued by a local government or a public utility provider;
- Recent account statement, current account card or credit card issued by a bank;
- Recent document evidencing electoral enrolment;
- Recent notice of assessment issued under the Income Tax Act; or

- Recent phone or bank account statement

There are also special provisions for people without identification, who are still allowed to vote but must complete a declaration.

Is it unfair to require identification?

Some have claimed that requiring identification is both unfair and politically motivated, as socially disadvantaged groups are less likely to possess valid ID, including the young, the homeless and indigenous people.

It has been suggested that requiring voters to bring proof of identity is a way for certain groups to be excluded, especially those that traditionally vote for Labor. In addition, elderly and immobile people who forget their ID or are unaware of the requirement may have difficulties retrieving it.

A spokesperson for the Queensland Electoral Commission said that no one was turned away from the state election. As already mentioned, those without proof of identity were still allowed to vote, but had to fill in a declaration form instead. But some suggest that the availability of declarations undermines the whole idea behind requiring identification, and that the trust system works just as well.

‘Mistake of Fact’ as a Defence to Traffic and

Criminal Charges

Being charged with a crime can be distressing, especially if you were mistaken as to key facts and this mistake gave you a reason to believe you weren't doing anything wrong. For a number of charges, a mistake of fact is considered a valid defence, and if you made an honest and reasonable mistake that led to you committing a crime, you can often avoid a guilty verdict and a criminal conviction.

What is mistake of fact?

Mistake of fact is also known as an honest and reasonable mistake and it means that at the time you committed an alleged offence you genuinely didn't believe that you were doing anything wrong, and that your belief was reasonable in all of the circumstances.

An example of mistake of fact could be a drink driving charge where your drink was spiked and you weren't aware that you were intoxicated when you were driving, but you instead thought that you were tired or ill. Under those circumstances, your criminal responsibility is removed and you cannot be found guilty.

Another example might be where you were driving whilst suspended but did not know you were suspended because the RMS sent the suspension letter to the wrong address. In that situation, however, your mistake would not be reasonable if the failure to receive the letter was because you neglected to inform the RMS of your new address. Your mistake would also be unreasonable if you suspected that you may have been suspended but did not make the appropriate enquiries.

There is an important difference between mistake of fact and mistake of law. Mistake of law means that you knew what you were doing but you weren't aware it was illegal. Mistake of fact does not delve into whether or not you knew your act was

illegal, but whether you knew of the existence of a certain fact or facts that would be required to consitute a criminal offence, eg the fact that you had alcohol in your blood system.

Mistake of fact is used as a defence against strict liability charges, which are cases that don't require any proof of intent to commit the crime, and there are a many different circumstances under which honest and reasonable mistake can be argued.

Can mistake of fact be used in sexual assault cases?

Until 2003, the defence of mistake of fact was also applicable in cases of unlawful sexual intercourse with a child under the age of 16, as long as:

(1) the child was older than 14,

(2) had consented the the act, and

(3) the mistake was considered reasonable.

This defence was removed in 2003, and there have been a raft of changes to consent laws in sexual assault cases since then, as well as a range of restrictions upon the types of materials that can be accessed by the defence, and the nature and form of questions that the complainant can be asked in court.

In 2008, an appeal by a 17-year-old male against a conviction of unlawful sexual intercourse with a 15-year-old girl on the basis that he thought she was 16 was thrown out of court.

Sexual assault cases often rely on the idea of consent, and to be found guilty, the prosecution has to show that the defendant not only didn't have consent but that they were aware they didn't have consent, or were at least reckless as to whether or not the other person was consenting.

Despite amendments to the law, an honest and reasonable belief

that the other person was consenting can lead to a successful defence in many sexual assault cases, depending on the particular circumstances of the case.

Mistake of fact can be a strong defence

Mistake of fact is a complete defence, which means that it can lead to a defendant being found not guilty. The defence can be strongest where the defendant has evidence to explain how and why they made the mistake. Once the defence has been raised, the onus will be on the prosecution to disprove it and this is often very difficult for them to do.

If you are facing criminal charges and are unsure whether mistake of fact applies in your case, speak to a criminal lawyer to find out.

Man Charged with Refusing to Kill Cockroaches

For all the reasons you could land you before a Magistrate, refusing to kill cockroaches has surely got to be one of the strangest.

But this is exactly what happened to one restaurant owner after he refused to do anything about the cockroach infestation in his restaurant, due to moral objections.

Owner Khanh Hoang is a passionate animal-lover and owner of the award-winning Kingsland Vegetarian Restaurant in the ACT.

And staying true to his beliefs, he could not bring himself to kill the little critters, even though he knew that many had taken up residence in his kitchen.

Instead, photographs used in court showed both dead and live cockroaches surrounding the kitchen, including the cooking equipment.

But cockroaches were not the only problem.

Other health issues included a toilet that opened right into the kitchen, a missing hot water tap handle resulting in dishes being washed with cold water only, uncovered food stored in the dishwasher, and cooking surfaces covered in grease, dirt and faeces.

In an interview with Health Protection Services, Hoang admitted knowing about the cockroach problem and doing nothing about it. Shocked inspectors had no choice but to shut the restaurant down the very next day.

However, the restaurant opened again after just 6 days, when Hoang finally relented and got the place cleaned up.

But he still had to face the Magistrate after being charged with 12 separate breaches of the ACT Food Act, and pleading guilty to eight of them.

Hoang’s lawyer told the Magistrate that his client was a passionate vegan whose priorities had been compromised by his morals. He impressed the Magistrate with photos of the now immaculate kitchen.

But Hoang still got a $16,000 fine, with one year to pay it off.

A reformed Hoang has gone on to win more awards, and now regularly engages a pest control company and even has a food safety supervisor.

What is the law in NSW?

In NSW, regulations for the preparation and sale of food are governed by the Food Act 2013, the Food Regulation 2010 and

the Food Standards Code.

Most breaches are dealt with by fines, which can be issued on the spot or after being sent to court.

The NSW Food Authority is responsible for ensuring compliance with food safety regulations within the state.

The Authority even has a name and shame register, where businesses that have breached food safety requirements are listed.

One Indian takeaway restaurant was fined almost $100,000 in Downing Centre Local Court after inspectors found cockroaches, dead rats, rat faeces and rat nests in the kitchen.

The restaurant pleaded guilty to all 13 of the charges brought against them.

It was listed on the name and shame register, along with many of Sydney's most popular and ritziest restaurants.

Do I Have to Pay Fines to Private Car Parks?

Finding a place to park in some parts of Sydney can be a nightmare.

Imagine you're driving around trying to find a spot in an unfamiliar area, when you suddenly come across a car park that offers two hours free parking.

You can't believe it – it's too good to be true!

You happily take the spot, only to return an hour later to

find a hefty fine on your windscreen for not displaying a ticket.

But the sign clearly said ‘2 hours free parking’.

You look again and, upon close inspection, notice the small print: ‘driver must display ticket’.

Now the parking company wants you to pay $66!.

You want to tell them to shove it.

Do I really have to pay the ‘fine’?

Firstly, only statutory bodies have the power to issue fines.

This includes the police, state transit officers, parking rangers and the RSPCA.

Private car parking companies do not have statutory authority to issue fines.

Some of these so-called ‘fines’ may actually look very similar to the legitimate infringement officers issued by government agencies.

The car park companies are clearly attempting to disguise the fact that they are not actually ‘fines’, but are really a demand for what are known as ‘liquidated damages.’

In most cases, it is unlikely that such demands would be legally enforceable because for a company to claim liquidated damages, it must prove that:

(a) it suffered loss or damage because of your actions, and

(b) the amount of loss is the same or more than the amount claimed.

This can be difficult to show in a court of law.

And the State Debt Recovery Office will not come chasing after

you if you don't pay.

However, you may receive nasty letters in the mail from the carpark company itself, and they may even send the case to a debt collector or threaten to take legal action.

Do they have any basis for claiming the 'fine'?

Car park companies will normally claim that by leaving your car, you entered into a contract with them.

They will say that one of the terms of that contract was to display a ticket.

The fact that you failed to display the ticket, they would argue, meant that you breached the contract and are therefore liable to pay damages.

According to basic contract law, however, the car park company might have a tough time recovering damages (ie money) from you.

This is because it would be difficult to prove that:

(a) You were the driver at the time, and

(b) They incurred a loss due to your actions.

Can car park companies get my identity?

In the past, car park companies could obtain your details from the RMS, in order to send letters and even commence legal action against you.

In fact, the RMS has been forced disclose the details of more than 150,000 NSW drivers.

But changes to the law put a stop to this in 2012.

Under section 279 of the Road Transport Act NSW 2013, the RMS cannot be required to disclose information about the owner of

a motor vehicle for the purpose of allowing an applicant to recover private car park fees.

This means that your private details are protected, and it would be costly for the private car company to find out your identity if the RMS won't help them out.

However, this doesn't mean that unscrupulous companies won't uncover your identity through other slick ways.

Many of the so-called 'fines' have a section where you can write to the company and contest them.

Some people fall into the trap and send the completed ticket back, thereby giving the company their name and address.

Companies can then use this information as both an admission that you were the driver at the time and to send further notices, or even in some cases to take the case to the local court and hope that you settle before the case gets to a hearing.

It is very rare for car park companies to actually take someone all the way to a defended hearing in court. This is probably because they know that they are unlikely to succeed, and that they may even be forced to pay the person's legal costs if they lose.

They will usually just rely on threats and harassment to get people to pay.

The 'Australian National Car Parks' case

One of the worst offenders was 'Australian National Car Parks', who manage hundreds of
car parks for Woolworths, Aldi and MacDonalds.

The company has been the subject of years of complaints for issuing unfair and inflated 'fines', and for intimidating and harassing those who refuse to pay the amounts demanded.

But things took a turn for the worse for the company when, in 2013, it faced prosecution for “undue harassment.”

The company had tried to charge a woman $173 for failing to put a ticket on her car while parking in a free spot, and it continually harassed her in an attempt to make her pay up.

She had offered to pay the daily rate for the car park, but the company refused to accept.

After receiving over 4000 similar complaints, the Department of Fair Trading finally took action against two of the company directors, taking them to Parramatta court and causing them to change their business practices.

If you have been given a private parking ‘fine’, it’s best to remain calm and remember that there is a good chance to avoid paying it.

If you are harassed or intimidated, you should consider lodging a complaint to the NSW Fair Trading which has the power to take action against companies that engage in bully tactics.

Do Judges Make Law?

Imagine that you are a judge and you have the choice of:

(a) following the law which would result in an unfair outcome, or

(b) deciding the case in a way that you think is fair but not in accordance with the law.

Which would you choose?

Judges have traditionally been very careful to emphasise that their role is not to make the law, merely to apply it.

But it is apparent that judges play a significant role in the development of law through the interpretation of both common law principles and legislative provisions.

When legislation is ambiguous or has gaps, judges must necessarily come to a decision as to how the law should be interpreted.

Precedent

When a higher court makes a decision, it is generally binding upon subsequent cases.

This is called "precedent".

It also means that members of the judiciary in the District or Local courts must follow the decisions of higher courts such as the Supreme and High courts.

Those who support "literal" approaches to the law say that judges should use pure and rational logic to arrive at the 'right' conclusion; they should never 'make the law' but strictly uncover and apply it.

Those who support "purposive" approaches argue that a judge's task is to consider the purpose behind the provision or legal principle – which acknowledges that judges have an active role in developing the law.

Legal Rights

We certainly have a lot to be thankful for our common law, which is often a primary source for the protection of our rights.

Our Constitution contains few rights, but courts have consistently found and applied protections, particularly in

criminal trials.

This includes the right to be considered innocent until proven guilty; and the fact that it is the job of the prosecution to prove your guilt – not your responsibility to prove your innocent etc.

But what should happen if judges take it too far?

Judicial Activism

Judicial activism is a term that is used disparagingly when judges are accused of taking things too far.

Judges have to decide according to the law, not what they would like the law to be.

A judgement should therefore read like a judgement on the law as applied to the facts of the case, not an opinion piece.

Judges who are accused of making decisions based on their own political or personal beliefs face the risk of being labelled as judicial activists.

According to one former High Court Justice Dyson Heydon, judges who don't like the constraints of the judiciary should get out and join a political party.

If judges were not bound by legislation, or earlier cases, they would have far too much arbitrary power.

As we have a judiciary that is not elected, and difficult to fire, it makes sense that their power should not be unlimited.

This ensures that any judicial developments should be incremental and gradual.

However, having a judiciary that is too fettered can also be problematic.

Courts don't normally have to take great account of the

financial and political consequences of their judgments.

And while judges can declare laws invalid, they cannot suggest new laws to replace them.

The current situation means that judges are often reactive – not proactive.

Community Values

One criticism often levelled at judges is that they are "out of touch" with the community and do not decide cases in line with community values.

It might surprise many people that the job of a judge is not to be 'in touch' with the community – or community standards or values.

Laws are supposed to be judged according to the law, not what radio commentators think should happen.

The criterion for defining cases is what the law says, not by reference to opinions about community values and standards.

There are multiple reasons for this.

Firstly, how would we decide 'community values'?

And who would decide them?

There are often conflicting opinions among members of the community, and divergent views should be seen as healthy in a democracy.

Secondly, deciding cases according to legislation means that they are decided according to the decisions of an elected government.

While it becomes apparent that judges often apply subjective interpretations to the law, they must do so cautiously.

And judges are certainly not free to deviate from the clear meaning of legislation simply because they do not agree with the result it may produce.