

# YOU BE THE JUDGE

## SENTENCING LAW IN TASMANIA



MAGISTRATES COURT - CASE SCENARIO 1



# CASE SCENARIO 1

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## MAGISTRATES COURT

### FACTS

On 1 July 2002, the Defendant (Darren SMITH) is at a well-known Launceston nightclub with his girlfriend (Tracey JONES). She is 3 months pregnant. They have been living together for 12 months in a house they are buying near Hadspen.

The Defendant has consumed beer for about the two hours they have been at the night club. His girlfriend drove them to the nightclub and intends to drive them home. A young male person pays some attention to his girlfriend and the Defendant and the male have a verbal argument. This upsets his girlfriend and then she and the Defendant argue. She leaves to drive home.

The Defendant has some more alcohol. He is worried about his girlfriend and decides to walk home. They live about 10 kilometres from Launceston. It is a cold night. He becomes increasingly worried about his girlfriend and sees an unlocked car in the street. Without thinking he gets in and starts the car. He commences to drive home.

He decides to stay away from the main highway and drives through Prospect. He does not know the area well and on the bend past the Launceston Casino turn-off he takes the corner too wide and is pulled over by a Police car coming the other way.

The Defendant is breathalysed and returns a reading of .16 percent. He is charged with Motor vehicle stealing, and exceeding .05.

### PRIORS

He has appeared in the Youth court for disorderly conduct 4 years ago (dealt with by adjournment with undertaking of good behaviour for 2 years, without conviction).

### BACKGROUND

The Defendant is 20 years of age. His father was an alcoholic who left home when the Defendant was 9. His mother brought him up. He has 3 younger siblings who live at home with his mother.

He was unemployed until 6 months ago when he secured an apprenticeship as a motor mechanic. His job requires a licence. He is described by his employer as initially shy but now settling down well into his job and he has a bright future. He provides financial help for his mother and siblings.

He is extremely remorseful.

He and his girlfriend are in a stable relationship and looking forward to the birth of their child. She is surprised at his behaviour and says he normally does not drink let alone drink and drive.

He would like to apply for a restricted licence if he is disqualified from driving.

### ISSUES

Prevalence of car theft - different offences of (a) stealing, and (b) motor vehicle stealing  
Prevalence of drink driving  
Penalty provisions of Road Safety (Alcohol and Drugs) Act  
Restricted Licences - eligibility  
Rehabilitation of Offenders

# COMPLAINT

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MAGISTRATES COURT

**DEFENDANT**    **Darren SMITH**

**CHARGE 1**            Motor Vehicle Stealing  
Breach of Section 37B(1) Police Offences Act 1935

**PARTICULARS**

You are charged with on 1 July 2002 at Prospect in Tasmania, driving a motor vehicle, namely a blue 1980 Holden Commodore sedan, reg no. CO 5132 the property of John BLACK without the consent of that person or some person in lawful charge of the vehicle and having authority to give that consent.

**CHARGE 2**            Drive a motor vehicle while exceeding the prescribed alcohol limit  
Breach of Section 6(1) of the Road Safety (Alcohol & Drugs) Act 1970

**PARTICULARS**

You are charged with driving a motor vehicle on 1 July 2002 on Westbury Road, a public street at Prospect in Tasmania, whilst alcohol was present in your blood in a concentration greater than the prescribed concentration of 0.05 of a gram of alcohol in 100 millilitres of blood, namely .16 grams of alcohol in 100 millilitres of blood.

# OFFENCES

## MAGISTRATES COURT

### CHARGE 1 MOTOR VEHICLE STEALING

#### *Police Offences Act 1935*

#### MOTOR VEHICLE STEALING

**37B.(1)** Subject to subsection (2), a person who drives or uses a motor vehicle without the consent of the owner or registered operator of the vehicle or of some person who is lawfully in charge of the vehicle and has authority to give that consent is guilty of the offence of motor vehicle stealing.

**(2)** Subsection (1) does not apply to or in relation to the driving or use of a motor vehicle by a police officer or an authorized officer acting in the execution of his duty.

#### PENALTY

**37E.** A person who is convicted of an offence under section 37B or section 37C is liable to a penalty not exceeding 50 penalty units or to imprisonment for a term not exceeding 3 years.

[i.e. Up to \$5000 fine or 3 years imprisonment]

### CHARGE 2 DRIVE A MOTOR VEHICLE WHILE EXCEEDING THE PRESCRIBED ALCOHOL LIMIT

#### *Road Safety (Alcohol and Drugs) Act 1970*

#### DRIVING WITH EXCESSIVE CONCENTRATION OF BLOOD ALCOHOL

**6.(1)** Any person who drives a motor vehicle while alcohol is present in his blood in a concentration greater than the prescribed concentration is guilty of an offence.

#### PENALTIES FOR DRINK-DRIVING OFFENCES, &C.

**17.** SEE TABLE

**(3)** Subject to subsection (5), a court that convicts a person of an offence specified in column 1 of the Table –

**(a)** must –

**(i)** impose a fine of an amount not less than the minimum amount shown in the Table and not more than the maximum amount shown in the Table; or

**(ii)** impose a term of imprisonment for a term not exceeding the term shown in the Table; or

**(iii)** impose both that fine and that term of imprisonment; and

**(b)** must, in addition, disqualify the person from driving for a period not less than the minimum period shown in the Table and not more than the maximum period shown in the Table.

**(5)** Notwithstanding subsection (3), if a person who is convicted of an offence referred to in column 1 of the Table satisfies the court which convicted the person that there are special circumstances why the minimum fine specified in the Table or the minimum period of disqualification specified in the Table should not be imposed, the court may impose a lesser fine or a lesser period of disqualification.

# TABLE

## MAGISTRATES COURT

TABLE Topic: Crime – Drink Driving Penalties  
Legislation: s.17 **Road Safety (Alcohol & Drugs) Act 1970**

### PART 1 - FIRST OFFENCE

SECTION	CONCENTRATION OF ALCOHOL IN BLOOD IN GRAMS PER 100 MILILITRES OF BLOOD	FINE	PERIOD OF DISQUALIFICATION	TERM OF IMPRISONMENT
Sect. 6 (1)	0.05 or more but less than 0.1	Min. 2 penalty units (\$200) Max. 10 penalty units (\$1000)	Min. 3 months Max. 12 months	3 months
	0.1 or more but less than 0.15	Min. 4 penalty units (\$400) Max. 20 penalty units (\$2000)	Min. 6 months Max. 18 months	6 months
	0.15 or more	Min. 5 penalty units (\$500) Max. 30 penalty units (\$3000)	Min. 12 months Max. 36 months	12 months

# RESTRICTED LICENCES

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## MAGISTRATES COURT

### GROUND FOR GRANTING A RESTRICTED LICENCE

Legislation: *Vehicle and Traffic Act 1999* ('the VTA')

s.18 of the VTA provides that in certain circumstances, the court may grant a "restricted" (or "hardship") licence where a driver has been disqualified from driving.

s.18(5) of the VTA provides the court may only grant a restricted licence if satisfied that:

- the loss of the person's licence will impose or is imposing severe and unusual hardship on that person or their dependants;
- a restricted licence should be granted for the purpose of mitigating or alleviating that hardship; and
- the granting of a restricted licence would not be contrary to the public interest.

### WHO IS EXCLUDED FROM APPLYING?

Legislation: *Road Safety (Alcohol & Drugs) Act 1970* ('the RSA'); *Vehicle and Traffic Act 1999* ('the VTA')

s.19(1A) of the RSA provides that restricted licences cannot be granted to a person who has been convicted of an offence under that Act if:

- the offence was committed during any period of disqualification or within 3 years after the end of any period of disqualification;
- the person was convicted of exceed 0.05 and their reading was 0.15 or more;
- the person was convicted of driving under the influence;
- the person objected to the analysis of a blood or urine sample;
- the person was the holder of a learner's licence or a provisional licence;
- at the time of the offence the person was not authorised under an Australian driver licence to drive the vehicle in respect of which the offence was committed or cannot satisfy the court that he or she would, but for an unintentional failure to comply with an administrative requirement, would have been authorised to drive that vehicle at that time;
- the person was driving a prescribed vehicle at the time of the offence; the person failed to comply with a requirement to submit to a breath analysis or the taking of a blood sample.

s.18(2) of the VTA also provides that the following persons are not entitled to apply for a restricted licence:

- a person whose licence is, or is liable to be, suspended due to an accumulation of demerit points and who has, or had the option of entering into an undertaking to be of good behaviour under the demerits point scheme, but who did not or does not propose to take up that option; or
- a person who is subject or liable to a period of ineligibility to hold a driver licence due to an accumulation of demerit points.

# GROUP WORKSHEET - PAGE 1 OF 2

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## CASE 1 - MAGISTRATES COURT

1. What offences have been committed?

See Complaint.

2. What is the penalty range for each offence?

See relevant legislation.

3. If disqualified from driving, is the Defendant eligible for a restricted licence?

See eligibility requirements.

4. What should the sentence be?

### PART 1 (FOR DISCUSSION WITHIN YOUR GROUP)

#### A. FACTORS TO TAKE INTO ACCOUNT

Issues listed in scenario

Circumstances of the crime

Victim impact

Personal Circumstances of the Defendant

Character of the Defendant

Remorse (if any) shown by Defendant

Financial Circumstances of the Defendant (relevant to capacity to pay fine)

Prior convictions

#### B. SENTENCING OPTIONS

Imprisonment

Suspended sentence – wholly or partly

Community service order up to 240 hours

Probation order – can add special conditions

Fine

Adjourn for up to 5 years & release on undertaking to be of good behaviour with conditions

Record a conviction and discharge offender

Dismiss charge

# GROUP WORKSHEET - PAGE 2 OF 2

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## CASE 1 - MAGISTRATES COURT

### PART 2 (FOR PRESENTATION)

Group Colour:

**A.** Sentencing Decision (only write final decision on paper):

\*Imprisonment for..... months/ years

Wholly / partly suspended for ..... months/ years

Community service order for.....hours

Driving disqualification for ..... months/ years

Probation order for ..... months/ years

Specify any special conditions -

Fine for \$ ..... at the rate of \$ ..... per fortnight

Adjourn for ..... months & release on undertaking to be of good behaviour  
with conditions – Specify .....

Discharge offender

Dismiss charge

**B.** Why (3 main reasons)

- .....
- .....
- .....

**C.** \*Non-Parole Period (only relevant to imprisonment)

Yes for .....months/years

OR

No



# THANKS

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The Sentencing Workshop was a joint initiative of the Crime Prevention and Community Safety Council, Legal Aid Commission of Tasmania, Neighbourhood Watch Association, Department of Justice and Industrial Relations and Department of Police and Public Safety. Special thanks go to the Law Foundation for supporting the initiative.