

LET'S GET STARTED: DISCUSSION

What was important to you when you were looking for a place to live? For sure, the financial aspects, but possibly safety as well. When do you feel safe? Why? Do you think that criminal law may have anything to do with that? Why? Why not?

Have a look at the questions below. Are you able to answer them?

Write down the answers or discuss them with your friend. Over to you!

- ▷ *What is criminal law?*
- ▷ *What types of offences are there?*
- ▷ *What types of punishments may be imposed on an offender?*
- ▷ *What is the purpose of criminal law?*

READING 1: DEFINITION OF CRIMINAL LAW AND OFFENCES

Criminal law is another important branch of law. It is intended to protect society against crime.

The text below discusses the most important issues connected with criminal law.

As you read, take a close look at the words in bold and try to memorise them.

What is criminal law?

Criminal law sets out the rules that define prohibited behaviours that threaten and may harm the general public. Such behaviours are called **offences**. In addition, criminal law prescribes **punishments** for **offenders** who have **committed** an offence. This is covered by what is known as **substantive criminal law**, which defines offences and punishments. On the other hand, **criminal procedure law** lays down the rules to be followed in order to enforce the rules of the substantive law, for example, what to do if you are a **victim** of an offence.

What types of offences are there?

Generally, offences can be divided into less serious offences, called **misdemeanours**, and more serious offences, called **crimes** or **felonies**. In some legal systems (UK, USA) offences are divided into summary offences, triable-either-way offences, and crimes. Depending on the category of the offence, offenders are **tried** before different courts, and different punishments may be imposed. Not only does the punishment



depend on the type of the offence, but also its **severity**. Offenders may receive a lower punishment if any **mitigating factors** exist, or the maximum punishment, in the case of **aggravated offences**.

What types of punishments may be imposed on an offender?

There are a number of punishments that may be imposed on offenders. In the case of less **severe** offences, the **perpetrator** may have to pay a **fine**, or serve a **community service**; in the case of more serious offences, offenders may be sentenced to **imprisonment**, **life imprisonment**, or may face the **death penalty**, although not all countries impose all of these punishments.

What is the purpose of criminal law?

Contrary to the common belief, the purpose of criminal law is not just to punish the offender. The essential purposes of criminal law include retribution, deterrence, incapacitation, rehabilitation and restoration. The concept of **retribution** assumes that offenders should be punished for their acts adequately to the offence they committed, not necessarily in the same manner inflicted on the victim. However, the punishment should be **severe** and **commensurable**. Further, criminal law assumes that punishment may act as a **deterrent** to future criminal acts, meaning that punishments can discourage other people from making the same mistake, or the offender from **relapsing to crime** in the future. The purpose of **incapacitation** is to separate the convict from the rest of the population, to protect the general public. Another purpose is to **rehabilitate** the offender, namely to help them become valuable members of society once they serve their sentence. In some instances, the offender may be ordered to **restore** the status that existed before the offence was committed.

Now, cover the text and try to answer the questions in *Discussion* again. Good luck!



LISTENING 1: NOW, YOU BE THE JUDGE!

PRACTICE 1

Go to the following website: www.LegalEnglishBasics.pl and play TRACK 10 and answer the questions below.

1. What was the defendant found guilty of?

2. What do magistrates do?

3. Did the defendant plead guilty?

4. How was the defendant identified?

5. Does the defendant have any previous convictions for damaging property?

6. Were there any aggravating factors?

7. Were there any mitigating factors?

8. What options do the sentencing guidelines set out for criminal damage?

9. What is included in the report prepared by the probation officer?

10. What sentence did the court impose?

Do you think that the sentence was fair? Why? Why not?

USE OF LANGUAGE 1: PRESENT YOUR ARGUMENT IN A POWERFUL WAY

PRACTICE 2

Lawyers often have to present their arguments to support their assertions or rebut the assertions of the other party. Have a look at the examples given below. How do each of the two sentences differ?

CRIMINAL PROCEDURE

When an offence is committed it should be either **reported** by the **victim** or a **witness**, or **detected** by the police.

Then the offender should be **detained** by the police and formally **charged**. The **public prosecutor** prepares an **indictment**, which is an official statement charging the person alleged to have committed the offence.

As of that moment the offender is called a **defendant** and may act in person or be represented by a **defence counsel**. If the defendant cannot afford to hire a counsel, a **duty solicitor (counsel)** will be appointed for him/her.

One of the maxims of criminal law states that the **burden of proof** rests on the accuser; therefore, it is the prosecutor who must prove that the defendant is **guilty** as charged.

The defendant should answer the charges by either entering a guilty or **not-guilty plea**. In the case of the latter, the court sets the **trial date**.

The trial starts with the **opening statements** of the parties. These outline what each party will try to prove in the course of the trial. Then the **hearing of evidence** begins, when both parties present their witnesses, **exhibits**, **expert opinions** etc., to **substantiate** their **assertions**, whereas the other party will try to **rebut** the evidence presented by the **adversary**. To achieve that, they **cross-examine** the witnesses of the other party and/or present evidence to the contrary, to support their plea.

Then the parties **rest** and the judge (or the **jury**, if it exists in a given country) will **deliberate**, namely to analyse the evidence in order to reach a **verdict**. If the judge finds the defendant not guilty, the defendant is **acquitted**. However, if the defendant is found guilty, the court will proceed to **sentencing**, by imposing a suitable punishment. Then the defendant becomes a **convict** and must serve the punishment imposed by the court.

Obviously, until the ruling becomes final, either party may appeal against it to a higher court. The higher court may **uphold** the ruling of the lower court, and then it must be **enforced** as ruled, or it may **overturn** the ruling and **deliver** a new ruling, or **remand the case back for review**.

Now answer the below questions:

1. Who can report an offence?

2. Who prepares an indictment and what does it contain?

3. Does a defendant have to have a legal counsel?

4. What can a defendant do if he/she cannot afford to engage a lawyer?

5. What does the burden of proof mean for the prosecutor?

6. What kind of evidence can be presented in court?

7. What is the purpose of cross-examination?

8. What happens if the defendant is found guilty?

USE OF LANGUAGE 2: MAKING ALLEGATIONS

PRACTICE 8

One of the maxims of criminal law is the **presumption of innocence**, which means that a person is **innocent until proven guilty**. Therefore, when talking about someone's acts, and before presenting evidence that substantiates their guilt, you may need to use special language.

Read the dialogue below and take a close look at the highlighted phrases. Try to memorise them.

How do Karen and Jill refer to the offences committed by their clients?

Karen: Hi Jill! How are you? I heard you've been assigned to the Peterson case. Seems tough!

Jill: It is a really difficult case. My client **1 is alleged to have embezzled** public funds. What's more, he **2 is said to be involved** in a number of financial scams that are now under the investigation by the FSA and Anti-Corruption Bureau.

Karen: Have you analysed the supporting evidence? It **3 is believed to be** pretty strong...

Jill: I've gone through most of it. It is strong, but please don't mention it to anyone. Under no condition can it leak to the press.

Karen: That goes without saying! Is your client also **4 alleged to have defrauded** a bank?

Jill: He is, but the bank managers are also **5 thought to have conspired** with my client, so they **6 are believed to be** unreliable witnesses.

Karen: I've heard they **7 are reported to have acted** to the detriment of their bank, aren't they?

Jill: They are. And my client **8 is asserted to have blackmailed** them. This case is pretty bad. He **9 is expected to testify** against them in court, but I'm not sure it's a good idea. Such testimony will be self-incriminating.

Karen: Will Allan assist you in this case? He **10 is considered to be** an expert in business crimes.

Jill: Mr Peterson **11 is understood to be** our prime client, so I guess I can ask for any help I might need. And Allan is, indeed, **12 thought to be** the best. He **13 is said to have won** over 90% of similar cases, so I will definitely ask him to assist me.

Karen: Good luck! And let me know if I could be of any help.

Jill: Sure, thanks Karen.

PRACTICE 9

Take a look at the Practice 8 again. The highlighted phrases above are used to express what a person thinks is happening now, will happen in the future, or happened in the past. It is a form of *Passive Voice* that is used to talk about beliefs, opinions or suspicions when you are not 100% sure of the facts.

Decide which of these phrases refer to:
 (i) something that happens in the present or future;
 (ii) something that will happen in the past;
 and put them in the table below.

PAST	PRESENT/FUTURE



PRACTICE YOUR VOCABULARY 1: OFFENDERS

PRACTICE 10

Look at the list of offenders below. Match them with the acts they may be accused of.

OFFENDER	WHAT ARE THEY BELIEVED TO HAVE DONE OR DO?
1) ARSONIST	a) physically attacked another person
2) ASSAULTER	b) deliberately destroyed or damaged public or private property
3) BURGLAR	c) deliberately set fire to property
4) DRUG TRAFFICKER	d) entered into a building illegally with the intent to commit a crime, especially to steal something
5) EMBEZZLER	e) killed a human being with premeditation
6) FRAUDSTER	f) smuggles, distributes, and sells illegal drugs
7) MANSLAUGHTERER	g) steals something from other people
8) MURDERER	h) stole or misappropriated money placed in their trust or belonging to the organisation they work for
9) THIEF	i) unintentionally killed a human being
10) VANDAL	j) lies to other people to achieve financial or personal gain

SPEAKING 2: MAKING ASSUMPTIONS AND ACCUSATIONS

PRACTICE 11

Describe each offenders defined in Practice 10 above, following the example given below. Use the structures discussed in Practices 8 and 9 above.

Example:

A *burglar* is someone who is believed to have entered into a building illegally with the intent to commit a crime, especially to steal something.

Now it's your turn!



PRACTICE YOUR VOCABULARY 2: TEST YOURSELF!

PRACTICE 12

Complete the sentences below with the following words:

acquitted | aggravated | charged | defendant | deterrent | duty |
 fraud | imprisonment | indictment | manslaughter | misdemeanours |
 mitigating | parade | perpetrator | plea | relapse | sentenced |
 serve | severe | substantiated | substantive | trial | upheld | rebut

1. An _____ is an official document in which the prosecution presents formal charges.
2. Criminal law includes _____ and procedure laws.
3. During the _____, we will have to _____ their evidence, which simply means we will have to prove that they are wrong.
4. He was charged with _____ as he had no intention to kill – it was an accident.
5. If you can't afford a lawyers, you will be assigned a _____ solicitor.
6. If you enter a guilty _____ at the earliest opportunity, the court will consider it a _____ factor and may reduce your punishment.
7. Many convicts do not rehabilitate; on the contrary, they _____ into crime.
8. Offences are divided into _____ and crimes.
9. The court of appeal agreed with the lower court and _____ the ruling, so once it becomes final, you will have to _____ your sentence.
10. The defendant was found not guilty and was _____ by the court.
11. The director was accused of committing _____ as he misappropriated the funds entrusted by the investor.
12. The fact that offenders are punished for their acts should act as a _____ and discourage other people from committing offences.

13. The fact that you ran away from the crime scene will be definitely considered an _____ factor and you may be _____ to life _____.
14. The prosecutor _____ its assertions and convinced the court to find the _____ guilty as _____.
15. The punishment doesn't have to be equivalent to the offence, but it should be _____ and commensurable.
16. The witness was unable to identify the _____ during the identity _____.

PRACTICE 13

Decide whether these statements are TRUE or FALSE. If you think that a statement is false, explain why:

- | | | |
|--|---|---|
| 1. Criminal law is mainly intended to punish offenders. | T | F |
| 2. Offences are divided into misdemeanours and crimes. | T | F |
| 3. Criminal law protects the general public. | T | F |
| 4. Substantive criminal law defines offences and punishments. | T | F |
| 5. Murder is punished with less severe punishment than manslaughter. | T | F |
| 6. Offenders must go to prison for a number of years. | T | F |
| 7. Embezzlement is a business crime. | T | F |
| 8. The prosecutor charges the defendant formally in their opening statement. | T | F |
| 9. A not-guilty plea means that the defendant is acquitted. | T | F |
| 10. The punishment that may be imposed on offenders should act as deterrent. | T | F |
| 11. The punishment should be equivalent to the offence. | T | F |
| 12. Aggravated offences are subject to more severe punishment. | T | F |
| 13. Mitigated circumstances may result in decreased punishment. | T | F |
| 14. It is the defendant who must prove their innocence in the course of the trial. | T | F |
| 15. The appeal court may overturn or uphold the ruling of the lower court. | T | F |