

English for Lawyers 3

Lecturer: Miljen Matijašević
G10, room 6/1, Tue 14:15–15:15
e-mail: miljen.matijasevic@gmail.com
Session 2, 9 Oct 2018

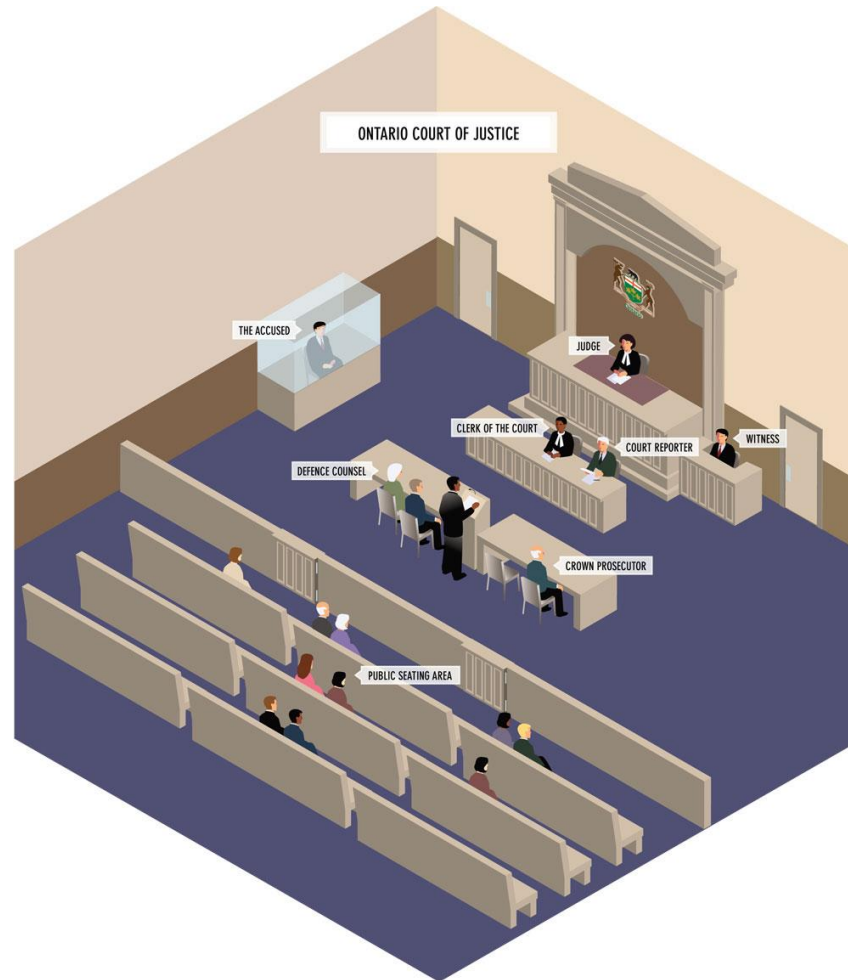
Criminal Law



The Criminal Court



The Criminal Court



The Criminal Court



The Crown Court (England and Wales)

Justice Systems



What are the main differences between these justice systems?

Criminal Law

- ▶ What are the differences between:
 - civil and criminal wrongs
 - civil and criminal trials
- ▶ Exercise II: Who is who in criminal court?
- ▶ Exercise III: Scan the text and find missing words

Crime

- ▶ How can we define crime?


CRIME is

- ▶ an offence against the community
- ▶ punishable by the state
- ▶ a severe breach of public law

Croatian equivalents of the word:

- ▶ *kazneno djelo; zločin; kriminal* (criminal activity)

Crime in English/US law

- ▶ there is no single criminal code in English law
 - common-law crimes
 - statutory crimes
 - ▶ in the United States
 - crimes
 - misdemeanours
 - federal and state crimes
- 

Elements of a crime

- ▶ most crimes require two elements:
 - *actus reus* (the prohibited act)
 - *mens rea* ('guilty mind', intention)

Criminal liability

ACTUS REUS

- a physical act
- words
- omission (inaction)
- possession
- a state of affairs (being found somewhere unlawfully)

Criminal liability

MENS REA

- intention
 - the person acts on purpose in order to cause the event
- recklessness
 - takes an unreasonable risk, knowing that his conduct may cause the event


Criminal liability

CASES IN WHICH MENS REA IS NOT REQUIRED


- negligence
- **strict liability** (e.g. food and drugs, road traffic, consumer protection, etc.)
- **vicarious liability** (one person acting on behalf of another; e.g. corporate liability)

Exemption from criminal liability

- a person deprived of free will or self-control
 - insanity
 - coercion
 - necessity
 - automatism

 - a person belonging to a class of persons with special rules
 - the Sovereign
 - foreign sovereigns and diplomats
 - children under the age of 10
- 

Criminal Law

- ▶ the state is the **prosecutor**
 - ▶ has interest in fighting crime
 - ▶ criminal justice is administered with the help of the police
 - ▶ the police investigate a crime, **apprehend suspects and detain them in custody**
- 

Human Rights Act 1998

- ▶ **The Human Rights Act 1998** introduced the rights laid down in the European Convention on Human rights (Art 5 and 6) into English law in 2000
- ▶ introduces provisions governing the right to a fair trial, presumption of innocence (Art 6) and the right to liberty and security (Art 5)
- ▶ direct impact on the criminal procedure: all English statute and case law must now be measured against these provisions

European Convention on Human Rights

Article 5 – The Right to Liberty and Security

- ▶ governs matters pertaining to lawful arrest and detention and lays down the conditions under which an individual can be deprived of his or her liberty
- ▶ It also provides that everyone who has been the victim of arrest or detention in contravention of the provisions of that Article has an enforceable right to compensation (**unlawful arrest and detention**).

Article 6 – The Right to a Fair Trial

2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to the law.

Standard of Proof

- ▶ in criminal trials, the **burden of proof** is on the prosecution, who, unlike in civil trials, must **prove guilt beyond reasonable doubt** (standard of proof)

Classification of Crimes


ACCORDING TO MODE OF TRIAL:

- ▶ **indictable offences**
(triable in the Crown Court)
- ▶ **summary offences**
(triable in magistrates' courts)
- ▶ **offences triable either way**
(defendant chooses the mode of trial)
- ▶ Study the crimes categorized in these categories on p. 128


Classification of Crimes

ACCORDING TO THE OBJECT OF CRIME

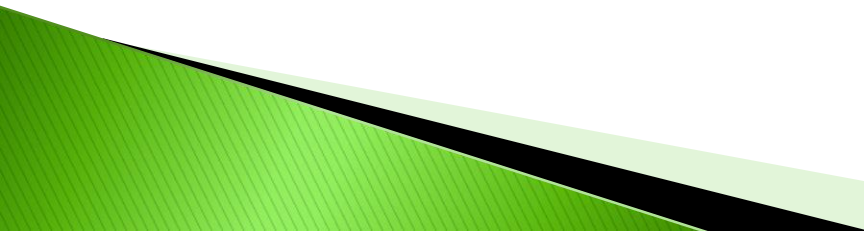
Crimes against:

1. the State and public peace and order
 2. the person
 3. property
 4. other crimes
- 

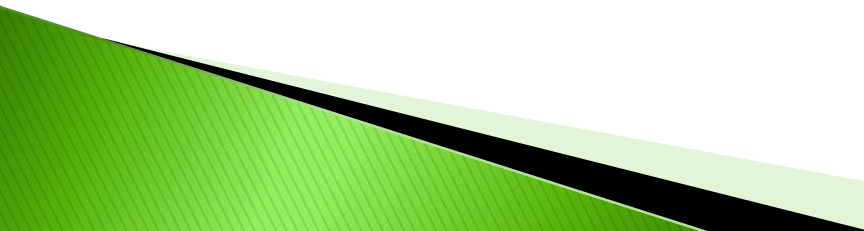
Crimes against the State, public peace and order

- ▶ treason
 - ▶ conspiracy
 - ▶ perverting the course of justice
 - ▶ perjury
 - ▶ riot
 - ▶ sedition
 - ▶ unlawful assembly
- 


Crimes against the person

- ▶ murder
 - ▶ manslaughter
 - ▶ involuntary manslaughter
 - by gross negligence
 - constructive manslaughter
 - ▶ infanticide
 - ▶ rape
 - ▶ stalking
 - ▶ assault and battery
- 

Crimes against property

- ▶ arson
 - ▶ blackmail
 - ▶ burglary
 - ▶ embezzlement
 - ▶ extortion
 - ▶ fraud
 - ▶ forgery
 - ▶ handling stolen goods
 - ▶ criminal/malicious damage
 - ▶ robbery
 - ▶ shoplifting
 - ▶ theft
 - ▶ larceny
 - ▶ money laundering
 - ▶ tax evasion
- 

Other crimes

- ▶ traffic offences
 - ▶ bigamy
 - ▶ etc.
- 

Criminal Law


the parties (UK):

- THE CROWN – i.e. the state
e.g. R v Collins (‘the Crown against Collins’)
R stands for ‘*Regina*’, i.e. ‘*Rex*’, latin: Queen or King
- DEFENDANT – the person being prosecuted, the alleged criminal

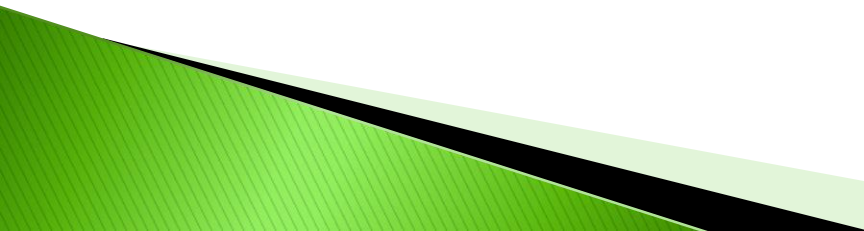
The Prosecutors

- ▶ Most prosecutions undertaken by:
 - **Crown Prosecution Service (CPS)**

Starting Proceedings

- ▶ upon investigation of a criminal act, the police may **apprehend** suspects and decide whether the offender should be prosecuted
 - ▶ if so, a file is sent to the CPS
 - ▶ CPS then decides whether there is a **realistic prospect of conviction**
 - ▶ they must be sure that the **evidence is legally admissible and reliable.**
- 

Starting Proceedings

- ▶ next they must consider whether a prosecution would be in the **public interest**
 - ▶ criminal proceedings may be initiated by the serving of a **requisition to appear in court** (a.k.a. summons), or a **warrant of arrest**, issued by a magistrates' court
 - ▶ prosecution is not initiated in all cases, but the offender may only be **cautioned**
- 

Caution


- ▶ in many cases of petty crimes, instead of being prosecuted, offenders receive a police **caution**
- ▶ this is an official warning intended to:
 - deter first-time offenders from re-offending, i.e. committing the act another time
 - remove the necessity of a court appearance
 - deal quickly with less serious offenders
- ▶ this is not a conviction, but results in a criminal record – may be considered in future trials as evidence of bad character

The Right to Silence

- ▶ the defendant has a right not to say anything, both in the police station and at trial
- ▶ since the entry into force of the Criminal Justice and Public Order Act 1994, **using the right to silence may be brought up in the court**, i.e. the silence can be taken as an indicator of possible guilt on the part of the defendant

Modes of trial

▶ magistrate's court

- trial by 2–3 lay magistrates or a district judge
 - may impose fines of up to £5,000 (for most offences)
 - highest prison sentence: 6 months (or maximum 12 months for multiple offences tried simultaneously)
- 

Modes of trial

▶ the Crown Court

- trial by a judge and jury
- a jury of 12 (10 needed for a guilty verdict)
- more severe sentences available
- possible advantage: **pre-trial legal argument stage** before judge alone
- possibility to settle / dismiss the case due to insufficient evidence

Thank you for your attention!

