

English for Lawyers 3


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Revision



Criminal Law, part 1

Answer the questions


1. What does criminal law involve?
 2. What is actus reus and what forms can it take?
 3. What is mens rea?
 4. How can a defendant plead?
 5. What is the prosecution's task in court?
 6. What is the presumption of innocence?
 7. How are criminal offences classified in English law?
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Find the English equivalents

1. čedomorstvo
2. veleizdaja
3. davanje lažnog iskaza
4. ometanje istražnog/sudskog postupka
5. podmetanje požara
6. pranje novca
7. pronevjera
8. protuzakonito okupljanje
9. provalna krađa
10. utaja poreza

Find the English equivalents

ANSWERS:

1. infanticide
 2. treason
 3. perjury
 4. perverting the course of justice
 5. arson
 6. money laundering
 7. embezzlement
 8. unlawful assembly
 9. burglary
 10. tax evasion
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Answer the following questions

3. Explain the difference between:
 - murder,
 - manslaughter, and
 - involuntary manslaughter.

4. Who is exempt from criminal liability?

Case studies




- ▶ RECKLESSNESS as mens rea
- ▶ knowingly taking an unreasonable risk which might result in a criminal offence

Chief Constable of Avon & Somerset v Shimmen 1987

Criminal damage

The defendant was a martial arts expert who was demonstrating his skill to friends by performing a move which he anticipated would bring his foot within inches of a shop window. He had miscalculated the risk, and he broke the window.


Key principle: A defendant who considers whether a risk exists and genuinely decides that there is no risk is not reckless.



Chief Constable of Avon & Somerset v Shimmen 1987

Criminal damage

(DC) Prosecution appeal allowed. Defendants are not reckless if they consider the risk and decide that there is none. However, this defendant had realised that there was some risk but had thought that he could avoid it. Thus he was reckless in the sense of realising a risk and going on to take it.

- ▶ CONSTRUCTIVE LIABILITY manslaughter
 - ▶ committing a criminal offence which leads to the commission of a more serious offence (death of a person)
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R. v Lamb 1967

Involuntary manslaughter: constructive liability

Two boys were playing with a revolver. There were two bullets in the chamber but neither were opposite the barrel. The two boys believed that this meant it would not fire. One of the boys pointed the gun at the other and fired. As he pulled the trigger the chamber turned and the gun went off killing the boy. The other was charged with unlawful act manslaughter.

R. v Lamb 1967

CONSTRUCTIVE LIABILITY, involuntary manslaughter

Key Principle: The defendant must commit an unlawful and dangerous act which causes death.

(CA) Defendant's appeal allowed due to a misdirection. There was no unlawful act (assault) without proof of the *actus reus* and *mens rea*. Since the latter was missing, the offence was incomplete.

R. v Mitchell 1983

Involuntary manslaughter: constructive liability


The appellant tried to jump the queue at a Post Office. An elderly man took issue with the appellant's behaviour and challenged him. The appellant hit the old man and pushed him. The man fell back onto others in the queue including an elderly lady who fell and broke her leg. She later died. The appellant was convicted of manslaughter and appealed contending that the unlawful act was not directed at the woman.

R. v Mitchell 1983

CONSTRUCTIVE LIABILITY, involuntary manslaughter

Key Principle: The defendant must commit an unlawful and dangerous act which causes death.

[CA] The appeal was dismissed and the conviction was upheld. There was no requirement that the unlawful act be directed at the victim.




Criminal Law



(cont.)

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)
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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)

Criminal Procedure in England

Watch the video:

The Magistrates' Court


<https://www.youtube.com/watch?v=WeNDacwO5NA>

More about magistrates:

<https://www.youtube.com/watch?v=fCybrBaKj8s>



The Magistrates' Court

1. Who are the magistrates and how do they make their rulings?
 2. What cases can they hear? When do they refer cases to the Crown Court?
 3. What does the legal advisor or clerk do?
 4. What is the usher's job?
 5. What must the prosecuting solicitor prove?
 6. What about the defence solicitor?
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Criminal Procedure in England

Watch the video:


The Crown Court

https://www.youtube.com/watch?v=tZYvv_s5R-s

Listen to the introduction by the judge and note the differences between trial at the magistrates' court and the Crown Court!



The Crown Court

1. The judge's introduction
 2. Prosecuting barrister
 3. Defence barrister
 4. The judge – after evidence
 5. The jury
 6. Defence – after the verdict
 7. The judge – sentencing
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Modes of trial

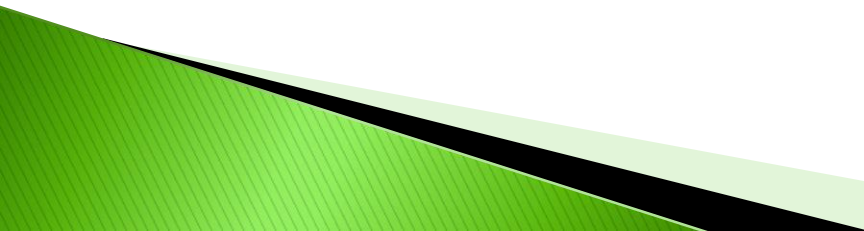
▶ the Crown Court

- 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

Criminal procedure in England

- ▶ System of justice in common law systems is ADVERSARIAL
- ▶ civil law countries traditionally have the INQUISITORIAL system
- ▶ exercise 133/X
 - decide which system the features belong to

Criminal proceedings

- ▶ cases are brought before a **magistrate's court**
 - ▶ The defendant enters a **plea**
 - ▶ If he **pleads** not guilty the court evaluates the case and may
 - proceed to trial and sentence
 - decide that the matter is too complex or serious for their jurisdiction
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Criminal proceedings

- ▶ if the case is found to be more serious, it is **committed** to the **Crown Court**, where more **severe penalties** are available, as well as a jury trial
- ▶ A case can be committed to the Crown Court:
 - for trial
 - only for sentencing after a conviction in the magistrates' court

Summary offences

- ▶ 95% of criminal cases are categorized as summary offences and dealt with by magistrates' courts
- ▶ these offences include: **traffic violations, drunk and disorderly behaviour, assault, minor criminal damage cases, cases prosecuted by government departments or agencies**
- ▶ if the defendant pleads guilty upon being charged, court appearance is avoided

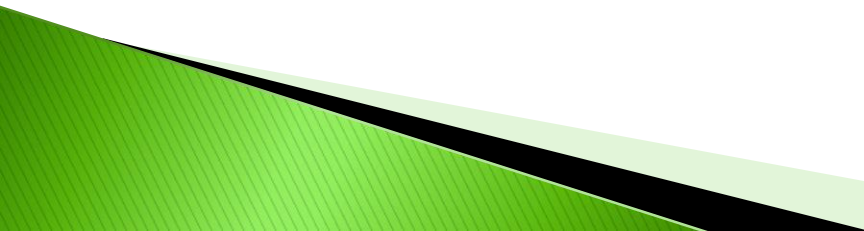
Triable either way

- ▶ these offences include **theft, some drug offences, some acts of violence against the person, obtaining property by deception, etc.**
- ▶ the defendant given **the option to select the mode of trial – summary trial or trial on indictment in the Crown Court (before a jury)**
- ▶ they must be well informed of the procedures and possible penalties for each of the modes
- ▶ the court may, on the other hand, **deem the case too complex or serious** and refer it to the Crown Court, seeing as more severe penalties are available there

Indictable offences

- ▶ serious offences, such as rape, murder, fraud, conspiracy, manslaughter, robbery, causing serious bodily harm, etc.
- ▶ trial by indictment – the Crown Court – before a jury
- ▶ before the jury is sworn in the judge has to assess whether the evidence is sufficient for a possible conviction by jury
- ▶ it is possible that the judge dismisses the case due to insufficient or inadmissible evidence
- ▶ if a ‘not guilty’ plea is entered, and the evidence is considered reliable, the case proceeds to trial

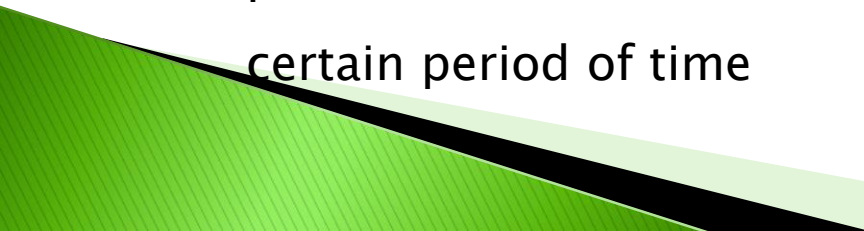
Indictable offences – trial by jury

- ▶ a jury of 12 is sworn in
 - ▶ after the examination of evidence, **the judge sums up the evidence** and the facts of the case to the jury and the jury **retires**
 - ▶ **unanimous verdict** – no longer required, but instead a **majority of 10 out of 12** jurors
 - ▶ if the jury convicts, the **judge proceeds to sentence**, taking into account any **aggravating** or **mitigating factors**
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Reaching a verdict

- ▶ Possible verdicts:
 - **conviction** (v. to convict)
 - finding the defendant guilty
 - **acquittal** (v. to acquit)
 - finding the defendant not guilty

Available sentences

1. a discharge (conviction without punishment)
 2. a fine
 3. a community service order (doing unpaid work, receiving treatment for addictions, rehabilitation programmes, supervision)
 4. a custodial (prison) sentence
 5. a suspended prison sentence (probation) – prison sentence activated only if the convict reoffends within a certain period of time
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Triable either way – pros

- ▶ Maximum prison sentence: 6 months for one offence, 12 months total
- ▶ Maximum fine: £5,000
- ▶ Juries find defendants not guilty more often than magistrates
- ▶ Harder to convince 10 jurors of guilt beyond reasonable doubt than 1–3 magistrates

Magistrate's court

Crown Court

Practice

- ▶ Vocabulary exercises 131 /VII, VIII

Thank you for your attention!

