

Truth, myth or mixture?

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Introduction

This free course explores the criminal law and courts of England and Wales and shows that some common ideas about them may not be entirely true! It examines those ideas and reveals the realities behind them.



Figure 1 Courtroom drama

The criminal justice system appears in news, documentaries, drama, and fiction. Many people also have direct contact with it, whether through their work or as victims, suspects or witnesses. How accurately do those experiences reflect the system as a whole? How realistic are the impressions given in the media or in fiction?

The different sections examine statements you may believe about the criminal law. They explore whether these common ideas about criminal justice are truths, myths or a mixture of both. They may change your mind about the criminal justice system – and should inspire you to learn more about the law. You will start by thinking about those involved in criminal court proceedings, and will look at juries in the first section.

Learning outcomes

After studying this course, you should be able to:

- explain some key features of the criminal justice system
- describe some key features of the criminal law
- understand the truth about the biggest myths around criminal law and the criminal courts.

1 'Criminal cases are tried by jury'

There are many images associated with the criminal justice system. Some are symbols: for example, the scales of justice represent law as a whole.



Figure 2 The scales of justice

Activity 1 Symbols of criminal law

 Allow 10 minutes

What symbols come to mind when you think of the criminal courts?

Provide your answer...

Comment

Some popular symbols include:

- A pair of handcuffs
- A gavel
- Lady Justice (often holding scales and a sword)
- A barrister's wig.



Figure 3 A gavel

However, the gavel is never found in the courts of England and Wales.



Figure 4 Lady Justice above the Old Bailey

Does Lady Justice wear a blindfold? The most famous British statue of her, on top of the Old Bailey, does not.

Other images of the criminal justice system are more complex. For example, a criminal trial is often pictured as involving a red-robed judge, barristers in wigs and gowns, and a jury of 12 members of the public. This section will explore whether that picture of a criminal case being tried by a jury is the truth, a myth, or a mixture of myth and truth.

1.1 Truth?

It is true that *some* criminal cases are tried by jury. In the Crown Court, the judge is in charge of the trial. Their role is to ensure that it runs smoothly and fairly, and to decide any questions of law. However, the jury decides whether the defendant (the accused person)

is guilty or not guilty. The jury is made up of members of the public chosen at random from the electoral register. Because they are not legal professionals, they are referred to as 'lay people'. They represent the community and use their life experience to help them make decisions.



Figure 5 A jury

1.2 Myth?

Most criminal cases are not tried by jury. This is because most are dealt with entirely by a magistrates' court, or because the defendant pleads guilty.

There are two types of criminal courts which try and sentence defendants: the magistrates' courts and the Crown Court. The magistrates' courts deal with the early stages of criminal cases, and with the trial and sentencing of less serious offences. Unlike the Crown Court, a magistrates' court does not have a jury.

Young people under 18 have their cases heard in a special part of the magistrates' court: the youth court. This court can deal with most offences, even serious ones, and only the most serious cases involving young people (e.g. murder and manslaughter cases) will go to the Crown Court.

1.2.1 The magistrates' court

All criminal cases start in a magistrates' court, where decisions are made by a panel of magistrates or a district judge, with no jury. The magistrates' court makes the first decisions about the defendant: for example, whether to release them on bail or keep them in prison to await trial.

Less serious cases (e.g. traffic offences, low-value shoplifting) are dealt with entirely by magistrates' courts. Only some more serious cases (e.g. robbery, murder) are sent from a magistrates' court to the Crown Court, where juries sit.

Like juries, magistrates are lay people (and are often referred to as 'lay magistrates'). They receive training, but they are not legally qualified. District judges, however, are qualified lawyers.



Figure 6 Interior of a magistrates' court

Activity 2 Crown Court

 Allow 10 minutes

What percentage of cases do you think go to the Crown Court?

- ☐ More than 80 per cent
- ☐ About 50 per cent
- ☐ About 20 per cent
- ☐ Fewer than 10 per cent

Comment

Fewer than 10 per cent of criminal cases are sent to the Crown Court. Most cases are dealt with by magistrates' courts alone.

In summary, all cases begin in a magistrates' court and most remain there. Figure 7 shows the criminal court process from the start of a case to the end of the trial and sentencing.

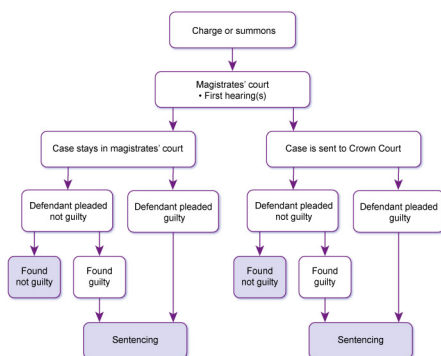


Figure 7 Criminal court process

1.2.2 Guilty pleas

The defendant will be asked at an early stage to plead guilty or not guilty to the offence. If the defendant pleads not guilty, there will be a trial. However, if the defendant pleads guilty, they admit that they committed the crime. There is no need to hear evidence in a trial to decide whether the defendant is guilty. The court only has to decide their sentence (punishment). This is decided by the magistrates or judge, so no jury is needed.

Activity 3 Guilty pleas

 Allow 2 minutes

What proportion of defendants in the Crown Court do you think plead guilty?

- ☐ More than two-thirds
 - ☐ About half
 - ☐ Fewer than one-third
 - ☐ Fewer than one-tenth
-

Comment

More than two-thirds of defendants in the Crown Court plead guilty (Ministry of Justice, 2020a). The proportion is even higher in magistrates' courts.

1.3 Mixture?

The claim that 'criminal cases are tried by jury' is a mixture of myth and truth. Almost all criminal cases are dealt with entirely in a magistrates' court, which does not have a jury. Some more serious cases go to the Crown Court, where most defendants plead guilty. The tiny proportion of cases which go to the Crown Court *and* where the defendant pleads not guilty have a jury trial. However, as the courts deal with about 1.5 million cases every year (Ministry of Justice, 2020b), that still means tens of thousands of jury trials take place each year. Having considered the role of the jury in criminal cases, in the next section you will think about judges.

2 'Most judges are old, white men'

For many people, the stereotype of a judge is an older, white man with an upper middle-class accent. However, the judiciary has changed in recent years. How far have these changes gone?



Figure 8 An older, white, male judge

Activity 4 Name three judges

 Allow 2 minutes

What are the names of three judges, fictional or real, which first come into your mind when you think about judges? Write their names down below.

Provide your answer...

Comment

You may have thought about some fictional judges such as Judge John Deed (TV series of the same name), Judge Roy Snyder (TV series The Simpsons), Judge Bullingham (Book and TV Series Rumpole of the Bailey) or Judge Judy (TV series of the same name). Alternatively you may have considered some real judges such as Baroness Lady Brenda Hale (former UK Supreme Court judge), Baron Tom Denning (former Master of the Rolls, UK Court of Appeal) or Clarence Thomas or Ruth Bader Ginsberg (Supreme Court Justices of the USA). Were the judges you considered male or female? What was their ethnicity and background? You will now consider whether the myth of the 'old white male judge' is accurate.

2.1 Truth?

There is some truth in the image of the white, male judge. That is unsurprising given the history of the legal profession. To become a court judge, a person must already be an experienced lawyer. Lawyers are people who provide legal services, including solicitors and barristers.

Box 1 Barristers and solicitors

Barristers typically specialise in courtroom advocacy or drafting specialist documents. Usually, they are introduced to their client by a solicitor.

Solicitors have direct contact with clients. They do most legal work, including preparing cases, speaking to witnesses, advising clients, and often speaking in court, but can also instruct a barrister for advocacy or specialist advice.

However, until 1919, only men could become barristers or solicitors. All barristers and pupils (trainee barristers) must belong to one of the four Inns of Court in London. Pupils must also complete qualifying sessions – traditionally, by eating dinners – at their Inn before they can be called to the Bar (i.e. formally qualify). While women had tried to join the Inns of Court before 1919, the Inns refused to admit them.

The Law Society, which was responsible for solicitors' regulation and education, would not let women take the exams needed to qualify as a solicitor. In 1914, four women brought a case against the Law Society,¹ but they lost. The courts ruled that women should continue

¹ *Bebb v Law Society* [1914] 1Ch 286.

to be excluded from the profession because that had been accepted practice for centuries.

Ethnic minority men were not formally prohibited from becoming lawyers. However, the racism they faced made practising in England and Wales very difficult. Most black and Asian barristers who qualified before the twentieth century went on to practise in other countries of the British Empire.

2.1.1 Magistrates

Magistrates have been part of the legal system since the middle ages. They were traditionally men from the landed gentry: upper-class landowners. Inevitably, they were almost all white. One exception was Nathaniel Wells, a magistrate in Wales at the start of the nineteenth century. The son of a wealthy plantation owner and an enslaved black woman, he inherited his father's wealth. He bought an estate in Chepstow and became part of Monmouthshire's landed gentry (The National Archives, no date).

2.2 Myth?

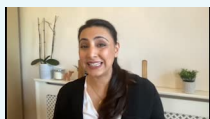
There have been significant changes to the judiciary and legal profession in the last century – and particularly in recent decades.

Box 2 Gender diversity

Judges are no longer exclusively white men. The Sex Disqualification (Removal) Act 1919 (SDRA) allowed women to become solicitors and barristers. The first women solicitors and barristers qualified in 1922. By 2020, 49 per cent of solicitors in law firms and 38 per cent of practising barristers were women (Solicitors Regulation Authority, 2020; Bar Standards Board, 2020).

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Women lawyers and judges



The first woman to be appointed as a judge was Rose Heilbron, who became a recorder (a part-time judge) in 1956.



Figure 9 Rose Heilbron

Box 3 Ethnic diversity

There have also been significant increases in ethnic diversity among lawyers. In 2020, 21 per cent of solicitors and 13.6 per cent of barristers were from ethnic minority backgrounds (Solicitors Regulation Authority, 2020; Bar Standards Board, 2020).

Video content is not available in this format.
Ethnic minority lawyers and judges



The first black recorder was Tunji Sowande, appointed in 1978.



Figure 10 Tunji Sowande

The statistics for other forms of diversity are less clear. Many lawyers choose not to declare their disability, sexuality, gender identity, religion, or socio-economic background.

2.2.1 Magistrates

1919, the year the legal profession opened up to women, was also the year women could first become magistrates. Today, over half of magistrates are women (Magistrates Association, 2019).

Ethnic diversity has taken longer to achieve. It would be another four decades before a minority ethnic magistrate – black magistrate, Eric Irons – was appointed in 1962. By 2020, 16 per cent of magistrates were members of ethnic minorities (Ministry of Justice, 2020c).

Today's magistrates are volunteers from a range of backgrounds. However, there are still concerns about their socio-economic diversity and age. In 2020, 82 per cent were aged over 50 (Ministry of Justice, 2020c).

Reflection point

Why do you think that such a high proportion of people who volunteer to become magistrates are aged over 50 years old?

2.3 Mixture?

The perception of judges as being older white men is not entirely false. Women and people from ethnic minorities remain under-represented among court judges, especially in the higher courts, such as the Court of Appeal.

Box 4 Court judges in England and Wales

On 1 April 2020, in the criminal and civil courts of England and Wales:

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(Ministry of Justice, 2020c)

Not all judges are old, white men – but a disproportionate number are.

2.3.1 Increasing diversity

The judiciary is becoming more diverse in terms of age, sex and ethnicity. Activity 5 considers judicial diversity in more depth.

Activity 5 Judicial diversity

 Allow 15 minutes

You have seen the statistics for the sex, age and ethnicity of judges. What other kinds of diversity do you think might be important?

Provide your answer...

Comment

You might have mentioned disability, gender identity, sexuality, religion, education, or social class. There are concerns about all these forms of diversity among the judiciary, but as you saw earlier, there is less information about these.

What do you think the most important benefits of greater diversity are?

Provide your answer...

Comment

The first woman Supreme Court judge, Baroness Hale, gave the following reasons why judicial diversity matters (Hale, 2017):

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Did you think of any others?

In the next section you will look at the police, who are part of the wider criminal justice system.

3 'The police enforce the law'

In dramas and documentaries, the police detect crime and chase criminals. On the news, police officers manage crowds, and hold press conferences when defendants are convicted and sentenced. It seems obvious that 'the police enforce the law', but is it true?



Figure 11 Police officers at a protest

Activity 6 Police enforce the law

 Allow 2 minutes

How many territorial police forces are there in England and Wales?

- ☐ a. 125
- ☐ b. 31
- ☐ c. 43
- ☐ d. 58

Which is the largest police force in England and Wales?

- ☐ a. Metropolitan police
- ☐ b. Greater Manchester police
- ☐ c. South Wales police
- ☐ d. North Yorkshire police

How many full time employed police officers were there in England and Wales in September 2022?

- ☐ a. 165,295
- ☐ b. 151,875
- ☐ c. 142,145
- ☐ d. 130,825

3.1 Truth?

The police have a duty to protect the public by preventing and detecting crime. The law also gives them special powers to help them carry out that duty.

Police powers and duties

Police powers are intended to allow officers to perform their duty to prevent and detect crime. For example, they can search people, vehicles and buildings, collect evidence, arrest and question suspects, and move people (e.g. protestors) from locations.

Box 5 Types of law

Police powers and duties are set out in two types of law:

- *Common law* is made through cases heard before the courts. The police's duty to protect the public is a common law duty.
- *Statute law* is found in Acts: laws passed by Parliament. Police powers are defined in statutes such as the Police and Criminal Evidence Act 1984 (PACE).

Enforcing the law

The police investigate crime and gather evidence. They may identify and question suspects. They start the court process when they charge a suspect with an offence, either at the police station or by 'postal charge' (a written charge sent to the suspect along with a postal requisition requiring them to attend court).

For minor offences, the court process may start with a summons instead of a charge. The summons is a document requiring the accused person to attend court on a specific day.

MG4E

 <Defendant copy>

Written Charge(s)
 S9 statements enclosed/MCA statements of facts only

[Name & address of defendant]

URN
(if applicable)

Custody number
(if applicable)

Date of birth

Arrest/summons number

**POSTAL
REQUISITION**

You are charged with the offence(s) below.

On [date] at [time]

[Name and address of magistrates' court] will hear the case.

General notes
 Please read all this notice and everything sent with this charge carefully before you fill in any of the forms.

The charge lists the offences which the prosecutor says you have committed. The evidence for this is in the enclosed witness statements. This notice tells you how to fill in the plea form enclosed with this charge.

Warning
 If you do not reply to the charge, or attend court, the court may find you guilty in your absence.

Police bail
 If you are on police bail for the offence(s) you do not have to return to the police station and your police bail has been cancelled.

Advice and help
 If you need advice about what to do you should get help from a solicitor or advice agency at once. If you cannot afford a solicitor you may be able to get free advice about your plea, or how to apply to the court for a representation order (legal aid) so that you can have a solicitor at the hearing. Do not wait until you first come to court. If you need any general advice about the court, contact the court office at [address of the court office].

2010/11

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Figure 12 A postal requisition

3.2 Myth?

The police are not the only body to enforce the law. First, some offences are enforced by other agencies. Second, the police work closely with the Crown Prosecution Service (CPS) to decide whether to charge a suspect and to prepare cases for court.

3.2.1 Other agencies

Parliament has given other bodies powers to investigate and prosecute certain crimes. These include:



Figure 13 Government agencies

An individual or organisation can bring a private prosecution. Some organisations, including the Royal Society for the Prevention of Cruelty to Animals (RSPCA), regularly investigate and bring private prosecutions. Private prosecutions by individuals are unusual: bringing a prosecution is costly and difficult.

Activity 7 Match the crime to the investigator/prosecutor

 Allow 10 minutes

Match each crime to the agency who would investigate and prosecute it.

Breach of health and safety regulations

Causing unnecessary suffering to an animal

Insider-dealing in shares

Breach of food hygiene regulations

Conspiracy to commit a complex fraud

Match each of the items above to an item below.

Health and Safety Executive

RSPCA

Financial Conduct Agency

Food Standards Agency

Serious Fraud Office

Comment

This activity illustrates how these agencies bring prosecutions only for specific offences related to their particular responsibilities.

3.2.2 Crown Prosecution Service

The CPS brings most of the criminal prosecutions investigated by the police to court. Its head is the Director of Public Prosecutions. The CPS describes its role in Box 6.

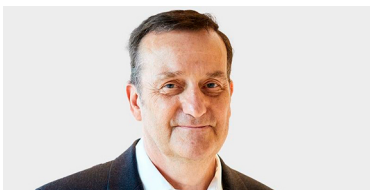


Figure 14 Max Hill QC, Director of Public Prosecutions

Box 6 The CPS

The Crown Prosecution Service (CPS) prosecutes criminal cases that have been investigated by the police and other investigative organisations in England and Wales. The CPS is independent, and we make our decisions independently of the police and government.

Our duty is to make sure that the right person is prosecuted for the right offence, and to bring offenders to justice wherever possible.

The CPS:

- decides which cases should be prosecuted;
- determines the appropriate charges in more serious or complex cases, and advises the police during the early stages of investigations;
- prepares cases and presents them at court; and
- provides information, assistance and support to victims and prosecution witnesses.

(Crown Prosecution Service, no date)

3.3 Mixture?

The police do enforce the law, using their powers and duties under statute and common law. They investigate offences and start the court process.

However, they alone do not enforce the law: they work closely with the CPS on their cases, and once a case goes to court the CPS is responsible for its prosecution. Some specialist offences are investigated and prosecuted by other bodies.

In the next few sections you will consider some of the common myths about crimes and criminals, starting with the relationship between crimes and morality.

4 'Crimes are immoral'

Are all crimes also moral wrongs? Before Section 4.1 looks at this question in more detail, Activity 8 encourages you to reflect on your own experiences and moral views.

Activity 8 Have you ever?

 Allow 10 minutes

Have you ever done any of these things? (Don't worry, nobody else will see your answers!)

Interactive content is not available in this format.



Comment

Most people have done at least one of the things on this list. If you ticked 'yes' to any, take a moment to consider whether you felt at the time that you were acting immorally, and what you think now.

4.1 Truth?

More serious criminal offences are also considered immoral. For example, murder, assault, and theft are generally considered morally, as well as legally, wrong.

Box 7 Morality and law

In 1962, one of the most senior judges of England and Wales, Viscount Simonds, said that the purpose of the criminal law is to enforce morality:

The supreme and fundamental purpose of the law [is] to conserve not only the safety and order but also the moral welfare of the State ... The law must be related to the changing standards of life, not yielding to every shifting impulse of the popular will but having regard to fundamental assessments of human values and the purposes of society.²

² *Shaw v DPP* [1962] AC 220, 267–8 (Viscount Simonds).

4.2 Myth?

Some crimes are not generally considered immoral, while opinions will differ on others. Is it immoral to cycle along a wide pavement to avoid a dangerous road junction?

A distinction can be made between crimes which are serious and clearly immoral, and those which are minor and not considered 'truly' criminal – often called regulatory offences.



Figure 15 Cycling

Views about what is immoral can also change over time and vary widely between different people. For example, drink-driving (driving a vehicle after consuming more than a minimal amount of alcohol) was not considered 'truly' criminal a few decades ago. However, public opinion changed as people became more aware of the consequences of drink-driving. Now, many people would consider it a 'true' crime and an immoral act.

4.2.1 Regulatory offences

Many offences are not 'truly' criminal. They are regulatory offences, which are often punishable only by fines and may not have an obvious victim. Examples include:

- driving offences, e.g. driving with a broken brake light
- health and safety offences, e.g. minor breaches of regulations
- offences regulating the sale of certain items, e.g. selling lottery tickets to a child under 16.

4.2.2 Reasons for criminalising activity

Behaviour has sometimes been made illegal because it is immoral. However, there are other important reasons for making some actions a crime. One of the most influential factors in the current law of England and Wales is the harm principle.

Box 8 The harm principle

The harm principle was set out by philosopher and politician John Stuart Mill in 1859:

The only purpose for which power can rightfully be exercised over any member of a civilized community against his will, is to prevent harm to others.

(p.14)

In other words, the criminal law should only be used against someone when it is necessary to protect others from serious harm.

Critics of the criminal justice system emphasise that crimes often protect certain parts of society at the expense of others. For example, feminist critiques focus on the ways that the law takes the interests of men as the norm, thereby failing to protect women from sexual and domestic violence. Critical race theory points out the institutional racism of the criminal justice system and consequences including disproportionate prosecutions of colour. Other critiques emphasise that the law protects property-owners and the middle classes: benefit fraud is seen as more obviously criminal than, say, tax evasion.

4.2.3 Immoral but not illegal

A lot of immoral behaviour is not illegal. For example, cheating on a spouse or partner is not a crime.

Activity 9 Immoral or illegal?



Allow 5 minutes

Joshua is running along a canal path when he sees a small child struggling in the water. As he wants to finish his run and get to work on time, he does nothing to help the child.



Figure 16 Canal path

Interactive content is not available in this format.



Comment

You may well consider that Joshua's failure to help the child is immoral. However, it is not illegal. The criminal law of England and Wales – unlike many other legal systems – does not generally criminalise omissions (i.e. failing to do something), although there are important exceptions.

4.3 Mixture?

Morality and the criminal law overlap: one reason for making behaviour a crime is that it is immoral. Most serious crimes are immoral, and most highly immoral acts are also criminal. For example, murder is one of the most serious crimes and is also generally considered immoral.

However, not all immoral acts are criminal, and not all crimes are immoral. In particular, regulatory offences are often minor and may not be moral wrongs. Morality is not the only basis for deciding what should be a crime: for example, the harm principle is also important.

In the next section you will continue to think about criminal offences by considering whether all crimes have a victim.

5 'All crimes have victims'

When crime is discussed, the victims of crime are often considered. Many crimes are discovered when a victim reports them to the police. It might therefore seem obvious that crimes have victims. But is that always true?



Figure 17 The Victims' Code

5.1 Truth?

The Code of Practice for Victims of Crime (Ministry of Justice, 2015) defines a victim as:

- somebody who has suffered physical, mental or emotional harm or economic loss which was directly caused by a criminal offence
- a close relative of someone whose death was caused by a criminal offence.

Businesses and organisations may also be victims of crime.

Some crimes may not have actual victims, but pose a risk to potential victims. Consider the following extract from a newspaper report. Nobody had been injured by speeding motorists, but campaigners were concerned that they might be in future.

Box 9 Speeding on a Taunton road

Concerns about 'reckless' driving and 'boy racers' speeding on Taunton road with three schools

Concerns have been raised about 'reckless' driving and 'boy racers' speeding on a residential road in Taunton. [...]

[An unnamed resident] said there have been incidents where people have been hit by vehicles while crossing the road. He believes it is 'only a matter of time' before a child is seriously injured or even killed.

'My wife rushed to help a little boy who was knocked off his bike while crossing the road', he said.

'Nobody was at fault here, but that just goes to show how risky it is driving at excessive speeds here [...]

'Should we have speed bumps, speed cameras, or a 20mph speed limit? It's only a matter of time before a child is killed, in my opinion.'



Figure 18 Speed limit sign

Brenda Weston, a Labour councillor for the Priorswood area [...] added:

'I am a part of the 20's Plenty For Us campaign and I think Cheddon Road is an area that needs it.'

'There are a lot of older and young people who walk up and down the road. There are also a lot of cyclists, like myself, and they need to be protected. [...]

A spokeswoman for the 20's Plenty For Us campaign, a movement aimed to lower speed limits to 20mph in residential areas, believes a lower speed limit will help protect children crossing the road and has more than just safety benefits.

She said: '[...] 20mph means actual, and perceived fear of, harm to kids reduces. Stopping distances halve from 30mph to 20mph and survival rates rise by 7–10 with 20+ per cent fewer casualties.' [...]

(Taylor, 2020)

For many crimes, the victim is not (or not only) an individual, but society as a whole. For example, if there is a series of violent robberies in a town, the people who were robbed are the immediate victims. However, many other people in the town will feel less safe and may change their behaviour as a result.

5.2 Myth?

Some crimes are victimless. For example, if a person drives along a quiet lane with a broken brake light, nobody else may be affected by their actions. Similarly, someone who grows cannabis for their own use in their own home is unlikely to harm anyone else. Nonetheless, both have committed crimes.



Figure 19 Police cannabis-disposal team

5.3 Mixture?

Many crimes have victims, and the most serious crimes cause grave harms to their victims. However, that is not true of all crimes. And sometimes, it is unclear who is really the victim of a crime.

Activity 10 Who is the victim?

 Allow 15 minutes

Alex and Sam get drunk, argue, and then exchange blows outside a nightclub. Which of them is the victim of a criminal assault, and why?

Provide your answer...

What if Alex struck the first blow: does that change your view? Why?

Provide your answer...

What if Alex struck first, but only after Sam made provocative remarks and gestures?

Provide your answer...

What if Sam started the fight, but Alex turned out to be a much better fighter? By the end of the fight, Alex had a few minor bruises but Sam was seriously injured.

Provide your answer...

Comment

It is not easy to identify the victim in this scenario, and views may change in light of the extra information. It is arguable that neither party was a victim of crime, that both were, or that the victim changed according to the facts. There is no right answer here.

In the next section you will explore what happens when individuals are convicted of a criminal offence and whether they are 'let off' without prison sentences.

6 'Convicted criminals are let off without prison sentences'

You have probably seen headlines talking about criminals who 'escaped prison' or calling for 'tougher sentences'. It might seem that a lot of criminals are being 'let off' rather than sent to prison. This section will look at how the courts punish people convicted of crimes, in order to explore whether that is true.



Figure 20 Behind Bars

Activity 11 HM Prison and Probation Service

 Allow 5 minutes

Fill in the gaps in the paragraph below using the following words and numbers: 12, 13, 117, *one-third*, *one-quarter*, *crowded*, *trial*.

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6.1 Truth?

Most people convicted of a crime do not go to prison. In the year to March 2020, over a million people were convicted of offences. Only 7 per cent were imprisoned; 78 per cent were fined (Ministry of Justice, 2020a).

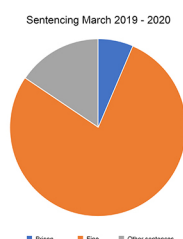


Figure 21 Pie Chart

6.2 Myth?

Most people who did not go to prison were not 'let off'. Prison is only one punishment available to the criminal courts and is usually not the most appropriate one. The majority of offenders were convicted of motoring offences or other minor offences. Even for more serious crimes, a prison sentence may not be the best way of punishing the offender.

6.2.1 Sentences

The court has a range of sentences to choose from. Imprisonment is one of these, but other punishments include:

- a suspended sentence: the person does not actually go to prison if they commit no further offences over a set period of time
- a community sentence, e.g. unpaid work in the community or supervision by a probation officer, or participation in an alcohol- or drug-treatment programme
- a fine: a financial penalty paid to the court
- disqualification from an activity such as driving or being a company director
- an order relating to treatment for mental illness
- a conditional discharge: the person is not punished now, but if they commit a further offence within a certain period of time they will be punished for the current offence too.

6.2.2 Purposes of punishment

To decide whether a punishment is appropriate, it is important to consider its purpose. There are many reasons for punishing someone who has committed a crime, and this [interactive](#) considers the most important.

Now that you have read a little bit about the purposes of punishment, have a go at the activity below.

Activity 12 Sentencing Act 2020

 Allow 10 minutes

Match each of the items at the top to an item below.

Section 57(2) Sentencing Act 2020 (SA) lists the purposes of sentencing as:

The punishment of offenders

The reduction of crime (including its reduction by deterrence)

The reform and rehabilitation of offenders

The protection of the public

The making of reparation by offenders to persons affected by their offences

Match each of the items above to an item below.

Retribution

Deterrence

Rehabilitation

Incapacitation

Reparation

6.3 Mixture?

While most people convicted of crimes are not imprisoned, they are punished in other ways. However, punishment is often controversial. Appropriate punishments can be difficult to decide.

Box 10 Sentencing decisions

Listen to this discussion of how sentencing decisions are made.

Audio content is not available in this format.



6.3.1 You be the judge

Now that you have explored how and why people are sentenced, Activity 13 puts your knowledge into practice.

Activity 13 You decide the sentence



Allow 30 minutes

Mairead is 27 years old. She has many previous convictions for theft (shoplifting from supermarkets), including two in the past year. She has just pleaded guilty in the magistrates' court to stealing food and toiletries valued at £45 from her local supermarket. Mairead has recently completed a community order which included supervision by a probation officer. A pre-sentence report prepared for the court by the National Probation Service suggests she is likely to commit further offences. It

notes that she steals to supplement her income from benefits; she cannot work as she is a full-time carer for her disabled child.

Figure 22 Court and probation

What sentence do you think would be appropriate, and why?

Provide your answer...

Comment

The sentence you choose (e.g. a prison sentence, community sentence or fine) will depend upon which factors you consider to be important. Should the court prioritise deterring Mairead from committing further offences? Should it focus on incapacitating her from committing more thefts? Might rehabilitation be the best way of preventing future offences? Do Mairead's caring responsibilities affect your opinion?

Courts decide sentences using sentencing guidelines produced by the Sentencing Council (2020). Since Mairead was acting alone with little planning, and the items were worth under £200, the guideline sentence is a conditional discharge or fine. Do you think this is an appropriate sentence? Why (not)?

Provide your answer...

Comment

You might think that this sentence is appropriate for shoplifting of this value, especially taking into account Mairead's personal circumstances. However, is it appropriate for a frequently repeated offence?

The guidelines say that persistent offending might justify a community sentence or even imprisonment. However, being a sole carer for her child is a mitigating factor (i.e. one which might reduce Mairead's sentence).

Does this change your view of the appropriate sentence?

Provide your answer...

Comment

If you considered a fine or conditional discharge to be appropriate, you may not have changed your view. However, if you thought it was too lenient then you might use the guidelines to suggest a more severe sentence.

By pleading guilty early, Mairead saved public time and money and saved witnesses from coming to court. Now you have decided her sentence, the final step is to discount (i.e. reduce) it by one-third to recognise her guilty plea. For example, a £150 fine would be reduced to £100; a community sentence might be for one-third fewer hours or may be reduced to a fine.

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Comment

This type of case frequently comes before the courts. It can be difficult to balance all the factors and decide on an appropriate sentence.

You might consider whether criminal prosecution is the best answer here. Is it helpful to consider Mairead's thefts in isolation from their social context, including the level of financial and practical support she and her child receive?

In the last section, you will consider the differences between criminal and civil law: are they two different systems or is there some overlap between them?

7 'Criminal law and civil law are completely different'

One of the most important distinctions the legal system makes is between criminal and civil law. You will see that each has its own processes and purposes. However, is it true that they are completely different?



Figure 23 County Court



Figure 24 Old Bailey criminal court

Activity 14 Criminal or civil case?

 Allow 3 minutes

For each of the following, decide if they are potential criminal or civil cases.

1. Jennifer is accused of stealing a mobile phone.

.....

Answer

Criminal case

2. Pablo is dismissed from his job so that the manager's daughter can be given the role.

.....

Answer

Civil case

3. Brian buys a new washing machine which stops working after four days.

.....

Answer

Civil case

4. Samara punches her friend, causing a black eye, after an argument about their favourite band.

.....

Answer

Criminal case

7.1 Truth?

The criminal justice system is separate from the civil justice system. The two systems have different courts, procedures and parties. These differences reflect the distinct purposes they serve.

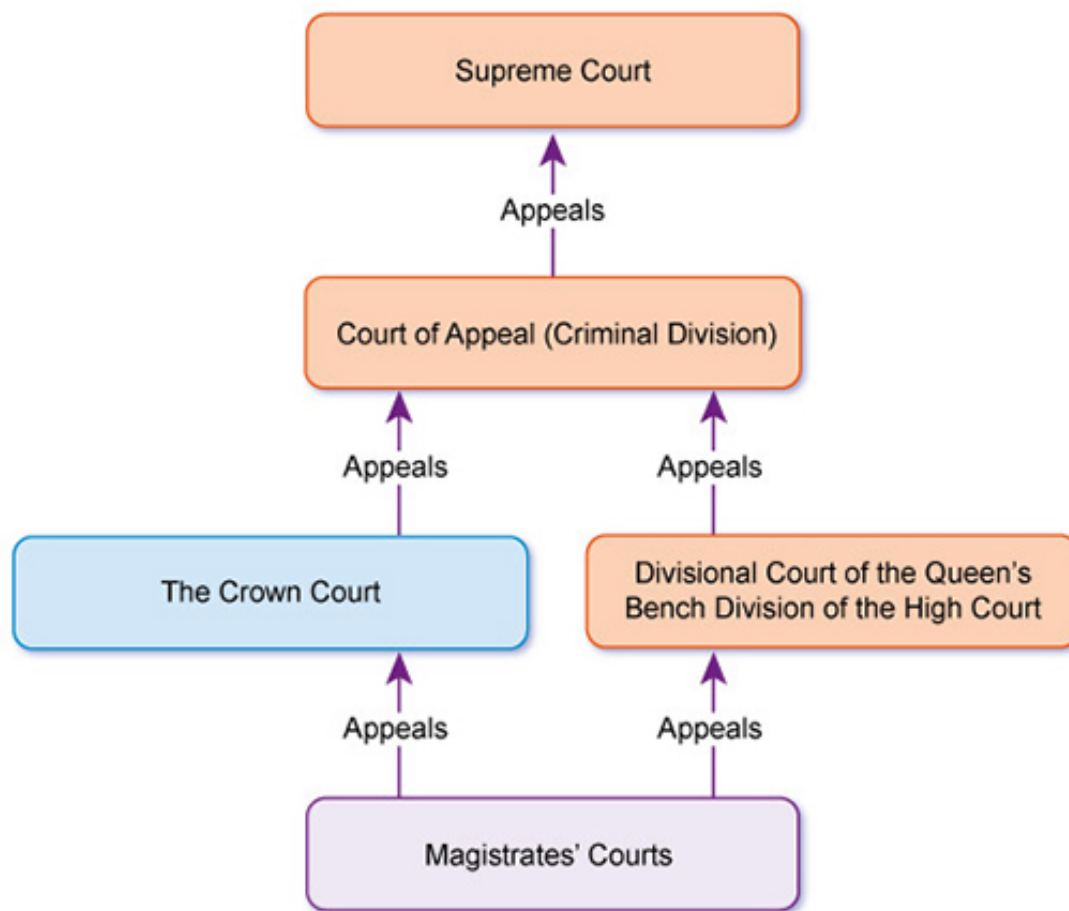
The purpose of the criminal justice system is to punish those who commit crimes. As explored earlier, many crimes have individual victims. However, crimes are also considered to have been committed against society as a whole. The prosecution is therefore brought by the state.

By contrast, the civil courts' purpose is to resolve disputes between individuals and put things right between the two sides, not to punish them. Typically, the person who is in the wrong is ordered to pay damages – a sum of money – to the other person. For example, if Zofia and Ahmad make a contract (a legally binding agreement) that Zofia will sell her car to Ahmad for £5000, but Ahmad only gives her £4000, the court may order him to pay the outstanding balance. Ahmad will then have the car and Zofia will have the full price, just as they had agreed. The court will not punish him with an additional fine.

The different purposes of the criminal and civil justice systems mean that there are important differences in the ways they operate. These include their courts, decision-makers, parties and levels of proof.

7.1.1 Different courts

All criminal cases begin in the magistrates' courts, and some of the more serious ones are transferred to the Crown Court, as Figure 25 illustrates.



- Appellate courts – hear only appeals against decisions of lower courts
- Courts of first instance – hear new cases
- Court of first instance and appellate court

Figure 25 The criminal court system

Decisions in magistrates' court cases can be appealed to the Divisional Court of the High Court, or to the Crown Court. Appeals from the Crown Court are heard by the Criminal Division of the Court of Appeal. Cases which raise points of particular importance may be appealed from the Court of Appeal to the Supreme Court, which hears appeals from both civil and criminal cases.

Before 2009, the highest court in the United Kingdom was known as the Appellate Committee of the House of Lords (usually referred to simply as 'the House of Lords'). In October 2009, it was replaced as the highest court by the Supreme Court. Older cases therefore refer to the House of Lords rather than the Supreme Court.

Civil cases are heard by different courts, as Figure 26 illustrates.

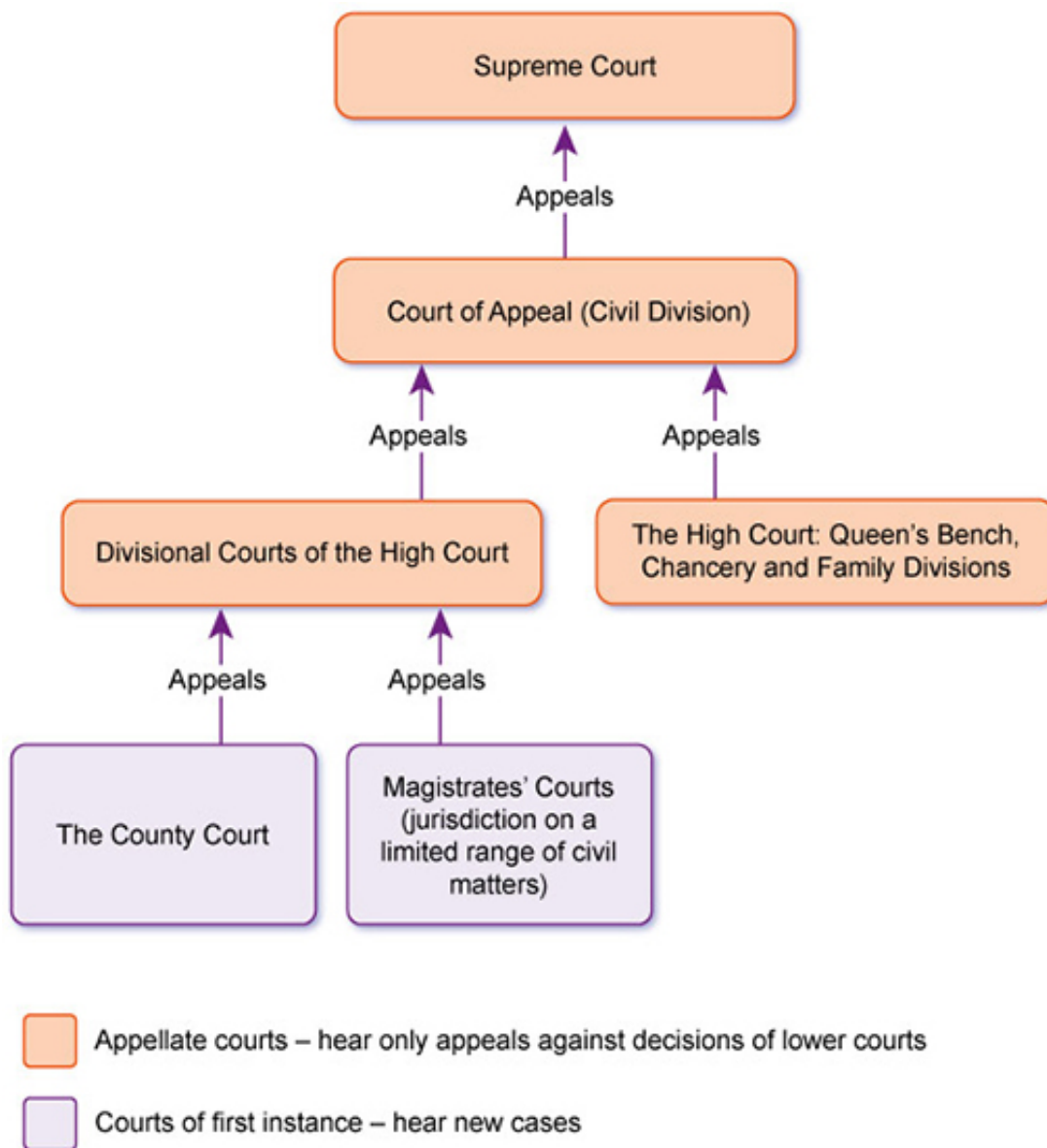


Figure 26 The civil court system

Most civil cases are heard in the County Court, while very serious or complex cases are dealt with by the High Court. The types of civil cases heard in magistrates' courts are very limited. They include alcohol-licensing appeals, enforcing council-tax demands, and certain family law proceedings.

Decisions in both County Court and magistrates' court cases can be appealed to the Divisional Courts of the High Court. Appeals from the High Court are heard by the Civil Division of the Court of Appeal. Cases which raise points of particular importance may be appealed from the Court of Appeal to the Supreme Court (before October 2009, formerly to the House of Lords), which hears both civil and criminal cases.

7.1.2 Different decision-makers

The criminal courts are concerned with wrongs done to the community as a whole. They therefore involve lay people (non-lawyers) from the community, who sit as jurors and magistrates.

Because the civil courts are concerned with private disputes between individuals, they do not need to involve lay people. Decisions are almost always made by legally-qualified judges.

Court decision-makers

Criminal courts	
Magistrates' courts	A panel of lay magistrates or a legally trained district judge decide questions of law and fact
Crown Court	A legally trained judge decides questions of law A lay jury decides questions of fact (i.e. whether the defendant is guilty or not guilty)
Civil courts	
County Court	A legally trained judge decides questions of law and fact
High Court	A legally trained judge decides questions of law and fact

7.1.3 Different parties

In a criminal case, the people on each side – the parties – are the *prosecution* and *defendant*. When the CPS brings a prosecution, it does so on behalf of the state. The defendant is the accused individual.

Criminal case names usually have the format *R v [Defendant]*. 'R' is short for Regina or Rex (Latin for Queen or King, the head of state). In other words, the prosecutor represents the Crown or state.

In a civil case, the parties are the *claimant* and *defendant*. The claimant is the person (or organisation) asking the court to order the defendant to do something. The defendant is the person (or organisation) against whom the claim is made.

Civil case names usually have the format *[Claimant Name] v [Defendant Name]*.

7.1.4 Different levels of proof

Burden of proof

The burden of proof is the obligation to prove the overall case or an element of it. The general rule in both criminal and civil cases is that whoever starts the case has the overall burden of proof. Therefore the prosecution has the burden of proof in a criminal case and the claimant has the burden of proof in a civil case.

Standard of proof

The standard of proof is the level to which the case has to be proved. The criminal standard is very different from the civil standard.

In a criminal case, the prosecution is brought by the state, which has huge powers and resources. By contrast, the defendant is usually an individual, whose liberty may be at stake. The standard of proof is therefore *beyond reasonable doubt*: the court must only convict the defendant if it is sure of their guilt.

In a civil case, the parties are (in theory, at least) more evenly matched. They are usually individuals or organisations, not representatives of the state. The standard of proof is therefore *on the balance of probabilities*: in order to win, the claimant must show their case is more likely than not to be true.

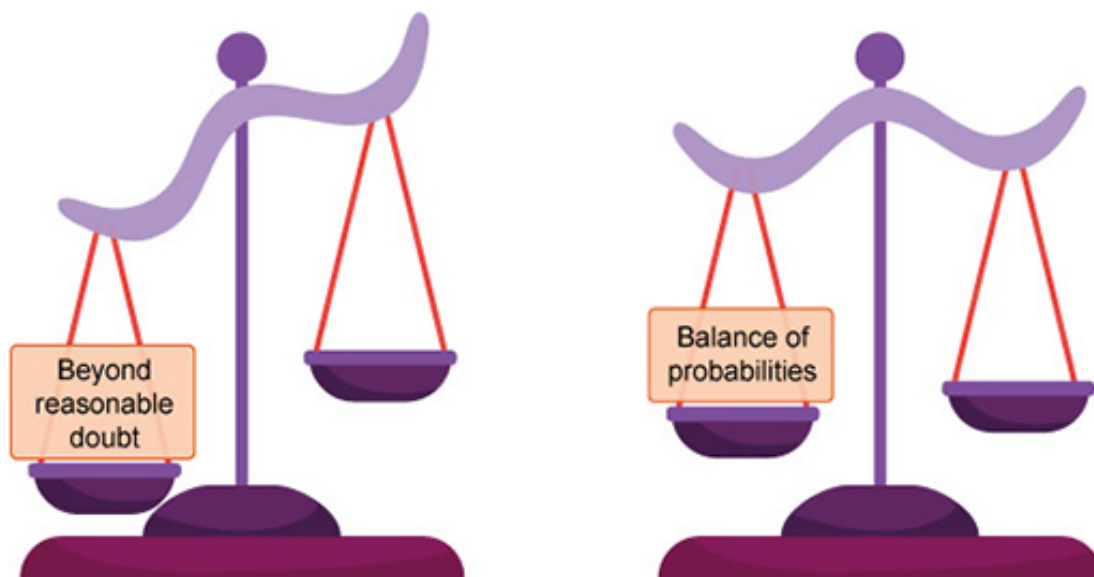


Figure 27 Standards of proof

7.2 Myth?

Civil and criminal law have different court systems and purposes, but they are not completely separate. In fact, they are often dealing with the same or overlapping situations.

In order to understand how criminal and civil justice overlap, this section will follow a case study from the original event to the end of legal proceedings.

7.2.1 A case for the courts

The case study begins with an incident described in Box 11.

Box 11 The facts

Shanice was driving to work at 8 a.m. on 5 March at the same time that Arjun was driving his young children to school. The children started arguing in the back seat. Distracted by their shouting, Arjun failed to notice Shanice's car approaching as he made a right turn. His car hit hers, causing damage to both cars.



Figure 28 Police at an accident scene

The police and an ambulance attended the scene, where Arjun admitted what had happened. Shanice suffered a concussion and broken ribs. She had to take four weeks off work to recover.

7.2.2 In the criminal court

The car accident will lead to proceedings in both the criminal and civil courts. You will consider the criminal case first.

Activity 15 In the criminal court

 Allow 5 minutes

A few weeks after the accident, Arjun receives a magistrates' court summons for careless driving contrary to Section 3 of the Road Traffic Act 1988 (RTA).

The purpose of the criminal proceedings is to:

- Punish Arjun for his conduct
- Compensate Shanice for her injuries and financial losses

Comment

The purpose of the criminal prosecution is to punish Arjun.

Arjun pleads guilty at the first hearing. This means that there will not be a trial but the court will sentence him. Who will decide his sentence?

- A panel of magistrates
 - A district judge
 - Either a panel of magistrates or a district judge
 - A jury
-

Comment

In the magistrates' court, either a panel of magistrates or a district judge decides the sentence. A jury only sits in the Crown Court, where it decides the verdict but not the sentence.

Arjun is fined and receives six penalty points on his driving licence. He is not ordered to pay compensation: the criminal court does not usually make a compensation order in a road-traffic accident case.

7.2.3 In the civil court

While the criminal court has punished Arjun for his careless driving, it has not compensated Shanice for her injuries or financial losses. She will therefore need to start a civil case.

Activity 16 In the civil court

 Allow 2 minutes

The purpose of the civil court proceedings is:

- To punish Arjun for his careless driving
 - To compensate Shanice for her injuries and financial losses
 - Both to punish Arjun and to compensate Shanice
-

Comment

The purpose of civil proceedings is compensation, not punishment.

Shanice brings a claim for the civil wrong of negligence. A person is negligent if they fail to take reasonable care and, as a result, cause loss, harm, or injury to someone else. The central question will be similar to that in the criminal court: whether Arjun's driving was of an adequate standard. Arjun's guilty plea in the magistrates' court can be used as evidence in the civil case.

The civil court will not punish Arjun. It will order him to pay compensation to Shanice. That compensation will include an amount for the pain and suffering her injuries caused her, as well as the cost of repairing the damage to her car, any wages she lost, and any expenses she incurred as a result of the accident.

7.3 Mixture?

The criminal and civil legal systems have different aims and purposes, different laws, and different courts. However, they also overlap: the same incident can give rise to both civil and criminal proceedings.

You have now considered a number of common myths about criminal cases and the criminal courts. You will have a final opportunity to reflect on your thoughts about the criminal justice system in the last section.

Conclusion

In this course you have considered how the criminal justice system differs from its popular image. By exploring a number of common myths and considering whether they are true, you have considered the court system and the people who work in it, as well as the purposes of criminal law and punishment.

Take a moment to reflect on how your impressions of the criminal law and courts have started to change. At the start of this course, you associated the following symbols with criminal justice:

Reflection point

Has the meaning of those symbols changed at all for you? Do you have a different image of Lady Justice now?



Figure 29 Equality and balance

You should now be able to:

- explain some key features of the criminal justice system
- describe some key features of the criminal law
- understand the truth about the biggest myths around criminal law and the criminal courts.

This OpenLearn course is an adapted extract from the Open University course [W111 Criminal law and the courts](#).

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