

## Criminal Law Fact Sheet

### What is criminal law?

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Murder, fraud, drugs, sex, robbery, drink driving....stories of people committing crimes fills the news headlines every single day. It is an area of law which captures the imagination and is the inspiration for a huge number of TV shows and films. The criminal law would govern how Luther can prove his cases, whether Steven Avery (TV show Making a Murderer) should be released from jail and what James Bond is allowed to do.

The criminal law is an incredibly important pillar of society and is the principal area of law which relates to prohibited conduct in society. When the Government takes steps to ban certain actions, they create crimes (known as criminal offences). The “criminal law” has many roles and here are three key examples:

**i. Defining criminal offences** i.e. specifying exactly what the public is not allowed to do or must do in certain circumstances. This may sound simple but it very rarely is. For example, it probably sounds quite easy to define theft or stealing... taking someone else’s property without their permission is a simple way of framing it, isn’t it? However, this simple explanation would mean that borrowing your mum’s coat to run to the shop would be a criminal offence. That is why in order to commit the criminal offence of theft; you must (a) “dishonestly” take someone else’s property AND (b) never intend to give it back.

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**ii. Maintain rules that apply to the investigating authorities**, for example the police, when they are investigating a crime that they suspect an individual or a company has committed. This is to prevent the police using unfair means to prove someone's guilt and to prevent intentional misconduct and abuse. This can range from ensuring that interviews are recorded in a specified format to preventing the police withholding documents that will undermine their case against the accused. Miscarriages of justice are being commonly investigated by the mainstream media (particularly after shows like Making a Murderer) and often they will centre around the conduct of the investigators and whether they adhered to the rules talked about here.

**iii Developing and maintaining rules of evidence** is the area which sets out how the accused and the prosecution are allowed to present their case. This is a tricky area with many hard decisions to be made about whether allowing one side to present certain evidence is unfair or not. If you heard a saying that they saw the headmaster stealing a television from the school, you might think your account is strong evidence which should go before the court. In fact, this is a complicated question and is what lawyers refer to as "hearsay" evidence.

The rules around "hearsay" are designed to prevent an unfair situation for one side. In this example, the headmaster would want to question the teacher who said this but would not be able to if it was only you telling the court about what you had heard. If allowed to question the teacher directly, the headmaster may be able to show that they might not be telling the truth – for example, that the

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teacher in question has a grudge against him or even that the teacher was in Spain at the time of the theft, so couldn't possibly have seen who did it!

There are a vast range of criminal offences: from theft or careless driving to murder or multi-million pound frauds. If the police and the body they work alongside (the Crown Prosecution Service or CPS) decide that it is likely that there is enough evidence to convict the suspect at trial, they will "charge" the suspect with a criminal offence. If this happens and the matter proceeds to trial, the accused will be found either guilty or not guilty by a judge or a jury (depending on the type of case). If they are found guilty, the offender will be sentenced, which sometimes includes going to prison.

### Acting as a solicitor in a criminal case

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Broadly speaking, a criminal solicitor will either:

- a. Represent the client denying the allegations – here they are known as the 'defence solicitor'; or
- b. Represents "the Crown" in trying to convict the individual, on behalf of the country / the Queen – the solicitor here will be known as the prosecutor or 'prosecution'.

The defence solicitor can advise at all stages: before arrest, during police interviews, before a charging decision is made and at every stage of the trial and appeal. They ensure the client's legal rights (as set out in the criminal law – as mentioned above) are protected throughout this process and help to present the accused's explanation and version of events to the court. Both of these are necessary to ensure that the defendant has a "fair hearing".

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Unlike in the USA, most people accused of a crime in the UK will be represented by both a solicitor and a barrister. The solicitor is the representative from the outset i.e. by attending the police station or even assisting the client with an investigation before an interview. A criminal defence solicitor is the client's main point of contact and usually oversees the conduct and organisation of their case. A criminal barrister's role on the other hand, is largely concerned with presenting the accused's case in court – a barrister wears a wig and gown, solicitors generally don't. A defence solicitor is also always on hand to advise the accused throughout the process and will assist the barrister in preparing for the trial.

One of the most important aspects of a criminal defence solicitor's role is to obtain evidence to support the client's case. The process will initially involve talking to the client in great detail about the events in question, in order to understand exactly what they say happened and what their comments are in relation to evidence provided by the investigators. Once the accused's account (i.e. their version of events) has been fully understood, a solicitor will look to find as much evidence as possible to help to prove what their client has told them. This can include a bit of detective work and can be done in many ways. Some common examples are:

1. Reviewing email, text, WhatsApp, Snapchat and Facebook correspondence;
2. Interviewing supporting witnesses and drafting their statements;
3. Instructing experts to advise on aspects of the allegation, for example:

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- a. A technical expert to determine the client's or a witnesses location using their phone data;
- b. A handwriting expert to show who wrote or signed an important document;
- c. A doctor to provide evidence on an injury and how it occurred;
- d. A car collision expert to review tyre marks and work out how fast a car was travelling when it braked;
- e. A video expert to enhance and enlarge CCTV footage

### Key topics covered by this area of law

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- Police station representation
- Sexual offences
- Fraud
- Bribery and Corruption
- Cyber crime
- Driving offences

### What skills does a criminal lawyer need?

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Criminal lawyers are needed at a very stressful and challenging time in the a client's life. Therefore, a criminal solicitor needs to have strong communication skills, show empathy and be able to explain complicated issues clearly. The stakes are high so it is important that the lawyer considers every avenue and fights every battle for their client.

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### Recent updates and cases

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- In June 2018, the government created the new offence of “upskirting”, which is when someone takes a photograph up someone’s skirt without their permission.
- The police are investigating possible corporate manslaughter charges relating to the fire in Grenfell Tower.
- In the last few months of 2017, there were a series of rape trials which collapsed part way through because important evidence (for example, evidence on a complainant’s phone) was discovered, which cast doubt on the allegations and hadn’t previously been given to the accused. This has led to the police apologising for the way it has handled some cases and the government has conducted an inquiry into the failings.
- In September 2017, Charlie Alliston was found guilty of “wanton and furious cycling” (an offence from 1861), when he knocked over and killed a woman as he sped through London on an adapted ‘fixie’ (a fixed gear bike with no front brakes). He was (only) sentenced to 18 months in prison and this has prompted the government to announce a possible change in the law.
- In March 2018, Ant McPartlin pleaded guilty to drink driving and was fined £86,000 – the biggest ever fine for this crime – after the court was told that he earned £135,000 a week.

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### Key pieces of law

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#### Criminal Damage

There are three different criminal damage offences contained in the [Criminal Damage Act 1971](#):

1. Simple criminal damage (under s.1(1) CDA 1971)
2. Aggravated criminal damage (under s.1(2) CDA 1971)
3. Criminal damage by arson (under s.1(3) CDA 1971)

We will look at the first two for the purposes of this note.

### Offence definitions

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In order to have committed the crime of criminal damage, the offender must have done something which fits into the following definitions:

1. S.1(1) Criminal Damage Act 1971 ('simple criminal damage') sets out that a person is guilty of criminal damage if they intentionally or recklessly destroy or damage property belonging to another without lawful excuse.
2. S.1(1) Criminal Damage Act 1971 ('aggravated criminal damage') sets out that a person is guilty of aggravated criminal damage if, without a lawful excuse:

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- a. They intentionally or recklessly destroy or damage property belonging to themselves or another person; AND
- b. In doing so, intentionally or recklessly endanger the life of another person.

### ***“Actus Reus” and “Mens Rea” of the offence:***

In order for a person to have committed a criminal offence, they must commit both the “actus reus” and the “mens rea”. These are Latin terms:

- A. The “actus reus” element of the crime is the physical act necessary to commit the crime i.e. ‘the act’.
- B. The “mens rea” is the mental element necessary to commit the crime i.e. to show what someone was thinking when they committed the crime.

### ***Actus Reus – criminal damage:***

**Simple criminal damage** – this can be broken down into a number of essential elements. In order for someone to be guilty of this act, their actions must:

1. Destroy or damage;
2. Property;
3. Belonging to another.

**Damage** – case law (i.e. decisions of previous court cases) has shown that “damage” can have quite a wide definition. This includes permanent or temporary physical harm, as well as impairment of value or temporary loss of use. As an example, if expense has been incurred in restoring the property to its former state, this will constitute criminal damage.



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**Property** – is often quite a simple question and is simply defined by the Criminal Justice Act 1971 as ‘property of a tangible nature’ (i.e. able to be seen or physically touched). The Act gives further examples of ‘property’ but it is too detailed to go into here. Belonging to another - the Act also defines ‘belonging’ as, essentially, either (a) when someone has custody of or control of property, or (b) having legal ownership of the property.

**Aggravated criminal damage** – some of the elements of simple criminal damage are repeated here. In order for someone to be guilty of aggravated criminal damage, their actions must:

1. Destroy or damage;
2. Property;
3. Belonging to themselves or another;
4. Endanger the life of somebody else.

The considerations for (1) and (2) are the same as for simple criminal damage (as above). (3) is also the same, except that the property being damaged or destroyed does not have to be somebody else’s – it can be the property of the person doing the damage.

Endanger the life of somebody else – this is the part of aggravated criminal damage which distinguishes it from simple criminal damage. The aggravating factor is that life is endangered by the destruction or damage to the property. For example the cutting of electricity cables leaving live wires exposed or destroying a wall which could cause the roof to collapse on someone. However, the courts have made it clear that the danger to

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life must result from the destruction or damage to the property itself. It is not sufficient that the danger came from the act which caused the destruction or damage. For example, it would not be aggravated criminal damage if someone shot a bullet through a window which either before or after hit someone.

### *Mens rea – criminal damage*

**Simple criminal damage** – the mens rea of simple criminal damage consists of either intending to destroy or damage property belonging to another or destroying or damaging property through a reckless act.

The courts have decided that a person acts recklessly when they:

- a. Are aware of a risk that exists or will exist; and
- b. Unreasonably goes on to take that risk.

However, a person will not be committing the offence if, due to their age or personal characteristics, they genuinely did not appreciate or foresee the risks involved in their actions. Note, the question to be answered, is not whether the reasonable man would have been aware of the risk, but whether the accused person was aware of the risk.

*What about if the person has taken drugs or is drunk?* If it is alleged that the person intended to cause damage / destruction of the property, then self-induced ('voluntary') intoxication can be relevant to intent. However, if it alleged that they acted recklessly, voluntary intoxication is not relevant. Failure to see a risk provides no defence when the failure results from voluntary intoxication.

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**Aggravated criminal damage** – the first stage when considering the mens rea of aggravated criminal damage is to ask whether they meet the points outlined above in relation to simple criminal damage. These must be met before considering the heightened ‘aggravating factor’ of endangering someone’s life.

If it is shown that the person either intentionally or recklessly destroyed or damaged someone else’s property, then the second element of the offence must be considered. Did the accused person actually intend that the destruction / damage of the property would endanger someone’s life or were they reckless as to whether human life might be endangered? The same considerations as to recklessness and whether the intention or recklessness was affected by drugs or drink apply – as set out above.

*Please note: The materials on the resources pages are in no way purporting to be a comprehensive analysis of any of the areas of law they cover. They provide a high level overview of various legal concepts which the students will be tested on for the purposes of the Legal Apprentice competition.*