

SAMPLE

Legal Studies
Teach Yourself Series
Topic 6: Key Features of Criminal Law

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Contents

Key Features of Criminal Law	3
Initial terminology	3
As it appears in Units 1 & 4	3
Criminal Law characteristics	3
As it appears in Units 1 & 4	3
The Principles of Criminal Law	4
Review Questions	
Criminal Law Pre-trial procedure	
As it appears in Units 1 & 4	
Review Questions	
Criminal Law Trial procedure	
As it appears in Unit 1	
Review Questions	
Criminal Law Sanctions	
As it appears in Units 1 & 4	
Review Questions	
Criminal Investigations	
As it appears in Unit 1	
Review Questions	
Crimes against the person	
As it appears in Unit 1	
Murder	
Manslaughter	
Defensive Homicide	
Infanticide	
Rape	
Culpable Driving	
Dangerous Driving	
Incest	
Assault	
Defences to crimes	
Review Questions	
Crimes against property	
As it appears in Unit 1	
Theft	
Robbery	
Burglary	
Review Questions	
Solutions to Review Questions	6

Key Features of Criminal Law

Our legal system categorises laws into criminal and civil law. Criminal law is concerned about the rights of society and how society deals with breaches of those criminal laws.

Initial terminology

As it appears in Units 1 & 4

In TYS1 the concept of why laws are needed were discussed and in TYS2 reasons why laws need to change were introduced. These reasons apply to criminal law and criminal law.

During your study of criminal law you will be required to study two specific areas of criminal law:

- Crimes against the person
- Crimes against property

You are also required to evaluate crime statistics and rates of recidivism (re-offending) and sentencing trends, comparing sentencing trends in Victoria with those in one other country.

A breach of a criminal law is referred to as a crime. A crime is where a person commits an act or an omission (fails to act) that harms society.

Criminal Law characteristics

As it appears in Units 1 & 4

Criminal law is needed because:

1. Laws establish a code of acceptable behaviour – they set the boundaries of what society agrees is acceptable behaviour and what will be tolerated. An example of this concept is the recent changes to road rules known as ‘hoon driving laws’. Society attitude to this type of driving was deemed unacceptable so the law was changed.
2. Laws aim to protect society and its citizens from harm – we all expect to be able to go about our daily lives and be protected, as well as having our home and possessions protected. Laws prohibit violence against others, such as rape and murder; laws prohibit vandalism, theft and arson. We also have laws to protect ourselves from harm because we don’t always know what is best for ourselves – such as laws requiring cyclists to wear helmets.
3. Once laws have been put in place that set boundaries and guidelines for acceptable behaviour it is hoped that all members of society will abide by these laws. However, human nature tells us that some people will break these laws. The law needs to have a mechanism in place to deal with those who break these laws.

Laws are made to create the police force and give them the power to investigate crimes, interview suspects, search people and places and arrest people. In 2010, a new law was created to give police greater power to search people with a view to stopping knife violence.

Laws are also made to establish courts and tribunals to deal with criminal and civil disputes. Courts are granted a jurisdiction that allows them to hear certain disputes. In 2010 a law was passed to establish the Mental Health List – a division of the Magistrates Court that deals with crimes where the suspect has a recognised mental illness.

Laws are also needed to determine the penalties or sanctions to be imposed upon those found guilty of committing a crime. In response to a sentence of six years imprisonment for Thomas Towle, the Victorian Parliament passed a law increasing the minimum sentence for the crime of culpable driving to 10 years.

4. Laws are also needed to reflect our changing views and values. As society evolves our laws need to be changed to reflect these changing views. An example is the law passed in 2009 removing abortion as a crime. Previously abortion had been a crime but society's views had changed so the law was changed to reflect the views of society.

The Principles of Criminal Law

There are a number of key principles upon which all criminal law is based. These principles are:

- A person must be of a certain age to be charged with a crime. This is known as the age of criminal responsibility. A child under the age of 10 is deemed incapable of understanding the consequences of their actions and therefore cannot be charged with a crime. Between the ages of 10-14 a child is deemed to lack the mental capacity to commit a crime but they can be charged if it can be proven they knew what they were doing. Over 14 a child will be charged as an adult would.
- As criminal laws are made on behalf of society it is society who is responsible for bringing the accused person to court
- Because society is bringing the accused to court, society bears the burden of proof – they must prove that the accused has committed the crime they have been charged with.
- When society brings the dispute to court they are referred to as the prosecution
- The prosecution must meet the necessary standard of proof to be successful. This standard of proof is 'beyond reasonable doubt'. This means that there is no reasonable doubt that the accused committed the crime.
- The accused party is called the defendant
- The prosecution is seeking a sanction to be imposed on the defendant
- A sanction is designed to protect society, punish the offender, rehabilitate the offender, deter others and denunciate the criminal.
- A crime can result from an act or an omission by the defendant
- If the prosecution proves their case the defendant is found guilty
- Juries are always used in a criminal trial in the County and Supreme Courts
- A jury will comprise 12 jurors, with 15 sometimes used for cases expected to last a long time.

- A jury's role is to determine if the defendant is guilty or not guilty of the crime they have been charged with.
- An accused person is presumed to be innocent until proven guilty in court

To be found guilty of committing a crime, the prosecution must prove that two elements were present:

- ✓ Actus rea – 'a guilty act', the person did commit a wrongful act
- ✓ Mens rea – 'a guilty mind', the person charged with the crime intended to commit the crime (in other words, they knew what they were doing was wrong).

There are exceptions to proving both the actus rea and the mens rea. These are referred to as strict liability crimes. A guilty mind does not have to be proven as the act is sufficient to prove guilt. These crimes tend to be breaches of road laws such as speeding and drink driving.

Crimes can be classified as either:

- Summary offences – a minor criminal offence heard in the Magistrate's Court. The court will issue a summons as a means of bringing the accused to court.
- Indictable offences – more serious offences generally heard in the County or Supreme Courts using a judge and a jury of 12. Accused persons are often held on remand while awaiting trial

A person charged with a crime will be identified according to the role they played in the commission of the crime. There are considered to be three possible participants in a crime:

1. Principal offender – person who actually commits the crime
2. Abettor – person who aids, abets, counsels or procures the commission of the crime
3. Accessory – person who assists the principal offender by impeding the apprehension, prosecution or conviction of the principal offender.

Solutions to Review Questions

- The standard of proof in a criminal matter is beyond all reasonable doubt and the onus lays with the prosecution to show that the defendant is guilty.
- A summary offence is a minor offence such as a traffic offence, heard in the Magistrate's Court whereas an indictable offence is a more serious offence such as murder. Traffic offences are tried in the higher courts, before a judge and jury.
- The role of the jury in Peter's case is as follows:
 - To listen to the evidence and decide if the accused is guilty or not
 - Must reach a unanimous verdict
 - Must determine if the accused is guilty beyond reasonable doubt, otherwise they must return a verdict of not guilty.

4.

Feature	Criminal Law	Civil Law
Purpose	Protect society as a whole	Protects individual rights
Party bringing the dispute for resolution	Society	Person whose rights have been infringed
Party holding the burden of proof	Prosecution	Plaintiff
Party defending the claim	Defendant	Defendant
Term to describe wrong by defendant	Crime	Wrong
Burden of proof	Prosecution	Plaintiff
Standard of proof	Beyond reasonable doubt	Balance of probabilities
Verdict	Guilty or not guilty	Liable or not liable
Use of a jury	Jury of 12 in County and Supreme Courts	Optional jury of 6
Outcome	Sanction	Remedy

- Bail allows an accused party to remain free until their trial. They can then work to prepare their case for trial.
- When selecting a jury, challenges may be made by the prosecution and the defence that will bar a potential juror from sitting on the jury. A cause challenge is a challenge when there is a reason why the prospective juror should not sit on the jury (both sides have unlimited cause challenges in criminal cases). A preemptory challenge is when there is no reason for the challenge. (both sides are allowed six challenges without a reason)
- A Committal Hearing is a pre-trial procedure, which is held in the Magistrates Court to determine if there is sufficient evidence, to take the matter to a higher court and gain a conviction.