

2022 UNIT SPECIFICATION

Title:	(Unit 11) Criminal Litigation
Level:	3
Credit Value:	7

Learning outcomes	Assessment criteria	Knowledge, understanding and skills
The learner will:	The learner can:	
<p>1. Understand the powers of the police to arrest and detain a person for the purpose of investigating a criminal offence</p>	<p>1.1 Explain the requirements of a lawful arrest</p>	<p>1.1 S.24, 24A, 28, 30, 117 Police and Criminal Evidence Act (PACE); Code G: power of and grounds for arrest including necessity criteria; record of arrest;</p> <ul style="list-style-type: none"> reasonable force. Eg: <u>O'Hara v Chief Constable RUC</u> (1997) AC 286: Reasonable grounds requirement under s.24 is applied in accordance with a two-part test from this case. Eg: <u>Elkington v Director of Public Prosecutions</u> (2012) EWHC 3398 (Admin): Use of force when arresting/reasonable grounds for arrest. Eg: <u>Pegram v Director of Public Prosecutions</u> (2019): Use of force to attract attention to give warning not to commit an offence.

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	<p>1.2 Identify the circumstances in which a person may be searched at the time of arrest</p> <p>1.3 Explain the implications of an unlawful arrest</p> <p>1.4 Explain the role of the custody officer</p>	<p>Procedure on arrest to include: fact of arrest, reason for arrest, caution, suspect taken to police station. Eg: <u>Adler v Crown Prosecution Service</u> (2013) EWHC 1968 (Admin). Human Rights Act 1998: s.6; European Convention on Human Rights: Art 3 – prohibition of torture and inhuman or degrading treatment; Art 5 – right to liberty and security of the person, the right not to be arrested/detained by the police without lawful authority.</p> <p>1.2 S.32(1)-(4) PACE. HRA 1998: s.6; ECHR: Art 3 – prohibition of torture and inhuman or degrading treatment; Art 8 – right to respect for private life.</p> <p>1.3 S.78, s.82(3) PACE: challenge to admissibility. Unlawful arrest can be remedied. Eg: <u>Lewis v Chief Constable of Essex Police</u> (1991) 1 All ER. HRA 1998: s.6; ECHR: Art 3 – prohibition of torture and inhuman or degrading treatment; Art 5 – right to liberty and security of the person, the right not to be arrested/detained by the police without lawful authority; Art 8 – right to respect for private life.</p> <p>1.4 In relation to:</p> <ul style="list-style-type: none"> • completing the custody record; • informing the suspect of rights; (Code C) • Undertaking a risk assessment (Code C) • Identification of detainees who might be ‘vulnerable’; Code C factors; need for Custody Officer to take proactive steps.
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	<p>1.5 Explain the time limits for detaining a suspect without charge</p> <p>1.6 Explain the rights of a detained suspect and the treatment of vulnerable suspects</p>	<ul style="list-style-type: none"> • seizing and/or retaining personal items; • the decision to charge; • s.34, s.37, s.39, s.54 PACE; Code C. <p>1.5 S.40 PACE: periodic reviews; s.41, 42, 43 PACE: time limits and criteria for extending.</p> <p>1.6 PACE and Code C (2018). Revised Code C Police and Criminal Evidence Act 1984 (Codes of Practice) (Revision of Codes C, E, F and H) Order 2018</p> <ul style="list-style-type: none"> • S.56 PACE; Code C: right to inform someone of arrest; • criteria for delaying the right; s.58 PACE; Code C: right to legal advice; • criteria for delaying the right; • right to an interpreter if suspect is deaf or has speech difficulties (Code C) • Right to interpreter and translation facilities where applicable (Code C) <ul style="list-style-type: none"> • Right to consult the Codes of Practice • Code C: right to basic comforts including medical attention, rest and breaks; • Code C: presence of appropriate adult where suspect 'vulnerable' and effect of revised Code C (2018) • HRA 1998: s.6; ECHR: Art 3 – prohibition of torture and inhuman or degrading treatment; Art 5 – right to liberty and security of the person, the right not to be
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	<p>1.7 Explain the effect of a failure to comply with any of the requirements relating to both the custody officer's role and the time limits for detaining without charge</p> <p>1.8 Explain the rights of a person attending voluntarily at a police station to assist with an investigation</p>	<p>arrested/detained by the police without lawful authority.</p> <p>1.7 S.78 PACE: challenge to admissibility. HRA 1998: s6; ECHR: Art 6 – right to a fair trial.</p> <p>1.8 S.29 PACE; Revised PACE Code C 2018:</p> <ul style="list-style-type: none"> • requirements for questioning including: • Free to leave at any point unless arrested (s29 PACE) <p>Revised Code C (2018):</p> <ul style="list-style-type: none"> • Must be cautioned; • Must be told they are not under arrest; • Must be informed about purpose of voluntary interview; • right to information about the offence; • right to free and independent legal advice; • right to an interpreter; <p>access to appropriate adult if vulnerable or juvenile;</p>
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	<p>1.9 Explain the requirements for the proper conduct of an interview of a suspect</p> <p>1.10 Explain the effect of a failure to comply with any of the requirements for the proper conduct of an interview</p>	<p>1.9 Provisions relating to the conduct of interviews to include: location of interview (Code C);</p> <ul style="list-style-type: none"> • cautioning (Code C), limit on the right to silence (eg: unreasonable failure to mention during questioning a fact which is later relied on at trial) eg: <u>R v Karapetyan</u> (2013) EWCA Crim 74 and the meaning of an adverse inference being drawn (s.34 CJPOA); • ‘use of oppression’ (s.76 PACE); • Code C); • inducements to confess (Code C) and safeguards relating to confessions (s.76, 78 PACE); • fitness to be interviewed (Code C); appropriate adult present (Code C); • physical environment (Code C); • access to legal advice (Code C); • interview recording and transcript (Code E) • revised PACE Code E (2018) requirement for all interviews to be recorded using an authorised recording device; could include footage from body worn cameras <p>1.10 S.78 PACE: challenge to admissibility. Eg: <u>R v Dunn</u> (1990) 91 Cr App R 237: defendant will have difficulty in challenging the admissibility of a confession under s.76 and/or s.78 PACE which has been obtained in the presence of a legal adviser. <u>Note: R v Mason</u> (1998) 1 WLR 139: the position is different if the solicitor was misled by the police.</p>
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	<p>1.11 Explain the circumstances in which a suspect may be charged</p> <p>1.12 Explain the nature of police bail and the circumstances in which it may be refused</p> <p>1.13 Identify the conditions that may be attached to police bail</p> <p>1.14 Explain the measures for safeguarding the suspect when obtaining identification evidence</p> <p>1.15 Explain the effect of a failure to comply with the rules in obtaining identification evidence</p> <p>1.16 Apply an understanding of the police powers in respect of arrest, detention and questioning to a given situation</p>	<p>1.11 S.37 PACE; Code C.</p> <p>1.12 Pre-charge bail – case to CPS for charging decision (s37(7)(a) PACE</p> <p>Pre-charge bail – all other cases: (s.54 Policing and Crime Act 2017 inserting s47ZA-K into PACE 1984): allowing “Release under investigation” (RUI)</p> <ul style="list-style-type: none"> • post-charge bail (S.38(1) PACE <p>1.13 S.47 PACE.</p> <p>1.14 Procedures for conducting identification parades (Code D) Annex B and identification by video (Code D Annex A);</p> <ul style="list-style-type: none"> • taking fingerprints (s.61 PACE) and photographs (s.64 PACE); • obtaining intimate (s.62 PACE) and non-intimate (s.63 PACE) samples. <p>1.15 S.78 PACE.</p> <p>1.16 Application to a scenario.</p>
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<p>2. Know the principal functions and features of the magistrates court and the Crown Court in relation to criminal proceedings</p>	<p>2.1 Explain how offences are classified and how the type of offence determines procedure at the allocation hearing</p> <p>2.2 Identify the underlying principles and main functions of the magistrates' court</p> <p>2.3 Identify the underlying principles and main features of trial in the magistrates' court</p> <p>2.4 Identify the principal functions of the Crown Court</p> <p>2.5 Identify the principal features of trial in the Crown Court</p>	<p>2.1 Summary;</p> <ul style="list-style-type: none"> • indictable; • either way; • examples of commonly encountered offences belonging to each category. eg: summary assault and battery and many RTA offences, triable either way such as theft, burglary and s.20 and s.47 OAP 1861, and indictable offences such as murder, rape and s.18 OAP 1861. <p>2.2 Principles of First Hearings. Functions to include: bail hearings; summary proceedings; allocation hearings, sending procedure s.51 CDA 1998.</p> <p>2.3 Nature and role of magistrates;</p> <ul style="list-style-type: none"> • role of the legal adviser; • limits on sentencing; • rights of audience. <p>2.4 Bail appeals;</p> <ul style="list-style-type: none"> • plea and trial preparation hearing; • trial on indictment. <p>2.5 Role of judge;</p> <ul style="list-style-type: none"> • nature and role of jury; • rights of audience; • outline of key features is required including Better Case Management
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	<p>2.6 Describe the sequence of events where a defendant pleads either guilty or not guilty. Identify potential for a submission of no case to answer</p> <p>2.7 Describe the grounds and routes of appeal from the magistrates' court and the Crown Court</p> <p>2.8 Apply an understanding of court type and function to a given situation</p>	<p>2.6 Submission of no case to answer Eg: <u>R v Galbraith</u> (1981) 2 All ER 1060. Usually defence made submission at close of prosecution case. Submission may be made at conclusion of defence case Eg: <u>R v Anderson</u> 1998</p> <p>Trial procedure (in outline) is following a not guilty plea; procedure (in outline) following a guilty plea (where trial is not needed).</p> <p>2.7 Magistrates court: prosecution and defence grounds for appealing to the Crown Court and the High Court;</p> <ul style="list-style-type: none"> • Crown Court: prosecution and defence grounds for appealing to the Court of Appeal. <p>2.8 Application to a scenario.</p>
<p>3. Understand the rules and procedures relating to bail granted by the Court</p>	<p>3.1 Explain the nature of bail granted by the Court</p> <p>3.2 Describe the procedure at a bail hearing</p>	<p>3.1 Definition;</p> <ul style="list-style-type: none"> • <i>prima facie</i> right (s.4 Bail Act 1976); • conditional; • unconditional; • consequence of failure to surrender (s.6 Bail Act 1976). <p>3.2 Prosecution outlines objections;</p> <ul style="list-style-type: none"> • defence makes submissions; • magistrates decide stating reason(s); • possibility of appeal.

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	<p>3.3 Identify the grounds on which the prosecution may object to bail being granted</p> <p>3.4 Explain the factors to be taken into account by the court in deciding whether to refuse bail</p> <p>3.5 Identify the conditions that may be attached to bail</p> <p>3.6 Describe the procedure for appealing against a bail decision</p> <p>3.7 Apply an understanding of the rules and procedures relating to bail to a given situation</p>	<p>3.3 Bail Act 1976 Sch 1 para 2: grounds for denying bail;</p> <ul style="list-style-type: none"> • s.114 and s.115 The Coroners and Justice Act 2009. <p>3.4 Bail Act 1976 Sch 1 para 9: considerations for the court to take into account in deciding whether the grounds for refusing bail have been established. When considering objections to bail court should consider all aspects of the strength of the evidence Eg: <u>R(E) v Wood Green Crown Court</u> (2013) EWHC 1869 (Admin).</p> <p>3.5 S.3 Bail Act 1976: examples to include reporting to a police station and/or other obligations/restrictions;</p> <ul style="list-style-type: none"> • nature of a surety; • consequences of breach. <p>3.6 S.81 SCA 1981: application to Crown Court.</p> <p>3.7 Application to a scenario.</p>
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<p>4. Understand the function the allocation hearing</p>	<p>4.1 Explain the purpose of the allocation hearing</p> <p>4.2 Describe the procedure at plea before venue and the consequences of the defendant indicating a guilty plea/not guilty plea</p> <p>4.3 Describe the procedure at the allocation hearing</p> <p>4.4 Identify the factors magistrates will take into account when deciding upon allocation of the case.</p>	<p>4.1 The purpose of the allocation enquiry, is to determine the trial venue for either way offences;</p> <ul style="list-style-type: none"> • examples of either way offences to demonstrate capacity for varying degrees of seriousness, as in the offences of theft, burglary and s.20 and s.47 OAPA 1861. <p>The Criminal Procedure Rules 2020 and the Allocation Guidelines issued by the Sentencing Council for England and Wales (effective 11 June 2012) replace the National Mode of Trial Guidelines (1995).</p> <p>4.2 Significance of initial details; procedure following the indication of a guilty plea.</p> <p>4.3 S.17-21 MCA 1980: (as amended) prosecution representations;</p> <ul style="list-style-type: none"> • defence representations; • consequences of the magistrates' decision depending on whether trial by magistrates or trial by jury is decided upon. <p>4.4 S.19 MCA 1980 (as amended) statutory factors;</p> <ul style="list-style-type: none"> • allocation guidelines.
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	<p>4.5 Explain the factors to be taken into account by the defendant in deciding on trial by magistrates or trial by jury where the circumstances provide a choice</p> <p>4.6 Apply an understanding of the factors to be taken into account when deciding upon allocation of the case</p>	<p>4.5 Factors favouring trial by magistrates eg: less publicity;</p> <ul style="list-style-type: none"> • factors favouring trial by jury eg: perceived higher acquittal rate. <p>4.6 Application to a scenario.</p>
5. Understand the rules relating to disclosure of evidence	<p>5.1 Explain the nature of advance disclosure of ‘used’ material in relation to either way offences</p> <p>5.2 Explain the requirement on the prosecution to disclose material which might undermine the prosecution’s case – ‘unused’ material</p> <p>5.3 Explain the requirement for providing a defence statement</p> <p>5.4 Identify the type of information the defence statement must contain</p> <p>5.5 Identify the circumstances in which adverse inferences may be drawn from the defence statement</p>	<p>5.1 Provision of Initial Details of Prosecution Case (IDPC) Criminal Procedure Rules 2020 Part 8</p> <p>5.2 S.3 Criminal Procedure and Investigations Act 1996: objective test;</p> <ul style="list-style-type: none"> • meaning of ‘undermine’; • methods of disclosure: provide copy; allow to inspect. Disclosure regime – ‘unused’ material Criminal Procedure Rules 2020 Part 15. Material which might undermine the case for prosecution or assist the case for the accused. <p>5.3 S.5, 6 CPIA 1996: relevance of type of trial;</p> <ul style="list-style-type: none"> • time limit for complying. <p>5.4 S.6A CPIA 1996: form and content of defence statement.</p> <p>5.5 S.11 CPIA 1996: examples of circumstances relating to the defence statement from which adverse inferences may be drawn.</p>

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	<p>5.6 Explain the duty of the prosecutor in relation to the defence statement</p> <p>5.7 Apply an understanding of the rules relating to disclosure of evidence to a given situation</p>	<p>5.6 S.7A CPIA 1996. Prosecution must serve any further unused material required in light of the defence statement in compliance with its ongoing obligation under s.7 CPIA which is to keep disclosure under review.</p> <p>5.7 Application to a scenario.</p>
6. Understand the procedures relating to sentencing	<p>6.1 Describe the sequence of events between conviction and sentencing</p> <p>6.2 Explain the purpose of the plea in mitigation</p> <p>6.3 Explain the content of a plea in mitigation</p> <p>6.4 Identify the range of sanctions and other orders available to a sentencing court</p>	<p>6.1 Depending on whether the defendant is found guilty or pleads guilty, the sequence (in outline) to include: prosecution outline of offence including defendants' criminal record;</p> <ul style="list-style-type: none"> • offences to be taken into consideration; • pre-sentence or other report; • plea in mitigation. <p>6.2 Reduction in length or severity of sentence.</p> <p>6.3 Content to include information relating to, for example: the nature and circumstances of the offence, the circumstances of the defendant including history and present situation, attitude to the offence and capacity for reform.</p> <p>6.4 Custodial sentences (in outline);</p> <ul style="list-style-type: none"> • non-custodial sentences (in outline); • other orders (in outline): compensation; • prosecution costs; • confiscation of proceeds;

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	<p>6.5 Identify the factors to be taken into account by the court when sentencing</p> <p>6.6 Apply an understanding of procedure relating to sentencing to a given situation</p>	<ul style="list-style-type: none"> • CBOs (Criminal Behaviour Orders Part 2 of the Anti-social Behaviour, Crime and Policing Act 2014 <p>6.5 Factors (in outline) to include: statutory maximum for the offence;</p> <ul style="list-style-type: none"> • aggravating factors; • mitigating factors; • sentencing aims (s.57 Sentencing Act (2020)); • any sentencing guidelines relevant to the offence. <p>6.6 Application to a scenario, including collating and structuring information to form the basis of a plea in mitigation.</p>
<p>7. Understand the provisions for publicly funded advice, assistance and representation in the criminal justice process</p>	<p>7.1 Explain the provisions for publicly funded advice and assistance:</p> <ul style="list-style-type: none"> - at the police station - at the solicitor’s office - at first appearance in court 	<p>7.1 Duty solicitor schemes at the police station, advice provided under Part 2 of the Criminal Legal Aid (General) Regulations 2013 (applied alongside s.13 Legal Aid Sentencing and Punishment of Offenders Act 2012 (LASPO) LASPO saw the creation of new executive agency – replacing the Legal Services Commission – now Legal Aid Agency, and at court; requirement of LSC contract for solicitors undertaking criminal defence work;</p> <ul style="list-style-type: none"> • relevance of means testing (in outline only) where required; • range of tasks included within advice and assistance; • role of Public Defender Service (in outline); • CDS Direct telephone advice (in outline).

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	<p>7.2 Explain the requirements for publicly funded representation</p> <p>7.3 Apply an understanding of publicly funded advice, assistance and representation to a given situation</p>	<p>7.2 Relevance of Article 6(3)(c) ECHR;</p> <ul style="list-style-type: none"> • merits test: ‘interests of justice’, Access to Justice Act 1999 criteria; • means test (in outline only): based on income only (Criminal Defence Service Act 2006) <p>7.3 Application to a scenario;</p> <ul style="list-style-type: none"> • this could include completing an application form for legal aid where the ‘interests of justice’ criteria are explicitly addressed.
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Additional information about the unit	
Unit aim(s)	The learner will understand key concepts, terms and processes in the area of Criminal Litigation
Details of the relationship between the unit and relevant national occupational standards (if appropriate)	This unit may provide relevant underpinning knowledge and understanding towards units of the Legal Advice standards; specifically, Unit 31 Criminal Law Advice and Casework
Details of the relationship between the unit and other standards or curricula (if appropriate)	Courses of study leading towards the achievement of the unit may offer the learner the opportunity to satisfy requirements across a number of Level 3 Key Skill areas; most specifically, Communication, Improving own learning and performance, Problem solving and Working with others
Assessment requirements specified by a sector or regulatory body (if appropriate)	N/A
Endorsement of the unit by a sector or other appropriate body (if required)	N/A
Location of the unit within the subject/sector classification	15.5 Law and Legal Services
Name of the organisation submitting the unit	CILEx (The Chartered Institute of Legal Executives)
Availability for use	Only available to owning awarding body
Availability for delivery	1 September 2008

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