

**CILEX**

**CPQ**

# **A2 – Criminal Law and Litigation**

*Advanced Stage*

**2021**

# A2: Criminal Law and Litigation

The aim of this module is to give you the essential knowledge and understanding of criminal law and its end to end process; how in practice a case commences; its progress through the Criminal Justice System to conclusion.

The module covers:

1. The context of the criminal law
2. The hierarchy of the criminal court system
3. Principles of criminal liability
4. Key criminal offences and defences
5. Acting for a defendant
6. Key stakeholders and procedural matters within the criminal justice system
7. Dealing with vulnerable clients and witnesses

## Learning Outcomes

By the end of this module you will be able to:

1. Outline the purpose and function of the criminal law and recognise key differences between the civil and criminal law
2. Identify classification of offences and which court they are heard in
3. Apply the practical process and procedures of the Criminal Justice System, its forms, courts, and duties of the participants in the Criminal Justice System including the role of the police, various prosecuting authorities and the defence in bringing and defending a case
4. Represent and advise a client who is in custody in a police station, acting in the client's best interests and in accordance with the standards required of a Police Station Accredited Representative
5. Be able to advise a client on their plea whilst taking the necessary strategic steps in order to prepare their case and fully represent and act in their best interests

***Linked online assessment: A2***

<p><b>1. The context of the criminal law</b></p>	<p>To work in any area of criminal practice you will need to have a broad understanding of the criminal law; the purpose, functions and context of criminal law, the classification of criminal offences and the relationship between civil and criminal law. Therefore, you will need to know the following:</p> <ul style="list-style-type: none"> <li>a) Fundamental principles, aims, theory, scope and function of the criminal law; including recognition of the balance between individual autonomy and community welfare, fault-based element of crime, retributive justice and rehabilitation</li> <li>b) The classification of offences <ul style="list-style-type: none"> <li>• Summary only</li> <li>• Either way</li> <li>• Indictable only</li> </ul> </li> <li>c) The burden and standard of proof in a criminal case</li> <li>d) The relationship between criminal and civil law; the difference in standard of proof, remedies and knowledge of the key offences arising in both civil and criminal law, for example: <ul style="list-style-type: none"> <li>• Misrepresentation</li> <li>• Negligence</li> <li>• Gross negligence</li> <li>• Harassment</li> <li>• Assault</li> </ul> </li> </ul>
<p><b>2. Hierarchy of the Criminal Court System</b></p>	<p>An understanding of the hierarchy of the criminal court system is essential. Therefore, you will need to know the following:</p> <ul style="list-style-type: none"> <li>a) The Magistrates' court <ul style="list-style-type: none"> <li>• Procedure: <ul style="list-style-type: none"> <li>○ First appearance/plea before venue/allocation</li> <li>○ Summary offences/Either-way offences</li> <li>○ Indictable only offences / "sending"</li> </ul> </li> <li>• Relevant provisions of the Bail Act 1976 <ul style="list-style-type: none"> <li>○ Right to bail and exceptions</li> <li>○ Appeals by the prosecution against the grant of bail</li> <li>○ Breach of bail</li> </ul> </li> <li>• The importance of accuracy of pre-trial forms</li> <li>• Trials</li> <li>• Overview of sentencing powers of the magistrates' court</li> <li>• Right to appeal to the Crown Court against conviction and/or sentence, or where appropriate to the Administrative Court in the Divisional Court of the Queen's Bench (on a point of law)</li> </ul> </li> </ul>

	<ul style="list-style-type: none"> <li>b) The Crown Court <ul style="list-style-type: none"> <li>• Overview of process and procedures</li> <li>• Plea and Case Management Hearing (PCMH) forms</li> <li>• Types of hearings</li> <li>• Pleas</li> <li>• Trials</li> <li>• General sentencing powers</li> <li>• Rights of appeal</li> </ul> </li> <li>c) The Administrative Court <ul style="list-style-type: none"> <li>• Divisional court of the Queen's Bench</li> <li>• Appeal by way of case stated and judicial review</li> <li>• Overview of the process, procedure and purpose</li> <li>• Appeals <ul style="list-style-type: none"> <li>○ Magistrates' court</li> <li>○ Crown Court</li> </ul> </li> </ul> </li> <li>d) Court of Appeal (Criminal Division) <ul style="list-style-type: none"> <li>• Overview of process and procedures</li> <li>• Appeal against conviction from the Crown Court</li> <li>• Appeal against sentence and unduly lenient sentences</li> </ul> </li> <li>e) The Supreme Court <ul style="list-style-type: none"> <li>• Key decisions on criminal cases</li> </ul> </li> </ul>
<p><b>3. Principles of Criminal Liability</b></p>	<p>You need to have a sound understanding of the elements of a crime in order to advise a client based on their instructions and the evidence against them. Therefore, you will need to know the following:</p> <ul style="list-style-type: none"> <li>a) Actus reus <ul style="list-style-type: none"> <li>• Definition</li> <li>• The actus reus for each of the key offences within this module</li> <li>• Voluntary and involuntary conduct and the impact of this on proving the elements of an offence</li> <li>• The distinction between conduct, circumstances and result of the actus reus within the offence</li> </ul> </li> <li>b) Mens rea <ul style="list-style-type: none"> <li>• Definition</li> <li>• The mens rea for each of the key offences within this module</li> <li>• Direct intention</li> <li>• Recklessness: subjective recklessness (R v Cunningham/Stephenson), objective recklessness (R v Caldwell) and RV G &amp; R</li> </ul> </li> </ul>

	<ul style="list-style-type: none"> <li>c) Strict liability <ul style="list-style-type: none"> <li>• Definition and purpose</li> <li>• The types of offences it applies to e.g. driving offences</li> </ul> </li> </ul>
<p><b>4. Key Criminal Offences &amp; Defences</b></p>	<p>You will need to be aware of the elements of key criminal offences with which a client might be charged, the sentencing guidelines for each offence and some of the key defences:</p> <ul style="list-style-type: none"> <li>a) Theft; Theft Act 1968</li> <li>b) Criminal damage; Criminal Damage Act 1971</li> <li>c) Murder; contrary to common law</li> <li>d) Manslaughter: <ul style="list-style-type: none"> <li>• Voluntary manslaughter</li> <li>• Involuntary manslaughter - Unlawful act/Constructive manslaughter</li> </ul> </li> <li>e) Non-fatal offences against the person; Offences Against the Person Act 1861: <ul style="list-style-type: none"> <li>• Grievous bodily harm &amp; wounding</li> <li>• Assault</li> <li>• Battery</li> </ul> </li> <li>f) Knife crime – possession of a bladed article, having an offensive weapon in a public place, use of Knife Crime Prevention Orders as an alternative to prosecution</li> <li>g) Rape and sexual assault, including the definition of consent (s76 Sexual Offences Act 2003) and the use of the SOA 1956 in relation to non-recent sexual offences</li> <li>h) 'Hate Crime' - understanding the impact on sentencing of crimes motivated by hostility of the victim as set out in s66 Sentencing Act 2020</li> <li>i) Defences <ul style="list-style-type: none"> <li>• Self-defence /defence of another/ prevention of crime including meaning of reasonable force</li> <li>• Intoxication: voluntary and involuntary</li> <li>• 'Reasonable excuse' as a defence to possession of a bladed article</li> <li>• Understanding consent as a defence to alleged sexual offences</li> </ul> </li> </ul>

## 5. Acting for a Defendant

When acting for a defendant you will need to know the steps required to fully prepare a client's defence as the case progresses. Therefore, you will need to know the following:

- a) The role of defence through the Police Station Accreditation scheme; relevance and application of the Codes of Practice under Police and Criminal Evidence Act 1984 (PACE 1984)
  - Obtaining relevant information from the client
  - Client care: managing clients in difficult circumstances, e.g. withdrawing from drugs
  - Application of the Codes of Practice under PACE 1984, including lawful arrest, identification, the client's rights at the station
  - Advising the client on how to respond in interview based on the evidence disclosed and other circumstances of the case
  - How to make and handle complaints against the police
  - Bail pending further investigation
  - Bail after charge, alternatives to charging, commencing a case other than by charge
- b) Obtaining adequate funding:
  - Legal Aid
  - Private funding
  - Insurance policy cover
- c) Compliance with regulatory requirements and knowledge of the key requirements most relevant to criminal law, i.e.
  - The Solicitors' Regulatory Authority Code of Conduct
  - SQM Standard/Lexcel
  - Legal Services Commission terms and conditions
  - Private Client terms and conditions
- d) Awareness of the Criminal Procedure Rules and application to procedure
- e) Preparation of a client's case, including:
  - Completion of form MC100
  - Obtaining full instructions on evidence served
  - Providing plea advice to client including possible reduction in sentence for early guilty plea
  - Defence witness statements in accordance with requirements of s9 Criminal Justice Act 1967, to further the objectives set out in the Criminal Procedure Rules
  - Ensuring ongoing compliance with SRA Code of Conduct throughout the case

	<ul style="list-style-type: none"> <li>• Obtaining expert evidence and disclosure of evidence</li> </ul> <p>f) Managing conflicts of interests when representing a co-defendant</p> <p>g) Advising a client on the impact of cautions and convictions on Disclosure and Barring Service checks, including spent convictions and filtering of some offences</p>
<p><b>6. Key Stakeholders and Procedural Matters Within the Criminal Justice System</b></p>	<p>Working in criminal law requires an awareness of the key stakeholders in the Criminal Justice System; their roles, functions and procedures. You will need to know the sequence of its procedures to provide support, care and conduct through the life of a criminal case. Therefore, you will need to know the following:</p> <p>a) Role and function of the police:</p> <ul style="list-style-type: none"> <li>• The role and responsibilities of the police in relation to investigation, arrest, detention, bail and charge</li> <li>• Requirements of PACE (Police &amp; Criminal Evidence Act) 1984</li> <li>• Alternative disposals, e.g. cautions, Single Justice Procedure Notices, Domestic Violence Protection Orders</li> </ul> <p>b) Role and function of the CPS:</p> <ul style="list-style-type: none"> <li>• Effects of the Prosecution of Offences Act 1985</li> <li>• The CPS as an independent body</li> <li>• Adherence to the Code for Crown Prosecutors and other statutory duties and powers to prosecute individuals, and various business entities</li> <li>• Relationship with the police, defence, courts and other prosecuting agencies</li> <li>• Making the charging decision (Full Code Test and Threshold Test from the Code for Crown Prosecutors)</li> <li>• Preparing and presenting cases at Court including disclosure of evidence</li> <li>• Supporting witnesses and victims</li> </ul> <p>c) Other prosecuting authorities, and an overview of the types of offences they prosecute, e.g.</p> <ul style="list-style-type: none"> <li>• Local authorities</li> <li>• Health &amp; Safety Executive</li> <li>• Financial Services Authority</li> </ul> <p>d) Role and function of the probation service:</p> <ul style="list-style-type: none"> <li>• Preparation of pre-sentence reports and recommendation of appropriate sentencing</li> </ul>

	<ul style="list-style-type: none"> <li>• Overseeing of offenders released on licence or subject to community sentences</li> <li>• Exercising powers of recall to prison for those in breach of post-release licence conditions</li> <li>• Bringing proceedings in the magistrates' or Crown Court where conditions of a community sentence/suspended sentence have been breached</li> <li>• Working with some victims of sexual or violent offences</li> </ul> <p>e) Role and function of Youth Offending Teams:</p> <ul style="list-style-type: none"> <li>• YOT as part of local authority, and separate to the police and CPS</li> <li>• Crime Prevention Programmes aimed at under 18s</li> <li>• Helping young people and their families at the station and in Court</li> <li>• Supervising and supporting young people who are under community or custodial sentences</li> </ul>
<p><b>7. Dealing with vulnerable clients and witnesses</b></p>	<p>Working in criminal law can be rewarding and also challenging. You will need to develop skills to recognise when defendants/clients and witnesses are vulnerable, and deal with these individuals professionally and sensitively. You will therefore need to know:</p> <ul style="list-style-type: none"> <li>a) The definition of vulnerable and intimidated witnesses, within the context of the Youth Justice and Criminal Evidence Act 2009</li> <li>b) The meaning of special measures, and overview of the measures available at the discretion of the Court</li> <li>c) Eligibility for special measures for adult victims of sexual offences</li> <li>d) The limited special measures available for young or otherwise vulnerable offenders, including access to an appropriate adult</li> <li>e) The power to restrict reporting on certain adult witnesses, e.g. members of the LGBTQ+ community conferred under s.46 YJCEA 2009</li> </ul>