

## Law condensed content – paper 1

### Section A:

#### Criminal courts and lay people:

- **Criminal process: Jurisdiction of the Magistrates' Court and the Crown Court, including classification of offences and pre-trial procedures**

#### Classification of offences:

- Summary offences – least serious offences that are tried in the Magistrates' Court e.g. common assault, criminal damage of less than £5000 or shoplifting goods of value less than £200.
- Triable-either-way offences – middle range offences that can be tried in either court e.g. ABH or theft, at the discretion of the defendant, unless they plead guilty (in which case it is tried in the Magistrates' Court). Magistrates can also send the case to the Crown Court if they believe it is too serious for them.
- Indictable offences – the most serious offence that is heard mainly in the Crown Court by a judge and jury e.g. murder, manslaughter or rape.
- The first preliminary hearing always occurs in the Magistrates' court, no matter the type of offence.

#### Pre-trial procedures:

##### Summary:

- The aim is to finish the trial at the earliest possible hearing. If D pleads guilty, a sentence can be decided at the first hearing.
- If D pleads not guilty, the magistrate will identify issues in the first hearing and decide a verdict as quickly as possible.

##### Triable-either-way:

- Plea before venue – D is asked to enter a plea. If it is guilty, D cannot request for the case to be heard in the Crown Court.
- Mode of trial – if D pleads not guilty, the magistrates decide which court the case will take place in. s19 Magistrates' Court Act 1980 – they must consider the nature and seriousness of their case, and their sentencing powers. Cases involving complex facts of law should be sent to the Crown Court.
- Defendant's election – if the magistrates are prepared to accept jurisdiction, D is given the choice of where they wish the trial to be heard.

##### Indictable:

- The first hearing takes place in the Magistrates' Court and deals with matters such as legal aid and bail.
- They are then sent to the Crown Court where all other pre-trial and case management issues are dealt with.

##### Jurisdiction:

##### Magistrates' Court:

- The Chartered Institute of Legal Executives provides the education, training, and development of skills for legal executives, as well as protecting their status and interests. They also publish a code of conduct and guides to good practice.
- Regulation is overseen by the CILEx Regulation Board, who prepare a summary of the issues and present a complaint to the Professional Conduct Panel. They may reprimand or warn the member.
- They refer serious matters to a Disciplinary Tribunal, which can exclude a person from membership or reprimand the member. It can also order a fine of up to £3,000.
- A further complaint can also be brought to the Legal Ombudsman.

• **The judiciary: qualifications, selection and appointment, training, role, retirement and removal**

- The role of the judge is to apply the law impartially and fairly when settling disputes without letting their personal opinions or prejudices intrude.

Superior Judges:

- Supreme Court Justices – hear cases of general public importance in which important legal principles are at stake. They sit on the Judicial Committee of the Privy Council which hears appeals from Commonwealth countries.
- Lord Justices of Appeal – hear cases in both the Civil and Criminal Division of the Court of Appeal.
- Puisne/High Court Judges – hear cases at first instance, listen to evidence, make findings of fact, and decide how the law applies. They can impose remedies in civil cases, hear case-stated appeals from the Magistrates’ and Crown Courts, and hear civil appeals from the County Court. Judges in the Queen’s Bench Division of the High Court can also sit in the Crown Court for more serious cases.

Inferior Judges:

- Circuit Judges – Crown and County Courts - hear civil cases in the County Court, hear criminal cases in the Crown Court, decide issues of fact and law and award remedies in civil cases.
- Recorders – Crown Court (sometimes County) – part time judges appointed for a 5 year period that hear cases in County or Crown Courts.
- District Judges – Magistrates’ and County Courts – they deal with smaller cases in the County Court and criminal cases in the Magistrates’ Court as a sole judge.

• **The separation of powers and the independence of the judiciary**

- The legislature (law making/Parliament), executive (law enforcing/government), and judiciary should be kept separate – the rule of law. For example, Judges should not be dismissed by the Government. It ensures a ‘government of laws’ and not a ‘government of men’ (AV Dicey).
- Judicial independence is the principle that members of the judiciary should retain independence from any influence by the government or parties or other political movements.
- Security of tenure – superior judges cannot be dismissed by the government. For them to be removed, it must be approved by the monarch following a petition presented by both Houses of Parliament. This gives them protection from political whims and allows them to pass judgements without fear of persecution.

cosmetic enhancement (R v McCarthy, R v Wilson), dangerous exhibitions, and horseplay (R v Jones, R v Aitken).

### Preliminary offences

#### • Attempts: the actus reus and mens rea; impossibility

- S1(1) Criminal Attempts Act 1981 – a person does an act that is more than merely preparatory to the commission of the offence (AR). They must have intend to commit the crime (MR).
- More than merely preparatory – D must have moved from planning to implementation – R v Geddes – D was found in the boys’ toilets of a school with a knife, rope and some masking tape. He was not guilty of attempted kidnapping as he did not have a child in his possession at this point.
- D must have ‘embarked on the crime proper’ – R v Gullefer, R v Boyle & Boyle
- D must have the mens rea to commit the full offence (R v Easom).

Impossibility:

- ‘A person may be guilty of attempting to commit an offence ... even though the facts are such that the commission of the offence is impossible’ e.g. D stabs the victim in their sleep without realising they had died of a heart attack a few hours earlier – they may be guilty of attempted murder.
- R v Shivpuri – D delivered a suitcase for £1,000, believing that it contained drugs when it was only harmless vegetable matter. Ruled that you can still be liable of an offence that is impossible to commit.

### Section C:

#### General defences:

#### • Critical evaluation of general defences (self-defence and consent) including ideas for reform

Self-defence:

- It is difficult in determining whether force was necessary or not and when it is deemed excessive e.g. R v Bird – D must show an unwillingness to fight, such as retreating, which may be too high of a standard. It may be difficult for D to determine how much force is reasonable in the heat of the moment.
- Arguably too lenient on D - judged subjectively – how D understood the situation – they could make a gross misjudgement on the amount of force required, which is not fair on the victim and does not provide justice for them.
- Both subjective and objective elements, as the level of force is judged objectively (R v Owino) - the force must be objectively reasonable in D’s circumstances – balance between needs of D and V – effective.
- Difficult to judge what D thought was reasonable at the time.

Consent: