

Lesson 9: Criminal Law

Script:

Criminal law is arguably one of the most exciting areas of the law it often involves facts that are controversial or unusual; it invites human interest and is often covered by the media, and most of movies and TV shows that deal with the law involve some elements of crime.

Criminal law differs from civil law, also referred to as tort law, in that in criminal law it is the state through the figure of a **prosecutor**, who initiates lawsuits, which are called **trials**. This public figure we say prosecutes the **defendant** meaning the person accused of committing a crime. This is the reason why these cases are referred to as the state versus the name of the defendant. In civil cases private individuals, or claimants, who have been harmed bring lawsuits which are sometimes called actions. We will deal with the latter in the next module.

I would like to describe to you a typical criminal case in a chronological order.

First of all, a person sometimes referred to as the offender commits the **offense** meaning the criminal act. After an investigation by the police during which evidence is gathered, and statements called **depositions** are taken from persons of Interest (meaning potential suspects), if there is sufficient proof then the prosecutor may file official **charges** against the person suspected of committing the crime. At that point, the defendant will be brought to court where he or she will have to declare either their guilt or innocence, or, as you may have heard in some American TV shows or movies, they will **plead guilty or not guilty**.

Next, there is a phase of **discovery** whereby the prosecution and the defense exchange all the evidence they have gathered.

Then a trial is held. During the course of the trial, the defendant may be asked to give an official statement called **testimony** in Court. Similarly, people with personal knowledge of **material** (meaning important) facts may also be asked to testify in court. Before any of the parties to the proceedings can testify they will be asked to **take an oath** in order to swear that everything they will say in court will be true and accurate. Should it later be proven that they lied they may be charged with the crime of **perjury** or **obstruction of justice**.

When the defense questions the defendant this is called the **examination in chief**; when the prosecution asks the defendant questions this is called the **cross-examination**. When either party doesn't agree with the questions being asked to either a defendant or a witnesses, they can raise an **objection** with the judge. If the judge agrees with this objection he or she will say **sustained**; if the opposite is the case he or she will say **overruled**.

After all the evidence has been presented and all witnesses examined, the **closing submissions** are delivered by both parties, during which the prosecution and the defense tries to summarize the case to the jury and instruct them how they should decide. It is often at this stage that the jury is reminded by the defense that they should not find a defendant guilty unless they are sure of it "**Beyond Reasonable Doubt**". This is the relevant **standard of proof** that applies to criminal cases. It essentially means that the jury must be 100% sure that it was the accused who committed the crime. This also differs from civil proceedings where the standard of proof is much lower and it's called the balance of probabilities which essentially means 50% or more. It is for

this reason that it is not uncommon that a defendant is found not guilty in a criminal trial and later found liable in a Civil Trial.

After the closing submissions are delivered the jury breaks in order to **deliberate** meaning to discuss and review all the evidence and decide on the guilt or innocence of the accused. After their deliberations, assuming that they can arrive to unanimous decision, a **verdict** is delivered. There are two possible outcomes. Either the defendant is **convicted** of the crime meaning found guilty or the defendant is **acquitted** of the crime meaning found not guilty.

In a case of acquittal the defendant is free to go. However in a case of conviction the trial will proceed to the final stage which is **sentencing**. At the sentencing stage, given all the circumstances of the case, the Judge must decide what is the appropriate punishment for the defendant. The Judge will consider the **mitigating** factors such as for example a very young age of the defendant or the fact that they haven't had a prior criminal record etc., as well as **aggravating** factors such as if there was a prior criminal record or if the crime was very violent in nature.

The range of sentences or punishments can often be prescribed in a Criminal Code that each country has. It is often used as a guideline when deciding on the exact type of a sentence - these can range from several years of imprisonment; a life sentence; a **life sentence without parole** meaning a sentence that will not be reviewable in the future, and in some countries such as Japan or United States a death sentence may also be rendered.

The severity of the sentence will of course depend on the seriousness of the crime. In many common law jurisdictions crimes are classified into two categories **felonies** (more serious offenses such as rape or murder) and **misdemeanors** meaning less serious offenses such as petty theft, driving under the influence etc.

In many cases, after **the convict** meaning the person convicted of a crime serves several years of the sentence, if they were on good behavior while in prison, if they show some **remorse** meaning responsibility and regret for their actions, along with some other mitigating factors, they may ask to be allowed to serve the remainder of the sentence out of jail while they reintegrate back into the society.