




CRIMINAL PROCEEDINGS




XIV SEMINARIO DE ESTUDIO COMPARADO DE SISTEMAS JUDICIALES EUROPEOS A TRAVÉS DEL LENGUAJE JURÍDICO

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Criminal Justice systems in the UK



Distinct jurisdictions:
England and Wales;
Scotland; Northern
Ireland.

Separate legal
systems, laws, courts,
prosecution services,
central authorities.

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2

Criminal Justice in the UK & Wales

- **Home Office:** oversees Police, Prison Service and National Justice Board.
- **Ministry of Justice:** oversees Magistrates' Courts, Crown Court, Appeal Courts and Legal Services Commission.
- **Attorney General's Office:** oversees the Crown Prosecution Service.

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3

The Home Office

- Head of Home Office:
Home Secretary
(Theresa May)



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The Attorney General's Office

- Attorney General: Dominic Grieve QC MP.
- Solicitor General (the Attorney General's
deputy): Edward Garnier QC MP.
- Attorney General's Office for England
and Wales:
<http://www.attorneygeneral.gov.uk/>



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5

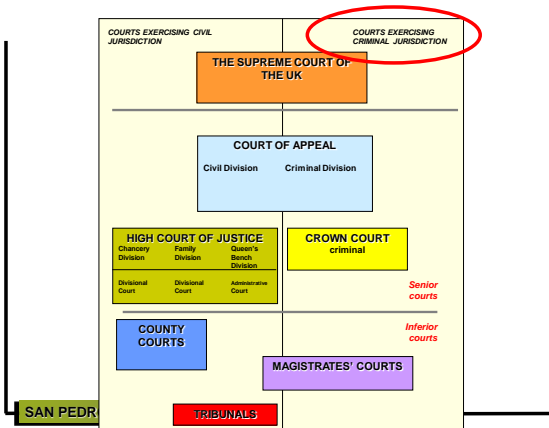
The Crown Prosecution Service (CPS)



- The Crown Prosecution Service:
<http://www.cps.gov.uk/>

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6



Arrest & Charge (UK)

- Arresting officer **MUST** caution the person under arrest.

Caution in the UK: **Right to be silent.**

"You do not have to say anything. But it may harm your defence if you do not mention when questioned something that you later rely on in court. Anything you do say may be given in evidence."

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8

Arrest & Charge

- IF charges are laid, the police may:
 - Hold the detainee in custody.
 - Remand the accused on bail:
 - bail with a security = conditional bail;
 - bail without a security = unconditional bail.
 - Remand the accused in prison.
 - Order him/her to be brought before a Magistrates' Court (24 hours).
- [Habeas corpus]

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9

Criminal proceedings: Offences

- Types of offence

1. **Summary offences** (lesser crimes).
2. **Indictable offences** (serious or very serious crimes).
3. **Offences triable either way** ('either way offences': intermediate offences).

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10

Summary Offences

[Petty offences / Misdemeanour (AmE)]

- Lesser crimes: *motoring offences, assault on police, petty theft.*
- Lesser, lighter or more lenient punishments.
- Trial by magistrates summarily (without a jury). Defendant not entitled to trial by jury.

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11

Indictable Offences

[Felony (AmE)]

- Serious or very serious crimes: *rape, armed robbery, murder.*
- Tried before a jury at Crown Court after formal indictment by CPS.

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12

Offences triable either way

- Intermediate offences: *theft*.
- Depending on seriousness of facts alleged, they may be deemed more suitable for trial by Magistrates or by Crown Court.
- Accused entitled to insist on trial at Crown Court if s/he prefers jury (BUT: greater sentencing powers of Crown Court).

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13

CRIMINAL PROCEEDINGS & COURTS

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14

Criminal proceedings: Magistrates' Court

- **Information before a Magistrates' Court**
 - Prosecutor/any individual (*private criminal prosecution*) may lay an information before a Magistrates' Court for an alleged offence,
 - Magistrate may issue a summons or a warrant for arrest.

1) Preliminary hearing -> discharge the accused / charge him with a crime.

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15

Criminal proceedings: Magistrates' Court

2) **Indictable-only offence** -> **committal proceedings** (= paper committal) → if there is a case to answer).

- Commit the case to the Crown Court (with jury).
- Magistrates do not examine the case, just send the case on the grounds of documentary evidence.

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16

Criminal proceedings: Magistrates' Court

3) **Triable either way offences (I)** -> Magistrates may, before deciding the venue, **plea before venue** (the accused pleads guilty / not guilty)

- If s/he pleads **guilty** the court will hear the prosecution case against him and mitigation of the defence, and then determine the sentence (if greater than Magistrates' Court has power to impose -> committal to Crown Court for sentence).
- If s/he pleads **NOT guilty**, Magistrates' Court will decide if:
 - trial on indictment (by a jury, in Crown Court);
 - summary trial (in Magistrates' Court).

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17

Criminal proceedings: Magistrates' Court

3) **Triable either way offences (II)**

- If the accused does not accept summary trial -> **committal proceedings** (examining magistrates).
- At this stage, Magistrates take evidence, and the Crown sets out the case.

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18

Criminal proceedings: Crown Court

Arraignment (reading of indictment, that is, of charges):

- Identification of the accused
- Indictment [*THE QUEEN v (Defendant) charged as follows...*]
 - » Introductory matters.
 - » Charges.
 - » Sections of statute.
- Plead guilty / not guilty.
- Submission of no case to answer / motion for dismissal.
- Counsel for the defence -> *pleas in bar*

If accused pleads guilty:

- Counsel for the prosecution-> summary of evidence, background and record.
- Counsel for the defence-> plea for mitigation.
- Judge-> verdict / sentence.
- If accused pleads guilty of a lesser offence (change of plea)

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19

Criminal proceedings: Final/Closing speech

- Closing argument or statement:

- 1) **C. for the prosecution** must prove *actus reus*, *mens rea*, *no defences*.
- 2) **C. for the defence must** NOT prove the accused's innocence because (s)he is presumed innocent until proved guilty.

- Summing-up by the judge (Jury summation in AmE):

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20

SENTENCE

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21

Conviction and sentence

- Sentence: decision for judge.
- Prosecutor's role: to draw court's attention to any aggravating or mitigating factors, victim personal statement, evidence of impact of offending on community, statutory provisions or sentencing guidelines.
- Defence: plea in mitigation.
- Sentencing guidelines issued by Sentencing Council to ensure consistency:
<http://www.sentencingcouncil.org.uk/sentencing-guidelines.htm>

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