

## 5 Criminal law

### 5.1 Introduction

I would like us to now look at the criminal law aspects of ‘Mrs Morrison’s disastrous day’. We will do this in the next activity. Note that this is just an introduction to criminal law: you will study this topic in more detail in Unit 13.

### 5.2 The basic elements of a crime?

These are known as *actus reus* and *mens rea*. These Latin terms indicate that for a crime to occur, there must be a guilty act (i) and a guilty mind (*mens rea*).

What is *actus reus*? It could be an act, e.g. throwing a stone which breaks someone else’s window. (Causing damage to someone else’s property is the *actus reus* of the criminal offence of criminal damage.) However, it could also be an omission, e.g. failing to stop at a red light or failing to report an accident. It could even be a state of affairs, e.g. being found drunk in a public place.

What is *mens rea*? *Mens rea* in general terms is the state of mind that makes your actions criminal. For our purposes it will usually involve acting or bringing about a result with intention or recklessness. So, for example, throwing a stone which breaks a window would not be enough to constitute the criminal offence of criminal damage. There would need to be intention to commit some damage to another’s property or **recklessness** as to whether such damage may occur. Intention to commit a crime is often required, but some criminal offences (e.g. failing to stop at a red light) do not require intention.

We will look at the concepts of actus reus and mens rea in more detail in Unit 13.

### 5.3 The criminal courts

In the previous activity we looked at the civil courts. In the next activity, we will look at the courts which have criminal jurisdiction.

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## ACTIVITY 6

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### Courts with criminal jurisdiction (allow 30 minutes)



Online

Please now look at the direct.gov website to find out some information about criminal courts. Open the following page:

[www.direct.gov.uk/en/crimejusticeandthelaw/goingtocourt](http://www.direct.gov.uk/en/crimejusticeandthelaw/goingtocourt)

Please then answer the following questions:

- 1 What are the two different types of criminal court called?
- 2 How are criminal offences classified? Hint: what sort of offences would be tried in which court?

#### COMMENT

1 There are two main criminal trial courts. These are the magistrates’ court, which deals with the majority of criminal offences, and the Crown Court.

A magistrates’ court will be made up of three magistrates who are not legally qualified, or one district judge (previously known as a stipendiary magistrate) who is legally qualified. In the Crown Court you will usually find one judge sitting with a jury (see paragraph 5.4, below).

## 2 Criminal offences are classified in three ways:

- (a) First, those that are seen as being relatively minor offences; these are called ‘summary offences’. These offences can only be tried in the magistrates’ court. Examples are some public order offences and many of the driving offences, such as speeding.
- (b) Secondly, there are those offences that are seen as always serious and are known as ‘indictable offences’. They can only be tried in the Crown Court and are decided by a jury. There are 77 Crown Court centres across England and Wales. These would include such serious offences as murder and robbery.
- (c) In between, there are offences that are known as being ‘triable either way’. They can be heard either in the magistrates’ court or in the Crown Court. The magistrates first decide whether the case is too serious for them to hear. If they decide that it is too serious, the case will go to the Crown Court. If the decision is that it is not too serious, the defendant will be given the choice of whether he or she wants the case heard in the magistrates’ court or Crown Court. Theft is an either way offence because it can be a minor offence (e.g. shoplifting of goods to a low value) or a major offence (e.g. stealing large sums of money from an employer).

## 5.4 Jury



One of the features of the English trial system is the concept of trial by jury, particularly in criminal Crown Court cases. The jury is made up of 12 members of the public. The judge decides questions of law and pronounces sentence and the jury decides whether a defendant is guilty or innocent having heard the facts and evidence from the prosecution and defence. The role of the jury ensures that ordinary people play a central role in the administration of justice. However, the great majority of criminal trials are heard by magistrates’ courts which do not have juries.

In recent years there has been much debate about the role of juries, and you will discover in Units 6–7 that the Criminal Justice Act 2003 has restricted the right to trial by jury in certain limited situations. Although you will be studying criminal law in Unit 13, and the court system and the jury in Units 6–7, you might like to read *Slapper and Kelly*, paras 11.6.2 and 11.7 at this stage. I have already mentioned the idea of creating a file in which you can collect newspaper cuttings etc. relevant to the module. You may, alternatively, prefer to save online articles to a