

LECTURE 1

Introduction to Criminal Law

Offences, penal laws, and criminal responsibility

01

Learning outcomes

- Distinguish criminal offences from civil wrongs
- Identify the components and classifications of criminal offences
- Compare the main reasons for punishment
- Apply legality, fairness, conduct, and fault principles
- Explain responsibility for individuals, companies, and minors

Diagnostic poll

Choose one answer for each scenario

- A supplier delivers goods two weeks late and causes financial loss
- A driver who has consumed alcohol causes a collision and injures a pedestrian
- A shopper takes an identical umbrella, honestly believing it is their own

Criminal Civil Both Not enough information

Criminal law and civil law

Criminal law

The state prosecutes conduct that the law prohibits. The process may lead to conviction and punishment.

Civil law

A person or entity enforces a private right or obligation. The process may lead to compensation or another civil remedy.

One event may engage both systems

Practical differences

Question	Criminal proceedings	Civil proceedings
Whose interest?	Public order and protected interests	Private rights and obligations
Who proceeds?	The state through the competent authority	The person or entity asserting the claim
Usual outcome?	Acquittal or conviction and punishment	Dismissal or a civil remedy
Standard of proof?	Beyond reasonable doubt	Generally the balance of probabilities

One event and two forms of liability

Assault and injury

A deliberately punches B and breaks B's jaw.

Late delivery

A supplier delivers late and the buyer loses money.

Dangerous driving

A driver causes injury after serious traffic misconduct.

Discuss

- Which public and private interests arise?
- What additional facts are needed?
- Why can compensation and punishment coexist?

A working definition

A criminal offence is an act or omission that a valid law prohibits and makes punishable through the authority of the state

The offence and the general rules determine the required conduct, fault, capacity, and any lawful exception

Carrara's historical lens

01

Published state law

The rule must exist in the required legal form

02

External conduct

A positive act or an omission

03

Protection of society

The prohibition protects legally recognized interests

04

Moral imputability

Responsibility requires the relevant capacity and fault

Modern qualification

Modern law also addresses legal persons, so the classical reference to an external act of man is incomplete today

Five components to test

- | | | |
|----------|---------------------------|---|
| 1 | Legality | A law must define the offence |
| 2 | Promulgation | The rule must be adopted and published in the required form |
| 3 | Act or omission | The case must contain legally relevant external conduct |
| 4 | Public enforcement | The state proceeds to enforce the prohibition |
| 5 | Responsibility | The prosecution must prove the required fault and capacity |

Classification of offences

Commission	or	Omission
Formal	or	Material
Simple	or	Complex
Instantaneous	or	Continuing
Crime	or	Contravention

Conduct and result

Commission and omission

Commission means doing what the law prohibits. Omission means failing to do what the law requires when a relevant legal duty exists.

Formal and material

A formal offence is complete with the prohibited conduct. A material offence also requires the result specified by law.

Duration and legal structure

Instantaneous and continuing

- An instantaneous offence completes when all elements concur
- A continuing offence involves an unlawful state that persists over time
- The distinction can affect when prescription begins

Simple and complex

The distinction concerns the legal structure of the offence and whether the conduct engages one provision or combines legally relevant elements or violations.

Crimes and contraventions

Crimes

Article 7 identifies imprisonment, solitary confinement, interdiction, and a fine known as multa as ordinary punishments for crimes

Contraventions

Article 7 identifies detention, a fine known as ammenda, and reprimand or admonition as ordinary punishments for contraventions

Article 41(2): an attempted contravention is not punishable unless the law expressly provides otherwise

Classification exercise

- A person unlawfully detains another person over several hours
- A prohibited declaration is knowingly filed and no further result is required
- A person causes death through conduct satisfying the elements of homicide
- A person with a legal duty deliberately fails to provide required information
- The accused begins executing a contravention but does not complete it

For each scenario

- Choose a classification
- Name the decisive fact
- Identify the legal text still needed

Break

Which purpose of punishment is most persuasive, and what is its strongest limit?

Four purposes of punishment

Theory	Central question	Primary focus
Retribution	What does the offence deserve?	Proportionate response to a past wrong
Deterrence	What future crime may be prevented?	Discouraging the offender or the public
Rehabilitation	What may help the offender change?	Reducing reoffending through support or treatment
Incapacitation	What harm is prevented while liberty is restricted?	Removing opportunity to offend in the community

Retribution

Punishment responds to a past wrong and should reflect what the offence deserves

Proportionality

Minor and serious offences should not receive the same response

State process

Lawful punishment differs from private vengeance

Deterrence

Specific deterrence

Discourages the punished individual from offending again

General deterrence

Uses the public example to discourage others

Certainty

Likelihood of detection and punishment

Severity

Harshness of the lawful penalty

Celerity

Speed between offence and consequence

Rehabilitation and incapacitation

Rehabilitation

Changes future behaviour through treatment, education, training, or support

Limit: individualized measures still require legality and fairness

Incapacitation

Protects the public by restricting the offender's opportunity to commit further offences in the community

Limit: risk prediction is uncertain and cannot replace proportionality

Interpretation of penal laws

The task

Determine what the legal rule means and whether the facts fall within it

- Read the enacted words in context
- Use definitions and governing interpretation rules
- Respect legality because liberty and criminal records are at stake
- Interpret the offence without creating a new crime by analogy

Three forms of interpretation

Form	Who provides it?	Role
Doctrinal	Jurists and scholars	Systematic analysis that may persuade
Authentic	The lawmaking authority	Binding definitions or clarification through law
Judicial	Courts applying the law	Meaning adopted when deciding a case

Judicial interpretation applies the offence. The legislature creates it.

Safeguards for penal law

Legality

A legal basis must define the offence

Non-retroactivity

The state cannot punish conduct under a later criminal prohibition or impose a later, heavier penalty

Presumption of innocence

The accused remains innocent until proved guilty according to law

Burden and standard

The prosecution must prove the charge beyond reasonable doubt

Doubt, fault, and finality

In dubio pro reo

A reasonable doubt on guilt is resolved in favour of the accused

Actus reus and mens rea

The prosecution proves the prohibited conduct and the mental element required by the offence

Ne bis in idem

A final acquittal or conviction protects against a second trial or punishment for the same offence, subject to lawful conditions and exceptions

Actus reus and mens rea

Actus reus

The prohibited act, omission, circumstance, and result required by the offence

Mens rea

The intention, knowledge, recklessness, negligence, or other fault required by the offence

The umbrella problem

Facts

Mia picks up an umbrella identical to her own. She notices a name label only after reaching home and returns the umbrella the next morning.

Analyse

- What conduct must be proved?
- What mental element does the offence require?
- Which facts support or undermine mistake?
- Who bears the burden of proof?

Break

Can an organization commit a crime if it has no human mind of its own?

Natural persons and legal persons

Natural person

A human being whose conduct and mental state may satisfy the elements of an offence

Legal person

An entity recognized by law. Statutory attribution rules connect human conduct, authority, benefit, and supervision to the entity

Officer and corporate liability

Article 13 of the Interpretation Act

May impose personal liability on a director, manager, secretary, or similar officer. The statutory defence requires lack of knowledge and all due diligence.

Article 121D of the Criminal Code

Provides offence-specific corporate liability within its stated title when the required person, authority, and corporate benefit are proved.

Method

Identify the offence, the actor, the person's role, the benefit to the entity, and the exact attribution provision.

Corporate responsibility scenario

A senior officer directs an employee to submit a false record to secure a benefit for the company

Identify

- The natural person and the legal person
- The prohibited act and required mental element
- The officer's authority and the corporate benefit
- The exact officer-liability or corporate-liability provision

Young age and capacity

Under 14

Article 35

Exempt from criminal responsibility for any act or omission

Age 14 to under 16

Article 37

Exempt when the act or omission occurs without mischievous discretion

Age 16 to under 18

Article 37

The applicable penalty is reduced by one or two degrees

Minor responsibility scenario

A 15-year-old joins older friends who damage property

- What act or participation must the prosecution prove?
- What evidence bears on mischievous discretion?
- Which article governs the age-based analysis?
- What responses may exist outside ordinary criminal punishment?