

Criminal Law

Part I: Criminal Law

1. Introduction

Наказателното право е съвкупност от правни норми, които определят кои **деяния** са **престъпления** и какви **наказания** при какви **обстоятелства** следва да бъдат **наложени** на **извършителите**.

Основен източник на наказателно право в България е **Наказателния кодекс** (Bulgarian Penal Code), който се състои от обща и особена част. Общата част разглежда **основните принципи** на наказателното право, а особена съдържа систематизирана категоризация на престъпленията.

There is no comprehensive codification of criminal law in common law jurisdictions. In the UK the Law Commission revises and consolidates the **general principles** of criminal law. In the USA criminal law is set out in 52 criminal codes. The federal criminal code overlays the codes of each of the 50 states and that of the District of Columbia, yet it is too unsystematic and incomplete to function as a national code. Therefore, the **Model Penal Code** has been developed by the American Law Institute for educational and reference purposes, but no judicial decisions are based directly on it.

2. The criminal offence: a common law definition

„Престъпление е това общественоопасно деяние (действие или бездействие), което е извършено виновно и е обявено от закона за наказуемо.” (Наказателен Кодекс, чл. 9 ал.1)

A **crime** is often regarded as a **public wrong** (as opposed to a **civil wrong**), but conduct which is harmful to the public is not necessarily a crime: therefore, a more precise definition would specify that crime is a public wrong, which courts or Parliaments have found sufficiently injurious to the public to necessitate the application of **criminal procedure**. At common law **criminal offences** usually consist of two elements: *actus reus* and *mens rea*. **Actus reus** (L. “guilty act”) is the prohibited conduct consisting of a) a willed act or omission, b) the relevant circumstances, and c) the prohibited consequences. It may be a physical act, words (in case of **incitement, conspiracy, blackmail, inducement**), omission (in case of **breach of duty**), possession (of illegal substances), etc. **Mens rea** (L. “guilty mind”) involves intention or recklessness. **Intention** is a desire or certainty beyond substantial doubt that given the relevant circumstances the relevant act will cause the relevant consequences. **Recklessness** contains **foresight** of the possible occurrence of the consequences but no desire to cause them, i.e. knowing that there is a risk, one simply takes it. While *mens rea* requires foresight and awareness, **negligence** does not, yet negligent conduct, especially in the case of **gross negligence**, can be prosecuted as criminal offence (**criminal negligence**).

3. Categories of crimes

In the UK **indictable offences** are serious offences tried on an indictment, i.e. a formal accusation, usually by a judge and a jury (e.g. murder, robbery), while **summary offences** are tried by lay or stipendiary magistrates without the right to a jury (e.g. minor traffic offences). There are also offences that are tried **either way** (e.g. theft). In the US a similar classification is made in accordance with the imposed penalty: a crime punishable by more than a year in prison is termed a **felony**, between 5 days and a year – a **misdemeanour**, and less than 5 days – an **infraction**.

4. Parties to a crime

Common law courts usually distinguish between i) a **principal (perpetrator)** who does the act and ii) an **accessory** who counsels, procures, aids or abets. Some jurisdictions differentiate further i) an accessory, who helps and encourages the principal in some way, from ii) an **accomplice** who is present and directly participates in the crime.

5. Criminal punishments (sanctions)

Punishment is a measure of state compulsion assigned by judicial judgement. It is imposed on a person who has been found guilty of a crime for the joint purpose of restoring social justice and reforming the wrongdoer's character in order to prevent the commission of subsequent crimes.

In many jurisdictions punishment is categorised in two main types: a) corporal and b) socio-economic punishment. Corporal punishment includes penalties such as: **capital punishment, imprisonment** (for life or for a definite period), **probation, corrective labour**. Socio-economic punishment comprises: **confiscation of property, fines, community service, restriction or loss of civic or other rights, public reprimand**.

6. Types of criminal offences

ПРЕСТЪПЛЕНИЯ ПРОТИВ ЛИЧНОСТТА	умишлено убийство	OFFENCES AGAINST THE PERSON
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murder is an unlawful killing of a reasonable creature, who is in being and under the Queen's peace, with **malice aforethought**, the death following within a year and a day.

причиняване другиму смърт по непредпазливост

manslaughter is a **criminal homicide** without malice aforethought. There are two categories: **voluntary manslaughter**, when death is caused in circumstances that would have amounted to murder had the act not been done under **provocation, suicide pact, excessive self-defence**, etc; and **involuntary manslaughter**, for example when death is caused by **gross negligence** or **recklessness**.

	причиняване на телесна повреда		assault is intentional infliction of unlawful personal violence or battery occasioning actual bodily harm .
	изнасилване		rape includes all unlawful non-consensual sexual intercourse , even in marriage.
	блудство		indecent assault is a physical or psychic assault accompanied by circumstances of indecency.
ПРЕСТЪПЛЕНИЯ ПРОТИВ СОБСТВЕНОСТТА	кражба	OFFENCES AGAINST PROPERTY	theft is the act of dishonest appropriation of property belonging to another with the intention of permanently depriving the other of it.
	грабеж		robbery is stealing and immediately before or at the same time of doing so, and in order to do so, using force on any person or putting or seeking to put any person in fear of being there and then subjected to force .
	изнудване		blackmail or extortion consists of a menacing demand made with a view to unlawfully enrich one's self or another.
	измама		deception or fraud is the dishonest obtaining of property belonging to another, with the intention of permanently depriving the other of it.

Part II: Criminal Procedure

7. Criminal Proceedings in the UK

Magistrates' Courts

If X exceeds the speed limit when driving a car, thus committing a **summary offence**, he or she may be **reported** by the police for **summons**. The latter is **served on** the **accused** informing him or her of the **alleged offence** and commanding him or her to **attend** the court on a specified date and time, by which criminal proceedings are **initiated**. If X does not **appear** in court, the magistrates may **issue a warrant for arrest**. If X chooses to attend the court, he or she may **consult** a solicitor to receive **advice** on whether to **plead** "**guilty**" or "**not guilty**". A "**guilty**" **plea** may lead to a quick settlement of the case usually by **fine**. If, however, X wishes to **contest** the accusation, he or she can plead "**not guilty**" and his or her solicitor will have to **prepare a defence**. If the defence is not successful and the **defendant** is **found guilty**, the magistrates will decide on a **penalty**. If the defence is successful, the defendant is **acquitted**.

Crown Court

If Y commits theft which is to be **tried** by the Crown Court, a written accusation is drawn up and becomes an "**indictment**" when signed and approved by the trial judge, by which the **suspect** is formally **charged** with the respective crime. The defendant is then **summoned** to

trial and **arraigned** with the court clerk calling him or her by name to the bar and asking him or her to plead “guilty” or “not guilty”. Prior to the trial there is a statutory requirement for **disclosure** by both prosecution and defence of any material relevant to the case, e.g. **alibis**, **witnesses**, **exhibits**, etc.

If Y pleads “guilty”, the **prosecuting counsel** outlines the **broad facts** of the case to the court and the **antecedents** of the defendant, i.e. the life history and previous **convictions**, are read out. Then the **defence counsel** may make a **speech in mitigation** pointing out **circumstances** that should be taken into consideration by the court in **fixing the sentence**. The judge then may **retire** to consider his or her **decision**, which is subsequently **delivered** together with the **penalty** in open court.

If Y, however, pleads “not guilty”, a **jury** is **empanelled** and **sworn in**, the prosecuting counsel outlines the broad facts of the case, shows how it intends to **prove** the case. The witnesses of the prosecution are then **examined**, **cross-examined** by the defence counsel, and if necessary **re-examined** by the prosecuting counsel. The defence counsel then outlines the broad facts of the defence. The witnesses of the defence are then examined, cross-examined by the prosecuting counsel, and if necessary re-examined by the defence counsel. At this point, the defendant Y may elect to go into the **witness box** and give evidence **under oath** and/or protest his or her **innocence**. Then the prosecuting counsel delivers a **closing speech**, the last speech, however, is attributed to the defence counsel. Afterwards, the judge instructs the jury on the law, sums up and explains that the **burden of proof** lying on the prosecution is to prove that the accused committed the offence **beyond reasonable doubt**. The jury then retires to **deliberate** in secret, without any external interference. If they do not reach unanimous decision on the **verdict**, the judge will order **retrial** and empanel a new jury. If the defendant is found guilty by the jury, the defence counsel makes a speech in mitigation before the **sentence** of the court is **awarded** by the judge.

Part III: International Criminal Law

International criminal law is a branch of international law which deals with international crimes and the courts and tribunals set up to adjudicate cases in which persons have incurred international criminal responsibility. Its sources can be traced to the general principles of international law recognized by civilised nations and the international treaties governing criminal conduct.

International criminal law can be categorised according to whether the conduct in question is **international**, constituting an offence against the world community, or whether the act is **transnational**, affecting the interests of more than one state:

acts threatening world order and security
wilful damage to the environment
crimes against humanity and fundamental human rights
war crimes and genocide
transborder organised criminal activity

drug trafficking
counterfeiting
money laundering
financial crimes
terrorism