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Współpracuje jako metodyk i trener ze szkołami języków obcych.

## Lesson Ten Criminal Law

As a result of what we hear on the news and read in newspapers, criminal law is much better known to laymen than civil law. People often misapply principles from criminal law to situations in civil (e.g., tort) law, which results in their misunderstanding. Today we will try to show the basic differences between these two branches of law.

Civil law is the general part of private law and it deals with relationship between individuals. Civil law includes Family Law, Property Law, Contract Law, Wills and Torts. In civil law private party (e.g., a corporation or individual person) **files the lawsuit** and becomes the **plaintiff**.

Criminal law deals with **offences** against public. In criminal matters, action is taken by the "state" against an individual for a **violation of the law**. In other words litigation in criminal law is always filed by the government, who is called the **prosecution**.

As you may remember from Lesson 8 on Litigation in civil procedure a **claimant** (plaintiff) sues a **defendant**. The judge may **reject the case** or **grant remedies** for the claimant.

In criminal procedure the prosecutor who is the **attorney** representing the state (US) or the Crown (UK) **prosecutes** the defendant. If the defendant is **found guilty** the judge **convicts** the defendant.

One of the most fundamental distinctions between civil and criminal law is in the notion of **punishment**.

A defendant in civil litigation is never **incarcerated** and never **executed**. In general, a losing defendant in civil litigation only **compensates** the plaintiff for losses caused by the defendant's behaviour.

In criminal law, a guilty defendant is punished by either (1) **incarceration** in a jail or prison, (2) **fine** paid to the government, or, in exceptional cases, (3) execution of the defendant: the death penalty. In USA crimes are divided into two classes: **felonies** which have a maximum possible sentence of more than one year incarceration, **misdemeanours** which have a maximum possible sentence of less than one year incarceration. Under UK law serious crimes are classified as **indictable offences** and less serious crimes as **summary offences**.

### MIRANDA WARNING

*"You have the right to remain silent. Anything you say can and will be used against you in a court of law. You have the right to an attorney. If you cannot afford an attorney, one will be provided for you. Do you understand the rights I have just read to you? With these rights in mind, do you wish to speak to me?"*

The party making the claim must prove that the **charges** or **allegations** made in the claim are true. This obligation is called **the burden of proof**.

In criminal **litigation**, the burden of proof is always on the state. The state must prove that the defendant is guilty. The defendant is assumed to be innocent (**presumption of innocence**); the defendant needs to prove nothing. There are exceptions. If the defendant wishes to claim that he/she is **insane**, and therefore not guilty, the defendant bears the burden of proving his/her insanity (**the insanity defense**). Other exceptions include defendants who claim **self-defense** or **duress**.

In criminal litigation, the state must prove that the defendant satisfied each element of the statutory definition of the crime, and the defendant's participation, "**beyond a reasonable doubt**." It is difficult to put a valid numerical value on the probability that a guilty person really committed the crime, but legal authorities who do assign a numerical value generally say "at least 98% or 99%" certainty of guilt.

In civil litigation the burden of proof is initially on the plaintiff. The plaintiff wins if the **preponderance of the evidence** favours the plaintiff. For example, if the jury believes that there is *more than a 50%* probability that the defendant was **negligent** in causing the plaintiff's **injury**, the plaintiff wins. This is a very low standard, compared to criminal law.

A few tort claims (e.g., fraud) require that plaintiff prove his/her case at a level of "clear and convincing evidence", which is a standard higher than preponderance, but less than "beyond a reasonable doubt."

## Glossary

allegation - domniemanie	indictable offence – ciężkie przestępstwo
attorney - adwokat	injury - szkoda
beyond reasonable doubt – ponad wszelką wątpliwość	insane - niepoczytalny
burden of proof – ciężar dowodu	insanity defense – brak poczytalności
charge - oskarżenie	litigation – spór sądowy
claimant - powód	misdemeanour - wykroczenie
to compensate - zadośćuczynić	negligent – niedbały, niestaranny
to convict - skazać	offence - przestępstwo
defendant – oskarżony / pozwany	plaintiff - powód
duress - przymus	preponderance of the evidence – przewaga dowodów
to execute – wykonać egzekucję	presumption of innocence – domniemanie niewinności
felony – ciężkie przestępstwo	prosecution - oskarżenie
to file a lawsuit – złożyć pozew	punishment - kara
to find sb. guilty – uznać winnym	to reject the case – odrzucić sprawę
to grant remedies – przyznać odszkodowanie	self-defense – obrona własna
to incarcerate - uwięzić	summary offence - wykroczenie
incarceration – uwięzienie	to violate the law- złamać prawo

**Exercises**

1. Label the pictures below with the name(s) of different kinds of punishments listed below:

- a. *Fine*      b. *Probation*    c. *Capital Punishment/Death sentence/Execution of the defendant*  
 d. *Community Service*      e. *Imprisonment/Incarceration/Jail sentence*



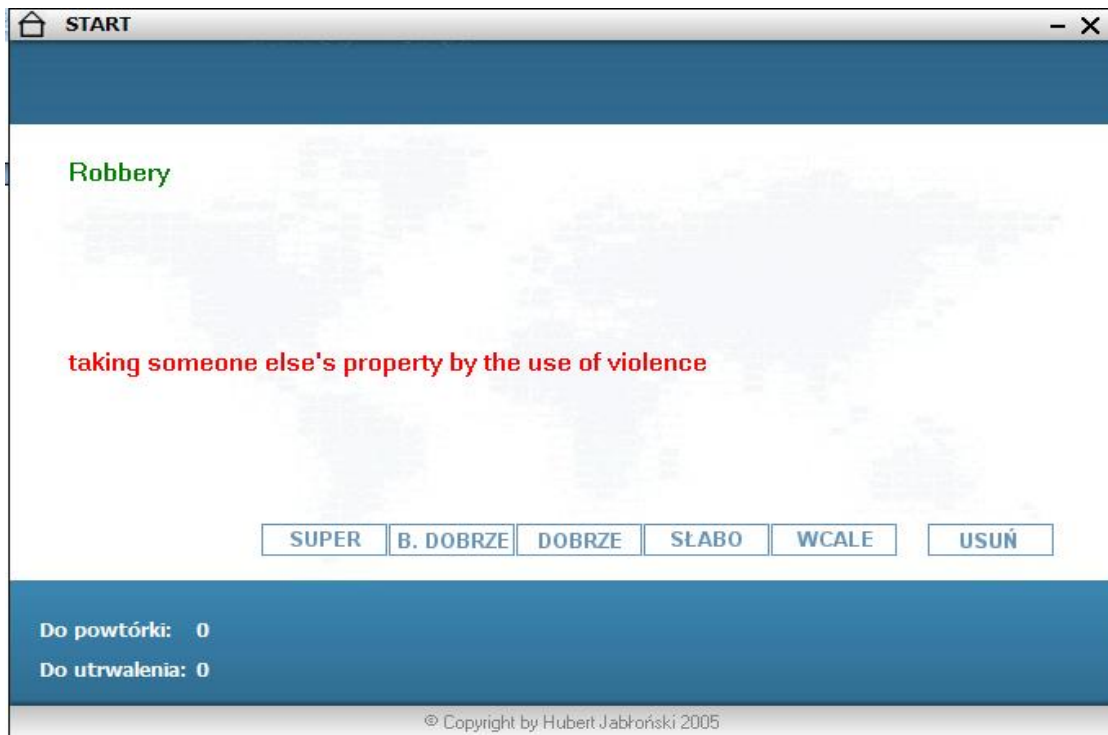
1.	2.	3.	4.	5.
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2. Prepare the table with about 25 rows and brainstorm the names of different crimes that you know. Write them in the left-hand column of your table. In the right-hand column write the definition of the crime. An online dictionary on [www.thefreedictionary.com](http://www.thefreedictionary.com) may help you:

✂	✂	✂	✂	✂	✂	✂
robbery	taking someone else's property by the use of violence					
theft / larceny	stealing from someone					
bribery	offering or taking money to obtain a benefit					

When your table is ready cut the table along the lines, mix the stripes and play the matching game. Match the name of the crime with its definition.

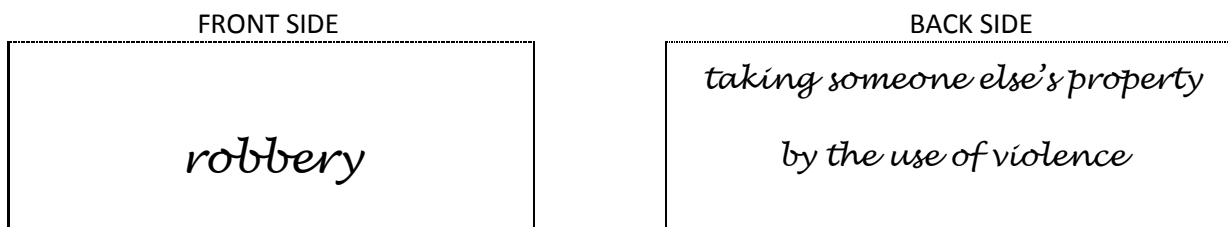
3. If you are a technophile, you may wish to create a similar database with the help of computer software, e.g. Super Memo, or a simpler SM type software – Your Teacher which can be downloaded from <http://hubjab.republika.pl/>. Below you can see an example card created in YT.



Have some fun and practice the names of crimes in online activities on:

<http://www.manythings.org/vocabulary/lists/c/words.php?f=crimes> – list of crimes with a collection of interactive word games

- If you are a technophobe, you may prefer to prepare a collection of double-sided paper cards with the names and definitions of crimes which you can use to test yourself or each other.



You take one card and ask yourself or your partner for a definition of robbery. Or you read the definition and ask for the word.

- Fill in the gaps in the pieces of criminal news with the missing prepositions.

Legendary rock and roll music producer Phil Spector is charged (1) ..... the fatal shooting (2) ..... former actress Lana Clarkston (3) ..... Feb. 3, 2003 (4)..... his Los Angeles mansion. He was officially charged (5) ..... November

(6) ..... 2003. Spector, 66, is free (7) ..... \$1 million **bail** (kaucja). A Los Angeles jury has convicted the famous music producer (8) ..... second-degree murder.

A former Illinois policeman, who made national news (9) ..... 2007 when his fourth wife disappeared, has been **indicted** (oskarżyć) and arrested (10) ..... connection (11) ..... the death (12)..... his third wife (13) ..... 2004. Drew Peterson is being held (14) ..... \$20 million bail (15) ..... charges (16) ..... murdering Kathleen Savio. Drew Peterson **entered a plea (17)** ..... **not guilty** (nie przyznać się do winy) (18) ..... killing his third wife who was found dead (19) ..... a dry bathtub (20) ..... 2004. Kathleen Savio's death was originally ruled an accidental drowning, but was changed (21) ..... homicide after Peterson's fourth wife disappeared. After Stacey disappeared the body of Savio was **exhumed** (ekshumować zwłoki) and a later **autopsy** (sekcja zwłok) found that she was the victim (22) ..... a homicide, not an accidental drowning as originally ruled.

The man charged (23) ..... killed three members (24) ..... Oscar-winning actress Jennifer Hudson's family has entered a not guilty plea (25) ..... Cook County Criminal Court (26) ..... Chicago. William Balfour is charged (27) ..... first-degree murder and home invasion.

A New York man accused (28) ..... kidnapping and killing graduate student Imette St. Guillen (29) ..... February 2006 has been found guilty (30) ..... kidnapping and assaulting another young college student. A jury deliberated less than three hours before finding Darryl Littlejohn guilty (31) ..... the **abduction** (uprowadzenie) (32) ..... 19-year-old Shanai Woodard.

Federal prosecutors have decided (33) ..... seek the death penalty (34) ..... a 22-year-old man accused (35) ..... the carjacking and murder (36) ..... Eve Carson. Demario James Atwater also faces the death penalty (37) ..... state charges (38) ..... first-degree murder, robbery and kidnapping.



Have some fun with Legal English and play detective games online:

1. [http://www.crimeandinvestigation.co.uk/games/3/Solve The Murder.htm](http://www.crimeandinvestigation.co.uk/games/3/Solve_The_Murder.htm)
2. <http://www.murdermysterygames.co.uk/online/suspicionofmurder.htm>
3. <http://www.channel4.com/history/microsites/C/city-of-vice/game/bow-street-runner/game.html>
4. <http://www.playsleuth.com/>
5. <http://www.bigfishgames.com/>

## ANSWERS

1. (1)e (2)a (3)c (4)d (5)b
- 2.

✂	✂	✂	✂	✂	✂	✂
arson	setting fire to the building, buildings, or other property					
assault	a violent physical or verbal attack					
battery	the act of beating					
bigamy	marrying one person while still legally married to another					
bribery	offering or taking money to obtain a benefit					
burglary	entering a building or other premises with the intent to steal					
conspiracy	an agreement between two or more persons to commit a crime					
domestic violence	physical abuse directed toward your spouse or domestic partner					
drug trafficking	buying and selling drugs					
embezzlement	to take (money, for example) for one's own use in violation of a trust					
espionage	the act or practice of spying or of using spies to obtain secret information					
forgery	making an illegal copy of a painting, banknote, antique, etc.					
fraud	deliberate deception or cheating intended to gain an advantage					
genocide	the systematic and planned extermination of an entire national, racial, political, or ethnic group					
hijacking	taking control of a aeroplane or other moving vehicle					
homicide	the act of killing someone					
joyriding	riding in a car taken for pleasure					
kidnapping	capturing and carrying away a person against their will and holding them in false imprisonment; usually for ransom					
manslaughter	unlawful but not deliberately planned killing of one human being by another					
money laundering	keeping in secret the source of illegally gotten money					
mugging	an assault upon a person especially with the intent to rob					
perjury	the deliberate, willful giving of false, misleading, or incomplete testimony under oath					
poaching	taking fish or game in a forbidden area					
rape	forcing another person to submit to sex acts, especially sexual intercourse					
riot	a violent disturbance of the public peace by three or more persons assembled for a common purpose					
robbery	taking someone else's property by the use of violence					
shoplifting	stealing merchandise from a store					
smuggling	importing or exporting without paying lawful customs charges or duties					
stalking	following or observing (a person) persistently, especially out of obsession					
tax evasion	avoiding paying taxes					
terrorism	use of violence and intimidation to achieve political ends					
theft / larceny	stealing from someone					
treason	a betrayal of trust or confidence					
trespassing	entering onto another's land wrongfully.					
vandalism	wilful or malicious destruction of public or private property					

5.

- |         |          |          |          |             |
|---------|----------|----------|----------|-------------|
| 1. with | 9. in    | 17. of   | 25. in   | 33. to      |
| 2. of   | 10. in   | 18. to   | 26. in   | 34. against |
| 3. on   | 11. with | 19. in   | 27. with | 35. of      |
| 4. at   | 12. of   | 20. in   | 28. of   | 36. of      |
| 5. in   | 13. in   | 21. to   | 29. in   | 37. on      |
| 6. of   | 14. on   | 22. of   | 30. of   | 38. of      |
| 7. on   | 15. on   | 23. with | 31. of   |             |
| 8. of   | 16. of   | 24. of   | 32. of   |             |

