Sanctions under criminal law

Criminal law aims to protect society. In order that society can keep functioning, it is necessary for those who break the law to be dealt with through the courts. The government is responsible for maintaining an effective and efficient legal system that deals fairly and justly with individuals who have broken the law.

The offender has the right to be given a punishment appropriate to the crime committed. The victims or their families also have the right to see the offender punished for the harm they have done. However, it is possible that each person affected by the outcome will feel differently. An accused who has been found guilty but given a lenient sentence may feel that the outcome is just. The victim may disagree.

After hearing all the evidence in a case, and deciding that the accused should be found guilty, the judge or magistrate will decide on a suitable punishment for the accused. Criminal punishments provided by the courts are referred to as sanctions.
Aims of criminal sanctions

In sentencing offenders, judges and magistrates will consider the aims of criminal sanctions. The aims of criminal sanctions are shown below.

- **punish** — The law must punish offenders so that victims or their families can seek retribution without taking the law into their own hands. If individuals did take the law into their hands, crime would increase and society would deteriorate. Imprisonment and the deprivation of freedom is the ultimate punishment in our society. We no longer use capital punishment or corporal punishment, as these punishments are considered inhumane and unacceptable in the twenty-first century.

- **protect** — While imprisonment is seen as a punishment of last resort, a few offenders are given very long periods of imprisonment because the courts deem them to be a danger to society. The horrendous nature of the crime, the lack of remorse and the offender’s callous attitude indicate that the person should be kept out of society for as long as possible.

- **denunciate** — When sentencing, the court may give a sentence that is harsh enough to show the disapproval of the court; that is, the court denunciates the particular behaviour. This will give others in society the message that this type of criminal behaviour will not be tolerated.

- **deter** — The law aims to deter the offender and others in society from committing the same or similar offences in the future. A punishment imposed as a general deterrent is one that discourages people in general from committing the crime, whereas a specific deterrent is aimed at stopping the particular offender from repeating the offence.

  A recidivist is a person who continues to commit crimes despite being punished for them.

- **rehabilitate** — It is in society’s interests to try to help offenders change their ways, otherwise crime rates and prison costs will escalate. In providing offenders with improved opportunities in the form of education, training, assistance and support (for example, counselling), the legal system hopes that offenders will grasp the chance of a better future and become law-abiding citizens.

Effectiveness of criminal sanctions

To be effective, criminal sanctions must be:

- appropriate to the severity of the crime committed
- appropriate for the offender, taking into consideration the financial, social, cultural and health circumstances of the offender
- acceptable to the community
- able to fulfil the aims of criminal sanctions.

Imprisonment fulfils the aim of protecting the community because when a person is in prison, he or she cannot harm the community. To some extent imprisonment deters individuals from committing crimes because the normal law-abiding citizen is likely to fear the possibility of being caught and imprisoned. However, a person who is a habitual offender is less likely to be deterred from committing a crime by the thought of possibly being caught and imprisoned.

To reduce recidivism and the incidence of crime in society, it is important to rehabilitate the offender. In prison prisoners may undertake programs to help them lead useful lives when they leave prison. However, while in prison, they mix with known criminals and could become more entrenched in a criminal way of life. A prisoner may experience difficulties in finding employment on release from prison, and in getting back into society.
The majority of law-abiding citizens are deterred from committing offences because it is morally wrong, and if they get caught they will be punished. However, people intent on committing a crime are not likely to be deterred by the thought that they might get caught and punished. A person who has been to prison or been punished in some other way might feel determined not to suffer the same fate again, and will not reoffend. Others, however, will continue to reoffend for a variety of reasons.

To fulfil the aims of criminal sanctions, the sanction must punish the offender and be appropriate to the severity of the crime. A lenient sentence is likely to cause dissatisfaction in the community if the crime is seen as serious.

The courts will at times show their disapproval of a particular type of behaviour (denunciate the behaviour of the accused) and give a severe sanction. This is to try to educate the offender that their type of behaviour is not acceptable to society. It is also showing people that the type of behaviour will not be tolerated. However, there can be circumstances that lead a person to commit crimes that may result in a lighter sentence. Also, if a person pleads guilty early, he or she is likely to receive a lighter sentence.

Suspended sentences are appropriate for minor offences or perhaps for someone who has already spent considerable time in prison awaiting trial. However, a suspended sentence is less likely to fulfil the aims of criminal sanctions. It has been suggested that these should be abolished because they are seen as being too lenient.

Community-based orders are likely to deter individuals from committing a crime. To some extent they also protect society in that at times when criminals are most likely to commit a crime they are busy doing some allotted work. Community-based orders aim to rehabilitate the offenders and help them get back into society.

Home detention is a deterrent and a punishment, but it could increase pressure on other family members.

A fine is an appropriate deterrent for minor offences such as traffic offences because it deters the general public from offending. However, it does not protect individual members of society and can result in extra financial pressure being put on the offender, which could result in further crimes being committed.

The suspension and cancellation of a driver’s licence is an effective way of keeping traffic offenders off the roads. However, it could place considerable and inappropriate hardship on an individual depending on the type of work they have.

Guidelines for sentencing

The sentence given must be appropriate to the crime committed. In deciding the length of the sentence, the court will consider:

- the maximum penalty prescribed for the offence
- current sentencing practices
- the nature and gravity of the offence
- the degree of blame on the offender
- whether the offender pleaded guilty and at what stage in the proceedings
- whether the offender followed the requirements of the directions hearings (see left)
- the offender’s previous character
- the presence of any aggravating circumstances (which made the crime worse) or mitigating factors (which gave some excuse for the crime)
- the impact of the crime on the victim.