

Criminal pre-trial procedure

- **Bail:** allows for a person charged with a criminal offence to be released from custody, on the undertaking that they'll appear at a later date.
 - Purpose: uphold presumption of innocence.
 - Conditions: e.g. accused may only receive bail if there is surety (person who promises to pay for failure to appear).
 - Refusal: may occur if; suspected that the accused will not appear in court, a danger to the community, charged with a serious offence e.g. murder.
- **Remand:** refers to when bail has been refused, and accused is held in custody until trial.
 - Purpose: protect society from accused and to ensure accused's appearance in court.
- **Committal hearings:** heard in Magistrates Court for indictable offences.
 - Purpose: to determine whether the prosecution has sufficient evidence to gain a conviction at trial in a higher court (prima facie case). This ensures efficiency in the court system.
 - Procedure: traditional method is for prosecution witnesses to give oral evidence, however commonly a hand up brief method will occur (written statements).

Civil pre-trial procedure

Pleadings

- Series of documents that are exchanged between parties, setting out the nature of the claim against the defendant, remedy sought and defendant's response.
- Writ is a summons served to the defendant
- Statement of claim sets out legal rights, facts and remedy sought.
- This is followed by notice of appearance, statement of defence and the counterclaim.

Discovery

- Parties gather further information on each other, with the aim of reaching an early out of court settlement.
- This stage will include interrogatories (a list of questions for opposing party), notice of discovery (demand for documents), oral discovery and medical examination.

Directions hearings

- Judge oversees pre-trial stages, through giving instructions that he/she believes will ensure a prompt and fair resolution.
- The purpose is to inform and prepare.

Criminal sanctions & their purposes

Five main purposes: Protection, Deterrence, Retribution, Rehabilitation, Denunciation

Imprisonment: Restricting the offender's liberty by placing them in a prisons for a time determined by the severity of their crime.

- Protection: By physically confining an offender, the public is protected.
- Deterrence: Aims to dissuade the offender and general public from committing crimes due to the undesirability of restricted freedom.

Community correction order: include a range of programs that allow the offender to be supervised within the community. E.g. unpaid community work and educational programs with a range of conditions attached.

- Retribution: CCOs require offenders to complete work without financial reward.
- Rehabilitation: Programs help offender become a valuable member of society, possibly changing their mindset.

Fine: a monetary sum that the offender pays to the police or courts, with the amount outlined in an act of parliament.

- Deterrence: Offenders may be dissuaded from reoffending due to the threat of fines.
- Denunciation: Putting a monetary value on crime shows that is the wrong way to act.

Civil remedies

Overall purpose: to restore the injured party to the position they were in prior to the infringement.

Damages: a monetary amount, awarded to the plaintiff to help restore them to the position they were in prior the infringement.

1. **Compensatory damages:** Aim is to compensate the plaintiff for the infringement of rights that was inflicted upon them.
 - **Specific damages:** damages that can be calculated exactly. e.g. medical expenses
 - **General damages:** an estimation based on long term consequences. For example future earnings
 - **Aggravated damages:** these are awarded when the defendant has enacted humiliation on the plaintiff.
2. **Nominal damages:** a small amount of money paid when the plaintiff legally had their rights infringed, but little actual damage was done to them (for example, in defamation cases).
3. **Contemptuous damages:** a tiny amount of money may be awarded when the court acknowledges that the plaintiff has a legal right to damages, but not a moral one.
4. **Punitive/exemplary damages:** the aim of these damages, rather than to restore the plaintiff to their original position, is to punish the defendant .e.g. when violent or cruel.

Injunction: a court order that prohibits or demands an action. This may be interlocutory (temporary) or ongoing.

- **Restrictive injunction:** prevents an action. For example, the injunction may prevent a party from demolishing a building.
- **Mandatory injunction:** compels an action. For example, the injunction may demand a formal apology.