

# SOCI 446

# PENOLOGY

## SESSION 9 – Criminal Procedure and Sentencing

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# Course Information

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# Session Overview

- By definition, a crime is an intentional action or inaction which violates the provisions of the criminal legislation **and is punishable**. Basically, the need to punish offenders involves a series of activities which constitute the sentencing procedures.
- For example, what happens after a suspect has been arrested? Under what circumstances can bail be granted? When does his /her trial begin and how? What kind of punishment will be prescribed if found guilty?
- These and other relevant issues are discussed.



# Session Outline

- The main topics to be covered in this session are as follows: -
- Topic One            The Court, definition and functions
- Topic Two            Arrest and Prosecution of suspects
- Topic Three           Sentencing options

# Objectives/Expected outcomes for the session

On the completion of this session, you should be able to –

- Define a court and explain its functions
- Describe the procedures involved in the arrest and prosecution of suspects
- Identify and explain the sentencing options available to the courts

# Topic One:

## The Court, definition and functions

### Introduction

- Before an offender is punished it has to be proved beyond every reasonable doubt that he has committed a crime, and the decision whether a person has committed a crime or not is made by the Court.
- No other agency or state whether the police or the army has the right to punish 'offenders' except the court.
- What or who constitutes a court and what are its main functions?

# The court, definition cont.

- The court is an agency of social control concerned with the administration of justice.
- Courts are often constituted by a body of people presided over by a judge or a panel of judges or a magistrate and acting as a tribunal in civil or criminal cases. A judge or magistrate can however sit alone to try a case.
- Thus, courts have the authority to adjudicate legal disputes between parties and to carry out the administration of justice in civil, criminal and administrative matters, in accordance with the rule of law



# The Courts – the sub divisions

- In Ghana, the constitution provides that the judiciary, that is, the courts, shall consist of -
- (A) the Superior Courts of Judicature comprising -
  - (i) the Supreme Court;
  - (ii) the Court of Appeal; and
  - (iii) the High Court and Regional Tribunals, and
- (B) such lower courts or tribunals as Parliament may by law establish.

# The Court – public hearings

- Except as otherwise provided in the Constitution or as may otherwise be ordered by a court in the interest of public morality, public safety or public order, **the proceedings of every court shall be held in public.**
- The Constitution further directs that, the Superior Courts may, in relation to any matter within their jurisdiction, **issue such orders and directions as may be necessary to ensure the enforcement of any judgement, decree or order of those courts.**
- In the exercise of the judicial power of Ghana, the Judiciary, in both its judicial and administrative functions, including financial administration, shall not be subject to the control or direction of any person or authority.

# The powers and independence of the courts

- Neither the President nor Parliament nor any person acting under the authority of the President or Parliament nor any other person whatsoever shall interfere with Judges or judicial officers or other persons exercising judicial power, in the exercise of their judicial functions.
- All organs and agencies of the State are required by the Constitution to accord to the courts such assistance as the courts may reasonably require, and to protect the independence, dignity and effectiveness of the courts
- A Justice of a Superior Court, or any person exercising judicial power, shall not be liable to any action or suit for any act or omission by him in the exercise of the judicial power.

# The Supreme Court

- **The Supreme court shall consist of the Chief Justice and not less than nine other Justices of the Supreme Court. It shall be duly constituted for its work by not less than five Supreme Court Justices except as otherwise provided in article 133 of the Constitution.**
- The Chief Justice shall preside at sittings of the Supreme Court and in his absence, the most senior of the Justices of the Supreme Court, as constituted, shall preside.
- A person shall not be qualified for appointment as a Justice of the Supreme Court unless he is of high moral character and proven integrity and is of not less than fifteen years' standing as a lawyer.

# The Supreme court cont.

- The Supreme Court shall be the final court of appeal and shall have such appellate and other jurisdiction as may be conferred on it by this Constitution or by any other law.
- The Supreme Court shall not be bound to follow the decisions of any other court.
- The Supreme Court shall have supervisory jurisdiction over all courts and over any adjudicating authority and may, in the exercise of that supervisory jurisdiction, issue orders and directions for the purpose of enforcing or securing the enforcement of its supervisory power.

# The Court of Appeal

- The Constitution provides that the Court of Appeal shall consist of -
- (a) the Chief Justice; (b) not less than ten Justices of the Court of Appeal; and (c) such other Justices of the Superior Court of Judicature as the Chief Justice may, for the determination of a particular cause or matter by writing signed by him, request to sit in the Court of Appeal for any specified period.
- The Court of Appeal shall be duly constituted by any three of the Justices referred to above and when so constituted, the most senior of the justices shall preside.
- A person shall not be qualified for appointment as a Justice of the Court of Appeal unless he is of high moral character and proven integrity and is of not less than twelve years' standing as a lawyer.

# The high Court

- **The High Court shall consist of -**
- (a) the Chief Justice (b) not less than twenty Justices of the High Court; and (c) such other Justice of the Superior Court of Judicature as the Chief Justice may, by writing signed by him, request to sit as High Court Justice for any period.
- The High Court may however be constituted - (a) by a single Justice of the Court; or (b) by a single Justice of the Court and jury; or (c) by a single Justice of the Court with assessors; or (d) by three Justices of the Court for the trial of the offence of high treason or treason as required by article 19 of the Constitution.

# Main role of the Courts

- The main role of the Courts – ranging from the supreme to the lower courts - is to interpret the laws of the land and to prescribe punishments for offenders or indeed recommend rewards/restitutions for those requiring compensation
- The sense in which the court is said to be an agency of social control is explained by the fact that it performs **teaching, persuasion and coercive** functions.
- As suggested earlier, by explaining the laws of the land, the court performs a **teaching (educational)** function and by punishing the guilty or rewarding those who deserve to be compensated, the judiciary carries out a function of **persuasion**.
- Further, by ordering the state security agencies to use force in the removal or demolition of unauthorized structures, it performs a **coercive** function



# Judicial systems

- Two main judicial systems can be identified:
- The British system adopted by Ghana – which is known as the **Adversary system**. This involves two adversaries, namely, the accused and the accuser (in other words the defendant and plaintiff). The function of the court under the adversary system is to listen to both sides, that is, the prosecution and the defense, as an impartial referee, and to base its decision upon the facts and the law.
- **The Inquisitorial system**. Under this system the judge or magistrate endeavors to arrive at the truth by asking relevant questions and comes to a decision based on the content of the responses he gets.

# Trial by jury

- The Jury system which originated from the English Common Law was entrenched in the 1992 Ghana constitution and requires that **all capital offences be tried by a judge and a seven-member jury**, of which the absence of a member of the jury due to ill-health or death can stall a case over a very long time.
- The jury system has come under a lot of criticism in Ghana because of the associated delays and the argument that some jury members may not have any significant educational background to fully understand the ingredients of the criminal law.

# Topic Two

## Arrest and Prosecution of suspects

- The criminalization process is a journey from the status of being an ordinary, law abiding citizen to the special status of being a convicted criminal, There are a number of stages along the way ;
- The process begins with an arrest. An arrest is the seizure and the immediate prevention of a person suspected of, or seen engaged in the a breach of the law from further proceeding on his journey or pursuing his/her immediate activities by incapacitating him/her through a handcuff or stocks
- Thus, an arrest is the first formal procedure in the criminal justice process, and is legally ascertained when a police officer takes a person into custody for having allegedly committed a criminal offense. Quite literally it means that the person arrested can no longer move about freely (Berg, 2002)

# The power of arrest

- The power of arrest is generally invested in sworn law enforcement officers, for example the police. Sworn officers, according to Berg (2002) literally take an oath to uphold the laws in their jurisdiction.
- Most police officers derive their authority from statutes that typically empower them to enforce the laws in their jurisdiction, to make arrests, to carry firearms and to provide evidence in criminal trials.
- In most jurisdictions, private citizens also have the power to make arrests, although generally only when a crime has been committed in their presence.



# The power of arrest cont.

- Private citizens rarely exercise this power, however and they are usually discouraged from doing so by the police, except when they apprehend an offender who has committed a crime against their person (Berg, 2002)
- **Arrests can be made with or without the benefit of a warrant if the arresting officer has probable cause to believe that an individual has committed any violation of the law in his/her presence; or has probable cause to believe that the person being arrested has committed a crime whether or not in their presence.**
- **When an arrest is made, it is reasonable for the arresting officer to search the person arrested in order to remove any weapon that the latter might seek to use to resist arrest or effect an escape.** In addition it is entirely reasonable for the arresting officer to search for and seize any evidence on the arrestee's person in order to prevent its concealment or destruction (Berg, 2002)

# The Miranda Warnings

On arresting a suspect, the police are under the obligation of the “Miranda warnings” to caution the suspect that any statement he or she makes could later be used against him/her in court, before the suspect is interrogated or made to write down a statement. This is to preserve the admissibility of the statements if they are to be used against them in court.

The Miranda rule was recognized by the US Supreme Court as a constitutional right in its 1966 decision in *Miranda v Arizona*.

In essence to be ‘mirandized’ is to be read your rights



# Trial within 48 hours

- In 1984 however, the Us Supreme court made an exception to the Miranda rule, declaring that if there is an imminent threat to public safety, suspects can be questioned about the threat *before* they are read their rights, and their statements can still be used against them.
- Section 9 of the Criminal Procedure Code of Ghana requires that a person arrested should be sent to the police station and informed of the charges against him/her and his/her legal rights.
- **Based on the notion that justice delayed is justice denied, this provision required that a suspect be put before court not more than 48 hours after his arrest.**
- But does this always happen? What may be some of the challenges?



# Prosecution of Suspects

- When the prosecutor (the attorney general or his/her representative) is not ready to proceed with the case there are two options:
- **The court has to grant the accused bail**, since the presumption is that a person is innocent until he has been proven guilty; thus, there is no legal basis for the detention of a person who has not been found guilty unless it can be proven beyond reasonable doubt that when released, a suspect may;
  - (i) not turn up for trial or (ii) cannot be contacted because he has no fixed abode or (iii) that he might escape – especially in the case of aliens; or (iv) the criminal is of a proven violent character and constitutes a danger to the state or commits a crime against some individuals while on bail.**



# Bail - defined

- Bail is the practice of releasing criminal suspects from custody in exchange for a sum of money that acts as a guarantee that the suspect will return for trial.
- Should the defendant not return at the specified time, the bail money is forfeited to the court. In theory, the amount of bail should be sufficient to insure that the defendant will return. If the individual does appear in court, the bail money is returned (Michalowski, 1985)
- If there is an assurance that the suspect will turn up for trial, there could be no reason why he should be denied bail. Typically, judges are responsible for setting bail, but prosecutors and police officers set bails in some jurisdictions.

# Refusal of bail -disadvantages

- **When bail is refused then a suspect is remanded in custody;** this is preventive detention, the main rationale for this is to keep the accused person from interfering with justice. Bail is normally granted to persons whose cases cannot be tried immediately.
- There are a number of **disadvantages** when a suspect is remanded in custody.
- (1) The suspect kept behind bars may not have access to counsel, (2) Remanded persons may be kept in conditions worse than actual prison. (3) Public funds go into the maintenance of suspects in detention, and (4) while a waiting trial, the suspect may fall into the company of hardened criminals and become contaminated. (5) The detainee might loose his job. (6) Ultimately, it might turn out that the detainee has been unjustly punished and this might make him bitter against society.

# The trial process

- The trial proceedings are carried out under any of the two judicial options described earlier, namely, the adversarial or the inquisitorial . The Jury trial is used when required, in the adversarial trial system.
- **In the judicial procedure there are three main actors, namely, the accused, the accusers and the impartial referee, that is, the Court.**
- **When the offence is a crime, the accuser is invariably the State.** In serious crime trials such as in treason or murder, the Attorney General or his representative acts as the prosecuting officer. In minor criminal cases, the officer in charge of the investigation may act as the prosecutor
- **In a civil case, the accuser is usually the victim.**

# Legal Aid

- Hitherto in Ghana, an accused person had to rely on his/her own resources in acquiring a defence counsel if he/she required one.
- Recently however the Ghana Bar Association has initiated a Legal Aid scheme in the country. In Britain as well as in some other European countries, the state provides legal aid, the rationale being that no one should be denied justice; because a conviction may be precipitated in the absence of a good defence.
- The criminal trial procedure involving a prosecution and defence is based on the principles discussed earlier to establish a conviction or an acquittal.

# Topic Three

## Sentencing options

### Introduction

- Sentencing or acquittal is generally the outcome of the work of the judiciary. It is the end product of the judiciary's constitutional duties upon which the public also passes judgment – as to whether the **penal pharmacy principle** has been followed – namely was the court able to pronounce a judgement (punishment/acquittal) that befits the crime under trial.
- We have seen earlier, how both the public and the police have expressed reservations about the level of the severity of punishments meted out by the courts.
- While the police often remain muted in their misgivings, the public has frequently demonstrated its disgust sometimes violently by taking the law into hand by inflicting instant justice on suspects!
- What sentencing options are at the disposal of the courts?

# Sentencing options

- Sentencing which follows the hearing of a case involves the determination and pronouncement of punishment by a court or judge.
- The court has a number of options prescribed by law in dealing with offenders. These include The death penalty, imprisonment, imposition of fines, removal from office or disqualification to hold and enjoy any office of honor trust of profit in the society. Others include - **the absolute discharge, the conditional discharge, Recognizance and Probation.**

# The Death Penalty

- The death penalty also known as **capital punishment** is a legally sanctioned practise whereby a person is put to death by the state as punishment for a serious crime.
- The decision by a court that someone be punished in such a manner is referred to as capital punishment. The act of carrying out the sentence - either by hanging, decapitation or by firing squad, or by a lethal injection, etc., is known as execution.
- **Crimes that are punishable by death are known as capital crimes or capital offences and they commonly include offences such as murder, treason, espionage, war crimes, genocide, and other crimes against humanity.**

# Death Penalty cont.

- The United Nations General Assembly adopted a non-binding resolution in 2007 calling for a global moratorium on executions with a view to its eventual abolition. Although quite a number of nations have abolished the death penalty over 60% of the world's people live in countries where the penalty is still on the statute books. These include China, India, the USA, Indonesia, Pakistan, Bangladesh, Japan and Sri Lanka.
- In Ghana although no executions have been carried out since 1993, there is no officially proclaimed moratorium. Notwithstanding, death row inmates have reportedly had their sentences commuted to life imprisonment after they have served at least ten years on death row.



# Imprisonment and the imposition of fines

- **Imprisonment is the act of taking away someone's liberty as punishment for a crime,** by restricting his/her freedom of movement. This can be done either by locking up the person in a jail cell or in some other location. Life imprisonment means that someone will be kept in prison as punishment for many years possibly until they die.
- **Imposition of a Fine: In criminal law a fine is a pecuniary penalty a compulsory payment or forfeiture exacted by a lawful tribunal as punishment for a crime.**
- What a reasonable fine ought to be is not defined but left to the discretion of the judge – all the circumstances being considered. A fine does not impose a loss of reputation. Convicted persons have the option of paying a fine or submitting themselves to a short term imprisonment.

# Removal or disqualification from office

- **Removal from office implies a dismissal**
- The act of a competent officer or of the legislature which deprives an officer of his office. It may be *express*, that is, by a notification that the officer has been removed, or *implied*, by the appointment of another person to the same office.
- **A disqualification to hold any office of honour trust or profit**, as decided by a court of competent jurisdiction, could be either temporary or perpetual. That is a person may be disqualified from holding public office during the period of his disqualification or banned from ever holding any such public office for life

# Other sentencing options

- **The absolute discharge** – Under this option, a suspect who has been found guilty but whose punishment in the opinion of the court will serve no useful purpose is given an absolute discharge. This does not mean, however, that the accused was not guilty.
- **The conditional discharge** – This implies that an accused person has been found guilty but sentence has been suspended for a period of not more than twelve months, during which the person may be arraigned before court when he commits a fresh offence, and sentenced both for the original and the new offence.
- **Recognizance** – This refers to the legal obligation entered into before a judge or Magistrate to do, or not to do some particular act. The offender is then made to sign a bond to be of good behavior for a specified period – within which if no fresh offence is committed the suspect become free, or may be sentenced for both the new and the original offense if he breached the bond.

# Other options cont. - Probation

- **Probation** – Under probation, the convicted person is released to the care of an agent of the court normally a probation officer on condition that the person submits himself/herself for supervision and abides by certain conditions laid down for him/her over a period ranging from 9 months to a maximum of 3 years, at the end of which the probationer may be released if he/she has been of good behavior.
- Probation has often been criticized by the public as ‘too lenient’ a treatment for crime, a ‘let off’, and ‘a second chance without any strings attached’. But these sentiments are misguided, because, although the probationer spends his time at home, yet he suffers a deprivation of his liberty – which equals punishment. Probation will be discussed in some detail subsequently.

# Summary

- The court is an agency of social control concerned with the administration of sanctions – in other words justice. A court can be constituted by a judge or a magistrate sitting alone over a case, or it can be constituted by a panel of magistrates or judges.
- The highest court of jurisdiction in any society is the Supreme Court. This is followed by the Court of Appeal and in third place is the High Court. Magistrates Courts and tribunals can be legally set up when and where required.
- The main role of the court is to interpret the laws of the land and to prescribe punishments for offenders or indeed recommend rewards to those requiring compensation

# Summary cont.

- An arrest is the first formal procedure in the criminal justice process. It occurs when a police officer takes a person into custody for having allegedly committed a criminal offense. Quite literally it means that the person arrested can no longer move about freely.
- The power of arrest is generally invested in sworn law enforcement officers, for example the police. .
- In most jurisdictions, private citizens also have the power to make arrests, although generally only when a crime has been committed in their presence.

# Summary cont.

- When the prosecutor (the attorney general or his/her representative) is not ready to proceed with a trial there are two options: (a) The court has to grant the accused bail, since the presumption is that a person is innocent until he has been proven guilty; (b) Accused persons who represent a danger to the state or community or to another person, may be denied bail.
- When bail is refused then a suspect is remanded in custody; this is preventive detention, the main rationale for this is to keep the accused person from interfering with justice

# Summary cont.

- Sentencing which follows the hearing of a case, involves the determination and pronouncement of punishment by a court or judge. The court has a number of options prescribed by law in dealing with offenders.
- These include the death sentence, imprisonment, imposition of fines , removal from office or disqualification of offenders from holding any office of trust in the society. Further, there is the conditional and absolute discharge, recognizance and probation.



# Assignment

- With reference to Roucek's concept of social control, and with illustrative examples, discuss the sense in which the Judiciary can be said to be performing the functions of social control.



# Reading list

## REQUIRED TEXT

Chris Abotchie (2011)

Distance

Abotchie, C., (2018)  
*Crime Prevention*

Publishing

*Penology*, Accra,

Institute of Continuing and  
Education

*Treatment of Criminals and*

Accra, Olive Tree Printing and

Chapter One pp 1-12