

**A Level Law
Answer Sheet**

Well done for completing your first piece of legal research and work. Check your answers with the suggested answers below.

**Activity 1 -** Types of sentences / factors considered when sentencing

There are a wide range of sentences that are available to the courts, which sentences are available will depend upon the type of offence that a defendant has committed and its severity.

**Custodial sentences:** Imprisonment is the most serious sentence that can be imposed on a defendant. Custodial sentences are reserved for the most serious offences where neither a fine nor a community punishment can be justified. A custodial sentence will be imposed where it is believed necessary to protect the public.

**Suspended sentences:** A suspended sentence is imposed when the court would have given the defendant a custodial sentence of between 14 days and 2 years (or 6 months in the Magistrates court) but it is suspended for up to 2 years, the length of suspension is determined by the court.  This means that the defendant does not go to prison immediately. If the offender commits another offence during the time that the sentence is suspended, the prison sentence is ‘activated’ and the offender will serve the sentence in addition to that of the new offence.

**Community orders:** A community order combines punishment with activities carried out in the community. The Criminal Justice Act 2003 created ‘one community order’ under which the court can combine any requirements that appear appropriate.  The courts can ‘mix and match’ requirements to meet the needs of the offender.

There are 12 potential ‘requirements’, these include an unpaid work requirement (up to 300 hours), prohibited activity requirement, mental health treatment requirement, a supervision requirement, an exclusion requirement, a residence requirement, mental health treatment, an alcohol treatment programme all requirements are listed under s177 Criminal Justice Act 2003.

**Fines:** A fine is a financial penalty that an offender must repay as a matter of law. This is the most common sentence handed down in the courts. It is the only type of sentence which can be imposed on businesses and companies as well as individuals.

**Discharges:** This is the least serious sentence that can be imposed by a court. A discharge is recognition that no further punishment is felt to be necessary, that the court process is punishment enough, but this is still post-conviction so a defendant will receive a criminal conviction.

**Conditional discharge:** the court discharges the offender on the condition that no further offence is committed during a set period of up to three years.

**Absolute discharge**: no penalty is imposed. This type of sentence is likely to be used where a defendant is criminally liable but morally blameworthy.

**Factors in Sentencing**

When sentencing a defendant there are a number of factors that the Magistrates / Judge will take into account:

1. The seriousness of the offence, according to the s143 of the Criminal Justice Act 2003 the seriousness of the offence is determined by the harm to the victim and the culpability of the defendant.

2. The particulars of the offence, these may either be aggravating or mitigating.

**Aggravating factors:** these are circumstances of the offence that justify the imposition of a harsher sentence.

eg. if the defendant has previous convictions for similar offences, if the defendant was on bail when they committed the offence, if the offence was racially motivated, if the victim was vulnerable, if the victim was serving the public, if the attacked carried out by the defendant was unprovoked.

**Mitigating factors:** these arecircumstances of the offence that justify the imposition of a more lenient sentence.

eg. the defendant co-operating with the police, the defendant has no previous convictions, the defendant showed genuine remorse, mental illness of the defendant, the defendant was provoked into committing the offence, the motive of the defendant.

3. The maximum/minimum sentence for the offence.

4. Any relevant sentencing guidelines that have been published by the Sentencing Council.

5. A pre-sentence report (published by the Probation Service) if available.

6. The aims of sentencing.

**Activity 2 -** A case study

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| **Aggravating factors** | **Mitigating factors** |
| * The victim was entirely innocent
* The attack was racially motivated
* The attack was undertaken by a gang
* The victim was not known to the defendants
* There was no provocation by the victim
* The attack involved use of a lethal weapon
* The attack targeted vulnerable areas of the victim’s body
* The attack continued whilst the victim was on the ground
* The offenders were actively seeking a victim that evening
* The offenders showed no remorse
* The offenders consistently lied to the police
 | * The offenders did not intend to kill but intended to cause grievous bodily harm
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