

Law

1 (a) Describe the different aims of sentencing.

[15]

Within the English legal system there are six different aims of sentencing. They will be considered when trying to place an appropriate sentence and will be present within that decision either alone or in combination.

Retribution is one of the six aims of sentencing and is defined as the punishment inflicted in moral outrage or personal vengeance. Applied to law it simply means recognizing that the criminal has done something wrong and taking revenge on behalf of both the victim and society as a whole. Retribution is a priority in most sentences and In the White Paper of 1990, Crime, Justice and Protecting the Public, reference was made to the need for sentences to achieve 'just desserts', stating that punishments should match the harm done. Retribution is also based on the idea of tariff sentencing and that each particular offence should have particular guidelines as to what sentence to give the offender. An example of this is the case of *R v Aramah* (1983) where the different tariffs for drug offences were defined according to type, value and amount of drugs involved. However, many different factors surrounding the offence and the offender can affect the aim of retribution; for example, a criminal might be sent to prison even though the crime committed fits a non-custodial sentence as the offender might come from unstable circumstances (e.g. homeless).

Denunciation is a key aim of sentencing. This means society's disapproval of criminal activity. The White Paper of 1990 also described denunciation as a priority in most sentences, stating that not only should the punishment match the harm done but also show society's disapproval of that harm. It also stated that 'The first objective for all sentences is the denunciation of and retribution for crime. An example of denunciation is the case of *R v Meggs*. Mr E. Meggs was convicted of specimen counts of incest with two daughters over a period of years. Although Incest is an indictable offence he was given a large custodial sentence totalling ten years. Although this combined many different aims of sentencing denunciation was a key focus, and society's disapproval was reflected in his sentence.

Incapacitation is another aim of sentencing. This simply means to prevent an offender from committing further offences and thereby protecting the public. Incapacitation is also based on the idea that a sentence can serve a purpose for society as a whole. The concept of incapacitation is reinforced within the Powers of the Criminal Courts (Sentencing) Act 2000, section 79. This states that a prison sentence should only be imposed where the offence is so serious that imprisonment is justified, or where the offence is a violent or sexual offence and only such a sentence would be adequate to protect the public. There are also non-custodial sentences which are based around incapacitation, such as, Exclusion Orders and Curfew Orders where offenders may be electronically tagged. *R v Meggs* is also an example of incapacitation as Meggs was unable now to continue his incestuous relationship with his daughters.

Deterrence is one of the six aims considered when sentencing an offender. This simply mean to discourage an offender from re-offending or to discourage others from offending. Deterrence can be split into two main types; individual and general deterrence. Individual deterrence, such as custodial sentences are imposed to make the offender stop and consider the possible consequences of his actions, and general deterrence are exemplary sentences which are meant to warn other potential offenders of the possible consequences. Both types have been criticised greatly as individual deterrence is not seen to be very effective as the offender becomes hardened to the punishment as the sentence increases. General deterrence is also seen as having little effect as it depends on the publicity of the case to make aware of the exemplary sentence imposed. Also general deterrence contrasts with the aim of retribution as the punishment it meant to fit the crime where as cautionary sentences involves an offender serving harsher or a longer term of punishment. An example of deterrence reflected in the sentence is the case of *R v Whitton* (1985). A football hooligan was given a sentence of life imprisonment as a warning to other football hooligans; however the sentence was reduced by the Court of Appeal some time later.

Rehabilitation is one of the six aims of sentencing. This means that the main aim of the sentence imposed is to reform the offender and to re-establish the person back into society. Rehabilitation is the main basis of the idea of individualised sentences. This is where the sentence is personal to the offender and reflects his circumstances and behaviour. For example, if a young man was convicted of possession of a Class B drug, but it was his first offence and he comes from a stable home with a job, the aim of his sentence would more likely to be rehabilitative than

punishment; therefore his sentence would be probably be a less harsh and may just get sentenced a drug testing and treatment order. However this type of sentencing also conflicts with the aim of retribution as the punishment should fit the crime not the offender. Also, persistent offenders are less likely to respond to a rehabilitative sentence. This is reflected within The Powers of Criminal Courts (Sentencing) Act 2000. It states that, when considering the seriousness of an offence, the court may take into consideration any previous failures to respond to previous sentences.

Reparation is also one of the six main aims of sentencing. This means to compensate the victim of the crime or the community as a whole. Reparation is usually carried out by paying the victim a sum of money (compensation order). However, sentences such as a Community Punishment Order is seen as making reparation to society as whole. Attempts have also been made to make the criminal repay the victim directly. For example, fixing the window that the offender smashed to burgle the victim's house. Compensation Orders are usually issued with the majority of sentences and under section 130 of the Powers of Criminal Courts (Sentencing) Act 2000 courts are under a duty to give reasons if they do not make a compensation order.

(b) Discuss the ways that the courts use various sentences to reflect these aims of sentencing. [30]

There are many different sentences that courts can pass to reflect the six different aims. However, the offence and the background of the offender are also factors in the final sentence. These sentences can be used in combination or alone. The different types of sentences can be split into two main groups; custodial and non-custodial.

Within Custodial sentencing age is an important factor as there are different custodial sentences for particular age groups. Young offenders can be given custodial sentences but only in exceptional circumstances and are imprisoned separately from adults.

The most infamous of custodial sentences is that of Prison. The Powers of Criminal Courts (Sentencing) Act 2000 states that a prison sentence should only be imposed where the offence is so serious that imprisonment is justified, or where the offence is a violent or sexual offence and only such a sentence would be adequate to protect the public. This type of custodial sentencing mainly combines the two aims of retribution and incapacitation. This is shown through the mandatory life sentence received if a person has been found guilty of murder, as retribution is often seen as 'an eye for an eye and a tooth for a tooth and a life for a life'. Incapacitation is the other main aim as within the walls of a prison you are restricted from going to various places, doing certain activities, under constant supervision. The other aims of sentencing can also play a factor in a term of imprisonment, for example prison is a strong deterrent for some people, it can be seen as being totally denouncing especially if a case receives much publicity, also an offender could be rehabilitated through the use of counsellors available to him and by not being able to take harmful substances such as illegal drugs.

Home detention curfew allows early release from prison. This is defined under the Crime and Disorder Act 1998. Home detention curfew is based around the aims of incapacitation and rehabilitation as it is designed to encourage recently released offenders to structure their lives effectively as well as to prevent that person from re-offending.

The Powers of Criminal Courts (Sentencing) Act 2000, section 85, gives the criminal courts power to pass an extended sentence for a sexual or violent offence. This simply means that an offender is sentenced to a period of imprisonment plus a further period where an offender is at liberty on licence. This custodial sentence is mainly based around the aims of incapacitation and deterrence. This is because it gives the courts power to constantly monitor the behaviour of an offender and have control over offenders. Therefore they are unable to re-offend as they are regularly being monitored and if they are caught re-offending or breaking certain conditions laid out then it would be automatic imprisonment.

Suspended Prison sentence is where an offender may be given period of suspension for up to two years, where if the offender commits an offence during this time the prison sentence is 'activated' and they are sent to prison to serve that sentence combined with any sentence for the new offence. Suspended Prison sentence mainly reflects the aim of deterrence, although many offenders view a suspended sentence as a 'soft' option. However, it is based around the idea of deterrence as if they are caught re-offending on a period of suspension then it is automatic prison for the two offences. This means that the offender will hopefully be more wary of the consequences and will deter from committing further offences.

There are fourteen main non-custodial sentences which the courts have a power to pass. The majority are set out under the Powers of Criminal Courts (Sentencing) Act 2000 and the Criminal Justice and Courts Act 2000.

Community Rehabilitation Order is where the offender is placed under supervision for a minimum period of six months to a maximum of three years. The offender must lead an 'industrious and honest' life and may be expected to comply with other conditions, for example an order that the defendant take part in specified activities for up to sixty days. The main aim of a Community Rehabilitation Order is rehabilitation. However, Home Office figures (1999) indicate that the order does not prevent re-offending as sixty-percent of offenders being reconvicted within two years.

An offender may be sentenced to work for between forty and two-hundred-and-forty hours on an appropriate project regulated by the probation service; this is a Community Punishment Order. The main aims for this order are retribution, reparation, deterrence, denunciation and incapacitation. A Community Punishment Order is seen as the severest punishment to sentence an offender before a custodial sentence; this is why retribution is a key aim in this sentence which is also indicated in the title of the order. As the offender is working on local community project they are repaying their local residents as well as society as a whole for the harm caused by breaking the law. The Community Punishment Order is one of the most effective non-custodial sentences for preventing further offences; therefore it must act as a strong deterrent as it limits your free time while having to work during that time. Denunciation is also reflected in this particular sentence as an offender is required to work in the local community where people that person knows might realise that he is serving the punishment order; overall this can be very shameful and embarrassing to an offender. A Community Punishment Order involves the aim of incapacitation as offenders have to work during a period of time set out by the probation service, therefore it can be organised so that an offender is working during times when he is most likely to offend.

A Community Punishment and Rehabilitation Order is a combination of the two previous sentences where up to one-hundred hours must be served by the criminal but must also comply with the terms of the rehabilitation order. This involves all six aims in the same way as described previously.

A Curfew Order is where an offender is ordered to remain at a fixed address for a minimum of two hours up to a maximum of twelve hours in a twenty-four hour period. Electronic tagging is often used in this type of sentence with certain offenders and they have a success rate of over eighty percent of offenders completing the tagging period successfully. This particular order mostly is based around the aim of incapacitation because the offender is having his liberty restricted at specific times of the day. So it might be arranged to have this curfew late evening to avoid going to pubs and nightclubs, which could be the case if the offender was convicted of numerous violent acts which all occurred while under the influence of alcohol. This aim of incapacitation is also emphasised with the tagging system as the enforcement do not only know of your whereabouts during the curfew hours but all hours throughout the day, therefore an offender is far less likely to commit an offence without being caught.

The Drug Treatment and Testing Order was devised under sections sixty-one and sixty-four of the Crime and Disorder Act 1998. This order is now laid out in section fifty-two to fifty-eight of the Powers of Criminal Courts (Sentencing) Act 2000. This is where an offender is treated for drugs and tested a specific number of times per month, if the offender is willing to adhere to it. This community sentence involves the aims of rehabilitation and incapacitation. The offender is rehabilitated by receiving treatment to enable him to abstain from drugs. It also incapacitates the offender as they will be tested each month to make sure they are continuing not to take illegal substances.

An Exclusion Order is where offenders are instructed not to go to certain places. This community penalty is also based around incapacitation, as offenders are unable to go to certain places as those places are where the court believes criminals most likely to offend. For example persons convicted of football hooliganism may be restricted from going to football grounds.

Drug Abstinence Orders can last for a period of between six months to three years for offenders who are eighteen years or older. This is where offenders are required to abstain from specified drugs and be tested for them over certain periods of time. This order is usually given when the convicted person's offence was caused or contributed to by the misuse of drugs. Similar to the Drug Treatment and Testing Order, this sentence reflects the aims of rehabilitation and incapacitation. It rehabilitates the offender from the misuse of drugs. It also incapacitates the offender, as the offence was the result of drug abuse; therefore the criminal is less likely to commit an offence if they are not taking drugs.

Fines are a common sentence and the fundamental aims of this non-custodial penalty are retribution, reparation and deterrence. One of the most effective to punish someone is by making them pay sums of money, depending on the amount of the fine defines the amount of retribution. It is also a strong deterrent as money highly regarded by most people and offenders dislike the fact that money they have likely to have earned is being taken away. Also this money is put to use, which means the offender is repaying society as whole in one way or another.

Discharges, both conditional and absolute do not have any key aims within the sentence but do have a slight deterrent factor. This is because the offenders that are released with no punishment after committing an offence are usually not hardened criminals or are morally blameless. Therefore they are unlikely to want to get into that position again and receive another conviction.

Disqualification from driving is simply where the offender has his licence seized so that he can no longer drive. This sentence mostly reflects retribution, deterrence and incapacitation. This is often seen as harsh punishment as many rely on being able to drive to go to places such as work. This means that it can also act as a strong deterrent as people do not want their licences confiscated as not only can they not drive but may be treated differently concerning employment or loans. This is also slight denunciation. Overall, disqualification from driving incapacitates the offender from using a vehicle and therefore will hopefully not commit further offence with a vehicle.

Compensation orders and restitution order are mainly focused around reparation. As it is an order issued by the court which requires the defendant to pay a sum of money to his victim in compensation or return property obtained by the defendant to the victim in restitution. Therefore the offender is repaying the victim.

A Deprivation and Forfeiture Order is where an offender is deprived of property he has used to commit an offence. Also under the Proceeds of Crime Act 1995 gives the courts powers to take from criminals all profits from crime up to six years before conviction. This sentence implies the aims of retribution and reparation. It implies retribution as not only has the offender been caught doing illegal activity but any property used or profit made is not seized, meaning that he is left with no profit, but a punishment. This sentence implies reparation as the money taken is put to use so the offender is repaying society in one form or another.

A deferred sentence is where the court has a good reason to believe that the offender's circumstances are about to change for the better so the sentencing of the defendant is deferred for up to six months. This has a strong deterrent factor as the offender will not want to commit any further offences while he is being assessed to see what level of punishment to sentence him. Therefore the offender will most likely act on best behaviour to try and receive a more lenient sentence.

Overall, all aims are involved slightly in each sentence as any punishment is a form of retribution and should be a deterrent. However, some aims are more prominent than others in various different sentences, although, combination of penalties can be passed. However, it depends on the case itself as to what the main aim should be, and this is left to the judge's discretion.