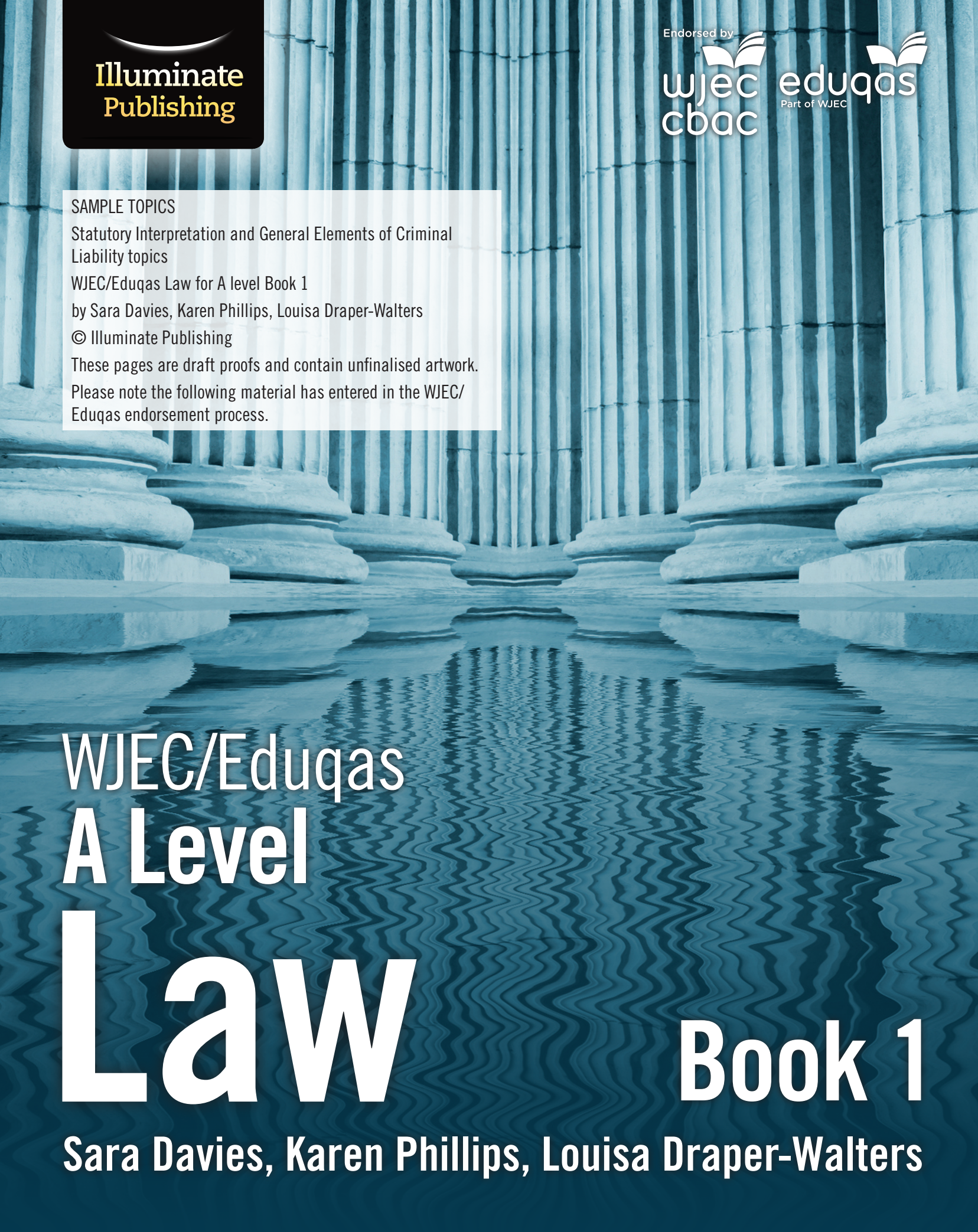

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SAMPLE TOPICS

Statutory Interpretation and General Elements of Criminal Liability topics

WJEC/Eduqas Law for A level Book 1

by Sara Davies, Karen Phillips, Louisa Draper-Walters

These pages are draft proofs and contain unfinalised artwork.

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WJEC/Eduqas A Level Law Book 1

Sara Davies, Karen Phillips, Louisa Draper-Walters

LAW MAKING, THE NATURE OF LAW AND THE WELSH AND ENGLISH LEGAL SYSTEMS

Statutory Interpretation

Spec reference	Key Content	Key Skills	Where does this topic feature on each specification/exam?
WJEC AS/A Level 1.3 – Statutory Interpretation Eduqas AS Level 1.1.3 – Statutory Interpretation Eduqas A Level 1.1.3 – Statutory Interpretation	• Statutory interpretation, including the various rules of statutory interpretation • including the literal rule, golden rule rule, mischief rule, purposive approach • The impact of the Human Rights Act 1998 and European Union law on statutory interpretation The use of intrinsic aids The use of extrinsic aids	**AO1** Demonstrate knowledge and understanding of legal rules and principles **AO2** Apply legal rules and principles to given scenarios in order to present a legal argument using appropriate legal terminology	• Eduqas AS Level – Component 1 Section A; paper 1 Section A • Eduqas A Level – Component 1 Section A; paper 1 Section A • WJEC AS/A Level – Unit 1 Section A; paper 1 Section A

Introduction

What is a statute?

This is a law made by Parliament; otherwise known as an Act of Parliament. It is primary legislation and is the highest source of law.

What is statutory interpretation?

This is the procedure by which a judge 'works out' the meaning of words in an Act of Parliament and how this then applies to the facts of the case before him.

Why do judges need to interpret statutes?

Parliament makes the law and judges apply it. In doing this, they create precedents for future cases to follow. In most cases, the meaning of statutes is clear and a judge's role is simply to determine how this law applies to the facts of the case before him.

However, occasionally words require interpreting. There are a number of reasons why judges need to interpret statutes:

1. A broad term is used. This may be deliberate where a broad term is used to cover more than one possibility and to allow the judge some flexibility. The judge still has to decide the meaning to be applied to the case before him. E.g. the word 'type' in the Dangerous Dogs Act 1991.
2. Changes in the use of language. Language use changes over time. E.g. 'gay'.
3. Ambiguous words. Some words have more than one meaning and the judge has to decide which meaning applies. E.g. 'bar' or 'wind'.
4. A drafting or other error. An error in the drafting of a statute may not have been picked up during the Bill stage.
5. New developments. Changes in technology can sometimes mean that an older Act of Parliament does not seem to cover a modern situation. E.g. ***Royal College of Nursing v DHSS***.

Approaches to Statutory Interpretation

Judges use 4 different rules or 'approaches' when dealing with a statute that requires interpretation. They are free to use any of the 4 approaches in combination with the other aids to interpretation discussed in this chapter.

Literal Rule

The judge will give the words contained in the statute their ordinary and plain meaning even if this causes an absurd result. Many feel this should be the first rule applied by judges in the interpretation of an unclear statute.

Case – Whiteley v Chappel (1968)
In this case, it was an offence to 'impersonate anyone entitled to vote' at an election. The defendant in question had pretended to be a dead person and taken their vote. He was found not guilty of the offence as the judge interpreted the word 'entitled' literally. As a dead person is no longer 'entitled' to vote, the defendant had done nothing wrong.

KEY TERMS

internal (intrinsic) aids
Often referred to as a 'chain of causation' it connects the actus reus and the corresponding result. For there to be criminal liability, there must be an unbroken chain of causation.

Golden Rule

If the literal rule causes an absurd result, the judge can take a more flexible approach to rectify the absurdity. Courts can take either a narrow or a wide interpretation considering the statute as a whole. With both the golden and literal rules, judges use **internal (intrinsic) aids**.

Case – Adler v George (1964)
S.3 of the Official Secrets Act 1920 states that it is an offence to obstruct a member of the armed forces 'in the vicinity of' a 'prohibited place'. The defendant in the case had obstructed an officer in an army base (a 'prohibited place') and argued that the natural meaning of 'in the vicinity of' means in the surrounding area or 'near to' and not directly within. Had the judge applied the literal rule, he could have escaped prosecution but the judge used the golden rule to reasonably assume the statute to include both within and around the prohibited place.

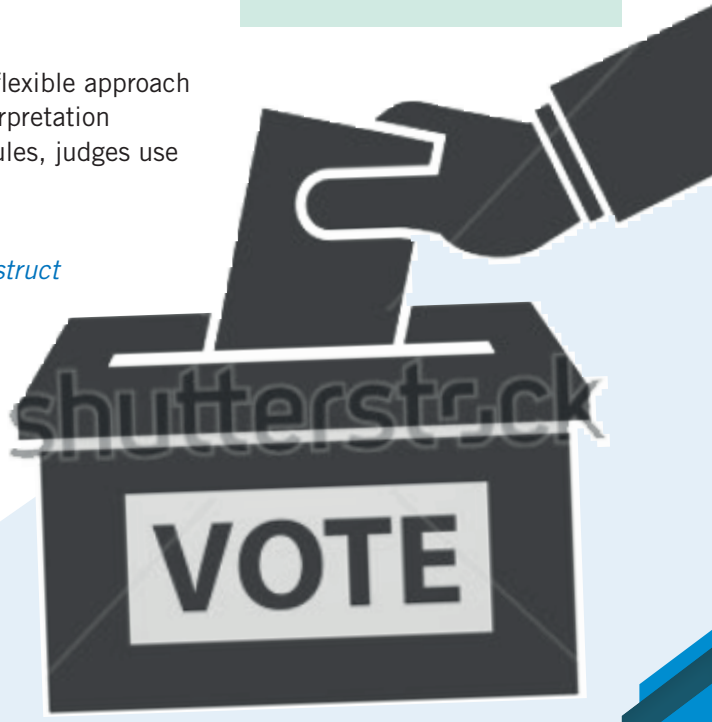


Figure 1.1 *Caption Sundae dolenturio omnihillupti aut que es accusam voluptas aces exerciissim quasped*

KEY TERM

external (extrinsic) aids
Often referred to as a 'chain of causation' it connects the actus reus and the corresponding result.

GRADE BOOST

When answering a question on statutory interpretation, it is important to apply all 4 rules and give a case example for each. Other aids to interpretation may also be needed to give a complete answer to a problem scenario style question.

GRADE BOOST

Think of some further examples of each of the reasons why judges may need to interpret statutes

STRETCH AND CHALLENGE

Try to think of an advantage and disadvantage for each of the 4 rules to provide some evaluation.

Mischief Rule

Laid down in ***Heydon's*** case and allows the judge to look for the 'mischief' or problem the statute in question was passed to remedy. It directs the judge to use **external (extrinsic) aids** and look for Parliament's intention in passing the Act.

Case – Elliot v Grey (1960)
It is an offence under the Road Traffic Act 1930 to 'use' an uninsured car on the road. In this case, a broken down car was parked on the road but was not able to be 'used' as a result of its wheels being off the ground and its battery removed. The judge decided that the Road Traffic Act 1930 was passed to remedy this type of hazard and even though the car could not be 'used' on the road, it was indeed a hazard to other road users.

Purposive Approach

Similar to the mischief rule in that it looks for the intention or aim of the Act. This approach has increased in popularity since joining the European Union due in part to the different way that European laws are drafted. Whilst our laws are more verbose and suit a literal interpretation, European laws are more vaguely written requiring the judge to construct a meaning. Lord Denning was a supporter of the use of the purposive approach and giving judges more discretion when interpreting Acts. As the title of the approach suggests, with this rule, judges are looking for the 'purpose' of the Act or, as Lord Denning said, the 'spirit of the legislation'.

Case – Magor and St. Mellons Rural District Council v Newport Corporation (1950)
Lord Denning sitting in the Court of Appeal stated 'we sit here to find out the intention of Parliament and of ministers and carry it out, and we do this better by filling in the gaps and making sense of the enactment by opening it up to destructive analysis'.

Lord Simmons criticised this approach when the case was appealed to the House of Lords calling this approach 'a naked usurpation of the legislative function under the thin disguise of interpretation'. *He suggested that* 'if a gap is disclosed, the remedy lies in an amending Act'.

Aids to Interpretation

As well as the 4 main approaches to statutory interpretation, a judge has other aids available to help him determine the meaning of a statute. These can be divided into internal (intrinsic) aids and external (extrinsic) aids.

Presumptions

The court will start with the **presumption** that certain points are applicable in all statues, unless explicitly stated otherwise. Some of the main presumptions are:

- Statutes do not change in the common law.
- **Mens rea** ('guilty mind') is required in criminal cases.
- The Crown is not bound by any statute.
- Statutes do not apply **retrospectively**.

Internal (Intrinsic) Aids

Intrinsic aids are found within the Act itself. Examples are:

- **The Long Title to the Act**
- **Preamble –** Normally states the aim of the Act and intended scope.
- **Headings**
- **Schedules**
- **Interpretation Sections**

Rules of Language

Judges can use other words in the statute to help them give meaning to specific words that require interpretation.

Ejusdem generis ('of the same kind')

Where there are general words which follow a list of specific ones, the general words are limited to the same kind/class/nature as the specific words.

Case – Powell v Kempton (1899)
A statute stated that it was an offence to use a 'house, office, room or other place for betting'. The defendant was using a ring at a racecourse. The court held that the general term 'other place' had to include other indoor places because the specific words in the list were indoor places and so he was found not guilty.

Expressio unius est exclusio alterius ('express mention of one thing is the exclusion of all others')

Case – R v Inhabitants of Sedgley (1831)
In this case, it was held that that due to the fact the statute stated 'lands, houses and coalmines' specifically in the Act, this excluded application to other types of mine.

Noscitur a sociis ('a word is known by the company it keeps')

Words in a statute must be read in context of the other words around them.

KEY TERMS

presumption
Often referred to as a 'chain of causation' it connects the actus reus and the corresponding result.

Mens rea
Often referred to as a 'chain of causation' it connects the actus reus and the corresponding result.

retrospectively
Often referred to as a 'chain of causation' it connects the actus reus and the corresponding result.

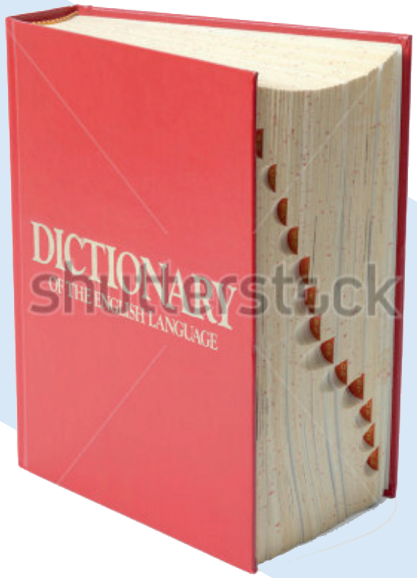
GRADE BOOST

Look carefully for what the question is asking. Some exam questions ask for *all* of the aids available to judges, whereas others focus on just one or two of the other types of aid such as Hansard. Remember to include as many case examples as you can, not just for the rules of interpretation but the other aids too.
Be prepared to discuss sections 3 and 4 of the Human Rights Act 1998 in a statutory interpretation question and the implications for statutory interpretation of these sections.

STRETCH AND CHALLENGE

Try to think of your own hypothetical example for each of the rules of language.

Figure 1.1 *Caption Sundae dolenturio omnihillupti aut que*



Case – Muir v Keay (1875)

A statute required the licensing of all venues that provided 'public refreshment, resort and entertainment'. Defendant argued his café did not fall within the Act because he did not provide entertainment. Court held the word 'entertainment' in the Act referred to refreshment houses, receptions and accommodation of the public, not musical entertainment and therefore did include the defendant's café.

External (Extrinsic) Aids

With both the mischief and purposive approach, the judge is directed to use **external** or **extrinsic aids**. These are found outside of the Act and include:

- **Dictionaries & textbooks**
- **Reports e.g. Law Commission**
- **Historical setting**
- **Treaties**
- **Previous case law**

Hansard

Perhaps the external aid that has caused the most problems is **Hansard**. Hansard is the daily record of Parliamentary debate during the passage of legislation. Some argue that it acts as a good indicator of Parliament's intention, however, over the years its use has been subject to limitations. Traditionally, judges were not allowed to consult Hansard to assist them in the interpretation of Statutes. Lord Denning disagreed with this approach and said in the case of ***Davis v Johnson (1979)*** that: "Some may say, and indeed have said, that judges should not pay any attention to what is said in Parliament. They should grope about in the dark for the meaning of an Act without switching on the light. I do not accede to this view…." The House of Lords disagreed with him and held that the prohibition on using Hansard should stand. However, the key case of ***Pepper v Hart (1993)*** finally permitted the use of Handard, albeit in limited circumstances. This was confirmed in the case of ***Three Rivers District Council v Bank of England (No. 2) (1996)***.

The recent case of ***Wilson v Secretary of State for Trade and Industry (2003)*** has once again restricted the use of Hansard. Currently, only statements made by a Minister or other promoter of legislation can be looked at by the court, other statements recorded in *Hansard* must be ignored.

Human Rights Act 1998

The Human Rights Act incorporates into UK law the European Convention on Human Rights. Under **s.3** of the HRA courts are required: 'So far as it is possible to do so, primary and subordinate legislation must be read and given effect in a way which is compatible with convention rights.' If the statute cannot be interpreted to be compatible then the court can issue a **declaration of incompatibility** under **s.4**. This asks the Government to change the law to bring it in line with the convention. They can use the **fast track procedure** to make amendments quickly though there has to be a 'compelling reason' to do so and, under s.10(2), the issuing of a declaration of incompatibility is not necessarily a compelling reason. **S.2** also requires judges to take into account any previous decision of the ECHR though they are not bound by it.

GRADE BOOST

Remember the link with Human Rights for this topic. Make sure you cite sections 3 and 4 and understand how they apply to this topic. In addition, be sure to know some cases on the use of Hansard, as discussed above. Examiners are looking for a range of case law and an understanding of how the law has evolved.

STRETCH AND CHALLENGE

Research and find the case of ***Ghaidan v Godin-Mendoza (2004)*** regarding the issue of Human Rights when interpreting statutes. What happened in the case and how did Human Rights apply to this case? What is the current approach regarding interpreting statutes compatibly with human rights?

Summary – Statutory Interpretation

- Judges sometimes need to **interpret** Acts of Parliament (statutes)
- This needs to be done for a number of reasons:
  - Ambiguous terms
  - Broad terms
  - Changes in the use of language
  - Error
- Judges can use four approaches to interpretation:
  - Literal rule – ***Whiteley v Chappel (1968)***
  - Golden rule – ***Adler v George (1964)***
  - Mischief rule – ***Elliot v Grey (1960)***
  - Purposive approach – ***Magor and St Mellon's Rural district Council v Newport Corporation (1950)***
- Judges have a number of other '**aids**' available to help them interpret statutes:
  - **Intrinsic aids:**
    - The Long Title to the Act
    - Preamble – Normally states the aim of the Act and intended scope.
    - Headings
    - Schedules
    - Interpretation Sections
  - **Extrinsic aids:**
    - Dictionaries & textbooks
    - Reports e.g. Law Commission
    - Historical setting
    - Treaties
    - Previous case law
    - Hansard ***Pepper v Hart (1993), Three Rivers (1996), Wilson (2003)***
  - **Rules of Language:**
    - Ejusdem generis
    - Noscitur a sociis
    - Expressio unius est exclusio alterius
  - **Presumptions**
- The Human Rights Act 1998
  - Section 3 – interpret statutes compatibly 'so far as possible'
  - Section 4 – declaration of incompatibility
  - Section 10 – Parliament can change an incompatible law using a fast-track procedure if there is a compelling reason
  - Section 2 – Judges must 'take into account' precedents of the ECHR (persuasive precedent only)

Exam Skills

Exam questions on statutory interpretation may require you to 'explain' an aspect of the topic or, you may be required to 'apply' the rules to a hypothetical example in order to reach a conclusion.

For a question that requires you to apply the rules of statutory interpretation, use the following table as a guide on how to approach.

Literal rule	**Golden rule**
Explain the rule Give a case example Advantage Disadvantage APPLY to the scenario	Explain the rule Give a case example Advantage Disadvantage APPLY to the scenario
Mischief rule	**Purposive approach**
Explain the rule Give a case example Advantage Disadvantage APPLY to the scenario	Explain the rule Give a case example Advantage Disadvantage APPLY to the scenario
Intrinsic aids and extrinsic aids	**CONCLUSION**
Identify and explain some intrinsic and extrinsic aids and apply them	Decide which rule you would apply

CRIMINAL LAW
General Elements of Criminal Liability

Spec reference	Key Content	Key Skills	Where does this topic feature on each specification/exam?
Eduqas AS Level 2.3.2 – General Elements of Liability	• Burden and standard of proof • Actus reus (voluntary, involuntary conduct, consequences and omissions) • Mens rea (negligence, recklessness, intention), fault • Causation (legal and factual • Strict Liability	**AO1** Demonstrate knowledge and understanding of legal rules and principles **AO2** Apply legal rules and principles to given scenarios in order to present a legal argument using appropriate legal terminology **AO3** Analyse and evaluate legal rules, principles, concepts and issues	• Eduqas AS Level – Component 2; Paper 2 Section B

EDUQAS

The Burden and Standard of Proof

In a criminal case, the burden of proving guilt is on the prosecution. The standard to which they need to prove this guilt is **'beyond reasonable doubt'**. The standard of proof is higher in a criminal case than a civil one as the impact of being found guilty of a criminal offence is much greater. It also supports the principle of **'innocent until proven guilty'** and article 6 EHCR (right to a fair trial).

STRETCH AND CHALLENGE

The standard of proof in a civil case is 'on the balance of probabilities' and the burden of proof is on the claimant.

Elements of Crime

There are generally two elements required for the commission of a criminal offence – **actus reus** (the guilty act) and **mens rea** (the guilty mind). The general **presumption** is that a defendant must have committed a guilty act whilst having a guilty state of mind. A presumption is a starting point for the courts. They presume certain facts to be true unless there is a greater preponderance of evidence to the contrary that rebuts the presumption.

This supports the Latin tenet: *actus non facit reum nisi mens sit rea* which means the act does not make a person guilty unless the mind is also guilty. There are exceptions to this which will be explored in the chapter on Strict Liability. Once this is established, **causation** then needs to be proved which looks at the link between the result and the conduct of the defendant.

EDUQAS

This topic will consider:

- Actus reus and omissions
- Mens rea
- Factual causation
- Legal causation
- Strict liability

Actus Reus

Latin for 'guilty act'. It consists of all the elements of a crime other than the mens rea. Actus reus may consist of:

- **Conduct** – this action requires a particular conduct but the consequence of that behaviour is insignificant. E.g. perjury where a person lies under oath. It is irrelevant if the lie is believed or affects the case, the conduct of lying is sufficient as the actus reus.
- **Result** – this action requires a particular end result. E.g. murder. The crime requires the result of the victim dying. It also requires causation to be proved.
- **State of affairs** – For these crimes, the actus reus consists of 'being' rather than 'doing'. E.g. 'being' in charge of a vehicle whilst under the influence of alcohol or drugs. There is a link with strict liability (explored later). This is demonstrated in the case of ***R v Larsonneur (1933)***. Mrs Larsonneur, a French national, was brought to the UK from Ireland in police custody. This was done against her will and she had no desire to come to the UK. She was arrested on arrival in the UK of being an alien illegally in the UK. The fact she had not wanted to come to the UK, nor had any power over her transfer was irrelevant as she was 'found' or 'being' illegally in the UK. She was found guilty.
- **Omission** – a 'failure to act'. The general rule is that it is not an offence to fail to act unless under a **duty to act**. A person could walk past a random person drowning in a fountain and be under no legal obligation to help them out. The question of when a person has a duty to act will be considered below.

Duty to Act

A person can only be criminally liable if they have failed to act when under a legal duty to do so and the crime is capable of being committed by omission. There are recognised situations where a person *is* under a duty to act.

1. **Statute** – If a statute requires an action, it is unlawful not to do so. For example, under the s.6 of the ***Road Traffic Act 1988***, failing to provide a breath sample or a specimen for analysis is an offence.
2. **Contract** – Individuals may be contracted to act in a particular way and if they fail to act when under this contractual duty to do so, they may be liable for an offence. The case of ***R v Pitwood (1902)*** illustrates this.
3. **Duty arising out of a special relationship** – Certain family relationships result in a duty to act. For example, parent-child and spouses. The case of ***R v Gibbins and Proctor (1918)*** demonstrates this point.
4. **Duty arising out of a person assuming responsibility for another** – If a person chooses to take care of another person who is infirm or incapable of taking care of themselves they are under a duty to do so without negligence. The case of ***R v Stone and Dobinson (1977)*** illustrates this.

KEY TERM

Causation – Often referred to as a 'chain of causation' it connects the actus reus and the corresponding result. For there to be criminal liability, there must be an unbroken chain of causation.

STRETCH AND CHALLENGE

Another case that demonstrates a 'state of affairs' crime is ***Winzar v CC Kent (1983)***. In this case, the defendant was found drunk in a hospital and slumped on a chair. The police were called and removed him to the street where they charged him with being 'drunk on the highway' contrary to the Licensing Act 1872. These crimes are also known as absolute liability offences and are considered in the Chapter on 'Strict Liability'.

KEY CASE

R v Pitwood (1902). In this case a carter was killed after Pitwood, a level crossing keeper, failed to close the crossing gate when he went on lunch. He had a contractual duty to ensure the crossing gate was closed and his failure to act led to the death of the carter.

5. **Defendant has inadvertently created a dangerous situation, becomes aware of it, but fails to take steps to rectify it** – In the case of ***Miller (1983)*** the defendant was squatting in a flat. He fell asleep but had failed to extinguish his cigarette. When he awoke, he realised the mattress was alight but merely moved to the next room and went back to sleep. His failure to act and call for help caused hundreds of pounds of damage. He was convicted of arson.

The difference between a positive act and an omission

As stated above, it is generally not a crime to fail to act, unless under a duty to do so. For example, doing nothing while somebody drowns is an omission as opposed to holding that person's head under the water so that they drown which is a positive act. In the case of ***Airedale NHS v Bland (1993)*** the removal of feeding tube from a patient to allow him to die naturally was held to be an omission and therefore not a criminal act. Contrast this with **euthanasia** where an act such as administering a deliberate overdose in order to terminate a person's life would be classed as a positive act and therefore a criminal offence.

Mens Rea

As stated above, the general presumption is that a defendant must have committed a guilty act whilst having a guilty state of mind. **Mens rea** refers to the mental element in the definition of a crime. If Parliament intended mens rea in an offence it will often include mens rea words in the statute such as 'intentionally', 'recklessly' and 'negligently'. If Parliament deliberately left out a 'mens rea word' then the offence may be considered to be one of **strict liability**.

The mens rea differs according to the crime. For example, the mens rea of **murder** is **malice aforethought** which has come to mean an *intention to kill or cause GBH* whereas the mens rea of assault is *intentionally or recklessly causing the victim to apprehend the application of immediate unlawful force*.

Coincidence of actus reus and mens rea

The general rule is that, to be guilty of a criminal offence requiring mens rea, an accused must possess the required mens rea when performing the actus reus, and it must relate to that particular act or omission. This is also known as the **contemporaneity rule**. For example, Bob is planning to kill his colleague tomorrow, but kills him by accident today. This does not make Bob guilty of murder. There are two ways the courts have taken a flexible approach to this question:

1. **Continuing acts** - It is not necessary for mens rea to be present at the start of the actus reus as long as at some point in a continuous act, mens rea appears. The case of ***Fagan v Metropolitan Police Commissioner (1969)*** demonstrates this point. Fagan accidentally parked his car on a police officer's foot when asked by the officer to park the car near the curb. Fagan did not mean to drive his car on the officer's foot. However, when asked to move, he refused. It was at this point that mens rea was formed and driving onto the officer's foot and remaining there was a continuing act.
2. Single transaction of events – The courts have held that as long as there is one unbroken transaction of events then actus reus and mens rea need not occur at the same time. For example, if Rhidian attempts to murder Trystan by beating him to death but has not succeeded, then actually kills Trystan by throwing what he assumes to be his corpse over a cliff, Rhidian will still be guilty of murder. A similar situation arose in the case of ***Thabo Meli (1954)***.

KEY CASES

Gibbins and Proctor (1918). Defendant and his lover failed to feed his daughter who living with them. She died as a result of starvation. The woman, despite the child not being hers, was living in the same household and had taken the defendants money to feed the child. She was therefore under a duty to act (to feed and care for) the child. They were both found guilty of murder.

R v Stone and Dobinson (1977). Stone's younger sister, Fanny, came to live with Stone and Dobinson. Fanny suffered from anorexia and, despite some weak attempts by Stone and Dobinson to get her help, she eventually died. The jury found that a duty was assumed from electing to take care of a vulnerable adult. They should have made more of an effort to get her help and were found guilty of manslaughter.

KEY TERMS

Strict Liability A group of offences, usually regulatory in nature, that only require proof of actus reus. Please see below.

Transferred Malice Under the doctrine of transferred malice, mens rea may be transferred from an intended victim to an unintended one. This is shown in the case of ***Latimer (1986)*** where the defendant hit victim number one with his belt but it recoiled off him injuring victim number two, an innocent bystander. The defendant had committed the actus reus of the offence with the necessary mens rea. The mens rea (intention to harm the person he aimed at) could be transferred to the actual victim.

EDUQAS

KEY CASE

Thabo Meli (1954). The defendants had attempted to kill the victim by beating him up but he was not dead. They then disposed of what they thought was his corpse over a cliff. The victim died as a result of the fall. The court held that there was one transaction of events and as long as the defendants had the relevant mens rea at the beginning of the transaction, it could coincide with the actus reus when that occurred

KEY TERMS

Subjective
belonging to the individual in question (the subject). Intention is always subjective, meaning that to find intention, it must be believed that the particular defendant in question had the required intention in order to find him guilty of the offence.

Objective
based on what a reasonable person would do/think in the same position. In law, an objective test considers, not the particular defendant in question, but what another average, reasonable person would have done/thought if placed in the same position as the defendant. There are occasions where some subjective characteristics of the defendant can be considered with an objective test (such as age and gender) that may have an effect on the way (s)he reacted.

Types of Mens Rea

There are various types of mens rea but for the purposes of the WJEC specification, **Intention**, **Recklessness** and **negligence** will be considered. It is important to appreciate that the specific mens rea required will depend on the offence being considered. For example, the mens rea of murder is **malice aforethought** meaning an intention to kill or cause GBH, whereas the mens rea of battery is intention or recklessness to apply unlawful force. The mens rea is either defined in the relevant statute, as it is with s.47 assault occasioning actual bodily harm, or through case law, as is the case with oblique intent.

Intention

Intention is always **subjective** meaning that in order to find that a defendant had intention, the court must believe that the particular defendant on trial desired the specific consequence of his action. To understand intention, it will be considered in relation to the offence of murder. The mens rea of murder is **malice aforethought**. Despite the term 'malice', no malice needs to be present. For example murder could be committed out of love or compassion as in the case of helping a terminally ill relative in pain to die. In addition, no 'aforethought' is required either. Murder can be committed on the spur of the moment with no prior planning. According to ***Vickers (1957)***, the mens rea of murder can be implied from an intention to cause brevious bodily harm. A defendant does not need to have intended to kill. The definition has therefore been interpreted as *an intention to kill or cause GBH*. This will be explored further in the chapter on Murder.

There are two types of intention: **direct** and **oblique**

Direct Intention is where the defendant has a clear foresight of the consequences of his action and specifically desires that consequence. For example, David stabs James because he desires the consequence of James' death.

Oblique Intention is less clear than direct intent. Here, the defendant may not actually desire the consequence of the action (e.g. death), but if he realises that the consequence will happen as a **virtual certainty** he can be said to have oblique (or indirect) intention. This area of law has evolved through case law. The current direction on oblique intent comes from the case of ***Nedrick (1986)*** as confirmed in ***Woolin (1998)***: *'...the jury should be directed that they were not entitled to find the necessary intention for a conviction of murder unless they felt sure that death or serious bodily harm had been a virtual certainty (barring some unforeseen intervention) as a result of the defendant's actions and that the defendant had appreciated that such was the case, the decision being one for them to be reached on a consideration of all the evidence.'*

Recklessnes

This type of mens rea concerns the taking of an unjustified risk. Following the case of ***R v G and another (2003)*** it is now almost purely a subjective concept meaning that the prosecution must prove that the defendant realised (s)he was taking a risk. The first use of the phrase 'subjective recklessness' was in the ***Cunningham (1957)*** case and is sometimes referred to as **Cunningham recklessness** where the court asks the question: '*was the risk in the defendant's mind at the time the crime was committed?*'

Negligence

Negligence consists of falling below the standard of the ordinary reasonable person. The test is objective and has traditionally been associated with civil law. It now has some relevance in criminal law with **gross negligence manslaughter** as required by the WJEC specification. This will be explored later in this book.

Causation

Causation relates to the causal relationship between conduct and result and is an important aspect of the actus reus of an offence. There needs to be an unbroken and direct **chain of causation** between the defendants act and the consequences of that act. There mustn't be a **novus actus interveniens** that breaks the chain of causation else there will be no criminal liability for the resulting consequence.

KEY CASE

R V G and another (2003). In this case, 2 boys aged 11 and 12 set fire to newspapers in a wheelie bin which was situated outside a shop. The fire spread to the shop and other buildings and caused £1 million pounds worth of damage. They were convicted of arson by the jury as, at the time, arson required an objective standard of recklessness (**Caldwell recklessness**) and the risk would have been obvious to a reasonable person, even if it was not to the young boys. On appeal, it was decided that the objective standard was not appropriate and the subjective characteristics of the boys such as their age and immaturity should be considered by the courts. As a result, Caldwell objective recklessness was overruled, replaced with subjective recklessness.

There are two types of causation: factual and legal.

FACTUAL CAUSATION	LEGAL CAUSATION
1. The **'but for' test** This test asks 'but for' the conduct of the defendant, would the victim have died as and when he did? If the answer is no then the defendant will be liable for the death. ***CASE: R v White (1910).*** *In this case, White poisoned his mother but she died of a heart attack before the poison had a chance to take effect. He was not liable for her death.*	**1.** The injury must be the **operating and substantial cause of death** This test considers whether the original injury inflicted by the defendant is, at the time of death, still the operating and substantial cause of death. ***CASE: R v Smith (1959).*** *Here, a soldier had been stabbed, dropped twice on his way to the hospital, delayed in seeing a doctor and subsequently given poor medical treatment. The court held that these other factors were not enough to break the chain of causation. At the time of death, the original wound was still the 'operating and substantial' cause of death.* ***CASE: R v Jordan (1956).*** *This case took a different stance to the **Smith** case above. In this case, the defendant stabbed the victim. Whilst in hospital, the victim was given an antibiotic to which he was allergic and died. The defendant was acquitted of murder because at the time of death, the original stab wound had almost healed and the death was attributable not to that, but to the antibiotic. The courts said that negligent medical treatment could only break the chain of causation where it is* **'palpably wrong'**.

STRETCH AND CHALLENGE

The area of oblique intent has developed through case law over the years to the current direction provided on this page. Explore the following cases and consider their facts, how the law has changed and why.
The following cases are in order of how the law has evolved:

- *Section 8 Criminal Justice Act 1967* – 'natural and probable consequence'
- ***R v Maloney (1985)*** – 'natural consequence of the action'
- ***Hancock and Shankland (1986)*** – 'degrees of probability'
- ***Nedrick (1986)***
- ***Woolin (1998)***

STRETCH AND CHALLENGE

Explore the cases of ***Cunningham (1957)*** and Caldwell (1982). What were the facts of the case and what did they rule in relation to negligence?

KEY TERM

Novus actus interveniens
This is an intervening act that is so independent of the original act of the defendant that it succeeds in breaking the chain of causation. There may be liability for the initial act. As with mens rea, above, this concept will be explored in relation to homicide.

EDUQAS

2. The **de minimis rule** Meaning insignificant, minute, trifling; this test requires that the original injury caused by the defendant's action must be more than a minimal cause of death. See the ***Pagett*** Key Case above.	**2.** The **'thin skull' test** A defendant has to take his victim as he finds him, meaning that if the victim dies due to some unusual or unexpected physical or other condition, the defendant is still responsible for the death. For example, if during a fight the defendant hits the victim with a punch that would not normally cause anything more than soreness and bruising, but, due to the victim having an unusually thin skull he dies, the defendant is still liable for the death. ***CASE: R v Blaue (1975).*** *In this case, the defendant stabbed a woman who happened to be a Jehovah's witness. As a result of her beliefs she refused a blood transfusion which would have saved her life. The defendant argued he should not be responsible for her death as the transfusion could have saved her life and she refused it. The court disagreed and said he must take his victim as he finds them.*
	3. **Novus actus interveniens** – *New intervening act* For an intervening act to break the chain of causation, it must be unforeseeable and random. It is sometimes likened to an 'act of God'. The case of ***Jordan*** above is an example of a novus actus interveniens.

KEY CASE

Another case that demonstrates the 'but for test' and the 'de minimis rule' is the case of ***Pagett (1983)***. In this case, an armed defendant was trying to resist arrest and held his girlfriend in front of him as a human shield. He shot at the police and they shot back killing the girl. It was held that 'but for' his action of holding her as a human shield, she would not have died as and when she did. In addition, his action contributed significantly to her death. This was despite the fact it was not he who shot her.

KEY TERM

In this context, **'palpably wrong'** means really seriously wrong and so independent of the original act that it is possible to break the chain of causation. It was seen as a **novus actus interveniens** and the original stab wound was no longer the 'operating and substantial' cause of death.

STRETCH AND CHALLENGE

A more recent case that looks at this issue is Cheshire (1991). Find out about this case and what the court said in relation to causation.

Exam Skills

When applying the law on general elements of liability to a scenario-style question, it is important to define the actus reus and mens rea of each offence (e.g. ABH, murder) with legal authority to support your definition. You then need to apply the actus reus and mens rea of each offence to the facts with supporting authority and then draw a conclusion. Remember you may also have to incorporate a defence if applicable.

The concepts explored in this chapter will be needed for each of the offences studied at AS/A level. You will need to revisit this chapter when studying homicide, property offences and non-fatal offences and consider how it relates.

Summary – Statutory Interpretation

A criminal case has to be proved by the prosecution beyond reasonable doubt.

- Two elements are needed for the commission of a criminal offence:
  1. **Actus reus**
  2. **Mens rea**
- In addition there needs to be causation of which there are two types:
  1. **Factual causation**
     a. But for test ***R v White (1910)***
     b. De minimis rule ***Pagett (1983)***
  2. Legal causation
     a. The injury must be the operating and substantial cause of death ***R v Smith(1959)*** and ***Jordan (1956)***
     b. The thin skull test ***R v Blaue (1975)***
     c. Novus actus interveniens ***Pagett (1983)***
- There needs to be coincidence of actus reus and mens rea - contemporaneity rule
  - Continuing acts – ***Fagan v MPC (1969)***
  - Single transaction of events – ***Thabo Meli (1954)***
  - Transferred malice – ***Latimer (1986)***
- Actus Reus – guilty act
  - Conduct crimes – perjury
  - Result crimes – murder
  - State of affairs crimes – ***R v Larsonneur (1933)***
  - Ommissions
- Ommissions – Generally it is not a crime to fail to act unless under a **duty to act** as in the following situations:
  - Statute –***Road Traffic Act 1988*** – breath sample
  - Contract – ***R v Pitwood (1902)***
  - Duty arising out of a special relationship – ***R v Gibbins and Proctor (1918)***
  - Duty arising out of a person assuming responsibility for another – ***R v Stone and Dobinson (1977)***
  - Defendant has inadvertently created a dangerous situation, becomes aware of it, but fails to take steps to rectify it – ***Miller (1983)***