

WJEC/Eduqas A Level Law Book 1 answers

Chapter 1: The nature of law and the Welsh and English legal systems

Law making

Activity 1.1 The passage of a Bill

Stage number	What happens at this stage
12	The Smoking in Outdoor Spaces Act 2025 receives Royal Assent.
3	Cerys Jones MP wins a ballot to introduce the Smoking in Outdoor Spaces Bill as a Private Members' Bill.
7	The Smoking in Outdoor Spaces Bill passes through the report stage in the House of Commons.
9	The Smoking in Outdoor Spaces Bill passes to the House of Lords, where it goes through five stages.
11	The House of Commons votes to pass the Smoking in Outdoor Spaces Bill.
13	The Smoking in Outdoor Spaces Act 2025 comes into force.
8	The Smoking in Outdoor Spaces Bill has its third reading in the House of Commons.
1	A pressure group, Promote Clean Air (PCA), begins a social media campaign demanding the immediate vicinity of buildings is kept smoke free.
5	The Smoking in Outdoor Spaces Bill has its second reading in the House of Commons.
4	The Smoking in Outdoor Spaces Bill has its first reading in the House of Commons.
2	Cerys Jones MP takes up PCA's cause.
6	The Smoking in Outdoor Spaces Bill passes through the committee stage in the House of Commons.
10	The House of Lords votes to pass the Smoking in Outdoor Spaces Bill.

Activity 1.2 Types of Bills

Type of Bill	Explanation	Example
Public Bill	Will affect only individuals or corporations	Abortion Act 1967
Private Bill	Sponsored by individual MPs who are chosen by a ballot to present their Bill to Parliament	Juries Act 1974
Private Members' Bill	Involve matters of public policy which usually reflect the government manifesto	Whitehaven Harbour Act 2007

Activity 1.3 Theorist Fakebook

Profiles could include the following content.

AV Dicey (parliamentary sovereignty)

About me: I'm a famous Oxford scholar who has developed a traditional view of parliamentary sovereignty.

Key terms:

- **constitution:** a single, legal, written document which sets out the fundamental laws outlining how the state works.
- **judicial written review:** the process of challenging the legality of a decision, action or failure to act by a public body such as a government.
- **judicial precedent:** also known as case law. A source of law where past judges' decisions create law for future judges to follow.

Parliamentary sovereignty overview

Parliament has absolute and unlimited power, and an Act of Parliament overrules any other source of law.

Parliamentary sovereignty detail

1. Parliament is sovereign and can make or unmake any law on any subject without legal constraints: Parliament is the highest source of English law and has the right to make or unmake any law, and to override or set aside any existing legislation. Parliament is democratically elected and therefore has the upper hand when making the laws we have to follow.

2. No Parliament can bind another: An Act of Parliament passed by a previous Parliament can be repealed by the next Parliament. No Act of Parliament is entrenched.

3. No Act can be challenged by a court nor its validity questioned: Even if it were alleged that an Act has been passed by fraudulent means, it has to be upheld by the courts. It cannot be overruled by another 'arm' of the state, except via judicial review.

Key threats to parliamentary sovereignty

1. Membership of the European Union.
2. *Human Rights Act 1998*.
3. Devolution.

AV Dicey (rule of law)

About me: I'm a famous Oxford scholar who also came up with an influential theory about the rule of law.

Other theorists who support the rule of law: Examples include Lord Bingham and Joseph Raz.

Rule of law overview

The state should govern its citizens in accordance with rules that have been agreed upon.

Rule of law detail

1. No sanction without breach: No one should be punished unless they have broken a law. There should be proper legal procedure and all law should be public. No law should have retrospective effect. Actions of, and decisions by, government

ministers can be challenged by judicial review to ensure that the state does not have powers to make arbitrary decisions.

2. One law should govern everyone: Everybody (including the government) is equal before the law. Court proceedings, the judicial mechanisms controlling society, apply to citizens, the government and public bodies. However, some institutions of the state, such as the police, are given more powers than citizens to enable the state to function.

3. Rights of individuals are secured by decisions of judges: The highest courts make decisions which have to be followed by the lower courts, preventing new legal principles from being regularly created.

Rule of law breaches

Examples include John Hemming MP using parliamentary privilege to disclose the name of a famous footballer subject an injunction by, Conservative MPs proposing to ignore a ruling by the European Court of Human Rights (ECtHR) that gave UK prisoners the right to vote, and using the *Human Rights Act 1998* to protect Abu Qatada When he was deported to Jordan.

Montesquieu (separation of powers)

About me: I'm an 18th century French philosopher.

How my theory applies in Wales:

Executive: The Welsh Government is the Executive, made up of representatives from the single party that holds the majority of seats in the Welsh Assembly. Its role is to implement the laws made through the legislative process.

Legislature: The Welsh Assembly is the legislature for Wales and includes 60 Assembly Members (AMs), who scrutinise proposed legislation being put forward in the Westminster Parliament. The National Assembly of Wales can pass laws in 20 devolved areas.

Judiciary: The *Constitutional Reform Act 2005* applies in Wales as well as England, to maintain the independence of judges.

Separation of powers overview

The only way to safeguard the liberty of citizens is to keep the three arms of the state separate.

Separation of powers detail

There are three separate functions of the state: legislature (parliament, which makes the law), executive (the government, which enforces the law) and the judiciary (judges, who apply and interpret the law in court). Individuals should not be members of more than one arm of the state.

Threats to the separation of powers

In reality, there is some overlap. For example, the Prime Minister and the cabinet make up the Executive, but they are also members of Parliament, who sit in the legislature. The Executive is influential on the legislative agenda, as proposed policies are often part of the government's manifesto, which may reflect a particular political viewpoint, as the Executive is usually formed by the party that won the most seats in a general election. This is deemed acceptable however, the Executive is elected by the public.

The House of Lords used to be the highest appeal court of the UK as well as a legislative debating chamber. The **Constitutional Reform Act 2005** created the UK Supreme Court, which is the highest appeal court in the United Kingdom, removing the most senior court from the legislature.

Activity 1.4 Direct applicability of EU Directives

1. Directives have no horizontal direct effect, as illustrated by *Duke v GEC Reliance*, so in theory Gloria will not have a claim because the sandwich shop is a private body. However, there are three ways of enabling Gloria to have a remedy:
 - **Francovich principle**, which gives individuals the right to compensation for failure to implement the Directive.
 - **Marleasing/Von Colson principle**, which allows judges to use a purposive approach to interpretation, which effectively leads to an indirect effect principle.
 - Wide definition of 'emanation of the State' as seen in *Foster v British Gas (1990)*.
2. Marcus will be able to rely on the Directive, because Directives have vertical direct effect, as seen in *Marshall v Southampton Health Authority (1986)*. This means that Marcus will have a claim against the local council, as it is an emanation of the state.
3. The same answer as for Gloria (1).
- 4 a. All the claimants would be able to rely on the national law for their sex discrimination claims.
- 4 b. Regulations are directly applicable which means that even if it had not been implemented, all claimants would be able to rely on it as Regulations automatically become national law, as illustrated by the *Re Tachographs (1979)* case.

Activity 1.5 Impact of EU law

	Primary or secondary?	Directly applicable? ✓/✗	Horizontal direct effect? ✓/✗	Vertical direct effect? ✓/✗
Treaties	Primary	✗	✓	✓
Regulations	Secondary	✓	✓	✓
Directives	Secondary	✗	✗	✓
Decisions	Secondary	✓	✓	✓

Activity 1.6 The four institutions of the EU

Use the words below to fill in the blanks to explain the role of the three institutions of the European Union.

European Parliament

The European Parliament is the directly **elected** arm of the European Union, and is responsible for making most of the **law**. The **MEPs** are elected every **five** years by the citizens of the member states. The number reflects the **population** of the member states. The European Parliament has three main roles: legislative, **supervisory** and budgetary.

European Commission

The European Commission is the **Executive** arm of the European Union and its main job is to manage the day-to-day running of the EU, as well as **proposing legislation**. The Commission is known as the **Guardian** of the **Treaties** and ensures that all member states comply with their EU **obligations**. There are **28** members of the Commission, one for each member state. They represent the interests of the **European Union**.

Court of Justice of the European Union

The Court of Justice of the European Union (CJEU) ensures law is **applied** and **interpreted** consistently throughout the member states. There is **one** judge from each member state but they rarely sit as a full court. The CJEU has two main functions: **judicial** and supervisory. Its supervisory function allows member states to apply for a **preliminary ruling** under **Article 267** of the Treaty of the Functioning of the European Union (TFEU), which provides advice on the interpretation and **validity** of EU law. When this may be appropriate is laid down in **Bulmer v Bollinger (1974)**, where the CJEU held that member states should first exhaust their own national appeal process.

The Council of the European Union

The Council of the European Union is the main **decision-making** body of the European Union and is its **legislative** arm. Its membership varies according to the **topic** being discussed. Council ministers jointly approve the **budget** with the European Parliament.

Activity 1.7 Welsh legislature crossword

Across

2. Assembly
3. Agriculture
4. Reserved
7. Labour
8. Executive
10. Devolution
11. Education

Down

1. Referendum
5. Drakeford
6. Sixty
9. Codification

1.1 Quickfire Questions

1. • House of Commons (elected chamber).
• House of Lords (non-elected chamber).
• Monarch (Royal Assent to all legislation).
2. • Legislature (UK Parliament – make the law).
• Executive (UK government – enforce the law).
• Judiciary (apply and interpret the law).
3. A theory introduced by A V Dicey which outlines that Parliament can make or unmake any law and have absolute and unlimited power.
4. Bills working their way through Parliament can bypass the House of Lords.
An example of this was the **Hunting Act 2004**.
5. • **Human Rights Act 1998**.
• Membership of the European Union.
• Devolution.
6. This Act gave Wales law-making powers, initially in nine areas, and, after the 2011 referendum, primary law-making powers in over 20 areas.
7. • **Francovich principle**, which gives individuals the right to compensation for failure to implement the Directive.
• **Marleasing/Von Colson principle**, which allows judges to use a purposive approach to interpretation, which effectively leads to an indirect effect principle.
• Wide definition of ‘emanation of the State’ as seen in **Foster v British Gas (1990)**.
8. EU law will automatically become law in member states without needing implementation, for example EU Regulation, as seen in the case of **Re Tachographs**.
9. **Marshall v Southampton Health Authority (1986)** and **Van Duyn v Home Office (1974)** illustrate the ability of individuals to rely upon EU law in their own national courts without having to go to European courts, if their claim is against the state or an ‘emanation of the state’.
10. The full name of the case is **R (Miller) v Secretary of State for Exiting the European Union (2016)**. The Supreme Court decided that the UK Parliament had to have a vote in relation to the terms of the EU withdrawal agreement after Article 50 was triggered by the referendum in 2016.

Law reform

Activity 1.8 Pressure groups

Answer depends on groups chosen. You can use the following table as a template.

Name of pressure group	Objectives	Methods	Successes?

Activity 1.9 Methods of law reform

Method of law reform	Explanation
Creation Example: Sarah's Law <i>(s327 Criminal Justice Act 2003)</i>	When problems have appeared over time and new legislation is enacted to amend it. Where successive statutes on the same subject are brought together.
Consolidation Example: <i>Anti-Terrorism, Crime and Security Act 2001</i>	Old and obsolete laws are removed. Out of date statutes are taken off the statute books after a long time.
Codification Example: <i>Gender Recognition Act 2004</i>	Where a particular area of law has developed over time, a large body of case law and statute can make the law confusing. This process brings together all the rules into one statute to increase certainty.
Repeal Example: Some people believe that the <i>Human Rights Act 1998</i> should be repealed	Completely new laws are written in response to public demand or because of pressure from other groups. Existing provisions can also be adapted for new needs.

Activity 1.10 Public inquiries research

Answers depend on own research. You can use this template to write down what you find out.

Public inquiry	Reason set up	Resulting changes
1. Bloody Sunday Inquiry (2010)		
2. Shipman Inquiry (2002)		
3. Laming Inquiry (2003)		
4. Leveson Inquiry (2012)		
5. Grenfell Tower Inquiry (expected to report in 2019)		

Activity 1.11 Law Commission

- a. Read the student's answer in response to the following question and **allocate a mark** using the appropriate mark grid for your specification.
- b. What has the candidate **done well** in their answer?
- c. How could the candidate **improve** their answer?

Activity 1.12 Apply the law

Advise Edna about how she could try to promote reform of the law on the use of single-use plastic in England and Wales.

1.2 Quickfire Questions

1. Consolidation, Codification, Repeal, Creation.
2. Judges are not elected. Their role under the constitution is to apply and interpret the law, not to make the law. Under the theory of separation of powers, it is the job of the legislature to make the law.
3. Examples could include the following:
 - Fathers4Justice – campaigns for equal rights for fathers in child custody battles.
 - Greenpeace – campaigning for environmental issues.
 - Amnesty International – campaigns against human rights violations around the world.
4. **The Law Commission Act 1965. s3** of that Act outlines its role, which is to 'keep under review all the law'.
5. To research problems in the law, to undertake a consultation if required and to produce a draft bill of changes to present to Parliament.
6.
 - Fast-track procedure for non-controversial Bills proposed by the Law Commission to be put through Parliament.
 - Annual report to be produced by the Lord Chancellor outlining which projects have and have not been implemented and why.
 - Assurance from the relevant minister that they will seriously consider a change in the law.
7. Usually public inquiries are set up after a major incident or disaster, where it is suspected there have been failings by an organisation or public authority.
8. A recent example is the Grenfell Tower inquiry.
9. Answers could include the following.
 - They provide a one-sided view of an issue.
 - They are undemocratic in the sense that they are not elected but can still influence the government.
 - Some groups advocate the use of direct action, which can be illegal.
10. Answers could include the following.
 - Pressure groups enhance democracy and encourage ordinary people to engage in politics.
 - Members' specialist knowledge can inform the governments
 - They can raise public awareness and educate the public on key issues.

Delegated legislation

Activity 1.13 Delegated legislation

Delegated legislation, or **secondary** legislation, is a law made by a body or person other than **parliament** but with its authority. Parliament normally passes an **Enabling Act** to **delegate** the authority to make law.

There are several types of delegated legislation. The **Legislative and Regulatory Reform Act 2006** allows ministers to issue **statutory instruments** to amend existing primary legislation. These are known as **Legislative Reform Orders**.

There are four main forms of delegated legislation. The most common is statutory **instruments**. These are made by government **departments** and are the majority of delegated legislation passed each year (approximately **3,000**). They are made via either **affirmative** resolution or negative **resolution**, which are part of the parliamentary **controls** on delegated legislation.

Byelaws are made by local **authorities**, public **corporations** and companies, and usually concern local issues or matters relating to their area of responsibility. For example, county councils make byelaws that affect their whole county, while district or town councils only make byelaws solely for their particular area. The laws are made with awareness of the **needs** of the locality. They normally concern matters such as **parking** and traffic management, or library provision.

Orders in **Council** are generally made in times of **emergency** (under the **Emergency Powers Act 1920** and **Civil Contingencies Act 2004** – the ‘enabling’ Act) and have to be approved by the **Privy Council** and signed by the **Queen**. They can also be used to amend law and to give effect to EU law. For example, **The Misuse of Drugs Act 1971 (Modification) (No. 2) Order 2003** downgraded cannabis from a Class B to a Class C drug.

Finally, devolution is the process of transferring power from central government to regional/local government (for example, the **Scottish** Parliament, the Welsh Government and the Northern Ireland Assembly).

Activity 1.14 Control of delegated legislation

Affirmative resolution	Where the delegated legislation goes beyond what Parliament intended.
Negative resolution	Where the person making the legislation has taken into account matters they ought not to, or not taken into account matters they ought to. Then it still needs to be proved that no reasonable body could have made the decision.
Super-affirmative procedure	Where the statutory instrument has to be laid before both Houses of Parliament to expressly approve the measure. Where used, this is an effective control.
Consultation	Many enabling Acts require a consultation with interested parties or those who will be affected by the delegated legislation. Where consultation is required, it is an effective control but not all enabling Acts require consultation, thereby limiting its usefulness. The enabling Act itself is a form of control, as it sets the parameters and procedures for the delegated power.
Joint Committee on Statutory Instruments	Where the procedures laid down in the enabling Act for making the statutory instrument have not been followed (e.g. consultation was required but not carried out).
Procedural ultra vires	This is sometimes required to oversee Legislative Reform Orders issued under the Legislative and Regulatory Reform Act 2006 . It provides Parliament with more power to scrutinise the proposed delegated legislation. Reports must be produced and each House of Parliament must expressly approve the order before it can be made.
Substantive ultra vires	It reports to the House of Commons or House of Lords on any statutory instrument which it thinks requires special consideration and could cause problems. It can only make recommendations and the House of Commons doesn't have to accept them.
Unreasonableness	Where the statutory instrument is published but no debate or vote takes place. About two-thirds of statutory instruments are passed in this way and are not actually considered before Parliament. They merely become law on a future specified date and for that reason is a limited control over the delegated authority. They may be annulled by a resolution of either House of Parliament.

Activity 1.15 Advantages and disadvantages of delegated legislation

ADVANTAGES	Explanation
Flexibility	Delegated legislation is made by specialised government departments with experts in the relevant field of the legislation. Ordinary MPs would not have that expertise.
Time	Delegated legislation is often used to amend existing legislation. It is easier to use delegated legislation than to pass a completely new Act of Parliament.
Speed	It is far quicker to introduce a piece of delegated legislation than a full Act of Parliament. Orders in Council can be used in times of emergency when a law is needed very quickly.
Expertise	Byelaws are made by local authorities to meet the needs of their areas and communities. Parliament would not have the same local awareness.
Local knowledge	Parliament does not have time to debate and pass all the laws needed to run the country effectively. It barely has time to pass around 70 Acts of Parliament per year, let alone the 3,000 statutory instruments that are needed.

DISADVANTAGES	Explanation
Lack of control	There is a vast amount of delegated legislation made each year (around 3,000 statutory instruments). As a result, the correct law can be difficult to find and keep up to date with.
Undemocratic	Some say law should be made by those elected to do so. Delegated legislation is made by unelected individuals and bodies.
Subdelegation	Most statutory instruments are passed using the negative resolution procedure. This is a loose control of delegated legislation. In addition, if consultation is not required, it is not carried out and is also a limited control.
Volume	The power to make the delegated legislation is often subdelegated to those who were not given the original authority to pass law. For example, it may go from a government minister to a government department and then to a group of experts. This means the democratic process is even further removed.

1.3 Quickfire Questions

1. Primary legislation that gives away the power to make law to the authority other than Parliament.
2. Byelaws, statutory instruments and Orders in Council.
3. For example, if they do not have the time to pass all laws needed.
4. Secondary or subordinate legislation.
5. Examples could include the following.
 - Statutory instrument – transport regulations
 - Byelaws – fines for dog fouling
 - Orders in Council – issued during the petrol crisis.
6. They allow Ministers to issue statutory instruments to amend existing primary legislation.
7. This is where the statutory instrument has to be laid before both Houses of Parliament and they have to expressly approve the measure.

Statutory interpretation

Activity 1.16 Rule of language

Match the rule of language with the correct explanation and a relevant case.

Rule of language	Explanation	Case example
<i>Expressio unius est exclusion alterius</i>	'a word is known by the company it keeps'	<i>Powell v Kempton (1899)</i>
<i>Noscitur a sociis</i>	'express mention of one thing is the exclusion of all others'	<i>R v Inhabitants of Sedgley (1831)</i>
<i>Ejusdem generis</i>	'general words which follow specific ones are taken to mean things of the same kind'	<i>Muir v Keay (1875)</i>

Activity 1.17 Approaches to statutory interpretation

A statute is a law made by Parliament; it is also known as an **Act** of Parliament. It is **primary** legislation and is the highest source of law. Statutory interpretation is when a judge works out the meaning of words in an Act of Parliament and applies them to the facts of the **case** before them. In most cases, the meaning of statutes is clear. However, occasionally words require interpreting. Judges may use four different rules or approaches when dealing with a statute that requires interpretation, along with the other aids to interpretation, such as intrinsic and **extrinsic** aids.

When applying the literal rule, the judge will give the words contained in the statute their **ordinary** and plain **grammatical** meaning, even if the result is **absurd**. Many people feel this should be the first rule applied by judges in the interpretation of an unclear statute, as it respects the **sovereignty** of Parliament.

For example, in *Whiteley v Chappel (1968)*, it was an offence to 'impersonate anyone entitled to vote' at an election. The defendant pretended to be a person who had **died** and taken their vote. The judge interpreted the word 'entitled' literally. As a dead person is no longer 'entitled' to vote, the defendant was found not guilty.

To avoid absurdity from the literal rule, the judge can apply the **golden** rule and/or internal (intrinsic) aids. A case to demonstrate the use of the golden rule is *Adler v George (1964)*. **s3 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 had obstructed an officer in a **military** base (a 'prohibited place') and said 'in the vicinity of' means in the surrounding area or 'near to' and not directly within. He may have escaped prosecution under the literal rule but the judge used the golden rule to decide the statute applied both within and around the prohibited place.

The mischief rule was 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**. The judge uses external (extrinsic) aids and looks for Parliament's intention in passing the Act.

This rule is illustrated by *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 parked on the road could not be 'used' because its wheels were 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 the car was indeed a hazard to other road users.

Finally, the **purposive** approach is similar to the mischief rule in that it looks for the intention or **purpose** of the Act. It increased in popularity after the UK joined the **European** Union, due in part to the vaguer wording of European laws, requiring the judge to construct a meaning. As the title of the approach suggests, judges are looking for the 'purpose' of the Act or, as Lord **Denning** said, the **spirit** of the legislation'. A case example is *Magor and St Mellons Rural District Council v Newport Corporation (1950)*. Lord Denning, 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'. However, Lord **Simmons** criticised this approach when the case was appealed to the House of Lords, calling it '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'.

Activity 1.18 Intrinsic or extrinsic?

State whether the aid is intrinsic' or extrinsic'.

Aid	Intrinsic or extrinsic?
Treaties	Extrinsic
Previous case law	Extrinsic
The long title to the Act	Intrinsic
Preamble to the Act	Intrinsic
Dictionaries and textbooks	Extrinsic
Headings	Intrinsic
Schedules	Intrinsic
Reports, e.g. from the Law Commission	Extrinsic
Interpretation sections	Intrinsic
Historical setting	Extrinsic

Activity 1.19 Apply the law writing frame

Answer using the table provided.

1.4 Quickfire Questions

1. It is the procedure by which a judge works out the meaning of words in an Act of Parliament and how this applies to the facts of the case before them. 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. However, occasionally words require interpreting. Reasons for statutory interpretation include:
 - ambiguous terms
 - broad terms
 - changes in the use of language
 - error.
2. Literal, golden, mischief, purposive.
3. General words which follow specific ones are taken to mean things of the same kind.
4. An aid to interpretation found within the statute, such as headings, schedules, preamble.
5. Under **s3 HRA 1998**, judges are obliged to interpret offending legislation compatibly with human rights and if unable to do so, must issue a declaration of incompatibility under **s4 HRA 1998**.
6. Explain the rule, give a case, identify an intrinsic aid, identify an extrinsic aid and then apply the rule to the scenario.
7. Literal: **Whiteley v Chappel (1968)**; Golden: **Adler v George (1964)**; Mischief: **Elliot v Grey (1960)**; Purposive: **Magor and St Mellons Rural District Council v Newport Corporation (1950)**
8. Literal.
9. Mischief.
10. i. What was the common law before the Act?
 ii. What 'mischief' or defect wasn't provided for by the common law?
 iii. What was the remedy and purpose of that remedy provided in the law?

Judicial precedent

Activity 1.20 Dealing with precedents

The theory of precedent and the concept of being bound by previous decisions suggests that the system is **rigid** and inflexible. It suggests that the **Supreme Court** is the only court that has any creative scope and that all other courts must strictly follow its previous precedents.

However, this would make the system very **inflexible** and would almost certainly lead to **injustice**. So the legal system in England and Wales has allowed a fine balance to be struck between the conflicting concepts of flexibility and certainty, so judges can choose to avoid a precedent in a case where they feel that a strict adherence to precedent would lead to an injustice.

A judge therefore has four options. The first is to **follow**. This is where the judge agrees with the precedent set in the earlier case and applies the precedent or **ratio decidendi** to the current case. This was seen in the case of **Jones v Secretary of State for Social Services (1972)** where the decision in **Re Dowling (1967)** was followed.

Secondly, **reversing** is where the earlier precedent was made in a lower court and the higher court can **reverse** that decision if it disagrees with it. The outcome of the earlier decision stays the same but will not be **followed**, for example in ***Hedley Byrne & Co Ltd v Heller & Partners Ltd (1964)***.

Thirdly, if the decision of a lower court is **appealed** to a higher one, the higher court may change it if it feels the lower court has wrongly interpreted the law. This is called **overruling**. This was seen in the case of ***Re Pinochet (1999)***.

Finally, the judge can find the material facts of the two cases sufficiently different to avoid following the precedent. This is called **distinguishing**. It was seen in the case of ***Merritt v Merritt (1971)*** which was **distinguished** from the facts in ***Balfour v Balfour (1919)***.

The **Supreme** Court is in a unique position because it can avoid precedent totally by changing the law and creating an **original** precedent. This is true if the precedent has been set by a lower court, or indeed by itself. The Supreme Court will use the **Practice Statement 1966** to do this 'where **it appears right to do so**'. This was seen in the case of ***Pepper v Hart (1993)*** where the law lords ignored a precedent they had set themselves, regarding the use of Hansard in statutory interpretation.

The Court of Appeal can also avoid using an earlier precedent, if it believes that one of the exceptions laid down in ***Young v Bristol Aeroplane Co (1944)*** applies to the present case.

The exceptions are where there are **two** conflicting previous decisions and where a previous decision has been overturned by a later **Supreme** Court decision; where the previous decision was made ***per incuriam***.

Section 2 of the ***Human Rights Act 1998*** requires all judges to '**take into account**' the case law of the **European Court of Human Rights**. This effectively allows judges to avoid an earlier precedent where it is clear that following it would conflict with a decision of the ECHR.

Activity 1.21 Judicial precedents

Draw lines to match the statements and cases with the correct explanation.

Original precedent: the law on negligence was created	<i>Vinter v UK (2013)</i>
'stand by what has been decided': Latin maxim upon which the theory of judicial precedent is based	Court of Appeal can depart from its own previous decisions in three instances: <ul style="list-style-type: none"> • where there are two conflicting previous decisions • where a previous decision has been overturned by a later House of Lords/Supreme Court decision • where the previous decision was 'per incuriam' (wrongly decided)
Most famous use of the Practice Statement where House of Lords overruled a previous ban on Hansard in statutory interpretation	<i>obiter dicta</i>
'other things said': element of judgement that is persuasive	<i>stare decisis</i>
Requires all judges to 'take account of' the case law of ECtHR	<i>R v Shivpuri (1997)</i>
ECtHR ruled that whole-life orders that were not subject to review violated Article 3, the right to be free from inhuman and degrading treatment	<i>Pepper v Hart (1993)</i>
First use of the Practice Statement in a criminal case, which departed from <i>Anderton v Ryan (1985)</i> <i>Young v</i>	<i>s2 Human Rights Act 1998</i>
<i>Bristol Aeroplane (1944)</i>	<i>Donoghue v Stevenson (1932)</i>

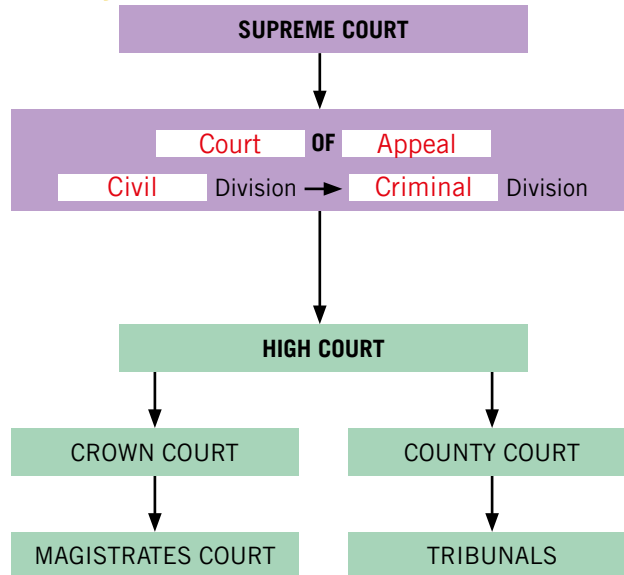
Activity 1.22 Advantages and disadvantages of precedent

Complete the advantages and disadvantages of precedent.

ADVANTAGES	DISADVANTAGES
Certainty Claimants can be advised that like cases will be treated in a similar way and not by random decisions of judges.	Rigidity Depending on the place of the court in the hierarchy, precedent can be very rigid, as lower courts are bound to follow decisions of higher courts even where they think the decision is bad or wrong.
Flexibility Case law can change quickly to meet changes in society.	Undemocratic / unrepresentative Judges are not elected and should therefore not be changing or creating laws, unlike Parliament that has been elected to do so.
Practical Case law is always responding to real-life situations. As a result, there is a large body of detailed rules that give more information than statutes.	Complexity While case law gives us detailed practical rules it also means that there are thousands of cases, and identifying relevant principles and the <i>ratio decidendi</i> can be difficult and time consuming.
Impartial and just Treating like cases in similar ways promotes impartiality.	Unpredictable Developments are contingent on accidents of litigation. Case law only changes if someone is determined enough to pursue a case through the courts.
	Slow to change Cases take a while to go through the courts and to establish new precedents. In addition, unlike legislation, case law applies to events which took place before the case came to court (see <i>SW v UK (1996)</i> ; <i>R v C (2004)</i>).

Activity 1.23 Precedent scenarios

No answers provided.

Activity 1.24 Identify the courts and precedents

Identify the following on the hierarchy above:

- Courts that can create precedent.
Supreme Court (House of Lords) and the Court of Appeal.
- Courts that have to follow precedent.
No answers provided
- Courts that can depart from their own decisions.
No answers provided
- Courts that are bound by their own decisions.
No answers provided

Activity 1.25 Original precedent***R v R (1991)***

Facts: The defendant was charged with attempting to rape his wife.

Law before: An 18th-century precedent stated that a husband could not be guilty of raping his wife.

New law decided: The House of Lords held that the status of women in society had changed and that they had now achieved equality with men so they should not be regarded as a form of chattel (belonging). If a wife does not consent to sex, her husband can now be found guilty of rape.

Gillick v West Norfolk and Wisbech AHA (1985)

Facts: A mother campaigned against doctors prescribing contraception to girls under 16 without parental consent, on the basis that it encouraged under-age sex.

Law before: There was no clarity over the extent to which parents have rights to control their children's behaviour and choices, for example over whether young teenagers can seek and receive contraception and medical advice without their parents knowing or consenting.

New law decided: The House of Lords, faced with no lead from Parliament on the issue in this case, held that a girl under 16 could be given contraceptive services without her parents' consent, if she is mature enough to make up her own mind.

Fitzpatrick v Sterling Housing Association (1999)

Facts: Mr Thompson rented a flat in 1972. In 1976, his partner, Mr Fitzpatrick, moved in and they lived together in the flat until Mr Thompson's death in 1994. Mr Fitzpatrick found her had no right to stay in the flat as the law did not explicitly allow gay couples to pass on their tenancy to one another.

Law before: Under the ***Rent Act 1977*** and later amendments under the ***Housing Act 1998***, tenants could pass on their tenancy to spouses or cohabiting family members when they died. However, there was no allowance in law for gay couples, who could not marry or undertake civil partnerships at the time, so it was unclear whether they could be regarded as spouse or family.

New law decided: House of Lords held that same-sex partners could establish a familial link for the purposes of the ***Rent Act 1977***, overruling the Court of Appeal's decision that this should be left to Parliament to determine.

Activity 1.26 Avoidance techniques

Select the appropriate cases from the list and write them in the correct row of the table to match the cases to the avoidance technique.

Avoidance technique	Definition	Example cases
Follow	The judge agrees with the precedent set in an earlier case and applies the precedent or <i>ratio decidendi</i> to the current case.	<i>Addie v Dumbreck (1929)</i> <i>Evans v Triplex Safety Glass Ltd (1936)</i> <i>Donoghue v Stevenson (1932)</i> <i>Anderton v Ryan (1985)</i>
Overrule	When the earlier precedent was made in a lower court, the senior judges can overrule that earlier decision if they disagree with it. The outcome of the earlier decision stays the same but will not be followed.	<i>R v Shivpuri (1987)</i> <i>British Railways Board v Herrington (1972)</i> <i>Fitzpatrick v Sterling House Association Ltd (2000)</i>
Reverse	If the decision of a lower court is appealed to a higher one, the higher court may change it if it feels the lower court has wrongly interpreted the law.	<i>Gillick v West Norfolk & Wisbech Area Health Authority (1986)</i>
Distinguish	The judge finds the material cases of the two cases sufficiently different to avoid following the precedent.	<i>Merritt v Merritt (1971)</i> <i>Balfour v Balfour (1919)</i>

Activity 1.27 Judicial precedent application question

Use the table to write your own answer to an appropriate question of your choice.

1.5 Quickfire Questions

1. To which court does the Practice Statement apply?
2. Why is following previous precedents considered an 'indispensable foundation'?
3. What reasons were given by the House of Lords in the Practice Statement for modifying the rule about following former decisions?
4. When will the House of Lords depart from a previous decision?
5. The Court of Appeal must follow decisions made by higher courts. Which courts are these?
6. What is the normal rule about the Court of Appeal following its own previous decisions?
7. Explain the three exceptions to the rule that the Court of Appeal must follow its own previous decision.
8. What are the advantages of the Court of Appeal normally following its own past decisions?
9. Why is the *ratio decidendi* of a case so important?
10. What is the significance of the material facts of a case?
11. Why is case reporting so important to the operation of precedent?
12. What is meant by *stare decisis*?

Civil courts

Activity 1.28 Differences between civil and criminal law

	Civil	Criminal
Name of the parties	Claimant v defendant	Prosecution v defence
Who starts the action?	Claimant	Prosecution
Courts of first instance	Magistrates and Crown	County Court and High Court
Burden of proof	On the claimant	Beyond reasonable doubt
Standard of proof	On the balance of probabilities	Beyond reasonable doubt
Examples	Personal injury, breach of contract, etc.	Theft, murder, etc.
The purpose of this type of law	Social control	Dispute resolution
Outcome	Liable or not liable	Guilty or not guilty
Examples of sanctions	Damages, injunction, etc.	Damages, imprisonment, fine, etc

Activity 1.29 Differences in terminology

Key term	Civil, criminal or both?	Definition
Public law	Both	The law of relations between individuals and the state.
Private law	Civil	A branch of the law that deals with the relationship between individuals or institutions, rather than between these and the state.
Prosecuted	Criminal	Tried for the criminal offence with which the defendant is charged.
Dispute resolution	Civil	Solving a disagreement between two parties.
Punishment	Criminal	A penalty as retribution for the commission of an offence.
Remedy	Civil	An award made by a court to the innocent party in a civil case to 'right the wrong', e.g. damages, injunction, etc.
Liable	Civil	To be 'responsible' for a civil wrong.
Sued	Civil	To begin legal proceedings against a defendant.
County Court	Civil	Civil court of first instance. Hears small claims cases and fast track. Can also hear some multi-track cases.
Crown Court	Criminal	Criminal court of first instance, which tries indictable and triable either way offences that have been sent there.
Defendant	Both	The person defending the action (civil or criminal).
Court of Appeal	Both	Appeal court – civil and criminal divisions.
Victim	Both	The person affected by the defendant's act, omission or civil wrong.
Compensation	Civil	Monetary payment to compensate for loss or damage. Also known as 'damages'.
Fine	Criminal	A financial criminal sentence.
Injunction	Civil	An equitable remedy. It can be mandatory, prohibitory or interlocutory.
Claimant	Civil	The party bringing the civil action against the defendant.
Guilty	Criminal	Defendant found to have committed the offence with which they have been charged.
Sentence	Criminal	The punishment given to someone who has been convicted of an offence. It can be imprisonment, a fine, a community sentence, a suspended sentence or discharge.
Three-track system	Civil	The allocation of civil cases is made on the basis of the value of the claim and the complexity of the law involved. The tracks are small-claims track, fast-track and multi-track.

Activity 1.30 Problem solving

1. Michelle
Court: County Court
Track: Fast track
2. Maria
Court: High Court
Track: Multi track
3. Jack
Court: County Court
Track: Fast track
4. Diana and Marcus
Court: High Court
Track: Multi track
5. Catherine and Ahmed
Court: County Court
Track: Fast Track

Activity 1.31 Alternative dispute resolution crossword**Across**

4. Arbitration
5. Conciliation
7. Court
11. Mediation
12. Advisory service
13. Settlement
14. Negotiation

Down

1. ADR
2. Scott v Avery
3. Arbitration Act
6. Award
8. Active
9. Binding
10. MIAM

Activity 1.32 Using types of ADR

Type	Definition	Example
Negotiation	Parties try to reach a settlement on their own with the help of a passive third party who acts as a go-between	Via ACAS
Mediation	The third party plays a more active role to push the parties towards a settlement	At a MIAM
Conciliation	The parties try to resolve the case on their own or with a solicitor	At a hearing or via paper arbitration
Arbitration	The most formal method of ADR, where the binding decision is imposed upon the parties	Via phone, letter, email, meeting

Activity 1.33 Advantages and disadvantages of tribunals

Fill in the details for each of the advantages and disadvantages of tribunals.

Advantages	Disadvantages
Cost Parties are encouraged to take their own cases without the need for representation. This has been made even easier with the availability of application forms online and a more transparent Tribunal Service since the reforms.	Lack of precedent Tribunals do not operate a strict system of precedent, so there is sometimes an element of unpredictability to the outcomes of cases.
Speed There is a duty on the tribunal judges to take on case management duties, so they are able to impose strict timetables to ensure that most cases can be heard within one day.	Delay If the case is complex, there can be a delay in getting it heard.
Informality Tribunals are much less formal than a court hearing, though they are more formal than other methods of ADR. The parties benefit from a private hearing and have the chance to maintain a relationship after the case is over.	Lack of funding Legal funding is available for some disputes (for example, if you are a member of a union, it may pay for your case), but it is not always available. This can be detrimental to a person taking on a big company who has the benefit of the most expensive representation. In addition, new fees for claims in the employment tribunal or employment appeal tribunal have now been introduced, which may prevent some people from pursuing a claim.
Independence Because of the involvement of the Judicial Appointments Commission in appointing tribunal judges, the tribunal system is much more transparent, independent and thus fair. Also, the unified set of procedures and rules minimises the risk of inconsistencies between tribunals.	Intimidated parties There is still the problem of parties feeling intimidated and daunted at the prospect of taking a case to 'court', particularly without the comfort of having a legal representative.
Expertise At least one member of the tribunal will be an expert in the relevant field, so this will save time explaining complex technicalities to a judge in court.	

Activity 1.34 Civil juries

Fill in the missing words from the list provided.

Juries are used in less than **1%** of civil cases. They decide whether the **claimant** has proved their case 'on the balance of **probabilities**' (the **standard** of proof) and they also decide the amount of **damages** the defendant should pay the claimant if the outcome is in favour of the claimant.

According to **s69** of the **Senior Courts Act 1981** for High Court cases and **s66** of the **County Courts Act 1984** for cases in the County Court, parties have the right to jury trial only in the following cases:

- false **imprisonment**
- **malicious** prosecution
- **fraud**.

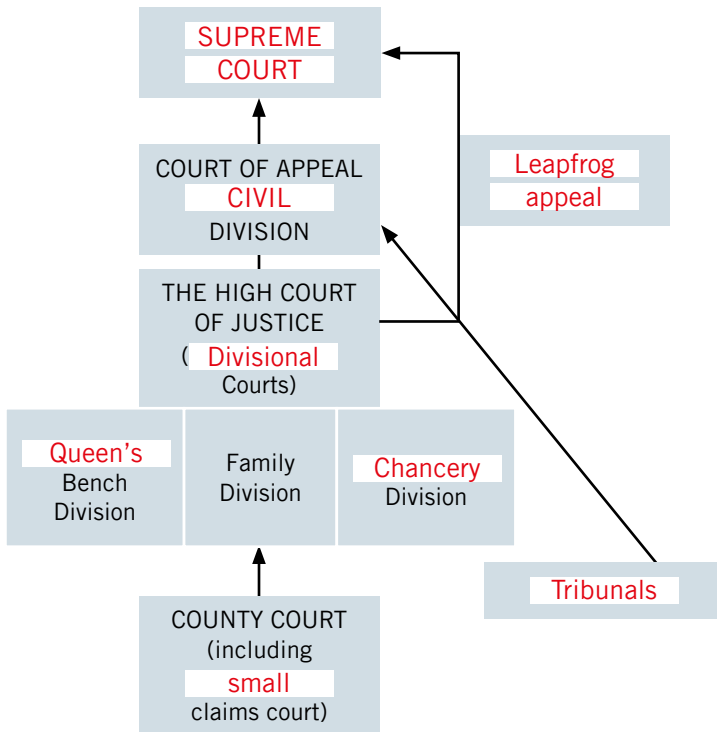
Section 11 of the **Defamation Act 2013** removed the presumption of a trial by jury for defamation cases. Defamation cases are therefore tried without a jury unless the court orders otherwise.

In personal injury civil cases in the Queen's **Bench** Division of the High Court, the parties can apply to the judge for a jury trial. It is rare for this to be granted. The Court of Appeal in the case of **Ward v James (1966)** laid down guidelines for personal injury cases which, in effect, stopped the use of juries. They advised that personal injury cases should normally be tried by a judge sitting alone, because such cases involve assessing **compensatory** damages which have to consider conventional scales of damages.

So, why are juries used rarely in civil cases? They tend to award **excessive** damages, they do not have to give **reasons** for their decisions and they can be costly.

Activity 1.35 Route of civil case appeals

The diagram shows where appeals to civil cases may go. Fill in the missing words to complete the boxes



1.6 Quickfire Questions

1. Small claims, fast and multi tracks.
2. Where there is a binding precedent set by the Supreme Court or if the case involves a point of law of general public importance.
3. Alternative dispute resolution.
4. Negotiation, mediation, conciliation, arbitration.
5. It runs alongside the civil courts and acts as a specialist court.
6. See answer to Activity 1.35.
7. A remedy.
8. Appeal courts for each division. Queen's Bench, Chancery and Family.
9. Claimant v defendant.
10. The burden is on the claimant and the standard is on the balance of probabilities.

Criminal process

Activity 1.36 Criminal process jargon buster

Provide a definition for these key terms relating to the criminal process.

Term	Definition
appropriate adult	Code C of the <i>Police and Criminal Evidence Act 1984</i> allows an adult to accompany a child or young person being interviewed by police in order to safeguard their welfare and rights.
unduly lenient	Outcome of an appeal where a judge deems a sentence to fall outside the range of sentences that could be considered appropriate for the offence(s).
case stated	A way of appealing where a court asks another court for its opinion on a point of law – for example, from magistrates' court to High Court.
conviction	Where a defendant is found guilty in court of the offence(s) with which he has been charged.
cross examination	The questioning in court of a witness by the opponent's legal team – for example, the defence will cross examine the prosecution witnesses.
deterrence	An aim of sentencing which 'deters' others or the individual from offending again.
leave to appeal	Where the prosecution or defence are given permission to appeal a case to a higher court.
acquittal	Where a defendant is found not guilty in court of the offence(s) with which they are charged.
leapfrog appeal	This is a type of appeal which usually enables a case to bypass the Court of Appeal and go straight to the Supreme Court.
charge	Where a decision is made by the police or the Crown Prosecution Service that a suspect will stand trial for the offence(s) for which they have been arrested.
examination in chief	The questioning in court of a witness by their own legal team – for example, the prosecution being questioned by their own barrister.

Activity 1.37 The aims of different sentences

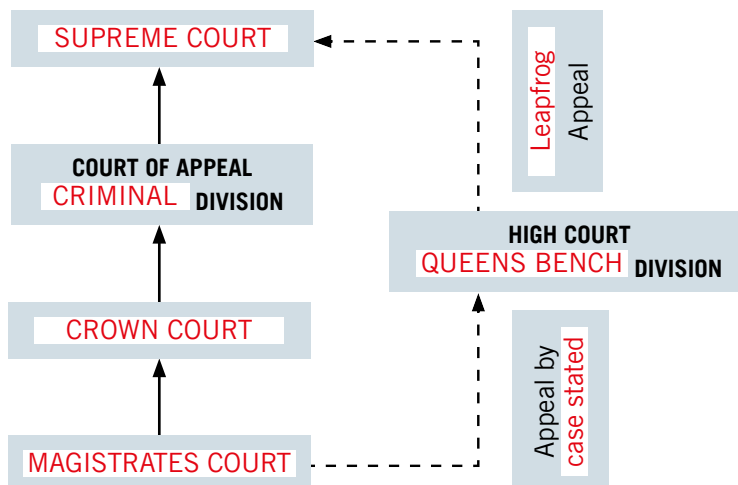
SENTENCE	AIM				
	Retribution	Protection of society	Deterrence	Reparation	Rehabilitation
Fine	✓		✓		
Discharges			✓		✓
Community Order				✓	✓
Determinate sentence	✓	✓			
Suspended sentences			✓		✓
Whole-life order	✓	✓			
Penalty Notice for Disorder	✓		✓		
Cautions	✓		✓		

Most widely achieved aim: Deterrence

The most common punishment given out in the UK is a fine. There are proposals to abolish prison sentences of less than six months as they are proving ineffective.

You should also consider the aims of youth sentencing, where the key aim is rehabilitation and to keep youths out of the prison system.

Activity 1.38 Criminal appeals



Activity 1.39 Bail or jail?

No answers provided

Activity 1.40 Stage of a criminal trial

Number the following statements in the correct order to show how a criminal trial proceeds:

3	The defence cross-examines the prosecution witnesses.
10	The judge sums up the legal and factual issues for the benefit of the jury.
9	The defence makes its closing speech .
7	The prosecution cross-examines the defence witnesses.
4	Prosecution re-examines its own witnesses.
11	The jury (or magistrates) retire to consider a verdict.
2	The prosecution calls its own witnesses and conducts examination in chief .
5	The defence can submit that there is no case to answer.
12	If the defendant is found not guilty, they are acquitted. If they are found guilty, the judge or magistrates deliver the sentence.
8	The prosecution makes its closing speech .
6	The defence calls its own witnesses to support its case and conducts its examination in chief .
1	The prosecution delivers its opening speech to outline facts.

Activity 1.41 Discussion points around recent reforms

Carry out your own research and discuss your findings with other members of your group or class.

Activity 1.42 Crown Prosecution Service

The Crown Prosecution Service was established by the **Prosecution of Offences Act 1986**. The Crown Prosecution Service is headed by the **DPP**, who is answerable to the **Attorney General**. There are **13** areas of the Crown Prosecution Service, each headed by a **Chief Crown Prosecutor**. An additional area is known as **CPS Direct**, which provides out-of-hours charging advice to police.

The **full code** test is contained in **s10** of the **Prosecution of Offences Act 1986**. The first stage is the **evidential** test, which asks whether evidence collected is reliable, sufficient and **admissible**. This is an **objective** test, so if it is not satisfied, then under **s23** of the **Prosecution of Offences Act 1986**, the case has to be **discontinued**.

The second stage is the **public interest** test, which consists of **seven** questions to determine whether a suspect should be charged. The Crown Prosecution Service should also consider whether an **out-of-court** disposal would be more appropriate than a prosecution.

An alternative test is the **threshold** test, which is used where there is not enough evidence to **charge**, but when the suspect is believed to be too much of a risk to be released. For this to apply, there has to be a **reasonable** suspicion that the person has **committed** the offence.

The 'Casework **Quality Standards**' is a document which outlines the **standards** that the public can expect from the Crown Prosecution Service and are important in upholding the Crown Prosecution Service to **account** if it fails to provide the service outlined by the **benchmarks** of quality. There are **four** standards.

1.7 Quickfire Questions

1. Summary (least serious), triable either way, indictable (most serious)
2. This case overturned **Vinter v UK (2013)** by ruling that whole-life orders are not a breach of Article 3 ECHR.
3. Retribution (punishment), deterrence (individual and general), protection of society, rehabilitation, reparation.
4. It is found under **s147 Criminal Justice Act 2003** and is a type of community sentence for youths, which aims to reduce the number of youths in custody. Requirements can be attached to the order such as unpaid work, a curfew, education or drug testing.
5. Absolute discharge is when an offender is released without punishment and no further action is taken. Suspended sentence is when the offender does not go to prison but has to comply with conditions set for the period of the order. A breach of the conditions will result in the offender being sent to prison.
6. **Schedule 1(9) Bail Act 1976** outlines the factors that are taken into consideration when deciding to grant bail:
 - Nature and seriousness of the offence.
 - Character, past record, associations and community ties of the defendant.
 - Defendant's previous record of surrendering to bail.
 - Strength of the evidence against the defendant.
7. Conditions are attached to bail under the **Criminal Justice and Public Order Act 1994** and can include curfews, electronic tagging, surrendering passports or residing at a bail hostel.
8. If the defendant was on bail for another offence at the time of the current offence, bail should be refused unless the court is satisfied that there is no significant risk that they will commit another offence.
9.
 - Reduction in the number of suspects on remand.
 - Defendant can maintain employment and family time.
 - Defendant is not restricted in time available to prepare for trial with their legal team.
10.
 - To advise police on charge brought against suspect.
 - To review cases.
 - To prepare cases for court.
 - To present cases in court.
 - To decide whether to bring a prosecution against suspect.
11. Examples could include the following.
 - Blurred CCTV.
 - Confession obtained by oppression
 - Hearsay.

12. The threshold test can be used where the full code test fails, but the suspect is still believed to be too much of a risk to be released. It asks:
 - Is there a reasonable suspicion that the person arrested has committed the offence in question?
 - Can further evidence be obtained to provide a realistic prospect of conviction?
13. The Director of Public Prosecutions at the time, Allison Saunders, was under pressure to step down after the Lord Janner case, because even though there was enough evidence to charge him with child sex offences, Ms Saunders decided it was not in the public interest to charge him.

Juries

Activity 1.43 Role of the jury

The jury is an ancient and democratic institution within the legal system, which dates back to the **Magna Carta**. The jury is selected at random and is an opportunity for the public to take part in the administration of **justice**.

The concept of jury **equity** means that juries are **impartial** and cannot be influenced by the judge. This was illustrated early on in the case of **Bushell** and then later in the cases of **R v Ponting** and **R v Wang**. Despite recommendations by **Auld**, the forcing of juries to convict was not implemented.

The jury sits in the **Crown Court** in criminal cases, listening to the evidence presented by the prosecution and defence, and then decide a verdict of **guilty** or not guilty. The jury makes a decision based on **fact**, and should return a **unanimous** verdict or, if they cannot all agree after a reasonable length of time, a **majority** verdict of no more than 10–2. This is provided for by the **Juries Act 1974**. In reality, juries are only used in only **1%** of cases because almost all cases are heard in the **magistrates' court**.

Juries are also used in a small number of civil cases. In these cases, the role of the jury is to decide **liability** and the **damages** in cases such as **malicious prosecution**, fraud, **false imprisonment** and, occasionally, defamation. This is provided for by the **Supreme Court Act 1981** and the **County Courts Act 1984**.

Juries are also used in the coroner's court, where their function is to decide the **cause of death** in cases such as deaths in police custody, **prison** and health and safety incidents. An example was the **Hillsborough** inquest.

Activity 1.44 Am I eligible for jury service?

1. Brenda is eligible because her criminal conviction is not serious enough to make her ineligible under the **Juries Act 1974** as amended by the **Criminal Justice Act 2003** and the **Criminal Justice and Courts Act 2015**, assuming she is aged 18 to 75, on the electoral roll and a UK resident.
2. Carl is eligible because his criminal conviction is not serious enough to make him ineligible under the **Juries Act 1974** as amended by the **Criminal Justice Act 2003** and the **Criminal Justice and Courts Act 2015**, assuming he is aged 18 to 75, on the electoral roll and a UK resident.

3. Michael is eligible under the *Juries Act 1974* as amended by the *Criminal Justice Act 2003* and the *Criminal Justice and Courts Act 2015*, assuming he is aged 18 to 75, on the electoral roll and a UK resident. However, he could apply for an excusal or a deferral on the grounds of work commitments.
4. Jennifer is eligible under the *Juries Act 1974* as amended by the *Criminal Justice Act 2003* and the *Criminal Justice and Courts Act 2015*, assuming she is aged 18 to 75, on the electoral roll and a UK resident. Before the *Criminal Justice Act 2003*, she would have been ineligible, as all legal professionals, including judges and police officers, were excluded.
5. Elizabeth is eligible under the *Juries Act 1974* as amended by the *Criminal Justice Act 2003* and the *Criminal Justice and Courts Act 2015*, assuming she is aged 18 to 75, on the electoral roll and a UK resident. Also, in the interests of Article 6 ECHR (right to a fair trial), she would need to make sure she does not need a 13th person to help her lip read.
6. Anthony is eligible under the *Juries Act 1974* as amended by the *Criminal Justice Act 2003* and the *Criminal Justice and Courts Act 2015*, assuming he is aged 18 to 75, on the electoral roll and a UK resident. However, he could apply for an excusal or a deferral on the grounds of imminent examinations.
7. Azeem is disqualified under the *Juries Act 1974* as amended by the *Criminal Justice Act 2003* and the *Criminal Justice and Courts Act 2015*, because one of the disqualification criteria is if you are receiving treatment for a recognised mental illness.
8. Cecil is disqualified under the *Juries Act 1974* as amended by the *Criminal Justice Act 2003* and the *Criminal Justice and Courts Act 2015*, because of his serious criminal conviction. He also would have committed contempt of court when serving on the jury by not disclosing his convictions.

Activity 1.45 Diary of a juror

Day 1

At the start of the day, I was really nervous and thought that they would maybe pick on me, I didn't know they could do that. I was scared that I would give the wrong verdict. [The concept of jury equity means that juries cannot be influenced in any way by the judge or others.

Bushell's case, **R v Wang** and **R v Ponting** illustrated this concept of jury equity.

Juries make their judgment based purely on fact and on the evidence presented in court]

Before the trial started, one of the jury members told the usher that she could not serve because she had been the victim of an armed robbery [This is an example of challenge for the cause, where jurors can be excused if they are unable to be 'fair, unbiased or capable'. In this case, the juror would be biased on the grounds of having prior experience in a similar case. **R v Gough** highlights this issue and held that there has to be a 'real danger' that the juror is biased] and she felt that it would be too distressing for her to hear about a similar case. I found this a little odd because I thought you could not get out of jury service.

I heard from several witnesses today, including a customer in the shop who I know to be a local vicar and he was adamant that Tim Burr was actually attacked by another customer in the shop. Before the trial, I saw CCTV photos of the attack in a local newspaper which confirms this, although there was no CCTV played during the trial. [Juries should base their decision only on what they see and hear in court and not be influenced by external sources. It may be the case that the CCTV footage, for whatever reason, was unreliable or inadmissible. **R v Taylor & Taylor** was an example where the jury was discharged for being influenced by the media] I thought this was strange but maybe they missed it out because they assumed everyone would have seen it. The defence barrister, Jo King QC, is very attractive. I am so enthralled by Jo's performance that I'm thinking of suggesting a date after the trial has ended. [This is similar to **R v Alexander and Steen**, where the juror bombarded a QC with love letters during a trial. This shows how unreliable a jury trial can be because you don't know on what basis jury members are making their decision]

I still have no idea whether the defendant is guilty or not guilty, so I've been conscientious and conducted a little internet research to find out more about the defendant and the attack. I've discovered that the defendant, Carrie Oakey, has previous convictions for theft and so I'm convinced she must be guilty.

I'd decided take these notes with me tomorrow and share the information with the other jurors [Under the **Criminal Justice and Courts Act 2015**, it is now a criminal offence to research a case online and a further offence to share this information with other jurors. This was the case in **R v Smith & Deane (2016)**, and highlights the threat posed by the internet and its easy accessibility] when I got a Facebook message from Ms Oakey's daughter, who was in court today, asking me to find her mother not guilty because her father has died and she will be left alone if her mother goes to prison. [Social media is a huge threat to jury trial and in the **R v Fraill (2011)** case, Joanna Fraill was jailed for contempt of court for engaging in conversations over social media with an

acquitted defendant in a drugs case] This makes me feel sorry for Ms Oakey but it puts me in an awkward position. I've sent her a private message saying I will do what I can. I don't think this will get me into trouble as I have not promised her anything.

Day 2

When I arrive at court, I talk to one of the other jurors and we decide to have lunch together. Over lunch, we talk for a long time about the trial. [Under the **Contempt of Court Act 1981**, it is an offence to talk about the trial with people other than those also on the jury and the jury must all be together. This is made clear in the introductory video which is shown to all jurors. Watch the video here: <https://www.youtube.com/watch?v=yQGekF-72xQ>.] He tells me he is a retired police officer and that there is no way the police evidence can be wrong, so the defendant must be guilty. [Since the **Criminal Justice Act 2003**, police officers have been able to serve on a jury, but this has led to allegations of bias. However, in the case of **Hanif and Khan v UK (2011)**, the ECtHR held that the presence of police officers on the jury could breach Article 6, but only if police evidence was being challenged] This has made me change my mind. Also, we have now seen pictures of Mr Burr's injuries and they are pretty bad – one photo was of where the knife had been stuck in his chest, and it was full of blood and gore. I think I will have nightmares tonight. [Jury service can be very distressing for some people. In the **R v West** case, jurors had to receive professional counselling as a result of the images and evidence they had seen during the trial of mass murderers Fred and Rose West.]

Day 3

As the trial progresses, I am getting fed up and just want to go home. There is a lot of waiting around and I am starting to think about all the things I could be doing rather than sitting in a boring court room listening to a load of people dressed up and talking about things I don't understand; even Jo King QC is not so appealing anymore. [One of the factors that make jury service unreliable is the resentment of some jurors about having to do it, and also a lack of understanding of what is going on in the court room. In the **R v Pryce** case, the jury was discharged for asking questions which showed 'fundamental deficits in understanding' and therefore could not come to a safe verdict] In order to make the time pass quicker, I start playing noughts and crosses with the juror sitting next to me. The people in the court won't know what we're doing, as we are allowed to make notes during the trial. I really hope the trial finishes tomorrow.

Day 4

The defence and prosecution are doing the summing up today. They are both very good but I will definitely ask Jo, the defence barrister, out on a date after court has finished. There is no way someone that nice would defend someone who has committed such a terrible crime, so Ms Oakey must be not guilty. When the judge tells us to go out for our deliberations, he says that we must make a decision that we all agree on; I think he said it's called a unanimous verdict.

The jury deliberation room is tiny with no windows and it feels like a prison cell. Even though there are tea and coffee facilities, it is smelly and old; nobody else is allowed in here. The ex-police officer I was talking to over lunch nominates himself as foreman of the jury and he is convinced, because the key witness is a police officer, that the defendant must be guilty. [Secret

deliberations are one of the advantages of jury trial, because it means they cannot be questioned on their verdict. However, this can also cause problems as nobody really knows how they come to their verdict. Strong personalities, dominant characters and a resentment of jury service all contribute to unreliable verdicts] *Because we are all desperate to go home, we all agree and decide to find the defendant guilty after all.* [Verdicts should be unanimous under the Juries Act 1974, which means all 12 members should agree on the verdict. This is an advantage as it means there is no element of doubt. However, the judge will accept a majority verdict of no less than 10–2 if a reasonable length of time has elapsed without a majority decision] *the judge will not ask us why we made that decision.* [Under the **Criminal Justice and Courts Act 2015**, it is now possible for jurors to disclose to the judge any statements made, opinions cast or arguments advanced in the deliberation room that could lead to a miscarriage of justice] *Deliberations were over within an hour and our jury service was over once we had delivered the verdict to the judge in court.*

Activity 1.46 Are jury trials reliable?

Use this table to help you answer this question.

Source suggests a jury trial is reliable	Source suggests a jury trial is unreliable

1.8 Quickfire Questions

1. Because it dates back to the Magna Carta, which allowed for 'trial by one's peers'.
2. The **Juries Act 1974** as amended by the **Criminal Justice Act 2003** and the **Criminal Justice and Courts Act 2015**. The current eligibility rules are that potential jurors should be aged 18–75, a UK resident for five years since their 13th birthday and registered on the electoral roll.
3. Anyone who is currently on bail, receiving treatment for a recognised mental illness, and those with serious criminal convictions.
4. A discretionary excusal is awarded to people who have prior commitments which prevent them from serving, for example, examinations, hospital appointments, holidays etc. It is usual to merely defer your service for up to two years in these circumstances.
5. Jury vetting is where the jury is checked for suitability – usually in terms of criminal checks and political affiliation to weed out those with extremist views.
6. The case of **R v Mason** approved the practice of jury vetting on the grounds that it 'promoted impartiality'.
7. **ABC trial** ordered a retrial, because jury vetting was used. In the case of **R v Sheffield Crown Court ex p Brownlow**, Lord Denning condemned jury vetting as being 'unconstitutional' and a 'serious invasion of privacy'.
8.
 - Challenge for the cause: a juror is dismissed because they cannot be fair, unbiased or capable.
 - Stand by the Crown: used in conjunction with vetting in cases of terrorism and national security.
 - To the array: where the whole jury is challenged on the grounds that the summoning officer acted improperly.
9. The case of **R v Ford** held that there is no entitlement to a multiracial jury but the case of **Sander v UK** held that a racist jury was contrary to Article 6 ECHR – the right to a fair trial.
10.
 - **s71 (s20A Juries Act 1974** as amended): created an offence of "researching" a case during the trial period.
 - **s72 (s20B Juries Act 1974** as amended): created an offence of intentionally disclosing information obtained under s71.
 - **s73 (s20C Juries Act 1974** as amended): created an offence of engaging in "prohibited conduct" during deliberations.
 - **s74 (s20D Juries Act 1974** as amended): created an offence of intentionally disclosing information about statements made, opinions expressed, arguments advanced or votes cast during deliberations.

Legal personnel: Barristers and solicitors

Activity 1.47 Legal personnel crossword

No answers provided

Activity 1.48 Legal personnel quiz

1. **b.** Representing a client in court
2. **c.** Dealing with the legal side of buying a house
3. **b.** A senior barrister or solicitor
4. **a.** A barrister
5. **c.** The Legal Services Ombudsman (Legal Ombudsman)

Activity 1.49 Challenging questions about legal personnel

No answers provided

Activity 1.50 Paralegals vs Legal executives

PARALEGALS	LEGAL EXECUTIVES

1.9 Quickfire questions

1. After how many years of practice is a barrister eligible to become a QC?
2. What is the cab rank rule?
3. What is the training period for barristers called?
4. What are the names of the four Inns of Court?
5. What is meant by **rights of audience**?
6. What is the name of the body that deals with complaints against solicitors?
7. Which Act of Parliament made it possible for solicitors to be appointed to the higher courts?

Legal personnel: The judiciary

Activity 1.51 The legal profession: a comparison

	Judges	Barristers / Solicitors
Role		
Qualifications		
Method of selection		
How representative of society are they?		
How they can be promoted		
The courts they work in		
Number in legal system		
Common criticisms of their role		
Other comments		

Activity 1.52 Selecting judges

Analyse and evaluate the extent to which the selection of judges is much fairer than it was before the *Constitutional Reform Act 2005*.

One reason that the selection of judges is now fairer is because the pool of potential candidates is much **wider**. Previously, only experience as a **barrister** was accepted before someone could become an inferior judge. Now, many inferior judges have practised as **solicitors**, rather than barristers. Further, the **Tribunals, Courts and Enforcement Act 2007** also allowed those with experience as fellows, academics and arbitrators to apply to become a judge. However, in 2017, the 'Judicial **ILEX** Statistics' stated that there had actually been a decrease in judges from a non-barrister background. This demonstrates that steps have been taken to make the selection process fairer, but more needs to be done to improve the number of judges from non-**white** backgrounds.

A further point which suggests that the selection of judges is now much fairer is that there is greater independence from the **Executive**. For example, the powers of the **Constitutional Reform Act 2005** to select judges have almost disappeared. The previously secret and controversial selection of judges by someone in a political post has been removed for all inferior judges. Instead, the independent **Judicial Appointments Commission** has been created to select judges based on merit only. However, the Lord Chancellor must still be consulted on all superior appointments.

This demonstrates that the selection of judges is much fairer and enables judges, independent of the Executive, to carry out their role as safeguards for citizens of the UK against a potentially oppressive government.

Finally, selection processes are much more transparent now. JAC is required to **advertise** judicial posts and has made an effort to address the issue of diversity. This open system is in contrast to the old system where candidates were invited in secret to become judges. Those selected tended to be **male** in terms of gender and **white** in terms of ethnicity. This shows that everyone with the relevant qualifications has an opportunity to apply.

Therefore, to a large extent, the processes are much fairer in selecting judges, leading to a judiciary with a more **diverse** background.

1.10 Quickfire Questions

1. What is the name of the body responsible for appointing judges?
2. What is meant by **security of tenure**?
3. In what ways can a judge be dismissed?
4. What was meant by **secret soundings**?
5. Under what section of the **Human Rights Act 1998** can judges issue a declaration of incompatibility?
6. Which Act of Parliament made it eligible for judges to be appointed based on the number of years of post-qualification experience they had?
7. What is meant by the doctrine of **separation of powers**?
8. How does a judge qualify for appointment to the Supreme Court?
9. Which Act of Parliament established the Supreme Court?

Legal personnel: Magistrates

Activity 1.53 Magistrates' eligibility criteria

TRUE	FALSE
Be aware of social issues	Have legal qualifications
Be mature, understand people and have a sense of fairness	Be aged 21–65 (can be 18–70)
Be reliable and committed to serving the community	Have no criminal convictions (although those with serious criminal convictions are excluded)
	Be able to be in court at least 36 half-days a year (it is 26 half-days a year)
	Have a professional background or job

Activity 1.54 Lay magistrates

Lay magistrates sit as a bench to hear a case. They are assisted by a **justices' clerk** on points of law and procedure.

Magistrates try the least serious **summary** offences, as well as some triable either way offences. They deal with **95%** of criminal cases from start to finish. In such cases, they decide the **verdict** as well as **sentence** for the defendant. Magistrates can sentence a defendant to up to **six** months in prison or an **unlimited** fine. If they feel the defendant deserves a harsher sentence, they can send them to **Crown** Court, where they are sentenced under the ***Powers of Criminal Courts (Sentencing) Act 2000***.

If the defendant pleads guilty, the magistrates can either sentence them or, if they feel their powers of sentence are insufficient, **send** them to Crown Court for sentencing. If the defendant pleads not guilty, a **mode of trial** hearing determines where the trial will take place. The magistrates consider the defendant's previous convictions and the facts of the case. If the magistrate is prepared to hear the case, the defendant can choose for the trial to be either at **youth** court or **Crown** Court.

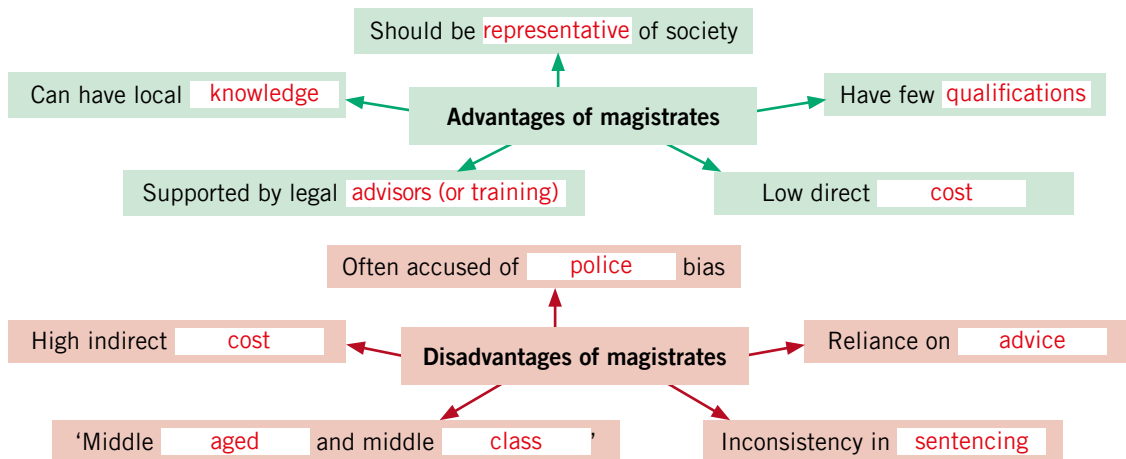
Although all **indictable** offences are tried in the Crown Court, preliminary matters are dealt with in the magistrates' court. In such hearings, magistrates are required to grant or refuse bail under **the Bail Act 1976**.

Two magistrates can sit with a judge to hear **appeals** in the Crown Court. Other specially trained magistrates can hear cases in the **youth** court, where defendants aged 10–17 are charged with criminal offences (except murder).

Outside of court, magistrates can issue search and **arrest** warrants to the **police**. They can also grant the police an extension to the time period that they can detain a suspect for questioning.

Activity 1.55 Advantages and disadvantages of magistrates

Fill in the blanks.



Activity 1.53 Magistrates crossword

Across

7. Preliminary
8. Mode of trial
9. Three
13. Bail
15. Arrest warrants
16. Two
18. Queen
22. Life experience
25. Teeside
28. Making judicial decisions
29. Good character
30. Judicial skills

Down

1. Six months
2. Retired
3. MNTI
4. Crown Court
5. Youth court
6. Plea before venue
10. Lay
11. Duty solicitor
12. Local advisory committee
14. Six key qualities
17. Working class
19. Biased
20. Bankrupt
21. Police
23. Social awareness
24. Wingers
26. Armed force(s)
27. Summary

1.11 Quickfire Questions

1. At what age do magistrates retire?
2. What is the maximum fine magistrates can give?
3. What is the name of the body that interviews magistrates?
4. Which groups of people are excluded for becoming a magistrate?
5. Magistrates usually sit as a bench of how many?
6. Who is responsible for appointing magistrates?
7. What is the maximum sentence magistrates can give?
8. Magistrates are involved in cases concerning what type of offences?

Access to justice and funding

Activity 1.57 Successes and failures of the Legal Aid, Sentencing and Punishment of Offenders Act 2012

Successes ✓	Failures ✗
Cuts to civil legal aid mean people are encouraged to look for an alternative – for example, ADR or an out-of-court settlement	Having to pass a means and merits test for criminal legal aid has huge implications for the undermining of the rule of law.
The cuts to legal aid mean the government saves money as, under the previous scheme, it massively overspent.	Some solicitors' firms are going out of business, as there are not enough cases being funded with public money.
Alternative sources such as the Citizens' Advice Bureau and pro bono units have seen an increase in business.	Conditional fee arrangements are controversial because legal professionals will only take on cases that have a strong chance of winning.
The Act aimed to discourage unnecessary and adversarial litigation at public expense and target legal aid to those who need it most.	The cuts have seen a huge increase in litigants in person (people representing themselves) and this puts a larger burden on the courts, as the hearing will last longer.
	Many cases now do not qualify for legal aid and the reductions in eligibility mean there is still an unmet legal need.

Activity 1.58 Legal authority matching

Draw lines to match the relevant section or schedule of the **Legal Aid Sentencing and Punishment of Offenders Act 2012 (LASPO Act 2012)** to the rule of law it lays out.

Legal authority	Rule
s16	'Exceptional funding' criteria for case involving human rights breaches.
s8	Ability of losing party to recover costs in conditional fee arrangements abolished.
s4	'Priority' areas that qualify for civil legal aid.
s13	Creation of damages-based agreements.
s14	Civil legal aid.
s10	Means and merits tests for civil legal aid.
s44	Means and merits tests for Representation Orders (criminal legal aid).
s1	Right to a duty solicitor at the police station.
s45	Criminal legal aid.

Your mind map about how civil and criminal cases can be funded in England and Wales could contain the following details.

Summary: Access to justice and funding

► 1949–1999:

- Welfare state
- Demand-led system led to ‘unmet need for legal services’

► 1999–2012:

- Set budget
- Introduction of conditional fee arrangements
- Franchising legal services
- Administered by Legal Services Commission

► *Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO)*

► **Legal Aid Agency:** Director of Legal Aid Casework takes decisions on individual cases.

► **Civil legal aid:**

- **s8 LASPO Act 2012:** Means test and merits test:
 - Child protection
 - Family mediation
 - Special educational needs
 - Clinical negligence in infants
 - Welfare benefits
 - Loss of home
 - Domestic violence
- **s10 LASPO Act 2012:** ‘exceptional funding’ where a failure to provide funding would breach human rights.
- **Contracts:** Only those with a contract with the Legal Aid Agency can offer civil legal aid (introduces competition and improves standards)

► **Criminal legal aid:**

- **s16 LASPO Act 2012:** Criminal advice and representation is delivered through a mixed system, e.g. public defender service, lawyers in private practice with contracts with the Legal Aid Agency
- **s13 LASPO Act 2012:** Duty solicitor scheme at the police station: free for everyone, not means tested
- **s14 LASPO Act 2012:** Legal aid for representation in court: only available subject to means and merits (interests of justice) test

Activity 1.59 Conditional fee arrangements and damages-based agreements

Fill in the missing words from the list provided.

Conditional fee arrangements were first introduced by the **Courts and Legal Services Act 1990**, and then more widely in the **Access to Justice Act 1999**. They are a **private** agreement between the solicitor and **client**. They are available for **personal injury cases**, as these are no longer funded by the legal aid system. Under s44 of the **Legal Aid, Sentencing and Punishment of Offenders Act 2012**, the **losing** side no longer has to pay the **costs** of the **winning** party. The **uplift** fee can be up to **100%** of the **basic** fee, except in personal injury cases, where the success fee cannot exceed **25%** of the damages, excluding damages for **future care** and loss.

Damages-based arrangements are similar to conditional fee agreements but, if their case is successful, the **solicitor** is entitled to take a **percentage** of their client's **damages**. The **maximum** payment that can be taken by the solicitor is 25% of the damages in personal injury cases and **35%** in employment tribunal cases.

The problem with **no win, no fee** arrangements is that there are often **hidden** costs, and claimants often have to take out expensive **insurance** premiums to cover costs, which may not be **affordable** for everyone. People are often also subjected to high-pressure sales tactics by 'claims farmers' who use inappropriate marketing techniques and **intimidating** salespeople. However, they do provide access to justice for those who do not **qualify** for legal aid.

Activity 1.60 Criminal process jargon buster

Provide a definition for these key terms that you will need to know in relation to criminal process.

Term	Definition
interests of justice test	A test used before qualifying for legal aid at the Magistrates' Court – also known as a Representation Order. The test considers previous convictions, the nature of the offence and the risk of custody.
means test (criminal legal aid)	A test used to determine the financial capability of a defendant to pay for their own legal fees.
Public Defender Service	A department of the Legal Aid Agency which operates alongside private providers to deliver legal services, advice and representation at the police station and magistrates' courts.
Representation Order	Another name for criminal legal aid awarded at the magistrates' court.
Means test (civil legal aid)	A test used to determine the financial capability of a claimant to pay for their own civil legal fees. The Legal Aid Agency looks at the claimant's income and their capital.
Merits test	A test used by the Legal Aid Agency to determine whether legal aid will be granted and takes into account prospects of success, public interest, proportionality and likely damages awarded.
Legal Aid Agency	The body responsible for overseeing the system of legal aid in the UK which replaced the Legal Services Commission.
unmet need for legal services	A phrase used to describe a problem faced by people who need a solicitor or court action but cannot get access to the system because of affordability or lack of knowledge.
no win, no fee	An informal name for a conditional fee arrangement or damages-based agreement where the claimant will not have to pay their legal fees unless they win their case.
Criminal Defence Direct	A method of telephone advice given to suspects at police stations in the absence of duty solicitors.
uplift/success fee	A percentage of the legal representatives' basic fee added to the fee, which becomes payable if the case is won.

Activity 1.61 Legal funding

No answers provided

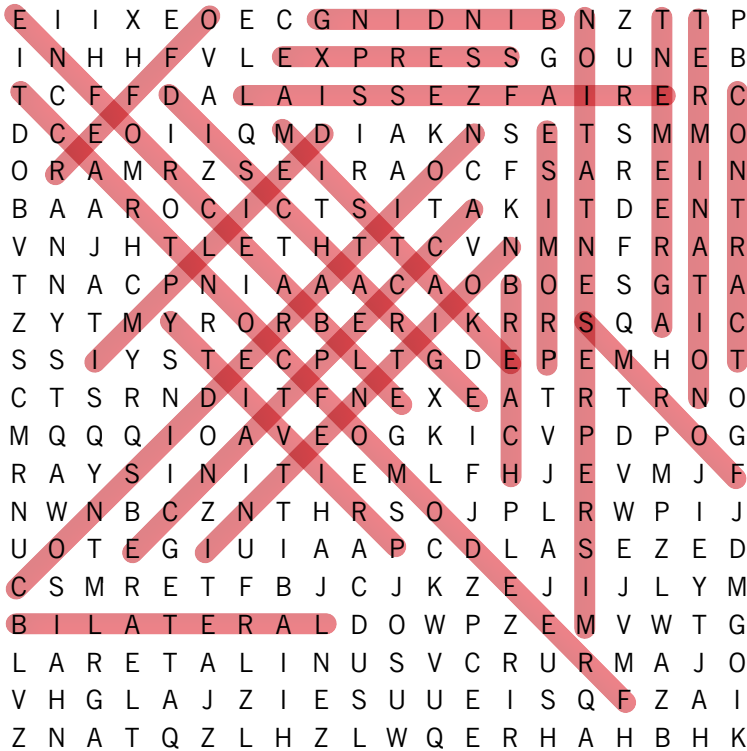
1.12 Quickfire Questions

1. The Legal Aid Agency (which replaced the Legal Services Commission).
2. Examples include the following.
 - Clinical negligence in infants.
 - Discrimination.
 - Family mediation.
 - Domestic violence.
 - Child protection and abduction.
 - Debt.
 - Special educational needs.
 - Forced marriage.
 - Housing.
 - Welfare benefits.
 - Immigration.
3. The Public Defender Service delivers criminal legal services alongside private providers at the police station and magistrates' court.
4. Examples include the following.
 - Only strong cases will be taken on by solicitors, so they can essentially cherry pick cases that have the highest chance of success.
 - People are often subjected to high-pressure sales tactics by claims farmers.
 - Lots of hidden, unpredictable charges which people are unaware of.
5. This section provides for "exceptional funding" to be granted in exceptional circumstances, where a failure to provide legal funding would result in a breach of the European Convention on Human Rights.
6. Section 16.
7. Examples include the following.
 - Civil legal aid is now only available in a limited number of cases.
 - Many people have to pay privately or represent themselves in court.
 - Fewer people are qualifying for legal aid under the criteria set out in the ***Legal Aid, Sentencing and Punishment of Offenders Act 2012***.
8. This section provides for "exceptional funding" to be granted in exceptional circumstances, where a failure to provide legal funding would result in a breach of the European Convention on Human Rights.
9. These are solicitors who work in private practice but have a contract with the Legal Aid Agency to provide criminal advice to people in police stations on arrest.
10. A form of telephone advice given to suspects at police stations because of duty solicitors not turning up at police stations.

Chapter 2: Law of contract

Rules and theory of the law of contract

Activity 2.1 Contract law word search



2.1 Quickfire Questions

1. A contract is any agreement or promise that is legally binding and can be written or unwritten.
2. Laissez faire is the idea that people can make agreements and enter into a bargain in their own interests and on their own terms.
3. It stipulates that 'so far as is possible to do so, primary legislation and subordinate legislation must be read and given effect in a way which is compatible with the European Convention on Human Rights'. This was illustrated in *Shanshal v Al-Kishtaini (2001)*.
4. Statutes such as the *Unfair Contract Terms Act 1977* can limit the freedom of contract principle, to ensure the notion of fairness is upheld.
5. Common Law (available as of right):
 - Damages
 - Equity (discretionary):
 - Injunction
 - Specific performance
 - Rescission
 - Rectification

6. Examples could include booking a holiday, buying goods in a shop, taking out a new mobile phone,
Using a pay and display car park, buying concert tickets.
7. It is a proposal for harmonised EU rules for online purchases of digital content as well as for the sales of physical goods.

Essential requirements of a contract

Activity 2.2 Invitations to treat

Invitations to treat	Explanation	Supporting case(s)
A display of goods.	The goods on display do not become an offer until the customer picks up the goods. When the sale is agreed, a contract is formed.	<i>Fisher v Bell (1961)</i>
Lots at an auction	An auctioneer's call for bids are an invitation to treat. The bids themselves are offers and the fall of the hammer is an acceptance.	<i>British Car Auctions v Wright (1972)</i>
Goods or services advertised for sale in newspaper or magazine.	An advertisement for goods for sale is usually an invitation to treat, but it can be an offer, depending on its wording and conditions.	<i>Partridge v Crittenden (1968)</i>
A request for tenders.	Public authorities are required to offer companies the opportunity to tender their services. The organisation is free to choose any company it wishes.	<i>Harvela Investments v Royal Trust of Canada (1986)</i>
A statement of price.	Simply indicating a price that would be acceptable does not constitute an offer.	<i>Harvey v Facey (1893)</i>

Activity 2.3 Is there a contract?

	Contract?
At an auction, Elton sees a piano and puts in the winning bid of £950. He then realises he only has £500 with him.	
A DIY store has advertised the following: 'Luxury paint: £10 a tin. If you buy the paint and find the equivalent cheaper elsewhere then we will refund your money'. Harriet buys three tins to paint her dining room but sees the same product on sale at a different store for £5 a tin. She returns to the first store, demanding a refund.	
Sophie wants to employ a cleaner. Her colleague Doreen says that her cleaner is looking for more work. Sophie asks how much she charges and Doreen says '£20 a week'. Sophie accepts the offer for the cleaner to come to her house once a week.	
Megan wants to sell her coffee machine. She knows her friend George loves coffee in the morning. She thinks she will sell it to him for £30 but has not spoken to him about it yet.	

	Contract?
Ali was interviewed for a job in McDonalds and one of his friends, Stewart, was on the interview panel. Stewart decided Ali was the best candidate for the job and told Ali he had got the job. In fact, the other managers decided not to offer the job to Ali as he had not scored highly enough in the interview.	
Claire is selling her late aunt's bungalow. She puts the house up for sale and Paula and Ayesha come to view the house. They like the house very much and offer Claire £180,000 for it. Claire wants more money than that so turns the offer down. They then offer her £195,000 for the house. Claire accepts this offer and says she will tell her solicitor the next day.	

Activity 2.4 Application question taken from WJEC SAMs material

Use the IDA structure to respond to the scenario and compare your answer with those of your classmates.

Activity 2.5 Privity of contract: Evaluation

This is a discussion activity – use pages 124–125 of *WJEC/Eduqas A Level Law Book 1* to give you some ideas, and then discussion your thoughts with your classmates.

Activity 2.6 Contract terms

Use pages 111–125 of *WJEC/Eduqas A Level Law Book 1* to start you off, and consider using examples from your own life.

2.2 Quickfire Questions

1. Bilateral contract = a contract between two parties, where each promises to perform an act in exchange for the other party's act. Unilateral contract = an offer made in exchange for an act; for example, a reward for lost property.
2. Offer = willingness by an offeree to enter into a legally binding agreement based on the terms set out in the offer by the offeror. Invitation to treat = indication of a willingness to deal, but not an intention to be bound.
3. Examples could include a display of goods, lots at an auction, goods or services advertised for sale in a newspaper or magazine, a request for tenders, a statement of price.
4. Offer must be communicated (*Taylor v Laird (1856)*) and the terms of the offer must be certain (*Guthing v Lynn (1831)*).
5. Communication of withdrawal of an offer can be by a reliable third party. In the case of *Dickinson v Dodds (1876)*, it was by a mutual acquaintance of both parties.
6. In several ways:
 - Acceptance
 - Rejection
 - Revocation
 - Counter-offer
 - Lapse of time
 - Failure of conditions
 - Death

7. Where the terms of an agreement state or imply that the ordinary post (mail) is the normal anticipated or agreed form of acceptance, acceptance takes effect when the letter is posted, not when it is received.
8. In this case, it was held that, where the agreed form of acceptance is an instantaneous method of communication (fax, email etc.), then the contract is complete when the acceptance is received.
9. The presumption that social and domestic agreements do not have legal intention is rebuttable. This means that if the courts can find evidence of intention, they may find a legally binding agreement has been made – this may be the case if the parties have exchanged money such as in *Simpkins v Pays (1955)*.
10. These are:
 - Consideration must be sufficient but not adequate.
 - Consideration must move from the promisee.
 - Existing contractual duty does not constitute consideration.
 - Part payment of debt is not consideration.
 - Past consideration is no consideration.
11. Privity of contract is the rule that you cannot confer rights or impose obligations on any person except the parties to the contract.
12. This Act enables third parties to enforce rights under a contract if:
 - **s1(1)(a)** – the third party is specifically mentioned in the contract; or
 - **s1(1)(b)** – the contract purports to confer a benefit upon them.
13. Examples could include the following.
 - Free will – parties should be free to make contracts with whoever they wish and should only incur rights and obligations if they have agreed to be part of a contract.
 - Unjust – it is unjust to allow a party to sue if they themselves cannot be sued.
 - Restrictive – the privity rule restricts the rights of the parties to modify or terminate the contract.
 - Indefinite liability – the exceptions expose contractors to indefinite liability by unlimited third parties.
14. Examples could include the following.
 - Extended litigation – the privity rule could lead to a chain of contract claims.
 - Intention of the parties – the privity rule doesn't necessarily reflect the intentions of the parties, who may wish a third party to have rights and obligations.
 - Lots of exceptions – the sheer number of statutory and common law exceptions makes it legally complex.

Discharge of contract

Activity 2.7 Discharge by frustration

Use the IDA structure to formulate your answer and then compare it with those of your classmates.

Activity 2.8 Contract discharge crossword

Across

2. Unilateral
3. Anticipatory
7. Caldwell
8. Illegality
9. Impossibility
10. Frustration
11. Recover

Down

1. Severable
4. Terminate
5. Part
6. Performance.

Activity 2.9 Match the case to the discharge

DISCHARGE OF CONTRACT			
PERFORMANCE	BREACH	AGREEMENT	FRUSTRATION
<i>Sumpter v Hedges (1898)</i>		<i>Bolton v Mahadeva (1972)</i>	
<i>Taylor v Caldwell (1863)</i>		<i>Frost v Knight (1872)</i>	
<i>Cutter v Powell (1795)</i>		<i>White and Carter Ltd v McGregor (1962)</i>	
<i>Platform Funding Ltd v Bank of Scotland (2008)</i>		<i>Avery v Bowden (1855)</i>	
<i>Startup v Macdonald (1843)</i>		<i>Modahl v British Athletic Federation (1999)</i>	
<i>Robinson v Davidson (1871)</i>		<i>Dakin & Co v Lee (1916)</i>	
<i>Krell v Henry (1903)</i>		<i>Herne Bay Steamboat Co v Hutton (1903)</i>	
<i>Hoeing v Isaacs (1952)</i>		<i>Planche v Colburn (1831)</i>	

2.3 Quickfire Questions

1. Bilateral discharge: The assumption is that both parties are to gain a fresh but different benefit from a new agreement. Unilateral discharge: The benefit is only to be gained by one party, who is therefore trying to convince the other party to let them off the obligations arising under the original agreement.
2. Actual breach is where a party to a contract does not perform their obligations under the contract at all. Anticipatory breach is where a party to a contract indicates in advance that they will not be performing their obligations as agreed.
3. This case found that, if a contract requires entire performance and a party fails to perform the contract in its entirety, they are entitled to nothing from the other party under the contract.
4. *Taylor v Caldwell (1863)*.
5.
 - Impossibility
 - Illegality
 - Commercial sterility
6. Where the commercial purpose of the contract has disappeared as a result of the intervening event.
7. *Law Reform (Frustrated Contracts) Act 1943*

Remedies: Contract law

Activity 2.10 Common law remedy of damages

The common law remedy of damages is available 'as of **right**' if it is established that a contract is **breached**. Damages in contract law are an award of money to financially compensate the **injured** party. The purpose of damages in contract law is to put the victim, so far as it is possible and so far as the law allows, in the same **position** they would have been in had the contract not been broken, but if it had been **performed** in the manner and at the time **intended** by the **parties**. When a contract is breached, a party may suffer **pecuniary** loss (financial loss) or **non-pecuniary** loss, which are other losses, such as mental **distress**, disappointment, hurt **feelings** or humiliation. Traditionally, these have not been compensated in contract law (unlike tort) but, more recently, this rule has been relaxed for contracts which are specifically for pleasure, relaxation and peace of mind – see *Jarvis v Swans Tours Ltd (1973)* and *Farley v Skinner (2001)*.

Activity 2.11 Limitations on the awarding of damages

Key concept	Explanation
Tests of causation	A person will only be liable for losses caused by their breach of contract. The defendant's breach must be an effective and intervening act between the breach of contract and the loss incurred may break the chain of causation e.g. <i>Quinn v Burch Bros (Builders) Ltd (1966)</i> .
Remoteness	Some losses are considered too remote (removed) from the breach of contract to be expected to be compensated by the defendant. A defendant will only be liable for such losses as were 'reasonably foreseeable' as arising from the breach – as in <i>Hadley v Baxendale (1854)</i> and later in <i>Transfield Shipping v Mercator Shipping [The Achilles] (2008)</i> .
Mitigation of loss	Claimants are under a duty to mitigate their loss; in other words, they cannot recover damages for losses which could have been avoided if they had taken reasonable steps – see <i>Pilkington v Wood (1953)</i> . Claimants cannot just sit back and allow losses to increase. If there is something they can do to reduce the impact or loss, and there are reasonable steps they can take, then they are under an obligation to do it.

Activity 2.12 Calculating loss word search



Key term	Definition
Sum of damages	Amount of compensation awarded.
Loss of expectation	The aim is to put the innocent party in the same position as if the contract had been performed
Reliance loss	Where this is the basis for calculating damages, the courts will seek to put the claimant in the position they were in before the contract was made.
<i>Golden Victory (2007)</i>	A case that is used by courts to prioritise fairness over uncertainty, by not taking into account events that have happened after the breach of contract.
Quantifying	Being able to put an amount on something.
Inferior	Less than.
Available market	The number of people who are both willing and capable of buying a particular product or service in a particular market.
Loss of profit	Money that the business has not made, possibly because of the contract issues.
Loss of a chance	Matter of causation.

Activity 2.12 Equitable remedies

Unlike common law remedies which are 'as of **right**', equitable remedies are **discretionary**. **Equitable remedies are based on the principle of 'fairness'**.

Where common law remedies are inadequate to **compensate** the claimant, there are, instead, equitable remedies. These are provided at the discretion of the court and take into account the **behaviour** of both parties and the overall **justice** of the case.

There are four main equitable remedies:

- **Injunction**.
- Specific **performance**.
- Rescission.
- Rectification.

Activity 2.14 Equitable remedies

Equitable remedy	Explanation
Injunction	An injunction normally compels the defendant not to do a particular thing (called a prohibitory injunction) – see <i>Warner Bros Pictures Inc v Nelson (1937)</i> . However, where the action has already taken place, the court may instead order a mandatory injunction compelling the party to do something. This would normally be an order that the defendant takes action to restore the situation to that which existed before the defendant's breach.
Rescission	This remedy places parties back in their pre-contractual position. If this is not possible, rescission is not granted. It is mainly granted as a remedy in misrepresentation cases. This is known as <i>restitutio in integrum</i> (<i>Clarke v Dickson (1858)</i>).
Rectification	An order compelling one side of the contract to perform their obligations under a contract. This is a rarely awarded remedy and is only awarded where damages would be inadequate (<i>Beswick v Beswick (1968)</i>), the contract has been made fairly (<i>Walters v Morgan (1861)</i>) or the award of specific performance would not cause great hardship or unfairness for the defendant (<i>Patel v Ali (1984)</i>). This supports the equitable nature of specific performance as a remedy.

2.4 Quickfire questions

1. Contract law requires the defendant to compensate the claimant for the injury or loss they have caused. Damages will reflect the type of injury or loss. Tort requires the defendant to stop doing what is harming the claimant or their property, and damages take the form of compensation for injury or loss.
2. Monetary compensation.
3. Common law and equitable.
4. Either by basing the damages on loss of expectation (the courts aim to put the claimant in the position they might have been in if the breach had not happened) or reliance loss (the courts aim to put the claimant in the position they were in before the contract was made).
5. The financial losses that result from a breach of contract.
6. Non-financial losses, such as mental distress, disappointment, hurt feelings or humiliation.
7. Injunction, specific performance, rescission, rectification.
8. The court has the choice over whether to award or not.
9. Lessening or reducing the loss.

Chapter 3: Law of tort

Rules of tort

Activity 3.1 Difference between a tort and a crime

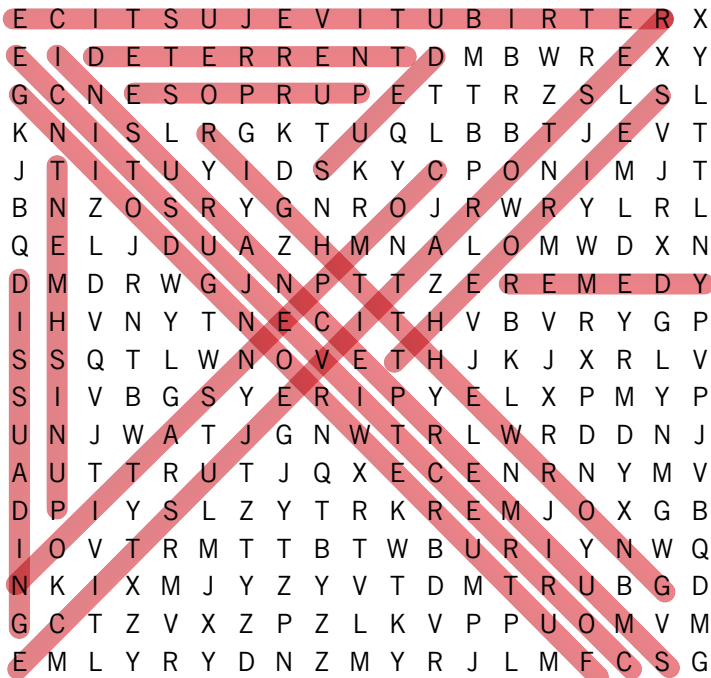
A tort is distinguished from a crime in the following ways. A tort is a **private law** action committed against an **individual** (e.g. negligence, nuisance, etc.), whereas a crime is a **public law** action committed against the **state** (e.g. theft, GBH, murder, etc.). The aim of a tort action is to **compensate** the victim for the harm done, whereas the aim of a criminal prosecution is to **punish** the wrongdoer. There are some areas of overlap, for example, high level **damages** in tort arguably 'punish' the defendant and there are also provisions in criminal law for the wrongdoer to financially compensate the victim. One incident may result in both a criminal prosecution and proceedings for tort – for example, dangerous **driving** where a victim suffers **injury**.

Fault-based liability and strict liability

The general principle in law is that there can be **no liability without fault**. Liability in tort is based on the idea that the defendant is, in some way, at fault. Fault has been given a wide meaning in the law of tort and includes situations like negligence, where a defendant's behaviour has fallen below an accepted **standard**, intentionally causing harm and **trespass**, where the defendant is infringing another's **rights**. Fault based liability deters others as they are aware that, if found to be at fault, they may be liable to pay **compensation**.

Some torts, known as **strict liability torts**, can be committed without the defendant being at fault in any way. These have the potential to be **unfair** as the defendant can be liable to pay damages even though they may not have been able to **prevent** the harm. The case of **Rylands v Fletcher (1868)** is an example of a strict liability tort.

Activity 3.2 Theories of tort law word search



Key term	Definition
theories	Ideas or suggestions about how something works.
purpose	The point of something.
remedy	Solution in a civil case, e.g. damages to put the claimant back in the position they would have been in had the wrong not occurred.
corrective justice	To put things back as they were as far as possible to do so.
right the wrong	Supports that the purpose of damages in tort is to 'right the wrong'.
restorative justice	Solution in a civil case, e.g. damages to put the claimant back in the position they would have been in had the wrong not occurred.
retributive justice	More commonly associated with criminal law but does play a role in tort. This theory is associated with punishment with the intention of dissuading the defendant and others from future wrongdoing.
punishment	The infliction or imposition of a penalty as retribution for an offence.
dissuading	The aim of putting off people from doing the unwanted action.
future wrongdoing	Similar behaviour in the future that is against the law.
sued	To have legal proceedings brought against you.
deterrent	To discourage a particular action.
insurance premiums	An amount paid for an insurance policy – e.g. car insurance.
compensation	An award, usually financial, to make up for a loss.

Activity 3.3 Evaluation of tort law

Add more detail to the notes evaluating tort law.

Justifications for tort law	Criticisms of tort law
Victim can be compensated for the damage caused by the wrongdoer. They can be put back in the position they would have been in (as far as possible) had the wrong not occurred – corrective or restorative justice.	Compensation culture: Some consider that tort law is creating a compensation culture similar to that in other countries, like the USA.
Individuals are deterred from committing acts or omissions that might hurt others, in the knowledge that they may have to pay compensation. Tort law aims to make people and companies be more careful with their acts or omissions and therefore make society safer.	Strict liability torts, as in the case of <i>Rylands v Fletcher (1868)</i> , have been criticised for not requiring fault on the part of the tortfeasor.
In the absence of a tort system, people who suffer injuries who would be unable to claim compensation may have to claim social security benefits, costing the taxpayer money.	Claims of negligence brought against state bodies such as the NHS still cost the taxpayer money.
Rule of law: For instance, a claimant unlawful detained by the police can bring an action for unlawful imprisonment.	There is a lack of equality in the tort system because many potential claimants may not have the financial means to bring an action in tort; legal aid is rarely available for tort.
Elements of retributive justice. For example, in some circumstances a court can award damages to punish the tortfeasor. These are in the form of exemplary damages.	Fraud: The system may be abused by people making fraudulent claims.

3.1 Quickfire questions

1. Civil wrong.
2. Various examples are possible, e.g. breach of contract, nuisance.
3. It will include the following features: claimant v defendant, private law, burden on claimant, three tracks, on the balance of probabilities, remedies.
4. Common law is law made by judges. The law of tort has developed through case law where judges have developed precedents.
5. A remedy.
6. County Court and High Court.
7. Three tracks.
 - Small claims – County Court.
 - Fast track – County Court.
 - Multi track – either County or High Court.
8. On the balance of probabilities, i.e. is it 'more likely than not'?
9. The claimant.
10. It supports that the purpose of damages in tort is to 'right the wrong'.
11. It provides a civil recourse to 'put things back as they were', as far as possible.

12. Punishment with the intention of dissuading the defendant and others from future wrongdoing.
13. Blame.
14. A tort that can be committed without the defendant being at fault in any way.
15. Justifications may include the following.
 - The victim can be compensated for the damage caused by the wrongdoer. They can be put back in the position they would have been in (as far as possible) had the wrong not occurred – this is corrective or restorative justice.
 - Individuals are deterred from committing acts or omissions that might hurt others, in the knowledge that they may have to pay compensation. Tort law aims to make people and companies be more careful with their acts or omissions and therefore make society safer.
 - In the absence of a tort system, people who suffer injuries who would be unable to claim compensation may have to claim social security benefits, costing the taxpayer money.
 - It is supported by the concept of the rule of law. For instance, a claimant unlawfully detained by the police can bring an action for unlawful imprisonment.
 - Although the law of tort is largely based on corrective justice, there are elements of retributive justice. For example, in some circumstances a court can award damages to punish the tortfeasor. These are in the form of exemplary damages.
16. Criticisms may include the following.
 - Some consider that tort law is creating a compensation culture like that in other countries, like the USA.
 - Claims of negligence brought against state bodies such as the NHS still cost the taxpayer money.
 - There is a lack of equality in the tort system. Many potential claimants may not have the financial means to bring an action in tort; legal aid is rarely available for tort.
 - Strict liability torts, as in the case of *Rylands v Fletcher*, have been criticised for not requiring fault on the part of the tortfeasor.
 - The system may be abused by people making fraudulent claims.

Liability in negligence

Activity 3.4 Duty of care

Element	Explanation	Supporting case(s)	Principle established
The damage was foreseeable	For a duty of care to exist, it must be reasonably foreseeable that damage or injury would be caused to the particular defendant or to a class of people to which they belong (rather than people in general)	<i>Kent v Griffiths (2000)</i>	It was held that it was reasonably foreseeable that the claimant would suffer some harm from this delay
There is a sufficiently proximate relationship between the claimant and defendant	Proximity means 'closeness'. This can be in terms of physical space, time or relationship; this test is quite similar to the 'neighbour' test. If there is not a sufficiently proximate relationship between the claimant and defendant, the defendant cannot reasonably be expected to have the claimant in mind since they are not likely to be affected by the defendant's acts or omissions.	<i>Bourhill v Young (1943)</i>	Although it was reasonably foreseeable that someone would suffer harm as a result of the defendant's negligent driving, injury to the specific claimant was not foreseeable as she was not in the immediate vicinity of the accident – only hearing but not seeing it. Her action therefore failed.
it is just, fair and reasonable to impose a duty of care	This is also known as the 'policy' test as judges are able to limit the extent of the tort through judicial discretion. One of the main reasons for this element of the 'floodgates' argument where there is the risk of opening up a potential claim to a huge number of claimants. An American judge, Cardozo CJ, referred to this danger when he warned of 'liability in an indeterminate amount for an indeterminate time to an indeterminate class'.	<i>Mulcahy v Ministry of Defence (1996)</i>	The Court of Appeal held that, although both factors of foreseeability and proximity were present, the facts of the case required them to consider this policy issue. The Ministry of Defence did not, therefore, owe a duty of care to servicemen in such battlefield situations

Activity 3.5 Breach of duty

Risk factor	Explanation	Supporting case(s)	Principle established
Degree of probability that harm will be done	If the risk is very small, it may be decided that the defendant is not in breach. Care must also be taken in respect of a risk where it is reasonably foreseeable that harm or injury may occur	<i>Bolton v Stone (1951)</i>	Very low probability of harm means a breach of duty is not established
The magnitude of likely harm	In this test, the courts consider not only the risk of harm but also how serious the injury could foreseeably be.	<i>Paris v Stepney Borough Council (1951)</i>	The greater risk to the claimant meant that greater precautions than normal had to be taken.
The cost and practicality of preventing risk	With this test, the court is looking at whether the defendant could have taken precautions against the risk. If the cost of taking such precautions to eliminate the risk is completely disproportionate to the extent of the risk itself, then the defendant will not be held liable	<i>Latimer v AEC Ltd (1953)</i>	The method of avoiding the risk has to be proportional.
Potential benefits of the risk	There are some situations where the risk has a potential benefit for society, for example ambulance driving.	<i>Daborn v Bath Tramways</i> <i>Armsden v Kent Police (2000)</i>	Asquith LJ: 'If all the trains in this country were restricted to a speed of five miles an hour, there would be fewer accidents, but our national life would be intolerably slowed down. The purpose to be served if sufficiently important, justifies the assumption of abnormal risk...'

Activity 3.6 Special characteristics

In some situations, the standard is not a purely **objective** one and the courts are able to take into account certain special **characteristics** of the defendant. Interestingly, in the case of drivers, the standard is that of the ordinary, normal driver (ignoring **experience** and years qualified). This was confirmed in the case of *Nettleship v Weston (1971)*.

Professional persons

Where the particular defendant has a professional **skill**, the court will expect the defendant to show that they have the degree of competence usually to be expected of an ordinary **skilled** member of that **profession**, for example, a qualified electrician. This means that, for example, a GP will only be expected to exercise the normal level of skill of a GP, not that of a senior consultant or surgeon.

Children

Where the defendant is a child, the standard of care is that of an ordinarily careful and reasonable **child** of the same **age** as in **Mullin v Richards (1991)**.

Activity 3.7 Resulting damage crossword

Solve the crossword clues and place them in the grid.

Across

7. Remote
8. But for test
9. Actus interveniens
10. Barnett

Down

1. Res ipsa loquitur
2. Foreseeable
3. Thin skull test
4. Wagon Mound
5. Re Polemis
6. Causation

Activity 3.8 Problem question application demonstration

Use the table to write a model answer, and then apply the same principles to a similar question.

3.2 Quickfire questions

1. **Donoghue v Stevenson (1932)**. Lord Atkin said that the manufacturers owed a duty of care to 'anyone who could be affected by their actions' (their neighbours).
2. Duty of care, breach of duty, resulting damage.
3. Apply as new situations arise, rather than assume it exists in all situations.
4. • The damage was foreseeable.
 - There is a sufficiently 'proximate' relationship between the claimant and defendant.
 - It is just, fair and reasonable to impose a duty of care.
5. Foreseeability: **Kent v Griffiths (2000)**. Proximity: **Bourhill v Young (1943)**. Just, fair and reasonable to impose a duty: **Mulcahy v Ministry of Defence (1996)**.
6. **T**he standard of care to be expected is that of the reasonable person – in most cases.
7. For example, for professional persons and children.
8. A person who either suffers physical injury as a result of another person's negligence or suffers a psychiatric injury where it was reasonably foreseeable that they could have been physically injured as a result of another person's negligence and as a result they have suffered a psychiatric injury. For example, a person is involved in a workplace accident and is not physically injured but develops a serious psychiatric condition.
9. A person who suffers psychiatric injury as a result of another person's negligence but was not exposed to danger. There are several other conditions which need to be met to be classified as a secondary victim.

Occupiers' liability

Activity 3.9 Occupiers' liability legal principles

Case	Facts	Legal principle
<i>Wheat v E Lacon and Co (1966)</i>	The occupier was a farmer who had let people walk across his land for 35 years. The claimant was injured when attacked by a wild horse that the farmer had put on the land.	The defendants were not liable as they had employed a competent firm to maintain the lift, and the technical nature of the work meant that they could not check it themselves.
<i>Lowery v Walker (1911)</i>	The claimant was killed when the lift he was in fell to the bottom of the lift shaft.	Primary responsibility for the safety of young children is placed upon their parents.
<i>Glasgow Corporation v Taylor (1922)</i>	A 14-year-old boy was paralysed when an abandoned boat he was fixing on the defendant's land collapsed on him.	The berries were an allurements so the occupiers were liable for leaving them there.
<i>Phipps v Rochester (1955)</i>	The claimant slipped on icy steps outside a school, which were covered in snow.	Permission can be implied by the courts if they feel it is reasonable to do so.
<i>Jolley v Sutton (2000)</i>	A child died after eating poisonous berries in a public garden.	The defendants were not liable because an occupier can expect that a person who is exercising a calling should guard against risks related to their specialism.
<i>Roles v Nathan (1963)</i>	The claimant's husband was killed when he fell down some pub stairs.	The accident was a type that was reasonably foreseeable and it did not matter that the injuries were more severe than could have been foreseen.
<i>Haseldine v Daw (1941)</i>	Two chimney sweeps were killed by toxic fumes.	The defendants were liable as, although they had employed a cleaner, they had failed to take reasonable steps to check that the work had been done properly.
<i>Woodward v Mayor of Hastings (1945)</i>	A child fell into a trench on the defendant's land and broke his leg.	The occupier is the person who controls the premises. There can be more than one occupier at the same time.

Activity 3.10 Check your knowledge of the Occupiers' Liability Acts

No answers provided

Activity 3.11 Applying the Occupiers' Liability Act 1957

No answers provided.

Activity 3.12 Applying the Occupiers' Liability Act 1984

No answers provided.

Activity 3.13 Occupier's liability evaluation essay

No answers provided.

3.3 Quickfire questions

1. What standard of care is owed to lawful visitors?
2. Who is classed as a lawful visitor?
3. Why are there different statutory provisions for occupiers' liability?
4. What is the difference between lawful and unlawful visitors?
5. Who is an occupier?
6. What duty of care is owed to trespassers?
7. Is an occupier liable for the fault of an independent contractor?
8. How must an occupier treat children under the Occupiers' Liability Act 1957?

Remedies: Tort

Activity 3.14 Damages role play

Student's own responses.

Activity 3.15 Cases concerning damages

Case	Facts
<i>Cunningham v Harrison (1973)</i>	The claimant received an award to cover the cost of a special hydraulic lift to take a wheelchair in and out of a car.
<i>West v Shepherd (1964)</i>	In this case it was said that exemplary damages are different from ordinary damages: 'The object of exemplary damages is to punish and deter.'
<i>Povey v Rydal School (1970)</i>	In this case the circumstances when a <i>quia timet</i> injunction (an injunction obtained prior to the commission of a tort) were stated as: the danger must be imminent, the potential damage must be substantial and the only way a claimant can protect themselves is through a <i>quia timet</i> injunction.
<i>Rookes v Barnard (1964)</i>	The claimant was successful in claiming the financial loss that his mother had suffered as a result having to care for him.
<i>Fletcher v Bealey (1884)</i> quoted in <i>London Borough of Islington v Elliott and Morris (2012)</i>	The claimant said that he needed a housekeeper and two nurses to live in his home and look after him.

3.4 Quickfire questions

No answers provided

Chapter 4: Criminal law

Activity 4.2 Actus reus cases to revise and use

Match the name of the case to the details by writing the correct number in the left-hand column

11	<i>Greener v DPP (1996)</i>	1. Victim had been crushed during Hillsborough football tragedy, was in a persistent vegetative state and was fed artificially through tubes. Court ruled that feeding could be withdrawn.
6	<i>Pittwood (1902)</i>	2. After being shot, the victim was given tracheotomy but died from complications. Defendant's act still contributed to death, so no break in chain of causation.
13	<i>Lowe (1973)</i>	3. Victim was stabbed and died after refusing a lifesaving blood transfusion due to being a Jehovah's Witness. Defendant charged with murder.
8	<i>Roberts (1971)</i>	4. Defendant held pregnant ex-girlfriend hostage and used her as a shield during shootout with police. She was hit by police bullet and died. Defendant convicted of manslaughter.
2	<i>Cheshire (1991)</i>	5. Defendant slept whilst smoking and awoke to find mattress on fire. Moved to another room and did nothing. Convicted of arson.
7	<i>Smith (1959)</i>	6. Level crossing keeper didn't close railway gate. A train hit and killed someone. Keeper was convicted of manslaughter.
10	<i>Santana-Bermudez (2003)</i>	7. A soldier was stabbed in a fight with another soldier. Negligent treatment on site made the injury worse and the victim died. However, the original wound was still the main cause of death and didn't break the chain so other soldier found guilty.
1	<i>Airedale NHS Trust v Bland (1993)</i>	8. A woman was injured after jumping from a moving car to escape defendant's sexual advances. It was a foreseeable reaction, so defendant liable under <i>OAPA 1861</i> .
5	<i>R v Miller (1983)</i>	9. Father and stepmother of a seven-year-old girl deliberately failed to feed her. She starved to death; they were convicted of murder.
3	<i>R v Blaue (1975)</i>	10. Defendant didn't tell police about needles in their pocket before being searched by police. The police officer injured by the needles. S47 conviction.
14	<i>R v Stone and Dobinson (1977)</i>	11. Failed to restrain dog, despite statutory duty under Dangerous Dogs Act.
9	<i>Gibbins and Proctor (1918)</i>	12. Defendant wanted to kill his mother so put poison in her drink. She died of natural causes before poison took effect. Factual causation, 'but for' test not established; attempted murder rather than murder.
4	<i>Pagett (1983)</i>	13. Defendant was the father of baby who became ill and died. He had low IQ and failed to take the baby to a doctor. No 'act' so manslaughter conviction quashed.
12	<i>White (1910)</i>	14. Sister of one of the defendants moved in. She suffered from anorexia, eventually dying from malnutrition. Both defendants convicted of manslaughter; one due to relationship and other as they had fed or bathed her at least once.

Activity 4.3 Mens rea cases to revise and use

Identify the case and year from the description and write it in the right-hand column.

Details	Name of case
Young man shot stepfather by accident. Judges ruled on the guidelines of foresight of consequence 'was it the natural outcome'. Overruled by <i>Hancock v Shankland</i> (1986).	<i>R v Malony (1985)</i>
Man pushed concrete block off bridge. Judges declared Malony guidelines unsafe due to a lack of 'probability' mentioned in guidelines.	<i>Hancock v Shankland (1986)</i>
Anaesthetist didn't see disconnected breathing tube during operation. Victim suffered brain damage and died. Gross negligence manslaughter.	<i>R v Adomako (1994)</i>
Defendants dropped victim into river and didn't stay to notice that he had drowned. Suggested that foresight was not automatically proof of intent, though very closely related.	<i>Matthews v Alleyne (2003)</i>
Defendant poured paraffin through a house letterbox and the house burned down, killing a child. Judges ruled jury can 'infer' intent if the outcome was virtually certain.	<i>Nedrick (1986)</i>
Defendant owned property used by drug users. She didn't know this, therefore did not have the relevant knowledge, the House of Lords found her not guilty of contravening the <i>Dangerous Drugs Act 1965</i> .	<i>Sweet v Parsley (1969)</i>
Defendant threw baby towards a pram, missed and killed baby. This case replaced 'infer' with 'find' and blurred the line between foresight and intent, which had not previously been directly linked.	<i>R v Woollin (1998)</i>
Two children set fire to some bundles of newspapers in a bin in a yard. The fire spread to a nearby shop and caused severe damage. They had not realised the risk so could not be reckless. The House of Lords removed the objective test from <i>Caldwell (1982)</i> .	<i>R v G and another (2003)</i>
Defendant was told to move his car and accidentally parked on the policeman's foot, but chose to not move the car away. Act and mens rea not overlapping, but act (of battery) was continuing so that actus reus and mens rea were present, constituting assault.	<i>Fagan v Metropolitan Police Commissioner (1986)</i>
Defendant tried to steal from gas meter, damaged it and poisoned neighbour by accident. Found not guilty based on the fact that, as well as not intending the harm, he had not taken a risk he knew about.	<i>R v Cunningham (1957)</i>
Defendant knocked victim unconscious in a fight, thought she was dead and dropped her in the river, where she later drowned. Found guilty of manslaughter despite his original intent and the act of dropping being separate.	<i>R v Church (1965)</i>

General elements of criminal liability

Activity 4.4 Mens rea: indirect intention and virtual certainty

No answers provided

Activity 4.5 Actus reus and the mens rea scenarios

No answers provided

4.1 Quickfire questions

No answers provided

Activity 4.6 General elements of crime

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 ECHR** (right to a fair **trial**).

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 while having a guilty state of mind.

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. Once this is established, **causation** then needs to be proved which looks at the **link** between the result and the conduct of the defendant. 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.

Activity 4.7 Actus reus

Type of crime or action for actus reus	Explanation
Conduct	This action requires a particular conduct but the consequence of that behaviour is insignificant, for example, 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, such as murder, where 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', for example, 'being' in charge of a vehicle whilst under the influence of alcohol or drugs. There is a link with strict liability. This is demonstrated in the case of <i>R v Larsonneur (1933)</i> .
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.

Activity 4.8 Duty to act

Draw lines to match the statements of when a person is under a duty to act with their corresponding explanation.

Duty to act situation	Explanation
Statute	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 <i>R v Stone and Dobinson (1977)</i> illustrates this.
Defendant has inadvertently created a dangerous situation, becomes aware of it, but fails to take steps to rectify it	Certain family relationships result in a duty to act, for example, parent-child and spouses. The case of <i>R v Gibbins and Proctor (1918)</i> demonstrates this point.
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 <i>R v Pittwood (1902)</i> illustrates this.
Duty arising out of a person assuming responsibility for another	In the case of <i>Miller (1983)</i> , 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.
Duty arising out of a special relationship	If an Act requires an action, it is unlawful not to do so. For example, under <i>s6 Road Traffic Act 1988</i> , failing to provide a breath sample or a specimen for analysis is an offence.

Activity 4.9 Mens rea crossword

Across

3. Actus reus
5. Continuing act
9. Transferred malice
12. Contemporaneity rule
13. Presumption
14. Nedrick
15. Strict liability

Down

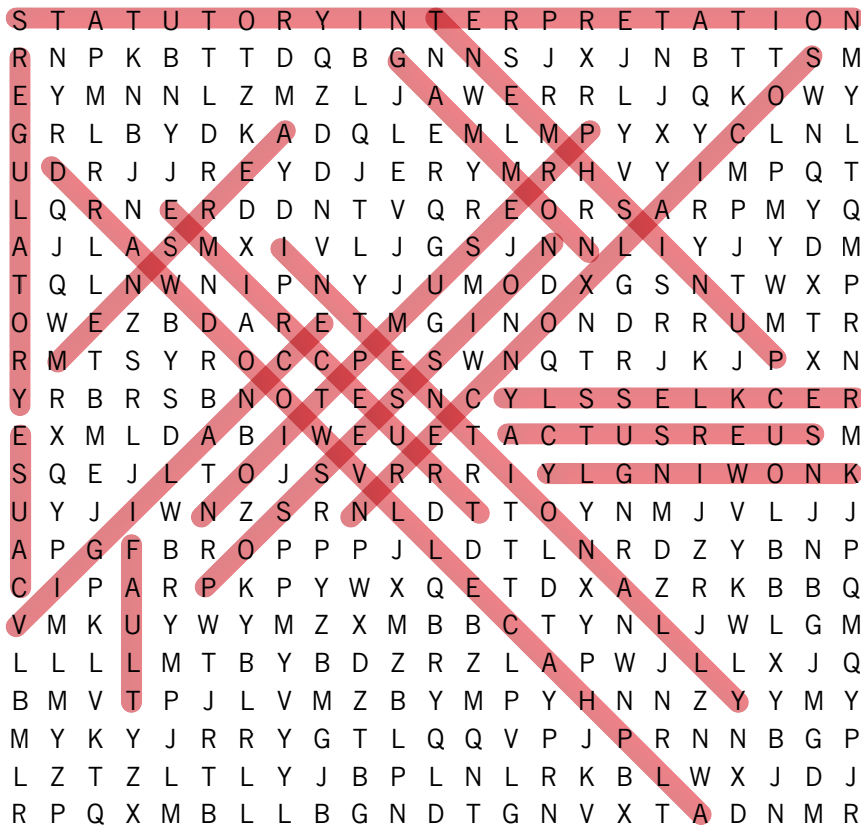
1. Oblique
2. Virtual certainty
4. Malice aforethought
6. R v G and another
7. Thabo Meli
8. Guilty mind
10. Negligence
11. Intention

Activity 4.5 Causation

Factual causation	Case	Legal causation	Case
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The 'but for' test	<i>R v White (1910)</i>	The injury must be the operating and substantial cause of death	<i>R v Smith (1959)</i>
The <i>de minimis</i> rule	<i>R v Pagett (1983)</i>	The 'thin skull' test	<i>R v Blaue (1975)</i>
		Novus actus interveniens	<i>R v Jordan (1956)</i>

Activity 4.11 Strict liability wordsearch



Word	Definition/main points
Regulatory	Regulating something, in this context, crimes that are not really criminal, so are minor with no moral issue involved
Mens rea	Guilty mind.
Actus reus	Guilty act.
Presumption	Starting point for the courts. They presume mens rea is always required but this can be rebutted using <i>Gammon</i> .
<i>Gammon</i>	The case where four factors were laid down to determine if a crime is one of strict liability or not. Rebutts the presumption of mens rea.
Statutory interpretation	Process whereby judges work out the meaning of a statute by using various approaches, for example, literal rule.
True crime	Crime for which mens rea is required.
Social concern	Issues of social concern can shift over time but tend to relate to offences such as selling alcohol or cigarettes to minors, pollution and public safety. Imposing strict liability for crimes that relate to issues of social concern is thought to promote extra vigilance and care on the part of defendants to not commit the offence
<i>Sweet v Parsley</i>	Case for regulatory or true crime.
<i>Alphacell v Woodward</i>	Case for issues of social concern.
Intentionally	Meaning to do something or to achieve a particular result.
Recklessly	Realising that a particular undesirable consequence might happen if a course of action is taken but taking the risk anyway.
Knowingly	With the knowledge that something would happen.
Vigilance	Being careful.
Possession	Blame.
Cause	Reason for something.
Punishment	A penalty as retribution for the commission of an offence.
Fault	When a defendant's behaviour has fallen below an accepted standard.

Activity 4.12 Advantages and disadvantages of strict liability

ADVANTAGES	Connective word e.g. 'however'	DISADVANTAGES
Time and cost of proving mens rea	however	Possibility of injustice
Protection of society by promoting a higher standard of care	meanwhile	Role of judges
The ease of imposing strict liability acts as a deterrent	on the other hand	Is strict liability actually a deterrent?
Proportionality of the punishment appropriate for strict liability	although	Does strict liability breach the European Convention on Human Rights?

4.2 Quickfire questions

1. Actus reus and mens rea.
2. Strict liability.
3. Factual and legal
4. This test asks 'but for' the conduct of the defendant, would the victim have died as and when they did? If the answer is no, then the defendant will be liable for the death. Case example: *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.
5. A defendant has to take their victim as they find them, 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 the victim has an unusually thin skull and dies, the defendant is still liable for the death. Case example: *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 her.
6. 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. In *R v Smith (1959)*, a soldier had been stabbed, dropped twice on his way to the hospital, was delayed in seeing a doctor, subsequently given poor medical treatment, and he died. 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.
7. *Gammon (HK) Ltd v Attorney General (1985)*.
8. It is something that is of concern to general society at a given time. Issues of social concern can shift over time but tend to relate to offences such as selling alcohol or cigarettes to minors, pollution and public safety. It is felt that imposing strict liability for crimes that relate to issues of social concern will promote extra vigilance and care on the part of defendants to not commit the offence.
9. For example, intentionally, recklessly, knowingly, purposely, negligently.
10. Advantages:
 - Time and cost of proving mens rea.
 - Protection of society by promoting a higher standard of care.
 - The ease of imposing strict liability acts as a deterrent.
 - Proportionality of the punishment appropriate for strict liability.
 Disadvantages:
 - Possibility of injustice.
 - Role of judges in interpreting statutes can lead to inconsistency in judicial decisions.
 - Is strict liability actually a deterrent due to the small penalties involved?
 - Does strict liability breach the European Convention on Human Rights? *R v G (2008)*.

Hierarchy of non-fatal offences against the person

Activity 4.13 Assault and battery

Assault

Assault is not defined in an Act of Parliament, as it is a **common** law offence.

Section 39 of the **Criminal Justice Act 1988** provides that assault is a **summary** offence with a maximum sentence on conviction of **six** months' imprisonment or a fine.

The actus reus of assault is any act which causes the victim to **apprehend** the immediate **infliction** of violence, for example, raising a fist, pointing a gun or threatening somebody, as in **Collins v Wilcock (1984)**.

Words can amount to an assault, as can **silent** telephone calls. In the case of **R v Ireland, Burstow (1997)**, the defendant made silent telephone calls to three women and these were held to be sufficient to cause the victims to apprehend the **immediate** infliction of unlawful force. In **R v Constanza (1997)**, threatening **letters** were held to amount to an assault. Words can also **take** away liability for assault as in the case of **Tuberville v Savage (1669)**, where the accused put his hand on his sword and said 'If it were not **assize** time, I would not take such language from you'. The threat was the hand being placed on the sword, which could have amounted to an assault; however, coupling this with the statement that he would not use his sword meant that the words took away **liability** for the assault.

The threat has to be 'immediate', though this has been interpreted liberally by the courts, as can be evidenced by the cases of **Ireland** and **Constanza** above. In the case of **Smith v Chief Superintendent of Woking Police Station (1983)**, the victim was in her nightdress in her downstairs **window**. The defendant, who had trespassed on to her property, was staring at her through the window and, even though the door was locked and she was behind the window, it was sufficiently '**immediate**' for an assault.

The mens rea of assault, as defined in the case of **R v Savage, Parmenter (1992)**, is that the defendant must have either **intended** to cause the victim to fear the infliction of immediate and unlawful force, or must have seen the **risk** that such fear would be created (**subjective** recklessness).

Battery

As with assault, battery is not defined in an Act of **Parliament**; it is a common law offence. **Section 39 Criminal Justice Act 1988** provides that battery is a summary offence with a maximum sentence on conviction of six months' imprisonment or a **fine**.

Though assault and battery are two separate and distinct offences, they can sometimes be charged together as 'common assault'.

The actus reus of battery is the **application** of unlawful **physical** force on another. It is accepted that a certain amount of physical force happens in daily life (**Collins v Wilcock (1984)**), such as walking down a busy street where people may bump into one another. For it to be a battery, the force must be **unlawful**. The application does not need to be direct, as in the case of **Hayte v DPP (2000)**, where the defendant

punched a woman, causing her to drop her **baby**. It was held to be indirect battery of the child, but it does need to be non-consensual. Similarly, in the case of **Fagan v Metropolitan Police Commissioner (1969)**, 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. The force was applied **indirectly** by the car driving on to the officer's foot and was unlawful when he refused to move.

The term 'physical force' implies that a high level of force needs to be applied, but this isn't the case. In the case of **Thomas (1985)**, it was held that touching the hem of a girl's **skirt** while she was wearing it was akin to touching the girl herself. The victim also does not need to be aware that they are about to be struck; therefore, if someone is struck from behind, this will still constitute battery. Contrast this with assault, where the victim must fear the application of unlawful force and so must be aware of it.

Unlike assault, a battery can be committed by **omission** where there is a duty to act. In the case of **DPP v Santana Bermudez (2004)**, the defendant was asked by a police officer searching him whether he had any 'needles or sharps' on him. He failed to inform her and, when she searched him, she pricked her finger on a hypodermic needle in his pocket. It was his failure to inform her of the presence of the needle.

The mens rea of battery is intention or subjective **recklessness** to **apply** unlawful force on another, as confirmed in **R v Venna (1976)**.

Activity 4.14 s47 (actual bodily harm)

Give an explanation and a supporting case for each actus reus listed.

Actus reus	Explanation	Supporting case
Assault or battery	<p>The first element of ABH requires proof of the actus reus of either an assault or battery.</p> <p>The actus reus of assault is any act which causes the victim to apprehend the immediate infliction of violence.</p> <p>The actus reus of battery is the application of unlawful physical force on another.</p>	<p>R v Ireland, Burstow R v Constanza Collins v Wilcock Haysted v DPP Fagan</p>
Occasioning	<p>The assault or battery must occasion (cause) actual bodily harm. The chain of causation therefore needs to be established between the defendant's act and the harm caused. Chain of causation connects the actus reus and the corresponding result. For there to be criminal liability, there must be an unbroken chain of causation.</p>	<p>R v Roberts</p>
Actual bodily harm	<p>This can be physical or psychological harm. The definition of what constitutes ABH has been clarified in the case of Miller (1954) as 'hurt or injury calculated to interfere with health or comfort'. The case of Chan Fook (1994) also makes the point that the injury needs to be more than 'transient or trifling'. The word 'actual' in this context means that, although the injury doesn't need to be permanent, it should not be so trivial as to be insignificant.</p>	<p>Miller DPP v Smith Chan Fook</p>

Activity 4.15 s20 (grievous bodily harm)

Actus reus	Explanation	Supporting case
Infliction of GBH	<p>The term 'inflict' has caused difficulty in the courts over the years. In <i>Clarence (1888)</i>, the term was given a very restrictive meaning but, more recently, in <i>Dica (2004)</i>, the meaning was widened to include recklessly transmitting HIV to an unaware victim as being 'infliction' of GBH. A similarly wide approach is demonstrated in <i>R v Halliday (1889)</i>, where a husband frightened his wife to the extent that she jumped out of their bedroom window to escape. The court held that her injuries had been directly inflicted by the defendant even though she had voluntarily jumped from the window.</p> <p><i>R v Bollom (2003)</i> established that the age and characteristics of the victim are relevant to the extent of the injuries sustained.</p>	<p><i>Clarence</i></p> <p><i>Dica</i></p> <p><i>R v Halliday</i></p> <p><i>R v Bollom</i></p>
Meaning of GBH	<p>Grievous is defined in <i>DPP v Smith (1961)</i> as 'really serious harm' and confirmed in <i>Saunders (1985)</i>. In <i>R v Brown and Stratton (1998)</i>, injuries such as bruising, broken nose, missing teeth and concussion were held to be grievous bodily harm.</p>	<p><i>DPP v Smith</i></p> <p><i>Saunders</i></p> <p><i>R v Brown and Stratton</i></p>
Wounding	<p>A wound requires a break in the continuity of the skin, usually resulting in bleeding. In <i>Moriarty v Brooks (1834)</i> it was held that both the dermis and the epidermis must be broken, however. In <i>JCC (A Minor) v Eisenhower (1984)</i>, an internal rupture of blood vessels in the victim's eye as a result of being shot with a pellet gun was not held to amount to wounding within <i>s20</i>.</p> <p>A scratch or break to the outer skin is not sufficient if the inner skin remains intact (<i>M'Loughlin (1838)</i>).</p>	<p><i>Moriarty v Brooks</i></p> <p><i>JCC (A Minor) v Eisenhower</i></p> <p><i>M'Loughlin</i></p>

Activity 4.16 s18 (GBH with intent)

The **statutory** offence of grievous bodily harm with intent is set out in **s18 Offences Against the Person Act 1861** which provides that it is an offence to **intend to maliciously wound** or cause grievous bodily harm or to **resist** or prevent the lawful apprehension or **detention** of any person. **s18** is an **indictable** offence. The maximum sentence for **s18** is **life** imprisonment, reflecting the gravity of **s18** in comparison to **s20**.

Section 18 is a crime of **specific** intent, meaning that it can only be proved with intention as the mens rea. **s47** and **s20** are both basic intent offences, as they can be proved with either intention or **recklessness**.

Similar to the actus reus for **s20**, the actus reus for **s18** is either maliciously **wounding** or causing **grievous** bodily harm. It refers to the term '**cause**' as opposed to 'inflict' and, though they are not the same (*R v Ireland, Burstow (1997)*) they have been taken to mean that causation is required. The meaning of 'wound' and causing 'grievous bodily harm' are the same as for **s20** above.

The key difference between **s20** and **s18** is that **s18** can only be proved with intention (direct or **oblique**), whereas **s20** can be established with recklessness or intention to cause **some** harm. The mens rea has two aspects: Firstly, the

defendant must ‘**maliciously**’ wound or cause grievous bodily harm. Secondly, the defendant must have specific intent to either cause grievous bodily harm to the victim or to resist or prevent the lawful **apprehension** or detention of any person.

Activity 4.17 Which offence? Application preparation

The first table has been completed as an example. Use the others as templates to respond to Scenarios 2 and 3 in a similar way.

Example scenario 1

Person	Offence	Actus reus	Mens rea
Alexandra throwing drink over Steve.	Battery is a common law offence. S39 Criminal Justice Act 1988 provides that battery is a summary offence with a maximum sentence on conviction of six months’ imprisonment or a fine.	<p>The actus reus of battery is the application of unlawful physical force on another. It is accepted that a certain amount of physical force happens in daily life (Collins v Wilcock (1984)). For it to be a battery, the force must be unlawful. The application does not need to be direct as in Haysted v DPP (2000) Similarly, in of Fagan v Metropolitan Police Commissioner (1969).</p> <p>The term ‘physical force’ implies that a high level of force needs to be applied, but this isn’t the case. Thomas (1985) held that touching the hem of a girl’s skirt whilst she was wearing it was akin to touching the girl herself. The victim also need not be aware that they are about to be struck; therefore, if someone is struck from behind this will still constitute battery. Contrast this with assault, where the victim must fear the application of unlawful force and so therefore must be aware of it. Unlike assault, a battery can be committed by omission where there is a duty to act (as in DPP v Santana-Bermudez (2004)).</p> <p>APPLY TO THE FACTS</p>	<p>The mens rea of battery is the intention or subjective recklessness as to the application of unlawful force on another. It is in of R v Venna (1976).</p> <p>APPLY TO THE FACTS</p>

Person	Offence	Actus reus	Mens rea
Steve slapping Alexandra in the face giving her a black	(<i>s47 ABH</i>) <i>s47 Offences Against the Person Act 1861</i> provides that it is an offence to commit an assault occasioning actual bodily harm.	<p>The actus reus for ABH can be broken down into three elements:</p> <ol style="list-style-type: none"> Assault or battery: apprehension or application of unlawful force. Occasioning: the chain of causation therefore needs to be established between the defendant's act and the harm caused. <i>R v Roberts (1971)</i> Actual bodily harm can be physical or psychological harm, as held in <i>Miller (1954)</i>. It can include cutting someone's hair as per <i>DPP v Smith (2006)</i>. The definition of what constitutes ABH has been clarified in <i>Miller (1954)</i> as 'hurt or injury calculated to interfere with health or comfort'. <i>Chan Fook (1994)</i> also makes the point that the injury needs to be more than 'transient or trifling'. The word 'actual' in this context means that, though the injury doesn't need to be permanent, it should not be so trivial as to be insignificant. 	<p>The mens rea of battery is the same as for assault or battery. There is no requirement to prove any extra mens rea for the actual bodily harm as per <i>Roberts (1971)</i>. <i>R v Savage (1992)</i> confirmed this.</p>
	Cases	Possible defence?	APPLY TO THE FACTS
<p>battery is intention or recklessness to apply force to another as confirmed in <i>Roberts (1971)</i>.</p> <p>FACTS</p>	See left.	<p>Intoxication is a defence to basic intent but not available.</p> <p>APPLY TO THE FACTS</p>	
			APPLY TO THE FACTS

Person	Offence	Actus reus	Mens rea	Cases	Possible defence?
Alexandra lunging at Steve with the glass.	<p>Assault is not defined in an Act of Parliament, as it is a common law offence.</p> <p>S39 Criminal Justice Act 1988 provides that assault is a summary offence with a maximum sentence on conviction of six months' imprisonment or a fine.</p>	<p>The actus reus of assault is any act which causes the victim to apprehend the immediate infliction of violence, e.g. raising a fist, pointing a gun or threatening somebody (see Logdon v DPP (1976)). Words can amount to an assault, as can silent telephone calls – see R v Ireland, Burstow (1997). In Constanza (1997), threatening letters were held to amount to an assault. Words can also take away liability for assault as in the case of Tuberville v Savage (1669).</p> <p>The threat has to be 'immediate', though this has been interpreted liberally by the courts as can be evidenced by Ireland and Constanza above. In Smith v Chief Superintendent of Woking Police Station (1983), the victim was in her nightdress in her downstairs window. The defendant who had trespassed onto her property was staring at her through the window and, even though the door was locked and she was behind the window, it was sufficiently 'immediate' for an assault.</p> <p>APPLY TO THE FACTS</p>	<p>The mens rea of assault as defined in the case of R v Savage, Parmenter (1992) is that the defendant must have either intended to cause the victim to fear the infliction of immediate and unlawful force, or must have seen the risk that such fear would be created (subjective recklessness).</p> <p>APPLY TO THE FACTS</p>	See left.	<p>Intoxication. S.18 is a crime of specific intent so would result in a partial defence and reduction down to s.20 GBH which is the next basic intent offence.</p> <p>Also need to consider transferred malice from Alexandra's intended victim of Steve to Leona as Steve ducked out of the way.</p>

Person	Offence	Actus reus	Mens rea	Cases	Possible defence?
Alex striking Leona in the face with the glass and gouging out her eye.	<p>s18 GBH: the statutory offence of grievous bodily harm with intent is set out in s18 Offences Against the Person Act 1861, which provides that it is an offence to intend to maliciously wound or cause grievous bodily harm. s18 is an indictable offence. The maximum sentence for s18 is life imprisonment reflecting the gravity of s18 in comparison to s20.</p> <p>s20 GBH - The statutory offence of grievous bodily harm is set out in s20 Offences Against the Person Act 1861 which provides that it is an offence to maliciously inflict grievous bodily harm or wound the victim. Grievous bodily harm is a triable either</p>	<p>s18: Similar to the actus reus for s20, the actus reus for s18 is either maliciously wounding or causing grievous bodily harm. It refers to the term 'cause' as opposed to 'inflict' and though they are not the same (R v Ireland, Burstow (1997)) they have been taken to mean that causation is required. The meaning of 'wound' and causing 'grievous bodily harm' are the same as for s20 above.</p> <p>APPLY TO THE FACTS</p> <p>s20: GBH can be proved by either showing an infliction of grievous bodily harm or a wounding of the victim. KEY TERM: Wounding – where both layers of the skin are broken, usually resulting in bleeding. It is important to choose the charge carefully as being either infliction of GBH or a wound.</p> <p>1. Infliction of GBH. The term 'inflict' has caused difficulty in the courts over the years. In Clarence (1888), the term was given a very restrictive meaning but more recently in Dica (2004), the meaning was widened to include recklessly transmitting HIV to an unaware victim as being 'infliction' of GBH. A similarly wide approach is demonstrated in R v Halliday (1889).</p>	<p>The key difference between s20 and s18 is that s18 can only be proved with intention (direct or oblique) whereas s20 can be established with recklessness or intention to cause <i>some</i> harm. The mens rea has two aspects: First, the defendant must 'maliciously' wound or cause grievous bodily harm. Secondly, the defendant must have specific intent to either cause grievous bodily harm to the victim or to resist or prevent the lawful apprehension or detainer of any person.</p> <p>s18 is a specific intent offence (as required by R v Belfon (1976)) and requires intention to maliciously cause grievous bodily harm thus reflecting the severity of the injuries and</p>		

Person	Offence	Actus reus	Mens rea	Cases	Possible defence?
	<p>way offence. The maximum sentence for GBH is 5 years imprisonment, the same as for the lesser offence of ABH, which has been criticised.</p>	<p>The court held that her injuries had been directly inflicted by the defendant even though it was she who had voluntarily jumped from the window. R v Bolloom (2003) established that the age and characteristics of the victim are relevant to the extent of the injuries sustained.</p> <p>2. Wounding. A wound requires a breaking in the continuity of the skin, usually resulting in bleeding. In of Mariarty v Brooks (1834), it was held that both the dermis and the epidermis must be broken; however, in JCC (A Minor) v Eisenhower (1984), an internal rupture of blood vessels in the victim's eye as a result of being shot with a pellet gun was not held to amount to wounding within s20.</p> <p>APPLY TO THE FACTS</p>	<p>culpability of the defendant.</p> <p>APPLY TO THE FACTS</p> <p>s20: The mens rea for GBH is defined by the word maliciously. Maliciously – is interpreted as meaning with intention or subjective recklessness.</p> <p>The case of Mowatt (1967) established that it does not need to be established whether or not the defendant intended or was reckless as to the infliction of GBH or a wound as long as it can be proved that he intended or was reckless to cause <i>some physical harm</i>. This was further clarified in the case of DPP v A (2000) where it was held to be sufficient to prove the defendant intended or foresaw that some harm <i>might</i> occur and it was not necessary to show the defendant intended or foresaw that some harm <i>would</i> occur.</p> <p>APPLY TO THE FACTS</p>		

Example scenario 2

Person	Offence	Actus reus	Mens rea	Cases	Possible defence?

Example scenario 3

Person	Offence	Actus reus	Mens rea	Cases	Possible defence?
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Activity 4.13 Which offence for causing which injury?

Injury	Offence
Black eye	Battery
Broken nose	s47 ABH
Stab to the abdomen	s20 GBH or s18 GBH, depending on severity and intention of the defendant
Graze	Battery
Fractured skull	s20 GBH or s18 GBH, depending on severity and intention of the defendant
Swelling	Battery
Fear of force about to be used but not used	Assault
Broken arm	s47 ABH

Quickfire questions

1. Assault, battery, **s47**, **s20**, **s18**.
2. (Maximum sentences) Assault/battery: six months imprisonment or a fine. **ss47** and **20**: five years imprisonment **s18**: life imprisonment.
3. Admitting guilt to a lesser charge than the one originally given.
4. Battery.
5. The immediate infliction of violence.
6. **s18** requires intention, whereas **s20** can be proved with either intention or recklessness. **s18** carries a maximum sentence of life imprisonment, compared with a five-year maximum under **s20**. **s18** is inflicting a more serious injury.
7. For example, outdated and misleading language (e.g. grievous, assault not requiring any physical contact), structure of the offences illogical, sentencing (the same for **s20** and **s47** and then a jump to life for **s18**), plea bargaining, no statutory definition of assault and battery.
8. For example, different sentences for **s20** and **s47**, making a clearer distinction between **s47** and **s20**. Clearer language. Main reform proposals:
 - **Criminal Law Revision Committee:** The Criminal Law Revision Committee (1981) was set up to look at the need for reform as there was such widespread criticism of the current legislation. It published findings which lead to the Law Commission undertaking research in the area.
 - **Law Commission:** Law Commission published a report Legislating the Criminal Code: Offences Against the Person and General Principles in 1993. The report also contained a draft bill addressing some of the problems but it has not been considered in

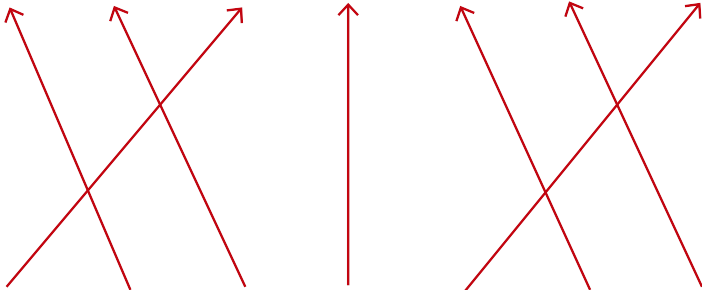
Parliament. The Law Commission published another reform report in 2015: LAW COM No 361

- **Draft Bill:** In 1998, the Home Office published a consultation paper Violence: Reforming the Offences against the **Person Act 1861** which included a draft Bill. The Bill was largely based on the Law Commission proposals. The Bill set out the offences in a more logical structure, replacing the offences under the **OAPA 1861**.

Chapter 5: Human rights law

Rules, theory and protection of human rights law

Activity 5.1 Human rights theory



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	Definition
inherent	Rights that apply to everyone simply because they are human
universal	Each human right, in some way, contributes to a person's dignity. Each right relies on the others
inalienable	The rights cannot be taken or given away
equal	All human rights are considered to have equal status and are not positioned in a hierarchical order
enforceable	This gives the court the power to balance competing rights, for example, Article 10 against Article 8 ECHR
proportionality	What a citizen is not allowed to do is set out by law and what they can do (rights and freedoms) is not (Malone v Metropolitan Police Commissioner (1979))
discretionary	Each state has discretion to give effect to the rights in the ECHR in different ways, in order to reflect their distinct histories and legal frameworks

Activity 5.2 The European Convention on Human Rights

Following the atrocities of the **Second** World War, the international community came together to collectively agree to protect human rights and promote **peace**. They formed the **United Nations (UN)**, which subsequently adopted the **Universal Declaration of Human Rights (UDHR)** in 1948. This is seen as the inception of modern human rights protection. This was followed by the formation of the **Council of Europe** which, in turn, adopted the **European Convention on Human Rights (ECHR)**. This is separate to the European Union and covers more countries; its aim is to uphold peace and protect human rights within Europe. The UK has **incorporated** most of the ECHR into domestic law via the **Human Rights Act 1998**.

The **Council of Europe** oversees states' adherence to the ECHR. Other institutions overseeing the ECHR are the **Committee of Ministers** and the **Parliamentary Assembly**.

As society evolves, human rights evolve too, and the ECHR (along with other human rights treaties) is considered to be a '**living instrument**'. For example, when the ECHR was written in 1950, modern technologies did not exist which now influence the interpretation of, for example, the right to **privacy**.

Activity 5.3 ECHR rights

Match the articles of the rights and freedoms protected by the Convention with their explanation.

Article
2
3
4
5
6
7
8
9
10
11
12
14

Right
Right to life
Right to liberty and security of the person
Right to a fair trial
Freedom of expression
Freedom from torture, inhuman or degrading treatment
Freedom of thought, conscience and religion
Freedom from slavery and forced labour
Right to marry and start a family
Freedom of assembly and association
Right to respect for private and family life, home and correspondence
Prohibition of discrimination
Freedom from retrospective law

Activity 5.4 Categories of rights in the ECHR

Category of right	Definition	Section
Absolute	The state cannot deviate from these rights; they can never legally be breached	s7
Limited	These are the weakest rights and can be removed when 'prescribed by law, necessary and proportionate in a democratic society in order to fulfil a legitimate aim'. They may be restricted to protect the rights of others or for the public interest	s2
Qualified	The state can deviate from these rights but only in the prescribed limitations laid down in the right	s3

Activity 5.5 The European Court of Human Rights

Fill in the missing words from the list provided.

The ECHR also established the **European Court of Human Rights** (ECtHR), which sits in **Strasbourg** and is the final court of appeal for individuals who feel their human rights have been violated. Before the **Human Rights Act 1998**, individuals had to use the right of **individual** petition, granted in 1966, in order to appeal to the European **Court** of Human Rights. All **domestic** remedies had to have been exhausted first, which was both time consuming and **expensive**. However, when the ECtHR declared the UK had illegally removed human rights, though not under a legal obligation to amend the law, they invariably did amend the law (they were under a '**moral** obligation'). For example, the **Contempt of Court Act 1981** was passed as a result of **Sunday Times v UK**, where the Court of Human Rights held that the common law offence of contempt of court breached **Article 10** of the ECHR.

An example of a case where an individual petitioned the ECtHR is **McCann v UK (1995)**, on the matter of the UK's 'shoot to kill' policy and a breach of **Article 2** (the right to life).

Activity 5.6 Sections of the Human Rights Act 1998

Explain	Case law / example + Evaluation point
The Convention is now applicable directly in the UK courts. A citizen who believes that their human rights have been removed is able to take the case to a national court. Citizens can still take their cases to Strasbourg on appeal.	Domestic judges now have the obligation. Less expensive and time consuming than going to Strasbourg.
When deciding on a case involving alleged breaches of human rights, courts in the UK must ' take into account ' the precedents of the European Court of Human Rights. They are not binding, but they are strongly persuasive .	<p>Leeds City Council v Price demonstrates that UK courts can choose a UK precedent over an ECtHR decision. If there is a conflicting UK precedent, then the UK precedent will be used instead.</p> <p>If the Court of Human Rights precedent is clear and there is no UK precedent then the Court of Human Rights precedent <i>should</i> be followed (Ullah (2004)).</p> <p>Evaluation point: Power given to unelected judges under sections 2 and 3, particularly when combined with section 6.</p>
When deciding a case involving human rights, judges must interpret a law ' so far as is possible to do so ' compatibly with human rights.	<p>R v A (2001) – Lord Steyn said the duty under s3 goes beyond the purposive approach. A 'declaration of incompatibility' should be a measure of last resort.</p> <p>Ghaidan v Godin-Mendoza (2004) provides the current approach for the use of s3.</p>

Section	Explain	Case law / example + Evaluation point
s4	If a statute cannot be interpreted broadly enough to ensure compatibility with Convention rights, under s4 judges can issue a declaration of incompatibility .	Bellinger v Bellinger (2003) Anderson (2003) Belmarsh detainees (A and Others (2004)) , R v Mental Health Tribunal ex parte H (2001)
<s10	If a declaration of incompatibility has been issued, Parliament has the power to change this quickly using a ' fast track ' procedure.	Evaluation point: Under s10(2) , Parliament can change the law using the fast track procedure if there is a 'compelling reason'. However, the fact a declaration of incompatibility has been issued is not necessarily a 'compelling reason'.
s6	Individuals can sue 'public authorities' for breaches of human rights. This is a body whose functions are 'public' or 'partly public' in nature. Courts and tribunals are included in this and are considered public authorities.	'Standard' public authorities include those such as the NHS, armed forces, prison service. 'Functional' public authorities can be classed as either public or private depending on the nature of their work and the proximity of their relationship with the state. Poplar (2001) and YL v Birmingham City Council (2008) . Implied horizontal direct effect: If a human rights issue is raised in a private case, the public authority is under a duty to protect them. Douglas and Jones v Hello! Ltd.
s19	All legislation that is passed after the <i>Human Rights Act</i> came into force should have a statement of compatibility.	Evaluation point: Under s19(1)(b) , a law can be passed without one. Ministers are not saying the law is 'incompatible', just that they are unable to declare it 'compatible'. Two Bills that did not have a statement of compatibility are the Local Government Bill 2000 and the Communications Bill 2003 . Both are now Acts of Parliament.
s8	A court may grant 'any just and appropriate remedy within its powers'.	Evaluation point: The UK chose not to incorporate article 13 , which would have required courts to provide an 'effective remedy'.

Activity 5.7 Bill of Rights crossword

Across

3. Parliament
7. unwritten
8. Good Friday Agreement
10. unelected
11. ECHR

Down

1. manifesto
2. entrenched
4. Executive
5. devolution
6. fast track
9. judges

5.4 Quickfire questions

1. Human Rights Act 1998.
2. Residual freedoms. They have become positive rights.
3. **Sections 2, 3, 4, 10, 7, 8, 10, 19.**

Specific provisions within the ECHR

Activity 5.8 Categories of rights in the ECHR

Absolute rights: These are the strongest rights. The **state** cannot **deviate** from these rights: they can never legally be breached. Example: the right to a **fair trial** (**Article 6**).

Limited rights: The state can deviate from these rights but only in the prescribed **limitations** laid down in the right. Example: the right to **liberty** (**Article 5**).

Qualified rights: These are the **weakest** rights and can be removed when 'prescribed by law, necessary and **proportionate** in a democratic society in order to fulfil a legitimate **aim**'. They may be restricted to protect the rights of others or for the **public** interest. E.g. freedom of **expression** (**Article 10**).

When considering these rights, remember the principle of **proportionality** and also the **margin** of appreciation.

Activity 5.9 Articles 5 and 6 ECHR

Across

3. compensation
6. deviate
7. public
8. liberty
9. remand

Down

1. promptly
2. innocent
5. limited
4. absolute

Activity 5.10 Researching Articles 8, 10 and 11

Answers depend on individual research. Compare your information, examples and conclusions with your classmates.

5.2 Quickfire questions

1. One that the state can never deviate from, e.g. <L>Article 6.
2. Qualified.
3. European Convention on Human Rights (or can be European Court of Human Rights).
4. **Human Rights Act 1998**.
5. **Articles 8, 9, 10, 11**.
6. **Articles 6, 3**.
7. Limited. It can be lawfully taken away under the limitations set out in the article (e.g. the lawful arrest of a suspect).
8. Depends on own response.
9. Right to marry and start a family.

Reform of human rights

Activity 5.11 History of human rights

Magna Carta	A legal writ (order) issued by a judge which requires a detained person to be immediately brought before the court to decide if they have been legally imprisoned.
Habeas corpus	Signed in 1215 by King John and the barons of Medieval England, this is one of the most important documents in the history of citizen's rights.
The Bill of Rights (UK)	Came into force in the UK in 2000. Allows individuals to bring cases concerning breaches of the ECHR to UK courts and requires UK legislation to be interpreted in a manner compatible with the ECHR.
US Constitution and Bill of Rights	Drafted by the UN Human Rights Commission and adopted by the UN in 1948. Sets out 30 fundamental rights that all citizens in a democratic society should enjoy.
The Universal Declaration of Human Rights (UDHR)	Started out as the Articles of Confederation in 1781, developed by the Founding Fathers in 1789 to create a stronger system of government and three arms of the state, and then ten amendments made in 1791.
European Convention on Human Rights (ECHR)	Located in Strasbourg, set up under Article 19 ECHR in 1959 and hears cases brought by individuals who are arguing that a state which has signed up to the ECHR has breached its obligations.
European Court of Human Rights (ECtHR)	Signed by members of the Council of Europe in 1950 and came into force in 1953. It gave citizens with a grievance against a signatory state the ability to take a case to the European Court of Human Rights (ECtHR).
Human Rights Act 1998 (HRA)	Enacted in 1689 after William and Mary were crowned as joint monarchs, it sets out basic civil rights, such as limits on the monarch's powers, the rights of Parliament, free elections and freedom of speech in Parliament.

Activity 5.12 Evaluation of human rights protection

Response depends on own opinions, but you must provide evidence and a reasoned argument for your evaluation.

Activity 5.13 Debating a Bill of Rights

Students' own responses. Which was the most effective argument? Why?

Activity 5.14 Your Bill of Rights

Response depends on own opinions, but you must provide evidence and a reasoned argument for your evaluation.

Activity 5.15 Model answer to a Bill of Rights question

Development 1

The first stage of this essay is to outline the current plans, to ensure that you demonstrate up-to-date knowledge. It is useful to monitor the news because this is an area where the proposals are always changing. There is clear evidence that some perceive that the HRA is failing. In a 2008 Ipsos MORI poll, 42% of respondents agreed that the HRA is a charter for criminals and the undeserving. The public perception of the HRA also led to its reform becoming central to the campaigns of the key political parties in the 2010 election.

Chapter 2 Law of contract

The Conservatives, who won that election, indicated that they would remove the HRA and replace it with a British Bill of Rights. It is not clear what this would mean at the moment but the Bill of Rights Commission published its report in December 2013. The Conservatives did not conclude whether they would accept all the recommendations although then-Justice Secretary Chris Grayling said he would give careful them consideration. However, some conclusions can be drawn from discussions surrounding the issue and the report. Firstly, it is not possible to downgrade the level of protection below that of the ECHR because the UK is a signatory. If this is the desire of the Conservatives, the UK would have to leave the Council of Europe, which would bring its own problems. Membership of the Council of Europe is a requirement of the membership of the EU. Leaving the Council of Europe would also force the UK out of the EU. This is now not so much of a concern following the Brexit vote.

Secondly, the Conservatives have alluded to the structure of the new law, although nothing is set in stone. They indicated that they would improve human rights protection by adding to those rights found in the ECHR rather than eroding rights. This could include things such as the right to trial by jury, healthcare and five-yearly Parliaments. The aim here is to win back public support for human rights law by making people feel they are accessing it via these rights and ensuring it is relevant to ordinary people. The Conservatives also indicate they want to strengthen parliamentary scrutiny by abolishing the fast-track procedure found under s10 HRA. They would like all amendments to legislation to be subject to the full parliamentary procedure.

Finally, it can be implied that the Conservatives would like to limit the power of the judiciary of the Court of Human Rights and UK judges. They feel that the judges in Strasbourg are not giving national judges enough flexibility and that UK judges are overstepping the boundaries, for example by failing to deport terror suspects due to Article 8. Therefore, this may mean the new Bill of Rights may not contain the same provisions as are currently found in ss2, 3 and 4 HRA. To overcome parliamentary sovereignty and entrench the law, the Conservatives have proposed a number of options. It is possible to make the Bill of Rights exempt from the Parliament Acts, allowing the House of Lords the indefinite right to veto any changes or removal of the law. Alternatively, the UK could adopt a system that mirrors New Zealand and Israel and only allow the law to be amended by a Special Commons majority. While all of this may look positive, some people criticise these plans and challenge whether the UK would indeed benefit from a Bill of Rights. Professor Gavin Phillipson stated that 'judges do not like being

told how to interpret things...'. Therefore, any attempt to curb the power of the judiciary may be doomed to fail. This then impacts on whether the public will accept the new Bill of Rights. Research indicates that the public like the rights but dislike how the judiciary are using them. If you are unable to change the judiciary, adding to the rights will not improve its public perception. The issue of devolution may also restrict the plans of the Conservatives. For example, health care is a devolved power. It may not be possible to add this to a law that is being passed by the UK Parliament. It is almost certain that the devolved governments would not be happy to be dictated to in an area they are meant to control. There is also a sense that the Conservative MPs do not want to change the HRA and consider it to be a diversion from real issues that need to be resolved. Therefore, a prime minister may struggle to find support from their own MPs. It is also true that the HRA is new (in legal terms) and it may need to be given a chance to prove itself before it is hastily reformed into an alternate incarnation.

Some do argue that it will be beneficial for the UK to implement a Bill of Rights. QC Geoffrey Robertson states: 'Without an entrenched Bill of Rights, there is no liberty in Britain that is safe from the meddling of politicians.' Therefore, the threats made against the HRA in terms of modification and removal are enough to justify the change to a law that is entrenched and offers additional protection.

In June 2010, Jean-Paul Costa, the former president of the European Court of Human Rights, said that repealing the HRA and replacing it with a British Bill of Rights would be a 'bad idea' and could jeopardise the protection that UK citizens receive under the European Convention. He noted it would complicate the relationship between the UK and Strasbourg, as UK law would diverge from the Court of Human Rights precedents. The creation of the Liberal Democrat–Conservative coalition caused problems for moving the plan forward. The Lib Dems are in favour of the HRA, and this led to the prime minister of the time, David Cameron, admitting that it is unlikely that his plans will happen until after the 2015 election. In 2015, the Bill of Rights was mentioned in the Conservative Party manifesto and, after gaining a majority, it was anticipated this would move forward. However, following the Brexit vote, the potential replacement of the HRA with a Bill of Rights was placed on hold until after the UK's exit from the EU is concluded.

Development 2

Traditionally, the need for a Bill of Rights was recognised by the need to curb the Executive and change the attitude of the judiciary. The lack of a human rights law meant that the Executive and its agencies were able to continue without regard to the impact on human rights. There was no check.

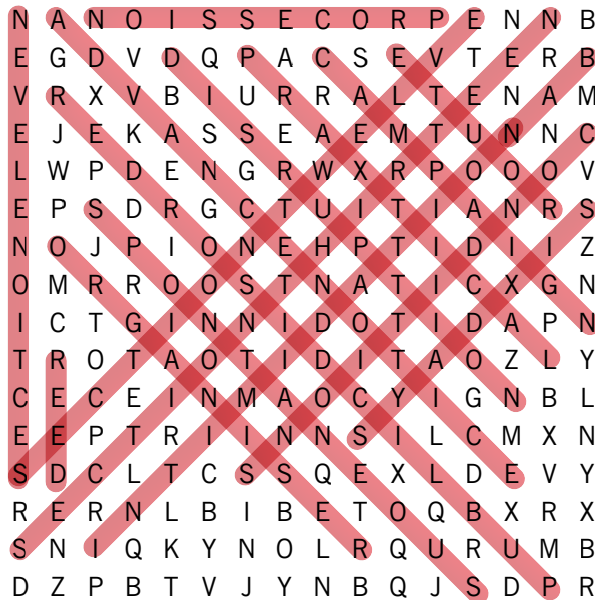
Continue your answer, using the information provided as a guide.

5.3 Quickfire questions

Answers not provided

Restrictions of the ECHR

Activity 5.16 Marches and processions word search



Activity 5.17 Meetings and assemblies

Section 16: Defines a meeting or assembly as an assembly of **2** or more persons in a **public** place which is wholly or partly in the **open** air.

Section 14 covers the powers of police to impose **conditions** on meetings (same four **triggers** as for **s12**) The police are given the power to impose conditions on **static** assemblies, held wholly or partly in the open air, if more than two people are going to be present. As well as the power to impose conditions in advance this Section allows the police to impose conditions at the **time** of the assembly and then to **arrest** those who fail to **comply** with the direction. The types of conditions include, the place it is held, its **duration**, maximum **number** of people. An assembly is **not** subject to the **notice** requirement found in **s11**.

Activity 5.18 Powers under the Criminal Justice and Public Order Act 1994

Section	Power
s14A	At the request of an occupier, the police have power to require trespassers to leave land on which they were intending to reside, subject to certain conditions.
s14B	Aggravated trespass: main targets for this offence were hunt saboteurs but it now covers any trespasser who disrupts a lawful activity taking place on land.
s69	Police can direct trespassers whom they reasonably believe to have committed, or are about to commit, an offence under s68 to leave the land.
s63	The police have the power to break up or prevent open-air gatherings of 100 or more people at which the playing of loud music is likely to cause serious distress to the inhabitants of the locality.
s68	Prohibit all trespassory assemblies subject to certain conditions: <i>DPP v Jones (1998)</i>
s61	It is an arrestable offence to organise, participate in or incite an assembly which you know breaches a banning order: <i>Windle v DPP (1996)</i>

Activity 5.19 Powers under the Public Order Act 1986

Section	Power
s1	Violent disorder: very similar to riot but only three or more people are required, and they do not have to be acting for any common purpose.
s2	Very similar to s4 but of a lower level. It covers harassment, alarm or distress and disorderly behaviour. It must take place within the hearing or sight of a person likely to be caused harassment, alarm or distress.
s3	Fear or provocation of violence: the offence is committed by using threatening, abusive or insulting words or behaviour towards another person, or by distributing any writing, sign or other visible representation which is threatening, abusive or insulting. There must be an intention to provoke or to cause fear of immediate unlawful violence: <i>R v Horseferry Road Justices, ex parte Siadatan (1990)</i> .
s4	Intentional harassment, alarm or distress: this offence is identical to that currently found in s5 except that the accused must intend to cause harassment, alarm or distress and must actually do so. In addition, the maximum penalties are far higher than those in s5 .
s4A	Riot: 12 or more people threatening or using unlawful violence. They must be acting together for a common purpose. The conduct of group must be such that would cause a person of reasonable firmness present at the scene to fear for their safety.
s5	Affray: similar to riot and violent disorder. A person commits affray by using or threatening unlawful violence so that a person of reasonable firmness would fear for their safety. No minimum number of people is required.

Activity 5.20 Serious Organised Crime and Police Act 2005

Response depends on individual research.

Activity 5.21 Breach of the peace

At **common** law, the police have the power to arrest **without** a warrant if a breach of the **peace** has been committed, if there is **reasonable** belief that a breach of the peace will be committed, or if they think it will be **repeated** (widely used during the **miners'** strike of 1984/85; see *Moss v McLachlan (1985)*). This common law power to arrest for breach of the peace has technically now been abolished by the **Serious Organised Crime and Police Act 2005**, which makes **all** offences arrestable if it necessary to arrest according to one of the **necessity** factors.

Activity 5.22 Obstruction of the highway and of the police

Under the **Highways Act 1980 s 137**, it is an offence 'if a person without **lawful** authority or excuse in any way **wilfully** obstructs the free passage along a highway'. For the purposes of this crime, the highway includes the **pavement** as well as the road. If a police officer orders a speaker, distributor, vendor or audience to 'move along', and they refuse to do so, they are likely to be arrested for obstruction of the highway or obstruction of a constable in the **execution** of their duty. In **Arrowsmith v Jenkins (1963)**, a pacifist meeting was held in a certain street which linked up two main roads. The meeting blocked the street, and the organiser cooperated with the police in unblocking it. However, the road was blocked completely for five minutes, and partly for 15 minutes. The police had advance notice of the meeting; nevertheless, the organiser was arrested and convicted. In **Nagy v Weston (1966)**, **reasonable** use of the highway will constitute a lawful excuse. One point to consider is **reasonableness**, where the court will consider the length of the obstruction, its purpose, its place and whether there was an actual or **potential** obstruction.

Obstruction of the police is a **statutory** offence under the **Police Act 1996 s89**. The courts have been very willing to uphold a wide use of this offence, even where its use severely restricts freedom of assembly. In **Duncan v Jones (1936)**, a speaker addressing a crowd from a box on the highway was told to stop, because the police feared a breach of the peace. Although the only grounds for this fear was that a disturbance had occurred in the same place a year earlier, the courts upheld the arrest of the speaker for obstruction after she refused to stop speaking.

Activity 5.23 Stop and search of persons, vehicles and premises

1. Key sections to apply:

s1 Reasonable suspicion

Code A

s2(3)

s2(9)

s3

s117

2. Key sections to apply:

s1 Reasonable suspicion

Code A

s2(3)

s2(9)

s3

s117

Activity 5.24 Search of premises

Section	Power
s8	Once lawfully on the premises, the police can seize and retain any relevant evidence.
s17	Provides important guidelines as to the exercise of the power to search premises. It provides that search of premises should be carried out at a reasonable time with reasonable force used and showing due consideration and courtesy towards the property and privacy of the occupier(s).
s18	Police may enter to make an arrest with or without a warrant, capture a person unlawfully at large or to protect people or prevent damage to property.
s19	After an arrest for an indictable offence, police can search premises occupied or controlled by the suspect if they reasonably believe there is evidence of the particular offence or other offences on the premises.
s32	Search with a warrant. Gives the police the power to apply to a magistrate for a search warrant. The magistrate must be satisfied that the police have reasonable grounds to believe that an indictable offence has been committed and that there is material on the premises which is likely to be of substantial value to the investigation of the offence and that the material is likely to be relevant evidence.
Code B	After an arrest for an indictable offence an officer can enter and search the premises where the person was when arrested or where they were just before being arrested if the officer reasonably suspects there to be evidence relating to the particular offence on the premises.

Activity 5.25 Powers of arrest

Is the arrest lawful in the following scenarios? Identify and apply the relevant sections.

1. Sections to be applied:

s24 PACE as amended by s.110 SOCPA

s24(5)

Code G

s117

s28

Code C

s30

s36

s54

2. Sections to be applied:
s24A PACE as amended by SOCPA for the security guard
Requirement to call police as soon as possible
Article 5 ECHR
3. Sections to be applied:
s24 PACE as amended by s.110 SOCPA
s24(5)
Code G
s117
s28
Code C
s30
4. Sections to be applied:
s24 PACE as amended by s110 SOCPA
s24(5)
Code G
s117
s28
Code C
s30

Activity 5.26 Detention and interrogation

Section	Power
s30	A person detained but not yet charged should have their detention reviewed by the custody officer after the first six hours and then every nine hours.
s36	Maximum period of detention is 96 hours, on approval from magistrates.
s37	On arrival at the police station, the custody officer decides whether there is enough evidence to charge the suspect.
s40	Police can authorise detention without charge for up to 24 hours. This was increased to 36 hours (s42) following the Criminal Justice Act 2003 .
s41	If there is not yet sufficient evidence to charge, police will assess whether such evidence might be obtained through questioning and, if so, a suspect may be detained for these purposes. If not, the suspect should be released. If enough evidence already exists to charge on arrest, the suspect should be granted bail under s38 PACE . Once detention has been authorised, the custody officer must begin a custody record for the detainee that must record the reasons for detention.
s44	The suspect must be taken to the police station as soon as possible after arrest, unless required elsewhere.
s54	Police may conduct an ordinary search of an arrested person on arrival at the police station and seize any item they believe the suspect might use to cause physical injury to themselves or any other person, damage property, interfere with evidence, or assist their escape; or any item the constable has reasonable grounds for believing may be evidence relating to an offence.

Activity 5.27 Intimate searches and samples

Section	Power
s55	Non-intimate samples such as hair and nail clippings can be taken, if authorised by an inspector or above.
s62	Police can take fingerprints from suspects.
s63	DNA information can be extracted from the samples taken and placed indefinitely on the national DNA database.
s64	A person may be identified by intimate samples as defined by s65 , i.e. bodily samples, swabs and impressions.
s65	Intimate search: The police, on the authorisation of an inspector or above, have the power to carry out an intimate search of the body's orifices, where the superintendent has reasonable grounds for believing that the suspect has concealed anything that could be used to cause physical injury to themselves or others, which might be used while in police detention or in the custody of a court; or that such a person may have a Class A drug concealed on them. The search must be carried out by a registered medical professional or a registered nurse.
s61 and s27	Intimate samples such as blood, saliva and semen can be taken from the suspect.
s61A	Impressions of footwear can be taken.

Activity 5.28 Rights and treatment of suspects during detention and interrogation

Scenario	Explain the power	Apply
1. Jacob is denied access to a solicitor on arrival at the police station.	s58 PACE . The suspect has the right to consult a solicitor privately and free of charge. This right can be suspended for up to 36 hours. This advice can be given over the telephone by Criminal Defence Service Direct.	Unlawful – should have been granted access to a solicitor unless suspended for up to 36 hours.

Scenario	Explain the power	Apply
2. Kristi's interview starts in the police car. When she arrives at the police station, the interview is not tape recorded but they write it up after it has taken place, forcing her to sign it.	<p>s30 PACE should be taken to police station as soon as possible. Cautioned under Code C. Under Code of Practice E interviews are tape recorded in the case of offences triable on indictment, including those triable either way.</p> <p>s60 PACE. Interviews should be tape recorded. However, it has been found that interviews can take place outside of the police station, for example, on the way to the station. In some areas, the police also video record interviews. The police must make a record of the interview and keep it on file.</p>	If she was cautioned then anything she said could be used as evidence. Interview at police station should have been recorded as per Code E and s60 PACE .
3. Stacy is arrested at 9pm on her way home from work. She is kept in a cell overnight and denied a phone call that she wants to make to her husband to stop him worrying.	<p>s56. The suspect has the right to have someone informed of their arrest. This right can be suspended for up to 36 hours if it is felt that the person chosen by the suspect may interfere with the investigation in some way (e.g. alerting other suspects, destroying evidence, etc.).</p> <p>s36. On arrival at the police station, the custody officer decides whether there is enough evidence to charge the suspect.</p> <p>s37. If there is not yet sufficient evidence to charge, they will assess whether such evidence might be obtained through questioning and if so, a suspect may be detained for these purposes. If not, then the suspect should be released. If enough evidence already exists to charge on arrest, the suspect should be granted bail under s38 PACE.</p> <p>Once detention has been authorised, the custody officer must begin a custody record for the detainee which must record the reasons for detention – Code C and s37.</p> <p>s40. A person detained but not yet charged should have his detention reviewed after first 6 hours and then every 9 hours by the Custody Officer.</p> <p>s41. Police can authorise detention without charge for up to 24 hours. This was increased to 36 hours (s42) following the Criminal Justice Act 2003.</p>	She has been denied the right to call her husband. Her detention does not appear to have been reviewed. She does not appear to have been taken to see the custody officer.

Scenario	Explain the power	Apply
4. Adam, a known gang member, is arrested following a spate of local robberies. He is denied a phone call to his friend Shahid.	s56. The suspect has the right to have someone informed of his arrest. This right can be suspended for up to 36 hours if it is felt that the person chosen by the suspect may interfere with the investigation in some way (e.g. alerting other suspects, destroying evidence, etc.).	They can deny Adam the right to call his friend for up to 36 hours if they feel Shahid may interfere with the investigation.
5. Angel, a 14-year-old suspected of shoplifting, is interviewed on her own.	s57. Vulnerable suspects (i.e. those under 17 and mentally disordered/disabled) must have an appropriate adult with them during questioning. This right is in addition to the s58 right above. The absence of this person may render any confession inadmissible in court.	Her statements would be inadmissible as no appropriate adult is present. She should also have been given access to a solicitor.
6. Angel is then kept in a cell for 10 hours overnight.	s58. The suspect has the right to consult a solicitor privately and free of charge. This right can be suspended for up to 36 hours for the reasons mentioned above. This advice can be given over the telephone by Criminal Defence Service Direct.	

Activity 5.29 Admissibility of evidence

It is essential that police powers are exercised correctly so that the evidence obtained can be used in court (i.e. **admissible**). The courts can refuse to admit evidence that has not been properly obtained.

s76(2)(a): Confession evidence may be excluded at trial if obtained by **oppression**. If this is raised, it is then up to the **prosecution** to prove beyond reasonable **doubt** that the confession was not obtained by oppression.

s76(2)(b): **confession** evidence may be excluded at trial if it was obtained in circumstances which make it **unreliable**. See the cases of **Saumel** and **R v Grant (2005)**, where failure to provide access to legal advice rendered the confessions inadmissible.

s78: Any evidence including a confession may be excluded under this Section on the grounds that it would **adversely** affect the **fairness** of the trial. This includes situations such as not writing up the interviews straight after they have finished, as in the case of **R v Canale (1990)**.

Breach of the Codes of Practice must be 'serious and **substantial**' in order for the evidence obtained to be considered for exclusion.

Under **s57:** Vulnerable suspects (including those under **17**) must have an **appropriate** adult with them during questioning. The absence of this person may render any confession inadmissible in court. Under **s77**, the jury would be warned where a confession is made by a vulnerable person with a mental disorder.

Activity 5.30 Regulation of Investigatory Powers Act 2000

Section	Summary
s1	Makes it an offence to intentionally and without lawful authority intercept communications by a postal service or telecommunications system.
s3	An interception will be lawful if done with consent.
s5, s5(2), s5(3)	<p>The warrant is only to be issued if the Home Secretary believes it is 'necessary' for certain specified purposes set out in s5(3) and that the conduct authorised by the warrant is proportional to what is sought to be achieved by that conduct – s5(2).</p> <p>The specified purposes set out in s5(3) are:</p> <ul style="list-style-type: none"> a) The interests of national security. b) Preventing or detecting serious crime. c) Safeguarding the economic well-being of the UK. d) Giving effect to an international mutual assistance agreement in circumstances equivalent to those falling within (b).
s6	Specifies the people who can apply for warrant under s5 .
s81(3)	<p>'Serious' crime as outlined in (b) is defined in s81(3) as:</p> <ul style="list-style-type: none"> a) That the offence or one of the offences that is or would be constituted by the conduct is an offence for which a person who has attained the age of twenty-one and has no previous conviction could reasonably be expected to be sentenced to imprisonment for a term of three years or more; b) That the conduct involves the use of violence, results in substantial gain or is conduct by a large number of persons in pursuit of a common purpose
s8 and s9	<p>s8 deals with the contents of the warrant – it must specify the target, contain information about addresses.</p> <p>s9 deals with the duration of the warrant – the initial period is three months from issue, but it may be renewed an unlimited number of times, provided the Home Secretary continues to believe it is necessary.</p>
s65	The only route of complaint for those dissatisfied with the system is to a tribunal.
s67	<p>The tribunal is to operate on the principles of 'judicial review'. This means that its focus is more on procedure rather than substance.</p> <p>If the tribunal finds that there has been impropriety it has the power to quash a warrant, order the destruction of any information and to award compensation</p> <p>There is no further appeal from the tribunal.</p>

Section	Summary
s26, s26(2), s26(8)	<p>Identifies three types of behaviour that are covered by the Act: directed surveillance, intrusive surveillance and the conduct and use of covert human intelligence sources.</p> <p>s26(2): covert but not intrusive surveillance is directed surveillance if 'it is undertaken for the purpose of a specific investigation and in order to obtain private information about a person'.</p> <p>s26(8): defines what is meant by a covert human intelligence source, such a source will establish or maintain a relationship with a person for the covert purpose of using the relationship to obtain access to information, or provide access to another, or for the covert purpose of disclosing information obtained from the relationship.</p>
s28	<p>Authorisations are granted under sections 28–32</p> <p>s28/29: Directed surveillance may be authorised on the same grounds as those in the Police Act 1997, e.g. a superintendent can authorise, it must be necessary and proportionate and the grounds include national security and the economic wellbeing of the UK, the crime to be prevented or detected does not have to be serious, and s28 also includes 'public safety', 'public health' and tax collection.</p>
s29	As above.
s32	<p>Authorisations for intrusive surveillance are granted by the Secretary of State or senior authorising officers (e.g. chief constables), requirements of necessity and proportionality apply but the grounds are limited to national security, the economic wellbeing of the UK and serious crime; notice must be given to Surveillance Commissioner and authorisation will not take effect until it has been approved.</p>

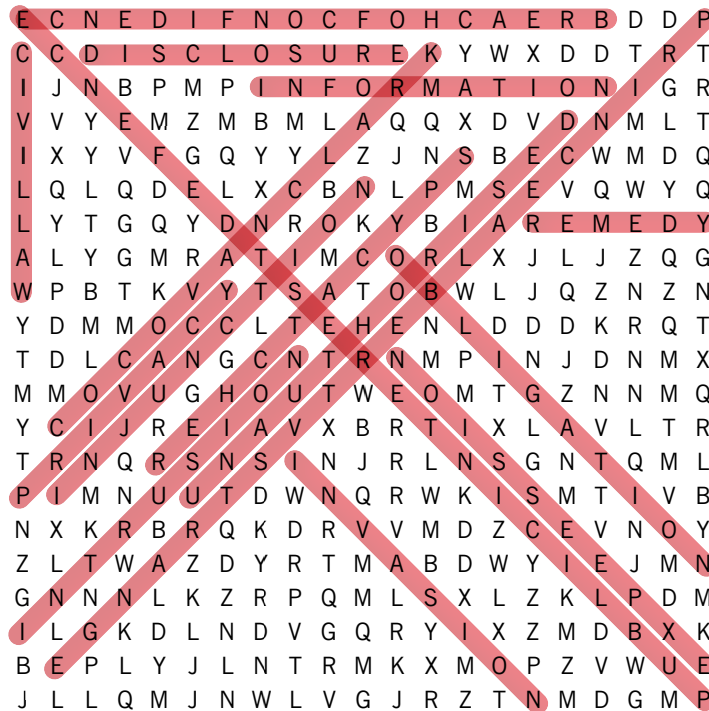
Activity 5.31 Investigatory Powers Act 2016

The **Investigatory Powers Act 2016 (IPA)** brings together and updates existing powers. (**RIPA 2000** will continue until expressly repealed.)

The **IPA** introduces:

- a 'double-lock' for the most intrusive powers, so that warrants issued by a **Secretary of State** will also require the approval of a senior **judge**
- new powers, and restated existing ones, for UK intelligence **agencies** and law enforcement to carry out **<WB>** interception of communications, **bulk** collection of communications data, and bulk interception of **communications**
- a powerful new Investigatory Powers **Commission** to oversee how the powers are used
- new protections for journalistic and legally **privileged** material
- a requirement for judicial authorisation for acquisition of communications data that identify journalists' **sources**
- harsh **sanctions** including the creation of new criminal offences, for those misusing the powers.

Activity 5.32 Breach of confidence word search



Word	Explanation
Invasion of privacy	An unwelcome intrusion into e.g. another's privacy.
Expression	The right to be left alone/free from observation and interference. The Calcutt Committee 1990 defined it as: 'The right of the individual to be protected against intrusion into his personal life or affairs, or those of his family, by direct physical means or by publication of information.'
Intrusion	Making known one's thoughts or feelings on a matter.
Breach of confidence	The disclosure of confidential information without permission. A civil remedy giving protection against the disclosure or use of information which is not generally known and which has been entrusted in circumstances imposing an obligation not to disclose it without authorisation.
Disclosure	The action of making information known.
Remedy	A solution to the issue.
<i>Prince Albert v Strange</i>	First case on the use of the civil law to protect privacy. The court awarded Prince Albert an injunction, restraining Strange from publishing a catalogue describing Prince Albert's sketches.

Word	Explanation
Injunction	A civil remedy. An order to do or not to do something (mandatory and prohibitory).
Civil law	Private law. Resolves disputes between two parties.
<i>Coco v AN Clark</i>	The three traditional elements of breach of confidence were summarised in the key case of <i>Coco v AN Clark (Engineers) Ltd (1969)</i> : <ol style="list-style-type: none"> 1. The information must have the necessary quality of confidence about it. 2. The information must have been given in circumstances importing an obligation of confidence. 3. There must be unauthorised use of that information.
Information	Requirement.
Obligation	Not permitted.
Unauthorised	Confidential information will not be protected if the public interest outweighs the interest in preserving confidentiality.
Public interest defence	Case involving the balancing of confidentiality and public interest.
<i>Spycatcher</i>	An unwelcome intrusion into e.g. another's privacy.

Activity 5.33 Breach of confidence and privacy post-Human Rights Act 1998

Research each case and share your findings with your classmates.

Activity 5.34 Which section applies? Official Secrets Act 1989

Which section(s) of the *Official Secrets Act* applies in the following scenarios?

1. **s2**
2. **s1**
3. **s3**
4. **s1, s2**

Activity 5.35 Contempt of court

Section	Definition
s1	Is the article written in the active period?
s2(3)	Does the article create a substantial risk of serious prejudice to the trial or case? Factors that can create a substantial risk of serious prejudice include words used, proximity of article to trial, pictures used, profile of the person named in the article, circulation.
s2(2)	Conduct will be contempt if it interferes with the administration of justice, in particular proceedings, regardless of intent to do so.
s5	Public interest defence, which ensures that public debate on matters of current controversy can continue even if it reflects upon matters before the courts.

Activity 5.36 Obscenity

Section	Definition
s2(1)	Publication. A person 'publishes' an article who '(a) distributes, circulates, sells, lets on hire, gives, or lends it, or who offers it for sale or for letting on hire; or (b) in the case of an article containing or embodying matter to be looked at or records, shows, plays or projects it or, where the matter is data stored electronically, transmits that data'. Therefore, electronically transmitting data via the internet constitutes a publication.
s1(1)	Article. Anything 'containing or embodying matter to be read or looked at or both, any sound record, and any film or other record of a picture or pictures'.
s1(2)	It is an offence to publish an ' obscene article for gain or not' or to have an obscene article for publication for gain.
s1(3)	Defence if there was ' no reasonable cause to suspect that the article is obscene'.
s2(5)	Provides for a ' public good ' defence but can only be used where the jury has established that the article is obscene.
s1(3)(a)	Provides a ' corresponding defence relating to a charge of 'having an obscene article for publication for gain'.
s4(1)	Provides the ' definition of obscene for the purposes of the Act. It says: 'an article shall be deemed to be obscene if its effect or (where the article comprises two or more distinct items) the effect of any one of its items is, if taken as a whole, such as to tend to deprave and corrupt persons who are likely, having regard to all relevant circumstances, to read, see or hear the matter contained or embodied in it.'

Activity 5.37 Criminal Justice and Immigration Act 2008 word search



Activity 5.38 Defamation

Under **s11 Defamation Act 2013**, defamation actions will now be tried without a jury unless the court orders otherwise. A judge, therefore, decides the remedy to be awarded. Damages are the main remedy but an injunction can also be awarded.

A number of elements need to be established in order to have a successful claim:

1. The statement must be defamatory. There is no statutory or single definition, although an accepted definition is from *Sim v Stretch (1936)*. The question to be asked by the courts is whether the statement would 'tend to lower the plaintiff in the society of right-thinking members of <WB> generally?'. This means ordinary, reasonable people and not their friends or family. No loss or damage, financial or otherwise, needs to be proved in most cases. Case examples are *Byrne v Deane (1937)* and *Berkoff v Burchill (1996)*.

A statement does not have to directly criticise the claimant – it might do so indirectly, by implication. This is known as an 'innuendo' *Tolley v J S Fry & Sons Ltd (1931)*.

It is irrelevant whether a defendant intended to publish a statement that adversely affects a claimant's reputation.

2. The statement must refer to the claimant or be taken to refer to the claimant. It must be proved by the claimant that an ordinary, reasonable reader or listener would take the statement as referring to them.

There are several ways that this can happen. The claimant can be named either by their actual name or a fictional name (as in *Hulton v Jones (1910)*). The claimant's picture can be used (*Dwek v Macmillan Publishers Ltd and Others (2000)*). Additionally, the statement can refer to the claimant through context (*Hayward v Thompson (1964)*).

Defamatory statements may also be made about a group of people but overly large groups may not be able to claim, as in the case of *Knupffer v London Express Newspapers (1944)*, unless the claimant can be singled out. The courts have not, however, indicated a particular number of people above which a claim would fail, as in *Riches v News Group (1986)*.

3. The statement must have been published. This covers more than just the 'traditional' newspaper, magazine or television. Publishing means that the information has passed from the defendant to a person other than the claimant or the defendant's spouse.
4. Publication of the statement has caused or is likely to cause serious harm to the claimant's reputation (**s1(1) Defamation Act 2013**). This aims to reduce the number of claims brought over trivial insults or jokes and protects freedom of expression. Only damage to reputation will be covered, not hurt feelings and media outlets can escape liability by publishing a swift apology; see *Cooke and Another v MGN Ltd (2014)*.

There are also a number of defences that might apply.

- Truth: **s2 Defamation Act 2013**.
- Honest opinion: **s3 Defamation Act 2013**.
- Responsible publication on a matter of public importance – **s4 Defamation Act 2013**.
- Absolute **privilege**
- Qualified privilege.
- Offer of **amends**.

Activity 5.39 Tort of harassment

Across

1. damages
4. conduct
5. criminal offence
7. harassment
8. bullying
9. paparazzi

Down

2. apprehended
3. stalking
6. statutory

5.4 Quickfire questions

1. Libel and slander.
2. The defamation appears in a permanent form.
3. The defamation appears in a non-permanent form.
4. The courts consider whether the statement would 'tend to lower the plaintiff in the estimation of right-thinking members of society generally'.
5. Freedom of speech and freedom of expression.
6. Right to privacy.
7. Truth (**s2 Defamation Act 2013**); honest opinion (**s3 Defamation Act 2013**); Responsible publication on a matter of public importance (**s4 Defamation Act 2013**); absolute privilege; qualified privilege; offer of amends