

**Law
A-level**

Introduction

Welcome to your Oxford Open Learning A-level Law course!

The Specification (or Syllabus)

This course has been designed to give you a full and thorough preparation for the AS level 7161 and/or A-level 7162 set by the Assessment and Qualifications Alliance (AQA).

No coursework is required.

Private Candidates

The AQA specification is open to private candidates. Private candidates should contact AQA for a copy of '*Information for Private Candidates*'.



Oxford Open Learning

The Arrangement of Lessons

AS Units

Module One: Law Making

Lesson

1. The English Legal System
2. Sources of Law
3. The Formal Legislative Process
Tutor-marked Assignment A
4. Influences on Parliament
5. Delegated Legislation
Tutor-marked Assignment B
6. Statutory Interpretation
7. Judicial Precedent
Tutor-marked Assignment C

Reading:
*AQA A-level Law
for Year 1/AS*

- Ch. 1
Ch. 2
Ch. 3

Chs. 7-8
Ch. 4

Ch. 5
Ch. 6

Module Two: The Legal System

8. The Civil Courts and Other Forms of Dispute Resolution
9. The Criminal Courts and Lay People
Tutor-marked Assignment D
10. The Legal Profession, Access to Justice and Funding
11. The Judiciary
Tutor-marked Assignment E

- Chs. 9-10

Chs. 13-14

Chs. 15, 17
Ch. 16

Module Three: Introduction to Criminal Liability

12. Underlying Principles of Criminal Liability
13. The Criminal Courts: Procedure and Sentencing
Tutor-marked Assignment F

- Chs. 18-22
Chs. 11-12

Module Four: Introduction to Tort

14. Liability in Negligence
15. The Civil Courts: Procedure and Damages
Tutor-marked Assignment G

- Chs. 24-25
Ch. 26

Tutor-marked Assignment H (Practice EP1)
Tutor-marked Assignment I (Practice EP2)

Summary of Cases (AS)
Glossary of Legal Terms

2nd Year Course (provisional)

Module Five: Criminal Law

Lesson

Reading: TBC

- 16 The Rules and Theory of Criminal Law
- 17 General Elements of Liability
- 18 Fatal Offences against the Person
Tutor-marked Assignment J
- 19 Non-Fatal Offences against the Person
- 20 Property offences
- 21 Defences
Tutor-marked Assignment K

Module Six: Law of Tort

- 22 The Rules and Theory of Tort
- 23 Liability in Negligence (Physical and Economic)
- 24 Occupiers' Liability
Tutor-marked Assignment L
- 25 Vicarious Liability
- 26 Defences
- 27 Remedies
Tutor-marked Assignment M

Module Seven: Law of Contract

- 28 The Rules and Theory of Contract Law
- 29 Essential Requirements in Contract
- 30 Contract Terms (Common Law & Statute)
Tutor-marked Assignment N
- 31 Exclusion Clauses
- 32 Vitiating Factors
- 33 Discharging a Contract
- 34 Remedies
Tutor-marked Assignment O

- 35 Preparing for the A-level Examinations
Tutor-marked Assignment P (Practice EP1)
Tutor-marked Assignment Q (Practice EP2)
Tutor-marked Assignment R (Practice EP3)

Summary of Cases (A-level)
Glossary of Legal Terms

Textbooks

This course is NOT self-contained, and has been designed to be used in conjunction with:

AQA A-level Law for Year 1/AS by **Jacqueline Martin and Nicholas Price** (Hodder Education) ISBN-13: 978-1510401648

The accompanying textbook for Year 2 (by the same authors plus Richard Wortley; Hodder; ISBN-13: 978-1510401747) will be confirmed in due course. One easy way of acquiring accompanying textbooks is through the Oxford Open Learning website (www.ool.co.uk).

For the Criminal Law sections of this course you will find the following book helpful:

Jonathan Herring: *Criminal Law: Text, Cases and Materials* (Oxford, ISBN-13: 978-0199646258)

For Tort, the following book is helpful:

Emily Finch & Stefan Fafinsky: *Law Express: Tort Law* (Pearson, ISBN-13: 978-1408295434)

AQA publishes a *Resources* list, full of useful supporting texts, which can be viewed on the AQA website or purchased from AQA.

Also well worth acquiring are the examination board's Marking Schemes, which give details on how individual papers are marked and what constitutes a good answer.

Law books are often revised for new editions so it is best to obtain the most recent edition, where there is more than one.

Aims and Objectives of the Course

This course has been designed and written with the purpose of preparing you to sit and *pass* the Advanced Subsidiary (AS) Law Examination of the AQA (Assessment and Qualifications Alliance). As required, the course enables you to study the structure and operation of certain major aspects of the English legal system and areas of substantive law, and to develop skills associated with an understanding of the law and its operation in society.

Students of the AQA syllabus will be expected to:

- develop competence in using legal skills during the study of the nature of law, legal issues and the English legal system, and private and public areas of substantive law

- demonstrate their ability to analyse a scenario by identifying the key facts from which legal issues arise
- analyse, when formulating a legal argument, legislation by applying the rules and principles of statutory interpretation and analyse case law by applying the doctrine of precedent
- in respect of each private and public area of substantive law they are required to study, analyse, apply and evaluate the legal rules and principles of that area of law. Analysis and application must include the ability to identify and breakdown into constituent parts the relevant legal rules and principles for each area of law and apply those legal principles to a hypothetical scenario. Evaluation must require students to formulate a reasoned argument to support a particular proposition by reference to the relevant legal rules and principles that support that argument
- construct clear, concise and logical legal arguments which are substantiated by legal authority, using appropriate legal terminology.

Lesson Structure and Assessment

AS Lessons are arranged to allow for progression through the AQA specifications from Unit 1 to Unit 4 (AS) and similarly in Year 2. Throughout the lessons, you will find Revision Points, Self-Assessment Tests and Tutor-Marked Assignments. You should work through all relevant exercises.

Tutor-Marked Assignments

At the relevant point in the course, you should attempt the tutor-marked assignments. The TMAs have been designed to closely format the AQA examination format. This will help you to prepare for the exams themselves. It will be most helpful if you attempt these under examination conditions, although not obligatory, it will give both you and your tutor a more accurate assessment of your progress and the mark you receive will be more reflective of what you could achieve in the examinations. You will note that the TMAs (as with the exams themselves) are made up of multiple choice answers, short answers and more extended ones. Each type of question has its own answer technique and it is very important that you follow the instructions given. Remember to watch out for the 'control words' and take careful note of the question mark weighting.

It is very important that you **quote cases** to support your arguments, both in your TMAs and in the exam. As you work through these course materials, make your own notes on some

cases that are relevant to topics raised in the lessons. Look for suitable cases in your textbook, in library books, on the internet, in the lessons and in the Summary of Cases at the back of this pack. Your tutor will provide appropriate annotations on your work along with your mark. These comments are meant to highlight areas of good work and to guide you in how you could structure the content and format of your answers to achieve maximum marks in the examination. This is known as feedback and feedforward.

At the end of the AS (1st Year) course, there are two mock exams. These are primarily intended for students taking the AS examinations. Students who are not taking exams after their first year but going straight on to their 2nd year have the option to miss out these “mocks”. There will be further practice examinations at the end of the 2nd Year course, matching the 3-paper structure of the A-level examination.

Suggested Answers

Suggested answers will be made available to you with your marked paper (if you are not working with a tutor you will have received the suggested answers upon enrolment). The tests are progressive in as much as your tutor will require you to develop not just your knowledge and understanding of the syllabus but also, how you are applying the legal skills necessary to support your answers. . They have been designed not only to test your understanding of the specific lessons to which they relate and your ability to apply the skills which you have learnt to problematical situations. They also provide you with a means of revising the content of earlier lessons by requiring you to interrelate one area of law with another.

A careful study of the Suggested Answers in combination with your tutor’s comments (if you have one) will be of great assistance to you with problems of technique, but remember that the Suggested Answers are the product of experience and are based on careful reading and analysis of the question and the drafting of a preliminary answer plan. It is important to remember that you can gain marks in law by offering alternative answers to those provided in the Suggested Answers just as long as there is accurate and sustained reasoning supported by the correct use of law. Often the questions you are asked will not require a definitive conclusion. You will though be expected to look at a variety of situations (‘what if’) and draw conclusions from them. You will not be penalised for not reaching a definitive judgment as you will usually not be given enough facts for this. You are given just enough information to initiate a discussion.

Problems and Difficulties

You will not go through the entire course without coming up against some things that you do not understand. If you find that something still does not make sense after you have been through all the relevant textbooks, do not hesitate to ask your tutor who should be only too pleased to help you.

It is important to notice that not all the lessons are of equal length. This is inevitable since some subjects can be dealt with in relatively short passages of notes and texts, whereas others require lengthier treatment.

Moreover, not all lessons are supplied with Self-Assessment Tests and where this is the case you should read with great care the portion of the text which has been suggested for study.

The 'AS' level System

The Advanced Subsidiary (AS) Level

Advanced Subsidiary (AS) courses may be used in one of two ways:

- As a final qualification, allowing candidates to broaden their studies;
- As the progression towards Advanced Level qualification.

The Advanced Subsidiary Level

The Advanced Subsidiary Level examination is stand-alone qualification which is co-teachable within the first year of the linear Advanced Level qualification.

The AS level normally comprises three teaching and learning modules. These modules generally match the Units of Assessment (or Exam Papers).

Grading and Shelf-Life

The AS qualification will be graded on a five-point scale: A, B, C, D and E. Students who fail to reach the minimum standard for grade E will be recorded as U (unclassified) and will not receive a qualification certificate.

Candidates may re-sit a unit any number of times within the shelf-life of the specification. The best result for each unit will count towards the final qualification. Candidates who wish to repeat a qualification may do so by re-taking one or more units.

The Examination Structure

This information is correct for the AQA examinations set in 2018 (AS level), 2019 (full A-level) and later years. Prior to the examination, students should contact the exam board for the latest information.

A-level (7162 specification)

A-level candidates need to sit three equally-weighted written examination papers, each lasting 2 hours, with 100 marks available.

In all three exams, questions are a combination of multiple choice, short answer and extended writing questions.

A-level Paper 1:

What's assessed:

1. The nature of law and the English legal system (25 marks out of 100).
2. Criminal law (75 marks out of 100).

A-level Paper 2:

What's assessed:

1. The nature of law and the English legal system (25 marks out of 100).
2. Tort (75 marks out of 100).

A-level Paper 3:

What's assessed:

1. Law of Contract (75 marks out of 100).
2. The nature of law and the English legal system (25 marks out of 100).

OR

1. Human Rights (75 marks out of 100).
2. The nature of law and the English legal system (25 marks out of 100).

We have selected Option 1 (inc. Law of Contract). No support is given in this course for the Human Rights option.

Detailed content of the A-level specification

3.1 The nature of law and the English legal system

Nature of law

Basic understanding of the distinction between enforceable legal rules and principles and other rules and norms of behaviour.

Basic understanding of the differences between criminal and civil law and between different sources of law including custom, statute law and the common law.

Nature of law: law and society

The role law plays in society.

The effect of law on enforceable rights and the balance required between competing interests (e.g. public and private).

The meaning and importance of fault in civil and/or criminal law.

Nature of law: law and morality

The distinction between law and morality and the diversity of moral views in a pluralist society.

The relationship between law and morality and its importance.

The legal enforcement of moral values.

Nature of law: law and justice

The meaning of justice and theories of justice.

The extent to which the law (civil and/or criminal) achieves justice.

The rule of law

Basic understanding of the constitutional doctrine of the rule of law and its application to law making, the legal system and substantive law:

- no person shall be sanctioned except in accordance with the law
- equality before the law
- fairness and clarity.

Law making: parliamentary law making

Parliamentary law making including:

- Green and White papers
- the formal legislative process
- the influences on parliament
- the doctrine of parliamentary supremacy and limitations on it
- the advantages and disadvantages of influences on parliamentary law making.

Law making: delegated legislation

Types of delegated legislation: orders in council, statutory instruments, bylaws (from local authorities and public bodies).

Parliamentary and judicial controls on delegated legislation.

The reasons for the use of delegated legislation.

The advantages and disadvantages of delegated legislation.

Law making: statutory interpretation

The rules of statutory interpretation: literal, golden and mischief rules; the purposive approach.

Internal (intrinsic) and external (extrinsic) aids.

The impact of European Union law and of the Human Rights Act 1998 on statutory interpretation.

The advantages and disadvantages of the different approaches to statutory interpretation.

Law making: judicial precedent

The doctrine of judicial precedent.

The hierarchy of the courts including the Supreme Court.

Stare decisis, ratio decidendi and obiter dicta; law reporting in outline and the reasons for it.

The operation of judicial precedent: following, overruling and distinguishing.

The advantages and disadvantages of the doctrine of judicial precedent and the operation of precedent.

Law making: law reform

The work of the Law Commission: reform, codification, consolidation and repeal.

The advantages and disadvantages of reform through the Law Commission.

Law making: the European Union

The institutions of the European Union: the Council, the Commission, the Parliament and the

Court of Justice of the European Union and their functions.

The legal system: the civil courts and other forms of dispute resolution

The different sources of European Union law: treaties, regulations and directives.

The impact of European Union law on the law of England and Wales.

Basic understanding of civil courts, including the track system and the appeal system.

Other forms of dispute resolution: outline of the tribunal structure and the role of tribunals. The roles of mediation and negotiation.

The legal system: the criminal courts and lay people

Basic understanding of the criminal process including the classification of offences, and the appeal system.

Criminal court powers and sentencing of adult offenders.

The role of lay people: the role and powers of magistrates in criminal courts and the role of juries in criminal courts.

The advantages and disadvantages of using juries in criminal courts.

The legal system: legal personnel and the judiciary

Basic understanding of the different roles of barristers, solicitors and legal executives.

Basic understanding of the regulation of legal personnel.

The judiciary: types of judge.

The role of judges in civil and criminal courts.

The independence of the judiciary: security of tenure, immunity from suit, independence from the Executive.

Reason for and advantages of judicial independence and the methods by which it is achieved.

The legal system: access to justice and funding

Basic understanding of alternative sources of legal advice: help lines, Citizens Advice Bureau (CAB), law centres and trade unions.

Private funding: own resources, insurance and conditional fee agreements.

Basic understanding of public funding: criminal and civil state funding.

3.2 Criminal law

The rules of criminal law

Rules and principles concerning general elements of criminal liability and liability for offences against the person, property offences and attempt.

Theory in criminal law

Harm as the basis for criminalising conduct.

Autonomy, fault and individual responsibility.

Principles in formulating rules of criminal law:

- fair labelling
- correspondence
- maximum certainty
- no retrospective liability.

General elements of liability

Actus reus:

- conduct; acts and omissions and state of affairs
- voluntariness and involuntariness
- causation
- consequences.

Additional fault elements:

- mens rea; intention and subjective recklessness
- negligence
- transferred malice.

No fault: strict liability.

Coincidence of actus reus and mens rea.

Fatal offences against the person

Common law offence of murder:

- voluntary manslaughter:

- loss of control (s54 Coroners and Justice Act 2009)
- diminished responsibility (s2 Homicide Act 1957 as amended).

Common law offence of involuntary manslaughter:

- unlawful act manslaughter
- gross negligence manslaughter.

Non-fatal offences against the person

Common assault:

- assault
- battery.

Offences Against the Person Act 1861:

- s47 assault/battery occasioning actual bodily harm
- s20 unlawful and malicious wounding or inflicting grievous bodily harm
- s18 unlawful and malicious wounding or causing grievous bodily harm with intent to cause grievous bodily harm.

Property offences

- Theft (s1 Theft Act 1968).
- Robbery (s8 Theft Act 1968).

Preliminary offence

Attempt (s1 Criminal Attempts Act 1981).

Defences; Capacity defences

- Insanity.
- Automatism.
- Intoxication.

Defences; Necessity defences

- Self-defence/prevention of crime.
- Duress.
- Duress of circumstances.

3.3 Tort

The rules of tort law

Rules and principles concerning liability and fault in actions for negligence, occupiers' liability, nuisance and vicarious liability, and associated defences and remedies.

Theory of tort law

Analysis and evaluation of when tort law imposes liability, with particular reference to the issues specified below.

- basic understanding of the public policy factors governing the imposition of a duty of care (the Caparo three-part test) in a claim for physical injury to people and damage to property
- basic understanding of the policy factors governing imposition of liability for pure economic loss and psychiatric injury
- basic understanding of the factors governing the objective standard of care in an action for negligence

- basic understanding of the factors governing the grant of an injunction as a remedy, and the way in which conflicting interests are balanced
- basic understanding of the nature and purpose of vicarious liability.

Liability in negligence for physical injury to people and damage to property

Duty of care: the 'neighbour' principle; the Caparo three-part test.

Breach of duty: the objective standard of care.

Damage: factual causation and legal causation (remoteness of damage).

Liability in negligence for economic loss and psychiatric injury

Liability for pure economic loss caused by negligent acts and negligent misstatements.

Liability for psychiatric injury sustained by primary and secondary victims.

Occupiers' liability

Liability in respect of visitors (Occupiers' Liability Act 1957).

Liability in respect of trespassers (Occupiers' Liability Act 1984).

Nuisance and the escape of dangerous things

Private nuisance.

The rule in *Rylands v Fletcher*.

Vicarious liability

Nature and purpose of vicarious liability

Testing employment status

Other areas of vicarious liability

Defences

Contributory negligence.

Consent (*volenti non fit injuria*).

Defences specific to private nuisance and the rule in *Rylands v Fletcher*.

Remedies

Basic understanding of compensatory damages for physical injury to people, damage to property and economic loss; basic understanding of the principle of mitigation of loss.

Injunctions.

3.4 Law of contract

The rules of contract law

Rules and principles of contract law concerning formation, terms, vitiating factors, discharge of a contract and associated remedies.

Theory of contract law

Analysis and evaluation of the voluntary nature of a contract and of principles governing contract law, with particular reference to the issues specified below:

- outline of the theory of freedom of contract and the competing need to protect the consumer
- outline of the distinction between offers, offers in unilateral contract and invitation to treat; outline of acceptances including the rationale for the postal rule and its relationship to electronic communications
- outline of the rationale for consideration, and of the relationships between consideration and privity, and between consideration and economic duress
- outline of the nature and effectiveness of exemption clauses
- outline of the nature and effectiveness of remedies including specifically consumer remedies.

Essential requirements of contract

Offer and acceptance.

Consideration (including privity of contract).

Intention to create legal relations.

Contract terms: general

Express and implied terms.

Conditions, warranties and innominate terms.

Contract terms: specific terms implied by statute law in relation to consumer contracts

Consumer Rights Act 2015

Terms implied into a contract to supply goods:

- s9 (satisfactory quality)
- s10 (fitness for particular purpose)
- s11 (description).

Remedies for the breach of a term implied into a contract to supply goods:

- s20 (short term right to reject)
- s23 (right to repair or a replacement)
- s24 (right to a price reduction or a final right to reject).

Terms implied into a contract to supply services:

- s49 (reasonable care and skill)
- s52 (performance within a reasonable time).

Remedies for the breach of a term implied into a contract to supply services:

- s55 (right to repeat performance)
- s56 (right to a price reduction).

Contract terms: exclusion clauses

Basic understanding of the nature of exclusion and limitation clauses.

Common law control of exclusion clauses: rules relating to incorporation; brief understanding of the rules relating to construction.

Statutory control of exclusion clauses: Unfair Contract Terms Act 1977 (s2 and s3); Consumer Rights Act 2015 (s31, s57 and s65).

Vitiating factors

Misrepresentation (nature, types and remedies).

Economic duress (definition and remedies).

Discharge of a contract Performance.

Breach (actual and anticipatory breach).

Frustration.

Remedies

Compensatory damages (including categories of recoverable loss, causation, remoteness and mitigation).

Equitable remedies of specific performance and rescission.

Termination of contract for breach.

3.5 Human Rights (not covered in the OOL course)

Rules in Human Rights law Rules and principles of law relating to the right to life, to liberty and security of person, to privacy, to freedom of expression, and to freedom of assembly and association, as recognised by the European Convention on Human Rights and in the United Kingdom.

Theory in Human Rights

Theories of rights.

Rights contrasted with liberties.

The scope of 'fundamental human' rights.

Human Rights in international law

The Second World War and its aftermath.

The United Nations and the Universal Declaration of Human Rights in the United Kingdom prior to the Human Rights Act 1998

Human Rights 1948.

The Council of Europe and the European Convention on Human Rights 1953.

Human Rights in the United Kingdom prior to the Human Rights Act 1998

The status of the European Convention on Human Rights in the United Kingdom, and the impact of decisions of the European Court of Human Rights.

Human Rights in the United Kingdom after the enactment of the Human Rights Act 1998

Extent and method of incorporation and interpretation of the provisions of the European Convention on Human Rights.

Impact on constitutional arrangements and on law in the United Kingdom including entrenched nature of the Human Rights Act

1998 in the devolutionary settlement of Scotland and Northern Ireland.

Criticisms of Human Rights.

The European Convention on Human Rights 1953

Article 2 of the European Convention on Human Rights 1953

Article 2.1: right to life

Article 2.2: justified exceptions.

Article 5 of the European Convention on Human Rights 1953

Article 5.1: right to liberty and security of person.

Article 5.1a–5.1c: justified deprivation of liberty – lawful arrest or detention.

Article 5.2–5.5: additional requirements to justify deprivation of liberty in cases of lawful arrest or detention.

Article 8 of the European Convention on Human Rights 1953

Article 8.1: right to respect for private and family life, his home and for his correspondence.

Article 10 of the European Convention on Human Rights 1953

Article 10.1: right to freedom of expression.

Receive information and ideas.

Communicate information and ideas.

Article 11 of the European Convention on Human Rights 1953

Article 11.1: right to freedom of peaceful assembly and to freedom of association with others.

Restrictions

Article 8.2, Article 10.2 and Article 11.2: restrictions on the rights under Article 8.1, Article 10.1 and Article 11.1.

General requirements relating to restrictions.

Enforcement

Claims before the European Court of Human Rights; the role of domestic courts; the effect of decisions on states and claimants.

The process of judicial review.

Human Rights and English law

The right to life: an outline of criminal and civil law provisions and investigatory procedures.

- Homicide and associated offences (including the defence of self-defence/prevention of crime).
- Obligations on police and others in planning dangerous operations.
- Protective policing.
- Civil law negligence.
- Independent investigation of deaths in custody or attributable to agents of the State.

Deprivation of liberty.

Privacy and communication: criminal and civil law provisions which protect or restrict the rights.

Expression, assembly and association: in addition to relevant provisions identified above which impact on the balance between privacy and the right to freedom of expression, assembly and association.

Reform

Reform of the protection of Human Rights in the UK.

The AS Examination

At AS level, candidates are assessed through two written equally-weighted written exam papers, each one, like the A-level, a combination of multiple choice, short answer and extended writing questions. Each paper lasts 1 hour 30 minutes, with a total of 80 marks, and each is worth 50% of the A-level.

It is a separate specification and marks from the AS cannot be carried forward to the full A-level examination. The AS course is the equivalent of the 1st Year of the A-level course. All aspects of AS study are relevant to the full A-level but there is no obligation to take the AS exams at the end of the 1st Year.

AS Paper 1:

The nature of law and the English legal system (40 marks out of 80).
Criminal law (40 marks out of 80).

AS Paper 2

The nature of law and the English legal system (40 marks out of 80).
Tort (40 marks out of 80).

Please refer to the AS specification for full details of topics and the depth of study required.

Studying the Syllabus

You should be sure to acquire your own copy of the syllabus, either via the AQA Publications Dept or from the website www.aqa.org.uk.

The syllabus can be purchased from

AQA Publications
Unit 2, Wheel Forge Way,
Trafford Park
Manchester
M17 1EH (tel: 0870-410-1036)

or downloaded from the AQA website.

We advise that you obtain a copy of the syllabus so that you can assess which topics you have covered in the most detail and which ones you will feel happiest about in the exam. AQA can also provide advice booklets on your course, including ‘Supplementary Guidance for Private Candidates’. As you approach the examination, it will also be helpful to purchase and tackle past papers from AQA.

Using the Internet

All students would benefit from access to the Internet. You will find a wealth of information on all the topics in your course. As well as the AQA website (www.aqa.org.uk), you should get into the habit of checking the Oxford Open Learning site (www.ool.co.uk) where you may find news, additional resources and interactive features as time goes by. Put it on your Favourites list now!

Further Guidance: The Use of Cases

English Law is essentially a case law system and part of the English legal technique is the use of cases as authorities. You do not have to have a detailed knowledge of every case mentioned in the course but it is wise to study carefully those to which your attention is directed.

Because the English Courts follow the principle of *stare decisis*, it is essential for you to quote those cases which support your contentions and opinions. It is also necessary for you to be aware of those precedents which do *not* support your argument and which you could refute if necessary. To do this with confidence is the hallmark of having a legal mind!

The refutation of a leading case is known as “distinguishing” that case from the current one under consideration. This is done by showing that the facts are not “on all fours” in the two cases being discussed or by showing that the decision in one was reached by differing considerations to that obtaining in the other.

It is also possible in some cases to argue that a certain precedent was wrongly decided. This can only be done where the precedent is not binding on the Court before which the current case is being tried. You should read pages 34 onwards of your textbook where this matter is fully explained under the heading “Stare decisis”.

When citing a case, you should if possible name the claimant and defendant together with a brief synopsis of the facts of the case. If either claimant’s or defendant’s name escapes you, then you can refer to “...in a case where XXX was claimant”. Alternatively, you can refer only to the most salient fact, such as “... a case where a claimant became ill after drinking from a stone bottle, afterwards found to contain a decomposed snail...”

You do *not* need to quote the date and references. Incidentally, it is useful to note that when the date is enclosed in square brackets [...] then the date is essential if you want to refer to it quickly in a law library. But where the date is in round brackets (...) the date is not essential for speedy reference.

Ratio Decidendi and Obiter Dicta

Two Latin phrases that will occur fairly frequently in your reading are *ratio decidendi* and *obiter dicta*. The former means the reason for the decision, that is to say the very fundamental point of law that was considered by the judge(s) and as a result of which consideration, the decision was given. The latter phrase refers to remarks made by the judge(s) “by the way” and which, whilst perhaps of importance, were not basic and essential to the decision. It is vital that you understand these two phrases and that in all cases you are able to discern the point that is being decided. You are very strongly advised to read the relevant portions of *Learning the Law* (op cit). It should be remembered that it is only the *ratio* which is binding on subsequent courts and not the *obiter*.

Examination Technique

Obviously your ultimate aim in taking this course will be to take and pass an examination and, as stated earlier, the course has been specifically designed with this end in mind. However, as the examination approaches there will undoubtedly be certain queries you will have as regards examination technique.

The most common question asked by students in this regard concerns the approach to, and the answering of, problematical questions. The key to answering such questions is proper preparation. Read through the question several times, analysing the situation presented as you do so. Make note of any points you think significant, cases that you think relevant, etc.

These notes will act as the basis of your essay plan and you should at this juncture organise these notes into a logical order. Define relevant basic terms, set out basic rules, etc. In actually writing your answer, remember to state the relevant law first and, having done so, apply it to the facts presented in the question. Remember also to examine all the possibilities to which the facts give rise and to make an effective use of the relevant case law.

Another query raised by students concerns the use of cases and the importance of including names, dates, and facts of cases in an answer. Firstly, if you cannot remember the name of a case, but you can recall the facts, then include the facts in your answer, but introduce them in some other way, e.g. ‘In a decided case...’ Secondly, if you know the name of the case but cannot recall its facts, it is acceptable for the case name alone to follow the principle. But if this is the only way you introduce cases your answer will look

unbalanced. Thirdly, there is no need to remember case dates or law report references. Fourthly, try to choose cases that are relevant to the facts of the problem and illustrate those facts.

Command (Control) Words

The questions that you will be asked in the examinations will contain 'command words'. These words are extremely important to the way in which you answer the question. The following is a guide to the words used and their meaning to you:

Explain: Display knowledge and understanding of some aspect(s) of the law and/or English Legal System (ELS).

Suggest: Display and apply knowledge and understanding of rules and principles of substantive law to support or deny a conclusion given in the instruction.

Apply: Display knowledge and understanding, supported by analysis, evaluation, and application of relevant rules and principles of substantive law to construct a legal argument on which advice as to criminal or civil liability is given.

Consider: Display knowledge and understanding, supported by detailed analysis, evaluation, and application of relevant rules and principles of substantive law to construct a legal argument in which a logical, sustained and well-developed line of reasoning is maintained leading to a valid, relevant and substantiated conclusion, or range of possible conclusions, as to criminal or civil liability.

Assess: Present analysis, evaluation, and application, supported by knowledge and understanding, of some aspect of nature of law/ELS to develop an additional perspective on liability considered in a substantive law scenario.

Discuss: Present analysis and evaluation, supported by knowledge and understanding, in which a logical, sustained and well-developed line of reasoning is maintained leading to a valid, relevant and substantiated conclusion by way of a judgment about some aspect of nature of law/ELS previously explained.

Legal Thought and Logic

As you read the various chapters of the text-book and the reports of various cases, you will note how the legal mind tends to analyse the various problems and to classify them in certain ways. It is not always easy to follow the logic of a certain decision but if you persevere, light will dawn!

Jurisprudence is not one of the subjects of your examination but, nevertheless, you may find it useful to read the article on “Jurisprudence” in, say, the *Encyclopaedia Britannica* or another of similar calibre.

In the majority of cases the law itself is not in dispute – it is the facts that have to be decided. Once the facts are ascertained it is necessary to apply the law to those facts. It is here that lawyers are bound by either statutes, precedents (i.e. case law) or equity and they do not apply what may seem to them to be the ideals of justice. The ideals of justice are matters for Parliament to consider or for the consideration of judges where the law itself is uncertain or productive of two conflicting possibilities.

Legal Examination Writing

How should examinations be written? A good approach is given below. Read it before you begin the course and return to it as you tackle your first pieces of written work.

A. The Approach

Writing an answer in an examination is different from that of an academic essay. In the examination you have to include as much information as you can in a limited amount of time. It is essential that you use the time effectively. Use the TMAs as mock examinations to develop your skills at writing information that will give you as many marks as possible. Remember, each mark is equivalent to 1% of the time you have in the exam. It is essential that you look at the marks given for each question. A 10 mark question is worth 10% of your time. In an exam of 1½ hours you should devote approximately 9 minutes to it, including reading and recapping for example and pro-rata. So, you should:

1. Read the question fully and be sure you understand it.
Ask yourself the following questions:
 - (a) What is being asked in the question?
 - (b) What are the distinctions?
 - (c) Is the question wide or narrow?
2. Brainstorm the question.
3. Order the brainstorm.
4. Keep referring back to the question to make sure you are not straying from the point.
5. When you have written an answer, read it through.
Ask yourself the following questions:
 - (a) Have I answered the question?
 - (b) Have I covered all the points?

B. The Style

This is the format you should use for the question with higher weightings (20 mark questions especially).

- 1. The Introduction**
 - (a) Outline your answer in general terms. Always start off with the enabling statute or leading case.
 - (b) Keep this paragraph short.
- 2. The Main Body of the Answer**
 - (a) This will include references to case law and/or statutes making sure that the facts stated are fully supported by the relevant laws.
 - (b) Keep your eye on the time. Do not exceed it or you will not have enough time to finish later questions
 - (c) Keep sentences short.
- 3. The Conclusion**
 - (a) Conclusions in the exams are not really important if you have covered the main body well. It is important to remember that there are often no right or wrong answers in a law exam. You are simply expected to look at the facts from all angles and apply the law to each situation.
 - (b) In scenario based questions you may wish to briefly sum up but do not forget that you do not get extra marks for repeating information.

C. Content of the Answers

(i) Civil

A legal answer is divided into two distinct areas.

1. The Thought Processes

- (a) What is the Common Law?
- (b) What is the Statute Law?
 - (i) What is the English Law?
 - (ii) What is the European Law (if applicable)?
 - (iii) What is the International Law (if applicable)?
- (c) Is there case law?
 - (i) What are the leading cases?
 - (ii) What are the general principles?
 - (iii) How do these general principles apply?
 - (iv) How do the facts of the question fit into the principles?
- (d) Is there academic law on this point?
 - (i) Are there contradictions?
 - (ii) Where are the points of difference?
- (e) Your ideas
 - (i) There is nothing wrong with having an opinion just as long as it supported by the law.

- (ii) Phraseology is important. 'It is submitted that...' or 'It is respectfully submitted that...'

2. The Legal Presentation

REMEMBER; there are always two sides to every argument and then a judgement.

In civil law the parties are called the Claimant (the person who brings the case) v (versus) the Defendant (the person who defends the action) and there is the judge who decides the case. All parties have to be discussed in the answer if required by the question. As such you must take account of each party and the opposing arguments. In an answer you may need to start with the claimant's case and this is followed by the defendant's and then the judgment.

- (a) **The Claimant.** Follow the models above and look at the arguments from the claimant's point of view.
 (b) **The Defendant.** Follow the models above and look at the arguments from the defendant's point of view.

In each case the law may well be the same. It is your job to try to tease out the differences. Use words like 'MAY, MIGHT POSSIBLY, IF, BUT, THEN.'

Use authorities to show the differences between the principle and what the facts are in the case under consideration.

- (c) **The Judgment.** On most occasions, the examiner does not give you enough information to make a definitive judgement. You won't be expected to reach a conclusion. After all, that is why we have court cases with witnesses and expert witnesses. So the best thing to do is to objectively assess the facts, drawing out the various possibilities but not draw conclusions.

(ii) Criminal

A legal answer is divided into two distinct areas.

1. The Thought Processes

- (a) What is the Common Law?
 (b) What is the Statute Law?
 (i) What is the English Law?
 (ii) Isolate the Actus Reus and Mens Rea for each substantive crime.
 (c) Is there case law?
 (i) What are the leading cases?
 (ii) What are the general principles?

- (iii) How do these general principles apply?
- (iv) How do the facts of the question fit into the principles?
- (d) Is there academic law on this point?
 - (i) Are there contradictions?
 - (ii) Where are the points of difference?
- (e) Your ideas
 - (i) There is nothing wrong with having an opinion.
 - (ii) Phraseology is important. 'It is submitted that...' or 'It is respectfully submitted that...'

2. The Legal Presentation for Criminal Answers

Now that you have the basic structure of the answer in terms of English and the Legal Structure you must turn to the presentational skill.

REMEMBER; there are always two sides to every argument and then a judgement. In criminal cases the parties are called the Prosecution or Prosecutor or The Crown (the person who brings the case) v (versus) the Accused Defendant (the person who defends the action) and then there is the judge who decides the case. All parties have to be discussed in the answer if requested. As such you must take account of each party and the opposing arguments. In an answer you need to start with the Crown's case and this is followed by the defendant's and then the judgement.

- (a) **The Prosecutor** Follow the models above and look at the arguments from the claimant's point of view.
- (b) **The Accused** Follow the models above and look at the arguments from the defendant's point of view.

In each case the law may well be the same. It is your job to try to tease out the differences. Use words like MAY, MIGHT POSSIBLY, IF BUT, THEN.' Use authorities to show the differences between the principle and what the facts are in the case under consideration.

- (c) **The Judgment.** You can give an assessment of the way you think the case is likely to go but very often you are not given enough facts to draw a definitive conclusion. When making such a decision the words to use are 'BEYOND ALL REASONABLE DOUBT'.

iii) Tort

A legal answer is divided into two distinct areas.

1. The Thought Processes

- (a) What is the Common Law?
- (b)
 - (i) What is the Statute Law?
 - (ii) What is the English Law?
- (c) Is there case law establishing a precedent?
 - (i) What are the leading cases?
 - (ii) What are the general principles?
 - (iii) How do these general principles apply?
 - (iv) How do the facts of the question fit into the principles?
- (d) Is there academic law on this point?
 - (i) Are there contradictions?
 - (ii) Where are the points of difference?
- (e) Your ideas
 - (i) There is nothing wrong with having an opinion.
 - (ii) Phraseology is important. 'It is submitted that...' or 'It is respectfully submitted that...'

2. The Legal Presentation for Tort answers

Now that you have the basic structure of the answer in terms of English and the Legal Structure you must turn to the presentational skill.

REMEMBER; there are always two sides to every argument and then a judgement. In civil law the parties are called the Claimant (the person who brings the case) v (against) the Defendant (the person who defends the action) and then there is the judge who decides the case. All parties have to be discussed in the answer if applicable. As such you must take account of each party and the opposing arguments. In an answer you may need to start with the claimant's case and this is followed by the defendant's and then the judgement but this depends on the specifics of the question.

- (a) In each case the law may well be the same. It is your job to try to tease out the differences. Use words like MAY, MIGHT POSSIBLY, IF BUT, THEN.' Use authorities to show the differences between the principle and what the facts are in the case under consideration.
- (c) The Judgment. You may try to give an assessment of the way you think the case is likely to go although you are rarely given enough information to do so. If though, when making such a decision the words to use are 'ON THE BALANCE OF PROBABILITIES'

Finally, good luck!

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