BOURNE GRAMMAR SCHOOL

A-level Law Welcome Pack

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Welcome to A-level Law (AQA)

Thank you for your interest in A-level Law. This welcome pack has been designed to inspire your *thinking* about law in advance of studying the subject and to provide some essential foundation points for understanding how the law works.

I encourage you to work your way through it, taking notes along the way, with the aim of arriving at your first lesson in A-level Law armed with a ring binder folder of initial resources. You might not understand everything in this collection of resources, and I will not expect this, but hopefully you will have engaged with the subject for the first time and developed some sense of its methods, vocabulary, and workings. I will ask to see this work but not so as to formally assess it; the emphasis is on *you* to develop your independence of mind and curiosity in working through the suggested tasks and reading, and for *you* to produce as much or as little as you wish.

Before applying yourself to these tasks, it might be useful to reflect on the question, "Why should I study Law?", and to consider how others have responded to this question. Have a look at the following video clips, which might give you some insights about the value of the subject, whether at A-level or degree level, and particularly what you may gain from studying the subject:

- Farnborough Sixth Form: students discuss the benefits of A-level Law for degree-level studies in Law
  https://www.youtube.com/watch?v=4hHrQOar8Pk
- Lord Judge, interviewed by King's College, London, answers the question, "Why study Law?"
  https://www.youtube.com/watch?v=7JZPsYU4evc
- Graham Virgo, of Cambridge University's Law Faculty, discusses the benefits of studying Law – the focus is on the degree, but his comments apply generally to studies in Law; please stick with this one:
  https://www.youtube.com/watch?v=tvgu918yFcM
- Some light relief – undergraduate Law student Eve Cornwell sums up the highs and lows of studying the subject (I imagine that you will relate to this video at some point during your studies in A-level Law):
  https://www.youtube.com/watch?v=57x3Ox2X_c4&t=77s

Enjoy the next two years – I look forward to working with you. Mr Mitchell

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Please note that these tasks give a flavour of what it is like to study Law but if your main concern is finding out about the **AQA A-level Law specifications**, assessment objectives and **examination papers**, please visit https://www.aqa.org.uk/subjects/law/as-and-a-level/law-7162

Task 1 – Introduction to Law

These tasks relate to Sources A-D. Please work through these questions, as you wish. The purpose of setting them is to introduce you to some key concepts of law and to allow you to familiarise yourself with legal vocabulary. This work will <u>not</u> be assessed but I may ask to see some of your initial notes and I may refer to some of these questions and concepts in lessons.

1. Read Source A, pp6-7, and Source B, pp10-13. Try to capture in notes some of the main characteristics of law and create a table to contrast the views, outlined in Source B, of John Austin, H.L.A. Hart and Sir John Salmond.
2. Read Source B, pp13-15. Add a spider diagram to your notes containing the five elements of the 'rule of law' that the author discusses.
3. With regard to Q2, consider the following scenarios and briefly discuss whether the rule of law has been observed or breached by the actions of law enforcement in these cases:
   a) Ali, a market trader, is at home with his family when, in the middle of the night, police break into the property and arrest Ali. He is not told why and is taken into custody. He is denied access to a lawyer and told that he will be held indefinitely in a prison cell.
   b) Cedric, an ambitious politician, believes that his expenses at Parliament do not go far enough and therefore claims expenses for aspects of his personal life by falsely representing them as necessary for his role. He feels affronted when police arrive to arrest him for fraud, and his only response is "But do you know who I am? You are making a big mistake. I know powerful people."
4. Read Source A, p8, and create a table that indicates the differences between civil law and criminal law using the following criteria as a guideline:
   a) Definitions
   b) Aims
   c) Who brings the legal action?
   d) Type of legal action
   e) Burdens of Proof and Standards of Proof
   f) Sanctions or remedies?
   g) Examples
   h) Relevant courts
5. Read Source B, pp15-25 on the relationship between law and morality. To what extent, in your view, should the law reflect morality? Gather

some examples from your reading which suggest that the law overlaps with morality, along with some counter examples which suggest that there is no clear overlap between law and morality.

6. Bearing in mind your work for Q5, read the short article in Source C. Please reflect on this issue: should the creators of sick jokes be punished by the criminal law or is moral condemnation enough? Use Google to find out what actually happened next in this case.
7. With the relationship between law and morality in mind, please watch Professor Michael Sandel's Harvard lecture on morality and killing: https://www.youtube.com/watch?v=kBdfcR-8hEY Where do you stand on the trolleybus scenarios he presents? If you wish to test your own moral values, try the updated trolleybus dilemmas relating to self-driving cars: see moralmachine.mit.edu
8. Read the recent case summary in Source D. Did you agree with the decision in *R (on the application of Miller) v College of Policing*, 2020? Should there be a category of matters about which the police can investigate and deliver warnings, but which are technically non-crimes at the point of commission? Discuss whether there are any topics that are too dangerous or divisive to be discussed on social media, and if so, what should be the consequences of discussing them?
9. Referring back to earlier answers, to what extent is *R (on the application of Miller) v College of Policing*, 2020 a victory for the rule of law?
10. Read Source A, pp8-9. Write down any tips that you think may be especially useful to you in embarking on studies in law.

Source A Edited Extract from the Introduction to 'AS Law' (2008) by A. Mitchell (Routledge)

The main purposes of this Introduction are:

To consider, briefly, the question '**What is law?**'

To introduce some initial approaches to **learning the law**.

WHAT IS LAW?

Law represents a set of rules that can be **enforced** in society. The enforcement of legal rules is formal, generally taking place in courts or tribunals, and leads either to **sanctions**, in the form of punishments, or **remedies**, in the form of financial compensation or the protection of certain rights. Legal rules therefore differ from other rules of behaviour in society, such as habits, traditions and moral rules, in that they have formal consequences. This book concerns **English law**, which is the law in England and Wales. Scotland and Northern Ireland, by and large, have their own legal arrangements.

The law has significance throughout our lives – for example, ages of consent and eligibility, and laws relating to education, further and higher education, work and pensions – and even **pre-birth** (through the laws on fertilisation, embryology and abortion) and **post-grave** (through the operation of wills). Some of the dilemmas facing the courts are incredibly difficult, raising social, political and ethical considerations, as the following case focus illustrates.

Developing the subject: What sort of issues does the law deal with?

Law is a fascinating area of study because it is so wide-ranging. It covers:

Everyday situations: such as parking and road traffic law; the buying and selling of goods and land; births and marriages; medical procedures; the formation and operation of businesses.

Particular problems: such as acts of violence or property damage; accidents at work; rail or air disasters; businesses creating environmental damage; and social issues such as smoking in public places and anti-social behaviour.

Constitutional issues: such as challenges to the decisions of Government Ministers and local councils; and claims that the police have exceeded their powers and infringed the human rights of suspects.

International disputes: such as matters of extradition about terrorist suspects held in the UK and wanted for trial by other countries, and those captured abroad and sought by the UK authorities.

Let's look at cases: Some recent dilemmas faced by the courts

Consider the following questions that have had to be resolved by the courts in recent times:

Could a male prisoner, serving a life sentence in the UK, be allowed to conceive a child with his wife through artificial insemination? (*Dickson v UK,* 2007: the European Court of Human Rights held that he could.)

Could a Christian group bring a private prosecution for criminal blasphemous libel against the BBC and others in respect of the play, 'Jerry Springer: the Opera'? (*R (on the application of Green) v City of Westminster Magistrates' Court,* 2007: the Queen's Bench Divisional Administrative Court held that such a prosecution could not be brought as relevant legislation excluded it.)

Could a Christian school pupil challenge her school's uniform policy by insisting on wearing a 'purity ring' to symbolise her belief in celibacy before marriage? (*R (Playfoot) (a Child) v Millais School Governing Body,* 2007: the Queen's Bench Divisional Administrative Court held that she could not as the school's policy did not infringe her human rights.)

Could a 13 year old boy who claimed to be frightened of his father rely on a defence of duress to murder when he had assisted his father in killing the victim? (*R v Wilson,* 2007: the Court of Appeal Criminal Division could not allow such a defence to the crime of murder.)

Could a couple be permitted to use a controversial form of stem-cell 'tissue typing' to produce a child that could act as a tissue donor for their seriously ill son? (*R (Quintavelle) v Human Fertilisation and Embryology Authority*, 2005: the House of Lords found that the 'tissue typing' process could be authorised.)

Could a boy under 16 who had admitted to the criminal offence of sexual intercourse with a girl under 16 argue that his human rights had been infringed because the law treated him as the 'accused' and the girl as the 'victim'? (*E v Director of Public Prosecutions*, 2005: the Divisional Court of the Queen's Bench Division found that he could not.)

Could a parent secure a declaration that would give her the right to know about, and determine, medical treatment relating to contraception, sexually transmitted diseases and abortion for her child, aged under 16? (*R (Sue Axon) v Secretary of State for Health*, 2006: the Queen's Bench Divisional Administrative Court found that the parent could not be granted such a declaration.)

These are the sorts of issues you might encounter, and discuss, as your legal studies progress.

The American writer, **Scott Turow**, once quoted one of his lecturers at Harvard Law School as saying, 'the law . . . is so broad a reflection of the society, the culture, that it is ripe for the questions posed by any field of inquiry: linguistics, philosophy, history, literary studies, sociology, economics, mathematics'. The list could easily be added to. Many students now usefully combine their legal studies with business, geography, psychology, medicine, politics or the sciences.

CIVIL LAW AND CRIMINAL LAW

The main distinction that all students of law have to learn is between the body of rules known as civil law and those rules known as criminal law.

Civil law expresses those areas of law that deal with **legal disputes between individuals and/or businesses**. For example, disputes that relate to commercial agreements between businesses; or between an employer and employees; or following a medical operation that has gone wrong and caused injury to the patient; or situations where a consumer has bought a product, or paid for a service, which proves to be less than satisfactory. In these sorts of situations, the law will be **enforced** by those persons who feel that they have lost out or suffered harm or an injury. They will take out a **lawsuit** – which may be funded by the individual, or with help from funds set aside by the Government – against the body or person whom they believe to be legally responsible for the loss or injury. This is the process of **litigation**. The person who takes out the lawsuit (a 'litigant') is called the **claimant**, and he or she will **sue** the party he or she believes to be responsible, known as the **defendant**. The claimant will be seeking a **remedy** for the dispute or problem. The claimant will generally have the burden of proving the case. The standard of proof that will satisfy a civil court is "on the balance of probabilities" – i.e. that the claimant can show it was more likely than not that the defendant was liable for a breach of law.

The most common civil remedy is in the form of financial compensation and is referred to as **damages**. However, sometimes other civil remedies might be sought: for example, an **injunction** might be applied for in order to stop the defendant from carrying out a certain activity or practice if it is causing a nuisance. Civil lawsuits will generally begin in either the **county court** or the **High Court**, depending on the nature and size of the claim. The word 'claimant' replaced the term 'plaintiff' during reforms to the civil justice system in the 1990s.

The other main branch of law is called the **criminal law**, which concerns the relationship between citizens and the state rather than between citizens. It is concerned with **punishing** an individual or business for acting contrary to the laws of the State. While the civil law is left to the individual to enforce, victims of criminal offences will take action themselves only on very rare occasions, since the crime is an offence against the State and the State will therefore seek to bring the offender to justice on behalf of the victim. The State is represented by a number of enforcing agencies, most prominently the police and the **Crown Prosecution Service** (**CPS**), who develop the case against the accused, known as the **defendant**, so that it can be brought to court. This action is referred to as a **prosecution.** In bring the case on behalf of the state, the prosecutors have the burden of proving a criminal case and to a higher standard of proof than in civil cases. The prosecution has to prove its case beyond reasonable doubt. A successful prosecution leads to criminal **sanctions** being imposed on the defendant in the sentencing process, such as imprisonment, fines, or sentences that require services to the community. Criminal trials are heard either by the **magistrates' courts** or by the **Crown Court**, depending on the seriousness of the crime.

GENERAL POINTS ON LEARNING THE LAW

One of the main features you will encounter in studying AS Level Law is the need to remember

examples of **statute law** (Acts of Parliament) and **common law** (law developed by cases).

The titles of **statutes** tend to describe the aim, scope or subject of the legislation and the year in which the Act was formally created: for example, the **Legal Services Act 2007**. Acts are often made up of many parts, with sections and subsections within them. Sometimes you will be required to refer to one of the sections of an Act because of its legal significance: for example, in writing about the criminal law of theft, you will start with the definition of this offence in section 1 of the **Theft Act 1968**. Adopting the usual abbreviation, this book will refer to such a section as **s 1**. Statutory sections are not easy to learn, though once you have a fair understanding of the legal framework being presented by an Act, some of the individual sections become more memorable and make greater sense.

Case law, on the other hand, represents the reported facts and decisions of cases that have come before the civil and criminal law courts over the years. The more important cases form **precedents** (or principles) that may be applied in future situations. Although there is much to learn, do not let yourself be overwhelmed by cases. There may be several cases that are similar to each other, not in factual terms but in principle, so learn the principle first and then just a few main cases to illustrate this principle. Collectively these reported decisions are referred to as the **common law**.

If you find it difficult to remember cases, there are many ways of trying to overcome this. A basic aim in learning case law is to know, for each case, **what happened** and **what the court decided**. So what methods can be used? A popular method of learning cases is to give them nicknames. Take the tort case of *Grant v Australian Knitting Mills* (1936). This can be remembered as 'the case of the dangerous underpants', as the facts related to underwear that, owing to the manufacturer's negligence, caused harm to the unfortunate customer. Other methods include the use of pictures to illustrate a case. Sometimes this can be a simple representation of the case – for example, a snail in a ginger beer bottle for the landmark tort case of *Donoghue v Stevenson* (1932) – but on other occasions, an illustration will not only aid the memory but also provide a fuller understanding of the facts. Such methods are subjective and you will have your own favoured approach, but it does seem to be generally good advice to **learn by association**. Lastly, you do *not* have to learn dates of cases for examinations. Therefore, while the decision has been taken to give dates for each case so that you can appreciate how the law has developed over time, do not lose sleep trying to remember all of them.

Researching for **homework** essays throughout the year is important because you add to your knowledge about the subject and you will, through this process, remember some of the information. Discussing pieces of work with your friends is often a good idea as you learn a lot from collaborative work, and it reveals ways of improving your own work and different styles of writing which you may wish to adopt. After all, your friends may approach the subject from differing perspectives, and use other cases and examples that might spark your interest and ideas. **Debates** and **class discussion** are also very useful for appreciating differing views on the subject.

<u>Source B</u> Edited Extract from Richard Priestley's 2019 Textbook on 'Jurisprudence' (which means the theory or philosophy of Law):

WHAT IS LAW?

What is law? Throughout history, this question has taxed the minds of respected thinkers and academics from a variety of disciplines. Many different perspectives have been offered. We'll look at three.

John Austin

The legal philosopher, **John Austin** (1790-1859), in his work, **The Province of Jurisprudence Determined (1832)**, defined law as being a command issued from a superior (the State) to an inferior (the individual) and enforced by sanctions. An order backed by threats, if you like. This definition has a clear application in relation to the criminal law which we can view as commands backed up by sanctions or penalties. Whereas criminal laws are normative in that they impose duties upon us all to behave in a certain way, the vast body of civil law is really concerned with rules enabling us to do things we choose to do, for example, to get married, make a will or enter a contract. We are not obliged to do these things and, therefore, not all laws can be referred to as commands.

Moreover, commands, in the sense of forced obedience by the State can be challenged. One need look no further than to the process of judicial review, the **Human Rights Act 1998 (HRA 1998)** and recourse to the European Court of Human Rights. For example, section 4 HRA 1998 permits the courts to issue a declaration of incompatibility to statutes that infringe the **European Convention on Human Rights (ECHR)**. Moreover, our Parliament is constrained through its membership of the European Union from enacting legislation in contravention of its regulations and directives.

Judicial Review

R (Law Society) v Lord Chancellor (2010) is a decent example of judicial constraints on the misuse of executive powers. Here, a previous Lord Chancellor had introduced a scale of payments by way of compensation to

successful defendants in criminal cases. Section 20 Prosecution of Offences Act 1985 gave him the authority. He set a rate such that successful defendants could only recover their costs at legal aid rates. This meant that the compensation payments would fall short of the costs actually incurred by the successful defendant who had engaged defence lawyers at his own expense.

The question was whether the scale of payments was lawful. It was not, Elias LJ stating that such a change was 'one of some constitutional moment ... That a defendant falsely accused by the state will have to pay from his own pocket to establish his innocence.' And we can't have that!

HRA 1998 - ECHR

R (F) v Home Secretary (2010) is an example of how the HRA 1998 can bite. Here, the provision in section 82 Sexual Offences Act 2003 of a lifetime requirement of those on the sex offenders register, who had been sentenced to 30 months' imprisonment or more for a sexual offence, to keep the police notified of where they are living and of travel abroad, was declared to be incompatible with a person's rights under Article 8 ECHR. It was the absence of any right to a review that rendered the notification requirements incompatible.

European Union

Where an Act of Parliament is in conflict with EU law and the European Court of Justice (ECJ) has declared that Act to be invalid, it is now clear from *R v Transport Secretary ex P Factortame* (1991) that the courts will regard the Act as being unenforceable and set it aside. **(Note to reader: written prior to s 38(1) of the EU (Withdrawal Agreement) Act 2020, which restores sovereignty to the UK Parliament as the conclusion of the Brexit process.)**

In *Factortame*, the UK's Merchant Shipping Act 1988 was held by the ECJ to be unenforceable because it discriminated against nationals of other member states. This was accepted by the House of Lords.

This was a truly remarkable decision, in that for one of our courts to stay the implementation of an Act of Parliament (essentially, set it aside) would normally be a contempt of Parliament.

Thus, certainly, the word 'command' is too austere for today's body of laws.

Professor H.L.A. Hart

H.L.A. Hart (1907-1992), Professor of Jurisprudence at Oxford, in his book, **The Concept of Law (1961)**, identified five elements which had to co-exist to create a legal system.

These were rules which, firstly, either forbade certain conduct or compelled certain conduct on pain of sanctions - criminal law;

second, rules requiring people to compensate those whom they injured - civil law, for example tort or contract;

third, rules stating what needs to be done in certain 'mechanical' areas of law such as making a contract or a will - civil law;

fourth, a system of courts to determine what the rules are, whether they have been broken and what the appropriate sanction is criminal and civil courts and arbitration procedures;

and, lastly, a body whose responsibility is to make rules and amend or repeal them as necessary Parliament and European courts.

As you can see, Hart's understanding of laws is more comprehensive than Austin's but he was writing around 170 years later and legal systems as they develop become more complex. Our legal system does encompass all five of Hart's elements.

Sir John Salmond

So, it is very difficult to sum up in a sentence what law is. Perhaps, the most adequate attempt to do so was by as the New Zealand judge, **Sir John Salmond** (1862-1924), who stated in his book, **Jurisprudence or the Theory of the Law (1902)** that law was:

'The body of principles recognised and applied by the state in the administration of justice. Or, more shortly: the law consists of the rules recognised and acted on in courts of justice.'

Characteristics of law

We can usefully examine the characteristics of law by adopting Sir John Salmond's definition.

This 'body of principles' amounts to a system of rules. The application of these rules by 'the state in the administration of justice' is by way of a sanction for

their breach, enforced through the courts. Law, then, combines authority (the state, here Parliament) and force (the courts).

The type of sanction will depend on the type of rule breached. In the criminal sphere, the sanction might be a fine or imprisonment. In the civil law, it will be a remedy such as damages or an injunction. The Offences Against the Person Act 1861 provides examples in criminal law. On the civil side, damages may be awarded in the tort of negligence for personal injuries. And injunctions to restrain a defendant from committing a wrongful act.

Laws are made by Parliament or through our system of precedent, known as the common law.

These rules, or laws, apply universally. They are underpinned by the rule of law.

I emphasised the rule of law and so I will just stop here for a discussion on its meaning and importance.

The rule of law

The modern appreciation of the rule of law owes a great deal to **A.V. Dicey** (1835-1922), Professor of Law at Oxford, who coined the expression, 'the rule of law'. In his book, **An Introduction to the Study of the Law of the Constitution (1885)**, he laid out its characteristics. For our purposes, the essential characteristics of the rule of law are as follows (I'll let some quotations speak for themselves):

(1) The supremacy of law

This means that all persons (individuals and government) are subject to law.

Dicey: 'No man is above the law … every man, whatever be his rank or condition, is subject to the ordinary law of the realm and amenable to the jurisdiction of the ordinary tribunals.'

Sir Edward Coke (1552-1634), an English judge: 'The rule of law is better than that of any individual. The King himself ought … to be subject … to the law, because the law makes him King.'

Dicey: 'With us every official, from the Prime Minister down to a constable or a collector of taxes, is under the same responsibility for every act done without legal justification as any other citizen.'

Dr Thomas Fuller (1654-1734) a physician, preacher, and intellectual: 'Be you never so high, the law is above you' (famously repeated by Lord Denning in *Gouriet v Union of Post Office Workers* (1977), when he thought the Attorney General of the day had overstepped the mark).

(2) Equality before the law

Dicey: 'The rule of law in this sense excludes the idea of any exemption of officials or others from the duty of obedience to the law which governs other citizens or from the jurisdiction of the ordinary tribunals.'

So, as **Lord Bingham**, a former Law Lord, stated in his well-known book, **The Rule of Law (2010):**

'So, if you maltreat a penguin in the London Zoo, you do not escape prosecution because you are Archbishop of Canterbury; if you sell honours for a cash reward, it does not help that you are Prime Minister. But the second point is important too. There is no special law or court which deals with archbishops and prime ministers: the same law, administered in the same courts, applies to them as to everyone else.'

That said, some differences justify differentiation. **Lord Bingham** cited children as an example:

'Children are, by definition, less mature than a normal adult, and should not therefore be treated as a normal adult would expect to be treated.'

(3) An independent judiciary

Lord Woolf (born 1933), a former Lord Chief Justice:

'One of the most important of the judiciary's responsibilities is to uphold the rule of law, since it is the rule of law which prevents the Government of the day from abusing its powers. Ultimately, it is the rule of law which stops a democracy descending into an elected dictatorship. To perform its task, the judiciary has to be, and seen to be, independent of government. Unless the public accepts that the judiciary are independent, they will have no confidence in the honesty and fairness of the decisions of the courts.'

Dicey: 'No man is punishable or can be lawfully made to suffer in body or goods except for a distinct breach of law established in the ordinary legal manner before the ordinary Courts of the land.'

(4) The importance of legal procedure

Hence the need, for example, for judicial review to correct *ultra vires* acts by public officials (i.e. those acts that go beyond the powers delegated to public officials by Parliament).

(5) Statutory interpretation

Lord Woolf: 'One of the twin principles on which the rule of law depends is the supremacy of Parliament in its judicial capacity. The other principle is that the courts are the final arbiters as to the interpretation and application of the law. As both Parliament and the courts derive their authority from the rule of law, so both are subject to it and cannot act in a manner which involves its repudiation.'

LAW AND MORALS

THE RELATIONSHIP

Morality is based on beliefs and values as to what is right and wrong. Within any given society or community, dominant moral values emerge which influence the conduct of its members. Therefore, moral values cannot be conceived as something that are absolute or universal. They must be seen as socially variable and dependent on what a particular society or social group at a particular time defines to be right or wrong.

Various factors may influence moral values, society for example. What is regarded as immoral in one society may not be so in another and, therefore, moral beliefs are culturally relative. In some countries or cultures, polygamy is accepted; in others, the law requires the marriage to be monogamous otherwise the crime of bigamy will have been committed.

Importantly, moral beliefs and values are (usually) not enforced by the state. The only sanctions for breaking a moral code are those of contempt, ridicule, avoidance or expulsion from the society of one's fellows.

Laws on moral issues are generally determined through the public consensus. In other words, the public's opinion can influence the development of the law on such issues, and generally the dominant view will be reflected within the legal system. This is because we are governed by consent. If a law is considered to be so wholly immoral as to be bad law, then it will not be respected. In fact, it will be ignored or flouted.

Clearly, then, laws must have some kind of moral underpinning. That stated, it is important to note that our moral beliefs - our ideas of right and wrong change over time.

We'll take a look at how law and general morality coincide and diverge.

The coincidence

Equity

Consider the system of equity: it is based on moral principles of fairness.

An outline understanding of history and principles of equity is important for you to know in order to get the point over to the examiner.

Over the centuries, the common law developed several defects. The courts stuck rigidly to their own rules of procedure which became disproportionately important. Indeed, failure to observe these very strict rules could lead to a total denial of justice. Delay was endemic in the system. Bribery and corruption were commonplace.

Moreover, the only remedy available at common law was (and still is) damages. Hence, equity introduced the remedies, *inter alia*, of injunction and specific performance.

The system of equity was developed through successive Lord Chancellors. Originally, he was an important member of the King's Council (essentially the Government before the rise of Parliament in the 16th century). He acquired his own department, the Chancery, which became a court. The Lord Chancellor was usually a cleric and so his court was a court of conscience. Indeed, the Lord Chancellor was often referred to as 'the keeper of the king's conscience'. Consequently, in the Chancery Court, the law was often ignored in favour of what was equitable. A separate law developed and from 1615 onwards where law and equity conflicted, the rule of equity prevailed. Therefore, we had two parallel legal systems running - law and equity.

The Judicature Act 1873 essentially fused the two systems in that any court can now dispense law and equity.

Equitable principles were formulated through a number of maxims. They are applied by the courts when it is right to do so in the circumstances of the case; though none of the equitable maxims is a binding rule.

Examples of maxims include the following:

'He who seeks equity must do equity'. Hence, a party who claims equitable relief is required to act fairly towards his opponent.

'He who comes to equity must come with clean hands'. The assumption here is that the claimant must demonstrate that he has not acted with impropriety in respect of the claim.

'Delay defeats equity'. Where a party has delayed seeking a remedy, then equity may refuse its assistance.

Religion

Many legal principles coincide with moral and religious beliefs. As Lord Hodson stated in *Shaw v DPP* (1962):

'Even if Christianity be not part of the law of England, yet the common law has its roots in Christianity.'

And in The Influence of Religion on Law (1989) **Lord Denning** stated:

'The common law of England has been moulded for centuries by Judges who have been brought up in the Christian faith. The precepts of religion, consciously or unconsciously, have been their guide in the administration of justice.'

Denning went further, stating:

'Without religion, there can be no morality, there can be no law'.

The Good Samaritan - 'Love thy neighbour' - is a prime example, expressed in the torts of negligence and nuisance. Consider *Donoghue v Stevenson* (1932) which laid the foundation stone of the modern law on negligence. The decision here was 'based upon a general public sentiment of moral wrongdoing for which the offender must pay' (Lord Atkin).

'The **rule that you are to love your neighbour becomes in law you must not injure your neighbour**; and the lawyer's question 'Who is my neighbour?' receives a restricted reply. You must take reasonable care to avoid acts or omissions which you can reasonably foresee would be likely to injure your neighbour. Who then in law is my neighbour? The answer seems to be persons who are so closely and directly affected by any act that I ought reasonably to have them in contemplation as being so affected when I am directing my mind to the acts or omissions which are called in question.'

You will find 'Good Samaritan laws', if I might use this expression, elsewhere. Rescuers, for example. Those who go to the aid of others in peril are not expected to show the normal standard of care required of others. In a rescue situation, there isn't time to think - people often act instinctively. In *Day v High Performance Sports Ltd* (2003) the claimant, Affiong Day, was some 25 feet up a climbing wall at the Castle Climbing Centre in Stoke Newington when she realised that she was not tied on. Attempt at rescue failed when the rescuer, who had hold of her, lost his grip. She suffered very serious brain injury when she fell to the ground. There was no liability on the part of the rescuer, Hunt J stating that the rescuer was 'not to be judged on the same standards as those which would apply if he had time to consider all possible alternative courses of action.'

And if a rescuer is injured in a rescue, then he may sue for damages. In *Tolley v Carr* (2010) the claimant received damages when he was severely injured whilst attempting to remove a crashed car from the fast lane of a motorway.

The Courts - Common Law

The courts are the guardians of morals - *'custos morum'*, to use the Latin! This has been well established over centuries. In *R v Delaval* (1763) the defendants were indicted for conspiracy to induce a young girl to become a prostitute. As the former Lord Chief Justice, **Lord Mansfield** (1705-1793) stated:

'This Court is the *custos morum* of the people, and has the superintendency of offences *contra bonos mores*' (against good morals).

Hence, the courts will protect moral values, as reflected by majority opinion. This is well expressed by a range of common law offences: outraging public decency, conspiracy to corrupt public morals and keeping a disorderly house.

The behaviour in *R v Laing* (2009), where Philip Laing urinated on a War memorial, is a classic example of the first offence. *R v Gibson* (1991) is another. Here, an artist exhibited earrings made from freeze-dried foetuses of three to four month's gestation. A conviction for outraging public decency was upheld.

Shaw, that I mentioned earlier, is an example of conspiracy to corrupt public morals. Shaw produced a magazine, for sale to the public, called the 'Ladies Directory'. Prostitutes paid for advertisements in the magazine, listing their names and addresses, photographs and descriptions of their specialities. The House of Lords upheld his conviction.

Shaw was followed in *Knuller v DPP* (1973) where the appellants had published a magazine, 'International Times', which displayed advertisements placed by readers inviting others to contact them for homosexual purposes.

In *R v Quinn* (1961) the Court of Appeal defined the keeping of a disorderly house as, *inter alia*, 'a house conducted contrary to law and good order … calculated to injure the public interest so as to call for condemnation and punishment.' Here, two club proprietors were convicted of keeping a disorderly house. It was shown that in the course of 'strip-tease' performances at the club there was serious indecency which was, in some respects, revolting and the public was invited to resort to the premises for indulging in 'perverted and revolting practices'.

These common law offences show that the relationship between law and morals wholly *coincided* with the contemporary majority view. Why? Because the jury decides the issue. In *Shaw*, Lord Hodson put it this way:

'Since a criminal indictment is followed by the verdict of a jury …, the function of *custos morum* is … performed by the jury … In the field of public morals, it will thus be the morality of the man in the jury box that will determine the fate of the accused.'

Moving on, **Lord Devlin** (1905-1992), a Law Lord, argued that the law should intervene to safeguard the fabric of society. This is well illustrated by the following cases.

Smith v Hughes (1960) concerned the interpretation of section 1(1) Street Offences Act 1959 which provides:

'It shall be an offence for a common prostitute to loiter or solicit in a street or a public place for the purpose of prostitution.'

The court considered appeals against conviction under this section by six different women. In each case the women had not been 'in the street'; one had been on a balcony and the others had been at windows of ground floor rooms, with the window either half open or shut. In each case the women had been attracting the attention of men passing by, by calling out to them or by tapping on the windows, but they argued that they were not guilty under this section as they were not literally 'in a street or public place'.

As you can see, this case involves the issue of statutory interpretation. A literal interpretation would result in the ladies being found not guilty. However, the

judges decided to apply the mischief rule and the convictions stood. This case arose shortly after the introduction of the Act in question and so by adopting a liberal interpretation the judges were expressing their disapproval of the activity concerned and the corrupting influence it could have on others.

Lord Parker said:

'For my part I approach the matter by considering what is the mischief aimed at by this Act. Everybody knows that this was an Act to clean up the streets, to enable people to walk along the streets without being molested or solicited by common prostitutes. Viewed in this way it can matter little whether the prostitute is soliciting while in the street or is standing in the doorway or on a balcony, or at a window, or whether the window is shut or open or half open.'

R v Brown (1993) concerned a group of homosexual men who had willingly participated in the commission of acts of sado-masochistic violence on each other. They were convicted of assault occasioning actual and grievous bodily harm contrary to sections 47 and 20 Offences Against the Person Act 1861. They appealed to the House of Lords arguing that since all participants had consented and the activities took place in private, the law had no reason to intervene. Their convictions were upheld by a majority decision on the grounds that public policy demanded such acts to be treated as criminal.

Lord Templeman said:

'Society is entitled and bound to protect itself against a cult of violence. Pleasure derived from the infliction of pain is an evil thing. Cruelty is uncivilised.'

Thus, the House expressed a firm moral stance. Many civil rights campaigners were outraged by the decision declaring that it was like 'Big Brother' in the bedroom, meaning that we were being told what sexual practices we could engage in, or rather not engage in, within the privacy of our own homes.

Whether the homosexual background to the Brown case influenced the House's decision, is a question which becomes more pertinent when one considers *R v Wilson* (1996) which provides a heterosexual contrast. In this case, a husband burnt his initials into his wife's buttocks with a hot knife. The branding was not only with his wife's consent but at her instigation. The trial judge reluctantly held himself to be bound by the decision in *Brown*, stating that 'anyone who injures his partner, spouse, or whatever, in the course of

some consensual activity is at risk of having his or her private life dragged before the public to no good purpose'.

Even though the issues of harm and consent may seem to make this case indistinguishable from *Brown*, the Court of Appeal in *Wilson* held that no offence had been committed. Their decision rests on the proposition that the branding was no different to having a tattoo and therefore it would be an incongruous situation for tattooing and body piercing to be lawful if the activity concerned were illegal. Also, the court stated that 'consensual activity between husband and wife, in the privacy of the matrimonial home, is not, in our judgment, a proper matter for criminal investigation, let alone prosecution'.

From these cases you should now recognise that judges are not scared of upholding moral standards. Thus, they are reinforcing **Lord Devlin**'s belief that areas of private or sexual morality are still the law's concern.

Of course, the courts' judgments will often reflect changing moral views. As **Lord Keith** said in *R v R* (1992):

'A live system of law will always have regard to changing circumstances.'

In this case it was held that a husband could be held responsible for raping his wife, thus changing the previously held common law position which dated back hundreds of years. In History of the Pleas of the Crown (1736), Chief Justice Sir Matthew Hale wrote:

'The husband cannot be guilty of rape committed by himself upon his lawful wife, for by their mutual matrimonial consent and contract the wife hath given herself up this kind unto her husband which she cannot retract.' In other words, it was assumed that by marrying, a woman automatically consented to having sex.

A very similar situation arose in *R v Miller* (1954), a few decades earlier than *R v R*. Here, a husband and wife separated and the wife commenced divorce proceedings against her husband. The husband raped his wife but the court decided that no offence had been committed due to the old common law assumption.

The judges did not seize the opportunity in this case, as they did in *R v R*, to develop the law by changing it. Why not? Probably because back in 1954, the

traditional perception of a woman's role was that of a home-maker living in the shadows.

You will find that most cases used to illustrate the enforcement of morals tend to involve the criminal law. However, issues concerning morality arise also in the civil law. Take contract, for example. In *Pearce v Brooks* (1866) a prostitute had entered a contract of hire purchase of a carriage from which she plied her trade. She fell behind with her payments and the plaintiffs sought to recover the outstanding money owed. The court declined to enforce the contract against her. It was held that the plaintiff had no cause of action because the carriage had been 'furnished to the defendant for the purposes of enabling her to make a display favourable to her immoral purposes'.

Parliament - Legislation

There's no doubt that the1960s ushered in a more relaxed - and tolerant - view of morality by opinion formers. At that time, it was the mainstream view that abortion, divorce, homosexuality and illegitimacy were morally reprehensible. And so it could be argued that Parliament was ahead of its time in introducing legislation to ameliorate and decriminalise such 'immoral' behaviour during that decade. As such, you can argue that public morality is influenced by law reform.

That said, it is notable that all of this legislation was enacted through private member's bills. You can take it from this that the Government of the day did not want to be seen to be promoting this legislation for fear of voter disapproval. Hence, politically, for the Conservative Party, it might have been better to have introduced the Marriage (Same Sex Couples) Bill in 2013 via a private member. It seems clear that the Bill split the Party in Parliament and its supporters in the country. In any event, there is no doubt that ensuing Act was ahead of its time as far as a large section of opinion is concerned.

Returning to the 1960s, the **Abortion Act 1967** decriminalised abortion.

The **Divorce Reform Act 1969** introduced 'no-fault' divorce.

The **Sexual Offences Act 1967 (SOA 1967)** legalised homosexual acts in private between consenting adults. However, it is notable that some forty-odd years after the SOA 1967, some homosexuals still wish their sexuality to be unknown. This proved to be disastrous for David Laws MP in 2010. His

concealment of his homosexuality caused an expenses scandal which led to his resignation.

Illegitimate children were given recognition for the first time by the **Family (Law Reform) Act 1969**. They could rank equally with legitimate children, where their parents had died intestate (i.e. without having made a Will).

It is arguable from this that statutes on moral issues that are ahead of their time, so to speak, have the effect of shaping our views on morality, rather than reflecting our views. Few would argue nowadays that homosexual acts in private between consenting adults should be criminalised.

European Convention on Human Rights

The **European Convention on Human Rights (ECHR)** lays down a code of morality to which all the signatories are honour bound to adhere. **The Human Rights Act 1998 (HRA 1998)** incorporated the ECHR into our domestic legislation.

One effect is that our courts must read and give effect to statutes in a way which is compatible with Convention rights. Article 3 ECHR provides that 'no one shall be subjected to torture or to inhuman or degrading treatment or punishment'. *Lodhi v Home Secretary* (2010) is a case in point. Here, there was a real risk that if the claimant, a national of Pakistan, was extradited to the United Arab Emirates (UAE), his rights under Article 3 would be breached. The general prison conditions in the UAE encouraged harsh treatment, especially of foreigners, and brutality in punishments. Hence, the decision of the Home Secretary under section 12 Extradition Act 1989 to extradite the claimant was quashed.

Incidentally, I am surprised that cases such as *Brown* continue to hold water. Although Article 8 ECHR guarantees respect for privacy, in *Brown v United Kingdom* (1997) the European Court of Human Rights upheld the convictions.

Convention Relating to the Status of Refugees

For those States, such as the UK, that have signed up to the **Convention Relating to the Status of Refugees** (the 'Contracting States') there are moral imperatives as to how we must treat refugees. For example, Article 33(1) provides:

'No Contracting State shall expel or return a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be

threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.'

J and T v Home Secretary (2010) is a case in point. Here, it was held that foreign homosexuals seeking asylum must not be returned to their country of origin if they cannot live openly as homosexuals without fear of persecution. Iran and Uganda were mentioned as particularly dangerous countries in this respect.

The Divergence

Moving on, clearly most laws do not have moral basis. Laws laying out the procedure to effect transactions are quite obviously relevant. For example, the rules as to the formation of contracts and the making of Wills. This even includes large parts of the criminal law: regulatory offences come to mind.

Also, consider that no one is under a moral duty to come to the aid of another who is in danger. This is because there is no liability where someone neither creates a risk nor undertakes to do anything to avert it. These are known as 'pure' omissions. As a judge once remarked:

'There would be no liability in negligence on the part of one who sees another about to walk over a cliff with his head in the air, and forebears to shout a warning.'

Suppose, then, you were walking along the bank of a canal one day and you saw a child who was drowning. You could have saved the child's life easily: the depth of the canal was only one metre and there was no current. In fact, you could have stretched out your hand to save the child from the canal bank.

Instead you chose to walk on and the child drowned. You would not be liable in negligence because you owed no duty to the child to save its life. You owed a moral duty to the child for which there is no penalty this side of Heaven!

Laws resulting from directives and regulations by the European Union (EU) are also relevant. Many of them merely harmonise the laws of the Member States, for example in food and product labelling.

Conclusion

So it is clear that a relationship does exist between law and morality.

That said, we live in an increasingly multi-cultural and secular society, where moral values and beliefs are wildly different. Accordingly, it is difficult to find any consensus on some important moral issues.

Source C Article from A-level Law Review: No joke, but is it a crime?

This short article looks at the outrage caused by a viral video of a group of people laughing whilst burning a cardboard building, representing Grenfell Tower, on a bonfire, and the questions it raised about whether this was a criminal act and whether those responsible should be prosecuted.

Background

Grenfell Tower was a 24 storey block of flats in North Kensington, West London. It was engulfed by fire on the evening of 14 June 2017 and tragically claimed the lives of 72 people. The victims were largely from ethnic minority communities; 31 of the victims were UK nationals. The fire led to an outpouring of grief and anger from the local community, and political disagreement about why the fire had happened and the extent to which government policies might be blamed for certain failings at the local level. The Prime Minister, Theresa May, said that the "whole country was heartbroken by the utter devastation" of the fire.

The bonfire incident

A group of men, ranging in ages from 19 to 55, filmed the burning of the cardboard tower and were laughing and jeering as it went up in flames. Some of the remarks, and the cartoon-style representation of Muslim people in the building, appeared to have been motivated by racism. They then shared the film on social media and it went viral as more and more people shared it. It was soon reported to the authorities and there was an outcry in the media. The video was widely condemned as vile, sickening, despicable, callous and unacceptable, with the Prime Minister, the Mayor of London, the Metropolitan Police and Grenfell Tower survivors among those condemning it in the strongest terms. Six men subsequently handed themselves in to the Metropolitan Police.

Is a vile, sickening and callous joke actually a crime?

A starting point would be to recognise that a grossly offensive action of this nature would certainly offend against morality, but there is a distinction to be drawn between legal rules and moral rules. In considering the overlap between the two, Lord Mustill argued in his dissenting judgement in *Brown* (1994) that public disgust was not a sufficient reason for the state to criminalise immoral conduct that had taken place in private. (It should be noted that those in the majority in *Brown* clearly took the view that it was in the public interest for the law to condemn private immorality.) The fact that the men in the Grenfell Tower effigy case filmed the event and then placed it on social media, where viral sharing could bring it to public attention, might elevate the matter beyond private morality. However, Nazir Afzal, an experienced Crown Prosecution Service prosecutor, told The Daily Mail newspaper that a similar case from 2003, where a group of people burned a Gypsy caravan with the number plate P1KEY, had not met the tests for prosecution in criminal law.

So was the Grenfell Tower burning effigy video just deeply immoral or might it satisfy the requirements of the criminal law?

The **harm principle**, as expressed most vividly by John Stuart Mill's 'On Liberty' – "The only purpose for which power can be rightfully exercised over any member of a civilised community against his will is to prevent harm to others" – is at the heart of the criminal law. The conduct in this case clearly caused offence to many – interestingly this did not prevent it being shared widely, even by news organisations – but is this sufficient for "harm"? As Jonathan Herring (Oxford) points out, one of the problems with perceiving the taking of offence as a harm is that it enables "one set of people to impose their moral values on others". It was also the case that the harm was not directed at anybody present at the private bonfire, and when it became public, the taking of offence was not restricted to the survivors of the Grenfell fire and relatives of those who had died, but a much wider cross-section of society.

The criminal law might potentially protect against the harm of taking offence in four ways when we consider the Grenfell tower effigy video:

- s.4A of the **Public Order Act 1986** (offence of causing intentional harassment, alarm or distress)
- s.1 of the **Malicious Communications Act 1988** (offence of sending electronic communications with intent to cause distress or anxiety)
- s.1 and Schedule of the **Racial and Religious Hatred Act 2006** (offence of stirring up hatred against persons on religious grounds)
- s.5(3) of the **Criminal Law Act 1977** and common law offence of outraging public decency (carrying out an act, with others, which outrages minimum standards of public decency and is in a place accessible to the public)

In discussing the applicability of these crimes, it is also necessary to take into account the human right of freedom of expression, as found in **Art.10** of the **European Convention on Human Rights,** and incorporated into English law by the **Human Rights Act 1998**. Veteran campaigner and activist Peter Tatchell eloquently argued on a BBC discussion programme that the importance of protecting freedom of expression in society outweighed the calls for criminal prosecution in this instance, as over-use of the criminal law could have a stifling effect on legitimate free speech elsewhere.

None of the crimes listed above are clear-cut in their application to the Grenfell case which lead to consideration of two further principles of criminal law: **maximum certainty** and **fair labelling**. For conduct to be a crime, the legal rules must be clear, certain and readily available to the public. It is a matter of concern that in this case, there is a great deal of uncertainty about whether a crime has been committed or not. Furthermore, the criminal offences should match the conduct involved (the 'fair labelling' aspect) but as the CPS have at least four options to consider – and it is not an exhaustive list – there is the danger that a crime will be interpreted so as to fit the conduct, rather than the conduct itself being suggestive of a clear rule of the criminal law. Other principles that might apply here include the principle of **minimal criminalisation** (is it absolutely necessary to call this incident a

crime?) and **proportionality** – should the Metropolitan Police be prioritising the criminalisation of callous actions that have already attracted moral disapproval over crimes of physical violence?

Conclusion

At the time of writing it is not known whether the men involved in burning the Grenfell tower effigy will definitely be prosecuted in the criminal courts for their actions. To do so would of course hold the men responsible for blameworthy conduct, which is a feature of the criminal law, but whether it is justifiable in this case, as the foregoing discussion indicates, remains very much open to question.

Andrew Mitchell, November 2018

Source D Edited Case Summary by Richard Priestley, with notes by Mr A. Mitchell:

R (on the application of Miller) v College of Policing, 2020:

The College of Policing, the first defendant in this case, was formed to issue guidance for policing. As such it formulated the Hate Crime Operational Guidance (HCOG). The Guidance included a policy on what were termed 'non-crime hate incidents'. These were defined as *'any non-crime incident which is perceived by the victim, or any other person, to be motivated (wholly or partially) by a hostility or prejudice'*. These 'non-crime hate incidents' had to be *'recorded regardless of whether or not they are the victim, and irrespective of whether there is any evidence to identify the hate element'*.

The claimant, Harry Miller, a businessman, former policeman and founder of the campaign group, Fair Cop, posted 31 sarcastic and satirical tweets on transgender issues. Examples included: 'If we asked Holly and Jessica who murdered them, I imagine they wouldn't say 'A woman called Nicola.' This was a comment on a report that Ian Huntley, the Soham murderer, was identifying as a woman called Nicola and that activists were supporting his right to do so. And 'I was assigned Mammal at Birth, but my orientation is Fish. Don't mis-species me.'

A Mrs B complained to the second defendant, Humberside Police, on the basis that the tweets were transphobic. The police responded by contacting the claimant. Part of the interview was as follows.

Police (PC Gul): 'I need to check your thinking'.

Claimant: 'So, let me get this straight, I've committed no crime. You're a police officer. And you need to check my thinking?'

Police: 'Yes'.

Claimant: 'Have you any idea what that makes you? 'Nineteen Eighty-Four' is a dystopian novel, not a police training manual.'

PC Gul warned the claimant that if he 'escalated' matters then the police might take criminal action. He did not explain what escalation meant. Subsequent statements by senior police officers (Assistant Chief Constable

(ACC) Young and A/Inspector Wilson) described the claimant's tweets as 'transphobic', referred to the possibility of such incidents 'escalating', and stated that a 'correct decision was made to record the report as a hate incident'.

In an application for judicial review the claimant claimed: (1) that the HCOG policy was unlawful as being in violation of the common law and/or Article 10 European Convention on Human Rights (ECHR); and even if the policy was lawful (2) his treatment by the police violated his Article 10 rights.

Article 10 of the ECHR provides:

(1) Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.

(2) The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

Before I turn to what the court decided in this case, I wish to explain why this is a good illustration of what you may be studying over the next two years. Here you have a dispute between a citizen and the police, with the latter in turn relying on guidance from the College of Policing. The police officers have alleged that the citizen has made remarks that were "non-crime hate incidents" which may escalate to crimes, whereas the citizen is maintaining that he has engaged in a lawful and legitimate debate about a matter of public policy. The police officers are seeking to fulfil their duty of protecting the public and the citizen is seeking to assert his rights; both believe that the law is on their side. The citizen wishes to test this by taking his case to court.

If you were a judge, what would you decide about this dispute?

In this particular case, the Administrative Court (High Court, Queen's Bench Division) held that the HCOG was lawful at common law and under the ECHR but the police's treatment of the claimant was an unlawful interference with his Article 10 rights. The police's actions led the claimant reasonably to believe that he was being warned not to exercise his right to freedom of expression about transgender issues on pain of potential criminal prosecution.

The HCOG was lawful because the police had the power at common law to record and retain a wide variety of data and information. Cases made clear that no statutory authorisation was necessary in relation to non-intrusive methods of data collection. The mere recording by the police of the Claimant's tweets as non-crime hate speech pursuant to HCOG did not amount to a formality, condition, restriction or penalty imposed in response to his speech so as to amount to an interference within the meaning of Article 10(1). The mere recording of an incident of itself had no real consequence for the claimant.

However, interferences with the right to freedom of expression include anything which impedes, sanctions, restricts or deters expression. The undisputed facts plainly showed that the police interfered with the claimant's right to freedom of expression. The effect of the police turning up at his place of work because of his political opinions must not be underestimated. To do so would be to undervalue a cardinal democratic freedom. In this country we have never had a Cheka, a Gestapo or a Stasi. We have never lived in an Orwellian society.

Task 2: Primary and secondary legislation

The main focus of Task 2 is on Source F on the Law relating to Coronavirus. However, to help you understand Source F I have included a lengthy textbook extract in the form of Source E, which I would like you to treat as a reference point rather than as something you would read from start to finish. You might also wish to look at https://www.youtube.com/user/UKParliament/featured to help you understand how Parliament works and makes laws; if you scroll down the suggested webpage, you should find Teach Parliament videos, aimed at students. Please work through the following questions, making notes as you wish along the way:

1. The Government used an Act of Parliament (primary legislation) and statutory instruments (secondary or delegated legislation) to respond to the Coronavirus emergency (see Source F). Why might it be argued that primary legislation is potentially less useful in an emergency than secondary legislation?
2. The enforcement by police of a statutory instrument, **The Health Protection (Coronavirus, Restrictions) (England) Regulations 2020,** led to some controversy earlier this year. Please list some of the reasons why this might be the case. If in doubt also glance through the Delegated Legislation section of Source E (pp53-68), where some of the disadvantages of law making in this way are briefly explored.
3. This is a research task: go to www.legislation.gov.uk/ and search for coronavirus legislation, including the Acts named in Source F, and for statutory instruments relating to coronavirus. You should be able to find all the available legislation, which you can try to read if you wish (though I doubt whether your patience will be rewarded during the 30+ statutory instruments). Do any of the legal provisions surprise you? Does the law cover areas that you had not anticipated?
4. Please read Source E (pp39-48), which discusses the 'Influences on Parliamentary Law-making' and contains some inspiring stories of successful campaigns leading to changes to the law. If you could change the law in any way, what would you choose to do?
5. Please read and make notes on Source E (pp33-39; and pp47-53), providing revision charts on the main elements of Parliamentary law-making and the formal legislative (law making) process, showing the progress through Parliament of a Bill to an Act of Parliament.

Source E Edited Extract from Richard Priestley's textbook on English Legal System (2020)

SOURCES OF LAW - LEGISLATION

On the basis that you are starting your legal studies here, then welcome!

Now, what we will be doing in this part of the course is laying the foundations to the building blocks of your knowledge. In other words, you will be learning the verbs and nouns of law, and those of you who study languages will readily understand my metaphor!

To begin, we need to know where law comes from.

CHAPTER 1. PARLIAMENT

We have three main sources of law:

- those made by Parliament i.e. Acts of Parliament and known as **statute law**;
- **common law**, made up of judgments by the courts over many years;
- and **European Union law (EU law)**.

Now, there is a pecking order in terms of the authority of these three sources of law. Clearly, common law is subservient to statute law in that Parliament can overturn judgments and judges must follow and enforce Acts of Parliament. However, it might surprise you to hear that EU law is superior to statute law – or certainly was prior to the **EU (Withdrawal Agreement) Act 2020**. In that case, you might say, what is the point in having Parliament at all? Well, that is another subject!

Anyway, Parliament is The Queen (the Crown), Lords and Commons; and formally described as 'The Queen in Parliament'. We'll take a quick look at them, firstly the House of Commons.

House of Commons

The 650 Members of the House of Commons, known as Members of Parliament (MPs), are elected by the public. Most MPs belong to a particular political party. The party with most MPs forms the Government. Currently, the

Conservative Government has a majority of 80, with 365 seats, which they won in a General Election in December 2019.

General Elections are held every five years under the **Fixed-term Parliaments Act 2011**. That said, there is provision in the Act to call an election earlier if the Government loses a vote of confidence; alternatively, where two-thirds or more MPs vote to call an early election there will be an election, as in 2017 and 2019.

House of Lords

Secondly, the House of Lords consists of wholly unelected Members (over 800). The Lords, like the Commons, is a debating chamber which reviews government policy and matters of current concern. Issues of national moment are often debated in an atmosphere which is free of the influence of strict party discipline.

Importantly, the House of Lords is a **revising chamber**. That is to say, it scrutinises proposed Government legislation and suggests amendments. It is said to be a constitutional watchdog with a role, particularly when considering legislation, of making the government think again when necessary and of ensuring that a government does have popular support for those of its measures which are controversial and far-reaching.

And it's also worth noting that there have been more defeats for the Government in the Lords because the Conservatives do not have a majority.

Unsurprising, then, that in 2018 the House of Lords inflicted fifteen defeats on the Government over the **European Union (Withdrawal) Bill** (aka 'Great Repeal Bill').

Powers of the House of Lords

As regards its powers, the **Parliament Acts 1911 and 1949** completely removed the right of the Lords to reject bills certified by the Speaker of the House of Commons as money bills. So, in legislative matters concerning, say, tax changes, the Lords exercises no power whatsoever. The point is that the expenditure of public money must be seen to be in completely democratic hands.

The Acts removed from the House of Lords the power to veto a Bill. Instead, the Acts introduced a **delaying power of one year for rejected Bills**, with the sole exception of legislation extending the lifetime of Parliament. This means

that, should the Commons wish to revive a rejected Bill, it would have to be reintroduced in the next parliamentary session. And note here that the Acts permit the Commons to force the Bill through Parliament if the Lords has rejected same for two years over three successive parliamentary sessions.

The power has been very rarely used in this manner and was thought to be available only for matters of constitutional importance. This appears not to be the case. A celebrated use was to force through the **Hunting Act 2004** which outlawed hunting wild animals with dogs.

Incidentally, do not confuse the legislative function of the Lords with what used to be (up until August 2009) its former judicial function. The House of Lords used to be the final court of appeal for the United Kingdom. This function was exercised through the Appellate Committee of the House by Lords of Appeal in Ordinary, better known as the Law Lords. The final court of appeal for the United Kingdom is now the Supreme Court.

The Crown

As regards the Crown - well, what is it? Literally, the Crown is a chattel, an object under guard in the Tower of London, which is worn on the head of the Sovereign on state occasions as a badge of royal office, rank and power. However, the term 'Crown' has been extended to refer to the individual entitled to wear the Crown - the Monarch or Sovereign. In law the Sovereign, Queen or King, is the Crown.

The Crown as formal head of government

The Sovereign is the formal head of government - you can see this for yourself when the Queen presides over the State Opening of Parliament, an occasion of splendour and pageantry. On this occasion, the Queen reads a speech prepared for her by the government of the day, setting out the legislative agenda for the coming parliamentary session. And the Queen formally welcomes foreign leaders on state visits. In 2019 it was the USA President, Donald Trump.

The Crown is a symbol of authority, but the actual role of the Monarch in the executive, legislative and judicial spheres is strictly limited by constitutional convention. Thus, all the royal powers are exercised by the Government in the name of the Crown and it is quite inconceivable that any Monarch would actually exercise them unilaterally. For example, the last occasion when a

Monarch (Queen Anne) refused to assent to a bill (the Scottish Militia Bill) was in 1707!

However, the power is still there and, whether you are a Monarchist or a Republican, it is a potent argument against the abolition of the monarchy that whilst it is in existence nobody else - say, a budding Hitler or Stalin - can exercise these powers.

The Royal Prerogative

Importantly, the Crown has formidable powers which are not derived from statutes. These powers are known as the Royal Prerogative and include making treaties and declaring war.

That said, the Royal Prerogative is essentially in the hands of the Prime Minister alone. So, Tony Blair, a former Prime Minister, by using royal powers, could have declared war on Iraq in 2003 without the authority of Parliament. However, for his own political safety, he chose to have Parliamentary approval.

Note that the extent of the Royal Prerogative was laid out by the Supreme Court in *R (Miller) v Secretary of State for Exiting the European Union* (2017). The question was whether the Government was constitutionally entitled to give notice of a decision to leave the European Union (EU) by exercising the Royal Prerogative. It was held that an Act of Parliament was required: leaving the EU would effect a change in UK domestic law. This could only be done by statute.

Fountain of Justice

The Crown is also the fountain of justice and thus the courts are the Queen's courts and the judges are the Queen's judges. Prosecutions are brought in the name of the Queen ('Regina', Latin, meaning Queen, and shortened to 'R'; similarly, Rex, Latin for King).

Assessment of Parliament

The Commons

You can see the democratic element in Parliamentary legislation: in essence, we, the people, make the law through voting for our Members of Parliament who are the legislators - the law makers - on our behalf.

That said, it is a very imperfect form of democratic law making. You see, MPs might represent their constituents but they usually do not represent the

majority of them and they are not their delegates in the sense that they are not forced by their constituents to vote for or against any proposed legislation. In fact, MPs will almost invariably vote on party lines than for any other reason, particularly when leant on by their Whips i.e. those MPs appointed to ensure party discipline.

Amazingly, it was revealed in 2014 that whips might cover up serious indiscretions - even child sex abuse - in order to guarantee loyalty. Tim Fortescue, a former whip, stated:

'Anyone with any sense who was in trouble would come to the whips … and say: 'I'm in a jam, can you help?' ... It might be a scandal involving small boys … They'd come and ask if we could help. And if we could, we did ... One of the reasons is, if we could get a chap out of trouble, he'll do as we ask forever more.'

Some have even been known to change party allegiances! And 2019 was a bumper year! In all, eight Labour and three Conservative MPs left in order to sit as an independent group. This independent group named itself as Change UK, then the Independent Group for Change after some of the group drifted away to join the Liberal Democrats. It's now known as The Independents, claiming not to be a political party. These MPs did not win any seats in the 2019 General Election.

The Lords

Further, Parliament does not merely consist of the elected House of Commons. Although sweeping changes have been made to the composition of the Lords by the **House of Lords Act 1999** which removed all but 92 of the then 751 hereditary peers after a great deal of fuss, the fact remains that its members are still unelected. In fact, some argue that the position is worse - or at best there has been no change - since the Act because the creation of new peers is now almost entirely a matter of patronage, essentially in the gift of the Prime Minister (as are most honours). Arguably, this is dangerous, especially with allegations in 2006-07 that peerages could be bought.

Debate on reform of the House of Lords has dragged on for over a hundred years. All political parties agree that had we started from scratch in creating a constitution, then there would not be such an institution. Simply put, it's not democratic. The problem in reform is twofold: an elected House of Lords might challenge the supremacy of the House of Commons because it has been

elected; and the nature of the House of Lords - its revising and scrutinising role requires experts as members, rather than professional politicians who have known no other life.

Before hitting the finishing line, note that the **House of Lords Reform Act 2014** provides for the resignation, retirement, or removal from the Lords through non-attendance or conviction of a serious offence. And that the **House of Lords (Expulsion and Suspension) Act 2015** provides for the expulsion or suspension from the Lords for matters of misconduct.

The Crown

Note that the Crown still has certain powers which I mentioned earlier.

Parliamentary supremacy

I'll end this section to acquaint you with what is known as Parliamentary supremacy, or sovereignty.

The legal supremacy, or sovereignty, of Parliament means the absence of any legal restraint upon the legislative power of the United Kingdom Parliament. **A.V. Dicey**, a noted nineteenth century jurist, expressed the notion when he wrote in **The Law of the Constitution (1885)** that:

'The principle of Parliamentary sovereignty means neither more nor less than this, namely that Parliament thus defined (Queen, Lords, Commons) has the right to make or unmake any law whatever; and, further, that no person or body is recognised by the law of England as having a right to override or set aside the legislation of Parliament.'

Now, what flows from this is that nobody can mount a challenge to the legality of laws made by Parliament and because of this, Parliament cannot bind its successors. In other words, an Act made by one Parliament can subsequently be repealed either by the same Parliament or, more often, by another Parliament after a General Election.

Logically, therefore, it is impossible to entrench a statute in an effort to make the legislation permanent and impossible to remove. Whilst this is of true, by virtue of the **European Communities Act 1972 (ECA 1972)** - which provided for our entry into Europe - Parliament surrendered sovereignty to the European Union in its ability to make laws in key areas. In short, European Union law - which accounts for over 50% of UK law - is superior to our statute law - for the time being! **(Note to reader: this was written prior to s 38(1) of the EU**

(Withdrawal Agreement) Act 2020, which restores sovereignty to the UK Parliament as the conclusion of the Brexit process.)

INFLUENCES ON PARLIAMENT

Just about all legislation is through Government policy derived from its manifesto pledges which are made at the start of a General Election; or - in matters of European Union law - at the behest of the European Union. For example, the Conservative Party Manifesto 2019, committed to "get Brexit done" and it has concluded this, legislatively, through the **EU (Withdrawal Agreement) Act 2020**.

'Think-tanks'

You should be aware that the policy of Government and Opposition can be shaped by official and unofficial 'think-tanks' - organisations that put forward policies in line with their own political persuasion. Examples include Policy Exchange on the centre-right of politics; the Institute for Fiscal Studies in the centre; and the Fabian Society on the centre-left.

Backbench MPs

Interestingly, not all legislation is initiated by the Government itself. A backbench member of Parliament (Commons or Lords) may introduce his very own bill which is called a Private Members' bill (PMB) - but these bills have little or no chance of success, simply due to lack of available Parliamentary time.

Ballot

Strangely, you may think, the best chance a backbencher has to present a bill is to win a ballot - a lottery, if you like! You see, there is a ballot at the beginning of a Parliamentary session which permits approximately twenty members to present a bill and gives them priority in time specifically allocated to private members' bills. The top six in the draw are guaranteed a full Friday's debate on the Second Reading of their bill ('Readings' are stages in a bill's progress).

Even if an MP comes top in the ballot, the chances of his bill becoming law without Government help - are not very high and, if the bill is controversial, just a little better than remote because the bill may be blocked by one of the many procedural devices which opponents may use, particularly talking out the bill or artificially prolonging debate on an earlier bill.

That said, there have been some notable examples of successful private members' legislation through the ballot procedure, especially the great reforming social legislation of the 1960s: the **Sexual Offences Act 1967**, **Abortion Act 1967**, **Theatres Act 1968** and the **Divorce Reform Act 1969** decriminalised, respectively, intimate homosexual acts and abortion; abolished the role of the Lord Chamberlain as a censor of live theatre; and greatly facilitated divorce.

Not to be outdone by the 1960s, Lord Lester's private members' bill, the **Civil Partnerships Bill 2002**, introduced in the House of Lords (and later adopted by the Government), was enacted in 2004. The **Civil Partnership Act 2004** permits same-sex couples to obtain broadly similar rights (and obligations) as married couples by forming a civil partnership at a registry office.

You should note that these subjects: abortion, divorce, homosexuality *et cetera* were quite controversial at the time. And still are! Hence, if a Government was sympathetic to reform in any of these areas, then the best route would be via a private member introducing a bill. That way, MPs could vote freely according to their consciences and the Government would have kept its hands clean, so to speak. All the more surprising, then, that the **Marriage (Same Sex Couples) Act 2013** started life as a Government bill and opposed by Conservatives of the more traditional persuasion. Hence, a "vote-loser" according to political observers, though hindsight shows it has not proved to be a deal-breaker for Conservative voters.

Ten Minute Rule

Before moving on, I should mention the Ten Minute Rule. This allows an MP to argue for a new bill in a speech lasting no more than ten minutes. This may be opposed. However, if successful, the bill is deemed to have had its first Reading.

Civil servants

What is often overlooked is the impact civil servants have in developing and shaping legislation. This is because they act as policy advisers to ministers. Clearly, then, civil servants play a key role; though without being privy to their meetings, it is impossible to gauge their personal influence on a particular piece of legislation.

There are also a number of organisations and individuals whose function is to suggest, encourage or even demand a change in the law.

Law Commission

The best-known official law reform agency is the **Law Commission (LC)**, an independent body established by the **Law Commissions Act 1965**. The role of the LC is to review the law of England and Wales with a view to its systematic development and reform. The LC is made up of five full time Commissioners together with support staff.

At any one time, the LC will be engaged on between 20 and 30 law reform projects. Whether a report is ever enacted is often as much to do with available Parliamentary time as it is with Government inclination; however, its success is that two thirds of Law Commission reports eventually find their way into the statute book.

Reforms by the Law Commission

Scandalising The Court (2012) is a report which recommended that the offence of scandalising the court (a form of contempt of court, consisting of the publication of statements attacking the judiciary) should be abolished. And section 33 **Crime and Courts Act 2013** duly abolished the offence.

Other examples of Acts of Parliament initiated by the LC include the **Fraud Act 2006** which greatly simplified certain aspects of the law of theft.

Consolidation by the Law Commission

The LC does not just look at the areas of law that require reform but also seeks to consolidate statutes into one statute. You see, an area of law may well be made up of different statutes passed at different periods. Often these statutes amend the wording of previous statutes. Consolidation is a kind of tidying up exercise.

Codification by the Law Commission

Codification is a continental system of legislation and, in our case, would mean essentially that all our common law and statutes would be lumped together into a single code. This, the Commission claims, would ‘make the law more accessible to the citizen and easier for the courts and litigants to understand and handle’. That may be so but it is unlikely to happen! For instance, the Commission has been working on a criminal code for the last thirty-odd years

which shows no more signs of bearing fruit in the next thirty-odd years than it has done in the last. That said, a criminal code has its supporters, notably a former Lord Chief Justice, **Lord Bingham** (1933 - 2010).

Other reform objectives of the Law Commission

Other reform objectives of the LC include the removal of anomalies in the law; the simplification and modernisation of the law; and the repeal of unnecessary and obsolete laws. This work is carried out by means of Statute Law (Repeals) Bills. The **Statute Law (Repeals) Act 2013** is the most recent. And it is certainly the largest that the LC has ever produced: repealing 817 whole Acts and part repealing 50 others. The earliest repeal is from around 1322 (Statutes of the Exchequer).

***Ad hoc* commissions / inquiries**

Apart from the Law Commission, there are a number of ad hoc commissions for example, Royal Commissions, committees and inquiries - that are often set up in reaction to a particular event or controversy. Some reports may induce Parliament to legislate.

Some public inquiries may be subject to the **Inquiries Act 2005**. I don't think I need to go into any real detail here. In any event, section 17 is of interest because it permits evidence to be given on oath. What this means is that anyone lying under oath commits the offence of perjury, contrary to section 1(1) **Perjury Act 1911**.

Stephen Lawrence Inquiry 1999

Perhaps the best known report is The Stephen Lawrence Inquiry, by Sir William Macpherson, into the murder of Stephen Lawrence, a Black man murdered in a racially motivated attack.

The report triggered a **Law Commission report, Double Jeopardy and Prosecution Appeals (2001)**, which recommended - in the case of murder - the abolition of the double jeopardy rule: an ancient rule that one cannot be tried twice for the same offence. You see, some of those thought responsible, including one Gary Dobson, had been acquitted of Stephen's murder. These proposals became law by section 75 **Criminal Justice Act 2003**.

And in *R v Dobson* (2011) the Court of Appeal concluded that there was enough new evidence to allow Gary Dobson's original acquittal for Stephen's murder to be quashed. In 2012 Dobson was found guilty and jailed for life.

Public opinion and the media, incidents and events

Public opinion is a potent force in driving through law reform, whether it is through letters (or emails, of course) from constituents to their MPs or the constituency party itself leaning on an MP. It seems that every week there is 'a cause for concern' that gets people shouting, 'There should be a law against it!'.

Expenses Scandal

Public opinion boiled over in 2009 when the Daily Telegraph revealed confidential information on MPs' expenses. Even cynical observers of politicians were staggered at the level of petty thieving and outright corruption.

In order to do something, the **Parliamentary Standards Act 2009 (PSA 2009)** was hurriedly passed through Parliament. An important element of the PSA 2009 is the creation of a new public body, the **Independent Parliamentary Standards Authority**, responsible for MPs' salaries and expenses.

Legal highs

The sale of legal highs has been a cause for concern for some time. Hence, the **Psychoactive Substances Act 2016** makes it an offence to produce or supply psychoactive substances i.e. any substance intended for human consumption that is capable of producing a psychoactive effect.

Dangerous Dogs

Do note that, when allied to intense media pressure, there are dangers that governments can be influenced into passing legislation hurriedly in a charged atmosphere. Of course, the media loves scare stories and most of them are just that. However, some are not. The **Dangerous Dogs Act 1991** (DDA 1991) came about because of widespread public concern - fuelled by lurid press reports about children who had been attacked by pit bull dogs - and it is now agreed that this Act was badly thought through. Indeed, Mr Justice Rougier in *R v Ealing Court, ex parte Fanneran* (1996) said about the Act:

'It seems to me that, while acknowledging the need to protect the public ... the Dangerous Dogs Act bears all the hallmarks of an ill-thought-out piece of legislation, no doubt drafted in response to another pressure group.'

You see, the Act demanded the compulsory destruction of these dogs, for example if they were not muzzled in public. Trivial incidents, such as the temporary removal of a pit bull's muzzle so that it could drink from a stream, could lead to perfectly innocent dogs being destroyed, and this rule caused widespread outrage not least amongst the magistrates and judges who were required to enforce the law. As it happens, the severity of the law is now tempered by amendments introduced by the **Dangerous Dogs (Amendment) Act 1997** which, *inter alia*, provides that destruction is no longer compulsory.

e-petitions

In 2011 the Government's e-petitions website was launched. The public can create an e-petition about anything that the government is responsible for and if it gets at least 100,000 signatures, it will be eligible for debate in the House of Commons. The first e-petition to pass the threshold in August 2011 was entitled 'Convicted London rioters should lose all benefits' in response to riots that month. In fact, this e-petition passed the threshold only one week after the launch.

Individual campaigns

The campaigns of individuals are worth a mention.

For example, that of PC Dave Wardell, whose dog, Finn, was stabbed and seriously hurt as he protected him from an attacker. In 2019, 'Finn's Law' was enacted in the shape of the **Animal Welfare (Service Animals) Act 2019** which makes it an offence to harm a police dog.

Another example is Gina Martin, who campaigned for the law to be changed after a man took a picture up her skirt. The result was the **Voyeurism (Offences) Act 2019**, containing a new criminal offence of "upskirting".

Lobbying

Many organisations lobby MPs to change the law.

Business and industry

Business and industry in the shape of organisations such as the Federation of Small Businesses - and particularly the **Confederation of British Industry (CBI)** lean on governments to protect their interests. As the CBI states: 'No other business organisation has such an extensive network of contacts with government ministers, MPs, civil servants, opinion formers, and the media'.

The same, of course, can be said for the Trade Unions, led by the **Trades Union Congress**. Note that the trade unions now provide 90% of the Labour Party's income. Hence, the relationship is very close.

The problem, really, is about how political parties are funded. Labour by the unions and their consequent influence; and Conservatives by business groups and so on. The only way round this is for parties to be funded by the taxpayer. Speaking personally, I wouldn't stand for it!

Charities and interest groups

Charities and interest groups (of which there are hundreds) lobby for a change in the law. Some are quite successful. The children's charity, **NSPCC**, state that their 'lobbying and influencing activities have contributed to changes' in legislation aimed at protecting young people.

There are also exceptionally persistent and noisy groups (some would say violent, though others disagree - animal rights activists spring to mind) as well as those who go about their business quietly. For example, the **Consumer's Association (known as Which?)** successfully lobbied to end the monopoly of solicitors in conveyancing which was implemented by the **Administration of Justice Act 1985**.

Secret lobbying

Secret lobbying is an area of which we know nothing. Because it's secret! However, some small light was shone on this dark corner in a sting operation by Channel 4 in 2010. Here, former MPs were filmed willingly touting to help a fictitious lobbying firm amend laws in return for cash.

In 2013 the Sunday Times secretly filmed three peers revealing their willingness to flout rules banning them from using their power and influence in parliament for paying clients.

Perhaps in response to these revelations, the Government passed the **Transparency of Lobbying, Non-party Campaigning and Trade Union Administration Act 2014.** The Act provides for a statutory register of lobbyists.

Judicial decisions

Decisions by the courts adverse to the wishes of the Government may provoke a response. *R v Davis* (2008) is an example of both points. Here, the appellant was convicted of murder solely due to the evidence of anonymous witnesses.

This offended the common law rule that the defendant in a criminal trial should be confronted by his accusers in order that he may cross-examine them and challenge their evidence. Hence, the trial was held to be unfair and the conviction unlawful. A month after this judgment, Parliament passed the **Criminal Evidence (Witness Anonymity) Act 2008** which abolished the common law rule.

Human Rights

Certain human rights were laid down by the **European Convention on Human Rights (ECHR)** which was drawn up by the Council of Europe in 1950, essentially in reaction to the appalling human rights abuses committed by the Germans before and during World War II. Parliament is inhibited from legislating in contravention of the ECHR, now incorporated in the Human Rights Act 1998 (HRA 1998).

Section 4 HRA 1998 provides that our courts may declare an Act to be incompatible with the ECHR, in which case the Act should (not must) be amended/repealed, as the case may be.

R (Steinfeld) v International Development Secretary (2018) is a decent example. Here, Rebecca Steinfeld and Charles Keidan had objections to the institution of marriage. Instead, they wanted to enter into a civil partnership. However, they were ineligible under sections 1 and 3 **Civil Partnerships Act 2004** because they were of the opposite sex. The Supreme Court declared that the sections were incompatible with Article 14 (protection against discrimination on grounds of sex) taken in conjunction with Article 8 (right to family life).

As I stated, a declaration informs Parliament that legislation is incompatible with the Convention, but the legislation remains in force. It is left to Parliament to take the policy decision, whether or not to amend the legislation. This may be implemented by a Minister making a **remedial order** under section 10 HRA 1998 to amend the legislation to bring it into line with the Convention rights.

Note that our Governments are honour-bound to implement the judgments of the European Court of Human Rights (ECtHR). *Goodwin v United Kingdom* (2002) is a good example. Here, a post-operative male to female transsexual claimed that the UK was in breach of Article 12 ECHR (the right to marry) as (at the time) marriages in the UK could only take place between couples of the opposite biological sex. The ECtHR held that Article 12 had been breached and

accordingly the **Gender Recognition Act 2004** was passed to provide for transsexuals to marry.

Although we are honour-bound, the Government has long refused to give voting rights to prisoners, despite a ruling by the ECtHR in *Hirst v United Kingdom* (2005) that the refusal violated the ECHR (free expression of the opinion of the people in the choice of the legislature). *McHugh v United Kingdom* (2015) is just the latest case where the ECtHR confirmed the violation. That stated, in December 2017 it was agreed that a small number of prisoners would be given the right to vote. This would include prisoners released on temporary licence, home detention curfew and remand.

Lastly on human rights, be aware that the pace of change may increase subsequent to the implementation of the HRA as new 'rights' are discovered.

European Union

Be aware that European Union law accounted for over 50% of UK legislation prior to the completion of Brexit – and much will remain during the transition process and adaptation of existing EU rules in domestic law.

CHAPTER 3. FORMAL UK LEGISLATIVE PROCESS

The parliamentary process for enacting legislation is where parliamentarians (i.e. MPs) come into their own, so to speak. You see, it is where they can exert their influence in scrutinising bills as they pass through the legislative stages.

Pre-legislative procedure

Before we move on to the actual mechanics, I just wish to say a few words about some pre-legislative procedure.

Green Papers

On a matter of real legislative significance, a Green Paper (so called as it used to be printed on green paper) may be issued by the appropriate Government Minister. A Green Paper is a consultation paper which lays out the Government's broad intentions and invites comment from any interested parties.

White Paper

Following the Green Paper, the Government will issue a White Paper which contains definitive proposals for legislation and this is often published at the same time as the relevant bill.

Cabinet Committees

The whole flow of legislation is controlled by a Cabinet Committee, made up of the most part by Cabinet Ministers - senior government ministers - and known as the Legislation Committee, which determines the content of the legislative programme for any parliamentary session and surveys progress during the session. When proposed legislation has found a space in that programme the bill will be drafted by highly skilled lawyers called Parliamentary Counsel.

Types of Bill

Incidentally, there are essentially two kinds of bill: **public bills** which are introduced by MPs or peers and are divided between government bills and private members' bills; and **private bills** which deal with local or personal matters and are introduced by persons outside Parliament by means of a petition. The overwhelming majority of bills are public and, indeed, are our only concern because they affect the whole country.

Procedure

Most government bills are presented first to the House of Commons. However, legislation is also sometimes presented first to the Lords, particularly important legislation which is not politically controversial or has a legal subject-matter. **Assuming that a bill is presented to the House of Commons first, the procedure will be as follows:**

First Reading

There will be a First Reading (the term 'Reading' refers to a practice which was common in the days before the invention of printing when the full contents of a bill would be read out loud to the House to inform MPs of its contents) which is a formal stage and there is no debate. Essentially, the name and the purpose of the Bill is read out.

You will have gathered here that there is no discussion or examination of the merits of a bill on its First Reading. However, prior to this formal stage, the Government sometimes publishes a draft bill which will be examined by a committee of MPs.

Second Reading

Moving on, the Second Reading is a general debate on the principles of the Bill. Again, a vote is taken and if there is a majority the Bill moves on to its **committee stage.**

Committee Stage

Here, the Bill will usually be examined in detail - and, if thought necessary, amended in a vote - by a public bill committee (formerly known as a standing committee) of MPs, who have an interest or knowledge of the Bill and are specifically chosen to reflect Party strength.

Incidentally, the whole House may consider certain bills at Committee Stage. In general, these consist of bills of constitutional importance, those requiring a very rapid passage and certain financial measures, including at least part of each year's Finance Bill.

Report Stage

This committee then reports back to the whole House - known as the Report Stage - which must approve amendments, if any, made by the committee. There is then a detailed debate where further amendments may be moved.

Third Reading

The final Commons stage of the Bill is the Third Reading often taken directly after the conclusion of Report. This enables the House to take an overview of the Bill, as amended in Committee or on Report, and to permit it to proceed, or otherwise, as might seem appropriate. Substantive amendments cannot be made at this stage. Except for bills of major political or constitutional importance, the Third Reading is usually very short, or indeed it may be taken formally.

House of Lords

The Bill is then sent to the House of Lords, where broadly the same procedure is followed, save that the committee stage is normally taken by a committee of the whole House of Lords and amendments can be made at Third Reading as well as at Committee and Report. If the House of Lords amends the Bill it must be sent back to the Commons for Commons' approval (in a "ping pong" process) because both Houses must agree on the wording of the Bill.

Royal Assent

Finally, under the **Royal Assent Act 1967** the Royal Assent is notified to the House of Commons by the Speaker and to the House of Lords by the Lord Speaker.

The Crown, as the third element in Parliament's composition, must give Assent to a Bill for it to pass into law. The Assent is merely a formality. As we know, Assent has not been withheld since 1707, but every Bill is still required to go through the procedure appointed.

After signification of Royal Assent, the Bill becomes an Act.

Evaluation

Before I sign off, I want to point out some strengths and weaknesses in our Parliamentary system.

Advantages

I suppose the main point is that Parliament makes law in a democratic fashion through its elected representatives. I mentioned this in the first section and pointed out some facets of Parliamentary democracy that were perhaps less than democratic. In any event, the public have a chance at least every five years to vote a Government out in a General Election.

Of some importance is that the stages between the issue of consultation papers right through to the Royal Assent permit detailed consideration by all politicians and interested parties of the likely effects of the particular legislation. This permits the law to be reshaped and fashioned as it passes through the Parliamentary process.

Another advantage is that powers may be delegated to other bodies, essentially for them to make their own laws because, for example, they have specialist knowledge. This is known as delegated legislation.

The law always strives to be certain. The doctrine of Parliamentary supremacy means that everybody knows where they stand in relation to the law, simply because the legality of Acts of Parliament cannot be challenged by anybody. Moreover, with certainty, lawyers can advise clients accurately and thereby reduce the need for litigation.

Disadvantages

Governments, for political reasons, undertake too much legislation and in so doing impose excessive demands on the capacity both of the professional draftsmen of legislation and of Parliament to consider the details of the legislation fully.

The sheer volume of legislation was noted by the Office of the Parliamentary Counsel in a review: **When Laws Become Too Complex (2013) (OPC 2013)**. It noted that between 1983 and 2009 Parliament approved over 100 criminal justice Bills, and over 4,000 new criminal offences were created! From 2007-2012, there were 215 Acts of Parliament. Put another way, in an average year, there will be 20,000 pages of laws enacted via statutes, statutory instruments and EU regulations.

This puts an enormous strain on the legal profession (especially myself!) and the courts. As a result, there have been prosecutions that should not have happened because nobody knew that the law had changed! In *R v Chambers* (2008) it was discovered that seven years previously the law on tobacco smuggling had been changed - in the meanwhile, there had been 1,000 people prosecuted! The court observed that all this is illustrative of a wider problem:

'To a worryingly large extent, statutory law is not practically accessible today, even to the courts whose constitutional duty it is to interpret and enforce it.'

Legislation is very complex. Certainly, the man-in-the-street will have no understanding. In fact, the OPC 2013 stated: 'Unexpectedly, even barristers, judges and academics may find legislation unclear and, occasionally, quite problematic.'

There is a problem with the quality of legislation. As to its cause, **H.W.R. Wade**, a law professor and noted textbook writer, noted that 'the most shocking feature of our legislative process is the way in which parliamentary scrutiny is eliminated on the pretext of shortage of time'. And the **House of Commons Political and Constitutional Reform Committee** concluded in its report: **Ensuring standards in the quality of legislation (2013)**, that 'the majority of poor quality legislation results from either inadequate policy preparation or insufficient time being allowed for the drafting process, or a combination of the two'.

Poor quality legislation can come about through the undue haste with which governments force legislation through Parliament. We have seen the effect of too much haste in the comments made by Rougier J about the **Dangerous Dogs Act.**

One specific weakness of the parliamentary machine itself is the committee stage. Many MPs find the line-by-line scrutiny of legislation an unsatisfactory and inadequate means of examining a bill. Further, the bills are usually complicated; the proceedings are very detailed; the membership is not specialised; the committees divide on party lines; and there is too little time to cover the whole bill.

Of particular importance to the layman is that many Acts of Parliament are almost unreadable. So, why cannot Parliamentary Counsel draft legislation that is understandable to the man in the street? Well, the problem is that words in statutes have to be interpreted by the courts and thus they must have a precise meaning in law. This is difficult because, for example, words in our language are capable of having different meanings.

Reform

A number of proposals have been put forward to remedy the situation.

In 1975, the technique of legislation was examined by a Committee appointed by the government and chaired by Sir David Renton MP. The Committee's report identified a number of areas of concern and made 121 recommendations, some of which have been implemented. The Committee noted that the language used in many Acts was too complex because draftsmen tried to provide for every eventuality.

Of particular concern to the Committee was the need to consolidate Acts of Parliament - presently one of the functions of the **Law Commission**. In other words, to bring together in one Act all of its successive amendments. This would provide more transparency and easier access. I think this is the best way forward: all the law concerning one subject in one place. Even the Government's own website, **legislation.gov**, is not up-to-date with any amendments to statutes by subsequent legislation. Pretty well every statute carries a warning: 'There are outstanding changes not yet made by the editorial team.' Hence, the website is not a reliable source of law for layman and lawyer alike.

A modest innovation has occurred since 1997. Now all bills are accompanied by **explanatory notes** which is a great help to lawyers and layman alike.

DELEGATED LEGISLATION

An Act of Parliament will often enable some other person, a government Minister for example, or a body such as a local authority to make detailed law within a framework set out by the Act. This is known as delegated (or secondary) legislation because the enabling Act or 'parent' Act has, in effect, delegated responsibility for making law to the other.

Now, at this stage, you may be wondering why Parliament needs to delegate law making duties and responsibilities to others and the more enquiring of you will wonder whether this is a good idea. After all, on the face of it, it is hardly democratic. Well, I will deal with these two points a little later.

In the meanwhile, we will take a look at the different forms of delegated legislation.

Statutory instruments

Statutory instruments (SIs) are laws made by Government ministers. They are a major means of delegating legislation. In 2018 there were 1387 new SIs, covering every aspect of daily life imaginable.

As a help, try to imagine each SI as a kind of mini Act of Parliament. It has a parent - the enabling Act - but it is law in its own right.

Procedure

Some Acts provide that SIs must be laid before Parliament for its approval of them. Hence, they are published in draft form.

Some of these draft SIs (around 10%) are subject to an **affirmative resolution**. In other words, the SI must be laid before Parliament for its specific approval, otherwise it will not become law; though Parliament cannot amend an SI.

The majority of draft SIs are subject to a **negative resolution**, that it is to say the particular statutory instrument will be law unless rejected by Parliament within a specified time, usually 40 days including the day on which it was laid.

There is also the **super-affirmative procedure** which requires a Minister to have regard to representations, House of Commons and House of Lords

resolutions and their Committee recommendations that are made within 60 days of laying, in order to decide whether to proceed with the SI and (if so) whether to do so as presented or in an amended form.

Moving on, SIs were created by the **Statutory Instruments Act 1946**. SIs give Government Ministers the power to make laws, known as Orders, Rules or Regulations, in their own particular areas of responsibility.

Orders in Council (often considered separately from SIs)

Starting at the top, so to speak, there are Orders in Council (OICs) made by the Queen and the Privy Council (a body largely made up of senior politicians). For example, the **Emergency Powers Act 1920** and the **Civil Contingencies Act 2004** provide that The Queen, acting on the advice of the Privy Council, has the authority to make OICs in times of emergency when Parliament is not sitting.

So, as soon as an Order in Council is made, then it is law. You can see one advantage here: speed.

OICs are used for a wide variety of purposes, and particularly where an ordinary statutory instrument made by a Minister would be inappropriate, as in the case of an Order which transfers ministerial functions, or where the Order is in effect a constitutional document extending legislation to, say, the Channel Islands or the Isle of Man.

Other Orders

Orders are made by government ministers and come in a number of flavours. Three are worth a mention.

Commencement Orders

Commencement Orders (COs) bring into effect one or more sections of an Act of Parliament.

COs are widely used because it is often the case that not all of an Act comes into force on the date it receives the Royal Assent. For example, the **Criminal Justice Act 2003** raised the maximum sentencing powers for the Magistrates' Court to 12 months' imprisonment for an individual offence. This is not yet in force and so the maximum sentence remains at six months.

Legislative Reform Orders (LROs)

LROs were created under the **Legislative and Regulatory Reform Act 2006.**

The Government sometimes adds a provision to a Bill which gives Ministers certain powers to make LROs that remove or reduce burdens resulting directly or indirectly from legislation; or promote principles of better regulation.

Provisos include the requirement of a need for the legislation; that there is no unreasonable interference with rights and freedoms; and no constitutional significance.

Remedial Orders

Remedial Orders (ROs) are used to correct shortcomings in existing legislation.

This is particularly relevant to decisions relating to the European Convention on Human Rights. Section 4 **Human Rights Act 1998** (HRA 1998) provides that a court may declare a legislative provision to be incompatible with the Convention. In which case, section 10 HRA 1998 provides that a minister may make an RO.

The same would apply where the European Court of Human Rights (ECtHR) holds that an individual's Convention rights have been infringed. For example, in *Gillan and Quinton v United Kingdom* (2010) the ECtHR held that the scope of section 44 Terrorism Act 2000 was too wide. The section permitted the use of stop and search without any requirement of reasonable suspicion. Hence, the **Terrorism Act 2000 (Remedial) Order 2011** repealed section 44.

Rules

Rules are used to make procedural laws: they set out how things should be done, rather than what should be done. For example, the Civil Procedure Rules and the Criminal Procedure Rules govern the running of, respectively, the civil and criminal court systems.

The Civil Procedure Rule Committee makes the Rules in exercise of the power conferred by section 2 Civil Procedure Act 1997. Similarly, the Criminal Procedure Rule Committee under section 69 Courts Act 2003.

Regulations

Regulations are used to make substantive law - often amendments to existing primary or secondary legislation - and are frequently very detailed and technical in nature.

Regulations enable the law to be maintained and kept up-to-date.

Perhaps the widest scope for Regulations was to be found in relation to European Union law, for under the European Communities Act 1972 they gave effect to provisions of the EU – prior to the **EU (Withdrawal Agreement) Act 2020.** For example, the **Tobacco and Related Products Regulations 2016** gave effect to the EU Tobacco Products Directive.

Bylaws

Bylaws are second in importance to statutory instruments. These are usually made by local authorities to regulate matters within their own area such as parking restrictions; though bylaws can also be made by other bodies such as universities and public corporations. Here, they will cover matters affecting public behaviour.

Remember, there will always be an enabling Act. For example, Westminster City Council, by virtue of the **Westminster Act 1999** is empowered to make regulations concerning ice cream vendors!

Evaluation

Now, you may think that regulations concerning ice cream vendors is no big deal. It isn't and this is another reason why delegated legislation is necessary. You see, Parliament simply does not have time to waste in considering small points of detail and neither does it have the necessary local knowledge. Parliament doesn't have specialised knowledge either which is why so much health and safety legislation is delegated. You can see, therefore, the advantages in this type of legislation. Another advantage is that delegated legislation can be introduced quickly whereas a statute often takes months to pass the necessary stages; further, they can easily be revoked or amended where necessary.

Parliamentary control

A disadvantage that can be spotted immediately is that delegated legislation through bylaws is often made by unelected bodies such as universities and public corporations. For example, the **British Airports Authority** has powers to make rules and issue fines for non-compliance by virtue of the Civil Aviation Act 2006.

However, there is some control vested in Parliament and, indeed, the courts. Clearly, the **affirmative procedure** provides more stringent parliamentary

control, since the instrument must receive Parliament's approval before it can come into force.

Now, before a bill is enacted, the **House of Lords Delegated Powers and Regulatory Reform Committee** will consider the extent of legislative powers proposed to be delegated by Parliament to Government Ministers. The Committee is required 'to report whether the provisions of any bill inappropriately delegate legislative power' to a Government Minister.

That said, there is no power to amend bills.

After a particular bill is enacted, there are further 'watchdogs' on proposed SIs under the particular Act.

The **House of Lords Secondary Legislation Scrutiny Committee** draws to the 'special attention of the House' any proposed SI which it considers may be flawed or inadequately explained by the Government.

And the **Joint Committee on Statutory Instruments**, comprising Lords and Commons Members, consider and, if necessary, report, not with respect to its merits but only on technical grounds, for example, whether it is badly drafted or *ultra vires* i.e. beyond the power authorised by the particular Act.

These Committees have no power to amend an SI and, to this extent, are toothless. Moreover, there is a constitutional convention (an understanding) that the House of Lords should not reject SIs.

Lastly, in the matter of Parliamentary control, there is always the point that Government Ministers - and the Prime Minister at Prime Minister's Questions may be questioned on the floor of the House about 'overweening' SIs.

Henry VIII clauses

Note that the Government sometimes adds a provision to a Bill to enable the Government to repeal or amend it after it has become an Act of Parliament without further parliamentary scrutiny. Such provisions are known as **'Henry VIII clauses'**. The term comes from the **Statute of Proclamations 1539** which stated that 'The King … may set forth at all times by authority of this Act his proclamations … [which] shall be obeyed … as though they were made by Act of Parliament'.

Note that the use of Henry VIII powers is becoming commonplace. **Westminster Lens (2017)** (a report by the Hansard Society) shows that in the

2015-16 parliamentary session, of 23 government Bills, 16 contained a total of 96 Henry VIII powers to amend or repeal primary legislation.

Henry VIII powers are controversial and we'll take another look at them at the end of this section.

So, what do we make of delegated legislation? Do we need it? Is it democratic? Would we all rather be in the South of France? Well, I know the answer to the last question! Whether or not delegated legislation is democratic depends on its type. After all, **bylaws** are usually made directly by elected councillors. If you don't like a bylaw, then vote them out at the next election! The main problem is their use by **non-elected people**. Further, there is a case that there is not sufficient Parliamentary control, or even awareness. Take negative resolutions, for example. Unless picked up by the Opposition parties, it is likely that they will become law without being questioned.

A real criticism is that statutory instruments pave the way for **sub-delegation**. In other words, law-making authority is effectively handed over to civil servants. More often than not a Minister in a particular department will be handed a list of statutory instruments to lay before Parliament and will do so without question. Worse, statutory instruments are not often debated on the floor of the House of Commons, and consequently there is very little publicity.

Critics also mention that the sheer volume of delegated legislation - 13,000 pages every year - makes it difficult to discover what the present law is on any particular subject.

R v Chambers (2008) is your classic example. The case concerned tobacco smuggling. Here, in 2006, 600kg of tobacco had been smuggled into the UK from Belgium and £66,000 of duty (i.e. tax) had consequently been evaded. Now, the **Excise Goods Regulations 1992** provided that pretty well anyone involved in tobacco smuggling could have his assets confiscated to the value of the duty evaded. As it happened, the 1992 Regulations had been amended by the **Tobacco Product Regulations 2001**. The new Regulations provided that *only* those who 'caused the tobacco products to reach an excise duty point' (i.e. the point of entry into the United Kingdom) could be made liable to a confiscation order.

Until this case, nobody had been aware of the change in the law. In fact, wrongly, for five years there had been confiscation orders made under the old law. In this instance, the appellant had not been involved in the illegal

importation, but was concerned in storing the tobacco after it had arrived in the UK. His conviction was quashed.

Brexit

Brexit requires legislation to remove EU law that will no longer be relevant to our new status. So, in March 2017 the Government published a White Paper. The Paper set out proposals for a 'Great Repeal Bill' which included converting all EU law into domestic law which would then 'continue to apply until legislators in the UK decide otherwise'.

The reasoning behind this proposal is the sheer weight of EU law. As the Paper stated:

'There are currently over 12,000 EU regulations in force … [and] 7,900 statutory instruments which have implemented EU legislation.'

Naturally, this begs the question as to how to legislate to untangle EU law that is no longer appropriate once we leave the EU. And the answer is to use secondary legislation.

This begs the next question: whether Henry VIII powers will be used and to what extent?

Well, the **European Union (Withdrawal) Act 2018** provides the answer. The Act repeals the **European Communities Act 1972** which provided for our entry to the EU and converts all EU law into UK law. Section 8 provides that a Minister may use Henry VIII powers to remove this retained law where it no longer operates effectively. Where it is redundant, in other words. However, the section also provides that there is no power for a Minister, for example, to impose or increase taxation.

Henry VIII powers do raise a serious constitutional issue: whether we are moving from Parliamentary Supremacy to Executive Supremacy because - as we know - these powers allow the Government (the Executive) to alter statutes without the stamp of approval by Parliament.

This issue has erupted and been debated over the years. And it's worth noting that in 2016, **Lord Judge**, a former Lord Chief Justice, entered the debate. In **Ceding Power to the Executive - the Resurrection of Henry VIII** he stated:

'Every Henry VIII clause … is a blow to the sovereignty of Parliament. And each one is a self-inflicted blow, each one boosting the power of the executive.' As

such, how Brexit legislation is evolving is an essential element in any evaluation of delegated legislation.

Judicial controls over delegated legislation

We know that delegated legislation is the law of the land and enforceable in the courts. However, there is one important difference: delegated legislation is made by Government Ministers, local authorities or whomsoever but not by Parliament. So what? So, this legislation, or acts made under it, can be challenged in the courts. You see, because of our notion of Parliamentary supremacy, the legitimacy of an Act cannot be challenged by anybody on any grounds whatsoever. However, a Minister or others can be challenged in the courts on the basis that they had no power under the parent Act to make the particular delegated legislation, or act under it in a particular way.

So, for example, an action or a decision taken by a public body (such as a local council) that is deemed to be outside its powers (the legal term, derived from Latin, is '*ultra vires*'), that is to say not in accordance with its parent Act, may be reviewed by the courts in a process known as **judicial review**. And such actions or decisions that are held to be *ultra vires* are void which means that they are of no effect; they are not lawful.

This is an important check on Ministers and public bodies and establishes the principle that they are subject to the ordinary law as is everybody else. In other words, the **rule of law** is enforced by judicial review.

The duty to consult

Quite often there is a duty to consult the public on various proposals; for example the closure of schools, hospitals or care homes; or planning proposals by local authorities (i.e. local councils). This duty to consult might arise through a statute (a statutory duty); or by the common law where there is a legitimate expectation of such consultation. Either way, a consultation can be subject to judicial review if not carried out properly.

Importantly, guidelines on consultations were issued by the Supreme Court in *R (Moseley) v London Borough of Haringey* (2014). Relevant guidelines are as follows: a consultation must be issued when the particular proposals are still at a formative stage; the proposer must give sufficient reasons for any proposal in order for an intelligent consideration and response; adequate time must be

given for consideration and response; and the findings of a consultation must be conscientiously taken into account.

The duty to give reasons

Whether or not there has been a public consultation, some statutes provide that public authorities have a duty to give adequate reasons for their decisions. Others, say nothing about the giving of reasons, for example the **Town and Country Planning Act 1990**. And if there is no statutory requirement to give reasons for decisions, on the face of it there can be no judicial review to test their adequacy.

However, the common law might step in cases where there is no statutory duty. Your authority is the Supreme Court judgment in *Dover District Council v CPRE Kent* (2017). The case concerned an application for planning permission to build houses in the Kent Downs, an Area of Outstanding Beauty. Against the advice of its professional advisers - and in the teeth of local objectors - the local authority granted the application. Whilst acknowledging that there is no general common law duty to give reasons, it was held that openness and fairness to objectors required reasons to be stated.

Essentially, then, the common law will quash a decision - in cases where there is no statutory duty to give reasons - where openness and fairness so demands. The rationale is clear for imposing a duty to give reasons. It will improve the quality of decisions by focusing the mind of the decision-making body and promote public confidence in the decision-making process.

Orders in judicial review

In a judicial review case, a court can issue certain orders: a mandatory order, formerly known as ***mandamus***, to compel a public body to carry out its functions; a prohibiting order, formerly known as **prohibition**, to forbid a public body from exceeding its authority; a quashing order, formerly known as **certiorari**, to quash a decision of a public body; a **declaration**, for example, that a decision is incompatible with the European Convention on Human Rights (ECHR); and an **injunction** to stop a public body acting in an unlawful way.

Be aware that judicial review may only be used where there is no right of appeal or where all avenues of appeal have been exhausted.

Interveners and standing

Note that a body that is not a party in an application for judicial review, known as an intervener, may make submissions to the court. A third party intervener is essentially an outsider to the case, for example a charity or an NGO (non-government organisation) that has an interest in the outcome. And note that interveners often provide financial support to applicants.

As to what is termed 'standing', section 31(3) **Senior Courts Act 1981** provides that 'the court shall not grant leave [to proceed with a claim for judicial review] unless it considers that the [claimant] has a sufficient interest in the matter to which the [claim] relates'.

So, an applicant must have some legal interest in applying for judicial review; this is known as having sufficient interest, standing or ***locus standi*** (latin, literally 'a place to stand on'). The point is that the courts do not approve of actions brought by busybodies interfering in matters which do not concern them.

For example, in *R (DSD) v The Parole Board* (2018) the Mayor of London had no standing when he contended that the release by the Parole Board of a notorious sex offender was irrational. He was in no different position from any other politician or, indeed, any member of the public.

Conversely, in *R v HM Inspectorate of Pollution ex parte Greenpeace* (1994) the court granted Greenpeace standing to review decisions made by HMIP to allow the testing by British Nuclear Fuels plc of a new nuclear reprocessing plant at Sellafield. The court considered that Greenpeace was a 'responsible and respected body' with a long-standing interest and concern for the environment.

Only a public body is amenable to judicial review

You may have noticed that I have used the adjective 'public' with reference to bodies whose actions may be amenable to judicial review. You see, it is only the decisions of public bodies, for example Government departments and local authorities, that may be subjected to this kind of scrutiny.

PCC of the Parish of Aston Cantlow v Wallbank (2003) is a leading case. The facts are not important. What is important is that Lord Nicholls identified a public body as something 'governmental'.

Decisions of private bodies, therefore, are not justiciable in this context. Just to get the point home: if your application to join your local golf club was rejected by the club committee for some completely irrational reason - say, because you are a woman - then its decision is not capable of being reviewed by the courts because the golf club is necessarily a private body: golf clubs are not created by statute.

However, there is some confusion. Let me give you an example. As you know, your local council is a public body because it is set up by statute, exercises governmental authority - makes bylaws and so on - and receives taxpayers' money. Frankly, you can't get much more public than that! Now, there is a statutory duty on the part of your local council to house homeless people and obviously the way your local council goes about this duty is subject to judicial review. But what if your local council contracts with a private company for it to carry out its statutory duty of housing the homeless? Does the private company then become a public body and are its decisions subject to judicial review? The answer is yes, as it will then become a 'hybrid' public authority.

The example fits neatly with the facts of *Donoghue v Poplar Housing Limited* (2001) where **Lord Woolf** said that although 'there is no clear demarcation line which can be drawn between public and private bodies …, what can make an act which would otherwise be private, public, is a feature or a combination of features which impose a public character or stamp on the act. Statutory authority for what is done can at least help to mark the act as being public; so can the extent of control over the function exercised by another body which is a public authority.'

So, in *Donoghue* those functions (namely housing) of Poplar (a private body) which were formerly exercised by the London Borough of Tower Hamlets (a public body) were deemed to be public.

Grounds for a challenge

Importantly, the courts cannot review the merits of a decision of a public body unless it is completely unreasonable or subject to challenge under the Human Rights Act 1998 - they can only review the way in which it was made. You see, the courts cannot substitute their decision for that made by the particular administrative body: this is the crucial difference between review and a normal court appeal. The procedure is that following an aggrieved party's successful review, the matter is referred to the particular body to make the decision again

in the proper way, or within the law. Of course, if the decision is beyond the body's power to take, it will be struck down (quashed).

Decisions capable of review

Delegated legislation and decisions of public bodies can be challenged for various reasons.

Illegality

Firstly, then, illegality. *R (Bapio) v Home Secretary* (2008) is a prime example. Here, the Secretary of State for Health unlawfully (by not seeking Parliamentary approval) changed the **Immigration Rules** in order to deny non-European doctors the right to continue practising medicine in the UK.

Another good example here is where a public body has delegated its powers unlawfully. You see, where Parliament has delegated a function to an administrative authority, the authority should not sub-delegate that function to any other body or person. For example, in *R v DPP ex p First Division Civil Servants* (1988), the Divisional Court held that the Director of Public Prosecutions could not lawfully delegate to non-legally qualified persons the decision whether or not to prosecute a suspect. The court said that these were tasks which Parliament must have envisaged that a lawyer would perform.

Irrational - Wednesbury unreasonableness

Secondly, in the leading case of *Associated Provincial Picture Houses v Wednesbury* (1948) **Lord Greene MR** said public bodies must act reasonably and rationally, otherwise their actions would be susceptible to judicial review. We have to be careful here. You see, unreasonable behaviour does not mean 'wrong' or 'mistaken' behaviour because those usually can be seen as a matter of opinion. It has to be something overwhelming, something which no reasonable public body could contemplate when viewed objectively.

In essence, it has to be a 'barking' decision which, I suppose, is a shorter way of describing a decision that is, in the words of **Lord Greene MR**, *'so outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it'.* Trust judges to use thirty-two words when one would be quite sufficient! In any event, irrational or unreasonable acts or decisions that are capable of being subject to judicial review are known as **'Wednesbury unreasonable' acts or decisions.**

R v Sacupima ex parte London Borough of Newham (2000) is an example. Here, a number of persons, who were ordinarily resident in the London Borough of Newham, had become homeless. They were informed by the Council that it would not be securing accommodation for them locally, or in any neighbouring area, or in London at all! They were told that bed and breakfast accommodation had been secured for them at seaside resorts such as Great Yarmouth and Brighton! All the applicants were on income support, and unable to afford the cost of travelling to Newham to continue with schooling, medical care of themselves or members of their families. Clearly, this was Wednesbury unreasonable.

Procedural impropriety

Thirdly, then, procedural impropriety. Essentially, where Parliament has laid down procedures which must be followed before a body can exercise its powers, then these procedures must be followed. You might quote *R (Bapio) v Home Secretary* (see earlier comments) in this context.

Agricultural Board v Aylesbury Mushrooms Ltd (1972) - better known as the Aylesbury Mushrooms case, and often quoted by textbook writers - is also a good example. Here, Aylesbury Mushrooms Ltd took on the Minister of Labour who was authorised to make Orders under the **Industrial Training Act 1964** to set up training boards which would organise the training of employees in particular industries.

Before making any such Order, the Minister was required to consult organisations or associations which were representative of substantial numbers of employees engaging in the activities concerned. He failed to consult the Mushroom Growers' Association, which represented about 85 per cent of all mushroom growers. Hence, the Order was invalid as against mushroom growers, though it was valid in relation to others affected by the order, such as farmers, as the minister had consulted with the National Farmers' Union.

Rules of natural justice

English and Welsh law recognises two rules of natural justice: the absence of bias and the right to a fair hearing, known as procedural unfairness. As regards the latter, the House of Lords in the landmark case of *Ridge v Baldwin* (1964) explained that this exists where any body has legal authority to determine the rights of subjects, there is an obligation to act fairly.

Wheeler v Leicester City Council (1985) is an example where the House of Lords considered the defendant Council to have been unfair (indeed Wednesbury unreasonable, according to **Lord Roskill**). Here, it was held that Leicester Rugby Club had been improperly banned from using a recreation ground by the Council which objected to the club's failure to condemn the participation of some club members in a tour of South Africa (this was in the apartheid era).

As **Lord Templeman** said: 'The laws of this country are not like the laws of Nazi Germany. A private individual or a private organisation cannot be obliged to display zeal in the pursuit of an object sought by a public authority and cannot be obliged to publish views dictated by a public authority. The club having committed no wrong, the Council could not use their statutory powers in the management of their property or any other statutory powers in order to punish the club'.

Human Rights (and European Union law)

Moving on, the **Human Rights Act 1998** (HRA 1998) can be used as a ground for a challenge to an administrative decision made by a public authority. Section 6(1) provides that it 'is unlawful for a public authority to act in a way which is incompatible with a Convention right'.

R (Quila) v Home Secretary (2011) is a good example. Here, two foreign nationals applied for marriage visas to British citizens. The Secretary of State refused the applications on the ground that they were aged under 21. In 2008 the Immigration Rules had been amended to raise the minimum age for the grant of a marriage visa from 18 to 21 in order to deter forced marriages. It was not suggested that these marriages were forced. The Supreme Court held that the refusal was unlawful as being in breach of their rights under Article 8 European Convention on Human Rights (right to a private life).

No right to damages

Note that there is no general right to damages for misuse of public law powers. The mere fact that a decision is, for example, ***Wednesbury unreasonable***, does not lead to an award of damages, no matter how serious the consequences. That said, the HRA 1998 does provide that damages may be awarded in public law cases.

Evaluation

So, what do we make of judicial review?

Depending on your point of view, judicial review is either a vital ingredient of the **rule of law** or a cheap delaying tactic for spurious claims. Lawyers, not unnaturally incline to the former opinion whilst it seems that the Government inclines to the latter.

Overall, I think that judicial review is very important in that it maintains the **rule of law**. The process allows the courts to exert **some control over the use of delegated legislation** which Parliament has allowed to grow essentially unchecked; that the courts have necessarily introduced generally accepted standards of morality and justice; and that the courts have a legitimate role here as guardians of the law against over mighty administrators. I hope that doesn't sound too pompous!

Anyway, you may wish to cite *R (Public Law Project) v Lord Chancellor* (2016) as an example of a check on executive powers. The case concerned an appeal by the Public Law Project as to the exercise by the Lord Chancellor of a Henry VIII power.

Here, section 9 **Legal Aid, Sentencing and Punishment of Offenders Act 2012** (LASPO) provided that the Lord Chancellor could by order add, vary or omit the types of civil cases that qualified for legal aid (public funding for assistance with legal cases). The Lord Chancellor laid a draft order before Parliament. The draft order effectively provided that an individual who failed a residence test would no longer qualify for civil legal aid. To satisfy the residence test, an individual would have to have been lawfully resident in the UK for at least 12 months before the application for legal aid was made.

The draft order was *ultra vires* because it sought to restrict the class of individuals rather than the types of claim. And that this was outside the power granted under section 9.

Source F Law making and the Coronavirus

Andrew Mitchell provides a brief overview of the law-making responses to this emergency

We can trace back to Hippocrates (460-370 BC, Ancient Greece) the idea that desperate times call for desperate measures (he was talking about diseases too!) and in the extraordinary circumstances of this global pandemic, governments and legislative assemblies across the world have responded with a variety of extraordinary legal tools to put a temporary halt to economic activity, enforce restrictions on the movements of citizens and endeavour to save lives. In the UK, the response has taken two main forms:

1. Parliament has passed emergency primary legislation in the form of the **Coronavirus Act 2020**, which complements the framework already in place in the **Public Health (Control of Disease) Act 1984**. There are also emergency powers available under the **Civil Contingencies Act 2004**.
2. However, under these and other Acts, the Government has used delegated law-making powers to make over 30 (at the time of writing) pieces of secondary legislation in the form of statutory instruments, many of which make temporary or reviewable changes. The most significant of these for citizens is **The Health Protection (Coronavirus, Restrictions) (England) Regulations 2020**, made by the Secretary of State for Health and Social Care, Matt Hancock, under enabling powers in the aforementioned 1984 Act. These Regulations set out some of the restrictions on individuals and businesses that police services were tasked with enforcing.

Parliamentary law-making process

One of the interesting features of the Parliamentary law-making process for the Coronavirus Act 2020 is how quickly the Bill progressed through Parliament and the recognition by political parties that, in an emergency, the legislation should not be the focus of too much partisan argument, even if Opposition MPs accepted some of the restrictions on liberty with a "heavy heart". Introduced to the House of Commons as a formality for its first reading on 19th March, it then completed all stages in the House of Commons and then the House of Lords in three days: 23-25th March. The Royal Assent formally took effect at 5.30pm on 25th March.

At Second Reading in the House of Commons, Sir Edward Leigh (Conservative MP) made the following important constitutional point: "Nobody denies that the Bill is necessary, but given that it gives the state, for the first time in our history, unprecedented powers to enforce isolation on people who have committed no crime, will the Secretary of State reassure the House that it will be fully involved in renewing this once this crisis is over, and that there will be no drift in this matter?" The Secretary of State replied with the following words: "The measures we are taking to be able to hold people in quarantine build on those in the **Public Health (Control of Disease) Act 1984**, which we have been using hitherto. In that element, the Bill is not unprecedented…Of course, there are measures that are significant departures from the way we normally do things, but they are strictly temporary." The Government

accepted that checks would be needed on such powers by Parliament and agreed that these would be debated and reviewed every six months.

Delegated legislation

Delegated legislation is ideally suited to emergency situations as it can be made relatively quickly and flexibly, according to changing circumstances, provided that Government Ministers work within the powers that have been delegated to them. Much of the legislation will be uncontroversial and technical, such as commencement orders for parts of primary legislation or amendments to existing statutory schemes, such as the extension of MOT dates for cars. However, **The Health Protection (Coronavirus, Restrictions) (England) Regulations 2020** proved controversial, largely owing to the way in which the police were initially implementing their powers – with former Supreme Court justice, Lord Sumption, suggesting the country was becoming a "police state" – and also because the drafting of the legislation leaves some activities, such as "exercise", undefined and therefore open to a range of interpretations. It is likely that, in the course of time, some of these powers may be subject to judicial control, following applications from citizens for judicial review.

It is clear than that Parliament and the Government have responded to desperate times with desperate measures in the form of emergency legislation and only time will tell if these legal frameworks will prove practically sufficient and constitutionally and administratively justifiable.

Andrew Mitchell is Head of Law at Bourne Grammar School, Lincolnshire, and a member of the editorial board for this magazine. April 2020.

Task 3: Experiencing the Law

For Task 3 all I would like you to do is to cast your eyes across Sources G to L and ensure that, before you walk into a Law classroom, you have taken the opportunity to do some of the following things:

- Read a recommended law book or article
- Watch a law-related film
- Listen to a law-related radio programme or podcast
- Read a quality newspaper
- Read a current affairs magazine
- Have a look through the Youtube videos and suggested websites

You might also wish to **keep a note of particular recommendations** that you would like to explore at a later date, especially if you wish to consider Law as a future degree and/or career option.

In addition, in Source M, there is an interesting task that students have enjoyed over the years – should the creators of a cultural work, such as a film, which inspires acts of violence in others have legal responsibility for compensating the victims of such violence? – together with some quizzes to test your knowledge and research skills.

Source G What should I be reading for an application to study Law at university?

Andrew Mitchell offers some personal statement suggestions to students who wish to read for a degree in Law

The question I have posed in the title of this article is the one that I am most often asked by students; and often I am asked it rather late in the process, in September or October, when embarking on any lengthy reading is difficult to say the least. My hope, therefore, is that this article, if it applies to you, inspires you to start some reading prior to and over the summer holidays. This should take the stress away from the process of writing the personal statement and mean that you are ready to submit with the first wave of applicants in September, or by October half-term at the latest.

What type of reading should I do?

When universities receive your application they will be keen to see that you have taken some steps to prepare for a degree in Law and so any reading that you have done to find out more about the subject will be a plus point in your statement. To this extent, your reading could span from short pieces, such as newspaper or magazine articles, to longer journal articles, books, reports and case decisions.

I gained my interest in studying Law from my enjoyment of reading the current affairs and humour magazine, *Private Eye*, as it often comments on legal issues and during its history has been brought to the courts on many occasions to defend itself from accusations of libel (tort of defamation). From there, having gained familiarity with some legal vocabulary, I started to read the Law coverage of *The Times* newspaper, with opinion pieces appearing on one day a week (currently on Thursdays) and law-related news pieces and case reports appearing on an almost daily basis.

By the time I started studying the subject at university – and, unlike you, I did not have the opportunity to study the subject at A-level at that time – I already had an awareness of some legal terms, issues and procedures, which I was able to piece together as the workings of a coherent framework during my three years at university. I loved my Law degree and wholeheartedly recommend the subject, and I owe it my initial reading that I chose the right course for me.

Reading recommendations for the personal statement

My reading recommendations divide into three categories:

- Books/articles that present legal arguments about a controversial issue in society
- Books/articles that give you a sense of what it is like to be a lawyer
- Books/articles that provide a taste of what a Law degree will be like

Books/articles that present legal arguments about a controversial issue in society

These provide useful starting points for thinking about the law and will often grab the interest of the reader with provocative lines of argument. **Helena Kennedy QC** has written several books of this nature, with **'Eve was Framed'** and **'Eve was Shamed'** both arguing, with a wealth of evidence, that the law treats women particularly badly. Whether you agree or disagree with Kennedy's conclusions, you can't help but acknowledge the examples she cites and the force of her argument requires the

reader to sit up and take notice. **Tom Bingham** wrote a fine book in defence of the concept of **'The Rule of Law'** which has a gentler style but nevertheless explains and illustrates its points in a witty and elegant manner. For those seeking some balance in weighing the arguments about contentious issues, **Professor Michael Sandel's 'Justice'** does a great job of presenting legal dilemmas and then guiding the reader through ways of thinking about them. (Sandel's Harvard lectures on Justice are available via Youtube and are highly recommended, especially the first one on the morality of killing.)

Books/articles that give you a sense of what it is like to be a lawyer

The 'popular' law book is currently a growth area for publishers, with **'The Secret Barrister'**, a sometimes humorous, sometimes maddening look at how the criminal justice system really works, riding high in the bestseller charts, and **Alex McBride's 'Defending the Guilty'** making the transition from book to BBC comedy drama. **Thomas Grant's 'Court Number One'** on Old Bailey trials, and **'Jeremy Hutchinson's Case Histories'** on the life and cases of a barrister in post-war Britain, examine landmark legal cases as part of the broader canvas of changing social history. I especially wish to recommend **'Under the Wig'** by **William Clegg QC** for providing the reader with a stage-by-stage account of his career as a barrister, interspersed with some of his high-profile cases, which capture the drama and excitement of the courtroom, and convey the author's enjoyment of his work as a criminal defender. It is a page-turning read for those thinking about a career in the law.

Books/articles that provide a taste of what a Law degree will be like

Some books and articles do a very good job of giving a flavour of what it is like to study Law at university, and in this regard **'What About Law?'** by **Barnard, O'Sullivan and Virgo**, and **'Discovering the Law'** by various authors, and edited by **Sean Butler**, are especially useful. Both books seek to introduce the reader to the core modules of any Law degree (plus Roman Law and Family Law in 'Discovering the Law') by choosing stimulating examples and discussion to draw out key themes, principles and concepts that you will encounter at degree level. **Nicholas J McBride's** masterly **'Letters to a Law Student'** goes even further by explaining the legal skills and reasoning required for a Law degree and illustrating these with a wealth of examples – the letters are to Alex, a fictional student, and act as a guide to that young person's legal studies.

Two books I seriously enjoyed, and which contribute to an understanding of legal studies, but which are less essential than those mentioned above, are **Allan C. Hutchinson's 'Is Eating People Wrong?'**, which takes a deeper, fascinating look at some of the landmarks of the common law, and **Scott Turow's 'One L: What They Really Teach You at Harvard Law School'**, which mirrored aspects of my experience of reading Law at university even though I certainly did not attend Harvard.

Should I just read about the law or are there other things I could be doing?

In my teenage years I became hooked on a television programme of the time called *'Crown Court'*, which, as its name suggests, presented a Crown Court jury trial in every episode; they look a bit dated now but you can still find them on Youtube. I found viewing and listening to law-related programmes also very useful, as well as reading courtroom drama fiction, and actively seeking work experience and visiting courts. A list of things to do to prepare yourself for Law might include:

- Visiting the public gallery of a local court (I recommend Crown Courts, in particular)
- Visiting Parliament and the Supreme Court in Westminster, London (or any of the devolved assemblies in Scotland, Wales and Northern Ireland)

- Gaining work experience, whether a placement with a law firm or a day of shadowing a solicitor, barrister or legal executive
- Taking part in a law-related competition (e.g. essay competition; mock trial; debate; moot)
- Attending a talk/lecture by a legal practitioner, academic or campaigner
- Watch documentaries about the law
- Listen to radio programmes about the law (e.g. BBC Radio 4's 'Law in Action', 'Unreliable Evidence' and 'The Moral Maze')
- Attend a Law Summer School, Taster Day or Open Day
- Subscribe to a daily quality newspaper or a weekly current affairs magazine
- Visit the websites of the Law Society, Bar Council and Chartered Institute of Legal Executives
- Read, watch or listen to law fiction (but with a caution that artistic licence and the law do not always combine to guarantee legal accuracy)

You are, of course, already reading a law-related magazine and I have found that some students have drawn on articles in this magazine to powerful effect in their university applications: if you have read to the end of this article, why not choose some others in this issue to gain ideas for your personal statement?

Andrew Mitchell

Source H Edited Extract from 'AS Law' by Mr A. Mitchell (2008):

Experiencing the law

I am pleased to say that studying the law is not *just* about learning facts and passing examinations. It is also about developing an understanding of the law's role in society, and thinking about *issues* such as justice and morality and the way in which these concepts fit within the existing legal framework. This book is informed strongly by the belief that an enjoyment of law will be shaped by a range of experiences.

The following ways of experiencing the law will be considered below, and I hope you will find, through pursuing some of the suggestions here and your own research, that the law is a relevant, vital discipline:

The law in **books (fiction and non-fiction)**
The law on **film** and **television**
The law and the **internet**.

This chapter concludes with some thoughts about law and morality; and looks to the future, with some comments on the **UCAS process** that follows the completion of the first year of A-level Law.

THE LAW IN BOOKS

Non-fiction

The range of non-fiction law books is huge and includes judicial biographies, court histories, textbooks, books of cases and materials, books about famous trials, critical legal studies, true crime, and so forth. However, the recommendations begin with a practical suggestion. Every law student – as with every law teacher – needs access to a **good law dictionary**. The *Oxford Reference Concise Dictionary of Law* is ideal: neither too weighty, nor too superficial, and with definitions that are easy to locate. A more recent addition to the market, helpfully illustrated and clearly targeted towards to the A-level specifications, is Martin and Gibbins's *The Complete A–Z Law Handbook*.

With practicalities out of the way, I will start with books about law which complement studies directly. Holland and Webb's *Learning Legal Rules* and Fox and Bell's *Learning Legal Skills* are both excellent books to dip into. The former expresses the view that 'studying the law should not be a boring experience' and takes subjects common to the English legal system, such as statutory interpretation and judicial precedent, and then develops them using practical exercises and

examples. The latter expresses a similar view: '. . . studying the law should be exciting, challenging and rigorous'. It is a rich feast indeed, and includes extracts, examples and ideas to start us all 'thinking like lawyers'. The book changes with each new edition and has included everything from a modern-day interpretation of the trial of Christ, through to discussion of law films and fiction, differing interpretations of law (for example, feminist, black, Marxist) and the way in which law is perceived on a day-to-day basis. There is an amusing extract in the second edition, for example, about the way in which American Law Professors routinely break the copyright laws when they provide multiple copies of materials for students. These two books will be good companions throughout your legal studies and come strongly recommended. In the same spirit is Manchester, Salter and Moodie, *Exploring the Law: The Dynamics of Precedent and Statutory Interpretation*, which is recommended for its detailed case studies of the operation of precedent and interpretation in shaping and developing areas of the law. An excellent new book on the market, Gary Slapper's *How the Law Works* lives up to its promise of being a 'friendly guide to the legal system' and is a very useful starting point for your legal studies. Like this textbook, it values 'experiencing the law' and concludes with interesting lists of law films, great lawyers and so on.

There are also large numbers of less directly useful, but nevertheless fascinating, collections of legal – or at least law-related – extracts on the market. First, Brian Harris's *The Literature of the Law*, a selection of wise extracts from judgments in cases relating to life and death matters – such as abortion and the decision to withdraw life support from a man in a persistent vegetative state – and a variety of other legal situations. It allows you to see how judges assess competing factors and apply logical reasoning to resolve complex dilemmas. A good book, because it makes you think! Second, John Mortimer's *The Oxford Book of Villains*, which details the exploits of crooks, con-men, traitors and murderers (to name but a few of the categories), using both fact-based and fictional sources. The abridged extract that follows, selected by Mortimer from a biography of the barrister Sir Edward Marshall Hall, about the Old Bailey trial of Frederick Henry Seddon, accused of murdering his lodger with poison (and subsequently convicted and hanged for this offence), provides a flavour of the book:

> *Seddon had a very quick and agile mind: at first his clever parries and retorts were very effective. He had an explanation and a reason for everything. But gradually his very cleverness and his inhuman coolness began to disgust the jury . . . Only towards the end did he break out and lose his composure. When he was asked as to the counting of the gold on the day of [the victim] Miss Barrow's death, he showed his first sign of anger . . . Little by little, Sir Rufus [ie, Sir Rufus Isaacs, the counsel for the prosecution] gained ground, and for all his cleverness the soul of Seddon was laid bare before the Court, if soul it could be called; for its god was gold, and his mean, calculating character, which obviously cared for nothing but Seddon and his worldly possessions, aroused the contempt and loathing of almost every-body in court. Here was a man who would do anything for gain. 'Never,' said an onlooker, 'have I seen a soul stripped so naked as that.'*

In similar vein, *The Faber Book of Murder*, edited by Simon Rae, includes some excellent material under headings such as 'blood', 'knife', 'justice', 'poison', and so on. There is a very interesting section on old legal definitions, including clarification of the meaning of 'malice aforethought' in the *mens rea* of murder from Kenny's *Outlines of Criminal Law*, and a section on hanging. The latter reveals the problems associated with any legal system that attempts to retain a death penalty:

> *Other cases could be cited of innocent men executed, though the official and correct view is 'out of sight, out of mind' and 'dead men tell no tales'. Hansard, of 1881, gives an account of a boy executed at Winchester. The prison chaplain rushed to London bearing a written confession made by a man for the very crime in question. This man was waiting to be hanged on another*

account. The chaplain could not find the Home Secretary in time; and so the poor boy was hanged.

Collections of criminal trials are well worth reading, and there are a number of excellent out-of-print volumes which you might find in second-hand shops or car boot sales (fine places to pick up rare, largely forgotten books). John Mortimer's *Famous Trials* is a good introduction, and conveys a number of telling points about the murder trial which help to explain its fascination: 'Murder, like farce, flourishes in the most respectable societies'; 'Murder, like prostitution and the music hall, was one of the great releases for Victorian and Edwardian society'; and, most famously, 'Murder, as is well known, like divorce and Christmas, mainly takes place in the family circle'. These trials tend to evoke a sort of 'golden age' of murder, identified by George Orwell as a period between 'roughly 1850 and 1925' during which murders gave the 'greatest amount of pleasure to the British public'.

A more recent book, *The Trial: A History from Socrates to OJ Simpson* (2005) by Sadakat Kadri is also well worth tracking down. It was clearly a labour of love for the author, whose research is incredibly broad and is packed full of interesting details, stories and historical knowledge. Whilst it is worth reading conventionally, chapter-by-chapter, to take in the broader sweep of the subject, it is also has that wonderful quality where you can dip in almost anywhere and find something remarkable or thought provoking. By tackling the subject in such a wide and varied manner, Kadri has identified a number of patterns to show that societies really do not take sufficient heed of the lessons of history: his coverage of witch-trials, for example, ends not in medieval times but in 1980s America and Britain.

Talking from experience: New Scotland Yard

There would be no trials without criminal investigation and the gathering of evidence. An insight into criminal investigation may be gained by considering some of the work undertaken at **New Scotland Yard**.

The **Fingerprint Bureau** employs experts with a working knowledge of the characteristics of fingerprints (for example, loops, whorls, arches, and so forth). Fingerprints taken at the scenes of crimes are compared with previous offenders' fingerprints stored on the computer system to see if a match is found. Fingerprint experts will also check a suspect's fingerprints taken at the police station against those on the computer to update the file and to see if the suspect may have committed previous unsolved crimes.

Another branch of operations is the **National Missing Persons Bureau**. The Bureau receives reports of persons who have been missing for at least 14 days, or earlier where it is suspected that some harm may have come to the person. The Bureau liaises with Interpol with regard to UK nationals who go missing abroad. There are two main sorts of cases that the Bureau deals with: missing persons; and bodies that are found and unidentified. The records are continually updated by reference to daily telexes, emails and letters from police stations, and in conjunction with the **Police National Computer**. There is a **Metropolitan Missing Persons Bureau** that carries out a similar role to the National Bureau, but only for the London area.

A distinction should be made between the National Missing Persons Bureau and the **Missing Persons Helpline**. The Bureau links all the police stations togeth-er so that information can be stored centrally in the form of a database and can be accessed by stations across the country via contact with the

Bureau. The Missing Persons Helpline, on the other hand, is aimed at helping and advising those who have been affected by a missing friend, family member or relative. Employees of the Bureau have to write letters to police stations across the country requesting recent photographs and dental records of missing persons. The Bureau also keeps paper-based records relating to missing persons.

For some reason, criminal law is always presented as more interesting than civil law, though as any tort scholar will tell you, the civil law throws up some great human-interest stories and acute legal dilemmas. The area of tort known as defamation (that is, injury to a person's reputation in writing, referred to as **libel**, or through the spoken word, referred to as **slander**) is particularly interesting, and there have been some outstanding accounts of libel trials. A recent example, *The Irving Judgment*, details the High Court judgment of Mr Justice Gray in a libel case brought by a historian, David Irving. Irving had sought – unsuccessfully – to defend his reputation against allegations that he was a Nazi apologist who had manipulated historical facts to place Hitler in a positive light and deny the holocaust. This book should be of interest to students of all the Humanities and Social Science subjects, for whom the accurate gathering and presentation of evidence is vital in the pursuit of objective truths.

One way of keeping up-to-date with the law is to buy a daily broadsheet newspaper, or access such a newspaper from a library or the internet. *The Times* is very good for law coverage and contains *Law pages* every Thursday, which is particularly useful for keeping up-to-date with topics such as the legal profession, the role of the layperson and access to justice. *The Independent*, *The Daily Telegraph* and the *Guardian* also contain legal issues within their coverage of social matters; the *Guardian*'s Marcel Berlins and Clare Dyer were also responsible for one of the best introductory books on the practical workings of the English legal system, *The Law Machine*, now sadly very dated.

You are also advised, if you can, to keep up-to-date on legal issues by reading the *A-level Law Review*; and to pick up political and current affairs magazines such as *Private Eye, New Statesman, The Spectator*, *The Week* and *Prospect* for wide-ranging views and opinions on some of the legal themes of the day.

Fiction

The **classics** of law fiction are often stated as including:
Charles Dickens's *Bleak House* (containing the interminable Chancery suit of *Jarndyce* v *Jarndyce*, as a criticism of English civil justice in the nineteenth century).
Harper Lee's *To Kill a Mockingbird* (including the great fictional creation of the American lawyer, Atticus Finch).
Franz Kafka's *The Trial* (a book which uses a legal context to develop broader themes of existence and meaning, and which begins with one of the best opening lines ever*: 'Someone must have been telling lies about Joseph K, for without having done anything wrong he was arrested one fine morning.'*).

Richard Harrison has also argued that Bram Stoker's *Dracula* is also a great novel about the law (*New Law Journal*, 2002), following the relationship between a firm of solicitors and their most mysterious Transylvanian client.

Perhaps one of the most useful starting points for any discussion of whether we need laws in society is William Golding's *Lord of the Flies*. Equally, a book to show how dreadful it is when such laws are then abused by their makers is George Orwell's masterly *Animal Farm*. A classic book that explores the limits of free will, the meaning and implications of murder, and the mechanics of detection is Fyodor Dostoevsky's *Crime and Punishment.* I cannot claim that these

books will aid your revision efforts for A-level Law but they will invite you to explore issues, challenge accepted strands of logic and think deeply about society and the role of law within it.

There have also been many great plays with legal themes or legal characters, including a large number by **Shakespeare** (with Portia, in *The Merchant of Venice*, being a particularly notable fictional character, famously addressing the Venetian Court disguised as a 'doctor of laws' and defeating Shylock's claim to the 'pound of flesh' of one of his debtors). Some of the great moments of legal drama, however, appear in Robert Bolt's play, *A Man For All Seasons*, about the trial, in the sixteenth century, of Sir Thomas More, Henry VIII's Chancellor. More's crime – described at the time as treason – was to refuse to show his allegiance to the King on a point of religious principle. In the play, More is betrayed in court by Richard Rich, a character whom More had helped in the past, and he is put under pressure by his daughter and her husband-to-be, Roper, to go after Rich:

More: And go he should if he was the Devil himself until he broke the law!

Roper: So now you'd give the Devil benefit of law!

More: Yes. What would you do? Cut a great road through the law to get after the Devil?

Roper: I'd cut down every law in England to do that!

More (*roused and excited*): Oh? (*Advances on Roper*.) And when the last law was down, and the Devil turned round on you – where would you hide, Roper, the laws all being flat? (*Leaves him*.) This country's planted thick with laws from coast to coast – Man's laws, not God's – and if you cut them down – and you're just the man to do it – d'you really think you could stand upright in the winds that would blow then? (*Quietly*.) Yes, I'd give the Devil the benefit of law, for my own safety's sake.

This is a stirring statement for all believers in the **rule of law** and has particular resonance today. Doesn't it remind you of Lord Hoffmann's comments in *A v Secretary of State for the Home Department* (2004)? *If we hope to get to the current Devil (terrorists) by eroding our liberties, aren't we giving them the victory*?

It has to be said that much modern law fiction is American, and the best-seller lists are dominated by three names: John Grisham (of course); Scott Turow; and Richard North Patterson. Grisham's fast, pacey thrillers take in a range of themes including the death penalty (*The Chamber*); racism and revenge (*A Time to Kill*); jury independence (*The Runaway Jury*); and corporate greed (*The Rainmaker*). *The Firm*, a particular favourite, presents the reader with a model law graduate, Mitch McDeere, and finds him sucked into a major law firm with criminal connections, thus raising the big question: should Mitch blow the whistle on the firm? The book steps up a gear when it becomes clear that the question is not so much whether he should blow the whistle, but whether he is able to stay alive long enough to do so!

Turow's novels, *Presumed Innocent* and *The Burden of Proof*, are more densely plotted and of the 'whodunnit' variety than Grisham's (and like North Patterson's novels, more consciously political), though perhaps Turow's best work is actually one of non-fiction: *One L: What They Really Teach You at Harvard Law School* should be **compulsory reading** for anyone wanting to read Law at university. His description of lectures by Nicky Morris at Harvard provides a sense of what studying law really can be like: '*Each time I walked into Morris's classroom all that rapturous discovery of the first six weeks returned. And I knew I would leave after each meeting with that same crazy feeling, half-heat, half thirst – the sensation of being nearly sucked dry by excitement*'.

For those interested in American legal fiction, the short-story collection *Legal Briefs*, edited by William Bernhardt, provides an introduction both to Grisham and North Patterson, along with a number of other writers in the genre. All of the above titles fit into the area of 'law fiction', though in the more general **thriller** category David Guterson's *Snow Falling on Cedars* and Donna Tartt's *The Secret History* are excellent reads, the latter – about murderous students! – being one of the most passed-on and recommended books this writer has ever encountered.

The contrast presented by British legal fiction is a stark one. Whilst it has distinguished authors writing in the detective and thriller genres, Britain has yet to produce a Grisham or Turow in legal fiction. It is most welcome, therefore, when a writer such as **PD James** turns her attention to the legal field, and *A Certain Justice*, her tightly plotted story of the murder of a barrister, is a satisfying novel that crosses the genre divide. British legal fiction has tended to be lighter and more whimsical than the American style, and this may seem a little dated by comparison. Nevertheless, it is hard not to find John Mortimer's *Rumpole of the Bailey* irresistible – he of the 'dependable knowledge of bloodstains, blood groups, fingerprints and forgery by typewriter' – and the depictions of life in barristers' chambers and before the judge are charming and gently humorous. Henry Cecil's series of law novels from the 1950s, such as *Brothers in Law, Much in Evidence* and *Sober as a Judge*, are similarly delightful (if the reader makes concessions for the time at which they were written). Indeed, the character of the young barrister, Roger Thursby, is a great comic creation and should be enjoyed by all those who see themselves practising at the Bar in years to come.

A personal ten top books to have on your shelf as a law student

Whilst I have tried as hard as I can to make this *the* book to have on your shelves, reading more widely, and having the appropriate reference books, will enable you to develop a greater depth of understanding and encourage broader interests in the subject. Please note: these are not the ten top revision guides to pass A-level Law, but I believe they will add enormous *value* to your studies.

(1) *Oxford Reference Concise Dictionary of Law*.
(2) At least one A-level Law or English Legal System textbook or revision guide of your choice. (I always like more than one perspective on a subject.)
(3) A good introductory practical companion: *Letters to a Law Student* by Nicholas McBride, *How the Law Works* by Gary Slapper, *Learning the Law* by ATH Smith or *How to Study Law* by Bradney, Cownie *et al*.
(4) Some topical arguments about the law: try *Eve was Shamed* by Helena Kennedy, *Justice* by Michael Sandel, or *The Secret Barrister.*
(5) For thinking about taking law further: *One L: What They Really Teach You at Harvard Law School* by Scott Turow.
(6) For general interest: *The Trial: A History from Socrates to OJ Simpson* by Sadakat Kadri.
(7) For fun: anything by John Mortimer (but preferably the *Rumpole of the Bailey* stories) and/or Henry Cecil.
(8) A page-turner: John Grisham – take your pick.
(9) For stretch: William Golding's *Lord of the Flies* or Fyodor Dostoevsky's *Crime and Punishment* or George Orwell's *Animal Farm* or Harper Lee's *To Kill a Mockingbird*.
(10) To place your studies in their historical, constitutional context: Hilaire Barnett's *Britain Unwrapped: Government and Constitution Explained*.

THE LAW IN FILM AND TELEVISION

Of the books discussed above, some terrific films have been made – for example, *To Kill a Mockingbird* (1962, Dir: Robert Mulligan), with Gregory Peck on superb form as Atticus Finch; and *A Man For All Seasons* (1966, Dir: Fred Zinnemann) – and a number of the Grisham novels also provide superior examples: *The Firm* (1993, Dir: Sydney Pollack), *The Pelican Brief* (1993,

Dir: Alan J Pakula) and *The Rainmaker* (1997, Dir: Francis Ford Coppola). In these sorts of films, we tend to find in the hero/heroine characters a demonstration of what the academic HH Koh calls the 'idea of law': '. . . the simple idealistic notion that talented and passionate women and men trained in the law can make our unjust and imperfect world so much better'.

Of all the great films about law, and there have been many, perhaps the US movie *Twelve Angry Men* (1957, Dir: Sidney Lumet) remains the most outstanding. Taking the simple dramatic setting of the jury room for a murder trial (with the defendant facing the death penalty if convicted), 12 men struggle in the summer heat to come to a decision on which they can all be agreed. The jury members each come to the trial with their own personal baggage and prejudices, and the film explores the extent to which important decisions on another man's life or death may be affected by other priorities. One juror, for example, is pre-pared to go along with any decision so long as it enables him to get out of jury service and to that day's baseball game. The film also illustrates the point that if the standard of proof in criminal law is not kept to 'beyond reasonable doubt' then serious injustices can occur. Henry Fonda plays the character who makes the initially conviction-happy jurors think again, in a series of dramatic scenes in which he points out that 'just maybe' the defendant did not commit the murder. There are some tremendous performances from the cast, and the film has a power and intensity about it which remain with the viewer.

The prize for most **powerful court scene in a film** must go to another US film, *A Few Good Men* (1992, Dir: Rob Reiner), though there is a swearing alert on this one. Tom Cruise plays a military attorney who goes head-to-head with Jack Nicholson's platoon commander in a fantastic battle of wits and dominance that retains its impact on every showing. It is a scene that can reduce a law class to silence every time. However, Dustin Hoffman's explosive courtroom performance, under cross-examination, in the custody battle drama, *Kramer v Kramer* (1979, Dir: Robert Benton), runs it very close.

As for British law films, some of the most interesting examples are those of a more gentle nature, such as *Witness for the Prosecution* (1957, Dir: Billy Wilder), notable for Charles Laughton's memorably amusing performance as a barrister; and *Brothers in Law* (1956, Dir: Roy Boulting), an adaptation of the Henry Cecil novel mentioned earlier, and including some charming comic scenes, with Ian Carmichael's performance as the hapless barrister, Roger Thursby, a particular delight. If you think BBC's *The Office* does a good job of both making you laugh and cringe at the same time, try Thursby's first appearance in court, before a very stern Judge Ryman (played by *Dad's Army* star, John Le Mesurier). All would-be barristers should see this.

On a much more serious note, Basil Deardon's *Victim* (1961) is on one level a thriller about blackmail, but it was also courageous at the time of its release in its attempts to highlight the injustices of laws that criminalised homosexuals. Given the social changes that have occurred since 1961 you could be forgiven for thinking that it has lost its capacity to speak to modern audiences, but I think it retains the power to shock precisely because of these changes. Dirk Bogarde's performance as a homosexual barrister, whose efforts to preserve his career and marriage lead to tragedy, is terrific. Another film that retains its capacity to shock and challenge orthodox ideas is Lindsay Anderson's *O' Lucky Man* (1973), which includes a satirical attack on the justice system. Anderson made a series of films attacking aspects of the British institutions, and the law is but one of the many targets in *O' Lucky Man*, which charts the progress of the ambitious Mick Travis, through a series of jobs, adventures and mishaps that provide illustration of his rise and inevitable fall.

A personal top ten of law films to watch during your studies

To the best of my knowledge the following films are available on DVD/video. The films are best

watched for entertainment and the broader issues they raise rather than for strict legal accuracy.

(1) Highly effective and still relevant to your studies: *Twelve Angry Men* (US, 1957).
(2) Another US classic: *To Kill a Mockingbird* (US, 1962) or *Anatomy of a Murder* (US, 1959, Dir: Otto Preminger) or *Inherit the Wind* (US, 1960, Dir: Stanley Kramer).
(3) For sheer joy: *Witness for the Prosecution* (US, 1957) or *Brothers in Law* (UK, 1956).
(4) For best courtroom battle: *A Few Good Men* (US, 1992).
(5) For watching in the presence of the opposite sex: *Kramer v Kramer* (US, 1979) (post-film discussion guaranteed).
(6) For timeless arguments about justice and the rule of law: *A Man For All Seasons* (UK, 1966).
(7) Shocking and thought-provoking # 1: *Victim* (UK, 1961) or *Philadelphia* (US, 1993, Dir: Jonathan Demme).
(8) Shocking and thought-provoking # 2: *Let Him Have It* (UK, 1991, Dir: Peter Medak) or *The Hurricane* (US, 1999, Dir: Norman Jewison).
(9) Good popcorn fodder: any of the John Grisham adaptations (such as *The Firm*, US, 1993).
(10) For campaigning lawyers in action, try the very inaccurate but interesting *In the Name of the Father* (UK, 1993, Dir: Jim Sheridan) or *A Civil Action* (US, 1998, Dir: Steven Zaillian).

Law on British television has ranged from *Crown Court* and Channel 4's *The Courtroom* to *Trial by Jury*; and from *Kavanagh QC* to *Judge John Deed*. There is no doubt that the British public like legal story lines, since whenever one of the major soap operas runs a trial story the nation tends to take sides quite quickly (with encouragement, for the most part, from the tabloid press). Legal dramas are generally very engaging, have strong characters and court-room scenes, and if they are well written, tend to keep you guessing until the final scene. If it is ever repeated, I urge you to see some episodes of *Rumpole of the Bailey*, with Leo McKern assuming a legal character that rivals Charles Laughton's creation in *Witness for the Prosecution*: a stereotype, but a very jolly one, of the 'Old Bailey hack'.

Perhaps, however, some of you will have been inspired to study law because of US programmes such as *Ally McBeal, Law and Order* and *LA Law*, where working in a legal office is portrayed as consistently fun, glamorous and exciting. While there might be a world of difference between the legal practice depicted in *Ally McBeal* and, say, the conveyancing department of a small provincial English firm, if these programmes entertain and inspire then they have performed a valuable service. Keep enjoying them!

In addition to dramas, television documentaries on legal themes – such as *Dispatches* and *Rough Justice* – can be very useful and thought-provoking. Both the *Law in Action* and *Unreliable Evidence* programmes on Radio 4 are also good guides for keeping up with the law and for their presentation of legal issues (though they do tend to clash with the academic day: schedulers please note). *Crimewatch* is of natural interest to law students, showing how police investigations work in practice and how evidence is gathered prior to proceedings in the criminal justice system. However, UK documentary makers have yet to match some of the US output in recent years, ranging from Michael Moore's *Bowling for Columbine* to Morgan Spurlock's *Supersize Me* (which did make me think again about those obesity law-suits against fast-food chains, which seem to have become somehow representative of a perceived 'compensation culture' by the UK media).

THE LAW AND THE INTERNET

Websites that will guide your further reading throughout your studies in law are those that enable you to access primary legal sources. Therefore, for access the Acts of Parliament and

delegated legislation mentioned in this welcome pack, go to http://www.legislation.gov.uk/

Case law may be accessed via https://www.iclr.co.uk/
and https://www.supremecourt.uk/decided-cases/
and also via the Bailii (British and Irish Legal Information Institute) Law portal: https://www.bailii.org/

The best site for A-level Law students is www.e-lawresources.co.uk/
It is a 'one stop shop' of useful information. The site contains information on all the specification topics such as the English legal system, criminal law, contract law and the law of tort. There are also lecture notes, case summaries and quizzes to test understanding. It is highly recommended.

THINKING AHEAD . . .

This book concludes with some consideration of the future. It is perhaps too early to decide on careers, but I suspect your school or college will be in the process of preparing you for higher education applications, careers advice, and so on. There follow some comments on the UCAS process, which will gain momentum after Year 12. It is important to say, however, that university life will not suit everybody; and that to become a solicitor, for example, you can work your way to the position through experience and commitment as a **legal apprentice** – and some of these opportunities include working *and* studying for a degree.

The UCAS process has to be undertaken by all students who wish to study at university. This is a very difficult and stressful time for students; there is the sense that this will determine the next few years of your life, and perhaps a future career, and there is always the lingering doubt that the direction chosen might not be the right one. Moreover, you will have to discuss with parents and teachers the institutions to which you are applying and the course you wish to pursue. Some of you will have more problems convincing parents and teachers of your choices than others. This is not an easy issue to resolve and there are few ready solutions. Experience suggests, however, that many students do win their parents round, largely through hard work and commitment to their respective courses. The strongest point is surely that *you* will be undertaking the next few years at university, not your parents. They should come to accept this in time: fingers crossed!

Once you have decided on your chosen degree, some of you might wish to look at league tables, as they will give you an idea (yes, just an idea) of how good the university is for your course. You must remember, though, that there are many discrepancies with league tables. Universities have differing strengths: some of the older institutions are particularly *research-orientated*, and some of the newer uni-versities are rated highly for *teaching*; some universities are distinguished in both areas. If you are wishing to choose Law, whether on its own or combined with another subject, and have legal career aspirations in mind, you are advised to select a degree that is recognised as a '**qualifying law degree**'. In other words the degree *must* cover the **specified seven core subjects** (each one highlighted below):

Law of obligations (comprising **contract law** and the **law of tort**)
Criminal law
Public law (also referred to as constitutional and administrative law)
Property law (also referred to as land law)
Equity and trusts
EC/EU law.

As the training routes for solicitors, barristers and legal executives illustrate, you do not have to read for a degree in Law to enter the profession. Many students opt for a degree of their choice and then take the one year post-graduate conversion course.

However, for a Law degree, some universities will now require you to sit the **Law National Admissions Test (LNAT)** alongside the UCAS process. Please check if this is a requirement of the universities to which you wish to apply. Whilst there are many skills to consider in attempting to prepare yourself for this experience – albeit in acceptance of the official line that this is a test that cannot be prepared for – I recommend two activities that should stand you in good stead:

- **Competitive debating**. Get involved in the Oxford, Cambridge and Observer Mace competitions. The skills involved (as applicable to public speaking *and* writing) of thinking on your feet, imposing a structure on your examples, opinions and ideas, and delivering a coherent argument will not only help to prepare you for the essay component of the LNAT, but also for examinations and essay-writing in other subjects. Regular debating also brings you into contact with current affairs issues, and topics, that you might not otherwise encounter and so in the process you can become informed in a range of topics.
- **Read quality newspapers** for **news** and for **comment**. Every day of every week, social and political commentators are contributing short essays on topical issues, approaching these from all sorts of angles and perspectives to persuade us of their point of view, or to provoke letters of outrage. Regular reading of these daily polemics will introduce you to aspects of style and rhetoric that you can adopt in your own essay-writing, whilst the reading process itself encourages you to analyse the arguments, pick up on developmental reasoning (or a lack of it!) and respond critically.

While you should be ambitious when applying to universities – and the LNAT universities represent just one group of universities among many – listen to the advice that teachers give about your predicted grades and consider carefully the admission entry requirements and the number of applicants for each place at each institution. Law, for example, is a very popular subject, and the **high entry requirements** underline this point. You should have one or two choices to represent the 'best case scenario' and at least one choice to represent a 'safety net': you should be clearly on course for achieving the grade requirements of the middle choices. It is also important for you to choose courses based on the range of options and course structures featured in the prospectus: what areas of law appeal to you?

You do not have to visit all of the universities you list on the UCAS form, though prior visits will *inform* your choices. Otherwise, you should visit the universities that have accepted you to see whether the course and university really is for you. If you are adventurous and are thinking of moving out, you must ask yourself whether you would like to live in your chosen university town. Does it provide you with the study environment that you need to succeed? Can you **afford** to live in this area?

Students must remember that not all the institutions applied to will accept them. One of the most celebrated and admired criminal defence barristers of our times, Michael Mansfield QC, experienced just such a situation: he was initially rejected by Keele University. (In fact, all the universities he applied to rejected him.) Furthermore, Mansfield had to re-sit his Bar examinations as he initially failed them. The determination and perseverance characterised by Mansfield should be borne in mind by all of us and serve as a great reminder not to give up in the face of short-term difficulties.

Source I Further recommendations for Law viewing and listening

Please consider the following Youtube contributions, offering clips of suggested films:

Top 5 Law Films https://www.youtube.com/watch?v=P979PPAk_jA

Top 10 Movie Lawyers https://www.youtube.com/watch?v=a-QkZ4LXRHE

Top 20 Movies that all Law students and Lawyers should watch https://www.youtube.com/watch?v=ma1Gu_ekfkc

See also the following sets of recommendations for films, television series, documentaries, podcasts and music, but with a **warning** that for true crime documentaries, in particular, caution is advised, as some of the material can be very upsetting:

https://www.abajournal.com/magazine/article/the_25_greatest_legal_movies

https://www.imdb.com/list/ls059151004/

https://www.imdb.com/list/ls058489550/

https://www.bbc.co.uk/programmes/genres/drama/legalandcourtroom

https://www.radiotimes.com/news/on-demand/2020-03-06/best-true-crime-netflix/

https://www.bbc.co.uk/programmes/p04xwq1k

https://en.wikipedia.org/wiki/Category:British_courtroom_films

https://www.lawcareers.net/Explore/LCNSays/The-10-podcasts-all-law-students-should-listen-to

https://www.theguardian.com/law/2017/oct/13/listen-up-law-students-these-podcasts-could-help-you-study

https://theattic.london/2019/07/31/10-legal-songs-for-just-about-every-lawyer-ly-mood/

Source J Suggested reading list for Law applicants to King's College, Cambridge

N.B. Although these books are currently listed on the college website, they have not recently been updated so newer editions of some titles may now be available

There are many books that provide an introduction and useful tips for law students. Do browse through the bookstores or your local library and see which you find most useful/interesting. The following books may help in introducing you to legal skills/how lawyers think (don't worry if you can't find the latest edition):

- Nicholas McBride, *Letters to a Law Student: A Guide to Studying Law at University* (3rd edition, Pearson, 2014).
- Glanville Williams, *Learning the Law* (14th edition by ATH Smith, 2010) - this is a popular introductory book. It will *not* give you any specific, substantive legal knowledge, but it *will* provide you with useful information ranging from how to read cases to what the abbreviations mean.
- Allan Hutchinson, *Is Eating People Wrong? Great Legal Cases and How They Shaped the World* (Cambridge University Press, 2010) - all the chapters are useful, but see particularly chapters 1,2,6,8 and 10.
- Catherine Barnard, Janet O'Sullivan and Graham Virgo (eds), *What about Law: Studying Law at University* (2nd revised edition, 2011) - some leading cases are discussed in a highly accessible manner in this book, and it provides an introduction to the study of each of the foundation subjects, as well as to the study of law as an academic discipline. You might find chapter 1 and the chapters on Crime, Tort and Constitutional Law especially useful.
- Tony Honoré, *About Law: An Introduction* (Oxford University Press, 1996)
- Ian McLeod, *Legal Method* (9th edition, Palgrave Macmillan, 2013)
- Karl N. Llewellyn, *The Bramble Bush: On Our Law and Its Study* (Oxford University Press, 1960)
- Peter Clinch, *Using a Law Library: A Student's Guide to Legal Research Skills* (2nd Edition, 2001) - Sooner or later you're going to have to do legal research (i.e., find your way around a law library quickly and competently in order to look up material). This is a useful guide.

Source K Suggested Reading List for Law applicants to Royal Holloway, University of London

Barnard, C. and O'Sullivan, J. What about Law? Studying Law at University (2nd edn. Oxford University Press, 2011) ISBN 978-1849460859 This book provides a very useful introduction to law. It explains how universities teach law to their students and it counters any perception that law is a dry, dull, subject.

Bingham, T. The Rule of Law (1st edn, Penguin, 2011) ISBN 978-0141034539

This book offers a very interesting review of one of the most fundamental principles in Public law, which is the Rule of Law. It offers a view that the principle is not a dry legal doctrine but the foundational principle of any fair and just society.

Devlin, P. The Enforcement of Morals (1st edn, Liberty Fund Inc, 2010) ISBN 978-0865978058 This book offers an insight into why the boundaries of criminal law have been organised in the way they have been. This book was originally published in 1965 in resp0nse to HLA Hart's classic text Law, Liberty and Morality and it offers a more paternalistic view of the role of the law.

McBride, N. Letters to a Law Student: A Guide to Studying Law at University (3rd edn, Pearson, 2013) ISBN 978-1447922650 This book is a very popular favourite among students and lecturers and it offers a very useful insight into the studying of law. It helps students prepare for their first year of legal study.

Smith, A. T. H. Glanville Williams: Learning the Law (15th edn, Sweet and Maxwell, 2013) ISBN 978-0414028234 This book is a very traditional text having been around for over sixty years! The book provides an overview of the English legal system and legal skills. It has proved an invaluable review for students and lecturers alike.

Upex, R. and Bennett, G. Davies on Contract (10th edn, Sweet and Maxwell, 2008) An introductory text to the Law of Contract which offers a very succinct summary of the present law and explores the basic principles concerning formation of contracts and the various ways of challenging that formation. It is a must read for contract lawyers as a way of introducing the subject.

Wacks, R. Law: A Very Short Introduction (1st edn, Oxford University Press, 2008) ISBN 9780199214969 This book provides a very pithy review of the law. It explains that as the law touches all of us in some way it is important for everyone to have some understanding of its more basic concepts.

Source L A-level Law Review article on BBC Radio 4 and the law

In the online age, and with the popularity of podcasts and content on demand, there are many resources available to A-level students to stimulate a broader interest in their studies. I am always delighted to point my students in the direction of **BBC Radio 4**, the respected channel that does the most, in my view, to cater for A-level students wishing to engage with their subjects at a higher level. Law students are particularly well served by the channel (and its "Sounds" app: https://www.bbc.co.uk/sounds) and I would recommend the following programmes in the hope that they inspire particular interests, add depth to your understanding of legal rules or issues, and provide a stimulus for further reading and research.

- **Law in Action** (http://www.bbc.co.uk/programmes/b07kdsdl)

Currently presented by **Joshua Rozenberg**, this series has recently celebrated its 30th anniversary, and examines specific legal issues in each 30 minute episode, usually assisted by contributions from senior lawyers, academics and members of the judiciary. Recent episodes, which are available via iPlayer at the time of writing, include topics such as the legal minefield of Brexit; the options for policing social media; artificial intelligence and the law; and drones and the law.

- **Unreliable Evidence** (http://www.bbc.co.uk/programmes/b007nq8d)

In this programme, comedian, broadcaster and lawyer **Clive Anderson** discusses a current legal issue with a panel of invited guests. Episodes are 45 minutes in length and have recently included a focus on the legal rights of prison inmates; proposals to reform laws of violence (of particular relevance to AS and A2 students); human rights on the battlefield; law and the gender pay gap; and whether the law is letting down the victims of rape. All episodes are available via iPlayer.

- **Moral Maze** (http://www.bbc.co.uk/programmes/b006qk11)

This discussion programme, chaired by **Michael Buerk**, explores the moral dimension of topical news stories and makes for 45 minutes of often gripping radio; the exchanges of opinion between guests and "witnesses" make this a must listen for Law students. Recent episodes have focused on privacy versus press freedom; legalising drugs; and Islamic terrorism.

It is also worth noting that the channel's drama output often refers to matters of law and **The Archers**, Radio 4's longest running soap opera, recently had a plotline that culminated in an exciting criminal trial: the trial of Helen Titchener, for stabbing her husband, Rob (http://www.bbc.co.uk/programmes/articles/550Y8rfTt7Kcrz7Z8RJ7cX7/the-trial-of-helen-titchener).

Andrew Mitchell

Source M Additional Introductory Tasks

THE 'COPYCAT MURDER' CASE

Imagine that you are a judge hearing this case in the Supreme Court. In the absence of Parliamentary guidance on the issue, you have to give a reasoned judgment.

BACKGROUND

A pair of "university drop-outs", Curtis Fletcher and Lucy Michaels, spent one day last year on a crime spree in the north of England which left one woman dead and several injured. They had started by robbing, at gunpoint, a small convenience store, and then progressed to raids on a post office and a motorway service station. In the latter incident the pair, seemingly high on drugs, started shooting at both staff and customers. A sales assistant, Marjorie Scholes, who had been due to retire at the end of that week, was shot dead by Michaels. It emerged, after the event, that the couple had been obsessed by a film, 'Slaughterers', and that the video of this had been rented by the couple on the day before the shooting. When they were finally arrested, Fletcher was found to have been wearing a t-shirt declaring "Bye Bye Boom Boom", a slogan from the film. The plot of the film is about a couple, one male, one female, who take drugs, go on a killing spree and later become celebrities. The couple were tried in the Crown Court for murder and other offences and both received life sentences.

LEGAL CLAIM

Civil claims for compensation have been brought by the family of Mrs Scholes, and by three people injured during the spate of crimes, against the director and film distributors of 'Slaughterers'. The claims seek damages either on the basis a) of a breach of the duty of care (tort of negligence); or b) product liability under the CONSUMER PROTECTION ACT 1987 (i.e. for creating a product that causes death or personal injury)*.

The claimants also seek an injunction against distributors to prevent the film from being sold, shown or rented in the UK.

In your judicial role, please provide the following:

1) **A list of factors you would take into account in deciding the case;**
2) **Lists of the likely implications of judgments for <u>and</u> against the claimants (i.e. the family of Mrs Scholes and three victims);**
3) **A brief decision – one page of A4 - on whether the claim should succeed, providing reasoned justification as far as possible (this does <u>not</u> have to show detailed legal knowledge).**

***Product liability claims are usually concerned with consumer goods, such as domestic appliances, which prove to be defective.**

SUPPORTING INFORMATION (ITEMS 1-7)

1) An extract from the statement given by the director of the film:

"I cannot be held responsible for the way in which people respond to my films. 'Slaughterers' does not glorify violence, it merely comments on the way in which violence is viewed in society. No more link can be established between my film and crime, than between the violence, say, of 'Tom and Jerry' in childhood, and the subsequent actions of an adult nation. I am an artist pushing the boundaries of film and must not be made a scapegoat for matters beyond all of our control, i.e. the darkness of some men's souls."

2) Statement by a spokesman for the film distributors:

"This is the thin end of the wedge. If one incident, regrettable though it was, can lead to a national ban on distribution, then the industry's in trouble. If this case succeeds, where will the line be drawn in future?"

3) Random items seized from the flat of Curtis Fletcher:

South Park Calendar (with some birthdays noted); poster: "This is the first day of the rest of your life"; numerous candles; book on astrology (highlighted); a dartboard; a photograph of a dog in a garden, dated '1981'; a yo-yo; several works of fiction, including 'American Psycho'; several videos, including 'Slaughterers' (not rewound); a Hawkwind tour t-shirt; poster: "Rehearse for the Apocalypse"; a Manchester City shirt; a postcard from Brighton, signed "mam".

4) Statement by Rev. P. D. Goodhart, National Viewers Council:

"Should we be surprised, in an age of screen violence, horror and sex, that these dreadful incidents occur? Although the circumstances are terrible, we now at least have the chance to respond to those with the will to corrupt our youth with one clear message: enough!"

5) Oxford Reference Dictionary of Law on Causation in Tort:

"Causation is the relationship between an act and the consequences it produces…It must be established that the defendant's tortious conduct caused the damage to the plaintiff before the defendant can be found liable for that damage...(another test: would the damage have occurred but for the defendant's tort?)…Sometimes a new act or event (novus actus interveniens) may break the legal chain of causation and relieve the defendant of responsibility, e.g. if X stabs Y, who almost recovers from the wound but dies because of faulty medical treatment, X will not have caused the death."

6) Lord Atkin's neighbour test on the breach of the duty of care:

"Who then in law is my neighbour?...persons who are so closely and directly affected by my act that I ought reasonably to have them in my contemplation as being so affected when I am directing my mind to the acts or omissions that are called in question."

7) Consumer Protection Act 1987, s.3 (extract):

"…there is a defect in a product…(if) the safety of the product is not such as persons generally are entitled to expect; and for those purposes…safety (relates to) the context of risks of death or personal injury."

Legal Latin Quiz

Name: _____

Research the meanings of these 12 frequently used examples of 'Legal Latin'.

1) *prima facie* _____

2) *caveat emptor* _____

3) *ultra vires* _____

4) *inter alia* _____

5) *ratio decidendi* _____

6) *noscitur a sociis* _____

7) *actus reus* _____

8) *onus probandi* _____

9) *obiter dicta* _____

10) *res ipsa loquitur* _____

11) *Rex* or *Regina* _____

12) *mens rea* _____

Legal fiction, film and music

Name: _____

1) Which book by D.H. Lawrence gave rise to a famous obscenity trial?

_____

2) Which 1999 film stars John Travolta as a lawyer who takes on corporate interests in a landmark environmental case?

_____

3) Which English punk group of the 1970s famously sang ‘I fought the law (and the law won)’?

_____

4) Which novel, by Franz Kafka, begins: “Someone must have been telling lies about Joseph K, for without having done anything wrong he was arrested one fine morning.”?

_____

5) With which author are the following films associated: ‘A Time to Kill’ (1996); ‘The Rainmaker’ (1997); and ‘Runaway Jury’ (2004)?

_____

6) Which diminutive female rapper was jailed in the US for perjury following a shoot-out involving members of her crew in 2001?

_____

7) Which fictional barrister is most famously associated with the ‘Penge Bungalow Murder’ and boasts a ‘dependable knowledge of bloodstains, blood groups, fingerprints and forgery by typewriter’?

_____

8) Which Charles Dickens novel and recent television adaptation features the fictional long-running Chancery law-suit of *Jarndyce v Jarndyce*?

_____