

Revision Guide for A Level OCR Law

Paper 1: Section A: The Legal System
2nd Edition

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Teacher's Introduction

This revision guide is an important study aid for students of AS and A Level Law. It provides them with a set of comprehensive revision notes, including the key facts and legal principles needed to write both descriptively and analytically, without overloading the student.

Relevant and up-to-date case studies are given for each sub-topic for students to reference in their exams. Comprehension activities and further research tasks are also included throughout to give students the opportunity to apply their understanding and encourage independent study.

The Exam Section at the back of this resource also provides advice on answering exam questions. It describes and illustrates the different techniques required by the two questions and provides worked examples for each subsection of the Legal System unit.

The material specifically follows the OCR specification for the Legal System and covers the subject content required of the OCR AS and A Level Law Papers H018/01 and H418/01. This section is worth 25% of the marks for this paper, and 8⅓% of the marks for the A Level as a whole.

Students spend approximately 30 minutes of the two-hour paper answering two questions, both from a choice of two. The first question tests assessment objective 1: 'Demonstrate knowledge and understanding of the English legal system and legal rules and principles.' Its eight marks are worth 10% of the marks for Paper 1, and 3⅓% of the total A Level marks. The second question tests assessment objective 3: 'Analyse and evaluate legal rules, principles, concepts and issues.' Its 12 marks are worth 15% of the marks for Paper 1, and 5% of the total A Level marks.

The Legal System section has a huge amount of material to cover for a small part of the total marks. On the one hand, students should not go over the top and learn these topics in huge detail; on the other hand, they should ensure that all items are covered. It is, therefore, important that students learn wisely. For instance, some students can be very resistant to revising for subsection 4 'Access to Justice' as they may not find it as interesting as topics such as Sentencing or Juries. Students should bear in mind that those topics are buried in the huge subsection 2 'Criminal Courts and Lay People' and that there is an equal likelihood of an 'Access to Justice' question coming up as a 'Criminal Courts and Lay People' question. The small size of the 'Access to Justice' subsection therefore means that time spent revising its topics could turn out to be a winning strategy.

Pleasingly, the revision of OCR's Law syllabus in 2020 vastly reduced the range of questions that could appear as the AO3 question on the Legal System. While the range of topics for the AO1 question remains huge, students must remember that the number of marks this question is worth is small and taper their revision accordingly. For the AO3 question, technique and focus on the question is essential, but the reduction in possible question topics means that preparation and revision for this question is now more manageable.

Schools are also advised to purchase ZigZag's Key Cases pack on the Legal System, available at:
<https://zigzageducation.co.uk/synopses/11042-key-cases-law-ocr-alevel-2020>

Some of the cases from the above resource have been adapted for inclusion in this resource, and additional cases concerning the work of Tribunals have been added. Students should **not** attempt to learn all these cases but it would be useful to learn one or two from each list to use as supporting factual material in a Describe question or to help make a well-developed point in a Discuss question. When used in that way, the case name and significance is all that should be included in the answer; students should not include the details which are included here merely to provide background information and to aid understanding by showing the law in action.

Teachers and students should also make full use of OCR mark schemes, reports and example answers, which are available free of charge from:

<https://www.ocr.org.uk/qualifications/as-and-a-level/law-h018-h418-from-2020/assessment/>

Remember!

Always check the exam board website for new information, including changes to the specification and sample assessment material.

1. The Civil Courts and Other Forms of Dispute Resolution

There are four learning sections and two evaluation sections in this topic.

Learning sections

- A. County Court and High Court
- B. Appeals and Appellate Courts
- C. Employment Tribunals
- D. Alternative Dispute Resolution

Evaluation sections

- Advantages and disadvantages of using the civil courts to solve disputes
- Advantages and disadvantages of using Alternative Dispute Resolution to solve disputes

The material for the evaluation sections is included in learning sections A and D.

A. County Court and High Court

The Civil Courts

Civil Law (for background understanding)

- Criminal Law deals only with criminal offences. These are offences committed against the state or society.
- Civil law deals with disputes between individuals and the protection of individual rights.
- Civil law cases at first instance are heard in the County Court and High Court.
- The High Court hears more serious and complex cases.
- A civil case is brought by the claimant.
- The decision is usually made by a judge but, in rare cases, by a jury.
- If found liable, the defendant usually has to pay damages (compensation). The judge will also make a decision as to who should pay the costs of the case.
- The standard of proof must be 'on the balance of probabilities'. This is a lower standard than in a criminal case.
- There are many branches of civil law. Examples include: probate, which involves wills; contract law; tax and trusts; family law; employment law; and tort.
- A tort is not a crime but it is a wrongdoing. Examples include negligence, nuisance, and defamation (slander or libel).

The Woolf Reforms (for background understanding only)

- Lord Woolf in his report called 'Access to Justice' suggested a series of reforms. His suggestions have been put into the **Civil Procedure Rules 1999**.
- Woolf suggested that the civil court system must be fair, just, speedy and of reasonable cost.
- It needed to be well managed, effective, accessible and easily understood by the public.
- At the heart of the reforms was the introduction of a track system for civil cases.
- Expenses were to be reduced by encouraging the use of Alternative Dispute Resolution and by a case management track.
- Active case management by the judge, the setting of timetables and the efficient use of resources would speed up procedures.
- A single set of rules in both courts and the use of simplified language would make the system less intimidating. 'Claimant' was to be used rather than 'plaintiff'.
- The reforms have led to a fall in the number of cases heard and the rate of settlement.

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County Court – Jurisdiction

The County Court tries, in open court, most civil claims up to £100,000 in value.

County Courts are usually assigned a Circuit Judge and a District Judge.

The Circuit Judge will hear all cases over £15,000 and some over £5,000. District Judges will deal with smaller cases. Types of cases include:

- Businesses trying to recover money they are owed, e.g. for breach of contract.
- Consumer disputes over breach of contract or non-working goods.
- Individuals seeking compensation for damage or injury resulting from an individual's negligence.
- Individuals seeking damages for personal injury and/or an injunction to stop the defendant from doing something.
- Successful litigants seeking a court order enabling bailiffs to enter a property to enforce a judgment.
- Landowners seeking an order to prevent trespass.
- Claims relating to ownership of property or seeking to obtain or prevent an event taking place on land.
- Bankruptcy matters.
- Cases relating to wills and trusts where the value of the trust, fund or estate is less than £100,000.
- Matters under the Equality Act 2010.
- Actions which all parties agree to have heard in a County Court (e.g. defamation) but which could also be heard in the High Court.

High Court – Jurisdiction

The High Court of Justice deals at first instance with all high value and high importance civil law cases, and also has a supervisory jurisdiction over all subordinate courts and tribunals.

There are three branches of the High Court:

1. The King's Bench Division of the High Court – Jurisdiction

- This is the largest of the three divisions and includes a number of specialist courts.
- This hears mainly contract and tort cases over £100,000 in value.
- It hears complicated cases of smaller value.
- It hears appeals from courts and tribunals.
- Its Administrative Court hears challenges to official actions or decisions under the process of judicial review.
- The Administrative Court also hears case-stated appeals from cases originally heard in magistrates' courts.
- Other specialised courts of the King's Bench Division include the Technology and Construction Court, the Commercial Court, and the Admiralty Court.



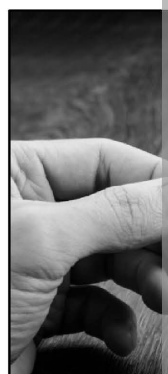
2. The Chancery Division of the High Court – Jurisdiction

- This hears business and property cases over £100,000 in value.
- It also hears cases involving disputed wills and trusts.
- It hears tax appeals.
- Specialised courts of the Chancery Division include the Patents Court and the Intellectual Property Court.

3. The Family Division of the High Court – Jurisdiction

Unlike the other courts, cases are usually heard in private.

- This deals with family matters such as issues arising from divorce, child custody, that have been transferred from the County Court.
- It hears all wardship cases and cases relating to the welfare of children under the Children's Act 1989.
- It also deals with controversial cases involving disputes over medical treatment, such as *Re A (2001)*.



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Pre-trial Procedures

- The court will encourage the parties to settle the case without going to court.
- A Pre-Action Protocol of steps to be taken, such as giving information to the other party, must be followed by the parties.
- The claimant starts a claim by filling in Form N1 and filing it at the County Court. (Debt claims can be filed online.)
- Claims of less than £10,000 (or less than £1,000 in personal injury cases) start in the small claims track.
- Claims between £10,000 and £25,000 (or between £1,000 and £50,000 in personal injury cases) start in the fast track.
- Claims over £25,000 (or over £50,000 in personal injury cases) can start in the multi-track.
- The defendant has 14 days to either admit the claim and pay up, or to dispute the claim and defend the case in court within 14 days.
- A judge allocates the case to one of the tracks.

Allocation of Cases to Track

- A judge allocates a case to one of three tracks based on the answers to an allocation questionnaire filled in by the parties.
- The tracks are: small claims track, fast track and multi-track.
- Claims of less than £10,000 will be allocated to the small claims track.
- Landlord v tenant cases, however, will be allocated to the small claims track only if the claim is for less than £1,500 for a road traffic personal injury claim or less than £1,000 for any other personal injury claim.
- Claims between £10,000 and £25,000 will be allocated to the fast track.
- Claims of £25,000 or above will be allocated to the multi-track.

Small Claims Track

- This is used for a case involving a claim for less than £10,000.
- It is usually heard by a district judge in the County Court.
- The use of lawyers is allowed but discouraged.
- The process is cheap, quick and simple, lasting a maximum of three hours.
- The loser pays the costs.
- Judges are inquisitorial (they ask questions) and helpful.
- The allocation fee is low but increases as the claim rises.
- Legal funding is not available.
- If the other side is a business, a lawyer is more likely to be used which can put the claimant at a disadvantage.
- Winning the case does not guarantee that the claimant will be paid.

Fast Track in the County Court

- This track is used for cases between £10,000 and £25,000, for road traffic personal injury claims and landlord v tenant cases between £1,000 and £25,000, and for all other personal injury claims between £1,500 and £25,000.
- Most cases are held in open court with the public present but family matters are held in private.
- A hearing is more formal than in the small claims procedure because of the use of lawyers.
- It is more expensive than the small claims track because the winner pays the loser's costs and the use of lawyers is expensive.
- A circuit judge usually hears the case.
- The 'fast track' is so called because to speed up the process a strict timetable is set for the case to be heard within 30 weeks of allocation to the track.
- The case hearing cannot last longer than one day.
- It is faster than it was but is still slow. The average wait is 48 weeks.

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Multi-track in the County Court

- Claims between £25,000 and £50,000 may be heard in either the County Court or the High Court.
- The Circuit Judge will set a strict timetable and set out the rules for the case, of witnesses allowed and the disclosure process.

Multi-track in the High Court

- High Court multi-track cases are for over £50,000.
- Contract and tort cases are heard in the King's Bench Division but also the Chancery Court and the Technology and Construction Court.
- A single judge will usually hear the case although a jury can be used in the King's Bench Division for certain types of case.
- Judicial review is heard in the High Court if there is a question as to whether the government is following the law in reaching a decision.
- The Chancery Division deals with insolvencies, mortgage disputes, copyright and trademark disputes.
- The Family Division handles cases about children and marriage and non-contentious probate.

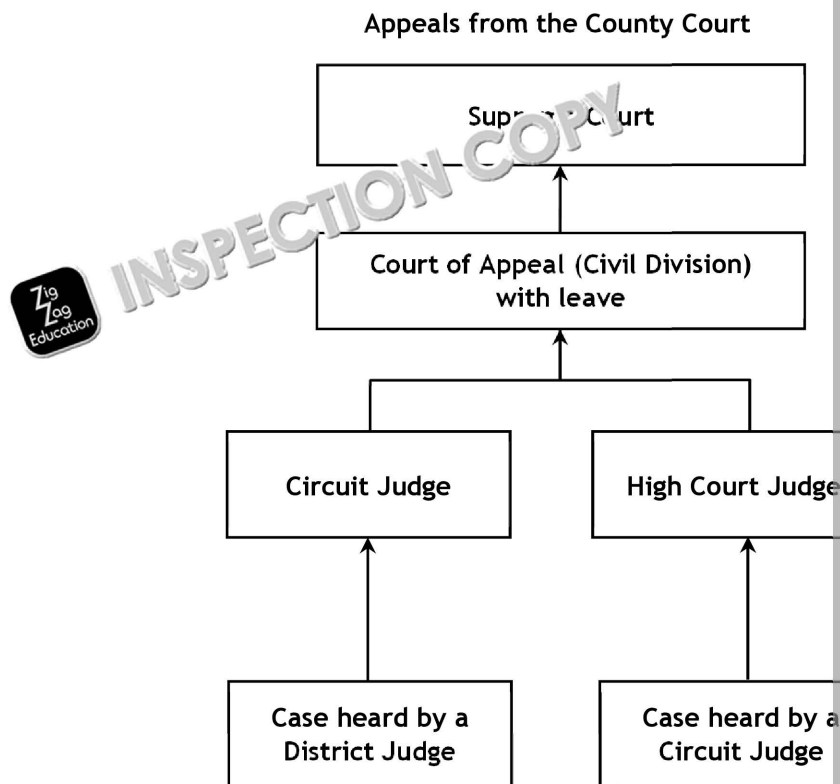
✓ Advantages of using the civil courts to settle disputes	✗ Disadvantages of using the civil courts to settle disputes
<ul style="list-style-type: none"> ✓ The matter will be presided over by a judge. ✓ The judge will be qualified and experienced in dealing with complex legal issues. ✓ A resolution to the matter is certain as the judge will make a binding decision, making the remedy legally enforceable. ✓ The track system allows cases to be managed in a way that will minimise delays by allocating them to the most suitable track and court. ✓ The track system allows both parties to know how long the case will last and the number of witnesses to be called. ✓ The use of precedent allows lawyers to advise their clients as to outcomes. ✓ Unlike with ADR, civil courts have a clear, structured appeal route. ✓ Unlike with ADR, the amount of compensation awarded can be appealed. ✓ Unlike with ADR, legal funding is available for some cases. ✓ Some lawyers will offer a no-win no-fee arrangement in personal injury claims. ✓ Civil courts provide open justice, enabling the general public and media to follow cases of public importance. 	<ul style="list-style-type: none"> ✗ The time taken to get to trial is long compared with ADR methods. ✗ The pre-trial procedures, disclosure, protocols and allocation can be complex although intended to speed up the process. ✗ The courts are under-resourced, particularly with small claims where each case is given priority. ✗ Costs are high and will be paid by the losing party. ✗ Ordinary people find the process daunting. ✗ Since the losing party must pay the costs, ordinary people are reluctant to challenge a powerful corporation or government department that can afford to fight the case. ✗ Legal funding is small and only available for some cases. ✗ Lawyers are only going to take a case if there is a high chance of winning. ✗ Unless there is clear precedent, a literal approach may interfere with judges following the purpose of the law and outcomes uncertain. ✗ Only about 60% of successful claims in the County Court actually reach the High Court. People have the worry of having to go through the procedure while hoping to avoid bankruptcy or disappearance.

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B. Appeals and Appellate Courts

Civil Appeals



Appeals

- An appeal will consist of arguments by lawyers on why the original decision is wrong.
- Grounds for appeal might be because there was an error in law, there was an error in fact, or there was a procedural irregularity.
- New evidence should not be introduced unless there was a failure in the disclosure of evidence.
- The appeal should be lodged within 21 days of the original decision.
- The appeal court can confirm or reverse the original decision; it may also alter the decision.

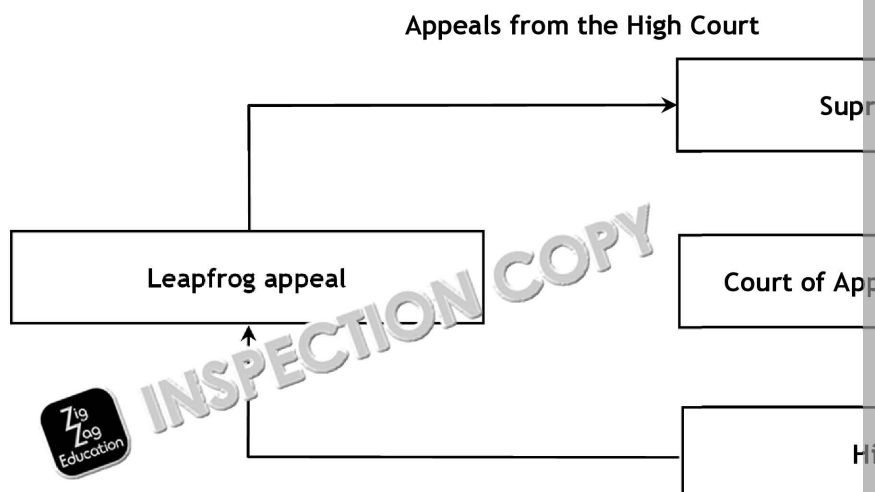
Appeals from the County Court

- A case originally heard by a District Judge will be heard by a Circuit Judge on appeal.
- A case originally heard by a Circuit Judge will be heard by a High Court Judge on appeal.
- Multi-track cases from the County Court go to the Court of Appeal (Civil).
- Second appeals are possible to the Court of Appeal but only with permission.
- In very rare circumstances, a further appeal to the Supreme Court is possible and the issue must involve a point of law of public importance.

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Appeals from the High Court

- These go to the Court of Appeal (Civil Division).
- From a decision in the Court of Appeal there may be a further appeal to the Supreme Court and with permission from either the Court of Appeal or the Supreme Court (very rarely given only if the issue is considered to be of national importance.)
- In exceptional circumstances, a leapfrog appeal directly to the Supreme Court on a point of public importance is possible. The permission of the Supreme Court must be obtained.



Exercise (answers on page 64)

Answer the following questions:

1. What term is used in civil law instead of 'plaintiff'?
2. The Civil Justice System was reformed in 1999 following whose recommendations?
3. What is the purpose of a pre-action protocol?
4. A claim for a claim of £65,000 in which court and on which track?
5. On which track will a case for less than £5,000 be placed?
6. By using the leapfrog procedure in civil appeals from the High Court, what is the advantage?
7. In which court are defamation actions started?
8. Civil appeals to the Supreme Court must be 'with leave'. What does this mean?
9. A fast track case in the County Court, originally heard by a district judge. Who will hear the appeal?
10. In what court is a judicial review first heard?

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C. Employment Tribunals

What are Employment Tribunals?

- Employment tribunals are part of a wider system of tribunals that work alongside the courts.
- They deal with issues in the workplace where an employee believes they have been treated unfairly, such as an unfair dismissal, redundancy, unfair pay deductions or claims of discrimination.
- The rules and procedure are set out in legislation such as the **Employment Rights Act 1996**.
- Hearings are open to the public.
- There is no fee. Claimants do not have to pay a fee but the Supreme Court has ruled that this does not provide sufficient access to justice for a significant number of claimants.

Claim Procedure

- The employee must bring a claim within three months minus one day of the date of the complaint.
- ACAS should usually be contacted at this point to see if early conciliation can be achieved to resolve the claim without having to go to the tribunal.
- Claimants can bring a claim on their own but are usually advised and assisted by a trade union or a solicitor.
- The claimant will submit detailed reasons for the claim before the hearing and the employer will submit a response.
- Any preliminary hearings will be heard by a specialist judge.
- The full hearing will be before a panel of three: the judge, a representative from the employer and a representative from the employee (such as a union representative).
- Evidence is heard under oath and witnesses may be called.
- The parties can represent themselves or use a lawyer or representative, e.g. a trade union.
- The panel will reach a collective decision and communicate this to all parties.
- The decision is binding.
- If a claim is successful, the tribunal can make recommendations and may award compensation.
- A tribunal may impose costs orders if one of the parties has acted vexatiously or abusively.
- A tribunal may impose a preparation time order requiring a party to pay costs for the delay in preparing for the hearing.
- A tribunal may impose a wasted time order requiring payment of costs by a party if there have been improper, unreasonable or negligent acts or omissions.

Appeals

- Either side may appeal to an Employment Appeal Tribunal within 42 days of the decision.
- This can be on a point of law only.
- If the appeal fails, a further appeal can be made within 21 days to the Court of Appeal, and ultimately, to the Supreme Court, but only if those courts give permission.

✓ Advantages of tribunals	✗ Disadvantages of tribunals
<ul style="list-style-type: none"> ✓ The process is quicker than court. ✓ It is relatively cheap, especially if lawyers are not used. ✓ Costs will not be awarded against the losing applicant unless there is evidence of bad faith or time-wasting. ✓ It is less formal than going to court. ✓ The decision is binding; a decision can be challenged in the courts only for procedural irregularity or on a point of law. 	<ul style="list-style-type: none"> ✗ Legal aid is not available for those not represented by a solicitor. ✗ If the employer uses a trade union representative, a tribunal hearing is more likely to be biased. ✗ There can be delays in getting a hearing. ✗ Although the tribunal has a judge and two lay members, the other two members are not legally qualified. ✗ Once a fortnight, meetings are held, but several days may actually be spent in court. ✗ No appeal is available in most cases of serious irregularity.

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Case Studies

Students should NOT attempt to learn all the following case studies. Students are most two, that they find particularly interesting and memorable. If using the case the issue (which is in bold at the top right of each box) and the result – do NOT go happened in the case.

Case Study **Taylor-Valles v HM Passport Office 2021**

Elaine Taylor-Valles, an asthmatic call centre agent, requested a parking space as she was worried that walking in cold weather would exacerbate her condition. Her bosses refused as they did not have enough parking spaces for everyone and she did not have a blue disabled permit. She was sacked after her asthma prevented her being absent for 100 days in the 14 months she worked for the Passport Office. The tribunal ruled that the Passport Office should have adjusted its car parking policy in the light of Taylor-Valles's disability and said she had been victimised on account of her disability. The Passport Office was ordered to pay her nearly £42,000 in compensation.

Case Study **Onuoha v Croydon Health Services NHS Trust 2021**

Mary Onuoha, a theatre nurse, wore a necklace with a small cross and was asked to leave safety grounds. She refused because staff of other religions were treated differently. When removed from theatre duties and put on reception, she resigned. The tribunal ruled constructive dismissal as she had been singled out for an aggressive application of the Policy. Compensation was awarded.

Case Study **Bayfield and Jenner v Wunderman Thompson (UK) Ltd 2021**

Chas Bayfield and Dave Jenner, white male creatives, worked at a top London advertising agency, were made redundant after a female director vowed to 'obliterate' its 'reputation of being full of straight white men'. A tribunal upheld their claim of unfair dismissal on the grounds of direct discrimination. Compensation was awarded.

Case Study **Forstater v Centre for Global Development 2022**

Maya Forstater's consulting contract was not renewed after she tweeted that trans people were a threat to the fundamental rights of others. Her employment tribunal claim failed, with the judge describing her views as 'incapable of being held as a tenable belief' and 'not worthy of respect in a democratic society'. The claim was dismissed successfully and it was ruled that her beliefs were philosophical, and, therefore, not protected under the Equality Act 2010. She had been subjected to direct discrimination and gender-critical beliefs.

Case Study **Johnson v DHL Services 2022**

Matthew Johnson, a black ambulance driver, was told by his boss that he would be 'known how much time he would want off and that people that could fill his role were not'. He claimed this was racist as the phrase was a reference to 'nigger'. The claim was successful and he was ordered to pay £1,200 costs.

Further Research

Using the following website, find and research a Tribunal case.

<https://www.gov.uk/employment-tribunal-decisions>

Take brief notes on the name of a case, the issue, and the outcome.

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Exercise (answers on page 64)

Answer the following questions:

1. List the three main employment issues that tribunals deal with.
2. What is the time limit for bringing a claim?
3. What does ACAS stand for?
4. How is the tribunal panel made up?
5. Name an Act that sets out rules and procedures for tribunals.
6. How long does either side have to appeal the decision of the tribunal?
7. To whom is an appeal made?
8. What are the grounds for an appeal?
9. What is the main advantage of a tribunal hearing?
10. Give the main disadvantage of using an employment tribunal for

D. Alternative Dispute Resolution

What is ADR?

- ADR is an alternative to using the courts.
- Using the courts can be:
 - a. Costly in time and money
 - b. Traumatic, e.g. formality of court, complexity of law, adversarial system
 - c. Open to the public and press and therefore not private
 - d. Slow
 - e. Damaging to business relationships
- The use of ADR was encouraged in the Woolf Report.
- By the Civil Procedure Rules of 1998 a judge can stop court proceedings and encourage the parties to try ADR.
- A judge will look unfavourably upon a party that has not sought to try ADR before going to court.

The Methods of Dispute Resolution

Negotiation	Parties themselves
Mediation	Those in dispute get support from an independent third party in
Conciliation	An independent third party plays a more active role in suggesting the parties themselves still make the decision regarding the final
Arbitration	The disputing parties agree to let an independent third party make their behalf.

Negotiation

- Negotiation between parties is often private, quick and cheap.
- Negotiation can be face to face, by phone, by letter or email, or via third party.
- If lawyers are involved it becomes more expensive.

✓ Advantages of negotiation	✗ Disadvantages of negotiation
<ul style="list-style-type: none"> It is cheap, especially if lawyers are not used. A direct approach, for instance, to a customer services counsellor, is often a quick and easy way to solve a dispute. No one needs to be involved. It helps prevent relations between neighbours or between companies from being damaged. It can be used at any point during a dispute, right up to going to court. 	<ul style="list-style-type: none"> It will not work on both sides. If it fails an expensive case may be used to solve a dispute that has been wasted. It will be difficult to reach a compromise.

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Mediation

- A neutral mediator consults with each party to find common ground.
- It is expensive to hire a professional mediator but cheaper than going to court.
- The mediator acts as a facilitator but does not offer an opinion.
- The parties may be in the same room as the mediator, in separate rooms or the mediator communicating between them.
- Companies are used to negotiating with each other using this approach.
- There is no guarantee that the matter will be resolved and either party may walk away.
- Parties may prefer to use a formalised style, such as a conference. It is a mini trial where they present their cases to a panel that reviews the submissions and encourages the parties to reach a settlement.
- A decision is not legally binding but is based on common sense. This makes it easy to do business after the settlement because there is no sense of grievance.
- The **Centre for Alternative Dispute Resolution** in London is popular with businesses seeking mediation.
- **Relate** is a charity that offers mediation in family disputes.
- Local free mediation services, such as the **Sussex Mediation Service**, are available to resolve disputes between neighbours on matters such as noise and car-parking.
- Many solicitors have undertaken training in mediation in order to add an additional service to their firm's offerings.

✓ Advantages of mediation	✗ Disadvantages
<ul style="list-style-type: none"> ✓ Mediation is private. ✓ The parties select their own arbitrator. ✓ It is a flexible approach: mediation can be formal or informal. ✓ The process is quicker than court. ✓ It is cheaper than going to court. ✓ It is less stressful than going to court. ✓ Parties are more likely to maintain their relationship afterwards as the process is not adversarial but encourages cooperation. ✓ The parties can withdraw from the process at any time. ✓ The decision can be based on a common-sense compromise rather than having to follow the strict letter of the law. ✓ The process has a good success rate: the CEDR has a success rate of over 80%. 	<ul style="list-style-type: none"> ✗ It will not work if both sides are not willing to compromise. ✗ If it fails and the matter goes to court, time and money will have been wasted. ✗ It may be difficult to reach a compromise if the parties are not willing to compromise. ✗ Mediation can be expensive if a professional mediator is used. ✗ The mediator cannot force a resolution if the dispute is still unresolved. ✗ The mediator cannot force a resolution if the parties are not willing to compromise. ✗ Since a compromise is likely to be reached, the parties are likely to receive a settlement that is less than what they won in court.

Conciliation

- A conciliator plays a far more active role than a mediator and will suggest ways to resolve the dispute.
- The **Advisory, Conciliation and Arbitration Service (ACAS)** offers conciliation services.
- A settlement cannot be imposed – the parties must agree to it.
- Conciliation, like mediation, does not necessarily lead to a solution and parties can walk away.

✓ Advantages of conciliation	✗ Disadvantages
<ul style="list-style-type: none"> ✓ Conciliation is private. ✓ The parties select their own arbitrator. ✓ It is a flexible approach: conciliation can be formal or informal. ✓ The process is quicker than court. ✓ It is cheaper than going to court. ✓ It is less stressful than going to court. ✓ Parties are more likely to maintain their relationship afterwards as the process is not adversarial but encourages cooperation. ✓ The parties can withdraw from the process at any time. ✓ The decision can be based on a common-sense compromise rather than having to follow the strict letter of the law. 	<ul style="list-style-type: none"> ✗ It will not work if both sides are not willing to compromise. ✗ If it fails and the matter goes to court, time and money will have been wasted. ✗ It may be difficult to reach a compromise if the parties are not willing to compromise. ✗ Conciliation can be expensive if a professional conciliator is used, adding to the cost of the dispute. ✗ The conciliator cannot force a resolution if the dispute is still unresolved. ✗ Since a compromise is likely to be reached, the parties are likely to receive a settlement that is less than what they won in court.

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Arbitration

- Private arbitration is governed by the **Arbitration Act 1996**.
- Those in dispute agree to put the facts before a neutral third party and allow them to make a decision which they agree to abide by.
- An arbitrator can be anyone providing both parties agree to the choice. For instance, an expert mechanic may be chosen who can be asked to make a decision about a faulty car.
- The process will be agreed by the parties and can range from being very informal with the arbitrator receiving documents and making a decision without meeting the parties, to very formal and similar to a court hearing with lawyers questioning witnesses.
- In consumer contracts, the name of the arbitrator is written into the contract.
- If there is difficulty in agreeing an arbitrator, the High Court will appoint one.
- The arbitrator's decision is called the award. It is usually final and enforceable.
- A party may not go to court after going through a process of arbitration unless it is stated in the proceedings or if the arbitrator has made an error in law.
- Arbitration is used in business and commerce particularly. Going to arbitration is a standard term in many contracts and is known as a **Scott v Avery Clause**.
- Holiday and insurance companies like this approach because any disputes remain private and are unlikely to suffer poor publicity.



✓ Advantages of arbitration	✗ Disadvantages of arbitration
<ul style="list-style-type: none"> ✓ Arbitration is private. ✓ Experts may be used. The parties can select their own arbitrator. ✓ A time and place suitable to both parties can be chosen which is convenient. ✓ It is a flexible approach. Arbitration can be formal or informal. It can be anything from paper arbitration with no witnesses called to a formal hearing with witnesses giving evidence under oath. ✓ The process is faster than court. ✓ It is relatively cheap, especially if lawyers are not used. ✓ It is less stressful than going to court. ✓ It is most suitable for situations where the parties want to maintain their business relationship. ✓ The award is final and is enforceable by the courts. ✓ An award can be challenged in the courts for procedural irregularity or on a point of law. 	<ul style="list-style-type: none"> ✗ Individuals may not be able to resolve their disputes. ✗ No legal precedent is created. ✗ If a party is not satisfied with the award, they may need to go to the High Court and appeal. ✗ Arbitration fees for arbitrators can be high. ✗ No appeal against the award. ✗ No appointment of arbitrator. ✗ Irregularity of procedure.



Exercise (answers on page 64)

Answer the following questions:

1. Name the type of ADR when a third party actually makes a decision.
2. What does ADR stand for?
3. What is the decision made by an arbitrator called?
4. Name the most informal type of ADR.
5. What does the abbreviation ACAS mean?
6. What does a contract committing the two parties to using arbitration mean?
7. What does the Arbitration Act 1996 set out the rules for arbitration?
8. What is the difference between a mediator and a conciliator?
9. How many people sit on the panel of an employment tribunal?
10. If one of the parties is unhappy with the decision of an employment tribunal, what do they have to ask for a review of the decision?

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2. Criminal Courts and Lay Pe

There are four learning sections and one evaluation section in this topic.

Learning sections

- A. Criminal Process
- B. Appeals and Appellate Courts
- C. Sentencing and Court Powers
- D. Lay Magistrates
- E. Juries

Evaluation

- Advantages and disadvantages of using juries in criminal cases

The material for the evaluation section is included in sections E above.

A. Criminal Process

The subsections are:

- i. Classification of offences
- ii. Jurisdiction of the Magistrates' Court and the Crown Court
- iii. Pre-trial procedures

i. Classification of offences

Summary offences

These are the less serious offences.

Examples are:

- Assault
- Battery
- Most driving offences, such as speeding or using a mobile phone while driving
- Watching television without a licence

Indictable offences

These are the most serious offences.

Examples are:

- Murder
- Involuntary manslaughter
- GBH
- Robbery
- Rape

Triable either way offences

These offences can vary in their seriousness; for instance, theft of £1,000,000 has a very different level of seriousness to theft of £5.

Examples are:

- Theft
- Burglary
- Assault occasioning actual bodily harm

ii. Jurisdiction of the Magistrates' Court and the Crown Court

Summary offences

- These cases are dealt with entirely in the Magistrates' Court.

Indictable offences

- These cases start in the Magistrates' Court. They are then sent to the Crown Court to be dealt with.

Triable either way offences

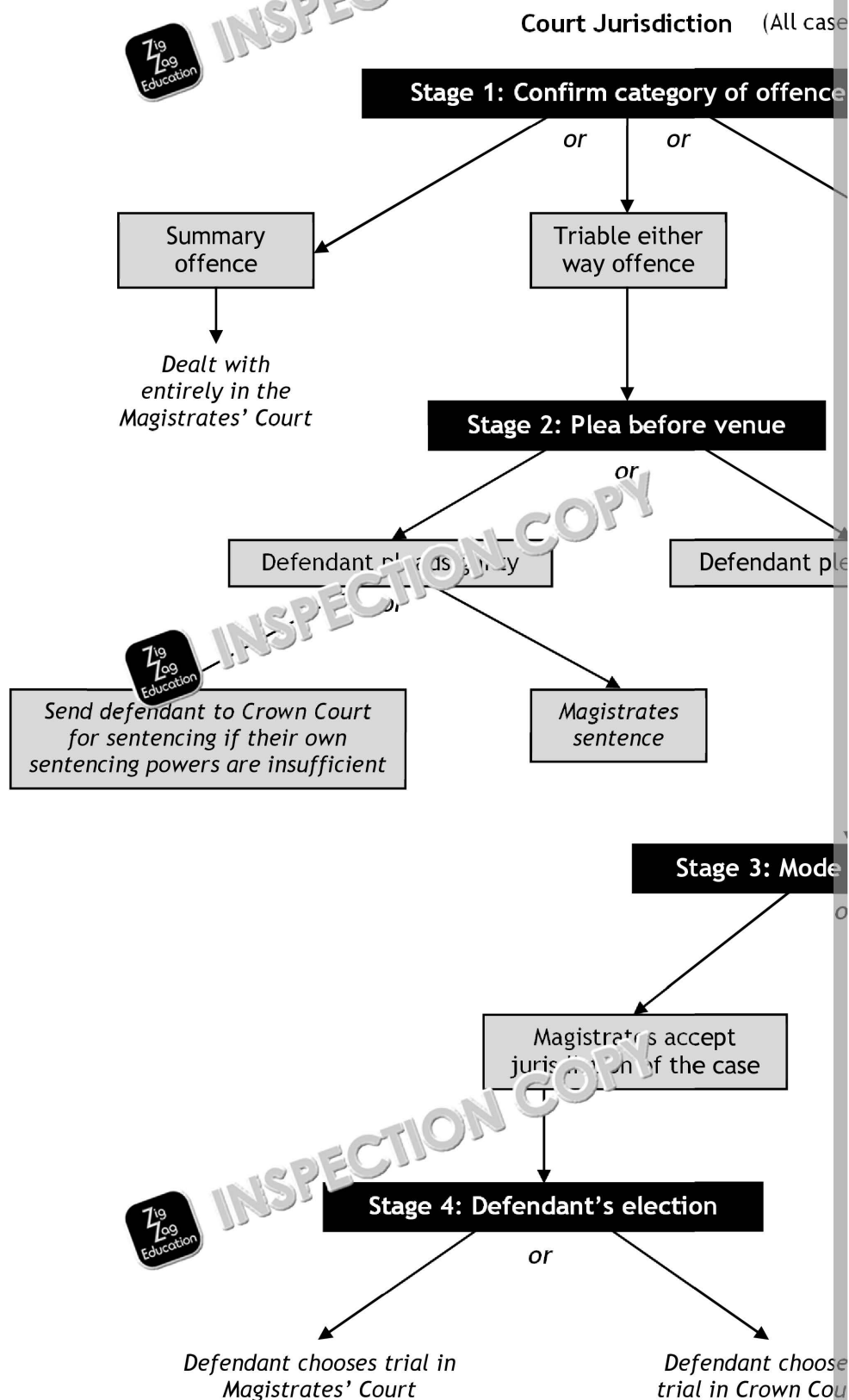
- These cases start in the Magistrates' Court.
- The defendant will be invited to issue a Plea before Venue.
- If the defendant pleads Guilty, the magistrates will sentence them or send them to the Crown Court if they feel their sentencing powers are insufficient depending on the seriousness of the offence.
- If the defendant pleads Not Guilty, the magistrates will hold a Mode of Trial hearing to decide whether they should accept jurisdiction for the case. (That is, they are deciding if their sentencing powers will be sufficient to punish the defendant properly if they are found guilty after their trial.)

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- An additional hearing, a Newton hearing, may need to be held first to decide the value of the goods (For instance, if a defendant who is charged with theft of £50,000 pleads guilty, the magistrates would have to decide whether to accept this as a guilty plea to the large amount or treat as a Not Guilty plea to the large amount and proceed to trial.)
- If the magistrates refuse jurisdiction, the defendant will be sent to the Crown Court for trial.
- If the magistrates accept jurisdiction, Defendant's Election occurs and the defendant has the choice as to which court the trial will take place in.
- Even if the trial takes place in the Magistrates' Court and the defendant pleads guilty, they still have the option to refer the case to the Crown Court for sentencing if the facts suggest a more serious sentence than originally thought is appropriate.



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Exercise (answers on page 64)

Read the paragraph on court jurisdiction below and fill in the gaps:

1. _____ offences are dealt with entirely in the Magistrates' Court. _____ start in the Magistrates' Court but are then sent to the _____ Court to be dealt with. 4. _____ either way cases offences such as 5. _____, start in the Magistrates' Court. The defendant will be invited to issue a Plea before 6. _____. If the defendant pleads Guilty, the magistrates will 7. _____ them or sentence them if their sentencing powers are insufficient depending on the offence. If the defendant pleads 8. _____, the magistrates will hold a trial to determine whether they should accept jurisdiction for the case. If the magistrates refuse, the defendant will be sent to the Crown Court for trial. If the magistrates accept jurisdiction, the trial will take place in the Magistrates' Court. If the defendant's 10. _____ occurs and the defendant gets the final 11. _____, the trial will take place in the Magistrates' Court. Even if the trial takes place in the Magistrates' Court, the defendant is found guilty, the 12. _____ still have the option to send the case to the Crown Court for sentencing if new facts have emerged that suggest a sentence more appropriate than the one originally thought is appropriate.

iii. Pre-trial Procedure

Summary offences

- An **Early Administrative Hearing** is held in the Magistrates' Court. This is to confirm the defendant's identity, deal with any request from the defence for the preparation of pre-sentence reports or considers whether the defendant is fit to plead.
- If the defendant pleads guilty, the prosecution and defence will present evidence and the magistrates will impose a sentence or wait until they have received reports regarding medical, psychiatric, probationary or financial matters.
- If the defendant pleads not guilty, the magistrates will arrange a date for trial.

Triable either way offences

- An **Early Administrative Hearing** is held in the Magistrates' Court, as for summary offences.
- The Mode of Trial procedure, outlined in the diagram on page 14, is followed.
- The procedure for summary offences (above) or indictable offences (below) will be followed depending on which court the case is to be dealt with in.

Indictable offences

- The first appearance is in the Magistrates' Court with an **Early Administrative Hearing** for summary offences.
- The case is then transferred to the Crown Court where a **Plea and Case Management Hearing** is held.
- If the defendant pleads guilty, the judge may well sentence immediately (after hearing evidence from the prosecution and defence) unless additional reports are needed.
- If the defendant pleads not guilty, arrangements will be made for the trial date to be set and for the prosecution and defence to disclose information.
- The prosecution must disclose the evidence they intend to use in the trial and the defence must state the basis of the defence such as disputed matter, alibi, and the nature of their evidence, and any points of law that will be argued.
- The judge will set a trial date if he or she feels enough information has been disclosed.

Bail

What is bail? (background information)

- ⇒ Bail is release on a promise to return. A person on bail is at liberty rather than in custody.
- ⇒ The system of bail tries to balance the rights of defendants to liberty and the rights of the public to safety.
- ⇒ Bail can be granted by either the police or the courts.

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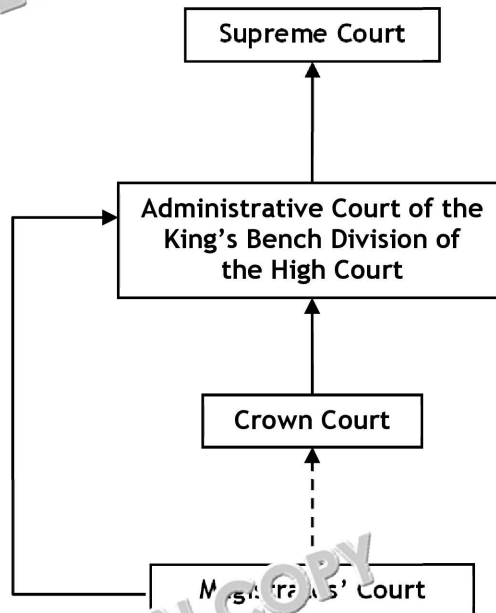
B. Appeals and Appellate Courts

Students need to know about:

- Criminal appeals from the Magistrates' Court
- Criminal appeals from the Crown Court

In each case, they also need to know about grounds and reasons for appeal and defence rights of appeal.

i. Criminal Appeals from the Magistrates' Court



The usual route of appeal is to the Crown Court. (Both appeal routes to the High Court are for case-stated appeals.)

An Appeal to the Crown Court

- Only the defence has the right to appeal to the Crown Court.
- This right of appeal is automatic (leave is not required).
- If the defendant pleaded not guilty in the Magistrates' Court s/he can appeal against conviction.
- If the defendant pleaded guilty in the Magistrates' Court s/he can appeal against sentence.
- The appeal is heard by a judge and two lay magistrates.
- The Crown Court can confirm the conviction or sentence, reverse it or vary it.
- About half of the appeals have some success.
- It is possible for both the prosecution and the defence to make a further appeal to the Court of Appeal on a point of law.

An Appeal to the Administrative Court of the King's Bench Division of the High Court

- This is from the Magistrates' Court or the Crown Court on a point of law.
- It is a case stated appeal.
- Both the prosecution and the defence can appeal against a decision by a lower court if the decision was based upon a mistake about the law.
- A decision can be confirmed, varied, reversed or sent back to the Magistrates' Court.
- There are fewer than one hundred such appeals a year.

An Appeal to the Supreme Court from the Administrative Court of the King's Bench Division of the High Court

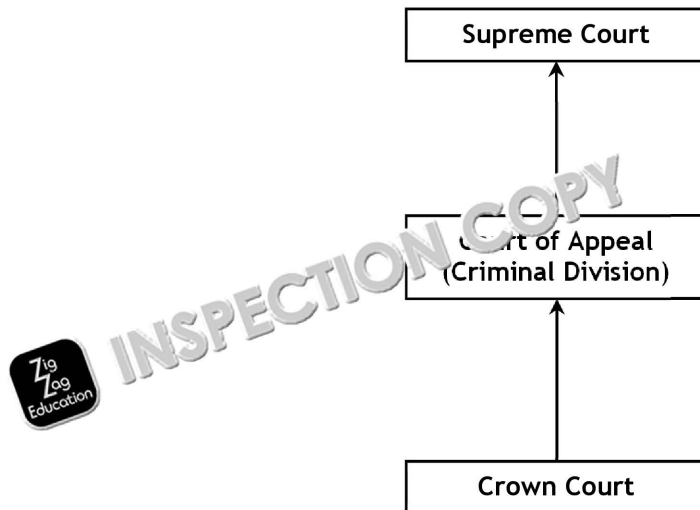
- It is only available on a point of law of general public importance but is only available to the prosecution.
- 'Leave' to appeal is required.
- Only two or three such appeals are heard annually.

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ii. Criminal Appeals from the Crown Court



Appeals by the Defence to the Court of Appeal (Criminal Division)

- Appeals against conviction and/or sentence can be made from the Crown Court to the Court of Appeal (criminal).
- Leave is needed but is rarely granted.
- Permission for the appeal to be heard will be granted or refused by a single judge of the Court of Appeal.
- The Criminal Appeal Act 1995 states that the Court of Appeal 'shall allow an appeal if they think that the conviction is unsafe'.
- The Act states that that is the **only** reason for allowing an appeal.
- A conviction may be upheld, quashed or varied.
- A sentence can be decreased but not increased or the appeal can be dismissed and the sentence retained.
- The Court of Appeal can order a retrial in front of a new jury.

Appeal by the Prosecution to the Court of Appeal (Criminal Division)

- The prosecution's right of appeal is limited.
- The prosecution's only right to appeal against acquittal is if new and compelling evidence has emerged. (This right, which breaks the double jeopardy rule, was introduced by the Criminal Justice Act for very serious offences only.)
- s.36 Criminal Justice Act 1988 allows the prosecution to appeal against a conviction.
- A referral by the Attorney-General can be made on a point of law after a conviction. It does not alter the acquittal but creates a precedent for future, similar cases.

Appeals from the Court of Appeal (Criminal Division) to the Supreme Court

- Appeals to the Supreme Court require leave.
- Both the defence and the prosecution can appeal but only on a point of law.

An additional prosecution right of appeal to the High Court

- Should a person be convicted of interfering with a witness or juror and a retrial is ordered, the prosecution may ask the High Court to quash the acquittal and order a retrial.

Further Research

Using the Zig Zag Education website, find and research a Court of Appeal (Criminal Division) case. Bring this to the class.

https://caselaw.nationalarchives.gov.uk/judgments/advanced_search?court=ca

Take brief notes on the name of a case, the issue, and the outcome. [NOTE: so if you are lucky, you may find a link to a summary of the case near the top of the page.]

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Case Studies

Students should learn two of the following. They should learn the name and the is right of each box). They should not repeat the details when answering an examining certainly not attempt to learn all these cases.

Case Study

C v DPP 1995

Appeal

A 12-year-old boy was convicted by magistrates of being involved with the attempted theft of a motorcycle. His appeal to the Divisional Court failed as the judges ruled that the prosecution no longer had to prove that a child aged 10-14 knew the difference between right and wrong, but a further appeal to the House of Lords succeeded and his conviction was quashed. This is a rare example of a case in the Magistrate's Court going all the way to appeal in the House of Lords.

Case Study

R v Gardner 2019

Joshua Gardner, a 17-year-old drug dealer and drill rapper, was nearly knocked off his feet when he was attacked the car with a huge 'zombie knife'. Found guilty of attempted GBH, he received a 3-year sentence. The judge said he had 'a realistic prospect of rehabilitation'. The prosecution appealed the sentence, which was raised to a custodial sentence of three-and-a-half years by the Court of Appeal.

Case Study

R v Challen 2019

Sally Challen killed her husband in 2010 with a hammer after 40 years of being abused. Her conviction for murder was quashed by the Court of Appeal, which ordered a retrial. Her appeal succeeding because of new evidence coming to light; in this case, psychological evidence.

Case Study

R v Dunlop 2006

Dunlop was charged with murdering a pizza delivery girl 15 years earlier. He had been acquitted by two juries but each jury had failed to reach a verdict so he had been formally acquitted. The Court of Appeal changed the double jeopardy rule, allowing a defendant that had been acquitted to be retried in certain circumstances. This was the first case where this happened; DNA testing developed and this time he pleaded guilty.

Case Study

Attorney General's Reference (no. 1 of 1983) 1985

A woman's employers accidentally overpaid her, putting £74.74 too much into her bank account. When she refused to return it, she was acquitted of theft by the jury. The case was referred to the Court of Appeal for guidance as to whether people like her should be prosecuted in future; the Court of Appeal ruled that the Theft Act 1968 made clear that anyone in this situation was liable for theft.

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Exercise (answers on page 64)

Decide whether the following statements on appeals and appellate courts are true or false. If false, correct the statement.

1. The prosecution and defence can appeal to the Crown Court against a conviction from the Magistrates' Court.
2. The Crown Court must give permission for such an appeal.
3. Such an appeal will be heard by a Crown Court judge and two magistrates.
4. A case stated appeal is made if either side disagrees with the verdict or the law applied.
5. The Appeals Act 1968 sets out the rules for when the Court of Appeal will allow an appeal from the Magistrates' Court.
6. The only reason the Court of Appeal can allow an appeal is if it is in the interests of justice.
7. The prosecution has very limited rights of appeal compared to the defence.
8. s.36 Criminal Justice Act allows the double jeopardy rule to be bypassed in certain circumstances.
9. If an Attorney-General's Reference succeeds, the defendant will be acquitted.
10. *C v DPP* 1995 is a rare example of a case from the Magistrates' Court that has found its way to the Supreme Court.



Exercise (answers on page 64)

Read the paragraph on appeals from the Magistrates' Court and fill in the gaps.

Richard and Matthew are appearing in court for the first time for summary offences. Richard's case was heard in the 1. _____ Court. There was a legal problem regarding the interpretation of the law. Consequently, 2. _____ has been granted for the magistrates to send the case to the 3. _____ of the High Court. The judges there also felt that the legal point was 4. _____ and so gave leave to send the case 5. _____. (The 6. _____ appeals that originate from the Magistrates' Court.) All these appeals are heard by the 7. _____. Meanwhile, Matthew's case in the Magistrates' Court resulted in a guilty verdict and he has been given a severe sentence. He has decided to appeal to the 8. _____. 9. _____ is not required and the case will be heard by the 10. _____.

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C. Sentencing and Court Powers

The subsections are:

- i. Aims of sentences for adults
- ii. Factors in sentencing adults
- iii. Types of sentences for adults

i. Aims of sentences for adults

Introduction

- Judges and magistrates have the task of sentencing.
- Magistrates are restricted to a maximum of six months' imprisonment for an offence. (In March 2023, this was raised temporarily to 12 months to help Crown Court judges.) Their powers to fine used to be up to £5,000 (resulting from the COVID crisis.)
- Crown Court judges have much more discretion. They can impose up to 14 years' imprisonment upon the range of sentences allowed for a crime.
- Each criminal offence has a maximum penalty set by Parliament. Theft has a maximum of seven years' imprisonment.
- The sentence for murder is a mandatory life sentence. No other sentence is mandatory.
- Offenders under the age of 21 are treated differently from adults.

The following aims, set out in s142 Criminal Justice Act 2003, were confirmed in s57 Sentencing Act 2020.

Punishment (or Retribution)

Retribution assumes that an offender deserves to be punished for his/her criminal acts and should get their 'just deserts'. It is about revenge for the victim or for society. The sentence should be proportionate to the offence so that the punishment fits the crime. A convicted murderer receives a life sentence.

Protection of the public

A long prison sentence will give the public some protection. A disqualification from driving or an exclusion order will do the same.

Reduction of crime (including by Deterrence)

- Deterrence has two forms. Individual deterrence tries to ensure that the offender does not reoffend by imposing a harsh punishment.
- General deterrence aims to prevent others from committing crimes.
- A harsh prison sentence, a heavy fine or a suspended sentence are examples of deterrence.
- General deterrence conflicts with the principle of retribution since it involves punishing more harshly than is proportionate.

Rehabilitation (or Reform)

- Rehabilitation is a forward-looking aim that aims to rehabilitate offenders. It involves the idea that an offender's behaviour can be reformed with support. It hopes the offender will not reoffend in the future.
- Sentences that focus on rehabilitation include many community service orders.

Reparation

- Reparation is compensating a victim or the community. This can be done through sentences such as an unpaid voluntary work requirement or by imposing a fine.

An additional aim (not included in the act) is Denunciation. This aims to indicate that some criminal activities are wrong. An example is drink-driving. This was once considered harsher sentences have been used to reflect society's disapproval.

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ii. Factors in sentencing adults

- Offences are broken down into subcategories, e.g. based on level of seriousness.
- Each subcategory has a STARTING TARIFF: this is the sentence the magistrate imposing if a defendant is guilty.
- The subcategory then has a RANGE which states the minimum and maximum sentence a magistrate can impose. The judge or magistrate will then move up or down the range based on AGGRAVATING and MITIGATING factors, as set out in ss. 63–75 Sentencing Act 2003.
- MITIGATING factors are factors that may reduce the severity of a sentence.
- AGGRAVATING factors may increase the severity of a sentence.

Examples of starting tariffs and ranges

- Theft of low value goods (up to £500) and little or no significant additional harm to the victim has a starting tariff of a high-level community order or a low-level community order to 36 weeks' custody.
- Theft of very high value goods (above £100,000) or high value with significant harm to the victim or others with lesser culpability has a starting tariff of one year's custody to two years' custody.

Aggravating circumstances: examples of factors that support a harsher sentence	Mitigating circumstances: examples of factors that support a lighter sentence
<ol style="list-style-type: none"> 1. The offender has previous convictions 2. The offender was on bail when s/he committed the offence 3. The offence was pre-meditated 4. The offender was in a position of trust when s/he committed the offence 5. The victim was vulnerable, e.g. very old or young. 6. A weapon was used. 7. There was a racial aspect to the offence. 8. The offence involved abuse of a position of trust. 9. Unnecessary violence was used. 10. The offence caused significant harm to the victim. 	<ol style="list-style-type: none"> 1. The offender was a first-time offender 2. There were no previous convictions 3. The offender has no previous convictions 4. The offender is a young person 5. The offender shows signs of remorse 6. The offender pleads guilty 7. The offender was in a position of trust 8. The offender played a minor role in the offence. 9. The offender sought help following the incident

Case Study

R v Beale 2017

Over a three-year period, Jemma Beale made claims of rape against nine men and another six men. As a result of her lies, an innocent man had spent five years in prison. Her conviction was quashed so she was sentenced to 10 years for perjury and perverting the course of justice.

Case Study

R v Adebolajo and Adebowale 2014

Spotting a soldier, Lee Rigby, Adebolajo and Adebowale ran him over and then hacked him to death. Adebolajo was given a whole-of-life prison sentence as this is a terrorist-related murder; Adebowale played a lesser role and was sentenced to 30 years.

Case Study

R v Raheem-Ullah 2015

Aggravating

He was convicted of sexual offences against two children under 13. In passing the sentence, the judge said that the fact the victims were Asian was an aggravating factor because of the particular shame in their community.

Case Study

R v Clark 1999

Mitigating

The defendant committed serious fraud and was sentenced to six months' imprisonment. The sentence was reduced to seven days. The judge said the defendant had not sufficiently considered mitigating circumstances. The defendant's exemption from military service after the death of their mother and her involvement in community and charity work were overlooked. Her good character should have been considered when sentencing.

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iii. Types of sentences for Adults

Custodial sentences

- This is the most serious sentence.
- The **Criminal Justice Act 2003** stated that custodial sentences should not be passed unless the court considers the crime to be very serious.
- Custodial sentences should be given to young offenders only as a last resort. A young offender is held in a separate unit from adults, not in a prison.
- Only offenders aged 21 and over can be given a prison sentence.

Types of custodial sentence in the UK

- a. mandatory life sentence
- b. discretionary life sentence
- c. determinate sentence
- d. indeterminate sentence
- e. suspended sentence

a. Mandatory life sentence

- i. This is the only sentence for murder.
- ii. The judge has no choice but to give it.
- iii. The judge will state a minimum number of years that an offender must serve from a few years to whole-of-life term. Release is not automatic; the murderer must convince a Parole Board that they can be safely released.
- iv. As it is a life sentence, the murderer will spend the rest of their life in prison, monitored and can be sent back to prison if they break the terms of their licence.
- v. The starting tariff for murder is 15 years in custody before parole can be considered.
- vi. If the murder involves the use of a firearm, the murder of a police officer on duty, the murder of a child, or a sexual or sadistic murder, the starting tariff for parole can be considered.
- vii. If the murder involves the murder of a kidnapped child, a sexual or terrorist-related murder, political murders, or the murder of a public figure, the starting tariff is whole-of-life, meaning they will never be released.

b. Discretionary life sentence

- i. These are imposed for serious offences such as rape, robbery, or kidnapping.
- ii. The judge can give a life sentence if they feel it is appropriate based on the facts of the case.

c. Fixed term sentence

- i. The prisoner serves part of the sentence in custody and the rest on licence.
- ii. Prior to 2022, half the sentence was spent in custody and the rest on licence.
- iii. The Police, Crime, Sentencing and Courts Act 2022 has raised this to two-thirds for some offences and ensured that 'offenders of particular concern' are not automatically released on licence.

d. Extended sentences

- i. The **Criminal Justice Act 2003** gave courts the power to pass an extended sentence for dangerousness in sexual or violent offences.
- ii. The custodial sentence is followed by an extension to the period of supervision.
- iii. This can be up to eight years for a sex offence or up to five years for a violent offence.

e. Suspended prison sentences

- i. Suspended prison sentences of up to two years are available for offenders aged 18 and over.
- ii. The court must specify the length of time during which sentence is suspended.
- iii. If s/he commits another offence within this time, the offender does not commit any further offence, the suspended sentence will not be served.
- iv. If s/he commits another offence within the period of suspension, the original sentence together with any sentence for the new offence will be served.
- v. They are for serious offences and aim to deter.
- vi. They can be combined with community sentence requirements. If the requirements are broken, the suspended sentence can be 'activated'.

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Community sentence

- There is only one community sentence: the community order which was introduced by the **Act 2003**.
- The magistrate creates a community order specifically for an offender by imposing more requirements.
- An example of a requirement is an **Unpaid Work Requirement**. This involves the offender doing 40 to 300 hours.
- A **Prohibited Activity Requirement** may prevent an offender from wearing a face paint spray.
- Under a **Curfew Requirement** an offender may be ordered to remain at home between two and 12 hours every 24 hours. This can last up to six months and may include electronic tagging.
- An **Exclusion Requirement** can be used to stop the offender going to, for example, a school ground, for up to two years.
- A **Mental Health Treatment Requirement**, a **Drug Rehabilitation Requirement** and a **Sexual Offence Treatment Requirement** all involve the offender accepting treatment for the purpose of rehabilitation.
- A **Supervision Requirement** will place an offender under a probation officer's supervision.
- An **Attendance Centre Requirement** can be used for offenders under 25.

Other sentences include:

- **Fines** – Since 2015, magistrates have been able to give unlimited fines, depending on the ability of the offender to pay.
- **Compensation orders** – Unlike with fines, this money goes to the victim.
- **Driving bans**
- **Conditional discharge** – There is no punishment as long as the offender does not re-offend in the period set by the court of up to three years.
- **Absolute discharge** – apart from receiving a criminal conviction, there is no punishment.



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Case Studies

Students should certainly not attempt to learn all the following case studies. Two memorable would be sufficient for students to learn, and then just the name and s

Case Study

R v Matthews 2015

Ryan Matthews was approaching the end of his 21-year sentence for murder and with supervised day visits. This involved being moved to a different unit but one ban. To avoid the move, he stabbed his care assistant to death. He received a w

Case Study

R v Andrews 2017

18-year-old Aimee Andrews suffered teasing after it emerged that she had made a She therefore decided to commit suicide by deliberately driving head-on into another car. She was not seriously injured, but the other driver was killed and his injuries were life-changing. She received a sentence of 9½ years for manslaughter and dangerous driving.

Case Study

R v Littlewood 2018

Joseph Littlewood approached a woman, dropped his trousers and said, 'What do you like wearing stockings and suspenders but nothing else. He was convicted of indecent exposure. His sentence included a sexual harm prevention order preventing him from speaking to any woman in an emergency or to obtain goods or services.

Case Study

R v Rolph 2018

Sarah Rolph from Milwards stole an electric toothbrush from Boots. The Community Order included a drug rehabilitation requirement and a curfew requirement banning her from going out at night.

Case Study

R v Wainfur 2006

He was part of a group of thugs that terrorised inhabitants of Newport, using homophobic abuse. His Anti-Social Behaviour Order included a requirement not to go to certain areas.

Case Study

R v 'Bournemouth Boy' 2022

A 13-year-old boy pleaded guilty to aggravated vehicle taking of an Audi and also to driving without due care and attention, without a licence, and without insurance! His parents were fined a surcharge and the boy was disqualified from holding or obtaining a driving licence.

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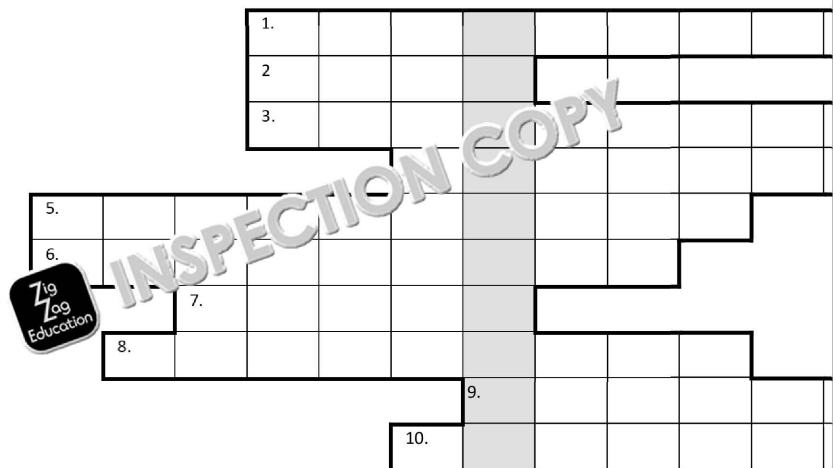
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Exercise (answers on page 65)

Use the clues below to fill in the law-search on sentencing. Spot the column.



Clues

1. A life sentence for murder is...
2. A financial punishment
3. Being sent to prison is an example of this type of sentence
4. A Community Order is constructed from one or more
5. Passes sentence
6. Can be absolute or conditional
7. Passes sentence
8. A type of sentence
9. Requirement to remain home during certain hours
10. An aim of sentencing



Exercise (answers on page 65)

Find the words associated with sentencing in the anagrams below. Write down how many words you are looking for.

1	Scene Ten	
2	Cigar Shed	
3	Centre Deer	
4	Crewmen Queer Fruit	
5	Fen is	
6	Bit Urine Rot	
7	Acid	
8	on Nude	
	Iota Timing	
	Ponies Virus	

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D. Lay Magistrates

Lay people

- Lay people are ordinary citizens, usually unqualified in law, who play a part in decision-making in our courts.
- They are not legal professionals and are unpaid (save for expenses).
- They take on the role of magistrates or jurors.

Lay Magistrates

- Magistrates are also known as Justices of the Peace or JPs.
- They have been in existence since the twelfth century.
- Today there are approximately 30,000 in England and Wales.
- They are part-time judges in the Magistrates' Court. They usually have another job, are retired, or can afford not to work.
- *There are also a few stipendiary magistrates (District Judges). Since they are paid they are not lay personnel.*

Qualifications

- Lay magistrates must be aged 18 to 65 on appointment. They may serve until the age of 70.
- A lay magistrate does not have to be a British citizen but must take the oath of allegiance.
- Lay magistrates must live within or near to the area covered by the court (The local area).
- They must have no serious criminal convictions (although minor offences are allowed).
- Undischarged bankrupts are disqualified from being magistrates.
- Police, members of the armed forces, traffic wardens and their close relatives could be a conflict of interest.
- They must be prepared to do at least 26 half days per annum.
- They must not be closely related to another magistrate serving in the same court.
- They must not have any other commitment that prevents them carrying out their duties.
- They must have personal qualities (see below).
- They must have judicial qualities (see below).

The Key Qualities of a Magistrate

The Lord Chancellor has listed the six personal qualities required of magistrates:

1. Good character
2. Understanding and communication
3. Social awareness
4. Maturity and sound temperament
5. Sound judgment
6. Commitment and reliability

The Judicial Qualities of a Magistrate

- The ability to absorb factual information and make a reasoned decision upon it.
- The ability to work as part of a team

Appointment

- About 1200 are appointed each year.
- The appointments are made by the Senior Presiding Judge.
- Names are forwarded to the Senior Presiding Judge by Local Advisory Committees.
- These will advertise for candidates and hold interviews.
- A candidate will apply online or by contacting a LAC; they must supply the name of a referee who will confirm that they have made two court observational visits in the last year.
- The first interview will check that the candidate has the six key qualities.
- The second interview examines judicial qualities through role-playing exercises.

Local Advisory Committees

- The membership used to be secret but now all names must be published.
- They have a maximum of 12 members and include magistrates and non-magistrates.
- They aim to appoint a diverse range of magistrates that reflect the local community.
- Local advertising is used to attract interested individuals.

Role in Criminal Cases

- All criminal cases start in the Magistrates' Court.
- Magistrates deal with about 97% of all criminal cases in their entirety.
- They sit as a 'bench' of three and reach a majority decision. The magistrate in the middle is the speaking magistrate.
- A single lay magistrate has little power but can issue search or arrest warrants.
- Magistrates have an appellate function. Two will sit in the Crown Court with appeal from the Magistrates' Court.
- Magistrates deal entirely with all summary cases and those either way where they remain in the Magistrates' Court.
- If the offence is indictable, the magistrates deal with preliminary matters, such as plea, but the case will be dealt with in the Crown Court.
- For other offences, the magistrates ask the defendant if they plead guilty or not. If they plead guilty, they sentence the defendant, or send them to the Crown Court if they feel their own sentencing powers are insufficient.
- If the defendant pleads not guilty to a summary offence, the magistrates hear the case, reach a verdict and if found guilty then make a decision as to suitable sentence.
- If the defendant pleads not guilty to a triable either way offence, the magistrates can send the case to the Crown Court Jurisdiction section on page 14.
- In all criminal cases magistrates decide whether bail should be granted, and they can issue search warrants and arrest warrants. (They cannot issue a writ, however, if the charge is indictable only.)
- Magistrates can undertake additional training if they would like to serve in the Crown Court.

Role of the Magistrates' Clerk (no background understanding only)

- Each bench has a clerk to help the magistrates.
- The clerk advises the magistrates what decision should be reached so is not involved in the decision-making but explains any points of law.
- A clerk is usually trained as a solicitor. A senior clerk will have at least five years' experience as a solicitor or solicitor.
- S/he has a large managerial role in supervising the issue of court orders, legal aid, and now issue warrants for arrest, extend police bail and support the training of new magistrates.



Exercise (answers on page 65)

Answer the following questions:

1. What does JP stand for?
2. What is the youngest age for appointment as a magistrate?
3. When must a magistrate retire?
4. Magistrates usually sit together, most often as three, to form a bench. What power does a single lay magistrate have?
5. Who technically appoints the magistrates on behalf of the King?
6. On whose advice?
7. How many lay magistrates must potential candidates for magistracy be?
8. Which category of crime is always tried by magistrates?
9. Which category of crime is never tried by magistrates?
10. When can magistrates not allow an offender to be released on bail?
11. What do magistrates issue in order to arrest offenders or search premises?
12. Who guides magistrates in court but does not take part in the decision-making?
13. What name is given to a non-lay magistrate?
14. Magistrates sometimes sit in the Crown Court. To do what?

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E. Juries

Introduction

- Jurors are lay people.
- The jury system goes back a thousand years. It is considered a traditional part of English law.
- Juries are used for criminal cases in the Crown Court where a panel of 12 make a decision of guilty or not guilty.
- The jury reaches its decision in complete secrecy – Section 8 of the Contempt of Court Act 1981 makes the disclosure of anything that happened in a jury room a criminal offence.
- The only questions the jury can be asked are whether a verdict has been reached and the number of votes for each side.
- The judge must accept the verdict; the jury cannot be asked the reason for its decision.
- The judge must not pressure the jury to reach a verdict.
- The jury must try to reach a **unanimous** verdict.
- If the jury is unable to reach a unanimous decision after two hours, the Juries Act 1974 allows the judge to accept a majority verdict of 11:1 or 10:2.
- If one, two or three jurors have had to drop out during the trial, verdicts of 10:2, 9:3 or 8:4 are allowed.
- The trial will collapse if more than three jurors drop out.
- If the jury indicates to the judge that it is unable to achieve an allowable majority, the judge must discharge the jury and a new trial with a new jury will be held.

Qualifications of jurors

- These are set out in the Juries Act 1974 (as amended).
- Jurors must be aged 18 to 75. (NOTE: not 18 to 70 as stated in some textbooks)
- A juror must be on the electoral register.
- A juror must have been a resident in the UK, the Channel Islands or the Isle of Man for at least five years before the trial.
- Jurors must not be disqualified or resident in a mental hospital under a Mental Health Act.

Disqualification

- A person is disqualified if they have received a custodial sentence of five years or more.
- A person is disqualified for 10 years following release from prison after serving a sentence of five years or more, or after receiving a suspended or community sentence.
- Anyone on bail is disqualified.
- Some people who are mentally ill are disqualified.
- Those who lack capacity – for example, because they cannot understand English or because of a mental health condition – would prevent them fulfilling the duties of a juror – are also disqualified. (The problem of having a thirteenth person in the jury room was changed as s.196 Police, Crime, Sentencing and Courts Act 2022 allows the presence of interpreters in the jury room.)

Excusal

- People may be excused jury service. They must ask for permission when reporting for jury service.
- You might be excused completely if you have a serious medical condition.
- You are excused if you have been on jury service within the last two years.
- Your jury service may be postponed, e.g. if you have exams or a holiday arranged during the period of your summons.
- Members of the armed forces are excused if their commanding officer provides a certificate.
- Since 2004, judges, lawyers and police officers have been eligible for jury service.
- A juror can be fined up to £1,000 for non-attendance.

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Selection of Jurors

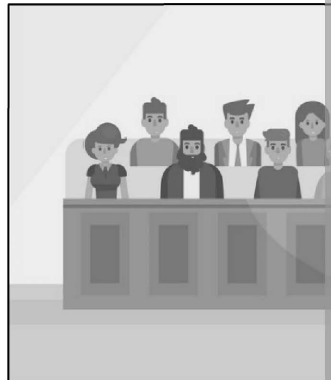
- More people are summonsed than are needed because the summoning officer is not sure who will be disqualified or excused. For a court with several courtrooms, 150 people might be summonsed for a trial.
- A juror is usually required to serve for a period of two weeks.
- 15 names are called at random (e.g. by shuffling and picking cards, each of which has a name on it) by a court clerk and these 15 people are taken into a courtroom.
- In the courtroom 12 names are chosen randomly by the court clerk and these 12 people sit in the jury box. The other three wait in case challenges are made.
- A **challenge to the array** is when the prosecution or defence challenge the way the jury is selected. It is one-sided or unrepresentative.
- A **challenge for cause** is when the prosecution or defence challenge an individual juror. It is required that the juror is replaced by one of the reserves.
- The right of **peremptory challenge** is available to the prosecution only, without the need to give a reason. The juror will be replaced by one of the reserves but will still be used if no reserves are left.
- Jury vetting is the process of checking out prospective jurors. This is random and aims to eliminate those disqualified.
- Controversial further checks on a juror's background can be made by Special Branch for national security. This must be authorised by the Attorney-General.

Evaluation of Jury Selection

- Juries are considered to be democratic because they are randomly selected.
- Whole groups such as the young or homeless do not always appear on the electoral roll and are unavailable for jury service.
- Despite vetting, many disqualified people sit on juries. One survey in London found that 10% of jurors are disqualified.
- The **Criminal Justice Act 2003** has tightened up the rules on excusal considerably. It means that a wider section of the population are now represented on juries. However, some people are still excused. This can prevent juries from representing a fair cross section of the community.
- Judges have no power to create a multi-racial jury (**R v Ford 1989**).

The Role of the Jury in Criminal Cases

- A jury is usually found in the Crown Court where the defendant pleads not guilty.
- At trial, the jury's function is to listen to and decide the facts of the case. The judge provides the jury with details about the law they need to know in considering their verdict. There is, therefore, a split function: the judge decides the law and the jury decides the facts, i.e. whether the law has been broken.
- The jury will deliberate in secret.
- The jury will find the defendant guilty or not guilty.
- The jury will endeavour to reach a unanimous verdict, although a majority verdict is possible (see Introduction to Juries above).
- The jury will base its decision only on the evidence presented to the court.
- The jury members will take an oath not to base their decision on anything heard outside the court or to undertake their own research.



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✓ Advantages of using juries in criminal cases	✗ Disadvantages of using juries in criminal cases
<ul style="list-style-type: none"> ✓ In the Ponting Case, the jury was seen as a bastion of liberty against the state when it used jury equity to find Ponting not guilty despite a wealth of evidence suggesting he was guilty. ✓ Public have confidence in trial by ordinary people because there is community involvement. ✓ Juries make law more accessible. Points of law must be explained clearly in open court. This case is expensive because the trial is lengthy but people usually appreciate the openness. ✓ 12 jurors mean that bias should be removed. ✓ Responsibility cannot be placed upon one juror because no individual juror is responsible for a decision. ✓ A jury dissolves at the end of a case so it does not become case hardened. ✓ Secrecy means the jury is free from any pressure in their discussions. 	<ul style="list-style-type: none"> ✗ Secrecy is important but it is hard to keep out if juries really understand complex cases. There is a risk the jury came to its decision based on emotion. ✗ Juries do not give reasons for their decisions. This makes appeals difficult. ✗ Juries are not a real cross-section of society. In inner city areas, 30% of the population must be registered. By using electoral rolls they are not representative. ✗ Jury vetting is seen as an infringement of individual liberties. ✗ 18 years of age is often the minimum age for jury service. ✗ Many jurors do not understand the law or can miss finer details. This is especially true if education standards are low. ✗ When a case is very complex, jurors may find the court daunting. ✗ Some jurors may find the court daunting. ✗ Problems with prejudice can arise from media coverage (R v Duffin). ✗ It is possible for weaker jurors to be influenced by other jurors. Occasionally jurors have been influenced by bribery or threats from judges or barristers. ✗ The compulsory nature of jury service is unpopular. Expenses may not cover the costs. It is often time consuming. ✗ The use of juries is more expensive than lay magistrates. ✗ Impartiality cannot be guaranteed. Some jurors are biased or may be racially biased or may be prejudiced against the status of a defendant. ✗ There are concerns that the high acquittal rates are due to jury leniency.

Alternatives to Jury Trial (for background information only)

- Trial by a single judge would be cheaper and quicker than a jury but s/he may not have the same level of understanding of ordinary people. S/he will have legal expertise but may be case hardened or prosecution minded.
- Trial by a panel of three to five judges is used on the continent. This would be expensive.
- A judge plus lay assessors would command public confidence because there is a lay element.
- A mini jury is used in some cases. It has the advantages/disadvantages of being lay but the lack of qualified personnel would be an issue. This is not a standard procedure.

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Case Studies

Students should certainly not attempt to learn all the following case studies. Two particularly interesting and memorable would be useful to learn in order to use to Discuss question on Disadvantages of Juries. If used that way, just the case name at the top right of each case study) should be included to illustrate the point being disadvantage. Students should not go into the details of a case in an exam answer.

Case Study

R v Y (June 2004)

This was the Ouija board case – at a hearing, jurors used a séance in order to determine a fact. Because the séance took place outside the jury room, an enquiry could be held into the jury's conduct. If the séance had happened inside the jury room, it is likely to have remained a secret. The verdict was quashed and a retrial ordered.

Case Study

R v Karakaya 2005

A conviction was quashed because information gathered at home was brought in to deliberations. This broke the rule that no evidence should be introduced once the verdict. Although this example of jury malpractice was discovered, it is unknown whether any other jurors have done this.

Case Study

R v Pryce 2013

The jury sent the judge a note asking 10 questions such as 'Can you define what is a reasonable doubt?' and 'Can you base your verdict on a reason not raised in court?' Mr Justice Patten ordered a retrial, saying he had 'never come across' such a response from a jury working in criminal courts. He said that the jury showed 'a fundamental deficit in understanding' and asked 'is this jury's lack of understanding an aberration or typical?'.

Case Study

The Romford Jury 1993

During an Old Bailey case, it was discovered that nine of the jurors came from Romford. A successful challenge to the array on the grounds that the jury was not impartial was successful.

Case Study

Attorney-General v Fraill 2011

Joanne Fraill made Facebook friends with the woman whose drug trial she was sitting on. She discussed the jury's deliberations with her. She was convicted of contempt of court. This was the first contempt of court case involving Internet communication, which has become a common occurrence in the years since.

Case Study

Attorney-General v Davey 2013

A man was on trial for sexual offences against children. Juror Davey posted the following on Facebook: 'Wooooow I wasn't expecting to be in a jury Deciding a paedophile's fate. Up a paedophile & now I'm within the law!' Davey was convicted of contempt of court. He had made clear his intention to 'prejudice the due administration of justice' as he was not having the evidence. Without social media, however, his intent would never have been known. Other jurors go in with predetermined conclusions.

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Case Study**R v Ponting 1985**

A civil servant leaked official secrets to the press. He said that he was not guilty under s.2 Official Secrets Act (1911) as he had acted in the public interest. The judge ruled that this was no defence but the jury still found him not guilty. This confirmed that a jury does not have to give reasons for verdicts, even when these appear perverse.

Case Study**5. The Case 1670**

Bushel was a member of a jury that failed to convict two Quakers, William Penn and William Meade, of an unlawful assembly, causing the judges to imprison the jury for contempt of court against imprisonment. This established that a judge must accept a jury's verdict.

**Exercise (answers on page 65)**

Decide if the following statements are true or false:

1. A judge may ask for a majority verdict after two hours.
2. Juries explain their verdicts.
3. The Ponting Case was associated with vetting.
4. The Juries Act 1973 dealt with jury excusals.
5. The jury foreman reads out the verdict.
6. The Contempt of Court Act insists that all jury decisions should be unanimous.
7. Juries are never used in the Court of Appeal (Criminal).
8. All juries consist of lay people only.
9. You can serve on a jury more than twice.
10. The right of stand-by is open only to the prosecution.



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3. Legal Personnel

There are three learning sections and two evaluation sections in this topic.

Learning sections

- A. Barristers, Solicitors and Legal Executives
- B. The Judiciary
- C. The Separation of Powers and the Independence of the Judiciary

Evaluation section

- Evaluation of the Judiciary
- The Advantages of Judicial Independence

The material for the evaluation section is included in sections B and C above.

A. Barristers, Solicitors and Legal Executives

The subsections are:

- i. Barristers
 - a. Role
 - b. Regulation
- ii. Solicitors
 - a. Role
 - b. Regulation
- iii. Legal Executives
 - a. Role
 - b. Regulation

i. Barristers

Role

- There are approximately 16,500 barristers working in England and Wales.
- They are all trained and supervised by the Bar Council.
- One of their main duties is acting as **advocates** in the Crown and other courts. They appear in court and give 'evidence' in all the courts in England and Wales.
- They also prepare '*opinions*' for clients by giving their views on legal issues and whether a case is worth pursuing.
- Another role is the preparing of pre-trial papers to ensure that a case can proceed quickly.
- Some barristers specialise in certain areas such as company law and tax law.
- Employed barristers include those who work for the CPS on a salary for a fixed period.
- According to the 'cab rank rule', barristers must take a case if they are available in their area of expertise.
- Most barristers are technically self-employed but form a group known as the Bar.
- Until recently barristers relied on the solicitor, and clients did not have direct access to a barrister. This is no longer the case in civil law (apart from family law) because of the direct access to a barrister.
- After 5 years, a barrister can apply to 'take the silk' and become a King's Counsel or Queen's Counsel. They are then called 'silks'.
- Barristers can work alongside solicitors and non-lawyers in a Legal Disciplinary created by the **Legal Services Act 2007** as a result of the Clementi Review.

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Regulation of Barristers

Complaining about a Barrister's Work

- Initially complain to the barrister's chambers.
- Then complain to the Office for Legal Complaints:
 - Created by Legal Services Act 2007
 - Chairman and members are lay
 - Completely independent of Bar Council
 - Set up (independent) **Legal Ombudsman** to perform day-to-day handling of complaints

Powers of Legal Ombudsman:

- Require an apology
- Force barrister to put matters right if possible – no cost to client
- Order payment of compensation of up to £30,000

Complaining about a Barrister's Conduct

- Bar Standards Board** can discipline anyone in breach of their Code of Conduct
- Can refer serious breach to **Disciplinary Tribunal of the Council of the Inn**
- Powers of Disciplinary Tribunal:
 - Suspend, fine, reprimand or disbar

Legal Services Board

- The Legal Services Board has independent oversight of the regulation of legal services
- It therefore watches over the Bar Standards Board.

Suing a Barrister

- A barrister does not enter into a contract with their client so they cannot sue for breach of contract but it is a breach of a solicitor's professional etiquette not to pay a barrister
- This means that a client cannot sue for breach of contract but they can sue for negligence inside court. This was decided in **Hall v Simons 2000**.
- Where a barrister sues outside court as stated in **Saif Ali v Sydney Mitchell 1980**.
- The argument was that doctors, etc. can be sued for negligence so why not barristers?

Case Study

Arthur Hall & Co. v Simons 2000

A client thought his barrister had been negligent in the presentation of his case in court. Permission was given, overruling the precedent set in *Rondel v Worsley* (1969) that barristers could not be sued for negligence. As a result of this case, clients can now sue barristers for negligence. Barristers can sue clients for non-payment.

Further Research

Using the following website, make a list of the types of sanctions imposed on barristers by the Bar Standards Board

<https://www.barstandardsboard.org.uk/for-the-public/search-a-barristers-recommendations/findings.html>

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Exercise (answers on page 65)

Complete the gaps in the text below about barristers.

- A new barrister must find a tenancy in a set of 1. _____
 2. _____ employed and join together to share expenses.
 A barrister often relies on 3. _____ from 4. _____
 5. _____ cannot approach a barrister directly for criminal work.

Most barristers specialise in 6. _____ but others focus on
 advising on litigation and drafting documents. Some specialise in criminal
 law 7. _____ law and will rarely appear in court. After 7. _____
 a barrister can apply to 'take the silk' and become a 8. _____
 to handle more complex cases and higher fees. The old method of appointment
 9. _____. It is now more open and independent. Few
 10. _____ or from the 11. _____ mind
 become a 12. _____.

ii. Solicitors

Role

- There are nearly 150,000 solicitors in England and Wales working in both the private and public sectors. In the private sector the type of work they do depends on the size of the firm.
- All solicitors are members of the Law Society, which represents their interests.
- Most firms have four or fewer partners.
- Solicitors interview clients and negotiate for them; they draft legal documents and appear in court.
- In small town firms where there are only a few solicitors, the work is often with individuals in personal matters. They tend to be general practitioners handling a wide range of problems, conveyancing, business and family matters. Much of their work is done out of court.
- They can also act for their clients in court.
- Larger city firms often employ hundreds of solicitors and have a lot of partners. They specialise in commercial law and they act for business interests as well as individual clients.
- International city firms are mainly based in London and have worldwide networks. They are heavily involved with company and commercial law.
- Solicitors in the public sector are employed by the Crown Prosecution Service, the police, local government, commerce and industry.
- Solicitors can now work alongside barristers and non-lawyers in a Legal Practice Entity (LPE). These were created by the **Legal Services Act 2007** as a result of the Clementi Report.

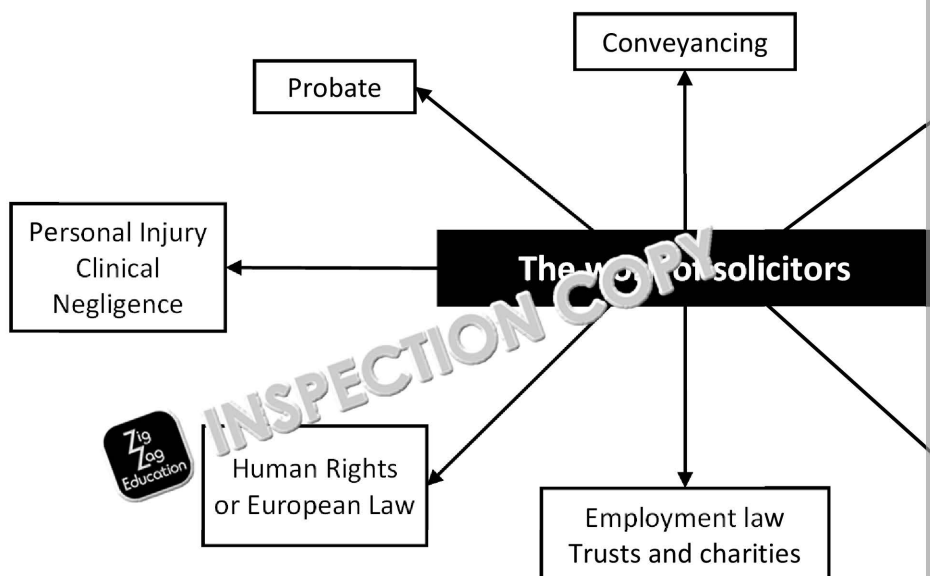
Conveyancing and Advocacy

- Before 1987, solicitors had a monopoly over conveyancing but this is no longer the case. There is now much conveyancing work and those who used to have had to become barristers to do it can now do it themselves. Their fees are lower.
- Solicitors have demanded the rights of advocacy. They have always been allowed to appear in the Magistrates' and County Courts but they used to have no rights of audience in the High Court.
- By the **Courts and Legal Services Act 1990** it became possible for a solicitor to apply for rights of advocacy which gives him/her rights of audience in the higher courts. This was a major step towards the Bar until 1994, when the first solicitors received their certificates in advocacy.
- The **Access to Justice Act 1999** allows all newly appointed solicitors to become advocates. This has worried barristers.

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Regulation of Solicitors

Complaining about a Solicitor's Work

- Initially complain to the solicitor's practice.
- Then complain to the Office for Legal Complaints:
 - Created by Legal Services Act 2007
 - This created the independent **Legal Ombudsman** to perform day-to-day
 - Chairman and members are lay
 - Completely independent of Law Society.

Powers of the Legal Ombudsman:

- Force an apology
- Force solicitor to put matters right if possible – no cost to client
- Refund or reduce fees
- Order payment of compensation of up to £30,000

Complaining about a Solicitor's Conduct

- The **Solicitors' Regulation Authority** can put a serious misconduct case before the **Disciplinary Tribunal**.
- Powers of Solicitors' Disciplinary Tribunal:
 - Fine
 - Reprimand
 - Suspend from Roll of Solicitors
 - Strike off from Roll of Solicitors

Legal Services Board

- The Legal Services Board has independent oversight of the regulation of the legal profession.
- It therefore watches over the Solicitors' Regulatory Authority

Suing a Solicitor

- A solicitor deals with clients and enters into a contract with them.
- If a client does not pay, a solicitor can sue the client for their fees but this is rare.
- It has always been possible to sue a solicitor for negligence for **out-of-court** work.
- In **White v Jones 1995**, a solicitor was found to be negligent when he took no action to ensure that the subject of the will had died in the meantime. In **Hall v Simons 2000**, a solicitor was found to be negligent for failing to court work.

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Case Study

Abse v Smith 1986

An MP sued another MP for libel. The two sides reached an agreement and one side gave permission to read out the settlement in open court. Permission was refused as it was not an audience in open court of the High Court. (As a result of this case, a Practice Direction was issued allowing the Chancellor and the senior judge from each division of the High Court allowing solicitors to read out statements in these circumstances.)

Case Study

Griffiths v Lawson 1993

Solicitors can be sued for negligence as shown by this case where the solicitors were awarded compensation owing to a client during divorce proceedings.

Case Study

Saunders 2018

Philip Saunders, a 69-year-old solicitor, headbutted Mr Ghadami during an argument in the High Court. The Solicitors' Disciplinary Tribunal ruled that he had 'failed to act with integrity' and was removed from the role of solicitors.

Case Study

White v Jones 1995

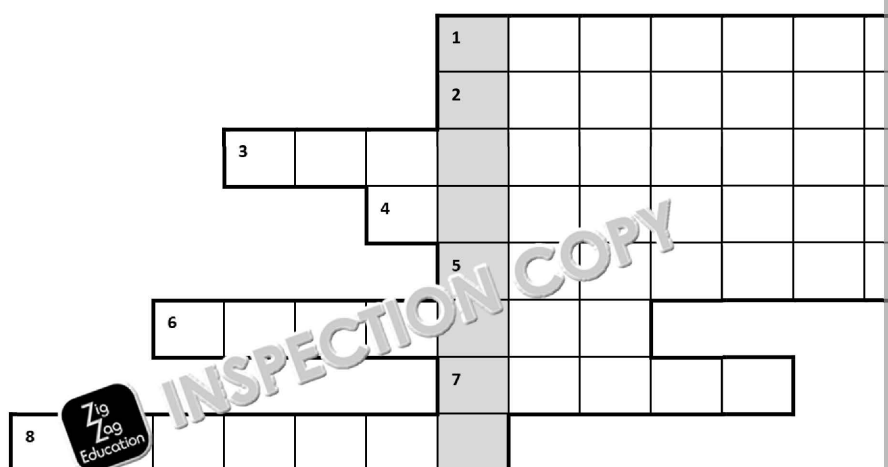
Mr White wanted to leave his daughters £9,000 each and asked his solicitors to do this (and to remove them out of his previous will.) The solicitors were slow to do this and Mr White died before he could change his inheritance. Even though the daughters were not clients of the solicitors, the solicitors were found liable for their interests and would have to pay compensation to cover the lost inheritance.



Exercise (answers on page 65)

Answer the clues below to complete the crossword. Find the hidden words.

- 'Right of _____' means a solicitor can speak in court.
- The Tribunal can punish solicitors.
- Legal executives are now permitted to carry out this work.
- A solicitor might draw one of these up for a client.
- A dissatisfied client can complain to the Office of Legal _____.
- The area of law dealing with inheritance and wills.
- First word of CPS.
- It supervises solicitors – second word.



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iii. Legal Executives

Role

- There are 20,000 legal executives in England and Wales working in both the public and private sectors.
- They will have obtained the CILEX Professional Qualification from the Chartered Institute of Legal Executives.
- They are fee-earning qualified lawyers. Most work in solicitors' firms and some work in the public sector.
- They specialise in a particular area of law such as conveyancing, setting up trusts or providing advice on civil or criminal matters.
- They have the same expertise as a solicitor in their specialist area.
- They must undertake regular training to remain up to date.
- Fully qualified Chartered Legal Executives can commission oaths and take the Bar.
- Chartered Legal Executives can take qualifications allowing them to obtain Specialist Advocacy certificates allow them to speak in particular courts such as the Family Court and the County Court.

Regulation of Legal Executives

- Legal executives are governed by the Chartered Institute of Legal Executives (CILEX) Regulation.
- Legal executives must declare and provide details of certain conduct that they have become, or remain, a regulated legal professional.
- CILEX ensures that ethical and professional standards are included in the CILEX Regulation.
- CILEX might bring a case before a Professional Conduct Panel and then, if necessary, a Disciplinary Tribunal.
- CILEX can warn, reprimand or fine legal executives, or even remove them from the Register.



Exercise (answers on page 66)

Answer the following questions:

1. Approximately how many legal executives are there in England and Wales?
2. Which body regulates legal executives?
3. Do they work in the public or the private sector?
4. Give an example of an area of law a legal executive might specialise in.
5. Where do most legal executives work?
6. What certificate must a legal executive obtain that will allow them to take the Bar?
7. What is the name of the panel that examines whether a legal executive has met the expected ethical or professional standards?
8. If the matter then goes before a Disciplinary Tribunal, what sanctions can it impose?

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B. The Judiciary

The subsections are:

- i. Types of Judge
- ii. The Role of Judges in Civil Cases
- iii. The Role of Judges in Criminal Cases

i. Types of Judge

Superior Judges

Justices of the Supreme Court

- The changing of the Supreme Court by the **Constitutional Reform Act 2005** enhanced the separation of powers.
- The most senior judges are now completely separate from the House of Lords where they sat as the Appellate Committee before the Supreme Court was created.
- The judgment in *Austin v London Borough of Southwark 2010*, concerning Settlement, showed that the Supreme Court considered itself to be a court of Lords Appellate Committee.
- There are 12 Justices of the Supreme Court.
- They have previously held high judicial office, usually as an Appeal Court in England and Wales, Scotland, or Northern Ireland.
- It is expected that they will hear about 70 appeals a year annually, both civil and criminal law is involved and there is public interest.
- They usually sit as a panel of five judges but occasionally as a panel of seven.
- Witnesses are not called and evidence is read and arguments are heard.
- Any decision made is binding on all lower courts.



Lord Justices of Appeal

- They sit as a panel of three in the Court of Appeal. A majority decision is required.
- They must have been a High Court judge or had at least seven years' experience as a judge.
- A single judge hears applications for leave to appeal.
- Jurisdiction is by case-stated appeal. Judges hear both civil and criminal appeals.
- The Civil Division is presided over by the Master of the Rolls.
- The Criminal Division is presided over by the Lord Chief Justice who is also the President of the Criminal Division.

High Court Judges

They must have had at least seven years' experience as a lawyer or been a Circuit Judge.

- They sit in one of the three divisions of the High Court.
- The High Court operates in London and in provincial centres.
- They also sit in the Crown Court with a jury.
- A High Court judge hears a first instance case alone but will join with Lord Justices of Appeal in the Court of Appeal.

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Inferior Judges

Circuit Judges

- Circuit judges sit in County Courts and in Crown Courts.
- They hear civil cases in the County Court and criminal cases in the Crown Court.
- They must have had seven years' experience in legal service; for instance as a barrister, a solicitor, a recorder, or a District Judge, or as the chair of an employment tribunal.
- Senior circuit judges may sometimes sit in the High Court or even in the Court of Appeal.

Recorders

- Recorders are barristers and solicitors who also work as part-time Circuit Judges, sitting in County Courts and occasionally in the Crown Court.
- They work on fixed-term contracts.
- They handle less complex cases than Circuit Judges.

District Judges

- District Judges work part-time in the Magistrates' Court as an alternative to lay magistrates.
- They also deal with small claims cases in the County Court.
- They must have served as a barrister or solicitor for five years.

ii. The Role of Judges

Students need to understand the role of judges in:

- Criminal Courts of First Instance
- Criminal Appellate Courts
- Civil Courts of First Instance
- Civil Appellate Courts

Criminal Courts of First Instance

- Preside over the court.
- Ensure the hearing is carried out fairly.
- Familiarise themselves with the case papers and the law.
- Decide questions of law and make rulings.
- If a District Judge in a Magistrates' Court, address preliminary matters such as bail.
- If a District Judge in a Magistrates' Court, determine verdicts and sentences.
- If in a Crown Court, advise the jury as to their role and provide a summing up.
- If in the Crown Court, give approval for the approaches to be adopted by the jury.
- If in a Crown Court, pass sentence if the jury produces a guilty verdict.

Criminal Appellate Courts

- Decide whether leave to appeal should be granted.
- Preside over the court.
- Ensure the hearing is carried out fairly.
- Familiarise themselves with the case papers and the law.
- Review the transcript of previous hearings.
- Decide questions of law and make rulings.
- If in the Crown Court, sit with two lay magistrates to hear appeals from Magistrates' Courts.
- If a High Court Judge or the Administrative Court, hear case-stated appeals.
- If a Lord Justice of Appeal, sit in the Court of Appeal (Criminal Division) and the Court of Appeal (Civil Division).
- If in the Supreme Court, sit as part of an odd-numbered panel of five or seven Justices.
- If in the Court of Appeal or Supreme Court, follow or create precedent.
- Decide whether to allow the appeal.
- If the appeal is against sentence and the appeal succeeds, decide how to vary the sentence.
- If the appeal is against outcome and the appeal succeeds, make decisions to vary the conviction or whether to order a retrial or order release.

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Civil Courts of First Instance

- Decide on a track.
- Preside over the court.
- Ensure the hearing is carried out fairly.
- Familiarise themselves with the case papers and the law.
- Organise case management such as number of witnesses to be called, directions.
- If in the Small Claims Court, help the claimant present their case.
- Decide questions of law and make rulings.
- Deliver a judgment if acting alone.
- Advise the jury in the jury trial cases where one is used.
- If a claimant succeeds, determine matters such as the remedy.
- Decide what costs must be paid and by which party.

Civil Appellate Courts

- Decide whether leave to appeal should be granted.
- Preside over the court.
- Ensure the hearing is carried out fairly.
- Familiarise themselves with the case papers and the law.
- Review the transcript of previous hearings.
- Decide questions of law and make rulings.
- If a Lord Justice of Appeal, sit in the Court of Appeal (Civil Division) as part of a panel of three.
- If a Justice of the Supreme Court, sit as part of an odd-numbered panel of five.
- If in the Court of Appeal or Supreme Court, follow or create precedent.
- Decide whether to allow the appeal.
- Make decisions regarding remedies and costs.

NOTE: Beware of a question on the role of specific types of judge in which the question is about the role of judge in general. It is irrelevant to the answer.

Evaluation of the Judiciary

- Judicial independence allows judges to make impartial judgments, based on the facts presented in court and on the law, without fear of pressure from outside interests. By ensuring impartiality, it ensures that the rights of individuals are protected from abuse and promotes public confidence in the integrity of judges and of the legal system.
- Judicial activism by judges diminishes the importance of Parliament as it allows judges to create law; the role of judges is merely to interpret it.
- Judicial activism has allowed the courts to move faster than Parliament in responding to changes in law as shown in cases such as *R v R (1991)*.
- Judicial activism by judges frustrates the ability of governments to pursue policies. These have been featured in party manifestos and thereby approved by voters.
- Judges are not representative of society and tend to be elderly.
- Women are not evenly represented among the judiciary: around one third of superior judges are female.
- Their class and age mean that many judges are out of touch with society. See *Brown and others (1993)*.
- The creation of the Judicial Appointments Commission has helped to increase diversity and has been particularly important in increasing the number of ethnic minorities in the judiciary.

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Case Study **Brown and others 1993**

Five men *get together to do strange things such as branding and whipping each other's penises with stinging nettles and fish hooks. The acts were done in private and no harm was required and police discovered their activities by accident. The House of Lords found the acts unlawful under s.47 and s.20 OAPA on the grounds that these activities were not in the public interest, they were a 'manly diversion' and they were not 'conducive to the enhancement or enjoyment of life.'*

Case Study

R v R 1991

R's wife was divorcing him and had moved out. He forced his way into the house attempted to force sexual intercourse upon her. His conviction for attempted rape was upheld on appeal and, then, by the House of Lords. Previously, rape within marriage was not a crime. With this ruling, the law was changed so that, if a person is married, one was consenting to sex whenever demanded. With this ruling, the law introduced the concept of marital rape.



Exercise (answers on page 10)

Answer the questions below on the role of judges and check your answers with the answers on page 10.

Z	V	T	N	Z	H	O	Z	T	Y	K	H	W	X	N	X	A	E	Y	O
T	T	S	O	V	G	K	N	D	J	J	R	T	U	Q	O	I	T	A	R
W	C	K	I	G	Y	P	Q	B	P	R	Y	W	O	U	H	H	V	Z	F
E	T	S	T	D	G	T	F	O	B	O	U	R	A	L	R	D	V	A	D
I	A	E	A	B	N	H	P	X	B	B	G	S	Y	P	I	E	F	V	Y
V	P	R	T	I	I	M	H	X	U	U	U	W	P	R	S	A	E	W	E
E	P	I	E	R	D	R	Z	U	V	R	E	S	H	G	U	U	B	X	S
R	E	V	R	C	I	X	S	Z	S	F	W	W	P	P	L	J	D	H	O
L	A	A	P	C	S	M	B	N	U	W	C	W	V	A	S	G	S	B	A
A	L	R	R	L	E	D	I	L	P	J	P	Y	W	Y	J	N	D	J	O
I	S	T	E	A	R	R	F	N	R	D	H	Q	U	P	I	R	J	C	
C	D	L	T	C	P	E	X	T	O	X	M	Z	A	C	C	O	U	O	
I	D	U	N	Z	M	A	O	I	A	K	F	B	I	N	L	D	B		
D	N	E	I	E	Y	T	Q	S	W	D	U	C	V	X	E	W	G	I	
U	I	D	N	I	T	E	A	Q	T	R	X	Z	G	T	A	M	T		
J	I	W	B	Z	N	V	F	E	P	Y	W	Q	G	L	N	L	E	E	
L	K	N	F	C	F	U	B	A	B	I	K	M	I	U	C	E	Y	N	R
Q	H	I	S	H	J	Q	V	G	A	M	G	Z	N	Y	X	S	L	T	C
L	E	G	T	G	L	I	S	Q	H	B	M	Z	V	T	Z	H	O	Z	T
Y	K	H	S	T	N	A	R	R	A	W	W	X	N	X	A	E	Y	O	T

1. A Latin term for the guaranteeing of freedom from unlawful arrest.
2. Top judges in the UK before the Justices of the Supreme Court.
3. British statutes used to have to be compatible with this before the Human Rights Act 1998.
4. Not heard in a court of first instance.
5. Judge supports this in a criminal court.
6. Choosing a suitable punishment.
7. Can be unconditional?
8. Deciding if an action is lawful.
9. Statutory.
10. Judges and magistrates.

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C. The Separation of Powers and the Independence

Separation of Powers

Constitutions

- A club has a constitution or list of rules to determine how it is to be run. It will also indicate the rights and the responsibilities of members.
- Countries also tend to have constitutions for the same reasons. They set out how the country is actually governed and often guarantee fundamental rights such as freedom of speech and religion.
- There are usually three different arms of state operating within a constitution.
- The Legislature is the law maker. In the UK this is Parliament, consisting of the House of Commons, the House of Lords and the Monarch.
- The Executive is concerned with policy making and execution. The Prime Minister and government service are parts of this.
- The Judiciary applies the law in court where it also solves legal disputes and provides legal advice.



Parliament

Dictatorship v Democracy (for background understanding only)

- In China the three arms of state are all in the hands of just one group, the Communist Party, which has so much power that the result is dictatorship.
- In the USA, the American Constitution provides for three equal and separate arms of state: the Congress (legislature), the President (executive) and the Supreme Court (judiciary) and each is separately elected or chosen.
- No person in the USA may belong to two arms of state at the same time (with the exception of the President). A system of checks and balances was set up to prevent any one branch becoming too powerful.
- Each arm of state is to some extent dependent on the other two and there is an overlap in their functions.
- The UK constitution operates as an elaborate system of checks and balances.
- The reason for this division of political power among the three arms of state is the doctrine of the separation of powers.

Theory of the Separation of Powers

- This theory maintains that in order to avoid oppressive government and prevent corruption, the three arms of state should be kept separate.
- Each of these three arms of state should be made up of separate personnel and no one should hold more than one arm of state at the same time.
- By distributing power among the arms of state, each will check the excesses of the others and thus guarantee liberty.
- These ideas were developed in the eighteenth century by Montesquieu, a French philosopher, and John Locke, an English political philosopher.
- A complete separation of power would not work in practice. It would result in inefficiency and paralysis of government as sometimes occurred in the USA.
- It is better therefore if the three arms of state cooperate. They usually do so and there is an overlap in their functions and balances.
- The British Constitution does reflect the idea of the separation of powers but it is not as strict as the US constitution.
- The King has a role to play in all three arms of state.
- Government ministers play a role in two arms of state. They have a legislative role in the House of Commons as well as having an executive role. The Lord Chancellor and the Lord Justices of Appeal have judicial roles.
- Recently governments have reduced some of this overlap by constitutional reform.

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Constitutional Reforms

- Judges no longer sit in the House of Lords so they cannot take part in the legislative process.
- The powers of the Lord Chancellor have been reduced. His or her power to veto a judicial appointment has been removed although s/he may still request that a judicial appointment be reconsidered.
- The Lord Chancellor remains a member of the executive in charge of legal aid and the judiciary.

How the Judiciary Breaks the Separation of Powers

- The task of judges is to solve legal disputes and provide justice.
- However judges can interfere with the legislature function by engaging in statutory interpretation. This may result in changing the law made by Parliament.
- They also create law through original precedent.
- Judges also interpret statutes for compatibility with the **European Convention on Human Rights Act 1998**, if someone raises a challenge in court. They can issue a declaration of incompatibility and so require Parliament to reconsider.
- Judges can also play some part in the executive function. By carrying out judicial review they can prevent a minister from exceeding his/her powers. A case example of judicial review is *Prime Minister 2019*.
- There are criticisms that judges have taken on too much of a political role. They have not been elected and are difficult to remove.

The Independence of the Judiciary

- Judicial independence is currently governed by the Constitutional Reform Act 2005.
- This imposes a responsibility on members of the government to uphold the independence of the judiciary and not to criticise judicial decisions.
- OCR's syllabus emphasises the need for students to know about the following factors that ensure judicial independence is achieved:
 - Security of tenure
 - Immunity from suit
 - Independence from the other two arms of state
 - Independence from the case

i. Security of tenure

- Security of tenure means that judges can be independent as they do not get sacked if their handling of a case annoys the government or goes against it.
- Before the eighteenth century, judges held office during the monarch's reign. Losing their job might influence their handling of a case.
- The 1701 Act of Settlement introduced the concept of judicial independence. Only certain senior judges held office during good behaviour and could be removed through a formal and defined process.
- Today, superior judges can be removed by the King following a petition from both Houses of Parliament. This has never happened in England and Wales.
- This means if a senior judge decides to interpret the law in his own way (as Lord Denning did frequently in the twentieth century) there is nothing to stop him apart from an appeal to a higher court.
- The Lord Chancellor can recommend senior judges for incapacity or poor performance. The Lord Chief Justice appoints and dismisses lower judges.

ii. Immunity from suit

- Judges cannot be sued for their legal decisions, as shown in *Sirros v Moore* (1991).
- They cannot be sued for slander over what they say in court about other people.
- This benefits judicial independence as judges can do what they think is right about consequences should they have made a mistake.

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iii. Independence from the other two arms of state

- Judges need to be free from political influences from the Government to be impartial and unbiased.
- Full-time judges are prohibited from being members of the House of Commons.
- The highest court in the UK used to be the Judicial Committee of the Privy Council. After the Constitutional Reform Act 2005, these 'Law Lords' were removed and the Supreme Court was created. Parliament in 2009 to sit in a separate Supreme Court.
- This was because it was felt that judges whose role is to interpret the law should not be involved in making the law.
- Before the Constitutional Reform Act 2005, the Lord Chancellor was a member of the House of Lords. Now, his role is more supervisory.
- Judges' salaries are not set by Parliament so they enjoy financial independence. However, the government may still influence their retirement and pensions.
- Cases like *Council of Civil Service Unions v Minister for Civil Service 1984* show that judges are not truly independent as their culture and upbringing reflect the establishment.
- Cases like *R (Miller) v Secretary of State for Exiting the European Union 2017* and *Miller (2) v Prime Minister 2019* can be used to argue that the independence of the executive is real.

iv. Independence from the case

- To ensure independence, judges must have no connection with a case.
- This can be illustrated with *R v Bow Street Metropolitan Stipendiary Magistrate 1998*.

✓ The advantages of judicial independence

- Judges can make decisions without fear of pressure from the parties involved or the media.
- Judges can make decisions without the fear they might be sacked.
- It upholds the separation of powers.
- It ensures the executive is accountable to the law.
- It ensures judges to be impartial and to give judgments that are based purely on the law.
- It means judges are seen to be impartial.
- It allows judges full discretion when passing sentence.
- It means individuals can be protected from state officials abusing their power.
- It maintains public confidence in the judicial system.

Case Study

Sirros v Moore 1975

When a man had his case dismissed and got up to leave, the judge told police to arrest him. He was not in custody, the judge was sued for false imprisonment. The case was dismissed. It stated that judges are protected against being sued for their illegal actions in court as they are acting within their jurisdiction.

Case Study

Council of Civil Service Unions v Minister for Civil Service 1984

An Order in Council was issued to ban trade unions at GCHQ. The order was challenged in the House of Lords. It was held that Orders in Council could be subject to judicial review in matters of national security.

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Case Study

R (on the application of Miller) v Secretary of State for Exiting the European Union 2016

Gina Miller argued that the government could not commence the process of withdrawing from the EU (the referendum) without an Act of Parliament. Even though some government ministers argued that the Court judges to stay out of political matters, the Supreme Court (with all 11 judges) ruled that the government's decision was unlawful.

Case Study

R (on the application of Miller) v Prime Minister 2019

The Queen prorogued Parliament on the advice of the Prime Minister Boris Johnson. Gina Miller argued that the prorogation was unlawful. The High Court ruled that the prorogation was unlawful. The matter was appealed to the Supreme Court. The Supreme Court unanimously ruled 11:0 that the matter was justiciable and that the prorogation was unlawful as the prorogation would have the effect of frustrating Parliament's constitutional functions.

Case Study

R v Bow Street Metropolitan Stipendiary Magistrate, ex parte Pinochet 1998

General Pinochet, former Head of State of Chile, was arrested in London under a warrant issued by the House of Lords. The House of Lords initially ruled that he could be extradited. The decision was appealed to the House of Lords. The House of Lords ruled that the warrant was invalid as the House of Lords was not a court of law. The decision was appealed to the House of Lords. The House of Lords ruled that the warrant was invalid as the House of Lords was not a court of law.

Further Research

Using the following website, find and read a Supreme Court judgment to prepare for your assignment. <https://www.supremecourt.uk/judgments/index.html>

Take brief notes on the name of a case, the issue, and the outcome. [NOTE: only scroll down one page to find the judgment. Some of these are very long so you may not see the 'press summary'.]



Exercise (answers on page 66)

Answer the following questions on the separation of powers and judicial independence.

1. What is the name given to the rules that set out how a country is governed?
2. What are the three arms of state?
3. Which country keeps the three arms of government completely separate?
4. What are the two Houses of Parliament?
5. Which eighteenth-century Act introduced the concept of judicial independence?
6. Which twenty-first-century Act guarantees judicial independence?
7. Which Act states that all laws must be compatible with the European Convention on Human Rights?
8. What is the phrase that means superior judges cannot be removed from office by the government?
9. What is the phrase that means judges cannot be sued if they make a mistake in their judgments?
10. What court has replaced the Judicial Committee of the House of Lords?

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4. Access to Justice

There are two learning sections and one evaluation section in this topic.

Learning sections

- A. Government Funding for Civil and Criminal Cases
- B. Private Funding, Conditional Fees, Other Advice Agencies

Evaluation section

- C. Evaluation of Access to Justice

A. Government Funding for Civil and Criminal Cases

The Legal Aid Agency

- The Legal Aid, Sentencing and Punishment of Offenders (LASPO) Act 2012 brought the Legal Aid Agency (an executive agency of the Ministry of Justice), which replaced the Legal Services Commission (LSC).
- This provides civil and criminal legal aid and advice in England and Wales to help with legal problems.
- It has a team of around 1,250 staff and offices in towns and cities across England.
- It makes sure that legal aid services from solicitors, barristers and the not-for-profit Citizens Advice are available to the general public.
- It funds the Civil Legal Advice service.
- It publishes statistical information on legal aid.
- It publishes the Director of Legal Aid Casework annual report, which states how the agency fulfils its independent decision-making duties each financial year.
- It runs the Public Defender Service, giving a range of services within the criminal justice system.

Government Funding for Civil Cases

Civil Legal Advice (CLA) service

- This gives free and confidential advice on civil cases to people who qualify for legal aid.
- Problems it helps with include: debt, if one's home is at risk; housing, if one is evicted; domestic abuse; separating from an abusive partner, including making arrangements for sorting out money and property; a child being taken into care; special educational needs; child abduction cases.

Availability of civil legal aid

- Claimants may be able to claim legal aid to pay for advice, representation in court or for dispute resolution.
- The claimant's case must be 'within scope' as set out in LASPO (the Legal Aid, Sentencing and Punishment of Offenders Act 2012).
- Claimants must pass a means test, as set out in the Civil Legal Aid (Financial Resources and Cost of the Proceedings) Regulations 2013.
- In 2022, the maximum gross monthly income was £2,057 (plus £222 for each additional child). The maximum disposable income limit of £13,000 (plus £3,000 for immigration cases).
- A partner's income is usually to be included in the calculations.
- The Legal Aid Agency waives all upper eligibility limits if the claimant is applying for protection from domestic violence or forced marriage; however, a contribution may be required.
- If legal aid is not available, the claimant will have to pay their own costs or seek a conditional fee agreement (CFA).

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Factors to be considered when deciding whether a claimant qualifies for civil legal aid

- The likely cost of providing the services and the benefit which may be obtained from the services being provided.
- The availability of resources to provide the services.
- The appropriateness of applying those resources to provide the services, having regard to future demands for the provision of civil legal services.
- The importance for the individual of the matters in relation to which the services are sought.
- The nature and seriousness of the act, omission, circumstances or other matters in relation to which services are sought.
- The availability to the individual of other services and the likelihood of the individual obtaining such services.
- If the services are sought by the individual in relation to a dispute, the individual's financial position in the dispute.
- The conduct of the individual in connection with services made.
- The conduct of the individual in connection with any legal proceedings or other disputes about legal rights or duties.
- The public interest.

Government Funding for Criminal Cases

Advice at the police station

- Anyone questioned at a police station has the right to free legal advice.
- This is not means tested.
- Anyone held at a police station must be told of this right before being questioned.
- Each police station has a duty solicitor who is completely independent of the police.
- A duty solicitor is available 24 hours a day.
- For less serious offences, legal advice might be provided over the phone via telephone solicitors.
- If, following the police station stage, a case proceeds to the courts, a duty solicitor will be available during the trial at the Magistrates' Court but only if the defendant is charged with a serious offence or could face a period of imprisonment if convicted.
- The Legal Aid Agency's Public Defender Service provides high-quality, free legal representation at the police station and for those eligible for criminal legal aid.



Advice after being charged with a criminal offence

- A defendant may receive legal aid towards paying for advice or representation. However, there are two hurdles to pass over.
- First, there is a means test. This takes into account the income, outgoings and assets of the defendant, usually, their partner.
- In early 2023, if a defendant had an annual household disposable income of £37,500, they would have to make an income contribution towards their costs.
- In early 2023, if a defendant had an annual household adjusted income of £2,000, they would be eligible for legal aid in a Magistrates' Court trial. ('Adjusted' means that the income of the defendant's children is taken into account in working out this figure.)
- The defendant will avoid the means test if under 18 or in receipt of certain government benefits known as 'passporting'.
- Secondly, the defendant must pass a merits test to show that their receipt of legal aid is in the interests of justice.
- This involves considering factors such as a person's previous convictions, the seriousness of the charge, the risk of custody. The more serious the charge, the more likely that the case will go to the Crown Court.
- As part of the 'interests of justice' test, the Widgery criteria must be considered.
- Passing the interest of justice test is automatic if under 18 or if the case has been transferred to the Crown Court. (This does not include appeals to the Crown Court.)

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The Widgery criteria

- It is likely that I will lose my liberty if any matter in the proceedings is decided against me.
- I have been given a sentence that is suspended or non-custodial; if I break this I will go to prison for the original offence.
- It is likely that I will lose my livelihood.
- It is likely that I will suffer serious damage to my reputation.
- Consideration of a substantial question of law may be involved in the proceedings.
- I may not be able to understand the court proceedings or present my own case.
- The proceedings may involve expert or specialist examination of a prosecution witness.
- It is in the interests of another person that I am represented.
- Any other reasons.

B. Private Funding, Conditional Fees, Other Advice

Private funding

- A person can go straight to a lawyer for advice. Some firms offer an initial free half-hour consultation.
- Solicitors offer a private service but fees can be expensive.
- If fees are charged by the hour, there is no certainty as to the final cost to the client.
- Under the Direct Access Scheme, claimants can approach a barrister directly for certain civil law cases.



Conditional Fee Agreements (CFAs)

- They help people to deal with the risk of taking a case to court. People are covered by the possibility of losing and having to pay the costs of the other side. CFAs can be used in most civil cases but not in family cases.
- Solicitor and client both agree that the solicitor will not be normally charged for a case unless it is won.
- A 'success fee' is additional to the normal fee if the case is won. This may be up to 100% of the normal fee but cannot exceed the damages.
- If the case is won, the client pays both the normal fee and the success fee.
- If the case is lost, the solicitor gets nothing.
- Insurance is taken out to protect against paying the costs of the other side if the case is lost.

Other Advice Agencies

- Citizens Advice is a charitable organisation.
- Citizens' Advice Bureaux (CABx) are located in most urban centres and offer free legal advice.
- Solicitors working inside CABx as employed staff or as volunteers provide most legal advice on a variety of matters, such as housing, employment and benefit issues.
- In 2023, there were 43 Law Centres in England and Wales.
- Law Centres offer free, non-means tested advice about employment, housing, children's rights in areas where there is little or no solicitor availability. Their role is to protect the legal rights of people who cannot afford a lawyer.
- Law Centres receive some funding from central and local government but are not required to maintain their operations.
- Advice is also available from a variety of organisations. These include motoring organisations like AA, and the Citizens Advice Bureau's online service.
- LawWorks is a national pro bono group that connects volunteer solicitors with people who are not eligible for legal aid and cannot afford to pay.
- Advocate (The National Pro Bono Centre) is a national charity that matchmakes between people who cannot afford a barrister and cannot obtain legal aid with barristers happy to take cases free of charge.

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- Advocate is the sole pro bono charity to provide legal assistance in all areas of the legal system from the Magistrates' tribunal through to the Court of Appeal and Supreme Court.
- FRU (Free Representation Unit) has been providing representation in social security tribunals since 1972, helping people who are not eligible for legal aid and cannot afford to pay for legal services.
- Its work is done by volunteers, mostly law students and legal professionals in their spare time.
- Trade unions usually offer members free legal advice on all issues. For work-related issues, the union will assist employees and negotiate with employers. Some unions consider it worth employing a solicitor, or even a barrister, to assist the employees.
- Insurance companies often offer legal advice helplines, either as a free extra on a car or house insurance policy.
- As well as Citizens Advice, other charities sometimes offer free legal advice and support. Gingerbread offers free, specialist advice for single-parent families; Shelter Housing Advice Centre provides legal advice and attend court to help people who have lost their homes or are at risk of losing them; the National Debt Helpline provides a free advice line on matters such as making a will, pension issues and debt problems; and the Welfare of Immigrants provides legal advice and support for migrants and refugees.

Further Research

Look up the websites of three of the organisations and charities listed above. Note the services they offer and whom they offer these services to.

C. Evaluation of Access to Justice

Evaluation of Government Funding of Civil Cases

- Too few legal service providers have direct contracts with the Legal Aid Agency.
- Solicitors are discouraged from doing government-funded legal work because of the means test.
- Means testing excludes almost everyone needing legal funding.
- The budget available for civil cases is inadequate and keeps being cut. It was reduced by 10% in the 2010-11 financial year and barristers' strike in 2020.
- For many years, funding is not available for private law cases.
- There is a lack of fairness in the system. Employment claimants against large businesses are disadvantaged because they receive no funding. The business they face will be able to pay for legal representation.
- The lack of legal aid means that more clients represent themselves, which slows down the process and increases court delays.

Evaluation of Government Funding of Criminal Cases

- The right to free legal advice protects human rights and helps to ensure that the legal system is fair.
- A person at a police station is in a vulnerable and stressful position so access to legal advice is essential to ensure access to justice.
- It is a huge drain on the public purse.
- Attendance by lawyers at the police station is now limited to save money. Most defendants are represented by phone.
- The 'interests of justice' test is a merits test that is applied very strictly. Usually, imprisonment is likely for a defendant.
- The means test is also difficult to satisfy.
- Stringent merit and means tests are used to save public money.
- About 75% of adults cannot qualify for legal aid in criminal cases in Magistrates' courts.
- Fees paid to solicitors for publicly funded criminal work are considered so poor that many solicitors are unwilling to take on this work.
- The duty solicitor must work unsocial hours, making solicitors unwilling to take on this work.
- Government funding has failed to match inflation. The LAA now has less money to spend than it did in 2010.
- The Widgery criteria's emphasis on the prospect of imprisonment to satisfy the interests of justice means that habitual offenders are more likely to receive legal aid than usually.

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Evaluation of Conditional Fee Agreements

- CFAs provide access to justice for people who are unable to pay for it in the normal way as legal funding is unavailable.
- A client will be confident in his/her solicitor's commitment to the case.
- Solicitors will not accept cases that are unlikely to succeed. This saves court time.
- Some firms have been criticised for using high pressure sales tactics and misleading clients.
- The poorest clients will not be able to afford insurance premiums.
- It is difficult to estimate costs in complex cases. A lawyer may make a loss even if they win.
- Some firms dealing with CFAs have gone out of business because they have taken on too many cases and been unable to make a profit.
- It is difficult to find solicitors willing to deal with risky cases as the solicitor will have to pay the costs if there is a chance of winning. This may deny access to justice.



Evaluation of the Availability of Non-Government Legal Advice

- A wide range of legal advice is available but it is often limited to cities and towns.
- There is a limited number of Law Centres which are only available in urban areas and offer limited areas of law.
- CABx are widely established and offer good quality advice because their personnel are trained.
- There is a lack of local advice in country areas but advice available on the Internet.
- Advice given is not always used because of a suspicion of lawyers and concern about cost.
- There is a lack of knowledge about what is available but government and other agencies try to deal with this problem.
- There is an increasing number of organisations offering pro bono legal work.



Exercise (answers on page 66)

Answer the following questions:

1. Identify the organisation that supervises all areas of legal funding.
2. Which professional group provides barristers free of charge to people on legal aid?
3. What does CABx stand for?
4. What name is given to the process whereby a client and solicitor agree to pay the costs if a case is won?
5. Who can a person held at a police station ask to consult for free?
6. By what other name is the Merits Test known?
7. In what sort of areas have the 43 Law Centres been set up?
8. What is the Direct Access Scheme?
9. Why are many solicitors discouraged from doing government-funded work?
10. About 75% of adults seeking legal aid for criminal cases fail to qualify. Why? They are not considered poor enough. What test do they fail to pass?



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Exam Section

The Examination Paper for Paper 1 Section A (The Legal System)

H418/01 Section A – The Legal System



Answer two questions

Question 1 or 2

This question tests Knowledge

There are two questions

Answer **one** of them only

Each question is worth 8 marks

Take 10–12 minutes on this question

KNO
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Question 3 or 4

This question tests Analysis

There are two questions

Answer **one** of them only

Each question is worth 12 marks

Take 15–18 minutes on this question

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30 minutes recommended to answer both questions

20 marks are available for this part of the paper

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The Examination Paper

- There are two sections on Paper 1: Section A on the Legal System and Section B on the Legal System and Legal Rules. Section A concerns Section A only.
- There are two questions to answer. For both questions, there is a choice.
- You must answer either question 1 or question 2.
- You must then answer either question 3 or question 4.
- The two questions should take 25–30 minutes to complete.
- You are allowed one and a half hours to complete the rest of the paper on Criminology. You must not encroach on that time by spending more than 30 minutes on Section A.
- Section A is worth 20 marks. The whole paper is marked out of 80.
- Diagrams can be used in answers. They might be particularly useful when explaining a legal system or process.



The Question Format

Section A: Question 1 or 2

- Question 1 or 2 is a ‘describe’ question and you will need to demonstrate detailed understanding. It is worth 8 marks. You should spend 10–12 minutes on this question.
- All marks are for assessment objective 1 (AO1): *Demonstrate knowledge and understanding of the legal system and legal rules and principles.*
- For ‘describe’ questions any analysis or critical comment would not be credited.

Section A: Question 3 or 4

- Question 3 or 4 is a ‘discuss’ question which requires you to analyse and discuss the legal system and legal rules and principles.
- All marks are for assessment objective 3 (AO3): *Analyse and evaluate legal concepts and legal rules and principles.*
- For ‘discuss’ questions, although knowledge on its own is not credited, knowledge can be used to develop points.

Marks for the two questions are awarded as follows.

Levels of Response Criteria for Question 1 or 2	
	AO1
Level 4 7–8 marks	Excellent knowledge and understanding of the English legal system and legal rules and principles. • The response is accurate, fully developed and detailed. • There is excellent citation of fully relevant statutes.
Level 3 5–6 marks	Good knowledge and understanding of the English legal system and legal rules and principles. • The response is detailed, but not fully developed in places. • There is good citation of mostly relevant statutes.
Level 2 3–4 marks	Basic knowledge and understanding of the English legal system and legal rules and principles. • The response may lack detail in places and is partially developed. • There is some reference to statutes.
Level 1 1–2 marks	Limited knowledge and understanding of the English legal system and legal rules and principles. • The response will have minimal detail. • Appropriate citation of statutes is limited.
Level 0	No response or no response worthy of credit.

Note: Citation of statutes is not relevant for all topics.



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Answer technique for Question 1 or 2

- ⇒ The best technique is to make a series of short sentences providing concise answers to the question.
- ⇒ End every point with a full stop.
- ⇒ Avoid using connectives – even using ‘and’ might hide that you have made two points.
- ⇒ You can include diagrams; for instance, if describing the appeal courts.
- ⇒ Stick to the question. There are no marks for providing information that has nothing to do with the question.
- ⇒ Your points should cover a range of information relevant to the question.
- ⇒ Try to include at least one statute (unless there is no relevant statute for a particular question).
- ⇒ Do not miss this question out – even if you do not know enough about the topic, you can earn at least some marks by writing some sentences that are focused on the question.



Levels of Response Criteria for Question 1 or 2

	A03
Level 4 10–12 marks	<ul style="list-style-type: none"> Excellent analysis and evaluation of a wide range of legal concepts and issues. The response is wide ranging and has a well-sustained focus on the question. The key points are fully discussed and fully developed.
Level 3 7–9 marks	<ul style="list-style-type: none"> Good analysis and evaluation of a range of legal concepts and issues. The response has a mainly consistent focus on the question. Most of the key points are well discussed and well developed.
Level 2 4–6 marks	<ul style="list-style-type: none"> Basic analysis and evaluation of legal concepts and issues. The response is partially focused on the question. Some of the key points are discussed and partially developed.
Level 1 1–3 marks	<ul style="list-style-type: none"> Limited analysis of legal concepts and/or issues. The response has limited focus on the question. Discussion of any key points is minimal.
Level 0	<ul style="list-style-type: none"> No response or no response worthy of credit.

Answer technique for Question 3

- ⇒ This question requires you to use paragraphs to separate and expand your points.
- ⇒ The marking scheme used by OCR for the former G151 syllabus still works well for the new syllabus.



Definition	Award
Point	1 mark
Developed point	2 marks
Well-developed point	3 marks
Very well-developed point	4 marks

- ⇒ Three or four well-developed and focused paragraphs should be sufficient for a high mark.
- ⇒ The opening sentence of each paragraph should directly answer the question (even if it is repetitive (even though an A Level English teacher would hate this approach!)).
- ⇒ If the question asks for Advantages, then that is what you must give at the start of a paragraph by saying ‘A Disadvantage is...’
- ⇒ When making a point, make sure you include ‘because...’
- ⇒ Develop the point by using phrases such as ‘This means that...’
- ⇒ Further develop the point by supporting it with knowledge. It is important that this knowledge, for example, appears in the middle of the paragraph, rather than at the start, so that the point is clear.
- ⇒ Develop the point with an additional argument or factual support or a counter-argument. If you use a Disadvantage to start a question on Advantages, you can use it at the end to introduce it with a phrase such as ‘However, this is not a complete advantage because you are providing high-quality discussion on the Advantage.’
- ⇒ Do not waste time by writing an Introduction or a Conclusion.
- ⇒ Do not miss this question out – even if you do not know enough about the topic, you can earn at least some marks by writing some sentences that are focused on the question.



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Exam Practice

1. The Civil Courts and Other Forms of Dispute Resolution

Question 1 or 2

The syllabus states that AO1 'describe' questions may be set on the following topics:

- ♦ County Court and High Court: jurisdictions, procedural procedures, the three tracks
- ♦ Appeals and Appellate Courts
- ♦ Employment tribunals and Alternative Dispute Resolution

These are examples of questions that might appear on civil courts:

- Explain the jurisdiction of the three divisions of the High Court.
- Describe the way in which civil cases are allocated to different tracks.
- Describe the routes of appeal available in civil cases.
- Describe which types of cases are heard in the different civil courts.

These are examples of questions that might appear on ADR and employment tribunals:

- Explain arbitration as a form of Alternative Dispute Resolution.
- Describe mediation and conciliation.
- Describe how employment tribunals work.

Model answer for an 8-mark question

1. Explain the jurisdiction of the three divisions of the High Court.

- The King's Bench Division hears mainly contract and tort cases over £10,000.
- It hears complicated cases of smaller value.
- Its Administrative Court hears challenges to official actions.
- The Administrative Court also hears certain stated appeals from the Magistrates' Court.
- The Chancery Division hears business and property cases over £100,000.
- It also hears cases involving disputed wills and trusts.
- It hears the majority of appeals.
- The Patents Court deals with matters concerning patent protection.
- The Family Division deals with family matters that have been transferred from the County Court.
- It hears all wardship cases and cases relating to the welfare of children.
- It also deals with controversial cases involving disputes over medical treatment.

Comment

This includes far more than is needed to gain full marks. Bullet points are acceptable – 10 to be on the safe side – but it is important that all three courts get the jurisdiction of each is included. It is a good idea to include an Act or a Case name. Both have been included above but including both is not necessary. The student should be strict with oneself and stop when the 12 minutes has gone by.

Question 3 or 4

The syllabus states that AO3 'discuss' questions may be set on the following topics:

- ♦ Advantages and disadvantages of using the civil courts to resolve disputes
- ♦ Advantages and disadvantages of using Alternative Dispute Resolution to resolve disputes

These are examples of questions that might appear on civil courts:

- Discuss the benefits of using the civil courts to solve a dispute.
- Discuss the advantages **and** disadvantages of using the Small Claims Court.
- Discuss the problems of using the court system to solve civil disputes.

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These are examples of questions that might appear on ADR:

- Discuss the advantages of using arbitration as a way of dealing with a civil dispute
- Discuss the advantages **and** disadvantages of using arbitration as a way of dealing with a civil dispute
- Discuss the advantages of using arbitration rather than going to court if one has a civil dispute
- Discuss the advantages of using Alternative Dispute Resolution to solve civil disputes
- Discuss the advantages **and** disadvantages of using mediation as a way of dealing with a civil dispute

Model answer for a 12-mark question

2. Discuss the advantages of using arbitration rather than going to court if a dispute arises.

One advantage of arbitration is it is likely to be quicker than going to court. A huge advantage, e.g. this means that normal relations between the two parties can continue. This is not a complete advantage, however, as arbitration hearing with lawyers may be slow to arrange.

Another advantage of arbitration is it will be cheaper than going to court. This is especially true if it is a paper arbitration with the parties submitting their cases in writing. They will not need to pay for the costs of a hearing room (as in a court case) or any person to act as arbitrators. On the other hand, the scale of this as an advantage will be reduced if the arbitration is formal with the use of lawyers and witnesses adding to costs.

Another advantage of arbitration is the flexibility of the process. The rules of the Arbitration Act 1996 and allow the two parties to agree on the nature of the hearing; from an informal hearing to a formal hearing with lawyers or anything in between. They can also agree on how the arbitrator will be and whether there will be a single arbitrator or a panel. One advantage is lost if the parties have previously signed a contract which contains arbitration procedures in advance.

Another advantage is the decision is binding. This means the parties have to accept the decision. A matter is over after the decision. A hearing as an appeal can occur only if there has been a procedural error in the proceedings or the arbitrator has made a mistake in law. Another advantage is that the decision is final. No court, making the process less stressful. Another advantage is that the decision is enforceable. It can be enforced by a court.

Comment

The first three paragraphs are probably sufficient to gain full marks. Note how four sentences. Do not worry that the identical opening to each paragraph is poor marks for style: repetition and focus on the wording in the question is good. Do the question says *advantages*, then you write *advantages*; if the question says *benefits*. Use the question in the opening sentence of each paragraph to ensure

Note that knowledge never appears at the start of a paragraph – it is always used in order to support the point that has been made at the start of the paragraph.

Two of the paragraphs end with a disadvantage. It is critical that you do not overstate a disadvantage as the question clearly states advantages. Disadvantages can only be mentioned in a paragraph in order to qualify the advantage that is being discussed; for instance, "the advantage is not a complete advantage or it is not always an advantage."

The fourth paragraph above is probably not necessary and should be written on your time for this question. It is simply there to get you to full marks if you lose 1 or 2 marks short by making some quick final points. If you have reached the end of the question, there is no point spending time on this paragraph as you already have full marks for the question and you are wasting time on 1 or 2 marks that you should be spending on other questions in the Criminal Law section.

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2. Criminal Courts and Lay People

Question 1 or 2

This section of the syllabus is very crowded; it is a shame that students will have to be examined on only a tiny part of it... if any!

The syllabus states that AO1 'describe' questions may be set in the following topics:

- ◆ Criminal Process: jurisdiction of the Magistrates' Court and the Crown Court, offences and pre-trial procedures
- ◆ Appeals and Appellate Courts
- ◆ Sentencing and court powers, factors and types of sentences for adults
- ◆ Lay magistrates: roles, qualifications, selection, appointment and their role

These are examples of questions that might appear on criminal process:

- Describe and illustrate the different categories of criminal offence.
- Describe how it is decided in which court a triable either way offence might be tried.

These are examples of questions that might appear on appeals and Appellate Courts:

- Describe the routes of appeal from a Magistrates' Court.
- Describe the defence's rights of appeal for a case originating in the Crown Court.
- Describe the prosecution's rights of appeal for a case originating in the Crown Court.

These are examples of questions that might appear on sentencing and court powers:

- Describe the five main aims of sentencing.
- Describe custodial sentences for adults.
- Describe community sentences for adults.

These are examples of questions that might appear on lay magistrates and juries:

- Describe qualifications for magistrates.
- Describe the recruitment and appointment process for magistrates.
- Describe the role of magistrates in criminal cases.
- Describe qualifications for juries.
- Describe the selection process for juries.
- Describe the role of juries in criminal cases.

Model answer for an 8-mark question

3. Describe the role of magistrates in criminal cases.

- The role is to sit as a panel of three.
- The role is to deal with summary cases in their entirety.
- The role is to send indictable cases to the Crown Court to be dealt with.
- The role is to hold mode of trial hearings for triable either way cases.
- The role is to hold a Newton hearing if the facts of the case need to be established.
- The role is to hold early administrative hearings and to consider bail applications.
- The role is to issue search warrants and arrest warrants.
- The role is to allow the police to extend a suspect's time in custody up to 96 hours for an indictable offence.
- The role is to take the defendant's plea for summary and triable either way cases, and if they plead guilty, or send to the Crown Court for sentencing.
- The role is to hold a trial if the defendant pleads not guilty and if the trial remains in the magistrates' court.
- The role is to consider if they have received additional training.
- The role is to sit as a panel with another magistrate and a judge in the Crown Court.

Comment

This includes more than is needed to gain full marks. Bullet points are acceptable – 10 to be on the safe side. An English teacher would not like the repetition of 'The role is...' ensures that the student remains focused on the question and makes it easy for the examiner to award marks.

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Model answer for an 8-mark question

4. Describe how it is decided in which court a triable either way offence might be tried.

Comment

An annotated diagram is sufficient for full marks – see the relevant parts of the

Model answer for an 8-mark question

5. Explain the five main aims of sentencing.

- These are set out in the Criminal Justice Act 2003.
- One aim is punishment.
- A sentence should be proportionate to the offence; for instance, a minor offence should receive a minor sentence.
- Another aim is reparation.
- This allows the offender to make up for what they have done by doing good deeds or paying compensation.
- Another aim is rehabilitation.
- This aims to alter an offender's behaviour; for instance, by teaching them skills to help them re-enter society.
- Another aim is reduction of crime.
- This can be done by deterring the offender with a suspended or small sentence, or by giving a harsh sentence.
- The final aim is protection of others.
- A long prison sentence will keep society safe from a dangerous offender.

Comment

This is different in style from the usual 8-mark question, which is about making a list of the five aims and writing a sentence on each. The key is to keep it simple and to the point. This question is worth at least 8 marks so it would be a mistake to spend all your time on it. Put to better use on a longer question. Good practice would be to check the aims within 12 minutes, then write, shorten the sentences and try again. Once you can do it in 12 minutes, you will ensure full marks are awarded.)

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Question 3 or 4

In contrast to the vast range of possible 8-mark questions for this section, the syllabus questions may be set on the following topic only:

- Advantages and disadvantages of using juries in criminal cases

Students should be alert to the possibility, however, that OCR might set a question on juries, such as jury secrecy or jury selection.

These are examples of questions that might appear on juries:

- Discuss the advantages of using juries in criminal cases.
- Discuss the disadvantages of using juries in criminal cases.
- Discuss the advantages and disadvantages of jury secrecy.

Model answer for a 12-mark question

4. Discuss the advantages and disadvantages of jury secrecy.

One advantage of jury secrecy is that the jury is free from outside pressure, making decisions that might be unpopular with the public in the knowledge that, under the law, individual jurors must remain secret. This is also an advantage as it makes individual jurors less effective. This means people will be less unwilling to speak out.

Another advantage of jury secrecy is that jurors do not have to explain their decisions. They can ignore the strict letter of the law and reach a verdict based upon common sense. In cases like *R v Ponting* and *R v Kronlid*, the juries delivered perverse verdicts. On the other hand, some argue that this is not an advantage, believing that it is wrong that a jury can reach a verdict without explanation.

A disadvantage of jury secrecy is that there is no way of knowing whether the jury has reached its verdict properly. For instance, the jury takes a oath to base its verdict on, and only one juror can speak in court. In *R v Young*, however, some of the jury decided to hold a séance to communicate with the murdered man. Although the jury's malpractice was discovered, jury secrecy means that the public will never know whether the jury might determine a verdict by tossing a coin.

Another disadvantage of jury secrecy is that there is no way of knowing whether the jury has understood the case. For instance, some jury members might find the case too complex and rely on their own opinions and be swayed by other jury members with strong personalities. In *R v Smith*, the jury revealed itself to be incompetent as a result of the questions it asked a shocked witness. This means that there is no way of knowing whether this jury was an aberration or whether incompetence is typical but remains undiscovered.

Comment

Three paragraphs are probably sufficient to gain full marks. Note how each paragraph starts with a topic sentence. Note how the opening to each paragraph is directly focused on the question. It is good practice to return to the question at the end of the paragraph as well.

Since the question refers to *advantages* and to *disadvantages*, it is essential to write a paragraph on each, otherwise it is impossible to gain full marks. (If a question only asks for advantages, then each paragraph must start with *an advantage*; a *disadvantage* can be brought in at the end of a paragraph as illustrated in the second paragraph above.)

Note that the word *secrecy* never appears at the start of a paragraph – it is always used in the order to state the point that has been made at the start of the paragraph.

If you have reached your time limit for this question after three paragraphs, do not panic. Just make some quick final points.

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3. Legal Personnel

Question 1 or 2

The syllabus states that AO1 'describe' questions may be set on the following topics:

- ◆ Barristers, solicitors and legal executives: role and regulation of legal professions
- ◆ The judiciary: types and role in civil and criminal courts
- ◆ The separation of powers and the independence of the judiciary

These are examples of questions that might appear on barristers, solicitors and legal executives:

- Describe the role of a barrister.
- Describe the types of work undertaken by a solicitor.
- Describe the role of a legal executive.
- Describe how a complaint is made about the way a barrister has handled a case.
- Describe the options available for a client to make a complaint about a solicitor.

These are examples of questions that might appear on the judiciary:

- Describe the types of inferior judge.
- Describe the role of judges of first instance in criminal courts.
- Describe the role of superior judges in civil cases.
- Describe the role of judges sitting in appellate courts.

These are examples of questions that might appear on the separation of powers and the independence of the judiciary:

- Describe the separation of powers.
- Describe how the independence of the judiciary is protected.

Model answer for an 8-mark question

7. Describe the type of work undertaken by a solicitor.

- Most solicitors specialise in one area of law.
- Solicitors in small towns may cover several areas of law.
- Some work in private practice while others work for large businesses, local government, or the CPS.
- Work includes interviewing clients and giving advice on a range of matrimonial problems or criminal matters.
- Work includes negotiating on behalf of clients.
- Duty solicitors will give advice to people detained at police stations, either in person or by telephone.
- Work includes writing letters for clients and drawing up wills and contracts.
- Work includes preparing and collecting evidence and preparing papers for court.
- Work includes briefing barristers on behalf of clients and assisting them in court.
- Work includes representing clients in County Courts or Magistrates' Courts.
- Solicitors with an advocacy qualification can exercise rights of audience in court.
- Some solicitors have obtained mediation or conciliation qualifications to ensure the services they can offer clients.

Comment

This includes more than is needed to gain full marks. Bullet points are acceptable – 10 to be on the safe side. A teacher of English would throw up their hands at the lack of punctuation but the consistent use of 'Work includes...' ensures that the student remains on topic. The Zig Zag Education logo makes it easy for the examiner to award marks.

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Question 3 or 4

The syllabus states that AO3 'discuss' questions may be set on the following topics:

- ◆ Evaluation of the judiciary
- ◆ Advantages of judicial independence

The first of these bullet points is less specific than for other parts of this syllabus, so be alert to the possibility of more unusual questions.

These are examples of questions that might be set on the judiciary or on judicial independence:

- Discuss whether the judiciary is out of touch with modern society.
- Discuss the advantages of replacing magistrates with District Judges.
- Discuss whether the judiciary is truly independent.
- Discuss the advantages of judicial independence.

Model answer for a 12-mark question

8. Discuss the advantages of judicial independence.

One advantage of judicial independence is that judges are free from outside influence. They have security of tenure. This means they can make decisions that might be unpopular with the government free from the fear that they could be removed. An example is the *Miller* case that showed the value of judicial independence as the judges were able to rule against the government though it meant striking down an action of the government.

Another advantage of judicial independence is it upholds the separation of powers. Those who interpret the law should not be the same people that make the law. It was the Constitutional Reform Act of 2005 that created the Supreme Court, leading to the removal of judges from the House of Lords. This is a definite advantage as it ensures the independence of the judiciary from the legislature.

Another advantage of judicial independence is that the judiciary is not controlled by the executive. The Act has not always been perfect but the Constitutional Reform Act has improved the role of the judiciary. The Act makes clear that the Lord Chancellor can no longer perform any judicial function. It also puts the appointment of judges in the hands of the Appointments Commission, meaning that prospective judges are appointed on merit, not because they have been seeking the favour of a government when making a decision.

Another advantage of judicial independence occurs because judges have no political bias. This leaves them free from accusations of bias when judging cases. Any hints of bias on the part of judges can damage public faith in the judicial system. Judicial independence in this area is, therefore, essential in maintaining the integrity of the system and public trust.

Comment

Three paragraphs are probably sufficient to gain full marks. Note how each paragraph starts with a topic sentence. Note how the opening to each paragraph is directly focused on the question. It is a good practice to return to the question at the end of each paragraph as well.

The question just refers to *advantages* of judicial independence, therefore, essential that each paragraph focuses on an *advantage*; a *disadvantage* can be brought in only as a counterpoint at the end of a paragraph.

Note that the word *judiciary* never appears at the start of a paragraph – it is always used to refer to the point that has been made at the start of the paragraph.

If you have reached your time limit for this question after three paragraphs, do not panic. Just make some quick final points.

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4. Access to Justice

Students are notoriously resistant to revising this topic but should be encouraged to take as much chance of appearing on the exam paper as the large topic on 'Criminal Justice'. Whereas a huge range of questions on that topic is possible, the range of possible questions on 'Access to Justice' is limited; therefore, thorough preparation of this topic could pay huge dividends.

Question 1 or 2

The syllabus states that AO1 'describe' questions may be set on the following topics:

- ◆ Government funding for civil and criminal cases
- ◆ Private funding, conditional fees, other advice agencies

These are examples of questions that might appear on government funding for civil and criminal cases:

- Describe the different forms of legal advice and assistance offered by the Legal Aid Agency to people seeking help with a civil case.
- Describe the different forms of legal advice and assistance offered by the Legal Aid Agency to people in custody.
- Describe how a person suspected of, or charged with, a crime can access legal advice and assistance.

These are examples of questions that might appear on private funding, conditional fees and other advice agencies:

- Describe the different sources of civil legal advice.
- Describe the availability of funding for civil disputes.

Model answer for an 8-mark question

9. Describe the different sources of civil legal advice.

- A person can go straight to a solicitors' firm and pay for advice. Often, initial consultation is offered for free.
- Many companies offer Conditional Fee Agreements but only if there is a prospect of success.
- There are Citizens Advice Bureaux in most large towns and these offer free advice on a wide range of issues. Solicitors working in Citizens Advice as employed staff or as volunteers can provide expert legal advice on a variety of matters, such as housing, employment, family law, etc.
- Citizens Advice Bureaux offer free, non-means-tested advice about employment, housing, family law, etc. and children's rights in areas where there is little or no solicitor available.
- Pro bono organisations provide volunteer lawyers to assist people that cannot afford legal advice. Examples are LawWorks with solicitors and Advocate with barristers.
- Trade unions usually offer members free legal advice on all issues. For example, Unions will assist employees and negotiate with employers.
- Many charities provide legal help with specific issues. For example, Gender Equality provides specialist advice for single-parent families.
- Car and house insurance companies usually attach a legal helpline to their policies. This is usually for a small additional fee.

Comment

This includes much more than is needed to gain full marks. Bullet points are acceptable for this question; explained points should be enough; the inclusion of an additional sentence with an explanation of facts ensures that the syllabus's requirement of breadth and depth is met. This answer should spend no more than 10–12 minutes preparing this.

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Question 3 or 4

The syllabus states that AO3 'discuss' questions may be set on the following topics:

- ◆ Evaluation of access to justice

These are examples of questions that might appear on access to justice:

- Discuss the problems with government funding for civil cases.
- Discuss the problems with government funding for criminal cases.
- Discuss whether the funding available for civil disputes ensures access to justice.
- Discuss whether the means and merits tests for criminal funding are fair.

Model answer for a 1-mark question

10. Discuss whether the means and merits tests for criminal funding are fair.

It could be argued that the means test is fair as it does not apply to anyone at a police station. Anyone held at a police station must be told of their right to free legal advice, be questioned and a duty solicitor will be provided if requested. Although some might argue it is fair that rich people should be provided with a duty solicitor at taxpayers' expense, it might be stressed and vulnerable and unable to access their funds. It is, therefore, argued that legal aid should be required at this stage.

Some would argue that the means test is unfair as the figures are low. For an individual with an adjusted income of £22,325 or more, they are not eligible for legal aid in the first instance. It is fair that the 'adjusted' figure takes into account the number of dependants. If their income is below that figure, they are still likely to have to make a contribution. On the other hand, it is fair that a means test exists as it would be impossible to fund all defendants in a time of austerity.

Some would argue that the merits test is fairer than this is intended to ensure that aid only if it is in the interests of justice. This involves considering factors such as convictions, the nature of the offence and the risk of custody. The Widgey that important factors to be taken into account such as the damage to the defendant should they lose their livelihood as a result of being convicted. It is certainly the case that aid should be heard in or transferred to the Crown Court.

A factor that might make the merits test seem less fair, however, concerns the fact that the defendant is likely to receive a custodial sentence if any matter in the proceedings is decided against me. The first of the Widgeons lose my liberty if any matter in the proceedings is decided against me.' Since a defendant is likely to receive a custodial sentence than a first-time offender, this means that a defendant is likely to pass the merits test than a usually law-abiding citizen. It is certainly true that criminality increases the chances of one receiving legal aid!

Comment

Three paragraphs are probably sufficient to gain full marks. Note how each paragraph starts with a topic sentence. Note how the opening to each paragraph is directly focused on the question. Note how the paragraph ends with a good practice to return to the question at the end of the paragraph as well.

It is vital that students spot the 'AND' in the middle of the question and ensure question are addressed separately. They do not need to be addressed equally paragraph on each.

If you have reached your time limit for this question after three paragraphs, do not panic. You have to make your points quickly.

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Answers

1. The Civil Courts and Other Forms of Dispute Resolution

Civil Law, page 7

1. Claimant
2. Lord Woolf's Report
3. Both parties provide each other with information
4. High Court & Multi-track
5. Small Claims
6. Court of Appeal (Civil Division)
7. High Court
8. With the permission of the High Court
9. Circuit Judge
10. High Court

Tribunals, page 8

1. Unfair dismissal, discrimination in the workplace and redundancy
2. Three months – minus a day
3. Advisory, Conciliation and Arbitration Service
4. Legally qualified chair, employers' representative and employees' representative.
5. The Employment Tribunal
6. 42 days
7. Employment Appeal Tribunal
8. Point of law only
9. They are quick/cheap
10. Lack of legal aid

ADR: page 12

1. Arbitration
2. Alternative Dispute Resolution
3. The Award
4. Negotiation
5. Advisory Conciliation and Arbitration Service
6. *Scott v Avery*
7. Arbitration Act 1996
8. A conciliator plays the role of a mediator and suggests solutions
9. Three
10. 14 days

2. Criminal Courts and Lay People

Court Jurisdiction, page 15

1. Summary
2. Indictable
3. Crown
4. Triable
5. Theft / Burglary / s.47 OAPA
6. Venue
7. sentence
8. Not Guilty
9. Mode of Trial
10. Election
11. choice
12. magistrates

Appeals and Appellate Courts, page 19

1. False – just the defence.
2. False – the right is automatic.
3. True
4. False – if either side feels a mistake was made regarding a point of law.
5. False – it is the Criminal Appeals Act 1995.
6. True
7. True
8. False – for the most serious offences only.
9. False – the judgment will be regarded as guidance or precedent for future cases.
10. False – the case predates the creation of the Supreme Court so its final appeal was in the House of Lords.

Criminal Courts: Appeals from the Magistrates' Court, page 19

1. Magistrates
2. Leave/permission
3. King's Bench Division
4. General importance
5. The Supreme Court
6. Court of Appeal
7. Stated
8. Crown Court
9. Leave/permission
10. Two lay magistrates

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Sentencing (Law Search), page 25

- | | |
|----------------|----------------|
| 1. mandatory | 6. discharge |
| 2. fine | 7. judge |
| 3. custodial | 8. suspended |
| 4. requirement | 9. curfew |
| 5. magistrate | 10. reparation |

Hidden word: **Deterrence**

Sentencing (Anagrams), page 25

1	Scene Ten	(1)	Sentence
2	Discharged	(1)	Discharge
3	Centre Deer	(1)	Deterrence
4	Crewmen Queer Fruit	(2)	Curfew Requirement
5	Fen is	(1)	Fines
6	Bit Urine Rot	(1)	Retribution
7	Acid Louts	(1)	Custodial
8	Inaction Nude	(1)	Denunciation
9	Iota Timing	(1)	Mitigation
10	Ponies Virus	(1)	Supervision

Lay Personnel: Magistrates, page 27

- | | |
|----------------------------------|------------------------|
| 1. Justice of the Peace | 9. Summary |
| 2. 18 | 10. Indictable |
| 3. 70 | 11. If charged with m |
| 4. Bench | 12. Warrants |
| 5. Issue warrants | 13. Magistrates' Clerk |
| 6. Senior Presiding Judge | 14. District Judge |
| 7. By a Local Advisory Committee | 15. Hear appeals |
| 8. 26 | |

Lay Personnel: Juries, page 32

- | | |
|----------|----------|
| 1. True | 6. True |
| 2. False | 7. True |
| 3. False | 8. False |
| 4. False | 9. True |
| 5. True | 10. True |

3. Legal Personnel**The Legal Profession: Barristers, page 35**

A new barrister must find a tenancy in a set of 1. **chambers**. Barristers are 2. **Self-employed** expenses and support staff. The barrister often relies on 3. **briefs** from 4. **solicitors** because barrister directly for criminal or family law.

Most barristers specialise in 6. **advocacy** but others focus on paperwork, giving advice, legal aid. Some specialise in certain areas such as company law or tax law and will rarely appear in court. A barrister can apply to 'take the silk' and become a 8. **KC**. This is a passport to more complex cases. The method of appointment was too 9. **secretive**. It is now more open and independent. Few 11. **ethnic** minorities. A silk is more likely to become a 12. **QC**.

The Legal Profession: Solicitors, page 37

- audience
- disciplinary
- conveyancing
- contract
- complaints
- probate
- crown
- society

Hidden word: **Advocacy**

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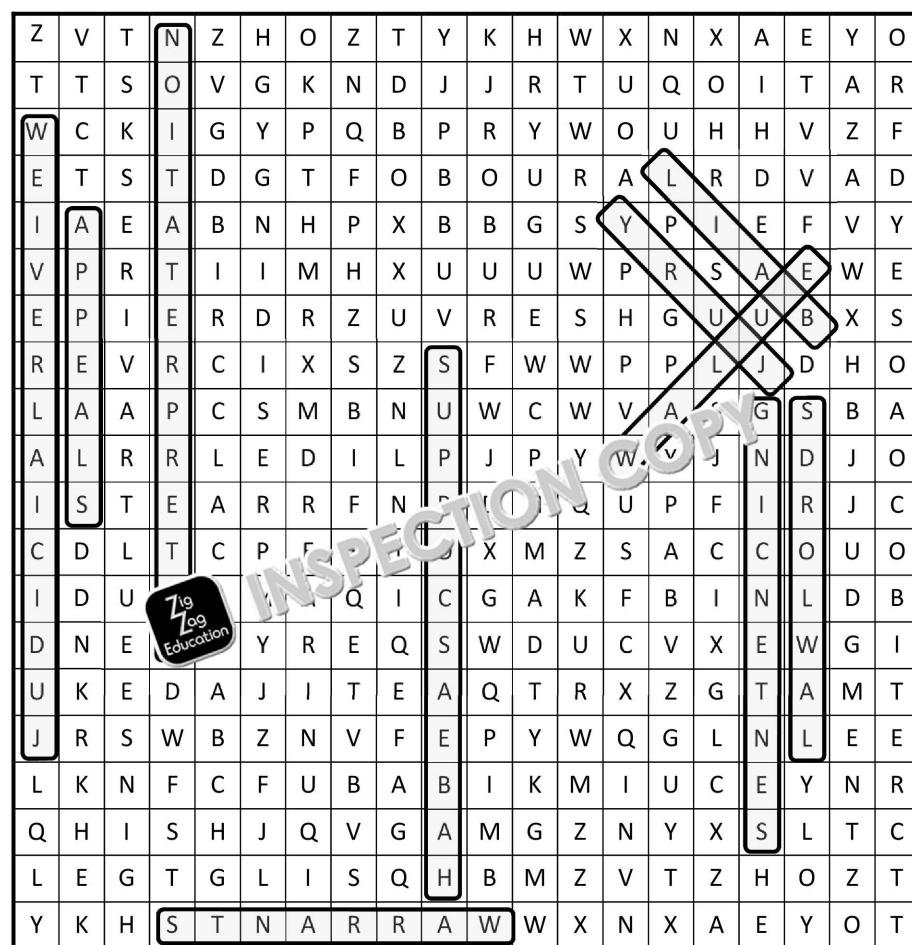


Legal Executives, page 38

- 20,000
- CILEX
- Both
- Examples include conveyancing, setting up companies, drawing up wills or providing
- In solicitors' firms
- Advocacy certificate
- Professional Conduct Panel
- The legal executive can be warned, reprimanded, fined or even removed as a legal executive

The Judiciary, page 42

- Habeas Corpus
- Law Lord
- EU Law
- Appeals
- Jury
- Sentencing
- Bail
- Judicial Review
- Interpretation
- Warrants



Separation of powers and judicial independence, page 46

- Constitution
- Legislature, Executive and Judiciary
- USA
- House of Commons and House of Lords
- Act of Settlement 1701
- Constitutional Reform Act 2005
- Human Rights Act 1998
- Security of tenure
- Immunity from suit
- Supreme Court

Access to Justice, page 48

- Legal Aid
- Advocacy
- Citizens Advice Bureaux
- Conditional Fee agreement
- The duty solicitor
- The Interests of Justice test
- In areas where there is no solicitor available
- It allows clients to claim costs for certain civil law cases
- Pay rates are controlled by the Legal Services Commission
- Means test

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