

Revision Guide for A Level OCR Law

Paper 2: Section A: Law Making
Second Edition

zigzageducation.co.uk

**POD
12417**

Publish your own work... Write to a brief...
Register at publishmenow.co.uk

Follow us on X (Twitter) [@ZigZagLaw](https://twitter.com/ZigZagLaw)

Contents

Contents	i
Product Support from ZigZag Education	ii
Terms and Conditions of Use	iii
Teacher's Introduction	1
Student Introduction	2
1. Parliamentary Law Making	3
A. The Pre-Legislative Process	3
B. Types of Bill	4
C. The Legislative Process	5
D. Advantages and Disadvantages of the Legislative Process	7
2. Delegated Legislation	9
A. Types of Delegated Legislation	9
B. Controls on Delegated Legislation	12
C. Reasons for the Use of Delegated Legislation	16
D. Advantages and Disadvantages of Delegated Legislation	17
3. Statutory Interpretation	18
A. Rules of Statutory Interpretation	18
B. The Purposive Approach	22
C. Intrinsic and Extrinsic Aids to Interpretation	24
D. Impact of European Union Law and the Human Rights Act 1998 on Statutory Interpretation	26
E. Advantages and Disadvantages of the Different Rules and Approaches to Statutory Interpretation	27
4. Judicial Precedent	30
A. The Doctrine of Precedent including stare decisis, ratio decidendi and obiter dicta	30
B. The Hierarchy of the Courts, Including the Supreme Court	31
C. Binding, Persuasive and Original Precedent; Overruling; Reversing; Distinguishing	34
D. Advantages and Disadvantages of Precedent	38
5. Law Reform	40
A. Influences on Parliament	40
B. Law Reform by the Law Commission	42
C. Advantages and Disadvantages of Influences on Law Making	44
6. European Union Law	46
A. The Institutions of the European Union	46
B. Sources of European Law	49
C. Impact of EU Law on the Law of England and Wales	50
Exam Section – A Level	53
The Examination Paper for Paper 2 Section A (Law Making)	53
Exam Practice	56
Exam Section – AS Level	72
The Examination Paper for Paper 2 Section A (Law Making)	72
Answers	75

Teacher's Introduction

This revision guide is an important study aid for students of AS and A Level OCR Law: Paper 2, Section A: Law Making. 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 subtopic for students to reference in their exams. Comprehension activities and further research tasks are included throughout to give students the opportunity to apply their understanding and encourage independent study. Learning tips have also been added to further support students in their revision.

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

The material specifically follows the OCR specification for Law Making and covers the subject content required of the OCR AS and A Level Law Papers H018/02 and H418/02.

Remember!

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

Assessment objective 1 requires that the student has an accurate knowledge and understanding of legal principles and can apply them effectively in the examination. Assessment objective 2 represents a higher proportion of marks. This objective requires the ability to analyse, evaluate and apply appropriate legal rules and principles. It is not possible to do this without first having built up a firm foundation of legal knowledge. Indeed, effective analysis always requires relevant illustration and examples, and OCR's mark schemes specify the need to support answers with relevant cases and/or statutes.

Teachers and students should make full use of OCR mark schemes and reports, which are available free of charge from: <https://www.ocr.org.uk/qualifications/as-and-a-level/law-h018-h418-from-2020/assessment/>

Case support is much more important in the Law Making unit than in the Legal System unit. Indeed, case support is essential in topics such as Statutory Interpretation, Precedent, EU Law, and the Judicial Review section of Statutory Interpretation. Schools are therefore advised to purchase ZigZag's Key Cases pack on Law Making as it contains a vast range of cases and statutes as well as a variety of learning activities to help students to remember these. It is available at: <https://zigzageducation.co.uk/synopses/11042-key-cases-law-ocr-alevel-2020>

April 2024

Student Introduction

This revision guide is an important study aid for AS and A Level OCR Law: Paper 2.

It contains a brief outline of each topic in the syllabus, including the key facts and both descriptively and analytically, along with learning and revision exercises. It also contains detailed notes on how to answer questions for each section together with worked examples.

There are two main types of law in the UK: statute law and common law. Common law has been developed by the courts over hundreds of years under the concept of judicial precedent.

The Law Making unit mainly concerns statute law which is law created by Parliament.

The topics in this unit are:

1. Parliamentary legislation
2. Delegated legislation
3. Statutory interpretation
4. Judicial precedent
5. Law reform
6. European Union law

The A Level course is about the law in England and Wales only as other parts of the world have different legal systems. The 'Parliamentary legislation' topic covers the actual process of creating laws. 'Law reform' is about where the ideas and initiatives for creating statute laws come from. 'Delegated legislation' is where the power to make laws in certain areas is given to other bodies or positions, as opposed to Parliament. The courts have the job of interpreting and making sense of the parliamentary legislation that has been created, and the topics on 'Statutory interpretation' and 'Judicial precedent' are about how the courts go about this task. The remaining topic on 'European Union law' is a relatively new topic as the UK was affected by and subservient to EU law as a consequence of the UK's membership of the EU. OCR has yet to remove the topic from its syllabus, meaning that questions on this topic will appear on this paper, although it has finally, but belatedly, removed the inaccurate requirement for 'European Union law' from the Statutory Interpretation unit.

Some Points about Statute Law

- Statute law is made by **Parliament**.
- Parliament passes about 60–70 acts annually.
- Parliament consists of the King, the House of Lords and the House of Commons.
- Statutes must be approved by all three of these bodies to become law.
- Members of Parliament are elected by the voters to sit in the House of Commons.
- A General Election must take place within five years.
- The party that gets the most MPs usually forms the government and its leader becomes the Prime Minister.
- Parliament can alter, revoke or create new laws. It has complete power as far as the law is concerned. This is known as **parliamentary sovereignty**.
- Statutes are binding on all courts and all people in England and Wales. Judges must apply the law. They are not supposed to challenge it but they can be very flexible in how they interpret it.
- Statutes can alter the law fairly **quickly** but the procedure can be time-consuming.
- Statute law is made by **Parliament**. Since judges are not elected, in a democracy it is more democratic to make laws rather than judges.
- Statute law generally presupposes the existence of common law. Where there is a conflict, **statute law will prevail**.

INSPECTION COPY

COPYRIGHT
PROTECTED

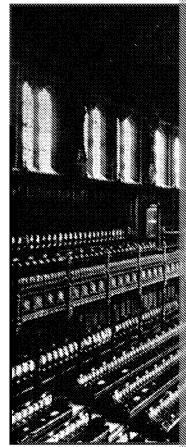


1. Parliamentary Law Making

A. The Pre-Legislative Process

Green Paper

- This is a public consultation document issued by the government on proposed new bills.
- This will be sent to interested parties for their views. For instance, a bill suggesting a change in speed limits would be sent to car manufacturers, insurance companies, the emergency services, the AA and RAC, road safety groups etc.
- Anyone else interested in the topic can send their comments on the proposals to the relevant government department.
- The government reviews all the comments and makes revisions if necessary.
- Early consultation produces better legislation. It is very democratic.
- A recent example of a Green Paper has been: Changes to the special educational needs and disabilities (SEND) and alternative provision (AP) system in England (2022).



Inside the House of Commons

White Paper

- This is issued after the Green Paper consultation stage has been completed and the government has decided on its proposals.
- The government sets out its firm proposals.
- Parliamentary draftsmen will now convert this into a bill using legal language.



Exercise 1A (answers on page 75)

Answer the following questions:

1. When the government is considering a new bill, what name is given to the document that is issued?
2. Name an organisation that might be asked to consult on a new bill.
3. Give an example of a recent consultation document.
4. Following the consultation, the government will issue firm proposals. What is this document?
5. Who converts this document into legal language?



**COPYRIGHT
PROTECTED**



B. Types of Bill

Public Bills

- The majority of bills are this type and are introduced by the government.
- These will affect the country as a whole if they become law.
- An example of a bill before Parliament at the time of writing is the Anonymity

Private Bills

- These are bills that affect a particular organisation or area, or even just an individual.
- This type of bill used to be the only way one could obtain a divorce in this country.
- An example of a Private Bill that became an act is the University of Manchester and other universities into one.

Private Members' Bills

- These are nearly all introduced by non-government Members of Parliament.
- Time is limited to 10 days for these to be debated.
- A ballot of proposed bills is held at the start of the session. To have any hope of passing through parliamentary stages, a bill must be one of the first seven drawn out in the ballot.
- The bill has no hope of passing if the government is against it.
- Bills tend to be on non-political issues. An example of a Private Members' Bill that became an act is the Abortion Act 1967.
- Private Members' Bills can also be introduced using the 10-minute rule, but this is rare.



Exercise 1B (answers on page 75)

Answer the following questions:

1. Who introduces most Public Bills?
2. Who or what is affected by Private Bills?
3. When are Private Members' Bills debated?
4. Which type of bill used to be the only way one could obtain a divorce in this country?
5. What type of bill was the Abortion Act 1967?

**COPYRIGHT
PROTECTED**



C. The Legislative Process

Introducing a Bill

- The government introduces most bills but not all of them.
- A bill is carefully written by parliamentary draftsmen. These are experts in detail who ensure the bill is not ambiguous or vague. Bills are often long and complicated.
- There are eight stages to passing a statute, as shown below.

Most statutes originate in the House of Commons and reflect the policies of the elected government. They begin as bills but on completing the legislative process they become statutes or acts.

A bill may be introduced in either House but new laws must be introduced into the House of Commons.

A bill is a draft version of an act that has not yet become law. It is divided into clauses.

A bill is usually introduced by a government minister. The procedure below is for a bill in the House of Commons.

First Reading

- The short title of the bill is read out.
- That is all that happens! This stage is a formality.

Second Reading

- The minister introducing the bill describes the aims of the bill and there is then a debate.
- At the end of the debate, there is a vote. A simple majority vote is needed to pass the bill.

Committee Stage

- A committee of MPs carries out a detailed examination of every clause of the bill.
- If the bill is a finance bill, the whole House sits as a committee.

Report Stage

- The committee reports back to the House with suggested amendments.
- These changes are debated and then each is accepted or rejected.

Third Reading

- There is a debate on the amended bill.
- Sometimes there is no debate and this stage is another formality.
- This is followed by a vote.

Other House

- The process is then repeated in the other House of Parliament.

Amendments Consideration

- An identical bill must be passed by both Houses. If the second House has made amendments, the bill must now be approved by the first House.
- Parliamentary ping-pong may result, with the bill going back and forth between the Houses until agreement is reached.

Royal Assent

- The monarch signs the bill. This stage is a formality.
- The bill now becomes an act.

- If the First Reading takes place in the House of Lords, the long title of the bill is read out.
- If the two Houses of Parliament cannot agree, the Salisbury Convention states that the government will not introduce a bill that would force a general election back down on a matter that the government had included in its manifesto at the last election because the House of Commons has democratic legitimacy.
- Otherwise, the House of Commons can bypass the House of Lords completely. This has happened in 1911 and 1949. To do this, it must pass an identical bill in the following year.

INSPECTION COPY

COPYRIGHT
PROTECTED





Exercise 1C (answers on page 75)

Answer the following questions:

1. List the three types of parliamentary bill.
2. What is a Green Paper?
3. What is a White Paper?
4. Which bills must start in the House of Commons?
5. What is read out in the First Reading in the House of Commons?
6. What is the name of the stage where a group examines the bill and amendments?
7. What is the name of the stage where the House considers these amendments?
8. What is the phrase that describes the process of a bill going back and forth between the two Houses?
9. What is the name of the stage whereby the monarch signs the bill into law?
10. What is the name of the bill called once it has completed this procedure?



Learning Tip

OCR's mark schemes suggest using the acronym **FSCRTOR** as a learning aid to help remember the parliamentary stages and to avoid missing any out. ZigZag suggests adapting this (pronounced *eff-scri-toe-ah*) to include the 'parliamentary ping-pong' stage where amendments are considered:

- F** – First Reading
- S** – Second Reading
- C** – Committee Stage
- R** – Report Stage
- T** – Third Reading
- O** – Other House
- A** – Amendments Consideration
- R** – Royal Assent



INSPECTION COPY

INSPECTION COPY

**COPYRIGHT
PROTECTED**



D. Advantages and Disadvantages of the Legislative Process

✓ Advantages of the legislative process	✗ Disadvantages
<ul style="list-style-type: none"> ✓ Common law changes very slowly but acts can be passed quickly. ✓ The legislative process is thorough, involving considerable discussion, debate and scrutiny. ✓ It is subjected to public scrutiny. ✓ The pre-legislative procedure allows thorough consultation, allowing bills to be adapted as a result of this. ✓ Statute law has the authority of the new law which have elected MPs. ✓ Laws based on draft bills presented by the Law Commission are based upon detailed research. ✓ The judiciary no longer has a role in creating legislation, supporting the principle of the separation of powers. ✓ In an emergency, a law can be rushed through its stages. ✓ The House of Lords contains specialists in many areas who can scrutinise bills and propose amendments to make new laws watertight. ✓ The Salisbury Convention and the Parliament Acts can prevent deadlock occurring. 	<ul style="list-style-type: none"> ✗ Statutes are often vague unlike those in Europe, making statutory interpretation difficult to understand. ✗ It is difficult to find the relevant legislation on a particular topic. This makes it difficult to apply the law, particularly if acts have been amended by secondary legislation. ✗ Parliament alone can create new laws. ✗ Sometimes the lack of time for debate means bills fail to get through. Existing laws can then become outdated. ✗ Many acts need to be amended. They need to be tidied up. ✗ For example, the Theft Act 1968 had a loophole that meant a petrol station without a pump could be the subject of theft. The Theft Act 2003 closed the loophole. ✗ The procedure is long and is criticised as being too slow. ✗ One of the Houses of Parliament can veto a bill. ✗ Elected MPs are not always the best focus for legislation, as they may be more focused on re-election factors than in creating new laws.

Further Research

Using the following website, find a Green Paper:

<https://www.gov.uk/search/all?keywords=green+papers&order=relevance>

Prepare a brief presentation on what the government was considering.

INSPECTION COPY

**COPYRIGHT
PROTECTED**





Exercise 1D (answers on page 75)

Parliamentary Legislation: Anagrams

Identify the relevant words from the following clues and anagrams:

	Clue	Anagram	
1	Issued after a Green Paper.	Happier Wet (2 words)	
2	If passed, a bill becomes what?	A Complaint After (3)	
3	Money bills must be introduced here.	Confuse Shoo Mom (3)	
4	Stage after the Second Reading.	Magic Settee Tom (2)	
5	The monarch gives a bill formal approval.	Analyse Rots (20)	
6	This ensues if the two Houses disagree on amendments.	Aaron Grimly Pet-napping (2)	
7	A bill that only changes the law for people in one area.	Trivial Pleb (2)	
8	They sit in the Commons.	Aristocracies Prime Form (3)	
9	These are the government force through a bill which the House of Lords has refused to pass.	Sacramental Pit (2)	
10	A type of bill.	Brambliest Elm Viper (3)	

INSPECTION COPY

**COPYRIGHT
PROTECTED**



2. Delegated Legislation

What is it?

- A head teacher might create prefects and monitors and give them (or **delegated**) minor punishments to younger pupils. Ultimate power, however, remains with the head teacher. He or she can extend, adapt or withdraw this power at any time.
- In the same way, Parliament can delegate some of its law-making powers to a body other than Parliament to make law.
- Legislation that person or body then creates is known as **delegated** or **secondary** legislation.
- Ultimate authority remains with Parliament, which can extend, adapt or withdraw the power at any time.

A. Types of Delegated Legislation

There are four types of delegated legislation that students must learn for this exam:

1. By-laws (local authorities)
2. By-laws (public corporations)
3. Statutory Instruments
4. Orders in Council

Learning Tips

The syllabus suggests that there are just **three** types to learn... but unless students learn all four, there are **four** types, they have a tendency to forget that by-laws can also be made by public corporations.

For each of the four types, students should learn:

- i. Who makes them
- ii. What they are for
- iii. An example

1. Local Authority By-laws

- The first type of by-laws are made by local authorities such as town councils.
- The **Local Government (Miscellaneous Provisions) Act 1982** gives local authorities the authority to create by-laws in a range of areas.
- Examples of by-laws are designating an area of pavement as a cycle path or closing a town high street to traffic temporarily for an early Christmas shopping occasion.
- These are matters of no relevance or interest to most Members of Parliament and best decided by locally elected people.
- The **Byelaws (Alternative Procedure) (England) Regulations 2016** set out the current procedure for creating by-laws.
- The process must include publicity in the local press, consultation and the approval of the relevant government minister.

2. Public Corporation By-laws

- The second type of by-laws are made by public corporations.
- For instance, the **Transport Act 2000** allowed the Strategic Rail Authority to make by-laws for the use of railway travel and the conduct of people using railway assets.
- The Port of London Act 1968 allows the Port of London Authority to make by-laws for the River Thames.
- The National Trust created a by-law creating a nudist beach on its land at Bournemouth.
- Parliament leaves law-making to such bodies because they have specialist knowledge and understanding of the environment they are responsible for.

INSPECTION COPY

COPYRIGHT
PROTECTED



3. Statutory Instruments

- A Secretary of State or minister can often pass statutory instruments in the form of Regulations.
- They are used to speed up the legislative process by enabling regulation without placing them before Parliament.
- For instance, if an act sets out a fee (e.g. for car tax or the TV licence), an act to be adjusted to take account of inflation without having to go through the procedure that was described in Section 1.
- Parliament delegates the power to a minister through an **Enabling Act** (also known as a **Henry VIII Act**).
- The Parent Act sets out the sort of statutory instruments that can be made. An Act of Parliament is a Parent Act.
- For instance, the **Dangerous Dogs Act 1991** allows the Secretary of State to ban breeds. s.2(4) of the act requires the consultation that is required for an affirmative resolution procedure must be used.
- There are between 2,000 and 4,000 statutory instruments each year.
- They save precious parliamentary time although there is a danger that some ministers are acting *ultra vires* (beyond their powers).
- As there are so many, there is little time to properly **scrutinise** them.
- Publication of all statutory instruments is required under the **Statutory Instruments Act 1946**.

Learning Tips

Almost every Act of Parliament is an Enabling Act that **enables** the creation of statutory instruments. Think of the original Act of Parliament as being the parent, and the subsequent statutory instruments as its children.

4. Orders in Council

- These are orders passed by the King and Privy Council when emergency legislation is required when Parliament is not sitting.
- The Privy Council is made up of the Prime Minister and other leading members of the government and former governments.
- The **Emergency Powers Act 1920** and the **Civil Contingencies Act 2004** allow the use of Orders in Council.
- For instance, Orders in Council were used to close airports and introduce security measures on liquids onto aircraft during a terrorism alert in 2006.
- Before Brexit, Orders in Council were mostly used to bring **European Directives** into the UK under the **European Communities Act 1972**.
- Some appointments in the gift of the monarch are made using Orders in Council.
- The order is drawn up by the relevant government department, approved by the Privy Council, signed off by the monarch.

Further Resources

Using the following website, find five statutory instruments. Choose them from different areas of law.

<https://www.legislation.gov.uk/uksi>

Write down the titles and a brief explanation of what the statutory instrument was for.

**COPYRIGHT
PROTECTED**





Exercise (answers 2A on page 75)

Types of Delegated Legislation: Word Search

1. These can make by-laws:
2. A type of delegated legislation:
3. Another type of delegated legislation:
4. Can create delegated legislation:
5. An act passed in response to a series of reports on children
6. A Latin phrase for 'beyond their powers':
7. Allows laws to be made in an emergency:
8. Another word for king:
9. The National Trust created a special beach for these at Studley.
10. The missing word in 'The **Local Government** (..... **Provis**



INSPECTION COPY

COPYRIGHT
PROTECTED



B. Controls on Delegated Legislation

- There must be controls on delegated legislation to prevent the person or body from abusing their power.
- By-laws must be signed off by the relevant government minister and are also subject to Parliamentary controls.
- Statutory instruments are subject to both Parliamentary controls and court controls.
- It used to be thought that Orders in Council could not be challenged but the *Princess Alice* case established that these are subject to court controls.

Parliamentary Controls on Statutory Instruments

These can be divided into two groups:

1. Controls on or in the original Parent Act, i.e. past controls.
2. Controls on the statutory instrument that is being created, i.e. present controls.

1. Past Parliamentary Controls

The Enabling (or Parent) Act

- This sets the boundaries for the delegated legislation.
- It sets out the types of statutory instruments that can be made and which cannot. For instance, the **Dangerous Dogs Act 1991** allows the Secretary of State to make regulations about the list of banned breeds.
- The Parent Act will also set out the procedure to be used when creating the statutory instrument. For instance, **PACE (Police and Criminal Evidence Act 1984)** states that statutory instruments made under PACE must go through Affirmative Resolution Procedure.
- For example, the Parent Act may also make **consultation** with certain public authorities, motoring organisations or the public, obligatory. If so, and if the consultation is not carried out, the statutory instrument will be **unlawful**.
- Parliament can modify or repeal the Parent Act at will.

The House of Lords Delegated Powers Scrutiny Committee

- This is an additional committee that bills will be referred to during the passage through the House of Lords.
- The Committee will look at the part of the proposed Parent Act that refers to delegated powers to ensure this part has been set out correctly with the appropriate resolution procedure.

2. Present Parliamentary Controls

Resolution Procedures

Affirmative Resolution Procedure

- The requirement for this procedure will be set out in the Parent Act.
- A formal vote approving the statutory instrument must take place in both Houses of Parliament.
- The Houses cannot amend the statutory instrument; they can merely approve or reject it.

Negative Resolution Procedure

- The vast majority of statutory instruments are created using this procedure.
- They are not looked at in Parliament. In essence, a member of either House of Parliament can object to the statutory instrument being published.
- The vote is simply to accept or reject the statutory instrument. It cannot be amended.

Super-Affirmative Resolution Procedure

- This was introduced by the **Legislative and Regulatory Reform Act 2006**.
- This allows government ministers to make statutory instruments for any purpose that the Parent Act says, but **only** if the aim is to reduce a **burden**.
- A 'burden' includes an 'obstacle to efficiency, productivity or profitability'.
- For instance, a statutory instrument was used to simplify renewal of car insurance online instead of having to take car ownership and insurance documents to the original act concerning this was passed, no one would have imagined that you could renew online one day, so no allowance was made within the Parent Act for changes to be made.
- This power is used **sparingly** by **ministers**.
- There must be a vote in both Houses and widespread consultation.

COPYRIGHT
PROTECTED



Learning Tip

The OCR guidance stresses that there is no need for students to learn about Super Procedure, but it is very handy to use as the basis of a paragraph if answering a 'd' effectiveness of parliamentary controls on statutory interpretation.

Students' eyes tend to glaze over when confronted with Affirmative and Negative think of them as labels, with complicated names, for something that is quite straight

Questions to Ministers

- MPs and Lords can question government ministers about proposed statutory

The Joint Committee on Statutory Instruments

- This committee comprises members from both Houses of Parliament.
- It scrutinises statutory instruments made by various government departments and delegated powers.
- It draws Parliament's attention to any statutory instrument that it feels should be given consideration; for instance, if it appears to be unclear or defective or has gone beyond the scope of the Parent Act.
- It does not assess the merits of the instrument or of the underlying policy.
- It has no power to amend a statutory instrument.

Effectiveness of Parliamentary Controls

- Parliament is supreme. It has the ultimate control because it is able to repeal any statutory instrument.
- The Parent Act is a very effective control as it enables the use of judicial review to challenge down delegated legislation that has been created improperly.
- The effectiveness of the Parent Act as a control has been undermined by the **Reform Act 2006**, which allows ministers to create statutory instruments regardless of whether they say so long as the aim is to reduce a burden.
- Affirmative Resolution Procedure is an effective control as it requires a formal resolution of both Houses of Parliament for a statutory instrument to be created.
- It could be argued that Affirmative Resolution Procedure is not an effective control as it forces the ruling party's members to vote the delegated legislation through.
- Negative Resolution Procedure is an effective control as any MP or Lord can block a statutory instrument so long as they do this within 40 days of its being published.
- It could be argued that Negative Resolution Procedure is not an effective control as statutory instruments created in this way even if they are written in clear language are impossible for MPs and Lords to keep track of them all.
- The Scrutiny Committees are effective controls as the parts of every Parent Act require every statutory instrument to be subject to detailed scrutiny, and every statutory instrument is subject to a detailed scrutiny.
- It could be argued that the Scrutiny Committees are ineffective as they cannot draw Parliament's attention to concerns.

Court Controls

- There is only one court control: **judicial review**.
- Anyone has the right to use judicial review to challenge the legality of delegated legislation.
- If the judges agree that the delegated legislation is unlawful, they will declare it invalid (kill it!).
- There are four grounds for deciding that a decision-maker has acted *ultra vires*.

**COPYRIGHT
PROTECTED**



- Substantive *ultra vires* is where a person or body has used the powers given in a statute. An example is **R v Home Secretary, ex parte Fire Brigades Union 1995**. The minister used powers given to him in an enabling act.
- Procedural *ultra vires* is where a person or body has failed to carry out the proper procedure in making legislation, as in the **Aylesbury Mushrooms Case 1972**.
- Unreasonableness: a person/body has done something that no reasonable person in that situation would have done. An example is **Associated Picture Houses v Wednesbury Corporation 1948**. **Strickland v Hayes Borough Council 1896**.
- Where a person/body has used their powers in a way that is inconsistent with the purpose of the statute, as in **R (Bono) v Harlow District Council 2002**.

Learning Tip

If you are having trouble getting your head around judicial review and *ultra vires*, try the following examples.

Let's say you have forgotten to do your homework so your teacher gives you a three-hour detention. Perhaps your school has a policy which states that teachers can give after-school detention. You would be able to ask the High Court to void the detention on the grounds that the teacher has no power to issue a three-hour detention = substantive *ultra vires*.

Let's say the teacher tells you that you have a one-hour detention but they do not give you a detention slip. You could ask the High Court to void the detention on the grounds that the teacher has not followed the correct procedure by failing to give you a detention slip = procedural *ultra vires*.

Perhaps the teacher gave you a detention for saying 'Owl!' after a wasp flew in and you were startled. You could try asking the High Court to strike the detention down on the grounds that the teacher is too harsh to punish you in this way.

Let's say you forget your homework again so the teacher orders you taken outside and you are told that you must stay there for 10 minutes. You could challenge this under the **Human Rights Act 1998** as being contrary to the right to a fair trial.

Case Study **R v Home Secretary, ex parte Fire Brigades Union 1995**

The Home Secretary went beyond the powers granted him by the Criminal Justice Act 1967 to make changes to the Criminal Injuries Compensation Scheme. The changes were found to be *ultra vires*.

Case Study **Agricultural Training Board v Aylesbury Mushrooms Ltd 1972**

A statutory instrument to establish a training board was declared invalid in 1972 because of inadequate consultation. A letter had been sent to other growers' organisations but not to members of the Mushroom Growers' Association despite the Parent Act specifying that they must be consulted.

Case Study **Strickland v Hayes Borough Council 1896**

A by-law prohibiting obscene language was found to be unreasonable because it was too broad. It would, therefore, have applied to swearing in the privacy of one's own home.

Case Study **R (Bono) v Harlow District Council 2002** **Inconsistent with the purpose of the statute**

A Review Board's rejection of a claim to housing benefit was challenged successfully in 2002. The board was not an independent and impartial tribunal and therefore breached the claimant's rights under the ECHR. (The Human Rights Act 1998 requires UK courts to be mindful of the ECHR.)

**COPYRIGHT
PROTECTED**



Effectiveness of Judicial Review

- Judicial review is very effective as it can be used against by-laws, statutory instruments and delegated legislation.
- Effectiveness is reduced because the courts can do nothing unless someone brings a claim, yet the ordinary person in the street may not know s/he can do this.
- Even if a person is aware of judicial review, undertaking the process is daunting.
- It is a very **expensive** process and rarely attracts **legal aid** funding.
- If the judicial review fails, the claimant will have to pay the government's legal costs and the government is not known for using the cheapest lawyers!
- Many Parent Acts give Ministers **wide powers** making it quite difficult for the courts to interfere. The **Legislative and Regulatory Reform Act 2006** has widened these powers.
- It is sometimes argued that courts can be reluctant to break the doctrine of separation of powers, an underlying belief in the **supremacy of Parliament** in law-making makes them reluctant to interfere with the government.
- Judicial review does hold the Executive to account. Although the government can appeal to Parliament to negate a court ruling, this would not be retrospective.



Exercise 2B (answers on page 76)

True or False?

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

1. Relative Acts set out what sort of statutory instruments can be made and how they can be used.
2. The House of Lords Delegated Powers Scrutiny Committee checks whether the powers referring to creating secondary legislation are set out correctly.
3. A vote in each House is required by Positive Resolution Procedure.
4. Under Negative Resolution Procedure, there is no vote in Parliament. The House of Commons demands one within 80 days of its being published.
5. The Legislative and Regulatory Reform Act 2006 created Super-Resolution Procedure.
6. The Joint Committee on Statutory Instruments scrutinises statutory instruments.
7. The court control on delegated legislation is called statutory review.
8. The courts can strike down delegated legislation that has not been properly made.
9. This is on the grounds of substantive *ultra vires*.
10. **Wednesday Unreasonableness** is where the courts strike down delegated legislation on the grounds that no reasonable person would have enacted it.

COPYRIGHT
PROTECTED



C. Reasons for the Use of Delegated Legislation

By-laws Made by Local authorities

- These allow for local democracy.
- Examples of by-laws are designating an area of pavement as a cycle path or closing roads to traffic temporarily for an early Christmas shopping occasion.
- These are matters of no relevance or interest to most Members of Parliament or the people elected people.
- Delegating these powers saves parliamentary time.

By-laws Made by Public Corporations

- Parliament leaves certain law-making to bodies such as Network Rail, London Underground and the companies because they have specialist knowledge and a better understanding of the issues responsible for. The companies are more responsible for the health and safety issues that they control better than Parliament and Lords could.
- Delegating these powers saves parliamentary time.

Statutory Instruments

1. Thousands of statutory instruments are created every year. Parliament could deal with all these using the normal law-making process.
2. Statutory instruments allow minor changes to be made to existing acts using a simplified process. The **Dangerous Dogs Act 1991** allows the Secretary of State to add new breeds to the list of banned breeds with a single vote in each House rather than having to go through the full FSC procedure.
3. Parent Acts may lay down figures concerning fees, fines or benefits. Statutory instruments allow adjustments to be made to these figures in line with inflation without having to go through the FSC procedure.
4. Statutory instruments allow for a simplified way of adapting existing legislation to new circumstances, such as the COVID crisis, without having to go through the full law-making process.
5. A huge number of statutory instruments concern temporary road or lane closures. Using statutory instruments prevents the waste of a ridiculous amount of parliamentary time.

Orders in Council

- These allow for quick action by the government in the event of an emergency.
- For instance, Orders in Council were used to close airports and introduce rules on aircraft during a terrorism alert in 2006.



Exercise 2C (answers on page 76)

Fill in the gaps

1. _____ are made by local authorities (e.g. town councils) for creating cycle-paths. They are also made by 2. _____ that have the potential for danger such as rail and 3. _____ companies. 4. _____ amend or add to existing Acts of 4. _____ and are made by 5. _____. For instance, the Home Secretary can use statutory instruments to add additional breeds to the list of 6. _____ banned by the Dangerous Dogs Act 1991.
7. _____ are made by the King and Privy Council. Their main purpose is to make laws that need to be taken quickly when Parliament is not in session. They are also used for making certain appointments in the gift of the monarch.
9. _____ of some Universities. Before 10. _____, these were made by regulations into UK law.

COPYRIGHT
PROTECTED



D. Advantages and Disadvantages of Delegated Legislation

✓ Advantages of Delegated Legislation	✗ Disadvantages
<ul style="list-style-type: none"> ✓ It saves parliamentary time, allowing Parliament to focus on policy. ✓ It allows local matters to be decided by local people. ✓ It allows specialists to be involved in legislation. They can deal with very technical matters, such as motorway construction, or with health and safety matters. ✓ It provides flexibility. Details of a statute can be implemented or adjusted quickly and easily. ✓ It can be useful in a crisis because it can be implemented quickly, such as during the foot-and-mouth crisis in 2001, using an Order in Council. ✓ It was essential for giving effect to EU law within the UK without having to go through Parliament. This was done through Orders in Council. ✓ It is subject to controls, including judicial review. 	<ul style="list-style-type: none"> ✗ There is too much detail in delegated legislation. This also makes it difficult to understand the law is. ✗ Statutory instruments are not debated in Parliament. ✗ Parliament does not have a say in delegated legislation. Select Committees have been set up to monitor delegated legislation. ✗ It can be seen as undermining the role of public corporations. ✗ There is the risk of ministers not giving delegated legislation the same level of scrutiny as statutory instruments. Ministers can delegate this to unelected civil servants rather than to elected members of Parliament. ✗ Debate is reduced in Parliament of statutory instruments and Orders in Council. ✗ This was a particular problem in 2001 when many Orders in Council were used to implement EU law. ✗ Publicity for delegated legislation is focused on the technical details, so awareness of delegated legislation is low. ✗ Delegated legislation is often written using obscure words and phrases, making it difficult to understand. ✗ Judicial review is not always successful and expensive, bringing the matter back to court.



Exercise 2D (answers on page 76)

Delegated Legislation

1. Parliament uses what type of act to allow for the delegation of power?
2. What type of delegated legislation is likely to be created by a railway company?
3. What type of delegated legislation is used by the Secretary of State to change the National Curriculum without going through Parliament?
4. What type of delegated legislation may be used in a national crisis?
5. What percentage of our law is made by delegated legislation today than by statute? True or false?
6. Which court considers judicial review cases?
7. **The Road Traffic Act** gave the minister responsible for transport the power to change the speed limit for petrol quickly. Is this Act an example of delegated legislation?
8. What is the procedure in Parliament that requires a vote to approve delegated legislation?
9. What happens if a court declares a piece of delegated legislation invalid?
10. What was the procedural *ultra vires* issue regarding the **Aylesbury** case?

COPYRIGHT
PROTECTED



3. Statutory Interpretation

A. Rules of Statutory Interpretation

What is Statutory Interpretation? (For background understanding)

- Statutes (Acts of Parliament) are very detailed and very carefully drafted but can be ambiguous or even absurd.
- The development of society can also create changes. The **Telegraph Act 1868** provided that a telephone was invented, therefore in **Attorney General v Edison Telephone Co 1899** the court gave a liberal interpretation to extend some provisions of the act to deal with this new technology.
- Courts cannot request an explanation from Parliament as to what it intended before passing new laws. Also a statute may have been passed years ago so it would be difficult for a particular Parliament to explain how a particular law was intended to be interpreted.
- It is, therefore, the task of the courts to solve these problems. Judges will have to interpret a statute in order to work out what the law is and how it is to be applied.
- Unfortunately, how a particular judge interprets a law depends upon their interpretation toward Parliament. For instance, a judge with a literal approach believes the law is sacrosanct and must be followed exactly by the courts even if this results in an absurdity. On the other hand, a judge believing in judicial activism and the purposive approach might interpret the law to produce a sensible result. If the law produces badly drafted ambiguous laws, it is up to the courts to make sense of them and take account of changes in society. Other judges have a view in between.
- The outcome of a case may therefore depend upon what type of judge presides over the case and what approach to follow.

The Literal Rule

- This is the traditional starting point.
- The literal meaning of the words must be accepted. This definition was provided in **Pepper v Hart 1993**. He said: 'If the words of an act are clear though they lead to a manifest absurdity.'
- The courts will give the words their ordinary meaning.
- The contemporary meaning of words must be applied, for instance, a dictionary might be used as an external aid.
- **Abley v Dale 1851** stated that the literal meaning would be taken even if it resulted in an absurdity. This was followed in **London and NE Railways v Berriman 1946** and **Fisher v Bell 1960**.
- The use of the literal rule can hold back the law in the face of changing social conditions.
- It is too mechanical and rigid. It may defeat Parliament's purpose.
- It is often preferred by judges who do not wish to be accused of making law or separation of powers.
- It maintains parliamentary supremacy. It is Parliament's role to legislate and if it turns out to produce absurd results or is not working the way intended, it is for Parliament to amend that law.

Case Study **London and North Eastern Railway Co. v Berriman 1946**

*Berriman died while doing maintenance work. He was oiling points on the track which were owned by the railway company. This was required by the **Fatal Accidents Act**. It stated that for workers 'relaying' or 'repairing' railway track. The statute had been designed to provide for their families protection in case of accident. The literal rule was used to rule that 'oiling' or 'relaying' and was not covered by the act. Hence his wife was refused any compensation. The outcome of the act had been defeated by a literal interpretation of it.*

INSPECTION COPY

COPYRIGHT
PROTECTED



Case Study

Fisher v Bell 1960

The Restriction of Offensive Weapons Act 1959 aimed to reduce the number of dangerous knives that were not to be offered for sale. Flick knives had been displayed in a shop window charged with offering flick knives for sale contrary to the above act. The judge found the shopkeeper was acquitted. Applying a literal meaning to the words of the act, the judge found the shopkeeper was not offering flick knives for sale. By placing them in his shop window he was merely inviting the public to look at the flick knives for sale. The literal rule actually defeated the intention of Parliament to restrict the availability of flick knives.

Case Study

Mesure v Mesure 1960

The Matrimonial Causes Act 1960 set out the circumstances for when one could get a divorce. The situation if one's partner had been receiving 'continuous treatment' for mental illness. Mrs Mesure had been in a mental hospital for seven years, so Mr Mesure sought a divorce. Mrs Mesure had become seriously ill with tuberculosis and had to be transferred to a sanatorium for several weeks. The staff at the clinic had been treating her disease and not her mental illness. The court found for that was not 'continuous treatment' and the five-year period had reset on her return to the hospital.

Case Study

Cheeseman v DPP 1990

Two policemen caught Ashley Cheeseman masturbating in a public toilet and charged him with **Section 33 of the Public Order Act 1986** with 'willfully and indecently exposing the person... to the annoyance of others'. The court used a dictionary from 1847 to determine that a 'passenger' was someone who was travelling. The court found that did not apply to the policemen so Cheeseman was not guilty of the specific offence.

The Golden Rule – Narrow Approach

- A court will start by applying the literal rule, but if it would lead to an absurd result, it will use the golden rule instead.
- The narrow approach was set out by Lord Reid in **Jones v DPP 1962**: 'If they [the words] have one meaning, then you can choose between those meanings, but beyond this, you cannot go.'
- That means that if a word or phrase in a statute is ambiguous and has two possible meanings, you can use the meaning that prevents an absurd result.
- Examples are **R v Allen 1872** and **Adler v George 1964**.

The Golden Rule – Wide Approach

- A judge prepared to use this approach will actually alter the meaning of a word or phrase to avoid an absurd or repugnant result.
- It is used even when the words have only one possible meaning.
- Examples are **Maddox v Storer 1962**, **Meah v Roberts 1978** and **Re. Sigsworth 1935**.

Case Study

R v Allen 1872

The Offences against the Person Act 1861 prohibits bigamy. It is therefore illegal for a man to marry more than once unless they are widowed or divorced. Allen claimed that he could not have a second marriage while his first marriage was still valid. An application of the literal rule would mean that it would be impossible to commit the crime of bigamy. The court found that the second meaning was used to uphold Allen's conviction.

Case Study

Adler v George 1964

The Official Secrets Act 1964 made it an offence 'to obstruct Her Majesty's forces in any place.' The problem was that a demonstrator had got inside an RAF base and obstructed the forces. Did 'vicinity' mean 'outside' the base only, or could it include the base itself? The court chose the latter alternative.

COPYRIGHT
PROTECTED



Case Study

Maddox v Storer 1963

The Road Traffic Act 1960 made it an offence to drive over 30 mph in a vehicle 'adapted to carry passengers'. The vehicle in this case was a minibus built to carry 11 people. The court held that 'adapted to carry' could mean the same as 'suitable for carrying'.

Case Study

Meah v Roberts 1978

Some children in an Indian restaurant were accidentally served caustic soda in a drink. The manager was charged under the Food and Drugs Act 1938 with selling food intended, but unfit for consumption. The Act made clear that 'drink' counted as being 'food', but the manager argued that it was therefore, not food. The court used the golden rule as interpreting 'food' as including drink.

Case Study

Re. Sigsworth 1935

A son murdered his mother, who had no will. The Administration of Estates Act 1925 provided that the son would inherit. This would have been a repugnant situation; therefore, the court used the mischief rule. The court ruled that 'issue' did not include a person who had murdered the person they had murdered.

The Mischief Rule

- This was established in the sixteenth century by **Heydon's Case 1584**.
- This looks for the wrong or the 'mischief' which a statute is trying to correct in the light of this.
- In Heydon's Case, Lord Coke said a court should interpret a statute having regard to:
 1. What was the common law before the making of the act?
 2. What was the mischief and defect for which the common law did not provide?
 3. What remedy the Parliament hath resolved and appointed to cure the disease in the law?
 4. The true reason of the remedy.
- A judge using the mischief rule will therefore interpret an act in such a way as to give effect to the intention of Parliament in the light of some pre-existing problem (mischief) for which the act provides a remedy.
- This approach gives judges considerable scope. This has been criticised on the grounds that it is the role to legislate and not the job of judges to do so.
- Examples of the use of the mischief rule are **Corkery v Carpenter 1951** and **Street v The Queen 1969**.
- The Law Commission favours the mischief rule if one of the three rules must be used.

Case Study

Corkery v Carpenter 1951

The Licensing Act 1872 allowed the arrest of someone found drunk in charge of a vehicle without a warrant. In Corkery v Carpenter 1951, the court decided that a bicycle was a vehicle, despite the defence barrister reciting the lyrics of 'Daisy Bell' to the court. If the drunkard would have been let off. The judge used the mischief rule to determine that the mischief the act was designed to prevent was drunkards endangering their lives and other road users.

Case Study

Street v The Queen 1969

The defendant was a prostitute accused of soliciting contrary to the Street Offences Act 1959. The offence was to solicit in a street for the purpose of prostitution. She got around this by operating from a shop window. The use of the golden rule in the above case would have frustrated the will of Parliament. By using the mischief rule she could be convicted. The mischief that Parliament intended to prevent was men in the street being solicited by prostitutes.

Case Study

DPP v Bull 1995

The defendant was a male prostitute accused of soliciting contrary to the Street Offences Act 1959. The offence was to solicit in a street for the purpose of prostitution. He got around this by operating from a shop window. Surprisingly, the court used the golden rule to interpret the act. The mischief the statute was trying to prevent was men in the street being solicited by prostitutes.



Exercise 3A (answers on page 77)

Fill in the table below

Case	Rule	Key word/phr
R v Allen 1872		
Smith v Hughes 1960		
M v Mesure 1960		
Adler v George 1964		
DPP v Bull 1995		
Meah v Roberts 1978		
Cheeseman v DPP 1960		
Maddox v Storer 1962		
Corkery v Carpenter 1951		
London and North Eastern Railway Co. v Berriman 1946		

INSPECTION COPY

**COPYRIGHT
PROTECTED**



B. The Purposive Approach

- The difference between the mischief rule of the sixteenth century and the purposive approach is that the courts will additionally consider extrinsic material and look wider than the statute.
- This is a much broader approach than is taken under the mischief rule.
- Judges are not only looking to see what the gap was in the old law but also what the purpose of the new law was trying to achieve.
- An advantage of using this approach is that judges are more likely to respect the intention of Parliament and thwart the attempts of lawyers to find loopholes.
- Judges will consider the context of the statute. They will establish what concern the government had at the time the act was created. Judges will go out of their way to interpret the law in the way Parliament supposedly intended it to be.
- Today, many judges favour the purposive approach, having become used to the way the European Court of Justice uses EU law as the literal rule cannot be used when dealing with law that has been created by a body other than Parliament.
- UK courts have therefore found it necessary to use a purposive approach when dealing with the Human Rights Act 1998.
- Judges who do not adopt the purposive approach are more concerned with the spirit of the law than the letter.
- Lord Denning stated that this approach avoids any harsh and destructive anomalies.
- It avoids the absurdity and injustice that can result from the use of the literal rule.

Opposition to the Purposive Approach

- Lord Scarman disliked the purposive approach and argued that the only way to ensure that the law was in accordance with the purpose was to apply the actual words of the statute: *'We are to be governed by Parliament's enactments'*.
- If this produces the wrong result, it should be Parliament that changes the law, not the courts.
- Using a purposive approach does not respect parliamentary supremacy and allows too much judicial discretion.
- They can *'make law'* and this is against the theory of separation of power.
- The purposive approach can only be used if judges can find Parliament's intention.

The main differences between the mischief rule and the purposive approach

Mischief Rule	Purposive Approach
A sixteenth-century rule.	A late twentieth-century rule.
The use of extrinsic aids was limited.	An extended use of extrinsic aids.
Judge had to find the gaps or errors in the pre-existing common law.	Judges focus on finding the purpose of the statute.
Judges focused their efforts just on the statute itself.	Judges will consider the context of the statute.

COPYRIGHT
PROTECTED



Case Study

R v Z et al. 2005

Under the **Terrorism Act 2000**, four men were charged with belonging to an illegal organisation contained a list of illegal organisations and this included the IRA. The men, however, claimed they were not part of the Real IRA, and this was not listed. The Court of Appeal took the literal approach and found them guilty. On further appeal, the House of Lords used a purposive approach to establish the original intention of the Act and reversed that judgment.

Case Study

Coltman v Bibby Tankers 1987

The Employer's Liability (Defective Equipment) Act (1969) concerned liability to employers for defective equipment. Coltman was on a ship – the 'Derbyshire' – that sank with all hands. He sought to avoid paying compensation by arguing that a ship is not 'equipment' failed with his negligence. The purposive approach to determine that the purpose of the Act was to make employers liable for defective equipment.

Case Study

Jones v Tower Boot Co. 1997

The Race Relations Act 1976 imposed liability on employers for racial abuse in the workplace. Raymond Jones suffered racial abuse at work and claimed under the Act. The court found that the abuse occurred during break times. The purposive approach was used to interpret the Act. The purpose of the Act was to prevent racial abuse anywhere at work, not just when one was at work.

Case Study

R v Registrar General ex parte Smith 1990

This involved a problem with the interpretation of the **Adoption Act 1976**. This Act required that 'shall... supply' adoptees over 18 with a copy of their birth certificate if they applied. Smith, a murderer, wished to exercise his rights, but the Registrar-General, having been warned by Smith's mother should he trace her. The Court of Appeal used the purposive approach to interpret the Act. The purpose of the Act was to provide adoptees with information about their background. The court's decision (which showed common sense while really stretching the interpretation) it could **not** have been Parliament's purpose to endanger people like Smith's mother.



Exercise 3B (answers on page 77)

Fill in the table below

Case	Issue	Key word/phrase
Jones v Tower Boot Co. 1997		
R v Registrar General ex parte Smith 1990		
Coltman v Bibby Tankers 1987		

**COPYRIGHT
PROTECTED**



C. Intrinsic and Extrinsic Aids to Interpretation

- Judges are the interpreters of statutes. They have to work out Parliament's intention. Judges can use intrinsic and extrinsic aids.
- Intrinsic aids are those found within the statute itself.
- Extrinsic aids are those existing outside the statute.
- Hansard is an example of an extrinsic aid that can now be consulted, although its use is restricted.

Examples of Intrinsic Aids	Examples of Extrinsic Aids
<ol style="list-style-type: none"> The statute as a whole which may give some idea of its purpose. The long title of a statute. The short title. Headings. An interpretations section in a statute which defines words for the purpose of that legislation. The preamble in a statute might state the purpose of the act. Such an example can be found in the Parliament Act 1911. Schedules: The Postal Services Act 2000 contains a schedule describing the composition and appointment procedures relating to the relevant postal services commission. Punctuation within the act. Marginal notes. 	<ol style="list-style-type: none"> A dictionary from the Oxford English Dictionary. Other Acts of Parliament. EU Directives. Official Law Commission Reports. The Interpretation Act 1979 provides words for statutes. It notes that 'he' includes 'she' (feminine), so 'he' includes 'she'. It also notes a number of words in acts: <ul style="list-style-type: none"> A statute is presumed to be for the future unless it is clearly for the past or a specific area. It is presumed that a person is sane (guilty mind). A judge may presume that a statute is retrospective. The historical context of the statute. This was important in Pepper v Hart 1992. The work of leading academic writers on the definition of 'consideration' in Selfridge 1915. The European Convention on Human Rights Act 1998. The Human Rights Act 1998 states that the purpose of legislation must not be to breach the Convention. Hansard – see note below.

Hansard

- The minutes of Parliament are called Hansard. Every word spoken in both chambers is recorded.
- Courts were explicitly forbidden from using Hansard as an extrinsic aid to statutory interpretation.
- This was because the courts treat Parliament as if it is a single entity with a single intention. Parliament comprises over a thousand individuals with their own viewpoints. Reading the Hansard would be going to reveal the view of Parliament as a whole.
- Hansard is so huge that lawyers would spend an unaffordable amount of time researching it. It is so complicated as the variety of opinions expressed in debates would allow supporters to claim that the government's intention was to do something different.
- Lord Denning favoured the use of Hansard. The House of Lords condemned this in **Johnson 1979**.
- The House of Lords gave the practice Statement in **Pepper v Hart 1992** to allow judges to use Hansard in certain circumstances.
- The circumstances in which Hansard may now be used are carefully restricted. The following tests must be satisfied:
 - Is the legislation ambiguous, obscure or does it lead to an absurdity?
 - Has the statement that a judge wishes to use been made in Parliament in relation to the bill?
 - Is the statement to be used quite clear in its meaning?
- Hence the only part of Hansard that can be used is the introductory statement of the Minister. The problem with this is that the purpose of the bill may have altered as it moves through Parliament, making the purpose, as expressed in the introductory statement, outdated.

COPYRIGHT
PROTECTED



Case Study Harrow London Borough Council v Shah and Shah (1999)

The Shahs were newsagents convicted of selling a lottery ticket to a child under the **Lottery Act 1993**. They had urged their staff not to sell lottery tickets to children, but one member of staff ignored this and sold a lottery ticket to a 13-year-old. The Shahs used a due diligence defence, arguing that they had done their best to prevent the act itself as an intrinsic aid: since a due diligence defence was mentioned elsewhere in the section relating to the Shahs meant the offence was one of strict liability.

Case Study Laroche v Spirit of Adventure (UK) Ltd 2009

The Court of Appeal used three extrinsic aids to determine that a hot-air balloon was covered by the **Carriage By Air Act 1961**:

- (i) The Pocket Oxford Dictionary
- (ii) A statutory instrument: the Air Navigation Order (2000)
- (iii) The Warsaw Convention – an international convention

Case Study R v Deegan 1998

In trying to determine whether a pocket knife counted as a bladed article under the Criminal Justice Act 1988, the Court of Appeal decided that the ministerial statements in Hansard were not used as an extrinsic aid in this case.



Exercise 3C (answers on page 77)

Statutory Interpretation: True or False?

1. Official reports of the Law Commission are extrinsic aids.
2. Dictionaries contemporary to an act cannot be used to find the meaning of words.
3. It was not possible to use Hansard until **Pepper v Hart 1992**.
4. The three major rules of statutory interpretation are the literal, the mischief and the golden rule.
5. **Abley v Dale 1851** stated that a literal meaning would be taken.
6. The mischief rule was first used in **Bushel's Case 1670**.
7. In the **Berriman Case 1946** the judge chose to use the mischief rule.
8. In **Fisher v Bell 1960** the literal rule was used which defeated the purpose of the **Sexual Offences Act 1959**.
9. A judge uses the literal rule when s/he thinks the meaning of words is clear.
10. Lord Denning opposed the use of extrinsic aids.



INSPECTION COPY

**COPYRIGHT
PROTECTED**



D. Impact of European Union Law and the Human Rights Act on Statutory Interpretation

European Union Law

- The UK joined the European Economic Community (which would later evolve into the European Union) in 1973. It left the European Union 47 years later in 2020.
- While the UK was a member of the EU, parliamentary law was no longer sovereign.
- While the UK was in the EU, English courts had to interpret EU legislation using the usual English rules.
- This involved using a purposive approach involving interpreting the spirit of the law rather than the letter of the law to look at extrinsic aids.
- This looser approach was necessary because of the use of Civil Law in European languages. The literal approach could not be used to interpret translations.
- As a consequence, English courts became increasingly used to adopting the purposive approach in matters of course.

The Human Rights Act 1998

- The European Convention on Human Rights, drawn up by the Council of Europe, came into force in 1953. Its purpose was to protect human rights and act as a block against the resurgence of Nazism.
- The European Court of Human Rights was established to interpret the convention. It is supposed to be binding on member states but it lacks enforcement powers.
- The UK Parliament passed the Human Rights Act in 1998. This incorporated the European Convention on Human Rights into UK law.
- The Act stated that the courts' interpretation must not be incompatible with the European Convention on Human Rights.
- When considering the law on a matter relating to the Convention, courts must assume that it was Parliament's intention that the Act should conform to the Convention.
- In addition, s.2(1)(a) of the Human Rights Act states that UK courts must take into account the European Court of Human Rights.

Learning Tip

In a nutshell, the impact of both these items has been an increase in the use of the purposive approach.

OCR has made clear that there will not be a discrete question on this area; it could come up in the context of the purposive approach.

Area of confusion: remember, the ECHR is not a court of the EU.



Exercise 3D (answers on page 77)

1. What was the date of the Human Rights Act?
2. What was incorporated into UK law as a result of this Act?
3. Which approach does this Act encourage?
4. What is stated in s.2(1)(a) of the Human Rights Act?
5. When did the UK join and leave the European Union?

**COPYRIGHT
PROTECTED**



INSPECTION COPY



When evaluating the literal rule, do **not** state that it produces absurd results: state absurd results.



✓ Advantages of the Mischief Rule	✗ Disadvantages
<ul style="list-style-type: none"> ✓ This rule is more likely than the two previous ones to prevent an absurd or repugnant result. ✓ It can be used to repair poorly drafted laws or to update laws in the light of technological developments. ✓ This saves parliamentary time as, otherwise, Parliament would have to fix the law. ✓ A Law Commission report in 1969 said it was the only rule that should be used. ✓ By identifying the gap in the law that the statute was created to put right, it allows the court's judgment to reflect what Parliament must have intended when creating the statute. ✓ It allows problems caused by poor drafting or by unforeseen situations to be dealt with in a common-sense way. ✓ By upholding Parliament's intentions as opposed to its literal words, it is actually respecting parliamentary supremacy. ✗ Judges can use it to stretch the meaning of the statute to a very large extent to avoid a repugnant result as in <i>re Sigsworth</i>. 	<ul style="list-style-type: none"> ✗ By not focusing on the mischief, it undermines parliamentary supremacy. ✗ It reduces certainty, making it difficult for lawyers to advise their clients. ✗ This can result in unnecessary litigation. ✗ When used to update laws, it can result in new offences or civil liabilities. ✗ It encourages judicial law-making, undermining the separation of powers. ✗ It can be used by different judges in different ways, e.g. compare <i>re Sigsworth</i> and <i>DPP v Bull</i>. ✗ It gives judges too much discretion over what the law means, undermining the separation of powers. ✗ Judges can use it to stretch the meaning of a statute to a very large extent to avoid a repugnant result as in <i>re Sigsworth</i>. ✗ Use of the rule depends on the facts of the case and the preamble. ✗ The increased use of the rule has led to the view that this rule is no longer necessary.

✓ Advantages of the Purposive Approach	✗ Disadvantages of
<ul style="list-style-type: none"> ✓ This can prevent an absurd or repugnant result. ✓ It focuses directly on what Parliament's aims were in producing the act. ✓ This saves parliamentary time and negates the need for Parliament to appeal or amend a law that is not working as intended. ✓ The courts can fill in gaps in the law. ✓ It allows the courts to interpret old laws in the light of conventions that the UK has signed up to, such as the European Convention on Human Rights. ✓ Unlike the literal approach, the purposive approach avoids harsh and destructive analysis of language. ✓ A range of extrinsic aids can be used to assist interpretation (including <i>Hansard</i> under strictly limited circumstances). ✓ It allows problems caused by poor drafting or by unforeseen situations to be dealt with in a common-sense way. ✓ By upholding Parliament's intentions as opposed to its literal words, it could be argued that this approach is respecting parliamentary supremacy. ✓ It has been argued that while Lady Hale was Chief Justice, the Supreme Court made controversial judgments concerning Brexit that protected Parliament from excessive government interference. 	<ul style="list-style-type: none"> ✗ By not focusing on the mischief, it undermines parliamentary supremacy. ✗ It reduces certainty, making it difficult for lawyers to advise their clients. ✗ This can result in unnecessary litigation. ✗ When used to update laws, it can result in new offences or civil liabilities. ✗ It allows judicial law-making, undermining the separation of powers. ✗ While introductory statements are reported in <i>Hansard</i>, they are not used to help determine the meaning of a statute may have altered its meaning through Parliament's progress through Parliament. ✗ Finding the intention of Parliament is not always possible. ✗ Indeed, finding the intention of Parliament is impossible as it falsely assumes that Parliament has a single intention. That is an argument in favour of the literal approach and focus on the words of the statute. ✗ It gives judges too much discretion over what the law means, undermining the separation of powers. ✗ It has been argued that while Lady Hale was Chief Justice, it made controversial judgments concerning Brexit that protected Parliament from excessive government interference. ✗ Judicially activist judges may be seen to pursue an agenda.



Exercise 3E (answers on page 77)

Statutory Interpretation: Pairing Exercise

1. NE Railways v Berriman 1946	A. Wide approach
2. Re. Sigsworth 1935	B. Mischief rule
3. Heydon's Case 1584	C. Established rule
4. Smith v Hughes 1960	D. Telephone call
5. R v Allen 1872	E. Extrinsic aids
6. Interpretation Act 1992	F. Intrinsic aids
7. The Telegraph Act 1869	G. Words must be given their ordinary meaning unless to do so would lead to an absurd result
8. A dictionary from the time of the statute	H. Literal rule
9. Abley v Dale 1851	I. Allowed approach
10. A statute's preamble	J. Use of narrow interpretation golden rule

INSPECTION COPY

COPYRIGHT
PROTECTED



INSPECTION COPY



4. Judicial Precedent

A. The Doctrine of Precedent including *stare decedendi* and *obiter dicta*

Judicial Precedent

A key element in the UK's system of common law is the emphasis on PRECEDENT.

- Most courts do not have juries. They have a judge (or judges) who listens to the case and then makes a JUDGMENT.
- PRECEDENT is not primarily about achieving fairness by achieving a just result. It is about achieving fairness by achieving consistency in results.
- (If a just result cannot be achieved, there are built-in flexibilities in the system of precedent that still allow that to be achieved – discussed below.)
- When courts are asked to judge an issue, they don't look at the rights and wrongs of the case, but at what happened before when a similar case was heard. They must FOLLOW the earlier decision.
- Judicial precedent is fair because it provides CONSISTENCY – if cases are similar, they should have a similar result. (This is an argument against having juries because juries can do what the courts do not have juries.)
- It is also fair because it provides CERTAINTY – you go into a case with a good idea of what the result will be.
- JUDGMENTS are lengthy documents that are written down and published.
- This might not happen until weeks, or even months, after the formal court hearing.
- If there are several judges hearing the case, one will usually write the judgment, stating on it that they agree. Sometimes, several (or even all) of the judges may write a judgment.
- If the panel is split, the judge or judges that has/have been outvoted will add a dissenting judgment, explaining why they disagree with the majority decision. This is known as a dissenting judgment.
- The recording and reporting of judgments enables the system of precedent to find precedent to support the case they are arguing.
- To work, the system of precedent also requires a clear COURT HIERARCHY.
- Precedent remains subservient to statute law.
- A new statute will override precedent.

Terminology

- A phrase you need to know is *STARE DECISIS*: it means 'stand by what has been decided'. It means that the court should stand by the principles of law that were reached in similar cases in the past.
- A JUDGMENT will contain *RATIO DECIDENDI* (the reason for the judgment) and *OBITER DICTA* (things said in passing).
- The *RATIO* is the important part which forms the PRECEDENT for future cases.
- The *OBITER* simply covers everything else in the judgment.
- Since judgments can be very long, finding the *RATIO* is not always easy.



Exercise 4A (answers on page 78)

Define the following terms:

1. Precedent
2. Judgment
3. *Stare decisis*
4. *Ratio decidendi*
5. *Obiter dicta*

INSPECTION COPY

COPYRIGHT
PROTECTED



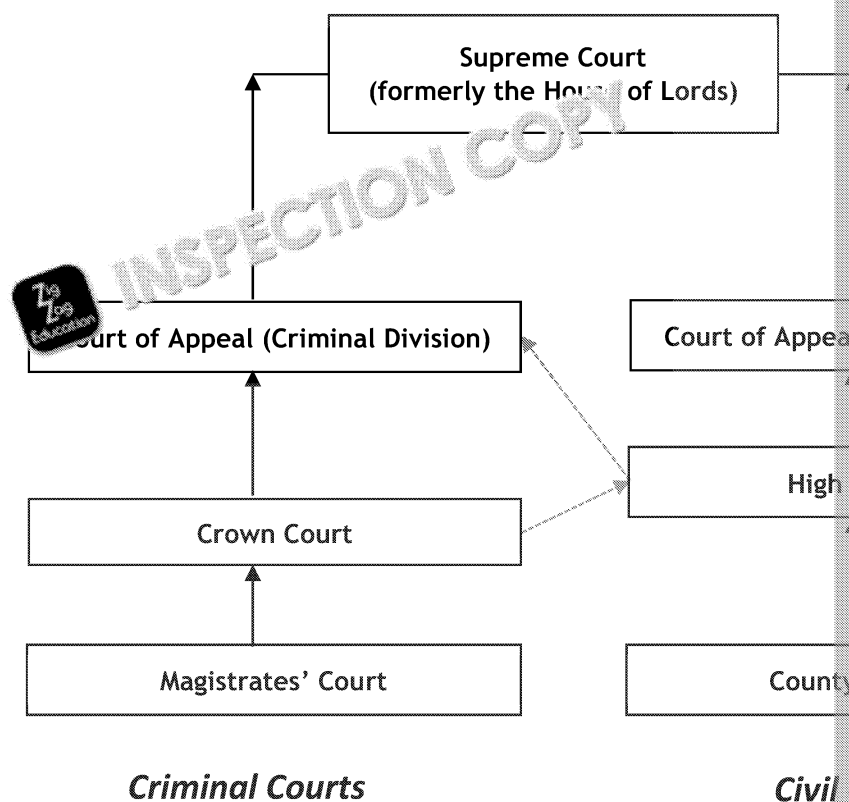
B. The Hierarchy of the Courts, Including the Supreme Court

Hierarchy of Precedent

Courts are bound by the judgments of those above them in the hierarchy as shown below.

They are also bound by the judgments of courts at the same level in the same division.

(Being BOUND means that a court **must** FOLLOW that judgment.)



How courts can avoid being bound by otherwise binding precedent

- The Courts of Appeal can use the Young Exceptions.
- The Supreme Court can use the Practice Statement.
- All courts can use Distinguishing Precedent (*explained in Section D below*).

The Young Exceptions

- The two Courts of Appeal do not bind each other but they do bind themselves.
- Each Court of Appeal **must** therefore follow earlier judgments from the same division.
- This has led to legal people tying themselves in knots trying to resolve dilemma rules. For instance:
 - Suppose a Court of Appeal reached a judgment in a case but the judge in the next similar case had been heard earlier and had reached a different decision. What would happen next time a similar case would be heard? Since the Courts of Appeal are bound by their own judgments, the court in the third case would be bound by two contrary decisions.
 - Supposing a Court of Appeal reached a judgment that was later reversed by the Supreme Court. The next time it heard a similar case, it would still be bound by its own judgment but it would also be bound by the opposite judgment of the House of Lords / Supreme Court.
 - Supposing a Court of Appeal reached a judgment unaware of a parliamentary enactment that would produce the opposite result. If a similar case is being heard later and, this time, one brings the statute to the court's attention, are the judges bound by the previous decision?

**COPYRIGHT
PROTECTED**



- To you or I, the solution in each situation is simple, but we are dealing with legal rules. Fortunately, the rules for these situations were laid down in **Young v Bristol Aeroplane Co 1944**. This case made clear that the Courts of Appeal were bound by previous decisions of the House of Lords with just three exceptions:
 - If the Court of Appeal is faced with previous conflicting decisions from the House of Lords, it must choose which to follow.
 - It must follow decisions of the House of Lords.
 - The Courts of Appeal are not bound by an earlier decision that was made at first instance, in ignorance of an existing statute.
- In addition, the Court of Appeal (Criminal Division) has an additional leeway to depart from its own previous decisions if following an unsatisfactory or out-of-date precedent would otherwise result in a manifest injustice. This was established in **R v Gould 1968**.
- Both Courts of Appeal must also take into account the Human Rights Act and the European Convention on Human Rights.



The Practice Statement

- The Supreme Court (formerly the House of Lords) is the highest court within the civil and criminal law.
- In **London Street Tramways v London County Council 1898** the House of Lords refused to depart from its own past decisions. The aim of this was to produce certainty and consistency in the law. However, it led to unjust decisions and prevented the law from developing to reflect changing times.
- The only exception would be when a past decision had been made *per incuriam* (through lack of care). This would happen when the existence of a statute had not been realised.
- In 1966, the Lord Chancellor announced a change in practice. This was the 'Practice Statement'.
- This would allow the House of Lords to depart from its previous decisions but only 'if it appears right to do so'.
- The Lord Chancellor made clear that this power must be used 'sparingly' because of the need for certainty in law.
- The Practice Statement was first used in **Conway v Rimmer 1968**. Its first use in a criminal case was in **R v Shivpu**.
- When the Supreme Court replaced the House of Lords in 2009, it was unclear whether it considered itself to be a continuation of the former court and bound by its decisions, or whether it considered itself to be a brand-new court unbound by its previous decisions.
- The question was answered in **Austin v London Borough of Southwark 2010**. The Supreme Court confirmed it saw itself as a continuation and that the use of the Practice Statement to overrule precedent that had been set by the house of Lords.

Case Study

Conway v Rimmer 1972

A former police officer who was acquitted for wrongful prosecution, demanded disclosure of documents held by the Home Secretary relating to his case. An earlier judgment from a case in 1942 prevented the disclosure of the documents. The Practice Statement was used to overrule this and the release of the documents was ordered.



Case Study

Herrington v British Railways Board 1972

A child got through a gap in a fence near a railway line to play and was badly injured. The fence was not repaired. In the case of *Addie v Dumbreck 1929*, the House of Lords held that the occupier of the railway premises owed a duty of care to a trespasser. In *Herrington*, the Law Lords used the Practice Statement to depart from their decision in *Addie*. They held that the occupier of the railway premises owed a duty of care to a child and found the Railways Board liable for the child's injuries.

**COPYRIGHT
PROTECTED**



C. Binding, Persuasive and Original Precedent; Overruling; Reversing; Distinguishing

Binding Precedent

- This is when a court makes a judgment that binds all courts below it or at the same level.
- The courts must follow a decision, even if they believe it has been wrongly decided.
- However, a judgment is only binding if the legal principle is the same, the facts are similar, and the court is of the right standing.
- A court is not bound by judgments of courts lower in the hierarchy or of courts of the same level.
- Precedents which have been overruled by, for example, a higher court or Act of Parliament are not binding.
- Precedents which can be distinguished are not binding.
- Judgments made *per incuriam* are not binding.
- Parliamentary supremacy means that a new parliamentary statute overrides any previous common law.

Case Study **R v Howe 1987 and R v Wilson 2007**

Howe was convicted by his fearsome gang boss to murder another man otherwise known as 'Patsy'. He was not allowed to use the defence of duress by threats, and the House of Lords ruled that this was not available for murder. 20 years later, 13-year-old Ashlea Wilson was forced by her father to participate in the murder of his mother. Some felt that his young age meant he should have been able to use the defence of duress by threats to the jury, but the binding precedent set in **R v Howe** made this defence unavailable and the conviction was upheld.

Lord Denning's historic resistance to the Court of Appeal being bound by the House of Lords

[NOTE: OCR's syllabus explicitly states that students do not need to be aware of this case, but it is worth learning as it could be used in a paragraph for a 'discuss' question on the importance of precedent.]

- In 1962, Lord Denning, a Law Lord in the House of Lords, stepped down to become head of the Courts of Appeal as he felt he would have more influence in what the Court of Appeal judgment he could reach.
- Lord Denning did **not** consider that the Courts of Appeal should be bound by the House of Lords.
- In **Broome v Cassell Ltd 1972**, a case involving the awarding of exemplary damages, the Court of Appeal ignored an earlier ruling by the House of Lords. The Court of Lords, which condemned Lord Denning and stressed that courts are bound by the House of Lords above them in the hierarchy. The House of Lords then reached the same judgment as the Court of Appeal.
- In **Schorsch Meier GmbH v Hennin 1975**, Lord Denning's judgment ignored the earlier House of Lords case (the **Havana Railway** case). Since there was no House of Lords, Lord Denning's judgment stood.
- **Miliangos v George Frank (Textiles) Ltd 1976** was identical to the **Schorsch** case. The House of Lords reached the same judgment. This time, the judgment was appealed to the House of Lords. Lord Denning's judgment was to be bound by a superior court but then used the **Principle of Precedent** to reach the same judgment as Lord Denning.

COPYRIGHT
PROTECTED



Persuasive Precedent

- A persuasive precedent is not binding on a court but the court may choose to follow it.
- There are many types of persuasive precedent, including:
 - A judgment from a lower court; for example, **R v R 1991**.
 - A judgment of the Court of Appeal from the other division.
 - Dissenting judgments; for example, **Rose & Frank v Crompton Bros Ltd 1914**.
 - *Obiter* remarks. (Only the *ratio* part of a judgment can be binding, but a judge's comments can be persuasive. This happened in **R v Gotts 1992**.)
 - Decisions of courts of other countries with a similar common law system.
 - International treaties and conventions that the UK has signed, e.g. the European Rights.
 - Judgments of the European Court of Human Rights.
 - Decisions of the Judicial Committee of the Privy Council; for example, **Thompson v British Overseas Airways Corp 1984**. (This committee sometimes looks at controversial cases. Because it comes from a different court, its decisions have no precedential value, but they are treated by courts as if they are binding.)

Case Study

R v Howe 1987 and R v Gotts 1992

In **R v Howe** (see above), the House of Lords' judgment stated that duress by threats was a defence to murder or attempted murder. Since **R v Howe** was a murder case, the comments made by Lord Hailsham formed the ratio of the judgment and were therefore binding precedent for future cases involving murder. Comments about other crimes – i.e. attempted murder – were part of the obiter and therefore not binding. Five years later, 16-year-old John Graham threatened to shoot his father if he did not stab his mother. The House of Lords in **R v Gotts** followed **R v Howe** to rule that duress by threats was not a defence to attempted murder. This was a persuasive precedent on this issue.

Case Study

R v R 1991

A married couple had separated but not divorced. The husband broke into the wife's home and raped her. It had been understood since 1736 that there was no such thing as rape within marriage; despite this, Mr R was convicted of attempted rape. The Court of Appeal upheld the conviction. The House of Lords was persuaded to follow the Court of Appeal. This was a persuasive precedent, thereby changing the law and creating the concept of marital rape.

Learning Tip

The Practice Statement is used by the Supreme Court (formerly the House of Lords) to overrule its own previous decisions. It is not used by any other court.

The Young Exceptions are used by the Court of Appeal **only** – they are **not** used by any other court.

Distinguishing precedent is used by any court.

Original Precedent

- If there is no past precedent to follow, a judge will decide on a new precedent for later cases.
- A judge creates original precedent by looking at the closest previous decision and applying its principles to the new situation. This is called 'reasoning by analogy'.
- **R v Dudley and Stephens 1884** is an example of original precedent.
- The emergence of the tort of negligence in **Donoghue v Stevenson 1932** was an example of original precedent.

COPYRIGHT
PROTECTED



Case Study

R v Dudley and Stephens 1884

Two sailors, who had been adrift for 20 days and who had been without food or water, killed the cabin boy. The next day, they were rescued. This was a novel situation with no precedent. The sailors wished to use the defence of necessity but the court created original and binding precedent. There was no defence of necessity for murder.

Case Study

Donoghue v Stevenson 1932

Mrs Donoghue suffered damage by drinking part of a bottle of ginger beer in which was, unknown to her, a decomposing snail. She suffered shock and severe gastroenteritis. The bottle was opaque. She had been unable to see the snail. She, therefore, sued the manufacturers of the beer for negligence. The judgment in this case established the Neighbour Principle as the basis of the legal principle for the modern tort of negligence.

Overruling

- A court in a later case states an earlier judgment in a different case was wrong and is no longer good law – it has been overruled. It does not have to be followed.
- The Supreme Court can overrule itself by using the Practice Statement.
- The Courts of Appeal can overrule a previous judgment using the Young Exception.
- Otherwise, courts can overrule judgments of courts below them in the hierarchy.
- Examples of cases where overruling occurred can be found in the section on precedent.

Reversing

- This is when a court higher in the hierarchy overturns a decision of a lower court. An example is **R (Miller) v Secretary of State for Exiting the European Union**.

Case Study R (Miller) v Secretary of State for Exiting the European Union 2017

Queen Elizabeth II prorogued Parliament on the advice of Boris Johnson, the Prime Minister, that Parliament might interfere with the UK's departure from the European Union. The advice was unlawful. The High Court ruled that political decisions were not subject to judicial review. The case then went to the Supreme Court, which reversed the decision, ruling that the prorogation was unlawful.

Learning Tip

If a court chooses not to overrule or reverse an earlier judgment, the correct phrase is that it **followed** the earlier judgment.

Distinguishing

- This involves a judge or a panel of judges deciding that the case in front of them is different from the case being used as precedent – there is something different about it that means it is not applicable.
- It is a technique used by a court to avoid following a previous decision which should be followed.
- It allows judges some flexibility and can be used cleverly by judges to develop the law in a way that a judge dislikes but which they would otherwise be bound by.
- Using distinguishing precedent does **not** count as overruling.
- Examples of cases where distinguishing precedent was used are **Merritt v Merritt** (which was distinguished from **Balfour v Balfour 1919**) and **R v Wilson 1996** (which was distinguished from **R v Brown 1993**).

COPYRIGHT
PROTECTED



Case Study **Balfour v Balfour 1919 and Merritt v Merritt 1971**

These cases were concerned with whether agreements between a husband and wife had been established that they were not in **Balfour v Balfour 1919**, but **1971** distinguished the two cases because of the factual differences between them. They separated when they made the agreement.

Case Study **R v Brown and Others 1993 and R v Wilson 1996**

Five men used to get together to do strange things such as branding and whipping each other's penises with stinging nettles and fish hooks. Even though the acts were consensual, medical attention was required and police discovered their activities by accident, they were convicted of s.47 and s.220 OAPA offences. Meanwhile, Mr. Wilson was convicted of s.47 for branding his wife's bottom at her request. Medical attention was required for the burns. His conviction was quashed by the Court of Appeal, which distinguished the grounds that the branding was consensual activity between husband and wife and bodily adornment rather than for sexual gratification.



Exercise (Answers on page 78)

Complete the table below by identifying each case and labelling it as one of the following list:

- Binding precedent
- Persuasive precedent
- Original precedent
- Distinguishing precedent
- Following
- Reversing
- Overruling

Details	Case
The branding was similar to tattooing, plus it was not done for sexual gratification but was a consensual activity between husband and wife.	
The House of Lords upheld the judgment of the Court of Appeal that it was possible for a husband to be guilty of the rape or attempted rape of his wife (<i>R v R</i>).	
It was ruled that duress is not a defence to murder.	
This judgment established the Neighbour Principle as the basis of the legal principles for the modern tort of negligence.	
The House of Lords decided that the judgment in <i>Anderton v Ryan</i> was wrong and that it was possible to be guilty of an attempted crime even if the facts made that crime impossible to commit.	
It was suggested that duress should not be a defence to attempted murder.	
After the Court of Appeal had ruled that a political decision concerning the Brexit process was not subject to judicial review, the Supreme Court ruled that it was.	
Necessity is not available as a defence if one kills and eats the cabin boy.	
The House of Lords ruled that times had changed since <i>Addie v Dumbreck</i> and that a duty of common humanity was owed to child trespassers.	
It was ruled that duress is not a defence to attempted murder.	

**COPYRIGHT
PROTECTED**



D. Advantages and Disadvantages of Precedent

✓ Advantages of Precedent	✗ Disadvantages of Precedent
<ul style="list-style-type: none"> ✓ It gives certainty to the law. This allows lawyers to accurately advise clients and so limit the number of cases going to trial. ✓ It is fair as it ensures consistency in judgments. ✓ Half a million past cases have been reported which provide a wealth of precedent, making the law very precise. ✓ Precedent has some flexibility, such as the Practice Statement, the Young Exceptions and the use of distinguishing precedent. ✓ The system is both cost and time saving. If the principle is already established, it is convenient to use in later cases. ✓ This flexibility allows the law to be developed in the light of new changes in society. ✓ Judges are not free to impose their own ideas. They must follow relevant earlier precedents. ✓ Original precedent allows judges to fill in gaps in the law. 	<ul style="list-style-type: none"> ✗ The system is inflexible and always limited. ✗ The law changes slowly and past are not easily bound to follow the courts until the Supreme Court has the opportunity to reconsider. ✗ A narrow decision can become binding as the 3:2 majority becomes binding on the future. ✗ The House of Lords has been reluctant to change the law. ✗ The system is unwieldy and easy to locate relevant precedents. ✗ Distinguishing precedent can be made up with whatever cases are going to be decided. ✗ If distinguishing is used to create complicated laws and judges in lower courts can ignore decisions of higher courts. ✗ It can be difficult to find relevant precedents. ✗ It can lead to change in the law. This can be unjust. ✗ Judicial law making is not democratic. ✗ Nothing can be done by a higher court if a majority decides to ignore the law. ✗ The Court of Appeal cannot overrule the House of Lords and the House of Lords is out of date. It is up to the Court of Appeal to overrule those judgments. If the Court of Appeal, it hears appeals from the Court of Appeal.

INSPECTION COPY

**COPYRIGHT
PROTECTED**





Exercise 4D (answers on page 78)

Judicial Precedent

1. Give the Latin term for judicial precedence.
2. What was the top UK court before it was replaced with the Supreme Court?
3. What is the term for when a court judgment is changed on appeal?
4. Give the year of the Practice Statement.
5. Which court was directly affected by it?
6. What is the meaning of *per incuriam*?
7. What type of precedent allows a court to avoid following others because the facts are not the same?
8. What is the binding part of a judgment called?
9. What is the non-binding part of a judgment?
10. What is the word to describe when a court in a case states that a previous case was wrong?
11. Name the case where the Practice Statement was first used in criminal law.
12. Which type of precedent can be considered but does not have to be followed?
13. Is the Supreme Court bound by judgments of the European Court of Justice?
14. By which case in 1898 did the Lords indicate that it would always follow its own past decisions?
15. Is the Court of Appeal (Civil Division) bound by previous decisions of the Court of Appeal (Criminal Division)?
16. In what case were three exceptions highlighted regarding the Court of Appeal to follow its own past decisions?
17. Which case is binding precedent for the principle that duress is a defence to murder?
18. Is case law subservient to statute law?
19. Which case established the original precedent that one cannot be convicted of a crime if one eats the cabin boy?
20. Are decisions of Australian courts binding or persuasive on UK courts?

INSPECTION COPY



INSPECTION COPY

COPYRIGHT
PROTECTED



5. Law Reform

A. Influences on Parliament

Political Influences

- Before elections, political parties publish manifestos. These contain a list of measures they will take if elected into power. The aim is to produce a manifesto that will attract voters. If elected into power, the manifesto will form the basis of the party's laws they put through Parliament.
- For instance, the Conservative Party's manifesto in 2019 pledged to abolish the **2011**. Having won the election, the Conservative government fulfilled this pledge with the **Calling of Parliament Act 1922**.
- The manifesto also included a commitment to introduce voter identification. This was achieved by creating a statutory instrument (**The Voter Identification** requires voters in England to bring a photo ID at polling stations from May 2023 to October 2023 for general elections.
- The Labour Party's 2017 manifesto included a commitment to incorporate the Convention on Human Rights into UK law. This was achieved with the **Human Rights Act 1998**.
- Opportunities are provided for members of the House of Commons and the House of Lords to introduce Private Members' Bills.
- These may be on issues they feel strongly about, such as the Abortion Act 1967 introduced by David Steel of the Liberal Party.

Campaigns by Individuals

- Nicola Roberts of Girls Aloud campaigned to prevent the unsupervised use of tanning beds. Her campaign gained the attention of the government and the opportunity of coming high in the ballot of Private Members' Bills to steel the **2010** through Parliament.

Public Opinion

- The government keeps a close eye on opinion polls which enables the government to gauge public opinion on law reform between elections.

The Media

- TV programmes and newspapers run campaigns to change or introduce new laws.
- The media provides publicity to individuals and groups campaigning for new laws.
- Social media has enabled thousands, if not millions, of people to have their voice heard.

Pressure Groups

- These enable similarly minded people to act together to encourage the government to introduce new laws into Parliament.
- Pressure groups include single-issue groups such as **Extinction Rebellion**, which campaigned for the government to pass a law to fully insulate every dwelling in the UK from flooding.
- They also include broad groups such as **Greenpeace**, which campaigns for new laws on a range of issues, such as stopping deforestation, over-fishing, genetic engineering and nuclear power.
- They also include professional associations, especially trade unions, which campaign for the interests of their members. For instance, the **NEU** and other trade unions campaigned for a 5.5% pay rise for teachers in 2023.

Lobbying

- This involves approaching members of Parliament and/or the government directly to introduce new laws.
- This can be done by personal meetings in constituency surgeries, direct letters or by using a lobbyist.
- Wealthy individuals or companies able to afford political donations can attend to the government.

Judicial Activism

- Some have argued that judges using the purposive approach are undermining the role of Parliament in undertaking judicial law making, prompting Parliament to make new laws to clarify the law.

INSPECTION COPY

COPYRIGHT
PROTECTED





Exercise 4D (answers on page 78)

1. Which Act did the Conservatives promise to abolish in their 2019 n
2. A member of which pop group campaigned for the **Sunbeds (Reg**
3. What does the government use to gauge public opinion on variou
4. Which pressure group campaigns for new laws on a wide range of deforestation, over-fishing, genetic engineering and nuclear power
5. What is the term used when individuals or groups approach mem

 INSPECTION COPY

 INSPECTION COPY

INSPECTION COPY

COPYRIGHT
PROTECTED



B. Law Reform by the Law Commission

Who the Law Commission is

- The Law Commission was set up by the Law Commissions Act in 1965.
- It was set up 'for the purpose of promoting the reform of the law', i.e. to review the law.
- The Law Commission consists of five Law Commissioners. The chairperson is a senior judge, the others are senior legal personnel.
- It has a secretarial staff, researchers and draftsmen to prepare bills to be presented to Parliament. The body it is considered too small and underfunded.

What the Law Commission does

- **Review.** It will study particular areas of law to check if they are functioning properly and make recommendations to Parliament. An example of this is the **Occupiers' Liability** statute that occupiers of premises have a duty of common humanity to trespassers.
- **Consultation.** It will seek the opinion of individuals and groups as to whether a particular law is operating successfully.
- **Proposals.** It will propose new laws to cope with changing society and technology. Currently, it is designing new laws to cope with the issue of driverless cars.
- **Repeal.** Note: it cannot repeal laws itself but it will bring to Parliament's attention laws that need to be repealed, e.g. by bundling such laws together in a Repeals Bill that Parliament can consider. This has led to the repeal of over 3,000 old statutes.
- **Consolidation.** This involves putting all the law on one topic together. An example is combining burglary and robbery together in the **Theft Act 1968**. Another example is combining all the laws on sentencing into a single document.
- **Codification.** This is the writing down of the entire section of an area of law. It involves converting common law into statute law. An unsuccessful example is the attempt to codify all crimes but was abandoned as Parliament creates legislation faster than the Law Commission can keep up. The **Sentencing Act 1991** converted the law on sentencing into one statute but it was out of date within months of being enacted, producing new primary and secondary legislation.

Act extract

The Law Commissions Act 1965 section 3

'... to take and keep under review all the law... with a view to its systematic development in particular the codification of such law, the elimination of anomalies, repeal of obsolete and generally the simplification and modernisation of the law.'

How the Law Commission Operates

- The topics investigated by the Law Commission are referred to it by the government, but it also choose to work on individual projects of reform.
- The Law Commission researches the area of law.
- It produces a consultation paper which is sent to interested groups.
- Having reviewed the consultation, it publishes proposals for reform in a Law Commission Paper.
- Its draftsmen then convert these into legal language to be presented to Parliament.
- After it has set up, nearly all of its proposals were enacted into law. As time has passed and few of its proposals are enacted, meaning fewer than half of its proposals have been enacted. For instance, it regularly proposes replacing the common law crime of murder with a new offence, but this has not happened. Again, it regularly proposes updating the Offences Against the Person Act 1861 but this has not happened.

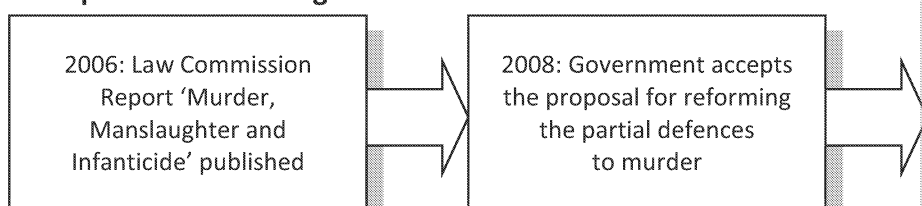
**COPYRIGHT
PROTECTED**



Success or Failure?

- The Commission was successful at first but by the 1980s only 50% of its suggestions had been enacted.
- The main problem was a lack of parliamentary time. Parliament doesn't always have time to consider the Commission's proposals.
- Sometimes the government was not too interested, often for political reasons. In the 1970s, no Law Commission recommendations were passed.
- Today, 33% of its work has not been enacted. One problem, therefore, is a lack of political will.
- The problem of lack of parliamentary time was partially dealt with by introducing a new procedure to speed up the introduction of reforms suggested by the Commission, but this is only applicable to bills of civil law so is limited in its application.
- Sometimes the Commission has had to rely on Private Members' Bills to get its suggestions enacted. At the end of the 'year and a day' rule for offences involving death. This was passed in 1993.
- Another problem for the Law Commission is that it has been restricted to technical legal issues and has been steered away from socially or politically controversial questions.
- There is often resistance from government departments to the intrusion of the Commission into their territory.
- The Law Commission's work is sent to the Lord Chancellor's Department once a year. The Lord Chancellor does not have sufficient staff or time to deal quickly with the Commission's recommendations.
- Examples of the success of the Law Commission include the **Criminal Attempts Act 1981**.
- The **Law Commission Act 2009** created a duty on the **Lord Chancellor to report** to Parliament on the extent to which the government has implemented Law Commission recommendations.
- It also allows for a **protocol between the Lord Chancellor and the Law Commission** to be drawn up by the Ministers of the Crown, government departments and the Law Commission.
- The purpose of the **Law Commission Act 2009** and the protocol is to improve the extent to which the Commission's recommendations for reform of the law are implemented by government.

An Example of the Working of the Law Commission



Exercise 5B (answers on page 79)

Law Reform: The Law Commission

Fill in the blanks

The 1. _____ in 1965 established the Law Commission. It consists of 12 members, 6 of whom are judges and 6 are lay members appointed by the Lord Chancellor. It is a rather small body of 12 members. Its role is to simplify and update the law. It has tidied up 4. _____ over 3,000 acts. It 5. _____ statutes by putting all the provisions relating to a particular subject in one place. It is involved in the 6. _____ of law. This is the bringing together of all the provisions relating to a particular subject in one place. An example was the **Draft Criminal Code**, which has been 7. _____. The Law Commission also carries out consultation exercises and produces 8. _____ bills when required. When researching an area of law, it first produces a 9. _____ and then a 10. _____ sent to interested groups. It publishes its proposals for reform in a 10. _____.

**COPYRIGHT
PROTECTED**



C. Advantages and Disadvantages of Influence

✓ Advantages of Influences on Law Making	✗ Disadvantages of
<ul style="list-style-type: none"> ✓ Party manifestos mean that the process of law reform is democratic as parties publish their law-making plans in these, allowing the public to choose which party to elect into government on the basis of the plans put forward. ✓ These plans are likely to become law because the government will usually have a majority in the House of Commons and, under the Salisbury Convention, the House of Lords does not block measures that have been published in the governing party's manifesto at the last election. ✓ Even if an MP or peer is not in the party of government, opportunities are provided in both Houses for them to introduce Private Members' Bills. ✓ Opinion polls enable the general public to maintain an influence on the government and Parliament in between elections. ✓ Media support can provide individuals with huge publicity in promoting a cause. ✓ The growth of social media has enabled people who would have previously considered themselves excluded from the political process the opportunity to spread their views and link with similarly minded people. ✓ Pressure groups enable individuals to work together with others to influence law reform, increasing their influence. ✓ Anyone has the right to contact their Member of Parliament with their views, regardless of whether or not they voted for them. ✓ The Law Commission is a full-time body with the specific job of considering law reform. ✓ It is staffed by legal experts and its recommendations are based on thorough research and consultation. 	<ul style="list-style-type: none"> ✗ If a new government promises, the public a new election is held. ✗ Experience has shown that public are not always in line with opinion poll questions they are in favour of. ✗ The media has too much influence which issues to put forward. ✗ The rise of social media has been the loudest. ✗ Pressure groups may undertake extreme actions to draw themselves notice. ✗ Rich people and groups are more likely to get their views heard. ✗ The Law Commission has increasingly ignored nearly 60-year life expectancy Commission Act 2000. ✗ The Lord Chancellor has the power to veto the Lord Chancellor's proposal on proposed legislation in implementing it. ✗ The Law Commission has not yet codified the law and the constant creation of secondary legislation. ✗ The government is not always in line with the opinion of the public. ✗ Judges using the power of judicial review is undermining parliamentary sovereignty.

INSPECTION COPY

**COPYRIGHT
PROTECTED**





Exercise 5C (answers on page 79)

Word Search

Clues

- Which organisation was set up in 1965 to keep the law under review?
- What is the word used for approaching a Member of Parliament on law reform?
- What is the name of the document in which political parties present their policies?
- Which pressure group campaigns for new laws on a wide range of issues including deforestation, over-fishing, genetic engineering and nuclear power?
- Which famous Act on birth matters was passed in 1967 following a Private Members' Bill through Parliament?
- This is the writing down of the whole section of an area of law into one place.
- This is the gathering together of all law on one matter into one place.
- This is the process of ascertaining the views of individuals and groups.
- This is the collective term for newspapers and TV organisations.
- What is the name of the failed attempt to bring all criminal law into one Act?



INSPECTION COPY

COPYRIGHT
PROTECTED



6. European Union Law

Introduction (for background information only)

- The EU is currently made up of 27 member states. These have decided that they will work closely together both economically and politically.
- The original members, who set it up in 1957, were France, Italy, Belgium, West Germany and Luxembourg.
- The UK joined in 1973, through the **European Communities Act 1972**. After 1972 it became an increasingly important source of law until the UK left in 2020.
- All EU states have agreed to accept the **Treaty of Rome 1957** that set out the rules that set up the institutions of the EU. Later treaties have modified and developed these rules. These include the **Maastricht Treaty** and the **Treaty of Lisbon**.
- The **Treaty of Rome** and later treaties are the written constitution for the EU.
- The **Treaty of Lisbon 2007** restructured the EU so that the rules governing the EU are now contained in two treaties:
 1. **Treaty of the European Union (TEU)**
 2. **Treaty of the Functioning of the European Union (TFEU)**
- When a country joins the EU it accepts the treaty obligations and, in doing so, it gives up some of the powers it previously had over its own political and economic affairs. It loses some of its sovereignty.
- The same rules apply to all member states with the result that they have become more integrated. Some people feel that this loss of sovereignty might lead to a United States of Europe.

A. The Institutions of the European Union

Students must learn the membership, role and legal functions of:

1. The European Commission
2. The European Parliament
3. The Council of the European Union
4. The Court of Justice of the European Union

1. The European Commission

Membership

- There are 27 commissioners, one from each member country.
- Commissioners swear an oath to represent the interests of the EU as a whole.
- They serve for renewable five-year terms.
- The president in 2024 was Ursula von der Leyen.
- Each of the other commissioners heads a department dealing with an area of policy. The areas are: Agriculture, Energy, Justice, Internal Affairs and Youth.

Role and Legal Functions

- It acts as the executive service and is responsible for the administration of the EU.
- It is the executive of the EU with headquarters in Brussels. It implements the laws of the EU.
- It acts as the 'Guardian of the Treaties' and implements the policies decided by the European Parliament.
- It also makes proposals for legislation and draws up draft documents.
- The Commission has to ensure that laws passed by the EU are correctly implemented by member states. If they are not, it can refer the matter to the Court of Justice.
- It is supported by around 32,000 civil servants.
- It represents the EU in trade negotiations with non-EU countries.

INSPECTION COPY

COPYRIGHT
PROTECTED



2. The European Parliament

Membership

- MEPs (Members of the European Parliament) are directly elected by the people every five years.
- There are currently 705 MEPs. The next elections are in 2024.
- The number of MEPs for each country is proportionate to the size of the population for a country and a minimum of six. For instance, Germany currently has 96 MEPs.
- MEPs form voting blocks with MEPs from other countries with the same political views.

Role and Legal Functions

- It has co-legislative power with the Council.
- It cannot initiate legislation but approves, amends or rejects bills put to it by the Commission.
- In some areas, such as involving competition laws, 'special legislative procedure' must be used. The Parliament must be consulted but has no other power.
- It must approve the President and Commission, and can remove the Commission on a motion of censure.
- Along with the Council, it grants formal approval to how the Commission has spent the budget the last year.

3. The Council of the European Union

Membership

- Each member state sends a representative.
- This will usually be the countries' foreign secretaries, but membership varies and is discussed. For instance, if agricultural matters are being discussed, agriculture ministers will be present.
- The presidency is held by countries rather than by an individual. It rotates between member states every six months.

Role and Legal Functions

- It is the main political institution. It, rather than the Parliament, makes the key decisions.
- It passes legislation alongside the Parliament. It cannot initiate legislation but can draft legislation.
- It nominates the President of the European Commission for approval by the Parliament.
- It attempts to create a common position on areas of foreign policy. Once agreed, it is binding on all member states.
- It issues **regulations**, which are the equivalent of laws that member states must follow. These are matters that member states must put into law through their own legislation.

4. The Court of Justice of the EU (CJEU)

Membership

- It comprises 27 judges, one from each member country.
- They must be legal experts whose independence is beyond doubt and who possess the highest legal office in their countries.
- A President of the CJEU is chosen from among their number for a renewable term of five years.
- The judges and eleven Advocates-General are appointed for a renewable term by the governments of the member states.

**COPYRIGHT
PROTECTED**



Role and Legal Functions

- The role of the Court is to ensure the uniform application of EU law throughout the EU.
- The Commission, or other member states, will refer to it cases where member states fail to fulfil their obligations under EU treaties.
- It will also hear references from national courts for preliminary rulings on issues of EU law under Article 267 of the Treaty on the Functioning of the European Union.
- Any decisions are by majority vote. Dissenting judgments are not possible. There are usually 11 or 12 judges.
- Occasionally 13 judges sit as a 'Grand Chamber' or all 27 judges sit in a plenary session.
- The CJEU's decisions are binding on all the courts of member states but it is not binding on previous decisions.
- It can fine a member state for failing to fulfil community obligations or force a change in national law.
- One such case, the **Commission v UK** (1991), **chogographs**, forced the UK to use tax to encourage the use of vehicles in 1979.



Exercise 6A (answers on page 79)

Identify the correct institution.

Description	
There are currently 705 members of this.	
Its members must be legal experts whose independence is beyond doubt.	
It acts as a civil service and is responsible for the administration of the EU.	
It issues regulations , which are the equivalent of laws that member states must follow, and directives , which are matters that member states must put into law through their own legislative procedures.	
Its role is to ensure the uniform application of EU law throughout the EU.	
It must approve the President and Commission, and can remove the Commission after a two-thirds majority or a motion of censure.	
Its president in 2019 was Ursula von der Leyen.	
It can fine a member state for failing to fulfil community obligations or force a change in national law.	
It acts as the 'Guardian of the Treaties'.	
Each member state sends a representative.	

COPYRIGHT
PROTECTED



B. Sources of European Law

Primary Legislation: The Treaties

Every action taken by the EU is founded on treaties. These binding agreements between member states set out EU objectives, rules for EU institutions, how decisions are made and the relationship between the EU and its members. EU laws and decisions are binding on all member states.

Founding Treaty: The Treaty of Rome, 1957

- This created the European Economic Community (EEC), which has since become the European Union (EU).
- It proposed the removal of customs duties and the creation of a single market.

Accession Treaties

- These specify the terms by which applicant states become members of the EU.
- An example is the Treaty of Accession in 1972, which concerned the accession of the United Kingdom, Ireland and Denmark.

Amending Treaties

- These amend the terms of membership of the EU and its powers.
- An example is the Maastricht Treaty 1992. This established the EU and laid down the rules for the movement within the EU.
- Another example is the Treaty of Lisbon 2007. It renamed the Maastricht Treaty the Treaty of the European Union, and it renamed the Treaty of Rome as the Treaty on the Functioning of the EU. It also made the EU's Charter of Fundamental Rights legally binding.

Secondary Legislation

Regulations

- Under Article 288 (TFEU) the EU may issue regulations. These are made by the Council of the European Union.
- They are directly applicable, i.e. apply to all member states automatically, as in *Commission v UK Tachographs*. Member states do not need to incorporate them into national law.
- They take precedence over national legislation.
- They are used to introduce major changes into EU Law.
- A person living in a member state can enforce rights guaranteed by a regulation.
- They deal with a range of matters from employment rights to labelling on food.
- Regulations have direct effect both horizontally and vertically where the directive does not. These are that the regulation provides individual rights and is clear.

Directives

- Directives are usually issued by the Commission with the backing of the Council of the European Union under Article 288 (TFEU).
- Member states are required to implement them through statute or through common law. They must do this within a specified time, usually two years.



Exercise 6B (answers on page 80)

1. What forms the primary legislation of the European Union?
2. What was the European Union called when it was founded in 1957?
3. Which treaty founded this organisation?
4. How many member states were there in 1957?
5. What is the name for a treaty that brings a new country into the EU?
6. What is the name for a treaty that alters the terms of membership?
7. Give an example of such a treaty.
8. Which part of the **Treaty of the Functioning of the European Union** allows the Council to issue regulations?
9. What must member states do if issued with a directive?
10. Within what time scale must they do this?

**COPYRIGHT
PROTECTED**



C. Impact of EU Law on the Law of England and Wales

Parliamentary Sovereignty and EU Law

- While the UK was a member of the EU, parliamentary law was no longer sovereign.
- The *Van Gend en Loos* case established that EU law prevailed over national law.
- The *Costa v ENEL* case established that national parliaments could not legislate against EU law.
- In the UK, while some EU directives were put into UK law by an Act of Parliament, many were put into effect using Orders in Council. By the time the UK left the EU, it was estimated that over 10,000 pieces of law had been put into effect this way, meaning that a huge proportion of law had been put into effect by unelected representatives.
- With the departure of the UK from the EU, the extent to which Parliament has lost its sovereignty is a moot point. Parliament is now free to pass any law it chooses, but thousands of pieces of law remain in force unless specifically revoked or unless Parliament imposes a 'sunset clause' of its own.

Continuing Jurisdiction of the Court of Justice of the European Union (CJEU)

- Despite Brexit, the CJEU's jurisdiction in the UK controversially remains in certain areas.
- For instance, the Withdrawal Agreement states that the European Commission can bring infringement proceedings against the UK for breaches of EU law that took place before the end of 2020.
- The Withdrawal Agreement also gives the CJEU jurisdiction over disagreements between the UK and the EU over the Withdrawal Agreement until 2028.

The Interpretation of EU Law by English Courts

- While the UK was in the EU, English courts had to interpret EU legislation using the same principles as the continental European courts.
- This involved using a purposive approach involving interpreting the spirit of the law rather than the literal meaning of the words.
- This looser approach was necessary because of the use of Civil Law in European countries. The literal approach could not be used to interpret translations from different languages.
- As a consequence, English courts became increasingly used to adopting the principles of Civil Law.

The Effect of Membership on Rights

While the UK was a member of the EU, UK citizens could use EU law to enforce their rights.

- Direct effect: this is a mechanism, developed in the *Van Gend en Loos* case, which allows individuals to use EU law to enforce their rights.
- Vertical direct effect: this means individuals can use EU law to make claims against the state such as the police, state hospitals or nationalised industries. This was established in *Marshall v Southampton and South West Hampshire Health Authority*.
- Horizontal direct effect: this means individuals can use EU law to enforce their rights against another individual or business.
- Indirect effect: although EU directives must be put into national law by national governments, individuals can still make claims against them if the directive has been implemented defectively.
- State liability: this was established in the *Francovich v Italy, 1991* case. The CJEU held that the UK can claim damages from member states for non-compliance with EU law.
- The Küçükdeveci Principle: a member state's courts cannot ignore EU law that is directly applicable over the constitution.

Learning Tips

OCR's guidance makes clear that students do not need to learn the mechanisms listed above in any detail for a 'describe' question, but it might be helpful for students to know the basic principles for answering a 'discuss' question on the extension of rights to individuals.

**COPYRIGHT
PROTECTED**



Case Study**Van Gend en Loos 1963****Supremacy**

When the Dutch government and the EU disagreed on the customs levy for a car import, the Court of Justice ruled that EU law takes precedence over national law and that national courts could use national courts to enforce their rights.

Case Study**Marshall v Southampton and South West Hampshire Area Health Authority 1986**

Miss Marshall, aged 62, was forced to retire even though male colleagues were over 65. She claimed successfully for unfair dismissal. The health authority was an employer. The Equal Treatment Directive had vertical effect.

Case Study**Francovich v Italian Republic 1991****State liability for failure to implement an EU Directive**

When a man lost his job because his employer went bust, he successfully sued the state to implement an EU Directive that would have entitled him to compensation.

Case Study**Kücükdeveci v Swedex**

German law allowed younger employees (below 25) to be given a shorter notice period than older employees. The Court of Justice of the European Union ruled that EU law was superior to something in a member state's constitution.

INSPECTION COPY

COPYRIGHT
PROTECTED





Exercise 6C (answers on page 80)

EU Law: Word Search

Find the answers to the clues and locate them in the word search.



Question	
1. The EU institution that administers the EU.	
2. The EU institution that is directly elected.	
3. The EU institution that makes key decisions.	
4. The EU's judicial institution.	
5. There are 27 of these, one from each member country.	
6. This founded the European Economic Community in 1957.	
7. EU laws are directly applicable to member states.	
8. Member states are required to implement these through statute or through delegated legislation.	
9. The nickname for the process by which the UK left the EU.	
10. The mechanism, developed in the Van Gend en Loos case, which ensures that individuals can use national courts to enforce their rights.	

INSPECTION COPY

**COPYRIGHT
PROTECTED**



Exam Section – A Level

The Examination Paper for Paper 2 Section A (Law Making Unit 2a)

H418/02 Section A – Law Making Unit 2a

Answer two questions



Question 1 or 2

This question tests Knowledge

There are two questions

Answer only **one** of them

Each question is worth 8 marks

Take 10–12 minutes on this question

KNO
of r

V
to

Question 3 or 4

This question tests Analysis

There are two questions

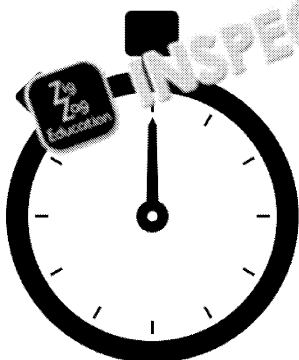
Answer only **one** of them

Each question is worth 12 marks

Take 15–18 minutes on this question

ANA
m

Wc



30 minutes recommended to answer both questions

20 marks are available for this part of the paper

INSPECTION COPY

COPYRIGHT
PROTECTED



The Examination Paper

- There are two sections on Paper 2: Section A on Law Making and Section B on Legal Systems. The Companion 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 Topic B. Do 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.

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 of the law. It is worth 10 marks. You should spend 10–12 minutes on this question.
- All marks are for assessment objective 1 (AO1): *Demonstrate knowledge and understanding of legal systems and legal rules and principles.*
- For 'describe' questions, any analysis or critical comment will 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 law. It is worth 10 marks. You should spend 10–12 minutes on this question.
- All marks are for assessment objective 3 (AO3): *Analyse and evaluate legal concepts and issues.*
- For 'discuss' questions, although knowledge on its own is not credited, knowledge can be used to develop points.
- For some of the topics, such as Statutory Interpretation, Precedent, EU Law, and Human Rights, it is very important that you use cases to support your arguments.

Marks for the two questions are awarded as follows:

Levels of Response Criteria for Question 1 or 2	
AO1	
Level 4 7–8 marks	<ul style="list-style-type: none"> • Excellent knowledge and understanding of the English legal system. • The response is accurate, fully developed and detailed. • There is excellent citation of fully relevant statutes and case law.
Level 3 5–6 marks	<ul style="list-style-type: none"> • Good knowledge and understanding of the English legal system. • The response is detailed but is not fully developed in places. • There is good citation of mostly relevant statutes and case law.
Level 2 3–4 marks	<ul style="list-style-type: none"> • Basic knowledge and understanding of the English legal system. • The response may lack detail in places and is partially developed. • There is some reference to statutes and case law.
Level 1 1–2 marks	<ul style="list-style-type: none"> • Limited knowledge and understanding of the English legal system. • The response will have minimal detail. • Any appropriate citation of statutes and case law is limited.
Level 0	No response or no response worthy of credit.

Note: while citation of statutes and/or case law is not relevant for all topics, it is essential for some.

COPYRIGHT
PROTECTED



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.
- ⇒ 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 topic).
- ⇒ Try to include at least two or three cases for relevant topics.
- ⇒ Do not miss this question out in order to spend more time on higher-scoring questions. You must attempt at least some marks on this question.

Level of Response Criteria for Question 1 or 2	
AO3	
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	No response or no response worthy of credit.

Answer technique for Question 3 or 4

- ⇒ This question requires you to use paragraphs to separate and expand your points.
- ⇒ The mark schemes used by OCR for the former G152 syllabus still work 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-scoring answer.
- ⇒ The opening sentence of each paragraph should directly answer the question. Avoid repetitive (even though an A Level English teacher would hate this approach!).
- ⇒ If the question asks for advantages and disadvantages, what 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 a point by using phrases such as ‘This means that...’.
- ⇒ Further develop the point by supporting with knowledge. It is important that the knowledge, for example, appears in the middle of the paragraph, rather than at the start, so that the point is clear.
- ⇒ Develop further 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. 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 pick up at least some marks by writing some sentences that are focused on the question.

**COPYRIGHT
PROTECTED**



Exam Practice

Exam-style Questions

1. (a) Describe the legislative stages that a government bill, starting in the House of Commons, must pass through to become law.
1. (b) Describe the pre-legislative process for a new government bill.
2. Discuss the advantages and disadvantages of the law-making process.
3. Describe three types of delegated legislation.
4. Discuss the effectiveness of controls on delegated legislation.
5. Describe the literal rule of statutory interpretation.
6. Discuss the advantages of the literal rule.
7. (a) Describe *stare decisis*.
7. (b) Describe the powers of the Courts of Appeal within the Doctrine of Precedent.
8. Discuss the disadvantages of judicial independence.
9. Describe the role of the Law Commission.
10. Discuss the advantages of influences on parliamentary law making.
11. Describe the membership and functions of the Council of the European Union and the Court of Justice of the European Union.
12. Discuss the impact of European law on the law of England and Wales.

INSPECTION COPY

COPYRIGHT
PROTECTED



INSPECTION COPY



1. Parliamentary Law Making

Question 1/2

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

- ◆ Green and White Papers
- ◆ Different types of Bill
- ◆ Legislative stages in the House of Commons and the House of Lords
- ◆ The role of the Crown

These are examples of questions that might appear on 'The Legislative Process':

- Describe the pre-legislative process for government bills
- Describe the different types of bills.
- Describe how an Act of Parliament is made.

Model answer for an 8-mark question

1a. Describe the legislative stages that a government bill, starting in the House of Commons, has to be through to become law.

The First Reading is a formality. Unlike a bill starting in the House of Commons, where the bill is read out, in the House of Lords the long title of the bill is read out.

In the Second Reading, there is a formal debate followed by a vote. The bill must have a majority in order to proceed to the next stage.

This is the Committee Stage. A committee of peers will go through the bill line by line, making amendments. In addition, another committee will examine the part of the bill that relates to the use of statutory instruments.

In the Report Stage, the House of Lords decides whether to accept or reject the amendments that the Committee has suggested.

Finally, there is the Third Reading which comprises a debate on the amended bill.

The bill now goes to the House of Commons where the whole process described above is repeated.

If the House of Commons has made additional amendments, these will have to be agreed by the House of Lords. If the House of Commons and the House of Lords disagree, the bill will have to be agreed by both Houses. If the House of Commons and the House of Lords disagree, the bill will have to be agreed by both Houses. If the House of Commons and the House of Lords disagree, the bill will have to be agreed by both Houses.

The final stage is the Royal Assent whereby the monarch signs the bill into law. Since 1708, this has been a formality.

Comment

This answer has used the SCAROAR hint to list each stage, in order, with a very brief description of each stage included.

**COPYRIGHT
PROTECTED**



Model answer for an 8-mark question**1b. Describe the pre-legislative process for a new government bill.**

- If the government is planning to create a new law in Parliament, it will start with a Green Paper.
- This is a consultation document. It will explain the situation relating to the problem that might be in the new law and ask for opinions.
- It will be sent to interested parties for their views. For instance, a bill to change the speed limits would be sent to car manufacturers, insurance companies, the police, the RAC and road safety groups.
- As the Green Paper will be publicised on the Internet, any other individual can also come forward to submit their thoughts before the deadline.
- An example of a Green Paper is Changes to the special educational needs (SEN) and alternative provision (AP) system in England (2022).
- Once the deadline has passed, the government will review all the responses and make plans in light of the feedback.
- If the government decides to go ahead with the proposed legislation, it will publish a White Paper.
- The White Paper will contain its firm proposals.
- The White Paper may differ from what was suggested in the Green Paper as the government's consideration of the feedback received.
- Parliamentary draftsmen will now convert the White Paper into a bill.
- This can now be put before Parliament and the formal part of the legislative process begins.

Comment

This is a difficult question to answer as there is not much to write on this area. It is best to use a bullet-point format as this makes it easier for the examiner to see that sufficient points have been made. To ensure full marks, eight points must be made and all parts of the pre-parliamentary process must be covered.



INSPECTION COPY

**COPYRIGHT
PROTECTED**



Question 3/4

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

- Advantages and disadvantages of the legislative process.

These are examples of questions that might appear on this topic:

- Discuss the advantages of the legislative process.
- Discuss the disadvantages of the legislative process.
- Discuss the advantages and disadvantages of using Parliament to make law.

Model answer for a 12-mark question

2. Discuss the advantages and disadvantages of the law-making process.

An advantage of the law-making process is that the process is democratic. It consists of MPs who are directly elected by voters from 650 constituencies. They are elected on the basis of promises they have made in their manifestos, which means that they are accountable to the population as a whole. The MPs remain accountable to the electorate and can be voted out at the next election.

On the other hand, the electoral process can be seen as a disadvantage of the law-making process. As MPs will need to be re-elected within the next five years, they are going to take measures to boost their popularity rather than the long-term needs of the country. They may vote as their party whips instruct them to vote. The absence of a separation of powers between the legislature and executive in this country means that MPs do not have the independence to act in line with the wishes of the people that elected them.

Another advantage of the law-making process is the thorough scrutiny that bills undergo. This allows a range of organisations and individuals to give their opinions on proposed bills and shape and improve them. There will be thorough debate on the bill in both Houses of Parliament. All points about the proposed legislation to be aired and considered. In addition, the House of Lords allows for forensic analysis of bills, enabling the resulting act to be a more balanced and effective piece of legislation.

Another disadvantage of the law-making process is the complexity that results from the large number of bills written in complex legal language and are very difficult to understand. In addition, the large number of secondary delegated legislation such as statutory instruments to be created under the authority of the primary legislation adds to the complexity of parliamentary law and adds to the confusion for the public. This particular matter is.

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.

The key part of this question is the word 'and'. It is possible to get more than full marks if you discuss both advantages and disadvantages are covered. The example above contains two paragraphs on one and one on the other is sufficient to fulfil the demands of the question.

If you have time, make a final point for this question after three paragraphs, do not make any more points.

COPYRIGHT
PROTECTED



2. Delegated Legislation

Question 1/2

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

- ◆ Types of delegated legislation:
 - ❖ Orders in Council
 - ❖ Statutory instruments
 - ❖ By-laws
- ◆ Controls on delegated legislation by Parliament and the courts

This is an example of a question that might appear on 'Types of delegated legislation':

- Describe three types of delegated legislation

These are examples of questions that might appear on 'Controls on delegated legislation':

- Describe parliamentary controls on delegated legislation.
- Describe judicial controls on delegated legislation.

Model answer for an 8-mark question

3. Describe three types of delegated legislation.

By-laws are created by local authorities using powers granted by Parliament in the Local Government (Miscellaneous Provision) Act 1972. These involve local matters such as creating cycle paths or temporary closure of town centre roads for early Christmas shopping.

By-laws can also be made by public corporations. Corporations that own and operate the London Underground, Network Rail or the Port of London Authority, can make by-laws on health and safety matters affecting the general public.

Statutory instruments are created by government ministers using powers laid down in the Statutory Instruments Act 1946. They enable minor changes to be made to existing Acts of Parliament, such as adding a new animal to the list of those banned in the Dangerous Dogs Act 1991.

Orders in Council are made by the King and Privy Council. The Civil Contingencies Act 2004 allows the Privy Council to be made to deal with emergency situations if Parliament is not sitting.

Comment

8-mark questions in the Law Making unit are different from those in the Legal System unit. In the Law Making unit, you can be sufficient for full marks. Here, four types of delegated legislation are described, and an example of who creates it and an example.

It is unlikely that full marks can be achieved without including at least one Act of Parliament.

It is important not to spend more than 12 minutes on this answer.

COPYRIGHT
PROTECTED



Question 3/4

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

- ◆ The effectiveness of parliamentary and court controls on delegated legislation
- ◆ Reasons for the use of delegated legislation
- ◆ Advantages and disadvantages of delegated legislation

This is an example of a question that might appear on 'The effectiveness of parliamentary controls on delegated legislation':

- Discuss the effectiveness of controls on delegated legislation.

This is an example of a question that might appear on 'Reasons for the use of delegated legislation':

- Explain the need for delegated legislation.

These are examples of questions that might appear on 'Advantages and disadvantages of delegated legislation':

- Discuss the benefits of delegated legislation.
- Discuss the disadvantages of delegated legislation.

Model answer for a 10 mark question

4. Discuss the effectiveness of controls on delegated legislation.

The Parent Act is an effective control on statutory instruments as it sets out the procedure for making instruments that a government minister is allowed to make and the procedure for their removal. The Dangerous Dogs Act 1991 specifically states that the Secretary of State must maintain a banned list. This means they could not add breeds of dangerous cat as they are not on the list. On the other hand, the Legislative and Regulatory Reform Act 2006 allows the government to make instruments without the need for a bill. The effectiveness of this control as it allows statutory instruments to be made more quickly. The Act says if the aim is to reduce a burden.

Judicial review is an effective control on all types of delegated legislation. It allows the court to check the legality of a piece of delegated legislation. For instance, if the court agrees that the government has gone beyond their powers, as in the Fire Brigades Union case, they will quash the instrument. On the other hand, the effectiveness of this control is limited by the costs involved in going to court and the risk of having to pay the other side's costs. The control is effective for a big supermarket chain, such as ASDA, that wants to challenge a regulation but not for, say, a small shopkeeper.

Negative Resolution Procedure is an ineffective control because of the sheer number of statutory instruments created. In some years, this has exceeded 3,000. While it is true that Parliament has the right to demand a vote within 40 days of publication of a statutory instrument, under this procedure, the huge number makes the task of keeping up with the instruments a problem. The problem is exacerbated by the legalistic language in which they are written. The Parent Act to see which parts they are altering.

Scrutiny committees, such as the Joint Committee on Statutory Instruments, scrutinise statutory instruments. While it is true this committee scrutinises statutory instruments, it cannot vote on them or make amendments. It can merely refer them back to Parliament for a formal vote. The government can use its whips to ensure the instrument is approved, making this control ineffective.

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.

Note that knowledge never appears at the start of a paragraph – acts or cases are used to support the point that has been made at the start of the paragraph in order to support the point. marks for knowledge for this question so acts and cases will gain credit only if they illustrate the point being discussed.

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

COPYRIGHT
PROTECTED



3. Statutory Interpretation

Question 1/2

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

- ◆ Rules of statutory interpretation:
 - ❖ The literal rule
 - ❖ The golden rule
 - ❖ The mischief rule
- ◆ The purposive approach
- ◆ Intrinsic and extrinsic aids to interpretation
- ◆ Impact of European Union Law and the Human Rights Act 1998 on statutory interpretation

These are examples of questions that might appear on the rules of statutory interpretation. 'The purposive approach':

- Describe the literal rule of statutory interpretation.
- Describe the golden rule of statutory interpretation.
- Describe how the golden rule differs from the literal rule.
- Describe the mischief rule of statutory interpretation.
- Describe the purposive approach to statutory interpretation.
- Explain how different rules or approaches might produce different outcomes.

This is an example of a question that might appear on 'Intrinsic and extrinsic aids to interpretation':

- Describe intrinsic and extrinsic aids.

OCR has made clear that there will not be discrete questions on 'Impact of European Union Law and the Human Rights Act 1998 on statutory interpretation' although there might be a combination of questions on:

- Explain how the literal and purposive approaches are different and how their use is affected by European Union Law and by the Human Rights Act 1998.

Model answer for an 8-mark question

5. Describe the literal rule of statutory interpretation.

The literal rule means that judges will give the words their exact literal meaning. They will apply the words in a statute, even if this leads to an absurd result. This approach maintains parliamentary sovereignty. Judges taking the view that it is up to Parliament to pass a new law if a poor law leads to absurd consequences.

An example of the literal rule being used was the case of *Berriman*. Her husband was killed while doing maintenance work on tracks. An Act would have provided compensation if a person had died while 'repairing or relaying' tracks. Using the literal rule, the judge found that maintenance work was not 'repairing or relaying' tracks so Mrs Berriman was denied compensation.

Another case illustrating the literal rule is *Mesure v Mesure*. The Matrimonial Causes Act 1973 provides for divorce if one's partner has been 'separated' for five years' 'continuous' treatment for mental illness. Mr Mesure had been in a mental hospital for seven years but, during that time, had been treated for his mental illness for only a few weeks. When in the TB clinic, she was not being treated for her mental illness. The judge found that the treatment was not 'continuous' and so Mr Mesure could not have a divorce.

Another case is *Cheeseman*. Policemen caught him masturbating in a train carriage. The offence was defined as exposing his person to the annoyance of 'passengers'. Since the police found him masturbating in a train carriage, the literal rule meant the offence he was charged with had not been committed.

**COPYRIGHT
PROTECTED**



Comment

8-mark questions in the Law Making unit are different from those in the Legal System unit. A list can be sufficient for full marks. The statutory interpretation questions on the other hand require paragraphs. Here, we have one paragraph giving a definition of the literal rule and each focused on a case illustrating the rule. Each of these paragraphs must contain:

- i. The name of a case
- ii. The problem word or phrase
- iii. The outcome

Answers on the mischief rule and the purposive approach should use the same structure. Both the wide and the narrow approach must be defined; only two paragraphs are required for each approach.

OCR's 2022 paper contained this question: *Explain the mischief rule.* In the Exemplar provided a sample answer for that question and said that the inclusion of a definition of the rule in three cases earned it full marks. The example above is, therefore, more than sufficient. It is important not to spend more than 12 minutes on this answer. If you have read the question and written three paragraphs, do not write a fourth paragraph.

INSPECTION COPY

COPYRIGHT
PROTECTED



Question 3/4

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

- Advantages and disadvantages of the different rules and approaches to statutory interpretation

These are examples of questions that might appear on this topic:

- Discuss the advantages of the literal rule.
- Discuss the disadvantages of the literal rule.
- Discuss the advantages and disadvantages of the literal rule.
- Discuss the advantages of the golden rule.
- Discuss the disadvantages of the golden rule.
- Discuss the advantages and disadvantages of the golden rule.
- Discuss the advantages of the mischief rule.
- Discuss the disadvantages of the mischief rule.
- Discuss the advantages and disadvantages of the mischief rule.
- Discuss the advantages of the purposive approach.
- Discuss the disadvantages of the purposive approach.
- Discuss the advantages and disadvantages of the purposive approach.

Model answer for a 12-mark question

6. Discuss the advantages of the literal rule.

An advantage of the literal rule is that it provides certainty. If a judge is given a clear meaning, it means that lawyers can advise their clients confidently as to the outcome. For example, in the Berriman case, the lawyer should have advised his client that the railway worker would fail as the railway worker had been killed while maintaining tracks and not 'repairing' them. This shows an advantage of the rule as a client that has been advised can waste money on a hopeless case.

Another advantage of the literal rule is it upholds the supremacy of Parliament as the sovereign body in the UK and has the ultimate law-making power. Judges must follow the law as written. Some would argue this is not an advantage, however, as the literal rule ensures laws are drafted perfectly and that following the literal rule can result in absurd outcomes.

An associated advantage of the literal rule is that it supports the separation of powers doctrine, the legislative and judicial functions should be kept totally separate. If judges used the mischief rule or the purposive approach to guess what Parliament was intending, it would be in effect, making law themselves if they do not follow the exact words of an Act. This means that judges should leave law making to Parliament and apply the provisions of an Act of Parliament.

Another advantage of the literal rule is that it encourages Parliament to take the Green Paper stage therefore enables wide consultation to ensure that all views are considered. The Committee Stage ensures that there is thorough scrutiny of the wording of the Bill so that the language of the Act that emerges will be as clear and unambiguous as possible. This is a complete advantage, however as it is impossible to anticipate every possible situation. For example, in R v Chappell where a man attempting voter fraud got away with it because he used a dead person's name.

Comment

Three paragraphs are probably sufficient to gain full marks. Note how each paragraph starts with a topic sentence, how the opening to each paragraph is directly focused on the question; and how the paragraph returns to the question at the end of the paragraph.

This question just refers to *advantages*. It is therefore essential that each paragraph discusses an *advantage*; a *disadvantage* can be brought in as a counterpoint at the end of a paragraph (e.g. 3 and 4 above) since this means the *advantage* is still being discussed.

Note that knowledge never appears at the start of a paragraph – cases can be used in order to support the point that has been made at the start of the paragraph. The same applies for this question so cases will gain credit only if they are being used to illustrate the point.

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

COPYRIGHT
PROTECTED



4. Judicial Precedent

Question 1/2

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

- ◆ The Doctrine of Precedent, including *stare decisis*, *ratio decidendi* and *obiter dicta*
- ◆ The hierarchy of the courts, including the Supreme Court
- ◆ Binding, persuasive and original precedent; overruling; reversing; distinguishing

These are examples of questions that might appear on 'The Doctrine of Precedent':

- Describe *stare decisis*.
- Describe the *ratio decidendi* and the *obiter dicta* of a judgment.

These are examples of questions that might appear on 'The hierarchy of the courts':

- Describe the hierarchy of civil and criminal courts.
- Describe the position of the Supreme Court when considering a previous judgment from itself.
- Explain the Court of Appeal's powers and the Practice Statement.

These are examples of questions that might appear on 'Binding, persuasive and original precedent; overruling; reversing; distinguishing':

- Explain overruling and reversing.
- Explain original and distinguishing precedent.
- Describe binding and persuasive precedent.
- Describe the powers of the Courts of Appeal within the Doctrine of Precedent. [This question simply means 'Describe the system of precedent' and would require discussion of hierarchy, *ratio* and binding precedent.]
- Explain how judges in the Courts of Appeal can depart from otherwise binding precedent.
- Explain how the Supreme Court can depart from otherwise binding precedent.

Model answer for an 8-mark question

7. Describe *stare decisis*.

- *Stare decisis* means 'to stand by what has previously been decided'.
- It is the principle under which the UK law system of precedent operates.
- It relies on a system of court hierarchy: courts are bound by judgments of the same level in the same division (civil or criminal).
- The binding part of a judgment is called the *ratio decidendi*. This gives the law.
- An example of binding precedent is *R v Howe* which set out that duress is a defence to murder.
- The remainder of the judgment is known as the *obiter dicta* and is not binding but persuasive precedent.
- An example was the obiter remarks in *R v Howe* that duress should not be a defence to murder. This was used as persuasive precedent in *R v Gotts*.
- The Supreme Court can avoid being bound by precedent by using the Practice Statement in Appeal by using the Young exceptions, and any court by using distinguishing.
- The system of *stare decisis* depends on accurate court reporting to work.

Comment

Students are likely to run away screaming if they come across this question in a revision guide. It is really easy to answer. The question simply means 'Describe the UK system of precedent'. The example above includes a concise summary of the system of precedent. The example above includes full marks; six of the points above should be sufficient. There are no AO3 mark advantages and disadvantages of precedent should not be discussed. In precedent questions, you should include a case or two as illustration. There is no need to give details about the facts of the case.

**COPYRIGHT
PROTECTED**



Model answer for an 8-mark question**7b. Describe the powers of the Courts of Appeal within the Doctrine of Precedent**

The Courts of Appeal are not bound by courts below them in the hierarchy. The Court of Appeal (Civil Division) is not bound by judgments of the High Court, and the Court of Appeal (Criminal Division) is not bound by cases that have gone before the King's Bench Division. The Court of Appeal can reverse judgments of the Crown Court.

The Courts of Appeal are not bound by precedent set by the Court of Appeal. They can use those judgments as persuasive precedent.

The Courts of Appeal are bound by previous judgments of the same division. They use one of the Young Exceptions, as set out in *Young v Bristol Aeroplane Co Ltd*.

- i. If the Court of Appeal is faced with previous conflicting decisions from the same division, it can choose which to follow.
- ii. The Court of Appeal must follow decisions of the House of Lords / Supreme Court.
- iii. The Court of Appeal is not bound by an earlier decision that was made in error.

The Court of Appeal (Criminal Division) has additional leeway to depart from a customary sentence.

Finally, the Courts of Appeal are bound by all judgments of the Supreme Court and its predecessor, the House of Lords. This was made clear in the *Miliangos* case.

Comment

This includes far more than is needed to gain full marks. The answer is concise and covers all the reasons as there are no AO3 marks available for this question. In 'precedent' questions, you should include a case or two as illustration. There is no need to give details about what the case is about, just that helps to explain the significance.



INSPECTION COPY

COPYRIGHT
PROTECTED

5. Law Reform

Question 1/2

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

- ◆ Influences on Parliament
- ◆ Law reform by the Law Commission

This is an example of a question that might appear on 'Influences in Parliament':

- Describe influences on parliamentary law making.

These are examples of questions that might appear on 'Law reform by the Law Commission':

- Describe the composition of the Law Commission.
- Describe the role of the Law Commission.
- Describe how the Law Commission carries out its work.

Model answer for a 10 mark question

9. Describe the role of the Law Commission.

The Law Commission was set up by the Law Commissions Act 1965 for the purpose of reviewing and reforming the law.

One of its roles is to review areas of law to check they are functioning properly. One of its recommendations was the Occupiers' Liability Act 1984 which put under occupiers of premises to unlawful visitors.

Another of its roles is consolidation. An example is the Sentencing Act 2020 which consolidated sentencing into a single document.

Another of its roles is codification which involves putting converting common law into statute. An example is the Theft Act 1968 which put various common law property crimes into statute.

It also seeks to repeal out of date laws and regularly prepares Repeal Bills for the government to pass. It can be done.

Comment

This includes far more than is needed to gain full marks. The answer is concise and to the point. It lists reasons as there are no AO3 marks available for this question. In this answer, each point is followed by a sentence added explaining each. Try to include a piece of supporting information for each point, in each supporting sentence.

Learning Tip

If answering a question such as *Describe influences on parliamentary law making*, the syllabus lists these as being: *political, public opinion, media, pressure groups and lobbyists*. In an answer, you just write about three of these (or four to be on the safe side). For each influence, you would need a couple of sentences describing the influence with a factual example. There is a mark scheme for the 2020 paper on OCR's website that provides a breakdown of the influence of each.

COPYRIGHT
PROTECTED



Question 3/4

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

- Advantages and disadvantages of influences on law making

These are examples of questions that might appear on this topic:

- Discuss the advantages of influences on law making.
- Discuss the disadvantages of influences on law making.
- Discuss the advantages and disadvantages of influences on law making.

Model answer for a 12-mark question

10. Discuss the advantages of influences on parliamentary law making.

One advantage of political parties as an influence on parliamentary law making is democratic as political parties publish their plans in manifestos. The public can then choose which party to vote into government. For instance, in the 2019 general election, the public was able to vote for the Conservative Party confident in the knowledge that it would get Brexit. In addition, the public has the confidence that these measures will be implemented because the government will usually have a majority in the House of Commons. In the House of Lords, the House of Lords does not block measures that were published in a manifesto at the last election.

The influence of pressure groups is also an advantage as these groups can bring attention to matters that need statutory attention. Groups such as the RSPCA have expert knowledge and expertise to advise Parliament on measures that need to be taken to protect animals. Groups such as Greenpeace can raise awareness of measures that need to be taken to protect the environment. On the other hand, the influence of pressure groups can cease if the public's level of influence turns out to be based more on the noise they make than on their expertise.

An advantage of the influence of the Law Commission on law reform is that it is also staffed by legal experts whose full-time role is to investigate areas of the law that need to be reformed. For instance, it is currently researching the issue of driverless cars and how road laws need to be reformed to meet the challenge of this new technology. The advantage is limited, however, by the fact that the government is under no obligation to consult the Law Commission before Parliament or even to consult it when considering new laws.

The influence of lobbying on law reform is an advantage as anyone has the opportunity to suggest new laws to Parliament. An example is how Nicola Roberts of Girls Aloud introduced a Private Members' Bill banning unsupervised use of public sunbeds. Trade unions also have opportunities to lobby Members of Parliament to urge new laws. The advantage is limited, however, because wealthy individuals and companies can meet government ministers directly in order to influence changes in the law.

Comment

Three paragraphs are probably enough to gain full marks. Note how each paragraph is more than four sentences. Note how the opening to each paragraph is directly focused on the question; it is important to return to the question at the end of the paragraph.

This question just refers to *advantages*. It is therefore essential that each paragraph starts with an *advantage*; a *disadvantage* can be brought in as a counterpoint at the end of a paragraph (as in the three paragraphs above) to further emphasise how the point is not a complete advantage.

Note that knowledge never appears at the start of a paragraph – organisations are mentioned later in the paragraph in order to support 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 – but make some quick final points.

COPYRIGHT
PROTECTED



6. European Union Law

Question 1/2

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

- ◆ Institutions of the European Union
- ◆ Sources of European law

These are examples of questions that might appear on 'Institutions of the European Union':

- Describe the membership and functions of the European Parliament and the Council of the European Union.
- Describe the membership and functions of the Council of the European Union.
- Describe the membership and functions of the European Parliament and the Council of the European Union.

This is an example of a question that might appear on 'Sources of European law':

- Describe treaties, regulations and directives.

Model answer for an 8-mark question

11. Describe the membership and functions of the Council of the European Union.

The Council of the European Union:

- comprises a representative from each member country;
- these will usually be the countries' foreign secretaries, but membership can be discussed. For instance, if agricultural matters are being discussed, ministers of agriculture will attend instead;
- nominates the President of the European Commission for approval by the European Parliament;
- attempts to create a common position on areas of foreign policy;
- issues regulations, which are the equivalent of laws that member states must put into law through their own legal systems.

The Court of Justice of the European Union:

- comprises 27 judges, one from each member country;
- these must be legal experts whose independence is beyond doubt and who are required for the highest legal office in their countries;
- has the role of ensuring that EU law is applied uniformly throughout the EU;
- will hear references from national courts for preliminary rulings on issues of EU law; Article 267 of the Treaty on the Functioning of the European Union;
- makes decisions that are binding on all the courts of member states but can be overruled by previous decisions.

Comment

This includes far more than is needed to gain full marks. Eight bullet points should be enough – four for each institution. (Five bullet points per institution are included in the model answer.) It is essential that both membership and functions are included; in other words, the question is covered.

COPYRIGHT
PROTECTED



Question 3/4

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

- ◆ Impact of European Union law on the law of England and Wales

These are examples of questions that might appear on this topic:

- Discuss the impact of European law on the law of England and Wales.
- Discuss the consequences of the supremacy of European law during the UK's

Model answer for a 12-mark question

12. Discuss the impact of European law on the law of England and Wales.

One way in which European law had an impact on the law of England and Wales was the purposive approach. This is where a domestic court, when interpreting a law, interprets it by considering what Parliament's intentions were when making the law. The literal meaning of the words used in the law was necessary when it was translated into all the languages of EU nations; since words cannot be translated into all languages, this made the literal approach to interpreting EU law impossible. Therefore, courts used the purposive approach even for laws created by the UK's English courts.

Another impact was the increased opportunities for individuals to assert their rights. While the UK was a member, UK citizens could use vertical effect to enforce their rights against the state if their rights had been infringed. They could even make claims against arms, police or state hospitals. This was shown in the case of *Marshall v Southam Hampshire Area Health Authority (1986)* where a woman successfully sued her employer as she was forced to retire on account of her age.

Membership of the EU also allowed UK citizens to use horizontal direct effect where they were enforcing their rights against an individual or a business, or an arm of the state. Additional protection was provided by indirect effect where courts were required to interpret national laws in line with EU directives, even if the courts had failed to implement these as required.

Another impact was on the sovereignty of UK institutions. While the UK was a member, the law took precedence over national law. Similarly, the House of Lords (and the Court of Appeal) lost its status as the ultimate UK court as there was now a further room for appeal to the Court of Justice of the European Union. Brexit has restored the top position of the UK court hierarchy and it has largely restored the sovereignty of Parliament, although some of these appear to remain for the time being as the result of terms in the Withdrawal Agreement.

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.

This question is different to the 'discuss' questions in the other sections as it requires you to discuss the impact of European law on the law of England and Wales.

Note that knowledge never appears at the start of a paragraph – factual examples are used in a paragraph in order to support 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 – but make some quick final points.

COPYRIGHT
PROTECTED



Exam Section – AS Level

The Examination Paper for Paper 2 Section A (Law Making Unit 2a)

H018/02 Section A – Law Making Unit 2a

Answer **all** four questions



Questions 1, 2 and 3

These questions test Knowledge

There are three questions

Answer **all** of them

Each question is worth 8 marks

Take 10–12 minutes on each question

Knowledge

of the law

What

to

Question 4

This question tests Analysis

There is **one** question

You **must** answer it

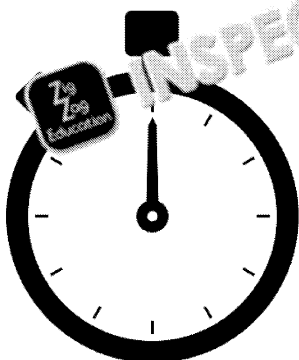
It is worth 8 marks

Take 10–12 minutes on this question

Analysis

of the law

What



*45 minutes recommended to answer
the four questions*

*32 marks are available for
this part of the paper*

INSPECTION COPY

COPYRIGHT
PROTECTED



The Examination Paper

- There are two sections on Paper 2: Section A on Law Making and Section B on Legal Principles. The Companion concerns Section A only.
- There are **four** questions to answer.
- **All** four questions **must** be answered. There is **no** choice of questions.
- The four questions should take 45 minutes to complete.
- You are allowed another 45 minutes to complete the rest of the paper on Topic B. Do not encroach on that time by spending more than 45 minutes on Section A.
- Section A is worth 32 marks. The whole paper is marked out of 64.
- Diagrams can be used in answers.

The Question Format

Section A: Questions 1, 2 and 3

- Questions 1, 2 and 3 are 'describe' questions and you will need to demonstrate understanding. Each question is worth 10 marks. You should spend 10–12 minutes on each.
- All marks are for assessment objective 1 (AO1): *Demonstrate knowledge and understanding of the legal system and legal principles and principles.*
- For 'describe' questions, any analysis or critical comment would not be credited.

Section A: Question 4

- Question 4 is a 'discuss' question which requires you to analyse and discuss.
- All marks are for assessment objective 3 (AO3): *Analyse and evaluate legal concepts and principles.*
- For the 'discuss' question, although knowledge on its own is not credited, knowledge can be used to support and develop points.
- For some of the topics, such as Statutory Interpretation, Precedent, EU Law and Human Rights, you must use cases to support your answers.

Marks for the two types of question are awarded as follows:

Levels of Response Criteria for Questions	
AO1	
Level 4 7–8 marks	<ul style="list-style-type: none"> • Excellent knowledge and understanding of the English legal system. • The response is accurate, fully developed and detailed. • There is excellent citation of fully relevant examples or case law.
Level 3 5–6 marks	<ul style="list-style-type: none"> • Good knowledge and understanding of the English legal system. • The response is detailed, but not fully developed in places. • There is good citation of mostly relevant examples or case law.
Level 2 3–4 marks	<ul style="list-style-type: none"> • Basic knowledge and understanding of the English legal system. • The response may lack detail in places and is partially developed. • There is some reference to examples or case law.
Level 1 1–2 marks	<ul style="list-style-type: none"> • Limited knowledge and understanding of the English legal system. • The response will have minimal detail. • Appropriate citation of examples or case law is limited.
Level 0	<ul style="list-style-type: none"> • No response or no response worthy of credit.

Note: While citation of case law is not relevant for all topics, it is essential for some.

Answer technique for Questions 1, 2 and 3

- ⇒ 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.
- ⇒ Stick to the question. There are no marks for providing information that has not been asked for.
- ⇒ Your points should cover a range of information relevant to the question.
- ⇒ Try to include a statute if relevant.
- ⇒ Try to include at least two or three cases for relevant topics.
- ⇒ Do not miss out a question in order to spend more time on other answers – you will lose marks on each question.

COPYRIGHT
PROTECTED



Levels of Response Criteria for Questions	
A03	
Level 4 7–8 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 5–6 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 3–4 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 1–2 marks	<ul style="list-style-type: none"> Limited analysis of legal concepts and issues. The response has limited focus on the question. Discussion of key points is minimal.
Level 0	No response or no response worthy of credit.

Answer template for Question 4

- ⇒ This question requires you to use paragraphs to separate and expand your points.
- ⇒ The mark schemes used by OCR for the former G152 syllabus still work well for this question.

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

- ⇒ Two or three well-developed and focused paragraphs should be sufficient for this question.
- ⇒ The opening sentence of each paragraph should directly answer the question. Avoid 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. To start 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 with knowledge. It is important that your example appears in the middle of the paragraph, rather than at the start, so that you have developed the point.
- ⇒ Develop further 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 conclusion.
- ⇒ Do not miss out this question – even if you do not know enough about the topic. It is easy to pick up at least some marks by writing some sentences that are focused on the question.

Question Examples

For the ‘define’ questions (Questions 1, 2 and 3), see the question examples and the worked examples in the preceding A Level section.

For the ‘discuss’ question (Question 4), see the question examples and the worked examples in the preceding A Level section. NOTE: the AS ‘discuss’ questions are worth 8 marks, whereas the A Level ‘discuss’ questions are worth 12 marks. The worked examples in the A Level section are therefore based on three paragraphs, whereas two or three paragraphs will be sufficient for the AS Level ‘discuss’ question.

**COPYRIGHT
PROTECTED**



Answers

1A: Pre-Legislative Process: Comprehension

1. Green Paper
2. Examples include: car manufacturers, insurance companies, the emergency services, safety groups, etc.
3. An example is Changes to the special educational needs and disabilities (SEND) system in England (2022)
4. White Paper
5. Parliamentary draftsmen

1B: Pre-Legislative Process: Comprehension

1. The government
2. Individuals, organisations or associations
3. Fridays
4. Private Bill
5. Private Members' Bill

1C: Parliamentary Legislation: Comprehension

1. Public Bills, Private Bills, Private Members' Bills
2. Consultation document
3. Formal proposals by the government for a new act
4. Finance bills
5. Short title
6. Committee Stage
7. Report Stage
8. Parliamentary ping-pong
9. Royal Assent
10. Act

1D: Parliamentary Legislation: Anagrams

Clue	Anagram
1 Issued after a Green Paper.	Happier Wet (2)
2 If passed a bill becomes what?	A Complaint After (3)
3 Money bill must be introduced here.	Confuse Shoo Mom (3)
4 Stage after the Second Reading.	Magic Settee Mot (2)
5 The monarch gives a bill formal approval.	Analyse Ro's (20)
6 This ensues if the two Houses disagree on amendments.	Major Criminy Pet-napping (2)
7 A bill that only changes the law for people in one area.	Trivial Pleb (2)
8 They go to the Commons.	A Stablemen Prime Form (3)
9 These allow the government to force through a bill which the House of Lords has refused to pass.	Sacramental Pit (2)
10 A type of bill.	Brambliest Elm Viper (3)

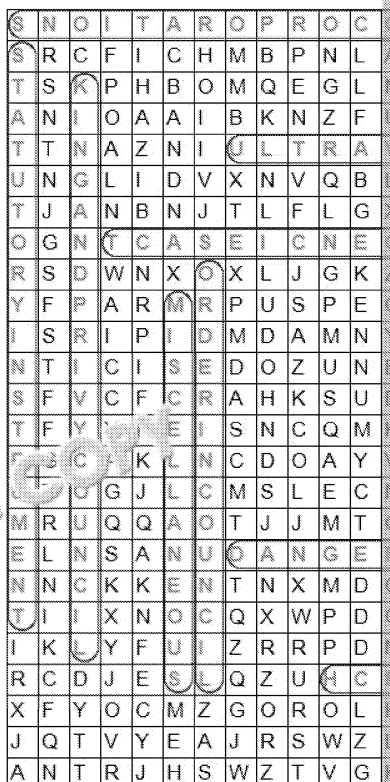
INSPECTION COPY

COPYRIGHT
PROTECTED



2A: Delegated Legislation: Word Search

- Public corporations
- Statutory instrument
- Order in Council
- King and Privy Council
- Dangerous Dogs Act
- Ultra vires*
- Civil Contingencies Act
- Monarch
- Nudists
- Miscellaneous



2B: Delegated Legislation – True or False?

- False – **Parent** (or Enabling) Acts set out what sort of statutory instrument can be made and the procedure to be followed.
- True
- False – ... in each House is required by **Affirmative Resolution Procedure**.
- False – ... within **40** days of its being published.
- True
- True
- False – The court control on delegated legislation is called **judicial** review.
- True
- False – This is on the grounds of **procedural ultra vires**.
- False – **Wednesbury Unreasonableness** is where the courts strike down delegated legislation that no reasonable person would have enacted it.

2C: Delegated Legislation – Fill in the Gaps

- By-laws
- public corporations
- water
- Parliament
- ministers
- dogs
- Orders in Council
- emergency
- Chancellors
- Brexit

2D: Delegated Legislation

- Enabling Act
- By-law
- Statutory Instruments
- Orders in Council
- True
- The High Court
- No – the Act is the Parent Act that allows the delegated legislation to be created
- Affirmative Resolution Procedure (or Super Affirmative Resolution Procedure)
- The delegated legislation is struck down and voided
- The consultation of interested parties was inadequate

**COPYRIGHT
PROTECTED**



3A: Statutory Interpretation: Fill in the Table

Case	Rule	Key word/phrase	
R v Allen 1872	Golden rule	'bigamy'	Offence comm marriage cere
Smith v Hughes 1960	Mischief rule	'in a street'	Offence comm prostitutes we
Mesure v Mesure 1960	Literal rule	'continuous'	Divorce denier
Adler v George 1964	Golden rule	'vicinity'	Offence comm
DPP v Bull 1995	Mischief rule	'female prostitutes'	'No offence as
Meah v Roberts 1978	Golden rule	'food'	Offence comm purporting to
Cheeseman v DPP 1960	Literal rule	'passenger'	No offence
Maddox v Storer 1962	Golden rule	'a apt to carry'	Offence comm 'suitable for ca
Corkery v Carpenter 1951	Mischief rule	'carriage'	The bicycle co
London and North Eastern Railway Co v Farringham 1926	Literal rule	'relaying or repairing'	No compensa

3B: Intrinsic and Extrinsic Aids to Interpretation: Fill in the Table

Case	Issue	Key word/phrase	
Jones v Tower Boot Co. 1997	Jones suffered racial abuse during break times	'in the course of employment'	The emp abuse th
R v Registrar General ex parte Smith 1990	A dangerous adoptee wanted to exercise his right to see his birth certificate	'issue'	Permiss
Coltman v Bibby Tankers 1987	A ship sank with all hands	'equipment'	Comper ship co

3C: Statutory Interpretation: True or False?

1. T
2. F – They can
3. T
4. F – Literal, golden and mischief rules
5. T
6. F – The mischief rule was first used in Heydon's Case 1584
7. F – The literal rule was used
8. T
9. T
10. F – He wanted to widen the use of extrinsic aids, including HANSARD

3D: Statutory Interpretation: Exercise

1. 1998 [Note: The wrong date is used throughout OCR's endorsed textbook]
2. The European Convention on Human Rights
3. The purposive approach
4. UK courts must take into account the decision of the European Court of Human Rights
5. 1973; 2020

3E: Statutory Interpretation: Pairing Exercise

- | | |
|---|---|
| 1. NE R v Allen 1872... | H. Literal rule used |
| 2. Re Sigurdson 1935... | A. Wide approach of the golden rule |
| 3. Heydon's Case 1584... | C. Established the mischief rule |
| 4. Smith v Hughes 1960... | B. Mischief rule used |
| 5. R v Allen 1872... | J. Use of narrow approach of the golden rule |
| 6. Pepper v Hart 1992... | I. Allowed a restricted use of extrinsic aids |
| 7. The Telegraph Act 1869... | D. Telephones had not yet been invented |
| 8. A dictionary from the time of the statute... | E. Extrinsic aid |
| 9. Abley v Dale 1851... | G. Words must be given the ordinary meaning unless it leads to an absurdity |
| 10. A statute's preamble... | F. Intrinsic aid |

COPYRIGHT
PROTECTED



4A: Judicial Precedent Exercise – Define the following terms:

1. Precedent – where earlier judgments govern the outcome of later cases
2. Judgment – the decision of the court in a legal case
3. *Stare decisis* – the reliance on precedent that is a feature of English common law
4. *Ratio decidendi* – the part of a judgment where the reason for the decision is stated
5. *Obiter dicta* – everything in the judgment that is not part of the *ratio decidendi*

4B: Judicial Precedent Exercise – Hidden Word

Court of APPEAL

House of LORDS

OBITER dicta

ORIGINAL precedent

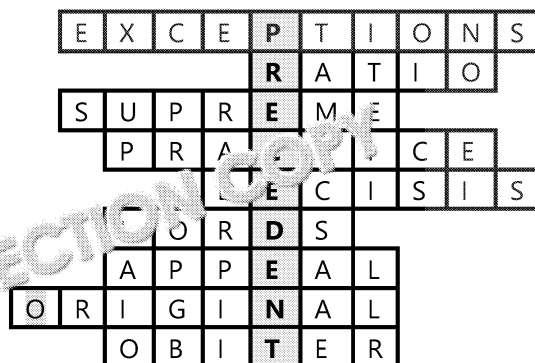
PRACTICE statement

*RATIO decidendi**Stare DECISIS*

SUPREME Court

Young EXCEPTIONS

Hidden word: PRECEDENT

**4C: Exercise – Cases**

Details	Case
The branding was similar to tattooing, plus it was not done for sexual gratification but was a consensual activity between husband and wife.	R v Brown
The House of Lords upheld the judgment of the Court of Appeal that it was possible for a husband to be guilty of the rape or attempted rape of his wife (<i>R v R</i>).	R v Brown
It was ruled that duress is not a defence to murder.	R v Howe
This judgment established the Neighbour Principle as the basis of the legal principles for the modern tort of negligence.	Donoghue v Stevenson
The House of Lords decided that the judgment in <i>Anderton v Ryan</i> was wrong and that it was possible to be guilty of an attempted crime even if the facts made that crime impossible to commit.	R v Shivpuri
It was suggested that duress should not be a defence to attempted murder.	R v Howe
After the High Court had ruled that a political decision concerning the Brexit process was not subject to judicial review, the Supreme Court ruled that it was.	R (Miller) v Secretary of State for the European Union 2017
Necessity is not available as a defence if one kills and injures a cabin boy.	R v Dudley and Stephens
The House of Lords ruled that times have changed since <i>Addie v Dumbreck</i> and that a duty of common humanity was owed to child trespassers.	Herrington v British Railways Board
It was ruled that duress is not a defence to attempted murder.	R v Gotts

4D: Judicial Precedent

1. <i>Stare decisis</i>	6. Made in error	11. R v Shivpuri	16. Young
2. House of Lords	7. Distinguishing	12. Persuasive	17. R v Brown
3. Reversing	8. <i>Ratio decidendi</i>	13. No	18. Yes
4. 1966	9. <i>Obiter dicta</i>	14. London Tramways	19. R v Brown
5. House of Lords	10. Overruling	15. No	20. Persuasive

COPYRIGHT
PROTECTED

5A: Law Reform: Influences

1. Fixed Term Parliaments Act
2. Girls Aloud (Nicola Roberts)
3. Opinion polls
4. Greenpeace
5. Lobbying

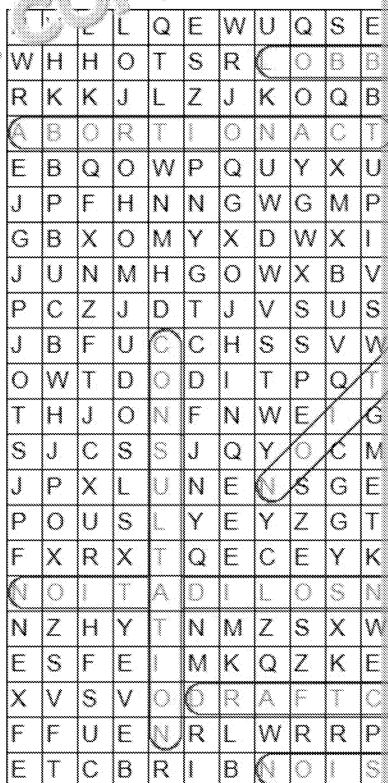
5B: Law Reform: The Law Commission

The 1. **Law Commissions Act** in 1965 established the Law Commission. It consists of two members appointed by the Lord Chancellor. It is a rather small body that has suffered from a lack of resources to simplify and update the law. It has tidied up statute law by 4. **repealing** over 3,000 pieces of legislation by putting all the law on one topic together. It is involved in the 6. **codification** of laws, which is the bringing together of a whole section of law into one place. An example was the **Draft Criminal Code**, which has been ignored by successive 7. **governments**. The Law Commission also carries out consultation exercises and prepares 8. **draft** bills, which are then required. When researching an area of law, the first produces a 9. **consultation** paper that is sent to interested groups. It publishes its proposals for reform in a 10. **Law Report**.

5C: Law Reform: Word Search

Answers

1. Law Commission
2. Lobbying
3. Manifesto
4. Greenpeace
5. Abortion Act
6. Codification
7. Consolidation
8. Consultation
9. Media
10. Draft Criminal Code



6A: Exercise – Identify the Correct Institution

Description	Institution
There are currently 705 members of this.	The European Parliament
Its members must be legal experts whose independence is beyond doubt.	The Court of Justice
It acts as a civil service and is responsible for the implementation of the EU.	The European Commission
It issues regulations , which are the equivalent of laws that member states must follow, and directives , which are matters that member states must implement through their own legislative procedures.	The Council of the European Union
Its role is to ensure the uniform application of EU law throughout the EU.	The Court of Justice
It must approve the President and Commission, and can remove the Commission after a two-thirds majority on a motion of censure.	The European Parliament
Its president in 2024 was Ursula von der Leyen.	The European Commission
It can fine a member state for failing to fulfil community obligations or force a change in national law.	The Court of Justice
It acts as the 'Guardian of the Treaties'.	The European Commission
Each member state sends a representative.	The Council of the European Union

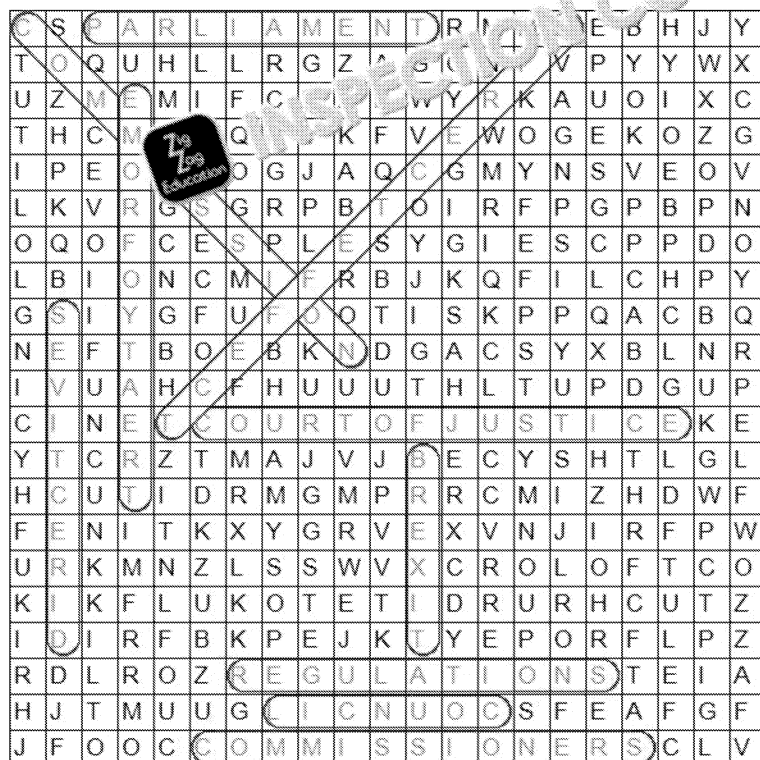
COPYRIGHT
PROTECTED



6B: Exercise

1. The treaties
2. European Economic Community
3. Treaty of Rome
4. Six
5. Accession treaty
6. Amending treaty
7. Examples include the Maastricht Treaty 1992 and the Treaty of Lisbon 2007
8. Article 288
9. Implement it into national law
10. Usually within two years

6C: EU Law: Word Search



Question
1. The EU institution that administers the EU.
2. The EU institution that is directly elected.
3. The EU institution that makes key decisions.
4. The EU's judicial institution.
5. There are 27 of these, one from each member country.
6. This founded the European Economic Community in 1957.
7. These EU laws are directly applied to member states.
8. Member states are required to implement these through statute or through delegated legislation.
9. The name for the process by which the UK left the EU.
10. The mechanism, developed in the Van Gend en Loos case, which ensures that individuals can use national courts to enforce their rights.

**COPYRIGHT
PROTECTED**

