AQA A-Level politics and law- full course notes

Legal Studies (St Thomas More Catholic School)

AQA A-LEVEL Politics notes

Parliamentary Law Making

Before a bill passes through Parliament, a consultation process often takes place. Green papers and White papers are often issued, outlining proposals for the bill, in order to canvas opinion and to generate debate before the bill comes before Parliament.

A **Green Paper** is a consultation document issued by the government which contains policy proposals for debate and discussion before a final decision is taken on the best policy option. It will often contain several alternative policy options to consider. The aim of a green paper is to allow people both inside and outside Parliament to give the department feedback on its policy or legislative proposals. Unsurprisingly, it is printed on pale green paper.

A **White Paper** is a document issued by a government department which contains detailed proposals for legislation. It is the final stage before the government introduces its proposals to Parliament in the form of a bill. When a White Paper is issued, it is often accompanied by a statement in the House from the secretary of state of the department sponsoring the proposals. A White Paper is sometimes produced following the consultation process which is undertaken when the government issues a Green Paper.

When a bill has been drafted, often by a government department, the minister responsible for the department must introduce the bill, usually in the House of Commons to the rest of Parliament, who will debate and amend it during a series of stages. Bills can also begin their journey in the House of Lords. Let's examine the journey of a government bill, beginning in the House of Commons.

At **First Reading**, the title and the main aims of the bill are read out. No debate occurs at this stage. A verbal vote is then taken to decide whether or not to take the bill to Second Reading. If a majority agrees, then a date is set for Second Reading, which is often set as the next day.

At **Second Reading**, the main policy areas of the bill are debated by the whole House, often led by the minister who proposed the bill. A vote is then taken and if a majority agrees, then the bill will move to the Committee Stage, where greater scrutiny will take place. Once a bill passes to the Committee Stage, it is unlikely that the bill will fail to become an Act of Parliament, although the nature of the bill might change, following amendments.

At the **Committee Stage**, a standing committee of between 16 and 50 MPs conduct a line-by-line examination of the bill. The MPs are usually chosen for their expertise in the area and a proportion come from all parties. They debate each and every clause, in order to refine the language used and to amend any problematic issues that present themselves. A vote must be taken on each amendment that is made before the bill moves to the Report Stage.

At the **Report Stage**, the standing committee reports back to the whole House on the issues raised in the Committee Stage and on any amendments made. The purpose of this stage is also to ensure that the standing committee adheres as far as possible to the principles generally agreed by the House at Second Reading.

The House may make additional amendments at this stage if necessary, but these must be approved by a further vote. Once the bill passes a vote, it may move on to the Third Reading.

The **Third Reading** is where there is a review of the whole bill. This stage is often a formality, as most of the issues would have been addressed at earlier stages. After a successful vote, the bill then passes to the House of Lords, where the same stages are repeated, albeit with a few differences.

When a bill reaches the House of Lords, First and Second Reading are no different in essence to their counterparts in the House of Commons. However, when the bill reaches the Committee Stage, there are some key differences to note. Firstly, in the House of Lords, the whole house conducts the Committee Stage - there are no standing committees in the House of Lords. Secondly, although the House of Lords has the authority to delay a bill, they only have limited power to do so, due to the Parliament Acts 1911 and 1949. A delay to money bills can only be up to one month and to all other bills up to one year. After that, the House of Commons can bypass the House of Lords and take the bill straight to Royal Assent. The House of Commons is seen as superior in this regard, due to the fact that their members are democratically elected.

If the Lords reject or request amendments to a bill, passed to them by the Commons, there may be a period where the two Houses pass the bill back and forth until a compromise is agreed. This is known colloquially as ‘ping pong’.

The final stage is **Royal Assent**. This is where the monarch, or rather someone appointed on their behalf, signs off on a bill, bringing it into law. The monarch has not given Royal Assent in person since 1854 and it is customary for assent to be given by the Speakers of the two Houses. Additionally, Royal Assent has not been refused since 1707, when Queen Anne refused to give assent to the Scottish Militia Bill. It is therefore a formality today. On the day that assent is given, the bill will usually become law at midnight, unless there needs to be a delay, for example, to prepare or train people, such as the Police or local authorities to implement the law.

Parliamentary Law Making

Before a bill passes through Parliament, a consultation process often takes place. Green papers and White papers are often issued, outlining proposals for the bill, in order to canvas opinion and to generate debate before the bill comes before Parliament.

A **Green Paper** is a consultation document issued by the government which contains policy proposals for debate and discussion before a final decision is taken on the best policy option. It will often contain several alternative policy options to consider. The aim of a green paper is to allow people both inside and outside Parliament to give the department feedback on its policy or legislative proposals. Unsurprisingly, it is printed on pale green paper.

A **White Paper** is a document issued by a government department which contains detailed proposals for legislation. It is the final stage before the government introduces its proposals to Parliament in the form of a bill. When a White Paper is issued, it is often accompanied by a statement in the House from the secretary of state of the department sponsoring the proposals. A White Paper is sometimes produced following the consultation process which is undertaken when the government issues a Green Paper.

When a bill has been drafted, often by a government department, the minister responsible for the department must introduce the bill, usually in the House of Commons to the rest of Parliament, who will debate and amend it during a series of stages. Bills can also begin their journey in the House of Lords. Let's examine the journey of a government bill, beginning in the House of Commons.

At **First Reading**, the title and the main aims of the bill are read out. No debate occurs at this stage. A verbal vote is then taken to decide whether or not to take the bill to Second Reading. If a majority agrees, then a date is set for Second Reading, which is often set as the next day.

At **Second Reading**, the main policy areas of the bill are debated by the whole House, often led by the minister who proposed the bill. A vote is then taken and if a majority agrees, then the bill will move to the Committee Stage, where greater scrutiny will take place. Once a bill passes to the Committee Stage, it is unlikely that the bill will fail to become an Act of Parliament, although the nature of the bill might change, following amendments.

At the **Committee Stage**, a standing committee of between 16 and 50 MPs conduct a line-by-line examination of the bill. The MPs are usually chosen for their expertise in the area and a proportion come from all parties. They debate each and every clause, in order to refine the language used and to amend any problematic issues that present themselves. A vote must be taken on each amendment that is made before the bill moves to the Report Stage.

At the **Report Stage**, the standing committee reports back to the whole House on the issues raised in the Committee Stage and on any amendments made. The purpose of this stage is also to ensure that the standing committee adheres as far as possible to the principles generally agreed by the House at Second Reading. The House may make additional amendments at this stage if necessary, but these must be approved by a further vote. Once the bill passes a vote, it may move on to the Third Reading.

The **Third Reading** is where there is a review of the whole bill. This stage is often a formality, as most of the issues would have been addressed at earlier stages. After a successful vote, the bill then passes to the House of Lords, where the same stages are repeated, albeit with a few differences.

When a bill reaches the House of Lords, First and Second Reading are no different in essence to their counterparts in the House of Commons. However, when the bill reaches the Committee Stage, there are some key differences to note. Firstly, in the House of Lords, the whole house conducts the Committee Stage - there are no standing committees in the House of Lords. Secondly, although the House of Lords has the authority to delay a bill, they only have limited power to do so, due to the Parliament Acts 1911 and 1949. A delay to money bills can only be up to one month and to all other bills up to one year. After that, the House of Commons can bypass the House of Lords and take the bill straight to Royal Assent. The House of Commons is seen as superior in this regard, due to the fact that their members are democratically elected.

If the Lords reject or request amendments to a bill, passed to them by the Commons, there may be a period where the two Houses pass the bill back and forth until a compromise is agreed. This is known colloquially as ‘ping pong’.

The final stage is **Royal Assent**. This is where the monarch, or rather someone appointed on their behalf, signs off on a bill, bringing it into law. The monarch has not given Royal Assent in person since 1854 and it is customary for assent to be given by the Speakers of the two Houses. Additionally, Royal Assent has not been refused since 1707, when Queen Anne refused to give assent to the Scottish Militia Bill. It is therefore a formality today. On the day that assent is given, the bill will usually become law at midnight, unless there needs to be a delay, for example, to prepare or train people, such as the Police or local authorities to implement the law.

Training of Solicitors

There are two types of legal personnel making up the legal profession in England and Wales: solicitors and barristers. Let’s explore how they each train and compare the similarities and differences in their roles.

The **training of solicitors** can be split into three main routes. The first two routes are very similar.

Firstly, a trainee would obtain an undergraduate degree in Law, usually with a 2:2 or higher, although a 2:1 or first-class degree is preferred, due to the competition for places.

The next stage is the **Legal Practice Course**, or LPC for short. This is a one year course, where trainees will learn the basic skills required of solicitors in their day-to-day roles. The skills include negotiation, interviewing clients, advocacy (which means arguing on someone's behalf), legal research, drafting documents and business skills such as keeping accounts.

Finally, the trainee would need to obtain a training contract with a legal firm such as a solicitors' firm, the Crown Prosecution Service, or even a local authority. The work-based training contract is paid and lasts two years, where the skills learnt during the LPC are applied in real life. The trainee will be supervised closely and their work will be reviewed regularly by a qualified solicitor, but over time the trainee will be given their own cases to work on.

Once the trainee has completed their training contract, they will be admitted by the Law Society as a solicitor. Their license to practice law must be renewed annually.

The second route is almost identical to the first route, except for the first stage. It is possible for a trainee's undergraduate degree to be in a subject other than Law. If so, they are able to complete a 'conversion course', called the **Graduate Diploma in Law (GDL)**. This is an intense course, which aims to condense the main topics of a Law degree into one year. Once the GDL is complete, trainees will then proceed with the LPC and training contract in the normal way.

Legal Executive - the third route is the non-graduate route. Here, the trainee completes a work-based qualification from the outset, without the need for a degree. To obtain a place on this training route, the trainee, typically a mature student, must first become a trainee legal executive. A legal executive is a legal professional, but with much more limited authority and knowledge than a typical solicitor or barrister. To gain a place as a trainee, an applicant must have a minimum of four GCSE grades at grade 4 or above, including English. However, in practice, since competition for places is high, higher grades will usually be expected.

Whilst working as a trainee legal executive, one must become a member of CILEX and complete parts one and two of the CILEX examinations. CILEX stands for Chartered Institute of Legal Executives and is the organisation that regulates their training and practice. Once these have been passed, the trainee may then be eligible to become a Fellow of CILEX, so long as they have worked in a solicitor's office for at least five years and are at least 25 years of age.

Once they reach this point, they are qualified as a Legal Executive and would normally deal with issues such as probate (wills) and conveyancing (buying and selling of real estate). If, however, the trainee wanted to become a solicitor, then all they would need to do is to complete the Legal Practice Course, just like trainee solicitors on the graduate routes.

Roles of Solicitors and Barristers

The roles of these two legal professionals are very different, albeit with a few similarities. They both, for example, offer legal advice, both verbally and in written

form. In addition, they can both argue on their client's behalf in a range of legal settings and on any legal issue. However, the differences lie within these details.

For example, a barrister has rights of audience in any court in England and Wales, whereas a solicitor only has rights of audience in the Magistrates' and County Courts. They sometimes appear in Crown Courts, but usually only at sentencing, or on appeal from the Magistrates' Court (if they had been the solicitor in the original case). In order to extend their rights of audience to higher courts, a solicitor may complete further training and become a Solicitor-Advocate.

In terms of the tasks undertaken, solicitors spend a lot more time preparing cases, interviewing clients, gathering evidence, drafting contracts and writing letters on their clients' behalf. In contrast, barristers spend most of their time in court, arguing in front of judges and juries. This is called "advocacy". Their casework has usually been prepared by a solicitor, who has handed them the case the day before, or even on that same morning!

Solicitors tend to work in law firms, where they will often aim to become a partner one day and be able to share in the profits of the firm, as well as taking a salary. In contrast, barristers are usually self-employed. They usually work in a barristers' chambers, alongside other self-employed barristers, but who share facilities, administrative staff and crucially, a clerk, who books cases for them.

Clients can go directly to solicitors for advice and advocacy, but barristers are usually hired by solicitors, although under the Direct Access rules, clients can approach barristers without going through a solicitor first. The cab-Rank Rule also applies to barristers, where they are not allowed to turn down a case if they are offered it, so long as they are free to take it on and is ready to be taken to court.

In summary, solicitors do most of their work before the beginning of a court case. Barristers do most of their work once it begins.

Training of Barristers

Barrister training comprises of three stages: the academic stage, the vocational stage and the pupillage stage.

Barrister training requires that a trainee obtains a degree in Law. Where the degree is in a different subject, the trainee must complete the Graduate Diploma in Law (GDL) or pass the Common Professional Examinations (CPE), in the same way that a trainee solicitor would if their degree was not in Law.

The vocational stage is where the trainee would learn the skills required by barristers for their roles both in and out of court. The skills are learnt during the Bar Professional Training Course (BPTC), which used to be known as the Bar Vocational Course. The skills learned include legal research, advocacy, drafting documents, negotiation, client interviewing, case preparation and opinion-writing.

In order to register on the BPCT, each trainee must join one of the Inns of Court: Lincoln's Inn, Grey's Inn, Middle Temple and Inner Temple. These Inns provide academic support, library and dining facilities, bursaries and they regulate the conduct of the trainees. The BPTC lasts one year, during which there are twelve qualifying sessions, or 'dinners' as they are known, as well as pass exams at the end of the course.

The final stage is the pupillage stage, where the trainee must try to secure a one-year work placement, shadowing a qualified barrister. The year is split into two six-month parts. During the 'first six', the trainee will perform minor tasks and observe qualified barristers as they perform their roles. During the 'second six', the pupil is able to appear in court and conduct their own cases, usually under supervision. This stage is paid, although typically at half the salary of a trainee solicitor completing their training contract.

Actus Reus and Mens Rea

In order for a person to be found guilty of committing a criminal offence, it usually has to be proved that the defendant has both committed a ‘guilty act’ with a ‘guilty mind’. Let’s explore those two ideas here.

Actus Reus - The guilty act, or actus reus as it is known, is the physical part of the offence. For example, if the case concerned theft, the guilty act would occur as soon as the defendant begins to treat someone else’s property as their own, often by taking it away from the owner. In a Battery case, the actus reus would normally be the infliction of force upon the victim.

In order for the actus reus to be established, it must be proved that the act was performed voluntarily. If it was an involuntary act, then this is usually not enough to secure a conviction, except in rare circumstances such as offences of strict liability. A famous dangerous driving case regarding this was Hill v Baxter. Here, Lord Goddard explained that an ‘unknown illness’ (as the defendant pleaded) was not evidence of an involuntary act. Only something like a swarm of bees entering the car could render the defendant’s actions as involuntary.

Secondly, the actus reus might actually be an omission or the absence of an act. There are several examples where an omission could form the actus reus of an offence. For example in R v Pitwood, the defendant failed to operate a level crossing, causing a fatal collision. In R v Stone and Dobinson, the defendants failed to take care of a sick relative. In R v Miller, the defendant failed to address a dangerous fire that they had accidentally caused. And in R v Dytham, an off-duty police officer failed to intervene when a person was kicked to death by a bouncer whilst in their presence.

Finally, there are some offences, which only require an act. It need not be voluntary and in some cases, the defendant may even claim they were unaware of it. These offences are known as strict liability cases. The act is simply being in a state of affairs. One key case to know for strict liability is the case of R v Larsonneur. In this case, the defendant had moved to Ireland as her right to remain in England had expired. However, she was deported back to England, from Ireland, where she was promptly arrested, essentially for being in England without permission.

Mens rea means the ‘guilty mind’ and refers to the metal element of a criminal offence. This could, for example, be seen as an intention to steal or taking a risk as to whether harm could be caused to somebody. There are various ways of categorising different levels of mens rea. Intention clearly has more culpability than mere recklessness. However, recklessness still demonstrates that a risk was known and was taken anyway, showing a disregard for the wellbeing of others.

Intention can be split into direct intention and oblique intention. Direct intention is where the defendant aims to cause the damage that was inflicted. This could be seen in the case of R v Mohan where the defendant aimed to run over a police officer. The intention here was clearly to cause harm by hitting the victim with the car.

Oblique intention is a lesser form of intention, where the defendant still aimed to cause harm, but not the harm that actually occurred. The case of R v Woollin illustrates this principle. In this case, the defendant threw his baby in a fit of rage, knowing that serious harm was a virtual certainty. The baby died. Whilst death was allegedly not the defendant's aim, harm was still intended on some level. A key idea to consider here is whether foresight of consequences is proof of intention. In the case of Nedrick, it was decided that if the defendant was virtually certain that harm would occur, then this is evidence from which the jury might infer intention, however, the jury may arrive at the opposite conclusion.

Subjective recklessness is the next level down from intention regarding mens rea for criminal liability. R v Cunningham that the defendant must have an appreciation of a risk to another, from his actions. If he then takes that risk and causes harm as a result, then that will satisfy the mens rea requirements for most crimes (those which do not require intention for criminal liability). This decision was approved and upheld in the case of R v Gemmell and Richards, where two boys set fire to a bin, which then spread to a building, causing extensive damage. The boys knew their actions could have caused harm and they took that risk, therefore they were found to be liable.

Finally, mens rea can be established via gross negligence. This is where there is a duty of care, which was breached, causing death. A jury must also decide that

this breach was so serious or “gross” that it should amount to criminal conduct. The case of R v Adomako illustrates this idea clearly. Here, an anaesthetist failed to spot that an oxygen tube had become disconnected during a routine operation. The patient died after being starved of oxygen for over two minutes. At the trial it was discovered that most anaesthetists would have spotted the disconnected oxygen tube within twenty seconds, thereby eliminating any risk to the patient. Due to this, the jury found that not only was Adomako negligent but that he was grossly negligent, amounting to criminal liability.

Murder

Murder is a common-law offence and was defined by Lord Coke in 1797 as an “unlawful killing of a reasonable person in being under the Queen’s peace, with malice aforethought, express or implied”. That definition is still what defines murder today. The first part of the definition is the actus reus of murder. The second part is the mens rea.

Let’s break down Coke’s definition into its constituent parts and see how the courts have applied those parts in case law.

Unlawful Killing means that the defendant must have caused the death and be without any legal permission to do so. Certain defences such as self-defence would provide such legal permission. The killing can come about via an act or an omission, meaning a failure to act. In the case of Re A, regarding the separation of conjoined twins, doctors were granted legal permission to operate in order to

separate the twins. Without this operation, both twins would certainly have died. The doctors performed the operation, despite knowing that it would cause the death of the weaker twin. They had legal permission to do so and therefore could not be found guilty of murder.

A case that illustrates murder by omission is R v Stone and Dobinson, where the defendants had agreed to look after Stone's ill sister. They failed to provide basic care and she died as a result. Their failure to act, an omission, was given as the actus reus of the offence of murder.

A **Reasonable Person in Being** refers to the victim as being human. The victim, however, cannot (for the purposes of 'murder') be a foetus or brain-dead. This is illustrated in cases such as Attorney General's Reference No.3 of 1994, where the defendant attacked a pregnant woman, causing her to prematurely give birth two weeks later. The premature baby died as a result of the early birth, however, the House of Lords declared the defendant not guilty of murder because, at the time of the attack on the mother, the baby was not yet independent of the mother and was therefore not regarded by the court as a reasonable person in being.

In the case of R v Malcherek and Steel, the victim's life-support machine was switched off after the doctors had established that the death of the brain-stem. The defendant appealed but was unsuccessful because the doctor's actions in switching off the life-support did not break the initial chain of causation, caused by the injuries inflicted by the defendant, which the victim died from.

Under the **Queen's Peace** means that the defendant cannot be found guilty if they kill an enemy in the course of war. In contrast to this, the defendant in R v Page, a British soldier, was found guilty of murder, as they killed an Egyptian national whilst off-duty. The defendant had not killed 'in the course of war' in this instance. Furthermore, in the case of R v Clegg, a soldier fired shots at a stolen car that had driven through an army checkpoint in Northern Ireland. Since the car no longer posed a threat (as it was driving away from the defendant), the court decided that the force used was excessive and unreasonable. The defendant was convicted of murder as since he wasn't allowed the defence of "self-defence", he wasn't granted legal permission to kill.

Malice Aforethought means the intention to cause harm. For the offence of murder, the intention can either be "express" (to cause death) or "implied" (to cause Grievous Bodily Harm). Either of those two intentions will suffice for a murder conviction.

Over the years, the law on intention, particularly in relation to murder, has developed quite significantly.

In R v Moloney, the defendant shot his step-father, killing him. At trial, it was argued that the defendant didn't think the gun was pointed at his step-father, with whom he enjoyed a good relationship. Lord Bridge decided that intention could only be inferred if: (1) death or serious injury was a natural consequence of the voluntary act, and (2) the defendant foresaw that consequence as being a natural

consequence of their actions. The jury does not have to automatically ‘find’ intention, but, rather, they have the freedom to infer intention if they see fit. The defendant in Moloney was therefore found guilty of manslaughter rather than murder, as intention was not established on appeal to the House of Lords.

The court, in the case of R v Nedrick, went further than the Moloney decision and argued that if death was a virtually certain consequence of the defendant’s actions and if the defendant was aware of this at the time of the killing, then they should be convicted. This decision was later upheld in R v Woolin.

Sometimes it is difficult for the courts to prove whether or not the intention of a violent attack is to kill, or just to cause serious injury. Since Coke’s definition allows “malice aforethought implied”, juries have the freedom to decide for themselves what the defendant intended, regardless of what he or she pleads. Either way, however, so long as intention to cause at least GBH is established, a murder conviction can follow.

This was illustrated in the case of R v Vickers. Here it was established that the defendant intentionally caused Grievous Bodily Harm to his victim after being discovered burgling a sweet shop. The victim died from her injuries and the defendant was convicted of murder, despite claiming that it was never their intention to kill. However, they were aware of the severity of the injuries they had inflicted on their elderly and vulnerable victim. This allowed the jury to infer intention in order to convict the defendant.

Voluntary Manslaughter

When a defendant faces a murder charge in court, there are two 'partial defences' that can reduce the conviction from Murder to Voluntary Manslaughter. This is important, as it also removes the mandatory life sentence that results from a murder conviction. The two partial defences available are Diminished Responsibility and Loss of Control. Both were recently reformed in the Coroners and Justice Act 2009, after being created originally by the Homicide Act 1957.

Diminished Responsibility - This is defined in section 52 of the Coroners and Justice Act 2009. In order to plead successfully, the defendant must be able to demonstrate the following:

1. Abnormality of mental functioning, caused by a recognised medical condition,
2. Which provides an explanation for the defendant's acts or omissions in being party to the killing,
3. Which substantially impaired the defendant's ability to:
4. Understand the nature of their conduct
5. Form a rational judgement
6. Exercise self-control

The burden of proof is on the defendant and the standard of proof is on the balance of probabilities.

Let's take each of the Diminished Responsibility criteria and examine how the courts have interpreted this partial defence.

Abnormality of mental functioning - In the original partial defence, defined in the Homicide Act 1957, the phrase used was "abnormality of mind". That phrase was updated to 'abnormality of mental functioning" to clarify the development of the law through the courts. It was not intended to change how the law should be applied. Therefore precedents set under the old law still operate today.

Lord Parker defined abnormality as: "a state of mind so different from that of ordinary human beings that the reasonable man would term it abnormal."

Abnormal mental functioning is determined by a jury decision, often after hearing medical evidence. It must arise from a recognised medical condition. The term “abnormal” can be interpreted quite widely and has included: pre-menstrual tension, battered woman syndrome, epilepsy, chronic depression and even jealousy. A comprehensive list of recognised medical conditions can be found in the British Classification of Mental Diseases.

It is important to note that juries are not bound by medical evidence - they can choose to ignore it if they wish. A case illustrating this was that of Peter Sutcliffe, AKA the “Yorkshire Ripper”. The medical evidence was overwhelming: Sutcliffe was a paranoid schizophrenic. However, the jury decided to ignore this and they denied him the partial defence of Diminished Responsibility, convicting him of murder.

Provides An Explanation - The abnormality of mental functioning must provide an explanation for the behaviour of the defendant. Simply having a recognised medical condition is not enough, as it could just be coincidental and not be the reason why the killing occurred. Furthermore, it is important to understand that the killing was not the result of an external factor, such as intoxication. Intoxication would not necessarily prevent a defendant from pleading Diminished Responsibility, but they would have to show that they would have killed even if they weren’t intoxicated. Where intoxication does lead to Diminished Responsibility the case can become a little more complex. Long term abuse of drugs and/or alcohol can lead to brain damage. If the defendant was, for example, an alcoholic, they may be able to plead Diminished Responsibility, citing brain damage or Alcohol Dependency Syndrome as their recognised medical condition.

Substantially Impaired - The defendant’s ability to understand the nature of their conduct, form a rational judgement, or exercise self-control must be “substantially impaired”. Impaired means that they may still have some ability. They do not have to have lost all ability. However, the word “substantially” means that the impairment must be more than trivial. If you are answering a scenario question, then look out for evidence that the defendant planned the killing. This might be a sign that the defendant’s ability was not “substantially impaired”, although it would ultimately be up to the jury to decide, as confirmed in the case of R v Eifinger. In 2016, Lord Hughes, in the case of R v Golds, developed the meaning further, arguing that “substantial” should be taken to mean “important or weighty”.

Loss of Control - The partial defence to murder of Loss of Control, again reducing the charge to voluntary manslaughter, is defined in section 54 of the Coroners and Justice Act 2009. In order to plead successfully, the defendant must be able to demonstrate the following:

1. A loss of self-control
2. The loss of self-control had a qualifying trigger
3. A person of D’s sex and age, with a normal degree of tolerance and self-restraint and in the circumstances of D, might have reacted in the same or in a similar way to D.

Loss of Self-Control - The defendant must be able to demonstrate, again on the balance of probabilities, that they had lost control at the time of the killing. Sudden loss of control is not necessary to successfully plead the defence. In the case of R v Ahluwalia, the defendant (under the previous partial defence of provocation) was unsuccessful in her plea, as a period of time had passed before she lost control, killing her husband after he had threatened her. Under the new law, she would most likely be allowed the defence, providing that she could persuade a jury that she had not acted in a considered desire for revenge.

Qualifying Triggers - A qualifying trigger is the reason why the defendant killed the victim. There are two qualifying triggers allowed by this partial defence, set out in section 55 of the C&JA 2009. Firstly, D's fear of serious violence from V against D or another identified person. Secondly, a thing or things done, or said, or both, which (a) constitute circumstances of an extremely grave character, and (b) cause D to have a justifiable sense of being seriously wronged. Only one of the two qualifying triggers needs to be proved. Excluded triggers include sexual infidelity, incitement to use violence by D and acting in a considered desire for revenge.

Reasonable Man Test - Finally, to plead the defence successfully, the defendant must show that the following "reasonable man" might also have reacted in the same or a similar way: a person of D's sex and age, with a normal degree of tolerance and self-restraint, and in the circumstances of D. It is important to note when dissecting a scenario task, that a defendant with a "hot temper" would not typically have a normal degree of tolerance. Furthermore, the circumstances of D can include things like unemployment, as seen in R v Gregson or having a history of abuse, as seen in R v Hill. Medical conditions such as schizophrenia, depression or even epilepsy could also be included as circumstances. However, in cases where the defendant has a medical condition, it is often easier to plead Diminished Responsibility. No matter what, the "circumstances" must be relevant to the defendant's capacity for tolerance or self-restraint. Voluntary intoxication is not allowed as a circumstance, as demonstrated in R v Asmelash. However, if the defendant would have acted in the same way whilst sober, then the defence should still be available to the defendant.

Involuntary Manslaughter

Unlawful Act Manslaughter is a common-law offence and isn't defined under any particular statute. The offence is defined as an unlawful, criminal act, which is dangerous and which causes the death of the victim.

Act - The killing must result from an act rather than an omission. Where the death results from an omission, you should instead consider Murder or Gross Negligence Manslaughter as the criminal charge.

The act must be unlawful in a criminal sense. A civil wrong is not enough, as illustrated in the case of R v Franklin, where the defendant threw a box off a pier, killing a swimmer. At the time, the throwing of the box off the pier was considered a civil offence, rather than a criminal one, so the defendant could not be found guilty of unlawful act manslaughter. In the case of R v Lamb, the defendant pointed and fired a revolver, killing the victim. However, since neither the defendant nor the victim believed that the revolver would fire a bullet, there was technically no "assault". This is because there was no apprehension of violence, which is a necessary part of a criminal assault charge.

The term "**dangerous**" is defined by an objective test, laid down in the case of R v Church. Here, the court decided that the unlawful act must be such as all sober and reasonable people would inevitably recognise…the risk of some harm. Recognition of serious harm is not required for danger to be established. Where serious harm is recognised, students should consider that a Murder charge may be more appropriate, as there is the possibility that the defendant might satisfy the requirement for "malice aforethought implied", as illustrated in the case of R v Vickers.

Finally, the unlawful and dangerous act must be the **cause of the death**. In some cases, it may be possible that the unlawful and dangerous act is merely coincidental to the death. Cases involving drug taking are interesting to note. For example, in the case of R v Kennedy, the defendant supplied the victim with heroin. This is an act that is unlawful and would be considered dangerous. However, since the injection of heroin was what killed the victim, rather than simply being supplied with it, the defendant was found not guilty of unlawful act manslaughter.

Gross Negligence Manslaughter - This is a common-law offence, which can be committed via an act or an omission. It was originally defined in R v Bateman. However, it was more recently defined very clearly in the case of R v Adomako. In R v Adomako, the defendant was an anaesthetist, whose job was to monitor amongst other things, the oxygen supply to the patient during a routine eye operation. The oxygen tube became disconnected and consequently, the victim died.

At the trial it was established that the defendant clearly breached their duty of care to the victim by failing to monitor the victim's oxygen levels. In fact, it was argued that the reasonable man, in other words, other competent anaesthetists, would have noticed the disconnected tube much earlier than the defendant and so harm would not have resulted. In fact, at the trial, expert witnesses argued that a competent anaesthetist would have realised the signs of the oxygen tube disconnection after about 15 seconds, rather than the four minutes that the defendant took, and even then only after being alerted by the alarm on the machine.

According to the judgement in R v Lawrence and reaffirmed in R v Adomako, the risk to the victim must be of death, rather than simply a risk of some injury.

Finally, it is up to the jury to decide whether the level of negligence exhibited was “so gross” as to amount to a criminal rather than a civil negligence charge. A good quote to use in your exam answers comes from Lord Mackay LC, in Adomako: “whether having regard to the risk of death involved, the conduct of the defendant was so bad in all the circumstances as to amount in their judgment to a criminal act or omission”.

The grossness also depends upon the seriousness of the breach of duty committed by the defendant, in all the circumstances in which the defendant was placed, when it occurred. This gives the jury the option to assess the seriousness within the context of the situation.

Assault

The offence of assault is defined in the Criminal Justice Act 1988, section 39. Assault occurs when a person intentionally or recklessly causes another to apprehend immediate unlawful personal violence. This is well illustrated in the case of R v Nelson, where the Court of Appeal stated that “What is required for common assault is for the defendant to have done something of a physical kind which causes someone else to apprehend that they are about to be struck”. The actus reus of assault may be an act or an omission. They can include words, actions, or even silence. In R v Constanza, the defendant wrote the victim letters which caused the victim to feel threatened, either now or in the future. In R v Ireland, it was silent phone calls that the court determined as the actus reus of an assault.

In addition, the defendant need not be in “fear”, i.e. “scared”, they just have to hold the belief that violence will occur. Bravery on the part of the victim doesn’t negate the offence. Furthermore, there is no offence if the victim perceives that there is no threat. This was the case in R v Lamb, where the victim believed that a revolver being pointed at him would not fire a bullet (as he believed that the firing chamber was unloaded).

Sometimes it is possible that an assault can be negated. This may be because it is impossible for the threat to be carried out. As well as this, words can also

negate a threat. For example in Tuberville v Savage, the defendant threatened the victim, but then qualified the threat by stating that the threat wouldn't be carried out at that time, showing that he wasn't going to do anything.

Finally, the force which is threatened must be unlawful. Examples, where lawful force could be used, might include force used in self-defence or defence of another, or where the force is threatened or used by a police officer in the execution of their duties.

Battery

The offence of battery is also defined in the Criminal Justice Act 1988, section 39. Battery occurs when a person intentionally or recklessly applies unlawful force to another. Battery is the physical extension to assault and not only includes violence but can mean any unwanted touching. In Collins v Wilcock, the defendant was a police officer who took hold of a woman's arm in order to prevent her from walking away from him as he was questioning her about alleged prostitution. She succeeded in her case that the officer had committed battery, as he had gone beyond mere touching and had tried to restrain her, even though she was not being arrested.

A battery may occur as part of a continuing act. In the case of Fagan v Metropolitan Police Commissioner, the defendant parked his car on a police officer's foot. It wasn't until the defendant decided to leave the car there that the battery occurred. Until then, there was no unlawful force applied.

One can go even further in the definition of the battery and argue that the touching of the hem of a skirt constitutes a battery. This happened in R v Thomas, where the judge decided that the touching of a person's clothing amounted to the touching of the person themselves.

Another way in which battery can occur is indirectly. This could include setting a booby trap. In the case of R v Martin, the defendant placed an iron bar across the doorway of a theatre and then turned the lights off, causing panic. This led to several people injuring themselves whilst trying to open the door. In DPP v K, a schoolboy hid acid in a hand-drier, intending to remove it later. In the meantime, another student used the hand-drier and was sprayed with the acid, causing injury.

Finally, a battery can also be caused by an omission. In the case of DPP v Santa-Bermudez, the defendant failed to tell a police officer, when asked, that there was a sharp needle in his pocket before he was searched. The officer cut her finger on the needle and the defendant was found by the court to be liable for battery, due to the omission.

GBH

Grievous bodily harm/Wounding is also defined in the Offences Against the Person Act 1861. To prove the offence, it must be shown that the defendant wounded or inflicted grievous bodily harm. Furthermore, that they intended some injury or were reckless as to the injury being caused. It should be noted that if the defendant intended injury, they do not have to have intended serious injury.

A “wound” is classified as a cut or break in the continuity of the skin. Breaking only one layer of skin would be insufficient, such as a cut to the inside of someone’s cheek. In JJC v Eisenhower, the victim was hit in the eye by a shotgun pellet, but because the bleeding only occurred beneath the surface, it was held not to amount to a wound. There must be a cut to the whole of the skin so that the skin is no longer intact.

The word “grievous” is taken to mean “serious”. This was decided in the case of DPP v Smith, where the level of injury was said to be “really serious harm”. This was changed in R v Saunders, where the word “really” was removed from the definition so as to clarify the nature of the offence. The offence does not have to be life-threatening and can include many minor injuries, not just one major one. In R v Bollom, it was also decided that the age and health of the victim should play a part in assessing the severity of the injuries caused. After all, inflicting the same injuries to a strong and healthy 21-year-old and a frail 90-year-old will usually result in very different levels of harm and so the law should reflect this.

As with the law on ABH, the level of harm for GBH can include “serious” psychiatric injury. This was decided in R v Burstow, where the victim suffered severe depression as a result of being stalked by the defendant. Biological GBH [“Biological GBH”] is another aspect. This was seen in R v Dica, where the defendant caused the victim to become infected with the HIV virus by having unprotected sex without informing them that he was HIV-positive.

The mens rea of GBH can be recklessness or intention. Reckless GBH is defined under section 20 of the Offences Against the Person Act 1861 and simply requires that the defendant was subjectively reckless as to some harm occurring as a result of their actions or omissions. In section 18, the defendant must have intended to do some grievous bodily harm. An intention to wound is not enough, as seen in the case of R v Taylor, where it was unclear whether the defendant had intended serious harm by their actions. The Court of Appeal, therefore, substituted a conviction for section 20 GBH rather than section 18.

ABH

The offence of assault occasioning actual bodily harm is defined in the Offences Against the Person Act 1861, section 47. Assault occasioning ABH is defined as an assault that causes Bodily Harm (ABH). This includes any hurt calculated to interfere with the health or comfort of the victim. Such hurt need not be permanent but must be more than transient and trifling. In other words, it must be more than minor and short term. The harm can result from physical violence, could include psychiatric harm and could even be caused by the victim’s own actions, where they try to escape from the apprehended unlawful force of the defendant.

In R v Miller the court stated that actual bodily harm was “any hurt or injury calculated to interfere with the health or comfort of the victim”. This was then added to in R v Chan Fook, where the court decided that psychiatric injury could be classed as actual bodily harm, but that it must be “not so trivial as to be wholly insignificant”. Furthermore, loss of consciousness, even for a moment, can be argued to be actual bodily harm, as illustrated by T v DPP.

Pain is not required for the harm to be classed as ABH. This is well illustrated by DPP v Smith, where the defendant cut off the victim’s ponytail and some hair from the top of her head without her consent. As the amount of hair was substantial, the Divisional Court decided that the hair-cutting should amount to ABH.

Theft and Robbery

Theft is a statutory offence, defined in section 1 of the Theft Act 1968.

“A person commits theft if he dishonestly appropriates property belonging to another with the intention of permanently depriving the other of it.”

Let’s take a look at the different principles within the definition and see how they have been applied to case law.

Dishonesty is part of the mens rea of theft and requires a two-part test in order for it to be established in law. The test has both objective and subjective elements and was laid down in R v Ghosh, where a locum doctor charged a hospital for work he hadn’t done, in order to receive a payment that he was already entitled to, for other work that he hadn’t been paid for yet. In R v Ghosh, it was decided by the court that dishonesty by the defendant is established if (a) the reasonable man would see the conduct as dishonest, and also (b) the defendant realised that it would be seen as dishonest by the standards of the reasonable man.

In 2017, however, the case of Ivey v Genting Casinos seems to have uprooted the established rules on dishonesty. The UK Supreme Court appears to have abandoned the subjective limb of the Ghosh test, preferring instead to use only an objective test, bringing the criminal law in line with civil law. However, Lord Phillips’ comments regarding the removal of the subjective limb were made obiter dicta, so they do not overrule the Court of Appeal’s decision in Ghosh.

Appropriation - Secondly, to appropriate means to assume any rights of ownership over the property in question. It does not mean that all rights of ownership are assumed. Rights include selling the property, destroying it, possessing it, consuming it, using it, hiring it out, etc. In Pitham and Hehl, the defendant had sold furniture belonging to someone else without their permission. It didn’t matter that the furniture hadn’t been removed yet, as the offer to sell was solely the right of the owner, so an appropriation had taken place.

Appropriation can even take place when consent is given. This was seen in Lawrence when a taxi driver took more money than he needed when a foreign student offered her open purse to pay for the fare. In Gomez, the appropriation took place when the manager consented to a colleague taking goods from a shop in return for payment by cheque. The cheques were stolen, however, and therefore had no value. The House of Lords, therefore, ruled that appropriation can take place, even with the consent of the owner. The case of Hinks raised the question of whether consent without deception could negate any charge of appropriation. The House of Lords ruled that even without deception, consent was no automatic defence to appropriation. Finally, later assumption of a right can occur when the defendant, for example, borrows something, but then later decides not to return it. The appropriation, in this case, occurs at the points where the defendant decides to keep the item.

Property - There are five types of property that can be stolen: money, personal property, real property, things in action and other intangible property. The first two types are very straightforward, including coins and notes (for money) and physical objects (for personal property). Real property refers to land and buildings. Things in action allow the owner to enforce rights in law. Examples can include tickets for the theatre, copyrights and cheques, amongst others. Finally, other intangible property refers to other non-physical things which can be stolen. This can include export quotas, as seen in A-G of Hong Kong v Chan Nai-Keung. However, it doesn't extend to knowledge of the questions on an exam paper, as seen in Oxford v Moss.

Some things cannot be stolen. Typically, these are plants and/or animals that would be found in the wild, or which haven't been cultivated in any way. For example, wild mushrooms growing on someone's land would not be considered as property that can be stolen. However, if the landowner had planted those mushrooms or had tended to them, then they would be considered property that could be stolen. Wild creatures, such as deer, can also be classed as property, but they cannot be 'stolen' if they are on a large estate. This is in contrast to animals who live in captivity in the zoo, who clearly show evidence of 'ownership'. Electricity cannot be stolen either, although a separate offence does exist to deal with this issue.

Belonging To Another typically means in someone else's possession or control. Obviously, the owner of property has possession or control of it in most cases. However, they may transfer that possession or control to another party in some situations. Take, for example, the case of Turner, who stole back his car from the repair garage, before paying for the work done. The car was temporarily under the possession and control of the garage, so he could be found guilty of the theft of his own car. The Theft Act 1968 also states that where a person receives property by mistake and is under an obligation to return the property a failure to restore the property will also amount to theft.

Intention to permanently deprive - In order to be found guilty of Theft, the defendant must intend to permanently deprive the other of the property that was stolen. An interesting way to look at this is to consider that if someone steals money, intending to replace that money later on, they can be still be found guilty. This is because the banknotes or coins they replace the originals with are not the same ones, they just have equal monetary value. The victim has still been permanently deprived of the original physical banknotes and coins.

Robbery is defined in section 8 of the Theft Act 1968. Essentially the offence is a theft, completed by the threat or use of force. The threat or use of force must be used in order to complete the theft, it cannot merely be coincidental.

So, what if a theft was completed and the force or the threat of force was used in order to make off with the property? Strictly speaking, that wouldn't be a robbery, if the statute was to be interpreted literally. However, the courts have taken a more pragmatic approach here, making the offence of robbery more widely available to prosecutors. In the case of R v Hale, the defendants tied up the victim

after the appropriation had taken place. However, the court decided that it should be up to the jury to decide whether or not the appropriation should be held to be a continuing act and so the defendants were convicted of robbery.

The force need only be minimal, as illustrated by R v Dawson and James, where the defendants pushed the victim off-balance in order to steal his wallet. Also, the force used might not be directly on the victim themselves. In the case of R v Clouden, the defendant wrenched a shopping basket from the defendant's hand. They argued that since they didn't actually touch the victim, then there was no robbery. However, the court decided otherwise, saying that their actions amounted to force on the victim.

Finally, the force used must be in order to steal. If, for example, the defendant knocked their victim unconscious, then decided to take their wallet, this would not be a robbery, since there was no intention to steal at the time that they applied the force.

Private Nuisance

Private Nuisance is often described as an unlawful interference with a person's use or enjoyment of land or some right over, or in connection with it. It is normally used to describe conflicts arising between neighbours to do as they wish on their own land. However, sometimes one neighbour's ordinary exercise of rights can create problems with their neighbour's enjoyment of their rights.

The nuisance caused may be trivial or serious. They are usually an ongoing problem caused over an extended period of time. The purpose of the law on nuisance is to try to balance the competing interests of all parties. For that reason, not all cases involving the enjoyment of land will be classed as a nuisance in law, only those that would be seen as unreasonable.

The litigants involved in a nuisance case are referred to as the claimant (the one bringing the case) and the defendant (the one who has caused the nuisance deemed as unreasonable). The claimant is often the owner of the land where the nuisance occurs, but sometimes they may be an occupier, in landlord and tenant disputes, for example.

The defendant is usually the party accused of causing the nuisance. However, sometimes they may not have caused the nuisance, but should be held responsible for dealing with it. The cause of the nuisance could be as a result of human actions, or natural causes such as the weather. In the case of Sedleigh Denfield v O'Callaghan, a group of strangers had blocked a pipe on the defendant's land. This then led to flooding on the claimant's land. Clearly, the defendant did not cause the nuisance, but they were responsible for dealing with it, as it occurred on their land. In Leakey v National Trust, the defendant failed to deal with a potential landslide that they had identified. After heavy rainfall, the land from a natural mound slipped and caused damage to the claimant's cottage. The defendant's failure to prevent a foreseeable problem rendered them liable.

In order to prove the existence of a nuisance, the claimant must prove three key elements: unreasonable use of land, indirect interference and reduction in the claimant's use or enjoyment of that land. Courts are flexible in their approach to what is classed as "unreasonable" and take it on a case by case basis. For example, in Solloway v Hampshire County Council, the council was not liable for trees that damaged the claimant's property, because they lacked the resources to do anything about it. Had they had the resources to do something about it, as other councils might have had, then they may well have been liable.

A nuisance can also be classified relative to the local area. As stated in Sturges v Bridgman, "what would be a nuisance in Belgrave Square would not necessarily be a nuisance in Bermondsey". The nuisance often depends on what is deemed acceptable in that particular area. For example, opening a sex shop in a residential area would be seen as more of a nuisance than if the same shop had been opened in a remote industrial estate.

The nuisance in question might also result in a compromise between the two parties. For example in Dunton v Dover District Council, a playground caused a nuisance to a local care home for the elderly. Rather than closing down the playground, the council decided to reduce the opening hours, thus reducing the level of nuisance whilst maintaining the interests of the local children who needed somewhere to play.

The duration of the interference should be continuous. This doesn't necessarily mean non-stop. It could be the case that there is a nuisance caused between certain hours each night by a resident playing loud music which upsets his neighbour. The nuisance isn't negated simply because the music gets switched off each night for a few hours before it resumes.

Additionally, in some cases, it has been shown that the duration of the interference may only last 15 or 20 minutes. This was the case in Crown River Cruises Ltd v Kimbolton Fireworks Ltd, where flammable debris from a fireworks display lasting only 20 minutes set a barge alight.

With regards to the seriousness of the interference, the law distinguishes between an inconvenience and physical damage. The law regards an inconvenience as something which materially interferes with the ordinary comfort of physical existence… according to plain and sober and simple notions among the English people. This was decided in Walter v Selfe in 1851 and stands to this day as the basic test for inconvenience. Conversely, there may not just be inconvenience, but damage as well. Where damage occurs as the result of interference, that will be enough to class the nuisance as unreasonable. This can be illustrated by Halsey v Esso Petroleum Co Ltd. Here the claimant sued not only for noise pollution but also for the damage caused to the washing, by smuts from the defendant's property.

However, if the damage caused is in the public's interest, then liability for nuisance may not be so straightforward. For example, in the case of Stephens v Anglian Water, the defendant had an absolute right to appropriate water, regardless of the subsidence it caused in the claimant's property. Also, if the damage caused is foreseeable by the claimant and they do not take reasonable steps to avoid the damage, then it is difficult for a court to find in favour of the claimant.

The interference must also be indirect. If it is direct, then the law would fall under the category of Trespass rather than Nuisance. Examples of indirect interference, which can be classed as nuisance include: loud noises such as gunfire, pollution of rivers, vibrations from machinery, fumes drifting over neighbouring land and continuous interference from cricket balls.

Finally, the use and enjoyment of land are often assessed on the balance of competing interests. This means that some activities, whilst legal, may still be beyond the protection of the law. In Hunter v Canary Wharf, local residents argued that poor TV reception, caused by the erection of a tower was a nuisance. However, the court decided that it could not be classed as a nuisance, as the landowner had every right to build on that land. The same rule applies equally to obstruction of a view, the passage of light or radio signals.

Finally, in defence to a nuisance complaint, a defendant can cite lawful justification in some cases. These can include local authority planning permission, e.g. to build an extension on a home. Also, if the nuisance had continued for 20 years without complaint, then the right to take action in nuisance has lapsed. Furthermore, the concept of volenti non fit injuria means that a claimant may consent to nuisance. For example, if a tenant rented a house where the gutters had become blocked, causing flooding to his property, as was the case in Kiddle v City Business Properties. Here, the damage caused was not the result of the landlord's negligence, so they could not be found to be liable.

Negligence

In the Tort of Negligence, civil liability is based on establishing three principles: duty of care, breach and damage. Once these principles have been established, compensation may be paid out to a claimant, which aims to put them back into the position they were in before the damage occurred.

Firstly, duty of care is established using the three-part **Caparo Test**, which originated from the case of Caparo Industries PLC vs Dickman. In his judgement, Lord Bridge explained the parts to the Caparo test: foreseeability of damage, proximity between the defendant and the claimant and that it is fair, just and reasonable to impose a duty of care in such a situation.

Foreseeability can be described as predictability and can be illustrated by Kent v Griffiths, where it was entirely predictable that an ambulance crew who were in no hurry to attend an emergency would likely cause further harm to the injured party.

Proximity refers to closeness between the defendant and claimant. This can be in terms of time, space and/or relationship. In Bourhill v Young, the defendant caused a road accident. The pregnant claimant was not present at the time but arrived soon after. The shock she experienced caused her to miscarry. Since there was no proximity, the defendant was found not to be liable for the miscarriage.

Fair, Just and Reasonable - There is also a policy test, where it is judged whether or not it would be fair, just and reasonable to impose a duty of care in these circumstances. This is to prevent ludicrous claims from being made in court. In the case of Mulcahy v Ministry of Defence, the claimant had suffered hearing loss due to a cannon being fired unexpectedly, right next to them whilst they were on the battlefield. It emerged that it shouldn't have been fired until the claimant was in a different position in relation to the cannon. However, the Court decided (on Appeal) in favour of the defendant, as it would be unfair to impose a duty of care on soldiers in battle as they engaged with the enemy.

Secondly, **breach** is where the defendant has not taken sufficient care to uphold their duty of care. Factors that normally influence breach include the likelihood of risk, the magnitude of the risk, the practicality of taking precautions, the benefits of taking the risk and the standard of care required by that particular defendant.

In the case of Bolton v Stone, Miss Stone was hit by a cricket ball that had flown over a seventeen-foot fence from one hundred yards away. This had only happened around six times (and without injury) in the ninety years that the cricket ground had been providing a service to the community. Due to these factors and with particular regard to the likelihood that harm would result, the cricket club was found not to be liable, as all reasonable precautions had been taken and this was an unpredictable event.

Factual Causation - Thirdly, damage is established so long as the defendant's actions or omissions were at least a factual cause of the damage, using the 'but

for' test: This is where the claimant would not have suffered, but for the defendant's breach of their duty of care.

Remoteness - Not only that, but the damage must not be 'too remote', (i.e. there should be a clear link between the cause and the consequence, with few steps in between.) This is best explored using the case of Wagon Mound No.1. Here, a ship discharged oil into the water when coming into the harbour. The oil caused damage to the nearby wharf. The defendant was found to be liable for this. However, damage was also caused to a ship, which had caught on fire due to a piece of floating debris, which had been covered in oil and then had been lit by the spark from a welder's torch and had then floated out to sea and set the ship alight. The resulting damage was so far removed from the initial dumping of the oil that the defendant was found to be not liable for the damage to the ship, even though they had set in motion the chain of events that had led to it.

The final element to damage is the 'Thin Skull Rule'. Here, one must have regard to others, who may be vulnerable or have particular weaknesses, which would make harm or injury more likely or more serious. Many lawyers put this as "you must take your victim as you find them". These vulnerabilities may not be known to the defendant, but this will not absolve them of any blame. In the case of Smith v Leech Brain, a man had previously recovered from cancer. At work, a piece of molten metal spat at him from a vat and caused severe burning. This caused pre-cancerous cells to emerge and he died three years later from the cancer. The claimant, his widow, won their case, as even though this wouldn't have happened to most people, it was predictable that molten metal could have spat at whoever was working there. The fact that it caused death due to the cancer was no defence for the defendant. The claimant won.

Offer and Acceptance

An **Offer** is an expression of willingness to contract on certain terms. It is made with the intention that it will become binding, once it has been accepted. Offers can be specific or general. Specific offers are made to individuals or groups of people and the offer can only be accepted by that group. Alternatively, general offers, such as a reward for the safe return of a lost dog, or an advertisement for products in a supermarket, are directed at nobody in particular and can be accepted by anybody who meets the conditions of the offer. Some offers are time-limited, whereas offers without time limits are open for a 'reasonable time'.

Rules Of The Offer - Offers are subject to certain rules. Firstly, the offer must be 'certain', in that the terms within it must be clear and without ambiguity. In the case of Guthing v Lynn, a promise to pay an extra £5 "if the horse was lucky" was considered to be too vague to constitute an offer. Secondly, the offer can be made by any method. This means in writing, verbally or even by one's conduct. Thirdly, the offer can be made to anybody who fulfils the conditions of the offer. Fourthly, the offer must be communicated. This means that only those who have been notified of the offer can accept it. For example, imagine if a lost dog was found and returned to the owner. The owner would only be required to pay the reward if the person who returned the dog was aware of the reward before returning it. Finally, the offer must still be in existence when it is accepted. This refers to time-limited offers, which expire after a set period of time has passed.

Just as offers can be made in a variety of ways, they can also be terminated in a number of ways. The most obvious way to terminate an offer is to accept or refuse it. An alternative way to terminate an offer would be to place a counter-offer. In Hyde v Wrench, Wrench offered to sell his farm to Hyde for £1000. Hyde counter-offered with £950. When this was refused, he then tried to reinstate the original asking price. However, Wrench refused to sell as the offer had been terminated the moment that the counter-offer was made. Another way to terminate an offer is through revocation. This is when an offer is withdrawn. The revocation must occur before the offer has been accepted, or else the agreement must be honoured. Finally, a lapse of time may render an offer terminated. Obviously, some offers are time-limited and this time limit forms a condition of accepting the offer. However, where offers are not time-limited, they should remain open for a "***reasonable time***". What is reasonable depends on the individual circumstances of the offer.

Invitation to Treat - Sometimes an offer is not made, but an invitation is given for another person to make an offer instead. This is called an invitation to treat. An invitation to treat involves person A inviting person B to make an offer. Person B then makes the offer. Person A then decides whether or not to accept the offer. In the case of Fisher v Bell, a shopkeeper displayed a flick-knife in the shop window. It was illegal to offer flick knives for sale. Next to the knife was an invitation to treat, i.e. a price tag. This was not an offer for sale, although it is easy to see how similar it would be. Due to this interpretation, the court decided that since the shopkeeper had not offered a flick-knife for sale, there was no criminal liability. Goods on display on supermarket shelves and in self-service stores are considered as invitations to treat as well.

Small advertisements are also considered as invitations to treat. Simply listing the price next to a product for sale does not constitute an offer. In Partridge v Crittenden, an advert listing "Bramble finch cocks, 25s each" was an invitation to treat, not an offer. They couldn't then be found guilty of offering for sale a wild bird under the Protection of Birds Act 1954. In the same way, a catalogue of prices wouldn't be considered an offer, but an invitation to treat. Auction sales are also invitations to treat, as placing an item at auction still requires a bidder to make the offer, as seen in British Car Auctions v Wright, where an unroadworthy car was put into the auction. Had the unroadworthy car been offered for sale in

the traditional sense, there would have been an offer and consequently a criminal act.

Acceptance is an unqualified and unconditional agreement to all the terms of the offer, by words or conduct. Any conditions or qualifications added would constitute a counter-offer and would therefore terminate the standing offer. In order for acceptance to be valid, the following conditions must apply. Firstly, acceptance must be communicated. In the case of Felthouse v Bindley, the claimant stated that if he heard nothing then he would infer acceptance of the offer made. There was no acceptance of the offer as the acceptance had not explicitly been communicated; silence was not enough. Secondly, acceptance can be inferred from conduct, i.e. if the party who accepts the offer starts to implement what is in the offer. Thirdly, if an offer is accepted, then it must be complied with, although under some circumstances another method of compliance may be satisfactory. If no method of acceptance is specified, then any method of acceptance will suffice, providing that it is effective. Thirdly, if acceptance is made by post, then it is complete when posted. The party who made the offer need not have received the acceptance. For example, if the acceptance was lost in the post, the acceptance is still valid as it has already taken place. Finally, where each party uses their own bespoke forms, an agreement is only formed, once the last of the forms have been sent and received without objection.

Intention to Create Legal Relations

There are some agreements made, where even though a valid offer has been made and then accepted, the courts still might decide that it is not legally enforceable. This is because when the parties made their agreement, they didn't intend it to be legally binding. To determine if an agreement is legally binding, the courts have different rules for social/domestic agreements and business/commercial agreements. After all, it would be ridiculous if children could sue their parents for failing to give them their weekly pocket money. It wouldn't be ridiculous, however, for a company to sue if their suppliers failed to give them their supplies, resulting in a loss of earnings.

Commercial Agreements - Arrangements made in business contexts are generally regarded as being legally binding unless evidence can demonstrate that this was never the intention. It must be determined on a case-by-case basis. This was illustrated in the case of Edwards v Skyways Ltd, where an agreement was made to pay out in the case of redundancy. Skyways Ltd attempted to avoid making this payment after the agreement was made, but the court refused to allow this, even though there was no need for the agreement to be made in the first place.

In order to identify an intention, the courts distinguish between a basic agreement (where further details may be added at a later stage) and situations where a final decision is deferred until some matter is resolved between the two or more parties. In situations where free gifts or prizes are offered in promotions or competitions, these are agreements that must be honoured. This was seen in the case of McGowan v Radio Buxton, where the claimant won a competition, with the prize being a Renault Clio car. The radio station tried to give the winner a toy Renault Clio, stating that there was no legally binding contract. The court disagreed, arguing that there was an intention to create legal relations and furthermore that there was not even a hint that the prize would be a toy car.

The only way for an intention to not be legally binding is where it is stated in the agreement itself, often in the small-print. For example, in Jones v Vernon's Pools Ltd, an agreement clearly stated that there was no legal relationship between the

winner and Vernon's Pools Ltd, but is "binding in honour only". So when the claimant argued that his winning coupon had been lost by the company, the clause in the agreement rendered his claim invalid.

Social and Domestic Agreements - As mentioned earlier, agreements made within families should generally be regarded as not legally binding. Key cases to illustrate this are Balfour v Balfour and Merrit v Merrit. In the Balfour case, the claimant argued that her husband had agreed to pay his wife an allowance. However, the intention was only to be honoured during the course of their marriage. Since the husband only stopped paying the allowance after their separation, there was clearly a different set of circumstances, so the court decided he was not liable for the payments. Agreements made within marriage should not be considered to be legally binding. In contrast, a similar situation arose between Mr and Mrs Merrit. Only this time, the agreement was made after the marriage had broken down. Since this was an agreement made outside the marriage, it should be considered to be legally binding. Not only that, but it was put into writing.

In cases that don't involve family members, but which are still "social" agreements, one must consider whether money had changed hands. Once this happens, the agreement goes beyond the normal social conventions and the parties have entered into a legally binding agreement. In Parker v Clarke, the Parkers, a young couple, agreed with the Clarkes to sell their house and move in with the older couple in order to share living expenses. In return, the younger couple would also inherit the older couple's house. When the initial social agreement was put into writing and money was exchanged, the agreement stopped being a social agreement and became legally binding.

European Convention on Human Rights

Article 2: Right to life - Under Article 2, everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law. In England and Wales, as with many other countries both in and beyond Europe, the right to life is protected. In a very obvious sense, this right is upheld whenever governments abolish capital punishment, or where they enact policies designed to prevent lives from being ended without lawful excuse. As with all laws, the rights of any individual must be balanced against the rights of others. Where possible, the right to life should be preserved for all parties. However, in practice, this may not always be the case. For example in the case of Re A, a pair of conjoined twins needed to be separated in order to preserve the life of the stronger twin. Without separation they would both die, however, the operation to separate them would certainly cause the weaker twin to die. After a lengthy court case, it was decided that the separation should take place although this was met with fierce opposition, both in some of the media and particularly from some religious groups.

Article 5: Right to liberty and security of person - Under Article 5, everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases:

- the lawful detention of a person after conviction by a competent court
- the lawful arrest or detention of a person for non-compliance with the lawful order of a court or in order to secure the fulfilment of any obligation prescribed by law
- the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so
- the detention of a minor by lawful order for the purpose of educational supervision or his lawful detention for the purpose of bringing him before the competent legal authority
- the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants
- the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition.

In 2001, following the terrorist attacks in New York, The Anti-Terrorism Crime and Security Act 2001 was passed. Part 4 of the Act provided that any foreign national who was suspected of being a terrorist (but not convicted or even charged) could be indefinitely detained without charge or trial if he or she could not be deported. However, the UK Supreme Court (then the House of Lords) ruled that the detention of foreign nationals without charge and for an indefinite period was in breach of Article 5 and was discriminatory, on the basis that it only applied to foreigners and not to domestic terrorists. The law was repealed in response to the House of Lords' declaration of incompatibility.

Article 8: Right to respect for private and family life, his home and for his correspondence - Under Article 8, everyone has the right to respect for his private and family life, his home and his correspondence. However, this should be balanced against the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others. Rights regarding Article 8 include respect for one's sexuality. This was breached by British Armed Forces, asking for details regarding the sexuality of applicants. Rights also include the unlawful storing and sharing of personal data or unlawful surveillance by the state and the right to not be physically interfered with. Family has a wide interpretation and can include romantic, married, non-married, living with grandparents and siblings. Article 8 is often cited as a defence against deportation or where children may be taken into care. This was illustrated by a case against Poole Council, who had unlawfully spied upon a family, whom they suspected (wrongly) of living outside the catchment area of the school that their children attended. Poole Council were found to have breached Article 8 when they had stationed employees outside the home to covertly spy on the family and had even tailed them on the way to school.

Article 10: Right to freedom of expression - Under Article 10, everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. It protects the right to communicate and express yourself in any medium, including in words, pictures and actions. It's often used to defend press freedom and protect journalists' sources. It must, however, be balanced against other considerations. These can include national security, prevention of crime and disorder, prevention of the disclosure of confidential information and other rights upheld by the ECHR. In 2013, David Miranda, a journalist involving the Edward Snowden case, was detained by police for nine hours at Heathrow Airport. He was questioned without access to a lawyer and was eventually released only when the time had come to either charge or release him. Since they had no evidence on which to base a charge, it was decided later that their detention of Miranda had breached Article 10, even though the police had used Schedule 7 of the Terrorism Act 2000, a sweeping power that enabled detention without suspicion. The Court of Appeal later ruled that the schedule itself was in breach of Article 10 as it had no provisions for the protection of journalists exercising their duties and Miranda was simply exercising his right as a journalist to publish a story of public interest.

Article 11: Right to freedom of peaceful assembly and to freedom of association with others - Under Article 11, everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests. This right is closely related to freedom of expression and allows for people to form peaceful demonstrations, go on marches and meet up with other like-minded individuals, without interference from the state. In fact, the state must take reasonable steps

to allow any demonstration to go ahead, even if they disagree with the reasons for the demonstration. Violent demonstrations, however, are not protected by Article 11. Any limitation of Article 11 must be lawful, necessary and proportionate and should be in the interests of national security, prevention of crime and disorder, protection of health or morals and to protect other rights and freedoms.

Balancing Conflicting Interests Between Human Rights

Balancing human rights can be complex as there are so many to balance against one another. In exams, you should try to identify a small number of human rights and use legal cases to demonstrate in detail how they have been dealt with in the courts.

Firstly, let's look at the right to privacy. In 2016 the Investigatory Powers Act was given royal assent. The Act allows for the collection of a huge swathe of information to be gathered and stored. Much of this information would be considered to be private. Information gathered could include internet search history, financial information and records of phone calls. Many prominent lawyers have argued that mass collection of such data should be considered illegal, on the grounds that for most people, this information is not collected in the interests of justice. One of the justifications given for the implementation of the Investigatory Powers Act is that it is in the interests of national security, as it helps to identify

potential terrorists and other criminals. However, most people are not terrorists or criminals. Therefore, the collection and storage of this data would in some people's minds, constitute unwarranted state surveillance.

On the one hand, terrorists would be more easily prosecuted if there was more data available to the authorities. However, on the other hand, the mass collection of the data not only creates a needle-in-a-haystack approach, which is inefficient and possibly ineffective. It also opens the doors to the abuse of this data to coerce innocent people into doing the bidding of the State, possibly against their will. Not only that, but the IPA allows police officers to approve their own access, whereas these previously had to be approved by the Home Secretary and a judge. The potential for abuse is therefore too high in many legal experts' opinions, based upon powers that had been abused in the past by police officers when operating without the consent of a court.

Now let's turn to the right to a private and family life. This right is often cited as important in determining deportation cases for foreign-born criminals. Often, defendants in such cases have a spouse and children who are resident in the UK and may even have been born in the UK too. Since they have full citizenship, deportation would not be legal. But to deport the father or mother due to their criminal activities would separate the children and spouse from a close family member. In cases such as these, it may be preferable to imprison the offender. However, this may depart from precedents where similar criminals were deported for similar offences. This flies in the face of the right to equal treatment under the law. Deportation can also raise another issue, that of the safety of the offender. In the case of Abu Qatada, the Home Secretary wished to deport Qatada to Jordan in order to face trial there. However, there was sufficient evidence to suggest that once in Jordan, Qatada may possibly face torture. Due to this, it took many months for the Jordanians to agree to a fair trial without the use of torture as a method of extracting evidence. Other cases of less-high-profile offenders, however, have resulted in the deportation of offenders, who it is proven have since been subject to torture, which denies another of their fundamental human rights.

The right to peaceful assembly is often brought into question when mass demonstrations and political marches take place. Here, it is important for the State to balance people's right to free assembly with the possible danger that violence could break out, or that due to the size of crowds, people could inadvertently get injured. In 2009 and 2010 a number of largely peaceful demonstrations took place over issues such as tuition fees. During these demonstrations, the police were seen to use a method of crown control known as 'kettling'. This involved rounding up and cordoning off small sections of protesters into a confined area, where they faced heavy-handed methods of crowd control by police armed with batons, shields and sometimes mounted cavalry units. During these periods of kettling, often lasting six to seven hours, protesters were denied the right to free movement and were often subjected to violence themselves, some sustaining

serious and even fatal injuries. This was the case with Ian Tomlinson in 2009, where he was hit over the head by a police baton at a newspaper stand during the G20 protests. The use of kettling as a way to maintain the “safety” of the overall demonstrations was seen by many to be in breach of a variety of human rights, including the right to peaceful assembly. However, some arguing in favour of the police tactics argued that it should be available to the police in extreme circumstances where other options are unavailable.

Another area where human rights must be balanced is in cases involving extra-marital relationships of high profile celebrities. Here, the right to freedom of expression of the press has come into conflict with the celebrities’ right to privacy. Both A V B (2001) and a case involving Lord Coe failed in their attempt to prevent newspapers from publishing details of their affairs. In both cases, the courts decided that the media’s freedom of expression should take preference over the right to privacy and that the courts should not act as censors. However, some judges, such as Lord Hope in Naomi Campbell’s case against the Mirror Group Newspapers, have expressed that there should be a right to privacy to some degree, although it hasn’t been fully developed what this law would entail.