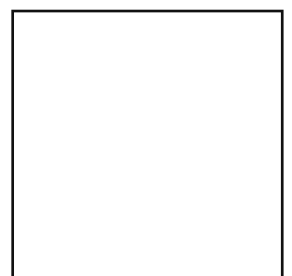
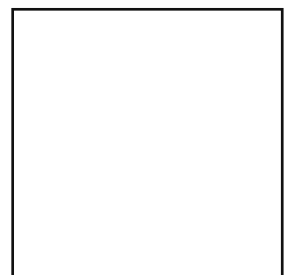
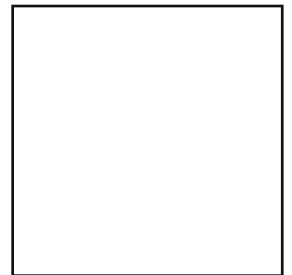


**Nelson Thornes  
Distance Learning**

# **GCSE Law**

**Steve Harris**



Nelson Thornes

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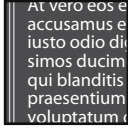
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# GCSE Pack

Key to icons used throughout this pack:



Writing



Reading



Hand-in activity (either by post or e-mail)

# Study Calendar

## GCSE Law | 2010–2011

Study week	Unit Start date	Unit	Externally Assessed Assignment	Work due date
1		Introduction		
2		Unit 1.1 Legislation	Assignment 1.1 Write-up for tutorial 3	
3		Unit 1.2 Judge-made law	Assignment 1.2 Write-up for tutorial 4	
4		Unit 2.1 Criminal process – police powers	Assignment 2.1 Write-up for tutorial 5	
5		Unit 2.2 Criminal process – CPS and bail	Assignment 2.2 Write-up for tutorial 6	
6		Unit 2.3 Criminal courts and appeals	Assignment 2.3 Write-up for tutorial 7	
7		Unit 2.4 Civil process		
8		Unit 2.5 Civil courts and appeals	Assignment 2.5 Write-up for tutorial 9	
9		Unit 2.6 Alternative methods of settling disputes	Assignment 2.6 Write-up for tutorial 10	
10		Unit 3.1 Lay magistrates	Assignment 3.1 Write-up for tutorial 11	
11		Unit 3.2 Juries	Assignment 3.2 Write-up for tutorial 12	
12		Unit 3.3 The legal professions	Assignment 3.3 Write-up for tutorial 13	
13		Unit 4.1 Elements of a crime	Assignment 4.1 Write-up for tutorial 14	
14		Unit 4.2 Crimes against the person	Assignment 4.2 Write-up for tutorial 15	
15		Unit 4.3 Crimes against property	Assignment 4.3 Write-up for tutorial 16	
16		Unit 4.4 General defences to crimes		
17		Unit 4.5 Sentencing	Assignment 4.5 Write-up for tutorial 18	
18		Unit 5.1 The nature of tort, defences and remedies	Assignment 5.1 Write-up for tutorial 19	

Study week	Unit Start date	Unit	Externally Assessed Assignment	Work due date
19		Unit 5.2 Negligence		
20		Unit 5.3 Occupier's liability and vicarious liability	<b>Assignment 5.3</b> <b>Write-up for tutorial 21</b>	
21		Unit 5.4 Trespass and nuisance	<b>Assignment 5.4</b> <b>Write-up for tutorial 22</b>	
22		Unit 6.1 Marriage and civil partnerships	<b>Assignment 6.1</b> <b>Write-up for tutorial 23</b>	
23		Unit 6.2 Divorce	<b>Assignment 6.2</b> <b>Write-up for tutorial 24</b>	
24		Unit 6.3 Inheritance	<b>Assignment 6.3</b> <b>Write-up for tutorial 25</b>	
25 to GCSE exam		Revision		

# Introduction



## **Hello and Welcome to Law at a Distance**

Over the next year, we shall be studying the AQA GCSE Law course.

In this course we will be studying the laws of England and Wales (Scotland has its own, different laws). The course will provide you with a basic knowledge of the law and how it works. It will give you a broad introduction to the English legal system and will help you:

- gain an understanding of the way the law affects us all
- understand the ways in which English law is made, administered and changed
- evaluate the effectiveness of legal rules, institutions and procedures.

The course is studied by supported distance learning.

As a distance learning student, you will receive a one-hour video conference tutorial. The sessions will be held at your school and will be interactive, giving you the chance to ask questions and discuss the work with both your tutor and the other members of the group.

Each week, during the video conference, we will review the unit you have worked on. You must complete all of the activities set in preparation of the video session. Assignments set must be completed by the date set and given to your link tutor to post or can be emailed directly to your tutor.

Even though you will only meet with your tutor for one hour per week, the GCSE course is a full-time course, the same as the other courses you are taking. We recommend that you do at least an additional 4 hours of study per week. This work should be carried out during your study periods and at home if you are to benefit from the course.

At the end of the course, you will sit two 1.5 hour examinations, and the marks from these exams will determine your final grade.

The subjects covered in the course are:

### **Introduction**

- Why we need law*
- Classifications of law*
- How and why laws need to change*

### **Institutions of the law**

- Criminal and civil courts*
- Alternatives to using the courts*
- The personnel of the law*

### **Sources of law**

- Legislation*
- Case law*
- How law is made and enforced*

### **Law in action**

- Law of tort*
- Negligence*
- Trespass*
- Nuisance*

*Criminal law*

*Crimes against the person*

*Crimes against property*

*Defences to crime*

*Sentencing*

*Family law*

*Marriage and divorce*

*After divorce – children and financial arrangements*

*Wills and the law of succession*

Law is a dynamic subject and is subject to change all the time. As a law student, we positively encourage you to watch the television and read the newspapers to keep up-to-date with major changes in the law. Some newspapers such as *The Times* and *The Guardian* have specific legal sections, and you may find it useful to read these – your school library may well subscribe to these.

## The process of distance learning

This study pack has been written in conjunction with the *GCSE Law* textbook written by Jacqueline Martin, published by Hodder Arnold. It is essential that you have an up-to-date copy of this book. References are made in the activities to page numbers in both the 3rd and 4th editions.

Each unit of the study pack will provide you with useful and important information, followed by activities to undertake. Each activity will direct you to certain pages of the textbook which you need to read. The knowledge gained from the study pack and the textbook will be sufficient for you to complete the activity. Once you have completed the activity, you will need to read the next section of the study pack and the pages of the textbook to complete the next activity, and so on.

As law is a new subject to you, you will come across many new words and expressions used within the law. You might find *The Complete A–Z Law Handbook* by Jacqueline Martin and Mary Gibbons, published by Hodder and Stoughton, useful as it explains many of these words and expressions.

Another book you might find useful, especially when you come to revise for the exams, is *GCSE Law* by Alan Jones and Tracey Page, published by Nelson Thornes.

## Why do we need laws?

Law is an important subject as it affects just about every aspect of life. It affects you when you go to school, when you leave and get a job, when you retire – and it even affects you after you die. It affects you when you go shopping, when you travel in a car, on a bus or a train and even walking down a street. Look in any newspaper on any day and you will find lots of stories reporting legal issues.

### But do we need all these laws?

# Activity 1

Imagine you and the rest of your group have been shipwrecked and washed up on a desert island. You are the only people there.

- 1 What would be the first things you would need to sort out?



2 Would you need things like canoe parking restrictions?

3 How would you decide how the group is going to get on with each other?

4 How would you sort out any problems or disputes which might occur?



In simple, small societies, the 'rules' that are needed and that develop tend to be simple and agreed by the group themselves. This becomes less practical as society becomes larger and more complex.

## Activity 2



Imagine the population of our island society has grown to the size of England's.

1 What would happen if we didn't have any 'rules' at all?

2 Would we need 'rules' such as restricting where we can park and the speed we can drive? Why?

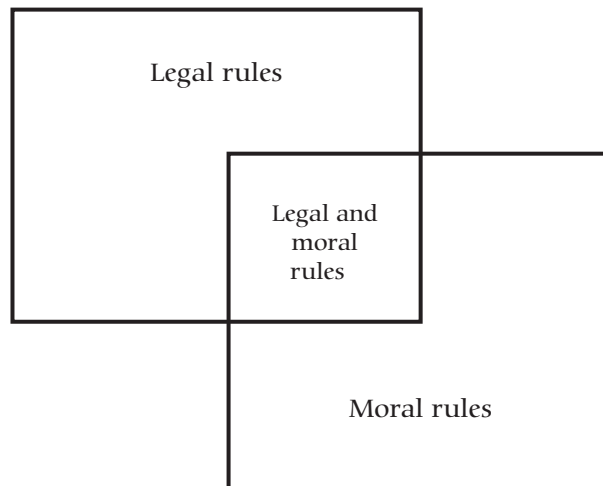
3 Could we all have a direct say in the 'rules' we wish to live by?

4 How might disputes need to be settled now? Why?





Law and morality are different, but in many areas (as shown above) there is an overlap between law and morality, and this is often illustrated in the following way:



### Why and how the law needs to change

Although we all have to accept laws that we may feel are unnecessary or unfair (such as a smoker who can no longer smoke in an enclosed space or the fact we have to pay tax on our income), ultimately the law is only there if it is acceptable to the people as a whole.

## Activity 4

Parliament passes a new law which states that only men can walk on the pavements – women must walk in the gutter to give men more space. Everybody, both men and women, think this law is stupid. What is likely to happen?

The law is constantly changing, and these changes can be brought about for many different reasons. As individuals, we cannot usually cause the law to be changed, but we may be able to persuade the lawmakers to change it if we can show there is sufficient need or desire for it. Changes can be brought about in various ways.

- Changing views and values of society  
Over time, society's views on matters such as abortion, homosexuality and passive smoking can change, and so the laws will be changed to reflect those views.
- Changes in technology  
As technology changes, new laws will be needed to control or restrict the use of such technology; for example, new rules and laws were needed when the use of mobile phones became so commonplace.

- Pressure groups  
Groups of people who have a common opinion or interest may be able to put pressure on Parliament to try to get changes in the law relevant to their particular interest; for example, Greenpeace tries to get changes on environmental issues.
- Law reform bodies  
We have permanent bodies of people who constantly review the law to try to keep it up to date and to highlight and recommend changes where necessary.
- Government policies  
The different political parties have different ideas on how the country and society should be run, and their policies will affect the laws passed.
- Membership of the European Union  
UK membership of the EU has had some major effects on the law, particularly on consumer and employment law.

Activity

5



In the case of *R v R* (1991), the House of Lords overruled a very old and well-established rule that a husband could not be convicted of raping his wife.

1 What do you think prompted this change?

2 Can you think of other areas of law that have been changed similarly?



### Classifications of law

The law is a very large subject and covers many different types and areas of law. To help clarify things, the law can be divided into different areas or classifications. The first division you need to be aware of is the difference between **public law** and **private law**.

**Public law** relates to the laws relevant to the state (or government) in some way. It covers areas such as:

- constitutional law – the laws on how the government, Parliament, the police and the courts operate
- administrative law – the laws that relate to public authorities such as local authorities
- criminal law – the laws that relate to what you can and cannot do and what will happen to you if you break the law.

**Private law** relates to disputes that arise between individuals. Most people think of criminal law when they first think of laws they know. However, the civil law is a much wider area of law and covers many different and varied areas. Some of these areas are:

- contract – the laws relating to enforcing promises made
- tort – failing to reach a standard of behaviour set by the law and injuring another
- family – the laws relating to marriage and divorce, and so on
- company – the laws relating to forming and running companies
- consumer – the laws relating to your rights when shopping
- employment – the laws relating to the employer/employee relationship.

Another classification of the law that we will need to look into in more detail is the difference between **criminal** and **civil** law. While we talk about the English legal system, it is actually quite possible to think of there being two separate systems: one dealing with the criminal law and one dealing with the civil law. Each endeavours to achieve different things for the parties involved, and each branch has also developed its own terminology.

### **Criminal law**

Here, the state is accusing a person of a crime. The case is usually brought by the Crown Prosecution Service (CPS). The lawyer representing the CPS will be known as the **prosecutor**, and the person being prosecuted will be known as the **defendant** or the **accused**.

Prosecutions will be heard in the Magistrates' Court or the Crown Court, depending on how serious the offence is. It is the job of the prosecutor to prove that the defendant committed the offence: this is known as the **burden of proof**. As the consequences of being found guilty of a crime can be very serious, the level to which the prosecutor has to prove the case is very high: this is known as the **standard of proof**. The case must be proved **beyond reasonable doubt** – that is, if there is any doubt in a case whether the defendant did or didn't do it, they must be given the benefit of that doubt and acquitted.

## Activity 6



You walk into the sitting-room of your house. The window is open, and the curtains are blowing gently in the breeze. Your younger sister is standing in the middle of the room holding a tennis ball and sobbing. Your mother's favourite vase is smashed on the floor in front of the window.

1 What do you think has happened?

2 If your sister was prosecuted for criminal damage (breaking the vase), should she be convicted? Why?



# Activity 8



Jill Horner is driving along the road and is distracted when one of her bangles gets caught on the gear stick. As she struggles to get free, she does not see Jack Dumpy crossing quite properly at a zebra crossing. Jill brakes, but it was too late to stop her injuring Jack. He suffers a broken leg, cuts and bruises and shock. The police are prosecuting Jill for careless driving, and Jack wishes to sue Jill because of his injuries.

- 1 In which courts would Jill's prosecution be heard and the civil action be brought?
  
- 2 If found guilty of driving without due care and attention, Jill will be \_\_\_\_\_ and \_\_\_\_\_.
  
- 3 How would the civil case be written?
  
- 4 If successful, what will Jack be seeking from the court?

The following table lists some of the differences between civil and criminal law. Try to remember these differences in terminology when we are covering the other units of the course.

*Differences between civil and criminal law*

	<b>Criminal law</b>	<b>Civil law</b>
Purpose of the law	To maintain law and order and to protect society from lawless behaviour	To uphold the rights of individuals/organisations
Breach of rules may lead to the defendant being:	prosecuted	sued
Cases are heard in:	criminal courts Magistrates' Courts/Crown Court	civil courts County Courts/High Court
Parties involved are called:	<i>R v Defendant</i>	<i>Claimant v Defendant</i>
Burden of proof is on:	the prosecution	the claimant
Standard of proof is:	'beyond reasonable doubt' If there is any doubt whether the defendant did or didn't do it, they must be given the benefit of that doubt and acquitted.	'on the balance of probabilities' The claimant must convince the judge that what they claim is more likely to be true than what the defendant claims.
Possible outcomes are:	punishment fine/imprisonment/community sentence	a remedy compensation for injury suffered/injunction, and so on



# Topic 1 Sources of law

## Unit 1.1 Legislation

**On completion of this unit, you should:**

- understand the meaning of parliamentary sovereignty
- understand the legislative process
- be aware of the meaning of delegated legislation
- be aware of the advantages and disadvantages of delegated legislation.

**Key terms:**

- Parliamentary sovereignty
- Green Papers and White Papers
- Bills
- Readings and stages of legislative process
- Royal assent
- Orders in Council
- Statutory Instruments
- Bylaws

# Legislation

Legislation is a collective term that is used to describe the laws passed by Parliament or by people who have been authorised to do so by Parliament.

Laws passed by Parliament are called **statutes**, but you will also often hear them referred to as **Acts of Parliament**. They are just different names for the same thing.

Parliament is made up of the House of Commons, the House of Lords and the Queen. It usually requires the consent of all three before a law passed by Parliament can come into force.

## Activity 1

Read Jacqueline Martin, page 104 (3rd), page 95 (4th). Explain the following:

1 Who sits in the House of Commons and how do they get to be a member of the House of Commons?



2 Who sits in the House of Lords and how has this changed in recent years?

Laws passed by Parliament are the highest source of English law. If an Act of Parliament is passed and it says something different to a law that has been made by the judges (a precedent – see later), then the judges must apply the Act of Parliament even if they disagree with it or think it is wrong.

Acts of Parliament are important because they can do things that some other sources of law cannot:

- They can create entirely new laws.
- They can amend or change any existing English law.
- They can repeal (abolish) any existing English law.

## Activity 2



At vero eos e  
accusamus e  
iusto odio di  
simos ducim  
qui blanditi  
praesentium  
voluptatum d

Read Jacqueline Martin, pages 104–5 (3rd), pages 100–2 (4th). Explain the following terms:

- 1 Parliamentary sovereignty or Parliamentary supremacy
- 2 Name the two statutes that might limit Parliamentary sovereignty.

## The passing of an Act of Parliament

The passing of an Act of Parliament is a long and complex process. A number of stages have to be gone through before the law comes into force.

The first stage in the introduction of a law is that Parliament needs to be aware that the law needs to be changed. If individuals or groups feel that the law needs to be changed, then they have to make Parliament aware of this because only Parliament can pass statutes. If Parliament agrees, they may change the law.

There are a number of ways of doing this:

- Protests and petitions  
If people feel the law needs to be changed, they may hold protest meetings or rallies. They may also sign petitions and hand them into the Government to show the number of people who feel the same about the law.
- Pressure groups  
Groups of people who hold the same opinion on a subject may work together to try to persuade Parliament to make changes.
- Law reform bodies  
As the law is very large, it is difficult to know all of the laws that are in force and so there are permanent bodies such as the Law Commission. The Law Commission keeps the law under review and recommends changes if necessary.
- Green and White Papers  
Most new statutes are introduced to the Government as part of their policy, but sometimes, although they may have an idea for a new law, they may wish to find out opinions on their proposal. If they wish to hear people's opinions before actually writing the proposed new law, they can issue a Green Paper in which they will ask for opinions and views on the proposal. If the Government has clear ideas on the law they wish to pass, they may issue a White Paper. This is a draft of the law they want to pass, but there is still opportunity to hear opinions on the proposal.

The next stage in the passing of an Act of Parliament is the creation of a **Bill**. A Bill is the document that contains the proposed new law, and because it is important that they accurately state what is required, they are normally drafted by lawyers who work for Parliament or the Civil Service.

There are three different types of Bill:

- Public Bills
- Private Member's Bills
- Private Bills.

## Activity 3

Read Jacqueline Martin, page 105 (3rd), pages 95–7 (4th) and then explain the following.

- 1 How does the Government use Green and White Papers to help them in creating new laws?



- 2 Briefly describe the three different types of Bill?

Once the Bill has been drafted, it will enter Parliament to begin the process of being passed. A Bill can start either in the House of Commons or the House of Lords and then move on to the other House once it has completed the required stages. For our purposes, we will start the Bill in the House of Commons.

## Activity 4

Read Jacqueline Martin, pages 105–7 (3rd), pages 97–8 (4th).

- 1 List and explain the different stages a Bill must go through in the House of Commons.





## Activity 5

Read Jacqueline Martin, page 102 (4th), then answer the following questions.

- 1 If there is a conflict between English law and European Union law, which law must be applied by the judges?



At vero eos e  
accusamus et  
iusto odio dic  
simos ducim  
qui blanditis  
praesentium  
voluptatum d

- 2 What will the judges do if they feel that a statute infringes the Human Rights Act 1998?

## Delegated legislation

One of the things you should have noticed about the process of passing Acts of Parliament is that it is a relatively slow process. Parliament can only pass about 60 to 70 statutes a year. This may not always be enough to control and regulate the country, and so Parliament may authorise others to make some of the laws. Laws being made by these other people are known as **delegated legislation**.

## Activity 6

Read Jacqueline Martin, page 109 (3rd), page 105 (4th), then give the name of the type of Act that delegates the power to make laws to others. Give examples of such Acts.



At vero eos e  
accusamus et  
iusto odio dic  
simos ducim  
qui blanditis  
praesentium  
voluptatum d

Note that if Parliament wishes to delegate power to others, it must do so in an Act of Parliament and that Act must go through the usual process – Bill, First Reading, Second Reading, and so on. It saves Parliament time, though, as the Act will only lay down the framework of the laws required and thus will be simple. Also, they tend to be uncontroversial and unlikely to be objected to. For example, if the Government wants new rules to ensure nuclear power stations are safe and they

want experts at the Ministry of Energy to make those rules, the Opposition are not going to object.

There are different types of delegated legislation which are made by different people for different reasons.

## Activity 7



At vero eos e  
accusamus e  
iusto odio di  
simos ducim  
qui blanditi  
praesentium  
voluptatum d

Read Jacqueline Martin, pages 109–10 (3rd), pages 105–6 (4th), and explain who makes each of the different types of delegated legislation, and what are they used for.

1 Orders in Council

2 Statutory Instruments

3 Bylaws



The use of delegated legislation in recent times has increased dramatically, and much of this increase is due to the advantages delegated legislation has over the introduction of laws through statute law. The use of delegated legislation to introduce new law also has disadvantages which you need to be aware of.

## Activity 8



At vero eos e  
accusamus e  
iusto odio di  
simos ducim  
qui blanditi  
praesentium  
voluptatum d

Read Jacqueline Martin, pages 111–12 (3rd), pages 106–7 (4th). Briefly explain the advantages of delegated legislation and display your answer in a table.



□□□□□□□□

## Assignment

### 1.1



- 1) Name the three different 'bodies' that make up Parliament in this country. *(3 marks)*
  
- 2) Only Parliament has the power to pass statutes, but list ways in which ordinary people can influence the laws that are made. *(2 marks)*
  
- 3) Explain the different uses for Green and White Papers in the legislative process. *(2 marks)*
  
- 4) Explain the different stages a Bill will go through within Parliament to become law. *(6 marks)*
  
- 5) Parliament is described as 'sovereign' or 'supreme'. What does this mean and how has this sovereignty been limited in more recent times? *(3 marks)*
  
- 6) What is the name given to a statute that delegates to others the power to make laws? *(1 mark)*
  
- 7) Name three different types of delegated legislation. *(3 marks)*
  
- 8) Why does Parliament hand over to others the power to make laws? *(5 marks)*



## TIPS

In multi-part questions such as this, it is important to read the questions carefully to gauge how much depth is required for each part.

- The words used are a good clue. If the question asks you to '**name**' something, then that is all that is required of you.
- Words like '**explain**' or '**comment on**' show that you need to expand on your answer and show your depth of knowledge of the topic. Sometimes you will be asked a question (as in 8, above). In this situation (depending on how many marks are available), you are usually required not just to give your answer but also to expand on it in order to explain how you reached that answer and thus demonstrate your knowledge.
- As mentioned above, the number of marks each part carries is another good indication of the depth required. The more marks on offer, the more depth is required.
- Another good way to enhance your answer is to use cases and statutes (this is often referred to as 'quoting authority') to illustrate and support what you have said. So explaining a case to show how a particular area of law works would help your answer as it shows you know how it works.



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# Topic 1 Sources of law

## Unit 1.2 Judge-made law

---

**On completion of this unit, you should:**

- understand the essential ingredients of judicial precedent
- understand the hierarchy of the courts and why it is important
- understand how certainty and flexibility is obtained.

**Key terms:**

- Judicial precedent
- ratio decidendi
- obiter dicta
- Binding and persuasive precedents
- Overruling, reversing and distinguishing

## The doctrine of judicial precedent

Judicial precedent is the oldest source of English law and can trace its origins back to the Norman invasion in 1066. The English legal system is still essentially a common law system, which means that much of the law has been developed over time by the courts. Precedent is still a very important source of law as it covers areas of law that are not contained within legislation or delegated legislation.

The basis of the system of precedent is the principle of **stare decisis** – ‘stand by the decision’. This requires a later court to use the same reasoning as an earlier court where the two cases involved raise the same legal issues. This ensures that the system is fair and predictable as it means two similar cases will be decided in similar ways.

If a dispute comes before the courts that is not covered by legislation, then it is for the judge who hears the case to decide what the law is: our judges cannot say ‘I don’t know!’ and thus must reach a decision in the case. In order to ascertain what the law is, the judge will use **common law reasoning** – this is looking at the decisions that have been made by other judges in previous cases to help them reach a decision in the case before them.

In order for the system of judicial precedent to work effectively, there are three essential ingredients:

1. accurate law reports
2. a settled hierarchy of the courts
3. rules for working out the part of a judgement that must be followed.

### Accurate law reports

If a judge is expected to follow the decisions of other judges made in previous cases, it is essential that the judges can refer to reports of what those judges said.

There are a number of different providers of recognised law reports, such as the **All England Law Reports**, **The Weekly Law Reports** and the **Times Law Reports** where people can find the details of cases and the judgements made in them.

## Activity 1

Read Jacqueline Martin, pages 94–5 and 101–2 (3rd), page 117 (4th).

1 Who produced the reports before 1865?



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accusamus e  
iusto odio dic  
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qui blanditis  
praesentium  
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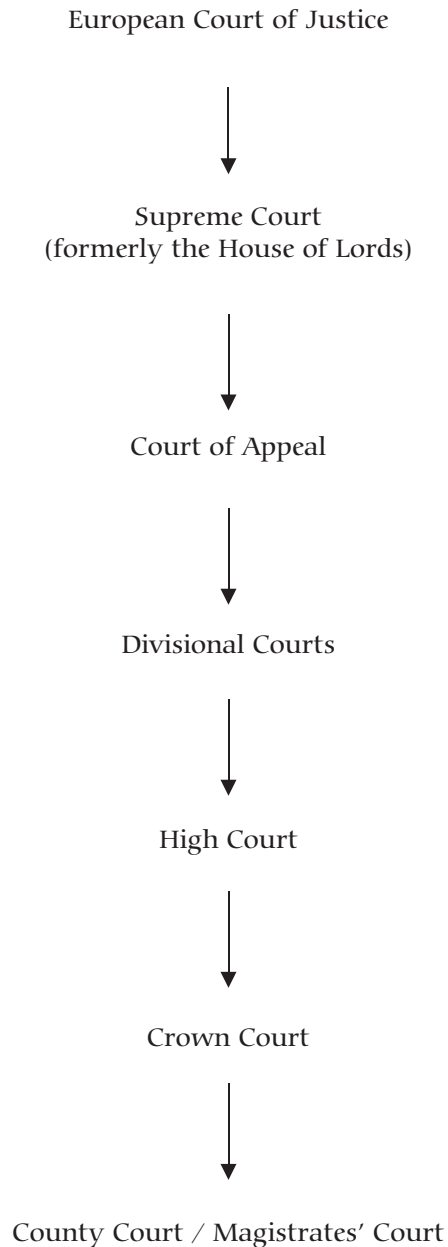
2 What was created in 1865 and how did this change the operation of precedent?

## Settled hierarchy of the courts

If a judge is looking at a number of previous decisions made by different judges, they will need to know which judge is more important than another, as they are expected to follow the decision made by the highest judge. You can tell the level of a judge by which court they were sitting in when they made the decision.

The courts have a clear relationship with each other, and the general idea of the system is that the lower judges have to follow the decisions of the higher judges.

## The hierarchy of the courts



## Activity 2



Complete the following statements:

- The decisions of the European Court of Justice must be followed by \_\_\_\_\_.
- The decisions of the Supreme Court must be followed by \_\_\_\_\_.
- The decisions of the Court of Appeal must be followed by \_\_\_\_\_.
- The decisions of the Divisional Courts must be followed by \_\_\_\_\_.

The situation of whether you have to follow the previous decisions of higher or lower courts is generally straightforward. The more complex question is whether a judge has to follow the decisions made by judges of the same level as themselves: for example, does a judge in the Court of Appeal have to follow previous decisions made in the Court of Appeal?

## Activity 3



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Read Jacqueline Martin, pages 95–8 (3rd), pages 110–12 (4th) and answer the following questions.

- 1 Is the European Court of Justice bound to follow its own previous decisions?
- 2 What power did the 1966 Practice Statement give the House of Lords/Supreme Court?
- 3 When are they likely to use this power?
- 4 The Court of Appeal is usually bound to follow its own previous decisions. Why is this?

5 The Court of Appeal (Civil Div) has to follow its own previous decision. Why isn't this so strictly applied in the Court of Appeal (Criminal Div)?

6 Does the High Court have to follow its own previous decisions? Why do you think this is the case?

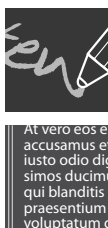
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## Rules for working out the part of a judgement that must be followed

In making a judgement, the judge will make a speech. The speech will generally outline the relevant facts of the case, a statement of the legal principles relevant to facts involved in the case, and the reasons on which the judge based their decision. The reason for the decision is known as the **ratio decidendi** ('the reason for deciding'), and it is the ratio decidendi statements of a case that form the precedent which must be followed by all **lower** judges hearing similar cases.

Any other statements made during the speech not directly connected to the facts and the decision of the case are known as **obiter dicta** ('other things said by the way'). Obiter dicta statements do not have to be followed by other judges, but may be considered by other judges and used if they wish to.

### Activity 4



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Read Jacqueline Martin, page 94 (3rd), page 109 (4th) and the simple judgement below, which has been split into different sections. Then answer the questions.

Report of *Mitchell v Taylor* in the High Court before Mr Justice Dodds:

- (1) *'The case before me is a relatively straightforward case of negligence, and I find in favour of the claimant in this particular case.'*
- (2) *On the day in question, the claimant Mrs Mitchell was crossing the road quite properly on the zebra crossing situated in Greenhill Road, Winchester, when the defendant James Taylor came along the road knocking down the claimant causing numerous injuries including a broken leg. The day was fine and the road was dry, and thus it would seem that the only reason for the injuries suffered was due to the excessive speed and lack of attention of the defendant.*
- (3) *The law in this area is clear. Drivers of vehicles have a responsibility or duty to ensure that they drive their vehicle in such a manner that other road users will*

*not be injured when going about their proper business. In this case, by driving at an excessive speed and being unable to stop in time for users of the zebra crossing, the defendant has clearly broken that duty and must pay compensation for the injuries caused to the claimant. In considering this case, I believe the weather conditions were an important factor. As the day was fine and the roads were dry, there was no excuse for Mr Taylor's inability to stop.*

(4) *If though the day had been cold and the roads had been icy and it was this which caused a driver to be unable to stop their vehicle, then, provided the driver was driving at a sensible speed for the conditions, my decision might be very different as this could be described as a pure accident.'*

- The obiter dicta
- The facts
- The ratio decidendi
- The decision

Choosing from the above lists of options:

Paragraph (1) of the judgement would be considered to be \_\_\_\_\_ of the case.

Paragraph (2) of the judgement would be \_\_\_\_\_ of the case.

Paragraph (3) of the judgement would be \_\_\_\_\_ of the case.

Paragraph (4) of the judgement would be considered \_\_\_\_\_ of the case.

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## Binding and persuasive precedent

### Activity 5

Read Jacqueline Martin, pages 98–9 (3rd), pages 112–14 (4th), and explain the following.

1 What is meant by a **binding precedent**?

2 When might a judge make an **original precedent**?

3 Give at least **two** examples of when a judge might follow a persuasive precedent even though they don't have to.

The Doctrine of Binding Precedent brings certainty and predictability to the law and such certainty is necessary.

- People need certainty to be able to plan their lives and businesses based on established principles, i.e. they need to know this.
- Lawyers will be able to advise their clients on the likely success or otherwise of a claim they may have by looking at the precedents.

BUT if the judges have to slavishly follow previous decisions, then the whole system can become rigid and ultimately unjust. So in order for the system to be fair and allow the system to develop to meet changing needs, it needs to have flexibility as well as certainty.

Within the system of judicial precedent, flexibility is introduced by:

- **Overruling** – the higher courts can overrule the decision of a lower court.
- **Reversing** – if a case is taken on appeal and the Appeal Court changes the decision of the lower court, then the original decision is said to have been reversed.
- **Distinguishing** – judges only have to follow the ratio decidendi of a case if the facts of that case are similar to the facts of the present case. If a judge can identify material differences that justify not having to follow that ratio, then they don't have to.

## Activity 6



Read Jacqueline Martin, pages 100–1 (3rd), pages 114–17 (4th). In a table, list and briefly explain the advantages and disadvantages of the system of judicial precedent.



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simos ducim  
qui blanditi  
praesentium  
voluptatum d



□□□□□□□□□□

# Assignment 1.2



- 1) Name a law report and explain why accurate law reports are so important to the system of judicial precedent. *(2 marks)*
  
- 2) Explain the importance of the hierarchy of the courts in the operation of judicial precedent. Give examples to illustrate your answer. *(4 marks)*
  
- 3) In judicial precedent, what is meant by each of the following?
  - i) ratio decidendi *(2 marks)*
  
  - ii) obiter dicta *(2 marks)*
  
  - iii) Binding precedent *(2 marks)*
  
  - iv) Persuasive precedent *(2 marks)*
  
- 4) Explain the importance of the 1966 Practice Statement issued by the House of Lords. *(4 marks)*
  
- 5) Explain how judges may use distinguishing within judicial precedent to avoid having to follow binding precedents. *(3 marks)*
  
- 6) Comment on one **advantage** and one **disadvantage** of judicial precedent. *(4 marks)*

