

## Law A level

### Course plan

This plan shows the structure of the course and gives an outline of the contents. Sections 1–4 cover the requirements of the AS and Part 1 of the A level; Sections 5–10 cover Part 2 of the A level. You need to do Sections 1–10 to prepare for the A level.

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- Topic 4 Law and society: balancing competing interests
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## Sample of the Law A/AS level Course from Section 1

### Topic 1

# The nature of law and the rule of law

## Introduction

This topic covers the first two chapters of the textbook and introduces you to the theory of law. We will look first at the distinction between enforceable legal rules and principles and other rules and norms of behaviour. You also need to understand the differences between criminal and civil law and between different sources of law. Finally, we will look at the rule of law, which is a concept that applies, or should apply, in most democratic countries.



You will probably need 2 hours to complete this topic.

## Objectives

When you have completed this topic you should be able to:

- explain the distinction between enforceable legal rules and other norms
- identify the differences between criminal and civil law
- identify the different sources of law
- show a basic understanding of the rule of law.

## Legal and other rules

Law is based on rules. However, there are many other rules governing how we behave so we need to make a distinction between enforceable legal rules and other norms of behaviour. There is no agreed definition of law but there are certain elements a law has that other rules don't.



Read 1.1 and 1.2.

One difference between law and other rules of behaviour is that law is enforced by the state. Breaking other rules may get you punished by your family, a teacher or an employer, but there is no formal punishment through a court of law.

### Activity 1

(Allow 5 minutes)

Briefly explain three more differences between law and other rules.

Differences between law and other rules:

- law can be made instantly but other rules can develop over time
- law must be obeyed; other rules may be obeyed but do not have to be
- law is enforced by the courts while other rules are enforced by disapproval of the community
- law applies to everyone whereas other rules only apply to certain people in certain circumstances.



## Criminal and civil law

Read 1.3 on criminal and civil law.

Both criminal and civil liability are based on people being responsible for their actions. However, there are important differences between criminal and civil law. In **criminal law** the responsibility is to the state and also to other people for certain laws, like not to harm others. In **civil law** the responsibility is between individuals so we have laws that say you must keep your side of a contract with another person or organisation or must be careful not to harm others by your negligent actions.



The main difference between criminal and civil law is in what happens after the event. Here is a summary of the essential differences.

## Criminal law

- proceedings are initiated by the Crown (the Crown Prosecution Service)
- all cases begin in the Magistrates' Court
- serious crimes are heard in the Crown Court
- the accused is prosecuted
- the standard of proof is beyond reasonable doubt
- the primary purpose is punishment.

## Civil law

- proceedings are initiated by the individual (the claimant)
- cases begin in the County Court or High Court depending on the amount claimed
- the defendant is sued
- the standard of proof is the balance of probabilities
- the primary purpose is compensation, called damages.

### Study hint

For Part 2 you will be studying the option of human rights and not contract law. This means you can leave out the parts of the textbook referring to contract law. Also note that defamation is mentioned in the examples in the textbook, which is fine, but this is not examined on any AQA paper.

## Sources of law



Read 1.4.

The main two sources of law are **statute law**, which comes from Parliament, and **common law** which comes from decisions by judges in the higher courts. Other sources of law today include European law and human rights law which are dealt with later as they are not included in this part of the textbook. The other source of law is custom, but this is rare these days so we will deal with that very briefly first.

## Custom law

Traditionally, some law developed from rules of behaviour that had been going on for so long they had become accepted as law even though not established in a case or by statute. As these customs became applied across the country they eventually developed into the common law.

## Common law

Common law developed following the Norman Conquest as judges travelled the country making decisions on various issues, both criminal and civil. As the law became widespread and applied across the whole country it began to be referred to as the common law because it was common to the whole country. So common law comes from judges rather than Members of Parliament (MPs) and does not go through the formal processes for making law. You will see that most of **tort** comes from the common law. Negligence is the biggest area of tort law and virtually all this comes from decisions made in court. In criminal law, the law more usually comes from statutes, however, murder, which is probably seen as one of the worst crimes, is still a matter of judge-made law and is not in an Act of Parliament.

Before moving on you may like to know what tort means. Although tort comprises a large part of English law, the word itself derives from the French for a wrong.

## Statute law

Statute law is made in Parliament and so statutes are also called Acts of Parliament. The formal process for making a statute and the influences on Parliament when making law are covered in the next topic so this is just a brief introduction to highlight the differences between the sources of law.

Whereas common law can only be made when a particular case comes before the court, statute law can be made at any time. It is often needed where there have been social or technological advances which the law needs to keep up with. This would include laws dealing with social media, computer hacking and tissue-typing of embryos.

You may like a quick explanation of the reference in the textbook to 'designer babies'. This comes from the law that allows for tissue-typing. This is a way of checking whether an embryo has certain characteristics and allows for a choice to be made between

embryos to ensure a match, e.g. for a brother or sister who needs a bone transplant.



## Activity 2

(Allow 10 minutes)

Look at the 'check your understanding' activity before the summary in the textbook and answer the questions.

Minor offences are dealt with in the Magistrates' Court. The accurate statement is B (statement D is correct but not accurate). Although no specific examples are given you can say that in a negligence case the person harmed will sue the person who acted negligently in the county court or the High Court, whereas in a criminal case the state will prosecute the wrongdoer in the Magistrates' Court or the Crown Court. You could pick any other differences from the summary above.

## The rule of law



As noted in the textbook the rule of law is mostly a symbolic idea. That does not mean it is unimportant, but it does mean it is a somewhat tenuous concept and has no clear definition.

Read 2.1 and 2.2.

You will see Dicey's view was important in the nineteenth century and others have developed his ideas. A book written by Lord Bingham (*The Rule of Law*, 2010) discussed the rule in depth with the aim of not only explaining it but bringing it up to date for a modern world. The following activity is based on this book, which was itself the basis for Lord Bingham's lecture on the subject in 2014.



### Activity 3

(Allow 20 minutes)

The extract below is taken from *Criminal Law for AQA AS* by Sally Russell and is based on a speech given by Lord Bingham in a 2014 lecture, taken from his book *The Rule of Law*. Read the extract and then answer the questions.

- 1 Who popularised the rule of law in the nineteenth century?
- 2 What correspondence had to be made public by the court's decision in *Evans v AG* (2015)?
- 3 What did Lord Bingham mean when he said 'If you maltreat a penguin in the London zoo, you do not escape prosecution because you are the Archbishop of Canterbury'?
- 4 What is accepted by most people as being part of any rule of law?
- 5 Why might the legal aid reductions mean the rule of law does not apply in practice?

#### The rule of law

When rules of criminal law are formulated they should conform to the rule of law. This involves equality, clarity and fairness.

The law should apply to everyone equally and no-one should be above the law.

The law must be clear so that people know the rules (then if the rules are broken it will be fair to punish those at fault).

The law must be accessible so that if a person is accused of a crime it is only fair that access to justice and legal advice is possible.

This is a simplified description of the rule of law, and it applies not only to Paper 1 at AS but also to Paper 3 for the A-level, so needs further discussion.



#### The Rule of Law

The Constitutional Reform Act 2005 refers to the rule of law, and the Lord Chancellor's oath requires the Lord Chancellor to respect the rule of law, but there is no agreed definition of it. An early view of the rule of law is that formulated by Dr Thomas Fuller in 1733:

"Be you ever so high, the law is above you". In *Evans v AG* 2015, the SC ruled that correspondence between Prince Charles and government ministers should be made public under the Freedom of Information Act and said it was "fundamental to the rule of law" that decisions and actions of the executive are subject to review in a court of law.

The rule of law was popularised by A. V. Dicey (a constitutional lawyer) the following century who, in summary, said "everyone, whatever his rank, is subject to the ordinary law of the land". A little more recently, Lord Bingham said "If you maltreat a penguin in the London zoo, you do not escape prosecution because you are the Archbishop of Canterbury". So, an important part of the rule of law

is that everyone is subject to it, with no exclusions. There is more to it than that, and opinions differ on what it means in the modern sense. Although the rule of law is a somewhat abstract notion, to try to explain it today a good place to start is with Lord Bingham's 2014 lecture on the subject, taken from his book 'The Rule of Law'. The core principle is as above, that no-one is above the law, including those who make it. He notes that the rule of law has evolved and continues to do so, and sets out 8 sub-rules which he feels describe the rule of law in its current form. These are:

Law must be accessible. This means that if people are bound by the law they must be able to know what the law is.

Questions of legal rights and liabilities should be resolved by application of the law and not be a matter of discretion. This does not mean there is absolutely no discretion. A judge must exercise a certain amount of discretion when deciding on an appropriate sentence or remedy – the point is that any such discretion is limited by law, e.g., statutes or earlier decisions.

The law should apply equally to all. This is accepted by most people as being part of any rule of law but Lord Bingham points out that in practice it is not always apparent. An example is the various Terrorism Acts where non-nationals suspected of terrorism are subject to being locked up without trial, but nationals are not – even though they pose the same threat. It is arguable that anyone subject to national laws should be entitled to the law's protection. Even where the law appears to apply equally it may not in practice. It is true that the Archbishop of Canterbury is not above the law – but if he does mistreat a penguin he can probably afford a decent lawyer to help his case! The Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO), has severely reduced access to justice and legal aid, especially in civil cases.

The law should adequately protect fundamental human rights. This is perhaps a more recent addition to the concept of the rule of law. In the preamble to the Universal Declaration of Human Rights it says that if people are not to be compelled to rebel against tyranny and oppression that "human rights should be protected by the rule of law".

The state must meet its obligations under international law. Thus an act by a state that is unlawful would be against the rule of law. He referred to the war against Iraq and whilst not saying whether or not he believed it to be illegal, he did say that if it was illegal then it would be against the rule of law "if this sub-rule is sound".

Means must be provided for resolving civil disputes. He says that if people are bound by the law they should receive its benefits and should be able to go to court to have their rights and liberties determined "in the last resort". He does not rule out less formal methods of resolving disputes but sees access to the courts as a "basic right" adding that legal advice should be affordable and available without excessive delay. Where the first sub-rule requires law to be accessible in the sense of clarity, this sub-rule requires accessibility in terms of cost. It has been said that justice is open to all "like the Ritz hotel" – meaning that everyone may be entitled to it but many are unable to use it in practice due to lack of money. Going back to the mistreatment of penguins, the Archbishop is more likely to be able to afford to go to the Ritz and to gain access to justice than the average person on the street, especially since LASPO.

All public officials must exercise their power reasonably and not exceed its limits. As with the second rule, this rule is against the arbitrary use of power. An example of its application is that everyone has the right to apply for judicial review of a decision made by public officers and government ministers – a judge cannot overturn such a decision, but can rule that it is unreasonable.

Adjudicative procedures must be fair. This means open court hearings, the right to be heard, the right to know what the charges and evidence against you are, that the decision maker is independent and impartial, and that in criminal cases D is innocent until guilt is proved. Fairness would also cover access to justice in both the earlier senses of clarity and cost.

Lord Bingham sees the rule of law as depending on an unspoken bargain between the individual and the state. The citizen sacrifices some freedom by accepting legal constraints on certain activities, and the state sacrifices some power by recognising it cannot do all that it has the power to do. He concludes that this means those who maintain and protect the rule of law are “guardians of an all but sacred flame which animates and enlightens the society in which we live”.

To sum up the rule of law:

No-one is above the law

Everyone is subject to the law, not the arbitrary exercise of power

The law must encompass clarity, access to justice, fairness and an independent and impartial judiciary (this would include a fair trial)

The law must apply equally

In Lord Bingham’s view, the rule of law should also protect human rights and comply with international obligations if it is to apply to a modern state with national and international commitments. Bear that in mind if you will be studying human rights for Paper 3.

As you study the law try to consider whether the rule of law is being upheld.

From Russell, S (2017) Criminal Law for AQA AS. CreateSpace

- 1 A V Dicey.
- 2 Correspondence between Prince Charles and the Government.
- 3 Lord Bingham meant that the law applies equally so that whoever you are you are not above it.
- 4 Most people accept that the law should apply equally.
- 5 Reductions in the provision of legal aid mean that many people cannot afford to have a lawyer to help with advice and representation in court so they do not get equal treatment in practice even if they do in theory.



## The rule of law in practice

Read 2.3 to the end of the chapter.

It is important to be able to use examples when trying to explain a principle of law so read this section in the textbook carefully. One

thing that may need clarifying is the word **substantive**. Lawyers and academics use this word to refer to the substance of the law, including crime, contract, human rights and tort. This differentiates these types of law from **non-substantive** law, which applies to the nature rather than the substance of the law and includes law-making and the English legal system, as well as the concepts of law that come in Part 2 of the A level course.

The textbook gives many examples of the role of law in protecting people and property, but note that these protections are not worth very much without the rule of law. This is because if they do not apply equally to all, some people will not be protected, or if people do not have access to justice they are not able to enforce any protections that the law offers. Most rights are meaningless unless they are enforceable.

### Exam hint

You will be expected to be able to illustrate your answers with examples. Make sure you are able to refer to one or two examples from each of the areas discussed. The following activity on the rule of law will help with this. Note that the rule of law comes into the criminal paper for AS (Paper 1) and the human rights paper (Paper 3) for the A level so choose one of these.

### Activity 4

(Allow 8 minutes)

Give one example of the rule of law operating in each of the following:

- law-making
- the legal system
- substantive law - chose an example from either criminal law or human rights law.

Examples for law-making include that the process must be open and fair and that there are checks on how the law is made.

Examples for the legal system include that everyone has the right to a hearing and a fair trial, no-one should be imprisoned without trial and justice should be accessible to all. Examples from criminal law include that the law is clear and that the prosecution must prove its case against the wrongdoer. Examples from human rights law

include the right to liberty (which corresponds to the idea that no-one should be imprisoned without trial) and the right to a fair trial which also applies to the English legal system.

### **Study hint**

The examples given here are quite general but later when you are studying particular processes and laws you will see more specific examples. It is a good idea when you are reading other topics to think back to the rule of law and make a note of any examples you see in that topic.

Here is an example answer to a three-mark question asking for a brief explanation of the rule of law.

The rule of law requires that people are treated equally and that no-one is above the law. This includes royalty and government ministers. People should have access to justice and a fair trial. Cuts in the provision of legal aid have made this difficult.

Here is a better example answer.

The rule of law requires that people are treated equally and that no-one is above the law. This includes royalty and government ministers. The Supreme Court ruled in 2015 that correspondence between the government and Prince Charles should be made public so it could be reviewed in court. People should have access to justice and a fair trial and cuts in the provision of legal aid have made this difficult. Lord Bingham said that access to the courts was a basic right and that legal advice should be affordable, so legal aid cuts go against the rule of law.

The second answer says much the same about the rule of law but gives examples. It does not matter that the case name is not used, though it is always better if you can, as long as you can show that you know the case.

## Self check

(Allow 3 minutes)

- 1 Which one of the following statements best describes statute law?
  - a) A law made in court.
  - b) A law made by tradition.
  - c) A law made in Parliament.
  - d) A law made by the government.
- 2 Which of the following statements is most accurate?
  - a) The Crown Court is a civil court.
  - b) The Crown Court is a criminal court.
  - c) The Crown Court hears all civil cases.
  - d) The Crown Court hears all criminal cases.
- 3 In which of the following courts does the jury usually appear?
  - a) The Magistrates' Court
  - b) The High Court
  - c) The Crown Court
  - d) The County Court

You will find feedback to self checks at the end of the section.

## Summary

Now that you have completed your work on this topic you should understand that:

- law is based on rules
- legal rules are enforced by the state
- the main difference between criminal and civil law is in what happens after the event
- law comes from custom, common law and statutes
- the rule of law should ensure equality, clarity and fairness.

## Key terms

**criminal law:** the responsibility is to the state and also to other people for certain laws, like not to harm others

**civil law:** the responsibility between individuals for certain laws

**tort:** French word meaning a wrong (in civil law)

**statute:** law made in Parliament, also called an Act of Parliament

**common law:** law made by judges

**substantive:** law such as crime, contract, tort and human rights

**non-substantive:** nature rather than substance of the law

## References

Bingham, T (2010) *The Rule of Law*. Cambridge University Press

Bingham, T (2007) The Rule of Law, *The Cambridge Law Journal*, 66(1), pp67-85. Accessed 11 July 2017.

<http://www.jstor.org/stable/4500873>

RSA (2010), *Lord Bingham – The Rule of Law*, video. Accessed 22 August 2017

<https://www.youtube.com/watch?v=XIMCCGD2TeM>

Russell, S (2017) *Criminal Law for AQA AS*. Create Space



## Going further

You can read or download Lord Bingham's article on the rule of law published by Cambridge University Press at the link below. It is around 20 pages long but makes interesting reading if you would like to know more about the rule of law in a twenty-first century multicultural world. There are several examples of both the use and abuse of the rule of law, along with some background on the reasons why it is so necessary.

Bingham, T (2007) The Rule of Law, *The Cambridge Law Journal*, 66(1), pp67-85. Accessed 11 July 2017.

<http://www.jstor.org/stable/4500873>

You may also find the Lord Bingham's speech about the rule of law interesting (produced by RSA and available here:

<https://www.youtube.com/watch?v=XIMCCGD2TeM>

## What next?

We hope this sample has helped you to decide whether this course is right for you.

If you have any further questions, please do not hesitate to contact us using the details below.

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