

HODDER
EDUCATION

MY REVISION NOTES

AQA A-level

LAW

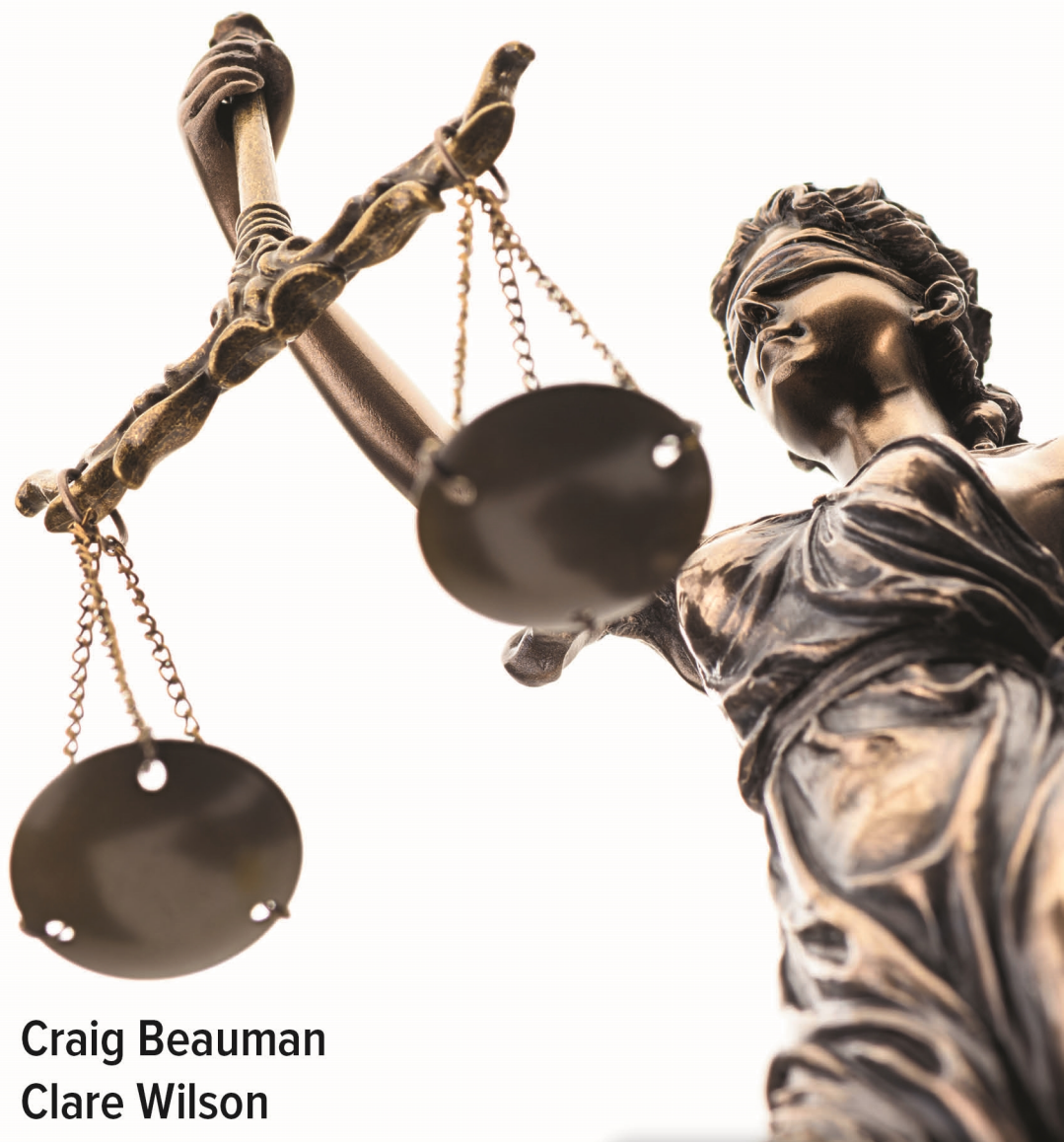
AQA

A-level

LAW

SECOND EDITION

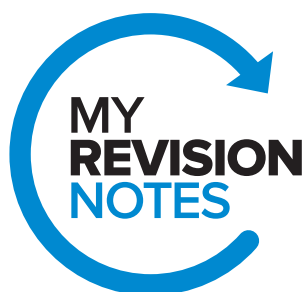
- + Plan and organise your revision
- + Reinforce skills and understanding
- + Practise exam-style questions



Craig Beauman
Clare Wilson



 **HODDER**
EDUCATION
LEARN MORE



AQA

A-level

LAW

2ND EDITION

Clare Wilson
Craig Beauman

Copyright: sample material

HODDER
EDUCATION

AN HACHETTE UK COMPANY

Every effort has been made to trace all copyright holders, but if any have been inadvertently overlooked, the Publishers will be pleased to make the necessary arrangements at the first opportunity.

Although every effort has been made to ensure that website addresses are correct at time of going to press, Hodder Education cannot be held responsible for the content of any website mentioned in this book. It is sometimes possible to find a relocated web page by typing in the address of the home page for a website in the URL window of your browser.

Hachette UK's policy is to use papers that are natural, renewable and recyclable products and made from wood grown in well-managed forests and other controlled sources. The logging and manufacturing processes are expected to conform to the environmental regulations of the country of origin.

Orders: please contact Hachette UK Distribution, Hely Hutchinson Centre, Milton Road, Didcot, Oxfordshire, OX11 7HH. Telephone: +44 (0)1235 827827. Email education@hachette.co.uk Lines are open from 9 a.m. to 5 p.m., Monday to Friday. You can also order through our website: www.hoddereducation.co.uk

ISBN: 978 1 3983 5204 9

© Clare Wilson and Craig Beauman 2022

First published in 2017

This edition published in 2022 by

Hodder Education,

An Hachette UK Company

Carmelite House

50 Victoria Embankment

London EC4Y 0DZ

www.hoddereducation.co.uk

Impression number 10 9 8 7 6 5 4 3 2 1

Year 2026 2025 2024 2023 2022

All rights reserved. Apart from any use permitted under UK copyright law, no part of this publication may be reproduced or transmitted in any form or by any means, electronic or mechanical, including photocopying and recording, or held within any information storage and retrieval system, without permission in writing from the publisher or under licence from the Copyright Licensing Agency Limited. Further details of such licences (for reprographic reproduction) may be obtained from the Copyright Licensing Agency Limited, www.cla.co.uk.

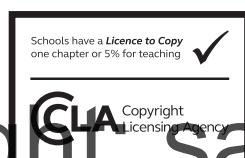
Cover photo © graham oakes/Shutterstock.com

Illustrations by Aptara Inc

Typeset in Bembo Std 11/13 pt by Aptara Inc

Printed in India

A catalogue record for this title is available from the British Library.



Copyright sample material

Get the most from this book

Everyone has to decide their own revision strategy, but it is essential to review your work, learn it and test your understanding. Revision doesn't begin seven or eight weeks before the exam, it begins on the first day and every day of class. These Revision Notes will help you to do that in a planned way, topic by topic. Use this book as the cornerstone of your revision and don't hesitate to write in it – personalise your notes and check your progress by ticking off each section as you revise.

A key strategy is to write your own questions, look at previous question papers and get a 'flavour' of how AQA examiners write the questions. Try writing your own scenario/problem questions based on those available on the AQA website.

Tick to track your progress

Use the revision planner on pages iv–v to plan your revision, topic by topic. Tick each box when you have:

- + revised and understood a topic
- + tested yourself
- + practised the exam questions and checked your answers online.

You can also keep track of your revision by ticking off each topic heading in the book. You may find it helpful to add your own notes as you work through each topic.

Features to help you succeed

Exam tips

Expert tips are given throughout the book to help you polish your exam technique in order to maximise your chances in the exam.

Typical mistakes

The author identifies the typical mistakes candidates make and explains how you can avoid them.

Now test yourself

These short, knowledge-based questions provide the first step in testing your learning. Answers are available online.

Definitions and key words

Clear, concise definitions of essential key terms are provided where they first appear.

Key words from the specification are highlighted in blue throughout the book.

Revision activities

These activities will help you to understand each topic in an interactive way.

Exam practice

Practice exam questions are provided for each topic. Use them to consolidate your revision and practise your exam skills.

Exam summaries

Descriptions of the types of questions you can expect in the examination.

This second edition contains three new features:

Stretch and challenge

A series of activities and questions to challenge your thinking and help you to aim for the higher grades.

Evaluation points

Boost your evaluative skills with these activities and discussion points.

End-of-unit summaries

These bring together the whole content of the unit, containing a bulleted list for you to review quickly before the exam. This 'retrieval practice' allows you to practise recall of learnt information and skills.

Online

Go online to check your answers to the now test yourself and exam practice questions at www.hoddereducation.co.uk/myrevisionnotes

Copyright: sample material

[illegible]

- ## 2 Criminal law

- ### 3 Tort

- ## 4 Law of contract

- 141 4.1 Rules of contract law
143 4.2 Theory of contract law
146 4.3 Essential requirements of a contract
157 4.4 Contract terms (1): General
161 4.5 Contract terms (2): Specific terms implied by statute in relation
to consumer contracts
164 4.6 Contract terms (3): Exclusion clauses
168 4.7 Vitiating factors
172 4.8 Discharge of a contract
176 4.9 Remedies

5 Human rights

- 183 5.1 Rules in human rights law
- 185 5.2 Theory of human rights
- 187 5.3 Human rights in international law
- 189 5.4 Human rights in the UK prior to and after the Human Rights Act 1998
- 193 5.5 European Convention on Human Rights 1953
- 203 5.6 Restrictions
- 206 5.7 Enforcement
- 209 5.8 Human rights and English law
- 213 5.9 Reform of the protection of human rights in the UK

218 Glossary

221 Index

REVISED

TESTED

EXAM
READY

My revision planner

Copyright: sample material

Countdown to my exams

From September

Attend class in person or via the internet if necessary; listen and enjoy the subject; make notes. Make friends in class and discuss the topics with them. Watch the news. Also refer to the *A-level Law Review* for further clarification of topics, exercises and case law updates.

6–8 weeks to go

- Start by looking at the specification – make sure you know exactly what material you need to revise and the style of the examination. Use the revision planner on pages iv–v to familiarise yourself with the topics.
- Organise your notes, making sure you have covered everything on the specification. The revision planner will help you to group your notes into topics.
- Work out a realistic revision plan that will allow you time for relaxation. Set aside days and times for all the subjects that you need to study and stick to your timetable.
- Set yourself sensible targets. Break your revision down into focused sessions of around 40 minutes, divided by breaks. These Revision Notes organise the basic facts into short, memorable sections to make revising easier.

REVISED

2–6 weeks to go

- Read through the relevant sections of this book and refer to the exam tips, exam summaries, typical mistakes and key terms. Tick off the topics as you feel confident about them. Highlight those topics you find difficult and look at them again in detail.
- Test your understanding of each topic by working through the 'Now test yourself' questions in the book. Look up the answers online.
- Make a note of any problem areas as you revise and ask your teacher to go over these in class.
- Look at past papers. They are one of the best ways to revise and practise your exam skills. Write or prepare planned answers to the exam practice questions provided in this book. Check your answers online at www.hoddereducation.co.uk/myrevisionnotes.
- Use the revision activities to try out different revision methods. For example, you can make notes using mind maps, spider diagrams or flash cards.
- Track your progress using the revision planner and give yourself a reward when you have achieved your target.

REVISED

One week to go

- Try to fit in at least one more timed practice of an entire past paper and seek feedback from your teacher, comparing your work closely with the mark scheme.
- Check the revision planner to make sure you haven't missed out any topics. Brush up on any areas of difficulty by talking them over with a friend or getting help from your teacher.
- Attend any revision classes put on by your teacher. Remember, he or she is an expert at preparing people for examinations.

REVISED

The day before the examination

- Scan through these Revision Notes for useful reminders, for example, the exam tips, exam summaries, typical mistakes and key terms.
- IMPORTANT: Check the time (is it morning or afternoon?) and place of your examination. Keep in touch with other students in your class.
- Make sure you have everything you need for the exam – pens, highlighters and water.
- Allow some time to relax and have an early night to ensure you are fresh and alert.

REVISED

My exams

A-level Law Paper 1

Date:

Time:

Location:

A-level Law Paper 2

Date:

Time:

Location:

A-level Law Paper 3

Date:

Time:

Location:

Assessing AQA A-level Law

As a student of A-level law, it is important to understand HOW you are to be examined at the end of two years of study. In consequence, there are three key measures that you need to understand:

- + the 'assessment objectives' used to mark an exam
- + the command words used in exam papers
- + the format of the exam papers themselves.

AQA Assessment objectives

REVISED

Assessment objectives (AOs) are set by OFQUAL and measure how students meet certain criteria in their exam responses:

- + **AO1:** *Demonstrate knowledge and understanding of the English legal system and legal rules and principles.*

This AO is used to examine your understanding of how well you can discuss or explain the law – the rules, the statutes, the common law decision of judges, and so on, in an extended piece of writing.

- + **AO2:** *Apply legal rules and principles to given scenarios in order to present a legal argument using appropriate legal terminology.*

This AO is used to examine your understanding of how well you can apply legal rules, statutes and the common law to a fictitious problem/scenario situation.

- + **AO3:** *Analyse and evaluate legal rules, principles, concepts and issues.*

This AO is used to examine your own assessment, and that of well-established assessment of the rules, the statutes, the common law and decision of judges in an extended piece of writing.

AQA Command words

REVISED

A command word is used at the beginning of an exam question. It 'frames' or specifies exactly what you are to do and how to answer a question. An understanding of the question's command word will avoid wasting time in an exam.

The most frequently used command words used for AQA A-level law papers, along with the number of marks for associated questions, are:

1 Select

- + Used in multiple-choice questions, worth 1 mark.
- + AO1
- + Questions 1–5 on all papers.
- + Meaning: Display knowledge and understanding of a specific aspect of the nature of law, the ELS or substantive law.

2 Explain

- + Used in extended questions, worth 5 marks.
- + AO1
- + Question 6 on all papers.
- + Meaning: Display knowledge and understanding of a specific aspect of the nature of law, the ELS or substantive law.

3 Suggest

- + Used in scenario/problem questions, worth 5 marks.
- + AO1 (2 marks) + AO2 (3 marks)
- + Question 7 on all papers.
- + Meaning: Display and apply knowledge and understanding of rules and principles of substantive law to support or deny a conclusion given in the instructions.

Copyright: sample material

4 Advise

- + Used in scenario/problem questions, worth 10 marks.
- + AO1 (3 marks) + AO2 (4 marks) + AO3 (3 marks)
- + Question 8 on all papers.
- + Meaning: Display knowledge and understanding, supported by analysis and evaluation, and application of relevant rules and principles of substantive law to construct a legal argument on which advice as to criminal or legal liability is given.

5 Examine

- + Used in extended questions, worth 15 marks.
- + AO1 (5 marks) + AO3 (10 marks)
- + Question 9 on all papers.
- + Meaning: Analyse some aspect of non-substantive law to provide a detailed basis for a required evaluation of substantive law.

6 Consider

- + Used in scenario/problem questions, worth 30 marks.
- + AO1 (10 marks) + AO2 (10 marks) + AO3 (10 marks)
- + Question 10 on all papers.
- + Meaning: Display knowledge and understanding, supported by detailed analysis evaluation and application of relevant rules and principles, to construct a legal argument allowing a well-reasoned conclusion.

AQA Exam papers

REVISED 

The AQA A-level law specification is examined in three equally weighted (100 marks) papers of two hours, duration, each sat at the end of the course. Each paper is therefore worth 33.3 per cent of the overall assessment.

Paper 1 The nature of law, the English legal system and criminal law

100 marks split into two parts:

- + the nature of law, the English legal system (25 marks)
- + criminal law (75 marks).

Paper 2 The nature of law, the English legal system and tort law

100 marks split into two parts:

- + the nature of law, the English legal system (25 marks)
- + tort law (75 marks).

Paper 3A The nature of law, the English legal system and contract law

100 marks split into two parts:

- + the nature of law, the English legal system (25 marks)
- + contract law (75 marks).

Paper 3B The nature of law, the English legal system and human rights law

100 marks split into two parts:

- + the nature of law, the English legal system (25 marks)
- + human rights law (75 marks).

1 The nature of law and the English legal system

1.1 The nature of law

This chapter explores the differences between rules that are enforceable by law and rules that are followed as part of normal human behaviour.

It contrasts civil and criminal law, as well as identifying the main sources of law. Law and society are examined together with law and morality, and the extent to which the law achieves justice.

The nature of law is assessed in all three exam papers.

The nature of law

REVISED

The distinction between enforceable legal rules and principles and other rules and norms of behaviour

Law is made up of rules and regulations that are enforceable by the state. This means they are:

- + made by the state, and
- + administered by state organisations, for example, Her Majesty's Court Service.

We obey laws because we have to.

Other rules, such as the rules of football or of social etiquette, are not laws because they are not enforceable by the state. We obey these rules because we choose to in certain situations.

There are four categories of legal rules and regulations, as outlined in the table below.

Revision activity

In the context of the UK, to what does the word 'state' refer?

Exam tip

These are key issues which you will need to compare and contrast throughout this chapter.

Table 1.1.1 Categories of legal rules and regulations

Category	Purpose	Example
Procedural laws	Prescribe the framework in which other laws are made and enforced.	The Police and Criminal Evidence Act 1984 provides a procedure to be followed by the police in order to make a lawful arrest; other procedural laws dictate how a trial is to be run, who can access financial assistance when going to court etc.
Substantive laws	Create and define legal rights and obligations.	Criminal offences are substantive laws, but so are other laws such as employment rights or the law relating to divorce.
Public laws	Govern the relationship between the state and its citizens.	Public laws include criminal laws and most procedural laws as they define the powers of Parliament, government and other key institutions of the state, such as the police and courts.
Private laws	Create rights enforceable between individuals; they are mainly substantive in nature.	The law of trespass allows you to restrict access to your property.

Copyright: sample material

Differences between criminal and civil law

Criminal law

Criminal laws create criminal offences and punish those who commit them. These laws attract the attention of the Criminal Justice Service (CJS), which includes:

- + the police
- + the Crown Prosecution Service (CPS)
- + the criminal courts
- + Her Majesty's Prison Service
- + Her Majesty's Probation Service
- + the National Offender Management Service.

The Crown **prosecutes** the defendant. The defendant may be found **guilty**, provided the jury/magistrates have no **reasonable doubt**.

Criminal law fits into both the substantive and public categories outlined above. There are courts that specialise in criminal law (see Chapter 1.4).

Civil law

Civil laws create rights that are enforceable between private individuals. This means that enforcement agencies such as the police do not get involved in these laws. Civil laws therefore do not aim to punish but to compensate those whose rights have been violated.

The **claimant** can **sue** the **defendant**. The defendant may be found **liable** on the **balance of probabilities**.

Civil laws fit into the substantive category above. There are courts that specialise in civil law (see Chapter 1.4).

Now test yourself

TESTED ☐

- 1 Decide which type and category the following laws fit into:
 - + theft
 - + rules of evidence
 - + conventions that dictate how an Act of Parliament should be made
 - + wills
 - + health and safety law.
- 2 In which type of law are the police likely to be involved?
- 3 What is the aim of criminal law?
- 4 Is the criminal or civil law standard of proof higher?
- 5 Select the true statement about civil and criminal law:
 - A** The same unlawful conduct may sometimes be both a crime and a breach of the civil law.
 - B** Civil law is based on common law rules, whereas criminal law is based on statutory rules.
 - C** Issues of law are always decided by juries, in both civil and criminal law cases.
 - D** Judges of the Supreme Court do not hear appeals in civil law cases.

Exam summary

You are most likely to be asked specific multiple-choice questions in this area, such as Q5 above.

However, there is an expectation that this is underpinning knowledge for all other questions, and you must ensure you refer to the correct criminal or civil terminology when answering longer questions on the substantive law areas.

Revision activity

Name as many different law-making bodies as you can.

Prosecutes: legal term for bringing a criminal charge against a defendant.

Guilty: legally responsible for a specified wrongdoing.

Reasonable doubt: the criminal standard of proof which means the prosecution must provide sufficient evidence for the jury or magistrates to be certain of the defendant's guilt – if they are not, then they have reasonable doubt.

Claimant: legal term for a person or organisation starting a civil claim in the courts.

Sue: take civil legal proceedings against a defendant.

Defendant: legal term for a person defending or responding to a legal claim (called a respondent in some aspects of civil law).

Liable: held to be legally responsible for a breach of the civil law.

Balance of probabilities: the civil standard of proof which means the claimant must satisfy the court that their version of events is more likely than not.

Revision activities

- 1 Name two of the criminal law courts.
- 2 Name two of the civil courts.

Exam tip

Make sure you do not mix up the terminology used in criminal and civil law.

Different sources of law

You will find much more detail on this topic in Chapter 1.3.

Custom

Rules that come about through custom or practice involve the disapproval of the community rather than formal punishment if they are broken. The individual may also become conditioned to accept the rules, so they are enforced by a feeling of self-guilt.

Some such rules may 'harden into rights' and be so widely accepted that they become the law.

The early common law developed out of customs that were commonly accepted.

Statute

The UK Parliament is based in the Palace of Westminster and made up of the monarch, the House of Commons and the House of Lords. Laws passed here are known as Acts of Parliament or statutes.

Most new law – and all law that could attract controversy, for example, increased police powers in relation to terror suspects – is made by Parliament.

Statute laws are easy to identify as the clues are in the names, for example the Human Rights Act 1988 (see Chapter 5).

Devolved bodies

The UK Parliament has delegated some of its law-making power to other organisations in specific matters, such as:

- + the European Union (see Chapter 1.3)
- + the Scottish Parliament
- + the Welsh Government
- + the Northern Ireland Assembly
- + local councils, such as local borough or county councils.

Laws passed by local councils often only apply in a small geographical area, for example, a by-law banning ball games on an area of parkland (see Chapter 1.3).

Common law

'Common law' refers to laws that have been developed by judicial decisions.

An example of a common law crime is murder. This means it has never been defined in an Act of Parliament, but instead developed from ancient custom and is still developing through the decisions of judges in the highest courts. These decisions are known as 'precedents' (see Chapter 1.3).

Lord Reid said famously: 'There was a time when it was thought almost indecent to suggest that judges make law – they only declare it ... But we do not believe in fairy tales anymore.'

Stretch and challenge

Consider how the decision in *R (AR) v Chief Constable of Greater Manchester* (2018) illustrates the importance of maintaining the balance between conflicting interests.

Exam summary

You are unlikely to be asked a specific question on this area, but more detailed information on parliamentary law making, delegated legislation and judicial precedent will be asked about (see Chapter 1.3). In addition, there is an expectation that you will know the sources of each substantive law you refer to.

Now test yourself

- 6 What are statutes?
- 7 Who is needed to make statutes?
- 8 Who makes the common law, and how?

TESTED ☐

Copyright: sample material

The role law plays in society

Law can be described as a mechanism of social control. It comprises rules for keeping order in all societies. These rules develop from the behaviour that society has, over time, accepted as 'appropriate' or 'normal'.

A rule is something that determines the way in which we behave. We either:

- + submit ourselves to the rule voluntarily, as is the case with moral rules (see pages 8–9), or
- + have to follow the rule as it is enforceable in some way, as is the case with the law.

The aim of criminal law is to maintain law and order. Therefore, when a person is found guilty of an offence, that offender will be punished. There is also the aim of trying to protect society, and this is the justification for sending offenders to prison.

Civil law upholds the rights of individuals and organisations. The courts can order compensation to put the parties back to the position they would have been in if their rights had not been violated.

The effect of law on enforceable rights and the balance required between competing interests

This topic is assessed in Paper 3.

What are rights/interests?

In this context, rights and interests are defined by Rudolf von Jhering and Roscoe Pound as 'principles identified by individuals and/or states as being of fundamental importance'.

Individuals' interests (private interests) might include:

- + survival
- + safety
- + freedom
- + justice
- + privacy
- + healthcare
- + education.

We now associate many of these areas with human rights law.

The state's interests (public interests) are less complex – generally just:

- + physical security
- + financial security.

When do interests conflict?

Individuals can conflict with:

- + other individuals, for example, a starving man's method of survival may be to steal another person's bread
- + the state, for example, a suspected terrorist's interest in freedom will conflict with the state's interest in security.

How does the law balance conflicting interests?

Conflict between individuals' interests is generally dealt with by substantive laws, such as theft in our example above.

Conflict between an individual's interests and the state's interests is generally dealt with by procedural laws, such as the rule in the Terrorism Act 2006 that allows the police to hold a suspected terrorist for up to 14 days without charge, as in our example above.

Exam tip

Your exam responses should show that you know about the key theorists in this area and the differences between them, and that you understand the important areas of substantive and procedural law. Always use key cases to illustrate your points.

Table 1.1.2 Key theorists on enforceable rights and balancing conflicting interests

Jeremy Bentham (1748–1832)	<ul style="list-style-type: none"> + Bentham devised the concept of utilitarianism, also known as the ‘greatest happiness principle’. + He was a leading theorist in the philosophy of law and a political radical whose ideas included freedom of expression, equal rights for women, the right to divorce and the decriminalising of homosexual acts. He called for the abolition of slavery, the death penalty and physical punishment, and was an early advocate of animal rights. + He was strongly in favour of the extension of individual legal rights and opposed the idea of natural law (‘God-given’ in origin), calling it ‘nonsense upon stilts’.
Rudolf von Jhering (1818–92)	<ul style="list-style-type: none"> + Von Jhering explored the ‘struggle for law’. He conceived of jurisprudence as a science to be utilised for the further advancement of the moral and social interests of mankind.
Roscoe Pound (1870–1964)	<ul style="list-style-type: none"> + Pound is associated with social engineering, emphasising the importance of social relationships in the development of law. + He stated that a lawmaker acts as a social engineer by attempting to solve problems in society using law as a tool.

Table 1.1.3 Key cases for balancing competing interests

Case	Use as an example of:
<i>Miller v Jackson</i> (1977)	Conflict of individual rights: the cricket club wanted to play cricket; its neighbours wanted to stop balls flying into their gardens.
<i>Kennaway v Thompson</i> (1981)	The use of partial injunctions and damages in order to strike a balance between the rights of the neighbours and the social interest of sport.
<i>Evans v UK</i> (2006)	Individuals’ conflicting rights over the destruction or otherwise of embryos created from them both.
<i>R v T</i> (1990)	Substantive law, for example, a defence attempting to balance the conflicting interests of the defendant and the victim.
<i>DPP v Majewski</i> (1976)	Restriction of the use of a ‘defence’ for policy reasons.

Key areas of substantive and procedural law

- + Nuisance (see Chapter 3.5)
- + Bail (see page 44)
- + Treatment of suspects by the police (see page 44)
- + Criminal trial process (see page 44–5)
- + Automatic disclosure of criminal convictions
- + Cautions
- + Consent (see Chapter 3.7)
- + Intoxication (see Chapter 2.8)

Revision activity

Identify whether areas of law are procedural or substantive.

Link them to the cases in the table – does the law successfully engineer a balance of the interests?

The meaning and importance of fault in civil and/or criminal law

Fault is an integral part of English civil and criminal law. Indeed, it has often been said that fault is the common thread that runs through all English law.

This topic will be assessed in Paper 1 and/or Paper 2.

Fault in civil law

Negligence – one of the largest areas of civil law – relies on the defendant breaching a duty of care owed to the victim (see Chapters 3.1–3.3). This breach is where the fault lies.

To be found to have breached the duty of care, the defendant must be seen to have fallen below the standards of the ‘reasonable person’, making this a kind of objective fault.

The defendant can have different levels of fault, depending on a multitude of factors. Key cases here include *Paris v Stepney Borough Council* (1951) and *Latimer v AEC* (1953).

Reasonable person:

sometimes known as the ‘man on the Clapham omnibus’, the reasonable person is a hypothetical ordinary person, used by the courts to decide whether a party has acted as a reasonable person would do. The reasonable person is a reasonably educated, intelligent but nondescript person, against whom the defendant’s conduct can be measured.

Copyright: sample material

Fault may be transferred from one person to another – known as vicarious liability (see Chapter 3.6). It can also be shared between the two parties – known as contributory negligence (see Chapter 3.7).

Just as there are some crimes with no fault requirement (strict liability offences), there are also some civil torts with no fault requirement – see *Rylands v Fletcher* (1868) in Chapter 3.5.

Other key cases here include *Froom v Butcher* (1976) and *Mohamud v WM Morrison Supermarkets plc* (2016).

Fault in criminal law

An act must be accompanied by fault to equal a crime. An act without fault is an accident and so, in the majority of cases, nobody can be found guilty of a crime.

However, there are two types of offence that do not require fault:

- + strict liability offences
- + absolute liability offences.

These offences are there to regulate society and protect the vulnerable, for example, parking offences or sexual intercourse with a child under the age of 13.

The laws governing these offences are strictly monitored, so as to ensure that people are not unjustly found guilty of an offence over which they had no control (see page 46). A key case here is *Sweet v Parsley* (1970).

In crime, there are different levels of fault (see Chapters 2.1–2.6). These levels tend to reflect how seriously the crime is viewed, as opposed to the outcome.

For instance:

- + someone who intends to kill their victim will be charged with murder – see *R v Janjua and Choudhury* (1998)
- + if the defendant was negligent, they would be charged with gross negligence manslaughter – see *R v Adomako* (1995).

As murder carries a mandatory life sentence and gross negligence manslaughter only carries a maximum life sentence, this demonstrates that sentencing reflects the fault of the defendant and not what happened to the victim.

Fault can be reduced or removed completely if the defendant can successfully plead a defence (see Chapter 2.8).

Importance of fault

Fault was first introduced into negligence law in *Cambridge Water v Eastern Counties Leather* (1994). Before that, fault was not always necessary for damages to be paid.

Some civil legal systems operate a non-fault-based system. For instance, in New Zealand all taxpayers contribute to a fund that pays the victims of accidents and other incidents resulting in injuries to the victim. However, to apply an entirely no-fault system would require higher taxes for everyone.

Fault has always been a part of criminal law. It is necessary to justify sentencing, as it would be unjust to penalise someone for an act when the outcome was not their fault. It simply would not be possible to have a criminal legal system without fault.

Equally, a criminal system that did not have some regulatory offences without fault would grind to a halt – the courts would be full of motorists being prosecuted for speeding or parking on double yellow lines, whereas in the UK's system of strict liability for these offences, they can be dealt with by post (see Chapter 2.3).

Revision activity

Research the facts of *R v Hart* (2000) and *R v Huntley* (2004).

How many victims did each defendant kill? Which was given the most severe sentence? Do you agree with this outcome?

Revision activity

Use the headings and subheadings from this section to make up questions of your own that have two or more requirements. Test yourself or your study buddy on how to respond to them.

Typical mistakes

Often, questions on fault will ask you to do at least two things, for example, 'Explain what is meant by fault and its importance'. If you ignore the word 'and', your answer will not gain the higher marks.

Table 1.1.4 Key cases on fault

Case	Use as an example of:
<i>Sweet v Parsley</i> (1970)	Strict liability being avoided. Judges inserted the word 'knowingly' to prevent the offence being one of strict liability.
<i>R v Janjua and Choudhury</i> (1998)	The different levels of fault acceptable to establish the <i>mens rea</i> of murder, from direct intent to kill to oblique intent GBH.
<i>R v Adomako</i> (1995)	The lowest type of fault possible in criminal law – negligence. This was a gross negligence manslaughter case involving an anaesthetist who failed to take adequate care of a patient.
<i>Paris v Stepney Borough Council</i> (1951)	Fault in civil law. The employer knew of the employee's condition (one eye) and failed to provide safety equipment.
<i>Latimer v AEC</i> (1953)	Fault in civil law. The employer took sufficient steps to keep his staff safe – he was not required to take unreasonable steps.
<i>Froom v Butcher</i> (1976)	Fault can be shared in negligence using the principle of contributory negligence. Here, the claimant was injured in an accident caused by the defendant, but the claimant was not wearing a seatbelt and so contributed to his own injuries.
<i>Mohamud v WM Morrison Supermarkets plc</i> (2016)	Fault can be transferred to the employer, who can be legally responsible for the actions of an employee. Morrisons supermarkets was liable when its employee attacked the claimant.
<i>Cambridge Water Co. Ltd v Eastern Counties Leather plc</i> (1994)	Establishing the requirement of fault in negligence and stating that damage must be reasonably foreseeable

Now test yourselfTESTED ☐

- 9 How successful is the law in fulfilling its purpose?
- 10 Why is it important that the balancing of competing interests is seen to be done?
- 11 Why is having a number of offences without fault important for efficiency purposes? Why are these offences regarded as a problem?
- 12 What effect does a defence have on the fault element of a crime?

Exam summary

In the exam, you MAY be asked:

- + a short question (5 marks) about one of the areas that has been addressed by this topic
- + a maximum-length question (30 marks), part of which requires the application of substantive law, but part of which goes on to question how effective this area of law is at balancing conflicting interests, for example.

Law and morality

REVISED ☐

This will be assessed in Paper 2 and/or Paper 3.

The distinction between law and morality

Laws are rules and regulations that are objective and not necessarily fault-based, for example, speeding.

Morals are subjective personal codes of values or beliefs that are based on levels of fault and determine what is right or wrong, for example, lying.

In some situations, it is possible for there to be an overlap of the two, such as murder which is both against the law and morally wrong.

Copyright: sample material

However, there are other situations that cause tension between legal and moral rules, for example, abortion and euthanasia.

The diversity of moral views in a pluralist society

The UK is a pluralist society, where there is more than one:

- + culture
- + race
- + religion
- + political party
- + language
- + ethnic origin
- + set of customs and traditions
- + social class.

Stretch and challenge

Read this case to develop your understanding of law and morality: *R (on the application of Conway) v Secretary of State for Justice* (2018). You can find good analysis at <https://ukhumanrightsblog.com/2018/07/09/the-right-to-die-who-decides/>.

In an effective, progressive pluralist society, diversity should be celebrated, not simply tolerated. However, this can lead to tensions: should the law involve itself in matters of moral importance to some groups?

Relationship between law and morality

Table 1.1.5 Relationship between law and morality

Laws	Morals
<ul style="list-style-type: none"> + Made by formal institutions, e.g. Parliament and the courts. + (But think of common law: does this have its basis in morality?) 	<ul style="list-style-type: none"> + Evolve as society evolves, no formal creation. + (Were the Ten Commandments in the Bible or the Koran an attempt to create a formal moral code?)
<ul style="list-style-type: none"> + Can be instantly made or repealed. + (However, this often takes time and public pressure: the Human Rights Act was passed in 1998, years after the United Nations Declaration of Human Rights in 1948.) 	<ul style="list-style-type: none"> + Change with society's attitudes; slow transitional period. + (Sometimes change is rapid, such as during the 1960s. Within a decade, contraception, sex outside marriage and the use of recreational drugs became widely acceptable.)
<ul style="list-style-type: none"> + Existence can be established. + (But does this make them right? The defence to many war crimes was that the defendants were merely obeying the law.) 	<ul style="list-style-type: none"> + Only vaguely defined. + (There may be general agreement on some issues such as murder, but not on others such as abortion.)
<ul style="list-style-type: none"> + Breaking them attracts some form of sanction/punishment/remedy enforced by the state. 	<ul style="list-style-type: none"> + Breaching moral standards merely results in social condemnation, as opposed to an organised system of enforcement.
<ul style="list-style-type: none"> + Society's attitude to the law is irrelevant. + (See recent disputes over the 'tampon tax'. However, in a democracy this can only be a short-term position.) 	<ul style="list-style-type: none"> + Morals reflect society's values and beliefs.
<ul style="list-style-type: none"> + Obligatory 	<ul style="list-style-type: none"> + Subjective
<ul style="list-style-type: none"> + Not necessarily fault-based (i.e. strict liability) 	<ul style="list-style-type: none"> + Fault-based

The legal enforcement of moral values

Lord Devlin devised four key principles for Parliament to bear in mind when deciding which moral 'offences' ought to be prohibited by law and which ought not:

- 1 The individual freedom to be allowed must be consistent with the integrity of society.
- 2 The limits of such tolerance are not static, but lawmakers should be slow to change laws which protect morality.
- 3 Privacy must be respected as far as possible.
- 4 The law is concerned with minimum rather than maximum standards of behaviour: i.e. the law sets down a minimum standard of behaviour; society's standards should be higher.

Copyright: sample material

There has been much academic and legal debate about whether the law should be used to enforce moral values. Broadly, there are two differing philosophies:

- + positivism
- + natural law theory.

Positivism

Positivism maintains that laws and morals should be kept separate.

Table 1.1.6 Key theorists for positivism

Aristotle	The law should be 'reason, free from passion'.
Jeremy Bentham	Natural law theory is 'nonsense upon stilts'.
John Stuart Mill	'The only purpose for which power can be rightfully exercised over any member of a civilised society against his will is to prevent harm to others. His own good, either physical or moral, is not a sufficient warrant.'
H.L.A. Hart	'Is it morally permissible to enforce morality? Deprivation of freedom causes pain to the individual. Individuals should not be so deprived, unless it is justifiable in the interests of society.' 'Laws that merely enforce morals should cease. Laws should only intervene where immorality causes harm to the society or harm to the individual concerned.'
Wolfenden Report 1978	'Unless a deliberate attempt is made by society, acting through the agency of law, to equate the sphere of crime with that of sin, there must be a realm of private morality and immorality which is, in brief and crude terms, not the law's business.'

Natural law theory

Natural law theory maintains that the law should be used to enforce moral values.

Table 1.1.7 Key theorists for natural law theory

St Thomas Aquinas	Natural law theory is a 'dictate of right reason'.
James Fitzjames-Stephens	'The immorality of an action is good reason for it to be a crime and the law should be a persecution of the grosser forms of vice.'
Lord Devlin	'The suppression of vice is as much the law's business as the suppression of subversive activities.' 'It is an error of jurisprudence to separate crime from sin.'
Lon Fuller	Referring to laws made by Germany under the Nazi regime, 'some laws are so immoral that they must be invalid'.
Viscount Simonds	'There remains in the courts of law a residual power to enforce the supreme and fundamental purpose of the law, to conserve not only the safety and order but also the moral welfare of the state.'

It is difficult in practice to take a theoretical position on this argument, particularly because we live in a pluralist society. Judges are often faced with tough decisions which are matters of life and death – the arguments then become much more difficult to polarise.

In 2000, the case of conjoined twins Jodie and Mary came before the court. The only way to save Jodie's life was for doctors to perform surgery which would kill Mary. Lord Justice Ward said: 'This is a court of law, not a court of morals.'

Because these matters can be very divisive, political parties and politicians often prefer not to publicly state their positions for fear of alienating voters.

Evaluation point

Research these theorists, adding dates to create a timeline. How does the period of time add context to their arguments?

Revision activity

Consider the recent cases regarding baby Charlie Gard and Tony Nicklinson on the rights to receive treatment or to die. Create a timeline of the attempts to pass the Assisted Dying Bill and try to fit the successes and failures around the theories.

Revision activity

Why do you think living in a pluralist society can make these sorts of decisions more difficult?

Stretch and challenge

What mechanism is used in Parliament to pass controversial law without political parties having to state an opinion?

Copyright: sample material

Table 1.1.8 Key cases for positivism and natural law

Case	Facts	Useful quotes or points	Decision based on positivism or natural law?
<i>R v Wilson</i> (1996)	D branded his initials on his wife's buttocks with a hot knife, at her request. Her skin became infected and she sought treatment from a doctor, who reported the matter to the police. The husband was charged with ABH.	Russell LJ: 'Consensual activity between husband and wife, in the privacy of the matrimonial home, is not, in our judgment, a proper matter for criminal investigation, let alone criminal prosecution.'	Positivism
<i>R v Brown</i> (1993)	Ds engaged in sadomasochism, including physical torture.	Lord Templeman: 'Pleasure derived from the infliction of pain is an evil thing.'	Natural law
<i>R v Human Fertilisation and Embryology Authority ex parte Blood</i> (1997)	Blood's husband contracted meningitis and lapsed into a coma. Samples of his sperm were taken for later artificial insemination. Her husband died shortly after the samples were obtained.	As the husband's consent was not given, Blood was not permitted to use the sperm. However, she later used an EU rule and was permitted to use it abroad.	Positivism
<i>Gillick v West Norfolk and Wisbech Health Authority</i> (1986)	G sought a declaration that it would be unlawful for a doctor to prescribe contraceptives to girls under the age of 16 without the knowledge or consent of the parent.	The court refused to grant it, setting out guidelines for when children can give consent to medical procedures. This is now known as 'Gillick competency'.	Positivism
<i>Shaw v DPP</i> (1961)	D published a ladies' directory of the services offered by prostitutes.	The supreme and fundamental purpose of the law is to conserve not only the safety and order but also the moral welfare of the state.	Natural law
<i>Knuller v DPP</i> (1973)	D published a magazine in which advertisements were placed by homosexuals seeking to meet other like-minded individuals to engage in sexual practices.	The House of Lords doubted the correctness of the decision in <i>Shaw</i> but declined to depart from it.	Natural law
<i>R v Gibson and Sylveire</i> (1990)	Ds exhibited a pair of earrings made with freeze-dried human foetuses at the Young Unknowns Gallery in London.	This was the first occasion on which the charge of outraging public decency had been preferred in more than 80 years.	Natural law
<i>Pretty v DPP</i> (2001)	Pretty attempted to change the law so she could end her own life because of the pain and problems caused by her terminal illness, motor neurone disease.	Lord Bingham: 'The task of the committee in this appeal is not to weigh or evaluate or reflect those beliefs and views or give effect to its own but to ascertain and apply the law of the land as it is now understood to be.'	Natural law
<i>R v Cox</i> (1992)	Cox was a consultant and had been treating V for years. As her rheumatoid arthritis became worse, she pleaded with him to end her life. He administered a fatal injection to stop her heart.	D was found guilty but given a suspended sentence.	Natural law
<i>Evans v UK</i> (2007)	Evans wanted to use embryos fertilised by her ex-partner; he refused.	Despite the emotional issues at stake, consent must be applied.	Positivism
<i>R v Dudley and Stephens</i> (1884)	Ds were shipwrecked and stranded in a small boat with a young cabin boy. When food ran out, they drew straws to see which one of them would be killed so that the others could eat him. Ds ate the cabin boy and were convicted of murder.	Law and morality are not the same, and many things may be immoral which are not necessarily illegal, yet the absolute divorce of law from morality would be of fatal consequence.	Natural law