

HODDER
EDUCATION

MY REVISION NOTES
OCR A Level
LAW

OCR

A Level

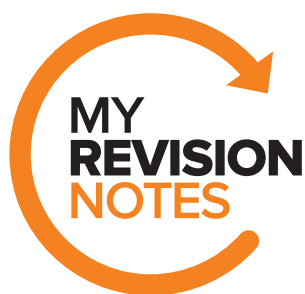
LAW
SECOND EDITION

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



Craig Beauman
Clare Wilson





OCR

A Level

LAW

SECOND EDITION

Clare Wilson
Craig Beauman

Copyright: sample material

The Publishers would like to thank the following for permission to reproduce copyright material.

Acknowledgements

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 5203 2

© Clare Wilson and Craig Beauman 2022

First edition published in 2018
This edition published 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

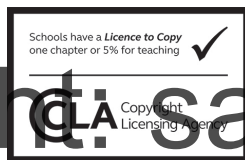
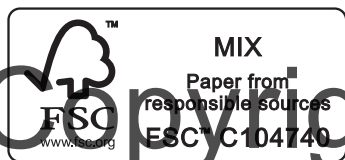
Cover photo © New Africa – stock.adobe.com

Illustrations by Aptara Inc.

Typeset in India

Printed in Spain

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 OCR examiners write the questions. Try writing your own scenario/problem questions based on those available on the OCR 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 terms

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

Key terms 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

My revision planner

Introduction

Section 1 The legal system

- 1 1.1 Civil courts and other forms of dispute resolution
- 6 1.2 Criminal courts and lay people
- 14 1.3 Legal personnel
- 20 1.4 Access to justice

Section 2 Criminal law

- 25 2.1 Rules and theory
- 29 2.2 General elements of criminal liability
- 35 2.3 Fatal offences against the person
- 43 2.4 Non-fatal offences against the person
- 47 2.5 Offences against property
- 55 2.6 Mental capacity defences
- 61 2.7 General defences
- 68 2.8 Preliminary offences
- 72 2.9 Evaluation

Section 3 Law making

- 80 3.1 Parliamentary law making
- 83 3.2 Delegated legislation
- 87 3.3 Statutory interpretation
- 92 3.4 Judicial precedent
- 96 3.5 Law reform
- 100 3.6 European Union law

Section 4 The law of tort

- 105 4.1 Rules and theory
- 109 4.2 Liability in negligence
- 113 4.3 Occupiers' liability
- 118 4.4 Torts connected to land
- 123 4.5 Vicarious liability
- 126 4.6 Defences
- 131 4.7 Remedies
- 134 4.8 Evaluation

Section 5 The nature of law

- 141 5.1 Introduction to the nature of law
- 146 5.2 Law and morality
- 151 5.3 Law and justice
- 155 5.4 Law and society

REVISED

TESTED

EXAM
READY

material

My revision planner

The figure consists of three vertical bars representing different stages of preparation:

- REVISED** (Blue bar): Shows 14 white dots, indicating 100% completion.
- TESTED** (Green bar): Shows 10 white dots, indicating approximately 71% completion.
- EXAM READY** (Orange bar): Shows 10 white dots, indicating approximately 71% completion.

[illegible][illegible][illegible][illegible]

REVISED TESTED EXAM READY

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 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 and 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

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

- Flick 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 examination – pens, highlighters and water.
- Allow some time to relax and have an early night to ensure you are fresh and alert.

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

My exams

AS Law Paper 1

Date:
Time:
Location:

AS Law Paper 2

Date:
Time:
Location:

A Level Law Paper 1

Date:
Time:
Location:

A Level Law Paper 2

Date:
Time:
Location:

How you will be examined

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, and
- ✚ The format of the exam papers themselves.

OCR 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, etc. 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, etc. in an extended piece of writing.

OCR 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 for 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 OCR A Level Law papers, along with the number of marks for associated questions, are:

1 Describe

- ✚ Used in extended question 1 x 8 marks
- ✚ AO1 (8 marks)
- ✚ Questions 1–2 on all papers
- ✚ Meaning: Display knowledge and understanding of a specific aspect of the nature of law, the English legal system or substantive law.

2 Discuss

- ✚ Used in extended question 1 x 12 marks
- ✚ AO3 (12 marks)
- ✚ Questions 3–4 on all papers
- ✚ Meaning: Analysis and evaluation of legal concepts and issues.
There must be a focus on the question. Key points are discussed and developed.

3 Advise

- ✚ Used in scenario question 1 x 20 marks
- ✚ AO1 (8 marks) + AO2 (12 marks)

Copyright: sample material

- + Questions 5, 6, 8 and 9 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.

4 Discuss

- + Used in extended question 1 x 20 marks
- + AO1 (8 marks) + AO3 (12 marks)
- + Questions 7 and 10 on all papers
- + Meaning: Analysis and evaluation of legal concepts and issues. There must be a focus on the question. Key points are discussed and developed.

OCR Exam papers

REVISED

The OCR A Level Law specification is examined in three equally weighted papers (80 marks each) 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. Your place of study will decide whether you are examined for Component 3 or 4.

Component 1 – The legal system and criminal law

80 marks split into two parts:

- + The legal system (20 marks)
- + Criminal law (60 marks)

Component 2 – Law making and the law of tort

80 marks split into two parts:

- + Law making (20 marks)
- + Tort law (60 marks)

Component 3 – The nature of law and contract law

80 marks split into two parts:

- + The nature of law, the English legal system (20 marks)
- + Contract law (60 marks)

Or:

Component 4 – The nature of law and human rights law

80 marks split into two parts:

- + The nature of law, the English legal system (20 marks)
- + Human rights law (60 marks).

Section 1 The legal system

For the OCR A Level in Law H418 specification, the English legal system is divided into three parts:

- + the legal system explored in Component 1
- + law making explored in Component 2, and
- + the nature of law explored in Component 3.

This section looks at the first part, the legal system in Section A of Component 1.

Exam tip

Make sure you do not study the legal system in isolation from law making and the nature of law. They are complementary to each other, along with the **substantive law** parts.

Understanding how OCR divides the English legal system into three parts will help you appreciate how the English legal system operates. This in turn will enhance your exploration of the topics.

Substantive law: legal rules which determine rights and obligations or how a society must behave, for example, criminal, contract, tort or human rights law.

1.1 Civil courts and other forms of dispute resolution

This chapter looks at four key areas of civil law in the English legal system on the OCR specification:

- + County Court and High Court – jurisdictions, pre-trial procedures and the three tracks
- + appeals and appellate courts
- + employment tribunals and alternative dispute resolution (ADR)
- + advantages and disadvantages of using the civil courts and ADR.

The **civil courts** deal with non-criminal matters, such as **contract**, tort and human rights issues. They are designed to deal with disputes between individual citizens and/or businesses. There is some crossover with criminal courts, but generally they have separate courts.

Examples of disputes include disagreements arising under contract, family or employment law.

There are two key civil courts of first instance: the County Court and the High Court.

Exam tip

You need a clear understanding of the civil courts' structures, pre-trial procedures and appeals systems. It might help you to visit as many types of civil court as you can, to observe their workings in practice.

Civil courts: courts that deal with non-criminal matters.

Contract: an agreement between two parties which is binding in law and therefore enforceable in court.

Revision activity

Explain what is meant by tort law and why such disputes are dealt with under civil law.

Identify which courts have both civil and criminal jurisdiction.

County Court and High Court

REVISED

Jurisdictions of the civil courts

The County Court deals with the majority of civil matters and the enforcement of previous judgments that have not been complied with.

It hears:

- + contract disputes, e.g. businesses recovering monies owed
- + tortious (civil wrong) actions, e.g. landowners seeking to prevent trespass issues

Copyright: sample material

- + compensation claims for injuries to **claimants**
- + matters arising under the Equality Act 2010
- + cases usually between £5000 and £15,000, but a circuit judge can hear cases over £15,000.

The High Court has three divisions.

- 1 Queen's Bench Division (QBD) hears:
 - + contract cases, such as failure to pay for goods and breach of contract
 - + tort cases involving defamation, trespass, negligence or nuisance
 - + judicial review actions.
- 2 Chancery Division hears:
 - + specialist civil cases, which include company law, patents and contentious probate
 - + professional negligence cases
 - + competition law cases.
- 3 Family Division hears:
 - + family-related cases
 - + cases involving children under the Children Act 1989
 - + wardship cases involving the custody and day-to-day care of minors.

Pre-trial matters and the three tracks

While some civil cases start in the Magistrates' Court, most civil cases start in the County Court.

If the claim value is for a specific amount, in some cases a claim can be made online via www.gov.uk. If the value is unspecified, a claimant fills in an N1 form and sends this, with the appropriate fee, to the HM Courts and Tribunals Service. Depending on the value of the claim, and whether the **defendant** denies liability, the service can allocate the claim to the most appropriate track:

- + small claims track for straightforward claims of not more than £10,000 or personal injury of not more than £1000
- + fast track for claims between £10,000 and not more than £25,000
- + multi-track for claims exceeding £25,000 and not more than £50,000
- + High Court for more complex claims over £50,000.

Typical mistake

Do not muddle the three tracks when it comes to the financial limits and the key types of cases they hear. Exam questions might ask about which court(s) an appeal will go to after it is heard in one of the tracks – be clear on the differences.

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

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

Revision activity

Print out and complete an N1 form. This will help you appreciate the idea of simplicity and understand its requirements.

Fill out a claim via the www.gov.uk website for a civil claim (although do not submit it!). This will help you appreciate the idea of simplicity and understand its requirements.

Appeals and appellate courts

REVISED

If either party in a case is dissatisfied with the decision made by the judge at first instance, then it is possible to appeal. Generally:

- + A first appeal from a decision of the small claims court or the fast track is heard by a next-level judge. If the case was first heard by a District Judge, the appeal will be to a Circuit Judge. If first heard by a Circuit Judge, then the appeal is to a High Court Judge.
- + It is possible for a second appeal from the decision of a Circuit Judge or High Court Judge to go to the Court of Appeal (Civil Division), but this would be in exceptional circumstances and only with the Court of Appeal's permission.
- + An appeal from a decision of the multi-track, whether heard by a District or Circuit Judge, is to the Court of Appeal (Civil Division).
- + An appeal from the High Court is to the Court of Appeal (Civil Division), or on rare occasion to the Supreme Court (called a 'leapfrog' appeal) where a point of general public importance is present.

- ✚ It is possible for a further appeal from the Court of Appeal (Civil Division) to the Supreme Court, but only if either court gives permission.
- ✚ A final appeal is possible for a case to be referred to the European Court of Justice, under Article 234 of the Treaty of Rome, if a point of European Union law is involved.
- ✚ Jury trial is possible in tortious cases, including defamation and malicious prosecution.
- ✚ Appeal route is possible following a judgment.

Judges in civil cases are responsible for 'case management'. Here, it is their responsibility to ensure any cases they preside over run effectively. Historically, judges would allow cases to overrun and overspend, and were criticised as being sympathetic to big business.

Revision activity

Draw a flow chart showing the civil courts' appeal routes from:

- ✚ the County Court, and
- ✚ the High Court.

Employment tribunals and alternative dispute resolution (ADR)

REVISED

Exam tip

Make sure you can explain each type of ADR for an 8-mark question for each type, and be able to discuss each type for a 12-mark question on either the advantages and disadvantages of ADR.

Both employment tribunals and ADR are ways of resolving disputes without going to court.

- ✚ Employment tribunals involve disputes between employees (or potential employees) and employers.
- ✚ ADR generally involves disputes between consumers and traders. The most common types of ADR are **mediation** and **arbitration**.

Mediation: where a neutral third party attempts to resolve a dispute (possibly face to face) with both parties, without giving their opinion.

Arbitration: a form of ADR where the parties to a dispute refer the case to an independent third party, known as an arbitrator, to decide.

Employment tribunals

Employment tribunals are specialist employment 'courts' that deal with such issues outside the civil courts system.

Table 1.1.1 Outline of how employment tribunals work

Role	<ul style="list-style-type: none"> ✚ Responsible for hearing claims from citizens who think someone such as an employer, a potential employer or a trade union has treated them unlawfully. ✚ Employment tribunals (ET) were established to deal with specific areas of employment rights as part of a historic overhaul of social and welfare legislation.
Jurisdiction	<p>Includes:</p> <ul style="list-style-type: none"> ✚ unfair dismissal ✚ discrimination ✚ unfair deductions from pay.
Procedure	<p>When a claim arises and cannot be sorted out between the individual and their employer through informal discussions, then:</p> <ul style="list-style-type: none"> ✚ Claimants generally use an ET1 form to make a claim via the gov.uk website to the Tribunal Office, if they feel they have been treated unfairly. ✚ A respondent has 28 days after receiving the ET1 to complete a response form known as an ET3. ✚ If the claim is accepted by the Tribunal Office, then the employer is contacted. ✚ If the employer does not respond, then judgment is made in favour of the claimant. ✚ If the employer disputes the claim, then the case will go to 'case management' and a hearing is held to resolve the dispute. ✚ Hearings are heard by a panel of three: an employment judge, a representative of an employer's organisation and a representative of an employee's organisation. ✚ Following the hearing a judgment is issued.

Copyright: sample material

Stretch and challenge

Role-play the following situation in a fictional tribunal:

You are a Year 12 student who has been sacked from your part-time job as a waiter in a local restaurant during the Covid-19 pandemic. You were sacked because you refused to go into the kitchen because of a lack of hygiene standards and overcrowding, which meant that social distancing was impossible.

Revision activity

Using the internet, draw a flow chart to reflect the tribunals' structure in England and Wales.

Alternative dispute resolution (ADR)

There are four key types of ADR:

- + Negotiation
- + Conciliation
- + Mediation
- + Arbitration.

In 2015, the United Kingdom implemented two sets of regulations in order to implement a European Directive on ADR. Given the Covid-19 pandemic from 2020 onwards and the inability of the courts to function as 'normal', the emphasis on ADR has become a priority in the English legal system.

The Directive reinforced several key ADR principles:

- + Wherever possible, there is a duty to use ADR as a means of resolving a dispute.
- + While decisions using ADR are generally not binding, they will become so if both parties absolutely agree to a binding resolution.
- + Wherever possible, due to 'case management', judges will insist that ADR is used before **litigation**.

Negotiation

Negotiation is the most basic form of ADR, where an individual attempts to resolve the issue directly, privately and possibly face to face with the other party. For example, this would be suitable for:

- + noise caused by neighbours
- + returning faulty goods to a shop
- + receiving poor service from a tradesperson.

Revision activity

Role-play the following scenario. Your neighbour's son keeps playing his music very loud and in the early hours of the morning. You have asked him to stop, but he has ignored you. How could negotiation help resolve the dispute?

Mediation

Mediation is slightly more formal than negotiation, but still a relatively informal method of dispute resolution.

A neutral third-party mediator attempts to resolve the issue (possibly face to face) with both parties, without giving their opinion. For example, this would be suitable for:

- + businesses negotiating or renegotiating contracts
- + marriage guidance to avoid separation or divorce.

Conciliation

Conciliation is a form of mediation, where a third party tries to suggest a compromise between the disputing parties. For example, this would be suitable for:

- + disputed access to goods and services by disabled people
- + cases of alleged discrimination
- + some employment disputes
- + some family law matters involving the Family Division of the High Court.

Litigation: the process of taking legal action through the courts.

Negotiation: where an individual attempts to resolve an issue directly, privately and possibly face to face with the other party.

Conciliation: a form of mediation where a third party is active in raising ideas for compromise between the parties in dispute.

Typical mistake

Do not confuse mediation and conciliation or forget to support your definitions with examples (real or imagined) of organisations that operate in these areas of ADR.

Arbitration

For this ADR, a third party decides the case when the disputing parties refer the case to it. The arbitrator is impartial – they don't take sides but hear all of the arguments and make a decision based on the evidence.

Before arbitration is used, both sides must agree that the arbitrator's decision will be binding. For example, this would be suitable for:

- + package-holiday contracts
- + disputes between employees and employers using ACAS, an organisation that gives employers and employees free, impartial advice on workplace rules, rights and practice.

Exam tip

You might be asked to assess the options a defendant would have if they wanted to resolve a dispute without going to court. This would require a discussion of tribunals and ADR.

Advantages and disadvantages of using the civil courts and ADR to resolve disputes

REVISED

Table 1.1.2 Advantages and disadvantages of using the civil courts

Advantages of using the civil courts	Disadvantages of using the civil courts
<ul style="list-style-type: none"> + Simple, logical system + Simpler DIY method of bringing a case, generally with a fixed fee and explained via leaflet or the internet + Small Claims Court is less formal than the main County Court, with a District Judge taking an active role, setting time limits and asking questions + Solicitor not needed in many cases, unless the claim is contested + Simplified and single set of rules governing both the High Court and the County Court + Appeal routes possible from County or High Court + Jury trial possible in tortious cases, including defamation and malicious prosecution 	<ul style="list-style-type: none"> + ADR is encouraged, but not always appropriate or enforced by judges + Expensive and time-consuming cases can prevent many claims from reaching the High Court + QBD is based in London, but the Chancery division has bases around the country

Table 1.1.3 Advantages and disadvantages of different methods of ADR

	Advantages over litigation	Disadvantages over litigation
Negotiation	Potentially the quickest, cheapest, most informal way of settling a dispute between parties, as no court or lawyers are involved	<ul style="list-style-type: none"> + Requires confrontation with the other party + If the dispute is not settled, the case may go to court, which will involve costs and the court may insist the parties go back to negotiation before trial
Mediation	<ul style="list-style-type: none"> + The parties are, in effect, in control of proceedings and decisions + Based on common sense rather than decisive legal rules 	<ul style="list-style-type: none"> + Will only work if both parties agree and cooperate + Many decisions may not ultimately be binding on both parties
Conciliation	More formal version of mediation, where an impartial conciliator takes an active role in suggesting and advising the parties	<ul style="list-style-type: none"> + Can require confrontation with the other party, but some cases are dealt with via telephone + The decision of the conciliator is not binding + The parties may still need to go to court if the decision is not followed
Arbitration	<ul style="list-style-type: none"> + An agreement to arbitrate can be made at any time and is usually included in a contract by what is known as a <i>Scott v Avery</i> clause + The decision is binding and can be enforced through the courts + Arbitration is voluntary 	<ul style="list-style-type: none"> + Requires confrontation with the other party + While arbitration is generally free, it may not be in some cases + The use of a professional arbitrator can mean this process is more expensive than going to court

Copyright: sample material

Now test yourself

TESTED

- 1 List three areas of law that would be dealt with in the civil courts.
- 2 Discuss the key jurisdiction of the County Court in civil matters.
- 3 Look at the chart below and complete the missing court or value of claim.

Court	Claim value
Small claims	
	Between £10,000 and £25,000
Multi-track	
	Over £50,000

- 4 Explain the purpose of tribunals in the civil justice system.
- 5 Give three ways that alternative dispute resolution (ADR) is different from using the civil courts.
- 6 Explain what is meant by negotiation and mediation.

Evaluation point

Civil court judges are required to ask that ADR has been used or considered before they will hear a case in the civil courts. However, in practice, this rarely happens. Consider whether judges should insist absolutely on ADR before they allow a case to go to trial.

Exam summary

In the exam, you MAY be asked to:

- ✚ Explain the civil courts and other forms of dispute resolution, for example, the jurisdiction of the County Court.
- ✚ Describe the civil courts and other forms of dispute resolution, for example, the appeals process from the County Court. These types of questions will be worth a maximum of 8 marks each.
- ✚ Discuss the advantages or problems associated with the civil courts and other forms of dispute resolution, for example, the advantages of using mediation as a way of dealing with a civil dispute.

These types of questions will be worth a maximum of 12 marks each.

1.2 Criminal courts and lay people

This chapter looks at these key criminal areas in the English legal system on the OCR specification:

- ✚ criminal process
- ✚ appeals and appellate courts
- ✚ sentencing and court powers
- ✚ lay magistrates and juries
- ✚ advantages and disadvantages of using juries in criminal cases.

Criminal process

REVISED

The criminal courts system is designed to uphold laws which forbid certain types of behaviour. Indulging in those behaviours risks punishment; this can act as a deterrent in order to maintain a civilised society.

There are two key criminal courts of 'first instance': the Magistrates' Court and the Crown Court.

If a person is accused of committing a crime, and there is sufficient evidence to prosecute them, then the decision lies with the Crown Prosecution Service whether or not to prosecute.

First instance criminal courts:

the courts where a criminal case will commence. This will depend on many factors, for example, the seriousness of the alleged crime.

Jurisdiction in the Magistrates' Court

Around 97 per cent of all criminal cases are dealt with in a Magistrates' Court, with more than 90 per cent being concluded there. The court's key functions include:

- + trying summary offences and most **triable-either-way offences**
- + carrying out plea-before-venue hearings for either-way offences
- + sentencing defendants if found **guilty** – powers are limited but reflect the seriousness of the crimes under its jurisdiction
- + dealing with the first hearing of indictable offences such as granting bail or making reporting restrictions before being sent to the Crown Court
- + dealing with ancillary matters, such as issuing 'bench' arrest warrants and granting or refusing bail in summary or either-way trials
- + trying cases in the Youth Court for defendants aged 10–17.

Revision activity

Identify the Magistrates' Courts in your local area and the geographical area each one serves.

Jurisdiction in the Crown Court

In 1971, a system of Crown Courts was established to deal with those criminal cases not tried fully in the Magistrates' Courts. The Crown Courts deal with the most serious, **indictable offences** which include:

- + murder
- + manslaughter
- + robbery.

They also deal with:

- + appeals against a Magistrates' Court conviction or sentence
- + cases passed from a Magistrates' Court for trial or sentencing.

The trial normally begins with a plea and case management hearing, where the defendant will plead either:

- + guilty – and subsequently be sentenced, or
- + not guilty – whereupon a full trial involving a jury of 12 citizens will commence.

Guilty: legally responsible for a specified wrongdoing.

Indictable offences: the most serious, more complicated offences tried only and fully in the Crown Court, for example, murder, manslaughter and robbery.

Summary offences: the least serious offences in terms of injury or impact, tried in the Magistrates' Courts.

Triable-either-way offences: offences that can be tried in the Crown Court or in the Magistrates' Court.

Classification of criminal offences

Criminal offences are classified into three fairly distinct categories:

- + **summary offences**, the 'least' serious offences
- + **indictable offences**, the most serious offences
- + **triable-either-way offences**, which sit in between summary and indictable in terms of seriousness.

The offence's classification will dictate in which court the case is heard.

Table 1.2.1 Classification of criminal offences

Classification of offence	Trial court	Examples of offences	Sentencing powers of court
Indictable	Administrative hearing in the Magistrates' Court, then transferred to the Crown Court for trial	<ul style="list-style-type: none"> + Murder + Manslaughter + Robbery + Section 18 wounding/GBH 	Up to the maximum set for the specific offence by common law or statute
Triable-either-way	(Plea before venue) Magistrates' Court, or Crown Court	<ul style="list-style-type: none"> + Theft + Section 20 wounding/GBH + ABH 	Up to maximum set for the specific offence (but see below for magistrates' maximum sentencing powers)
Summary	Magistrates' Court	<ul style="list-style-type: none"> + Common assault + Driving without insurance or a licence 	Up to six months' imprisonment for a single offence, or up to 12 months in total for two or more offences; and/or a fine, generally of up to £5000

Copyright: sample material

Revision activity

Create and illustrate a diagram on A3 paper identifying the three classifications of offence.

Stretch and challenge

Using your local newspaper's website, research an example of a person convicted of a summary, triable-either-way and an indictable offence.

Pre-trial procedures

Table 1.2.2 Pre-trial procedures

Pre-trial procedure	Explanation
Summary offences	Most trials in the Magistrates' Court start with a first appearance at a trial. However, an adjournment of the trial could be needed, and bail set, if the: <ul style="list-style-type: none"> + CPS requires more time to prepare the case + defendant is unprepared and wishes to engage a solicitor + magistrates request pre-sentence reports on a defendant who pleads guilty + defendant pleads not guilty and wants to go to trial and, for example, witnesses need to be called.
Triable-either-way offences	<ul style="list-style-type: none"> + The magistrates will ask the defendant if they plead guilty or not guilty. + Then a decision is made whether to hear the trial in that court or the Crown Court.
Indictable offences	After an early administrative hearing in the Magistrates' Court, the case is sent immediately to the Crown Court to be dealt with by (usually) a single Circuit Judge.

Appeals and appellate courts

REVISED

The criminal courts system provides appeal routes for defendants in all cases and to the prosecution in certain situations.

Table 1.2.3 Appeals from the Magistrates' Court to the Crown Court

Available to	Only the defence
Reason for appeal	Against sentence and/or conviction
Appeal heard by	Panel of a single Circuit Judge and two magistrates
Further appeal possible?	<ul style="list-style-type: none"> + Generally no, but possible to appeal to the Queen's Bench Divisional Court purely on a point of law + Possible further appeal to the Supreme Court (see below)
Result of appeal	Appeal quashed, confirm appeal or remit case back to the Magistrates' Court

Table 1.2.4 Case stated appeals from the Magistrates' Court to the Queen's Bench Divisional Court (QBD)

Available to	The prosecution and the defence
Reason for appeal	On a point of law by way of case stated
Appeal heard by	Panel of two or three High Court Judges, which might include a Court of Appeal judge
Further appeal possible?	<ul style="list-style-type: none"> + Possible appeal by the prosecution or the defence to the Supreme Court on a point of law of general public importance + Must have leave to appeal by either the Supreme Court or QBD
Result of appeal	Appeal quashed, confirm appeal or remit case back to the Magistrates' Court

Table 1.2.5 Appeals from the Crown Court (1)

By whom?	Defendant
Reason for appeal	Rare, but possible – against sentence and/or (unsafe) conviction
Where heard?	<ul style="list-style-type: none"> + Court of Appeal (Criminal Division) within six weeks of conviction and must be granted permission + Fresh evidence can be heard at this appeal
Further appeal possible?	<ul style="list-style-type: none"> + Again, rare but possible, to the Supreme Court on a point of law of general public importance + Must have leave to appeal
Result of appeal	Appeal quashed or confirm appeal

Table 1.2.6 Appeals from the Crown Court (2)

By whom?	Prosecution
Reason for appeal	<ul style="list-style-type: none"> + Against the acquittal of the defendant if the prosecution is unhappy with the decision, or by the Attorney-General to clarify a point of law relevant to the acquittal + Against sentence if the Attorney-General considers the sentence to be unduly lenient
Where heard?	Court of Appeal (Criminal Division)
Further appeal possible?	<ul style="list-style-type: none"> + Rare, but possible + To the Supreme Court on a point of law of general public importance + Must have leave to appeal
Result of appeal	Appeal quashed or confirm appeal

Revision activity

Create a flow chart poster showing the different appeal routes from the Crown Court.

Sentencing and court powers

REVISED

The term 'sentencing' means any punishment given to an offender who has been convicted of a criminal offence. An adult offender is anyone aged 21 years or older who has been convicted of an offence.

Aims of sentencing

The aim, or purpose, of a sentence is what exactly it is trying to achieve. Under s 142 of the Criminal Justice Act 2003, there are five basic aims of sentencing for adult offenders, and any court dealing with an offender in respect of their offence must have regard to:

- the punishment of offenders
- the reduction of crime (including its reduction by deterrence)
- the reform and rehabilitation of offenders
- the protection of the public, and
- the making of reparation by offenders to persons affected by their offences.

Factors of sentencing

If a person is found guilty of a crime, their sentence is influenced by many factors. When deciding a sentence, a judge or magistrate will consider:

- + the type of crime committed
- + the seriousness of the crime – for example, was someone injured or was there a fatality?
- + the circumstances of the crime – for example, was the victim vulnerable or was a weapon used?
- + whether the convicted person has a criminal record
- + whether the convicted person pleaded guilty or not guilty
- + other aggravating or mitigating factors.

Copyright. sample material

Table 1.2.7 shows an example of how aggravating and mitigating factors could influence the sentence.

Table 1.2.7 Example of factors affecting sentence

Scenario	<ul style="list-style-type: none"> + D burgles his mother's house while she was asleep. He takes £50 from her purse in order to pay for drugs. + D has several convictions for burglary. + At trial he pleads guilty to this latest offence at the first possible opportunity.
Aggravating factor	<ul style="list-style-type: none"> + His mother was asleep in bed. + D has several convictions for burglary.
Mitigating factor	<ul style="list-style-type: none"> + He is a drug addict and the burglary was to pay for his habit. + He pleaded guilty at the first chance.

Judges and magistrates use guidelines from the Court of Appeal and the Sentencing Council when deciding what sentence to pass.

Exam tip

Using the Sentence Council website, www.sentencingcouncil.org.uk, have a look at the section on 'offences' and in particular 'shoplifting' or 'assault'. Read the webpage 'How is the sentence worked out?' to identify the aggravating and mitigating factors.

Types of sentence

Table 1.2.8 shows the four main types of adult sentence.

Table 1.2.8 Types of adult sentence

Custodial or non-custodial	Type of sentence for adults
Custodial	Imprisonment: the offender's behaviour is so serious that none of the other sentences will suffice. Offenders serve half of their sentence in prison and the other half on licence in the community.
Non-custodial	Community sentences: offenders are made to carry out between 40 and 300 hours of demanding work in the community or to undergo treatment for issues such as drug addiction.
	Fines: these are for less serious offences and, by far, the most common type of sentence. The amount depends on the severity of the crime.
	Discharges: this is where the court feels that simply being brought in front of a judge or magistrate is enough punishment. Conditions can be set with a discharge, for example, to stay out of trouble, and if the offender commits another crime, the first crime will be taken into consideration if sentenced.

Revision activity

Consider the following scenario: William is a DJ in a nightclub. He has a disabled son and, in order to make some extra money, he sells illegal drugs to some of the customers. One of the customers, Ryan, takes some of the drugs, but dies due to an overdose.

Which type of sentence do you think is appropriate? Explain your answer.

Exam tip

You might be asked to explain three types of sentence available to adult offenders, or to assess which sentences would be available to a judge in sentencing an adult defendant in a scenario.

Stretch and challenge

Consider which of the four types of adult sentencing would be the most appropriate in each case:

- + Adam is caught speeding at 80 mph on a motorway.
- + Belinda stabs her partner in a fit of rage.
- + Sajira is caught spray-painting her name on the wall of an underpass.
- + David, who is homeless, steals a sandwich from a supermarket.