# Teachers’ Guide – Law H418/03 The nature of law

## Overview of the topic

The basic format of this planning guide is to take the topics in the order that they are listed within the specification. Throughout this planning guide, relevant cases are suggested. There is no expectation that students should attempt to learn all the cases listed 'per topic' here. They are for teacher guidance – especially non-specialist teachers. Teachers are, of course, free to use their own preferred cases and determine the number of cases students should learn per topic based on their own circumstances.

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| Teachers may use this guide as an example of one possible way of approaching the teaching of the specification content for The nature of law and Human rights and NOT a prescriptive plan for how your teaching should be structured.  What this guide is intended to do is to show you what the teaching outline might look like in practice. It should then help you to build your own scheme of work, confident that you’ve covered all the required content in sufficient depth. |

The nature of law section of the specification is designed to take approximately **24 hours** of teaching time while the Human rights law section of the specification is designed to take approximately **52 hours** of teaching time. This guide will provide an overview of how this content **might** be taught in that timeframe. The planning guide does not contain activities. This is intentional to enable you to choose a series of activities that compliment your own teaching.

**This guide has been updated in 2023. Changes to the content have been highlighted in yellow**.

## Planning guide – H418/03: The nature of law (24 hours)

| **Specification content** | **Expanded content** | **Relevant cases** | **Suggested resources** |
| --- | --- | --- | --- |
| **Introduction to the nature of law**  **4 hours** | | | |
| Law and rules: the difference between enforceable legal rules and principles and other rules and norms of behaviour | * Understand that not all rules have the force of law. Rules have many different contexts such as within sport but they lack the formality of laws and the idea of enforcement in the courts. |  |  |
| The connections between law, morality and justice | See expanded content below.  Law and Morality. Law and Justice. |  |  |
| The differences between civil and criminal law | * Understand the differences between civil and criminal law: * procedure * purpose * outcomes including the different court systems. |  |  |
| * Recognise the range of disputes covered by the civil law; tort, contract, family, business employment, human rights etc. |  |  |

| **Specification content** | **Expanded content** | **Relevant cases** | **Suggested resources** |
| --- | --- | --- | --- |
| An overview of the development of English Law: custom, common law, statute law | * Understand the development and application of each area of law in outline only. |  |  |
|  | * Please note – none of the topics above will be discretely assessed. They are underpinning content which will be impliedly assessed across all assessment objectives through other questions. |  |  |
| The rule of law: definition and importance | * Understand the principle of the Rule of Law as an underpinning concept for justice, human rights and as a guiding principle of the law. A. V. Dicey. |  | Magna Carta  Book:  The Rule of Law by Tom Bingham |
| * Including core elements of the Rule of Law such as equality before the law, accessibility of the law, the absence of arbitrary power. | The Case of Proclamations (1610) |  |
| * No-one is above the law. | R (on the application of Miller) (Appellant) v The Prime Minister (Respondent) (2019) |  |

| **Specification content** | **Expanded content** | **Relevant cases** | **Suggested resources** |
| --- | --- | --- | --- |
| **Law and morality**  **6 hours** | | | |
| The distinction between law and morals | * Define morality and law. | Examples here may be drawn from all parts of the syllabus.  Difficult cases where the distinction between morality and law appears to have become blurred such as R v Brown (1994), R v Wilson (1996), Re A (conjoined twins) (2000). |  |
| * Compare and contrast the function and purpose of morals and the law. |  |
| * Understand the areas of overlap and difference between immoral and illegal acts. * Example; adultery being immoral but not illegal, parking on yellow lines being illegal but not immoral. Murder being illegal and immoral. |  |
| * Understand the main legal theories underpinning the law; such as legal positivism and natural law. |  |
| * Be able to give examples of the different approaches in practice by reference to particular cases. |  |
| * Legal positivists such as Bentham, Hart and Kelsen argue that morality plays no part in the law. |  |
| * Natural law proponents such as Aquinas and Fuller argue that the law is fundamentally moral in nature. |  |
| The diversity of moral views in a pluralist society | * Understand and be able to give examples of how pluralism is a key factor in shaping the approach to morality in our society. |  |  |
| * Link to human rights law where pluralism is a key factor in understanding how certain decisions are reached. | A wide variety of cases may illustrate the issue of pluralism in the courts.  The Abortion Act 1967  Otto-Preminger-Institut v Austria (1994)  Handyside v UK (1976) |  |
| * Issues where morality and law have clashed in the courts include. For example: | R v Lyons (2011) |  |
| * abortion | Open Door and Dublin Well Woman v Ireland (1992) |  |
| * the boundaries of sex and consent | R v R (1991), R v Brown (1994), R v Wilson (1996) |  |
| * prescription of contraception to underage children | Gillick v West Norfolk and Wisbech AHA (1986) |  |
| * drug use including the medical use of cannabis | R v Quayle (2005) |  |
| * consent and assisted dying, euthanasia and murder. | Pretty v UK (2002), Purdy (2009), Nicklinson (2014),  Inglis (2010), Gilderdale (2010);  Falconer Report 2011  Commission on Assisted Dying |  |
| * Understand the significance of pluralism in the operation of the ECHR. * Link to the concept of the Margin of Appreciation | Evans v UK (2007)  Muller v Switzerland (1988) |  |
| The relationship between law and morals and its importance | * Understand the main arguments and issues in the Devlin-Hart debate. | The Wolfenden Report 1957  Sexual Offences Act 1967 |  |
| * Be able to apply the main arguments to specific areas and cases. (See above). |  |  |
| * Explore the conflicting views of the judges in R v Brown. Lords Templeman and Lowry saw the importance of protecting morality whilst Lords Mustill and and Slynn (dissenting) felt that the moral aspect of the case was not a reason to make the men guilty. | R v Brown (1994) |  |
| * Examples of laws which could be said to engineer behaviour, such as preventing smoking or promoting greater awareness of the effects of negligent behaviour. | Racial and Religious Hatred Act (2006)  Health Act (2006)  Donoghue v Stevenson (1932) |  |
| The legal enforcement of moral values | * Hart/Devlin debate in practice. |  |  |
| * Bring examples from separate areas of the law to show the wide application of the debate. (see also above) | Inglis (2010), R v Brown (1994), R v Wilson (1996), DPP v Shaw (1962), R v Gibson (1991) |  |
| * Criminal – boundaries of consent/euthanasia. * Consent and sex |  |  |
| * Contract – providing protection for the weaker party to a contract | Consumer Rights Act 2015  Oscar Chess Ltd (1957) |  |
| * The rules of equity bring concepts such as ‘fairness’ into otherwise inflexible situations. | Central London Property Trust v High Trees House (1947) |  |
| * Negligence and Morality.   Tort including special rules concerned to protect children from harm.  Legal enforcement of moral values in human rights | Donoghue v Stevenson (1932),  BRB v Herrington (1972),  OLA 1957, Phipps v Rochester Corporation (1955)  Underpinning concepts of human ‘dignity’ as a moral concept.  Pretty v UK, Peck v UK. |  |
| * Consider current debates and issues such as the decriminalisation of cannabis for medical use | See above cases |  |
| * Consider the underpinning moral values embodied within the principles governing Human Rights law, such as human dignity, equality before the law and personal autonomy |  |  |
| * Be prepared to give specific examples from the ECHR which show a moral aspect | Article 2 - Right to life  Article 9 - Freedom of religion  Article 10 - Freedom of expression and thought |  |
| * Consider contentious areas where human rights protections and morality clash, such as assisted suicide | R (Nicklinson) v MoJ (2014), Pretty v UK (2002) |  |
| * For example, a right to life does not create a right to die. |  |  |

| **Specification content** | **Expanded content** | **Relevant cases** | **Suggested resources** |
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| **Law and justice**  **6 hours** | | | |
| The meaning of justice | * Understand the different types of justice within the law. |  |  |
| * Distributive justice * Utilitarianism * Social justice |  |  |
| Theories of justice | * Understand the different theories of justice which affect the way that the law is conducted. |  | [Video: The Moral Side of Murder.](http://justiceharvard.org/themoralsideofmurder/)  Discussing different moral approaches to the law using theories of justice  [The Case for Cannibalism:](http://justiceharvard.org/lecture-2-the-case-for-cannibalism/)  [Exploring utilitarian theories of justice](http://justiceharvard.org/lecture-2-the-case-for-cannibalism/) |
| * Distributive justice: |  |
| * Aristotle, Aquinas, Marx, Perelman. |  |
| * Utilitarianism: |  |
| * Bentham – focuses on the consequences of a person’s acts |  |
| * John Stuart Mill – develops utilitarianism and sees acts as right in so far as they promote happiness. |  |
| * Social Justice: |  |  |
| * Economic and Social theories of justice. * John Rawls social contract theory – ‘the veil of ignorance’. |  |  |
| * Nozick – libertarian approach advocating minimal interference by the state. Based on upholding a person’s right to own property they have acquired fairly. |  |  |
| * Procedural justice – justice which is facilitated by the system and procedures in place. |  | The nature of law delivery guide:  [Resource 8 – Procedural or Substantive Justice?](https://www.ocr.org.uk/Images/593000-the-nature-of-law.zip) |
| * Examples of this may include: |  |
| * the criminal system of appeals, the Criminal Cases Review Commission (CCRC), the system of judicial review, jury trial and precedent. |  |
| * Substantive justice – the justice existing in the individual rules and cases. |  |
| * Some examples of difficult legal rules: |  |  |
| * *mens rea* does not always correspond with the *actus reus* |  | [Law Commission Report (No 361 of 2015)](https://www.gov.uk/government/publications/reform-of-offences-against-the-person) |
| * The *mens rea* for murder and for s47 ABH are problematic | R v Savage (1991) |
| * Intoxication rules in criminal law | DPP v Majewski (1976) |
| * Gross negligence manslaughter – the definition has been challenged as being too vague | R v Misra (2004) |  |
| * Insanity rules – extremely outdated and leading to unfair labelling and stigmatising of defendants. | M’Naghten (1843), R v Sullivan (1984) |  |
| * It is not necessary to learn every theory and case in detail. |  |  |
| The extent to which the law achieves justice | * Consider and evaluate the extent to which the legal system produces just outcomes. |  |  |
| * Examples include: |  |  |
| * Access to justice in light of the limitation of the availability of legal aid. The emergence of ‘legal aid’ deserts | Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO) |  |
| * Punishments including mandatory life sentences and minimum tariffs * Sentencing and the availability of appeals. |  |  |
| * Understand the concept of corrective justice in such ideas as contributory negligence in tort and aggravating and mitigating factors in criminal law. | R v Inglis (2010) |  |
| * On the other hand, the prevalence of miscarriages of justice show that the system is always open to abuse and injustice. | Birmingham Six  Guildford Four  Bridgewater Three | [The Justice Gap](https://www.thejusticegap.com/justice4tonystock/) |
| **Law and society**  **6 hours** | | | |
| The role law plays in society | * Understand the role that the law has in shaping society through social control. | Explore the example of Extinction Rebellion in trying to change the legal priorities around issues of pollution and climate change. | [Extremism or a force for social change?](https://www.theguardian.com/environment/2020/feb/06/terrorism-police-assessed-extinction-rebellion-earlier-than-thought) |
| * The converse can also be true, that society can effect changes to the law through the mechanisms of protest, riots, strikes and civil disobedience. |
| * Understand the role of the media in creating moral panic as an agent of social change. | Theories of Jack Young and Stanley Cohen. |  |
| * Examples include knife crime, drug use and immigration. |  |  |
| * Explore recent examples of changing laws which were originally controversial but then accepted by society. For example: |  |  |
| * Drink-driving laws * wearing seatbelts * legalising homosexuality and abortion * driving whilst using a mobile phone. |  |  |
| The law as a social control mechanism | * Understand the theories behind law as a social control mechanism. |  | Social Control Through Law by Rosco Pound. |
| * Social control either through formal or informal mechanisms. |  |
| * Informal – family, school, local community. |  |
| * Formal – the criminal justice system of police, judiciary, probation and prison. |  |
| * Understand the theories in outline only of: * Jhering * Pound |  |
| * Exemplary sentencing is a clear example of social control theory in action. The ban on assisted suicide is another example. | R (Purdy) v DPP (2009), *Nicklinson* (above) |
| The way in which the law creates and deals with consensus and conflict | * Understand the different theories and how they are reflected in the legal system. |  |  |
| * Consensus theory explains how laws are based on society’s agreement in order to be credible – ‘collective consensus’ - Durkheim’s theory. |  |  |
| * Conflict theory assumes a permanent state of tension or conflict due to limited resources. * Marx - power is used to hold society together rather than consensus and conformity. |  |  |
| * Labelling theory suggests that most people commit deviant acts but only those who are caught and punished become stigmatised as ‘criminal’. |  |  |
| The realist approach to law making | * Understand that the law is a practical not a theoretical system upheld by judges. |  | Oliver Wendell Holmes’ book ‘The Common Law’ emphasises the importance of the law in practice. "*The life of the law has not been logic: it has been experience*." |
| * Legal realists see law as the product of social change and therefore not as a fixed commodity but one constantly subject to change. |  |
| * Theorists in this area are: * Rudolf von Jhering * Roscoe Pound * Wendy Hohfield. |  |  |
| * Understand the different viewpoints within realism, such as left realism and right realism. |  |  |
| * Left realism favouring ideas of rehabilitation and reducing social inequality. |  |  |
| * Right realism favouring ideas such as zero tolerance and ‘just deserts’. |  |  |
| * Explore the impact of the two approaches on specific areas of the law such as sentencing theory and practice. |  |  |
| * Consider the effectiveness of the different views of society as tools for developing the law. |  |  |

| **Specification content** | **Expanded content** | **Relevant cases** | **Suggested resources** |
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| **Evaluation**  **2 hours** | | | |
|  | * Candidates have to answer one 20-mark extended response question from a choice of two. The marks are distributed 8:12 for AO1:AO3 so the evaluation is important in these topics: |  |  |
| * The evaluation of the rule of law |  |  |
| * The evaluation of law and morality |  |  |
| * The evaluation of law and justice |  |  |
| * The evaluation of law and society. |  |  |
| * Learners are reminded that this section is synoptic and they should make good use of all the law they have studied throughout the course. * Evaluation will typically require learners to compare and contrast theories and approaches, explore the extent to which the areas studied above are reflected in our society, laws and legal system, how rules and theories operate in practice and be able to make links between theories and the evidence for them in cases and statutes. * Cases and statutory provisions learned throughout the course should provide a sound source of illustrative examples. * In an area such as Law and Justice or Law and Morality, learners should not feel they have to learn every single theory. It is better if they are able to compare two opposing or contrasting ideas with appropriate examples and support than to reel off numerous theories without any comparative context.      * As a useful guide, aim for four to five properly developed arguments with supporting examples (where appropriate) and a reasoned and justified response to the question (where required). |  |  |

## Suggested resources

## Books

The Rule of Law by Tom Bingham

Human Rights Law Concentrate 3rd Edition Bernadette Rainey Oxford

Law Express Human Rights Q&A 2nd Edition Howard Davis Pearson

Human Rights in the UK An Introduction to the Human Rights Act 1998 Fourth Edition by Hoffman & Rowe

Law Express Human Rights 3rd Edition by Claire De Than and Edwin Shorts

Unlocking Human Rights Law 2nd Edition Peter Halstead Routledge

Human Rights Law 4th Edition Directions Howard Davis Oxford

On Fantasy Island: Britain, Europe, and Human Rights by Conor Gearty Oxford

The Secret Barrister Stories of the Law and How It's Broken by the secret barrister.

A Theory of Justice by John Rawls

Social Control Through Law by Roscoe Pound

## TV and Radio Programmes

Films:

1984

McLibel

Minority Report

The Truman Show

Robocop

Ex Machina

Her

## Websites and other resources

<https://eachother.org.uk/>

<https://www.libertyhumanrights.org.uk/>

<https://www.equalityhumanrights.com/en/>

HUDOC ( ECtHR case law database)  [http://hudoc.echr.coe.int/sites/eng/Pages/search.aspx#](http://hudoc.echr.coe.int/sites/eng/Pages/search.aspx)

<https://www.equalityhumanrights.com/en/human-rights/human-rights-act/>

<https://www.bl.uk/magna-carta>

<https://www.un.org/en/universal-declaration-human-rights/index.html>

<https://www.bl.uk/my-digital-rights>

The ECHR in 50 questions

<https://www.echr.coe.int/Documents/50Questions_ENG.pdf>

The 14 Worst Human Rights Myths

<https://eachother.org.uk/the-14-worst-human-rights-myths/>

50 human rights cases that transformed Britain

<https://eachother.org.uk/50-human-rights-cases-that-transformed-britain/>

5 human rights trends to watch in 2020.

<https://eachother.org.uk/5-human-rights-trends-to-watch-in-2020/>

## Planning guide – H418/03: The nature of law (24 hours)

| **Specification content** | **Expanded content** | **Relevant cases** | **Suggested resources** |
| --- | --- | --- | --- |
| **Introduction to the nature of law**  **4 hours** | | | |
| Law and rules: the difference between enforceable legal rules and principles and other rules and norms of behaviour | * Understand that not all rules have the force of law. Rules have many different contexts such as within sport but they lack the formality of laws and the idea of enforcement in the courts. |  |  |
| The connections between law, morality and justice | See expanded content below.  Law and Morality. Law and Justice. |  |  |
| The differences between civil and criminal law | * Understand the differences between civil and criminal law: * procedure * purpose * outcomes including the different court systems. |  |  |
| * Recognise the range of disputes covered by the civil law; tort, contract, family, business employment, human rights etc. |  |  |

| **Specification content** | **Expanded content** | **Relevant cases** | **Suggested resources** |
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| An overview of the development of English Law: custom, common law, statute law | * Understand the development and application of each area of law in outline only. |  |  |
|  | * Please note – none of the topics above will be discretely assessed. They are underpinning content which will be impliedly assessed across all assessment objectives through other questions. |  |  |
| The rule of law: definition and importance | * Understand the principle of the Rule of Law as an underpinning concept for justice, human rights and as a guiding principle of the law. A. V. Dicey. |  | Book:  The Rule of Law by Tom Bingham |
| * Including core elements of the Rule of Law such as equality before the law, accessibility of the law, the absence of arbitrary power. | The Case of Proclamations (1610) |  |
| * No-one is above the law. | R (on the application of Miller) (Appellant) v The Prime Minister (Respondent) (2019) |  |

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| **Law and morality**  **6 hours** | | | |
| The distinction between law and morals | * Define morality and law. | Examples here may be drawn from all parts of the syllabus.  Difficult cases where the distinction between morality and law appears to have become blurred such as R v Brown (1994), R v Wilson (1996), Re A (conjoined twins) (2000) |  |
| * Compare and contrast the function and purpose of morals and the law. |  |
| * Understand the areas of overlap and difference between immoral and illegal acts. * Example; adultery being immoral but not illegal, parking on yellow lines being illegal but not immoral. Murder being illegal and immoral. |  |
| * Understand the main legal theories underpinning the law; such as legal positivism and natural law. |  |
| * Be able to give examples of the different approaches in practice by reference to particular cases. |  |
| * Legal positivists such as Bentham, Hart and Kelsen argue that morality plays no part in the law. |  |
| * Natural law proponents such as Aquinas and Fuller argue that the law is fundamentally moral in nature. |  |
| The diversity of moral views in a pluralist society | * Understand and be able to give examples of how pluralism is a key factor in shaping the approach to morality in our society. |  |  |
| * Link to human rights law where pluralism is a key factor in understanding how certain decisions are reached. | A wide variety of cases may illustrate the issue of pluralism in the courts.  The Abortion Act 1967  Otto-Preminger-Institut v Austria (1994) |  |
| * Issues where morality and law have clashed in the courts include. For example: |  |  |
| * abortion | Open Door and Dublin Well Woman v Ireland (1992) |  |
| * the boundaries of sex and consent | R v R (1991), R v Brown (1994), R v Wilson (1996) |  |
| * prescription of contraception to underage children | Gillick v West Norfolk and Wisbech AHA (1986) |  |
| * drug use including the medical use of cannabis | R v Quayle (2005) |  |
| * consent and assisted dying, euthanasia and murder. | Pretty v UK (2002), Purdy (2009), Nicklinson (2014),  Inglis (2010), Gilderdale (2010);  Falconer Report 2011  Commission on Assisted Dying |  |
| * Understand the significance of pluralism in the operation of the ECHR. | Evans v UK (2007)  Muller v Switzerland (1988) |  |
| The relationship between law and morals and its importance | * Understand the main arguments and issues in the Devlin-Hart debate. | The Wolfenden Report 1957  Sexual Offences Act 1967 |  |
| * Be able to apply the main arguments to specific areas and cases. (See above). |  |  |
| * Explore the conflicting views of the judges in R v Brown. Lords Templeman and Lowry saw the importance of protecting morality whilst Lords Mustill and and Slynn (dissenting) felt that the moral aspect of the case was not a reason to make the men guilty. | R v Brown (1994) |  |
| * Examples of laws which could be said to engineer behaviour, such as preventing smoking or promoting greater awareness of the effects of negligent behaviour. | Racial and Religious Hatred Act (2006)  Health Act (2006)  Donoghue v Stevenson (1932) |  |
| The legal enforcement of moral values | * Hart/Devlin debate in practice. |  |  |
| * Bring examples from separate areas of the law to show the wide application of the debate. (see also above) |  |  |
| * Criminal – boundaries of consent/euthanasia. Consent and sex | Inglis (2010), R v Brown (1994), R v Wilson (1996), DPP v Shaw (1962), R v Gibson (1991) |  |
| * Contract – providing protection for the weaker party to a contract | Consumer Rights Act 2015  Oscar Chess Ltd (1957) |  |
| * The rules of equity bring concepts such as ‘fairness’ into otherwise inflexible situations | Central London Property Trust v High Trees House (1947) |  |
| * Tort including special rules concerned to protect children from harm | Donoghue v Stevenson (1932),  BRB v Herrington (1972),  OLA 1957, Phipps v Rochester Corporation (1955) |  |
| * Consider current debates and issues such as the decriminalisation of cannabis for medical use | See above cases |  |
| * Consider the underpinning moral values embodied within the principles governing Human Rights law, such as human dignity, equality before the law and personal autonomy |  |  |
| * Be prepared to give specific examples from the ECHR which show a moral aspect | Article 2 - Right to life  Article 9 - Freedom of religion  Article 10 - Freedom of expression and thought |  |
| * Consider contentious areas where human rights protections and morality clash, such as assisted suicide | R (Nicklinson) v MoJ (2014), Pretty v UK (2002) |  |
| * For example, a right to life does not create a right to die. |  |  |

| **Specification content** | **Expanded content** | **Relevant cases** | **Suggested resources** |
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| **Law and justice**  **6 hours** | | | |
| The meaning of justice | * Understand the different types of justice within the law. |  |  |
| * Distributive justice * Utilitarianism * Social justice |  |  |
| Theories of justice | * Understand the different theories of justice which affect the way that the law is conducted. |  | [Video: The Moral Side of Murder.](http://justiceharvard.org/themoralsideofmurder/)  Discussing different moral approaches to the law using theories of justice  [The Case for Cannibalism:](http://justiceharvard.org/lecture-2-the-case-for-cannibalism/)  [Exploring utilitarian theories of justice](http://justiceharvard.org/lecture-2-the-case-for-cannibalism/) |
| * Distributive justice: |  |
| * Aristotle, Aquinas, Marx, Perelman. |  |
| * Utilitarianism: |  |
| * Bentham – focuses on the consequences of a person’s acts |  |
| * John Stuart Mill – develops utilitarianism and sees acts as right in so far as they promote happiness. |  |
| * Social Justice: |  |  |
| * Economic and Social theories of justice. * John Rawls social contract theory – ‘the veil of ignorance’. |  |  |
| * Nozick – libertarian approach advocating minimal interference by the state. Based on upholding a person’s right to own property they have acquired fairly. |  |  |
| * Procedural justice – justice which is facilitated by the system and procedures in place. |  | [The nature of law delivery guide](https://www.ocr.org.uk/Images/593000-the-nature-of-law.zip)  Resource 8 – Procedural or Substantive Justice? |
| * Examples of this may include: |  |
| * the criminal system of appeals, the Criminal Cases Review Commission (CCRC), the system of judicial review, jury trial and precedent. |  |
| * Substantive justice – the justice existing in the individual rules and cases. |  |
| * Some examples of difficult legal rules: |  |  |
| * *mens rea* does not always correspond with the *actus reus* |  | [Law Commission Report (No 361 of 2015)](https://www.gov.uk/government/publications/reform-of-offences-against-the-person)  Proposed that all crimes follow the correspondence rule. |
| * The *mens rea* for murder and for s47 ABH are problematic | R v Savage (1991) |
| * Intoxication rules in criminal law | DPP v Majewski (1976) |
| * Gross negligence manslaughter – the definition has been challenged as being too vague | R v Misra (2004) |  |
| * Insanity rules – extremely outdated and leading to unfair labelling and stigmatising of defendants. | M’Naghten (1843), R v Sullivan (1984) |  |
| * It is not necessary to learn every theory and case in detail. |  |  |
| The extent to which the law achieves justice | * Consider and evaluate the extent to which the legal system produces just outcomes. |  |  |
| * Examples include: |  |  |
| * Access to justice in light of the limitation of the availability of legal aid. The emergence of ‘legal aid’ deserts. | Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO) |  |
| * Punishments including mandatory life sentences and minimum tariffs * Sentencing and the availability of appeals. |  |  |
| * Understand the concept of corrective justice in such ideas as contributory negligence in tort and aggravating and mitigating factors in criminal law. | R v Inglis (2010) |  |
| * On the other hand, the prevalence of miscarriages of justice show that the system is always open to abuse and injustice. | Birmingham Six  Guildford Four  Bridgewater Three | [The Justice Gap](https://www.thejusticegap.com/justice4tonystock/) |
| **Law and society**  **6 hours** | | | |
| The role law plays in society | * Understand the role that the law has in shaping society through social control. | Explore the example of Extinction Rebellion in trying to change the legal priorities around issues of pollution and climate change. | [Extremism or a force for social change?](https://www.theguardian.com/environment/2020/feb/06/terrorism-police-assessed-extinction-rebellion-earlier-than-thought) |
| * The converse can also be true, that society can effect changes to the law through the mechanisms of protest, riots, strikes and civil disobedience. |
| * Understand the role of the media in creating moral panic as an agent of social change. | Theories of Jack Young and Stanley Cohen. |  |
| * Examples include knife crime, drug use and immigration. |  |  |
| * Explore recent examples of changing laws which were originally controversial but then accepted by society. For example: |  |  |
| * Drink-driving laws * wearing seatbelts * legalising homosexuality and abortion * driving whilst using a mobile phone. |  |  |
| The law as a social control mechanism | * Understand the theories behind law as a social control mechanism. |  | Social Control Through Law by Rosco Pound. |
| * Social control either through formal or informal mechanisms. |  |
| * Informal – family, school, local community. |  |
| * Formal – the criminal justice system of police, judiciary, probation and prison. |  |
| * Understand the theories in outline only of: * Jhering * Pound |  |
| * Exemplary sentencing is a clear example of social control theory in action. The ban on assisted suicide is another example. | R (Purdy) v DPP (2009), *Nicklinson* (above) |
| The way in which the law creates and deals with consensus and conflict | * Understand the different theories and how they are reflected in the legal system. |  |  |
| * Consensus theory explains how laws are based on society’s agreement in order to be credible – ‘collective consensus’ - Durkheim’s theory. |  |  |
| * Conflict theory assumes a permanent state of tension or conflict due to limited resources. * Marx - power is used to hold society together rather than consensus and conformity. |  |  |
| * Labelling theory suggests that most people commit deviant acts but only those who are caught and punished become stigmatised as ‘criminal’. |  |  |
| The realist approach to law making | * Understand that the law is a practical not a theoretical system upheld by judges. |  | Oliver Wendell Holmes’ book ‘The Common Law’ emphasises the importance of the law in practice. "*The life of the law has not been logic: it has been experience*." |
| * Legal realists see law as the product of social change and therefore not as a fixed commodity but one constantly subject to change. |  |
| * Theorists in this area are: * Rudolf von Jhering * Roscoe Pound * Wendy Hohfield. |  |  |
| * Understand the different viewpoints within realism, such as left realism and right realism. |  |  |
| * Left realism favouring ideas of rehabilitation and reducing social inequality. |  |  |
| * Right realism favouring ideas such as zero tolerance and ‘just deserts’. |  |  |
| * Explore the impact of the two approaches on specific areas of the law such as sentencing theory and practice. |  |  |
| * Consider the effectiveness of the different views of society as tools for developing the law. |  |  |

| **Specification content** | **Expanded content** | **Relevant cases** | **Suggested resources** |
| --- | --- | --- | --- |
| **Evaluation**  **2 hours** | | | |
|  | * Candidates have to answer one 20-mark extended response question from a choice of two. The marks are distributed 8:12 for AO1:AO3 so the evaluation is important in these topics: |  |  |
| * The evaluation of the rule of law |  |  |
| * The evaluation of law and morality |  |  |
| * The evaluation of law and justice |  |  |
| * The evaluation of law and society. |  |  |
| * Learners are reminded that this section is synoptic and they should make good use of all the law they have studied throughout the course. * Evaluation will typically require learners to compare and contrast theories and approaches, explore the extent to which the areas studied above are reflected in our society, laws and legal system, how rules and theories operate in practice and be able to make links between theories and the evidence for them in cases and statutes. * Cases and statutory provisions learned throughout the course should provide a sound source of illustrative examples. * In an area such as Law and Justice or Law and Morality, learners should not feel they have to learn every single theory. It is better if they are able to compare two opposing or contrasting ideas with appropriate examples and support than to reel off numerous theories without any comparative context.      * As a useful guide, aim for four to five properly developed arguments with supporting examples (where appropriate) and a reasoned and justified response to the question (where required). |  |  |

## Planning guide – H418/04: Law of contract (56 hours)

| **Specification content** | | **Expanded content** | **Relevant cases** | | | | **Suggested resources** |
| --- | --- | --- | --- | --- | --- | --- | --- |
| **Rules and theory**  **4 hours** | | | | | | | |
| * An outline of the rules of the law of contract * An overview of the theory of the law of contract | | Key themes in this topic area: | D&C Builders v Rees (1966) | | | |  |
| * Freedom of contract | NZ Shipping v Satterthwaite (1975) | | | |
| * Acting on good faith | Smith v Land and House Property (1884) | | | |
| * Consumer protection | Carlill v Carbolic Smoke Ball Company (1892) | | | |
| * Balancing interests and justice | Olley v Marlborough Court Hotel (1949)  Thompson v LMS Railway (1930) | | | |
| * Principle of fault | Victoria Laundry v Newman (1949) | | | |
| * Inequality of bargaining power |  | | | |
| Broader understanding:   * Links to potential topics for nature of law, morality | Pearce v Brooks (1865) | | | |
| **Formation**  **12 hours** | | | | | | | |
| Offer and acceptance, including the rules of communication and revocation | | * **Key concepts**: |  | | | |  |
| * invitation to treat | Partridge v Crittenden (1968)  Pharmaceutical Society of Great Britain v Boots (1953)  Fisher v Bell (1961)  Harvey v Facey (1893) | | | |
| * bilateral offer | Gibson v Manchester City Council (1979)  TRW v Pansonic (2021)  Battle of the forms | | | |
| * unilateral offer | Carlill v Carbolic Smoke Ball Company (1893) | | | |
| * counter offers | Hyde v Wrench (1840)  Stevenson v McLean (1880) | | | |
|  | | * **Termination of an offer** |  | | | |
|  | | * Offer ending by lapse of time | Ramsgate Hotel v Montefiore (1866) | | | |
|  | | * Death of the offeror | Bradbury v Morgan (1862) | | | |
|  | | * Revocation - timing of revocation and revocation via a third party | Byrne v Van Tienhoven (1880)  Routledge v Grant (1828)  Dickinson v Dodds (1876) | | | |
|  | | * Offer to keep an offer open (collateral contract) | Dickinson v Dodds (1876) | | | |
|  | | * Revocation of unilateral offers | Errington v Errington & Woods (1952) | | | |
|  | | * **Acceptance** to be unconditional and before revocation |  | | | |
| * Rules for acceptance by post and through instant means | Adams v Lindsell (1818)  Brinkibon v Stahag Stahl (1983)  Thomas v BPE Solicitors (2010)  Holwell Securities v Hughes (1974)  Yates v Pulleyn (1975) | | | |
| * Acceptance by silence | Felthouse v Bindley (1863) | | | |
| * Acceptance by conduct | Reveille International v Anotech International (2016) | | | |
| * Acceptance of unilateral offers | Carlill v Carbolic Smoke Ball Company (1893) | | | |
| * Acceptance in ignorance of the offer (eg rewards) | Fitch v Snedaker (1868)  Gibbons v Proctor (1891) | | | |
| Intention to create legal relations: domestic and commercial presumptions and rebuttals | | * The objective approach to the question of legal intention | Esso Petroleum v Commissioner of Customs and Excise (1976) | | | |  |
| * **Domestic contracts** |  | | | |
| * What is the presumption in domestic contracts? | Balfour v Balfour (1919)  Jones v Padavatton (1969) | | | |
| * When is it rebutted in domestic contracts? | Merritt v Merritt (1970)  Simpkins v Pays (1955)  Parker v Clarke (1960) | | | |
| * **Commercial contracts** |  | | | |  |
| * What is the presumption in commercial contracts? | Jones v Vernon Pools (1938)  Edwards v Skyways (1969)  McGowan v Radio Buxton (2001) | | | |  |
| * When is it rebutted in commercial contracts? | Rose & Frank v Crompton (1924)  Radmacher v Granatino (2010)  Kleinwort Benson v Malaysian Mining (1989) | | | | [Radmacher v Granatino [2010] UKSC 42](https://www.familylawweek.co.uk/site.aspx?i=ed68495) |
| Consideration: adequacy, sufficiency, past consideration, pre-existing duties | | 🗶 Candidates are not required to learn the rules on part payment of a debt and promissory estoppel |  | | | |  |
|  | | * Consideration must be **sufficient** but need not be adequate | Chappel v Nestle (1959)  White v Bluett (1853) | | | |  |
|  | | * Why doesn’t the law require each side to give something of equal value? | Thomas v Thomas (1842) | | | |  |
|  | | * Consideration must move from the promisee | Tweddle v Atkinson (1861) | | | |  |
|  | | * **Performing existing obligations** |  | | | |  |
| * Obligation to the same party | Stilk v Myrick (1809)  Hartley v Ponsonby (1857)  Williams v Roffey (1989)  Caribbean Trading v Trafigura (2004)  Criticised Williams v Roffey | | | |
| * Obligation to a third party | Shadwell v Shadwell (1840) | | | |
| * Public duty | Collins v Godefroy (1831)  Glasbrook v Glamorgan (1924)  Ward v Byham (1956) | | | |
|  | | **Past consideration** – reason for the rule and the exceptions to the rule | Re McArdle (1951)  Re Casey’s Patents (1892)  Lampleigh v Braithwaite (1615)  Roscorla v Thomas (1842)  Stewart v Casey (1892) | | | |  |
| Privity: the rights of third parties under the Contract (Rights of Third Parties) Act 1999 and common law exceptions | | * **The rule itself** |  | | | |  |
| * Only the parties to a contract can enforce it or have it enforced against them | Tweddle v Atkinson (1861)  Dunlop v Selfridge (1915) | | | |
| * A party can only sue to recover their own losses | Beswick v Beswick (1967) | | | |
| * Link to consideration | Tweddle v Atkinson (1861) | | | |
|  | | * **The common law exceptions** to privity |  | | | |  |
| * Collateral contracts | Shanklin Pier v Detel Products (1951) | | | |
| * Restrictive covenants | Tulk v Moxhay (1848) | | | |
| * Special cases | Jackson v Horizon Holidays (1975)  Linden Gardens v Lenesta Sludge (1994) | | | |
| * Agency and assignment in outline |  | | | |
|  | | * **Statutory exceptions** |  | | | |  |
| * Contract (Rights of Third Parties) Act 1999 | S.1 (1) (a), (b) | | | |
| * Old common law exceptions not repealed | S.7 | | | |
| * Interpretation of S.1 (1) (b) | Nisshin Shipping v Cleaves (2003) | | | |
| * When the act won’t apply | S.1 (2) | | | |
| * Changing a contract to remove a third party’s rights | S.2 (variation) | | | |
| **Terms**  **10 hours** | | | | | | | |
| Express and implied terms, including the Consumer Rights Act 2015 | | * The concept of terms and incorporation |  | | | | [Charlotte Fielding on the incorporation of Terms and Conditions Documents into Business Contracts](https://www.dbf-law.co.uk/blog/charlotte-fielding-on-the-incorporation-of-terms-and-conditions-documents-into-business-contracts/) |
| * The difference between express and implied terms | Hutton v Warren (1836) | | | |
|  | | * **Express terms** |  | | | |
| * Written notice | Curtis v Chemical Cleaning (1951)  Chapleton v Barry UDC (1940)  Thornton v Shoe Lane Parking (1970) | | | |
| * Harsh terms | Interfoto v Stiletto Visual (1987)  Blu Sky v Be Caring Ltd (2021)  Harsh terms | | | |
| * Tickets | Parker v SE Railway (1877)  Thompson v LMS Railway (1930) | | | |
| * Signed documents | L’Estrange v Graucob (1934)  Grogan v Robin Meredith (1996)  Neocleous v Rees (2019)  Electronic signature | | | |
|  | | * **Oral statements** |  | | | |
| * Importance of the term | Bannerman v White (1861)  Couchman v Hill (1947)  Schawel v Reade (1913) | | | |
| * Special knowledge and skill | Oscar Chess v Williams (1957)  Dick Bentley v Harold Smith (1965) | | | |
| * Time lag | Routledge v Mackay (1954) | | | |
|  | | * **Implied terms at common law** |  | | | |
| * Business efficacy | The Moorcock (1889) | | | |
| * the officious bystander test | Shirlaw v Southern Foundries (1926)  Shell UK v Lostock Garage (1976)  Marks & Spencer v BNP Paribus (2015)  Confirmed Moorcock and Shirlaw | | | |
|  | | * **Terms implied by statute** |  | | | |
| * satisfactory quality | Consumer Rights Act 2015 s.9 | | | |
| * fit for purpose | Consumer Rights Act 2015 s.10 | | | |
| * Goods to be as described | Consumer Rights Act 2015 s.11 | | | |
|  | | * **Terms implied by course of dealings** | Hillas v Arcos (1932) | | | |
| * Dealings which must be regular and consistent | McCutcheon v MacBrayn (1964) | | | |
|  | | * Candidates should be familiar with the terms which are implied by the Consumer Rights Act. * Terms implied by the Sale of Goods Act 1979 and the Supply of Goods and Services Act 1982 may be useful but will not be essential to be able to answer a question. |  | | | |
| Types of term: conditions, warranties, innominate terms | | The 2 approaches to classification of terms – term based and breach based approach: |  | | | |  |
| * **Traditional approach** |  | | | |
| * Conditions | Pouissard v Spiers (1876) | | | |
| * Warranties | Bettini v Gye (1876) | | | |
| * Consequences for breach of each kind of term | Pouissard v Spiers (1876)  Bettini v Gye (1876) | | | |
| * Problems with the term based approach which led to the introduction of innominate terms | Arcos v Ronaasen (1933) | | | |
| * **New approach (Hong Kong Fir Shipping v Kawasaki Kisen Kaisha)** |  | | | |
| * Innominate terms | Hong Kong Fir Shipping v Kawasaki Kisen Kaisha (1961)  Ark Shipping v Silverburn Shipping (2019)  Applied innominate terms | | | |
| * Consequences for breach of innominate terms | The Hansa Nord (1976) | | | |
| * Specific situations where a term will be identified as a condition; Identified as a condition by the parties | Lombard v Butterworth (1987)  Schuler v Wickman (1973) | | | |
| Identified as a term by previous cases | The Mihalis Angelos (1970) | | | |
| Exclusion and limitation clauses including the Unfair Contract Terms Act 1977 and the Consumer Rights Act 2015 | | * What is an exclusion clause? | | Transocean v Providence Resources (2016) | | | [The Consumer Rights Act 2015 – all change for consumer contracts for goods, digital content, services and unfair terms](https://www.blakemorgan.co.uk/the-consumer-rights-act-2015-all-change-for-consumer-contracts-for-goods-digital-content-services-and-unfair-terms/) |
| * **Common law regulation of exclusion clauses** | | Consumer Rights Act  S.69 | | |
| * Incorporation of the exclusion clause into the contract | | See cases above on incorporation of contract terms, eg Thornton v Shoe Lane Parking (1971) | | |
| * Rules of interpretation of exclusion clauses | |  | | |
| * Contra Proferentem (now S.69 Consumer Rights) | | S.69 | | |
| * Special rules for exclusion of negligence liability | | Shell v P&O Roadtankers (1995) | | |
|  | | * **Statutory regulation of exclusion clauses** | | S.64  Office of Fair Trading v Abbey National (2009)  Bairstow Eves v Adrian Smith (2004)  ParkingEye v Beavis (2015) | | |  |
| * Exclusion clauses that are never allowed – S.65, S.31 | | S.65  S.31 | | |
| * Exclusion clauses that are likely to be regarded as unfair - Schedule 2 | | Schedule 2 | | |
| * Regulation of unfair terms – S.62 | | S.62 | | |
|  | | * **Regulation of exclusion clauses in non-consumer contracts** | |  | | |  |
| * UCTA 1977 - Different rules for exclusion clauses in commercial contracts | | Unfair Contract Terms Act 1977 | | |
| * Terms which are void, S.2(1) | |  | | |
| * Terms which are subject to reasonableness, S.2(2), S.3(1) | | Smith v Eric Bush (1990) | | |
| * Tests for reasonableness S.11 | | George Mitchell v Finney Lock Seeds (1983)  Watford Electronics v Sanderson (2001) | | |
| **Vitiating factors**  **6 hours** | | | | | | | |
| Misrepresentation, including omission in consumer contexts | | * False statement of fact | | Fletcher v Krell (1873) | | | [Misrepresentation Act 1967](https://www.which.co.uk/consumer-rights/regulation/misrepresentation-act-1967)  [Marketing and advertising: the law](https://www.gov.uk/marketing-advertising-law/regulations-that-affect-advertising) |
| * When is opinion a misrepresentation? | | Bisset v Wilkinson (1927) | | |
| * When is silence a misrepresentation? | | Dimmock v Hallett (1866)  With v O’Flanagan (1936) | | |
| * Silence as misrepresentation Consumer Insurance (Disclose and Representations) Act 2012 | | Lambert v Co-op Insurance (1975)  Consumer Insurance (Disclosures and Representations) Act 2012 | | |
| * When is statement of future intention a misrepresentation? | | Edgington v Fitzmaurice (1885) | | |
| * **Did the misrepresentation induce the other side into the contract** | |  | | |
| * Statements not relied on, reasonableness of reliance on the statement | | Attwood v Small (1838)  Redgrave v Hurd (1881)  Museprime v Adhill (1990)  Crossley & Others v Volkswagon (2022)\*  Preliminary decision on reliance on the representation | | |
|  | | * **Different kinds of misrepresentation** | |  | | |
| * Fraudulent misrepresentation | | Derry v Peek (1889)  Greenridge Luton One v Kempton Investments (2016) | | |
| * Negligent misstatement | | Hedley Burn v Heller (1964) | | |
| * Statutory misrepresentation | | s.2(1) Misrepresentation Act  Howard Marine v Ogden (1978)  Spice Girls v Aprilia (2002) | | |
| * Innocent misrepresentation | | Defined by reference to s.2(1) Misrepresentation Act | | |
| * **Remedies for each kind of misrepresentation**: | |  | | |
| * Fraudulent misrepresentation | | East v Maurer (1991)  Smith New Court v Scrimgeour Vickers (1997) | | |
| * Negligent misstatement | | The Wagon Mound (1961) | | |
| * Statutory misrepresentation | | Royscott Trust v Rogerson (1991) | | |
| * Innocent misrepresentation | | Long v Lloyd (1958) | | |
|  | | * Damages in lieu of rescission under S.2(2) Misrep Act | | S. 2(2) Misrep Act | | |
| * Rescission and bars to rescission | | Leaf v International Galleries (1950) | | |
| * **Unfair commercial practices** | |  | | |
| * Statutory test for unfair practices | | Consumer Protection from Unfair Trading Regulations 2008 | | |
| * **Misleading actions and omissions** | |  | | |
| * Definition of misleading actions and omissions | | Consumer Protection from Unfair Trading Regulations 2008 | | |
| Economic duress | | * **General** idea of economic duress and effect on a contract if duress is proved | | The Siboen and the Sibotre (1976) | | | UK: [Economic Duress](https://www.mondaq.com/uk/landlord-tenant--leases/15456/economic-duress?) |
| * **The nature of the threat** * A threat that is improper and not just acceptable business negotiation | | The Atlantic Baron (1979)  CTN Cash and Carry v Gallagher (1994)  Times Travel v Pakistan Airlines (2021)  Lawful act duress defined | | |
| * **The consequences of the threat** * The threat left the other party with no choice but to agree, if they did have an alternative course of action this will be seen as a business choice and not duress | | Atlas Express v Kafco (1989)  Universal Tankships v ITWF (1983) | | |
| * **Extra criteria (Pao On v Lau Yiu Long):** * Protesting at the time, having independent advice | | Pau On v Lau Yiu Long (1979)  Progress Bulk Carriers v Tube City (2012) | | |
| * **Remedies and limits** * Rescission | | Atlas Express v Kafco (1989) | | |
| * bars to rescission such as lapse of time | | Pau On v Lau You Long (1979) | | |
|  | |  | | |
| **Discharge**  **6 hours** | | | | | | | |
| Performance | | * The basic rule - that the performance must be exact and full, according to the requirements of the contract | Cutter v Powell (1795)  Re Moore and Landauer (1921) | | | |  |
|  | | * **Exception to the rule** |  | | | |
| 1 – Performance may have been attempted | Planche v Colbourne (1831) | | | |
| 2 – The contract may be severable | Ritchie v Atkinson (1808) | | | |  |
| 3 – The contract may be substantially performed | Dakin v Lee (1916)  Hoenig v Isaaks (1952)  Bolton v Mahadever (1972) | | | |  |
| 4 – There may be a voluntary acceptance of partial performance | Sumpter v Hedges (1898) | | | |  |
|  | | * **Delayed performance** |  | | | |  |
| * When a delay allows the other side to terminate |  | | | |  |
| 1 – A specific date may be included in the contract. | Astea Ltd v Time Ltd (2003) | | | |  |
| 2 – A party may give reasonable notice | Charles Rickard v Oppenheim (1950) | | | |  |
| 3 – Unless time is of the essence, delay is a breach of an innominate term | Union Eagle v Golden Achievement (1997) | | | |  |
| Frustration | | * **Grounds for claiming frustration**: |  | | | | [Contract get-outs: Frustration vs Force Majeure?](https://metcalfes.wordpress.com/2012/04/22/contract-get-outs-frustration-vs-force-majeure/) |
| * Impossibility | Taylor v Caldwell (1863)  Jackson v Union Marine Insurance (1874) | | | |
| * Illegality | Denny Mott & Dickson v James Fraser (1944) | | | |
| * Radical change in circumstances | Krell v Henry (1903)  Herne Bay Steamboat v Hutton (1903)  Canary Wharf v EMA (2019)  Brexit not frusrating on a lease for an EU based institution | | | |
| * Frustration in specific situations |  | | | |  |
| * Leases | National Carriers v Panalpina (1981) | | | |  |
| * Employment contracts | Robinson v Davidson (1871)  Condor v Baron Knights (1966) | | | |  |
|  | | * **Limits to frustration**: |  | | | |  |
| * Choice, force majeure clause | Maritime National Fish v Ocean Trawlers (1935) | | | |  |
| * The parties’ anticipated risk | Amalgamated Investment v John Walker & Sons (1977)  Armchair Answercall v People in Mind (2017) | | | |  |
|  | | * **The financial consequences of a contract being frustrated** |  | | | |  |
| * The effect of money being paid before the frustrating event | Law Reform (Frustrated Contracts) Act (1943) S.1(2)  Gamerco v ICM (1995) | | | |
| * The consequences of one party receiving financial benefits before the frustrating event | Law Reform (Frustrated Contracts) Act S.1(3)  BP v Hunt (2016) | | | |
| Breach of contract: actual and anticipatory breach | | * **Actual breach** |  | | | |  |
| * Meaning of repudiatory breach | Hong Kong Fir Shipping v Kawasaki Kisen Kaisha (1962) | | | |
| * Damages for repudiatory breach and for non-repudiatory breach | See remedies below. | | | |
| * Breach of a condition | Poussard v Spiers (1876) | | | |
| * Breach of an innominate term | Hong Kong Fir Shipping v Kawasaki Kisen Kaisha (1962) | | | |
| * Breach of a warranty | Bettini v Gye (1876) | | | |
| * **Anticipatory breach** |  | | | |
| * Nature of anticipatory breach | Hochster v De La Tour (1853) | | | |
| * Choices the other party has: |  | | | |
| * Sue immediately | Hochster v De La Tour (1853) | | | |
| * Wait and see | Avery v Bowden (1856) | | | |
| * Perform the contract anyway | White & Carter v McGregor (1961) | | | |
| **Remedies**  **8 hours** | | | | | | | |
| Damages: compensatory damages; causation and remoteness of damage; mitigation of loss | | Meaning of damages as a common law remedy. |  | | | | [Remedies for breach of contract](https://uk.practicallaw.thomsonreuters.com/7-101-0603?transitionType=Default&contextData=%28sc.Default%29) |
| * **Basis for a claim in damages** |  | | | |
| * Loss of bargain | Charter v Sullivan (1957)  Thompson v Robinson (1955)  Young v Thames Properties (1999)  Ruxley Electronics & Construction v Forsyth (1995) | | | |
| * Reliance loss | Anglia TV v Reed (1972)  Farley v Skinner (2001) | | | |
| * Restitution | Clarke v Dickson (1858) | | | |
| * **Special situations** * Not for mental distress unless the main point of the contract is pleasure | Jackson v Horizon Holidays (1975)  Addis v Gramaphone Company Limited (1909) | | | |
| * **Foreseeability of the losses** * Losses must have arisen naturally or been within the contemplation of the parties | Hadley v Baxendale (1854)  Victoria Laundry v Newman (1949)  The Heron 2 (1969)  Parsons v Uttley Ingham (1978) | | | |
|  | | * **Mitigation** * The duty to mitigate – and when mitigation means there is no claim at all | British Westinghouse Electric v Underground Electric (1912)  Thai Airways v K L Holdings (2015) | | | |
|  | | * **Liquidated Damages** * Enforceability of liquidated damages clauses | Cavendish Square Holdings v Talal El Makdessi (2015)  Parking Eye v Beavis (2015) | | | |
| Equitable remedies | | * Orders eg specific performance and injunctions |  | | | |  |
|  | | * Consequences of equitable remedies being discretionary |  | | | |
|  | | * **Specific performance** |  | | | |  |
| * When damages would be an inadequate remedy | Airport Industrial v Heathrow Airport (2015)  Beswick v Beswick (1968) | | | |  |
| * Contracts for unique goods, when damages would be nominal | AB v CD (2014) | | | |  |
|  |
| * When specific performance won’t be awarded: |  | | | |  |
| * Monitoring of an ongoing obligation | Ryan v Mutual Tontine (1893) | | | |  |
| * Where it would cause hardship | Patel v Ali (1985) | | | |  |
| * When the contract was obtained unfairly | Walters v Morgan (1861) | | | |  |
|  | | * **Injunctions** |  | | | |  |
| * *Prohibitory* preventing, or *mandatory* remedying | Irani v Southampton AHA (1985) | | | |  |
| * When not awarded: |  | | | |  |
| * Where it would be unfair to the defendant | Shell v Lostock Garage (1976) | | | |  |
| * Where the effect would be to give specific performance where it would not normally be granted | Page One Records v Britton (1968) | | | |  |
| Consumer remedies under the Consumer Rights Act 2015 | | * Remedies for breach of rights in the Consumer Rights Act: | Consumer Rights Act S.19 - 24  Explanatory notes for the Consumer Rights Act  Examples in paragraphs 99 & 100  Overview of remedies in paragraph 101 | | | |  |
| * Rejection of goods | Consumer Rights Act s.20 & 24 | | | |
| * partial rejection of goods | Consumer Rights Act s.21 | | | |
| * Consumer’s rights to enforce terms | Consumer Rights Act s.19 | | | |
| * Time limit for short term right to reject | Consumer Rights Act s.22 | | | |
| * Right to repair or replacement | Consumer Rights Act s.23 | | | |
| * Reduction in price | Consumer Rights Act s. 24 | | | |
| \* *The rules outlined above are very detailed and candidates should gain an awareness of them in outline* |  | | | |
| **Evaluation**  **8 hours** | | | | | | | |
| Critical evaluation of formation and contract terms including ideas for reform | Evaluation of the following topics:   * Offer and acceptance * Intention to create legal relations * Consideration * Privity of contract * Incorporation of terms * Classification of terms * Exclusion clauses * Ideas for reform of the above areas | | |  | | | The examiner’s reports for June 2022 Contract Law give guidance on a generic approach to approaching the evaluation questions which could also be useful |
| * The common frameworks for AO3 style questions usually involve whether the above areas: * Achieve certainty in the law * Have clear rules which are easy to understand * Lead to just outcomes * Are out of date and in need of reform * Have been reformed effectively | | |  | | |
| **Assessment**  **2 hours** | | | | | | | |
|  | * As a useful guide, aim for four to five properly developed arguments with supporting examples (where appropriate) and a reasoned and justified response to the question (where required). | | | |  |  | |

## Suggested resources

## Books

OCR A Level Law, Price, Wortley, Briggs

2nd Edition

Hodder 2021

Elliott and Quinn’s Contract Law, Quinn

12th Edition

Pearson 2019

Law Express: Contract Law, Finch, Fafinski  
7th Edition   
Pearson 2021

Contract Law: Text, cases and materials, McKendrick  
10th Edition  
Macmillan 2022

## TV and Radio Programmes

Radio programme dealing with contract small print in non-consumer contracts <https://www.bbc.co.uk/programmes/m0006dgx>

A recorded interview on the Consumer Rights Act <https://www.bbc.co.uk/news/av/business-34415461/consumer-law-changes-your-questions-answered>

## Websites and other resources

‘Which’ guide to the Consumer Rights Act <https://www.which.co.uk/consumer-rights/regulation/consumer-rights-act>

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**Resources**: the small print

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