# Teachers’ Guide – H418/01 The legal system

## 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.

The legal system section of the specification is designed to take approximately **27 hours** of teaching time while the criminal law section of the specification is designed to take approximately **46 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.

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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 legal system and criminal law 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.** |

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

## Planning guide – H418/01: The legal system (27 hours)

| **Specification content** | **Expanded content** | **Relevant cases/statutes** | **Suggested resources** |
| --- | --- | --- | --- |
| **Civil courts and other forms of dispute resolution****7.5 hours** |
| **County Court and High Court jurisdiction. Pre-trial procedures and the three tracks** | * **County Court**
 |  | [Courts and Tribunals Judiciary](https://www.judiciary.uk/about-the-judiciary/the-justice-system/jurisdictions/) |
|  | * The County Court has jurisdiction to hear, for example; contract, tort, recovery of land to any value; partnerships, trusts, and inheritance up to £30,000; divorce and bankruptcy matters and Small Claims, Fast Track and some Multi Track cases.
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|  | * **High Court**
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|  | * The High Court has three divisions. Each division deals with different matters.
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|  | * Queen’s Bench Division (QBD) jurisdiction
	+ Contract and tort matters including personal injury, negligence, breach of contract, defamation, non-payment of a debt, possession of land or property.
	+ Hears applications for judicial review.
	+ The QBD also includes the Commercial Court, Admiralty Court, Circuit Commercial Courts and the Technology and Construction Court.
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|  | * Chancery Division Jurisdiction
	+ Hears claims relating to, for example, business and property related disputes, competition, intellectual property claims, insolvency and probate claims.
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|  | * Family Division Jurisdiction
	+ Deals with family matters, for example; matrimonial matters, Children Act 1989 cases, cases under the Child Abduction and Custody Act 1985, Court of Protection work and other family matters under the Family Law Act 1996.
 | [Children Act 1989](https://www.legislation.gov.uk/ukpga/1989/41/contents)[Child Abduction and Custody Act 1985](https://www.legislation.gov.uk/ukpga/1985/60/contents)[Family Law Act 1996](https://www.legislation.gov.uk/ukpga/1996/27/contents) |  |
| **Pre-trial procedures** | * A Claimant may be advised to use the Ministry of Justice’s ‘Money Claim Online’. The appropriate pre-action protocol must be followed. Claimant completes an N1 form setting out all the particulars of their case plus an allocation questionnaire. A track will be allocated.
 |  | [Civil Procedure Rules](http://www.justice.gov.uk/courts/procedure-rules/civil/rules)<https://www.justice.gov.uk/courts/procedure-rules/civil/protocol> [MCOL - Money Claim Online - Welcome](https://www.moneyclaim.gov.uk/web/mcol/welcome) |
| **The three tracks** | * Small claims
* Any claim of not more than £10,000 or up to £1,500 for all personal injury claims other than road traffic accidents.
* Cases are heard in the County Court by an inquisitorial District Judge and can be heard by a Circuit Judge
* There will be strict time limits and a restricted number of witnesses allowed
* Parties do not require legal representation
 | Civil Liability Act 2018 <https://www.legislation.gov.uk/ukpga/2018/29/enacted> | [HM Courts & Tribunals Guide](https://www.citizensadvice.org.uk/Global/Migrated_Documents/advisernet/04080403-ew-the-fast-track-and-the-multi-track-in-the-civil-courts-pdf-8.pdf)  |
|  | * Fast Track
* Cases between £10,000 to £25,000 (>£1,500 for personal injury other than road traffic accidents.
* Heard in the County Court before a District Judge and can be heard by a Circuit Judge with a strict trial time limit of one day and limited number of witnesses
* Case usually heard within 30 weeks of allocation
 |  |  |
|  | * Multi-track
* Cases of <£25,000 (or less if case involves complex law)
* Usually start in the County Court before a Circuit Judge however, sent to the High Court if the case involves complex points or is over £100,000
* Some specialist areas only heard in the High Court
* The judge will actively manage the case and will set a strict timetable including what must be disclosed, how many witnesses will be used and trial time
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| **Appeals and appellate courts** | * Grounds/reasons to appeal
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|  | Reasons for appeal include:* there was an error of law
* there was an error of fact
* there was procedural unfairness
 |  |  |
|  | * First appeal from the three track tracks
 |  | [Court of Appeal Civil Division](https://www.gov.uk/courts-tribunals/court-of-appeal-civil-division)[How to appeal to the Court of Appeal](https://www.gov.uk/guidance/appeal-to-the-court-of-appeal-civil-division)[Form 206: Applying for permission to appeal to the Court of Appeal](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/716594/form-206-eng.pdf) [Isle of Wight Council v Platt 2017 - UK Supreme Court judgment](https://www.youtube.com/watch?v=wZGofHdfjL0) |
|  | * Small claims appeal – first appeal will be before a Circuit Judge sitting in the County Court.
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|  | * Fast track appeal – if heard at first instance by a District Judge the appeal will go to a Circuit Judge in the County Court. If the matter was complex and initially heard before a Circuit Judge the appeal will be heard by a High Court Judge sitting in the High Court.
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|  | * Multi-track appeal – where the case has been originally heard in the County Court.
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|  | Further appeal to the Court of Appeal (Civil Division) allowed but only in exceptional cases as set out in s.55 Access to Justice Act 1999. | [Access to Justice Act 1999](https://www.legislation.gov.uk/ukpga/1999/22/section/55) |  |
|  | * High Court Appeals
 |  |  |
|  | * Appeal made to the Court of Appeal (Civil Division).
* In exceptional circumstances, there may be a ‘Leapfrog’ appeal direct to the United Kingdom Supreme Court (UKSC).
* Only permitted if appeal involves an issue which is of national importance or raises issues of sufficient importance to warrant the leapfrog. Leave to appeal required.
* Appellant's Notice must be submitted within 21 days of the decision.
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|  | * Further Appeal from the Court of Appeal (Civil Division)
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|  | * Only available if the UKSC gives permission and the matter is of national importance.
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| **Employment Tribunals**  | * Role of Employment Tribunals includes:
* To function as an independent tribunal
* To resolve disputes between employer and employee
* To Hear disputes between employees and employers where the employee thinks they have been treated unlawfully, for example in cases of:
	+ unfair dismissal
	+ discrimination
	+ unfair deductions from pay
	+ breach of contract
	+ Employment tribunals decisions include:
	+ compensation
	+ reinstatement of employee
 | [The Employment Rights (Dispute Resolution) Act 1998](https://www.legislation.gov.uk/ukpga/1998/8/contents) | [Courts and Tribunals Judiciary](https://www.judiciary.uk/about-the-judiciary/the-justice-system/jurisdictions/tribunal-jurisdiction/)[Employment Tribunals](https://www.gov.uk/courts-tribunals/employment-tribunal)[Employment Tribunal Procedure Rules](https://www.gov.uk/government/publications/employment-tribunal-procedure-rules)[Understanding Employment Tribunals](https://www.citizensadvice.org.uk/work/problems-at-work/employment-tribunals/understanding-employment-tribunals/)[ACAS](https://www.acas.org.uk/) |
| **Alternative Dispute Resolution** | * Negotiation
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|  | * Negotiation is where the two parties resolve their dispute without referring to third party assistance or submitting to alternative adjudication.
* Negotiation may be informal such as two individuals resolving a dispute face to face (e.g. a consumer dispute when returning goods and getting a refund) or formal such as asking qualified negotiators (sometimes solicitors) to act on behalf of the parties (e.g. negotiating a trade deal or company acquisitions and mergers).
 |  | [Citizens Advice](https://www.citizensadvice.org.uk/scotland/law-and-courts/legal-system-s/settling-out-of-court/using-alternative-dispute-resolution-to-solve-your-consumer-problem-s/) |
|  | * Mediation
 |  | Examples: |
|  | * Mediation uses a neutral 3rd party (the mediator) who facilitates discussion between the parties.
* The mediator will consult each party to try to establish common ground.
* The mediator does not give their own opinions (unless asked) leaving the parties in control.
* The decision is not legally binding.
* Conciliation
* Similar to mediation but the neutral third party (the conciliator) plays an active role in assisting parties to resolve their dispute.
* The conciliator will make suggestions, such as areas for compromise and a possible basis for settlement.
* The decision is not legally binding.
* Arbitration
* Arbitration is the voluntary submission of the parties to the dispute being dealt with by an independent 3rd party - the Arbitrator, chosen by the parties.
* The 3rd party will make a binding decision called an ‘award’.
* The decision is legally binding (Arbitration Act 1996) and can only be appealed against in exceptional circumstances.
* Decisions to arbitrate can be made before or at the time of a dispute.
* It may be a requirement to arbitrate by virtue of a Scott v Avery clause in a contract.
 | [Arbitration Act 1996](https://www.legislation.gov.uk/ukpga/1996/23/contents) | [The Civil Mediation Council](https://civilmediation.org/for-the-public/about-mediation/)[Citizens Advice on separation](https://www.citizensadvice.org.uk/family/ending-a-relationship/how-to-separate/mediation-to-help-you-separate/)[The Family Mediation Council](https://www.familymediationcouncil.org.uk/online-mediation/)[ACAS](https://www.acas.org.uk/)[ABTA](https://www.abta.com/)[ABTA and Monarch Airline customers](https://abta.com/news-and-views/news/monarch-travel-group)[ABTA & Thomas Cook customers](https://www.abta.com/news/thomas-cook-group)[Judge Rinder arbitration](https://www.chambersstudent.co.uk/where-to-start/newsletter/the-big-interview-judge-rinder) |
| **Advantages and disadvantages of using the civil courts and Alternative Dispute Resolution to resolve disputes** | * Consideration must be given to both the advantages and disadvantages of using the Civil Courts, ADR generally and, the individual types of ADR. It can be useful to compare the advantages and disadvantages of using the Civil Courts against that of using ADR and vice versa.
* Questions may be based on both advantages and disadvantages or one alone. As a useful guide, aim for four properly developed arguments with supporting examples (where appropriate) and a reasoned and justified response to the question (where required). Advantages can be used in a disadvantages question and *vice versa* but only where it is used as a counter-argument.
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| **Criminal courts and lay people****9 hours** |
| **Jurisdiction of the Magistrates’ and Crown Courts** | * **Magistrates’ Court**
* The Magistrates’ Court has jurisdiction to hear summary offences, some triable either-way offences and the first hearing of indictable offences.
* The court has the power to sentence an offender to a maximum of 6 months imprisonment (for one offence) and/or up to £5000 fine.
* LASPO (Legal Aid, Sentencing and Punishment of Offenders Act 2012) gives the court additional powers to issue higher penalties on offenders who have committed ‘Level Five’ offences.
* Deals with ancillary matters including the grant of bail, legal aid and the grant of search/arrest warrants and extension to custody times.
 | [Legal Aid, Sentencing and Punishment of Offenders Act 2012](https://www.legislation.gov.uk/ukpga/2012/10/contents/enacted) | [Courts and Tribunals Judiciary - Magistrates' Court](https://www.judiciary.uk/you-and-the-judiciary/going-to-court/magistrates-court/) |
|  | * **Crown Court**
* The Crown Court has jurisdiction to hear triable either-way and indictable offences.
* The court has unlimited sentencing powers (subject to statutory guidelines).
* It has jurisdiction to hear appeals from the Magistrates’ Court.
 |  | [Courts and Tribunals Judiciary - Crown Court](https://www.judiciary.uk/you-and-the-judiciary/going-to-court/crown-court/) |
| **Classification of offences and pre-trial procedure** | * Summary offences.
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|  | * Summary offences are less serious offences and are dealt with in the Magistrates’ Court.
* They include, e.g., most driving offences and criminal damage under £5,000.
* Matters are usually dealt with at the first hearing. Defendant will be asked whether they plead guilty or not guilty.
* If they plead guilty the magistrates will sentence.
* If they plead not guilty a trial will take place and sentence passed if found guilty.
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|  | * Triable either-way offences
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|  | * Triable either-way offences are mid-ranging offences and are dealt with in the Magistrates’ or Crown Court
* They include, e.g., theft and s.47 ABH.
* Pre-trial procedures include a plea before venue and mode of trial following a not guilty plea.
* The magistrates retain the option of sending the defendant to the Crown Court for sentencing.
* Indictable offences
* Indictable offences are the most serious offences and are dealt with in the Crown Court.
* They include, e.g., murder and robbery.
* Pre-trial procedure includes an Early Administrative Hearing at the Magistrates’ Court.
* The case is sent to the Crown Court for trial and/or sentencing.
* Plea and Trial Preparation hearing to take place as soon as possible
* Prosecution and Defence disclosure
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| **Appeals and appellate courts** | **Appeal from the Magistrates Court** |  |  |
|  | * From the Magistrates
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|  | * Defence can appeal, as of right, from the Magistrates’ Court against conviction and/or sentence.
* Case completely reheard by judge and two magistrates.
* Conviction may be confirmed, reversed or varied to find the defendant guilty of a lesser offence.
* Sentences may be confirmed or increased.
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|  | * Case stated appeal to the Queen's Bench Divisional Court
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|  | * Defence may appeal against conviction on a point of law. Court may confirm, vary or reverse the decision or send the case back to the Magistrates’ Court.
* Prosecution may appeal against acquittal on a point of law. Court may confirm or quash decision or send the case back to the Magistrates’ Court for re-hearing.
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|  | **Appeal from the Crown Court** |  |  |
|  | * From the Crown Court
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|  | * Defendant may appeal against conviction and/or sentence on grounds that the conviction is unsafe.
* Leave to appeal required and application must be made within 28 days.
* The Court may order a retrial or quash the conviction.
* Sentence may be reduced upon appeal but not increased.
* Prosecution may ask the Attorney General to seek leave to appeal in respect of an unduly lenient sentence.
* Prosecution Appeal to the QBD
* Prosecution may appeal against acquittal due to jury nobbling.

**Appeal form the Court of Appeal (Criminal Division)** |  |  |
|  | * Appeal to the UKSC
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|  | * Leave to appeal required from either the Court of Appeal or the Supreme Court.
* Appeal must involve a point of law of public importance.
* Available to both the prosecution and defence.
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| **Sentencing and court powers, aims, factors and types of sentences** | * Aims
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|  | * All courts must have regard to the following purposes of sentencing:
	+ the punishment of offenders
	+ the reduction of crime (including its reduction by deterrence)
	+ the reform and rehabilitation of offenders
	+ the protection of the public
	+ the making of reparation by offenders
 | [s142 Criminal Justice Act 2003](https://www.legislation.gov.uk/ukpga/2003/44/section/142) | Sentencing Council: [Aggravating and mitigating factors](https://www.sentencingcouncil.org.uk/explanatory-material/magistrates-court/item/aggravating-and-mitigating-factors/)https://www.sentencingcouncil.org.uk/sentencing-and-the-council/about-sentencing-guidelines/ |
|  | * Aggravating factors
* These make a crime more serious and include, amongst other factors:
	+ offender has previous convictions
	+ offence committed whilst on bail
	+ offender is operating as part of a gang
	+ offender has deliberately targeted a vulnerable victim
	+ when the offence was committed it was motivated by, or demonstrating hostility towards, a person who falls within one or more of the protected characteristics
* Mitigating factors
* These may reduce the sentence and include, amongst other factors:
	+ genuine remorse
	+ playing a minor part
	+ first time offence
	+ co-operation and admission of guilt at the earliest opportunity
 |  |  |
|  | * Adult custodial sentences
* An adult may be given a mandatory life sentence, discretionary life sentence, extended determinate sentence, minimum sentence for dealing in Class A drugs or a third burglary of a residential building, suspended sentence, fixed-term sentence and Home Detention Curfew.
 | [Criminal Justice Act 2003](https://www.legislation.gov.uk/ukpga/2003/44/contents)[Crime and Disorder Act 1998](https://www.legislation.gov.uk/ukpga/1998/37/contents) s122 LASPO <https://www.legislation.gov.uk/ukpga/2012/10/section/122> |  |
|  | * Non-custodial adult sentences
* Under s177 Criminal Justice Act 2003 an adult may be given a Community Order which may include one or more of 14 available requirements, for example:
	+ an unpaid work requirement
	+ curfew requirement
	+ electronic monitoring requirement
	+ exclusion requirement
	+ drug rehabilitation requirement
	+ alcohol treatment requirement
	+ supervision requirement
	+ a residence requirement
* Other non-custodial sentences include fines, discharges and driving bans.
 | [s177 Criminal Justice Act 2003](https://www.legislation.gov.uk/ukpga/2003/44/section/177)Sentencing Code - Sentencing Act <https://www.legislation.gov.uk/ukpga/2020/17/contents/enacted> . |  |
| **Lay magistrates and juries: qualifications, selection, appointment and their role in criminal cases** | **Lay magistrates** |  | [[Courts and Tribunals Judiciary](https://www.judiciary.uk/)](https://www.judiciary.uk/about-the-judiciary/judges-career-paths/becoming-a-magistrate/)[Magistrates application](https://www.gov.uk/government/publications/become-a-magistrate-application-form)  |
|  | * Qualifications and disqualifications
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|  | * Three basic requirements:
* aged between 18-74 (must retire at 75)
* live/work in, or reasonably close to, the area which they want to serve
* prepared to sit at least 26 half days per year.
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|  | * Those unable to sit include people with a serious criminal conviction; undischarged bankrupts; a person who has a job incompatible with the role or a relative of those with an incompatible job.
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|  | * Selection
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|  | * Application is made to the LAC (Local Advisory Committee). Application can be made via the Government website.
* The LAC will review all applications and aim to select a good cross-section of society.
* Candidates must undertake two interviews.
	+ First Interview will look at the candidate's general character, personal attributes and whether they possess the six key qualities.
	+ Second interview assesses the candidate's judicial aptitude and qualities by looking at case studies.
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|  | * Appointment
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|  | * LAC recommends suitable candidates to the Lord Chief Justice who designates the role to the Senior Presiding Judge under the Crime and Courts Act 2003. Candidates will be sworn in as a magistrate at a local court.
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|  | * Role
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|  | * Magistrates deal with approximately 95% of all criminal matters including all summary matters from start to finish, some triable either-way matters and the first hearing of indictable cases. They also deal with preliminary matters. Specially nominated and trained magistrates work in the Youth Court and hear criminal cases involving young offenders between 10-17 years old. Magistrates sit in the Crown Court with a professional judge to hear appeals from the Magistrates’ Court.
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|  | **Juries** |  |  |
|  | * Qualifications
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|  | * The three qualifications are set out in the Juries Act 1974 (as amended):
* aged between 18 and 75
* registered as a parliamentary or local government elector
* resident in the UK for at least five years since age of 13
 | [Juries Act 1974](https://www.legislation.gov.uk/ukpga/1974/23/contents) (as amended) |  |
|  | * Those unable to sit include those disqualified:
* Disqualified for life, for example, if the person has been imprisoned for life, been detained during Her Majesty’s Pleasure or had a sentence of imprisonment of 5 years or more.
* A person will be disqualified for a period of 10 years if they have served a custodial sentence of less than 5 years, a suspended sentence or been given a community order. A person is disqualified whilst on bail.
 |  |  |
|  | * Those ineligible includes people with certain mental health issues (not automatically ineligible), people who cannot speak/understand English, those with a disability which would stop them carrying out the role and deafness.
 |  |  |
|  | * A discretionary excusal may be applied for. This will defer jury service. A deferral may be granted for ‘good reason’. Armed forces personnel may have jury service deferred if their commanding officer certifies they are needed elsewhere.
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|  | * Selection
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|  | * Names selected randomly from the electoral register. Approximately 150 summonses for each court are sent out every two weeks.
* Fifteen randomly chosen at court from the jury pool. Twelve chosen at random in court by the clerk.
* Checks and challenges are undertaken. Vetting includes routine police checks and, in exceptional circumstances, wider background checks for political affiliations. Permission from the Attorney General is required.
* Jury members may be challenged either to the array, for cause or told to stand by.
 |  |  |
|  | * Role
 |  | [Role of the Jury](https://www.youtube.com/watch?v=yQGekF-72xQ&t=26s&disable_polymer=true) |
|  | * Jury listens to the evidence and the summing up by the judge.
* At the end of the trial the jury will retire to discuss the case in secret.
* The jury will decide if the defendant is guilty or not guilty based on the facts presented to them.
* Whilst a unanimous decision is preferred, a majority decision may be allowed, for example, 10-2.
* No reason for the decision is required.
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| The advantages and disadvantages of using juries in criminal courts | * Questions may be based on both advantages and disadvantages or one alone. They may be broad (use in general) or narrow (e.g., secrecy). As a useful guide, aim for four properly developed arguments with supporting examples (where appropriate) and a reasoned and justified response to the question (where required). Advantages can be used in a disadvantages question and *vice versa* but only where it is used as a counter-argument.
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| **Legal personnel**7 hours |
| **Barristers, solicitors and legal executives: role and the regulation of legal professions** | **Barristers*** Role
* Majority of barristers are self-employed working from Chambers and instructed by solicitors.
* Barristers may be employed and work for the Crown Prosecution Service, government or work within an Alternative Business Structure.
* Advocacy is a key area of work
* They can undertake a wide range of different roles including public access work, writing opinions, giving advice and holding case conferences. Many barristers specialise in particular fields of law.
* Regulation
* Controlled by the General Council of the Bar.
* The Bar Standards Board investigates any alleged breach of the Code of Conduct. It can discipline a barrister who is in breach of the Code.
* In serious matters of professional misconduct, the barrister will be referred to the Disciplinary Tribunal of the Council of the Inns of Court and ultimately, the barrister may be struck off.
* The Office for Legal Complaints set up by the Legal Services Act 2007 deals with complaints regarding the way a complaint was handled. The matter is referred to the Legal Ombudsman.
 |  |  |
|  |  | [Legal Services Act 2007](https://www.legislation.gov.uk/ukpga/2007/29/contents) | [The Bar Council](https://www.barcouncil.org.uk/)Bar Standards Board - [Homepage](https://www.barstandardsboard.org.uk/)[The Chase Barrister](https://www.telegraph.co.uk/news/2016/10/26/celebrity-barrister-who-stars-on-the-chase-fined-2500-for-failin/)[Legal Ombudsman](https://www.legalombudsman.org.uk/about-us/) |
|  | **Solicitors** |  |  |
|  | * Role
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|  | * Many solicitors work in High Street firms and are employed. Some work for other organisations, for example, CPS, local/central government or legal departments in businesses.
* Solicitor advocates will represent clients in all courts and those with relevant advocacy experience will be eligible to be appointed Queen’s Counsel and also to be appointed to higher judicial posts.
* Solicitors may act as Deputy District Judges in the Magistrates’ and County Court.
 | [Legal Services Act 2007](https://www.legislation.gov.uk/ukpga/2007/29/contents) |  |
|  | * Regulation
 |  |  |
|  | * The Law Society is the Governing Body for Solicitors in England and Wales. They represent the interest of their members – much like a union.
* The Solicitors Regulatory Authority regulates the profession and deals with complaints.
* The general reasons for a client complaining may include:
* Negligent advocacy – Hall v Simons or
* Negligent advice/work – White v Jones.
* The Office for Legal Complaints set up by the Legal Services Act 2007, which deals with complaints regarding the way a complaint was handled. The matter is referred to the Legal Ombudsman.
 |  | [The Law Society](https://www.lawsociety.org.uk/)[The Solicitors Regulation Authority](https://www.sra.org.uk/)[Legal Ombudsman](https://www.legalombudsman.org.uk/about-us/) |
|  | **Legal executives** |  |  |
|  | * Role
* A Legal Executive usually specialises in one specific area of law. They will advise clients and can represent clients in the lower courts.
 | [Legal Services Act 2007](https://www.legislation.gov.uk/ukpga/2007/29/contents) |  |
|  | * Regulation
 |  |  |
|  | * Chartered Institute of Legal Executives is the governing body.
* The regulatory body is CILEx Regulation.
* The regulatory body acts against legal executives who do not meet the required standards.
* The Office for Legal Complaints was set up by the Legal Services Act 2007, which deals with complaints regarding the way a complaint was handled. The matter is referred to the Legal Ombudsman.
 |  | [Chartered Institute of Legal Executives](https://www.cilex.org.uk/)[Legal Ombudsman](https://www.legalombudsman.org.uk/about-us/) |
| **The judiciary: types and role in civil and criminal courts**  | * Different levels of judges
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|  | * Inferior Judges
 |  |  |
|  | * District Judge
* Recorder
* Circuit judge
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|  | * Superior Judges
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|  | * High Court Judge
* Lord/Lady Justices of Appeal
* Justices of the Supreme Court
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|  | * Role in civil and criminal courts
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|  | * Magistrates’ Court
* District Judges (Magistrates’ Court) hear summary matters and some triable either way matters. They decide the verdict and pass sentence.
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|  | * County Court
* District Judges, Part-time Recorders and Circuit judges hear all civil cases. They decide liability and award the appropriate remedy.
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|  | * Crown Court
* Part-time Recorders and Circuit Judges hear some triable either-way matters and all indictable matters. They advise the jury on law and pass sentence. Hear appeals from the Magistrates’ Court.
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|  | * High Court
* High Court Judges hear cases in one of the three divisions. They hear civil cases of first instance and criminal and civil appeals. They decide liability and award the appropriate remedy in civic cases.
 |  |  |
|  | * Court of Appeal
* Lord/Lady Justices of Appeal hear civil and criminal appeal cases in the relevant division.
 |  |  |
|  | * UKSC
* Justices of the Supreme Court hear both civil and criminal appeals on points of law and public importance.
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| **The separation of powers and the independence of the judiciary** | * To allow for a democratic society, the three main sources of power (namely the legislature, executive and judiciary) are kept separate.
 | [R (on the application of Miller) (Appellant) v The Prime Minister (Respondent) and Cherry and others (Respondents) v Advocate General for Scotland (Appellant) (Scotland)](https://www.supremecourt.uk/watch/uksc-2019-0192/judgment.html)  |  |
|  | * The doctrine of the separation of powers states that the judiciary must be independent from the other two arms of the state to ensure fair and impartial justice is delivered and that no one person/body of people hold all the power in society.
 |  |  |
|  | * The doctrine provides a system of checks and balances. Judges are required to ignore any pressure from the legislature, executive, other outside pressure and their own prejudices. Judicial independence is achieved in a number of ways, for example by:
* limiting the role of the Lord Chancellor in judicial selection
* by the creation of the Judicial Appointments Commission
* the creation of the Supreme Court
* allowing immunity from prosecution in certain circumstances
* the fact that judicial salaries are set by an independent body
* security of tenure
* immunity from suit
* independence from the other two arms of the state
* independence from the case
 |  |  |
| Evaluation of the judiciary, including the advantages of judicial independence | * As a useful guide, aim for four properly developed arguments with supporting examples (where appropriate) and a reasoned and justified response to the question (where required).
 |  |  |
| **Access to justice****5 hours** |
| **Government funding for civil and criminal cases** | * Civil and Criminal government funding is provided by the Legal Aid Agency. The Agency was created by LASPO.
 | [Legal Aid, Sentencing and Punishment of Offenders Act 2012](https://www.legislation.gov.uk/ukpga/2012/10/contents/enacted)  | [Qualifying for civil legal aid](http://www.legislation.gov.uk/ukpga/2012/10/section/11/enacted) [Public Defender Service](https://publicdefenderservice.org.uk/)[Legal Aid Agency](https://www.gov.uk/government/organisations/legal-aid-agency) |
|  | **Government funding for civil cases**  |  |  |
|  | * Civil funding is only available for a limited number of civil disputes, for example, family, housing, debt and asylum and immigration.
* There is a strict merits test. The merits test criteria can be found in s11 LASPO and, amongst other factors, includes the likely cost of providing the service, the appropriateness of using funds for the particular case and the prospect of a successful claim.
* Applicants also need to pass the means test. The disposable income and disposable capital of the applicant is assessed.
 |  |  |
|  | **Government funding for criminal cases**  |  |  |
|  | * Advice and assistance at the police station – s13 LASPO
	+ Free advice and assistance are available from a duty solicitor at the Police Station to individuals in custody. Usually, only telephone advice as funding for attendance is limited to those most in need e.g., vulnerable suspects.

  |  |  |
|  | * Advice and assistance
	+ The duty solicitor at the Magistrates’ Court is available to offer free advice to all those in custody brought before the court.
	+ One hour of means tested criminal advice and assistance is available from contracted/franchised solicitors.
 |  |  |
|  | * Representation
	+ Merits and means tested legal representation is available. This includes case preparation.
	+ Merits tests address whether it is in the interests of justice to provide government funded legal representation.
	+ The means test assesses the disposable income and disposable capital of the applicant.
	+ Means testing rules differ depending on whether the case is in the Magistrates’ or Crown Court.
 |  |  |
|  | * Public Defender Service
	+ This service is run by the Legal Aid Agency. The service offers advice and representation at the police station and at court to those eligible for legal aid.
 |  |  |
| **Private funding, conditional fees, other advice agencies** | * Private funding
	+ This is where a person will pay for their legal advice and representation themselves. They usually seek advice from a Solicitors’ firm. Some firms offer free initial legal advice – usually limited to 30 minutes.
 |  |  |
|  | * CFA (Conditional fee agreement)
 |  |  |
|  | * + Client and lawyer/legal advisor make an agreement that the lawyer's payment is conditional on the case being successful. If successful the lawyer will also take a success fee from their winning client’s compensation.
	+ The success fee must not exceed 25% of the damages, excluding damages for future care and loss.
	+ A party will be advised to take out ‘after the event’ insurance.
 | [Legal Aid, Sentencing and Punishment of Offenders Act 2012](https://www.legislation.gov.uk/ukpga/2012/10/contents/enacted) |  |
|  | * There are a range of other advice agencies including, for example
	+ Citizens Advice
	+ Law Centres
	+ *Pro Bono* Units
	+ Free Representation Units
	+ Trades Unions
	+ Insurance companies
	+ Charities.
 |  |  |
| **Evaluation of access to justice** | * The main area of discussion is the impact of cuts to the legal aid budget:
	+ The extensive cuts to the legal aid budget over recent years has created limited access to justice for many. The cuts often affect those most in need. This is particularly hitting those in need of assistance at the Magistrates’ Courts where it is almost impossible to satisfy the legal aid tests. Means testing eligibility levels are now so low that very few people now qualify for financial assistance.
	+ Merits tests are also causing problems, in particular the ‘interests of justice’ test. Funding for civil cases has been cut to the point where very few cases are eligible for funding.
	+ There is a huge rise in litigants in person. Private funding allows a person to pick and choose the best lawyer, but it is very expensive.
	+ There are many places people can get legal advice from but, with the cuts to legal aid, outside agencies are finding themselves overwhelmed with cases. This means that it is difficult to be seen.
	+ CFAs have been a lifeline to many and have allowed people to bring maters to court without the worry of being financially ruined if they lose. The success fee cap means that the claimant, if they win, will receive a large quantity of their compensation. However, there are often hidden costs involved. Solicitors will only take on cases that have a high chance of winning.
* As a useful guide, aim for four properly developed arguments with supporting examples (where appropriate) and a reasoned and justified response to the question.
 |  |  |

## Suggested resources

## Books

Covering Both (AS & AL content)

OCR AS/A Level Law Book 1, 1st Edn, Martin & Price, Hodder

 OCR A Level Law Second Edn: Teal, Wortley, Price and Briggs, Hodder

Criminal Law

Smith, Hogan & Ormerod’s Essentials of Criminal Law, 3rd Edn, Child & Ormerod, Oxford University Press

Criminal Law, Text, Cases & Materials, 8th Edn, Herring, Oxford University Press

Smith, Hogan & Ormerod’s Criminal Law, 15th Edn, Ormerod & Laird, Oxford University Press

Elliott & Quinn’s Criminal Law, 12th Edn, Taylor, Pearson

Criminal Law Directions, 6h Edn, Monaghan, Oxford University Press

Unlocking Criminal Law, 7th Edn, Storey, Routledge

Ashworth’s Principles of Criminal Law, 9th Edn, Horder, Oxford University Press

Understanding Criminal Law, 4th Edn, Clarkson, Sweet & Maxwell

## TV and Radio Programmes

**Crime Movies**

Provoked (2006) (Aishwarya Rai)

Let Him Have It (1991) (Chris Eccleston)

In the Name of The Father (1993) (Daniel Day Lewis)

Flight (2012) (Denzil Washington)

To Kill a Mockingbird (1962) (Gregory Peck)

Twelve Angry Men (1957) (Henry Fonda)

**Television**

The Interrogation of Tony Martin (Channel 4) (Steve Pemberton)

[Women Who Kill (Channel 4 On Demand)](https://www.channel4.com/programmes/women-who-kill/episode-guide/)

[Murder by degrees](https://youtu.be/MyX5AY68pqc)

[Self-defence](https://youtu.be/fhRvkYuYbr8)

**Radio**

The Law in Action <https://www.bbc.co.uk/programmes/b006tgy1>

## Websites and other resources

UK Supreme Court: <https://www.supremecourt.uk/decided-cases/>

e-lawresources.co.uk <http://e-lawresources.co.uk/Home.php>

bits of law <http://www.bitsoflaw.org>

British and Irish Legal Information Institute <http://www.bailii.org>

UKSC <https://www.supremecourt.uk/index.html>

Old Bailey Online <https://www.oldbaileyonline.org/>

Winstanley College Law Pages <http://alevellaw.doomby.com/>

EU Law <https://europa.eu/european-union/law_en>

UK Gov Legislation <http://www.legislation.gov.uk/>

The Law Bank <https://www.youtube.com/user/TheLawBank>

Loss of Control <https://www.bbc.co.uk/news/uk-16592680>

## Planning guide – H418/01: Criminal Law (46 hours)

| **Specification content** | **Expanded content** | **Relevant cases/statutes** | **Suggested resources** |
| --- | --- | --- | --- |
| **Rules and theory****2 hours** |
| An outline of the rules of criminal law | * Define crime (e.g., Kenny, Ashworth, Williams)
 |  |  |
| * The changing nature of crime, the role of the state and future challenges
 | (e.g., de-criminalisation of homosexuality 1967 to 2000) | [Stonewall Timeline](https://www.stonewall.org.uk/about-us/key-dates-lesbian-gay-bi-and-trans-equality) |
| * Sources of criminal law and the agenda for reform and codification
 |  |  |
| * The elements of criminal liability
 |  |  |
| * + *Actus reus*
 |  |  |
| * + *Mens rea*
 |  |  |
| * + The role of defences
 |  |  |
| * Parties to a crime
 |  |  |
| * The burden of proof and the standard of proof
 | Woolmington v DPP (1935) |  |
| * Reverse onus
 | s.2(2) Homicide Act 1957 |  |
| * The above content would be impliedly assessed through all the assessment objectives rather than being discretely assessed.
 |  |  |
| An overview of the theory of criminal law | The **aims** and **purposes** of criminal law |  | Refer to ‘principles’ texts such as Clarkson and Ashworth (see below)See also Unit 3 ‘Nature of Law’ |
| * Protect individuals from harm
 | Homicide & non-fatal offences against the person |
| * Protect people’s property from harm/theft
 | Criminal damage & theft-based offences |
| * Preserve order in society
 | Public Order Act 1986 |
| * Enforce prevailing moral standards
 | R v Brown (1993); R v Wilson (1996) |
| * To balance conflicting interests
 | Strict liability offences |
| * Punish those at fault
 | Sentencing legislation |
| * Educate society about appropriate behaviour
 | Shaw v DPP (1961); Knuller v DPP (1973) |
| * To achieve justice
 | Revill v Newbery (1996); R v Martin (2002) |
| * Provide a deterrent
 | Clingham v RB of Kensington & Chelsea (2002) |
| **Theories** of criminal law |  |
| * Legal paternalism
 | Drug offences and under-age sex  |
| * Individualism and collectivism
 | Gough v DPP (2013) |
| * Legal necessity
 | Re: A (conjoined twins) (2001) |
| * Legal moralism
 | Wolfenden Committee 1957 |
| * The harm principle
 | JS Mill (1859); R v Hinks (2000) |
| * Distributive justice
 | See Unit 3 Nature of Law |
| * Socio-economic and public policy factors
 | Bromley LBC v GLC (1981) |
| * Symbolic criminalisation
 | War Crimes Act 1996 |
|  | e.g., contrast benefit fraud with tax fraud |
| **Legal** **principles** |  |
| * Fair labelling
 | Chalmers & Leverick 2008 |
| * Fair warning and certainty
 | Codification of criminal law & R v Rimmington & Goldstein (2005) |
| * Non-retroactivity
 | R v R (1992) |
|  | Z v UK (2002) |
| Distinctions between crime and tort or contract  |  |
| * Learners will not be asked discrete questions on the theory of criminal law. It will be assessed through the AO3 in questions 7 &10. The aim here is to provide learners with an overview of criminal legal theory. This can be used as a critical framework which can be adapted for use in any evaluative question. It is not intended to provide an exhaustive list and other legal theory will be credited where relevant. However, it is not necessary to study any single area in depth. An understanding of a few aims, theories and principles should provide a highly adaptable critical ‘toolbox’.
 |  |
| **General elements of criminal liability****4 hours** |
| * *Actus reus*: conduct and consequence crimes; voluntary acts and omissions; involuntariness; causation
 | The physical element of a crime (the *actus reus*) can be: |  |  |
| * Conduct
 |  |
| * + The act or omission (see below) required for the offence
 |  |
| * Circumstances
 |  |
| * + Surrounding factual circumstances or state of affairs (see below) that need to exist for liability
 |  |
| * Consequences
 |  |
| * + These are the results that need to have been caused (see below) by the defendant’s conduct
 |  |
| * Willed and voluntary conduct and involuntariness
 | Hill v Baxter (1958) |
| * A state of affairs
 | Winzar v CC of Kent (1983) |
| * An omission
 |  |
| * The general rule – no liability for an omission
 |  |
| * Exceptions to the general rule:
 |  |
| * + A statutory duty
 | s.170(4) Road Traffic Act 1988, s5 Domestic Violence, Crime and Victims Act (2004) |
| * + A contractual duty
 | R v Pittwood (1902) |
| * + A duty based on a special (often familial) relationship
 | R v Gibbins & Proctor (1918)R v Hood (2004) |
| * + The voluntary assumption of a duty
 | R v Stone & Dobinson (1977) |
| * + Duty by virtue of (public) office
 | R v Dytham (1979) |
| * + A duty to avert a danger created (supervening fault)
 | R v Miller (1983)DPP v Santa-Bermudez (2004), R v Evans (2009) |
|  |  |
| The *actus reus* must cause the prohibited outcome: |  |
| * Causation in fact
 |  |
| * + Did the result arise because of D’s conduct?
 | R v White (1910) |
| * Causation in law – *de minimis*
 |  |
| * + Was D’s conduct an operative and substantial cause (or a significant contribution)?
 | R v Kimsey (1996)R v Hughes (2014)R v Smith (1959); (R v Pagett (1983)) |
| * Prosecution must prove there was no *novus actus interveniens* (NAI) or ‘new intervening act’) which would break the chain of causation
 |  |
| * + Negligent medical treatment is not a NAI unless negligence was so potent (and independent of D’s act), as to render D’s conduct insignificant
 | R v Smith (1959); R v Cheshire (1991) ; R v Jordan (1956) |
| * + Victim’s self-neglect or suicide (Not a NAI)
 |  R v Wallace (2018) |
| * + Daft and unforeseeable act of the victim (NAI)
 | R v Roberts (1971) |
| * + Third party intervention ‘free, deliberate and informed act’ will be a NAI
 | R v Pagett (1983) |
| * + Drugs cases: free & voluntary act of self-injection by victim is a NAI
 | R v Kennedy (No 2) (2007) |
| * + The thin-skull rule – take your victim as you find them is not a NAI
 | R v Blaue (1975) |
| * Life-support machines – switching off a life-support-machine is considered an omission which does not break the chain of causation.
 | Airedale NHS Trust v Bland (1993); R v Malchereck & Steel (1981) |
| * Learners are not expected to evaluate *actus reus s*o there is no AO3 content here; however, issues relating to omissions and causation are highly examinable as part of problem questions. Furthermore, types of *actus reus* (the three C’s) are included for context only.
 |  |
| *Mens rea*: fault; intention and subjective recklessness; negligence and strict liability; transferred malice; coincidence of *actus reus* and *mens rea* | *Mens rea* is the mental or ‘fault’ element of criminal liability |  |  |
| * Based on levels of blame; has subjective and objective elements
 |  |
| * Can be more than one *mens rea* element to a single offence
 | s.1 Theft Act 1968 |
| * Motive is irrelevant
 | R v Steane (1947) |
| * **Intention** (most serious *mens rea*)
 |  |
| * + Direct: aim or purpose; decision to bring about an outcome.
 | R v Mohan (1976); R v Moloney (1985) |
| * + Oblique: The jury can find the necessary intention if they feel sure that the outcome caused was a virtual certainty of D’s actions, and D appreciated this.
 | R v Nedrick (1986); R v Woollin (1999), R v Matthews and Alleyne (2003) |
| * **Subjective recklessness**
 |  |
| * + D is aware of a risk of the relevant element of the *actus reus* and unreasonably takes that risk.
 | R v G and Another (2003) |
| * **Negligence**
 |  |
| * + Negligence is generally a civil concept which involves behaviour that falls below the standard of the reasonable person. It is used in some statutory crimes (e.g., driving offences).
 |  |
| * + *Gross* negligence is the basis of gross negligence manslaughter. Here, D’s negligence needs to be so extreme that the jury considers it ‘gross’.
 | R v Adomako (1995) |
| * **Strict liability**
 |  |
| * An offence which does not require proof of fault.
 | Pharmaceutical Society of GB v Storkwain (1986) |
| * Still requires D’s voluntary commission of the *actus reus*. Contrast this with ‘state of affairs’ offences with absolute liability where this is not required.
 | R v Larsonneur (1933) |
| * Identifying statutory offences of strict liability
 |  |
| * Where a statute does not make strict liability clear, it is left for the court to decide. They will use the following principles:
 | Gammon (Hong Kong) Ltd v AG of Hong Kong (1984) |
| * the starting point is that there is a presumption that proof of *mens rea* is required before someone is found guilty of a criminal offence
 | Sweet v Parsley (1970) |
| * the presumption is stronger where the offence is ‘truly criminal’ in nature
 | Harrow LBC v Shah & Shah (1999) |
| * + the presumption applies to statutory offences, and can be displaced only by clear wording in the statute or by necessary implication based on the effect of the statute
 | R v Lane and Letts [2018] |
| * + the presumption is more likely to be displaced and the offence will be more likely to be strict liability where it involves an issue of social concern:
		- * + licensing abuse
				+ consumer protection
				+ illegal broadcasting
				+ misuse of drugs
				+ road safety
				+ pollution
				+ underage gambling
				+ underage indecency
				+ firearms control.
 | Cundy (as above)Smedleys v Breed (1974)R v Blake (1997)Warner v MPC (1969)DPP v Harper (1997)Alphacell (as above)Shah (as above)B v DPP (2000)R v Howells (1977) |
| * the presumption in favour of *mens rea* stands unless strict liability would encourage observance of the law.
* **Transferred malice**
	+ - * Where the mens rea of an offence is transferred from its intended victim to an actual victim.
			* However, the mens rea for one offence cannot be transferred to an unintended second (and different) offence.
* **Coincidence of actus reus and mens rea**
 | Lim Chin Aik v The Queen (1963)R v Latimer (1886), R v Gnango (2011)R v Pembilton (1874) |
| * + Continuing act
	+ Series of acts
 | Fagan v MPC (1986)Thabo Meli v R (1954) |
| **Fatal offences against the person****8 hours** |
| Murder: *actus reus* and *mens rea* | * **Definition**: Sir Edward Coke (Coke, 3 Inst. 47)
 |  | Law Commission Reports[Murder, Manslaughter & Infanticide](http://www.lawcom.gov.uk/app/uploads/2015/03/lc304_Murder_Manslaughter_and_Infanticide_Report.pdf)[A New Homicide Act for England and Wales](http://www.lawcom.gov.uk/app/uploads/2015/03/cp177_Murder_Manslaughter_and_Infanticide_consultation_overview_.pdf) |
| * ***Actus reus***
 |  |
| * Unlawfully (note relevant defences below)
 |  |
| * Causes death (see causation above)
 |  |
| * Of a human being:
 |  |
| * + When does life begin?
 | Attorney General’s Ref (No3 of 1994) (1997) |
| * + When does life end?
 | Re: A (a child) (2015); Bland; Malcherek & Steel (as above) |
| * Under the King’s Peace (no offence at times of war)
 |  |
| * ***Mens rea***
 |  |
| * With malice aforethought (intention to kill or cause GBH)
 | R v Cunningham (1982); R v Vickers (1957) |
| * ‘Malice’ does not mean ill-will or malevolence
 | R v Inglis (2011) |
| * Sometimes expressed as express or implied malice:
 |  |
| * Express malice
 |  |
| * + intention to kill
 |  |
| * + - direct intent, or
 | R v Moloney (1985); R v Mohan (1975) |
| * + - oblique intent
 | R v Woollin (1999) |
| * Implied malice
 |  |
| * + intention to cause GBH
 | DPP v Smith (1961) |
| Voluntary manslaughter: defences of loss of control and diminished responsibility under Coroners and Justice Act 2009 | * **Voluntary manslaughter**
 |  | Law Commission Reports:[Murder, Manslaughter & Infanticide](http://www.lawcom.gov.uk/app/uploads/2015/03/lc304_Murder_Manslaughter_and_Infanticide_Report.pdf)[Partial Defences to Murder 2004](http://www.lawcom.gov.uk/app/uploads/2015/03/lc290_Partial_Defences_to_Murder.pdf)[A New Homicide Act for England and Wales](http://www.lawcom.gov.uk/app/uploads/2015/03/cp177_Murder_Manslaughter_and_Infanticide_consultation_overview_.pdf) |
| * Voluntary manslaughter is an outcome rather than an offence.
 |  |
| * It arises where D has committed murder but successfully pleads one of two partial defences which reduces D’s liability down from murder to voluntary manslaughter.
 |  |
| * The effect is to give the judge discretion in sentencing rather than having to impose a mandatory life sentence.
 |  |
| * They are set out in the Coroners and Justice Act 2009 (CJA)
 |  |
| * **Loss of Control (LoC)**
 |  |
| * Provisions in ss.54 & 55 of the Coroners and Justice Act 2009 (CJA)
 |  |
| * Definition:
 | R v Goodwin (2018) |
| * + s.54(1) A person who kills or was party to a killing may be convicted of manslaughter rather than murder where there exists:
 |  |
| * + - (a) a loss of self-control,
 | R v Jewell (2014) |
| * + - (b) the loss of self-control had a qualifying trigger, and
 |  |
| * + - (c) a person of D's sex and age, with a normal degree of tolerance and self-restraint and in the circumstances of D, might have reacted in the same or in a similar way to D.
 |  |
| * + s.54(7) A person who, but for this section, would be liable to be convicted of murder is liable instead to be convicted of manslaughter.
 |  |
| * Loss of control
 |  |
| * s.54(2) LoC need not be sudden or total.
 | R v Martin (2017); R v Jewell (2014)  |
|  |  |
| * Qualifying trigger
 |  |
| * + s.55 CJA sets out the meaning of a qualifying trigger:
 |  |
| * + s.55(3) Where D's loss of self-control was attributable to D's fear of serious violence from V against D or another identified person. or
 | R v Goodwin (2018) |
| * + s.55(4) Where D's loss of self-control was attributable to a thing or things done or said which
 |  |
| (a) constituted circumstances of an extremely grave character, and  | R v Zebedee (2012) |
| (b) caused D to have a justifiable sense of being seriously wronged  | R v Hatter (2013) |
| * + s.55(5) or a combination of s.55(3) & s.55(4)
 | R v Dawes (2013) |
| * ‘Grave character’ and ‘justifiable sense of being seriously wronged’ decided objectively.
 | R v Dawes (2013), R v Hatter (2013) |
| * + Breakdown of a relationship will not normally be ‘circumstances of an extremely grave character’ or give D a justifiable sense of being seriously wronged.
 | R v Hatter (2013); R v Bowyer (2013) |
| * Limitations on qualify triggers
 |  |
| * + s.55(6) CJA provides two further limits on qualifying triggers:
 |  |
| * + s.55(6)(c) sexual infidelity is to be disregarded\*
 | R v Clinton (2012)\* |
| * + s.55(6)(a)(b) D cannot rely on LoC if they caused the conditions of their own defence
 | R v Dawes (2013); R v Ward (2012) |
| * Degree of tolerance and self-restraint
 |  |
| * + s.54(1)(c) (D’s sex and age, with a normal degree of tolerance and self-restraint and in the circumstances of the defendant, might have reacted in the same or similar way) is a jury decision. Interpreting the scope of this limb of the test to determine which circumstances of the D should be considered has proved imprecise despite the additional detail in s.54(3) regarding circumstances which relate to the defendant's general capacity to exercise tolerance and self-restraint. Issues considered include:
 |  |
| * + - Depression & self-restraint, personality disorders, anti-social behaviour disorder, paranoid schizophrenia, PTSD & voluntary intoxication
 | R v McGrory (2013); R v Wilcocks (2016); R v Meanza (2017); R v Rejmanski & Gassman (2017); R v Asmelash (2013) |
| * + - Sexual infidelity may also be taken into account in the third limb under s.54(1)(c)
 | R v Clinton (2012) |
|  |  |
| * Burden of proof
 |  |
| * + S.54 (5) - if sufficient evidence is adduced, the jury must assume that the defence is satisfied unless the prosecution proves beyond reasonable doubt that it is not.

\* Sexual infidelity will not be excluded by s.55(6)(c) where other factors are accepted as the qualifying trigger and sexual infidelity forms part of the ‘context’ to be taken into account in determining whether ss.55 (3) & (4) apply. | R v Martin (2017); R v Gurpinar (2015) |
|  | **Diminished Responsibility** |  |  |
| * The current defence of diminished responsibility is set out in s.2 Homicide Act 1957, as amended by s.52 Coroners and Justice Act 2009 and requires:
 |  |
| * + s.2(1) that D was suffering from an abnormality of mental functioning which:
 | R v Byrne (1960); Brennan v R (2014) |
| * + - arose from a recognised medical condition
 | R v Jama (2004)  |
| * + - substantially impaired D’s ability to do one or more of the things listed in subsection (1A), and
 |  | [American Psychiatric Association’s diagnostic and statistical manual of mental disorders](http://allpsych.com/disorders/dsm.html).  |
| * + - provides an explanation for D’s acts/omissions as a party to the killing
 |  |
| * + (1A) the ‘things’ are:
 |  |  |
| 1. to understand the nature of D's conduct;
2. to form a rational judgment;
3. to exercise self-control.
 |  | [WHO International Statistical Classification of Diseases and Related Health Problems](https://www.who.int/classifications/icd/en/) |
| * The burden of proof is on the defendant but only to the standard of a balance of probabilities
 | R v Wilcocks (2016) |  |
| * Abnormality of mental functioning: definition
 | R v Byrne (1960) |
| * + Caused by a recognised medical condition:
 |  |
| * + - Depression
 | R v Gittens (1984); R v Seers (1984) |
| * + - Irresistible Impulses (Psychopathy)
 | R v Byrne (1960) |
| * + - Battered Woman Syndrome
 | R v Ahluawalia (1993) |
| * + - Alcoholism
 | R v Wood (2008) |
| * + - Alcohol Dependency Syndrome:
 | R v Stewart (2009) |
| * + - Paranoia
 | R v Simcox (1964) |
| * + - Adjustment disorder
 | R v Dietschmann (2003) |
| * + - Epilepsy
 | R v Campbell (1997) |
| * + - Pre-menstrual tension
 | R v Smith (1982) |
| * + - Post-natal depression
 | R v Reynolds (1988) |
| * + - Schizophrenia
 | R v Moyle (2008); R v Erskine (2009) |
| * The ‘*defence*’ will require medical evidence to succeed
 | R v Bunch (2013); R v Golds (2016) |
| * Where the medical evidence is uncontested and shows an abnormality then murder should be withdrawn from the jury
 | R v Brennan (2014) |
| * Substantial impairment
 |  |
| * + Substantial does not mean total. Substantial is more than minimal or trivial. It is up to the jury to decide whether the D’s responsibility was impaired so much by the medical condition to kill
 | R v Golds (2016); R v Squelch (2017) |
| * DR and intoxication
 |  |
| Where the cause of D’s killing is intoxication, three possibilities arise: |  |
| 1. D has brain damage as a result of alcohol misuse. Here, the brain damage can be included as an abnormality of mental functioning (AOMF).
 | R v Wood (2008) |
| 1. Where D is intoxicated involuntarily because of spiked drinks or alcoholism which leaves D with no control over drinking.
 | Contrast the view in R v Tandy (1989) with R v Wood (2008) & R v Stewart (2009) |
| 1. Where D has a RMC and was voluntarily intoxicated, the jury can take account of both the RMC & the intoxication related to the RMC when considering causation.
 | R v Dietschmann (2003); R v Joyce & Kay (2017) |
| Involuntary manslaughter: unlawful act manslaughter and gross negligence manslaughter | **Involuntary manslaughter (IM)** |  |  |
| * IM is a form of homicide where D has caused death but does not satisfy the *mens rea* of murder. It is a wide-ranging offence and this specification looks at two types:
 |  |
| **Unlawful act (or constructive) manslaughter (UAM)** |  |
| * UAM is where D lacks the *mens rea* of murder but kills the victim in the course of committing an unlawful and objectively dangerous criminal act.
 |  |
| * *Actus reus*
 |  |
| * An unlawful act
 |  |
| * + A civil wrong will not suffice, the act must be a crime.
 | R v Franklin (1883); R v Kennedy (2007); R v Meeking (2012) |
| * + There is a view that UAM is restricted to criminal actions and not omissions.
 | R v Lowe (1973) |
| * Which is objectively dangerous
 |  |
| * The unlawful act must be objectively dangerous.
 | R v Church (1967); R v Newbury & Jones (1976); R v Dawson (1985); R v Watson (1989) |
| * It is sufficient that the act may cause an injury not death.
 | R v JF & NE (2015) |
| * The dangerous act need not be directed at the victim.
 | AG’s Ref (No 3 of 1994) (1998), R v Goodfellow (1986) |
| * D need not realise his/her act is dangerous as long as a reasonable person would.
 | R v Bristow (2013) |
| * The dangerousness of the act is judged from the viewpoint of a reasonable bystander.
 | R v JM & SM (2012) |
| * Causes death
 |  |
| * The usual rules of causation apply here.
 | AG’s Ref (No 3 of 1994) (1998) |
| * Where V self-injects a drug prepared and supplied by D, there will be no liability for death caused if the V is a fully informed adult.
 |  |
| * *Mens rea*
 |  |
| * D will require the *mens rea* of the unlawful and dangerous act.
 | R v Lamb (1967) |
| * It is not necessary to prove that D foresaw harm from their act.
 | DPP v Newbury & Jones (1976) |
|  | **Gross negligence manslaughter (GNM)** |  |  |
| * GNM arises where D’s conduct is seriously negligent and that negligence causes death.
* According to *Adomako*, as re-stated and updated by *Broughton,* the requirements are:
 | R v Adomako (1994), R v Broughton (2020) |
| * + A duty of care
 |  |
| * + Breach of that duty
 |  |
| * + A serious and obvious risk of death
	+ Reasonable foresight
 |  |
| * + Causation of death
 |  |
| * + Negligence is ‘gross’
 |  |
| * A duty of care
 |  |
| * Based broadly on civil law from the law of tort
 | R v Wacker (2003) |
| * Many will be duty situations fixed by law such as:
 |  |
| * + statutory duties
 |  |
| * + doctor: patient
 | *Adomako*  |
| * + landlord: tenant
 | R v Singh (1999) |
| * + employers: employees
 | R v Dean (2002) |
| * Has been interpreted as applying ‘wherever D’s conduct carries a foreseeable risk to those around him/her’
 | R v Evans (2009) |
|  |  |
| * The role of the judge and jury
 | R v Willoughby (2004) |
| * Breach of that duty
 |  |
| * Did D’s conduct fall below that of the reasonable person in his/her position – civil law principle apply
 | *Adomako* |
| * Breach can be by act or omission
 | Contrast with *Lowe* in UAM |
| * Reasonable foresight
 |  |
| * When breaching Duty of Care, D’s conduct must pose a reasonably foreseeable serious and obvious risk of death.
 | R v Rose (2017); R v Rudling (2016); R v Kuddus (2019) |
| * Causation of death
 |  |
| * The usual rules of causation will apply (as above)
 |  |
| * Negligence is ‘gross’
 |  |
| * The negligence must be sufficiently gross to justify a criminal conviction
 | *Adomako* |
| * ‘*so flagrant and atrocious, it would consequently amount to a crime*’
 | R v Cornish (2016) |
| * It is a matter for the jury (and judge’s guidance)
 | R v Sellu (2016)) |
| * No breach of human rights
 | R v Misra (2004) |
| **Non-fatal offences against the person****8 hours** |
| Common assault: assault and battery under s39 Criminal Justice Act 1988 | * Common law offences charged under s.39 Criminal Justice Act 1988
 |  | [CPS Charging Standards](https://www.cps.gov.uk/legal-guidance/offences-against-person-incorporating-charging-standard) |
| * **Assault**
 |  |
| * Conduct by D which causes the victim to apprehend the infliction of some immediate, unlawful force.
 | R v Nelson (2013), Collins v Wilcock (1984, R v Ireland (1997) |
| * ***Actus reus***
 |  |
| * An act
 |  |
| * Some ‘act’ or ‘words’ required
 | Lodgon v DPP (1976) |
| * Words alone (and even silent phone calls) are sufficient
 | R v Constanza (1997); R v Ireland & Burstow (1997) |
| * Includes a continuing act
 | Fagan v MPC (1968) |
| * Causes V to apprehend immediate, unlawful force
 | R v Lamb (1967); *Lodgon* |
| * V must apprehend the force or there is no assault
 | Smith v CS of Woking Police (1983); *Constanza* |
| * Fear of immediate force is required
 |  |
| * Implied or conditional threats (e.g., words can negative what would otherwise be an assault)
 | Tuberville v Savage (1669) (contrast with R v Light (1857)) |
| * Can be caused indirectly
 | R v Dume (1986), Martin (1881) |
| * Unlawfulness is dealt with below under battery
 |  |
| * ***Mens rea***
 |  |
| * Requires D to intend or be reckless as to causing the result (apprehension of immediate force)
 | R v Venna (1976); R v Spratt (1990) |
| * Recklessness is subjective
 | R v Parmenter (1991) |
| * **Battery**
 |  |
| * Conduct by D which intentionally or recklessly inflicts unlawful personal violence against the victim.
 | Fagan v MPC (1968) |
| * ***Actus reus***
 |  |
| * Infliction of unlawful personal violence/force – where ‘violence/force’ includes any unlawful contact with another
 | Collins v Wilcock (1984); Wood (Fraser) v DPP (2008) |
| * Has included touching clothing (whilst being worn)
 | R v Thomas (1985) |
| * Can be indirect
 | Haystead v CC of Derbyshire (2000); DPP v K (1990) |
| * Can be a continuing act
 | Fagan v MPC (1968) |
| * Can be by omission
 | DPP v Santa-Bermudez (2003) |
|  |  |
| * Assault and battery require *unlawful* force but force may be applied lawfully in some circumstances
 |  |
| * Consent – see below in defences
 |  |
| * Self-defence & prevention of crime – see below
 | s.3 Criminal Law Act 1967 |
| * Lawful use of reasonable force by the police
 | s.117 Police and Criminal Evidence Act 1984 |
| * ***Mens rea***
 |  |
| * Requires D to intend or be reckless as to causing the result (making unlawful contact with V)
 | R v Venna (1976); R v Spratt (1990) |
| * Recklessness is subjective
 | R v Parmenter (1991) |
| * Battery without assault - for example, where D runs up behind V and hits him/her across the back of his/her head. V does not see this coming.
 |  |
| Assault occasioning actual bodily harm, wounding and grievous bodily harm under s47, s20, s18 Offences Against the Person Act 1861 | * Three offences created by the Offences Against the Person Act 1861:
 |  | [Offences Against the Person Act 1861](http://www.legislation.gov.uk/ukpga/Vict/24-25/100/contents)[CPS Charging Standards](https://www.cps.gov.uk/legal-guidance/offences-against-person-incorporating-charging-standard)[Law Commission Report Offences Against the Person](https://www.lawcom.gov.uk/project/offences-against-the-person/) |
| * **s.47** assault occasioning actual bodily harm (ABH)
 |  |
| * **s.20** unlawful wounding or grievous bodily harm (GBH)
 |  |
| * **s.18** unlawful wounding or grievous bodily harm (GBH) with intent
 |  |
| * Note sentencing and CPS Charging Standards
 |  |
|  | **s.47 assault occasioning ABH** |  |
| * ***Actus reus***
 |  |
| * ‘Assault’ should be read as either assault or battery so that the *actus reus* of s.47 is the *actus reus* of assault or battery with the result that V suffers ABH
 | R v Roberts (1972) |
| * ‘Occasioning’ means ‘causing’ such that D must cause the result element of the assault or battery, and ABH
 |  |
|  | * ‘ABH’ is not defined by the Act and courts have held it to include:
 |  |
| * + ‘any hurt or injury that interferes with the health or comfort of V’, typically, scratches, bruises, abrasions, bruising and swelling
 | R v Miller (1954) |
| * + temporary loss of consciousness
 | T v DPP (2003) |
| * + cutting a victim’s hair
 | DPP v Smith (2006) |
| * + psychiatric injury
 | R v Chan Fook (1994); R v Ireland (1997) |
| * ***Mens rea***
 |  |
| * The *mens rea* of s.47 is the *mens rea* of the base offence (assault and/or battery). There is no additional requirement.
 | R v Savage and Parmenter (1992): R v Roberts (1972) |
|  | **s.20 unlawful wounding or grievous bodily harm (GBH)** |  |
| * The offence requires that D:
 |  |
| * + Wounded; or
 |  |
| * + Inflicted GBH
 |  |
| * + Intending some injury to be caused; or
 |  |
| * + Being reckless as to whether some injury is caused
 |  |
| * ***Actus reus***
 |  |
|  | * Wounding – requires a break in the continuity of the skin.
 | Moriarty v Brooks (1834); JCC v Eisenhower (1983) cf: Wood (1830) |
| * Inflicting
 |  |
| * + Despite previous ideas that ‘cause’ (s.18) and ‘inflict’ (s.20) mean different things and have different requirements, it is now settled law that they have the same effect in law – to cause.
 | R v Wilson (1984); R v Burstow (1997); R v Dica (2004) |
|  |  |
| * GBH
 |  |
| * Means no more than ‘really serious harm’
 | DPP v Smith (1961) |
| * Injury need not be permanent or life-threatening
 | R v Bollom (2004) |
| * Includes severe beatings, broken bones, disfigurement
 |  |
| * Brief unconsciousness is potentially sufficient
 | R v Hicks (2007) |
| * Inflicting a disease (e.g., HIV- so-called ‘biological GBH’)
 | R v Dica (2004); R v Konzani (2005) |
| * Psychiatric injury if clinically severe enough
 | *Burstow*  |
| * ***Mens rea***
 |  |
| * ‘Maliciously’ has been interpreted to mean ‘intentionally or recklessly’
 | R v Savage and R v Parmenter (1991) |
|  | * Although foresight of a risk is required, s,20 does not require D to intend or foresee the full extent of the harm caused. D must simply intend or foresee *some* bodily harm may be caused
 | R v Mowatt (1968) |
|  | **s.18 unlawful wounding or grievous bodily harm (GBH) with intent**  |  |
| * ***Actus reus***
 |  |
| * The *actus reus* of s.18 is the same as that for s.20 above and the word ‘cause’ is given its ordinary meaning
 |  |
| * Do not cover the distinction between ‘to any person’ and ‘to any other person’
 |  |
| * ***Mens rea***
 |  |
| * This is a specific intent offence (i.e., it can only be committed intentionally *not* recklessly). D must be proved to maliciously:
 |  |
| * + intended to do some grievous bodily harm or
 |  |
|  | * + intended to resist or prevent the lawful apprehension or detainer of any person.
 |  |
|  | * Intention here carries the same meaning as for murder (above)
 | See *Moloney, Nedrick, Woollin* (above) |
|  | * *Mens rea* and wounding – an intention to wound is insufficient *mens rea* for s.18
 | R v Taylor (2009) |
|  | * Where D is resisting/preventing arrest, the offence requires proof of a specific intent to resist/prevent but need only be reckless as to causing a wound or injury
 | R v Morrison (1989) |
|  | * **Evaluation**: Victorian Act & archaic language heavily re-interpreted; inconsistency & overlap between offences; sentences do not reflect differences; consent exceptions are anomalous + reform point
 |  |
| **Offences against property****8 hours** |
| Theft under s1 Theft Act 1968 | * Definition of theft is to be found in s.1 Theft Act 1968: “*A person is guilty of theft if he dishonestly appropriates property belonging to another with the intention of permanently depriving the other of it*”
 |  | [Theft Act 1968](http://www.legislation.gov.uk/ukpga/1968/60/contents) |
| * Further definitional elements are located in ss.2-6
 |  |
| * ***Actus reus***
 |  |
| * + Appropriation (s.3)
 |  |
| * + Of property (s.4)
 |  |
| * + Belonging to another (s.5)
 |  |
| * ***Mens rea***
 |  |
| * + Intention to permanently deprive (s.6)
 |  |
| * + Dishonesty (s.2)
 |  |
| * ***Actus reus***
 |  |
| * **Appropriation (s.3)**
 |  |
| * Straightforwardly, an outright taking.
 |  |
| * Also, by s.3(1) ‘any assumption of the rights of the owner’.
 | R v Morris (1984), Pitham v Hehl (1977) |
| * No need to touch/handle property to appropriate.
 | R v McPherson (1973) |
| * Appropriation and label swapping.
 | R v Morris (1984)  |
| * Appropriation by ‘innocent’ acquisition, keeping & dealing.
 | s.3(1) |
| * Appropriation and the *bona fide* purchaser.
 | s.3(2) |
|  |  |
| * Appropriation and consent.
 | Lawrence v MPC (1971); R v Gomez (1993) |
| * Appropriation and consent with no deception.
 | R v Hinks (2000) |
| * Appropriation as a continuing act.
 | R v Atakpu and Abrahams (1993) |
| * **Property (s.4)**
 |  |
| * What can be stolen?
 | s.4(1) |
| * + Money
 |  |
| * + Real property (subject to exclusions)
 |  |
| * + Personal property
 | R v Kelly & Lindsay (1998) |
| * + Things in action
 | Darroux v R (2018); R v Kohn (1979) |
| * + Other intangible property
 | AG of Hong Kong v Chan Nai-Keung (1987) |
| * Exceptions:
 |  |
| * + Flowers, fruit or foliage taken for reward or sale
 | s.4(3) |
| * + Land and certain interests in land
 | s.4(2)(a),(b) & (c) |
| * What cannot be stolen?
 |  |
| * + Electricity (dealt with under s.13 Theft Act 1968)
 | Low v Blease (1974) |
| * + Confidential information
 | Oxford v Moss (1979) |
| * + Wild creatures (unless reduced into possession)
 | s.4(4) |
| * + Bodies and body parts (unless held or controlled)
 | R v Kelly and Lindsay (1998), R v Welsh (1974); Yearworth  |
| * **Belonging to another (s.5)**
 | v North Bristol NHS Trust (2009) |
| * In order for there to be a theft of property, that property must **‘belong to another’**. **s 5(1)** gives a very wide definition of what is meant by ‘belonging to another’.
 |  |
| * Possession or control
 | R v Rostron (2003); R v Dyke and Munro (2002); Powell v McRae (1977) |
| * Possession or control of property does not have to be lawful.
 |  |
|  |  |
| * Wide interpretation of ‘belonging to’.
 | R v Turner (No 2) (1971); Ricketts v Basildon Magistrates (2011) |
| * Proprietary interest.
 | s.5(2); R v Marshall (1998); R v Webster (2006)  |
| * Property received under an obligation.
 | s.5(3); R v Hall (1972); Davidge v Bunnett (1984)  |
| * Property got by mistake.
 | s.5(4); R v Gresham (2003);  |
| * **Intention to permanently deprive (s.6) (ITPD)**
 |  |
| * This element provides a distinction between borrowing and theft. Most ITPD cases are obvious (e.g., D sells or destroys property appropriated from V); some are less clear:
 |  |
| * To dispose of or treat as your own
 | s.6(1); DPP v Lavender (1994); R v Marshall (1998) |
| * A conditional intention to take something
 | R v Easom (1971) |
| * An intention to sell or ransom property back to V
 | R v Raphael (2008) |
| * An intention to replace with identical property
 | R v Velumyl (1989);  |
| * An intention to remove the value from the property
 | R v Lloyd & Oths (1985) |
| * An intention to abandon the property
 | R v Mitchell (2008) |
| * Where D intends to parts with V’s property but cannot be sure of its return
 | s.6(2); R v Fernandes (1996) |
| * **Dishonesty (s.2)**
 |  |
| * The Theft Act does not provide a definition of dishonesty. However, s.2(1) does provide three ‘negative definitions’ or ‘situations’ where D will NOT be considered dishonest if they believe that:
 |  |
| * they have in law the right to deprive the other of it, on behalf of themselves or of a third person (s.2(1)(a)); or
 | R v Holden (1991); R v Robinson (1977) |
| * they would have the other’s consent if the other knew of the appropriation and the circumstances of it (s.2(1)(b)); or
 | Boggeln v Williams (1978) |
| * the person to whom the property belongs cannot be discovered by taking reasonable steps (s.2(1)(c))
* the belief must be an honest one not necessarily a reasonable one.
 | R v Small (1988)R v Small (1988)  |
| * Where none of the negative definitions apply, the definition of dishonesty is left to the common law.
 |  |
| * The current test for dishonesty is the *Ivey* two-part test where juries should be directed to answer the following:
 | Ivey v Genting Casinos Ltd (2017); R v Barton & Booth (2020) |
| 1. What was the actual state of D’s knowledge or belief as to the facts?
2. In the context of (a), was D’s conduct dishonest by the standards of ordinary decent people?
 |  |
| Robbery under s8 Theft Act 1968 | * Robbery is defined in s.8 Theft Act 1968: “*a person is guilty of robbery if he steals, and immediately before or at the time of doing so, and in order to do so, he uses force on any person or puts or seeks to put any person in fear of being then and there subjected to force.”*
 |  | [Theft Act 1968](http://www.legislation.gov.uk/ukpga/1968/60/contents) |
| * ***Actus reus***
 |  |
| * Stealing
 |  |
| * Immediately before or at the time of stealing
 |  |
| * Uses force or puts V in fear of force
 |  |
| * On any person
* In order to steal (there must be an intended causal link between the force used and the theft).
 |  |
| * ***Mens rea***
 |  |
| * Same as theft (in order to steal)
 |  |
| * ***Actus reus***
 |  |
| * Steals
 |  |
| * There must be a complete theft
 | R v Robinson (1977); R v Zerei (2012); R v Waters (2015) |
| * Robbery is complete on the slightest appropriation. D need not succeed in ‘getting away’ with the property.
 | Corcoran v Anderton (1980) |
| * Immediately
 |  |
| * Courts have been flexible here and treated the appropriation as a continuing act.
 | R v Hale (1978); R v Lockley (1995) cf: R v Vinall (2011) |
| * Force or fear of force
 |  |
| * Force is an ordinary word for jury to interpret. Held to be quite low level. However, must be more than taking from a passive victim.
 | R v Dawson & James (1976) R v Monaghan & Monaghan (2012) |
| * Fear of force interpreted as apprehension that force will be used; and that the force will be used ‘then and there’.
 | B & R v DPP (2007)R v Khan (2001)  |
| * On any person
 |  |
| * Force can be applied indirectly.
 | R v Clouden (1987) cf: P v DPP (2012) |
| * Need not include the owner of the property.
 | Smith v Desmond (1965) |
| * ***Mens rea***
 |  |
| * The *mens rea* of robbery is the *mens rea* of theft. D must also intend to use force to steal such that if D accidentally uses force whilst stealing there would be no robbery.
 | R v Forrester (1992) |
|  |  |
| Burglary under s9(1)(a) and s9(1)(b) Theft Act 1968 | * There are two types of burglary set out in s.9 Theft Act
 |  | [Theft Act 1968](http://www.legislation.gov.uk/ukpga/1968/60/contents) |
| * **Section 9(1)(a)**
 |  |
| * D enters a building or part of a building as a trespasser
 |  |
| * With intent to:
 |  |
| * Steal
 |  |
| * Inflict grievous bodily harm
 |  |
| * Do unlawful damage
 |  |
| * **Section 9(1)(b)**
 |  |
| * D, having entered a building or part of a building as a trespasser,
 |  |
| * Steals or attempts to steal; or
 |  |
| * Inflicts or attempts to inflict grievous bodily harm
 |  |
| * Common elements
 |  |
| * Entry
 |  |
| * Of a building or part of a building
 |  |
| * As a trespasser
 |  |
| * Entry
 |  |
| * This is not defined in the Act and has been interpreted by the courts
 | R v Ryan (1996), R v Brown (1985) |
| * Building or part of a building
 |  |
| * Some guidance in s.9(4) to include inhabited vehicles and vessels
 | R v Coleman (2013) |
| * To be a ‘building’ a structure requires some degree of permanence.
* A structure of considerable size and intended to endure a considerable time.
 | B & S v Leathley (1979) cf: Norfolk Constabulary v Seekings and Gould (1986)Stevens and Gourley (1859) |
|  | R v Rodmell (1994) |
| * Part of a building – covers situations where D has permission to be in one part of the building but not another
 | R v Walkington (1979) |
| * As a trespasser
 |  |
| * Where D has entered without permission (express or implied) or other legal authority.
 |  |
| * Prosecution must prove D knew or was subjectively reckless as to whether they were trespassing.
 | R v Collins (1973) |
| * Where D enters with permission, he/she is not a trespasser.
 | *Collins* |
| * Where D goes beyond their permission to enter, they become a trespasser.
 | R v Smith & Jones (1976) |
| * ***Mens rea* of 9(1)(a)**
 |  |
| * D must be at least reckless as to the facts that make them a trespasser.
 | Collins (1973) |
| * D must intend to commit one of the three offences set out in 9(1)(a) above.
 |  |
| * Intent is required at time of entry and whether D goes on to commit it does not matter.
 |  |
| * Conditional intent is sufficient.
 | AG’s Ref (Nos 1 & 2 of 1979) (1979) |
| * **Additional *actus reus* of 9(1)(b)** burglary requires entry of a building, or part of a building, as a trespasser (as above), and the complete *actus reus* of theft, attempted theft, GBH or attempted GBH
 |  |
| * **Mens rea of 9(1)(b)**
 |  |
| * D must be at least reckless as to the facts that make them a trespasser (as above)
 |  |
| * When committing one of the four 9(1)(b) offences, D must act with the required *mens rea* of that offence
 |  |
| **Mental capacity defences****6 hours** |
| Insanity | * **Insanity**
 |  | [Law Commission Report: Insanity and Automatism](https://www.lawcom.gov.uk/project/insanity-and-automatism/)[Law Commission Report: Intoxication and Criminal Liability](https://www.lawcom.gov.uk/project/intoxication-and-criminal-liability-2009/)[Domestic Violence, Crime & Victims Act 2004](http://www.legislation.gov.uk/ukpga/2004/28/contents)[Criminal Procedure (Insanity) Act 1964](http://www.legislation.gov.uk/ukpga/1964/84)[The Line Between Mad and Bad](https://www.psychiatrictimes.com/forensic-psychiatry/line-between-mad-and-bad) |
| * If D claims he/she was insane at the time they committed the crime (as opposed to being unfit to plead), insanity can provide a defence.
 |  |
| * The definition is a legal (not medical) one and comes from the case of M’Naghten (1843):
 |  |
| * Everyone is presumed sane. In order to rebut this presumption, the accused (reverse onus) must prove, on a balance of probabilities, that, when the offence was committed, they were suffering from a **defect of reason**, caused by a **disease of the mind**, so that either: (a) they **did not know the nature and quality of their act**; or (b) they **did not know that what they were doing was wrong in law**.
 |  |
| * **Defect of reason**
 |  |
| * D must be deprived of the power to reason rather than failing to use the power of reasoning.
 | R v Clarke (1972); R v Windle (1952) |
| * The defect of reason may be permanent or temporary.
 | R v Sullivan (1984) |
| * **A disease of the mind**
 |  |
| * This might be a mental or physical disease provided it affects the mind.
* It must affect the ‘reasoning, memory or understanding’ to be classed as a disease of the mind.
* This has led to a number of medical conditions being classed as ‘insanity’ where doctors would not classify them this way.
 | R v Kemp (1956); R v Sullivan (1984); R v Hennessy (1989); R v Burgess (1991) |
| * The ‘disease’ must arise from an internal factor. Internal factors need to be distinguished from ‘external factors’ which are relevant to the related defence of automatism.
 | R v Quick (1973) |
| * Voluntary intoxication is considered an external factor.
 | R v Coley (2013) |
| * D did not know what he was doing (nature and quality) OR D (knew what he was doing but) did not know what he was doing was wrong.
 |  |
| * This has been held to mean that D understands the act is legally wrong rather than morally wrong (Codere (1916)
 | R v Oye (2013); R v Johnson (2007); R v Windle (1952) |
| * **A successful plea**
 |  |
| * If D proves insanity the verdict will be ‘not guilty by reason of insanity.
 |  |
| * This allows the judge to impose clinical options to help D rather than punish them. These range from an indefinite hospital order for murder to supervision orders and discharges.
 |  |
| Automatism | * **Automatism**
 |  |  |
| * Automatism applies to the situation where the defendant is not legally insane but because of some **external factor** they are unable to control what they are doing: “*the term "automatism" describes any act done by the muscles without the control of the mind, such as a spasm, a reflex action or convulsion, or an act done by a person not conscious of what he is doing, such as an act done while suffering from concussion or while sleepwalking*”
 | Hill v Baxter (1958)Bratty v Attorney-General for N. Ireland (1963) |
| * **Total loss of voluntary control**
 |  |
| * D must have lost the ability to control their actions rather than having impaired control.
 | AG’s Ref (No 2 of 1992) (1994)  |
| * **Caused by an external factor**
 |  |
| * This is the vital distinction between insanity and automatism.
 |  |
| * The distinction between them is often illustrated by looking at two aspects of diabetes that cause a diabetic defendant to act involuntarily:
 |  |
| * A is hypoglycaemic (has low blood sugar) because of taking insulin (an external factor).
 | *Quick* |
| * B is hyperglycaemic (has high blood sugar) because they failed to take insulin (an internal factor).
 | *Hennessy*; R v Bingham (1991) |
| * A can claim automatism because his state is due to an external factor and B can claim insanity because his state is due to an internal factor.
 |  |
| * External factors have included Post Traumatic Stress Disorder.
 | R v T (1990)  |
|  |  |
|  |  |
| * **Self-induced automatism**
* Whether D can rely on automatism when their autonomic state was self-induced depends on whether the crime committed was one of basic or specific intent and whether D was at prior fault in becoming autonomic
 | R v Bailey (1983), *Quick, Sullivan* |
| * Crimes of specific intent (SI) can only be committed intentionally; crimes of basic intent (BI) may be committed recklessly
 | DPP v Majewski (1977); **SI** = murder, s.18 wounding or GBH with intent, theft, robbery & burglary. **BI** = involuntary manslaughter, wounding & GBH under s.20, s.47 ABH, assault & battery |
| * Prior fault may be due to D being reckless about managing one’s own health (e.g., diabetes) or becoming voluntarily intoxicated.
 |  |
| * Intoxication may be by drink, drugs or both and can be voluntary or involuntary.
 |  |
| * + Where D commits the *actus reus* of a BI crime with no prior fault, the defence is available.
 | R v Hardie (1984) |
| * + Where D commits the *actus reus* of a BI crime with prior fault, the defence is unavailable.
 | R v Coley (2013) |
| * + Where D commits the *actus reus* of a SI crime with a lack of *mens rea,* there is no crime.
 | R v Bailey (1983) |
| * **Evidential burden and outcome**
 |  |
| * The defendant bears the evidential burden (reverse onus) and, if successful, D will be acquitted (a ‘complete’ defence).
 |  |
|  |  |
|  |  |
| * Learners will not be required to give a narrative description of insanity and automatism so there is no need to consider the background or context of the defences. Learners should be able to recognise the potential availability of the defence in a problem question and apply the rules to determine any possible impact on liability
* Similarly, a detailed account of the orders available to the court should D be found not guilty by way of insanity, will not be required.
 |  |
| Intoxication | * **Intoxication**
 |  |  |
| * Whether intoxication will be available as a defence depends on two factors:
 |  |
| (1) Was the offence committed one of basic intent or specific intent?  | (see above) |
| (2) Was D voluntarily or involuntarily intoxicated? | (see below) |
| * **D was voluntarily intoxicated**:
 |  |
| * + D commits a SI crime with no *mens rea* = defence available
 | R v Sheehan & Moore (1975);  |
| * + D commits a SI crime with *mens rea* = defence **not** available
 | R v Coley (2013) |
| * + D commits a BI crime = defence **not** available (note: what would foresight have been if sober point)
 | DPP v Majewski (1976); (R v Richardson & Irwin (1999)) |
| * D has a defence to both SI and BI crimes unless he has formed the *mens rea* of the crime whilst involuntarily intoxicated.
 |  |
| * + D has a defence to both SI and BI crimes unless he has formed the *mens rea* of the crime whilst involuntarily intoxicated.
 |  |
| * + A drunken intent is still an intent.
 | R v Kingston (1994) |
| * **Situations treated as involuntarily intoxicated**
 |  |
| * Drugs taken under medical prescription
 |  |
| * + intoxication arising from the unexpected side-effects of prescribed therapeutic substances
 | R v Bailey (1983) |
| * ‘Soporific or sedative’ drugs
 |  |
| * + drugs that are said to have a soporific or sedative influence (e.g., tranquilisers), as opposed to an inhibition-lowering (e.g., alcohol) or mind-expanding (e.g., LSD) effect
 | R v Hardie (1985) |
| * Lack of knowledge
 |  |
| * + Where D’s drink has been ‘spiked’ usually by adding stronger alcohol and/or drugs to an existing soft or alcoholic drink without their knowledge
 | R v Kingston (1994) |
| * Intoxication under duress.
 |  |
| * **Intoxication and ‘Dutch courage’**
 |  |
| * + Where D gets himself drunk so as to give himself the ‘Dutch courage’ to do the killing, and whilst drunk carries out his intention, he cannot rely on this self-induced drunkenness as a defence to murder, not even as reducing it to manslaughter.
 | *Attorney-General for Northern Ireland v Gallagher (1963)* |
| * **Evaluation**: legal principle vs policy; BI & SI distinction illogical & inconsistent; difficult for juries; inconsistency re: fall-back positions on SI offences credit will be given for relevant points on reform of intoxication.
 |  |
| **General defences****6 hours** |
| Self-defence, duress by threats, duress of circumstances and necessity | **Self-defence** |  | [Criminal Justice and Immigration Act 2008](http://www.legislation.gov.uk/ukpga/2008/4/contents)[Criminal Law Act 1967](http://www.legislation.gov.uk/ukpga/1967/58/contents)[Crime and Courts Act 2013](http://www.legislation.gov.uk/ukpga/2013/22/contents/enacted) |
| * s.76 CJIA codifies the private and public defences:
 | s.76 Criminal Justice & Immigration Act 2008 (CJIA) |
| * Private: The right to use reasonable force to defend yourself, another, your property or the property of another (common law).
 | R v Duffy (1967) |
| * Public: The right to use reasonable force in the prevention of crime or making an arrest (s.3 Criminal Law Act 1967).
 | s.3 Criminal Law Act 1967 |
| * **Exclusions**
 |  |
| * Some areas of law have separate provisions.
 | s.5(2)(b) Criminal Damage Act 1971 |
| * The defence will not apply to an offence committed by D without force or in some situations where there is prior fault.
 | Oraki v DPP (2018); R v Keane (2010) |
| * **The necessity of force**
 |  |
| * Was it necessary to use any force on V on the facts as D believed them to be?
 | R v Gladstone Williams (1984); R v Hussain (2010) |
| * The danger that D apprehends must be sufficiently specific or imminent to justify their actions, and of a nature which could not reasonably be met by more pacific means.
 |  |
| * **The pre-emptive strike**
 |  |
| * It is not necessary for there to be an attack in progress.
 |  |
| * It is sufficient if D *apprehends* an attack.
 | Beckford v R (1987); DPP v Bailey (1995) |
| * A threat to kill can be self-defence.
 | R v Cousins (1982) |
| * **Preparing for an attack**
 |  |
| * Self-defence includes preparing for an attack but has been narrowly interpreted as not going so far as to cover aggressive rather than defensive force.
 | Attorney-General’s Reference (No. 2 of 1983) (1984)DPP v Stratford Magistrates’ Court (2017) |
| * **The duty to retreat**
 |  |
| * It is not always necessary to retreat or demonstrate a reluctance to fight.
 | R v Bird (1985) |
| * **The reasonableness of force**
 |  |
| * Only such force may be used as is *reasonable in the circumstances*. This is a *question for the jury*. However, although the question of what is reasonable force is to be judged by the jury (i.e., *objectively*), it is critical that they put themselves in the circumstances which D supposed to exist and to consider the state of mind of D as well (i.e., *subjective*).
 | R v Scarlett (1993); R v Owino (1995) |
| * When is force excessive/unreasonable?
 | R v Martin (2001); R v Clegg (1995); R v Hussain (2010) |
| * Use of reasonable force at place of residence.
 |  |
| * s.43 Crime and Courts Act 2013 amends s.76 CJIA to extend the meaning of reasonable force (5A) in respect of householders (‘grossly disproportionate’)
 | Collins v Secretary of State for Justice (2016); R v Ray (2017) |
|  |  |
| * **Mistaken self-defence**
 |  |
| * D's mistaken but honest belief that he was using reasonable force can provide a defence.
 | R v Williams (Gladstone) (1984) |
| **Intoxicated & mistaken self-defence*** Self-defence based on a drunken mistake is not a good defence
 | R v Taj (2018); R v Hatton (2006); R v O’Grady (1987) |
| * **Evaluation**: all or nothing nature of defence; rules developed under common law at different time – relevant? should use of excessive force drop murder to manslaughter? jury decisions lead to inconsistency; should D’s characteristics be considered? Plus, reform point.
 |  |
|  | * **Duress**
 |  |  |
| * There are two types:
 |  |
| * Duress by threats (DBT): D is threatened by another person to commit a criminal offence.
 |  |
| * Duress by circumstances (DBC): the *circumstances* in which D finds themselves force D to commit the offence.
 |  |
| * **Duress by threats**
 |  |
| * A defence where D has been effectively forced to commit a crime due to a threat of death or serious injury.
 |  |
| * It is available to all crimes *except* ***murder*** *and* ***attempted******murder*** and ***accomplice*** to murder.
 | R v Howe (1987); R v Gotts (1992); R v Wilson (2007) |
| * In DBT, the specific type of crime must be ***nominated*** by the person making a threat (*nexus*).
 | R v Cole (1994); R v Ali (1995) |
| * **The nature of the threat**
 |  |
| * The threat must be serious: *‘peril of death or serious injury*’ ... is an essential element’.
 | R v Shayler (2001) |
| * Include threats to both mental and physical health.
 | Baker v Wilkins (1997) |
| * Threats to damage or destroy property are insufficient.
 |  |
| * A threat to expose sexuality is insufficient but a threat to rape is enough.
 | R v Valderrama-Vega (1985); R v Ashley (2012) |
| * **Threats against?**
 |  |
| * As well as threats to D personally, threats to other people will also support the defence. However, this will usually be restricted to immediate family members.
 | R v Martin (Cohn) (1989) |
| * **The Graham Test – should D have resisted the threat?**
 |  |
| * The defence is not available just because D reacted to a threat; the threat must be one that the ordinary man would not have resisted.
 | R v Graham (1982) – approved in *Howe* |
| * The definitive test for duress came from the case of *Graham* and has both a subjective and objective element:
 |  |
| * + Was the defendant impelled to act in the reasonable belief that he or she or others would be killed or physically injured if he or she did not comply with the threats?
 | R v Cairns (1999) |
| * + if so, would a sober person of reasonable firmness sharing the same characteristics of the defendant have acted in the same way?
 | R v Bowen (1996) |
| * Characteristics taken into account in 2nd limb: age; pregnancy; serious physical disability; recognised mental illness or psychiatric condition; sex.
 | *Bowen* |
| * Self-imposed characteristics caused by the abuse of alcohol, drugs or sniffing glue, care not relevant.
 | R v Flatt (1996) |
| * **Imminence of the threat**
 |  |
| * The threat to D must be ‘imminent’ - but this need not mean ‘immediate’.
 | R v Abdul-Hussain and Others (1999) |
| * **A Safe Avenue of Escape**
 |  |
| * D will be expected to take advantage of any reasonable opportunity that they have to escape. If they fail to take it, the defence may fail.
 | R v Gill (1963)  |
| * **Gang membership and voluntary exposure**
 |  |
| * The defence of duress is excluded when as a result of the accused's voluntary association with others engaged in criminal activity he foresaw or ought reasonably to have foreseen the risk of being subjected to any compulsion by threats of violence’ and to have R v Hassan as the only case in the authority column as recommended.
 | R v Hasan (2005) |
|  | * **Duress of circumstances**
 |  |  |
| * Here, the threat does not come from a *person* but the *circumstances* in which D finds themselves.
 | R v Willer (1986); R v Conway (1988); R v Martin (Cohn) (1989); R v Pommell; R v Cairns (1999) |
| * Duress of circumstances broadly follows the principle set out above and now applies to all crimes (not just driving offences) except murder, attempted murder and accomplice to murder.
 |  |
|  | **Necessity** |  | [The case for cannibalism](http://justiceharvard.org/lecture-2-the-case-for-cannibalism/) |
| * The defence of necessity involves a claim of pure justification on D’s part. D’s crime is justified because he was put in a situation where he had to choose between the lesser of two evils to avoid the greater harm.
 |  |
| * It has always been denied as a criminal defence.
 | R v Dudley & Stephens (1884) |
| * However, the concept of medical necessity has been raised and considered in two notable cases.
 | Re: F (mental patient: sterilisation) (1990); Re A (Conjoined Twins) (2000)R v Quayle (2005); R v Altham (2006) |
| * Attempts to extend medical necessity to the medicinal use of cannabis have, however, failed.
 |  |
| Consent | * **Consent**
 |  | [The Law Commission Reports: Criminal Law – Consent in the Criminal Law](https://www.lawcom.gov.uk/document/criminal-law-consent-in-the-criminal-law/)[The Law Commission - Consent and Offences Against the Person](https://www.lawcom.gov.uk/project/criminal-law-consent-and-offences-against-the-person/) |
| * Within the OCR specification, consent is only relevant in relation to non-fatal offences against the person, although some legal points are supported by cases come from areas such as sexual offences.
 |  |
| * Consent is a defence that effectively cancels out what would otherwise be an assault. Lawful consent is a valid defence to assault and battery but it is not a defence to ABH, GBH or wounding unless it fits within a recognised exception. These exceptions usually apply because of public policy or social utility and fit into two broad categories: intentional injury and the risk of accidental injury.
 |  |
| * **Intentional injury**
* **Boxing (and similar aggressive contact sports)**
 |  |
| * Due to their alleged entertainment value, public matches conducted with protective equipment, a referee and within the rules are lawful but street fighting and ‘bare-knuckle’ fighting are not lawful since the higher risk to the combatants outweighs any alleged entertainment value.
 | R v Coney (1882) |
| * **Reasonable surgical & medical treatment**
 |  |
| * Most surgery is expressly consented to and has a high utility factor in its benefit to the patient. This is clearly lawful. There can be issues around ‘informed consent’ but this is usually a civil matter.
 | Corbett v Corbett (1971) |
|  | * **Ritual circumcision**
 |  |  |
| * Male circumcision for religious purposes is lawful where both parents agree to it but so-called female circumcision is prohibited under the Female Genital Mutilation Act 2003.
 | Re: J (Circumcision) (2000) |
| * **Tattooing, ear and body piercing and branding**
 |  |
| * In most circumstances, V will give express consent to a piercing or tattoo that is considered to have some social utility as a personal adornment. There are issues around the age of consent to such procedures. But note the limits set in the recent decision re: ‘tongue splitting’ in *R v BM.*
 | R v BM (2018); R v Wilson (1997); Burrell v Harmer (1967) |
| * **Sado - masochism**
 |  |
| * The law has not generally accepted the idea of consent being a defence to injuries inflicted for sexual gratification in sado-masochistic sexual activity – certainly not where they are serious.
 | R v Brown & others (1993) ); R v Emmett (1999); R v Donovan (1934) |
| * **Risk of accidental injury**
* **Properly conducted sports**
 |  |
| * Deliberate and unnecessary infliction of injury cannot be consented to even in a rough sport like boxing or rugby.
 | R v Johnson (1986) |
| * As a general rule, any incident which takes place outside the rules of the game will not be considered to have been consented to. See *Barnes* for guidance.
 | R v Lloyd (1989), R v Billinghurst (1978); R v Barnes (2005) |
|  | * **Rough and undisciplined horseplay**
 |  |  |
| * Consent to rough and undisciplined play could provide a defence as long as there was no intention to cause injury and a victim can give effective consent to the risk of accidental injury in the course of rough undisciplined play.
 | R v Jones (1986); R v Aitken (1992) |
| * **Reasonable and lawful chastisement of children**
 |  |
| * Reasonable and lawful chastisement (corporal punishment) of children is lawful if ‘*reasonable and proportionate in the circumstances, involving no cruelty*’.
 | A v UK (1998); s.58 Children Act 2004 |
| * **Sexual activity**
 |  |
| * The risk of injury involved in consensual sexual activity short of ‘vigorous’ or ‘sado-masochistic’ activity will be a viable defence.
 | R v Boyea (1992); *Brown; Donovan* |
| * **Risk of STD/HIV transmission**
 |  |
| * V can validly consent to the risk of infection in a sexual encounter provided V was fully informed of the risk. Obviously, this does not include situations where either party intends the infection to be spread.
 | R v Dica (2004); R v Konzani (2005) |
|  |  |
| * Do not cover consent and homicide issues such as murder (which is unlawful) or consent to injection of illegal drugs.
 | Pretty v DPP (2002); R v Cato (1976) |
|  | * **Express consent**
 |  |  |
| * These are situations where we are explicitly asked verbally or in writing before a procedure that would otherwise be an assault such as ear piercing, surgery or dental treatment.
 |  |
| * **Implied consent**
 |  |
| * It is possible to ‘impliedly’ consent to minor batteries through situations where, for example, people inevitably come into contact with one another such as at football matches, on the underground or a pop concert.
 | Wilson v Pringle (1987) |
| * **Real consent**
 |  |
| * Just because V appears to consent, this does not mean the consent is valid in law.
 | R v Tabassum (2000) |
| * **Submission is not the same thing as consent**
 |  |
| * Consent is not the same as reluctant submission.
 | R v Olugboja (1981) |
| * **Consent gained by fraud**
 |  |
| * Not all frauds will vitiate consent.
 | R v Linekar (1995) |
| * Fraud as to the identity of D can vitiate.
 | R v Elbekkay (1995); R v Dica (2004), Newland (2015) |
| * Fraud as to the nature and quality of the act consented to can also vitiate.
 | R v Williams (1822) |
|  |  |  |  |
| * **Children and consent**
 |  |
| * Children generally are not able to consent on their own behalf.
* Children under 16 with sufficient intelligence to understand fully the implications of the proposed treatment can give effective consent (a "Gillick-competent" child).
 | Burrell v Harmer (1976)Gillick v West Norfolk & Wisbech HA (1985) |
| * **Mentally incapacitated and consent**
 |  |
| * If medical staff are acting in the patient’s best interests the absence of consent would not be unlawful.
 | F v West Berkshire HA (1967) |
| * **Evaluation**: striking a balance between law & morality; privacy & public policy; should judges determine social, moral & public policy issues? inconsistent application; credit will be given for relevant points on reform of consent.
 |  |
| **Preliminary offences****2 hours** |
| Attempts: the *actus reus* and *mens rea*; impossibility | * s.1(1) of the Criminal Attempts Act 1981 provides that “*If, with intent to commit an offence to which this section applies, a person does an act which is more than merely preparatory to the commission of the offence, he is guilty of attempting to commit the offence.*”
 |  | [Criminal Attempts Act 1981](http://www.legislation.gov.uk/ukpga/1981/47)[The Law Commission Report: Conspiracy and Attempts](https://www.lawcom.gov.uk/project/conspiracy-and-attempts/) |
| * ***Actus reus*** of an attempt
 |  |
| * An act
 |  |
| * Attempts cannot be by omission.
 | See Law Commission Report which recommends this.R v Nevard (2006) |
| * The ‘act’ or crime must be indictable or triable-either-way.
 |  |
| * More than merely preparatory.
 |  |
| * Various judicial explanations of More than merely preparatory have emerged.
* Embarking on the crime proper.
* Being in the executory phase.
* Trying to commit the crime.
 | R v Gullefer (1987)Geddes (1996) |
| * Cases where D had gone beyond mere preparation.
 | R v Boyle & Boyle (1987)R v Jones (1990)R v Tosti (1997)R v Dagnall (2003) |
| * Cases where D had **not** gone beyond mere preparation.
 | R v Gullefer (1987)R v Campbell (1990)R v Geddes (1996)Mason v DPP (2009) |
| * Since attempts cannot be the subject of an evaluation question, there is no need for learners to cover the background to attempts (i.e., pre-Act tests) or prepare to give a narrative overview of how attempts work. It will be sufficient to have enough knowledge to recognise an attempt within a problem question and construct basic liability for that attempt.
 |  |
| * By extension, there will be no need to cover any evaluation of attempts or compare and contrast approaches.
 |  |
| * ***Mens rea*** of attempt
 |  |
| * The *mens rea* of attempt is that D must intend the act which is more than merely preparatory and intend to commit the *full* offence.
 |  |
| * So, where attempted murder is concerned, D must intend to kill (express malice) not commit GBH (implied malice), since the full offence is to kill.
 | R v Whybrow (1951) |
| * A conditional intent is possible
 |  |
| * Do not cover the *Easom/Husseyn* background to this.
 | Attorney- General’s Reference (Nos 1 and 2 of 1979) (1979) |
| * Recklessness alone is insufficient.
 | R v Millard and Vernon (1987), O’Toole (1987) |
| * Where recklessness as to a circumstance of the *actus reus* is concerned?
 | R v Khan (1990); A-G’s Ref (No 3 of 1992) (1993); R v Pace & Rogers (2014) |
| **Impossibility** |  |
| * Some crimes will, in spite of D’s attempt, be impossible to commit.
 |  |
| * Legal impossibility
 |  |
| * + D’s attempt is impossible because, contrary to their belief, what they are attempting is not an offence known to law.
 | R v Taaffe (1983) |
| * Factual impossibility
 |  |
| * + D’s attempt is factually impossible where what they attempt is a crime known to law, but the circumstances surrounding the attempt make it impossible to commit.
 | s.1(2) Criminal Attempts Act 1981; R v Shivpuri (1987) , R v Jones (2007) |
| * + Nevertheless, they will be convicted under s.1(2).
 |  |
| * Do not cover *Anderton v Ryan*, the historic background to attempting the impossible or any evaluation since a narrative account will not be required. Learners should be able to recognise impossibility where they see it (as part of a problem question) and apply the appropriate rules.
 |  |
| **Evaluation****2 hours** |
| * Critical evaluation of:
	+ Non-fatal offences against the person,
	+ defences: self-defence, intoxication and consent
	+ ideas for reform of the above
 | * This section only applies to the AO3 of the essay questions 7 & 10. Learners should approach the essay questions based on the 8:12 split in marks available between 8 marks of AO1 and 12 marks of AO3. For 12 marks candidates should offer four to five properly developed arguments with supporting examples (where appropriate) and a reasoned and justified response to the question. In criminal law, reform is often one of the four to five points. Advantages can be used in a disadvantages question and *vice versa* but only where it is used as a counter-argument.
 |  |  |
| * It is not necessary for students to learn bespoke and specific AO3 for each area of criminal law cited in the column to the left (although they are free to do so). If they focus on the more abstract aims of criminal law set out in the theory of crime section (above), they can use their AO1 knowledge to reflect on the relationship between each crime or defence and the various underpinning aims, principles, and underpinning theories. In this way, aims, theories and principles provide a critical ‘toolkit’.
 |  |
| * The common frameworks for AO3 style questions usually involve:
 |  |
| * Whether an area of non-fatal offences or a defence is: fit for purpose, up-to-date, just or unjust, justifiable, effective or ineffective, balances principle and policy, satisfactory, outdated, consistent, fair or unfair, based on sound moral principles.
 |  |
| * It can be seen that rote learnt evaluation is not always flexible enough. It is better for students to focus on structuring well developed points (see sample marked learner work) by placing their AO1 knowledge of an area in a critical context using the aims and theories described above.
 |  |
| * Is a case just or unjust? Is a decision consistent with prevailing moral standards or not? Does a law achieve justice? Are conflicting rights balanced well in a given area of law? Are policy issues balanced against practical issues? Use a case to support your arguments. Provide a counter argument. When considering reform: what is the identified problem, what is the argument for reform and what is the reform being proposed?
 |  |

## Suggested resources

## Books

Covering Both (AS & AL content)

OCR AS/A Level Law Book 1, 1st Edn, Martin & Price, Hodder

OCR A Level Law Second Edn: Teal, Wortley, Price and Briggs, Hodder

Criminal Law

Smith, Hogan & Ormerod’s Essentials of Criminal Law, 4th Edn, Child & Ormerod, Oxford University Press

Criminal Law, Text, Cases & Materials, 10th Edn, Herring, Oxford University Press

Smith, Hogan & Ormerod’s Criminal Law, 16th Edn, Ormerod & Laird, Oxford University Press

Elliott & Quinn’s Criminal Law, 12th Edn, Taylor, Pearson

Criminal Law Directions, 7th Edn, Monaghan, Oxford University Press

Unlocking Criminal Law, 8th Edn, Storey, Wortley and Martin, Routledge

Ashworth’s Principles of Criminal Law, 10th Edn, Horder, Oxford University Press

## TV and Radio Programmes

**Crime Movies**

Provoked (2006) (Aishwarya Rai)

Let Him Have It (1991) (Chris Eccleston)

In the Name of The Father (1993) (Daniel Day Lewis)

Flight (2012) (Denzil Washington)

To Kill a Mockingbird (1962) (Gregory Peck)

Twelve Angry Men (1957) (Henry Fonda)

**Television**

The Interrogation of Tony Martin (Channel 4) (Steve Pemberton)

[Women Who Kill (Channel 4 On Demand)](https://www.channel4.com/programmes/women-who-kill/episode-guide/)

[Murder by degrees](https://youtu.be/MyX5AY68pqc)

[Self-defence](https://youtu.be/fhRvkYuYbr8)

**Radio**

The Law in Action <https://www.bbc.co.uk/programmes/b006tgy1>

## Websites and other resources

UK Supreme Court: <https://www.supremecourt.uk/decided-cases/>

e-lawresources.co.uk <http://e-lawresources.co.uk/Home.php>

bits of law <http://www.bitsoflaw.org>

British and Irish Legal Information Institute <http://www.bailii.org>

UKSC <https://www.supremecourt.uk/index.html>

Old Bailey Online <https://www.oldbaileyonline.org/>

Winstanley College Law Pages <http://alevellaw.doomby.com/>

EU Law <https://europa.eu/european-union/law_en>

UK Gov Legislation <http://www.legislation.gov.uk/>

The Law Bank <https://www.youtube.com/user/TheLawBank>

Loss of Control <https://www.bbc.co.uk/news/uk-16592680>

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