

A1 Features of civil law

Aims and purpose of civil law - Civil law aims to deal with disputes between individuals or organisations. Civil law cases usually (but not always) involve compensation or an agreement or judgement relating to finances. Civil law cases are filed by private parties, while criminal cases are usually filed by the government.

Standard and burden of proof in civil cases - A party's duty to produce sufficient evidence to support an allegation or argument. Plaintiffs in civil cases typically have the burden of proving their allegations by a preponderance of the evidence. In criminal cases, the prosecution typically has the burden of proving its allegations beyond a reasonable doubt.

A2 Structure and jurisdiction of the English civil courts

Civil court hierarchy:
Civil courts of first instance
Civil courts of appeal
Reasons/permissions/how to appeal



A3 Alternatives to the courts in civil dispute resolution

Situations for use: · **arbitration** · **conciliation** · **mediation** · **negotiation** · **ombudsman**.

Arbitration is a formal method of dispute resolution involving a neutral third party who makes a binding decision.

Conciliation is comparable to mediation but is often used in disputes with more legal complexities, such as employment disagreements.

Mediation does not impose a solution but instead aims to aid the parties in their attempts to settle the dispute without a formal court resolution.

Negotiation is the most flexible and informal of the dispute resolution methods. It is both voluntary and non-binding.

Ombudsmen are free to use, and their decision isn't binding. This means you can use another dispute resolution process or take your case to court if you're unhappy with the decision.

A4 Legal skills

Legal sources.
Researching and referencing legal information.
Methods of appropriate professional communication with colleagues, lawyers, clients.



B1 Sources of advice

A **solicitor** is to take instructions from clients, including individuals, groups, public sector organisations or private companies, and advise them on necessary courses of legal action.

Barristers specialise in representing people in court and at hearings, giving specialist legal advice (including drafting court documents and witness statements) and providing written advice.

Citizens Advice offers free advice on a wide range of issues, including benefits, housing and employment. They can help over the phone or in person at one of their centres.

Law centres offer free legal advice in centres across the country. They help with a range of issues – from benefits and employment to housing to immigration and seeking asylum.

Trade unions can offer free legal advice – and not just about employment issues.

B2 Sources of funding

Citizens' Advice Bureaux – A free, confidential, impartial and independent service available to the public on the High Street. They offer advice by telephone, face to face, email and home visits.

Law Centres – Law Centres work within the community and specialise in social welfare. They employ solicitors who offer free legal advice and representation.

Pro Bono Work – This is where lawyers act free of charge for clients. It is a registered charity for people who do not qualify for legal aid but can't afford to pay for their legal costs.

Trade Unions – Membership of a trade union will often include legal advice as part of the monthly subscription.



Ratio decidendi

'The reason for deciding'

The ratio decidendi is the reason for a court's decision and is part of the judgement delivered at the end of a case. Through analysis of the facts, the judge applies the appropriate rule or principle of law and makes ruling on the verdict of a case. Ratio decidendi is generally binding on lower courts and later judgments.

Obiter dicta

"things said by the way" – observations by a judge or court about a point of law which may be interesting but do not form part of the decision in the case. An obiter dictum does not have precedential value and is not binding on other courts.

Powers of the appeal courts

The Court of Appeal has the power to uphold, reverse, or amend a conviction or sentence from a lower court. This can include increasing or reducing a sentence, quashing a conviction, or ordering a retrial. Additionally, the court can provide guidance on points of law and set legal precedents.

Distinguishing - This is a method used by a judge to avoid following a past decision which he would otherwise have to follow.

Overruling - This is where a court in a later case states that the legal rule decide in an earlier case is wrong.

Reversing - this is where a court higher up in the hierarchy overturns the decision of a lower court on appeal in the same case

B3 The cost of taking legal action

Court costs
 Legal representation costs
 Awarding of costs against unsuccessful party
 Hidden costs, loss of reputation, enforcement of award

The cost of raising a court action using simple procedure depends on the value you are claiming:

claims £300 or less - £20 fee

claims over £300 - £112 fee.

To appeal a court decision there is a fee of £65.

C1 Precedent

The doctrine of precedent - a court is bound by the decisions of a court above it and, usually, by a court of equivalent standing. Superior courts have the power to overrule decisions of lower courts and in certain cases to overrule their own decisions.



BTEC LAW - UNIT 1: DISPUTE SOLVING IN CIVIL LAW



D1 Duty of care

Three stage test: · proximity · foreseeability · fair, just and reasonable.

Foreseeable that the defendant's carelessness could cause damage to the claimant.

Proximity between the defendant and the claimant. This does not dictate that there must be physical proximity between claimant and defendant, rather that there must be a connection between the two.

Fair, just and reasonable for the courts to find that the defendant owed a duty of care to the claimant.

D2 Breach of duty

The Reasonable Person test is used to determine whether a defendant has breached their duty of care in a particular situation, for example, in negligence cases. The court asks what a reasonable person would have done in the same circumstances, taking into account the defendant's knowledge and experience at the time of the incident.

Risk Factors

Vulnerability of the claimant - if the claimant is particularly vulnerable or has characteristics that make the claimant more susceptible to harm, then the standard of care is higher.

Probability of harm - if the probability of harm to the claimant is really low then the standard will be lower.

Justified risk taking - if there is a risk that can be justified then the standard of care will be reached, or a lack of reaching that standard will be justified.

D3 Damage

Damage can be physical, psychiatric or even purely economical. The important part is that there is evidence that the damage suffered by the claimant was caused by the defendant's actions. It needs to be proven that the damage was caused by the breach of duty this is done in causation.

Factual Causation - the 'but for' test is used to ask but for not the defendant's negligence, would the harm have occurred anyway.

Legal causation - this is established through the remoteness of harm. Is the harm being claimed for reasonably foreseeable?

D4 Damages

Medical Negligence In a medical context, there can be negligent acts and actions taken against them. This is where someone with medical expertise has been negligent. The same rules of duty, breach and damage still apply but the duty of care is fairly easy to establish but more time needs to be spent to determine whether the doctor has breached that duty.

D5 Burden of proof and res ipsa loquitur

This means 'let the facts speak for themselves'. Sometimes in Negligence, it is difficult for a claimant to prove that the defendant was in the wrong, but using this concept a claimant can show that the defendant was in the wrong. There are three conditions/elements that the claimant must show in order for res ipsa loquitur to apply. These are;

- The thing that caused the damage was wholly controlled by the Defendant.
- The incident that caused the damage would not have happened unless someone had been negligent.
- There is no other explanation for the injury / damage caused to the Claimant or their property.