

Unit 2: Investigating Aspects of Criminal Law and the Legal System

A1 Legal skills

· Researching legal information. · Finding appropriate and reliable sources. · Referencing sources in learners' work. · Using, interpreting and applying information from sources and authorities. · Presenting information verbally and in writing.

A2 Influences on Parliament

A **pressure group** is an organisation with shared aims which seeks to influence policy through political means, without seeking political office itself.

The **Law Commission** is a statutory independent body that keeps the law of England and Wales under review and recommends reform where it is needed.

The **media** allows the Government to demonstrate its policy to the public. The media can report the thoughts of the public which gives the Government some insight in relation to future policies presenting what would be acceptable by the public and what wouldn't.

A3 The law-making procedure in Parliament

Separation of power - The separation of powers is an idea which is fundamental to how the UK works. It is about having specific and separate powers and functions between the three branches of state.

The three branches of state are:

The legislature makes the laws.

In the UK, the legislature is Parliament, which is mainly the House of Commons (which MPs are elected to) and the House of Lords (which is made up of peers). Both the "houses" of parliament will debate proposals for laws, look at what changes should be made, and pass or reject laws.

When a law is passed, the Crown (currently the Queen) gives it royal assent to make it official. This is ceremonial, as the monarch does not refuse to make laws passed by Parliament official.

The executive is responsible for creating policy, putting proposals for laws to the legislature, and putting laws into effect - We call this the government.

The judiciary decides whether laws are being followed or if they have been made properly - In the UK, the judiciary is made up of the judges and officers of the courts of law. These are overseen by the Supreme Court, the highest court in the UK.

The legislative process in parliament

Public bills apply to everyone and either the government or backbench MPs propose them. Most bills are public. **Private bills** change the law for a limited set of interests such as a single organisation or an individual. **Hybrid bills** combine aspects of public and private bills and are used in very specific circumstances when a bill both has a broad public purpose and will affect people at a local level.

The legislative stages:

First reading

This is the first official stage of a bill. The short title of the bill is read out and then an order for the bill to be published is made.

Second reading

This is when a bill is first debated. For a government bill, a minister opens the debate and then shadow ministers and backbench MPs have the opportunity to make their points about the proposed legislation.

Committee stage

This is generally the longest stage of a bill's passage and where the most thorough scrutiny takes place. Most bills are referred to a public bill committee.

Report (consideration) stage

This stage usually takes place two weeks after committee stage. (If the committee stage was taken in the whole House, then this stage is skipped, unless the bill was amended there.)

House of Lords

The House of Lords follows the same bill stages as in the Commons, with a few key differences.

The Lords is self-regulating so there is no limit on time spent on debate.

During the committee stage, rather than being sent to a bill committee, the bill is usually debated on the floor of the House, or in the case of minor bills in 'grand committee'. All members can take part. While amendments are tabled, it is rare for them to be voted on at this stage – this usually takes place at report stage.

Royal assent

This is the final stage of a bill. Once both Houses agree on it, or just the Commons if the Parliament Act has been used, it then goes to the monarch, who will then officially agree to make the bill an act of parliament.

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A4 How statutes are interpreted by the courts

The literal rule

Under the literal rule, the words in a statute are given their ordinary and natural meaning.

The golden rule

The golden rule is used to prevent inconsistency and absurdity when interpreting an Act literally.

The mischief rule

Sometimes, statutes can be defined more broadly by the courts to deal with unforeseen loopholes or ambiguity within the legislation, which may prevent parliament's original intention being honoured.

The judges' discretion

Judges have the discretion to apply any of these rules of statutory interpretation as they deem appropriate.

B1 Delegated legislation

Orders In Council

The Queen and the Privy Council have the authority to make orders in the council. The Privy Council is made up of the prime minister, and other leading members of the government. This type of delegated legislation effectively allows the government to make legislation without going through parliament. Its main use today, is to give legal effect to European directives.

Statutory Instruments

Statutory Instruments refers to the rules and regulations made by government ministers. They are given authority to make regulations for areas under their particular responsibility.

By-laws

By-laws can be made by the local authorities to cover matters within their own area for example West Yorkshire county council can pass laws affecting the whole county but a district or a town council can only make bylaws for its district or town.

Controls on Delegated Legislation

Delegated legislation is often made by unelected officials so it is important that there should be control over the use of the power. This is especially true when considering that this type of legislation far outnumbers the law created annually by UK Parliament and can have far reaching consequences. Control can be divided into control exercised by Parliament (parliamentary controls) and control by the courts (judicial controls).

B2 The European legislative process and its institutions

Types of EU law

Regulations are legal acts that apply automatically and uniformly to all EU countries as soon as they enter into force, without needing to be transposed into national law. They are binding in their entirety on all EU countries.

Directives require EU countries to achieve a certain result, but leave them free to choose how to do so. EU countries must adopt measures to incorporate them into national law (transpose) in order to achieve the objectives set by the directive. National authorities must communicate these measures to the European Commission.

A **decision** shall be binding in its entirety. A decision which specifies those to whom it is addressed shall be binding only on them.

C1 The legal profession

Barristers are specialist advocates who are typically instructed by solicitors to represent clients in court. They provide legal advice, draft legal documents, and represent clients in court hearings and trials. Barristers are trained to provide legal advice and representation on complex legal matters, and they often specialise in a particular area of law.

Solicitors are legal professionals who provide legal advice and support to clients. They are responsible for managing cases, communicating with clients, and drafting legal documents such as contracts, wills, and conveyances. Solicitors also represent clients in court, although they are less likely to do so than barristers. They often specialise in a particular area of law, such as family law or corporate law.

Legal executives are trained legal professionals who have specialised knowledge in a particular area of law. They are typically employed by law firms, corporations, or government agencies to provide legal advice and support. Legal executives have similar responsibilities to solicitors, such as managing cases, drafting legal documents, and representing clients in court. However, they are not qualified to act as advocates in court like barristers.

C2 Financing advice and representation in a criminal trial

You have a right to legal advice when you are arrested and before you are questioned.

You can either ask to see the duty solicitor or contact a specific legal adviser.

You do not have to pay for the advice at the police station.

The solicitor will tell you whether you can get legal aid for more advice.

Sometimes, you may be given legal advice over the telephone instead of in person.

Even if at first you say you do not want legal advice, you can change your mind later and tell the police.

This advice will be independent and given in private.

You have rights that the police must follow, which include having regular meals and how long you can stay in the police station.

If you are deaf or English isn't your first language you are entitled to a free interpreter or signer.

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C3 Lay people

Magistrates:

The UK has a rich and successful history of having lay people involved, as lay magistrates, in the judicial decision making of the courts. The tangible benefits of lay magistrates playing a part in the judicial process includes:
 Lay people have local knowledge which can be invaluable;
 They come from a wide range of careers bringing a variety of experience;
 The cost of the process is less expensive (lay magistrates are unpaid).

A **jury** in a criminal trial comprises 12 members of society who hear a criminal case in the Crown Court and decide whether or not the defendant is guilty.

C4 Judiciary

The judge's role during the trial is to make sure that the case is conducted fairly and that all parties are able to present their cases. It's the judge's responsibility to decide whether evidence is admissible or not.

The judge then sums up the case. They recap the key points of the case and what the prosecution is trying to prove. They may also direct the jury by pointing out strengths and weaknesses in each side's case. They then make clear what the jury must do before the jurors retire to the deliberation room and reach a verdict.

D1 Elements of a crime

Mens rea, which translates to "guilty mind" in Latin, describes the criminal's state of mind at the moment of the crime. This involves having the intent to commit a crime or knowing that they will. For instance, if someone intentionally shoots and kills someone, they have the necessary mens rea for murder. Mens rea can be used to prove criminal responsibility at several levels.

Actus reus is a legal term used in criminal law to describe the physical act or conduct that constitutes a crime. It refers to the external or observable elements of a crime, such as an action, omission, or possession of an illegal substance.

D2 Non-fatal offences

Assault

An assault is committed when a person intentionally or recklessly causes someone to expect that unlawful force is about to be inflicted upon them.

Battery

A battery is committed when a person intentionally and recklessly applies unlawful force to another – essentially, it is a more serious form of assault.

(ABH)

This is often referred to as a 'section 47' which refers to s.47 of the Offences Against the Person Act 1861. In law, 'bodily harm' means exactly that: hurt or injury sustained by a victim (such as severe bruising, a brief loss of consciousness or minor cuts.)

(GBH)

'section 18' and a 'section 20.' These are both forms of GBH under the Offences Against the Person Act, but there is a key difference. It is not the seriousness of any injury that is key, but whether the accused intended to cause serious bodily harm.

D3 Aims of sentencing

The aims of custodial sentencing are the different reasons/rationale for its use. There are four main aims of custodial sentencing: incapacitation (to protect other people); rehabilitation (using education and treatment programmes to change offender behaviour); retribution (to show society and the victim's family that the offender has been forced to pay for their actions); and deterrence (to prevent the offender re-offending and demonstrate to society the consequences of similar actions).

D4 Factors involved in sentencing

Aggravating Factors -Prosecutors can offer evidence of aggravating factors that would merit a harsh sentence during trial. Criminal statutes often identify specific factors that should result in harsher punishments.

Mitigating Factors -The defence may put on evidence of mitigating factors that would support leniency in sentencing. Criminal statutes devote far less attention to factors that might mitigate a defendant's punishment, but courts have held that evidence relating to a defendant's character may be introduced provided that it is relevant to the sentencing process.

D5 Types of sentences

The types of sentences that the court can impose, e.g. prison, suspended sentences, community orders, fines, discharges.