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Starting with law: An overview of the law

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Intellectual property

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Contents

Introduction

In this course you will have the opportunity to look at some of the constituent parts of the legal system in the UK. You will also consider how laws are made and who is responsible for enforcing them. Finally, you will have an opportunity to experiment with different ways of taking notes.

This OpenLearn course provides a sample of level 1 study in Law

Learning Outcomes

After studying this course, you should be able to:

- understand how the legal system in the UK works
- understand how laws are made in the UK
- understand some of the key players in UK law enforcement
- understand different ways of taking notes.

1 The legal system

1.1 The constitution

The UK has a common law legal system. It is very difficult to give a simple definition of the legal system in the UK, but you may find it helps to think of it as the system that covers how all **civil** and **criminal** laws are made, used and enforced.

A fundamental part of any legal system is its **constitution**. A constitution is the basic law of the state providing the rules by which the state is governed and setting out the rights and responsibilities of the state and its citizens. For example, in the UK, adults aged over 18 who have the right to vote in a general election have a constitutional responsibility to vote.

Constitutions are important because they essentially set out the broad principles concerning who can make law. They also allocate the balance of power between the main institutions of the state – the **government**, **Parliament** and the **judiciary** – and provide the framework for the use of these institutions' powers.

A constitution may also indicate the basic principles by which a country should expect to be governed, for example, that people should not be punished unless they have broken the law; or that certain rights and freedoms, such as freedom of speech, thought and conscience, are guaranteed. In the UK, we have an unwritten constitution that comes from many sources. This is unusual as every other Western democracy has a written constitution. In many cases, such as for France, Germany and the United States of America, the document containing the constitution was written after a major change, such as a revolution or war.

The sources of the UK's unwritten constitution include Acts of the UK Parliament, judicial decisions and conventions. Conventions are not laws but are long established traditions which are followed because they have just simply become recognised as the right way to do things. One example of a convention is that judges do not undertake activities associated with political parties.

Underlying our unwritten constitution are three important principles:

1. the separation of powers
2. the supremacy of Parliament
3. the rule of law.

The separation of powers recognises that all state power can be divided into three types: executive, legislative and judicial. The executive element represents the government (and its ‘servants’ or employees), the legislative side is Parliament and the judicial element means the judges. The idea behind this separation is that these three types of power should not be concentrated in the hands of any one person, as this could lead to absolute control with no one to check whether that power was exercised for the good of the country as a whole.

The supremacy of the UK Parliament is another important part of the constitution. The UK Parliament is regarded as the highest source of law. It has the right to make any law it

chooses, and no person or body is able to override or set aside laws made by the UK Parliament (only the UK Parliament itself may do so). The UK Parliament is made up of two houses: the House of Commons and the House of Lords. Members of the House of Commons are democratically elected and therefore it is thought that Parliament should have the supreme authority when making laws that determine the rights and responsibilities of every individual in the country.

The rule of law stems from the work of a respected nineteenth-century writer called A. V. Dicey. It has three elements. First, it states the law is applicable to everyone; second, that no one should be punished by the state unless they have broken a law; and third, that the rights of the individual are secured by decisions of the judges made in court cases. Once again the idea is that the state should use its power according to agreed rules and not arbitrarily.

1.2 The growth of the legal system

The legal system plays a significant and growing role in society as our lives become governed by an increasing number of laws. As our society has become more sophisticated, a greater number of laws have been required. This in turn has resulted in our legal system becoming increasingly more complex. Changes in technology, the way in which we live and the types of relationships we have are all reflected by the law. Society expects the law to reflect its ideas, values and culture, so the law has to evolve to keep up with social changes. Examples of areas where the law has changed to keep pace with changes in society include family matters such as marriage, divorce and civil partnerships, technological developments such as the telephone, computers and the internet, and social developments such as consumer and employment rights.

Due to the growth in the number of laws and the growing complexity of society, most people will now seek some form of legal advice during their lifetime, whether it is to purchase a house, in relation to family issues, to seek advice about debt, a legal claim, or for advice on tax or income issues. This increase in people seeking legal advice has also seen a rise in the number of those providing that advice. For example, in 1970, 30,000 solicitors and barristers were in practice, but by 2000 this had increased to over 100,000. In the same thirty-year period, the number of judges employed in the courts multiplied from under 300 to over 3000. During the second half of the twentieth century, the provision of legal advice became a large industry. Recent turnover in the legal advice sector exceeded eleven billion pounds. This also makes it a substantial economic player and contributor to both industry and the public sector.

As more laws have been created to reflect changing attitudes in society, individuals have become more aware of their rights. We now also expect and demand much more from our legal system. The number of legal cases started has risen. In order to cope with the increased demand, the number of people employed by and involved in the legal system has grown, and it has assumed much greater economic significance.

While the legal system raises substantial sums of money through the collection of fines, it also costs a great deal of public money to run it. The growth of the legal system has, therefore, put a strain on public funds and so it has subsequently been subject to a number of reviews, all of which have attempted to make it more cost-effective, efficient, quicker and easier to use.

The **criminal justice system** accounts for over fifteen billion pounds per year of public spending. The **civil justice system** also has an impact on the public purse because in

recent years over fifteen billion pounds has been awarded by way of compensation in civil cases. Many of those civil cases were against public bodies, such as local authorities and hospitals. As the bodies are publicly funded, any money they are ordered by a court to pay as compensation comes, in effect, from public funds.

The increasing number of laws as well as the popularity of legal-themed television programmes, novels and films have also added to the growing public awareness of the legal system. Law is now recognised as being an area of much greater political importance than it once was. Governments now regularly introduce changes affecting the legal system as a response to public concerns. It is now common for the government to produce a new **bill** in the area of criminal justice each year, and there have been recent reforms in the criminal justice system to increase the speed and fairness of the system while at the same time reducing costs.

Many people have strong views on the legal system and the changes that have taken place over the last few decades; changes such as the reduction of access to the appeal system, the removal of the rights of defendants to remain silent during police interviews without an adverse inference being made, and the reduction of access to **legal aid**. There are many debates about how much public money should be spent on the legal system and how money should be raised to fund it.

One of the main challenges for the legal system in the twenty-first century is how to achieve a balance between the requirements of efficiency, cost control and achieving set targets, and the rights and responsibilities of individuals and society as a whole.

This balancing act is not necessarily new, as the debates about the purpose, role and function of the legal system have been ongoing for many centuries. What has changed recently is the increasing number of laws and the impact of legal regulation on everyday life. This has given the legal system much wider recognition and also caused more debate.

2 Types of law

2.1 Classifications of law

We have seen that law covers a wide variety of matters and plays a significant role in society. We have learnt that our legal system is made up of both a criminal justice system and a civil justice system. These two systems exist to deal with two different types of laws that have different purposes and lead to very different consequences if they are broken. We will now examine the two main types of classification of law.

2.2 Civil and criminal law

One of the most common classifications and one that is used by many legal systems, is the distinction between civil and criminal law. As civil and criminal law have different purposes, different systems for dealing with them have developed.

Criminal law is about creating laws for the protection of society as a whole and providing punishment for those who break those laws. Criminal law sets out types of behaviour that are forbidden within society and if the behaviour occurs, then punishment will follow. If you commit a crime, you have offended against the state and the state has the right to prosecute you. At the end of a case, if the defendant (the person who is alleged to have broken the law) is found guilty, they will be punished by the state.

Civil law is used to settle disputes between individuals (which can include companies and corporations). At the end of a case, the party at fault has to pay compensation or comply with another suitable **remedy**, such as an injunction.

There are a number of differences between criminal and civil law. These differences include the following.

- The purpose of each is different. Criminal cases are brought to maintain law and order and to protect society. Civil cases are brought to uphold the rights of individuals and to provide redress.
- The cases take place in different courts.
- A criminal case is usually brought by the Crown Prosecution Service (CPS) on behalf of the state (or Crown). A civil case is brought by an individual or company or corporation.
- The standard of proof is different. Criminal cases must be proven beyond reasonable doubt. Civil cases only have to be proven on the balance of probabilities.
- The terminology used is different, and the person starting the case is given a different name by each system. Criminal cases are usually brought on behalf of the Crown (state) and civil cases are brought by a claimant, i.e. an individual or company or corporation.

While the distinction between civil and criminal is quite clear, it does not always capture the whole of the legal system or the types of law that exist.

Another classification that is commonly used is that of **public law** and **private law**.

2.3 Public and private law

Public law involves the state or government in some way. There are three main types of law that fall into this category.

1. Constitutional law: this controls how the government operates and is used to resolve any disputes over constitutional matters, for example, who is entitled to vote.
2. Administrative law: this controls how Ministers of State and public bodies should operate and make decisions. An important part of administrative law is a type of court action known as judicial review.
3. Criminal law: this also comes under the heading of public law because it involves the state. Criminal law is part of public law because a crime is regarded as an action against society and the state as a whole.

Private law concerns the smooth running of society and covers areas such as work, business dealings, education and everyday life. There are many different areas of law that fall under the heading of private law. Examples include **employment law**, the **law of tort** and the **law of succession**.

Using the knowledge gained from your studies so far you will now try to identify what laws may have been broken in the following Y166 family example.

Activity 1: The classification of law

0 hour(s) 20 minutes(s)

Read the information in the box below and, looking back over Section 2, answer the questions that follow.

The Y166 family

Catherine's day

Catherine Taylor drives to work every day. One morning she is late for work and drives at 40 mph in a 30 mph speed limit. At work in the superstore, she has to deal with a number of customer complaints. One of those complaints is from a customer who bought a washing machine a few days ago. It was plumbed in by employees of the store, which is standard practice. However, the first time the customer used the machine it flooded their kitchen causing damage to the floor and some new kitchen cupboards.

- What laws may have been broken?
- What rights and responsibilities can be identified?

When Catherine drives at 40 mph in a 30 mph zone, she is speeding (and liable to have points put on her driving licence and a fine if found guilty of the offence). Speeding is a criminal law offence. Laws on speeding are created to provide a safe environment for both road users and pedestrians. One of the reasons why speeding is punished is deterrence, to prevent people from breaking the speed limit and causing road traffic accidents.

When Catherine deals with the complaint about the washing machine she is dealing with a civil law matter. On selling the machine, the superstore entered into a contract with the customer. That the machine would work properly was part of that contract. The machine was plumbed in by employees of the store. Again, as part of the contract, the employees should have done this properly and be qualified and trained to do this. As the washing machine has flooded the kitchen there appears to be a fault. As this is a new machine the superstore could be held liable for breaching the contract. If they have breached the contract then they may also be liable for any damage that has resulted from the breakdown of the washing machine.

In both these examples rights and responsibilities can be identified. When driving, Catherine has a responsibility to other road users. She should drive in a manner that complies with the law. She also has the right to expect that other road users will drive in a manner that complies with the law. The superstore, when selling the washing machine, has the responsibility to ensure that the machine matches the description they gave and that it works properly. The customer has a right to expect the machine to work properly. They can complain when the machine doesn't work and seek a remedy, such as a replacement machine or the repair of the machine.

3 Law making

3.1 Statutes and Acts of the UK Parliament

There are a number of ways in which our laws are created. As it is recognised as the supreme law-making body, we will start by considering the UK Parliament's role in law making.

The UK Parliament makes laws that are known as statutes, acts or Acts of Parliament. These are sometimes referred to as legislation. As you have already learnt, the UK Parliament can make or repeal any law it chooses. Also, it is sovereign, which means that in theory any laws made by the UK Parliament take precedence over any other laws. The UK Parliament can also give power to other people or public bodies to make laws in a process known as **subordinate legislation**.

All Acts of the UK Parliament begin as a bill, which is simply a proposal for a piece of legislation. There are three main types.

1. Public bills: these are written by specialised lawyers, who are trained in the art of drafting legislation. Public bills are presented to Parliament by government ministers and change the general law of the country.
2. Private members' bills: these are prepared by individual back bench Members of Parliament (MPs). MPs win the right to present these bills by entering a ballot. Very few of these bills become Acts, but they have a useful function as a way of drawing attention to particular issues. The Abortion Act 1967 stemmed from a private members' bill put forward by David Steel. Bills relating to areas such as birth certificates have also played a role in changing the law in recent years.
3. Private bills: these are usually proposed by a local authority or a large public body and usually only affect that organisation or body. Examples include a local authority seeking the right to build a bridge or road, or a transport company seeking land on which to build a new road.

A bill goes through several stages to enable debate, discussion and detailed consideration within each of the UK's Houses of Parliament (i.e. the House of Commons and the House of Lords). The following stages take place in both houses:

- first reading: this is a formal introduction of the bill without debate, where the title of the bill is read out
- second reading: this is a general debate on the principles and content of the bill
- committee stage: this is a detailed examination of the bill, leading to a debate and amendments of the bill
- report stage: this is an opportunity for further amendments to the bill
- third reading: this is the final chance for debate on the bill.

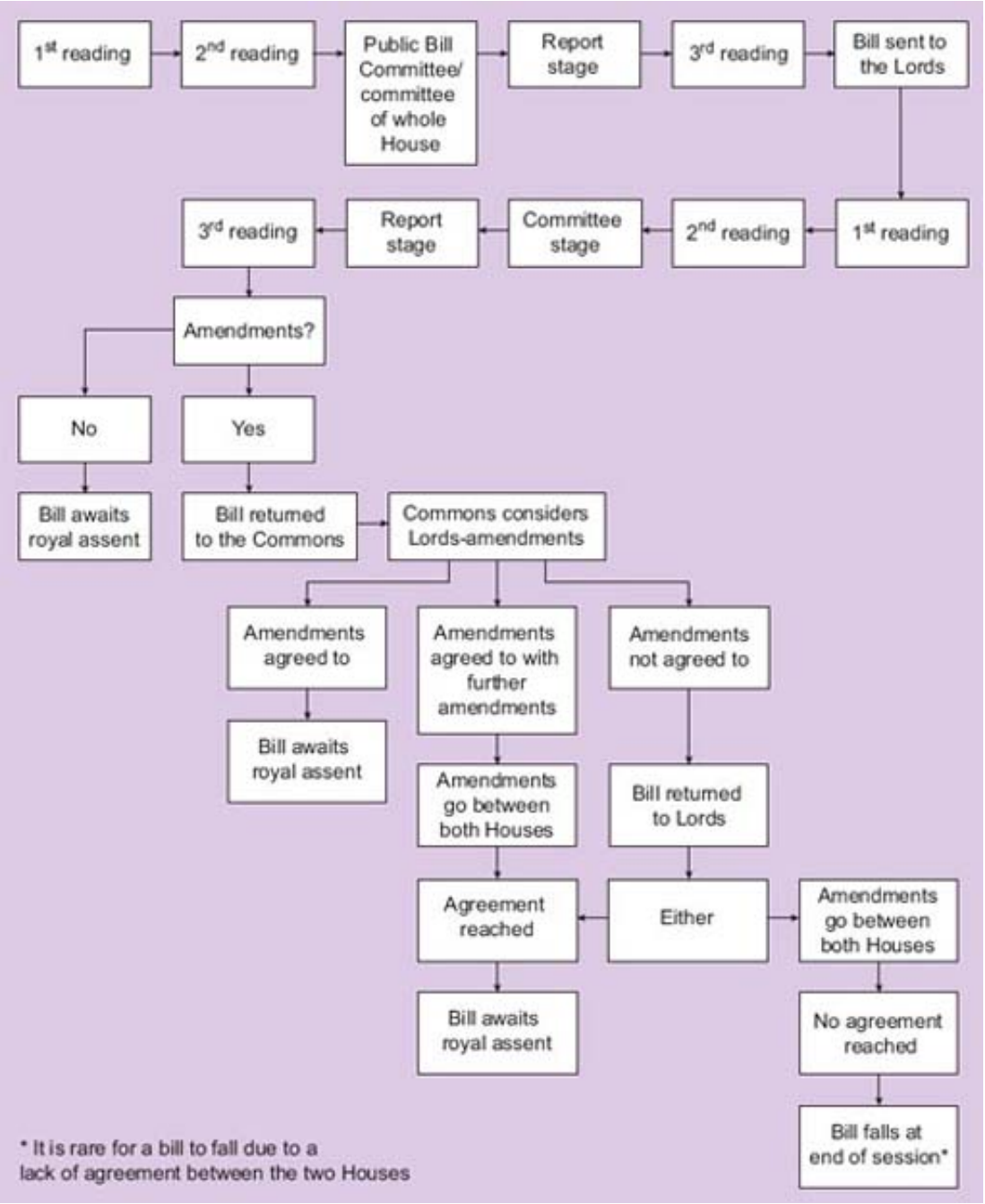

Figure 1 The Parliamentary stages of a government bill

When a bill has passed through both Houses of Parliament it is returned to the first House (where it originated) for the second House's amendments to be considered.

Both Houses of Parliament must agree on the final text. There may be several rounds of exchanges between the two Houses of Parliament until agreement is reached on every word of a bill. Once there is agreement, the bill goes to the next stage in the process: royal assent.

Technically the monarch must give their consent to all bills before they can become law. In reality, since 1709 no monarch has been asked to specifically give royal assent to a bill and the request goes to a committee. A bill becomes an Act on receiving royal assent. Acts then become operational as law on their commencement date. This date is often in the future to allow time for companies and public bodies to prepare for the new law.

You may wonder what happens if the House of Lords and the House of Commons cannot agree on a bill. As the House of Commons is directly and democratically elected, it takes precedence over the House of Lords. Special procedures have been developed by which proposed legislation can go for royal assent without the approval of the House of Lords once certain time limits have elapsed. The Parliament Act 1949 laid down some of these rules.

3.2 Subordinate legislation

Subordinate legislation is legislation made by a person or body to whom Parliament has given the power to make laws. There are three main forms of subordinate legislation: statutory instruments, by-laws and orders in council. This type of legislation is issued for a number of reasons, including insufficiency of Parliamentary time for the volume and detail of the new laws now needed; technical subject matter, where it is felt that the laws would be better produced by those with detailed technical expertise; and the need for local knowledge and flexibility. Subordinate legislation is controlled by means of consultation, publication and supervision by the UK Parliament. It is very common but it does come under some criticism because of the lack of democratic involvement, the difficulties in challenging it and the sheer volume of law that is now created in this way.

3.3 Members of the UK Parliament

Before we look at what an MP does, have a go at this activity.

Activity 2: The work of a Member of the UK Parliament

0 hour(s) 10 minutes(s)

Take a few moments to think about what you have read so far in Section 3. UK citizens who are over 18 are able to vote in elections for their MP. MPs sit (i.e. work) in the House of Commons. What do you think an MP does? How might they be involved in the law-making process?

From what we have just learnt about law making, you may have identified that MPs would be involved in the law-making process due to their work in the House of Commons. You may also have had contact with your local MP or you may have seen reports on their work in your local newspaper.

People wishing to become an MP must be over 18 years of age and a UK citizen, or a citizen of a Commonwealth country or the Republic of Ireland. Candidates must be nominated by ten Parliamentary electors of the constituency in which they wish to stand. Authorisation is required to stand for a specific party, such as one of the main political parties in the UK, otherwise candidates will be described as independent or have no description.

In order to encourage only serious candidates to stand, a £500 deposit is required when submitting the nomination papers. The deposit is returned if the candidate receives over five per cent of the total votes cast.

Certain people are disqualified from standing as an MP:

- convicted prisoners serving a sentence of over 12 months
- people found guilty of certain electoral offences
- peers who sit and are eligible to vote in the House of Lords
- bishops (known as the Lords Spiritual) who are entitled to sit and vote in the House of Lords.

UK citizens elect MPs to represent their interests and concerns in the House of Commons. MPs are involved in considering and proposing new laws and are able to use their position to ask government ministers questions about current issues. MPs split their time between working in Parliament itself, working in the constituency that elected them and working for their political party.

When the UK Parliament is sitting, MPs generally spend their time working in the House of Commons. This may include raising issues affecting their constituents, attending debates and voting on new laws. Most MPs are also members of committees, which look at issues in detail, ranging from government policy and new laws, to wider topics like human rights.

In their constituency, MPs often hold a ‘surgery’ in their office, where local people can come along to discuss any matters that concern them. MPs also attend functions, visit schools and businesses, and generally try to meet as many local people as possible. This helps MPs to be aware of issues that matter to their constituents.

3.4 Statutory interpretation

Although Acts of Parliament are debated and discussed in detail and are very carefully written by experts, there are occasions when the wording is not clear. If this occurs then the courts have to provide a definition as there is no time for referral back to Parliament for amendment. In these cases, the job of the courts is to determine Parliament's intentions and to put these into practice. This links back to the idea that the UK Parliament is the supreme law-making authority and therefore it is the courts' constitutional role to implement what they think Parliament actually intended. The next activity will demonstrate the importance of statutory interpretation.

Activity 3: Statutory interpretation

0 hour(s) 20 minutes(s)

Take a moment and think about how you would define the words ‘in the vicinity’.

The words ‘in the vicinity’ generally mean near to or nearby. The courts were required to consider the meaning of ‘in the vicinity’ in a case that involved the Official Secrets Act 1920. This Act made it an offence for anyone to obstruct members of the armed forces in the vicinity of any prohibited place. A prohibited place included air force bases. In the case of *Adler v George* [1964] 2QB 7, the defendant was arrested on an air force base. The defendant argued that the meaning of ‘in the vicinity’ meant near to and not on. The court agreed that ‘in the vicinity’ meant near to but decided that it was reasonable to interpret the Act as covering being on the prohibited place. This was a reasonable meaning because of the behaviour the Act was trying to prevent.

3.5 Common law

This may be a familiar term that you have encountered in newspaper reports or on the television or radio. Common law has its roots in history. In 1066, William the Conqueror began to establish a strong central government and to standardise the law in England. Representatives of the King were sent out into the country to check the local administration and were given the job of adjudicating local disputes according to local law. When these individuals returned to London they were able to discuss the various local laws from different parts of the country and began to use those that seemed rational to form a consistent body of laws. By about 1250 a common law had been produced that applied to the whole country. It could be applied consistently and could be used to predict what the courts might decide in particular cases.

Common law now, in effect, comes from case law, that is, the decisions made by judges in the court cases they judge. When considering a court case a judge has two tasks: first, establishing what the facts are (what actually happened), and second, how the law applies to those facts. It is the second aspect that makes case law. Once the decision has been made on how the law applies to a particular set of facts, later cases with similar facts should be treated in the same way. This is known as a system of judicial **precedent**. This means that in any decision there is a ***ratio decidendi*** – the reason for deciding. This is the principle of law on which the facts of the case have been decided.

Common law is created by a system which relies on a court hierarchy. This means that courts lower down in that hierarchy (such as the Magistrates' Courts, Crown Court, County Court or High Court) are bound by the decisions made by the higher courts (such as the House of Lords).

3.6 The law of negligence

We will now explore the law of negligence, using a Y166 family example.

Activity 4: The law of negligence

0 hour(s) 20 minutes(s)

Read the box below and answer the question that follows.

The Y166 family

Catherine's surprise

Catherine is taken to a local café for a drink by a friend. The friend buys two bottles of lemonade. Catherine pours her lemonade into a glass and drinks some of it before noticing that there are the remains of a decomposed snail in her glass. She suffers shock and is very ill. She decides to sue the manufacturer of the lemonade for negligence as they have sold a product to a consumer that is not suitable for consumption.

What type of law do you think negligence is and do you think that Catherine will succeed in suing the lemonade manufacturer?

Negligence in these circumstances comes under the classification of civil law. It is likely that Catherine may be able to claim some monetary compensation for the shock she received and the illness she suffered. You may have reached this conclusion just by thinking about the facts of the case and deciding that a manufacturer of a soft drink, such as lemonade, has a responsibility to make sure that their product reaches the general public in a condition that is fit to drink. You may have also thought that Catherine should have checked her glass before drinking the lemonade.

This example is based on the real case of *Donoghue v Stevenson* [1932] AC 562 (HL), decided in 1932, that had similar facts only involving ginger beer instead of lemonade. When summing up, the judge concluded that:

> You must take reasonable care to avoid acts or omissions which you can reasonably foresee would be likely to injure your neighbour … persons who are so closely and directly affected by my act that I ought reasonably have them in my contemplation as being so affected when I am directing my mind to the acts or omissions which are called into question.

This case created 'the neighbour principle', which would be followed if Catherine sued the manufacturer, as the facts of her case are very similar.

3.7 Europe

Two very different European sources of law have had an impact on our legal system since the middle of the twentieth century. In this sense, they are one of our most recent sources of law. These two sources are first, the organisation of member states referred to as the **European Union** (EU), and second, the **European Convention on Human Rights** (ECHR). They are distinct sources of law. They each act as a source of law in different ways.

Membership of the EU is by application. The UK became a member state of the EU (also sometimes referred to as the EEC or EC) on 1 January 1973. EU law covers matters such as trade and the freedom of movement of workers. On areas which are covered by EU law, it is regarded as supreme, and the UK Parliament (or any devolved legislature) cannot pass a law that conflicts with EU law. The formation of the EU and drafting of EU law has resulted in the creation of rights and responsibilities in the following areas: consumer protection, employment protection, and trade and company law.

Some EU laws such as **regulations** are immediately applicable as law in the UK; their purpose is generally to harmonise certain areas of law across all the member states of the EU. Other laws, such as directives, are in effect guidelines or instructions for member states to create laws in a specific area within a given timescale. It is then up to the

member states to decide how they are made law and to provide the detailed legislation required.

The ECHR is designed to protect basic individual rights such as the right to life, freedom of expression, the right to liberty and security, and the right to a fair trial. The UK became a signatory to the ECHR in 1951. UK citizens, once they have exhausted all possible remedies (all possible ways of resolving a dispute, including court cases and appeals) in the UK, can make an application to the European Court of Human Rights. The Human Rights Act 1998 requires that all legislation be created and read in a way which is compatible with the ECHR. This means that the UK Parliament, devolved legislatures and the courts should only create law that complies with the provisions of the ECHR. Otherwise, the courts can declare that it is not compatible.

4 Key players in law enforcement

If a law is broken, who has the responsibility for ensuring that the individual or company who has broken the law is 'brought to justice'?

Activity 5: Who enforces the law?

0 hour(s) 10 minutes(s)

Take a moment to think about what you may know about how law is enforced. When you last listened to the radio, watched a television programme or read a newspaper, did you come across any situations where a law had been broken? If so, can you recall who was responsible for dealing with the lawbreaker?

There are a number of possible answers to this question. A number of individuals and bodies have responsibility for dealing with lawbreakers, depending on what law has been broken. Therefore, laws may be enforced by any one of the following organisations:

- the trading standards department of a local council
- HM Revenue and Customs
- the UK Border Agency (formerly known as Immigration)
- the Child Support Agency (CSA)
- the social services department of a local council
- an industry ombudsman or watchdog
- the police.

This list is not exhaustive and there are a number of factors that determine who deals with the situation. The main factor is the type of law broken: is it a criminal law or a civil law? If it is a criminal law then it is likely to be a publicly funded body that is responsible for making sure that the breach of law is dealt with. A police officer will question and may arrest someone suspected of a crime such as theft. The trading standards department of your local council would investigate cases of goods not matching their description, fake goods or goods that don't meet safety requirements.

In civil law matters, it is often up to an individual to take action via the proper channels; often a **tribunal** or court of law. This is a fact which is often overlooked. If your employer has broken a law and you are affected by this, for example they haven't paid you for the work you have done over the past six months, then it would be up to you to pursue this. You have a legal right (to your pay) that you are entitled to enforce. You may seek advice from someone with specialist knowledge about the best way of getting your money, but *you* are responsible for bringing any legal action against your employer for the recovery of your wages.

There are a number of people who provide advice on the law or who are responsible for hearing legal cases. Many, but not all, of these are trained specialists with legal qualifications. The following list is not exhaustive but illustrates the range of people involved in our legal system:

- solicitors

- barristers
- legal executives
- a jury
- magistrates
- judges
- charitable organisations such as the Citizens Advice Bureau or local Law Centre.

We will now look at some of the people who are responsible for working on or hearing legal cases in court.

5 The legal profession

5.1 Solicitors

In 2008 there were about 75,000 solicitors working for firms providing legal advice to individuals and companies on a wide range of legal matters including buying and selling houses, family matters, contracts, tax and crime. As laws become more complicated and detailed, there is a growing trend for solicitors to specialise in a particular area of law, for example, crime or family or company. In addition, there were around 20,000 solicitors who did not practise. Solicitors are governed by the Law Society, which is responsible for setting training requirements, regulations and issuing certificates, which give individuals the right to practise as a solicitor.

The traditional and most common route towards becoming a solicitor in England and Wales requires a degree in law; however, other paths do exist and other methods of qualification have been developed in recent years. After obtaining a law degree, would-be solicitors must take the Legal Practice Course (LPC). This is designed to equip them with the knowledge required to practise as a solicitor. After passing the LPC, the next stage is finding a training contract in a law firm, which lasts two years. Upon completion, they are admitted to the profession as a solicitor.

5.2 Barristers

In 2008 there were approximately 12,000 barristers in independent practice known as the Bar. Their governing body is the Bar Council. It acts as their regulatory body and sets the requirements for training, qualification and professional development. The main role of a barrister is **advocacy** in the courtroom. Their time is mostly spent in court or preparing for court cases. They are self-employed and share premises called chambers with other barristers. Barristers work under what is known as the ‘cab rank’ rule. This means that they must accept any case which falls within their claimed area of specialisation and for which a reasonable fee is offered, unless they are already working on other legal cases.

To become a barrister in England and Wales, applicants need at least a second class degree in law (although other routes to qualification do exist). Following this, they have to join one of the four Inns of Court: Inner Temple, Middle Temple, Gray's Inn or Lincoln's Inn. These are all based in London and membership is part of the route to qualification. Students are then required to take a Bar Vocational Course (BVC) to prepare them for practice. As part of their qualification, students have to dine at their chosen Inn of Court twelve times. The idea is that students will benefit from the wisdom of experienced barristers if they sit amongst them at mealtimes. Once this has been completed they are called to the Bar. They must then find a place in a set of chambers to serve their pupillage. This is a one-year apprenticeship in which they assist a qualified barrister. There is great competition for pupillage places with only about 650 vacancies available each year. Once pupillage has been completed, a newly qualified barrister must then find a permanent place in chambers, referred to as a tenancy. There are only about 300 tenancies available each year and this forces many newly qualified members to do what is known as squat,

i.e. remain in their pupillage chambers for as long as they are allowed without becoming a new member.

6 Judges

Judges play a central role in our legal system. According to our unwritten constitution, judges, who are employed to hear legal cases, are expected to deliver their decisions (known as judgments) in a completely impartial manner. They are required to apply the law strictly without allowing any personal preferences to affect their decision making. They make their decisions based on the law and facts. They have a very sensitive but extremely important role.

There are a number of courts to which judges can be appointed. They are selected based on their experience, ability and good character. Judges are appointed by the Judicial Appointments Commission. To become a judge, you must have had a number of years' work experience in the courts as a barrister or solicitor.

7 The jury

The jury system has existed in Britain since the eleventh century, although its functions have changed over the centuries. The first juries very often acted as witnesses reporting on events they knew about. Modern juries should know as little as possible about the case before the trial and are mainly used in criminal trials in the Crown Court. Their role in the Crown Court is to listen to the evidence and decide the guilt or innocence of the accused based on the facts presented to them. They have a right to give a verdict according to their conscience. In a criminal trial in the Crown Court, the judge sits with the jury. The judge's role is to decide on the law and sentence the defendant if they are found guilty by the jury.

Even though Crown Courts hear only a small proportion of the criminal cases that are brought every year (about 30,000 cases), the jury forms a fundamental part of our legal system. The role of the jury is to decide whether the defendant is innocent or guilty based on the facts presented to them, playing a vital role in making sure the criminal justice system works for the benefit of the public. The idea behind the jury system is that everyone has a right to be tried by their peers.

The right to jury service corresponds with the right to vote, but there are people who are ineligible, such as the judiciary and people on **bail** awaiting criminal proceedings. A jury member must be:

- aged 18 to 70
- on the electoral register
- resident in the UK, Channel Islands or Isle of Man for at least five years since the age of thirteen
- not a mentally disordered person
- not disqualified from jury service.

When they have heard all the facts of the case, a jury **retires** to consider their verdict. At this point, jury members (jurors) are not allowed to communicate with anyone other than their fellow jurors, the judge and a court usher until after the verdict is delivered. They are also forbidden by the Contempt of Court Act 1981 from revealing anything that was said or done during their deliberations. This makes any research into the discussions of the jury a very difficult matter.

It is recognised that there are many advantages of jury members not being able to discuss how they reached their verdict:

- it ensures freedom of discussion
- it protects jurors from outside influence
- it protects jurors from harassment
- without secrecy people would be reluctant to serve as jurors
- it ensures the finality of the verdict
- it enables jurors to bring in an unpopular verdict
- it prevents unreliable disclosures by jurors and misunderstanding of verdicts.

However, there are also some criticisms of the jury system:

- it means that jurors are not accountable for their decisions

- it means that it is not easy to enquire into the reliability of convictions and to rectify injustices
- it limits the openness of the criminal justice system
- the way in which decisions are made about guilt or innocence is secret whereas the sentencing process takes place in **open court**
- it restricts each juror's freedom of expression.

8 Magistrates

Magistrates have been a part of the English legal system since the Justice of the Peace Act 1361. Their main role has always been in the criminal justice system. There are now over 30,000 magistrates (also known as Justices of the Peace) hearing over one million criminal cases per year. This represents about 96 per cent of all the cases heard in the criminal justice system. Magistrates do not receive a salary. They are appointed by the Lord Chancellor in the name of the Crown on the advice of the local Advisory Committees. The job description for magistrates lists the qualities for those wanting to become magistrates and these include having a good character, understanding and communication, social awareness, maturity and sound temperament, sound judgement, commitment and reliability. Positions are advertised widely. Magistrates are appointed after undergoing a selection process.

To become a magistrate a person must be under sixty-five and usually live within fifteen miles of the magistrates' court at which they will sit to hear criminal cases. There are people who can be excluded from appointment, such as police officers, traffic wardens, members of the armed forces, people with certain criminal convictions, undischarged bankrupts and those who have a close relative who is already a magistrate in the same magistrates' court.

In the magistrates' court, cases are generally heard by a group of three magistrates, one of whom acts as a chairperson. The magistrates make their decisions based on the facts and the law. They fulfil the role of both judge and jury.

Activity 6: Becoming a magistrate

0 hour(s) 10 minutes(s)

Read the box and answer the question that follows.

The Y166 family

Ronald wishes to become a magistrate

Ronald has a colleague who has been a magistrate for the past five years. One day over coffee his colleague tells Ronald a little about what he does as a magistrate. The next day Ronald sees an advert in the local newspaper inviting people to apply to become a magistrate.

Ronald wants to know whether he is able to apply to become a magistrate. Using the information you have read, how would you advise him?

Ronald may be able to apply to become a magistrate. This depends on a number of factors:

- Is there a vacancy for a local magistrate? Yes, vacancies are being advertised.
- Does he fulfil the age requirements? Yes, he fulfils the age requirements.
- Does he have the necessary qualities? We cannot comment on this as we do not know Ronald personally.
- Does he fulfil the criteria in relation to distance from the court? Again, we do not have this information.

If he does meet the criteria above, then he may apply to become a magistrate and will have to undergo a selection process.

9 Learning skills – note-taking

9.1 Introduction

Two of the most basic and important skills of a successful student are being able to read effectively and make clear, concise notes

The process of note-taking helps you engage with study materials in an active way. Turning a text into your own words helps to sharpen up your understanding and focus your thinking. The key to successful note-taking is to create notes that suit your purpose rather than writing reams that are boring to write and even more boring to read later! Here are some different ways of note-taking. Different methods will suit different people and different texts. What is important is that you discover what works best for you.

9.2 Marking up a text

Although you might not think of this as note-taking, marking the text as you read can be a very useful part of the note-taking process. You can do this by using a highlighter pen, by underlining key points or by making notes in the margin. However, try not to overdo it and only highlight important points.

9.3 Linear notes

This is the most common form of note-taking. It involves writing in sequence the points you want to note. As with all note-taking, the aim is to pick out and record the most important points. Avoid simply writing out most or all of the text again.

Try to write your notes in your own words as this will help you understand what you have been reading about. Also add a reference to which page(s) of the text your notes refer so you can easily find your way back to the relevant part of the text.

Click on 'view document' below to see an example of some linear notes on the key players in law enforcement.

view document

9.4 Mind maps

Mind mapping or spider diagrams have become popular in recent years. If you haven't tried this way of making notes, it is well worth a try. When making a mind map, you generally put the central topic in the middle of the page and then arrange the different aspects of the topic around it.

However, you can give free rein to your creativity with mind maps. There are no hard and fast rules. Try experimenting with different colours or even pictures if you have artistic skills. Mind maps do give you a clear visual representation of the relationship between points or ideas and many people find that the effort that they put into constructing a mind map is enough to fix the information in their memory.

Figure 3 shows a simple mind map. Figures 4 and 5 show more detailed versions.

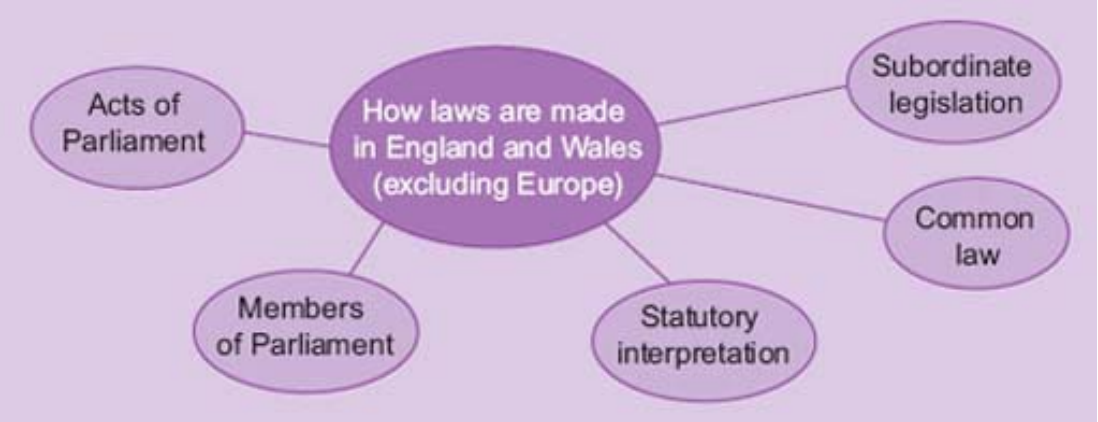

Figure 3 A simple mind map

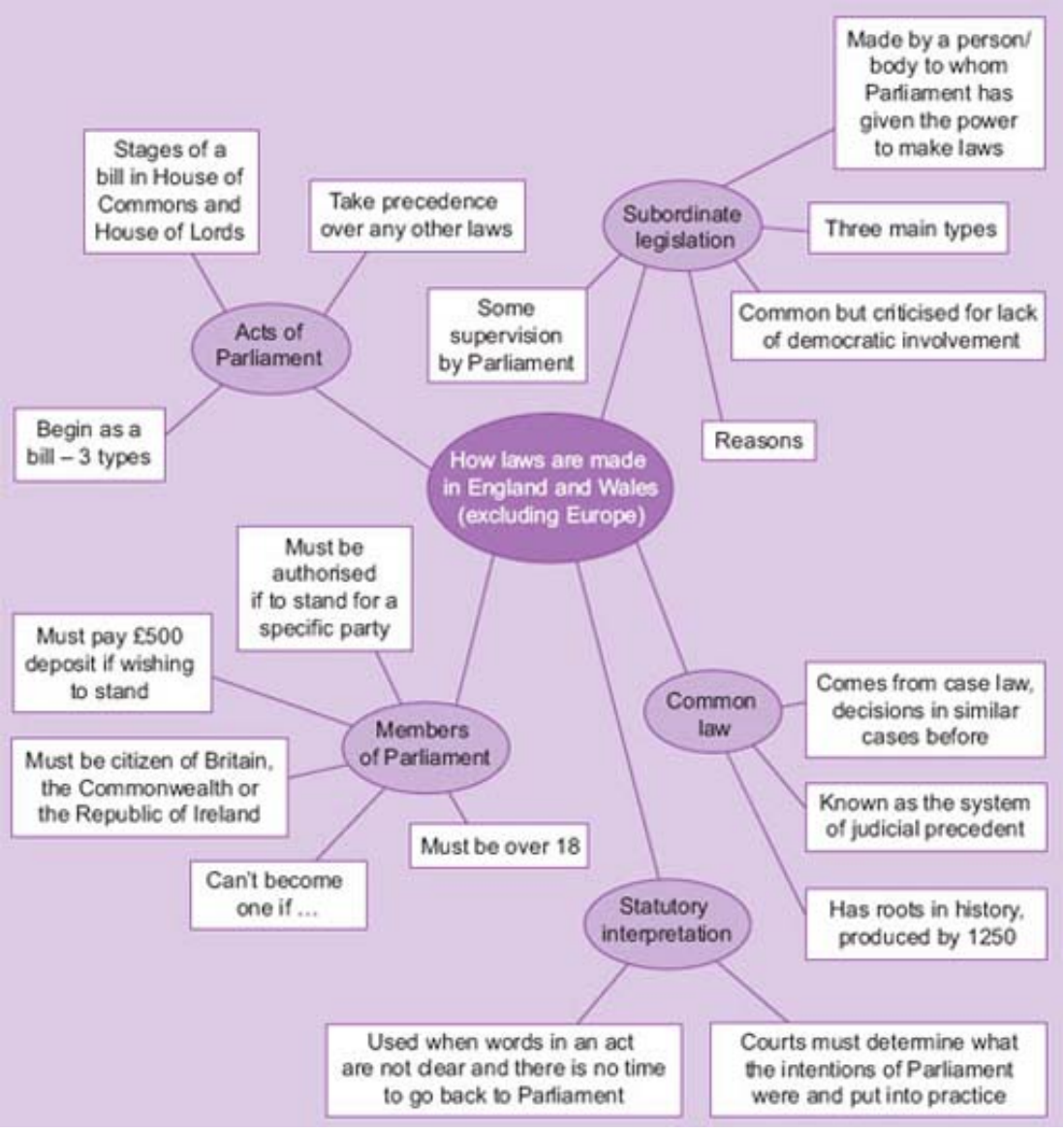

Figure 4 Some more information

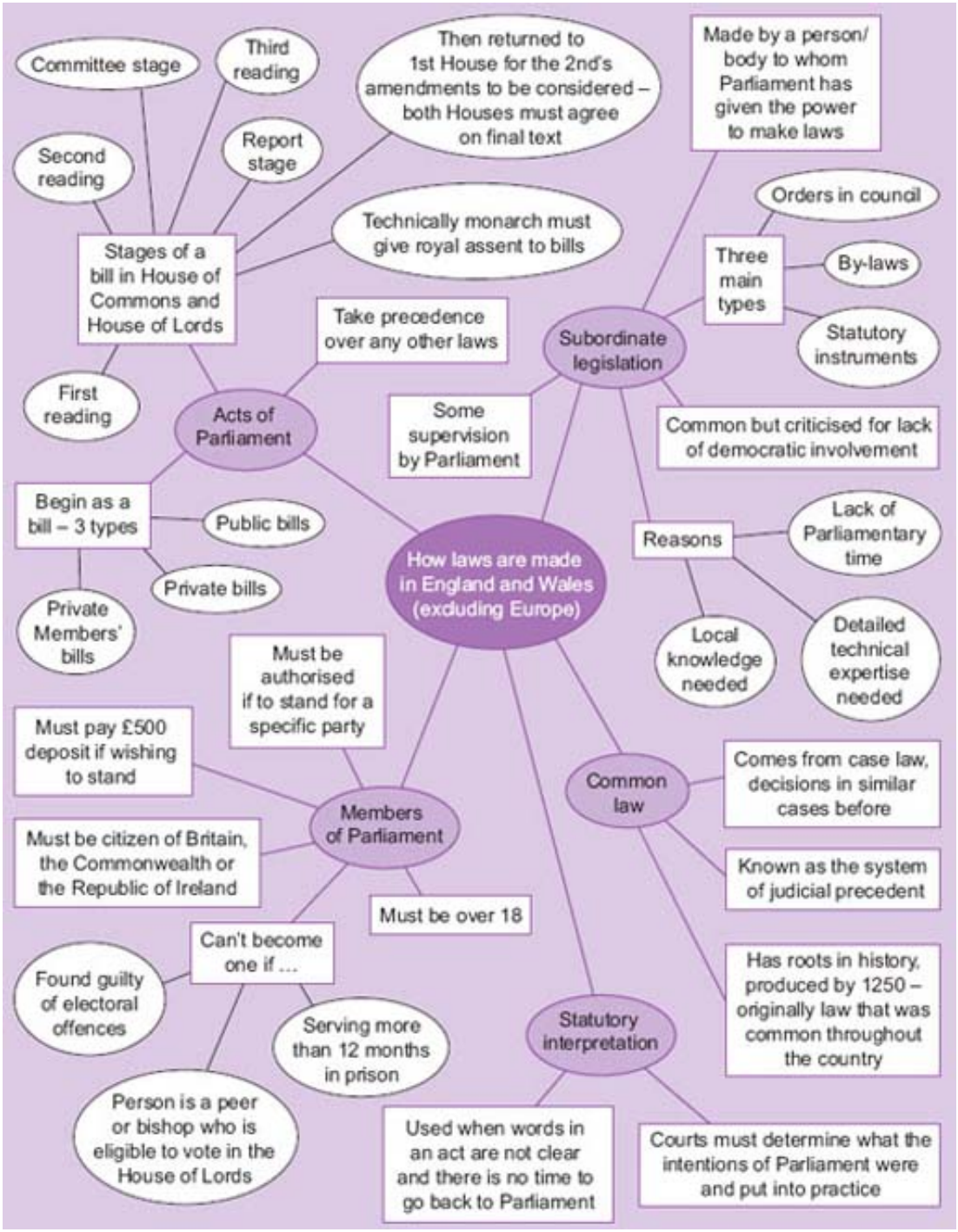

Figure 5 Lots of detail

9.5 Tables

Using a table or just a set of columns can help you to analyse information and ideas. You can vary the number of columns and rows as needed. The following activity provides an opportunity for you to summarise information in a table.

Activity 7: Completing a table

0 hour(s) 20 minutes(s)

Look back at the classifications of civil and criminal law in this course and complete the table below, which we have also provided in PDF format for you to print out and complete.

Table 1 The differences between civil and criminal law

	Civil law	Criminal law
What is its purpose?		
Who brings the case?		
Who is the case against?		
Standard of proof required		
Possible outcome of the case		
Examples		

Table 1 The differences between civil and criminal law

Here is an example of what a completed table could look like.

Table 1 Completed table illustrating the differences between civil and criminal law

	Civil law	Criminal law
What is its purpose?	To provide a system which enables individuals to resolve disputes.	To prevent behaviour which is deemed unacceptable and to preserve order in society.
Who brings the case?	A claimant (usually an individual, company or public body).	A prosecutor (usually a member of the Crown Prosecution Service).
Who is the case against?	A respondent (the person who has done the wrong, for example, caused the car accident).	A defendant (the person who, it is alleged, has committed the offence).
Standard of proof required	The claimant must prove their case on the balance of probabilities.	The prosecutor must prove their case beyond reasonable doubt.
Possible outcome of the case	If the claim is successful a remedy will be awarded. This may be in the form of monetary compensation (damages) or alternatives such as an injunction.	If convicted, the defendant may be fined, given a community punishment or sent to prison.
Examples	Breach of contract, a dispute over a will, a dispute over a broken domestic appliance.	Theft, drink driving, murder, fraud.

Conclusion

This free course provided an introduction to studying Law. It took you through a series of exercises designed to develop your approach to study and learning at a distance, and helped to improve your confidence as an independent learner.

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Glossary

Click on the link below to open the course glossary.

Open glossary now...

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