



BIROn - Birkbeck Institutional Research Online

Menis, Susanna (2019) English legal system. [Teaching Resource]
(Unpublished)

Downloaded from: <https://eprints.bbk.ac.uk/id/eprint/30776/>

Usage Guidelines:

Please refer to usage guidelines at <https://eprints.bbk.ac.uk/policies.html> or alternatively
contact lib-eprints@bbk.ac.uk.

School of Law 2019-20

Department of Law

English Legal System

LALW045S4

Module Guide

Module Convenor: Dr Susy Menis

Module Lecturer: Ms Annette Kalu

Contents

Programme Director's Welcome	3
Key Contact Information.....	4
Important Dates.....	5
Important Note about Due Dates	5
Introduction to the course.....	6
Required Books.....	6
How is the course taught?	7
What is expected of you?	8
Use of Moodle	8
Learning summary	9
Detailed course syllabus	10
Detailed assessment information	96
Referencing & Good Academic Practice	103

Programme Director's Welcome

A very warm welcome to the English Legal System module at Birkbeck College.

You are now part of a community of researchers, teachers and students here at the School of Law and I look forward to meeting you over the coming academic term.

In this module you will explore the working of the English Legal System. By looking at the principles and values underpinning the common law, you will develop an understanding of the approaches taken to law making by Parliament, and its application and development by the judiciary.

You will not merely study these topics, but you will learn how to apply your learning. By looking at a range of case law and legislation, the course builds the skills and knowledge necessary for developing cogent arguments and analysis. You will explore and practice legal reasoning whilst developing transferable skills such as acquiring a good grasp of information technology (e.g. using your course virtual learning environment), learn to reflect on and enhance your academic strengths and understand how to set targets for personal and professional development.

I further hope that you will take advantage of the many events, workshops and seminars that regularly take place at Birkbeck and in the Bloomsbury area.

This handbook provides you with detailed information about the module. Please familiarise yourself with the contents of the handbook and do not hesitate to use the services we provide and to contact us if you need assistance. We want you to make the most of your time at Birkbeck.

Dr Susy Menis, Programme Director

4 Gower Street, room 103

Tel: 020 3073 8049

Email: s.menis@bbk.ac.uk

Key Contact Information

Programme Director & Personal Tutor

Susy Menis: s.menis@bbk.ac.uk

Office: 4 Gower Street, room 103 (this room is on the first floor and there is no lift: meetings in accessible rooms can easily be arranged whenever requested)

Office hours: Monday by appointment (please email to arrange a suitable time on a different day)

Seminar Tutor & Lecturer

Annette Kalu: annette.kalu@bbk.ac.uk

Administrator

Simon Ellwood: law-certs-he@bbk.ac.uk

School of Law Administration Office

14 Gower Street, Room G02

Open weekdays from 12:00am to 2:00pm and from 4:00pm to 6:00pm

Telephone: 020 7631 6511

Lines are open from 10:30am to 2:00pm and from 4:00pm to 6:00pm

Contacting you

Our primary form of communication is through your nominated email account. You are responsible for checking that account regularly and ensuring that it is up to date. You can update your details on your My Birkbeck profile at: <http://www.bbk.ac.uk/mybirkbeck/>

College contacts

There is a daily student drop-in advice service in the main Birkbeck building.

You can telephone the MyBirkbeck Helpdesk on 020 7631 6316 or ask a question at: <http://www.bbk.ac.uk/ask>

For full details on Student Services, including the fees office, disability support, IT services, etc... see: <http://www.bbk.ac.uk/student-services>

Important Dates

Autumn Term

Induction	24 September 2019 (6-9pm)
Lectures & seminars start	30 September 2019 (6-9pm)
Last Class	9 December 2019 (6-9pm)

Coursework submission dates

Title of Assessment	Weighting	Word count	Due date
Skills multiple choice assessment	5%	On Moodle (no word count)	Friday 18 October 2019 by 4.30pm
Writing exercise 1	15%	550 words	Friday 8 November 2019 by 4.30pm
Writing exercise 2	15%	750 words	Friday 6 December 2019 by 4.30pm
Essay	65%	1700 words	Monday 13 January 2020 by 11am

Weeks	1	2	3	4	5	6	7	8	9	10	11	12	13	14
	30 Sep		18 Oct			8 Nov				6 Dec				13 Jan 2020
Coursework deadline			Skills multiple choice assessment			Writing exercise 1				Writing exercise 2				Essay

To successfully complete this module, you are required to obtain a pass overall.

You can download an App such as Grade Tracker Pro to calculate your overall mark.

Important note about due dates

Please note that coursework deadlines are strictly adhered to (there are no extensions). Unless there are mitigating circumstances (see programme handbook for regulations), late essays will be marked with a capped grade of 40%. Failure to submit an assignment will result in a grade of zero for that assignment.

Introduction to the course: English Legal System

This course provides a coherent framework for the study of law making. It is structured to address three main themes: legislation, judicial interpretation and precedent. These are the foundational building blocks of the English legal system. The course is primarily designed to allow you to develop your academic skills and it introduces legal skills; emphasis is placed on transferable skills and personal development. These skills are integrated within the study of the substantive material.

Aims and Learning Outcomes

In this module we aim to...

- Explore the working of the English common law legal system
- Develop understanding of the making and development of the law
- Introduce a range of debates in the practice of legal decisions
- Identify, locate and appraise case law and legislation
- Develop academic skills and legal skills

By the end of this course you should be able to...

- Describe the fundamental principles and values of the common law legal system
- Explain and evaluate approaches to the making of law, its application and development
- Identify, access and read cases and statutes
- Utilise information from various sources to produce a logical argument
- Apply the techniques of legal reasoning to problem solving
- Demonstrate a good grasp in information technology
- Reflect on own academic and professional strengths and limitations
- Take responsibility for setting targets and implementing plans for personal/academic/professional development

Required books

The core textbook for this course is:

E. Allbon and S. Kaur Dua, *Elliot and Quinn's English Legal System* (20th edn, Pearson 2019)

It is important that you have regular access to the textbook, and you can do that by:

1. Borrowing it from Birkbeck library (note there is a limited number of copies and you will not be able to highlight or write on the text [which is important for the skill of taking notes]). However, you could scan or take pictures of the chapters that you need (you can use an App such as FastScanner)
2. Accessing the eBook version (online) via Birkbeck eLibrary (note that you could photocopy the chapters that you need, but due to copyright regulations the number of pages that you will be able to photocopy is limited). See instructions on how to access a eBook on Moodle.
3. The best option is to purchase the textbook (which you will also need for module 2 if you decide to take it in the Spring Term).

The latest edition may be expensive, and therefore you can buy an older edition from Amazon. Just remember that the page numbers referred to in this guide reflect the 20th edition.

- **Given the size of the book, you do not have to bring it to class. However, it is important that you bring your preparation notes and you may find it useful taking pictures on your phone, or scan on your iPad, the relevant chapter for that week- so you have it handy in class.**

The following skill-textbooks will be cited throughout module. These textbooks can be either borrowed from the library or accessed via the elibrary. If you want to purchase a law-skill-textbook you may want to consider Finch & Fafinski (any edition, although the 6th edition will be cited here [the library may even have the 7th edition]). Otherwise, Hanson can be accessed via the elibrary and some chapters from Finch & Fafinski will be provided on Moodle:

S. Hanson, *Learning Legal Skills and Reasoning* (4th edn, London: Routledge, 2016)

E. Finch and S. Fafinski, *Legal Skills* (6th edn, OUP 2017)

A generic skill-textbook which is very helpful and it is good to have:

S. Cottrell, *The Study Skills Handbook* (Palgrave, Any edition).

How is the course taught?

Lectures & Seminars

This course combines lectures with seminars (sometimes this is called a 'workshop') and class discussion is interactive. Your lecturer may give a brief lecture at the beginning of the class and it will follow with class and group discussions and activities.

Class is every week on Monday, 6-9pm. Please check your timetable on "My Birkbeck" (www.bbk.ac.uk/mybirkbeck/)

What is expected of you?

Take responsibility for your own study experience by:

- ✓ Preparing for class by completing the relevant tasks
- ✓ Attending class
- ✓ Bringing the required notes/preparation to class
- ✓ Participating in class discussion
- ✓ Completing coursework
- ✓ Contacting the lecturer, programme director/personal tutor as needed (do not be shy!)
- ✓ Completing the mini-units on Moodle

Use of Moodle

Please check regularly for updates, information and materials on Moodle.

If for any reason you are unable to use Moodle and require assistance with obtaining the materials for the course, please contact a member of the Administration Team or the Programme Director.

Some pre-class activities, mini-units and guides are only available on Moodle.

You will be able to complete the following mini-units on Moodle:

1. An introduction to study skills (week 0)
2. The study of law (week 1 & 2)
3. Classification of the law (week 3 & 4)
4. The nature of law (an introduction to legal theory) (week 5 & 6)
5. Equity (week 7, 8 & 9)

It is not compulsory to complete these learning activities, but there are several advantages in doing so:

- You will be introduced to topics which may not be discussed in class
- You will be introduced to topics which you may come across in your future studies
- These topics will allow you to enhance your understanding of the wider contexts in which the law operates
- The tasks for each topic are small, easy to complete, and spread across two weeks.
- Completing these learning activities will help you to:
 - I. Develop your independent learning and active learning
 - II. Strengthen your time management
 - III. Effectively use information technology
 - IV. Effectively use the library (including eBooks)

Learning summary

Week 0 Tuesday 24 September, 6pm	Induction	Moodle mini-unit 0: An introduction to study skills
Week 1 Monday 30 September, 6pm	The Rule of Law	Moodle mini-unit 1: The study of law
Week 2 Monday 7 October, 6pm	Statute law	
Saturday Skills 12 October 10am-5pm	Academic skills workshop	
Week 3 Monday 14 October, 6pm	Statute law	Moodle mini-unit 2: Classification of the law
Week 4 Monday 21 October, 6pm	Statutory interpretation	
Week 5 Monday 28 October, 6pm	Statutory interpretation	Moodle mini-unit 3: The nature of law (an introduction to legal theory)
Week 6 Monday 4 November, 6pm	1. Practice library session 2. Class meeting with personal tutor	
Week 7 Monday 11 November, 6pm	Statutory interpretation	Moodle mini-unit 4: Equity
Week 8 Monday 18 November, 6pm	Case law	
Week 9 Monday 25 November, 6pm	Case law	
Week 10 Monday 2 December, 6pm	Case law	
Week 11 Monday 9 December, 6pm	Case law	

DETAILED COURSE SYLLABUS

Week 0: Start thinking about Law

Congratulations and welcome to this course, part of the programme Certificate HE in Legal Studies programme at Birkbeck London University!

If you attended the course induction on Tuesday 24 September, you had the chance to meet some of your fellow students, your lecturer and the programme director (who is also your personal tutor for the forthcoming academic year). If you missed the induction, you may find it helpful watching the lecture-cast (a recorded lecture) available on Moodle.

There is no class this week, but it is a good opportunity to start thinking about the law. For your own information you can watch this presentation by Baroness Helena Kennedy, QC.

LAW: The Importance of Law - Helena Kennedy
<https://www.youtube.com/watch?v=WNniQDIpM4Q> (3.21min)

The following is a longer lecture by Baroness Helena Kennedy. This lecture is interesting because she also talks about her personal experience of becoming a Barrister.

Annual Lecture : Helena Kennedy
https://www.youtube.com/watch?v=SF6wZ_iv7Fk (42.34min)

The next lecture is by American lawyer Kimberley Motley. In this Ted Talk, she addresses the issue of the rule of law. This is particularly enlightening because she talks about three cases from her international legal practice in Afghanistan and elsewhere.

How I defend the rule of law | Kimberley Motley
<https://www.youtube.com/watch?v=Td2hfdXQ5x8>

We hope you will enjoy this brief introduction to law. When you are ready, you can move on and prepare for next week's class.

Week 1: The Rule of Law

Class preparation

Welcome to the first week of study! There is no rule on what should be the first topic that students of law (or students interested in the law) should be introduced to first. But there is certainly a Rule which is fundamental to any legal system, and this is the Rule of Law.

It is important to know about the Rule of Law, because as explained in the Ted Talk by Kimberley Motley, this must be the foundation upon which a just legal system operates.

You will also be introduced to the principles of the UK constitution. The 3 principles which you will be focusing on reflect the framework upon which the English Legal System operates: rule of law, separation of powers and parliamentary sovereignty.

This is your first week of study, and to ease your preparation, you will have several audio-visual sources which will give you the information that you need. The introduction in your textbook, Elliot & Quinn's (pp.2- 6) will also give you the main points which you need.

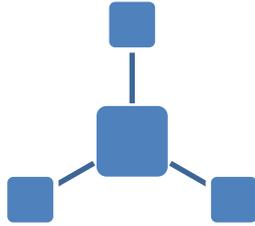
However, as you will be asked to do throughout this module, quickly read the tasks below, and think about how you will manage your time, so you arrive prepared for class.

You also want to have a scrap-notebook in which you write your initial notes and exercises without worrying about tidiness and clarity; then, when you are confident of your answers or have collected all the information you have been asked to, you can transfer these to another notebook in which you can keep a tidy set of notes to which you will be able to refer at any time and in preparation of your assignments.

Also, this is the first time, on this module, that you will open a textbook on the English Legal System. The recommended text will give you all the necessary information that you need for this stage of your studies (note that the textbook will be referred to simply as Elliot & Quinn's). Of course, you can choose to use a different textbook, this is fine, just make sure you follow the same topics as indicated for each week.

Preparation tasks:

1. Copy the following diagram to your scrap-notebook. In the middle box write 'UK Constitutional Principles'. Be sure you have enough space for notes under each of the small boxes.



2. Next, read in your textbook, Elliot & Quinn's, pp.2-6.

3. After the reading, go back to your diagram above, and try thinking about 3 titles which you can put in the blank boxes. Remember, the titles should be relevant to the central box 'UK Constitutional Principles'.

4. After coming up with titles, take brief bullet point like notes of the most important information you think may suit each title.

5. Next, watch and listen to the following audio-visual sources, and continue filling up your diagram with only the most important information you gather:

- Magna Carta and the rule of law: Magna Carta, meaning 'The Great Charter', is one of the most famous documents in the world. Originally issued in 1215 by King John of England as a practical solution to a political crisis, Magna Carta established for the first time the principle that everybody, including the king, was subject to the law. <https://www.youtube.com/watch?v=4zsE9V3yNyg> (2.34mins)
- Lord Bingham - The Rule of Law: One of the most influential judges of the 20th century, former Master of the Rolls, Lord Bingham makes the case for the rule of law as the foundation of a fair and just society. <https://www.youtube.com/watch?v=XIMCCGD2TeM> (28.15mins)

- John Carey on the Rule of Law: Political scientist John Carey discusses the importance of the rule of law in making democracy work
<https://www.facinghistory.org/resource-library/audio/john-carey-rule-law>
(7.17mins)

6. There are lots of world-wide concerns in relation to the Rule of Law. Access the following Index on the Rule of Law by the World Justice Project, and spend some time investigating it <http://data.worldjusticeproject.org/> . You may need to access the World Justice Project website on the Rule of Law and scroll down the page for some explanations on what the Index represents <https://worldjusticeproject.org/about-us/overview/what-rule-law>.

Note in your scrap-notebook any interesting information which you find and may want to share with the class.

In class (Monday 30 Sep, 6pm)

This class introduces you to the core principles of the English Legal System. You will also have the opportunity to get to know your fellow students given that you will be studying together for the next 11 weeks. Your lecturer will set study and teaching expectations and by the end of this class you will have come up with your class Rule of Law, that is, agreed ground rules to maintain an effective study experience to all.

1. Your lecturer will lead this discussion and you may be asked to work in pairs first. Take this opportunity to introduce yourself, try to remember your fellow student's name (perhaps you can write it down in your notebook). Then, by using your respective diagrams prepared for this class, come up with brief definitions for the following; be willing to share these with the rest of the class:

The rule of Law

Separation of powers

The Supremacy of Parliament

When ready, your lecturer will call you back to plenary, and you will have a discussion on the importance of these principles (plenary means a meeting/ a discussion attended by all participants- this term will be used in this guide to suggest a class discussion rather than pair/small group/individual work).

2. The above discussion will be followed up by the following thought-provoking question:

Consider what exactly is meant by the rule of law. Is it simply a matter of legal rules or does it connote something else? For example, Nazi Germany was an elected legal system based upon the rule of law- but the application of this legal system brought about millions of deaths. How this can be explained?

3. Next, you may be asked to work in pairs or small groups (you may also be asked to work with a different fellow student than the one you worked with on the first activity- again, introduce yourself and try to remember your fellow student's name).

Your lecturer will give you a handout with some news reports.

Come up with 2-3 bullet points of why it is thought that the situation in the news article may undermine the rule of law.

Then consider whether you agree with that or not, and be prepared to explain why (note that you may have a different view than your fellow student you are working with- this is fine and make a note of that). Be prepared to share your thoughts in plenary.

Your lecturer will wrap up the discussion- make sure you ask any questions that you may have.

Week 2: Statute Law 1

Class preparation

Throughout this module you will practice active learning; this means that your lecturer will assume that you have prepared for class. Preparing for class is very important for your own development of knowledge, but also for your fellow students. Why? Consider how limited and ineffective the discussion in class will be if one of you is not prepared. It is the same in the work place or any other place where you may be expected to contribute to a discussion (for example a meeting at work or a tenants meeting)- if you are not prepared, you simply cannot contribute nor make a difference.

The preparation for each week is manageable. However, most of us need to juggle several life commitments and therefore time management is a core skill (it is also a skill sought

after by employers) which you need to develop or sharpen. You will find a small activity on Moodle which encourages you to think about your own time management skills.

The first thing that you will do this week is to understand how to effectively manage your textbook, and this is important for any textbook which you will come across in the future. Law textbooks are similar to any other textbook (e.g. a criminology textbook or a psychology textbook) in that they all have a table of contents, which is very important because it allows you to navigate the textbook. But, law textbooks are also very different from any other textbook because they have two important sections titled 'Table of cases' and 'Table of statutory materials' in which they give you all the cases and legislation mentioned in the textbook and where you can find them. These tables are also important because they give you the correct case citation:

Airedale NHS Trust v Bland [1993] AC 789 28, 136
Al-Khawaja and Tahery v United Kingdom [2009] ECHR 110 22, 23
Ali v Head Teacher and Governors of Lord Grey School [2006] UKHL 14, [2006] 2 AC 363 330
Arkin v Borchard Lines [2005] EWCA Civ 655, [2005] 3 All ER 613 371

Test yourself: go to the table of contents and find the chapter 'Statute law'.

You will see that the chapter is not very long.

Think about your time management: look at the preparation you are required to do below and consider how you will time manage it, so you arrive to class prepared. Take a few moments to think about it, and do not forget that you may need to integrate this preparation around other engagements that you may have this week.

Preparation tasks:

1. The first thing to do is to skim read the chapter. What does 'skim reading' mean? There are different types of reading styles, each for a different purpose. What you need here is skim reading which involves **looking** at a page and **running** your eyes down the centre, allowing the **key words** to jump out at you. This will give you an initial idea of what the chapter is about.

Tip: in the Elliot and Quinn's textbook, the different sections of the chapter are separated by indicative headings; these will give you a good idea of what the sub-topics are without necessarily reading the content. In the future, this sort of activity, skim reading, will become faster and faster, but for now you may find that you need some time to get

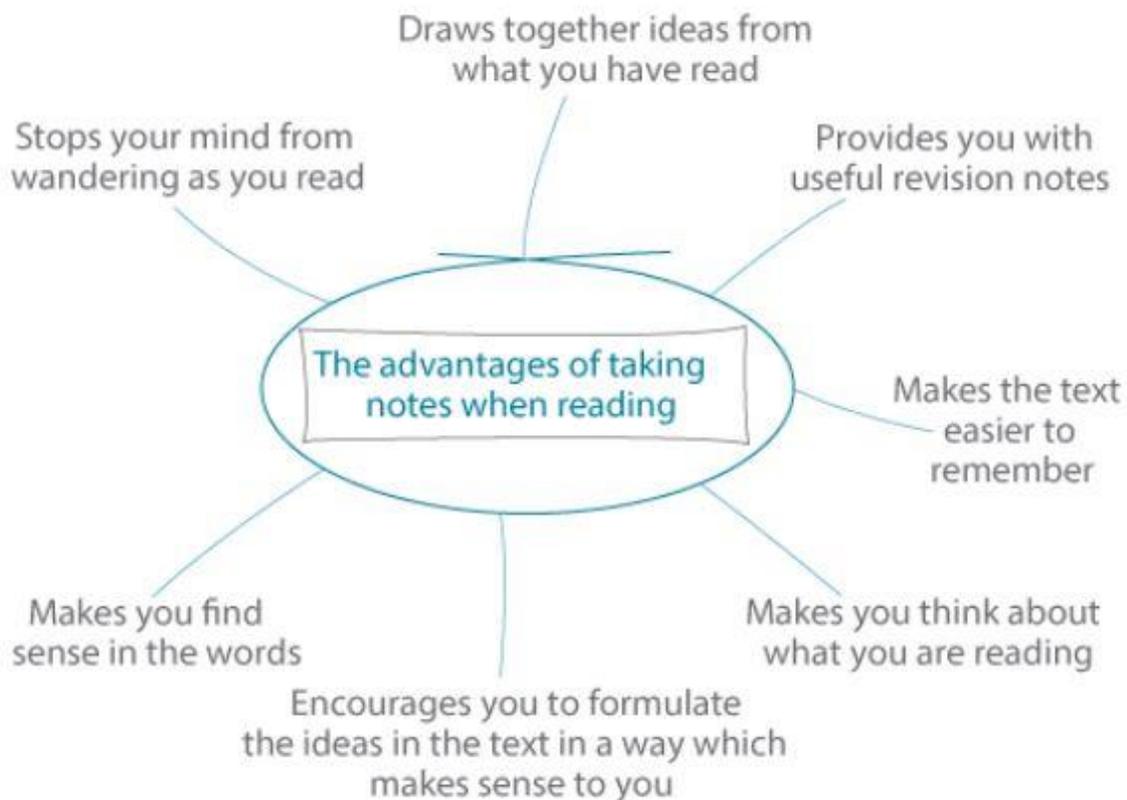
familiar with some of the concepts; this is absolutely normal, do not be too harsh on yourself.

2. Next, you will create a 'plan' of the readings which will help you to then develop the skill of effective note taking, it will also help with the skill of reading comprehension.

On your scrap-notebook, write down in bullet points the main headings of the chapter but leave plenty of space under each heading. You may also add some sub-headings.

3. Now, you will start thinking and practicing effective note taking. Taking notes forces you to think about the ideas in the text as you read it, because you have to decide what to write down and how to phrase it. As you write down the notes you are pressed into finding some sense in the words in the text. If you read without taking notes, no matter how good your memory is, you will find that the ideas gradually drift away from you.

Note taking is also part of being an active learner because it:



There are different styles of note taking, for example:

Linear notes:

- Usually formatted as bullet points.

- Useful when taking particularly lengthy and detailed notes.

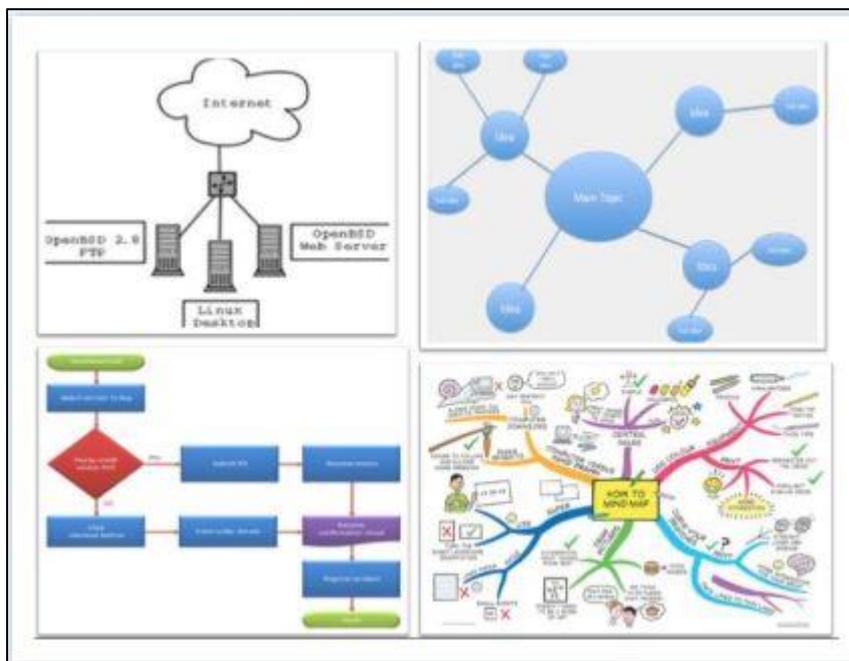
Postcards or post-it notes:

- Useful to break down notes into smaller pieces.
- Useful in revision and as a memory aid.

Tabular notes:

- Useful to categorise, organise and sort information.
- Can make complex material easier to understand.

Some people may use visual notes, such as:



However, the skill of note-taking does not come on its own. Especially in academic context (but not only) the information that you read needs also to be summarised in your own words. Then, you can use it in your assessments as long as you acknowledge the author of the original information. This is important for two reasons:

- A. It showcases your understanding of the information that you have read- this is because you can convey it (and explain it) in your own words.
- B. It avoids you running the risk of being accused of plagiarism; in a couple of weeks you will also consider the importance of referencing and how to acknowledge the source you summarised the information from (this is called 'citing').

The following is a brief guide about plagiarism taken from the Birkbeck website (you will find a longer explanation on Moodle):

Academic integrity

Learning to cite and reference correctly is **vital**. Most students understand the concept of **academic integrity** and most would never **deliberately** set out to "steal" another thinker's ideas or submit work which was not their own.

We regard **deliberate plagiarism** as one of the worst types of academic dishonesty, but it is often the result of students who are **nervous** about their ability to **paraphrase** or who don't feel they have **the right** to **deconstruct** and re-word the authors they are studying.

Plagiarism also often results from **not understanding** how to **reference correctly**, or simply **running out of time** and submitting work without the necessary bibliographic details.

All these things can be overcome by **learning** what plagiarism is, and by becoming **familiar** and **comfortable** with your **referencing system**.

Further guidance in <http://www.bbk.ac.uk/student-services/exams/plagiarism-guidelines> and http://app1.its.bbk.ac.uk/xerte2/play.php?template_id=616

4. Before practicing note-taking, you need to be introduced to the skill of summarising in your own words (you will find more guidance on Moodle):

When approaching the task of summarising, the following is essential:

- **Identify the key information in the text:** In order to produce an accurate summary it is necessary to identify the main ideas or the key points in a piece of written material.
- **Write in your own words:** The summary needs to be in your own words; it is not enough to take certain sentences from the written materials and put them together.

Tricks for summarising information into your own words:

- Read the original text and get a full grasp of it. You may need to re-read the original source a few times and look up the meaning of key words to fully understand it. It is useful using a dictionary (even an online one).
- When reading, ask yourself: What is the overall message? What are the key points?

- Concentrate on the essentials and leave out details and examples.
- Put the source aside and state its key points in your own words.
- Don't use exactly the same vocabulary as used in the original - however, there may be some essential words and phrases that you must use.
- Change the structure of the sentences.
- Break up long sentences into shorter sentences
- Join short sentences together with linking words.

Whatever your note-taking style is, this exercise focuses on taking notes and summarising them in your own words. If you can summarise in your own words information that you read, this is evidence that you have understood, or 'digested' the readings (hence this is evidence of your reading comprehension). This is true of any text which you will encounter in your life.

Taking good notes involves reading the text in an active way. When you make notes on a text, ask yourself the following questions:

- Why have I been asked to read this?
- What information do I need to find from this reading?

This is the first time in which you are faced with these questions and so the following are indicative answers:

- Why have I been asked to read this? *Because this week we study statute law and this chapter will help me prepare for this topic*
- What information do I need to find from this reading? *Although there are no specific questions which I have been asked to answer, I need to identify the main key points (i.e. the most important information) under each heading.*

Complete task 5 by first deciding which of the 3 approaches to note-taking below you will be adopting. The first approach is 'advanced' and you should take it only if you feel confident in note-taking; the second is 'step-by-step', and you should follow this if you feel less confident in note-taking (if you struggle with this one, try 'step-by-step extra').

ADVANCED: this is a method advised by Stella Cottrell (The Study Skills Handbook, p.127)

- Put your pen down- so you won't be tempted to copy out of the book.
- Read and identify the main ideas (you can highlight these in the textbook with a pencil or a highlighter) in each of the paragraphs in the chapter.
- Summarise these in your own words.
- Remember! This is a summary and so it should be shorter than the original text.
- Write at the end of each summary the number of the page you have summarised the information from (this is the citation and you will learn about that in a couple of weeks' time).
- 'test' your own summary against the information in the textbook- consider if your summary is good enough:
 - I. Have you extracted the key point from each paragraph? – would a non-student reading your summary understand what the key point is?
 - II. Does your summary convey the same information as the original text? Make sure that you have not changed the meaning or 'invented' new information.
 - III. If you feel that your summaries can improve by adding or excluding information, you can do that!

'STEP-BY-STEP':

- Draw a separating line halving a blank page in your scrap-notebook.
- Read and identify the main ideas (you can highlight these in the textbook with a pencil or a highlighter) in each of the paragraphs in the chapter.
- Use only one side of the halved blank page in your scrap-notebook and copy the above key point.
- On the other half of the page, and in parallel to the copied key point, try and 'translate' the key point in your own words.
- Remember! This is a summary and so it should be shorter than the original text.
- At the end of each summary write the page number you have summarised the information from (this is the citation and you will learn about that in a couple of weeks' time).
- 'test' your own summary against the information in the textbook- consider if your summary is good enough:
 - I. Have you extracted the key point from each paragraph? – would a non-student reading your summary understand what the key point is?
 - II. Does your summary convey the same information as in the original text? Make sure that you have not changed the meaning or 'invented' new information.
 - III. If you feel that your summaries can improve by adding or excluding information, you can do that!

'STEP-BY-STEP' extra:

- Draw a separating line halving a blank page in your scrap-notebook.
- Read and identify the main ideas (you can highlight these in the textbook with a pencil or a highlighter) in each of the paragraphs in the chapter.
- Use only one side of the halved blank page in your scrap-notebook and copy the above key point.
- **EXTRA:** imagine that you need to explain to a friend the above key point. Either on your phone or a recorder, record your explanation. Make sure that you explain the key point in your own words; also, the explanation should be simple.
- Now, use the other half of the page in the notebook, and in parallel to the copied key point, listen to your recording and write it down.
- Remember! This is a summary and so it should be shorter than the original text, so you may need to make it shorter than what you have said in the recording.
- At the end of each summary write the page number you have summarised the information from (this is the citation and you will learn about that in a couple of weeks' time).
- 'test' your own summary against the information in the textbook- consider if your summary is good enough:
 - I. Have you extracted the key point for each paragraph? – would a non-student reading your summary understand what the key point is?
 - II. Does your summary convey the same information as in the original text? Make sure that you have not changed the meaning or 'invented' new information.
 - III. If you feel that your summaries can improve by adding or excluding information, you can do that!

5. So this is your task: you have written down the headings of the chapter in your scrap-notebook; now you need to identify the most important information for each heading. This will form your **substantive knowledge** for this week's topic (in your summary, ignore for now, the information in the blue boxes) [substantive knowledge is the knowledge produced by the academic subject that you are studying. This creates understanding].

Now that you have a draft summary, copy your notes onto a clean sheet which you will be able to use in class.

Be prepared to share these summaries in class.

6. Finally, you may want to read the short guide on Moodle on taking notes when listening to a lecture and how to ask relevant questions following a lecture.

7. To test your hard work so far and see whether you have understood the reading take the 'Pre-class test' on Moodle.

These are other sources for you to explore and aid discussion in class:

An introduction to Parliament

<https://www.youtube.com/watch?v=RAMblz3Y2JA&t=2s>

UK Parliament tour - House of Commons Chamber

<https://www.youtube.com/watch?v=0ToKcEvqXuM>

UK Parliament tour - House of Lords Chamber

<https://www.youtube.com/watch?v=-wVlIfyvGfU>

Diversity and Parliament: how has Parliament changed?

https://www.youtube.com/watch?v=sS03_sqvjOs&list=PLj3mInRJqlem7vWn0CEIE5WyldWGaRFIq

In class (Monday 7 Oct, 6pm)

You will learn that the English Legal System's main 3 legal sources are legislation, case law and international law. In this module you will be focusing on legislation and case law, but you may come across some international and European cases or even international agreements (such as the European Convention on Human Rights (ECHR)).

Along with the above substantive knowledge, this module – with the support of your lecturer and discussions with your fellow students- will help you to develop or finalise and sharpen core academic and transferable skills.

Academic skills are those which you are expected, as a student, to use in your writing. These could be referencing, essay writing and others. However, there are many other skills which you will be expected to have as a student, but also in your current or future employment- and these are called 'transferable' skills, because they are developed while being a student but can be transferred to other contexts such as employment (and this does not have to be paid employment; it could be a volunteer engagement or any other activity which may require interaction with other people).

Remember! It is likely that you will be familiar with most of the skills which this module will focus on, and it may well be that you are actually very good at some of these skills. If this is the case, it is very good and you should embrace this- consider the exercises in this module as an opportunity to refresh these skills or even to polish them; do not forget that while

you may have these skills, this module will help you to channel these to a specific context- that of the study and application of the law.

However, it may well be that you do not have the above skills at all (although, most of the time, students have these skills but they do not know they have them- these skills are 'dormant' and they need to be woken up!). If this is the case, you want to make sure that you complete all tasks, both on Moodle and in preparation for class. If you feel that you may need additional support you can contact the programme director (contact details are at the beginning of this guide) and arrange a one-to-one tutorial; you can also contact the Learning Development Staff (contact details on Moodle) for a tutorial or attend free Birkbeck academic workshops (details on Moodle).

The most important thing to remember when you get stuck, is to ask for help!

1. You will first discuss with your lecturer the following:

- How do you understand the importance of the skills you have been introduced to: summarising in your own words; note taking; active learning?
- Why are these important?
- How confident are you in these skills?
- How easy/difficult do you think these will be to develop?
- What is plagiarism? And how do you think these skills will help you to avoid it?

2. Next, you may be asked to work in pairs. You will exchange the summary you have prepared for this class. Compare these and evaluate each other's quality of the summary.

3. Your lecturer will call you back to plenary. Do not be shy, volunteer to discuss the quality of your summary (be honest).

4. Next, your lecturer will give you a brief on statutory law.

Have your scrap-notebook ready for you to take notes of key points from the lecture. You also may want to write down any questions that you may have and ask them at the end (or raise your hand to draw your lecturer's attention).

5. Your lecturer will lead this discussion and you may be asked to work in pairs or groups. Read the extract below from your textbook (p.43) and address the following:

- Each group will summarise in their own words the information given; this should be clear enough, so it can be conveyed to the other groups. You may want to appoint a spokes-person.
- Share your summaries.
- Be prepared to give and receive feedback on the quality of your summaries.

- Important: discuss in plenary the main issues raised in the source. What do you make of these?

Modernising the House of Lords

The former Prime Minister, Lloyd George, described the House of Lords as 'a body of five hundred men chosen at random from amongst the unemployed'. Today's desire for reform might partly reflect public discontent at the 'cash for honours' controversy, when there were suggestions that individuals had been made Lords in return for donations to political parties. Such a reform could also provide a response to the recent scandal that some members of the Lords appear to have arranged for legislation to be amended in return for receiving large sums of money from private companies.

At the moment the House of Lords is a chamber which legislates on behalf of the people but is not held to account by the people.

Traditionally, hereditary peers have sat in the House of Lords and this right was passed down from father to son. Membership of the House is currently undergoing a major reform to remove the role of the hereditary peers. Their right to sit and vote in the House of Lords was ended in 1999 by the House of Lords Act, but 92 members were elected internally to remain until the next stage of the Lords reform process.

The Royal Commission for the Reform of the House of Lords, chaired by Lord Wakeham, published its report in January 2000. It recommended that there should be a chamber of about 550 members. Only a minority would be elected, to represent the regions; the remainder would be appointed by an independent Appointments Commission. It would be responsible for selecting members who were broadly representative of British society. Approximately 20 per cent of the House of Lords' members would be politically independent and the others would reflect the political balance as expressed by the last general election. The Appointments Commission would be under a statutory duty to ensure that at least 30 per cent of new members were women and that minorities were represented in numbers at least proportionate to their representation in the total population. The powers of the new chamber would be broadly comparable with the present House of Lords.

In 2011, the coalition Government announced its proposals for House of Lords reform, with the publication of a White Paper and a House of Lords Reform Draft Bill. The key proposals are that there should be a smaller chamber of 300 members with 80 per cent elected and 20 per cent appointed. Elected members would be elected for a 15-year term on a staged basis – one third every five years. The appointed members would be chosen by an Appointments Commission, with 20 members being appointed at the same time as the elected members. The appointed members would be expected to make a 'non-party political' contribution to the work of the chamber. All members would be allowed to serve only one 15-year term.

6. Within the academic context, the point of summarising information, is to then use it to answer questions. Now you will be introduced to short-answer questions. The aim of short-answer questions is to slowly build up your ability to write solid and well structured paragraphs.

Your lecturer will lead this task and you may be asked to work in small groups before sharing your answers in plenary. The following short-answer questions should be written in one paragraph (c.170-200 words). This is where the note-taking you did at home will come in handy.

Before approaching the questions (and any question in your future studies) you should understand what the question is asking you to do. These are the 'process' words (more on these on Moodle). Your lecturer will briefly explain the importance of understanding what the question is asking you to do. The process words in the questions in task 7 are as follows:

Describe: this means that you are required to give a detailed account of something; these could include the main characteristics or features of something.

Explain: this means that you are required to make clear (give reasons) why something happens, or why something is the way it is.

7. For the next task you may be asked to work independently, in pairs or in groups. Please follow your lecturer's instructions.

Attempt answering question A and then question B.

Be mindful of what they are asking you to do. The answers should be between 170-200 words. To do that, you will have to use your notes (rather than the textbook) from your class preparation, and any other notes you took in class today.

Question A (level of difficulty: 1)

Describe the stages of the law-making process in Parliament.

Question B (level of difficulty: 2)

Explain how the different options to the reform of the House of Lords differ from its present composition.

8. When ready, you will discuss the following in plenary with your lecturer in relation to the answers to the questions above:

- What do you think are the strengths and weaknesses of the law-making process in Parliament?
- Should the House of Lords' composition change? Explain.

9. Now you will have the opportunity to discuss the quality of your answers either in small groups or/and in plenary.

The following are the criteria for 'testing' whether you have the structure of the short questions right:

- ✓ Is all the information in the paragraph in your own words (using the notes written in your own words is fine, you do not need to summarise these again)?
 - If you have copied some of the information directly from the textbook, it means that your answer should be perfected.
- ✓ Does your answer have one identifiable key point?
 - If you identify more than one key point, it means that your answer should be perfected.
- ✓ Is the opening sentence indicative of what the answer is going to tell the reader?
 - If not, reconsider the first sentence- it may introduce the key point of the paragraph, and by reading it, the reader should get a good idea of the content of the paragraph.
- ✓ Are your sentences reasonable in length? Not too short and not too long?
- ✓ Have you indicated at the end of the question the pages you have summarised your information from?
- ✓ Consider any other element suggested by your lecturer.

Your lecturer will wrap up the discussion- make sure you ask any questions that you may have.

Saturday Skills:

12 October, 10am-5pm

This Saturday Skills day is fundamental for two reasons:

1. You will be given a brief on, and opportunity to familiarise yourself with the policy related to unfair academic practice (i.e. academic offences such as plagiarism). This is important given the stronger policies now followed by universities in dealing with students' academic misconduct.

Students are told about plagiarism but most of the time they do not fully understand the implications that such a practice may have on their academic progress. Therefore, in this class you will learn about the plagiarism policy, procedures and penalties at Birkbeck.

2. You will be given a brief on, and opportunity to practice referencing and citation skills; you will also look into how to effectively use academic/non-academic sources.

This part of the session is important because it will allow you to understand and practice correct use of citation, which in turn will guarantee that you will not, unintentionally, plagiarise.

This session will start at 10am and it may finish earlier than 5pm; therefore, please make sure you mindfully arrange your travel and in case that we finish earlier than predicted you can always spend some time in the library. Please bring a packed lunch.

In case it is impossible for you to attend, the taught parts of the day will be recorded, although there is nothing like asking questions in real time.

Whether you attend the session or not, it is recommended that you complete the short post-session test on Moodle to check your understanding and guarantee that all is clear to you, especially regarding plagiarism.

Important: this session is taken as evidence that you have been briefed on the above; therefore, an unfair academic practice, even if a minor first offence, will not be considered lightly.

There is no preparation for this class.

Week 3: Statute Law 2

Class preparation

IMPORTANT: by the end of this week (18 October by 4.30pm) you will have to complete the Skills multiple choice assessment on Moodle.

In this week's preparation you will be introduced to the most popular and important legal database: Westlaw.

This will also be the first time you access Birkbeck eLibrary (from the website- so you do not need to visit the library, you just need a computer connected to the internet).

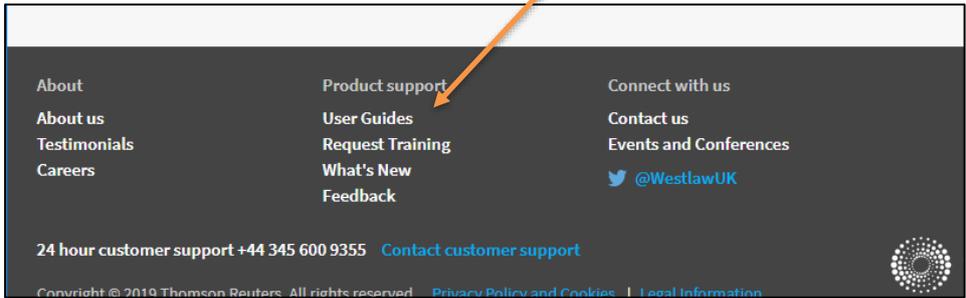
Here you will find step-by-step guidance; you may find useful following this initially. By the end of this course, you will become an expert at finding materials on the eLibrary and Westlaw, so please do not worry if initially it feels a bit overwhelming.

Think about your time management: look at the preparation you are required to do below and consider how you will time manage it, so you arrive to class prepared. Take a few moments to think about it, and do not forget that you may need to integrate this preparation around other engagements that you may have this week.

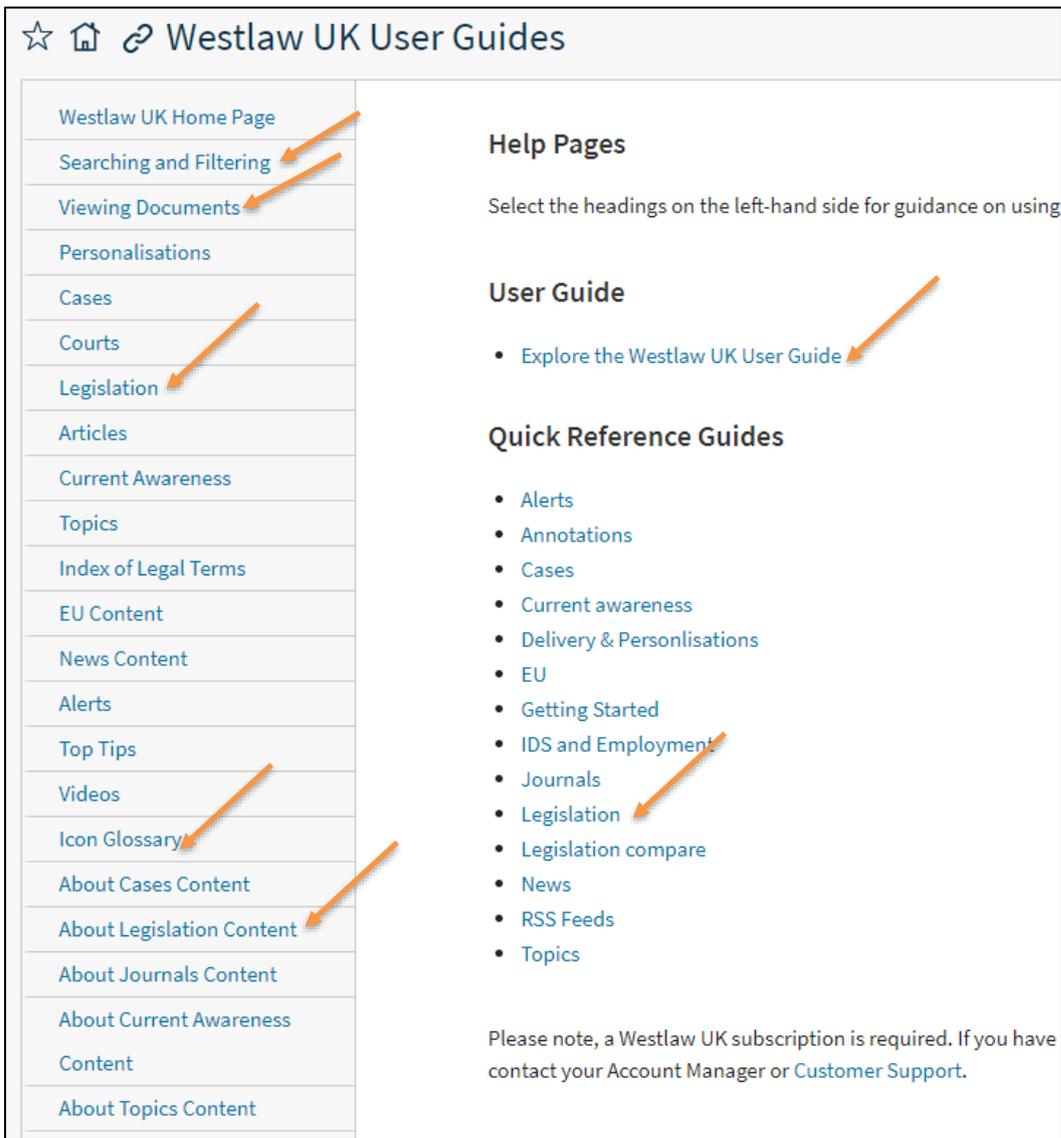
Preparation tasks:

1. To access Westlaw on BBK eLibrary please follow these instructions:

- access BBK library through My Birkbeck
- click on 'databases' and scroll down to the letter W
- click on Westlaw UK
- the first time you access Westlaw you will be asked to set up a One Pass account
- whenever you access Westlaw you will be asked to sign in- please first choose the institution (Birkbeck) and then insert your IT Services username and password
- this will bring you to the main page of Westlaw
- scroll down to the bottom of the page and click on User Guides



- Several links to guides will come up. Click on those related to legislation and skim read through them. By doing so you should get an idea of an effective reading of a legislation and the understanding of the meanings of wordings and symbols which you may come across. In particular, search for guidance on Status Icons and make sure you take a note of that (do not log out of Westlaw, you will need it again for task 3).



2. Access the following source- you will find it on Moodle under week 3: E. Finch and S. Fafinski, *Legal Skills* (6th edn, OUP 2017) chap. 3: using legislation (3.1 Anatomy of an Act of Parliament), pp.46-55.

Skim read it first; then look at the Act below and identify the different elements of an Act as explained by Finch and Fafinski (you can make notes on it):



CHAPTER 37

An Act to amend the law in relation to the making and disposing and importation of flick knives and other dangerous weapons. [14th May, 1959]

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

- 1.—(1) Any person who manufactures, sells or hires or offers for sale or hire, or lends or gives to any other person—
- (a) any knife which has a blade which opens automatically by hand pressure applied to a button, spring or other device in or attached to the handle of the knife, sometimes known as a "flick knife" or "flick gun"; or
 - (b) any knife which has a blade which is released from the handle or sheath thereof by the force of gravity or the application of centrifugal force and which, when released, is locked in place by means of a button, spring, lever, or other device, sometimes known as a "gravity knife",

Penalties for offences in connection with dangerous weapons.

shall be guilty of an offence and shall be liable on summary conviction in the case of a first offence to imprisonment for a term not exceeding three months or to a fine not exceeding fifty pounds or to both such imprisonment and fine, and in the case of a second or subsequent offence to imprisonment for a term not exceeding six months or to a fine not exceeding two hundred pounds or to both such imprisonment and fine.

(2) The importation of any such knife as is described in the foregoing subsection is hereby prohibited.

Short title, commencement and extent.

2.—(1) This Act may be cited as the Restriction of Offensive Weapons Act, 1959.

(2) This Act shall come into operation at the expiration of the period of one month beginning with the day on which it is passed.

(3) This Act shall not extend to Northern Ireland.

PRINTED BY SIR JOHN ROUGHTON SIMPSON, C.B.
Controller of Her Majesty's Stationery Office and Queen's Printer of Acts of Parliament

LONDON: PUBLISHED BY HER MAJESTY'S STATIONERY OFFICE

Price 3d. net

PRINTED IN GREAT BRITAIN

(37064)

3. Still on Westlaw, you will now retrieve a piece of legislation. This is a fundamental skill for students who study law, but it will also develop your IT skills and confidence in dealing with databases and online materials (hence an important transferable skill).

Firstly, you will watch an 8-minute lecture-cast on how to find legislation. To find the video on Westlaw, follow the same steps for task 1. Once you are on the User Guides page with all the links to the different guides, identify on the left of the screen the link for Videos. Scroll down the videos page and click on the video 'Finding Legislation'. Watch and listen to it carefully.

Next, test yourself and search for this legislation:

The Restriction of Offensive Weapons Act 1959 (c.37)

When you find the legislation, you may want to download it and save it on your computer or even print it. You will be referring back to this legislation during the forthcoming weeks.

(Please do not worry if you have struggled to identify it, this may be your first time doing something like that. You are encouraged to try again, but just in case, this is the link for the legislation- before clicking on the link, make sure that you are already logged into Westlaw via the BBK eLibrary

<https://signon.thomsonreuters.com/federation/oa?entityID=https://idp.bbk.ac.uk/openathens&returnto=https://uk.practicallaw.thomsonreuters.com/Document/I608FDC41E42311DAA7CF8F68F6EE57AB/View/FullText.html%3FskipAnonymous%3Dtrue>)

In class (Monday 14 Oct, 6pm)

Navigating legislation is an important legal skill. This week's aim is to help you develop your understanding of the purpose of legislation, including its structure and the importance and impact of legislative amendments. To do so, you will be introduced to the skills of close-reading and critical reading.

The Restriction of Offensive Weapons Act 1959 s.1 (c.37) will be used for that purpose.

1. By way of consolidating your knowledge acquired in the preparation for this week, your lecturer will open up the discussion, and you will consider the following questions under the snapshots taken from Westlaw:

Restriction of Offensive Weapons Act 1959 c. 37

Whole Document

Preamble

 s. 1 Penalties for offences in connection with dangerous weapons.

 s. 2 Short title, commencement and extent.

- i. what does the ✓ means?
- ii. what does the ! in S.1 means?
- iii. which area of law is this statute supposed to regulate?

Next, this is a snapshot taken from 'Provision Details' (Westlaw):

Restriction of Offensive Weapons Act 1959 c. 37			
Overview Document			
Proposed Draft Amendments			
	Provision	Amendment notes	Effective date
	s. 1(1)(a)	substituted by Offensive Weapons Bill 2017-19 (HL Bill 149) s. 21(1) (Lords' First Reading, November 29, 2018)	date to be appointed
	s. 1(1A)-(1C)	added by Offensive Weapons Bill 2017-19 (HL Bill 149) s. 22(2) (Lords' First Reading, November 29, 2018)	date to be appointed
	s. 1(2)	words substituted by Offensive Weapons Bill 2017-19 (HL Bill 149) s. 22(3) (Lords' First Reading, November 29, 2018)	date to be appointed
	s. 1(2D)-(2I)	added by Offensive Weapons Bill 2017-19 (HL Bill 149) s. 22(4) (Lords' First Reading, November 29, 2018)	date to be appointed

- i. With the help of your lecturer, consider what the above table can tell you about the Act?
- ii. The following is the new draft legislation, and you can see the items deleted and the ones which were added; how do these make the Act different from its original version?



Restriction of Offensive Weapons Act For educational use only 1959 c. 37

s. 1 Penalties for offences in connection with dangerous weapons.

England and Wales

1.- Penalties for offences in connection with dangerous weapons.

(1) Any person who manufactures, sells or hires or offers for sale or hire, or exposes or has in his possession for the purpose of sale or hire or lends to gives to any other person-

(a) ~~any knife which has a blade which opens automatically by hand~~

any knife which has a blade which opens automatically-

(i) from the closed position to the fully opened position, or

(ii) from a partially opened position to the fully opened position,

by manual

pressure applied to a button, spring or other device in or attached to the ~~handle of the knife,~~ knife, and which is sometimes known as a "~~flick knife~~" or "~~flick gun~~"; "**flick knife**" or "**flick gun**"; or

(b) any knife which has a blade which is released from the handle or sheath thereof by the force of gravity or the application of centrifugal force and which, when released, is locked in place by means of a button, spring, lever, or other device, sometimes known as a "*gravity knife*",

shall be guilty of an offence and shall be liable on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding level 4 on the standard scale or to both such imprisonment and fine.

(1A) Any person who possesses any knife of a kind described in subsection (1) is guilty of an offence.

(1B) A person guilty of an offence under subsection (1A) is liable-

(a) on summary conviction in England and Wales, to imprisonment for a term not exceeding 51 weeks, to a fine or to both;

(b) on summary conviction in Scotland, to imprisonment for a term not exceeding 6 months, to a fine not exceeding level 4 on the standard scale or to both.

(1C) In relation to an offence committed before the coming into force of [section 281\(5\) of the Criminal Justice Act 2003](#), subsection (1B)(a) has effect as if the reference to 51 weeks were to 6 months.

(2) The importation of any ~~such knife as is~~ **of a kind** described in ~~the foregoing~~ subsection (1) is hereby prohibited.

(2D) It is a defence for a person charged in respect of any conduct of that person relating to a knife of a kind described in subsection (1)-

(a) with an offence under subsection (1), or

(b) with an offence under **section 50(2) or (3) of the Customs and Excise Management Act 1979,**

to show that the conduct was only for the purposes of making the knife available to a museum or gallery to which this subsection applies.

(2E) It is a defence for a person charged with an offence under subsection (1A) to show that they possessed the knife only in their capacity as the operator of, or as a person acting on behalf of, a museum or gallery.

(2F) If the operator of, or a person acting on behalf of, a museum or gallery to which this subsection applies is charged with hiring or lending a knife of a kind described in subsection (1), it is a defence for them to show that they had reasonable grounds for believing that the person to whom they lent or hired it would use it only for cultural, artistic or educational purposes.

(2G) Subsection (2D) or (2F) applies to a museum or gallery only if it does not distribute profits.

(2H) In this section "*museum or gallery*" includes any institution which has as its purpose, or one of its purposes, the preservation, display and interpretation of material of historical, artistic or scientific interest and gives the public access to it.

(2I) A person is to be taken to have shown a matter mentioned in subsection (2D), (2E) or (2F) if-

(a) sufficient evidence of the matter is adduced to raise an issue with respect to it, and

(b) the contrary is not proved beyond reasonable doubt.

The following is a snapshot from www.parliament.uk of the page concerning the Offensive Weapons Bill. By way of consolidating your knowledge about the creation of legislation by parliament, consider with your lecturer the following:



- how many stages has the Bill been through already?
- at what stage is the proposed Bill currently in (at the time when this snapshot was taken)?
- how many more stages does the Bill have to go through before it receives Royal Assent?

By the time you have started this course the Bill will have received its Royal Assent and is an Act now.

Note that you will be working with the original version of the Act from now on.

2. Some Acts will have explanatory notes. Although these do not have legal authority, they clarify what the government of the day was intending. This is a good point to remember when you look at judges' statutory interpretation.

However, the Restriction of Offensive Weapons Act 1959 (c.37) does not have explanatory notes; therefore, by only reading the Act itself, it may be difficult to fully understand what parliament really intended when enacting this legislation.

Therefore, you may need to use some investigative skills, or better still, you will be practising 'close reading'- this is an important skill and it reflects the ability to only pick up relevant information and understand its meaning; sometimes 'close reading' may also suggest 'reading between the lines'.

Follow your lecturer's instructions now, and you may be asked to work in pairs before sharing your findings in plenary:

- i. what is the actual offence described in the Act?
- ii. how many 'acts' (or behaviours) does the Act criminalise?
- iii. which court will the offender be tried in?
- iv. what may this suggest about the severity of the crime?
- v. what are the penalties for such an offence?

3. Now, you will try and understand the purpose of this legislation when it was enacted. The Historical Hansard archive (available online) reveals several debates Parliament had on the question of restriction of these types of knives. Below you will find parts of these debates across the years 1956-1959.

Note that this is your opportunity to think about and develop your critical reading skills. This is a skill which is not only fundamental for your studies (at any level) but is also a transferable skill, hence, it is highly appreciated by employers.

Critical reading means that whilst reading your brain will also do some or all of the following (this is called multi-tasking, meaning doing more than one thing at the same time):

- a) identifying the line of reasoning in the text (line of reasoning is easily understood as 'a set of reasons given in support of an idea, action or theory'. In this course we will also refer to it as an 'argument')- Your lecturer may explain the difference between an academic argument and an argument that you may have with a friend.
- b) critically evaluate the line of reasoning (this means weighing up the evidence both for and against).

- c) checking for hidden assumptions or agendas ('assumptions' refer to anything that is taken for granted in the presentation of the argument. Most line of reasoning [arguments] will have assumptions, but as a scholar you will have to understand whether these assumptions may be biased or stereotypical, e.g. girls like pink; boys do not cry).
- d) identifying evidence in the text (and - is this evidence valid?)
- e) identifying the writer's (or speaker's) conclusions.
- f) deciding whether the evidence given supports these conclusions.

Now, critically read (bear in mind the above instructions for critical reading) the extracts below and answer the following questions. Your lecturer may ask you to work in pairs or small groups before sharing your findings in plenary:

- i. At which House did these debates take place?
- ii. What are the two competing interests coming through in these debates?
- iii. How many lines of reasoning (arguments) are there? Identify these.
- iv. Are there any hidden assumptions in the debate?
- v. Are the lines of reasoning backed up by evidence?
- vi. Do you think one interest should be overthrown by the other? If so, which one?
- vii. Do you think criminalisation of flick knives is the best thing to do regarding crime prevention?
- viii. This is a tricky question: although you have not been given access to all the relevant debates concerning the Bill, the below are perfectly representative- can you identify something missing in these debates which nevertheless is present in the legislation?

Spring-Clip Knives: HC Deb 25 October 1956 vol 558 cc798-9

[Mr. Janner](#) asked the Secretary of State for the Home Department whether he has now decided to take action to keep spring-clip knives out of the hands of young persons ; and if he will immediately introduce legislation to make the sale, loan or gift of such knives to young persons illegal.

[The Secretary of State for the Home Department and Minister for Welsh Affairs \(Major Gwilym Lloyd-George\)](#) While I agree that it is desirable to keep spring-clip knives out of the hands of young persons, I do not consider that this object could best be achieved by legislation of the kind suggested by the hon. Member for Leicester, North-West (Mr. Janner). My right hon Friend the President of the Board of Trade and I are in consultation with the representative trade associations about the possibility of cutting off the supply of these knives, whether imported or otherwise, by voluntary action on the part of traders.

[Mr. Janner](#) Is not the right hon, and gallant Gentleman aware that there has been considerable trouble already? Is he going to wait until there are further murders by means of these knives before doing something practical? Can he tell the House when he is likely to get some reply from the associations to which he has referred the matter?

[Major Lloyd-George](#) Consultations have been going on and, up to date, have been very satisfactory. Incidentally, I share the hon. Member's views about the whole of this knives question, but legislation is not easy. Definition is not easy because many knives, never mind clip knives, are legitimate knives, used for trade in this country.

Spring-Clip Knives: HC Deb 28 March 1957 vol 567 c1317

[Captain Pilkington](#) asked the President of the Board of Trade for what trades it is necessary to import flick knives.

[Sir D. Eccles](#) Fishermen, seamen, farmers, butchers and electricians.

[Captain Pilkington](#) Does not the potential danger of these knives outweigh their convenience in these trades? Why cannot ordinary knives be used?

[§Sir D. Eccles](#) The answer is that workers in these industries need to open a knife when their hands are extremely cold or when they can use only one hand.

[Mr. Hastings](#) Is the right hon. Gentleman aware that these flick knives are carried to some extent by delinquent children and are often found on them when they are admitted to remand homes and are taken from them by the police? Are they not a real danger?

Flick-Knives: HC Deb 21 November 1957 vol 578 cc547-8

[Mr. Janner](#) asked the Secretary of State for the Home Department whether he is aware that there have been further cases recently of the use of flick-knives for the commission of assaults; whether his attention has been drawn to the remarks of the learned judge at Durham Assizes recently that, if he could, he would make it an offence for anyone to sell flick-knives; and whether he will reconsider his decision in respect of legislation banning the sale of these knives to young persons.

[Mr. R. A. Butler](#) I have seen reports of some recent prosecutions arising out of the use of flick-knives; and the rider recommending prohibition of their sale which was added to their verdict by the jury and endorsed by the Judge in a recent case is now before me. I am giving the matter careful consideration, but in view of the extensive powers which the police already have to deal with this problem under the Prevention of Crimes Act, 1953, I am not at present convinced that legislation of the kind proposed by the hon. Member is necessary.

[Mr. Janner](#) Is not that a shocking thing? Is not the Minister aware that there have been murders committed by the use of these flick-knives since I last put the question? Is he

aware that a judge said: What an invention of the devil is a flick-knife, which unhappily so often features in crimes of violence in this country, often committed by young people. Is he aware that some of the main journals in this country, such as the Yorkshire Post, the Leicester evening papers and other papers, have had leading articles condemning the present position, and will he do something to prevent any further murders by these knives?

[Mr. Butler](#) I have consulted a number of chief constables, who reply that such people as farmers, fishermen, butchers, cobblers, blacksmiths and electricians use these knives. Therefore, legislation would be very difficult. I have inquired where these knives come from, and I find that a large number come from abroad. I understand from my right hon.

Flick Knives: HC Deb 11 March 1958 vol 584 cc221-2

[Mr. Janner](#) asked the President of the Board of Trade what evidence he has that young people within school ages have occasion to use flick knives for employment or industrial purposes; whether he is aware that a boy aged 13 years recently pressed a flick knife against the clothing of another boy near the region of his heart, and stabbed a 13-year-old girl in Leicester; and whether he will now prevent the importation of these knives

Restriction Of Offensive Weapons Bill: HL Deb 30 April 1959 vol 215 cc1194-206

[LORD MORRIS OF KENWOOD](#) My Lords, I beg to move that this Bill be read a second time [...] I am particularly distressed by the fashion or cult which has grown up among our children and young people who seem to regard these instruments of violence as being an essential part of their dress. They seem to think it smart and clever to carry these knives, and appear to get some extraordinary thrill from the actual flicking open of the blade [...] I would submit that the danger of these weapons lies in the fact that they can be held in the hand, unopened and unseen, and then, by the pressing of a button can suddenly and dramatically become an extremely lethal weapon.

Week 4: Statutory Interpretation 1

Class preparation

This week you will be studying one of the most fascinating topics in the English Legal System: Statutory Interpretation.

Firstly, browse the list of contents of your textbook and identify the chapter related to Statutory Interpretation.

Next, look at the preparation tasks below and consider how you are going to time manage these, so you arrive at class prepared. Please note that this week's textbook chapter is longer than the one on Statute law.

1. Skim read the chapter (no need to take notes at this stage). Remember, skim reading is a quick reading which merely gives you an idea of the content; you do not actually need to attempt to understand the content itself.

2. Next, write down in your scrap-notebook the following question:

Why may the courts find an Act of Parliament unclear?

3. Now read the introduction on pages 56-57 and highlight only the information which you think can answer this question.

4. Then, in your scrap-notebook summarise this information in your own words. In summarising the information, you may find it useful to remind yourself of the techniques introduced in week 2.

5. Finally, use this information to answer the question.

When you feel confident of your answer (it may well be that you will have to re-write it more than once), transfer it to a clean sheet (still on the scrap-notebook), so it is readable and be prepared to share this in class.

6. Using your scrap-notebook write on a blank page the title:

How are statutes interpreted?

7. Now, as you did before, highlight the relevant information from your textbook which you think may address the question (focus only on p.57); next, summarise this in your own words, and try answering the question. Remember, this is a summary, and therefore the writing will be shorter than the information in the textbook).

8. Next, under the above summary, copy the following table (you will need more space than the one you have here):

	Rule:	Rule:	Rule:	Rule:
Definition:				
Case law examples (include the case name and a brief summary of the case, so you can remember it)				
Advantages of the rule				
Disadvantages of the rule				
Any other notes that you want to make				

9. Now highlight and then summarise the information on the rules of interpretation (pp.57-63 [not including Rectification]). Make sure you leave space for adding information for when you discuss this in class.

10. Now, go to the section 'Aids to interpretation', highlight and then summarise this section in your own words. Be selective of the information that you summarise, and consider: 1. Whether to include the summary case law? 2. In case you do, what would be the best way of summarising these without making the writing cloggy (imagine a clogged-up water pipe).

11. The following is a challenging task because the information includes some legal theory- this is a good opportunity to test your skills:

In your scrap-notebook write the following question on a clean page:

What may influence the decision judges take in their approach to statutory interpretation?

Now, go to the section 'How judges really interpret statutes?' (p.74-77) and highlight the information you think can help you to answer this question. Summarise it in your own words and try answering the question.

When you feel confident of the answer (it may well be that you will have to re-write it more than once), transfer it to a clean sheet, so it is readable and be prepared to share this in class.

12. To test your hard work so far and see whether you have understood the reading take the 'Pre-class test' on Moodle.

In class (Monday 21 Oct, 6pm)

Legislation is one of the 3 main sources of English law; this is created by Parliament. However, it is up to the judiciary to apply this in practice. There is a saying, that once an artist completes an artwork and it is publicly exhibited, the viewer can interpret it as he or she likes; the meaning the artist gave the artwork is insignificant once it is presented to the public. The same observation can be made regarding judges' interpretation of legislation- and this is what you will be looking at when discussing statutory interpretation. You will also continue perfecting your short-answer skills as well as citation skills.

1. This class discussion will start with the 2 questions you were asked to answer in your preparation. Do not be shy and share your writing; this is your opportunity to receive feedback from your lecturer and your peers:

Why may the courts find an Act of Parliament unclear?

What may influence the decision judges take in their approach to statutory interpretation?

Your lecturer may also give a brief on statutory interpretation; make sure you take notes of important key points and of any questions that you may have (either write these down and ask them at the end of the brief or raise your hand to draw your lecturer's attention).

2. You have discussed the content to these questions, but content is not everything and you also need to make sure that the structure of your writing is appropriate, that is, clear and coherent- in other words, does it make sense?

You may be asked to work in pairs or small groups, and you will compare and contrast the structure and content of the above questions.

Then, your lecturer will call you back to discuss these in plenary. Again, do not be shy - share the weaknesses and strengths that you have identified in your writings.

3. Now you will have a specific discussion with your lecturer and/or in small groups on the rules of interpretation. Using the table you filled in for your preparation on the rules of interpretation, compare and contrast that with your fellow students' tables and see whether you have missed anything, or whether you have included redundant (not needed) information.

You will discuss the advantages and disadvantages of the rules with your lecturer.

4. Now you will have the opportunity to consolidate the knowledge and skills you have acquired so far; you may initially be asked to work on your own, then you will discuss your answer with your lecturer:

- i. Imagine that you need to explain to your friend the meaning of statutory interpretation.
- ii. Choose any of the rules of interpretation (only one).
- iii. Go back to your notes and see which information you can use to explain this rule.
- iv. You want to make sure that you use at least one (if not more) case law examples to explain that rule to your friend.
- v. Your answer should be about 200 words.
- vi. You may want to consider the following structure for your explanation:
 - ✓ Brief definition of statutory explanation (this could be your opening sentence)
 - ✓ Definition of the rule which you have chosen (this will be your key point)
 - ✓ Explaining the rule by drawing upon case law examples (think about how the rule was applied in the case, and you may want to briefly mention the implication of that on the decision)

5. When ready, you will discuss the following in plenary with your lecturer in relation to your answer above. Here you have the opportunity to demonstrate some independent thought- what does this mean? It means that you have an answer to one question, but you are going to use this answer to address a different question- lets try:

Is it a problem that the four approaches to statutory interpretation are so inconsistent with each other that a different result could be reached in the same case if the judges simply followed a different approach?

6. Now you will have the opportunity to discuss the quality of your answer either in small groups or/and in plenary. The following are the criteria for 'testing' whether your structure of the short questions is right (you have already used these in week 2):

- ✓ Is all the information in the paragraph in your own words (using the notes written in your own words is fine, you do not need to summarise these again)?
- ✓ If you have copied some of the information directly from the textbook, it means that your answer should be perfected.
- ✓ Does your answer have one identifiable key point?
- ✓ If you identify more than one key point, it means that your answer should be perfected.
- ✓ Is the opening sentence indicative of what the answer is going to tell the reader?

- ✓ If not, reconsider the first sentence- it should be indicative of the content of this paragraph although it does not necessarily have to be the key point of the paragraph (this may come in the next sentence).
- ✓ Are your sentences reasonable in length? Not too short and not too long?
- ✓ Have you indicated at the end of the question the pages from which you have summarised your information?
- ✓ Consider any other element suggested by your lecturer.

7. You have been introduced to plagiarism in week 2, and by now you should also be aware of the importance of citing and referencing your work (hopefully you have attended the Saturday skills workshop and you will find additional guidance on Moodle).

Use the following abstract from the OSCOLA guide to cite the textbook, legislation and case law which you have used to write your answer above. You may be asked to work independently, but then you will discuss this in pairs and finally with your lecturer:

OSCOLA GUIDE https://www.law.ox.ac.uk/sites/files/oxlaw/oscola_4th_edn_hart_2012.pdf

1.1.1 Citing cases

When citing cases, give the name of the case, the neutral citation (if appropriate), and volume and first page of the relevant law report, and where necessary the court. If the name of the case is given in the text, it is not necessary to repeat it in the footnote.

It is well represented in the case law, perhaps most notably in the expression of the no-conflict rule advocated by Lord Upjohn in *Phipps v Boardman*,³¹ and in the earlier Court of Appeal decision in *Boulting v Association of Cinematograph, Television and Allied Technicians*.³² In *Boulting* [or 'in the *Boulting* case'], Upjohn LJ said that the rule 'must be applied realistically to a state of affairs which discloses a real conflict of duty and interest and not to some theoretical or rhetorical conflict'.³³ In *Phipps*, Lord Upjohn developed his view of the rule further by adding that there must be a 'real sensible possibility of conflict'.³⁴

The relevant footnotes would appear as follows:

³¹ [1967] 2 AC 46 (HL).

³² [1963] 2 QB 606 (CA).

³³ *Boulting* (n 32) 638. OR ³³ *ibid* 638.

³⁴ *Phipps* (n 31) 124.

The numbers at the end of footnotes 33 and 34 are called 'pinpoints'; they give the page on which the quotation can be found. It is also acceptable to include the full case reference in all footnotes.

1.1.2 Citing legislation

A citation in a footnote is not required when citing legislation if all the information the reader needs about the source is provided in the text, as in the following sentence:

This case highlights the far-reaching judicial role ushered in by the Human Rights Act 1998.

Where the text does not include the name of the Act or the relevant section, this information should be provided in a footnote.

British courts must only consider Strasbourg jurisprudence: they are not bound by it.¹

¹ Human Rights Act 1998, s 2.

1.1.3 Citing secondary sources

If relying on or referring to a secondary source, such as a book or an article, provide a citation for the work in a footnote.

Hart wrote that the doctrine of precedent is compatible with ‘two types of creative or legislative activity’: *distinguishing* the earlier case by ‘narrowing the rule extracted from the precedent’, and *widening the rule* by discarding ‘a restriction found in the rule as formulated from the earlier case’.³⁴

³⁴ HLA Hart, *The Concept of Law* (2nd edn, Clarendon Press 1994) 135.

EXAMPLE of subsequent citation of a book

This example shows a citation of a book which is first cited (in full) at footnote 1, cited again in footnote 26 with a cross-citation to footnote 1, and then cited again at footnote 27.

¹ Robert Stevens, *Torts and Rights* (OUP 2007).

...

²⁶ Stevens (n 1) 110.

²⁷ *ibid* 271–78.

Your lecturer will wrap up the discussion- make sure you ask any questions that you may have.

Week 5: Statutory Interpretation 2

Class preparation

This week's class requires little preparation; this is because you will also start thinking about your first assessment. Do not be fooled by what seems to be a small assessment, and a good practice is to start preparing at least 2 weeks in advance. Note that preparation will include: understanding what the question is asking you to do; reading; taking notes; summarising these notes in your own words; drafting the answer once; reading the answer and tweaking it again as needed (this is your second draft); and you may need to re-read it and continue drafting and tweaking it until you are happy with the result. See on Moodle an explanation and instructions for this first writing task.

Think about your time management: look at the preparation you are required to do below and the instructions for the first assessment and consider how you will time manage that, so you arrive at class prepared and you submit the assessment on time. Take a few moments to think about it, and do not forget that you may need to integrate this preparation around other engagements that you may have this week.

Preparation tasks:

This week, you go back to investigate Westlaw, the legal database. You will follow the same instructions you were given to access Westlaw in week 3, but this time for case law rather than legislation.

1. Go back to week 3 preparation and follow the steps to access Westlaw via BBK eLibrary. Once you are on the Westlaw page, scroll down to User Guide and click on it. You have already explored the general Westlaw UK User Guide, so unless you want to refresh your memory, investigate all the links related to cases, in particular, try identifying the meaning of the following terms: Positive Case Descriptors; Negative Case Descriptors; and Neutral Descriptors (stay on Westlaw, you will need it again for task 3).

☆ 🏠 🔗 Westlaw UK User Guides

Westlaw UK Home Page
Searching and Filtering
Viewing Documents
Personalisations
Cases 
Courts
Legislation
Articles
Current Awareness
Topics
Index of Legal Terms
EU Content
News Content
Alerts
Top Tips 
Videos 
Icon Glossary
About Cases Content 
About Legislation Content
About Journals Content
About Current Awareness Content
About Topics Content

Help Pages

Select the headings on the left-hand side for guidance on using

User Guide

- [Explore the Westlaw UK User Guide](#)

Quick Reference Guides

- Alerts
- Annotations 
- Cases 
- Current awareness
- Delivery & Personalisations
- EU
- Getting Started
- IDS and Employment
- Journals
- Legislation
- Legislation compare
- News
- RSS Feeds
- Topics

Please note, a Westlaw UK subscription is required. If you have contact your Account Manager or Customer Support.

2. Access the following source- you will find it on Moodle under week 5: E. Finch and S. Fafinski, *Legal Skills* (6th edn, OUP 2017) chap. 6: using case law (6.1 Reading UK cases), pp.121-127.

Skim read it first; then look at the extract case law below and identify the different elements of a case as explained by Finch and Fafinski (you can make notes on it):

*394 Fisher v Bell.

For educational use only



Divisional Court

Lord Parker C.J. , Ashworth and Elwes JJ.

1960 Nov. 10.

Crime—Offensive weapon—"Offers for sale"—"Flick knife" displayed in shop window with ticket bearing description and price—Whether an offence committed— Restriction of Offensive Weapons Act, 1959 (7 & 8 Eliz. 2, c. 37), s. 1 (1).

Statute—Construction—Omission—Interpretation of words used—No power in court to fill in gaps.

A shopkeeper displayed in his shop window a knife of the type commonly known as a "flick knife" with a ticket behind it bearing the words "Ejector knife - 4s." An information was preferred against him by the police alleging that he had offered the knife for sale contrary to section 1 (1) of the Restriction of Offensive Weapons Act, 1959, ¹ but the justices concluded that no offence had been committed under the section and dismissed the information. On appeal by the prosecutor:-

that in the absence of any definition in the Act extending the meaning of "offer for sale," that term must be given the meaning attributed to it in the ordinary law of contract, and as thereunder the display of goods in a shop window with a price ticket attached was merely an invitation to treat and not an offer *395 for sale the acceptance of which constituted a contract, the justices had correctly concluded that no offence had been committed.

Positive/Neutral Judicial Consideration

Court
Divisional Court

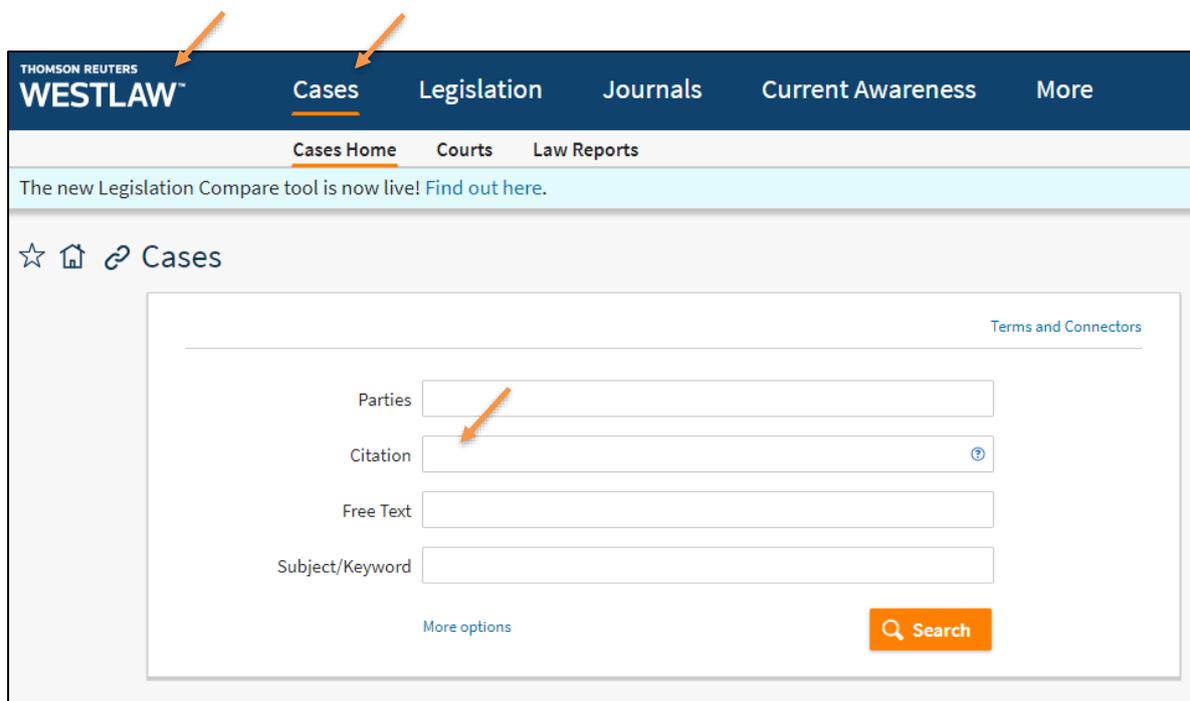
Judgment Date
10 November 1960

Report Citation
[1960] 3 W.L.R. 919
[1961] 1 Q.B. 394

3. Still on Westlaw, now you will retrieve a case law. This is a fundamental skill for a law student but it is also a transferable IT skill; finding your way around a database is not such an obvious skill.

Go back to the main Westlaw page by clicking on the title on the top left hand side of the screen: Thomson Reuters Westlaw.

At the top of this page you will have several links, click on Cases. The following search box will come up:



The easiest way of retrieving case law, is by typing the case citation in the citation box.

Type in the citation box the following case citation: 1961 1 qb 394

The case of the *Fisher v Bell* will come up:



This is an easy search because in the whole Westlaw database there is only one case law with the name *Fisher v Bell*, but this is not always the case- so in future searches you will need to make sure that you have retrieved the correct case.

Next, click on the Case Analysis and read the abstract- start thinking about what the case is about.

Then, click on the citation link [1961] 1 Q.B. 394 and read the case. You may need to read it several times and highlight words that you are not sure about, or key pointers that you think are important. You may find it useful either downloading it to your computer and/or printing it out- you will be using this case in the next few weeks and it is also the subject of the second assessment you have on this course.

Reading and understanding case law is a fundamental legal skill, but reading comprehension is also a transferable skill - if you can read and understand a case law, you will probably be able to read and understand any other complex text (e.g. a contract such as a tenancy agreement).

In whichever way you have saved the case (on your pc; taken pictures on your phone; hard copy) please make sure you bring this to class.

In class (Monday 28 Oct, 6pm)

Today you will be given the opportunity to develop several academic and legal skills (e.g. case annotation; reading comprehension); these are fundamental for your learning development so make sure these are clear to you (if you find any of these skills/concepts unclear please make sure you exercise active learning by asking your lecturer to clarify these).

This week's aim is to help you develop your understanding of statutory interpretation. This is really about the relationship between legislation and case law (or put differently, between Parliament and the judiciary).

Firstly though, you will have a discussion with your lecturer about some of the preparation you did for this class.

1. Keeping within the context of the Restriction of Offensive Weapons Act 1959 s.1 (c.37), you have been asked to read the case of *Fisher v Bell* [1961] 1 QB 394. If you have highlighted words, concepts or phrases that you did not understand whilst reading- please make sure you ask your lecturer about these.

Your lecturer will ask you about the following, do not be shy and share your answers. Please remember that you will be focusing on the aspect of statutory interpretation and not on the doctrine of precedent – you will come back to that in week 8:

- i. What does the green symbol with the letter *c* mean?
- ii. Which area of law does this case law relate too?
- iii. What are the different components of the case citation?
- iv. What is a Neutral citation?
- v. What are the facts of the case?
- vi. What is the relationship between the case and the Restriction of Offensive Weapons Act 1959 s.1(1)?

2. Today you will practice case annotation. The purpose of a case note is to provide an effective record of all important issues for the later use of the case. You can imagine this is a fundamental legal skill, and it will become handy in your future studies and career (it does not have to be a legal career but any other job that may require you to deal with a huge amount of information; hence, this is also a transferable skill).

Your lecturer will lead the discussion. You may have a brief explanation of the need for, and structure of a case note, but then you may be asked to work either independently or in pairs. Look at the instructions below by Hanson, and Twining and Miers on how to write a case note. Write your own case note for *Fisher v Bell*. Compare this with your neighbour and be prepared to share this in plenary.

Hanson (Learning Legal Skills and Reasoning, 2016, chap.10) gives us a useful indication on what a case note should include:

TABLE 10.2 INFORMATION REQUIRED FOR A CASE NOTE	
1. Formal citation of law report being noted.	9. Procedural history of the case which should indicate original claim, outcome of trial and the grounds of appeal and outcome of case in any previous appeal court.
2. Name of court.	10. The record of judicial reasoning as to why those rules applied to those facts in that way. Each judge's reasoning should be indicated separately.
3. Names of judges.	11. Decision of the court on the appeal (the outcome between the parties).
4. Date of court hearing of the case.	
5. Facts.	
6. Specific ground of appeal in the law report you are reading.	
7. Identification of applicable legal rules and cases referred to.	
8. Brief reference to what was held by the court hearing the case in the law report.	

Twining and Miers (How to Do Things with Rules, 2010, p. 275) propose the following example for the case of *R v Allen*. They explain that this is an example for a simple case note, and you may want to adopt this style:

<i>R v. Allen</i> Bigamy	
CCCR	(1872) LR 1 CCR 357 <i>Conviction affirmed</i>
<i>Facts</i>	In 1853 A married W1. In 1866 W1 died. In 1867 A married W2. In 1871, while W2 was still alive, A married W3, who was the niece of W1. Indictment for bigamy under section 57 of Offences Against the Person Act 1861: 'Whosoever being married shall marry any other person during the life of the former husband or wife ...' A's marriage to W3 was void under existing law (prohibited degrees).
<i>Issue</i>	What is the meaning of 'shall marry' in section 57? (Alternative formulation: does 'shall marry' include a 'marriage' which would in any case have been void independently of its bigamous character?)
<i>Held</i>	Per <i>Cockburn</i> LJ. 'Shall marry' means 'shall go through a form and ceremony of marriage recognised by law'. Mischief rule applied. Purpose of s. 57 is protection of <i>sacred ceremony</i> . Left open: 'fantastic forms of marriage unknown to the law' - e.g. <i>Burt v. Burt</i> . <i>R v. Fanning</i> (Irish case, 7:4 decision) not followed.
<i>Comment</i>	(a) does 'being married' have same meaning? (i.e. void ceremony followed by valid). No - <i>R v. Moscovitch</i> . Thus same word used in same section in two different senses. (b) rationale of bigamy said to be protection of <i>sacred ceremony</i> . See Glanville Williams, <i>Modern Law Review</i> , 13 (1950), 417 doubting if bigamy has clear rationale or, indeed, whether there is a need for a separate offence. ²¹

3. Now you are ready to further investigate the issues concerning statutory interpretation. Firstly, remind yourself of the wording of the Act in contention and consider why you have been given the 1959 version of the Ac:

1. [Restriction of Offensive Weapons Act, 1959, s. 1 \(1\)](#): "Any person who manufactures, sells or hires or offers for sale or hire, or lends or gives to any other person - (a) any knife which has a blade which opens automatically by hand pressure applied to a button, spring or other device in or attached to the handle of the knife, sometimes known as a 'flick knife' or 'flick gun'; ... shall be guilty of an offence and shall be liable on summary conviction in the case of a first offence to imprisonment for a term not exceeding three months or to a fine not exceeding fifty pounds or to both such imprisonment and fine, ..."

This is a great opportunity to practice your critical reading. You may want to remind yourself of the principles of critical reading you started developing in week 3:

Critical reading means that whilst reading your brain will also do some or all of the following (this is called multi-tasking, meaning doing more than one thing at the same time):

- a) identifying the line of reasoning in the text (line of reasoning is easily understood as 'a set of reasons given in support of an idea, action or theory'. In this course we will also refer to it as an 'argument')- Your lecturer may explain the difference between an academic argument and an argument that you may have with a friend.
- b) critically evaluate the line of reasoning (this means weighing up the evidence both for and against).
- c) checking for hidden assumptions or agendas ('assumptions' refer to anything that is taken for granted in the presentation of the argument. Most line of reasoning [arguments] will have assumptions, but as a scholar you will have to understand whether these assumptions may be biased or stereotypical, e.g. girls like pink; boys do not cry).
- d) identifying evidence in the text (and is this evidence valid?)
- e) identifying the writer's (or speaker's) conclusions.
- f) deciding whether the evidence given supports these conclusions.

Your lecturer will lead the discussion and you may be asked to work in pairs. The following are extracts taken from *Fisher v Bell*. Apply your critical reading skills and consider whether the prosecution and the defence have given a sound line of reasoning; who convinces you the most and why? (you may be asked to focus on only one of these abstracts and be prepared to share your thoughts in plenary).

Note that the Justices (the Magistrates Court) decided that Mr Bell was not guilty after all- do you agree with this first decision? Be prepared to discuss your findings:

Prosecution:

The defendant by his actions in displaying the knife in the window with the ticket behind it and referring to it, such actions being carried out with the object of attracting the attention of a buyer of such knife and selling the same to such buyer, had on the day in question offered the knife for sale within the meaning of the Restriction of Offensive Weapons Act, 1959. Support for that submission is to be found in *Keating v. Horwood*, where, in a prosecution under the Sale of Food Order 1921, which prohibited the offering or exposing for sale of under-weight bread, Lord Hewart C.J. held that a quantity of bread placed in a baker's motor-car and taken on a delivery round was both offered and exposed for sale. Similarly, in *Wiles v. Maddison*, Viscount Caldecote C.J. said that a person who put goods in his shop window to be sold at an excessive price could be convicted of making an offer at too high a price. Displaying goods in a shop window does not amount to an offer for sale; it is merely an invitation to treat: Therefore, the defendant is guilty.

Defence:

On the facts, the defendant at no time offered the knife for sale within the meaning of the Act. The Act upon its face prohibits the manufacture, disposition and marketing of flick knives, but it is not aimed against possession. Mere possession of such a knife, even if it is in a shop window, is not an offence within the Act. The words of section 1 are clear! "Exposed for sale" is not an offence under the section. As to *Keating v. Horwood*, there was there an obvious exposure for sale, so that it was unnecessary for the court to decide whether there was an offer for sale or not. Therefore, the defendant is not guilty.

4. By now, you must have gathered what was the contentious issue in the case. Have a discussion in class about that and consider the following (you may be asked to work in pairs before sharing your findings in plenary):

- i. Which part of the Act needed to be interpreted by the judiciary.
- ii. Why did this require interpretation?
- iii. This could have been interpreted in at least two ways, how?
- iv. What would have been the consequence for Mr Bell following each of these interpretations?
- v. Which rule of statutory interpretation did the prosecution suggest the Act should be interpreted with?
- vi. Which rule of statutory interpretation did the defence suggest the Act should be interpreted with?
- vii. Which rule of statutory interpretation did Lord Parker CJ suggest the Act should be interpreted with? How will the interpretation be read?
- viii. Lord Parker CJ was not convinced with his chosen rule of interpretation, why?
- ix. Remember what you have read in the Hansards about the need to enact this legislation. Given that, which rule would you have chosen to interpret the Act in this case?
- x. Do you think that the Lord Parker CJ interpretation is at risk of going against Parliamentary intention in relation to flick knives, or actually, it followed Parliamentary intention?

Your lecturer will wrap up the discussion- make sure you ask any questions that you may have.

Week 6:

1. Practice library session

2. Class meeting with personal tutor

This is an important week, for the following reasons:

1. You will be submitting your first assessment by Friday 8 November 4.30pm (by the end of week 6).

2. On Monday 4 November, you will attend:

- i. At 6pm a practice library session at the library with the law subject librarian Wendy Lynwood and the programme director Dr Susy Menis.

Why this session is important: as a student you really need to feel comfortable in the library environment. You also need to be familiar with all the services and opportunities provided by the library, so you can enhance your study experience. In this session you will also practice the use of the library website and Westlaw.

For more information and details of the subject librarian see

<http://www.bbk.ac.uk/library/subject-librarians>

- ii. At about 7.15pm you will have a class meeting with your personal tutor. Who is your personal tutor? Your personal tutor on this course also happens to be the course's programme director (Dr Susy Menis). You can find the Birkbeck College personal tutor policy here

<http://www.bbk.ac.uk/registry/policies/documents/personal-tutoring.pdf> but in short, what you need to know is that your personal tutor's primary role is to provide general advice and pastoral support, on academic and non-academic issues, and to suggest other sources of help.

In this session you will cover two things:

1. You will be given the opportunity to reflect on your progress. You will have a class discussion on shared strengths and weaknesses in your learning experience; you will explore with your personal tutor best practice and solutions.
2. You will be given an opportunity to give feedback on course content and teaching. This is important because it allows the course team to improve the quality of it by taking on board your feedback. Although you will be required

to fill an end-of-module questioner, this feedback is given verbally, thus facilitating a platform for discussion.

After the class discussion you will have the opportunity to speak with your personal tutor in a one-to-one session and share specific concerns.

There is no preparation for this week's class.

Week 7: Statutory Interpretation 3

Class preparation

This week you continue exploring the topic of statutory interpretation.

Think about your time management: look at the preparation you are required to do below and consider how you will time manage that, so you arrive at class prepared. Take a few moments to think about it, and do not forget that you may need to integrate this preparation around other engagements that you may have this week.

Preparation tasks:

1. Remind yourself of *Fisher v Bell* [1961] 1 QB 394 by reading the case again and identifying the relevant information for these questions; be prepared to share your answers in class:
 - i. How many judges sat at the Divisional Court for this case?
 - ii. What was the final judgment?
 - iii. Did all the judges agree with the final judgment?
 - iv. Do you agree with the final judgment?
 - v. What does it mean that the appeal was dismissed (see bottom of transcript)?
2. Either borrow or access the following text on BBK eLibrary (for a reminder on how to do that please see instructions on Moodle); if you access it online, you will be able to download (save and print) the relevant pages:

Hanson, *Learning Legal Skills and Reasoning*, Chap.13, pp. 363-379.

Be an active reader and make notes (or highlight) of the following (make sure you understand these concepts, and if you don't, ask your lecturer in class):

- i. What does it mean to think critically?
 - You may find it helpful to answer the above by creating a brief bullet-point guide (imagine that you need to explain it to a friend)
- ii. What is the difference between problems and rules?
 - You may find it helpful using a table such as this:

	Problems	Rules
Similarities		
Differences		

- iii. What is a legal rule?
- iv. Identify the key points in the construction of an argument.
- v. Read 'the role of judicial judgments in argument construction'. Summarise this section in your own words and be prepared to share it in class.

In class (Monday 11 Nov, 6pm)

Today's class is packed with legal skills- by the end of it, you should have an idea of how lawyers think! By way of introducing the skills of 'argument development' you will be discussing the interesting issue of 'Conditions of doubt'; then, you will have an opportunity to apply your knowledge and skills to a problem question- this is a typical assessment used in law degrees, but it is also an excellent tool to test your problem solving skills- something which employers look for. Remember, all these skills take time to develop and they need to be practiced, hence take any opportunity given to you during this module to engage in these skill development exercises.

1. Developing a reasoned argument:

Earlier in the module you had the opportunity to assess (evaluate) someone else's argument (a line of reasoning). Now you will be looking at developing your own.

Hanson defines argument as follows (p.365):

An argument is a series of statements, some backed by evidence, some not, which are purposely presented in order to prove, or disprove, a given position.

For now, you will look into developing simple arguments, and the following is a helpful tool to understand the building blocks of an argument:

- The premise or claim – a statement, proposition, foundation or reason for the conclusion.
- The evidence for that premise or claim.
- The conclusion – this follows logically from the premise(s) of what you are arguing. It is what you are arguing for.

Hanson connects the skill of argument development to critical thinking (p.367). Critical thinking is a skill which you have started developing earlier in the module when you were asked to critically read several extracts from Hansard and assess the arguments (the line of reasoning) made by the MPs involved in the debate concerning flick knives.

As observed by Hanson, critical thinking is not about ‘fault finding’; rather, it is about weighing up a stand point (an argument) by assessing its strengths and weaknesses. To put it simply, when you think critically- you never take anything at face value.

You may remember that earlier in the module, when assessing the MPs arguments in the Hansard extract, one of the points to consider was whether the MPs supported their line of reasoning with evidence. Without evidence there is only a personal opinion. Remember- formal argument is more than a statement of a point of view – it is also an attempt to support that view with evidence.

2. You will come back to the skill of developing an argument after looking at a special issue in the analysis of the law- The Conditions of Doubt:

Twining and Miers (How to do things with rules, 2010, chapter 6) tell us that much of the activity of using law is unproblematic in the sense that only exceptionally are issues raised concerning its scope, meaning or application. However, sometimes you will come across doubts or disagreements about the interpretation of legal rules such as in the case of *Fisher v Bell*. Twining and Miers provide a tool to help us, and develop our critical thinking and interpretation in relation to conditions of doubt (i.e. disagreements about the interpretation of legal rules). They identify 4 situations which may raise conditions of doubt about the interpretation of legal rules.

Your lecturer will lead the task and you may have first a brief discussion on the following conditions after you read them; then, you may be asked to work in pairs or small groups before sharing your findings in plenary.

The following is a snapshot taken from the Twining and Miers text (pp.178-182) which you will be using to identify the condition of doubt in *Fisher v Bell*:

Stage I

Conditions arising prior to the creation of the rule

1. Erroneous, incomplete or inadequate apprehension of the factual context of the original situation giving rise to the problem.
2. Incomplete or otherwise unacceptable evaluation of the original situation by the rule-maker.
3. Inappropriate or unacceptable categorisation of the original problem.
4. Lack of clear policy objectives, or competing or inconsistent or otherwise inadequate policy objectives.
5. Sheer complexity of the original situation.
6. The problem was not suitable for dealing with by means of rules.
7. The existing system of rules, institutions and arrangements made a solution difficult or impossible for this particular problem.

This stage covers events that arise during the process of perceiving and diagnosing problems to the point at which a decision has been taken to use rules as the, or as one, means for resolving the problem.

The rule-making stage: incomplete, indeterminate or imperfect rules

8. Doubts about intention; for example:
 - (a) Rule made inadvertently, or doubtful whether it was intended to make a rule (unintended rule A).
 - (b) Doubtful whether it was intended to make *this* rule (unintended rule B).
 - (c) Doubtful whether it was intended to use these words (unintended words).
 - (d) Doubt as to what meaning, if any, was intended in respect of these words (meaning of words).
 - (e) Doubt as to whether the rule was intended to cover this situation (scope).
 - (f) Doubt as to intended effect of this rule on other rules (effects).
 - (g) Doubt as to whether these (social, economic, other factual) consequences were intended (purposes).
 - (h) Doubt as to which were the reasons, if any, for making the rule (reasons for rule).
9. Imperfect or doubtful relationship of the rule(s) to other rules within the same 'system', for example:
 - (a) Uncertainty as to whether this rule repeals, makes an exception to, or has other effects on prior rules.
 - (b) Uncertainty as to whether this rule is *ultra vires* or unconstitutional or otherwise invalid because of prior rules.
 - (c) Uncertainty as to whether some general principle (e.g. *mens rea*) applies to this rule.
 - (d) Uncertainty as to whether this rule was *new* or whether it is to be interpreted in the light of its predecessors and of interpretations of them.
 - (e) Uncertainty as to whether past interpretations of other related or analogous rules are applicable to this one.
 - (f) Potentially related rules difficult to locate or identify.

10. Imperfect or doubtful relationship of this rule (or body of rules) to rules of some other 'system'.
11. The instrument or other means adopted for implementing or furthering the objectives not coextensive with those objectives (narrower, broader, overlapping, unconnected).
12. Policy objectives not likely to be furthered in fact by this policy or by this rule as an instrument of the policy.
13. Poor drafting, for example:
 - (a) Poor organisation.
 - (b) Style of drafting inappropriate to the instrument.
 - (c) Inappropriate choice of words (e.g. ambiguity; inappropriate vagueness; superfluous words used; undue prolixity; same word used in different sense elsewhere; word used in different sense from ordinary or technical usage).
 - (d) Obscure because of complexity or method of amendment.
 - (e) Rule is silent about, or does not provide for, certain contingencies ('gaps').
 - (f) Intentional obscurity.
 - (g) Scope for implying exceptions unclear.
 - (h) Internal inconsistency or other logical flaws; absurdity, seemingly contradictory provisions (e.g. catch-22).
 - (i) Other faults in drafting (e.g. error of law by drafter; inappropriate rigidity; potentially related rules overlooked by drafter).
14. Deliberate delegation of discretion by use of broad or vague terms or by other means.
15. The drafter was presented with an insoluble or almost insoluble drafting problem ('undraftability').
16. Difficulties occasioned during post-drafting stage (e.g. last-minute amendments, inadequate or misleading or otherwise defective promulgation or communication of contents of the rule to those affected).

Stage II, the rule-making stage, deals both with the process of rule-making and with the product, the rule itself. Some rules are defective because of avoidable error on the part of the drafter: for example, an unintentional ambiguity or loophole; an unnecessarily labyrinthine statute; a formulation of a rule unnecessarily broader or narrower than its purposes. On the other hand, some rules give rise to choices of interpretation because they are incomplete or imperfect, not because of incompetence on the drafter's part but for some other reason; for example, there may have been a deliberate delegation of discretion to official interpreters by the rule-maker; or it may have been impracticable for the drafter to construct a rule coextensive with its policy; doubts may have arisen because of the limitations of language as a medium of communication or just because there are a great many other rules in the system, or because of a lack of clear or consistent policies behind the rule(s).

Other factors that may result in conditions of doubt arising at this stage are connected with the legislative or rule-making process as such. A small number of Parliamentary Counsel working to an overcrowded schedule is a condition of the British legislative process that does not help good law-making.⁷ Political factors in this process may also operate as an obstacle to sound law-making, as for example where a statute or other instrument is drafted obscurely in order that its full import may not be apparent to those who might oppose it, if they understood it. Similar, but not identical, factors operate in administrative rule-making and in the ways that rules are created or established in complex organisations such as universities, large commercial organisations or trade unions.

Events after the creation of the rule

17. Change in factual context since creation of the rule (e.g. social, economic or technological change).
18. Change in mores or prevailing values since creation of the rule, resulting in conflict between the rule and newer values.
19. Change in some values resulting in conflict of values relating to the rule.
20. Change in meanings of words since creation of the rule.
21. Past enforcement pattern of this rule (e.g. this rule normally not enforced in this type of case).⁸
22. Uncertainty as to weight to be given to the conventions, policies and practices adopted by those charged with implementing the rule.
23. This rule has been seen to have bad or absurd consequences or effects.
24. Past authoritative interpretations of this rule in conflict or unsatisfactory; for example because they failed to deal appropriately with other authoritative interpretations (precedents).
25. Subsequent creation of other rules affecting this rule.

This stage covers those events that occur after the original creation of the rule and that give rise to conditions of doubt about its interpretation at a general level, as contrasted with any special features of the particular case. In considering the relationship between rule-makers and interpreters, we suggested that a simple model of interpretation as a part of a process of communication and cooperation failed to take into account not only the point that an interpreter may have different values or objectives from the rule-maker, but also that his overall situation may be different by virtue of events that have taken place since the creation of the rule. Such events can be of various kinds: the original social situation giving rise to the mischief may have changed in one or more respects; advances in technology may have caught the rule-maker unawares; public opinion (or the values of a group concerned with the rule) may have shifted; some defects in the rule may have become apparent; new rules may have been made which are difficult to reconcile with the rule to be interpreted; decisions may have been taken which now function as precedents, or otherwise bear on interpretation

Special features of the present case

26. Disagreement or uncertainty about what the facts were, or how they should be categorised.
27. Decision to invoke the rule dubious (e.g. the decision to prosecute in this case dubious or claimant 'standing on rights' or invoking a forgotten rule or the claim is frivolous or vexatious).
28. Issues framed inappropriately (e.g. choice of inappropriate charge or cause of action, defective pleadings or inadequate wording of appeal).
29. Unfair or inappropriate procedures followed.
30. Doubts as to role of this decision-maker or whether this is the right arena for this case.
31. Doubts about the decision of an inferior court or tribunal; for example:
 - (a) Controversial or eccentric ruling or reasoning by decision-maker at first instance.
 - (b) Doubt as to whether decision at first instance should be interfered with in this case or this type of case (e.g. appeal court uncertain whether or not to substitute its own judgment as to 'reasonableness' in this kind of case).
 - (c) Doubt as to the legality, rationality or procedural propriety of a decision taken by an inferior court, tribunal or public official.
32. This case an example of an extraordinary contingency not provided for by the rule-maker.
33. This case on the borderline of the rule.
34. Special features of this case which give rise to feelings of sympathy or antipathy (fireside equities).¹⁰
35. Embarrassing result in this case (e.g. relations with a foreign government,¹¹ popular/unpopular accused) or uncertainty as to the consequences of a particular result in this case.
36. Difference of views between interpreter(s) and others as to one or more of the above.

Stage IV concerns those doubts that may be wholly or partly attributable to special features of the particular case under consideration, such as a judgement by the interpreter that the decision to initiate proceedings was ill-advised, that there was some defect in the procedures that have been adopted, or that there is some extraordinary feature of the facts that gave rise to the present case. This kind of condition may be a troublesome matter for all kinds of interpreters, but it is especially characteristic of the situation of the unhappy interpreter confronted with a rule that more or less clearly indicates a result that he or she considers undesirable for one reason or another.

Within your pair or group:

- i. Spend some time identifying the condition of doubt in *Fisher v Bell*.
- ii. Next, imagine that you have been asked to re-draft the part of legislation causing the condition of doubt. Spend some time writing down an improved section which would leave no doubt as to the application of the law in *Fisher v Bell*.
- iii. Imagine that you are one of the judges preparing for trial in the case of *Fisher v Bell*. You know that your fellow judges might have different views on the interpretation of the legislation concerning *Fisher v Bell*. Therefore, to convince them otherwise write a short paragraph in which you frame your argument in relation to the condition of doubt you think is reflected in *Fisher v Bell*. You can follow these instructions:
 1. You may need to refer to the judgment given by Lord Parker CJ for evidence.
 2. Be prepared to support your argument in relation to the situation you think may have triggered the condition of doubt.
 3. You may want to follow the 'building blocks of an argument' to frame your argument.
 4. When framing your argument and when assessing your fellow judges' arguments you may want to consider the following questions:
 - ✓ What point are you trying to make?
 - ✓ How are you going to back up your argument?
 - ✓ What evidence is available?
 - ✓ What evidence is most appropriate for the argument?
 - ✓ Does the evidence support the argument? What is the logical connection?
 - ✓ What gaps or inconsistencies are there in your argument?
 - ✓ Is your conclusion based on the evidence?

Be prepared to share your argument in class. The discussion in class will help you to assess the strengths and weaknesses of your argument. This is the first step in structuring an argument; although this was a small writing task, you need to remember this experience and use the skills acquired when asked to structure longer pieces of writing, but also, when asked to debate a topic in class or when you have an informative conversation with a fellow student, work colleague or friend.

3. This final activity will help you to consolidate the knowledge you have acquired so far; you may be asked to work in pairs or small groups but be prepared to share your findings in plenary: drawing upon the case of *Fisher v Bell* and your knowledge about the different rules of interpretation, indicate what would be the likely outcome of *Fisher v Bell* if the

court would have applied each of the different rules; then note any uncertainties or problems arising from each rule in relation to *Fisher v Bell*. You can use the following table to gather your data:

Rule of interpretation	Likely outcome of case	Uncertainties and problems of this rule
Literal rule		
Golden rule		
Mischief rule		
Purposive approach		

Your lecturer will wrap up the discussion- make sure you ask any questions that you may have.

Week 8: Case law 1

Class preparation

Finally, case law is one of the most important sources of the English Legal System, and it is a unique characteristic of it. Reading and understanding case law is of course fundamental if you study law, but there is more to it. Generally, dealing with cases allows you to enhance your reading comprehension skills, analytical skills (being critical and not taking information at face value), synthesize complex information, and reasoning skills. In other words, if you can read and understand a case law- you can read and understand any other complex document or set of information.

Think about your time management: look at the preparation you are required to do below and consider how you will time manage that, so you arrive at class prepared. Take a few moments to think about it, and do not forget that you may need to integrate this preparation around other engagements that you may have this week.

Preparation tasks:

1. Firstly, go to the textbook and identify in the table of contents the chapter on 'Case law'. Skim read the chapter (no need to take notes at this stage).

On a blank page in your scrap-notebook summarise in your own words the information under the title 'Historical Background' (p.10). If you need to, follow the techniques you have been introduced to in week 2.

2. In a new page in your scrap-notebook write the title: 'Judicial Precedent'. Read p.14 and write down under this title the 3 elements of judicial precedent and define these in your own words.

3. Imagine that you have been asked to give a mini-lecture about the importance of the hierarchy of the courts to the doctrine of precedent. Your audience are young people (15-18 years old) and they do not have specialised knowledge in the law. However, by the end of your mini-lecture they should have gained some knowledge of the topic, although this knowledge does not have to be specific and detailed. You may want to follow these instructions:

- i. Skim read pp.15-24 to get a sense of the information available (excluding 'how do judges really decide cases?' in p.24). You will notice that this section is lengthy, and it includes lots of case law; you will have to use your judgement as to which case you will use to illustrate points made and which cases you will exclude and not mention. This is another important skill: being selective. Sometimes information

may be relevant to the topic in general, but it does not serve the specific point/question that you have been asked to address.

- ii. Now, read these pages again and highlight the information which you think may help you to explain the importance of the hierarchy of the courts to the doctrine of precedent.
- iii. Then, summarise this information in your own words.
- iv. Use the most relevant information to structure your mini-lecture.
- v. The summary should be written in 2 paragraphs, each c.170-200 words. Follow the same principles of writing short-answer questions (e.g. first indicative sentence at the beginning of each paragraph; clearly identifiable key point in each paragraph etc [see week 2]).
- vi. Think carefully about the content of each paragraph; you want to make sure that when you read one paragraph after the other, the reading flows and makes sense.
- vii. Finally, attempt to include a citation at the end of each paragraph. You should use the OSCOLA guide, available here https://www.law.ox.ac.uk/sites/files/oxlaw/oscola_4th_edn_hart_2012.pdf or in week 4.

When you are happy with your answer, transfer this to a clean page and be prepared to share this in class.

4. Next, you will consider controversial issues concerning the doctrine of precedent and the question whether judges' creation of precedent undermines Parliamentary supremacy. Follow these instructions:

- i. Imagine that you have been summoned to give expert evidence to a governmental committee invested with the task of identify whether judges have been undermining Parliamentary supremacy.
- ii. Skim read pp.28-33 to get a sense of the information available; highlight relevant information which you think you can use to give a balanced response to the above question; summarise this in your own words; insert the relevant information in the table below (you can copy this in your scrap-notebook and you can have as much evidence as you find):

Evidence indicating judges make law	Evidence indicating judges do not make law

Be prepared to share your finding in class.

5. Finally:

- i. Skim read pp.34-37; read it again and highlight relevant information which you think may be relevant to the table below.
- ii. Summarise in your own words from the highlighted information, the advantages and disadvantages of precedent and insert your data in the table below. You can copy the table in your scrap-notebook, so you have more room for your notes.
- iii. Then (this is an advanced stage and it is an opportunity to test your skills), skim through the chapter and identify case law which evidences either the weakness or the strength of precedent.

Disadvantages of case law		Advantages of case law	
Feature	Evidence	Feature	Evidence

Be prepared to share these in class.

6. To test your hard work so far and see whether you have fully understood the reading take the 'Pre-class test' on Moodle.

In class (Monday 18 Nov, 6pm)

This is an important week for two reasons. Firstly, this is the last block of this module and it deals with the main characteristic of the English Legal System, that is, the common law. Secondly, you will be introduced to the skill of writing an essay. In fact, you have already started looking at this skill, although in small pieces- do not forget that you have been practicing answering short-answer-questions. These are mini-paragraphs, so if you got these right, you should be able to apply this skill to the writing of a sequence of paragraphs.

1. The class discussion will start with the generic question:

What do we mean when we say that the English Legal System is a common law system?

You will have the opportunity to share your views and the knowledge acquired from your preparation; your lecturer may also give a brief on this topic. Make sure you take notes and ask any questions that may help you to clarify the topic discussed.

2. Next, your lecturer will lead the discussion and you may be asked to work in pairs or small groups. This is also where you will start thinking about essay writing.

Exchange with your fellow students your two paragraphs on the importance of the hierarchy of the courts to the doctrine of precedent. You will be given some time to evaluate it against the criteria below; these are similar evaluation criteria which your lecturer uses to mark your assessments. Make sure you take notes of your evaluation and think about the feedback you can give to improve the writing. Be considerate, remember that this is a learning curve and no one is perfect.

Please follow these instructions:

- i. Read the two paragraphs once and consider whether they flow and make sense. In other words, the movement from one paragraph to the other should be logical, and it does not feel like two unrelated chunks of information. This can help your evaluation:
 - Sometimes using connective (linking) words helps to build a logical argument in the writing by linking one sentence to another. Writing without linking words reads like a series of unrelated statements with no flow. Consider whether any of the following may help to improve the flow between the two paragraphs that you are evaluating:

To add a point	To contrast two points	To give an example	To note consequences	To summarise or conclude	To introduce a list of ideas
Also... In addition, ... Similarly, ... Moreover, ... Furthermore, ...	However, ... Although ... On the other hand ... Nevertheless, ... In contrast, ...	For example,, namely,	Therefore, ... As a result, ... Consequently, ...	Finally, ... In conclusion, To conclude, To summarise,	Firstly, ... Secondly, ... Finally, ...

- ii. Now, consider each paragraph separately. These pointers can help your evaluation:
 - Can you identify the key point of the paragraph?
 - If not, identify how many key points the paragraph has, and evaluate which key point should be chosen as the only key point for this paragraph.
 - Does the first sentence reflect the topic discussed in the paragraph? In other words, would the reader know what the paragraph is about by only reading the first sentence?

- Once you have identified the key point, is all the information in the paragraph relevant? Is there too much information or not enough? (remember the target audience).
 - Is there a clear flow between sentences? In other words, when read one after the other, do they make sense? If not, go back to the above list of connective words and see whether the flow can be improved by inserting one of these words.
- iii. The following evaluation is a step further in the development of the skill of essay writing, so you may want to pay particular attention:
- Focus on the sentences following the first sentence (which should introduce the key point of the paragraph). The purpose of these sentences should be to develop the key point; this can be done by providing detailed information, explanation, examples, evidence- all these should serve to clarify the key point of this paragraph.
 - Assess the purpose of the sentences following the first sentence in the paragraphs you have been given.
- iv. Finally: is the information cited? Remind yourself of the following OSCOLA guide below to check whether the information was cited correctly:

1.1.2 Citing legislation

A citation in a footnote is not required when citing legislation if all the information the reader needs about the source is provided in the text, as in the following sentence:

This case highlights the far-reaching judicial role ushered in by the Human Rights Act 1998.

Where the text does not include the name of the Act or the relevant section, this information should be provided in a footnote.

British courts must only consider Strasbourg jurisprudence: they are not bound by it.¹

¹ Human Rights Act 1998, s 2.

1.1.1 Citing cases

When citing cases, give the name of the case, the neutral citation (if appropriate), and volume and first page of the relevant law report, and where necessary the court. If the name of the case is given in the text, it is not necessary to repeat it in the footnote.

It is well represented in the case law, perhaps most notably in the expression of the no-conflict rule advocated by Lord Upjohn in *Phipps v Boardman*,³¹ and in the earlier Court of Appeal decision in *Boulting v Association of Cinematograph, Television and Allied Technicians*.³² In *Boulting* [or 'in the *Boulting* case'], Upjohn LJ said that the rule 'must be applied realistically to a state of affairs which discloses a real conflict of duty and interest and not to some theoretical or rhetorical conflict'.³³ In *Phipps*, Lord Upjohn developed his view of the rule further by adding that there must be a 'real sensible possibility of conflict'.³⁴

The relevant footnotes would appear as follows:

³¹ [1967] 2 AC 46 (HL).

³² [1963] 2 QB 606 (CA).

³³ *Boulting* (n 32) 638. OR ³³ *ibid* 638.

³⁴ *Phipps* (n 31) 124.

The numbers at the end of footnotes 33 and 34 are called 'pinpoints'; they give the page on which the quotation can be found. It is also acceptable to include the full case reference in all footnotes.

1.1.3 Citing secondary sources

If relying on or referring to a secondary source, such as a book or an article, provide a citation for the work in a footnote.

Hart wrote that the doctrine of precedent is compatible with 'two types of creative or legislative activity': *distinguishing* the earlier case by 'narrowing the rule extracted from the precedent', and *widening the rule* by discarding 'a restriction found in the rule as formulated from the earlier case'.³⁴

³⁴ HLA Hart, *The Concept of Law* (2nd edn, Clarendon Press 1994) 135.

EXAMPLE of subsequent citation of a book

This example shows a citation of a book which is first cited (in full) at footnote 1, cited again in footnote 26 with a cross-citation to footnote 1, and then cited again at footnote 27.

¹ Robert Stevens, *Torts and Rights* (OUP 2007).

...

²⁶ Stevens (n 1) 110.

²⁷ *ibid* 271–78.

When ready, take it in turns to explain the feedback you decided to give.

Finally, you will have a discussion in plenary with your lecturer. You may be asked to volunteer to share your paragraphs and/or feedback on these- do not be shy! Learning from mistakes is a fundamental part of skills-development.

3. A major debate when discussing common law, concerns whether judges make law. As you have learnt, Parliament is supreme and sovereign in law making, and therefore, following this principle, judges should only apply the law created by Parliament. However, you have also learnt when preparing for this class that through the doctrine of precedent judges create legal rules, which may overcome a gap in legislation and thus become law. There is no 'right' or 'wrong' answer to this query.

- i. Your lecturer will lead this task and you may be asked to work independently or in pairs, but half of the class will be assigned one side of the debate and the other, the other side of the debate:

Side 1: Judges should create law.

Side 2: Judges should not create law.

- ii. Depending on which side of the debate you are, use your notes you created at home (the two tables) to come up with a mini-answer to your side of the debate.

The answer should be structured as follows:

- a) An introduction: 3 sentences introducing your side of the debate.
- b) Two paragraphs: each discussing one key point (c. 170 words each).
- c) A conclusion: 3 sentences concluding your side of the debate.

- iii. Make sure you write this down clearly because once your answer is ready you will exchange it with a fellow student, and you will:
 - a) Evaluate the writing by following the criteria in the previous task.
 - b) Give feedback for improvement.
 - c) Explain why you gave this feedback.

- iv. Finally, in plenary with the help of your lecturer you will have a debate on the topic. Make sure you draw upon your writing and that when presenting your reasons you have taken on board the feedback given by your fellow student. You will also discuss strengths and weaknesses in your essay writing skills.

Your lecturer will wrap up the discussion- make sure you ask any questions that you may have.

Week 9: Case law 2

Class preparation

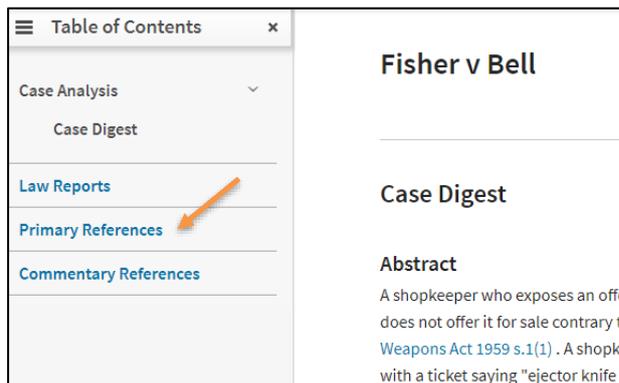
This week you go back to *Fisher v Bell* [1961] 1 QB 394. You may have saved the case on your PC or you may have printed it. This is fine, but you will need to retrieve it again on Westlaw because you will be asked to access a couple of links on the case's page.

This week's preparation is important not only because you are expected to arrive prepared at class, but also because this preparation is functional to the preparation for your second writing exercise due on the 6th December.

Think about your time management: look at the preparation you are required to do below and consider how you will time manage that, so you arrive at class prepared. Take a few moments to think about it, and do not forget that you may need to integrate this preparation around other engagements that you may have this week.

Preparation tasks:

1. If you have *Fisher v Bell* [1961] 1 QB 394 saved or in hard copy- read it again and remind yourself of the facts of the case.
2. Access Westlaw through BBK eLibrary and retrieve *Fisher v Bell* [1961] 1 QB 394. You can find a reminder on how to do that on Moodle, or go back to week 3 of this guide.
3. On the Case Analysis page of *Fisher v Bell* you will find a table of content on the left hand side of the screen. Click on Primary References:



4. Go through the lists of the different cases in this list, and take note of the following:
 - i. In how many law cases has *Fisher v Bell* been mentioned? What does this mean?
 - ii. In how many law cases has *Fisher v Bell* been considered? What does this mean?
 - iii. In how many law cases has *Fisher v Bell* been applied? What does this mean?
 - iv. In how many law cases has *Fisher v Bell* been followed? What does this mean?

Following your class last week, think about the following: In which of the four options above (mentioned, considered, applied, followed) was *Fisher v Bell* used as precedent? Be prepared to share your thoughts in class.

5. Still on the cases list page, go back to week 5 instructions on case annotation, and:
 - i. Identify, read and write a case note for *British Car Auctions v Wright* [1972] 1 WLR 1519 (if you have accessed the records correctly you should be able to click on the link provided directly on *Fisher v Bell* cases list page). Note that if you press the link in the list you will be brought to the Case Digest page; on the right hand side of this page you will have a small table of contents; under Where Reported, click on the first case citation- this will bring you to the full case.

- ii. Go back to the case list; identify, read and write a case note for *Partridge v Crittenden* [1968] 1 WLR 1204.
- iii. Start thinking about what you have learnt last week on the doctrine of precedent: how do you think *Fisher v Bell* was applied in these two cases?

Be prepared to share your case notes and thoughts in class.

If you want to explore these topics further you can access the following as an eBook from BBK eLibrary:

W. Twining and D. Miers, *How to Do Things with Rules* (Cambridge University press, 2010) Chapter 4.

In class (Monday 25 Nov, 6pm)

This week you will practice two important skills: identifying and distinguishing between questions of facts and questions of law in legal judgments, and applying your knowledge on a problem case-scenario.

You have noticed that once again you will be using *Fisher v Bell* to practice your legal skills and apply the knowledge you have acquired so far. This has been done to show you the interconnection between the main three topics of this module: legislation, statutory interpretation and precedent. This is very important for a variety of reasons:

- It allows you to get a wider view (a holistic view) on this module, where you can see that the topics are connected to each other rather than functioning as stand-alone.
- This deep approach to study in general and to the study of law, is used by academics or professionals (such as researchers or policy makers). This approach allows one to get to the bottom of the matter- hence, becoming a specialist or at least acquiring an excellent understanding of what is being investigated.

Twining and Miers (*How to Do Things with Rules*, 2010, p.276, 296) explain that the use of past decision in the solving of a current problem is a fundamental part of the legal reasoning applied in both legal and non-legal contexts. In fact, in the same way you have constructed an argument in week 7 where you were asked to support your line of reasoning with evidence- judges also use prior cases as a source of substantive (factual evidence) and authoritative reasons.

Identifying judges' reasoning in the establishment of a *ratio decidendi* is deceptively easy. In fact, it requires observation, interpretation and differentiation between questions of fact and questions of law.

This is a summary of Twining and Miers' (p.126) explanation on the importance of differentiating between questions of facts and questions of law:

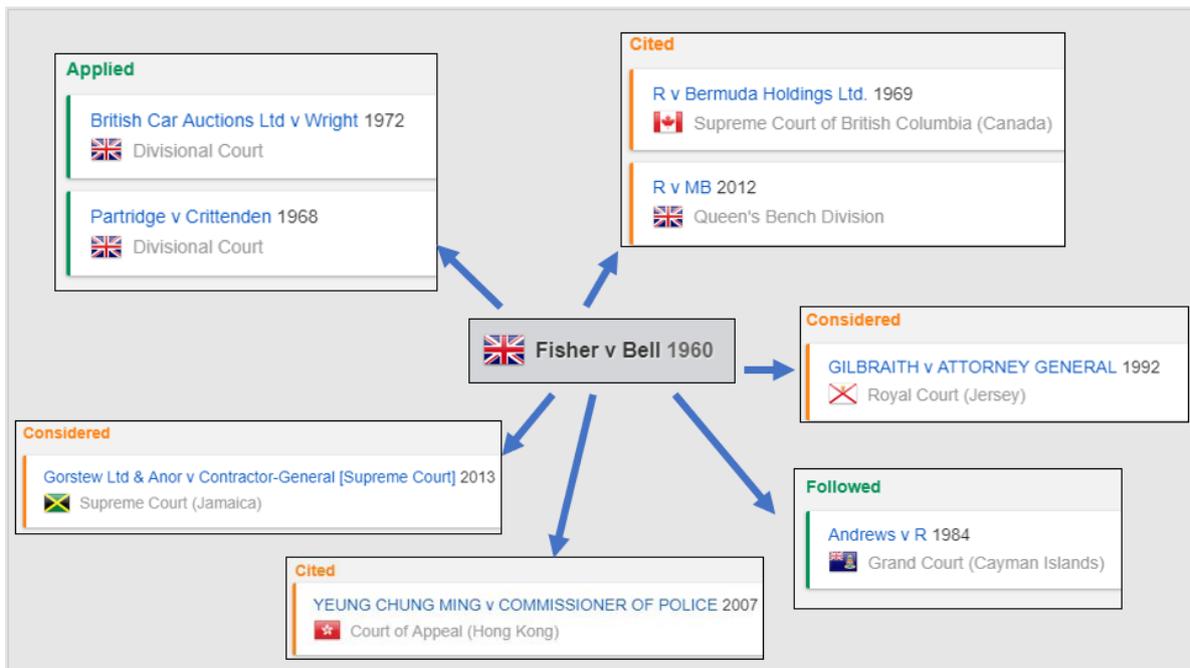
Decisions on questions of fact generally do not create precedent for later case law, whereas decisions on questions of law often do. Also, in general, questions of facts are reserved for the jurors, whereas questions of law are exclusively for the judge to answer. Decisions on questions of law are generally required to be supported by public interest.

1. You have already had the opportunity to indirectly consider questions of facts and questions of law for *Fisher v Bell* in the previous week, but because here you are specifically focusing on the case rather than statutory interpretation, have a brief discussion with your lecturer about the following:

- i. State the facts of *Fisher v Bell* in chronological order. Was there any question of fact in issue before the Divisional Court?
- ii. Formulate as precisely as you can the main question of interpretation (the question of law) that was at issue in this case.
- iii. Has *Fisher v Bell* created a precedent?
- iv. More specifically, is there *ratio decidendi* in *Fisher v Bell*?

2. Next, you may be asked to work in pairs or small groups: use the following diagram to recap the doctrine of precedent by referring to the *Fisher v Bell* case and the information you have found during your class preparation.

This is an opportunity to put in practice your interpretation skills: assess what this diagram conveys. Be prepared to share your thoughts in plenary:



3. Next, before moving on to discuss how the *Fisher v Bell* legal rule was applied in *British Car Auctions v Wright* [1972] 1 WLR 1519 and *Partridge v Crittenden* [1968] 1 WLR 1204, you will be checking your case annotations. You may be asked to work in pairs or small groups:

Compare and discuss your 2 case annotations with your fellow students; identify good practice and understand how to further improve your case annotation. Make sure you are grasping this skill which is important for legal studies AND also it develops the ability to write succinctly.

4. Your lecturer will lead the discussion, and you will be looking at how the *ratio decidendi* in *Fisher v Bell* was applied in the above two cases. Make sure this is clear to you as it will form part of your forthcoming assessment. You will continue the discussion on that next week.

5. Problem Question

This sort of exercise is great for testing your problem-solving skills but it also helps you to assess whether you can think outside the box. In legal studies, problem questions are used to assess whether students can apply the law to a fictitious case scenario. Most students think that problem questions are fun, and they may well be- however, they are only fun if you know the law needed to solve the question!

When approaching a problem-style question you need to:

- a) Read the question carefully and focus on what it is asking.

- b) Read the law carefully and familiarise yourself with the principles of law that are relevant to the question.
- c) Analyse the facts you have been given and consider how the relevant law applies to the facts.
- d) Organise your answer carefully and to help you doing that you will be using a technique called the IRAC method (some scholars including your lecturer may use the term ILAC = Issue, Law, Application, Conclusion). Although there are several other methods that scholars use, the IRAC method is simple and useful:

Issue	Think about: the parties, relevant facts, legal issues raised.
Rule	Think about: what is the relevant law here?
Application	Once you have identified the above you can apply the law to the facts.
Conclusion	Finally: by way of conclusion address the legal issue raised by the question.

By now, you should be familiar with two legal sources: Restriction of Offensive Weapons Act 1959 s.1 (c.37) and *Fisher v Bell* [1961] 1 QB 394.

These are your authorities which you will be using for the following problem question. Be prepared to discuss your findings in class.

Consider the following case scenario by drawing upon the legal rule (the law) in *Fisher v Bell*:

Bob has a toy vending machine in the local shopping mall. There are several types of toy in the vending machine and one of the them is a pocket flick knife.



All the items in the vending machine have been carefully selected by Bob.

When a person puts a coin in the vending machine there is no indication which item will be dispensed by it.

Bob has come to you for legal advice. He wants to know if, from a legal point of view, he is 'offering to sell' the pocket flick knife, or is he merely inviting to treat?

Spend some time writing down your answer by following the IRAC system. Be prepared to discuss this in class.

Your lecturer will wrap up the discussion- make sure you ask any questions that you may have.

Week 10: case law 3

Class preparation

You are reaching the end of this module, and by the end of this week you are expected to submit your second writing exercise. For this reason, there is little preparation for this week's class, however, it is partly functional to the writing exercise.

Think about your time management: look at the preparation you are required to do below and consider how you will time manage that, so you arrive at class prepared. Take a few moments to think about it, and do not forget that you may need to integrate this preparation around other engagements that you may have this week.

Preparation tasks:

1. Remind yourself of the relationship between *Fisher v Bell*, *British Car Auctions v Wright* and *Partridge v Crittenden*. You may want to read the notes you have taken in that regard from last week's class (you will need to do so anyway in preparation for the writing exercise).
2. Optional task: You looked at how to answer a problem question last week; this week you will explore this further. Remember that the second question in your forthcoming assessment is a problem question. You can answer any problem question by simply following the advice given in this guide and by your lecturer; however, if you want to explore this skill further (especially if you are planning to progress onto an LLB), we recommend you read the following:

S. Hanson, Learning Legal Skills and Reasoning (2010), pp.594-610. This can be borrowed from the library or you can access it through BBK eLibrary as an eBook. If you access the text as an eBook, you will be able to save and/or print the relevant pages.

In class (Monday 2 Dec, 6pm)

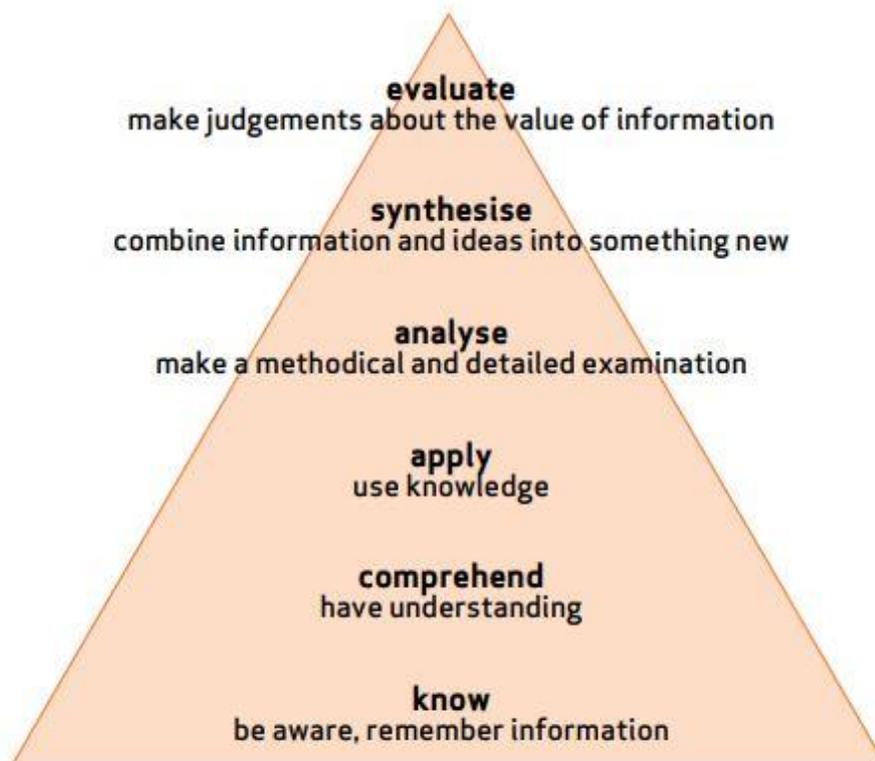
In this week's class you will continue applying your newly acquired technical and substantive legal knowledge and you will further develop the skills of critical thinking and reading, and solving problem case-scenarios.

You have already had the opportunity to start thinking about your critical thinking and critical reading skills in week 3 and week 7; this week you will explore this further.

To think critically is to examine ideas, evaluate them against what you already know and make decisions about their merit. The aim of critical thinking is to try to maintain an 'objective' position. When you think critically, you weigh up all sides of an argument and evaluate its strengths and weaknesses.

There are a range of critical thinking skills, and the following is known as the 'thinking triangle' created by Benjamin Bloom in 1956.

Which skills have you had the opportunity to use so far on this module?



You need to develop critical thinking and critical reading if you want to fully understand the outcome of a case. This is particularly important because it will allow you to understand and evaluate (assess strengths and weaknesses) the reasoning used by the judges. Understanding how judges reason is fundamental for a variety of reasons:

- Only by understanding the rational underlining their decision (their line of argument) will you be able to counter argue it.
- You may need to counter argue previous decisions in order to rebut a proposition of law which does not support your client's case (if you are the Counsel for the defence) or the Crown's legal submissions (if you are for the prosecution).
- Finally, understanding how a reasoning is structured will help you to develop your own reasoned argument (line of reasoning). You may need to be able to provide a reasoned argument in coursework or at a meeting in your workplace.

This is a reminder of what you need to bear in mind when close reading and critically reading to assess someone else's argument (line of reasoning) (week 3 in this guide):

- Identifying the line of reasoning in the text.
- Critically evaluate the line of reasoning: weighing up the evidence for and against.
- Checking for hidden assumptions or agendas.
- Identifying evidence in the text (and is this valid evidence?)
- Identifying the judge's conclusions.
- Deciding whether the evidence given supports these conclusions.

1. The following are extracts from the two cases specifically referring to *Fisher v Bell*. Your lecturer will lead the discussion and you may be asked to work in small groups each dealing with one case. Each extract will have at the end of it a set of questions; discuss these and be prepared to share your thoughts in plenary.

A. *Partridge v Crittenden*

This is an appeal pursuant by Partridge against the decision of Chester justices who, although referred to the decision of this court in *Fisher v. Bell*, took the view that the advertisement did constitute an offer for sale and thus found him liable for the unlawful offer for sale a certain live wild bird contrary to section 6(1)(a) of the Protection of Birds Act 1956:

6.— Restrictions on. sale of live and dead wild birds, eggs, etc.

(1) If, save as may be authorised by a licence granted under section ten of this Act, any person sells, offers for sale or has in his possession for sale—

(a) any live wild bird, being a bird included in the Fourth Schedule to this Act of a species which is resident in or visits the British Isles in a wild state, other than a close-ringed specimen bred in captivity;

Ashworth J. was the first to give judgment on the above:

The case arose because in a periodical known as “Cage and Aviary Birds,” the issue for April 13, 1967, there appeared an advertisement inserted by the appellant containing, inter alia, the words “Quality British A.B.C.R. ... Bramblefinch cocks, Bramblefinch hens, 25s each.” There was no direct use of the words ‘offers for sale’ in the advertisement.

[...]

A similar point arose before this court in 1960 dealing, it is true, with a different statute but with the same words, in *Fisher v. Bell*. The relevant words of section 1 (1) of the Restriction of Offensive Weapons Act, 1959, in that case were: “Any person who ... offers for sale. ... (a) any knife. ...” Lord Parker C.J., in giving judgment said:

“The sole question is whether the exhibition of that knife in the window with the ticket constituted an offer for sale within the statute. I confess that I think that most lay people and, indeed, I myself when I first read the papers, would be inclined to the view that to say that if a knife was displayed in a window like that with a price attached to it was not offering it for sale was just nonsense. In ordinary language it is there inviting people to buy it, and it is for sale; but any statute must of course be looked at in the light of the general law of the country.”

The words are the same here “offer for sale,” and in my judgment the law of the country is equally plain as it was in regard to articles in a shop window, namely that the insertion of an advertisement in the form adopted here under the title “Classified Advertisements” is simply an invitation to treat.

That is really sufficient to dispose of this case. I should perhaps in passing observe that the editors of the publication *Criminal Law Review* had an article dealing with *Fisher v. Bell* in which a way round that decision was at least contemplated, suggesting that while there might be one meaning of the phrase “offer for sale” in the law of contract, a criminal court might take a stricter view, particularly having in mind the purpose of the Act, in *Fisher v. Bell* the stocking of flick knives, and in this case the selling of wild birds. But for my part that is met entirely by the quotation which appears in Lord Parker's judgment in *Fisher v. Bell*, that “It appears to me to be a naked usurpation of the legislative function under the thin disguise of interpretation.”

I would allow this appeal and quash the conviction.

BLAIN J. was next to give his judgment with:

I agree.

Lord Parker C.J. was the last to give his judgment:

I agree and with less reluctance than in *Fisher v. Bell*. I say “with less reluctance” because I think when one is dealing with advertisements and circulars, unless they indeed come from manufacturers, there is business sense in their being construed as invitations to treat and not offers for sale. In a very different context in *Grainger & Son v. Gough* [1896] A.C. 325 H.L.(E) Lord Herschell said dealing with a price-list:

“The transmission of such a price-list does not amount to an offer to supply an unlimited quantity of the wine described at the price named, so that as soon as an order is given there is a binding contract to supply that quantity. If it were so, the merchant might find himself involved in any number of contractual obligations to supply wine of a particular description which he would be quite unable to carry out, his stock of wine of that description being necessarily limited.”

It seems to me accordingly that not only is it the law but common sense supports it.

Questions:

- i. How does each of the judges justify the application of the rule in *Fisher v Bell*?
- ii. How convincing are their justifications?
- iii. Do you agree with their decision?
- iv. What does Lord Parker CJ mean when he says: ‘I agree and with less reluctance than in *Fisher v. Bell*’? and why is he less reluctant in *Partridge v Crittenden*? Do you agree with the point he makes?

- v. What does Ashworth J. mean when he quotes Lord Parker CJ in *Fisher v Bell* that ‘it appears to me to be a naked usurpation of the legislative function under the thin disguise of interpretation.’

B. *British Car Auctions v Wright*

The defendants, who were auctioneers, conducted the auction sale of a secondhand motor car which was unroadworthy as respects steering gear and tyres, and the car was driven away on a road. They were convicted on the ground that they did “offer to sell” the car for delivery in contravention of section 68 (1) of the Road Traffic Act 1960 as amended (now repealed):

“(1) Subject to the provisions of this section it shall not be lawful to sell, or to offer to sell or supply, a motor vehicle or trailer for delivery in such a condition that its use thereof on a road in that condition would be unlawful ...”

The defendants appealed.

The questions for the opinion of the court were whether the defendants as auctioneers did “offer to sell” the vehicle within the meaning of section 68 of the Road Traffic Act 1960; whether the statutory defence under section 68 (4) (b) of the Act of 1960 was satisfied by reason of the steps taken by the defendants; and whether an auctioneer could be a “seller” for the purposes of section 68 of the Act of 1960.

Lord Widgery C.J. gave the first judgment:

I confess that, free of authority, I should have thought that the colloquial acceptance of an auctioneer as a person who offers the goods for sale is so strong that the use of a phrase such as “offer for sale” in a statute of this kind might readily be construed as including the function of the auctioneer when he carries out an auction in the ordinary way. But, of course, as a matter of strict law of contract, forgetting for the moment the colloquial meaning of the phrase “offer for sale,” the auctioneer when he stands in his rostrum does not make an offer to sell the goods on behalf of the vendor; he stands there making an invitation to those present at the auction themselves to make offers to buy. In the strict law of contract there is no doubt whatever that it has always been the law that when an auction sale takes place the offer comes from the bidder in the body of the hall and the acceptance is communicated by the fall of the auctioneer's hammer.

It is technically incorrect to describe an auctioneer as offering the goods for sale for that reason. In this case the question ultimately is whether in the context of section 68 “offer to sell” should be given its colloquial or its strict meaning.

There is authority of this court very close to this, first *Fisher v. Bell* [1961] 1 Q.B. 394. That was a case in which a shopkeeper was prosecuted under the Restriction of Offensive Weapons Act 1959, section 1(1) of which made it a criminal offence for a person to manufacture, sell or hire or offer for sale or hire certain weapons, so we have the phrase “offer for sale.” What happened was that the shopkeeper put in his window a flick knife; he gave it the rather more dignified title of an ejector knife and priced it at 4s It was a flick knife, and was one of those weapons within the Restriction of Offensive Weapons Act 1959. He was prosecuted for offering the flick knife for sale having put it in the window with the obvious intention of inviting the public to come in and buy, but it was held in this court that what he had done was not strictly an offer for sale, but was merely an invitation to the public to make offers, and his conviction was set aside on that ground.

That seems to me to be a clear authority on the problem with which we are faced. Lord Parker C.J., accepting, as with respect I accept, that, on the face of it, it would seem that the shopkeeper in that case was offering the goods for sale, felt constrained to hold that he was not because as a matter of the strict law of contract he was merely inviting people to come and make offers. The other members of the court agreed with him.

Mr. Spokes, who if I may say so has said everything possible in this case, has stressed the fact that at the present day, and indeed for many years, an auctioneer's function has been colloquially described as offering goods for sale, but the difficulty in following that argument is, of course, that the authorities to which I have referred require us I think to apply the strict technical meaning and not the colloquial one. I need only refer to one; it is the Markets and Fairs (Weighing of Cattle) Act 1926, section 1 (1) of which opens with these words: “Subject to the provisions of this Act an auctioneer shall not offer for sale in any market ...” certain beasts. It is said with conviction that there the auctioneer's conduct must be regarded as an offer for sale, and I agree that it is so. The reason, of course, is that the language of that section makes it clear in its own internal form that in that statute the colloquial meaning of the phrase “offer for sale” is being used.

With regret, however, I have come to the conclusion that we cannot apply the colloquial meaning of section 68 of the Road Traffic Act 1960, and I would allow the appeal and quash the conviction.

Melford Stevenson J. was next to give his judgment with:

I agree with equal regret. I would eagerly embrace any opportunity of escaping from the strict legal meaning of “offer for sale” in this context in this Act, but if we did I am satisfied that we should be in effect adding a definition in the statute which is not there, and that we cannot do. We are bound by the fetters of the earlier authorities, and we must so decide.

Milmo J. was last to give his judgment with:

I agree with both the judgments.

Questions:

- i. Is Lord Widgery attempting to answer a question of law or a question of fact? And what would that be?
- ii. What is the judges’ decision? And why do they say they regret having to take it?
- iii. In how many ways could ‘offer to sell’ have been interpreted here, and how would this have affected the defendants?
- iv. How convincing is the judges’ final decision?
- v. Do you agree with their decision?

2. Your lecturer will lead the discussion and you may be asked to work individually or in pairs.

You will spend some time structuring your answer following IRAC. When ready, be prepared to share your answers in plenary.

Issue	Think about: The parties, relevant facts, legal issues raised.
Rule	Think about: What is the relevant law here?
Application	Once you have identified the above you can apply the law to the facts.
Conclusion	Finally: By way of conclusion address the legal issue raised by the question.

To address the following case scenario you can rely on the following:

Ivory Act 2018 c.30 (see below extract)

Fisher v Bell [1961] 1 QB 394

British Car Auctions v Wright [1972] 1 WLR 1519

Partridge v Crittenden [1968] 1 WLR 1204

Sarita has a charity shop in central London. She gets lots of people dropping off items to be sold in the shop. She will sell anything except illegal items, such as drugs or weapons. She has some items in the shop which she knows will never sell, such as low value antiques. The items in the shop do not have price-tags, people just pay as much as they want. One day, a customer drew Sarita's attention to the fact that there were two ivory items in the shop, and that it was illegal to sell anything which is made of or has in it ivory (except if it is a pre-1918 outstanding artistic item which has received an exception certificate by the Ministry of State).

Sarita panics and she asks for your expert legal advice on whether she is committing an offence by keeping these items in the shop?

Ivory Act 2018

2018 CHAPTER 30

An Act to prohibit dealing in ivory, and for connected purposes.

[20th December 2018]

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

Prohibition

1 Prohibition on dealing in ivory

(1) Dealing in ivory is prohibited.

(2) "Dealing" in ivory means—

- (a) buying, selling or hiring it;
- (b) offering or arranging to buy, sell or hire it;
- (c) keeping it for sale or hire;
- (d) exporting it from the United Kingdom for sale or hire;
- (e) importing it into the United Kingdom for sale or hire.

(3) For the purposes of this section—

- (a) buying includes acquiring for valuable consideration;
- (b) selling includes disposing of for valuable consideration;
- (c) offering includes advertising and inviting to treat.

(4) In subsection (2)—

- (a) a reference in paragraph (b) to buying or hiring ivory does not include buying ivory, or hiring it as the borrower, outside the United Kingdom;
- (b) a reference in paragraph (b) or (c) to selling or hiring ivory includes selling ivory, or hiring it as the lender, outside the United Kingdom.

(5) In this section "ivory" includes—

- (a) an item made of ivory;
- (b) an item that has ivory in it.

(See further section 37.)

(6) Sections 2 and 6 to 9 set out exceptions to the prohibition.

Your lecturer will wrap up the discussion- make sure you ask any questions that you may have.

Week 11: Case law 4

Class preparation

This is the last week for this module. By now you should be able to confidently access Westlaw and retrieve a case. If you are still unsure, please do not worry and just go back to the instructions provided in Moodle or in week 3 of this guide.

This week's learning functions as consolidation of the knowledge and skills you have acquired and developed across the module. Completing this preparation and engaging in class will help you to better understand your strengths and weaknesses concerning the skills practiced so far; any strength should be cherished and any weaknesses should be addressed and you may want to go back to any of the activities covered in the module. This consolidation is also preparation for your final assessment.

If need be, you may want to arrange a support tutorial with your personal tutor (who is also the programme director).

Think about your time management: look at the preparation you are required to do below and consider how you will time manage that, so you arrive at class prepared. Take a few moments to think about it, and do not forget that you may need to integrate this preparation around other engagements that you may have this week.

Preparation tasks:

1. To prepare for this week's class please retrieve from Westlaw the following two cases and explore the respective questions; you will have to apply all the skills you have developed so far. You can download and save the cases to your computer or print them (be mindful of the fact that the *Jogee* case is very long):

Please read the following two cases in this order-

1. *Chan Wing-Siu and Others v The Queen* (1985) 80 Cr. App. R. 117

- i. What is the status of this case? What is its judicial treatment?
- ii. Where did the appeal come from?
- iii. What was the ground of appeal?
- iv. How many judges presided over the appeal? Who delivered the judgment?
- v. Read the case and identify whether there were any questions of fact.
- vi. Identify whether there were any questions of law.
- vii. Was there any condition of doubt that the judges had to deal with?
- viii. What do you think the significance of this case is?

2. You can retrieve the next case while on the Chan Wing-Siu case analysis Westlaw page. If you are not sure, you can still retrieve the case following the usual Westlaw search:

R. v Jogee (Ameen Hassan) [2016] UKSC 8 (please note that this is the longest case you have been asked to read so far- make sure you time manage your study-planning)

- i. What is the status of this case? What is its judicial treatment?
- ii. Where did the appeal come from?
- iii. What was the ground of appeal?
- iv. How many judges presided over the appeal? Who delivered the judgment?
- v. Read the case and identify whether there were any questions of fact.
- vi. Identify whether there were any questions of law.
- vii. Was there any condition of doubt that the judges had to deal with?
- viii. What do you think the significance of this case is?

3. Finally, read the following news report and try to form an idea on what different people in society might think about the issue of joint enterprise in murder cases:

- <https://www.theguardian.com/law/2015/oct/27/man-challenges-joint-enterprise-conviction-in-supreme-court>
- <https://www.bbc.co.uk/news/uk-35603309>
- <https://www.bbc.co.uk/news/uk-35598896>
- <https://www.theguardian.com/news/2018/mar/09/joint-enterprise-law-uk-how-do-11-people-go-to-jail-for-one-murder>
- <https://www.bbc.co.uk/news/uk-england-leicestershire-37336830>

Be prepared to share the above preparation in class.

In class (Monday 9 Dec, 6pm)

This is the last class of this module- congratulations!

This class is important for several reasons:

- a) It provides an opportunity to consolidate your knowledge.
- b) It gives you the grounds for your own preparation for the final assignment.
- c) The topic for this class was chosen because it reflects a rare moment in present-history where a previously applied precedent has changed; it reflects the slow evolving of the common law as per judges made law, and it also illustrates how social pressure may have driven legal change.

The discussion and exercises that you will carry out today should help you to fill in the following table; each discussion and task will allow you to add additional details to the table. By the end of the seminar, your table should be complete with valid information- this will provide the necessary

background-knowledge for your final assessment. You may want to copy a bigger version of this table in your scrap-notebook:

The law concerning joint enterprise applied up until the case of <i>Chan Wing-Siu</i> .	
Judges' decision in <i>Chan Wing-Siu</i> .	
The legal reasoning applied by the Judges in <i>Chan Wing-Siu</i> to reach their decision.	
How the decision in <i>Chan Wing-Siu</i> changed the law.	
Judges' decision in <i>Jogee</i> .	
The legal reasoning applied by the Judges in <i>Jogee</i> to reach their decision.	
How the decision in <i>Jogee</i> changed the law.	

1. You will start with a thorough discussion on the two cases: *Chan Wing-Siu and Others v The Queen* (1985) 80 Cr. App. R. 117 and *R. v Jogee (Ameen Hassan)* [2016] UKSC 8.

Your lecturer will lead the discussion and you may be asked to work in groups to check your findings from your preparation (i.e. your answers to the questions for each case).

2. Next, with your lecturer you will have a discussion on the following:

Which strengths and weaknesses of the doctrine of precedent are reflected in the changing of the common law of joint enterprise?

Note that this question is not aimed at specifically addressing the legal rule of joint enterprise, but it should help you to critically reflect holistically (widely) on the doctrine of precedent.

3. On the following task you will practice important skills necessary for your final assessment; these skills are of course important for your studies generally and as transferable skills they are also very attractive to employers: critical thinking and writing, assessing an argument (a line of reasoning) and structuring an argument (and developing it by drawing upon evidence). You will also have the opportunity to structure an essay plan.

The task requires you to critically compare the two different reasonings in relation to what the judges thought was the correct law of joint enterprise in *Chan Wing-Siu* and *Jogee*.

Below, you will find the two case abstracts that you can use for this task.

You may be asked to initially work independently.

The following is a step by step guide on how to go about this comparison, and you may want to approach your final assessment in the same way:

- a) Firstly, remember that you already have some background knowledge of the two cases- this is significant, because it emphasises the importance of preparation (and this is relevant for your studies and assessments but also a meeting that you may have at work).
- b) Skim read the two judgements and while doing so underline/highlight any word/phrase which you think may be used as a measure for comparison.
- c) See whether you have found similar measures of comparison between the two cases- you may need to compare the two texts against each other and draw upon the words you have highlighted. If you are not sure, spend some more time skim reading the two texts and highlighting possible measures of comparison.

At this point, your lecturer may stop your independent work and ask you to check your measures of comparison with the rest of the class (either in pairs/groups or plenary or both). This will help you to consolidate your measures of comparison.

- d) Next, back to independent work, use the measures of comparison to come up with a possible essay plan. Remember that similarly to short-answer questions, one paragraph should only deal with one key point; here you can use your measures of comparison as key points and deal with each in a different paragraph. You can plan the essay against this essay question:

Critically compare the joint enterprise common law established in *Chan Wing-Siu* and in *Jogee*.

Before moving on, your lecturer may have a discussion in plenary on essay planning and structuring, and you may be asked to share your plan with the rest of the class.

- e) Next, back to independent work, choose one key point (or one measure of comparison) and write a 150-200 word paragraph (as you would for a short-question answer). The paragraph should reflect the comparison you have been asked to pursue by the question, therefore, you may want to consider including the following:
 - The measure of comparison.
 - The line of reasoning in *Chan Wing-Siu* for this measure of comparison.
 - Identify whether the above is supported by evidence.
 - The line of reasoning in *Jogee* for this measure of comparison.

- Identify whether the above is supported by evidence.
- Assess (evaluate) which reasoning provides the strongest case.

Once finished, your lecturer will lead the discussion and you may be asked to share your writing with your neighbour and/or in plenary.

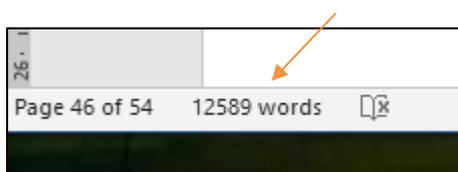
Finally, you will have a brief discussion led by your lecturer on possible introductions and conclusions for this type of essay.

Your lecturer will wrap up the discussion- make sure you ask any questions that you may have.

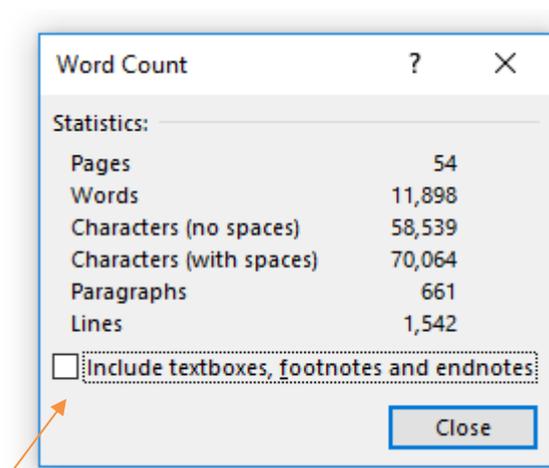
Detailed assessment information

General instructions:

1. References and citations (footnotes) are not included in the word count. You can exclude these from the word count when typing on a word document by clicking on the number of words at the bottom left side of the document:



The following box will open:



Unclick the 'Include textboxes, footnotes and endnotes'.

2. Please use the OSCOLA guide to cite and reference your writing. The guide is accessible here https://www.law.ox.ac.uk/sites/files/oxlaw/oscola_4th_edn_hart_2012.pdf

Writing which uses a different referencing system will not be penalised under the learning outcome 'cite sources correctly' but they may be penalised under the learning outcome 'acting upon a brief'.

3. A 10% variation above or below the word-count is allowed. Writing which does not adhere to this instruction will fail to achieve the learning outcome 'acting upon a brief'.

Writing exercise 1

Due by Friday, 8 November 2019 by 4.30pm

15%

Learning outcomes:

Knowledge:

1. Describe the fundamental principles and values of the common law legal system
2. Explain and evaluate approaches to the making of law, its application and development

Skills:

1. Act upon a brief
2. Identify, access and read academic legal sources
3. Use information effectively and summarise in own words
4. Cite sources correctly
5. Write well-structured paragraphs

Personal development:

6. Reflect on own academic and professional strengths and limitations
7. Take responsibility for setting targets and implementing plans for personal/academic/professional development

Word-count 550

To answer these questions, you only need to use your textbook, your notes, and the relevant legal sources you have been asked about in the questions. There is no need to carry out wider reading.

The following is a recommended word count; it is always good practice writing against a word count, this will help you to ensure your writing is focused and to the point. Please indicate the word count used at the end of each question.

Q1 and Q2 are short questions, and therefore they should be addressed as such. Q1 should be written as one paragraph only and Q2 should be written as two paragraphs.

This assessment will be marked against the above learning outcomes and the marking criteria available on Moodle. Your tutor may provide comments on your script, feedback in the comment-box and the rubric available for this assessment on Turnitin.

Q1. 200 words

Describe the roles of the two Houses of Parliament in law making.

Q2. 300 words

Explain what the contentious issue was in the case of *Fisher v Bell* [1961] 1 QB 394.

Q3. 50 words

Reflect on the skills you have been practicing so far. In bullet points, identify the following:

- I. A skill which you feel confident about.
- II. A skill which you do not feel confident about.
- III. Briefly explain why you do not feel confident about this skill, and briefly explain what you will do in order to gain confidence and improve this skill.

Writing exercise 2

Due by Friday, 6 December 2019 by 4.30pm

15%

Learning outcomes:

Knowledge:

1. Describe the fundamental principles and values of the common law legal system
2. Explain and evaluate approaches to the making of law, its application and development

Skills:

3. Act upon a brief
4. Identify, access and read academic legal sources
5. Use information effectively and summarised in own words
6. Cite sources correctly
7. Write well-structured paragraphs
8. Apply the techniques of legal reasoning to problem solving

Personal development:

9. Reflect on own academic and professional strengths and limitations
10. Take responsibility for setting targets and implementing plans for personal/academic/professional development

Word-count 750

To answer these questions, you only need to use your textbook, your notes, and the relevant legal sources you have been asked about in the questions. There is no need to carry out wider reading.

The following is a recommended word count; it is always good practice writing against a word count, this will help you to ensure your writing is focused and to the point. Please indicate the word count used at the end of each question.

Q1 is a short question and it should be written in 2 paragraphs (c.150 words each). Q2 is a problem question and it should be structured following the IRAC method.

This assessment will be marked against the above learning outcomes and the marking criteria available on Moodle. Your tutor may provide comments on your script, feedback in the comment-box and the rubric available for this assessment on Turnitin.

Q1. 250 words

Explain one advantage and one disadvantage of the doctrine of precedent by looking at the relationship between *Fisher v Bell* and *British Car Auctions v Wright* or the relationship between *Fisher v Bell* and *Partridge v Crittenden*.

Q2. 400 words

Tara is an artisan jewellery maker. She has a small shop in Borough Market in London. She has several items on display in the window. These items do not have specific price tags, but they are grouped, based on price bands, e.g. £30-£45; £50-£60 etc. One day, Anita came specially to buy a pair of earrings which one of her friends had bought a week ago and she really liked. The earrings were under the price band of £90-£150. She went into the shop to buy the earrings. When she was asked to pay, she was surprised to learn that the price of the earrings was £150. Anita told Tara that this was impossible because her friend bought the same pair of earrings a week ago for £100. Tara said that this may have been the case a week ago, but now the earrings cost £150.

Anita is asking for your expert advice. She wants to know whether Tara is breaching a contractual obligation of an offer.

Q3. 100 words

Reflect on the feedback your lecturer gave you on assessment 1; in bullet points, identify the following:

- I. A skill/ acquired knowledge for which your lecturer indicated that you did well.
- II. A skill/ acquired knowledge for which your lecturer indicated that you need to improve.
- III. Briefly explain what you did, in preparation for this assessment, to act upon your lecturer's advice above (II).
- IV. Do you think you have improved this skill?
 - a. If you think that you have- what is your evidence for that?
 - b. If you think you have not- what will you do to improve?

Essay

Due by Monday, 13 January 2020 by 11am

65%

Learning outcomes:

Knowledge:

1. Describe the fundamental principles and values of the common law legal system
2. Explain and evaluate approaches to the making of law, its application and development

Skills:

3. Act upon a brief
4. Identify, access and read academic legal sources
5. Use information effectively and summarised in own words
6. Cite sources correctly
7. Write a well-structured essay
8. Utilise information from various sources to produce a logical argument

Personal development:

9. Reflect on own academic and professional strengths and limitations
10. Take responsibility for setting targets and implementing plans for personal/academic/professional development

Word-count 1700

To answer these questions, you have to refer to the following: the case of *Chan Wing-Siu and Others v The Queen* (1985) 80 Cr. App. R. 117 and the case of *R. v Jogee* (Ameen Hassan) [2016] UKSC 8; the 2 radio interviews attached below. You can, if you want, access other academic sources such as a criminal law textbook; these sources must be academic sources so if you are not sure please ask your lecturer or the programme director for guidance.

The following is a recommended word count; it is always good practice writing against a word count, this will help you to ensure your writing is focused and to the point. Please indicate the word count used at the end of each question.

This assessment will be marked against the above learning outcomes and the marking criteria available on Moodle. Your tutor may provide comments on your script, feedback in the comment-box and the rubric available for this assessment on Turnitin.

Q1. 100 words

Write an essay plan to the essay question in Q2. You can use bullet points, a mind-map, a table, or any other type of illustration.

Q2. 1500 words

Lord Scarman once stated that the courts' function is to adjudicate according to principle, and if the results are socially unacceptable Parliament can legislate to overrule them. He felt that the risk was not that case law might develop too far, but that it stood still and did not therefore adapt to the changing needs of society.

Considering the above statement, explain the law of joint enterprise.

Q3. 100 words

Reflect on the feedback your lecturer gave you on assessment 2; in bullet points, identify the following:

- I. A skill/acquired knowledge for which your lecturer indicated that you did well.
- II. A skill/ acquired knowledge for which your lecturer indicated that you need to improve.
- III. Briefly explain what you have done, in preparation for this assessment, to act upon your lecturer's advice above (II).
- IV. Do you think you have improved this skill?
 - a. If you think that you have- what is your evidence for that?
 - b. If you think you have not- what will you do to improve?

Referencing & good academic practice

Good academic practice requires that you provide full and proper references for all materials that you make use of in your written work. Any reference to ideas or material from other sources (including internet sources!), whether in the form of direct quotation or paraphrasing, must be acknowledged using a properly formatted appropriate referencing style. Failure to reference properly can result in plagiarism.

Plagiarism Warning

Presenting someone else's work or thoughts as your own, or presenting another person's work without the appropriate referencing is plagiarism. It doesn't matter whether you deliberately intended to deceive or not; it still counts as plagiarism and is subject to the university's policies and penalties relating to academic offences. Plagiarism is not only dishonest, but it undermines the integrity of academic scholarship and is not acceptable.

Further information on assessment offences (including plagiarism) can be found here: <http://www.bbk.ac.uk/student-services/exams/assessment-offences>