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# **School of Law 2019-20**

**Department of Law**

## **THE ADMINISTRATION**

## **OF JUSTICE**

**LALW046S4**

### **Module Guide**

Module Convenor: Dr Susy Menis

Module Lecturer: Ms Annette Kalu

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# Programme Director's Welcome

A very warm welcome to The Administration of Justice 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.

This module introduces the English legal process and procedures. The course focuses on three themes: the common law and the civil law legal systems; the administration of justice; civil liberties and human rights. It allows a comparative approach to the study of these, looking at areas of concerns and debate such as policing, evidence and sentencing.

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](mailto:s.menis@bbk.ac.uk)

# Key Contact Information

## Programme Director & Personal Tutor

Dr Susy Menis: [s.menis@bbk.ac.uk](mailto: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](mailto:annette.kalu@bbk.ac.uk)

## Administrator

Simon Ellwood: [law-certs-he@bbk.ac.uk](mailto: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

## Spring Term

Lectures & seminar start	13 January 2020 (6-9pm)
Saturday Skills	25 January 2020 (10am)
Last Class	23 March 2020 (6-9pm)

## Coursework submission dates

Title of Assessment			Weighting			Word count			Due date				
Report on class presentation			10%			500 words			Friday 31 January 2020 by 4.30pm				
Skills multiple choice assessment			5%			On Moodle (no word count)			Friday 28 February 2020 by 4.30pm				
Court visit report			20%			800 words			Friday 6 March 2020 by 4.30pm				
Case study assessment (essay)			65%			1700 words			Monday 27 April 2020 by 11am				

Weeks	1	2	3	4	5	6	7	8	9	10	11	12	13	14
	13 Jan		31 Jan				28 Feb	6 Mar						27 Apr
Coursework deadline			Report on class presentation				Skills multiple choice assessment	Court visit report						Case study assessment (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:**

## **The Administration of Justice**

This course provides a comparative introduction to the administration of justice. While you will focus on England and Wales, you will also develop awareness of other legal systems. By examining a range of legal case studies, the course builds the skills and knowledge required for evaluating arguments and using inference techniques to problem solving. You will engage in debates concerning issues in policing, evidence and sentencing; you will visit a Court and reflect on this experience against what you have studied about the adversarial system. You will gain appreciation on and critically evaluate concerns related to civil liberties and human rights.

### **Aims and Learning Outcomes**

#### **In this module we aim to...**

- Explore the working of the adversarial legal system
- Develop understanding of pre-trial and trial process
- Identify the ways that the legal system responds to social and political climates
- 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 and evaluate the trial process, its adversarial character and values underpinning it
- Use case studies to explain and evaluate the several elements constituting the administration of justice in England and Wales.
- Utilise information from various sources to evaluate an argument and draw conclusions
- Apply the techniques of inference to problem solving
- Demonstrate a good grasp of information technology
- Reflect on your 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 an 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 20<sup>th</sup> 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 to take 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 6<sup>th</sup> edition will be cited here [the library has the 7<sup>th</sup> 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* (6<sup>th</sup> 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 be followed 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/](http://www.bbk.ac.uk/mybirkbeck/)) to confirm which seminar group you are in.

## 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 sub-learning 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. The people working in the legal system (week 0)
2. The trial courts in England and Wales (week 1 & 2)
3. The European Court of Human Rights (week 3 & 4)
4. The civil justice system (and introduction to Tort, contracts & obligations) (week 5, 6 & 7)
5. Legal persons (week 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 Christmas Break		Moodle mini-unit 0: The people working in the legal system
Week 1 Monday 13 January, 6pm	The common law and the civil law legal system	Moodle mini-unit 1: The trial courts in England and Wales
Week 2 Monday 20 January, 6pm	The common law and the civil law legal system	
Saturday Skills 25 January 10am-5pm	Academic skills workshop	
Week 3 Monday 27 January, 6pm	The administration of justice: The police	Moodle mini-unit 2: The European Court of Human Rights
Week 4 Monday 3 February, 6pm	The administration of justice: The police	
Week 5 Monday 10 February, 6pm	The administration of justice: Evidence	Moodle mini-unit 3: The civil justice system (and introduction to Tort, contracts & obligations)
Week 6 Monday 17 February, 6pm	1. Practice library session 2. Class meeting with personal tutor	
Week 7 Monday 24 February, 6pm	The administration of justice: Evidence	
Week 8 Monday 2 March, 6pm	The administration of justice: Sentencing	Moodle mini-unit 4: Access to justice
Week 9 Monday 9 March, 6pm	The administration of justice: Sentencing	
Week 10 Monday 16 March, 6pm	Civil liberties and Human Rights	
Week 11 Monday 23 March, 6pm	Civil liberties and Human Rights	

# **DETAILED COURSE SYLLABUS**

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## *Week 1: The Common law and the civil law legal system 1*

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### **Class preparation**

Welcome to the first week of the module The Administration of Justice. This is a unique module within the context of the study of law because usually, the criminal justice system takes a marginal or non-existent place when studying a law course (if you progress onto an LLB you will notice that the programme may have an option module with a title such as 'The Criminal Justice System' or similar). However, the administration of justice touches all of us on so many levels, and for this reason alone it is fundamental to gain at least some familiarity with the system.

This module takes a critical approach to the study of the topics in the syllabus. What does this mean? It means that you will be encouraged not to take situations and learning at face value. In other words, this module will attempt to challenge your understanding and prior knowledge- this is to make you a better-informed citizen.

You may have your own opinions on some of the topics which you will be discussing in this module. This is fine, but you should keep an open mind and remember that your fellow students may have different opinions to yours, and these are equally valid! You can disagree with their opinion but be considerate and do not dismiss them.

Through the examination of case studies in this module you will have the opportunity to develop the skills of developing an argument. If you have taken module 1 (English Legal System) you have had the chance to start thinking about these skills and even practice the basics (if you have not taken module 1, you can find the relevant skill-set [developing an argument and critical thinking] on Moodle and you are advised to read the information provided).

The way this module is structured allows you to slowly develop this skill; each week you will learn about another layer of the skill and you will have the opportunity to apply it. You

will do that by examining case studies on each topic every second week (police, evidence, sentencing and Civil rights).

The next two weeks will introduce you to the two most familiar legal systems: the adversarial and the inquisitorial.

However, there are so many other legal systems which we may not be familiar with, but this does not mean that they do not exist. For example, look at the following painting:



This is a painting by Yala Yala Gibbs Tjungurrayi and it represents Pintupi law. If you want to read about that access BBK eLibrary (or you can get a hard copy at the library) and search the book *The Politics of the Common Law* by Gearey et al., pp.84-91. You can access this as an eBook.

Before moving on, 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 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. In your scrap-notebook draw a table like the one below. Title one column 'adversarial system' and the other column 'inquisitorial system' (have as many rows as you need).

adversarial system	inquisitorial system

2. Next, to give you a generic idea of the two systems, skim read the short introduction in Elliott and Quinn's *The Adversarial System*, p.456 (go to the skills tab on Moodle if you need a reminder of the different types of reading).

- Then read the text again and identify the main key points that you need for the table (you can highlight the text if you printed a copy or have your own hard copy).
- Then, summarise in your own words this relevant information and write it down in the table under the relevant title (If you need a reminder of how to summarise information in your own words, please go to the relevant skills tab on Moodle).

3. On Moodle you will find the next reading: Monaghan Nicola, *Law of evidence* (Cambridge University Press, 2015), 2.2. The adversarial nature of the criminal trial.

- Skim through the reading first- just to give you a sense of the topics covered.
- Then read the text again and identify the main key points that you need for the table (you can highlight the text if you printed a copy or if you have your own hard copy). Then, summarise in your own words this relevant information and write it down in the table. Also make note of any case law which you think may illustrate a relevant point.

4. On Moodle you will find the next reading: Jane Creaton and Francis Pakes, *Adversarial or inquisitorial justice*, ed. Tom Ellis and Stephen P. Savage, *Debates in Criminal Justice*, Routledge 2012, p.52.

- Skim through the reading first- just to give you a sense of the topics covered. Then read the text again and identify the main key points that you need for the table (you can highlight the text if you printed a copy). Then, summarise in your own words any relevant information and write it down in your table.

Make sure your writing is clear and bring your scrap-notebook with you to class with all the annotated information.

**In class (Monday 13 Jan, 6pm)**

**BEFORE YOU LEAVE THIS CLASS: your lecturer will give you a list of topics for the presentation in week 3. You will need to choose one topic. It is your responsibility to take note of that topic (you can take a picture of it with your phone).**

If you have completed the English Legal System module, you will notice that this week was the first time in the programme where you required to do some wider reading. In total, you looked at 3 different sources. You will also continue developing your essay writing skills. This is what we call a scaffolding approach to learning, where the level of difficulty increases proportionally to the level of your learning. This approach assumes that you are building your skills and knowledge slowly but confidently. If for whatever reason you do not feel that this is the case, you may want to arrange a meeting with your personal tutor to have a chat about your progress (contact details at the beginning of this guide).

1. The class will start with a brief by your lecturer on the topic; you may be asked generic questions to kick off the discussion. Make sure that you take relevant notes of key points and that you draw your lecturer's attention to any questions that you may have.

2. Your lecturer will lead this discussion and you may be asked to work in pairs or in groups. Compare with your fellow students your findings on the differences between the adversarial and the inquisitorial system. Consider whether the information you and your fellow students have is relevant.

3. Once finished, your lecturer will call you back for a plenary discussion (= with all your fellow students). Drawing upon the information you have gathered in the table, you will be discussing the following statement:

The adversarial legal system is a better system than the inquisitorial legal system.

When debating, make sure your view is supported by reasoned arguments (e.g. I argue that this is the case.....because.....). During the debate, make sure you take notes- you will need these for your next task.

4. Next, you may be asked to work independently on the following:

- a. Imagine that you have been asked to give 1-2 minutes presentation to a group of police cadets (a youth organisation) who have just been enrolled and have no idea about the two legal systems. Consider that they will be given several presentations on the topic and so you need to choose one topic concerning the adversarial or the inquisitorial system (this topic needs



to be very narrow, so you need to think carefully- your table and the debate you just had may give you some ideas).

- b. The presentation should be structured as follows:
  - i. An introduction: 3 sentences introducing the topic of the presentation.
  - ii. Two paragraphs (c. 170 words each): each discussing one key point.
  - iii. A conclusion: 3 sentences concluding your side of the debate.

Make sure you write this down clearly because once your presentation is ready you will exchange it with a fellow student. Then, you will evaluate each other writing by following these criteria:

- a. Read your fellow student's presentation and consider whether the flow make sense. In other words, the move from one paragraph to the other should be logical, and it does not read like two unrelated chunks of information.

If required, consider adding any of the following connective words:

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, ...

- b. Now, consider each paragraph separately.
  - i. Can you identify the key point of the paragraph?
  - ii. If not, identify how many key points the paragraph has, and evaluate which one key point should be chosen as the only key point for this paragraph.

- iii. 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?
  - iv. 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).
  - v. 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.
- c. Next, assess 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 main key point of the paragraph; this can be done by providing detailed information, explanation, examples, evidence- all these should serve to clarify the key point of this paragraph.
- d. Finally: is the information cited?

Use the following abstract from the OSCOLA guide to check whether the information was cited accurately:

### 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*,<sup>31</sup> and in the earlier Court of Appeal decision in *Boulting v Association of Cinematograph, Television and Allied Technicians*.<sup>32</sup> 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'.<sup>33</sup> In *Phipps*, Lord Upjohn developed his view of the rule further by adding that there must be a 'real sensible possibility of conflict'.<sup>34</sup>

The relevant footnotes would appear as follows:

<sup>31</sup> [1967] 2 AC 46 (HL).

<sup>32</sup> [1963] 2 QB 606 (CA).

<sup>33</sup> *Boulting* (n 32) 638. OR <sup>33</sup> *ibid* 638.

<sup>34</sup> *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.<sup>1</sup>

<sup>1</sup> 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’.<sup>34</sup>

<sup>34</sup> 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.

<sup>1</sup> Robert Stevens, *Torts and Rights* (OUP 2007).

...

<sup>26</sup> Stevens (n 1) 110.

<sup>27</sup> *ibid* 271–78.

E. When ready, in turn explain the feedback you decided to give.

Finally, your lecturer will call you back to plenary. By way of discussing the statement: *The adversarial legal system is a better system than the inquisitorial legal system*

You will read your presentation. Remember that in week 3 you will be required to present a specific topic to the class, so consider today as welcome practice.

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

**BEFORE YOU LEAVE:** your lecturer will give you a list of topics for the presentation in week 3. You will need to choose one topic. It is your responsibility to take note of that topic (you can take a picture of it with your phone).

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## Week 2: The Common law and the civil law legal system 2

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### **Class preparation**

In this week you will start (if this is your first module) or continue (if this is your second module) thinking about structuring a reasoned argument. You will also practice accessing and identifying sources in the library and eLibrary. Finally, you will continue developing your knowledge from last week about the English legal framework.

Before starting your preparation for this week's class, look at the tasks below and consider how you will time manage these, so you arrive prepared. Note, this week you are required to deal with 4 sources.

Preparation tasks:

1. Draw in your scrap-notebook a table with 3 headings: logic, deduction, induction, like so (have as many rows as you need):

logic	deduction	induction

2. Either go to BBK library in person or you can access this book on the eLibrary as an eBook (if you need a reminder on how to access an eBook on BBK eLibrary please find the guide on Moodle- if you struggle, please contact via email the programme director for guidance):

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

- Skim through pp. 379-384: Logic, deduction, induction.
- Now, read these pages again with the aim of taking notes of key points which you can use to fill the table above.
- Make sure that the notes are summarised in your own words.

3. By way of thinking about these concepts more deeply, read the following extract. This is taken from Terence Anderson, David Schum and William Twining, *Analysis of Evidence*, p.2, B.1. Whose baby I? The Judgment of Solomon.

- Read the case on the Judgment of Solomon and answer the questions at the end of it. Be prepared to share this in class. Remember, this is not about how well you understand the Bible or religious related issues, but rather, it is about thinking and reasoning.

## B. Evidence and inference in non-legal contexts

### 1. Whose baby I? The judgment of Solomon

Then came there two women, that were harlots, unto the king, and stood before him. And the one woman said, O my lord, I and this woman dwell in one house; and I was delivered of a child with her in the house. And it came to pass the third day after that I was delivered, that this woman was delivered also: and we were together; there was no stranger with us in the house, save we two in the house. And this woman's child died in the night; because she overlaid it. And she arose at midnight, and took my son from beside me, while thine handmaid slept, and laid it in her bosom, and laid her dead child in my bosom. And when I rose in the morning to give my child suck, behold, it was dead: but when I had considered it in the morning, behold, it was not my son, which I did bear. And the other woman said, Nay; but the living is my son, and the dead is thy son. And this said, No; but the dead is thy son, and the living is my son. Thus they spake before the king.

Then said the king, The one saith, This is my son that liveth, and thy son is the dead: and the other saith, Nay; but thy son is the dead, and my son is the living. And the king said, Bring me a sword. And they brought a sword before the king. And the king said, Divide the living child in two, and give half to the one, and half to the other. Then spake the woman whose the living child was unto the king, for her bowels yearned upon her son, and she said, O my lord, give her the living child, and in no wise slay it. But the other said, Let it be neither mine nor thine, but divide it. Then the king answered and said, Give her the living child, and in no wise slay it: she is the mother thereof. And all Israel heard of the judgment which the king had judged; and they feared the king: for they saw that the wisdom of God was in him, to do judgment. (I Kings iii, 16–28)

## Questions

- 1 Was this case concerned with
  - a the interpretation of a rule,
  - b a straightforward dispute about past facts,

- c solving a problem for the future, or
  - d a combination of some or all of these?
- 2 Which of the following questions were pure questions of fact, and which were directly in issue in this case?
    - a Who was the natural mother?
    - b Who would look after the child better?
    - c Who had a right to the child?
    - d What disposition would be in the best interests of the child?
  - 3 What general assumptions about the relations between mothers and children are implicit in this passage? Do you believe them to be universally or generally true today? What is the basis for your belief?
  - 4 Do you think that (a) both women genuinely believed that the child was theirs? (b) both women believed that Solomon would carry out his threat?
  - 5 Does this story suggest that Solomon's "wisdom" was founded on the notion that he was a clever investigator; a just judge; an enlightened problem-solver; or a potentially good poker-player?
  - 6 There are different versions of the Bible. In the Revised Standard Edition of the Bible, the last sentence reads: "And all Israel heard the judgment which the king had rendered; and they stood in awe of the king, because they perceived that the wisdom of God was in him, to render justice." What evidence should a biblical scholar examine to determine which version is the most accurate? What standards should she apply? What evidence should a Justice of the United States Supreme Court examine to determine the meaning of a clause of the Constitution of the United States? What standards should the Justice apply?

4. Next, by way of reconsidering the differences between the adversarial English legal system (the common law system) and the inquisitorial legal system (the civil legal system) - watch the following documentary 'Murder in Italy' (85mins).

- Before watching, take note of the following questions which you will have to answer after you watch the documentary; be prepared to share your thoughts in class:
  - i. The documentary only focuses on the inquisitorial legal system in Italy. From what you have learnt so far, can you identify any differences with the adversarial English legal system?
  - ii. Drawing upon the documentary, can you identify any strengths or/and weaknesses in the inquisitorial legal system?
  - iii. Drawing upon the documentary, can you identify any risks in the approach taken by the inquisitorial legal system?



iv. Imagine this case was happening and had to be investigated and brought to justice by the adversarial English legal system - how do you think the resolution of the case could have been different?

- You can access this via the following link. Note that the system will ask you to identify your institution (Birkbeck College) and then it will ask you to log in, please use your library log in details:

Murder in Italy, 22:00 13/03/2017, BBC4, 85 mins.

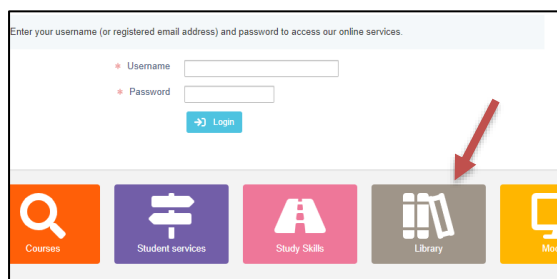
<https://learningonscreen.ac.uk/ondemand/index.php/prog/0E8C1DA6?bcast=123710370> (Accessed 04 Jul 2019)

5. Finally, identify on BBK eLibrary the following academic article:

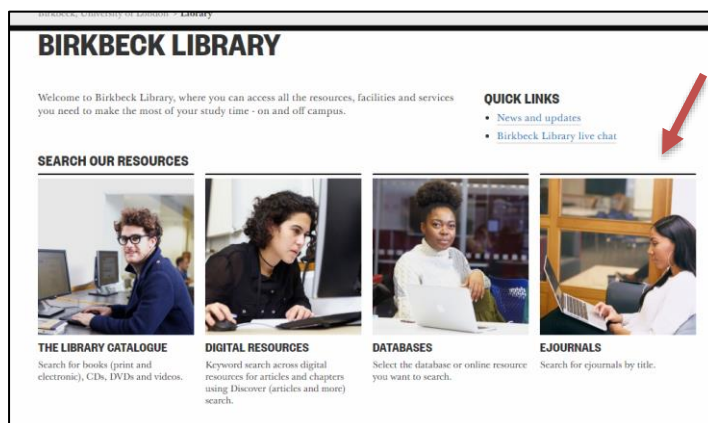
Mulcahy, L. 'Architects of Justice: The Politics of Court House Design', *Social and Legal Studies* 16, 3 (2007), 383-403.

This is your first time you have been asked to access an academic article via the eLibrary; you may want to follow these instructions:

1. Access BBK eLibrary. You can do that through My Birkbeck or directly from the library website.



2. Once on the library website, click on EJOURNALS





3. This will bring you to the search page. Insert in the search box: *Social and Legal Studies*

Find eResources by first letter of title

Number [A](#) [B](#) [C](#) [D](#) [E](#) [F](#) [G](#) [H](#) [I](#) [J](#) [K](#) [L](#) [M](#) [N](#) [O](#) [P](#) [Q](#) [R](#) [S](#) [T](#) [U](#) [V](#) [W](#) [X](#) [Y](#) [Z](#) [Other](#)

Identifying number:

Limit search to the following content types: ☒ All ☒ Journals ☐ Books

Please enter a search term

Title begins with

If you are looking for an article and you don't know the title of the journal? Try using [Digital Resources](#)

4. Three (3) databases will appear; you can choose any of these because the article's date (2007) is available in all of them. These instructions will choose the first database:

1 record retrieved for the search: Title begins with "Social and Legal Studies"

Social & legal studies (0964-6639)

Alternate Title: Social and legal studies

from 1992 to 2015 in [Hein-On-Line](#) The date range of access is determined by HeinOnline and may vary

from 01/03/1992 to present in [SAGE Complete A-Z List](#)

from 1995 to 2015 in [IngentaConnect](#)

5. You will be asked to enter your BBK username and password:

Welcome to the Birkbeck Library EZproxy login page

Please enter your Birkbeck username:

Please enter your Birkbeck password:

6. This will bring you to the journal page. Scroll down to 2007 and click on the + sign. Search for the article (tip: go by the page)

7. You can view the article online, download it and save it on your computer; you can also print it.

- Read and highlight key points in the article. You may also want to summarise these key points. You want to make sure that you know your way around the article because you will be asked to showcase your knowledge about it in class in a group competition!

### **In class (Monday 20 Jan, 6pm)**

This week you will start thinking about 3 important concepts in the art of argument making. If you took module 1 (English Legal System) you have already been introduced to some of the principles of how to structure a reasoned argument (if you have not taken module 1 you may want to read through the skills tab on Moodle).

These concepts are: logic, deduction and induction.

1. Your lecturer will lead this discussion and you may be asked to work in pairs or groups. By way of introducing these topics you will address The Judgment of Solomon. Compare your answers with your fellow students; then you will discuss these in plenary with your lecturer. Make sure you discuss the importance and differences of these concepts.

The aim of the following 3 exercises is to help you think about the characteristics of the adversarial legal system.

2. Discuss with your lecturer the findings you have identified concerning the documentary 'Murder in Italy'. You may be asked to work in groups and then share your thoughts in plenary.

3. You have been asked to read the article by Mulcahy. Reading and understanding what a source has to say (i.e. reading comprehension) is an important academic and transferable skill (imagine your employer giving you a file with lots of documents out of which you need to extract the key information in preparation for a meeting or a client briefing).

Understanding Mulcahy's article is particularly important because you will draw upon it in your court report assessment.

Your lecturer will lead this task and you may be asked to work in pairs or in small groups. You will be given a Quiz with questions about the article. To answer the Quiz, you can use the article and your notes. The group with the most correct answers wins!

4. The following exercise has several aims, and you want to make sure that you make the most of it:

- i. It will help you to think about the discussion you had on Mulcahy's article, 'Murder in Italy' and the adversarial system by way of applying what you have learnt to assess an actual trial proceedings.
- ii. In other words, you will be applying theory to facts - and this is what you will be required to do for the court-report assessment due on 6 March. Therefore this is important practice.

By way of practicing the above, you will be introduced to a different legal system: The South African legal system.

For general information, Oxford LibGuides explains that:

South Africa has a mixed legal system. Its doctrines and concepts are influenced both by the civilian tradition (in an uncoded Romano-Dutch form brought by early Dutch settlers) and by the common law tradition (introduced during the British colonial period).

Indigenous people may still choose to be subject to customary law, so long as it does not conflict with the Constitution.

(Reference: <https://ox.libguides.com/c.php?g=422906&p=2888047>)

Watch with your lecturer the following clip from the Oscar Pistorius trial. While watching keep in mind the discussion you had on the Mulcahy's article and 'Murder in Italy' - remember that the focus here concerns the adversarial legal system.

After watching, discuss with your lecturer any characteristics of the adversarial legal system that you were able to identify from the Pistorius trial.

Oscar Pistorius: I shot door by accident. 9/04/2014. The Telegraph. 13:44 mins.  
<https://www.youtube.com/watch?v=x3az9ltZOLo>

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

For those interested in exploring the South African system, the following is an interesting read by Salina Lutchman, Update: Researching South African Law,  
[http://www.nyulawglobal.org/globalex/South\\_Africa1.html](http://www.nyulawglobal.org/globalex/South_Africa1.html)

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## *Saturday Skills:*

### *25 January, 10am-5pm*

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This Saturday Skills day is fundamental for three reasons, whether you have attended Term 1 Saturday Skills or not:

1. You will be reminded of 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 reminded of and given the opportunity to practice referencing and citation skills; you will also investigate how to effectively use academic/non-academic sources.

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

3. You will be given a brief on, and opportunity to practice critical writing skills. This session you will specifically look at this skill and understand its importance in the academic context.

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.

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## *Week 3: The administration of justice: The police 1*

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### **Class preparation**

Your preparation for this week consists of writing the transcript for your presentation which is assessed and due on 31 January; you will also prepare for the class presentation in which you will deliver this transcript. Whilst this is not assessed, you will receive helpful feedback on your presentation skills (which you will need for next term if you take the course Law, Society and Ethics).

**Important:** This is not just a class presentation for the sake of it. You, and your fellow students, are given the role of 'lecturer', and you will be delivering the topics on policing while your lecturer will be sitting in the audience and just facilitates the discussion. Therefore, everyone will rely on you to deliver the topic which you have chosen.

Preparation tasks:

The presentation should be no longer than 2-5 minutes (your lecturer will give you guidance on that and it will depend on the number of students in class).

This task gives you the opportunity to practice several skills and showcase knowledge which you will acquire on the topic of policing.

The following are skills which you will develop or finalise, and the respective instructions:

1. Skills: Reading comprehension and summarising in your own words.

Instructions: You will have to identify the main key points of the topic you have chosen from the list your lecturer gave you in week 1. Use Elliott & Quinn's textbook to start your research; the textbook will identify key information. Once you do that, you can read and

research more widely (such as other textbooks, books, academic articles, information on the web which is reputable- remind yourself of the Saturday skills discussion you had on academic sources). Read and summarise in your own words the information that you need. Write a presentation transcript which you will then present in class.

2. Skill: Practicing essay writing

Instructions: Although your vocal presentation may slightly differ from the transcript, the transcript itself should guide your presentation, and it is helpful having a coherent structure. This is how good presentations in the academic or employment context should be structured (of course, the length of the transcript will depend on the time you have been given for the presentation): an introduction (1-2 sentences), 2-3 paragraphs (c.170 each) and a conclusion (1-2 sentences).

3. Skill: Practicing presentation skills.

Instructions: Although this is not assessed, your lecturer and fellow students will give you some feedback on your presentation skills. To refresh your knowledge on presentation skills please access the relevant skill tab on Moodle.

4. If you wish, you may distribute handouts or create a small PowerPoint presentation. Just make sure you time yourself at home so it does not exceed the 2-5 minutes.

### **In class (Monday 27 Jan, 6pm)**

You will be the lecturer!

This week, your lecturer (and possibly your Programme Director) will sit at the back. You and your fellow students will each give a short lecture on the topic that you have chosen.

As a lecturer: be prepared to answer questions on your topic and receive feedback on your presentation skills.

The audience:

- a. You will be given a checklist which you can use to assess your fellow students' presentation skills. Be prepared to share your feedback at the end of each presentation.
- b. You will listen to several presentations. Make a point to ask at least two questions (on two different presentations) concerning the content presented. This is important, because in this way you will be helping the presenter to practice the skill of answering a question 'on the hoof' (on the spot/without preparation/caught by surprise).

By the end of this class, you should have gained some knowledge regarding the different powers held by the police.

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## *Week 4: The administration of justice: The police 2*

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### **Class preparation**

In this week you will deal with the first case study. Therefore, preparation is of the essence. Before starting your preparation for this week's class, look at the tasks below and consider how you will time manage these, so you arrive prepared.

Preparation tasks:

1. Read the following two sources, and summarise the main key points in your own words; write these down in your scrap-notebook, and have these for class discussion:

Hanson, *Learning Legal Skills and Reasoning*, p.392- 402 (accessible via BBK eLibrary) and remind yourself of the inductive and deductive argument construction which you have discussed on week 2 (Hanson, pp. 379-384 and your class notes)

Elliott & Quinn's, pp.418 – 421 (in relation to power of arrest).

2. Find the European Convention of Human Rights (you can Google it); skim read it and focus on Article 2, Article 3 and Article 6. You can copy these in your scrap-notebook or download the Convention onto your computer (You can also take a picture of each article with your phone)

3. Read the following sources. You can print these out (click on the 'print' option on the articles so you avoid printing all the advertisements too). Highlight key points which you think may contribute to a discussion in class.

Dalian Atkinson: Two PCs may be charged over footballer Taser death

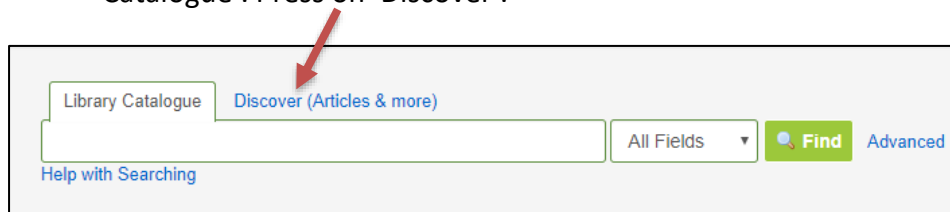
<https://www.bbc.co.uk/news/uk-england-shropshire-45902739>

South Wales police Taser rethink as gang knife threat grows

<https://www.bbc.co.uk/news/uk-wales-south-west-wales-44054494>

4. Search, read and summarise the main key points from this article: *Policing Science: The Lessons of Taser*. Follow these instructions to find the article; it is in the 'Discover' search on the library catalogue website:

- i. Access BBK eLibrary. You can do that through My Birkbeck or directly from the library website.
- ii. Once on the library website, click on 'The Library Catalogue'
- iii. This will bring you to a search box. The search box will be by default on 'Library Catalogue'. Press on 'Discover'.



- iv. When diverted to the Discover page, write in the search box: *Policing Science: The Lessons of Taser*, and press Find.
- v. You will be able to access the article directly by clicking on the PDF full text. You can save it on your computer or print it out. Highlight key points which you think may contribute to a discussion in class.

5. Search, read and summarise the main key points from this article: *Introduction of the Taser into British policing. Implications for UK emergency departments: an overview of electronic weaponry*. Follow these instructions to find the article:

- i. On BBK eLibrary, click on EJOURNALS.
- ii. Type in the search box the following: *emergency medicine journal*
- iii. Two databases will come up; you can choose either, but this instruction will choose HighWire Press.
- iv. This will bring you to the journal main page. At the top right-hand side of the page click on 'Archive'.





v. On the Archive page click on '2000s'.



- vi. Then click on '2004'.
- vii. Then click on March Vol 21, Issue 2
- viii. This will bring you to the table of content. Click on 'Reviews'.
- ix. Finally, under 'Reviews' identify the article: *Introduction of the Taser into British policing. Implications for UK emergency departments: an overview of electronic weaponry*

You can save it on your computer or print it out. Highlight key points which you think may contribute to a discussion in class.

6. Finally, watch the following documentary and write down any thoughts that the documentary brings up. You can access that via this link, and you will be asked to use your library login details.

In the Line of Fire with Ross Kemp, 22:45 05/03/2019, ITV London, 60 mins.

<https://learningonscreen.ac.uk/ondemand/index.php/prog/13145DCD?bcast=128639486>

(Accessed 05 May 2019)

Be prepared to share all the findings you have gathered during this preparation.

### Wider reading

The following is wider reading for police and torture. These are ECtHR cases which you do not need to read for this week's preparation; however, if you choose to focus on police powers on the final assessment (due on 27 April) you may want to come back to these readings and use them in your analysis. You will find a guide on Moodle on how to access these cases.

*Razzakov v Russia* (57519/09) (2017) 65 E.H.R.R. 10

*Hajrulahu v Macedonia* (37537/07) [2015] 10 WLUK 757

*Menesheva v Russia* (59261/00) (2007) 44 E.H.R.R. 56

*Selmouni v France* (25803/94) (2000) 29 E.H.R.R. 403

### **In class (Monday 3 Feb, 6pm)**

This week, you will start to practice analysing a case study. Note that the case study tasks which you will encounter in this module are not problem questions (although you may be asked to solve a problem question [remember you covered that in module 1- find guidance on Moodle] as a mean of applying knowledge). Instead, you will develop the skill of dealing with 'raw data' and learn how to infer from it a probable 'story' which can support an argument.

In this class you will continue developing the skills required for the development of an argument.

In preparation to this class you have read Hanson, she asks this important question:

*How does the court decide the criteria for the evaluation of an argument and assess whether it is more supported by the evidence than an opposing argument on the same matter?*

She further explains that trials may involve competing versions of facts or of the meaning of words in legal rules (p.392) (as you have seen when discussing judicial statutory interpretation in module 1).

Hanson uses the following definition for an 'argument':

*An argument is a series of statements, some backed by evidence, some not, that are purposely presented in order to prove, or disprove, a given position (p.394).*

Hanson explains that an argument can also be described as the process of convincing someone of something by bringing reasons to support that assertion.

1. Before moving on to examine the case study and practice your argument skills, you will have a discussion in class on the use of taser guns by the police. In your contribution to the discussion, draw upon key points from the readings and your notes.
2. Next, your lecturer will lead the discussion and you will briefly revise the construction of a deductive and inductive argument and the difference between the two.
3. The following scenario is this week's case study and you may be asked to work in small groups before sharing your findings in plenary. Make sure that you take notes and are prepared to share these with the rest of the class.

Police officer Shyla and Police officer Sam arrested John on suspicion of murder. John was not compliant and was violent during the arrest. He punched Officer Sam in the face; at this moment Officer Shyla used the taser gun to restrain John. As a result, John suffered grievous bodily harm injuries. It then transpired, that the officers were given the wrong intelligence, and that John was mistakenly identified as the suspect.

Your brief:

- i. Imagine that you are a junior clerk in the Independent Police Complaints Commission. You have been asked to draft an initial report identifying whether the use of a taser gun by police officer Shyla amounts to Torture, Inhumane and Degrading Treatment which violates Article 3 ECHR.
- ii. Your role here is neutral. You have not been asked to support either party (e.g. the police or the victim). Today you will just provide an objective report based on the evidence you have been given.

- iii. Note that if the Independent Police Complaints Commission identifies in its investigation that the use of a taser gun by police officer Shyla amounts to Torture, Inhumane and Degrading Treatment, John may be entitled to compensation. This will also open up the debate as to the limits and remits of police powers.

Start your examination by identifying the following:

\*All the evidence can be found at the end of this week's tasks\*

- Read evidence 1
- Structure a deductive argument by identifying the Major premise, the Minor premise and the conclusion.

Once completed, your lecturer might call you back to plenary to check your deductive argument. You will briefly discuss the weaknesses of such an argument.

Before continuing in your group work- identify with your lecturer the 'thesis' of the inductive argument which will also be the proposition.

4. Your job as a junior clerk is particularly difficult in this case. You do not actually have legislation which tells you exactly what can be classed as Torture, Inhumane and Degrading Treatment. If we take the offence of theft for example, the Theft Act 1967 is clear about all the elements of the offence that need to be identified so that the 'appropriation of a property' can be classed as stealing.

For Article 3 ECHR, you only know the following: No one shall be subjected to torture or to inhuman or degrading treatment or punishment.

But how are torture/inhuman or degrading treatment or punishment to be quantified and defined? (This question relates to those acts which may not be obviously classed as such, e.g. police interrogation under pressure).

For this reason, you will have to create a working definition which you will use as the legal rule.

- Read evidence 2 and 3.
- Try to come up with a workable legal rule as to when and which sort of acts may be classed as torture/inhuman or degrading treatment or punishment.
- Note that the Court in *Krastanov v Bulgaria* considered the possibility that 'ill treatment was sufficiently serious to be considered inhuman, but it could not be qualified as torture' - this is something that you may need to consider.

4. Once completed the above, your lecturer might call you back to plenary to check your legal rule; you will then come up with a class working definition.

With your lecturer, indicate the different elements of the legal rule which will need to be proved. Copy this table to your scrap-notebook and fill it in as the discussion goes (have as many rows as needed). Keep the second column blank for now:

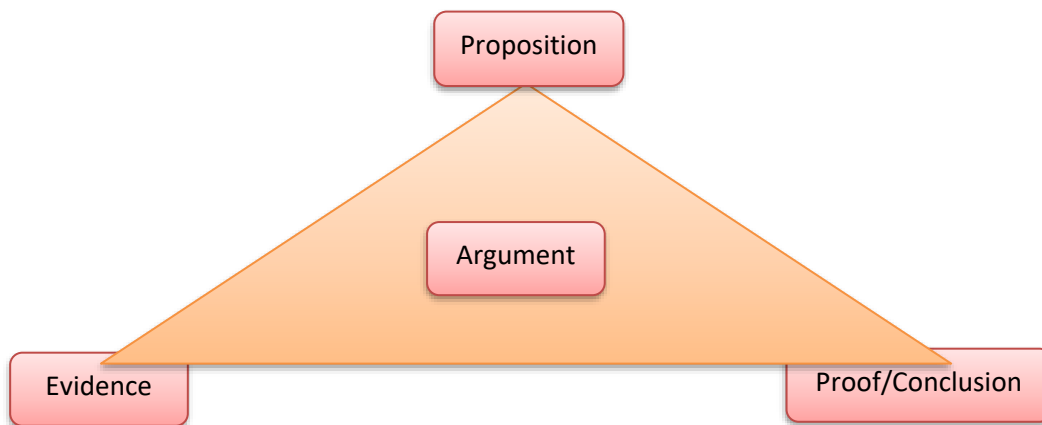
Elements of the legal rule which need proving	Facts evidencing the legal rule's elements

5. Next, you need to move on to the factual analysis. You may be asked to work in small groups, make sure you take notes to share in the plenary discussion.

- Read evidence 4
- Identify in your group some agreed-facts (facts which are undisputed, agreed by both sides)
- Now identify the possible facts evidencing the elements of the legal rule you came up with in class. You can use the second column in the table above.

6. Finally, with your group, consider what is your legal analysis? Look at the complete table- what is the conclusion you can draw from the inductive reasoning? Note that the conclusion should prove beyond reasonable doubt your 'thesis' (proposition); if it does not, the inductive argument cannot stand.

How well does the argument you have created fit in Hanson's diagram (adopted from p. 405)? In other words, how strong do you think the argument is? (i.e. well supported by evidence)



When finishing the above task your lecturer might call you back into plenary to check your findings.

In two weeks' time when dealing with the case study concerning evidence, you will develop the skill you have practiced today and learn how to challenge inductive reasoning.

There are two main pointers which you should take from today's class, and your lecturer may choose to wrap-up the session with a brief discussion on these:

- i. The importance of understanding the building blocks of an inductive reasoning (including weaknesses and strengths), how to construct one by following these building blocks, and being aware that the knowledge of how to construct an inductive reasoning can help you to write a reasoned argument (in an assignment or at the work place [e.g. for a report, a consultation or a proposal])
- ii. What is the tension you have identified between the use of police power and human rights?

### **Evidence (below)**

1. ECHR
2. ECtHR judgment (positive treatment) *Krastanov v Bulgaria* (50222/99) (2005) 41 E.H.R.R. 50
3. *Morrison v The Independent Police Complaints Commission* [2009] EWHC 2589 (Admin)
4. statements

## Evidence 1

### ARTICLE 3

#### Prohibition of torture

No one shall be subjected to torture or to inhuman or degrading treatment or punishment.

### ARTICLE 6

#### Right to a fair trial

1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.

### ARTICLE 2

#### Right to life

1. Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.
2. Deprivation of life shall not be regarded as inflicted in contravention of this Article when it results from the use of force which is no more than absolutely necessary:
  - (a) in defence of any person from unlawful violence;
  - (b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;
  - (c) in action lawfully taken for the purpose of quelling a riot or insurrection.

## Evidence 2

ECtHR judgment (positive treatment) *Krastanov v Bulgaria* (50222/99) (2005) 41 E.H.R.R. 50

Judge: Judge Rozakis (President)

The complainant (K) complained that the Bulgarian authorities had breached his rights under the European Convention on Human Rights 1950 Art.3 and Art.6(1). K had been severely beaten by police officers who had mistakenly identified him as a person suspected of criminal offences. K suffered severe head injuries and had to undergo neurological surgery. On May 26, 1995, K issued civil proceedings claiming damages against the authorities for violation of the relevant rules on the use of force by police officers. Following several appeals by the police authorities, final judgment was given in the case on May 27, 1999. It was held that K had suffered ill treatment at the hands of the police, to which he had not contributed in any way, and that he had sustained serious injuries as a result. K complained that: the ill treatment he had suffered at the hands of the police amounted to torture or inhuman or degrading treatment within the meaning of Art.3;

Held, upholding the complaints, that: K's assertion that he had been ill-treated was not disputed by the Bulgarian government. Moreover, the fact of his ill treatment had been fully confirmed by the domestic courts which had tried K's civil action. The injuries suffered established the existence of serious physical pain and suffering. However, it did not appear that the pain and suffering had been intentionally inflicted on K for the purpose of making him confess to a crime or breaking his physical and moral resistance. Furthermore, his injuries had been caused over a short time during the course of a police operation for the arrest of suspected offenders which was accompanied by heightened tensions. Thus, the ill treatment was sufficiently serious to be considered inhuman, but it could not be qualified as torture.

## Evidence 3

*Morrison v The Independent Police Complaints Commission* [2009] EWHC 2589 (Admin)  
Judgment by Mr Justice Nicol:

In the early hours of 29th June 2008 the Claimant was driving a friend home. They were stopped by the police. What happened then is a matter of dispute. On the Claimant's account, he was faced with a man pointing a gun just a few inches from his face. The Claimant raised his hands. The man broke the glass on the driver's side window and ordered him not to move. The door of the car was opened. The Claimant experienced an electric sensation which he puts down to being 'shot' with a Taser. He felt extreme pain.



He slumped forward against his seat belt which was still on. He has no memory of what happened after that until he recovered in Brixton police station. It appears that he had been arrested on suspicion of possession of a firearm and an offensive weapon (a Stanley knife). At the police station he was seen to have cuts on his face. He was taken to Kings College Hospital where these cuts were stitched. He was returned to the police station and bailed later that day. He has not been charged with any offence.

....

At this stage, the IPCC did not consider that Articles 2 or 3 of the ECHR were engaged. The Claimant's life had not been threatened and so the Article 2 right was not involved. So far as Article 3 was concerned, Mr Bradon did not believe that the injuries or the circumstances in which they were received met the severity test in relation to Article 3 's prohibition on degrading or inhuman treatment.

*[Comment: This case was only about approving the decision to investigate whether there was a violation of Article 3 [this is a judicial review]- but Justice Nicol gave a brief reflection on what could be considered a degrading treatment under Article 3- but he did not confirm that Morrison was subject to a degrading treatment]*

....

Article 3 provides:

“No one shall be subjected to torture or inhuman or degrading treatment or punishment.” In one of very many cases which have considered the meaning of this prohibition, the [\*European Court of Human Rights in Assenov v Bulgaria \(1999\) 28 EHRR 652\*](#) said at paragraph 93 and 94:

“93. Article 3, as the Court has observed on many occasions, enshrines one of the fundamental values of democratic society. Even in the most difficult circumstances, such as the fight against terrorism or crime, the Convention prohibits in absolute terms torture or inhuman or degrading treatment or punishment. Unlike most of the substantive clauses of the Convention and of Protocols Nos. 1 and 4, Article 3 makes no provision for exceptions and no derogation from it is permissible under Article 15 even in the event of a public emergency threatening the life of the nation.

94. The Court recalls that ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3. The assessment of this minimum is relative: it depends on all the circumstances of the case, such as the duration of the treatment, its physical and/or mental effects and, in some cases, the sex, age and state of health of the victim. In respect of a person deprived of his liberty, recourse to physical force which has not been made strictly necessary by his own conduct diminishes human dignity and is in principle an infringement of the right set forth in Article 3.”

In that case the applicant alleged that following his arrest he had been beaten by police officers at the police station with truncheons and a toy pistol and that he had been pummelled in the stomach. The Court held that the degree of bruising which he suffered were sufficiently serious to amount to ill-treatment within Article 3 .

In *Saya v Turkey* App. No. 4327/02 Judgment 7th October 2008 the applicants had attended a May Day rally and had been arrested by the police. They alleged that excessive force was used during their arrest. They suffered injuries which included tenderness to back of the legs and back, scratches on the back and tenderness and bruising. The Court found that in respect of some of the applicants (who had suffered injuries of this kind) there had indeed been a breach of Article 3 . This case also illustrates the Court applying the same principles to a situation where excessive force was allegedly used in the context of an arrest as it does to ill-treatment once a person is in custody in a police station or prison.

It was judgments such as these which led the IPCC in this case to concede that the treatment which the Claimant suffered could arguably cross the Article 3 threshold. I have to say that I do not regard the experiences of the Claimant as anywhere near the borderline that is perhaps represented by minor bruising or scratches. It is not disputed that Taser can cause intense pain (albeit briefly). The photographs of the Claimant show that he suffered significant cuts, not least to his face and head. Of course, if the police used no more than reasonable force to effect his arrest and/or to deal with a threat to public safety, there would be no breach of Article 3 , but if his account is correct and he was compliant and there was no reasonable basis to suspect that he had immediate access to a weapon, subjecting him to treatment of that kind was a serious matter.

#### **Evidence 4**

##### **Statements**

1. Officer Shyla's statement: we arrived at the premise following intelligence that John was hiding in his mother's house basement; intelligence suggested that John was armed. We broke into the house through the back door after no one answered our alter. We found John's mother listening to her radio show having headphones on- so she could not hear our entry-alert. John was having dinner in the kitchen. There is no way he did not hear our call. He did not look surprised by our presence, but when Officer Sam told him that we arrest him on suspicion of murder he studently put his hand in his pocket as if he was searching for something. Officer Sam and I jumped on him to restrain him. Officer Sam body-searched John, but he only found a cell-phone. When we restrained him this first time, Officer Sam hit incidentally John jaw- it was in the way. Once John calmed down, we ungrabbed him and I said, 'it does not have to be that way'. This is when John slapped me

in my face; then Officer Sam jumped on John attempting to restrain him, but John was waving his arms in the air attempting to punch Officer Sam. All that took about 5 seconds. I then grabbed the taser gun and I tasered John once; to my surprise it did not affect him and so I tasered him again. John then froze for 2 seconds, and Officer Sam was able to hand-cuff him. Because I was not sure whether John would comply for enough time for Officer Sam to complete the hand-cuffing, I tasered him again. John gave two short but sharp shouts. We took him to the police station custody but due to injuries, he was taken to Kings College Hospital. Injuries received 2 to 3 stitches to left lower jaw area; the taser injuries included skin injury, surface burns, difficulty breathing possibly due to minor shock.

2. Officer Sam's statement: when I saw John in the kitchen, I thought that he did not match the age profile given by intelligence. Before we were able to question John, he put his hands in the pocket as if he was looking for something. I thought immediately that he was looking for a weapon; intelligence did say that he was armed. Officer Shyla and I jumped on him to restrain him, and during this movement I punched him in the jaw. This was not intentional, but we moved very fast, I guess the impact was rather harsh. A few minutes later, out of the blue, John slapped Officer Shyla. This is when I jumped on John attempting to restrain him, but because I was doing that on my own (it took Officer Shyla a couple of seconds to react) I struggled to hand-cuff him. Then, Officer Shyla stepped in and tasered John once; this did not help, so she tasered him again and I was able to hand-cuff him, she then tasered him again. I did not think this was necessary, but she might have thought that he was unfreezing, but it was just the effect of the taser.

2. John's mother's statement: I was listening to my favourite radio programme on my iPlayer that my son bought for me on Christmas. I had my headsets on, so I only noticed what was going on in the house when that woman officer came to me and asked me to take off the headset. Then I saw John hand-cuffed with some browns on his jaws and strange signs on his neck and arms. The sort of thing that you see in movie horrors with leeches or this sort. I got worried, John has always had a very delicate skin.

3. John's statement: I really do not know what on earth happened there. I was having my dinner, I heard some banging on the door, but I thought the kids were trying to prank my mom again. So I ignore it. Then these two officers smashed the door. I was bemused to say the least, and rather shocked. Then they said that I am arrested on suspicion of murder, murder! So I tried to look for my phone, I wanted to start filming them- you know, sometimes you see clips on Facebook, I wanted to do the same. But then these two jumped on me; the guy searched me and they found the phone- what else did they think I am hiding? We got calm again, but then the woman said that 'we can do it the easy way' or something like that. This is when I got really crossed- do what? I shouted. So I slapped here, I could not control myself I was raging. Then the guy jumped on me again, I gave him the run for his money, but then I felt a sort of a nerve shock, a strange pain, and then another even stronger. I think I froze, I can barely remember what happened next.

4. Medical evidence: the patient arrived to the A&E with what seemed to be surface injuries. However, not all were surface injuries and some, like the burns caused by the taser were far more severe than they could have been if these were treated immediately; it appears that at least 2.5 hours lapsed between when the injury was caused and the medical treatment. The patient is also suffering from difficulty of breathing possibly due the shock to his nerves caused by the taser. Some individuals are more sensitive than others to this shock, and it appears that the patient is of the sensitive kind. It is not clear yet, whether the patient may suffer some mild but permanent damage to a small nerve in his arm. The damage may consist of mild pains especially when the weather is particularly cold.

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## *Week 5: The administration of justice: Evidence 1*

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### **Class preparation**

The study of the law of evidence is usually reserved to 2<sup>nd</sup> or even 3<sup>rd</sup> year law students, and it is usually an option module. But this is unfortunate, because issues concerning evidence are at the core of the justice system. Here you will be introduced to these briefly, enough to give you some food for thought.

Before starting your preparation for this week's class, look at the tasks below and consider how you will time manage these, so you arrive prepared.

Preparation tasks:

Have your scrap-notebook ready, and take notes as required.

1. On Moodle you will find the reading: *The Modern Law of Evidence*, By Adrian Keane, Paul McKeown, Introduction pp.1-7.

- i. Skim read it but do not take notes yet.
- ii. Now, read the following questions before you move on; consider writing these in your scrap-notebook (do not answer these yet):

1. What is 'evidence' and the 'law of evidence'?
2. Typically, the parties to litigation dispute the facts. What are the reasons that operate to prevent the court from looking at **all** the evidence that could assist in discovering where the truth lies?
3. What human factors can operate to prevent the court from discovering where the truth lies?
4. Are there any good reasons to restrict the evidence taken into account to a greater extent when the tribunal of facts is a jury or lay justice rather than a professional judge?

- iii. Next, read the text again, but this time identify the main key points (you can highlight these on the text if you printed it) which you think may help you to answer the above questions.

- iv. Use these key points by way of summarising these in your own words to answer the questions above.
- v. You want to answer the questions in full length paragraphs (it depends on the length of each question; some answers might be shorter- the important thing is that you keep a solid structure).
- vi. Write these clearly and be prepared to share these in class.

2. On Moodle you will find the reading: *The Modern Law of Evidence*, By Adrian Keane, Paul McKeown, Preliminaries, pp.8-56.

- i. Skim through it (note that this is a relatively long reading); do not take notes yet.
- ii. By way of giving you a background to the topic, in your scrap-notebook summarise the main key points under the titles 'Facts open to proof or disproof' (pp.9 – 11) and 'The varieties of evidence' (pp. 11- 13).

3. Next, imagine that you have been asked to deliver a brief lecture about one of the topics listed below. Your audience are newly recruited Magistrates. Note that Magistrates are lay members of the public and they are not required to have any legal expertise because they are assisted in court by a legal adviser (see Moodle mini-unit on the people working in the legal system).

- i. Choose one of the topics from the list below (go back to *The Modern Law of Evidence*, By Adrian Keane, Paul McKeown, Preliminaries, pp.8-56):
  - Circumstantial and conclusive evidence (pp.14 – 22)
  - Relevance and admissibility of evidence (pp. 23 – 32)
  - The functions of the judge and jury (pp. 34 – 46)
  - Judicial discretion (pp. 47 – 53)
- ii. Your written lecture will be structured as follows: introduction (1-2 sentences), two paragraphs (c.170 words each) and a conclusion (1-2 sentences).
- iii. You will notice that whichever topic you choose, some of the information is very specific and it includes several cases. You will have to exercise your judgment and decide which information to include and which to exclude- it may help you to remember that your target audience has no legal background and therefore, the information you give needs to be clear, not too specialised and to the point. Therefore, you will need to decide whether and which case law should be included.

- iv. Clearly write down your lecture in your scrap-notebook and be prepared to share this in class.

### **In class (Monday 10 Feb, 6pm)**

Burns tells us about the study of evidence that:

Evidence is the means by which we go about determining accurately what occurred in the past, while also determining how it ought fairly to be understood or interpreted, how it ought fairly to be evaluated, and also what we ought to do in response to that event. For practical purposes the past is irrelevant: it is the one thing we can do nothing to change. It is only because we presently embrace notions of corrective justice that we are concerned with what happened in the past (2006, 1155).

In this class you will continue exploring the law of evidence (following on from your preparation); you will also continue practicing your writing skills, argument building skills, inference skills, evaluation skills and team/collaborative working skills. You will also have the opportunity to continue developing your confidence in speaking in front of people.

1. The class will start with a brief discussion on the law of evidence by way of addressing the first set of questions in your preparation. Your lecturer will lead the discussion and you may be asked to work first in small groups and then share your answers in plenary.

1. What is 'evidence' and the 'law of evidence'?
2. Typically, the parties to litigation dispute the facts. What are the reasons that operate to prevent the court from looking at **all** the evidence that could assist in discovering where the truth lies?
3. What human factors can operate to prevent the court from discovering where the truth lies?
4. Are there any good reasons to restrict the evidence taken into account to a greater extent when the tribunal of facts is a jury or lay justice rather than a professional judge?

2. For the next task you will be asked to group with your fellow students who have addressed the same topic for the mini-lecture to be given to the newly recruited Magistrates. Depending on how big your group is, your lecturer may decide that different pairs in the group may be asked to evaluate different parts of the mini-lecture. Whichever is the case, please follow these instructions:

- i. Bear in mind that by the end of this task your group should come up with one agreed draft for the mini-lecture.
- ii. Appoint a writer in your group. She or he will write down on a clean piece of paper the agreed content for the group mini-lecture.
- iii. Focus on the introduction first. Compare all the introductions written by all group members (make sure no one is excluded- this is a good practice in team work, a highly desirable transferable skill). Evaluate these and decide which one could be the best to be used for that purpose (you can tweak it and re-draft it). Make sure that the introduction is indicative of the content of the mini-lecture.
- iv. Next, move on to evaluate the paragraphs written by all members of the group. Compare and contrast these, following the usual guidance on evaluating a paragraph's structure:
  - ✓ Is the information summarised in one's own words?
  - ✓ Can you identify the key point in each paragraph?
  - ✓ Is the open sentence in each paragraph indicative of what the paragraph is about?
  - ✓ Are the sentences reasonable in length? Not too short and not too long?
  - ✓ Is there a flow from one paragraph to another?

Drawing upon the above, pick the best two paragraphs across the group (you can tweak and re-draft these) to be used in your mini lecture.

- v. Follow the above process for the conclusion.

When your mini-lecture is ready, decide who will read it (you can distribute the reading between several people).

Now you will have a discussion in plenary by way of reading out the group's presentation to the rest of the class. Make sure that you take key notes of each group's lecture because you may need these for the next task.

3. The final task today will help you to consolidate all the knowledge you have acquired on the law of evidence. Your lecturer will lead the discussion and you may be asked to work in pairs or small groups.

The following is your brief:

Harris, a man, is charged with sexual assault on Seb, a boy aged 12, on a school playing field on a Friday at 2pm. Seb contacted the police in a distressed state at 2.35pm. Harris denies the offence, his defence being mistaken identify.



You have been asked to adduce the below items of evidence. You need to advise on the relevance of these items, and whether either the prosecution or the defence can use them. Do not worry if you are not sure, use your knowledge, intuition and common sense:

- I. Evidence from Martin, a teacher at the school, that Edward, another teacher at the school, told him on the Friday that he saw Seb crying shortly after 2pm but decided not to intervene.
- II. Evidence from Seb that, when he was 11 years old, he had reported his step-father to his mother, and then to the police, for assaulting him, as a result of which his step-father was charged with, and pleaded guilty to, the assault.
- III. Evidence that Harris has downloaded pornographic images of adults engaging in lawful sexual activity.
- IV. Evidence that Harris has downloaded pornographic images of adults engaging in unlawful sexual activity with boys.

[tweaked from Keane and McKeown, p.56]

When ready, you will discuss the above in plenary with your lecturer.

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

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## *Week 6:*

### *1. Practice library session*

### *2. Class meeting with personal tutor*

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#### **Monday 17 February, 6pm**

This is an important week, for the following reasons:

1. At 6pm you will attend a practice library session at the library with the law subject librarian Wendy Lynwood and the programme director Susy Menis.  
Why this session is important: you will continue developing your confidence 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>

2. 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 (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 questionnaire, 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.

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## *Week 7: The administration of justice: Evidence 2*

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### **Class preparation**

**IMPORTANT: by the end of this week (28 February by 4.30pm) you will have to complete the Skills multiple choice assessment on Moodle.**

This week you will be dealing with the second case study, and you will notice the preparation is lengthy. Therefore, please skim through the tasks below and think how you can best time manage yourself, so you arrive to class prepared.

Preparation tasks:

Background reading before approaching this week's case study:

1. Watch and read the following sources and take notes of key points made:

Wellcome Collection, *Forensic evidence and expertise in court, The Courtroom* (2015)  
(8min)

<[https://www.youtube.com/watch?v=GTz\\_ZoeH7\\_g&list=PLdB9LS0zZwZtwiEr\\_AJAiWZS2V0RDo8o](https://www.youtube.com/watch?v=GTz_ZoeH7_g&list=PLdB9LS0zZwZtwiEr_AJAiWZS2V0RDo8o)> accessed 08 July 2019.

Dyer C. and Taylor M., 'Cot deaths: law in disarray as 258 cases of convicted parents to be reviewed' *The Guardian* (London, 20 Jan 2004)

<<https://www.theguardian.com/society/2004/jan/20/health.childprotection>> accessed 08 July 2019.

2. Search on BBK eLibrary for the following article (you can follow the instructions in week 2):

Wilson A, 'Multiple infant deaths: expert witness testimony', *Journal of Criminal Law* 69 (6), 473-477.

Read it, and take/highlight key points.

3. Access Hanson, *Learning Legal Skills and Reasoning*, on BBK eLibrary. Read and summarise the main key points on inference, p.403.

This week's case study:

4. It is important that you complete the following task before your class this week. There are several sources which you need to use, and you will not be able to read them from scratch in class; the findings from this activity will be checked in class and then used to develop your argument building skills.

The following is your case study for this week:

Emma Smith, a 40 years old barrister from Middle Temple Court, gave birth to 4 children between 1989 and 1999. Only the first baby survived. The 3 other babies died a few weeks after their birth. Emma did not suffer from postnatal depression or any other psychiatric condition. It was confirmed that she was the only person in the house when the babies died, but there was no sign of violence or marks on the babies' bodies. Medical tests did not reveal anything unusual. Emma was adamant that she was a loving mother and that she had nothing to do with the deaths; she insisted that although she could not explain why the babies died, they did die from natural causes. There was no other similar case of death in her family-history. Emma was convicted by a majority of 10 to 2 in the Crown Court for murdering her children based on the expert evidence.

Emma made an application to the Criminal Cases Review Commission (CCRC) (<https://ccrc.gov.uk/>), to review the evidence in her case.

Your brief:

Imagine you are a CCRC investigator and you have been asked to review the evidence submitted in Emma's trial.

Your task is to identify the robustness (the rigorousness/ strength) of the expert evidence in infanticide cases (the crime of a mother killing her child within a year of birth). You will have to construct an inductive argument.

Your role here is neutral; you have not been asked to assess whether Emma should have been convicted or not - rather, you have been asked to assess the strengths of the evidence available at Emma's trial. For now, you will need to provide an objective report based on the sources you have been given.

To give you some background, the debate concerns the problem of distinguishing between natural death and unnatural death. This relates to the death of babies. You may be familiar with Sudden Infant Death Syndrome (SIDS), also known as cot death or crib death - this is the sudden unexplained death of a child less than one year of age. Diagnosis requires that the death remains unexplained even after a thorough autopsy and detailed death scene investigation. SIDS usually occurs during sleep. If you want to read more about it you can access the NHS page <https://www.nhs.uk/conditions/sudden-infant-death-syndrome-sids/>

Note that if the CCRC, after reading your report, considers that Emma was convicted upon weak expert evidence, it will forward the case to the Court of Appeal. This will also open up the debate as to the limits and remits of expert evidence.

Go back to week 2 and 4 to remind yourself about the building blocks of an inductive reasoning. Next, follow these steps:

- i. You have been given the deductive argument to start your investigation:

Major premise: if there was nothing to demonstrate that one or other incidents had resulted from the deliberate infliction of harm the death should be regarded as SIDS.

Minor premise: expert evidence suggested that it was improbable that Emma's 3 babies could all have died from natural causes.

Conclusion: Emma was responsible for the babies' death.

- ii. Making a note in your scrap-notebook of your thoughts: What do you think may be the problem with this deductive argument?
- iii. Start building up the inductive argument by first identifying the 'thesis' (the proposition). It is important that you identify the correct thesis, otherwise your argument will not relate to what the CCRC has asked you to do. You may want to go back to week 4 to remind yourself how to identify the thesis.
- iv. The following is the most challenging step in this task - the factual analysis. It is important that you give it a go so you can check your findings in class:

Test your thesis against each piece of evidence that you have been given below. In other words, how well each piece of evidence supports the thesis? You can use 'conclusive' and 'not conclusive' for your evaluation. You can copy the table below into your scrap-notebook to record your findings:

**\*\*scroll down to find the evidence\*\***

Thesis	Evidence number	Notes	Conclusive / not conclusive

- v. Finally, the legal analysis. Drawing upon your table, what is your conclusion? Can your conclusion support the thesis (the proposition)? How strong do you think the argument is? (i.e. well supported by evidence).
- vi. Write a brief paragraph in which you advise the CCRC of your findings. You can also advise whether you think the case should be referred to the court of appeal - explain why. Be prepared to share your findings in class.

5. Only after completing the above task (the aim is that the following reading does not bias your examination above) read the following three sources and consider the question which follows. Take notes/highlight key points and be prepared to use these in the discussion you will have in class.

- Extract from *R v Clark (Sally)* [2003] EWCA Crim 1020 (below- after evidence for task 4)
- The case of Sally Clark <http://news.bbc.co.uk/1/hi/england/2698425.stm>
- Sir Roy Meadow struck off by GMC <http://news.bbc.co.uk/1/hi/health/4685511.stm>

*Would you reconsider your evaluation of the evidence in the previous task in light of the above readings?*

Do not forget to bring your notes to class; you will be using these to further develop the skill of argument construction.

### Wider reading

The following is wider reading on expert evidence in general. You are not expected to read these for this week's preparation; however, if you choose to focus on expert evidence on the final assessment (due on 27 April) you may want to come back to these readings and use them in your analysis.

Experts and expert report, Westlaw Practical Law References

<<https://uk.practicallaw.thomsonreuters.com/3-603-9467?skipAnonymous=true>> accessed 08 July 2019.

Lord Hodge, Justice of The Supreme Court, *Expert Evidence: use, abuse and boundaries*, Middle Temple Guest Lecture, 9 October 2017, <

<https://www.supremecourt.uk/docs/speech-171009.pdf>> accessed 26 July 2019.

Sarah P., When Expert Evidence Goes Wrong – the lessons to be learned, Mar 28, 2018, Explanation, FCReportingWatch, < <http://www.transparencyproject.org.uk/when-expert-evidence-goes-wrong-the-lessons-to-be-learned/>> accessed 26 July 2019.

## **Evidence for task 4**

ABBREVIATIONS:

SIDS: sudden infant death syndrome.

ALTE: apparent life-threatening events.

**Evidence 1:** medical records concerning the 3 children (adapted from R v Cannings)

- *Gemma*

In evidence at trial the appellant described feeling “fantastic” when Gemma was born by Caesarean section. She was a good baby, and her development appeared normal. As was then routine, she was laid on her tummy. On November 13, she was given her triple



vaccine immunisation. Current research suggests that nothing in that process provides any basis for anticipating what happened to her next day.

On November 14, 1989 the history of events leading up to her death, based on the appellant's account, appeared straightforward. The record shows:

"On the night of 13th the baby was restless but then seemed to return to normal and slept through the night. On 14th the mother fed the baby at 9.00 am and went into town. Came home at 10.30 am and the baby was fine. She checked her at 1.00 pm to give her a feed and found her to be lifeless."

The cause of death was recorded as "natural, being Sudden Infant Death Syndrome (cot death)". The pathologist, Dr Scott, could find nothing which may have caused or contributed to Gemma's sudden death, no causes which might explain it. In the course of microbiological examination she found the organism, staphylococcus aureus, in Gemma's nose and mouth.

The defendant said that she had found Gemma lying on her back, looking very, very white. She tried, unsuccessfully, to revive her. She called an ambulance.

- *Jason*

When she became pregnant with Jason, the appellant was given instructions in resuscitation techniques and provided with an apnoea alarm. This is a well-known device, which detects the motion of a baby's breathing. When none is detected, after a pre-set period, the alarm sounds. Without diminishing its potential value, it is not, as some think, a machine which prevents an infant death.

On April 25, 1991 Jason was born by Caesarean section. At birth his hips were dislocated. The Aberdeen splint required to manage this condition meant that, as was in any event customary at the time, he was laid on his tummy rather than his back.

In her evidence, the appellant described Jason as a "beautiful" baby. She cared for him, following her mother's example, among other things making sure that windows were appropriately opened to air the home.

The appellant was expecting a visit from the health visitor, Mrs Peacock, during the morning of June 4, 1991. When Mrs Peacock arrived, the appellant answered the door, saying, "It's happened again". Mrs Peacock followed her into the flat. Apart from the appellant herself, no-one else was present, and Jason was lying on the double bed "white and apparently lifeless". The health visitor resuscitated him, telling the appellant to

telephone for an ambulance and for her husband. Before resuscitating him, she had checked that the baby's mouth was clear. She found no fluid or vomit in it. After a while, Jason gasped and seemed to respond. She picked him up, and patted his back, and stimulated his breathing. Thereafter, she had to keep breathing air into him whenever he seemed to be drifting off. She did so successfully.

She took the baby to his mother who seemed very shocked, and was sobbing. At one stage she heard the appellant in the bathroom, retching or vomiting.

The ambulance arrived, and the baby was taken to hospital, followed by his mother and father. On arrival at the accident and emergency department this account of the incident was recorded:

"10.15 am. Apnoea alarm — mother finds baby pale and limp. Health visitor ... arrived coincidentally at the same time. Resuscitated the baby."

Jason's condition on arrival was noted as "crying healthily — good movement and tone. Breathing spontaneously — no stridor/wheeze. Pale. Shut down. Mottled. Cool peripherally." His breathing was irregular, and described as "grunting", suggesting but not conclusive of a respiratory problem. Part of the base of the right lung was collapsed. His fingers and toes, legs and arms were very cold, and there was poor blood flow to the baby's skin. His temperature was 35°; significantly lower than normal. His temperature dropped a little further, but then started to recover.

Investigation revealed a raised white cell blood count, raised platelet count, and raised blood glucose. It was common ground that these findings in Jason were consistent with a baby who had been under stress, or unwell, but they were non-specific or unspecific on the question whether or not the stress was the result of the deliberate infliction of harm. The first urine test showed the presence of blood and protein, again suggestive of kidney stress, but again unspecific as to cause. Some glucose was also found, but the subsequent urine sample was normal for glucose. In the umbilical swab staphylococcus aureus was discovered, and an antibiotic prescribed. Bio-chemical changes in Jason, potentially important to the possible involvement of the vagus nerve, were also noted.

Full infection screening was carried out. Nothing untoward was found. The baby's treatment at hospital followed conventional lines. By 4.00 pm, his condition had stabilised. A physical examination by the consultant paediatrician, Dr Marshall, revealed nothing significant. To stabilise circulation, a drip was used. When it was noted that Jason had passed some rather loose motions, his feeding was withheld for a short time until he was settled. By June 6, Jason was well, and he was discharged.

Hospital staff who observed Emma and her husband described them as loving and caring towards Jason, and handling him well. When Jason was discharged, the consultant

paediatrician spoke to them, explaining how to give mouth to mouth resuscitation, and cardiac massage. A care plan was drawn up. A note was made that the couple was very upset and anxious about Jason because of a previous cot death.

The appellant stayed with Jason for a couple of days in hospital. When he was discharged she thought that he was not as alert as he had been before, but she was reassured by the midwife. She had therefore felt no need to take Jason to the doctor.

On June 13, 1991 Jason died. He was due to be taken to hospital that morning for a consultant paediatrician to check the progress of his dislocated hips. The appellant's account of what had happened was recorded in reported speech, as follows:

"Jason stopped breathing on June 4, but was resuscitated by a health visitor. Since that time he had been fine, feeding well and no chest or breathing problems. At 3.30 am on June 13, he had feed (bottle) no problems, and was put back into his cot with baby alarm turned on, mum went back to bed herself in the same room. At 7.45 am mother checked baby, he was ok, she went to get her own breakfast and the baby alarm went off at 9.00 am. She went back to the room and found him still and white, resuscitation tried with no success."

Before Jason arrived at hospital, in response to a 999 call, the emergency services arrived at the appellant's home. A paramedic said that as he arrived, the appellant was coming up from a kneeling position on the floor where Jason was lying. Although attempts were made at resuscitation, Jason was probably already dead. One paramedic, using specialist instruments, thought she had found some vomit in Jason's lower airway, but it was agreed at trial, that if there was any vomit it was entirely consistent with the baby's stomach contents having been released after he died.

The paramedics all described Emma as upset, sobbing and distressed, and they tried to comfort her. The post mortem examination on Jason was carried out by Dr Scott who had performed the post mortem on Gemma. As with Gemma, she found nothing that could have caused or contributed to Jason's death. She carried out precisely the same tests as she had before, and also an x-ray, which was negative. She looked for any "feature of abnormality" and found none. The child's brain was looked at by a paediatric pathologist. It, too, was normal. Dr Scott was also aware of Jason's ALTE nine days earlier. She appreciated that she should bear in mind the possibility of smothering, or something similar. These concerns led her to check her findings with a consultant neuropathologist, Dr Isabelle Moore. At the end of her investigation Dr Scott's opinion of the cause of Jason's death was "Sudden Infant Death Syndrome (cot death)".

The health visitor gave evidence that throughout her dealings with the appellant and Gemma and Jason, she thought they were properly cared for by their parents. She introduced them to Professor Emery, the distinguished paediatric pathologist, to some of

whose research into cot death we shall draw attention later, and Dr Scott herself later had contact with Professor Emery, who has now died. She showed him all her reports. He conducted a microscopic examination of the lungs. She understood that he agreed with her conclusions that both these deaths were natural, but that the causes were not yet defined. Dr Barnes confirmed that in Professor Emery's mind there was nothing suspicious about these two deaths. When Dr Scott carried out this post mortem, in accordance with practice at the time, she did not look for intra-alveolar haemorrhaging and iron-laden macrophages. The possible relevance of such material only became apparent in 1997, another mark of the constant development of knowledge.

- *Matthew*

Matthew was born by Caesarean section on July 5, 1999. Thereafter the appellant was sterilised. The birth was uncomplicated, but unfortunately the appellant suffered from Bell's palsy. At birth Matthew's Apgar score was 9 out of 10, very healthy. Because of the two previous deaths extensive investigations were carried out. MCAD deficiency was excluded. Blood plasma was checked and no abnormality found. No cardiac abnormality was detected by electrocardiogram (ECG), but the measurement of the QT interval (which we shall describe later) was drawn to the attention of the paediatric cardiologist. A further ECG was carried out in early August. The information revealed in these tests was re-examined after Matthew's death, and questions were subsequently raised whether Matthew and his family were susceptible to Long QT syndrome. In the meantime, the appellant was taken through a paediatric life support course to teach her advanced resuscitation techniques.

On their return home, Matthew seemed well, but the appellant was concerned because her treatment for Bell's palsy involved taking steroids, and in due course this meant she had to give up breast feeding him. The appellant apprehended that the apnoea alarm meant that it was not unsafe for Matthew to sleep on his tummy, which was his natural preference anyway. Matthew's progress was continually monitored. No concerns were expressed about him. Indeed all the checks, both at clinic, and at home, were normal, and the appellant herself did not report any problems to the health visitor. Everything therefore seemed to be going well. His MMR vaccination was given on November 1. The appellant's confidence grew, and she said she felt able to leave him in the house, with the front door open, or, later, in the car, while she chatted to one of her neighbours.

On the morning of November 3, the appellant made a 999 call to the ambulance service. The transcript is available. She said that Matthew was "breathing, I think, but he has been sick everywhere" and after being urged to calm herself down, said that he was definitely breathing, but he had been sick and "his hands are pale". She told the ambulance control of the two prior cot deaths. She said "he looks like he's trying to, trying to get his breath ...

he just looks as if he's not with us you know, he, his eyes are open. He is breathing but he is sucking in everything, it is horrible". She was asked whether he was breathing and said, "yes, but he is very laboured, he is on his front at the moment".

The paramedics responded to the call. When the paramedics arrived, the baby was found in a cot. The appellant told them that his apnoea alarm had worked. One of them tried to assess the child, who seemed conscious and appeared normal and alert. Indeed although his limbs were slightly pale, the baby felt quite warm and there appeared to be no major problems. The appellant was standing on the opposite side of the room.

Given the previous history, it was thought sensible to take the baby to hospital. When first examined, Matthew was pale, but conscious and alert, breathing was satisfactory and temperature normal. He was said to be bright and alert. The paediatric registrar noticed some crusted milk around his nose, and a "slightly inflamed looking throat". Otherwise the examination was unremarkable, and the record on file suggested that this was not a true apnoeic event. Arrangements were made for Matthew to be kept in hospital overnight, for observation. He seemed very well, feeding properly, alert and smiling. Neither the oxygen monitor nor the heart monitor, gave any cause for alarm. By next morning Matthew was happy and well. He was discharged.

At hospital it was noted that the appellant was distressed and had been crying and her husband was in a similar condition. Her worries for Matthew appeared genuine.

At 11.04 am on November 12, the ambulance service responded to a 999 call from the appellant's address. This call was made by Emma's husband, who had himself received a call from his wife while he was at work telling him that "It's happened again". The appellant was upstairs, on the floor with Matthew, performing mouth-to-mouth resuscitation. The baby was very limp, and cyanosed. There were no obvious signs of breathing or cardiac output. He appeared to be in cardiac arrest. The paramedic believed that the baby's airway was clear, without vomit or any other residue, either in the mouth or the airways themselves.

Matthew was taken straight to hospital. On the way resuscitation continued in the ambulance. In fact, it was too late. He was in cardiac arrest, not breathing, cool and unresponsive, and centrally cyanosed. There was no evidence of any blood or trauma to the baby's face or his head. There was a little, unremarkable, vomit around the mouth area, and traces of fluid that smelt like partly digested milk, again in the context, unremarkable. The baby was pronounced dead at 11.05 am.

At hospital, the appellant was tearful, and her husband extremely distressed. A staff nurse heard from the appellant that the baby had been in bed when she heard the alarm. She had turned it off and ran upstairs. She turned the baby over and saw that he was purple

and blotchy. Her husband asked her in the presence of the staff nurse why she had called him before she had called an ambulance, as indeed she had. She was quiet for a few minutes, and then told her husband that she had panicked. He asked her again why she had not called the ambulance first and she repeated that she had panicked. She also spoke to Dr Barnes, the consultant paediatrician who it will be remembered, had taken a particular interest in this family, and arranged for its inclusion in the CONI project (see reference to this project in another evidence).

Three days after his death, the post mortem examination of Matthew was carried out by Professor Berry. Focal pulmonary haemorrhage and oedema in the baby's lungs were found, both unremarkable and not diagnostic of unnatural death. Matthew had inhaled a small amount of stomach content, and a small quantity of aspirated gastric contents was found in his airways. No relevant haemosiderin was observed. The post mortem examination showed a very mild tracheo-bronchitis, but no natural cause for his death, and no unnatural cause for it either. Professor Berry expressed the opinion that, "In view of the extreme rarity of three deaths without explanation occurring in the same family I have given the cause of death as unascertained pending further investigations."

The consequence was that Matthew was susceptible to various kinds of infections, many of which would be completely harmless to adults with properly developed protective antibodies, but potentially damaging to the health of a baby whose protective immunity was inadequate. Professor Hutchinson pointed out that the peak level of vulnerability comes at about five to six months, when the infant is gradually losing the immunity inherited from his mother, without having fully developed his own immune system. He challenged Professor Berry's conclusions that the structures of the immune system were normal, pointing out that whether that was so or not, it would not determine whether the immune system was functioning normally. "The structure of the organs ... doesn't actually tell you how the cells within those organs are functioning." Professor Hutchinson was unable to explain to the jury how Matthew had died. All he was able to say was that according to his tests, Matthew lacked protective antibody. Dr Rushton supported the view that although the structure of the relevant organs might appear normal, it did not follow that they were functioning normally. Dr Drucker, a reader in microbiology, specialising particularly in researching microbial causes of AIDS, pointed out that Professor Hutchinson had tested Matthew's sample time and again, because the antibody level was "so unbelievably low", so low that it was virtually below the limit of detection. He explained that without antibodies to provide protection, organisms which would otherwise be relatively harmless in an adult would have a very serious effect in a baby which lacked appropriate immunity.

**Evidence 2:** evidence given by various paediatricians (adopted from *R v Cannings*):

- Dr Barnes, the consultant paediatrician, who knew this family, considered whether in all the circumstances the fact that there had been three deaths led him to conclude that the cause was filicide. On December 2, 1999 he wrote “although the number of deaths in this case must arouse suspicion I can say that I did not have suspicions of that nature from observing Emma and her husband's behaviour during the time that I have known them”. Dr Ward Platt agreed that taking both the episode and Matthew's death together, and looked at in isolation from the other events, there was nothing to suggest the deliberate infliction of harm on him.
- Professor Berry, a consultant paediatric pathologist at the Bristol Royal Infirmary read all the records for Emma and all the children, reviewed Dr Scott's post mortems on Gemma and Jason (speaking favourably of the quality of Dr Scott's work) and conducted the post mortem on Matthew. On examining the slides of Jason's lung tissue he found evidence of intra-alveolar macrophages, consistent with bleeding into Jason's lungs, which had taken place on an occasion earlier than his death. In view of the quantity, this evidence was consistent with an indication of obstruction of his airways at the time of the ALTE. However, on any view, there was no copious recent bleeding into the lungs. So there was no evidence of fresh bleeding. Professor Berry explained macrophages as scavenger cells found in the lungs. When blood is present in the intra-alveolar cells, the macrophages are unable to consume its iron content. Perl's (stain) test is used to detect siderophages, cells which themselves scavenge haemosiderin, the iron left behind in the lungs from a prior bleed, and which are well described as iron-laden macrophages. Pathologists can be confident that there has been prior bleeding, but the existence of siderophages, even if significant, is not diagnostic of smothering. Professor Berry expected that haemosiderin would develop within 36 to 48 hours and that the siderophages would be cleared, by absorption into the blood stream, coughing or swallowing within weeks. As a consultant paediatric pathologist, Professor Berry believed and even now remains of the view that the cause of Jason's death, and Matthew's, too, remains “unascertained”.
- Dr Rushton took a different view from Professor Berry about the quantity of haemosiderin visible on the slides. Using a microscope in court, he explained what he was seeing on them, and his view that it was possible to describe haemosiderin as present in only two of the seven pieces of lung which were examined, and then only in parts of those two pieces. He explained that the cells were not “all through the lung with a wide distribution; they are in quite small areas of the lung, in fact very small, microscopic areas of the lung”. He disputed Professor Berry's observations that macrophages were present in exceptional numbers, “because in

fact most of the lung doesn't contain any of these cells. They are localised in the sections to two of the small pieces of tissue and only in parts of those tissues." In his opinion the amount of haemosiderin to be seen was not exceptional, and based on his experience he concluded that, at the highest, it was only marginally in excess of the amount occasionally seen in cot death. Dr Rushton postulated various ways in which bleeding in the lungs such as that suffered by Jason might occur, including blood inhaled at birth (which was excluded by Professor Berry), and damage to the lung from foreign bodies such as vomit or stomach juices, or from the inhalation of toxic gas, or infection, or from bleeding or circulatory disorders, or even from resuscitation procedures. He was not in the slightest degree critical of the health visitor, or her efforts at resuscitation on June 4, which were described as gentle. It was suggested that if so, attempts at gentle resuscitation would not be likely to have caused any bleeding. His response, in effect, was that there was no way of knowing "because obviously most babies that are resuscitated don't die, and therefore we can only judge from the ones that die. It may be that in fact lung haemorrhages are very common in resuscitation. Unfortunately, that's evidence that you can't acquire." He also noted that resuscitation was carried out in the ambulance on the way to hospital. Again, although he implied no criticism whatever of the paramedics, the same point remained. If the effort were too gentle, the lung would not expand and resuscitation would not take place: if the resuscitation were too hard, then some of the thin membranes with blood vessels in them might be torn and produce local bleeds. Dr Rushton agreed that the blood could have resulted from the ALTE which had taken place nine days earlier, but felt it was difficult to estimate the time taken for the blood to leave the lungs. This affected the question whether the appearance of the macrophages was more consistent with an incident at the time of the ALTE rather than on delivery at birth. Dr Rushton's concern was that the length of time taken for blood to disappear from the lungs was not known. He pointed out that "Some people believe it can disappear extremely rapidly while other people believe it may hang around for some considerable time."

Dr Rushton did not suggest that his overall analysis of the pathological data provided any positive alternative explanation to that advanced by the Crown that there was an unnatural cause for the deaths and ALTEs. He also recognised that any assessment of the amount of haemosiderin had a subjective element, namely the experience and judgment of the individual examining the relevant slides. That said, he did not resile from his fundamental view that the amount of haemosiderin to be seen was not inconsistent with a natural event, or efforts at resuscitation after it. It was not possible to conclude that it represented the result of smothering.



**Evidence 3:** cross-examination by the prosecution of Professor Golding (adapted from *R v Canning*)

“Q. Are you saying then that we should regard these three deaths as possibly being entirely random?

A. I can't see any evidence that they shouldn't be ... by random doesn't mean, you know, a bolt from the blue; it means that this is a normal sort of pattern for repeated cot deaths, or, if you had a cot death and took somebody else's cot death and somebody else's cot death and put them together you would get that sort of pattern.

Q. Well, taking three cot deaths from three different families and putting them together is surely quite a different thing to taking three deaths within one family?

A. It is different only that it is from one family.

Q. Are you saying, therefore, that these deaths may not be linked in some way by some common cause?

A. No. What I am saying is that the fact that they are from one family does suggest that there is something else happening that would be responsible for putting that family at higher risk ...

Q. It is not just the three deaths that have to be looked at when considering the history of Emma's children, is it?

A. No, everybody has put acute life-threatening events together with them.

Q. Yes. Do you?

A. I see them as part of the pattern certainly, and definitely knowing that there is good evidence that children who have apparent life-threatening events are at greater risk of sudden infant death syndrome. ...

**Evidence 4:** evidence given by the following: Medical Statistics Unit, Department of Epidemiology and Population Health, London School of Hygiene and Tropical Medicine, London, UK (Prof R G Carpenter PhD, P D England PhD); Medical Birth Registry of Norway, University of Bergen, Norway (Prof L M Irgens PhD, P Schreuder BA); Institute of Child Health, Royal Hospital for Children, Bristol, UK (Prof P Fleming FRCPCH, P S Blair PhD);

University Hospital for Children and Youth, Utrecht, Netherlands (Prof J Huber FRCP); Clinic for General Pediatrics and Neonatology, University of Magdeburg, Magdeburg, Germany (Prof G Jorch MD):

The remarkable increase in sudden unexplained infant death (SIDS) rates recorded, especially in Norway<sup>1</sup> and in several other countries,<sup>2–4</sup> towards the end of the 1980s prompted large scale case-control studies that were set up during 1992 in Scandinavia,<sup>5</sup> Ireland,<sup>6</sup> England, and Germany.<sup>7,8</sup> The succeeding reduction in SIDS rates, led by the Netherlands,<sup>9</sup> which occurred in some countries necessitated a reassessment of risk factors for the syndrome because, despite the reductions, SIDS was still a major cause of infant mortality after the first week of life.

This concerted action made it possible to assemble one of the largest case-control data sets on SIDS. It spanned Europe from Norway in the north to Catalunya in the south, and from the Ukraine in the east to Ireland in the west. All pathologists attended conferences to ensure agreement on which cases should be included.

Our data, in agreement with those of almost all studies,<sup>28</sup> showed substantial risk attributable to smoking by one or both parents (table 5). Smoking before, during, and after birth was highly correlated and was represented best in the multivariate model by the amount that the mother smoked during pregnancy and the amount others in the household smoked after the birth.

As almost all studies have found, SIDS is associated with biological, (male sex, low birthweight, multiple birth), social (young unmarried mother with unemployed partner, etc), and environmental (parental smoking, overcrowding) factors. Nevertheless, the data suggested that, despite unavoidable disadvantages, most of these deaths might not have occurred had these infants been put down supine in a cot in the parent's room with light bedding that the baby could not get over its head.

<b>Country</b>	<b>Study region</b>
Sweden	Sweden
Norway	Norway
Denmark	Denmark
E and W	Yorkshire
E and W	Trent
E and W	South Western
Ireland	Ireland
Germany	Nordrhein-Westfalen
Netherlands	Netherlands
Austria	Styria
Hungary	Hungary
Ukraine	Odessa
Spain	Catalunya
Italy	Milan
Russia	St Petersburg
Slovenia	Slovenia
France	Seine-Maritime
Belgium	Brussels
Poland	Bialystok
E and W	Cambridge

E and W=England and Wales.

**Table 1: Country, study region, and number of cases and controls**

Risk factor	Cases
Position last left†	
Side vs supine	250 (35.6%)
Prone vs supine	268 (38.2%)
Mothers smoking and bed-sharing on last occasion	
Mother did not smoke or bed-share	249 (34.6%)
Mother did not smoke but shared bed‡	32 (4.5%)
Mother smoked <10 cigarettes per day but did not bed-share	133 (18.5%)
Mother smoked >10 cigarettes per day but did not bed-share	194 (27.0%)
Mother smoked less or more than 10 cigarettes and bed-shared‡	111 (15.4%)
Others in household smoked after birth	
None	259 (41.8%)
1–9 cigarettes per day	64 (10.3%)
10–19	131 (21.2%)
20–29	110 (17.8%)
30+	55 (8.9%)
Dummy used ever vs not used	394 (62.5%)
History of ALTE: yes vs no	79 (11.2%)
Sex (excluding matched set) (male vs female)	260 (61.2%)
Multiple birth vs singleton	47 (6.4%)
Birthweight	
≥3500 g	212 (28.7%)
2500–3499	381 (51.6%)
2000–2499	84 (11.4%)
<2000	61 (8.3%)
Admitted to SCBU: yes vs no	160 (24.4%)
Urinary tract infection in pregnancy: yes vs no	79 (11.2%)
Mother's age:	
>30 years	166 (22.5%)
26–30	224 (30.3%)
21–25	228 (30.9%)
19–20	75 (10.2%)
≤18	46 (6.2%)
Previous livebirths	
None	199 (26.9%)
1	256 (34.6%)
2	161 (21.7%)
3	73 (9.9%)
4+	50 (6.8%)
Marital status	
Cohabiting vs married	219 (29.8%)
Single vs married	126 (17.2%)
Partner unemployed vs employed	197 (29.8%)

ALTE=apparent life-threatening events. SCBU=special care baby unit. Data are numbers (%) \*ORs are adjusted for age and centres. †ORs for age-dependent variables, position last left and bed sharing when mother did or did not smoke, are reported at modal age of 10 weeks. ‡Excluding OR for Sweden. §Excluding OR for Milan. ¶Excluding missing data for Ireland.

Table 2: **Prevalence of multivariately significant potential risk factors for SIDS in cases and controls**

(extract from a study carried out by R G Carpenter, L M Irgens, P S Blair, P D England, P Fleming, J Huber, G Jorch, P Schreuder, 'Sudden unexplained infant death in 20 regions in Europe: case control study', published in *Lancet* 2004; 363: 185–91).

**Evidence 5:** evidence given by Professor Roy Meadow, Department of Paediatrics and Child Health, St James's University Hospital, Leeds (adapted from Meadow R. Unnatural sudden infant death. *Arch Dis Child* 1999; 80: 7–14 and R v Cannings):

My research demonstrates that smothering is thought to be the commonest covert reason for such unnatural sudden infant deaths because, unlike most other forms of physical abuse, fatal smothering can occur without external signs on the face or body, and without incriminating evidence at post-mortem examination. Moreover, there have been several studies indicating that smothering of children by parents is not particularly rare— although fortunately most children abused in this way do not die.

I have carried out a study where initially, 42 children had been certified as dying from sudden infant death syndrome (SIDS), and 29 were given another cause of natural death. In 24 families, more than one child died; 58 died before the age of 6 months and most died in the afternoon or evening. Seventy per cent had experienced unexplained illnesses; over half were admitted to hospital within the previous month, and 15 had been discharged within 24 hours of death. The mother, father, or both were responsible for death in 43, five, and two families, respectively. Most homes were disadvantaged—no regular income, receiving income support—and mothers smoked. Half the perpetrators had a history of somatising or factitious disorder. Death was usually by smothering and 43% of children had bruises, petechiae, or blood on the face.

*Table 1 Proof of parental responsibility for children's deaths in 50 families*

<i>Proof</i>	<i>Number</i>
Criminal Court alone	9
Criminal Court and Family Court	10
Family Court alone	31

*In 19 of the families, the parent confessed.*

I believe that the likelihood that the court verdicts about parental responsibility for death were correct is very high indeed. Most of the deaths are likely to have been caused by smothering. Many of the preceding histories were typical of smothering. The 19 (of 50) perpetrators who confessed to killing their child described the smothering. One was a mother who had also pushed balls of paper down the infant's throat because she thought that would choke the child.

Unfortunately, the circumstances of the study did not allow the sort of pathological re-evaluation that was needed. Reliance had to be placed on the notes taken from post-mortem reports that had been performed by a variety of investigators in different parts of the country, over a long period of time. Those pathologists would have been commissioned by the local coroner who has to be informed of sudden unexpected deaths. That coroner has an assistant, the coroner's officer, who explores the background to the death. Unless there is something very unusual or suspicious about the circumstances, the

coroner invites the local hospital pathologist to do a post-mortem examination. That pathologist might not have particular experience of infants and children, and is rarely a paediatric pathologist.

In relation to the current court case concerning the death of Emma's 3 children, my opinion is as follows:

In relation to Jason, he was a mature healthy baby who, without any significant previous incident, had suffered an unexplained ALTE, from which he made a very rapid recovery, and then died suddenly a week later, shortly after having been seen well. That means that on that day, he hadn't got any serious infection or disease going on, he appeared well. So something very sudden happened on that day.

The fact that a previous child had died in the family is relevant because that combination of circumstances, that sort of story is one that is very typical of a child who has died as a result of smothering. So my medical diagnosis there would be probable smothering.

In relation to Mathew, I do not believe that his first admission to hospital was an ALTE, although the episode was "worrying". It had significance because of the way in which Mrs Cannings had described it, and it was said to have arisen very shortly after a feed. I think that Mathew's death was a terrible tragedy, and a third death in the family was a "rare event, very rare". Indeed, Matthew's death had followed very shortly after he was seen to be well, and that the time that had elapsed was very unusual.

For me, the unusual feature is death so soon after being seen well, the fact that there had been previous deaths in the family and the fact that he had had an episode of some sort only nine days before he died that caused him to be assessed in hospital, because those features are ones that are found really quite commonly in children who have been smothered by their mothers. So the diagnosis for me, the clinical diagnosis, would be this was characteristic of smothering. ... One then goes on to say 'Well, is it possible it is a condition that is not yet understood by doctors or described by them?', and that must always be a possibility, but nevertheless as a doctor of children I am saying these features are those of smothering.

**Evidence 6:** evidence given by: Medical Statistics Unit, Department of Epidemiology and Population Health, London School of Hygiene and Tropical Medicine, Keppel Street, London WC1E 7HT, UK (Prof R G Carpenter PhD, A McKenzie MSc); Care of Next Infant (CONI) programme, Academic Unit of Child Health, Sheffield Children's Hospital, University of Sheffield, Sheffield, UK (A Waite BN, Prof J L Emery MD); Neonatal Intensive Care Unit, Jessop Wing, Royal Hallamshire Hospital, Sheffield, UK (R C Coombs FRCPCH); University Hospital, Lewisham, London, UK (C Daman-Willems FRCPCH); and University Hospital for Children and Youth, Utrecht, Netherlands (Prof J Huber FRCPCH):

Recent court cases in the UK have highlighted the need for epidemiological data on the relative frequency of natural and unnatural deaths in families who have had more than one unexpected infant death.

siblings have 25% of genes in common and experience an essentially similar domestic environment, which might, however, be altered by the preceding death. Several studies have shown that siblings of infants with SIDS are at increased risk of SIDS.

	Final classification by					Final allocation			
	Coroner and CONI panel	Coroner's court only	Family court	Criminal court	Appeal court	Total homicide		Total natural	Total
						Due to parents (filicide)	Due to others (not family)		
First CONI death									
Overt homicide	..	..	3	1	..	3	1	..	4
Probable covert homicide									
Initially SIDS	(1)	..	..	1*	..	1	..	..	1
Initially unascertained	..	..	1	..	..	1	..	..	1
Natural (explained/SIDS)	27	..	..	..	..	..	..	27	27
Natural (incomplete information)	..	11†	..	1	1	..	..	13	13
Second CONI death									
Confessed homicide	..	..	..	1	..	1	..	..	1
SIDS	1	..	..	..	..	..	..	1	1
Total						6	1	41	48

Excludes four families in which either the index death or the CONI death occurred after 1 year of age. \*Initially registered as SIDS, but the father was subsequently convicted of three homicides, including this child. †Some of the families were the subject of Social Service case conferences. We have no information that any were the subject of Family Court or criminal proceedings in relation to the death of the CONI baby.

Table 1: A general grouping of the deaths

In consideration of whether repeated unexpected infant deaths in a family are natural or not, isolated estimates of the probability of more than one SIDS case in a family, however derived, are invalid and easily misinterpreted. Multiple infanticide is also very rare. What is important is the relative likelihood that the deaths are natural versus unnatural, given that two or more deaths have occurred.

In this paper we report the proportion of natural and unnatural infant deaths (i.e., deaths before the age of 1 year), occurring in families enrolled on a support programme for parents who had previously had a sudden unexpected and apparently unexplained infant death. The programme name is the Care of Next Infant (CONI) scheme.

From 1988 to December, 1999, 6373 babies from 5229 families had completed the CONI programme. 1144 (22%) were siblings to an earlier CONI baby. 57 CONI babies died under the age of 1 year. Nine deaths were not unexpected. 48 presented suddenly and unexpectedly; seven of these were classified as probable homicides and 41 as natural sudden unexpected deaths in infancy. Thus, the proportion of sudden unexpected deaths in infancy was 5.86 times greater than the proportion of probable homicides.

When considering these and many previous findings, it is essential to distinguish between cases in which homicide was or might have been legally proven and cases in which homicide appears to be the most probable explanation.

programme. Statements that the risk of recurrence of SIDS is incredibly small are intended to suggest that the probability of such deaths being natural is zero. Selective media reporting can endorse this misconception. Our data suggest that second deaths are not rare and that the majority, 80–90%.

We have therefore probably included the majority of families in which there have been two or three sudden and unexpected deaths in recent years. Consequently, although child abuse is not uncommon, from the best available data, we believe that the occurrence of a second or third sudden unexpected death in infancy within a family, although relatively rare, is in most cases from natural causes. For a host of reasons, not the least of which is the protection of parents from false accusations, it is essential that all sudden unexpected infant deaths are submitted to a detailed, expert investigation like this study, which includes a full family history, clinical history, and paediatric autopsy. Also, adequate post-mortem material must be retained from every unexplained infant death for re-examination in the event of recurrence.

(extract from a study by R G Carpenter, A Waite, R C Coombs, C Daman-Willems, A McKenzie, J sHuber, J L Emery, 'Repeat sudden unexpected and unexplained infant deaths: natural or unnatural? *Lancet* 2005; 365: 29–35).

### **Evidence 7:** Evidence given by the Committee on Child Abuse and Neglect:

SIDS is suspected when a previously healthy infant, usually younger than 6 months, is found dead in bed, prompting an urgent call for emergency assistance. Often, the baby is fed normally just before being placed in bed to sleep, no outcry is heard, and the baby is found in the position in which he or she had been placed at bedtime or naptime. In some cases, cardiorespiratory resuscitation initiated at the scene by emergency personnel is continued without apparent beneficial effect en route to the hospital, where the baby is finally declared dead. Evidence of terminal motor activity, such as clenched fists, may be seen. There may be serosanguineous, watery, frothy, or mucoid discharge coming from the nose or mouth. Skin mottling and post-mortem lividity in dependent portions of the infant's body are commonly found. Review of the medical history, scene investigation, radiographs, and autopsy are unrevealing.

A young infant's death should be ruled as attributable to SIDS when all of the following are true: • a complete autopsy is done, including cranium and cranial contents, and autopsy findings are compatible with SIDS; • there is no gross or microscopic evidence of trauma or significant disease process; • there is no evidence of trauma on skeletal survey<sup>31</sup>; • other causes of death are adequately ruled out, including meningitis, sepsis, aspiration, pneumonia, myocarditis, abdominal trauma, dehydration, fluid and electrolyte imbalance, significant congenital lesions, inborn metabolic disorders, carbon monoxide asphyxia,



drowning, or burns; • there is no evidence of current alcohol, drug, or toxic exposure; and  
• thorough death scene investigation and review of the clinical history are negative.

It is impossible to distinguish at autopsy between SIDS and accidental or deliberate asphyxiation with a soft object.<sup>38</sup> However, certain circumstances should indicate the possibility of intentional suffocation, including:

- previous recurrent cyanosis, apnea, or apparent life threatening events (ALTE) while in the care of the same person; • age at death older than 6 months; • previous unexpected or unexplained deaths of 1 or more siblings; • simultaneous or nearly simultaneous death of twins; • previous death of infants under the care of the same unrelated person; or • discovery of blood on the infant's nose or mouth in association with ALTEs.

Controversy exists in the medical literature regarding the likelihood of a repetition of SIDS within a sibship.<sup>48–51</sup> When an infant's sudden and unexpected death has been thoroughly evaluated and alternate environmental or accidental causes of death have been carefully excluded, parents should be informed that the risk for SIDS in subsequent children is not likely increased.

(extract taken from a study carried out by Kairys, S.W. & Alexander, R.C. & Block, R.W. & Everett, V.D. & Hymel, Kent & Jenny, Chen & Corwin, D.L. & Shelley, Gene & Reece, Robert & Krous, Henry & Hurley, T.P.. (2001). Distinguishing sudden infant death syndrome from child abuse fatalities. *Pediatrics*. 107. 437-441).

## Reading for task 5:

### Extract from R v Sally Clark (2000)

Abstract of the case: S appealed against convictions for murdering her two baby sons. The instant appeal was a second appeal and followed a reference to the Court of Appeal from the Criminal Cases Review Commission. S's first son, C, had died aged eight weeks and a post mortem examination concluded that the cause of death was Sudden Infant Death Syndrome, SIDS. S's second son, H, had died aged 11 weeks and a post mortem examination concluded that shaking was the likely cause of death... At trial, expert evidence was given that the chances of two sudden infant deaths occurring in the same family from natural causes was one in 73 million. S also contended that the statistical information given to the jury about the likelihood of two sudden infant deaths from natural causes had misled the jury and had considerably overstated the rarity of two such events happening in the same family.

CA consideration in relation to the statistical evidence:

95. Professor Meadow was asked about some statistical information as to the happening of two cot deaths within the same family, which at that time was about to be published in a report of a government funded multi-disciplinary research team, the Confidential Enquiry into Sudden Death in Infancy ("CESDI") entitled "Sudden Unexpected Deaths in Infancy" to which the Professor was then writing a Preface. Professor Meadow said that it was "the most reliable study and easily the largest and in that sense the latest and the best" ever done in this country.

96. It was explained to the jury that there were factors that were suggested as relevant to the chances of a SIDS death within a given family; namely the age of the mother, whether there was a smoker in the household and the absence of a wage earner in the family. None of these factors had relevance to the Clark family and Professor Meadow was asked if a figure of 1 in 8,543 reflected the risk of there being a single SIDS within such a family. He agreed that it was. A table from the CESDI report was placed before the jury. He was then asked if the report calculated the risk of two infants dying of SIDS in that family by chance. His reply was:

"Yes, you have to multiply 1 in 8,543 times 1 in 8,543 and I think it gives that in the penultimate paragraph. It points out that it's approximately a chance of 1 in 73 million."

98. Mr Spencer then pointed to the suspicious features alleged by the Crown in this present case and asked:

"So is this right, not only would the chance be 1 in 73 million but in addition in these two deaths there are features which would be regarded as suspicious in any event?"

He elicited the reply "I believe so."

99. All of this evidence was given without objection from the defence but Mr Bevan QC (who represented the appellant at trial and at the first appeal but not before us) cross-examined the doctor. He put to him figures from other research that suggested that the figure of 1 in 8,543 for a single cot death might be much too high. He then dealt with the chance of two cot deaths and Professor Meadow responded:

"This is why you take what's happened to all the children into account, and that is why you end up saying the chance of the children dying naturally in these circumstances is very, very long odds indeed one in 73 million."

He then added:

“... it's the chance of backing that long odds outsider at the Grand National, you know; let's say it's a 80 to 1 chance, you back the winner last year, then the next year there's another horse at 80 to 1 and it is still 80 to 1 and you back it again and it wins. Now here we're in a situation that, you know, to get to these odds of 73 million you've got to back that 1 in 80 chance four years running, so yes, you might be very, very lucky because each time it's just been a 1 in 80 chance and you know, you've happened to have won it, but the chance of it happening four years running we all know is extraordinarily unlikely. So it's the same with these deaths. You have to say two unlikely events have happened and together it's very, very, very unlikely.”

100. The table that was produced to the jury gave just the figures for probability of a SIDS death in families where one or more factors thought to be relevant were present together with the figures when there was no such factor. In the CESDI report the table was accompanied by explanatory text but although this was available to the prosecution and the defence, it was not before the jury. It made clear the purpose of the information saying:

“The identification of families at higher risk of SIDS is of importance in allowing the appropriate deployment of scarce health care resources and in attempting to achieve changes in lifestyle or patterns of child care that might reduce this risk.”

It did not in any way suggest that it provided statistical information that would enable diagnosis of an unnatural death in an individual case.

101. The report also made clear that the figures did not “take account of possible familial incidence of factors other than those included” in the table. It ended with the warning: “When a second SIDS death occurs in the same family, in addition to careful search for inherited disorder, there must always be a very thorough investigation of the circumstances— though it would be inappropriate to assume maltreatment was always the cause”.

102. None of these qualifications were referred to by Professor Meadow in his evidence to the jury and thus it was the headline figures of 1 in 73 million that would be uppermost in the jury's minds with the evidence equated to the chances of backing four 80 to 1 winners of the Grand National in successive years.

103. Professor Berry was one of the four editors of the CESDI study. He made the point that simply squaring the figure was an illegitimate oversimplification and he drew attention to the qualifications to which we have referred.

104. The trial judge clearly tried to divert the jury away from reliance on this statistical evidence. He said:

“I should, I think, members of the jury just sound a word of caution about the statistics. However compelling you may find them to be, we do not convict people in these courts on statistics. It would be a terrible day if that were so. If there is one SIDS death in a family, it does not mean that there cannot be another one in the same family.”

105. This aspect of the case was raised on the first appeal. The areas of attack were threefold. First, evidence was called to show that the statistics were misleading; second, it was said that the evidence was led without regard to the guidance given by this Court in *R v Doheny and Adams* [1997] Cr App R 369 ; and third it was contended that the prosecution utilised the statistics in a way that gave rise to the “prosecutor's fallacy” identified in relation to DNA statistical evidence in *R v Deen*, *The Times* 10 January 1994 .

106. As to the first point, the Court of Appeal (at paragraph 155) concluded:

“The existence of arguments against squaring was known to the jury at trial. Professor Berry made the points to which we have already referred, and the judge reminded the jury about these in his summing-up. But again the precise figures are not important since the Crown was making the broad point that repeated SIDS deaths were very unusual, in which exercise the number of noughts separating the lower risk households from higher risk households did not matter once the overall point was made, as here it was.”

107. The court also rejected the second ground which was effectively a complaint that Professor Meadow trespassed beyond his mere expertise. The court said (paragraph 160):

“No-one would know better than Professor Meadow that this important evidence as to whether these deaths were unnatural lay in the physical finding post-mortem, in the account of the last hours of the infants, and in the evidence and credibility of the parents — it certainly did not lie in statistics. And it is clear from reading his evidence that his conclusions were firmly based on that medical and circumstantial evidence, as we would expect.”

108. As to “the prosecutor's fallacy” the court found merit in this argument saying:

“Therefore we accept that when one is looking post facto at whether two deaths were natural or unnatural, the 1:73 million figure is no help. It is merely a

distraction. All that matters for the jury is that when your child is born, you are at a very low risk of a true SIDS death, and at an even lower risk with a second child.”

109. The court absolved Professor Meadow of misusing the figure in his evidence but added that “he did not help to explain this limited significance”.

110. The court then asked themselves whether the jury might have focussed on that figure to the exclusion of the “real and compelling” evidence in the case. They reminded themselves of the warning given by the judge but concluded that there was some substance in the criticism. Nonetheless the court looked at this matter in the light of all the evidence and concluded that there was an “overwhelming case” against the appellant.

### **In class (Monday 24 Feb, 6pm)**

You already know that expert evidence is the case study for this week - you have looked into that in your preparation for this class.

1. Before moving on to check the inductive argument you came up with in your preparation, you will have a discussion in class on the importance and challenges in using expert evidence in a trial. In your contribution to the discussion, draw upon key points from the readings and your notes.
2. Understanding the importance and dangers of ‘inference’ in argument construction, is the next step in the development of your skills in this area. Your lecturer may give you a brief on that.

Hanson (p. 403) explains that inference is used, in inductive reasoning, to connect parts of an argument; however, it is important to be aware of the pitfalls in the use of inference, such as overlooking the possibility of several alternatives to the one inferred.

Your lecturer may lead the discussion either in plenary or small groups. Take as an example the deductive reasoning you have been given for this week case scenario. Try to challenge the inference of Emma’s guilt- offer at least 2 counter responses (you can be imaginative).

Major premise: if there was nothing to demonstrate that one or other incidents had resulted from the deliberate infliction of harm the death should be regarded as SIDS

Minor premise: expert evidence suggested that it was un-probable that Emma’s 3 babies could have died all from natural causes

Conclusion: Emma was responsible for the babies’ death

This simple task highlights the importance of critical thinking - by identifying possible alternative conclusions and test them out. By doing so, you should be able to identify the strongest argument.

3. Now you will have the opportunity to test your inference skills. You may be asked to work in small groups or in pairs. First, you will check your findings on the case study. You may want to start by identifying the thesis (or proposition), and the conclusiveness of the evidence.

Have you reached a conclusion already while preparing for this class? If so, consider what you have discussed in relation to alternative conclusions, test the strength of your own conclusion and the conclusion of your fellow students in your group. Your lecturer may call you back into plenary to discuss your findings.

4. Next step in argument construction, is the ability to counter argue an argument. You may have not noticed that, but you have already done so in the previous tasks. Now, you will purposely examine how to do that:

- Attacking the major premise of a deductive argument:

Major premise: if there was nothing to demonstrate that one or other incidents had resulted from the deliberate infliction of harm the death should be regarded as SIDS

Note that a major premise cannot always be challenged. For example, if the premise is a rule of law (either from a case law or a legislation), unless there is unclarity as to the meaning of some words or past interpretations (you could remind yourself of the conditions of doubt – see skills guide on Moodle), it will be difficult to challenge the premise.

In this example, this is a major premise which could potentially favour Emma; therefore, it is probably the prosecution who may be interested in challenging it.

- Attacking the minor premise

Minor premise: expert evidence suggested that it was un-probable that Emma's 3 babies could have died all from natural causes

This minor premise suggests that the prosecution was able to procure expert evidence which the jury thought indicate beyond reasonable doubt that Emma killed the 3 babies.

In that case, it would be in the defence interest to challenge that.

As Hanson explains (p.407) the defence can do that by using an inductive reasoning to prove the opposite - that expert evidence did not suggest that it was un-probable that Emma's 3 babies could have died all from natural causes.

This is your final task for today, and it consolidates everything you have done so far:

Use the findings you came up with at home and in class (whatever your conclusion was) and write down 1-2 paragraphs of the defence concluding speech, where you challenge the prosecution's inference of Emma's guilt. Your speech needs to be backed up by evidence. Be prepared to share this in class.

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

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## *Week 8: The administration of justice: Sentencing 1*

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### **Class preparation**

The focus of this week's topic is the criminal trial. Moodle mini-unit for weeks 5-7 give a brief introduction to the civil justice system (i.e. tort). If you haven't completed these, you may want to spend some time doing so now as they will give you a comparative overview to this week's topic.

This week you will have the opportunity to consolidate your writing skills. You will first skim read and then scan read the chapter, take notes, and answer specific questions which you will then discuss in class.

Before starting your preparation for this week's class, look at the tasks below and consider how you will time manage these, so you arrive prepared.

Preparation tasks:

1. First, identify in Elliott and Quinn's table of content the chapter related to Sentencing.
2. Next, skim read the chapter. There is no need to take notes at this point, but you want to gain a general idea of the chapter's content.
3. Now you will read again the chapter, this time with a purpose, that is, with the aim to answer specific questions.

Read these instructions first:

- i. Below are two questions. You are required to identify key information for both (inserting this information in the tables below rather than answering the questions).
- ii. Choose one of the following writing techniques which you will use to extract the information, depending on how confident you are in taking notes:

Writing process A- difficulty 1: this is a time consuming writing technique but it will help you to develop your writing skills confidently. You will need



to approach each question separately. In other words, you will read the chapter several times, each time to address a different question.

Writing process B- difficulty 2: this is an advanced writing technique because you process all the questions at once. You may read the chapter more than once, but while reading you will consider all the questions, and you will attempt to extract relevant information for each while reading along.

- iii. Whichever process you choose, the end result should be the same:
1. identify the relevant key points which will help you to answer the above questions;
  2. summarise in your own words this information;
  3. answer the questions as instructed under each.

The questions:

- a. What are the purposes of sentencing? (answer this question in bullet points)
- b. What are the features which make the purpose of sentencing effective and less effective? (Answer this by way of filling the following table which you may want to copy in your scrap-notebook [have as many columns as you need]).

Effective	Less effective

- c. What are the pros and cons of judicial discretion in sentencing? Answer this by way of filling the following table which you may want to copy in your scrap-notebook [have as many columns as you need])

Pros (in favour)	Cons (against)

Make sure your notes are clear because you will share these in class.

To test your hard work so far and see whether you have understood the reading, take the 'You be the Judge' activity on Moodle.

### Wider reading

You can read more about the Criminal Justice System in Elliott & Quinn's, chapter on 'The Criminal Trial Process' (page number and chapter may depend on the edition you use). This may give you some useful background in preparation for the writing of the Court Visit Report due Friday 6 March.

### **In class (Monday 2 March, 6pm)**

**IMPORTANT: by the end of this week (6 March by 4.30pm) you will have to submit the Court Visit Report on Moodle.**

Understanding and debating the nature of sentencing and its purpose is important not only as a law student but also as a responsible citizen.

1. The class may start with a brief by your lecturer and a discussion about the purposes of sentencing.
2. Next, you may be asked to work in pairs or small groups. Your lecturer will give each of the groups a role. Follow these instructions:
  - i. Imagine that you are in a Question Time debate.
  - ii. Your group will either defend the pros of judicial discretion in sentencing or you will be asked to defend the cons.
  - iii. You may use the relevant chapter in your textbook, but your preparation notes should be good enough (if taken correctly) for this task.
  - iv. With your group, discuss and write down one paragraph (c.200 words) defending the group's stance (you may want to appoint a writer and a spokesperson [these should be two different people]):
    - a. You want to be selective and only choose one reason (for the pros or for the cons).
    - b. This reason needs to be supported by evidence (examples, sentencing purposes and anything else which you think may convince the audience of your stance).

When ready, the seating arrangements will follow a debating style; the pros will sit on one side and the cons on the other.

Your lecturer will appoint a Chair for the debate.

Your lecturer will be the audience for the debate and at the end of it you will receive feedback on which group (or stance) was the most convincing and why.

This task is important for several reasons: Firstly, it allows you to 'digest' and 'translate' your preparation into usable information. Secondly, you continue developing your collaborative skills which universities and employers find fundamental. Thirdly, you continue developing your writing skills and preparation for your final assessment. Finally, you will have the opportunity to practice your presentation and debating skills.

3. This last task is all about consolidating your acquired knowledge. Your lecturer will lead the discussion and you may be asked to work in small groups before sharing your findings in plenary (you may be asked to report back after each part of the task).

- i. Read the following case study and consider the question below:

Thomas, a 23-year-old man who has been a street methadone addict for the past four years, is desperate for money to buy drugs. While walking through Russell Square, Thomas notices that an off-license shop keeper is locking the shop's door and then leaves the premises.

Thomas immediately goes to the rear of the shop. He tries the back door which is locked, then all of the windows, which are also locked. He then covers his fist with his jumper and smashes one of the windows; he puts his arm through and twists the handle to open the window, and climbs inside. On entering the shop, Thomas quickly runs to the cash register, in which he finds £200 which he puts into his pocket. He also takes a mobile phone before stepping back out through the broken window.

As Thomas is walking back down the street, he is stopped by two police officers who have received a report of a suspicious character in the area. Thomas is spoken to and, given his behaviour and responses, is arrested by the police, and then discover the stolen items on him. Thomas fully admits the burglary when spoken to by the police, and he pleads guilty at court. Thomas has several previous convictions for shoplifting from large supermarkets, for which he has received fines, but he has never had to be punished for burglary before.

What do you think are the key facts from the case study?

\*When taken as prescribed, methadone is generally safe and effective. Many people receiving methadone treatment can continue to contribute to society. But when the medication is misused, it can lead to light-headedness, hallucinations and addiction. Street methadone is methadone sold to someone without a prescription. The drug does not produce a high unless it is taken in

significantly high doses, but it can lead to overdose. Many street methadone users take the drug to alleviate opioid withdrawal symptoms (from DrugRehab.com). Methadone is also a Class A2 controlled drug (see list <https://www.gov.uk/government/publications/controlled-drugs-list--2/list-of-most-commonly-encountered-drugs-currently-controlled-under-the-misuse-of-drugs-legislation>)

- ii. You are due to sentence Thomas for this offence. Prior to doing so, his defence lawyer is to address you with a plea in mitigation.

Read Thomas's lawyer's plea in mitigation and note down any key facts which may affect your sentencing:

Thomas's lawyer's plea:

This offence is a serious one, but it must be seen as a departure from Thomas's previous behaviour. It is an indication of his increasing desperation in relation to his drug use. Clearly, he is not a sophisticated burglar but rather opportunistic in that an opportunity presented itself to him and he took it. He was in the premises for only a short period of time and only took the risk because he believed that the occupants were not present and that they were not likely to be returning soon. He took cash and a phone which he was able to carry on him and all of which were recovered by the police. He did not cause any damage other than to the window and cannot be said to have ransacked the premises.

Thomas has pleaded guilty at the first opportunity, but even before that he had fully cooperated with the police. Thomas is still a young man who as a result of his methadone addiction has fallen into offending. At the time of this offence Thomas was spending approximately £50 a day on his methadone use. His parents are still supportive of him and are at court to show that they have not turned their backs on him. Thomas lives in a council property and being aware of the possible risk of imprisonment, has been told by the council that if he is not present and paying something towards the rent for more than four weeks he may lose his flat.

Thomas left secondary school with a number of GCSEs and gained employment in a shop selling sports clothing. Unfortunately, as sometimes happens, shortly after he turned 20 he became involved with what is called a 'bad crowd': they introduced him to using heroin; then he started using street methadone with the intention of withdrawing from heroin- he then became addicted to it. Prior to this Thomas had never been in trouble with the police, but, obviously, because of his recent crimes he has now lost his good name as well as losing his employment and this will make the task of finding a new job even harder. In the meantime Thomas is in receipt of benefits, specifically Jobseeker's Allowance of £57.90 per week.

Thomas bitterly regrets the snap decision he took to enter this house and wishes to pass on his remorse to the occupiers. He asks for the court to understand his situation. He will never again commit such an offence.

- iii. Finally, with your lecturer discuss which sentence (a fine, a community sentence, or imprisonment) may be most appropriate here? Consider the social benefit of such a sentence.

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

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## *Week 9: The administration of justice: Sentencing 2*

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### **Class preparation**

This week's preparation will require you to gather a substantial amount of data which you will then use in class for the discussion of this week's case study: life imprisonment. There are several sources which you need to use, and you will not be able to read them from scratch in class; the findings will be checked in class and then used to develop your argument building skills.

Before starting your preparation for this week's class, look at the tasks below and consider how you will time manage these, so you arrive prepared.

Preparation tasks:

1. Retrieve the Criminal Justice Act 2003, Schedule 21 (if you search for the legislation on Westlaw, once on the legislation page you will have to scroll down quite a lot until you find the title **Schedule 21 DETERMINATION OF MINIMUM TERM IN RELATION TO MANDATORY LIFE SENTENCE**).

Take notes from the above on the following:

- The different categories of life imprisonment.
- Which type of offenders will be assigned to which category?
- What are the mitigating circumstances?
- What are the aggravated circumstances?

2. Identify the following cases (on Westlaw and ECtHR judgements- a reminder on how to access ECtHR judgements is available on Moodle):

- The ECtHR case of *Vinter v United Kingdom* (66069/09) (2016) 63 E.H.R.R. 1 (this case has 50 pages- so make sure you effectively manage your time).
- The ECtHR case of *Hutchinson v United Kingdom* (57592/08) (2015) 61 E.H.R.R. 13.
- *R v McLoughlin; R v Newell* [2014] EWCA Crim 188 (also known as *Attorney General's Reference* (No.69 of 2013))

Write a case note for each of the 3 cases. Be prepared to share these in class.

3. You will use certain information from these cases as evidence for your task for this week's case study. The data that you need to gather is as follows:

- Dangers/risks in relation to the application of the Criminal Justice Act 2003, Schedule 21 categories.
- The relationship between compassionate release on parole and ECHR art 3.
- Dangers/risks in relation to reducibility of a life sentence (i.e. the reduction in years served).

4. After you completed the above (to avoid you developing a biased opinion), read the following commentaries. Take note of key points and arguments made by the authors and be prepared to use these to inform the discussion you will be having in class (you may want to go back to the Skills tab on Moodle on critical reading to remind yourself of how to critically evaluate the strength of an argument).

- Claire Overman, *Vinter v UK and Whether Life Should Mean Life*, Oxford Human Rights Hub, <http://ohrh.law.ox.ac.uk/vinter-v-uk-and-whether-life-should-mean-life/>
- Natasha Holcroft-Emmess, *Vinter v UK – Why The Majority Are Right To Find That Whole Life Orders Violate Article 3 ECHR*, <http://ohrh.law.ox.ac.uk/vinter-v-uk-why-the-majority-are-right-to-find-that-whole-life-orders-violate-article-3-echr/>
- Darla Sartori, *The Hutchinson and Hammerton cases. The Human Rights Act within the case law of the European Court of Human Rights*, International Law Blog <https://aninternationallawblog.wordpress.com/2016/04/11/the-hutchinson-and-hammerton-cases-the-human-rights-act-within-the-case-law-of-the-european-court-of-human-rights/>

### Wider reading

The following is wider reading for life imprisonment. These are ECtHR cases which you do not need to read for this week's preparation; however, if you choose to focus on life imprisonment on the final assessment (due on 25 April) you may want to come back to these readings and use them in your analysis. You will find a guide on Moodle on how to access these cases.

*Khamtokhu v Russia* (60367/08) (2017) 65 E.H.R.R. 6

*Kafkaris v Cyprus* (21906/04) (2009) 49 E.H.R.R. 35  
*de Boucherville v Mauritius* [2008] WL 2696970

and

Lewis Graham, 'From Vinter to Hutchinson and back again? The story of life imprisonment cases in the European Court of Human Rights' (2018) 3 *European Human Rights Law Review* 258. (you can find this article on the Westlaw *Vinter v United Kingdom* page, scroll down to 'Journal Articles'; alternatively, you can find the journal and then the article via BBK eJournals)

### **In class (Monday 9 March, 6pm)**

This week you will investigate a life imprisonment case study. Here you will have the opportunity to apply the skill of argument construction in a similar way you will have to do it for your assessment.

1. Before moving on to consider the case study, you may have a discussion in class concerning life imprisonment. In your contribution to the discussion, draw upon key points from the readings.
2. You will then have a discussion with your lecturer about the case notes for the 3 cases. Do not be shy - volunteer to read at least one of your case notes. Only by doing so, will you receive some constructive feedback from your peers and lecturer.
3. The following is the case study for this week:



Alex was depressed and intoxicated. Not fully understanding what he was doing, he drove his car into the home of his former partner whilst she was inside with her two young children. The woman died but the children survived. Evidence suggested beyond reasonable doubt that Alex had gotten intoxicated to give himself courage<sup>1</sup> and hurt his former partner, he intended to cause her grievous bodily harm, not to kill her.

The sentencing judge noted that the claimant had meticulously planned the attack and concluded that he was a danger to the public. The jury found Alex guilty and the judge sentenced him to a whole life order (Criminal Justice Act 2003, Schedule 21, para.4). The court ordered that Alex's assessment for release on parole should take place once he had served 30 years of his sentence.<sup>2</sup>

Alex had no previous offences. He is 40 years old.

Alex spends 15 years in prison. One day he was notified that his mother moved into a care home owing to severe health problems, and he applied for compassionate release to help look after her.

The secretary of state reviewed his case and concluded that it was not sufficiently exceptional under the Crime (Sentences) Act 1997, s.30<sup>3</sup> to warrant compassionate release given the overarching consideration of the risk he posed to the public.

\*See respective notes at the end of this week's tasks\*

**Read the following instructions to the end before attempting the task.**

Imagine that you are a policy drafter for a high-profile charity. You have been asked to assess the following policy concern that may be present in the above case study:

The justification and application of a whole life order in the case of Alex.

You will have to explain in your report the following **points**- whether:

- 1) The instructions provided in the Criminal Justice Act 2003, Schedule 21, para.4 have been followed by the judge correctly.
- 2) Which dangers/risks this case study illustrates in relation to the application of the Criminal Justice Act 2003, Schedule 21 categories?
- 3) Was the term for Alex's assessment for release on parole and the refusal for compassionate release against ECHR art 3?<sup>4</sup> (see notes for a reminder of the right)
- 4) Which dangers/risks this case study illustrate in relation to the reducibility of a life sentence?

The policy draft which you will produce should have no personal opinion and should be supported by evidence. Once the policy draft is produced the charity will send this to the government for consideration. This may lead to a reform of the life imprisonment policy and reopen the debate on the importance and dangers of life imprisonment.

Note that in your final marked assignment you will be required to back up your writing by also drawing upon other sources than case law and legislation (e.g. you will be able to use a range of academic and semi-academic sources from the recommended reading provided throughout the module, as well as your own independent research). However, for today's task, you only need to draw upon the data you have gathered in preparation for this class.

Your lecturer will lead the discussion and you may be asked to work individually, with your neighbour or in small groups, but you will have the opportunity to check your answers in plenary before moving on to the next step:

**Step 1:** Try to come up with 2 deductive reasoning for point 1 and point 3 (clues: major premise; legislation). You do not need to spend too much time on that, and you do not need, yet, to draw upon your class preparation's data).

Discussion in plenary - What are the problems presented by these reasonings?

**Step 2:** Now your investigation starts to get serious and this task will take some time. Construct an inductive reasoning for point 1 and 3. Follow these instructions:

- i. You will use the data you have gathered in your preparation for this class as your evidence (*Vinter v United Kingdom*; *R v McLoughlin*; *R v Newell* and *Hutchinson v United Kingdom*). You may find it helpful drawing and using a table as you did in previous weeks.
- ii. Carry out the factual analysis and then the legal analysis.
- iii. After that, try to anticipate all possible inference in relation to the possible conclusions.
- iv. Finally, identify the stronger argument.

Discussion in plenary - check with your lecturer the above.

**Step 3:** (still in plenary) After checking your arguments above with the rest of the class and before moving on, you may discuss with your lecturer how to explain points 2 and 4 considering your inductive reasoning.

**Step 4:** Now you will create a plan for your policy draft. Follow these instructions:

- i. In bullet points, indicate the relevant key information that you will have to develop for each of the 4 points above.

- ii. Indicate case law and legislation which you may need to refer to.
- iii. Decide how many paragraphs your report will have and what you will explain in each paragraph.

**Step 5:** Finally, choose a paragraph which you would like to concentrate your writing on. It is important that you follow your plan above as to the content of this paragraph; this will help you to keep the writing focused and to the point. Be prepared to share your writing in plenary.

Your lecturer will wrap up the discussion by reviewing and checking your paragraph - do not be shy, and volunteer to read it out. Make sure you ask any questions that you may have.

### Notes for the case study:

<sup>1</sup>**Dutch courage:** also known as pot-valiance, it refers to courage gained from intoxication with alcohol. The popular story dates to the etymology of the term Dutch courage to English soldiers fighting in the Anglo-Dutch Wars and perhaps as early as the Thirty Years' War.

### <sup>2</sup> **Criminal Justice Act 2003, Part 12, Chapter 7, s.269, subs.4: 269 Determination of minimum term in relation to mandatory life sentence**

(1) This section applies where after the commencement of this section a court passes a life sentence in circumstances where the sentence is fixed by law.

(2) The court must, unless it makes an order under subsection (4), order that the provisions of [section 28\(5\) to \(8\)](#) of the [Crime \(Sentences\) Act 1997](#) (referred to in this Chapter as “the early release provisions”) are to apply to the offender as soon as he has served the part of his sentence which is specified in the order.

(3) The part of his sentence is to be such as the court considers appropriate taking into account—

(a) the seriousness of the offence, or of the combination of the offence and any one or more offences associated with it, and

(b) the effect of [\[section 240ZA\]](#) (crediting periods of remand in custody) or of any direction which it would have given under [section 240A](#) (crediting periods of remand on certain types of bail)] <sup>1</sup> if it had sentenced him to a term of imprisonment.

[

(3A) The reference in subsection (3)(b) to [section 240ZA](#) includes [section 246](#) of the [Armed Forces Act 2006](#) (crediting periods in service custody).

] <sup>2</sup>

(4) If the offender was 21 or over when he committed the offence and the court is of the opinion that, because of the seriousness of the offence, or of the combination of the offence and one or more offences associated with it, no order should be made under subsection (2), the court must order that the early release provisions are not to apply to the offender.

(5) In considering under subsection (3) or (4) the seriousness of an offence (or of the combination of an offence and one or more offences associated with it), the court must have regard to—

(a) the general principles set out in [Schedule 21](#), and

(b) any guidelines relating to offences in general which are relevant to the case and are not incompatible with the provisions of [Schedule 21](#).

(6) The [Lord Chancellor] <sup>3</sup> may by order amend [Schedule 21](#).

(7) Before making an order under subsection (6), the [Lord Chancellor must consult the Sentencing Council for England and Wales] <sup>4</sup>.

***And Crime (Sentences) Act 1997 c. 43 Part II EFFECT OF CUSTODIAL SENTENCES Chapter II LIFE SENTENCES, s. 28.— Duty to release certain life prisoners.***

(1A) This section applies to a life prisoner in respect of whom a minimum term order has been made; and any reference in this section to the relevant part of such a prisoner's sentence is a reference to the part of the sentence specified in the order.

] <sup>2</sup>

(1B) But if a life prisoner is serving two or more life sentences—

(a) [this section does not apply to him] <sup>3</sup> unless [a minimum term order has been made in respect of each of those sentences] <sup>4</sup>; and

(b) the provisions of subsections (5) to (8) below do not apply in relation to him until he has served the relevant part of each of them.

] <sup>1</sup>

(5) [As soon as—] <sup>1</sup>

[

(a) a life prisoner to whom this section applies has served the relevant part of his sentence,

] <sup>1</sup>

(b) the Parole Board has directed his release under this section,  
it shall be the duty of the Secretary of State to release him on licence.

(6) The Parole Board shall not give a direction under subsection (5) above with respect to a life prisoner to whom this section applies unless—

(a) the Secretary of State has referred the prisoner's case to the Board; and

(b) the Board is satisfied that it is no longer necessary for the protection of the public that the prisoner should be confined.

(7) A life prisoner to whom this section applies may require the Secretary of State to refer his case to the Parole Board at any time—

(a) after he has served the relevant part of his sentence; and

(b) where there has been a previous reference of his case to the Board, after the end of the period of two years beginning with the disposal of that reference; and

(c) where he is also serving a sentence of imprisonment or detention for a term, after [he has served one-half of that sentence] <sup>5</sup>;

and in this subsection “*previous reference*” means a reference under subsection (6) above or [section 32\(4\)](#) below.

(8) In determining for the purpose of subsection (5) or (7) above whether a life prisoner to whom this section applies has served the relevant part of his sentence, no account shall be taken of any time during which he was unlawfully at large within the meaning of [section 49](#) of the [Prison Act 1952](#).

[

(8A) In this section “*minimum term order*” means an order under—

(a) [subsection \(2\) of section 82A](#) of the [Powers of Criminal Courts \(Sentencing\) Act 2000](#) (determination of minimum term in respect of life sentence that is not fixed by law), or

(b) [subsection \(2\) of section 269](#) of the [Criminal Justice Act 2003](#) (determination of minimum term in respect of mandatory life sentence).

**<sup>3</sup> *Crime (Sentences) Act 1997 s.30(1) 30.— Power to release life prisoners on compassionate grounds.***

(1) The Secretary of State may at any time release a life prisoner on licence if he is satisfied that exceptional circumstances exist which justify the prisoner's release on compassionate grounds.

(2) Before releasing a life prisoner under subsection (1) above, the Secretary of State shall consult the Parole Board, unless the circumstances are such as to render such consultation impracticable.

**<sup>4</sup>Article 3 - Prohibition of torture**

Convention for the Protection of Human Rights and Fundamental Freedoms

SECTION I - RIGHTS AND FREEDOMS

ARTICLE 3 - Prohibition of torture

No one shall be subjected to torture or to inhuman or degrading treatment or punishment.

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## *Week 10: Civil liberties and Human Rights 1*

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### **Class preparation**

In the next two weeks you will be discussing the topic of human rights. This is not the first time that this topic has come up, but here you will have the opportunity to address it more thoroughly.

Before starting your preparation for this week's class, look at the tasks below and consider how you will time manage these, so you arrive prepared.

Preparation tasks:

1. This first task is a 'test' of your knowledge:

- i. Relying only on your current knowledge - so make sure you do not read anything new - write down a list of all the rights that you think are human rights.
- ii. Watch the following clip produced by the European Court of Human Rights (ECtHR), and compare the rights mentioned in the clip with your own list:  
<https://www.youtube.com/watch?v=MOcmUQTgiCw>

2. Next, have ready the following titles in your scrap-notebook (leave space under each to add notes):

The Universal Declaration of Human Rights (UDHR)

The European Convention on Human Rights (ECHR)

The Human Rights Act (HRA)

The European Court of Human Rights (ECtHR)

Absolute rights, Limited Rights, and Qualified rights.

You will now read/watch/listen to several sources; identify and summarise in your own words only relevant information which you can write down under each of the above titles:

1. Elliott and Quinn's- identify the chapter concerning the Introduction to Human Rights (this will depend on the edition you use).
2. The Story of Human Rights  
<https://www.youtube.com/watch?v=oh3BbLk5UIQ>.
3. Search on Google for the Universal Declaration of Human Rights. A good source to access is the United Nations website; here you will have access to the Declaration and other sources such as the history of the document, the drafting committee, the women who shaped the universal declaration, and relevant audio.
4. Search on Google for the European Convention of Human Rights. A good source to access is the Council of Europe website. Here you will have access to the Convention and other relevant sources.
5. Search on Google for the European Court of Human Rights website. Identify information which you think is relevant for any of the titles above.
6. Search on Google for the Human Rights Act 1998. A good source to access is [www.legislation.co.uk](http://www.legislation.co.uk).
7. Listen to Ian Cook's British Library podcast on the Human Rights Act 1998  
<http://www.bl.uk/podcasts/podcast92042.html>

#### Wider reading:

Micheline Ishay, 'What are human rights? Six historical controversies' (2004) 3(3) *Journal of Human rights*, 359 (you can retrieve this from BBK eJournals)

#### **In class (Monday 16 March, 6pm)**

The human rights framework protects us from torture and slavery, unlawful punishment, and arbitrary detention. It requires that all people receive equal treatment under the law. Respect for private and family life and freedom of thought, conscience and religion are all protected as human rights. These protections are the result of a long struggle by millions of individuals and understanding human rights aids in distinguishing the law from sensational news reporting.

The idea that all people are protected by human rights, no matter how unethical or criminal the person, is one of the most difficult concepts to accept for many people. Violent murderers, terrorists and sex-offenders are entitled to equal protection under the law, just as the purest of children or civic-minded individuals are protected. This is tied to the principle that all government actions must respect human dignity.

1. Your lecturer will give you a brief on this week's topic and you will be discussing the nature, the importance and relevance of UDHR, ECHR, HRA and the ECtHR; be prepared to share your thoughts. Also consider- what is the relationship between all these documents?

2. Next, by way of discussing the need to categorise rights you will consider the case law below and decide whether they reflect a right which is absolute, limited or qualified. You may be asked to work in pairs or groups. Be prepared to share your thoughts in plenary and discuss whether rights should be categorised in this way or not (i.e. absolute, limited or qualified):

- a. In *Wilson and others v UK*, the European Court of Human Rights decided that the use of financial incentives to induce employees to give up their union membership was a breach of the right to freedom of association.
- b. In *Z v UK*, the European Court of Human Rights found that a local authority was liable for a failure to protect four children from inhuman and degrading treatment, given that it was known that they were suffering from severe neglect and abuse at the hands of their parents over a four year period.
- c. In the case of *Osman v UK*, the European Court of Human Rights decided that the police are under an obligation to take reasonable steps to protect the life of an individual where the police were aware that there was a real and immediate risk to life. This has led to the police issuing so-called "Osman letters" where they become aware that the life of a particular individual is under threat.
- d. In *Begum v Denbigh High School*, Ms Begum refused to attend school unless she could wear the jilbab, which was in contravention of the school uniform policy which allowed pupils to wear the shalwar kameeze, which she did not consider was compliant with her Islamic faith. The House of Lords decided that any breach of her right to manifest her religion was justified, in particular to protect the rights of other pupils who might feel pressured into wearing alternative forms of dress. The decision by the school was proportionate where the school had consulted the local community to assist in developing an inclusive school uniform policy which took into account the range of faiths of pupils attending the school.
- e. In *Winterstein v France*, the European Court of Human Rights found that there was a violation when gypsy traveller families who had lived in the same place for many years without causing any unlawful nuisance were evicted. The Court said that national authorities should take account of the fact that the claimants were a vulnerable minority which required special consideration to be paid to their needs and their different way of life when it came to devising solutions to the unlawful occupation of land or deciding on possible alternative accommodation.



- f. In *CN v UK*, the European Court of Human Rights, decided that the UK had not done enough to protect the claimant who came to the UK fleeing sexual and physical violence in Uganda. This was in circumstances where her passport was removed and she was engaged by an intermediary as a live-in carer for an elderly Iraqi couple who paid the intermediary and wrongly assumed that the pay was being passed to the claimant. At that time, while the police found evidence of trafficking for domestic servitude, this was not an offence in English criminal law.
- g. In the case of *Price v UK*, the European Court of Human Rights decided that to detain a severely disabled person in police custody in conditions where she is dangerously cold, risked developing sores because her bed is too hard or unreachable, and is unable to go to the toilet or keep clean without the greatest of difficulty, constituted degrading treatment contrary to Article 3.
- h. In *Financial Times v UK*, the European Court of Human Rights decided that a requirement for journalists to disclose leaked documents which might have revealed their source was an unjustified interference with their right to freedom of expression.
- i. In *HL v UK*, the European Court of Human Rights held that the informal admission to a psychiatric hospital of an adult who lacked capacity, without the consent of his carers, was in breach of Article 5.
- j. In the case of *Savage v South Essex Partnership NHS Foundation Trust*, the House of Lords found that a hospital was liable for their failure to prevent the suicide of Mrs Savage where they were aware, or should have been aware, of a real and immediate risk to her life through self harm and they failed to do all that they could reasonably have done to avoid or prevent that risk.
- k. In *Peck v UK*, the European Court of Human Rights held that there was a breach of the right to privacy when a council released CCTV footage showing the claimant shortly after he had attempted suicide, where there was no attempt to seek the claimant's consent or obscure his identity.
- l. In *London Borough of Hounslow v Powell*, the Supreme Court set out guidance when eviction from local authority housing amounts to a breach of tenant's human rights.
- m. In *Austin v Metropolitan Police*, the House of Lords concluded that demonstrators confined within a police cordon for up to seven hours did not suffer a violation of their right to liberty, where the cordon was part of a crowd control measure to prevent a breach of public order and where the cordon was in place for no longer than was necessary.
- n. In *Napier v Scottish Ministers*, the Court of Session decided that the conditions in prison for a particular prisoner with atopic eczema, who required to "slop out" his toilet vessel contained in his cell, which he shared

with another prisoner, amounted in such circumstances, given the size of his cell and the extent to which he was confined to it, to inhuman and degrading treatment contrary to Article 3.

- o. In *Copland v UK*, the European Court of Human Rights held that Article 8 was infringed when a public sector employer monitored, collected and stored personal information relating to an employee's telephone, e-mail and internet usage at work. The Regulation of Investigatory Powers Act now regulates interception of communications on all private networks, including mobiles and voicemail.

3. Next, your lecturer will lead the discussion and you may be asked to work in pairs or groups before sharing your findings in plenary. This task requires you to draw upon the knowledge you have acquired so far, however, you should also use your imagination, intuition, life experience or any other knowledge that you think may help you to address the issues below. Do not worry if you do not know all the answers but try thinking outside the box!

Imagine that you are a practitioner specialising in human rights policy. You have been asked to evaluate the following, and provide a short report which addresses the relevant questions below:

An urban education authority is in the final stages of planning the opening of a new, non-denominational secondary school (i.e. not restricted to any particular or specific religions). The school catchment area is ethnically and religiously diverse and it is likely that a significant number of disabled pupils will also attend.

The head teacher, in partnership with the school board, is now due to develop a uniform policy for the school. This policy will set out what is, and what is not, acceptable in terms of dress for all pupils attending the school. It is intended that the policy will be enforced and a failure to conform with the policy could potentially lead to disciplinary action including exclusion. "Dress" is interpreted as comprising both clothing and jewellery.

- a. How should the head teacher design the consultation phase to ensure that a range of voices are heard? What factors may need to be taken into account when balancing rights whilst ensuring that the final policy has a proper basis in law, and is necessary and proportionate?

- b. Are there specific, potentially disproportionate, negative impacts on particular groups including those with protected characteristics?
- c. Which individuals and groups need to be heard?
- d. What sources of evidence (qualitative [e.g. interviews] and quantitative [e.g. statistics]) could be used to assess the current and future impact of the policy options?
- e. Which human rights are at stake?
- f. Are the rights absolute?
- g. Can the right be restricted and if so, what is the reason for the restriction in this case?
- h. If the right is being restricted, is the response proportionate? (i.e. is it the minimum restriction necessary to achieve your objective – or is it a “sledgehammer to crack a nut”? [disproportionate action])
- i. If the policy applies to everyone, are the protected groups likely to suffer a particular disadvantage compared with other groups?
- j. Is the policy designed to achieve positive benefits for protected groups? For example, will the policy remove or minimise disadvantage, meet particular needs or encourage participation?
- k. What changes if any, are necessary to the policy that would mitigate any negative impact of the policy?

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

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## Week 11: Civil liberties and Human Rights 2

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### **Class preparation**

This week you will be looking at a specific debate: the protection of competing interests. What the law does when confronted with the need to protect two interests which may be incompatible with each other? There may not be one right answer.

You will also continue developing the skill of using the *ratio decidendi* and *obiter dicta* of a case law to resolve a case scenario.

Before starting your preparation for this week's class, look at the tasks below and consider how you will time manage these, so you arrive prepared.

Preparation tasks:

1. As a warm up, present the following case scenario to different people that you know, and listen to their views. You may have your own opinion on this case scenario, but you also really want to listen and understand the reasoning given by the people you have asked. This is a good exercise to develop listening and communication skills. Make sure you keep a record of the different opinions:

A driver of a tram notices that ahead five people have been tied to the track. He can turn the tram and avoid the five, but in doing so he will kill one person who has been tied to the alternative track.

In your view, what actions would the driver be justified in taking? What principles underlie your view?

2. Next, watch the following clip (30 minutes) from a lecture by Harvard Professor Michael Sandel (Justice: A Citizen's Guide to the 21st Century, 2011).

When listening, think about the difference made between Benthamian justice and Kantian justice.

Write a paragraph (c.200 words) explaining how the differences between the two reflect and affect the problem of balancing different rights. Be prepared to share your writing in class.

When accessing the clip, you will be asked to log in with your student ID (your library ID):  
<https://learningonscreen.ac.uk/ondemand/index.php/clip/113600>

You can also watch the lecture in full (60min):  
<https://learningonscreen.ac.uk/ondemand/index.php/prog/01A16B4C?bcast=59705113>

3. Next, search on Westlaw the following case: *Campbell v Mirror Group Newspapers Ltd* [2004] UKHL 22. Make sure that you access this specific record: [2004] UKHL 22.

Scroll down the document to identify the **speech by Lord Nicholls of Birkenhead** (dissenting) and further down for the speech by Baroness Hale of Richmond (allowing the appeal). You will only need these two judgments.

In your scrap-notebook answer the following questions; these will help you to extract the essential information you will need in class:

- a. What was the trial outcome of the case?
- b. What are the grounds of appeal?
- c. What are the two competing interests in this case ?
- d. How were these interests dealt with by the European Court of Human Rights and by the English Courts?
- e. What are the 5 categories the information published was classed under?
- f. What is Lord Nicholls' resolution with regards to category 1 and 2?
- g. What is Baroness Hale's resolution with regards to category 1 and 2?
- h. What is Lord Nicholls' resolution with regards to category 3 and 4?
- i. What is Baroness Hale's resolution with regards to category 3 and 4?
- j. What did Campbell argue was the harm caused by the publication of the photographs?
- k. What is Lord Nicholls' resolution with regards to category 5?
- l. What is Baroness Hale's resolution with regards to category 5?
- m. Does Lord Nicholls believe that the appeal should be allowed?
- n. In which cases does Baroness Hale believe that the press freedom of expression is important?
- o. Does Baroness Hale believe that the appeal should be allowed?

### **In class (Monday 23 March, 6pm)**

This is the last class of this module - congratulations!

1. Class discussion will start by sharing your findings on the tram case scenario.

Your lecturer will run a poll: How many individuals (from those you have asked) said they would continue driving on the same track and how many said they would divert to the alternative track?

Who seemed to have based their opinion on Benthamian justice and who based their opinion on Kantian justice?

2. Your lecturer will lead this discussion and you may be asked to work in small groups, each dealing with one of the two debates (you will be given a handout):

Drug use: criminalise vs decriminalise

Investigatory Powers Act 2016

Following these instructions:

- i. Appoint a writer.
- ii. Appoint a spoke person.
- iii. Whichever debate you are dealing with, consider the competing interests expressed. How these can be justified? Can you think of a policy which could benefit both interests?
- iv. When ready, your lecturer will call you back to plenary.
- v. Firstly, your group will explain to the rest of the class what the debate is; then, you will explain the competing interests you have identified and whether your group thought that these are justifiable. Finally, your group will propose a policy which could benefit both sides (but it may well be that your group will argue that there is no such policy).

3. Next, you will discuss your answers to the *Campbell v Mirror Group Newspapers Ltd* case. Also consider, how the court has resolved the issue of competing rights?

4. Finally, you will apply the above knowledge to discuss the following case scenario. You may be asked to work in pairs/small groups but you will share your findings in plenary.

Cristiano is a professional footballer. He is married but he had a one-night stand with a model. They agreed to keep this a secret, so as not to damage their respective marriages. However, the magazine *Vicious* got hold of a picture taken of the couple outside of the hotel they were in that night. Cristiano felt that his right to privacy was infringed and he claimed damages. However, the court decided that the right for freedom of expression and public interest outweighed his right for privacy.

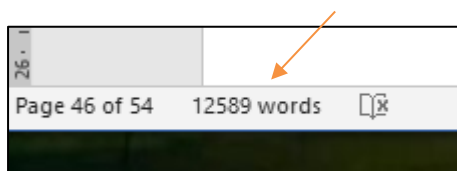
Should Cristiano appeal this decision? Advise Cristiano.

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

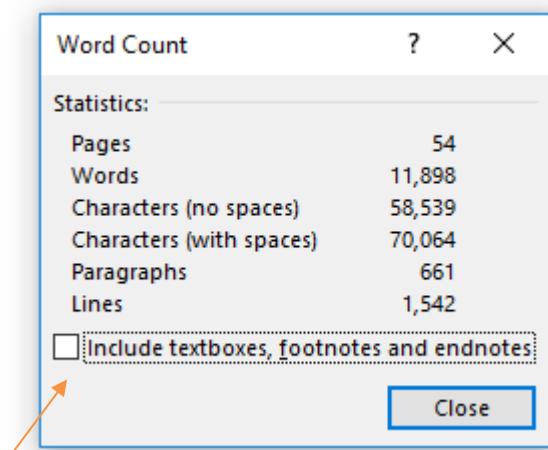
# Detailed assessment information

General instructions:

1. References and citations (foot notes) 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](https://www.law.ox.ac.uk/sites/files/oxlaw/oscola_4th_edn_hart_2012.pdf)
3. A 10% variation above or below the word-count is allowed.



# Report on class presentation

**Due by Friday, 31 January 2020 by 4.30pm**

**10%**

Learning outcomes:

Knowledge:

1. Describe and explain the role of the police in the administration of justice.

Skills:

1. Acting upon a brief.
2. Identifying, accessing and reading academic legal sources (i.e. textbook).
3. Using information effectively and summarising in one's own words.
4. Citing sources correctly.
5. Writing a well-structured essay.

Personal development:

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

Word-count 500

To answer these questions, you need to use your textbook. You can, if you wish, use other sources; these must have/demonstrate academic rigour 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.

Q1 is a transcript for a presentation, therefore it needs to start with 1-2 sentences introducing the topic and 1-2 concluding sentences.

Note that what you say during the presentation may be slightly different than your transcript (merely because of the difference between written delivery and oral delivery). However, the body of the transcript should be written in full with correctly structured paragraphs (consider 2-3 paragraphs); this is what you will upload on Moodle for marking. Please note, your class presentation is **NOT** assessed.

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. 450 words

Describe and explain one of the police topics you have chosen from the list of topics given in class.

Q2. 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.

## **Court visit report**

**Due by Friday, 6 March 2020 by 4.30pm**

**20%**

Learning outcomes

Knowledge:

1. Describe and evaluate the trial process, its adversarial character and values underpinning it.

Skills:

2. Acting upon a brief.
3. Identifying, accessing and reading academic legal sources.
4. Using information effectively and summarising in own words.
5. Citing sources correctly.
6. Writing a well-structured essay.
7. Utilising information from various sources to evaluate an argument and draw

conclusions.

Personal development:

8. Reflecting on own academic and professional strengths and limitations.
9. Taking responsibility for setting targets and implementing plans for personal/academic/professional development.

Word-count 800

To complete this assessment, you may want to use your textbook, your notes and any relevant legal source you have discussed in class (e.g. Mulcahy, L. 'Architects of Justice: The Politics of Court House Design', *Social and Legal Studies* 16, 3 (2007), 383-403).

You can use other sources such as Governmental websites (e.g. <https://www.parliament.uk/>); any other source (such as a websites) must have/demonstrate academic rigour so if you are not sure please ask your lecturer or the programme director for guidance.

Q1 should be structured as an essay. However, this is a reflective report; in other words, because you are required to describe your visit in court, you can use 'I' (e.g. When I entered the court room...). The aim of this task is to relate your court-visit experience to what you have been learning in class. Therefore, good essays will also draw upon readings discussed in class to make sense of what you have observed/experienced in court.

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. 750 words

Drawing upon your court-visit and what you have learnt in class, describe and evaluate some characteristics of the trial process, its adversarial character and values underpinning it.

Q2. 50 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.
- 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?

## Case study assessment

**Due by Monday, 27 April 2020 by 11am**

**65%**

Learning outcomes:

Knowledge:

1. Describe and evaluate the trial process, its adversarial character and values underpinning it

Skills

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

conclusions

9. Apply the techniques of inference and legal reasoning to problem solving

Personal development:

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

Word-count 1700

Q1 should be structured as an essay. You should refer to sources discussed in class and provided in the module materials. You can, if you want, use other sources; these must have academic rigour so if you are not sure please ask your lecturer or the programme director for guidance.

The following case study presents the 5 issues discussed in class. You should only choose 2 to 3 issues to answer the question. Please ignore any issue concerning extradition.

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: 1600 words

Amanda was a 35-year-old British woman, married, with 2 young children, working as a bank manager; she was a keen amateur wrestler and she even participated in the Rio Olympics Female Freestyle Wrestling competition.

She was on holiday in Spain with her sister. She was heavily pregnant and on the last week of the holiday she gave birth to a baby girl in a hospital in Seville.

After the birth, she said that she felt 'a bit confused' and 'light headed'. That night, the nurse found her walking in the corridor aimlessly. Amanda said that she could not sleep and so she just took a walk.

In the morning, the nurse alerted the medical team - Amanda's baby girl was sleeping in the nursery room, but she was not breathing at 7am. There was no sign of violence against the baby.

Two Spanish police officers were called to the hospital; they approached Amanda to ask her questions. Amanda got agitated and violent; she knocked down one of the officers leaving him with a deep cut just above his eye. Immediately, the other officer used a taser gun to bring Amanda under control.

The Spanish Magistrate carrying out the investigation of Amanda's case, deduced that, given the circumstances and the evidence provided by the nurses, Amanda must have killed the baby.

At this point, the English government asked the Spanish government for Amanda to be extradited to England, which she was.

At the trial in the Old Bailey in London, the Crown Prosecution Service called in two experts to give evidence on the issue of infant death.

One expert explained that given that Amanda's sister also lost her baby a few years ago in similar circumstances (i.e. found dead the morning after without any sign of violence) and although she was never charged for it, it is likely that post-natal depression runs in the family and therefore it is possible that Amanda killed her baby girl.

The other expert explained that: there is no connection between the two cases; there is no evidence of post-natal depression or any other mental health concern; there is no other evidence suggesting that Amanda killed the baby; none of the nurses nor any other patient in the post-natal ward at the hospital were questioned.

The jury found Amanda guilty of murder by a majority of 10 to 2. She was sentenced to life imprisonment.

Amanda's family have decided to appeal the conviction. The grounds of appeal being: that the use of contrasting and inconclusive expert evidence contravenes the right for a fair trial; that Amanda's treatment by the Spanish police amounted to degrading treatment; and that her sentence to life imprisonment amounted to a breach of her right to liberty and her right to her family life.

The question: You are a policy researcher. You have been asked by the government to explain and assess 2 to 3 of the following issues raised in Amanda's case:

1. Issues concerning the distinction between the inquisitorial and adversarial legal system.
2. Issues concerning police use of taser guns.
3. Issues concerning expert evidence.
4. Issues concerning life imprisonment.
5. Issues concerning conflict of interest in relation to human rights.

Please note that you are not required to solve Amanda's case, nor express your own judgment on it. The government has no interest in Amanda's case *per se* but wants your help to understand what the problems in current policy and practice are, as they are presented in the case study, for possible future policy reform.

Q2. 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.

For this module students are required to use the OSCOLA referencing style in addition to including a reference list at the end of the coursework.

The quick guide to OSCOLA can be found here:

[https://www.law.ox.ac.uk/sites/files/oxlaw/oscola\\_4th\\_edn\\_hart\\_2012quickreferenceguide.pdf](https://www.law.ox.ac.uk/sites/files/oxlaw/oscola_4th_edn_hart_2012quickreferenceguide.pdf)

And the full reference and style guide can be found here:

[https://www.law.ox.ac.uk/sites/files/oxlaw/oscola\\_4th\\_edn\\_hart\\_2012.pdf](https://www.law.ox.ac.uk/sites/files/oxlaw/oscola_4th_edn_hart_2012.pdf)

## 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>