

Topic Exploration Pack

Introduction to the Nature of Law

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Link to specification

AS Level - Component 01 Section A: The legal system

A Level - Component 03 Section A: The nature of law

- Law and rules: the difference between enforceable legal rules and principles and other rules and norms of behaviour
- The connections between law, morality and justice
- The differences between civil and criminal law
- An overview of the development of English Law: custom, common law, equity, statute law
- An overview of common law and civil law legal systems
- The rule of law: definition and importance

Introduction

When asked 'What is law?' most people will answer with an example, and it will usually be a crime such as murder. Law is so much wider than just the criminal law. It has a role in almost every (if not all) aspect of society. Many laws have their origins in tradition, customs and morals based on religion. Legal systems across the world share certain legal principles and procedures.

This pack will introduce the basic concepts and terminology which makes up the vastly diverse 'nature of law'.

Activity 1 – Start your own country

Your class are stranded on a desert island. In groups, discuss the following questions about how your new society will work:

1. Who will make your laws?

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2. How will these laws be enforced?

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3. How will the law makers be kept in check?

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4. How will the law makers be chosen?

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5. What sort of laws will you make?

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6. What sort of legal system do you want?

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7. How can laws be changed?

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8. What are your 5 main laws for the country?

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9. If a visitor came to your country, how would you describe your legal system?

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10. Present your new country to the class. Design a flag and set out your main laws. This could be done on a PowerPoint, a video, a leaflet, or by any other means.

Law and rules: the difference between enforceable legal rules and principles and other rules and norms of behaviour

Key terms:

A **rule** specifies certain conduct (how you act) or procedure e.g. 'you must wear school uniform' is a rule (conduct) or 'if you are absent from school your parent must write a note' (procedure).

A **principle** is the underlying reason we have the rule. Why does your school have a uniform? Why do your parents need to authorise your absence?

Legal rules tell us what we can and cannot do, but they also create rights.

Legal principles are the reasons we have the law e.g. why do we have a speed limit on the roads?

A **norm** is a customary way to behave. It doesn't always need a rule to go with it as it is an accepted way to act in a particular situation. Society creates norms through socialisation e.g. family values, peer pressure, schooling. For example, if you went for a job interview you would dress smart, shake hands with the interviewer, make eye contact when they speak to you and you definitely wouldn't

Activity 2 – Rules for the class

Law is based on rules and principles. Your law class needs rules that will set the standard and expectations for your A level course of study.

Instructions:

- Come up with five rules for the class.

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- Decide on possible penalties for disobeying these rules.

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- What are the principles behind these rules?

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Activity 3 – Law in the news

Law is part of everyday life. You have most likely entered into a legally binding agreement today (e.g. buying a bus ticket is a legal contract). To illustrate this point, complete the following activity:

Instructions: Look at the home page of a news website (e.g. BBC News). Try to spot the link that the law has with each story.

News story	Link to the law

The connections between law, morality and justice

The concepts of morality and justice are common themes that need to be considered when discussing all aspects of the law. Using the internet, find a concise definition of both of these terms:

Definition of Morality

Definition of Justice

There are many controversial issues for which parliament and judges need to make legal rulings. These laws may be unpopular with the public as some people may be opposed to certain changes in the law. Debates surrounding issues such as legalisation of drugs, the death penalty, euthanasia/assisted dying, gay rights, abortion, etc. make it difficult for the law-makers to pass new laws in these areas. This also raises issues regarding who makes these law. Judges are often criticised as being 'out of touch' whereas the government has to pass laws that are supported by the electorate. Sometimes the law is slow to change and keep up to date with modern viewpoints on moral issues.

There are many types of justice and many theories on the best way for the law to ensure justice has been done. All of the topics you will study on this course can be discussed in light of whether they achieve justice. There are four main types of justice:

Formal Justice – the procedures are people e.g. police, judges, courts, juries etc.

Substantive Justice – the laws e.g. criminal and civil laws, human rights etc.

Distributive Justice – fair allocation of wealth and resources e.g. minimum wage, anti-discrimination laws etc.

Corrective Justice – sentencing criminals and remedies in civil disputes.

Activity 4 – Law, Morality and Justice

Research a controversial area of law and answer the following questions:

- 1. What is the current law on this area?

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- 2. Why is it considered controversial?

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- 3. What are the arguments for and against changing the law?

For	Against

4. Would justice be achieved if the law was changed?

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5. Conclude whether the law should be changed.

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The differences between civil and criminal law

Classifying the different types of law can become complicated. A simple way to categorise the law in to two main areas is to distinguish between criminal law and civil law. Below are two cases, one criminal and one civil. Read the facts and the decision of each before discussing the main issues that arise in both cases:

Activity 5 – a civil case

Donoghue v Stevenson (1932)

Mrs Donoghue went to a café in Paisley with her friend to discuss her upcoming wedding arrangements. The friend bought Donoghue a bottle of ginger beer made by Stevenson’s drinks company. Donoghue drank some of the ginger beer not knowing that there was a dead snail inside the opaque bottle. When she saw the snail, she sued Stevenson for negligence claiming that she was entitled to compensation. Donoghue had been bought the drink by a friend and therefore, she could not make a claim under contract law.

Verdict: FOR THE CLAIMANT

The House of Lords held: Stevenson had been negligent and he owed a duty of care to Donoghue who was the ultimate consumer of their product.

Lord Atkin said:

Student Activity

'The rule that you are to love your neighbour becomes in law: You must not injure your neighbour, and the lawyers' question: Who is my neighbour? receives a restricted reply. You must take reasonable care to avoid acts or omissions which you can reasonably foresee would be likely to injure your neighbour. Who then, in law, is my neighbour? The answer seems to be persons who are so closely and directly affected by my act that I ought reasonably to have them in contemplation as being so affected when I am directing my mind to the acts or omissions which are called in question.'

1. What are the important facts of this case?

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2. Who won the case?

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3. What did the claimant want from the defendant?

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4. What law comes from this case?

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5. How does this law affect you?

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Activity 6 – a criminal case

R v Dudley & Stephens (1884)

Facts: Four sailors were sailing a yacht from Southampton to Australia to deliver it to its new owner. The yacht capsized and sank during a storm and the four man crew took to a small lifeboat. They had two tins of turnips but no water. They survived on the turnips and by eating a turtle they caught but after 15 days at sea Parker (the cabin boy) was ill from drinking sea water. The other three crew members discussed drawing lots to decide who should be sacrificed and eaten by the others according to the Customs of the Sea (shipwrecked sailors would do this if they were stranded days from land). One of the crew members (Brooks) refused to be involved so Dudley and Stephens killed the unconscious cabin boy, Parker. All three eat him and then were rescued by a passing boat after 24 days at sea.

When they reached Cornwall all three were arrested for murder. The charges were dropped against Brooks so he could give evidence for the prosecution. Dudley and Stephens argued that there was no case to answer due to the established Custom of the Sea. This was rejected and the Home Secretary and Attorney General decided to prosecute the defendants for murder. They argued that they had to kill Parker under the law of necessity.

Held: The defendants were found guilty of murder. The court was not convinced that it was necessary to kill Parker to save themselves. The defendants avoided the death penalty but were granted a pardon and sentenced to six years imprisonment.

1. What are the important facts of this case?

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2. What defence did they raise?

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3. What was the verdict?

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5. What law comes from this case?

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6. What would your decision have been?

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Activity 7 – Table of terminology

Which of these legal terms refer to criminal law, civil law or both?

Underline criminal terminology in one colour and civil terminology in a different colour. Circle any terms that apply to both criminal and civil law.

Public law	Private law	Dispute
Prosecuted	Punishment	Liability
Fine	Guilty	Compensation
Sued	Sentence	Claimant
	Defendant	

The difference between Criminal and Civil Law

	Criminal Law	Civil Law
Public or private?		
Which courts?		
The defendant is...?		
The outcome of the case is...?		
If responsible, the defendant is...?		
Examples:		
Burden of proof		
Standard of proof		
Cases are written:		
Example of a case:		

State whether the criminal law, civil law or both would deal with the following situations:

1. James has an argument with John and punches him in the face and breaks his nose.

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2. Sarah plays her music very loud into the night. Her neighbours want to get her to stop.

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3. Simon buys a DVD player from a shop. When he plugs it in he receives an electric shock.

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4. Victoria takes a bottle of wine from the supermarket and does not pay for it.

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5. Natalie is late for work. She drives over the speed limit and knocks a cyclist off their bike.

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An overview of the development of English Law: custom, common law, equity, statute law

Key terms:

Customary law – accepted practices that become part of a society’s laws through established rules.

Common law – is a system of judges making laws that are ‘common’ to all (Note: the term ‘common law’ is also used in another context to describe a type of legal system).

Equity – is a way of deciding legal disputes based on fairness rather than following the strict letter of the common law. It was historically used in the Chancery Court where the Lord Chancellor would preside. Equity is often referred to when dealing with the law of trusts.

Statute law – these are laws made by parliament. The history of statutory law included the establishment of an English Parliament (1265), the union with Scotland (Acts of Union 1707), membership of the European Communities (1973) and further devolution of power to Northern Ireland, Scotland and Wales (the Northern Ireland Act 1998; Scotland Act 1998; and the Government of Wales Act 1998).

The term '**English Legal System**' refers to the laws and procedures in England and Wales (Scotland and Ireland have different legal systems although there are overlaps). Here are some of the key dates in English law:

1066

English common law was established after England became one kingdom and replaced the existing customary and Roman law. After the Norman invasion of 1066, Norman kings used judges to spread the 'king's law' to replace any remaining Anglo-Saxon laws. The 'king's law' became known as 'common law'. Important landmarks in legal history include the signing of the Magna Carta 1215. Before 1215 there were three main ways to decide a case:

1. Trial by ordeal – this was either by water or by fire. The accused was dunked in a pool and if innocent they would sink and the guilty would float. Trial by fire required the accused to carry a hot poker. Their hand would be bandaged and then checked after three days. If the wound was clean, the defendant was innocent. Both of these practices were stopped by the Church in 1215.
2. Trial by oath – the accused would swear on their word that they were not guilty. The courts would often require witnesses (oath-helpers) to give character references.
3. Trial by battle – the accused had a full day to fight the other party in a dispute until they gave in. Land disputes could be settled using a 'champion' hired by the land owner to fight on their behalf. This method of solving a dispute officially ended in 1818.

1215

In 1215 the Magna Carta limited the powers of the King by stating that no person was above the law. It also included certain rights and liberties that had previously been denied.

1265

In 1265 the first parliaments were held in England and Ireland.

16th Century

The British Empire was first established in the 16th century and included the Americas and the West Indies. This empire came to an end after the American Revolution ended in 1783. During the 19th century the second empire was established and included large parts of Africa and India. These countries were decolonised in 1949 when British rule was lifted however, 53 member states kept their connection with the UK and are known as the Commonwealth and sixteen of these countries have kept the Queen as their head of state. The Commonwealth countries can also use the English courts as a final place to appeal. These cases are heard by the Judicial Committee of

the Privy Council who sit in the UK Supreme Court. Decisions made by the Privy Council are not binding on English law but they are persuasive. You will notice that many of these countries use the same or a very similar legal system to the English common law system.

1670

The use of juries and magistrates started to increase and the concept of 'jury equity' was established in *Bushell's Case* 1670.

1707

Acts of Union 1707 united the separate parliaments of England and Scotland. From then on, the Parliament of Great Britain passed laws for England, Wales and Scotland. Some of the power was devolved back to Scotland in 1998 in the Scotland Act.

1935

In 1935 the landmark case of *Woolmington v DPP* established the 'presumption of innocence' so that a person accused of a crime was 'innocent until proven guilty'.

1953

In 1953 the UK signed the European Convention on Human Rights. This international treaty protects the rights and freedoms of citizens in Europe. It also established the European Court of Human Rights where citizens can challenge decisions made in their home countries when they feel a breach of human rights has occurred.

1965

In 1965 the death penalty was abolished for murder. The law was changed by a backbench Labour MP called Sydney Silverman. He convinced parliament to pass the Murder Act 1965 after a number of high-profile miscarriages of justice and increasing public support for its abolition.

1973

In 1973 the UK joined the European Community, renamed European Union in 1992. This organisation allows for the free movement of goods, services and people. Many of the UK's employment laws have come from the European Union e.g. minimum wage and working time directives.

1998

In 1998 the Human Rights Act passed. This Act includes important rights and freedoms such as the right to a fair trial and freedom of association. All English law passed after 1998 should be compatible with the Human Rights Act.

Activity 8 – History of English law timeline

Using the information above plus your own research, produce a timeline of important events in English law.

An overview of common law and civil law legal systems

The legal systems of the world fall into five main categories: common law legal systems, civil law legal systems, religious law systems, customary law systems and mixed law systems.

Many countries have adopted the English common law legal system. This is often due to their historical links with Great Britain and former status as part of the British Empire. This includes the USA, where the thirteen original states were British colonies until the American Revolution broke out in 1776. Countries such as Australia, New Zealand, Canada and other commonwealth nations also have common law legal systems. Substantive laws and procedures are similar in these countries so it can be quite straightforward for an English lawyer to re-qualify and practise in another common law country.

The other main type of legal system is known as civil law legal system. This is based on Roman law, dating back to the Justinian Code in the Roman Empire. Its development can be charted through the Napoleonic Code and the German civil code. The countries which use a civil law legal system include most of continental Europe and central and south America.

Within the British Isles, England, Wales, Northern Ireland and the Republic of Ireland have common law systems, but Scotland has a mixed legal system as it is based on both civil law and common law. This is also the case with Québec in Canada, which was originally a French colony.

Activity 9 – Map of common law legal systems and civil law legal systems

Activity: Use a search engine to find out some of the countries of the world who use the common law legal system and the civil law legal system and then shade them on the world map.



Activity 10 – Difference between common law legal systems and civil law legal systems

Complete the table below explaining the main differences between Common Law Legal Systems and Civil Law Legal Systems:

Features	Common Law Legal System	Civil Law Legal System
Source of law		
Criminal Trials		
Civil Trials		
Evidence		
Role of judge		

The rule of law: definition and importance

As per Lord Steyn:

‘Unless there is the clearest provision to the contrary, parliament must be presumed not to legislate contrary to the rule of law. And the rule of law enforces the minimum standards of fairness, both substantive and procedural.’

R v Secretary of State for the Home Department, ex parte Pierson (1998) AC539, 591.

The most quoted work on the rule of law was written by Professor Dicey in *An Introduction to the Study of the Law of the Constitution 1885*. Dicey identified three important factors which make up the concept known as the rule of law:

1. No punishment without law – this links to the legal principle of habeas corpus which states that a person cannot be detained without the authorisation of a court. The Habeas Corpus Amendment Act 1679 was passed to stop King Charles II sending prisoners to countries who didn't have the habeas corpus rule so that he could detain people without charge. A similar thing occurred at Guantanamo Bay 2001-2009 where suspected terrorist were held without charge.

2. No man is above the law – this provides a safeguard to prevent dictatorship and arbitrary power. The rule of law applies to all, regardless of class or wealth and includes the King/Queen (as stated chapters 39 and 40 of the Magna Carta 1215). The Bill of Rights 1689 contained rules that William of Orange was required to sign before he became king.
3. Judicial decisions of the courts protect the rights of citizens – Dicey thought that judge-made law was the fairest system. The Act of Settlement 1701 protects the tenure of judges and ensures their independence from pressure when deciding cases.

The rule of law has its origins in ancient Greece with the writings of Plato and Aristotle. In Plato 'The Laws' he said:

'Where the law is subject to some other authority and has none of its own, the collapse of the state, in my view, is not far off; but if law is the master of the government and the government is its slave, then the situation is full of promise and men enjoy all the blessings that the gods shower on a state.'

According to Aristotle 'Politics Book III':

'And the rule of law, it is argued, is preferable to that of any individual.'

The rule of law features heavily in other legal systems as well. The Constitution of the United States of America states that congress is not the supreme law-maker as the constitution remains supreme. Article V of the American Bill of Rights 1791 refers to the 'due process of law'. The French Declaration of the Rights of Man and the Citizen 1789 also refers to important features of the rule of law.

An important case regarding the rule of law in *Entick v Carrington* (1765):

Facts: On the orders of Lord Halifax, four of the King's messengers broke into the house of author John Entick looking for any writings that were anti-monarchy. The messengers caused £2000 worth of damage to Entick's possessions and property. He claimed that the messengers were trespassers and had no legal authority to enter his house without his permission. The messengers argued that they had permission to search the house from Lord Halifax.

Held: There was no common law or statute that allowed the messengers to enter Entick's house. The state (meaning the king's messengers and Lord Halifax) were not authorised to enter the house by any law. Entick won his case. The messengers were trespassing.

This case relates to the rule of law in that the state can only do what the law allows them to do. This limits the power of the state and also means that no one is above the law.

All of these concepts, principles and important historical rules have led to what we today call the English legal system.

Activity 11 – Table of key terms

Make a glossary of the key terms for this topic:

Key Term	Description

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