

The new AQA A-level

Law

Teacher's Guide

AS: 7161

A-Level: 7162

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A teacher's guide for the 2017 AQA specifications for Law 7161 and 7162

This guide is based on my own books but you do not need to buy them to use it. What follows is mostly on changes to the specifications rather than the law. However, I'd be stupid not to mention the books at all, so here's what's what. Please ignore this next paragraph if you are not interested.

Partly due to my work schedule and partly to the return to the linear system, I have split the books by topic rather than year. Criminal law for both AS and the full 2-year A-level are both out, as is tort for both levels. The A-level books cover all the law on the topic which is required for both years and both the AS (7161) and A-level (7162) examinations. I have done separate books for AS because AS students do not need to evaluate the substantive law (nor do A-level students in the old way, but we'll come to that later). Nor do AS students need as much depth in certain other areas (an example being multiple causes which are included in factual causation for tort at A-level but not AS). I am still working on the other areas. There are plenty of texts available for the English legal system so I am not planning to cover that, though I may do a revision book on it later. However, I am linking to it in all my books as required by the new specifications. I have also included the rule of law in the criminal law book as it is a new element and will be examined on criminal law Paper 1 for AS (and anyway I like penguins). The only other part of the English legal system I plan to do is the European Union. It is not in many of the ELS texts but AQA has put it back in the specifications after many years of absence (an interesting time to choose to do that). For the rest, I will probably do human rights in a separate book and will do the nature of law as regards the four 'concepts' as another. Both these should be out by the end of this year, or at least well in time for teaching in 2018. All the books will be available in both paperback and Kindle formats and will be competitively priced so it will work out cheaper even though you are buying several books. The main benefit is that you don't need to carry around superfluous materials, some of which you may never teach.

By the way, if you want to know what penguins have to do with anything, you'll have to get the book.

I am not presuming to tell you how to teach (nor am I providing lesson plans!) The aim of this guide is to clarify the new specifications, to note where changes have occurred, and to provide some examples of how things might fit together regarding substantive and non-substantive law. I hope this will be useful for experienced teachers who may have little time to go through everything in the new materials in detail, but it is also for new teachers or teachers who are new to law. The latest approach is to examine (and teach) substantive and non-substantive law together. Thus, in Papers 1 and 2 the English legal system is examined within the context of crime or tort. The object (I believe) is that students will see a clearer relationship between the two. Many of you may have done this before – but now it's official. If you are teaching substantive law and someone else is teaching non-substantive law it would be a good idea to get together so you can link to each other's teaching. For example, if one person is covering the criminal courts, whatever part of substantive crime someone else is teaching in a particular week can be linked to that. There is a diagram and brief guide to how this can work below the examination information – see 'Connections between substantive and non-substantive law'. I have also added an example from my book at the end of the next part on changes since the draft materials.

Note: If you started planning before the accreditation there are some changes between the draft materials and the new ones. The actual specifications haven't changed but the number and type of questions, and the allocation of marks has. Also, what goes where has changed a little. This guide uses the accredited materials throughout. Before going on to the AS and A-level for the new specifications, here's a note of the changes since the draft materials.



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Changes since the earlier drafts

There are now two 'extended writing questions' for AS and three for A-level. These require candidates to provide "an extended answer which shows a clear logical and sustained line of reasoning leading to a valid conclusion".

All papers now have two questions which mix the substantive and non-substantive law (see the diagram under 'types of question' for more details). This is new; the earlier specimen papers had only one or the other in a question. This applies to both AS and A-level, although the AS only connects to the English legal system, whereas the A-level connects to both the English legal system and the nature of law.

Previously for the A-level papers there were questions which specifically asked for an evaluation of a substantive law topic. Now this is tied in to one of the concepts. Similarly, there were questions before purely on non-substantive law, e.g., justice. Now substantive and non-substantive law will be linked in the mixed question. The idea is to make the whole thing more integrated, which makes sense. AQA has confirmed that there is no evaluation at either level in the old sense of the word. I wrote to make sure about this because the approved text book includes a lot of traditional evaluation even for AS level/Year1. AQA confirmed that "There is no prescribed list of topics. Students are not required to learn a set of 'criticisms' of existing law and/or propose suggestions for reform". When AQA refers to evaluation it includes analysis of the law in application questions as well as the essay questions linking to the non-substantive law. Again, I quote AQA's explanation of evaluation in applying the law which it says, "requires evaluation of the rules and of the facts, so as to determine how the one should be applied to the other".

So, no criticisms of murder and voluntary manslaughter or calls for reform of the non-fatal offences. However, these could be used to discuss a concept such as justice.

Example

On the specimen paper for criminal law A-level, one mixed question was tied in with juries and the other with justice. The first of these was a scenario, which required an application of the law on property offences with the second part of the question asking candidates to assess the value of jury trial in determining D's criminal liability. The second of these mixed questions asked candidates to "examine the meaning of 'justice' and discuss the extent to which application of the special rules on sexual infidelity in the loss of control defence may achieve justice". I am not sure why 'justice' was in inverted commas by the way.

Here is an extract from Part 1 of my book which appears at the end of the ABH chapter. There is another example later for the A-level links.



Links to the non-substantive law

For links to the English legal system, look back at the diagram and examples in the introduction to Part 1. Now we are looking at specific offences, bear in mind this can affect where a case is heard and other matters involving the English legal system. ABH is a triable either-way offence so can be tried in either the magistrates' court or Crown court. The maximum sentence is 5 years but a magistrate has limited powers so if the harm is not minor, or there are several aggravating factors, the case may be sent to the Crown court. D may also choose the Crown court. The case will then be heard by a jury, which may have its advantages depending on the facts of the case. The jury applies the standards of the average person to these facts, so if D feels the circumstances will be viewed sympathetically it might be wise to opt for jury trial in the Crown court.

I also wrote to AQA to ask about multiple causes in tort as this seemed too complex for AS students but the specifications are identical for AS and A-level on factual causation. AQA has confirmed that



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multiple causes will not be required at AS. For A-level students, material contribution both to the harm and to the risk of harm (**Fairchild**) are required, but not what AQA refers to as 'insurance driven apportionment notions'. One other thing I asked about in tort was how far warning signs came into occupiers' liability for AS. Defences are not included at this level but warnings can also be part of the duty because an occupier is not expected to warn against obvious risks (as in **Tomlinson** etc.). AQA confirms that there will not be a specific question on warnings for AS but that it could legitimately be discussed regarding duty. Independent contractors are purely at A-level though.

Talking of defences, one change in the criminal law is that consent is no longer treated as a defence, only as a way of making a battery lawful for the purposes of the non-fatal offences. It will not be required for any other crimes.

Now for some explanations of the changes to the specifications, firstly, for AS (7161) then for the A-level (7162).

AS Law examination 7161

The English legal system: What goes where?

Paper 1 Crime	Paper 2 Tort
The nature of law (legal and other rules, civil & criminal distinctions and sources)	The nature of law (legal and other rules, civil & criminal distinctions and sources)
The rule of law	Parliamentary law-making
Precedent	Delegated legislation
Law Reform (including Law Commission proposals and reforms)	The Law Commission as an influence on law-making
Criminal courts and process (including appeals and sentencing)	Statutory interpretation
Lay people	The European Union
Legal personnel	Civil courts and process (including appeals)
Judges and their role in criminal courts	Alternative dispute resolution
Independence of the judiciary	Judges and their role in civil courts
Access to justice and funding in the criminal system	Access to justice and funding in the civil system

What's new for AS on the English legal system?

- The rule of Law (for Paper 1 only)
- The European Union (Paper 2 only)

Other than the above being added, the basic nature of law (rules, civil and criminal distinctions, and sources) was not specifically included before but most teachers would have covered it as an introduction to law. If you didn't, you'll need to add that too. Note that this relates to both papers.



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The parts of the English legal system assigned to the substantive law papers change slightly between AS and A-level, e.g., the rule of law is on the AS criminal paper but not the A-level criminal paper. This means AS students will need to cover the rule of law in Year 1 for the criminal paper, but A-level students will need it for the optional subject (contract or human rights). Here is a diagram of what's moved.

ELS area	AS topic	A-level topic
Rule of law	Crime	Contract or human rights
Statutory interpretation	Tort	Crime
Law reform	Crime	Tort
Independence of the judiciary	Crime	Contract or human rights
The European Union	Tort	Contract or human rights
Delegated legislation	Tort	Contract or human rights

This may make a difference if you have a mixed AS/A-level class, which is quite likely, as you will need to consider links to the English legal system with different topics. It won't be too much of a problem because all students need to cover all the English legal system at some point. The main issue is the linked questions on each paper, as the English legal system will be linked to different substantive topics for AS and A-level students. There may need to be a slight change of emphasis, e.g., when using actual statutes to illustrate statutory interpretation in the Year 1/AS class.

One idea is to teach statutory interpretation as normal and then get groups of AS students to explain a rule using a tort example and A-level students to explain another rule using a crime example. They will all get to learn the rules and how the rules work in practice in both civil and criminal law. Additionally, as AQA says that examples can be taken from anywhere for both precedent and statutory interpretation. Similarly, with law reform, the Law Commission proposals for reform of the **Offences against the Person Act** can be discussed by AS students, with A-level students looking at the Law Commission as an influence on the **Occupiers Liability Acts**. The rule of law is assigned to Paper 1 for AS students and it is easy to link to the criminal law. It is assigned to Paper 3 (human rights or contract) for A-level students so if you don't want to bring in a new topic one idea would be to link crime to justice. Both the rule of law and justice require equality and fairness so AS students can look at whether the rule of law has been applied in a case or statute or procedure and A-level students can look at whether that case or statute or procedure achieved justice – which you can keep fairly basic and explain you'll do more on justice in Year 2.

Of course, there may not be a link, as there are only two linked questions on each paper, or there may only be a tenuous link (see examples). However, I think it is safer to assume that there may be a link at some point between the non-substantive law that has moved and the substantive law.

Examples

- In the specimen paper the link between a scenario on **s 18** and sentencing was strong as there were several aggravating factors mentioned in the scenario
- In the specimen paper the link between a **s 20** scenario and appeals was more tenuous, but there was still a link (reference to disputes in court in the scenario)

This is what I have said to students in my examination guidance. "Some questions may have a clear link, e.g., a scenario involving several mitigating or aggravating factors linked to a question on sentencing. Others may not, but there will always be some type of link so try to connect the two parts, e.g., if asked to explain if Tom is liable for an offence and also whether juries are a good method of trial you would first need to apply the law you have learnt on the offence to whatever Tom has done. Depending on the exact information given in the question you can then discuss juries



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reasonably separately, but you can tie the two together with occasional references to Tom and to the role of a jury in relation to his particular offence, and maybe whether it would be to Tom's advantage or not". I think that works.

The question types and the apportionment of marks are now clearly set out.

Types of question and apportionment of marks for AS 7161

For each paper, there are:

- 5 multiple-choice questions on the substantive law and 5 on ELS (total 10 marks).
- 2 short-answer questions (1 on substantive law and 1 on ELS) at 3 marks each (total 6 marks).
- 2 questions covering BOTH the substantive law and ELS at 12 marks each (total 24 marks)
- 2 extended writing questions (1 on substantive law and 1 on ELS) at 20 marks each (total 40 marks).

Overall totals are 40 marks for the substantive law and 40 for ELS making a total for each paper of 80.

Assessment objectives (AO)

These have changed because of the change in the examination as regards substantive and non-substantive law. A key change is that AO3 is now pretty much the same weighting as AO2 and covers evaluation and analysis, where it used to be just a few marks for presentation.

Assessment Objectives figures are not set in stone, though the objectives themselves are, but here are the variables.

- 🚦 **AO1** tests knowledge and understanding of the English legal system and legal rules and principles (23-25%)
- 🚦 **AO2** tests the ability to apply legal rules and principles to given scenarios in order to present a legal argument using appropriate terminology (12.5-14.5%)
- 🚦 **AO3** tests the ability to evaluate and analyse the legal rules, principles and concepts (11.5-13.5%)

Weighting is the same for both papers and is shown above as a percentage (of the 50% for each paper) in brackets.

For the two papers together, AO1 is 46-50%, AO2 is 25-29% and AO3 is 23-27%. The marks total 100% of the AS (80 marks). If you prefer actual marks to percentages, to give you an idea, on the 2017 specimen paper these were, respectively, 34 marks, 28 marks and 18 marks per paper.

The assessment objectives for each question are as follows:

- **Questions 1 to 11** are all on AO1 only.
- For **Question 12** AO1 is 2 marks and AO2 is 1 mark.
- For **Questions 13 and 14** (the two mixed questions) AO1 is 3 marks, AO2 is 6 marks and AO3 is 3 marks.
- For **Question 15** AO1 is 7 marks, AO2 is 7 marks and AO3 is 6 marks.
- For **Question 16** AO1 is 10 marks and AO3 is 10 marks (there is no AO2)

So, AO3, the evaluation and analysis bit, only comes in to the last 4 questions.



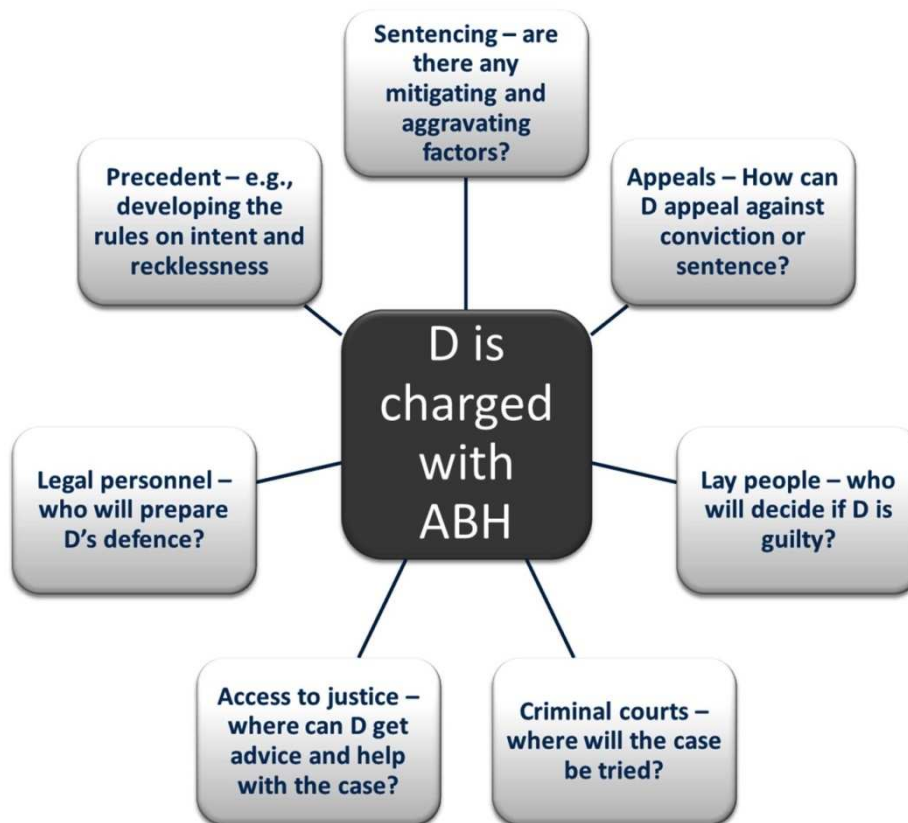
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The examination papers and questions are more clearly set out. The actual question numbers are even set out in advance as regards which cover substantive and which non-substantive law (and which cover both). Here's a summary including the type of question and marks available.

Question number	Substantive or non-substantive	Type of question	Marks	Total marks
Questions 1-5	substantive	multiple choice	1 each	5
Questions 6-10	non-substantive	multiple choice	1 each	5
Question 11	non-substantive	short answer	3	3
Question 12	substantive	short answer	3	3
Question 13	both substantive and non-substantive	short answer (but slightly longer)	6 each	12
Question 14	both substantive and non-substantive	short answer (but slightly longer)	6 each	12
Question 15	substantive	extended writing	20	20
Question 16	non-substantive	extended writing	20	20

Note that Questions 13 and 14 include both substantive and non-substantive law. For double the marks a bit more is needed than the truly 'short answer' questions but not as much as for the extended writing questions (15 and 16) which require candidates to provide "an extended answer which shows a clear logical and sustained line of reasoning leading to a valid conclusion".

Here are a few ideas for how the mixed questions might work, for the two AS papers. As I mentioned, there are two mixed questions on every paper, both AS and A-level. The diagrams are taken from my book but with a few notes added below each one.



For the first part of the question, for 6 marks, the law on ABH needs to be applied to the given facts.

Was there an assault or battery? Was actual bodily harm caused by the assault or battery? Was there any evidence of a break in the chain of causation? Did D see the risk of causing fear or of using force? Much will depend on the facts but that's a basis for the application part.

Then, for the second 6 marks, an explanation and application of one of the following is needed:

Sentencing

What type of sentence seems most appropriate on the given facts? If a custodial sentence is appropriate note that the maximum sentence for ABH is 5 years. Does the scenario indicate any aggravating factors such as the use of a weapon or a racial motive? These could indicate a sentence towards the maximum. Does the scenario indicate any mitigating factors such as the fact that it was not pre-meditated or D was provoked? These could indicate a shorter sentence or a non-custodial one.

Appeals

To which court(s) can D appeal? ABH is an either-way offence so it depends on where the trial is held. On what grounds can D appeal? Is there a point of law involved (appeal by way of case stated), if so is it of general public importance (possible role for the Supreme Court)?

Lay people

ABH is an either-way offence so at the mode of trial hearing the magistrate will allocate the case for trial either at the magistrates' court or the Crown Court. D may opt for trial by jury. Depending on which court seems appropriate on the facts, the advantages and disadvantages of magistrates and/or juries can be discussed.



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Criminal courts

ABH is an either-way offence. There will be a preliminary hearing ('plea before venue') where D will plead guilty or not guilty. The venue (magistrates' court or the Crown Court) is decided at the mode of trial hearing. Whether D pleads guilty or not guilty will affect what happens next.

Access to justice

The **Legal Aid, Sentencing and Punishment of Offenders Act 2012** set up the Legal Aid Agency which administers the Public Defender Service. D can get advice under the duty solicitor scheme and/or representation and help with a defence in court. The latter is means tested.

Legal personnel

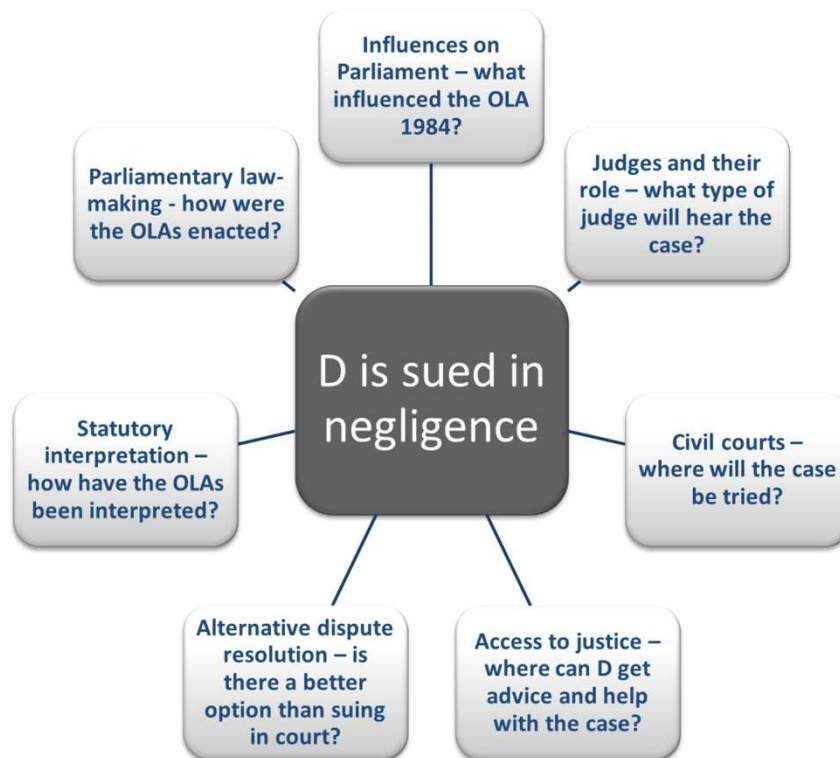
The duty solicitor is for early advice. A solicitor can be retained for a fuller range of advice and assistance either privately or by state funding if D meets the criteria. This will include preparing a defence and representing D in court. D is unlikely to need a barrister for ABH unless facts indicate some complexity. The entry criteria and/or training for legal personnel could be discussed if the question requires it.

Precedent

The development of the definition of assault by the CA and SC in cases such as **Ireland**, and of what amounts to ABH in **Chan-Fook**, **Ireland** etc. The need for subjective recklessness as decided in **Gemmell & Richards** (using the 1966 Practice Statement). The development of the law on intent, (though intent is not needed for the offence) could be discussed. **Woollin** is important because it confirmed **Nedrick** and a precedent carries greater weight once the HL (now SC) has approved it.

Those are just a few ideas, very briefly discussed. You may have plenty of others and anyway would want to expand on the above when discussing the links between the substantive law and ELS with students.

I have not included the rule of law in the actual diagram because it permeates everything and on the specimen, it came as a separate question. However, there is no guarantee that it won't ever come into a mixed one. I have not included law reform as this comes off crime for the A-level. Similarly, independence of the judiciary comes off in Year 2 (though judges themselves are still on).



For the first part of the question, for 6 marks, the law on negligence (physical harm) needs to be applied to the given facts.

Was there a duty of care? Did D act as a reasonable person in the circumstances or was the duty breached? If so, did that breach cause the harm both in fact and in law? Depending on the question there may be a need to discuss damages, at least briefly. Much will depend on the facts but that's a beginning for the application part.

Then, for the second 6 marks, an explanation and application of one of the following is needed:

Influences on Parliament

This could be linked if the question is on occupiers' liability but I think it unlikely with a question on negligence. I included it in the diagram in order to cover all the ELS areas linked to tort for AS. If the question is on occupiers' liability rather than negligence, the cases leading up to the OLA 1984 could be discussed.

Judges

The role of a judge, especially if the appropriate court is the High Court, is to listen to the evidence and rule on points of law. The judge will decide on liability based on the law and the application of the law to the facts. The judge also calculates the amount of damages and makes orders as regards costs.



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Civil courts

The facts may indicate whether the county court or High court is appropriate. The tracks may need to be discussed with the precise amounts relevant to where the case should be heard. The next two boxes connect to this, as mostly the idea now is to avoid court.

Access to justice

State funding was amended by the **Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO)**. The Legal Aid Agency oversees the provision of legal advice in both civil and criminal matters. Eligibility as regards both means and merits (as amended by the Civil Legal Aid Regulations 2013) must be satisfied. Civil legal aid provision has been drastically cut so other arrangements will most likely need to be made. Conditional fee arrangements, damages-based agreements and success fees (as amended by LASPO) are possibilities. After the event insurance and qualified one way costs shifting (QOCS) may also need discussing. **The Legal Services Act 2007** created alternative business structures (ABSS), allowing lawyers to form partnerships with non-lawyers. The Act also allows businesses other than law firms, such as banks or supermarkets to provide legal services (earning the nickname 'Tesco Law'). Alternatively, the courts should be avoided altogether, which brings us to the next box.

Alternative dispute resolution

Tribunals, mediation and negotiation can all help to avoid a court hearing. The legal aid cuts have led to ADR having an increased importance. There were plans for small claims mediation to become compulsory in 2015. Anyway, small claims are referred to mediation where the parties agree.

Law centres will not normally be of help in a negligence case but the Citizen's Advice Bureau has plenty of helpful information on its website and offers free advice on many issues. In some cases, especially if the negligence occurred at work, a trade union can help.

Statutory interpretation and parliamentary law-making

Again, these could be linked if the question is on occupiers' liability. It is unlikely that either would be linked to a question on negligence, but I hope you have the idea by now of how you can link the substantive and non-substantive law in a way that makes sense to students.

The questions now have standard command words. Here is a table with these (you can get this from the specifications; it is here for the sake of completeness).

Command words for AS Papers 7161 (criminal law and tort)

Questions 1 to 10 are multiple choice, the following commands come into the later questions. A0 is the assessment objective.

Question number	Command word and type of question	Explanation	A0	Marks
11	Explain Non-scenario (nature of law or English legal system)	Display knowledge and understanding of non-substantive law	A01	3
12	Suggest Brief scenario	Display and apply knowledge and understanding of rules and principles of substantive law to support or deny a conclusion given in the instruction	A01 A02	3
13 and	Apply	Display knowledge and	A01	12



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14 (mixed)	Scenario First part is application of the substantive law	understanding, supported by analysis, evaluation, and application of relevant rules and principles of substantive law to construct a legal argument on which advice as to criminal or civil liability is given	A02 A03	(6 marks for each part of each question)
13 and 14 (mixed)	Assess Scenario Second part is analysis of the non-substantive law	Present analysis, evaluation, and application, supported by knowledge and understanding, of some aspect of nature of law/ELS to develop an additional perspective on liability considered in a substantive law scenario	A01 A02 A03	12 (6 marks for each part of each question)
15	Consider Substantive law scenario	Display knowledge and understanding, supported by detailed analysis, evaluation, and application of relevant rules and principles of substantive law to construct a legal argument in which a logical, sustained and well-developed line of reasoning is maintained leading to a valid, relevant and substantiated conclusion, or range of possible conclusions, as to criminal or civil liability	A01 A02 A03	20
16	Discuss Nature of Law/ELS; non-scenario	Present analysis and evaluation, supported by knowledge and understanding, in which a logical, sustained and well-developed line of reasoning is maintained leading to a valid, relevant and substantiated conclusion by way of a judgment about some aspect of nature of law/ELS previously explained		20

That's it for AS, now for more detail on the A-level.



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A-level Law examination 7162

The English legal system and the nature/role of law: What goes where?

Paper 1 Crime	Paper 2 Tort (including balancing competing interests)	Paper 3 Contract or Human rights (HR)
Statutory interpretation	Parliamentary law-making	The rule of law
Precedent	Law Reform	Delegated legislation
Criminal courts	Civil courts	The European Union
Lay people	Alternative dispute resolution	
Legal personnel	Judges and their role in civil courts	Judges and their role in civil (contract) or criminal courts (HR)
Judges and their role in criminal courts	Access to justice and funding in the civil system	Independence of the judiciary
Access to justice and funding in the criminal system	Law and society - fault	Access to justice and funding in the civil (contract) or criminal (HR) system
Law and society - fault	Law and morality	Law and society – balancing conflicting interests
Law and Justice		Law and Justice
		Law and morality

The English Legal System

As discussed with the AS, where the English Legal System fits in has changed slightly for the A-level papers.

For A-level 7162, statutory interpretation is on crime and law reform has moved to tort. The other changes are because there is a third paper for A-level. The main issue is only for the linked questions as all students need to cover all the English legal system at some point.

Please refer back to the AS on this as it mostly applies there, but it also affects the 2nd Year class as you will now need to consider links to the English legal system with different topics.

Here is a repeat of the diagram of the moves as regards which paper the English legal system is assigned to.

ELS area	AS topic	A-level topic
Rule of law	Crime	Contract or human rights
Statutory interpretation	Tort	Crime
Law reform	Crime	Tort
Independence of the judiciary	Crime	Contract or human rights
The European Union	Tort	Contract or human rights



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Delegated legislation	Tort	Contract or human rights
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For the A-level non-substantive subjects include the nature of law, the old 'concepts' as well as the English legal system.

Here's a summary of which papers the topics are assigned to

Law and society – fault	Papers 1 and 2
Law and society – balancing conflicting interests	Paper3 (and included in the substantive law for tort in relation to injunctions as a remedy)
Law and morality	Papers 2 and 3
Law and Justice	Papers 1 and 3

What's new for A-Level?

Evaluation is the main change. It is required for all parts of the course so will need to be done for areas where it was not included before, i.e., involuntary manslaughter, the property offences and attempt, and all of tort. However, as I mentioned earlier the evaluation will now be tied to one of the concepts such as fault or justice. I was pretty sure this would be the case because before the Ofqual accreditation there were questions purely on evaluating the substantive law, and post-accreditation there were no such questions, evaluation came only within the mixed questions. Anyway, I wrote to AQA and it is now clear that there is no evaluation per se.

The theory of law is now specifically included in each subject area as an introductory element of liability, which is new, but many of you will have probably included some of this as an introduction to the topic. What else has changed rather depends on what you previously chose from the optional papers.

Crime

If you covered Unit 4A property offences you'll have less to do on that but will have to include all of tort (what was 4B). If you chose 4B before then you'll add the following to the offences against the person (what was 3A):

- Theft
- Robbery
- Attempt
- Duress

Other than adding those to the offences against the person the only change is that consent is not included as a defence. It is needed, however, for battery and ABH as it makes the battery lawful so is part of the AR.

Tort

Tort is mostly the same as before, though occupiers' liability is now part of the AS (mostly) and remedies for AS covers damages, with injunctions coming into nuisance for the A-level.

If you covered 3 A and 4B you just need to add the few crimes mentioned above. However, for those of you who taught 4A last time then tort is all new.

Concepts of law

This is now known as the nature of law or the role of law/law and society depending on which 'concept' you are referring to.

The role of law/law and society includes fault and balancing competing interests (note 'competing' not 'conflicting' now). The nature of law includes these, together with justice and law and morals. It



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is essentially an umbrella term for all non-substantive law as AQA says it includes the ELS and the theory of law for each topic too. AQA adds that as regards Law and Society “given the impossibility of its almost infinite scope, we are seeking to interpret [it] as the notions of ‘fault’ and ‘balancing interests’.

Creativity has gone (though it was always to an extent part of precedent and statutory interpretation, and still is).

One change is that each A-level paper will contain a question on concepts, so we have gone from two to one to three questions. However, the concept will be tied to the substantive law.

AQA confirms that no concept will be examined twice so e.g., if justice is on Paper 1 it will not be on Paper 3.

Contract and Human rights

Unless you taught contract before, both these topics will be all new so I am not going to list all “changes”. If you did teach contract, the main change is that implied terms will now be under the **Consumer Rights Act 2015** rather than the various earlier statutes on the sale and supply of goods. The other change is that economic duress is included as a vitiating factor.

Overall

Firstly, everything needs to be taught at a level that includes evaluation, but not as we know it. The AS only requires evaluation of the non-substantive law (advantages and disadvantages of institutions, processes etc.). However, the A-level will require a greater range and depth and will need to connect any problems with the law to one of the concepts or theories. It might be a good idea to do most of the evaluation of the non-fatal offences after the AS examination if you have a mixed class. I do a little in Part 1 of my A-level books as it is useful when looking at e.g., law reform, influences on Parliament, statutory interpretation and precedent) but do a lot more in Part 2. For evaluation of the Year 1 substantive law, I do this in ‘The Bridge’ which connects Year 1 and Year 2 and can be covered after the AS students have taken the examination. The **Offences against the Person Act** has been the subject of so many questions in the past and is so clearly in need of reform that I would be surprised if it was not evaluated in some form or other, probably in connection to law reform or justice. Where the law itself is different at the two levels you may want to teach that after the AS too if you have a mixed class. Mostly it is a matter of depth but multiple causes in tort are a complex issue (hence so many cases) and not needed at all by AS students, and the same with the development of the law on intention in criminal law. I have left such things out of my AS books to simplify matters. Again, this is why there is a second book covering the whole A-level so these issues are covered in Part 1 of the book as regards the law itself (because it is more sensible for students to learn the extra stuff together with the rest of the law on the subject) and in ‘The Bridge’ between Parts 1 and 2 for the evaluation of the law.

Secondly, there is much more emphasis on a holistic approach. We’re back to the linear system, so stop thinking modular! As with AS, questions are in two cases mixed, with e.g., a scenario requiring application of the law plus a discussion of some allied part of the English legal system (see above under AS 7161), or, for A-level either the ELS or one of the concepts such as justice.

Types of question and apportionment of marks for A-level 7162

Unlike the AS apportionment these are not broken down in a nice table. Overall totals are 75 marks for the substantive law and 25 for non-substantive, making a total for each paper of 100.

For each paper, there are:

- Five multiple-choice questions on the substantive law and ELS (total 5 marks).



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- Two short answer questions at 5 marks each, one for the substantive law and one for ELS (total 10 marks).
- One 10-mark question on the substantive law (total 10 marks).
- One 15-mark extended writing question on BOTH substantive and non-substantive (ELS or nature / role of law) total 15 marks).
- Two extended writing questions at 30 marks each (total 60 marks). One of these is only substantive law, the other mixes substantive and non-substantive law (ELS or nature / role of law).

The 10-mark question is not an extended writing question but for double the marks a bit more is needed than the truly 'short answer' questions. The three extended writing questions require candidates to provide "an extended answer which shows a clear logical and sustained line of reasoning leading to a valid conclusion".

Assessment objectives

- 🚧 **AO1** tests knowledge and understanding of the English legal system and legal rules and principles (13.33)
- 🚧 **AO2** tests the ability to apply legal rules and principles to given scenarios in order to present a legal argument using appropriate terminology (9)
- 🚧 **AO3** tests the ability to evaluate and analyse legal rules, principles, concepts and issues (11)

Weighting is the same for all three papers and is given as a percentage (of 33.33% for each paper) in brackets.

AO1 is 40 %, AO2 27 % and AO3 is 33 % over the three A-level papers (13.33, 9 and 11 per paper respectively). If you prefer actual marks to percentages, to give you an idea on the 2017 specimen paper these were, respectively, 40 marks, 27 marks and 33 marks per paper.

The assessment objectives work for each question as follows:

- **Questions 1 to 6** are all on AO1 only
- **Question 7** is 2 marks for AO1 and 3 marks for AO2
- **Question 8** is 3 marks for AO1, 4 marks for AO2 and 3 marks for AO3
- **Question 9** is 5 marks for AO1 (no AO2) and 10 marks for AO3
- **Questions 10 and 11** the 30 marks are equally divided with 10 marks for each

As with the AS examination, AO3, the evaluation and analysis bit, only comes in to the last 4 questions.

The questions sometimes specify a particular offence and sometimes don't so I would tell students to read the questions very carefully so they only discuss what is asked for, but to look for clues in the scenario where an offence isn't specified.

One thing I noticed on the specimen Paper 1 is that if asked to discuss a defence, candidates may need to include the offence. I may not have told students to do this so they should be warned. Here is an example:

Jason had been drinking all evening in a bar and had become very unsteady on his feet. Kris accidentally bumped into Jason, spilling some drink over him. Jason, who was still holding his beer glass, immediately threw a punch at Kris. The glass broke and Kris suffered a cut to his face.



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Advise Jason on whether he could avoid criminal liability for the injury to Kris by pleading intoxication.

This was only a 10-mark question. I would have included the *mens rea* as regards **s 18** and **s 20** to explain how the defence works and the difference between specific and basic offences. I would not have included anything on *actus reus* though, because I would not have thought that it was required by the question. However, the mark scheme includes the following on *actus reus*:

For A01 a need to identify and outline the elements of **s 18** and **s 20**

For A02 to apply “the definition of ‘wound’ and/or of ‘GBH’ to the ‘cut’ to conclude that the cut is a ‘wound’”

For A03 “Analysis and evaluation of the *actus reus* element of s20/s18, in particular, of the meaning of ‘wound’”

I might have done the first but not the second or third – and certainly not GBH.

There are 11 questions in all. For the two mixed questions, the balance between substantive and non-substantive was as follows in the specimen paper:

- For the 15-mark question (on loss of control and justice) the marks were 5 for substantive and 10 for non-substantive
- For the 30-mark answer (application to a scenario plus the value of jury trials) the marks were 23 for substantive and 7 for non-substantive

Connections between substantive and non-substantive law: Paper 1 7162

As I mentioned, there are two mixed questions on every paper, both AS and A-level, which link the substantive and non-substantive law. The A-level includes the AS, so for connections between crime and the ELS, and between tort and the ELS please refer back to Papers 1 and 2 for 7161. Also note where these differ for A-level, shown under ‘what goes where’ above. This will affect you if you have a mixed class. There is no problem regarding the nature of law as that is only for A-level students, so if you cover that in Year 2 the class is no longer mixed. However, certain parts of the English legal system are assigned to a different paper for AS and A-level. All this is discussed above under “What’s new for AS on the English legal system?” as teachers will need to start thinking about it from the start of Year 1.

Here I will concentrate on A-level Year 2.

- Connections between criminal law and fault or justice (Paper 1)
- Connections between tort and balancing conflicting interests (injunctions) and between tort and fault or morals (Paper 2)
- Connection between human rights or contract and all the concepts except fault (Paper 3)

One thing I should point out before going further is that I wrote to AQA because I was puzzled about a few things e.g., why morals went on the tort paper rather than crime. Here is what AQA said in reply:

“where appropriate, irrespective of the Paper to which a Nature of Law/ELS topic is assigned, examples may be drawn from the substantive law in other Papers”.

This means that although fault and justice are assigned to the criminal law paper, candidates can also use examples from tort, contract and/or human rights to illustrate these concepts. Similarly, law and morals is with tort on Paper 2 but there are many criminal cases which illustrate morality, e.g. euthanasia cases, which come into murder, so they could use these cases when discussing law and



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morality on the tort paper. However, note the words 'where appropriate'. In the specimen for Paper 1 Question 9 asks whether the rules on sexual infidelity in the **Coroners and Justice Act** achieve justice. The mark scheme allows 10 marks for non-substantive law and 5 for substantive. The first could include civil law but there would need to be more on criminal law, specifically voluntary manslaughter, as regards the 5 marks available for the substantive law. AQA says that in these questions, across all papers, *"discussion of the concept can be illustrated by any rules of law, civil or criminal, though the 5 marks falls on the substantive law associated with the particular paper"*

The nature of law is the umbrella term for all non-substantive law as discussed earlier. Questions 9 and 11 are the two questions on each paper which include evaluation. AQA says that Questions 9 is an essay based on a theory or concept of law but Question 11 could include the ELS i.e., any part of the nature of law. However, in this question there are 23 marks for the substantive law as it is scenario based.

AQA also says that *"the important thing is to relate the Nature of law (including Law and Society and 'concepts')/ELS issues to the substantive law, and not just leave them in abstract"*. Here are a few ideas for making the connections between the two, I am sure you will have plenty more.

I have concentrated here on the areas that are specifically on each paper but have included justice and/or the rule of law on all as this both these concepts clearly permeate all areas of law.

Connections between criminal law and fault or justice (Paper 1)

First of all, here is an extract from the chapter on diminished responsibility in Part 2 of my book. This is similar to the earlier one but now links to the 'concepts' as well as the English legal system and suggests slightly more sophisticated points to discuss for juries.



Links to the non-substantive law

ELS: For links to the English legal system, look back at the diagram and examples in the introduction to Part 1. As the charge would be murder the case will be tried in the Crown court and the maximum sentence is life, as for murder. The difference with the defence succeeding is that this sentence is now discretionary so the judge can choose a sentence appropriate to the facts. A jury will decide on the facts of the case and this could have its advantages. Much will depend on the type of killing. In euthanasia cases juries have been sympathetic as in **Gilderdale**. However, if D has killed a child or the killing is seen as immoral a jury is more likely to find D guilty even if the facts suggest a defence was available, as in **Sutcliffe**. The judge may need to interpret the **Homicide Act**, as amended by the **Coroners' and Justice Act**, but the law is clearer now so this may be easier, as seen in the many cases since the later Act seen in this chapter. The 'recognised medical condition' is more understandable for juries than the old law and it will be easier for D to get reliable medical evidence. This may involve access to justice as although it may be less expensive than before, it is still costly.

The nature of law: Much of what was said in the last chapter applies here too. One role of law is to punish wrongdoing and another is to provide justice and apply the rule of law, both of which require clarity and fairness in the law. It can be said to be fair that as long as there is a sufficient abnormality of mental functioning, there should be a defence to a murder charge. It does not mean D 'gets away with' the killing, only that the conviction will be for manslaughter not murder. D will be punished but the judge can choose the appropriate sentence in an attempt to achieve justice on the given facts. Again, as with the other partial defence, it can be said that the law is now clearer because many of the matters are now stated in the **Coroners and Justice Act** and not left to judicial development. Any of the cases where the defence succeeded can be used to illustrate the importance of fault in criminal liability. The success of the defence indicates that there is a reason for the killing, and thus a lower degree of fault. An important role of law is to provide justice. The vast difference in the sentences in **Freaney** and **Inglis** shows the difficulty in having a mandatory life sentence, so the



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availability of both partial defences can be said to achieve greater justice. A final point is that it is unfair and inconsistent, and therefore unjust, that the burden of proof is on D. Unlike other defences, D must prove diminished responsibility. It was confirmed in **Wilcock 2016** that the **Act** has not changed this, so it is arguable that the law has not played a very admirable role by keeping this rule. The law had a good opportunity to achieve greater equality and fairness by changing the rule when passing the **Act**.

That is just an example from one chapter. There are plenty of other things that could be discussed, here are a few ideas.

From Part 1 (AS)

Both justice and the rule of law require clarity, fairness and equality. Any cases where one or more of these is missing can illustrate these concepts.

Fault and justice can also both be illustrated by the same cases in many instances. If the level of fault is not as high as it should be then justice is not achieved.

Cases where there was no liability because the act was not voluntary (so no fault) show this principle achieves justice, as in **Leicester v Pearson**.

State of affairs crimes do not achieve justice because there is liability without fault, as in **Winzar**.

Omissions show a person can be liable with a lower degree of fault which is less just, as in **Stone and Dobinson**.

Mens rea is the fault element for criminal cases but often decisions do not achieve justice because the law is not clear. This is illustrated by the development of the law on intent, although it is arguably clearer now. Since **Gemmell & Richards** the law on recklessness is more just as it is now subjective only.

Constructive liability means that the *mens rea* required is higher than the *actus reus* indicates. Thus, the level of fault is lower. It is not just to convict someone without *mens rea* for the act committed. (**s 47 and s 20 OAPA Roberts/Savage/Mowatt**)

The sentencing maximums are not logical so justice is not achieved

Any strict liability cases illustrate fault and can be used for justice too.

By the way, this is the only sense you will need to teach strict liability. The advantages and disadvantages will not be needed in an evaluation other than in relation to fault. I quote "Students do not have to be aware of criticisms of the substantive law (including strict liability), and no question will ask them to discuss criticisms of the substantive law, or to propose reforms".

From the fatal offences

The euthanasia cases are not consistent and both justice and the rule of law require certainty in the law. It is hard to reconcile the cases of **Inglis** and **Gilderdale**. The fault was pretty much the same as both killed their child, but in one case the jury was sympathetic and in the other was not, meaning one woman was guilty of murder and one was acquitted. Similarly, in **Freaney**, this case again involved the killing of a child in a 'mercy killing' situation. In this case she was convicted of manslaughter as her plea of diminished responsibility succeeded. Where such defences succeed greater justice is achieved because the judge has discretion and can choose an appropriate sentence. Freaney was given a supervision order. However, Inglis was given a life sentence and the huge difference in sentencing does not seem just (Gilderdale was not convicted so was not sentenced at all).



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The mandatory sentence is arguably unjust as the judge cannot take account of any extenuating circumstances. Voluntary manslaughter cases involve a lower level of fault and justice is achieved by giving the judge discretion when sentencing, as with **Freaney**.

D must prove diminished responsibility and the **Coroners and Justice Act** has not changed this (**Wilcock**). This goes against the normal burden of proof in criminal cases and does not seem just.

As with **s 47** and **s 20**, manslaughter is a constructive liability offence so goes against justice, especially in such a serious crime as manslaughter. It seems particularly unjust where the unlawful act is only a minor offence such as a battery or criminal damage, as the *mens rea* for that offence will suffice.

From property offences and defences

Theft is a complex crime and the **Ghosh** test is hard for juries

Juries are unpredictable in theft cases and may be sympathetic where there is a reason for the theft. This means if the jury believe the theft was morally justified it may acquit, even though legally D is guilty.

Robbery requires such a small amount of force that it seems unjust that it carries a potential life sentence. However, the force shows a higher level of fault so it is arguable that it should carry a more severe sentence than theft.

The Law Commission has said the law on attempts is unclear and decisions have been inconsistent, thus not achieving justice. In **Geddes**, there was a high level of fault but the act was not 'more than preparatory' so he was not guilty. Justice was not served.

Attempted murder requires intent to kill (**Whybrow**) so there is a higher degree of fault needed than for murder itself, which only requires intent to cause serious harm. Justice is not served here either.

The sentence for an attempt is the same for the full offence even though that offence has not been committed. This does not seem just, however there is a high level of fault (higher than in some murder cases, as shown above) and it may just be chance that the victim survives, as in **R v Z 2017**.

All defences are an attempt to achieve justice and many indicate a lower level of fault. Defences often involve balancing competing interests too. In particular, the defence of intoxication takes the public interest into account as stated in **O'Grady**.

Connections between tort and balancing conflicting interests (injunctions) and between tort and justice, fault or morals (Paper 2)

As for crime, here is an example from my book (from the chapter on economic loss).



Links to the non-substantive law

ELS: For links to the English legal system, look back at the diagram and examples in the introduction to Part 1. In particular, where a principle of law has been established the system of appeals is relevant, as these principles are established in the higher appeal courts, i.e., the CA and SC. ADR is always relevant to tort cases too, as is access to justice, because cases can be expensive to take to court so alternatives or help with expenses may be needed.

The nature of law: The role of law is to mediate between the parties in a case and provide a fair remedy where appropriate. The remedy will be based on the level of fault, or blameworthiness. If someone is found to be at fault then this justifies the court imposing a penalty. In civil law, this is done by way of compensation (or sometimes an injunction as you will see with remedies). In cases of economic loss, the law is less strict (for D) than where physical harm has been caused, so the rules



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on imposing a duty of care are more severe. However, if a professional has taken on an assumption of responsibility the law is more likely to impose a duty as the level of fault is higher in such situations. In case like **White v Jones** there also seems to be a moral element to the decision. It would be wrong (and arguably immoral) to allow a potential beneficiary not to be compensated for losses which have occurred due to the solicitor's negligence as it would mean the wishes of the person who made the will were not met. As with most of tort Mill's 'harm principle' can be discussed. Where harm has been caused it is right for the law to be involved, and this would include economic harm. However, as this type of harm can be widespread the law imposes stricter rules, thus achieving a balance. The rules for proving a duty are stricter than for physical harm for policy reasons. It is not in the public interest for the courts to be flooded by claims. Where people have acted on negligent advice and lost money, the number of potential claimants could be huge in such a connected multi-media world.

That is just an example from one chapter. There are plenty of other things that could be discussed, here are a few ideas.

From Part 1 (AS)

Both justice and the rule of law require clarity, fairness and equality. Any cases where one or more of these is missing can illustrate these concepts.

Fault and justice can also both be illustrated by the same cases in many instances. If the level of fault is not as high as it should be then justice is not achieved. Many breach cases illustrate this well because breach is the fault part of negligence. The cases involving children can illustrate that the law recognises the lower level of fault involved, and this achieves justice.

Donoghue v Stevenson was based on the moral concept of 'do not harm your neighbour'.

The policy part of the **Caparo** test takes into account the wider social interest when deciding whether to impose a duty.

The law on legal causation is an attempt to achieve justice as it narrows the amount of harm D is liable for under the 'but for' test.

Occupiers' liability is based on morality, especially the decision in **BRB v Herrington** which then led to the 1984 Act.

The more limited duty owed to trespassers is an attempt to achieve justice by making occupiers liable for unsafe premises but to a lesser degree.

Again, cases involving children can illustrate that there is a lower degree of fault, and therefore a higher degree of fault as regards the occupier, who should take more steps to protect visitors.

From other negligence cases

Morality is seen in cases of economic loss and psychiatric harm where the rules for imposing a duty are stricter. This takes into account public policy (the floodgates argument) and arguably achieves justice by restricting liability.

In **White** the court thought it would be immoral to allow claims by the police when so many relatives had failed in their claims.

In **Greatorex** the court thought it would be immoral to allow claims between family members.

From land-based torts

Balancing competing interests is on the specifications for tort only as regards injunctions. Thus, it can be connected to all nuisance cases as this tort is based on solving conflicts between neighbours. This is particularly true in the granting of an injunction where the public interest is taken into account, as



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in **Miller v Jackson**. Much the same can be said of the rule under **Rylands v Fletcher**. This latter tort also illustrates fault well as it is essentially a tort of strict liability.

From vicarious liability, defences and remedies

Vicarious liability cases illustrate fault in that a person can be liable even though another committed the tort. In some cases, this achieves justice but less obviously does so where the tort does not seem sufficiently connected to the job as in **Lister**. Vicarious liability is an attempt to achieve justice by making the employer (who is likely to be insured) liable for the employee's torts. This also takes the public interest into account as it ensures employers take greater care.

Contributory negligence takes any fault by C into account when assessing damages.

Consent cases involving rescuers recognise that where there is a moral duty to act D may not be liable for any harm caused.

Remedies will take into account the interests of all parties in deciding which remedy is appropriate, an injunction or damages. Expecting C to mitigate any loss achieves a just balance so that D is not liable if C could have reduced the loss. If C does not attempt to mitigate this indicates a degree of fault.

Connection between human rights or contract and all the concepts except fault (Paper 3)

This section will be continued later.

....

Here is a table with the A-level command words. As I said with the AS command table, you can get this from the specifications; it is here for the sake of completeness.

Command words for A-level Papers 7162 (criminal law, tort and contract or human rights)

The commands and explanations have changed slightly for A-level.

For A-level the command word 'apply' has become 'advise' and 'assess' has become 'examine' for the mixed questions. However, the explanations of 'advise' and 'assess' remain the same.

Questions 1 to 5 are multiple choice, the following commands come into the later questions.

Question number	Command word and type of question	Explanation	A0	Marks
6	Explain Non-scenario (nature of law or English legal system)	Display knowledge and understanding of some aspect(s) of the nature of law/ELS, possibly requiring a specified number of points and/or an example	A01	5
7	Suggest Substantive law Brief scenario	Display and apply knowledge and understanding of rules and principles of substantive law to support or deny a conclusion given in the instruction.	A01 A02	5
8	Advise Substantive law scenario	Display knowledge and understanding, supported by analysis, evaluation, and application of relevant rules and principles of substantive law to construct a legal	A01 A02 A03	10



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		argument on which advice as to criminal or civil liability is given		
9 (mixed)	Examine Nature of Law/Concepts/ELS, non-scenario.	Analyse some aspect of non-substantive law (a concept, some aspect of the nature of law or some aspect of the ELS) to provide a detailed basis for a required evaluation of substantive law	A03	15
9	Discuss Nature of Law/Concepts/ELS, substantive law: non-scenario.	Analyse and evaluate some aspect of substantive law within the framework of an analysis of non-substantive law in which a logical, sustained and well-developed line of reasoning is maintained leading to a valid, relevant and substantiated conclusion	A03	Included above
8, 10 and 11	Consider Substantive law Scenario	Display knowledge and understanding, supported by detailed analysis, evaluation, and application of relevant rules and principles of substantive law to construct a legal argument in which a logical, sustained and well-developed line of reasoning is maintained leading to a valid, relevant and substantiated conclusion, or range of possible conclusions, as to criminal or civil liability	A01 A02 A03	Q 8 included above Q 10 & 11 30 each
11	Assess Nature of Law/Concepts/ELS: scenario and non-scenario.	Analyse and evaluate some aspect of substantive law in relation to some aspect of substantive law already introduced in constructing a legal argument arising out of a scenario	A03	Included above

To be continued ...



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