



Justice worksheet 1 – Guide

There are no right answers to these questions, but here's a brief guide.

What is justice to you?

The most popular answer to this would probably be fairness. Equality is another possibility.

Any two of the following theories:

Natural law – if a law does not follow a higher source then it is not a true law. Justice is only achieved by a combination of law and morals.

(Aquinas – the source was God, Aristotle – the source was nature, and Fuller – the source was inside us.)

Positivism – if the law is made correctly it should be obeyed, however unjust it may appear. Law and morals, and law and justice, were separable (Hart or Kelsen).

Utilitarianism – would argue justice and law should be concerned with the greater good (Bentham – 'the greatest happiness for the greatest number', and Mill – adapt the theory to take account of individual freedoms).

Economic – similar to utilitarianism, but economic theories seek to quantify the benefits (Marx – possibly redistribute wealth and property, but see also Nozick – keep what is obtained in a just manner).

Case law

Any case will do, especially where either the decision or the remedy/sanction appears unfair.

Examples include:

Crime: Justice was achieved in **Gemmell & Richards** as the HL used the **1966 Practice Statement** to overrule their earlier decision on recklessness. This is fair because the boys themselves did not realise the risk in what they were doing.

Contract: Implied terms, such as those in **Moorcock**, achieve justice by protecting the weaker party.

Tort: The addition of it being 'fair, just and reasonable' to impose a duty before one will be owed, added in **Caparo**, provides an element of justice in the legal test on duty of care.



Looking at justice in the real world, there are a great many possible answers. Whether it achieves justice is a matter of opinion and followers of different theories will disagree. An example would be the provision of special drugs for rare medical problems. There have been several cases on whether a local Health Care Trust must provide these where the cost is very high and they could instead spend the money on other drugs or equipment which would help more people. A Utilitarian approach would be to help the majority, not the few. However, would this provide justice to the patient who needs the special drug, which may be life-saving? One problem seen in the utilitarian approach is that it ignores the interests of the individual.

Who might have said that?

The statement	The theorist
Justice is achieved by redistribution, from each according to his ability, to each according to his needs	Marx
This law is not just because it is immoral and goes against nature	Aristotle
The law should not attempt any redistribution if a person has come by their property by legitimate means	Nozick
I think this law is unjust because it goes against God's will	Aquinas
This law is just even though it is immoral because it has been made according to the correct procedure and based purely on rules	Hart
Most people are made happy by this law so it is a just one, even though it goes against individual rights	Bentham
I agree with the utilitarian theory that looks at satisfying the most needs, but it should take into account individual needs too. The law should only act to stop something where it may cause harm to others	Mill