



SQE1 Revision Notes

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Helping Future Solicitors Succeed.**

BUSINESS LAW IN PRACTICE

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	Sole traders	Partnerships	LLPs	Companies
Set up costs (finances)	<p>✓ No set up costs</p> <p>No formalities - start trading straight away</p> <p>Sole trader finances, so can take personal loan. Same as partnerships</p>	<p>✓ No set up costs</p> <p>No formalities - start trading straight away</p> <p>Don't need formal agreement, or even intention to start a partnership</p>	<p>✗ need to be registered at CH</p> <p>Can borrow in its own name and create floating charges</p> <p>No minimum capital</p>	<p>✗ need to be registered at CH – certificate of incorporation</p> <p>Lenders prefer lending to cys since more disclosure + security. Cys can issue shares</p> <p>NEED AT LEAST 50K</p>
Separate legal entity	<p>✗ Not separate legal entity</p> <p>Contracts formed between individual and third parties</p>	<p>✗ Not a separate legal entity</p> <p>Contracts between partners as individuals and third parties</p>	<p>✓ Separate legal personality</p> <p>Owns property and enters into contracts <u>on its own behalf</u>***</p>	<p>✓ Separate legal personality</p> <p>Owns property, does contracts, profits/ losses in own name</p>
Legal liability	<p>✗ Unlimited personal liability</p> <p>Personal assets (e.g. home) can be sold to meet business debts</p>	<p>✗ Unlimited personal liability</p> <p>Partners have unlimited joint (contract) and joint and several (tort) liability.</p>	<p>✓ limited liability</p> <p>Liability limited to the amount they agreed to pay under terms of partnership agreement</p>	<p>✓ limited liability</p> <p>Liability of shs limited to the amount unpaid on their shares</p>
Structure	<p>✓ No formal structure</p> <p>Run business however</p>	<p>✓ No formal structure</p> <p>Just 2 or more people working for profit</p>	<p>✓ Organisational structure flexible, decided in a members agreement</p>	<p>✗ lots of formalities</p>
Formalities	<p>✓ No formalities</p> <p>No CH filing or procedural requirements</p>	<p>✓ No formalities</p> <p>No CH filing or procedural requirements</p>	<p>✗ registered at CH, need to file annual accounts</p>	<p>✗ registered at CH, regulated by CA 2006</p> <p>Lots of other regulations</p>
Privacy	<p>✓ No need for publicly filed accounts</p>	<p>✓ No need for publicly filed accounts</p>	<p>✗ due to above, some info is filed</p>	<p>✗ due to above, info public</p>

✗: disadvantage
✓: advantage

[A] - FORM OF BUSINESS - PARTNERSHIPS

1. TRADITIONAL PARTNERSHIPS (PARTNERSHIP ACT 1890)

: Relationship between persons carrying on a business in common with a view to making a profit

- No formality required
- No separate legal personality
- Jointly liable (jointly and severally liability applies to tortious liabilities)
 - Creditor need only obtain judgment against one of the partners

Formation - determined on the facts

- Profit and loss sharing, decision making
- Loan does not create partnership

Use of partnerships

- **Avoid when:** Concerns about being subject to unlimited liability
- **Advantages:** no costs (no formalities) - no filing/disclosure requirements - confidentiality

Fiduciary Relationship of partners to one another: overriding duty of good faith

Personal liability for partnership debts and contracts binding on the firm

- Partners are personally liable in relation to contracts which are binding on the firm
- Contractual liability: every partner is liable jointly for all debts and obligations of the firm incurred (s.9)
- Tortious: the partners' liability is joint and several (ss10, 12) (all parties liable, can be liable for others' proportions)

Liability of non-partners: new partners (s17)

- Partner will be liable for debts incurred during the time they were partner (even after they retire)
- Can obtain consent of creditor to relieve from liability once they retire (by novating the agreement)

Liability of non-partners (s36)

- If third party knew partners before they left ☐ need notice (actual for those who did direct dealings, constructive who did not deal)
- If third party did not know partner ☐ no need for notice

Liability of non-partners: 'Holding out' (s14)

- **Non-partner may be personally liable on a partnership debt if they have held themselves out as partner**
- Elements
 - o Representation to third party
 - o Third party's action in response
 - o Third party's state of mind - believing in the representation
- The rules apply for liability incurred by the non-partner, not the firm (principles of agency will apply)

Relationship between the firm and outsiders: contracts binding the firm

★ Where individual acting on firm's behalf was Partner: s.5 (common law of agency may also apply where s.5 is irrelevant)

★ **Non-partners: common law of agency will apply. S.5 does NOT apply**

- Where all partners are happy for the firm to enter into the contract and have given actual, express or implied authority to bind the firm, the firm will be bound - whether entered by partner/non-partner

But where not...

Power of partner to bind the firm against the others' wishes: s.5

- S.5 intends to protect third party to the contract - it is that **third party's view that is relevant**

Partner's unauthorised act will bind firm if viewed objectively: **(not weird in the type of business and way)**

- o Act is for carrying on **business of the kind carried on by the firm**
- o When carried out in the **usual way**

Will not be bound if:

- o Third party knew partner was not authorised
- o Third party did not know or believe that the partner was a partner

(Unauthorised partner may still be liable to other partners for breach of contract)

Power of non-partner to bind the firm against partner's wishes: common law rules of agency

- If agent has **apparent authority** to enter contract, may still bind firm despite no actual authority.
 - o Allowed to represent to third party that agent has authority to bind the firm
- 'Holding out': where representation is made that the non-partner agent is agent
 - o Agent held-out as partner has apparent authority to bind the firm in the same way partner can.

Taxation of partnerships

: Each partner liable to tax as an individual on their share of income or gains of the partnership

- Requirement to make single tax return (document) of its profits (partnerships choose their own accounting period). Partners also submit individual tax returns (income received from partnership and other income)

Income tax

- **Each partner** liable for the **income tax on their share of partnership profits**
- **Not jointly and severally liable for tax** (Partner A not liable for Partner B's shares of partnership profits)

Capital gains tax (on disposal by partnership)

- Each partner will be taxed on their **proportion of made gain** (subject to any reliefs available to individuals)
- Fractional share based on agreed profit-sharing ratio / **equally (where there is no agreed PSR)**

Partnership agreement (if none, default Partnership Act)

- Writing and oral agreement has same strength (later oral can nullify earlier written)
- Except for
 - when partnership forms
 - relationship between partnership and third parties
 - liability for partnership debts
- ⇒ existing partnership agreement overrides Partnership Act for most stuff
- Partners' mutual rights and obligations can be varied at any time by unanimous consent. (s.19)

Dissolution of partnership

- Partnership can be dissolved under PA by:
 - Automatic dissolution (subject to contrary agreement) - expiry of fixed term, completion of specific venture, death/bankruptcy of partner
 - Notice from any partner - where partnership has no fixed duration
 - Unlawfulness of partnership business
 - The court as last resort
- **Effect: relationship ceases, partner may demand assets of business to be realised**

Collecting in & distributing assets on dissolution of partnership

- Subject to written partnership agreement, once all debts and liabilities have been paid, any money/assets left will be distributed so that each partner is paid back their original capital first (s.44(b)(3))
- Agreement should set out asset surplus ratio (ASR) - surplus distribution - if not, equal

Provisions	Explanation
Commencement & duration	Set out a date on which partners agree that rights & obligations will commence <ul style="list-style-type: none"> ● If fixed term but partners continue business after expiration of the term without new agreement, they are presumed to be partners on same terms as before
Partnership name & place of business	Must not contain the words 'limited', 'ltd', 'LLP', 'public limited company', 'plc', be the same as an existing trademark <ul style="list-style-type: none"> ● Place of business must be set out + nature of business
Partnership property	Each party is deemed to own a share in the property belonging to the partnership (since partnership does not have a separate legal personality) → Individual partner doesn't have a right to any particular partnership asset <ul style="list-style-type: none"> ● Partners usually agree on which assets are partnership property ● S.20 PA – all property brought into partnership is partnership property
Partner shares	Shares in income and capital; and profits and losses <ul style="list-style-type: none"> ● Default PA: everything shared equally ● Real life: Need an express provision in agreement to set out a profit sharing ratio (PSR)
Drawings/salary	P.Agr - should set out how much each partner may draw and expressly set out if partners can receive a salary in addition to income profit shares
Input & roles	P.Agr - should clearly define the roles of partners + any limits on their authority <ul style="list-style-type: none"> ● PA default: every partner can take part in management, but not required
Decision making	P.Agr should expressly deal with decision making and management <ul style="list-style-type: none"> ● All partnership decisions must be decided by a majority; except

	<ul style="list-style-type: none"> • These require unanimity – • Changes to the nature of the partnership business • Introducing a new partner • Varying the rights and duties of partners
New partner	Need unanimous consent for a new partner to join partnership.
Expulsion	<p>Without prior agreement, it's impossible to expel a partner without dissolution, because they can't be expelled unless ALL partners previously agreed</p> <ul style="list-style-type: none"> • P.Agr – must have expulsion provisions in advance
Partner leaves	<p>Effect = automatic dissolution (but it's technical) = new partnership is formed by the remaining partners who continue the business</p> <ul style="list-style-type: none"> • P.Agr should explicitly state partnership will continue and how partner can leave (usually departing partner's shares bought out)
Non-compete	<p>Express clause to prevent partners from competing with the firm.</p> <ul style="list-style-type: none"> • PA default: if so, they must account to the firm for all profits made
Outgoing partners	<p>P.Agr can put limitations on powers of the outgoing powers:</p> <ul style="list-style-type: none"> • Non-compete clause; non-solicit clauses; non-dealing clauses • These are only enforceable if they're reasonable + necessary to protect the legitimate business interest of the partnership

A partnership can be dissolved (terminated) in a few ways:

1. Automatic dissolution (subject to contrary agreement) – expiry of fixed term, completion of specific venture, or death or bankruptcy of any partner
2. Dissolution by **notice** from any partner. This applies where partnership has no fixed duration
3. Dissolution if the partnership business becomes unlawful
4. Dissolution by the court as a last resort

On dissolution, the partnership relationship ceases and any partner may demand that the assets of the business are realised. Partnership Agreement should deal with both **when** a partnership may be dissolved + the **effect** of this.

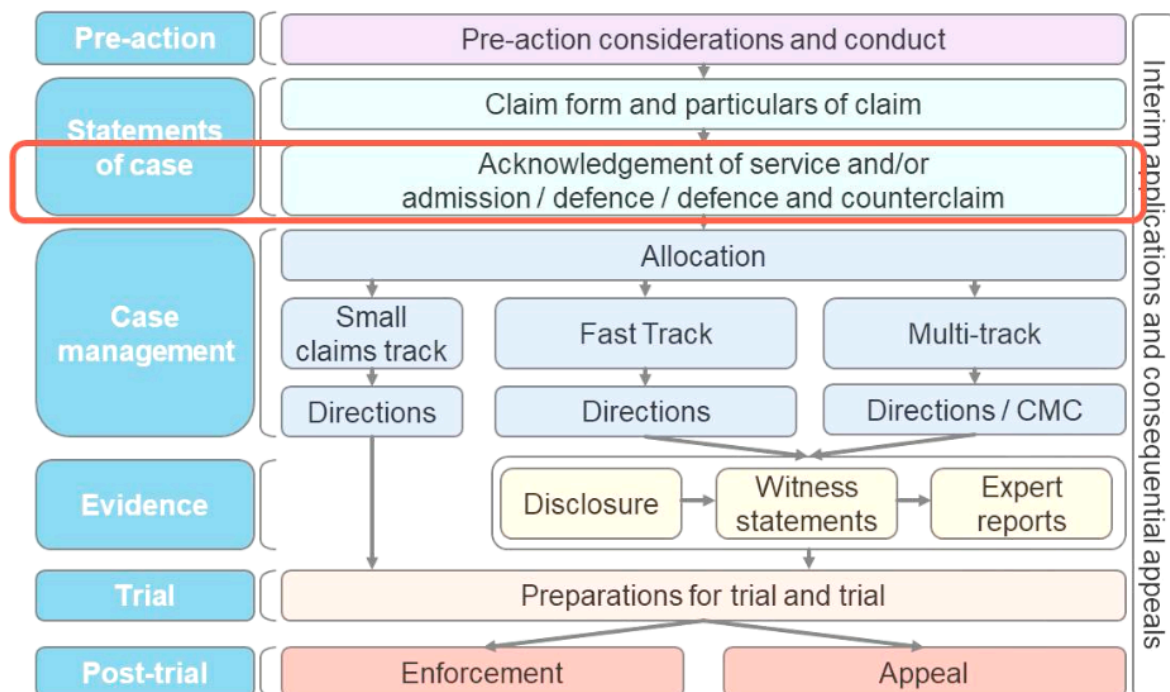
1. (subject to the P.Agr) End of partnership → all debts and liabilities paid
2. Any money/assets left will be distributed to each partner to the extent of their original capital
3. Check P.Agr for asset surplus ratio (ASR) – to see how surplus assets are to be shared
4. If no ASR, then surplus assets are shared in accordance with the agreed profit share ratio (PSR)
5. If no PSR, surplus assets shared equally

DISPUTE RESOLUTION

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[A] Introduction



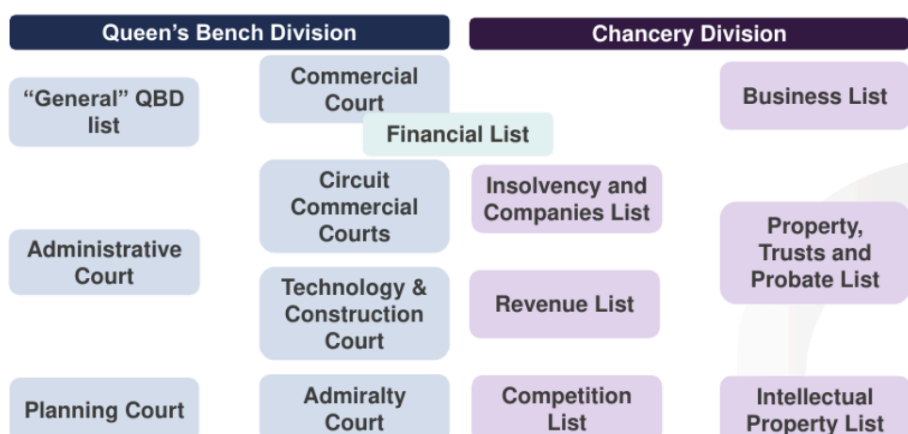
Overriding objective = to enable court to deal with cases justly and at proportionate cost

- OO also requires that vulnerable parties/witnesses can participate in proceedings – to give adjustments

Limitation period to bring a claim:

1. For claims in **contract and tort** → **6 years** from the date **cause of action accrues**
 - Contract, cause of action = when breach occurs
 - Tort, cause of action = when C suffers actionable damage (eg. not the car accident, but many months later when you discover that an injury occurs because of that incident)
2. For **personal injury claims** → **3 years** from the cause of action accrued; or the date of knowledge of the person injured – whichever latest
 - Knowledge = knowing injury was significant, was attributable to wrongdoing, or identity of D
3. For fraud/concealment/mistake → limitation does not start to run until **C discovers the fraud, concealment or mistake**. 6 years from this

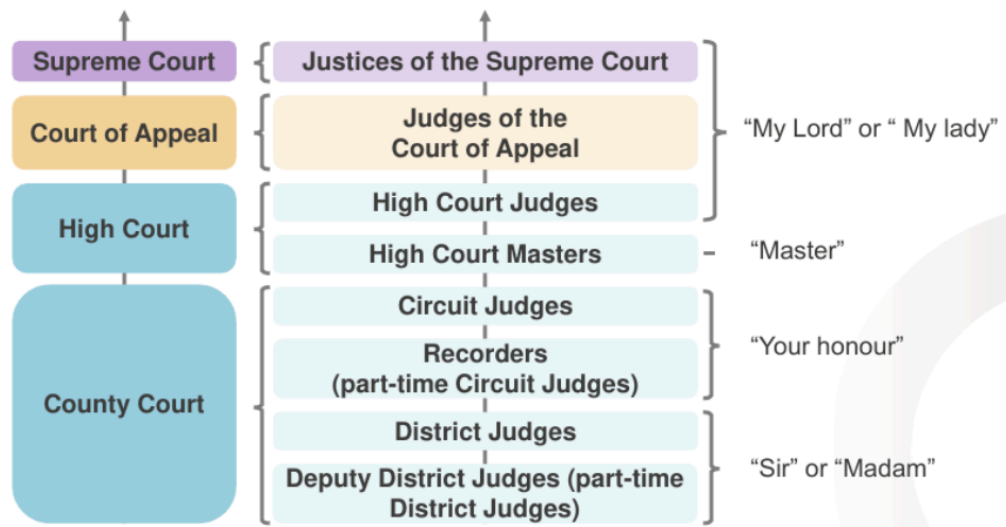
Role of specialist courts:



General QBD list:

Damages for PI, professional negligence, breach of contract, etc.

Planning court: planning permission, highways, right of way, etc.



[B] Pre-action Conduct

Resolving a dispute through a civil claim:

- *Preliminary considerations: pre-action protocols:*
- *Practice Direction – pre-action conduct*
- *principles and purpose of pre-action protocols governing particular claims and consequences for failure to follow their terms*

Issuing and serving proceedings:

- *issuing a claim form*
- *service of a claim form within the jurisdiction*
- *deemed dates of service and time limits for serving proceedings*
- *service by an alternative method*

Statements of case:

- *purpose, structure and content of a claim form [or] particulars of claim relating to a claim in contract or tort*

Pre-action protocols → 1) Practice Direction (Pre-Action Conduct) and 2) Pre-Action Protocol for PI

- Purpose: emphasis is to encourage parties to focus on resolving dispute without involving courts (last resort)
- If not possible to settle, lay foundations for expeditious conduct of proceedings
- One expectation of PAP – try negotiation or other ADR first

Consequences of non-compliance:

1. Costs and interests (most likely) – either increase amount to be paid/ decreased amount to be received
2. Court can stay the proceedings until the relevant steps are taken
3. Court can ask for an explanation of non-compliance

Is non-compliance ever justified? Only in limited circumstances:

1. Where limitation period is about to expire, so might need to issue proceedings before there is time to comply with pre-action requirements
2. Where there is another reason for urgent proceedings or for the element of surprise – eg. party can apply to court for search order, to allow an ‘unannounced’ revisit to opponent’s premises to search for docs

Pre-action Protocol for PI claims vs PD

- PAP for PI applies only to PI claims, which do not fall within another PAP, and are likely to be allocated to the fast track
- PD applies to all cases; **but where a specific protocol applies, the provisions of that specific protocol override any conflicting provisions of the PD**

Part 1: Issuing & serving proceedings

ISSUING CLAIM

Two options of court to issue the claim – 1) County Court; or 2) High Court

County Court	High Court
<p>Non-PI claims – up to £100,000 must be in CC</p> <p>PI claims – less than £50,000 must</p> <ul style="list-style-type: none"> - Claims for money up to £100,000 + against ≤2 Ds can be issued in the County Court Money Claims - Bulk claims can be registered at the County Court Business Centre 	<p>Non PI-claims – over £100,000 can</p> <p>PI claims of £50,000 or more can be</p> <p>Other factors why a claim should start in HC:</p> <ol style="list-style-type: none"> 1) Financial value of the claim + amount in dispute 2) Complexity of facts, legal issues, remedies, procedures 3) Importance of outcome to the public in general 4) C believes that claim ought to be dealt with by a HC judge

Value of the claim = its financial worth; should disregard:

- Interest, costs, any counterclaim, any contributory negligence, and any deduction of social security benefits
- Included VAT

Consequences of issuing in the wrong court:

- Court may **transfer the case** + order C to **pay the costs** of transfer
- If the matter continues in HC, there is a separate sanction for wrongly beginning a matter in the HC when it should have been issued in the County Court

Significance of the **date of issue** on the claim form:

1. Stops time running for limitation purposes
2. Starts the clock for the time in which claim form must be served

SERVICE OF A CLAIM FORM

Service = gives a document to another party in a way recognised by the court.

The claim form may be served either: 1) by the court; or 2) by claimant/ claimant's solicitor

- If court serves CF → **first class post**. (once court has effected service, it will send C a notice of issue stating the deemed date of service)
- If C serves the CF, must **notify the court** (unless notified by court that court can't serve) when issuing the CF
- C's solicitors must **file a certificate of service** at court within 21 days of service, certifying details of the date on which the claim was posted/delivered/etc + method + address used
- If C serves CF – there are a number of permissible methods of service; if not used any of these method, service may be invalid + C unable to obtain / enforce judgment obtained

Methods of serving CF (+ their relevant step)

1. **Personally on D** = physically leaving the CF on D
 - Relevant step for (1) & (2) ⇒ leaving CF with D
2. Leaving the document at a **permitted address**
 - Can only be **D's solicitor's address for CF**
 - For other docs, must also use D's solicitor's address if this is given; otherwise D may be served at an address where D resides/carries on business which relates to the purpose of D being served with the proceedings
3. **First class post**
 - Relevant step for (3) & (4) ⇒ posting the CF/ leaving it with DX service
4. **Document exchange** (DX) = a system used by legal professionals which provides for delivery on the next business day
5. **Fax** → only permitted if D/D's solicitor has indicated it will accept service by fax
 - Relevant step ⇒ completing the transmission
6. Other **electronic method**, eg. email → same as above, only permitted if D indicated
 - Relevant step ⇒ sending the email or other electronic transmission
7. Any other method authorised by the court

Time limit for CF to be served – the '**relevant step**' to serve CF must be completed before 12.00 midnight on the **calendar day 4 months after the date of issue** of the CF

- If not served within this time → claim fails automatically
- If C still wants to pursue the claim, need to issue new claim + pay court fees again

Extension of time to serve CF (very strict)

1. C needs to show **good reasons** for extension
 - NOT good reasons – if C is waiting for further evidence from D to pre-action correspondence; or C mistakenly served
2. Court only grants extension if:
 - Court failed to serve the claim form; or C has taken all reasonable steps to comply; **and**
 - the application has been made promptly

SERVICE OF PARTICULARS OF CLAIM

POC = where C sets out its claim in detail – can be served with / separately with CF

- If served separately – must be served within 14 days of service of the CF + within the period of validity of CF (4 months of issue) – this includes the response pack
 - Response pack contains forms for admission, defending, and acknowledging service
- If served together – we follow the deemed date of service of CF
- Once C serves POC, C must file a copy at court within 7 days of service
- Same permissible methods of serving documents

- When responding to the claim, D must give an address at which documents may be served going forwards – should be D's solicitor address

DEEMED DATES OF SERVICE

Claim form	POC	
<p>2nd business day after completion of 'relevant step'</p> <ul style="list-style-type: none"> - Eg. CF served by email on 5 sept (wed), deem served on 7 sept (fri) <p>Business day – excludes sat, sun, bank holidays, good friday, and Christmas</p>	<p><u>Instant methods (fax, email, personal service, leaving at permitted address)</u></p> <p>If done before 4.30 pm on a business day → the same day</p> <p>Otherwise → next business day</p>	<p><u>Non-instant methods (post/DX)</u></p> <p>If a business day → Second day after posting/ giving to DX provider</p> <p>Otherwise → the next business day</p>

Part 2: Statements of case

SOC = documents which C sets out the factual basis of its claim + the relief sought. And then D gives its own position in relation to the alleged facts and alleged entitlement to relief

Purpose of SOC:

1. Inform every other party about what client says about its case/particular issues in the claim
2. Help case proceed efficiently – know what issues are not in contention

SOC consists of CF, POC, Defence, Counterclaim, and Reply

- Every SOC must contain a **statement of truth** = a formal way of person signing confirming that they believe that the document is true
- If false/ no honest belief that it was true → can be contempt of court, can also lead to sanctions within the proceedings, or fine/imprisonment in serious cases

CLAIM FORM – purpose, structure & content – prepared by C

- Purpose: commence proceedings, set out key elements of the claim, identifies parties
- Structure: Form N1

Contents:

- a) Names of parties & addresses
 - Addresses = addresses for service
 - Parties must be referred to in their representative capacity – eg. if suing company, the name should be xxx LLP (for a LLP) etc.
- b) Brief details of their claim
 - This includes concise statement of **nature** of the claim + **remedy sought** by C
- c) A **statement of the amount** claim if C is claiming for money. This can be done in three ways:

- i) Specified amount of claim → just state this amount
- ii) Unspecified amount → can either say a range of expected claim
- iii) Or say 'I can't say how much I expect to recover'
 - **note: court has discretion to give judgment of whatever amount
 - For PI claims, C needs to state whether the amount C expects to recover for pain, suffering and loss of amenity is or isn't more than £1,000

d) POC – if attached, state this; if sent separately after, say 'POC to follow'

In relation to a claim for money, if the CF is to be issued in HC, the CF must:

1. State the exact amount of the claim, and
2. State that C expects to recover >£100,000 (for non-PI) or >£50,000 (for PI)
3. Specify the enactment/list that provides the claim may only be commenced in HC

PARTICULARS OF CLAIM – Purpose, structure, & content

Purpose: set out C's claim in full detail. Will be referred to by court + all parties when identifying the basis of C's claim

Content:

1. Must include a 'concise statement of the facts on which C relies'
2. Must include material facts/allegations showing → duty owed by D, breach of DOC, causation, and recoverable loss
3. If PI claims → should include C's DOB, details of injuries, and attach a schedule of **past and future expenses losses + report of any expert medical practitioner which is relied on**
4. If land claims → POC must identify land + state whether it includes residential premises
5. If claim based on a written agreement → the agreement should be attached
6. If claim based on oral agreement → POC sets out the words spoken, by whom to whom, when and where
7. If claim based on agreement by conduct → POC sets out the conduct relied on, by whom, when and where the acts were done
8. Should also include paragraphs to **claim interest** – can be done in two ways:
 - a) Calculating exactly the amount of interest claimed – for specified claim
 - POC need to set out the % rate, total amount claim, daily rate of interest thereafter, dates from/to which interest is being claimed
 - b) Or claim (plead) the interest generally – for unspecified claim
 - Eg. loss of goodwill, damage to reputation, loss of future earnings etc.
 - c) **If claim is hybrid (partly specified & unspecified) – can either treat 2 claims separately and work out both interest; or treat whole thing as unspecified

Interest → C has a right to **claim interest on the principal amount being claimed**

- If C seeks this, POC must set out **a statement to that effect + details**
- Legal basis for claim of interest may be either in the contract between parties, otherwise there is also a statutory right to interest

- In PI claims, where damages >£200, some interest **must** be awarded unless for special reasons
- In debt claims, if D pays whole debt during court proceedings, some interest **must** be awarded
- **Court has discretion whether to award interest + how much interest

POC structure ⇒ duty, breach, causation, and loss

- Before the final formalities (eg. the name of the firm of solicitors/barristers), the POC closes with a **summary of the remedies** sought by the claimant
- This is referred to as the 'prayer' – provides the court and D a quick means to ascertain what C actually wants

CONTRACT LAW

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(A) Formation

1. OFFER AND ACCEPTANCE

There are 4 elements required to form a legally binding contract: offer, acceptance, consideration and intention to create legal relations.

- **General rule: objective test** used to determine existence of a binding agreement between the parties – consider how interaction between parties look to a **reasonable person**
- **Exception: subjective test** is sometimes used where **offeree knew, or ought to have known** that offeror made a mistake
 - o Only applies if mistake relates to **terms** of the contract > collateral matter

Offer

Offer	ITT – cannot form legally binding contract
<p>Communication from a person in which person agrees to be legally bound to a contract on specified terms if offeree accepts.</p> <p>Two requirements:</p> <ol style="list-style-type: none"> 1. Must be precise enough – ‘yes’ answer sufficient 2. Intention to be bound – objective analysis of words used 	<p>Communication that a person would like to negotiate/discuss terms on which g/s are sold/provide that will lead to the contract at a later date</p>
<p>Examples of unilateral offers include:</p> <ul style="list-style-type: none"> - Unilateral advertisements (c.f. general rule ->): where offeror makes a promise in exchange for offeree performing an act (e.g. lost cat posters) - Auctions ‘without reserve’: promises to sell goods being auctioned to the highest bidder (If auctioneer refuses to accept the bid (and has not hammered) □ auctioneer is not entitled to the auctioned good (no contract), but is entitled to damages for breach of the separate collateral contract of auctioneer’s unilateral offer) - Tenders to accept most competitive bid/that conform to tender conditions: <ul style="list-style-type: none"> o Anyone who submits a bid confirming to tender conditions accepts unilateral offer - Automatic vending machines <ul style="list-style-type: none"> o G/S displayed are offers 	<p>Examples of ITT include:</p> <ul style="list-style-type: none"> - Advertisements (generally) - Display of goods – offer made by customer - Websites - Auction sales (the request for bid) – offer made by bidder, accepted tapping hammer - Tenders (requests for quotes and bids)

Bilateral offer: offer/promise **in exchange** for an offer/promise

Unilateral offer: offer **in exchange** for a **specified act** – made either to a specific **person**, wider **group** of persons, including to the **public**

An offer must be communicated to be effective: **offeree** must **know about the offer**.

- e.g. returning lost cat and returning it to owner only able to claim reward offered **if they knew about the offer** when returning the lost cat
- Acceptance would be deemed communicated when it would be reasonable for the client to expect it to be read. With businesses → reasonable to expect communications to be read during normal office hours

Acceptance

‘Mirror-image rule’ principle – if **response** from offeree is not **the exact same** as offer, it is **not a valid acceptance**

- **Acceptance can be made through words or conduct** – performance of obligations in accordance with terms of offer will amount to acceptance of the offer.
- Offeree’s acceptance must be **in respect of the offer** – **performance will only constitute acceptance if offeree knew about the offer – motive does not matter.**

Counter-offers: these are attempts by offeree to introduce new terms when responding to an offer

- This **terminates the original offer** – **offeree can no longer accept it**
- **c.f. requests for flexibility in payment** – these are not counter-offers, merely enquiries as to whether the amount required can be paid in instalments or later.

‘Battle of the forms’ – where parties send each other own standard terms of business

- **General rule: ‘last shot’ prevails** – last set of terms sent before the other party begins to **perform** obligations will apply to the contract

Conditional acceptance not allowed

Forms of acceptance – bilateral

General rule: acceptance of a bilateral offer **must be communicated to the offeror** – **receipt rule**

- Actual receipt required
- **Acceptance must be communicated in the specified form as in offer**
- If offeror has not made it very clear the form of acceptance required, offeree can **use another form of acceptance, provided it is not slower**

Exception of postal acceptance rule: offeree’s acceptance is effective **as soon as acceptance is posted**.

- Even if offeror never actually receives the acceptance, still bound
- Letter of acceptance must be
 - Properly addressed, posted through a post box/Royal Mail postbox
 - **Not applicable** to letters handed to the postman or sent through a courier company.
- Parties can contract out the postal acceptance exception.

Means of communication	General position
------------------------	------------------

Instantaneous media – incl phone, fax, telex, email	Receipt rule applies – must actually receive the acceptance <ul style="list-style-type: none"> - Offeree responsible for ensuring receipt. - Phone: if offeror does not hear or understand acceptance, not communicated - Fax: if offeror is aware of acceptance being sent but does not receive it or is unreadable – must ask for resend.
Instant media – office hours	Deemed communicated at the time when acceptance is actually received
Instant media – out of office hours	Deemed received the start of the following working day
Acceptance through a website	Unless otherwise agreed, order and acknowledgement of receipt of order deemed received when parties addressed are able to access them.

Forms of acceptance – unilateral

Offeree accepts the unilateral offer by **conduct**, which **does not need to be communicated** to offeror.

Termination of an offer

Revocation – offeror can do so whenever, **before** acceptance

- If there was an agreement to **keep offer open** for specific time, offeror is **bound to do so**
- Postal rule does not apply to revocation – must be actual receipt

Bilateral – must be **communicated** to the offeree – TP can communicate

Unilateral – offeror **cannot revoke** once offeree has **started to perform the act specified**

- Revocation does not require communication
- Must **use the same means to revoke as he used to offer** – e.g. advertise in same publication/same readership

Counter-offers – does not amount to acceptance and terminates offer

Lapse of time – offer stated open for a period of time will terminate on a set date –

- If there was no set date: ‘if offeree takes longer than **reasonable** to respond’ – lapse.

Making a new offer – second offer with the same g/s will terminate first offer.

2. CONSIDERATION

Consideration is a promise, act, or omission **of value** in exchange for a promise, an act, or omission.

- It is required for **all contracts** except those made by deed.

- **Exchange of promises** (i.e. promise of consideration at a certain date, even before consideration is actually provided) **will give rise to a valid contract.**

Consideration must be **sufficient, but does not need to be adequate.**

- Sufficient = what promisor requested in exchange for promise
- No requirement for consideration to reflect economic/monetary advantage for what is provided in exchange

Consideration **must not be past** – i.e. where act is carried out **before** promise is made – not consideration

- Exception: where **previous request device** applies – i.e. an **understanding** between parties that **actions of one** will be paid for, and exact amount will be fixed **at a later date.**

Where payment not agreed in prior, and service has been provided

- Service provider entitled to payment. Client requested the work was carried out, the client and service provider must have understood that the act was to be awarded and the payment would be legally enforceable if promised in advance

Consideration can be detrimental reliance

Agreement amendments

General rule: performance of existing contract/legal duties does not count as consideration – no element of exchange.

- If they perform **more than** what they are **legally** required to do – this can be consideration
- Performance of **existing contractual duties owed to TP** – can be consideration
 - e.g. repayment of a loan to TP can be consideration for a relationship between promise and promisor.

Any amendments to existing contractual terms **require either**

- (i) **Additional consideration** – incl. same work but changed circumstances (e.g. employees resigned, more responsibilities)
- (ii) **Practical benefit** – where a promisor obtains practical benefit as a result of making promise to pay more **is consideration** – e.g. avoiding to pay a penalty to TP.
 - Practical benefit exception **does not apply** for promises to **pay less than is owed** under existing contract
 - Exception 1: creditor's request to pay less **before** it was due or **in a different place** than initially agreed = yes consideration
 - Exception 2: agreement with **all creditors** to pay a **percentage** of debt owed = yes consideration
 - Exception 3: lesser payment **made by a TP** = acceptance of amount is binding and creditor is unable to claim the shortfall.

Williams v Roffey Bros

- Promise to extra pay is enforceable even where no additional consideration is given and the service provided is just what the service provider was originally bound to do (performance of an existing duty)
- If:
 - the promisor obtained a practical benefit and

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- the promise was not given under duress or by fraud (esp if it was their own idea to offer extra payment)

Promissory Estoppel

equitable doctrine that provides a defence to a debtor to stop a creditor from going back on his promise to accept a **smaller amount** than is owed under the original agreement.

For contract amendments not ordinarily legally binding because it lacks consideration – does **promissory estoppel** provide a defence for a promisee?

- Remember: promissory estoppel is a shield, not a sword.

Criterion
Clear and unambiguous promise from promisor that they will not enforce their rights under the contract
Promissory estoppel applies to promise to accept less
Applies to amendments, not formation
Promisee must have relied on the promise
It must be inequitable (unfair) for promisor to go back on his promise.
Suspensory, not extinctive – general rule: can assert rights by giving notice. Some cases are so unfair that right is extinguished. <input type="checkbox"/> promise can be brought back under appropriate circumstances

3. INTENTION TO CREATE LEGAL RELATIONS

The existence of the intention to create legal relations is **objectively determined** by applying the **relevant rebuttable presumption**.

Social and domestic context

–presumption rebuttable if evidence of intention to create legal relations

There is a rebuttable presumption that parties do not have the intention to create a legal relationship

Presumption can be rebutted by **clear evidence** drawn from the factors below:

Factors	Explanation
Certainty of agreement	<p>Are each parties' obligations clear?</p> <p>Courts will interpret lack of certainty as evidence that parties did not intend to create legal relations</p> <ul style="list-style-type: none"> - Where this is uncertain – unlikely to rebut the presumption

Parties are not on friendly terms when the agreement was made	
Agreement is serious	Presumption of no intention to create legal relations when spouses/partners living together on friendly terms is not absolute - e.g. prenup before marriage for cohabiting couples
One party has detrimentally relied on the agreement	One party acts in reliance of the agreement to detriment

Commercial context

The rebuttable presumption here is that the parties **did intend to create legal relations**

Presumption can be rebutted by **clear evidence** drawn from:

Factors	Explanation
Clear words that agreement shall not have legal effect	If agreement contains statement that make it clear, presumption will be rebutted - e.g. 'binding in honour only' or 'subject to contract'
Uncertainty in the agreement terms	If terms of an agreement are so uncertain that it is not clear how parties should perform their respective obligations – evidence used to rebut presumption

Names of documents don't necessarily conform with whether they have legal effect – specific wording should still be considered either way – **especially in relation to:**

Comfort letters – usually a description of party's current policy rather than promise/guarantee of what they will do

- However, comfort letter provided by an **accountancy firm** to confirm that figures in an annual report are accurate would be **legally binding**

Advertisements – generally made in commercial context

- If these are **obvious gimmicks or advertising puffs** – they will not serve as evidence of the intention to be legally bound
- Evidence from advertiser of **intention to perform** promise (e.g. providing holiday insurance/depositing money into a bank account) will serve as intention to be legally bound.

4. CERTAINTY

If an agreement is not certain, it will not be legally binding. English law has a high degree of contractual freedom, and merely vague or incomplete contracts will not be void for uncertainty

Main reasons are:

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- **Too vague**
- It is **too incomplete**
- One of both parties to the agreement is **mistaken**

Too vague

Where there is a **lack of certainty in one term**, it may not be too vague to perform –

- Look to ask an **arbitrator** to decide on the meaning of terms
 - o If arbitrator is unable to decide on the terms – term may be deemed **too vague to perform**.
- Possible also to look at **other transactions** performed under the same framework of agreement to look for evidence that clarifies the meaning of the term.

Incomplete

If an **essential term is missing** in an agreement – especially one where **key matters** (price, quantity) are not agreed by parties.

- Look at **performance** – if party has already provided partial performance of obligations under the agreement, terms of transaction performed may be applied to the missing key terms.
- Agreement unlikely to be void it provides that a key term will be determined by each party appointing a TP.

5. CAPACITY

Mental incapacity

First: person must prove that they did not have mental capacity **at the time they entered into the agreement**

- Mental Capacity Act 2005 s.2(1): ‘a person lacks capacity in relation to a matter if at the material time he is **unable to make a decision** for himself’ – satisfied if he is unable to:
 - o **understand the information** relevant to decision
 - o **retain** that information
 - o **use or weigh** that information as part of the process of decision making, and
 - o **communicate** his decision (whether by talking, sign language etc)

Second: the **other party to the agreement had known, or should have known, this was the case.**

A person with mental incapacity may exercise the remedy to **set the agreement aside**.

Except where the person with mental incapacity pays a reasonable price for the g/s that person **requires** at the time they enter into the agreement – **necessaries**

- if a person in question already has a good supply of g/s – unlikely to fall into necessities definition.

Intoxication

Agreement may be voidable for someone who does not fall within the mental incapacity definition but cannot understand the nature of actions/was intoxicated

- Must prove that the **other party to the contract knew/ought** to have known that **he was intoxicated** or otherwise unable to understand nature of actions
- **Rule of necessities also applies.**

Capacity of minors

Minor is defined in statute as anyone **under 18** – voidable except where they must pay a reasonable amount for necessities (not voidable).

Minor is bound by agreements of **employment, education and training**, unless he **loses more than he has to gain** under the contract

- Court may order minor to return goods acquired to the other party if it is **just and equitable** to do so.
- If an adult person guarantees the obligations of minor, **guarantor is bound** by such an agreement.

Corporate capacity

Corporate organisations have capacity to enter into and be legally bound by contracts

Constitutional documents (e.g. Articles) may limit its activities

- But if parties enter into an agreement with a company **in good faith**, it will be bound by the agreement, **even if activity conflicts** with a restriction on its constitutional documents.

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[A] DUTY OF CARE

Negligence = breach of a legal duty to take care by D resulting in loss or damage to C

To establish a claim in negligence, you generally consider: **Duty, Breach, Causation, Loss/Damage, Remoteness and Defences**

Common types of loss:

- Bodily injury
- Psychiatric harm
- Property damage
- Consequential economic loss (results from injury/damage --> loss of earnings due to broken arm)
- Pure economic loss (e.g. lost savings due to investment made on negligent advice)

1. HOW TO DETERMINE IF A DUTY OF CARE IS OWED?

- 1) See if there is precedent for DoC arising in the relationship
- 2) No? Apply tripartite Caparo Test (incrementally + by analogy with established legal authorities (identifying legally significant features of previous authorities)):
 - a. **Foreseeability of harm** --> objective (reasonable foreseeability)
 - b. **Proximity between D & C**
 - c. **Fair, just & reasonable** --> Court will consider impact of decision socially, politically and economically on society as a whole (e.g. floodgates, insurance, deterrence, crushing liability etc)

Examples: Police owe a DoC to protect the public from reasonably foreseeable physical injury when arresting//road users owe DoC to other road users//medical professionals owe DoC to patients when they accept them for treatment

2. LIABILITY FOR OMISSIONS

General rule: no duty imposed for omissions.

Method for creating exceptions:

- Pre-existing in law
- Novel: applying Caparo test + analogy with legal authorities (particularly looking at proximity between D & C for omissions)

No duty to avoid omissions except:

- **Where there is a statutory duty**
- **Where there is a contractual duty**
- **Where D has sufficient control over C** (parent-child, police-prisoner in custody)
- **Where D assumes responsibility for C's welfare**
- **Where D creates the risk**

Emergency services & omissions:

- Ambulance service has duty to respond 999 calls within a reasonable time, but no breach where they use discretion to deal with a more pressing matter before attending to C.
- Fire brigades have no duty to attend a fire but have a duty to not make the situation worse through a positive act.
- Police owe no duty to respond to emergency call but can owe duty to avoid omissions when have sufficient control over C

3. LIABILITY FOR THIRD PARTIES

General rule: no duty for failure to prevent a third party from causing harm to C

- Novel cases: apply Caparo test, particularly considering proximity between D&C, and D&TP.

Exceptions:

- **Sufficient proximity between D&C** (was it reasonably foreseeable that D's omission would enable TP to cause harm to C? --> Also, important to consider if V was an identifiable member of a small group at risk over and above the public at large.
- **Sufficient proximity between D&TP** (e.g. supervisory relationship at the time of the harm)
- **D created danger/risk**
- **Risk was on D's premises**

Alternative characterisation from Robinson case:

- D has assumed responsibility to protect C from danger
- D has done something which prevents another from protecting C from that danger
- D has a special level of control over that danger or D's status creates an obligation to protect C from that danger

4. PUBLIC BODIES AND DUTIES OF CARE

Positive acts and omissions: Liability of a public authority is determined in the same way as a private person, but when act/omission would amount to breach is authorised by an Act of Parliament it is not liable. (Parliamentary sovereignty)

Omissions only: Same rules apply as to individuals, but hard to argue that because a public body has the duty/power to act within a given area doesn't mean that they will automatically attract a duty in negligence.

- It must be shown that one of the exceptions for third parties applies here

Fair just and reasonable in the context of public bodies:

In *Poole* there was very little discussion of policy (with the focus being on the application of existing principles concerning 'assumption of responsibility') and this is the approach you should take.

However, the following considerations may still be of some limited relevance when considering whether to impose a duty on a public body in a new area:

- A. In successful claims against public bodies it is often ultimately the taxpayer who actually pays the damages. This might point away from a finding of a duty of care in a new case.
- B. the imposition of a duty might lead to public services being restricted in their operation for fear of litigation (sometimes referred to as 'defensive practices').

As with pure omissions, consider **first whether there is precedent**. If your facts were the same as *Hill v Chief Constable of West Yorkshire* and the police were being sued for failing to apprehend a criminal who then went on to harm the claimant, you could rely on *Hill* to establish that the police do not owe the claimant a duty.

However, if there is **no precedent, go through the three-stage test from Caparo v Dickman** and under proximity discuss any of the relevant exceptions to the general rule.

Only consider relevant exceptions. It is not a case that all these exceptions have to apply for a duty of care to be owed. However, the more exceptions that are satisfied, the more likely a duty will be owed. For example, the courts are probably more likely to find a duty where there is proximity between the defendant and claimant, AND between the defendant and third party.

Public, ELS & EU Law

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[A] ENGLISH LEGAL SYSTEM - SOURCES OF LAW

1. ORIGINS OF THE COMMON LAW

Law = system of rules a particular country or community recognizes as regulating the actions of its member and which it may enforce through imposition of penalties

Common law can have several meanings:

- Historical: distinguish between law applied by King's judges vs local customary courts
- Distinguish law applied by King's Courts as opposed to Equity (system developed by separate Court of Chancery)
- Distinguish case law from statute (main one)
- Identify law as applied by common law countries

Adapt has loads of stuff about writ system --> doesn't seem to be very relevant

The law of equity was created to address two problems with common law (only remedy of damages at common law and common law was more procedural (focusing on how a dispute could be resolved) rather than about right and wrong.

2. CASE LAW

Case law and common law are used interchangeably to distinguish law decided by judges from statute passed by Parliament.

Governed by **rules of precedent** (decisions of judges higher up hierarchy of courts bind lower courts)

To decide a case, a judge will:

- Consider evidence
- Consider applicable law
- Apply law to the facts
- Decide what remedy the successful party is entitled to and make an order to that effect

Stare Decisis --> Stand by what has been decided (rule of binding precedent). Court must be persuaded that:

- Earlier case was decided by court which binds it
- Relevant part of the earlier case is binding rather than persuasive.

Judgements consist of:

- a) Summary of the facts
- b) Statements of law which will include ratio decidendi (legal principle on which court's decision is based - binding) and obiter dicta (not binding, but may be highly persuasive and influential in subsequent cases if particularly powerful)
- c) Court's decision on remedy which is binding only on the parties in the case.

Court may follow/approve previous decision

Where court considers that earlier case's facts has similarities to those in case it will be applying the earlier decision.

Court can distinguish (finding difference in the material facts between the two cases)

- Reversing = case goes to appeal and higher appeal court disagrees with lower court. Doesn't negate precedent, just means that the court hasn't applied the law in the same way

- Overturning = superior court in later case decides that original precedent set in past case is wrong and sets new correct precedent instead. Original precedent is no longer good law.
 - o Practice Statement (Judicial Precedent) 1966 → Supreme Court not bound by its own decisions where rigid adherence to precedent would lead to injustice and unduly restrict proper development of law.
 - o Court of Appeal can also depart from its own precedents but only in three instances:
 - Previously conflicting CA decisions
 - CA's previous decision overruled expressly or impliedly by SC
 - CA's previous decision made per incuriam (not aware of relevant authority)

Rules of precedent

The rules of precedent can be summarised as follows:

Court	Binding on...
Supreme Court	All inferior courts and itself (subject to 1966 Practice Statement.)
Court of Appeal	All inferior courts and itself (subject to <i>Young v BA</i> exceptions).
The High Court	All inferior courts, and itself (unless there is a powerful reason to depart).
The Upper Tribunal	The First Tier Tribunal, inferior courts, and itself.
The First Tier Tribunal	Not binding but may be persuasive
Family Court	Not binding
County Court	Not binding
Crown Court	Not binding
Magistrates' Court	Not binding

3. EQUITY

Equity and the common law are often complementary but, if there is conflict between the two, equity will prevail. Greater flexibility than common law rules due to **discretionary equitable remedies**:

- **Specific performance**
 - o Where there is a valid and enforceable contract + damages not appropriate, the party can be compelled to perform an obligation they have under the contract.
- **Injunctions**
 - o Only available where damages are not appropriate. Can be final/interim and unconditional/subject to conditions. Mandatory injunction is an order to do something. Prohibitive injunction is an order to refrain from doing something.
 - o Also available to the court statutorily where 'it appears the court equitable and just to do so'.
- **Declaration**
 - o Court issues a legally binding statement certifying (1) legal rights of the parties; (2) existence of facts; (3) principle of law. Usually sought alongside another remedy.
- **Rescission**
 - o Setting aside a contract (available in equity or in common law). Only available where parties can be put back in their pre-contractual positions.
 - o Can arise in cases such as: misrepresentation, mistake, duress/undue influence.
- **Rectification**
 - o Correcting a document to reflect the parties' contractual intentions. Only applies to written contracts.

- o Usually to correct missing/incorrect names, numbers or descriptions. If the mistake is too fundamental or extensive, rectification will not be available.

4. PRIMARY AND SECONDARY LEGISLATION

Legislation = laws made with the approval of Parliament.

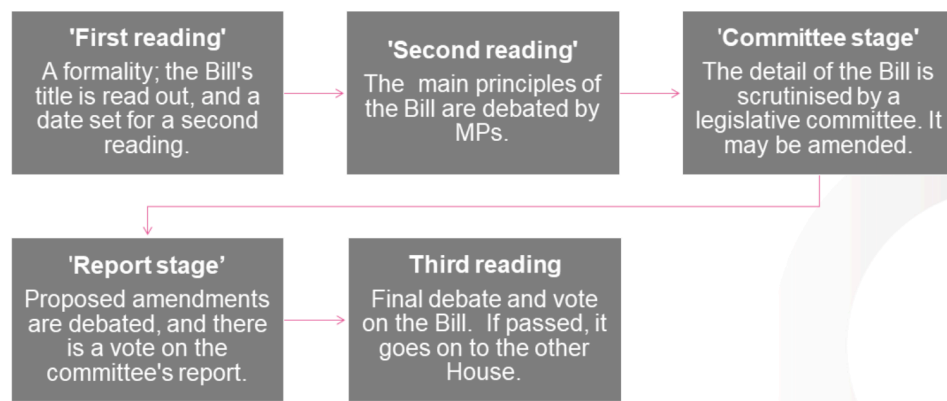
- **Primary Legislation** = Acts of Parliament which are put before, debated in, both the House of Lords and House of Commons and receive royal assent.
 - o **Public Acts** --> Relate to matters which concern the general public. Debated in both houses and those outside of the legislature can only influence by lobbying MPs. Vast majority of legislation passed by Parliament.
 - o **Private Acts** --> Relate to particular areas or people. Brought by local authority/large private organization to acquire a particular power (e.g. to build a bridge).
- **Secondary Legislation** = Laws made by Ministers (or other bodies) under powers conferred by a parent Act of Parliament. Normally used to fill in the details missing in primary legislation.
 - o Includes regulations made by Statutory Instruments, Orders in Council and By-laws.
 - o Delegated legislation made through the powers granted by parliament have the same statutory power as primary legislation, but the courts can quash secondary legislation if it falls outside the powers granted by parliament.
 - o Receives less parliamentary scrutiny than PL, (Parliament can either approve (through negative or affirmative procedure) or reject, not amend). Compliance with terms of parent act is investigated by Joint Committee on Statutory Instruments.
 - o Significantly more laws made through secondary legislation than primary legislation

Legislation begins as a Bill:

- Public Bills = intended to become Public Acts:
 - o **Government Bill** --> based on government policy through ministerial proposals in the form of Green Papers (for discussion) and White Papers (official government policy)
 - o **Private Members' Bill** --> promoted by a particular MP through the Ballot system and sometimes can be backed by the government. Unlikely to pass and given little parliamentary time compared to government bills.

Legislative Process

Bills can start in either HoL or HoC (except for those relating to public finance (reserved for HoC)).



The Bill will then receive Royal Assent from the monarch by convention. Legislation will come into effect at midnight on the day it receives RA unless there is a provision stipulating otherwise (usually dealt with in a commencement section). Power is usually delegated to the Secretary of State in that area to issue a statutory instrument to bring the Act into effect.

Structure of Acts

- Short title
- Long title
- Date enacted
- Parts (dealing with different subject matter, broken down into sections and sub-sections)

5. RULES OF STATUTORY INTERPRETATION

How judges interpret Acts of Parliament:

- **Literal Rule** --> plain and ordinary meaning
- **Golden Rule** --> Apply Literal Rule unless the outcome would produce an inconsistency, absurdity or inconvenience.
- **Mischief Rule** = What was the mischief that parliament sought to correct (now defunct, use purposive approach instead).
- **Purposive approach** = Taking a broader approach to interpretation of legislation in light of its purpose. Judges assume that the legislation is a basic frame and flesh out the precise meaning of the law over time through their judgements, but will vary the scope of its application depending on the nature of the legal question before it (won't apply it broadly to all areas of societal regulation).

Contemporary approach summarized = 'judges instinctively look both at the strict and superficial meaning of the words used and at the underlying purpose of the legislation, normally as a single, and largely subliminal, mental process'

Underlying linguistic presumptions

- **Expressio unius est exclusio alterius** --> If there is a list of items with no general words to follow, Parliament intended it to be a closed list (e.g. 'goods, wares and merchandise').
- **Ejusdem generis** --> Where general words follow a list of specific words, the general words are interpreted so as to restrict them to the same kind of objects as the specific objects ('houses, offices, room or other place' (interpreted to only refer to indoor areas))
- **Noscitur a sociis** --> Words of a statute are understood in the context of the entire statute (e.g. 'interest, annuities and other annual payments' interpreted to mean that interest = annual interest).

6. INTRODUCTION TO HUMAN RIGHTS

Rights conferred merely by virtue of being a human.

European Convention on Human Rights --> UK is a signatory and granted individuals the right to lodge complaints under the ECHR to the European Court of Human Rights (ECtHR) in Strasbourg in 1966.

- The Council of Europe oversees the ECHR and acts as the human rights watchdog for Europe's post-communist democracies.

Categories of rights under ECHR (note: not a hierarchy, just different types):

- **Absolute Rights** = cannot be lawfully interfered with in any way by the state.
 - o Freedom from torture and inhumane or degrading treatment (Art 3); Prohibition of slavery and forced labor (Art 4); Prohibition on retrospective criminal offences (Art 7).
- **Limited Rights** = Can in, in some circumstances, be lawfully interfered with by the state.
 - o Right to life (Art 2); Liberty & Security (Art 5); Fair Trial (Art 6)
- **Qualified Rights (Art 8 –11)** = Can be lawfully interfered with so long as certain tests are met.
 - o Right to private and family life, home and correspondence (Art 8); Expression & information (Art 10); Expression and association and assembly (Art 11).
 - Generally, it must be shown that:

- Interference was prescribed by, or in accordance with, the law
- Interference was in pursuit of a legitimate aim
- Interference was necessary in a democratic society (proportionate)

UK is a dualist system, so international law can only apply where either:

- 1) UK itself is a party to proceedings before an international court to which jurisdiction it has agreed to submit (e.g. ECtHR)
- 2) Where the UK has incorporated international legal rules into its domestic legal system through an enabling Act of Parliament (e.g. HRA 1998 passed to incorporate ECHR into domestic UK law – more on this in Human Rights)

Important sections in HRA 1998 to enable victims of breaches to enforce their rights in domestic UK courts:

- **S. 3(1):** Court should, as far as it is possible to do so, interpret UK domestic legislation in a way which is compatible with ECHR rights
- **S.4(2):** If a court considers that legislation is incompatible with a Convention right, it may make a declaration of incompatibility to that effect.
- **S.6(1):** Public authorities (NOT Parliament), including courts and tribunals are required to act in a way which is compatible with Convention rights.

7. SOURCES OF LAW

European Communities Act (ECA) 1972 established the direct applicability of EU legislation as a new source of law in the UK.

- EU established by the Treaty on European Union (TEU) in 1992.
- Treaty of Lisbon established system based on two treaties: TEU and TFEU
- Brexit --> effects are governed by the European Union (Withdrawal) Act 2018, which repealed the ECA on the same day.
 - o EU law created during UK's membership after 1973 retained until a new domestic law is enacted to repeal and replace it.

There are two main categories of EU law: primary, and secondary.

Primary	Secondary
<ul style="list-style-type: none"> • The Treaty on the European Union (1992), also known as the Maastricht Treaty. • The Treaty on the Functioning of the European Union (2009 in its current form, originated as the Treaty of Rome in 1957) 	<ul style="list-style-type: none"> • Regulations, Directives and Decisions made under Articles 288 and 289 of the TFEU. • Case law of the Court of Justice of the European Union (CJEU *)

* Note that the Court of Justice used to be known as the ECJ but is now referred to as the CJEU.

Regulations are directly enforceable in Member States without the need for supporting domestic legislation (Direct effect)

Decisions are only binding on the parties to whom they are addressed. Can be enforced in national courts against addressed parties providing that certain conditions are met.

Directives are only binding ‘as to the result to be achieved but leave to the national authorities the choice of form and method’ (i.e. national legislation needed to implement into MS’ legal systems). If implemented properly, individuals will be able to rely on rights conferred by national legislation implementing the directive.

- If a Directive is not properly implemented, European Commission may bring ‘infringement proceedings’ against MS, to be determined by the CJEU.
- Three methods for individuals to bring action against national court:
 - o **Direct effect** (if implementation period has expired)
 - o **Indirect effect** (obligation on domestic courts to interpret domestic law compatibly with EU law where possible)
 - o **State liability** (state compensation available for a state’s failure as long as it has sufficiently serious consequences)

These methods are also available for other kinds of EU law.

EU jurisprudence --> enforceable through domestic case law rather than the founding treaties, which applies the doctrine that EU law has supremacy over domestic law.

Preliminary references --> National courts of MS (inc. EW) can refer questions to CJEU about the validity and interpretation of EU law (inc. Secondary legislation produced by EU institutions) (Article 267 TFEU). CJEU will then pass a preliminary ruling to the national court for them to decide how to apply the legislation.

- Nb: no right to appeal to CJEU from national court. The only way to get there from a national court is through a preliminary reference.