

2c. Content of H418/01 – The legal system and criminal law

Section A: The legal system

This section focuses on the civil and criminal courts, the legal professions and access to justice. Learners will develop knowledge and understanding of the processes and people involved in the law and the changing nature of the legal system.

Content	Guidance
Civil courts and other forms of dispute resolution	
<ul style="list-style-type: none"> <input type="checkbox"/> County Court and High Court: jurisdictions, pre-trial procedures, the three tracks <input type="checkbox"/> Appeals and appellate courts <input type="checkbox"/> Employment tribunals and Alternative Dispute Resolution <input type="checkbox"/> Advantages and disadvantages of using the civil courts and Alternative Dispute Resolution to resolve disputes 	<ul style="list-style-type: none"> ✓ the jurisdictions of the County Court and the three divisions of the High Court ✓ grounds/reasons to appeal ✓ First appeal from the three tracks, further appeal to the Court of Appeal (Civil Division), High Court Appeals, Appeal from the Court of Appeal (Civil Division) ✓ how employment tribunals work ✓ negotiation, mediation, conciliation and arbitration
Criminal courts and lay people	
<ul style="list-style-type: none"> <input type="checkbox"/> Criminal process: jurisdiction of the Magistrates' Court and the Crown Court, including classification of offences and pre-trial procedures <input type="checkbox"/> Appeals and appellate courts <input type="checkbox"/> Sentencing and court powers: aims, factors and types of sentences for adults <input type="checkbox"/> Lay magistrates and juries: qualifications, selection, appointment and their role in criminal cases <input type="checkbox"/> The advantages and disadvantages of using juries in criminal cases 	<ul style="list-style-type: none"> ✓ summary offences, triable either-way offences, indictable offences and their pre-trial procedures ✓ grounds/reasons to appeal ✓ appeals to the Crown Court, Case stated appeal to the Queen's Bench Divisional Court, Appeals to the Court of Appeal (Criminal Division) and Appeals to the UKSC ✓ the aims of sentencing set out in s142 Criminal Justice Act 2003 ✓ custodial and non-custodial sentences for adults
Content	Guidance
Legal personnel	
<ul style="list-style-type: none"> <input type="checkbox"/> Barristers, solicitors and legal executives: role and the regulation of legal professions <input type="checkbox"/> The judiciary: types and role in civil and criminal courts <input type="checkbox"/> The separation of powers and the independence of the judiciary <input type="checkbox"/> Evaluation of the judiciary, including the advantages of judicial independence 	<ul style="list-style-type: none"> ✓ how the legal professions are regulated ✓ the different levels of judges and their respective roles ✓ how judicial independence is achieved: security of tenure, immunity from suit, independence from the other two arms of the state and independence from the case
Access to justice	
<ul style="list-style-type: none"> <input type="checkbox"/> Government funding for civil and criminal cases <input type="checkbox"/> Private funding, conditional fees, other advice agencies <input type="checkbox"/> Evaluation of access to justice 	<ul style="list-style-type: none"> ✓ the Legal Aid Agency: availability and restrictions on government funding for civil and criminal cases ✓ other advice agencies could include Citizens Advice, Law Centres, Pro Bono Units, Free Representation Units, Trade Unions, Insurance companies and Charities ✓ impact of the changes to the legal aid budget

Section B: Criminal law

This section focuses on the rules and general elements of criminal law and provides an introduction to criminal liability through the study of offences against the person and offences against property. Learners will develop their knowledge and understanding of criminal law and the skills to apply their legal knowledge to scenario-based situations and gain a critical awareness of the present state of criminal law.

Content	Guidance
Rules and theory	
<input type="checkbox"/> An outline of the rules of criminal law <input type="checkbox"/> An overview of the theories of criminal law	<input checked="" type="checkbox"/> definition of crime <input checked="" type="checkbox"/> sources of criminal law <input checked="" type="checkbox"/> the elements of criminal liability <input checked="" type="checkbox"/> those involved in a criminal case – prosecution and defence <input checked="" type="checkbox"/> the burden of proof, the standard of proof and reverse onus <input checked="" type="checkbox"/> the aims and purpose of criminal law <input checked="" type="checkbox"/> the principles of criminal law
General elements of criminal liability	
<input type="checkbox"/> <i>Actus reus</i> : conduct and consequence crimes; voluntary acts and omissions; involuntariness; causation <input type="checkbox"/> <i>Mens rea</i> : fault; intention and subjective recklessness; negligence and strict liability; transferred malice; coincidence of <i>actus reus</i> and <i>mens rea</i>	<input checked="" type="checkbox"/> conduct and consequence crimes; voluntary acts and state of affairs; categories of omissions; factual and legal causation, ways the chain of causation can be broken <input checked="" type="checkbox"/> direct and oblique intention, subjective recklessness, negligence and gross negligence, strict liability including the methods used to establish whether an offence is a strict liability offence, transferred malice, coincidence of <i>actus reus</i> and <i>mens rea</i>
Fatal offences against the person	
<input type="checkbox"/> Murder: <i>actus reus</i> and <i>mens rea</i> <input type="checkbox"/> Voluntary manslaughter: defences of loss of control and diminished responsibility under Coroners and Justice Act 2009 <input type="checkbox"/> Involuntary manslaughter: unlawful act manslaughter and gross negligence manslaughter	<input checked="" type="checkbox"/> definition of murder; the <i>actus reus</i> and <i>mens rea</i> requirements of the offence <input checked="" type="checkbox"/> the partial defence of loss of control (s54 Coroners and Justice Act 2009) <input checked="" type="checkbox"/> the partial defence of diminished responsibility (s2(1) Homicide Act 1957 as amended by s52 Coroners and Justice Act 2009) <input checked="" type="checkbox"/> <i>actus reus</i> and <i>mens rea</i> of unlawful act manslaughter <input checked="" type="checkbox"/> <i>actus reus</i> and <i>mens rea</i> of gross negligence manslaughter

Content	Guidance
Non-fatal offences against the person	
<input type="checkbox"/> Common assault: assault and battery under s39 Criminal Justice Act 1988 <input type="checkbox"/> Assault occasioning actual bodily harm, wounding and grievous bodily harm under s47, s20, s18 Offences Against the Person Act 1861	<input checked="" type="checkbox"/> definition of assault <input checked="" type="checkbox"/> <i>actus reus</i> and <i>mens rea</i> of assault <input checked="" type="checkbox"/> <i>actus reus</i> and <i>mens rea</i> of battery <input checked="" type="checkbox"/> <i>actus reus</i> and <i>mens rea</i> under s47 Offences Against the Person Act 1861 <input checked="" type="checkbox"/> <i>actus reus</i> and <i>mens rea</i> under s20 Offences Against the Person Act 1861 <input checked="" type="checkbox"/> <i>actus reus</i> and <i>mens rea</i> under s18 Offences Against the Person Act 1861
Offences against property	
<input type="checkbox"/> Theft under s1 Theft Act 1968 <input type="checkbox"/> Robbery under s8 Theft Act 1968 <input type="checkbox"/> Burglary under s9(1)(a) and s9(1)(b) Theft Act 1968	<input checked="" type="checkbox"/> definition of theft, robbery and burglary <input checked="" type="checkbox"/> <i>actus reus</i> and <i>mens rea</i> of theft <input checked="" type="checkbox"/> <i>actus reus</i> and <i>mens rea</i> of robbery <input checked="" type="checkbox"/> <i>actus reus</i> and <i>mens rea</i> of burglary
Mental capacity defences	
<input type="checkbox"/> Insanity, automatism, intoxication	<input checked="" type="checkbox"/> definition of insanity, automatism and intoxication <input checked="" type="checkbox"/> starting point for the defence; M'Naghten rules; consequences of an insanity verdict; non-insane automatism <input checked="" type="checkbox"/> voluntary and involuntary intoxication
General defences	
<input type="checkbox"/> Self-defence, duress by threats, duress of circumstances and necessity <input type="checkbox"/> Consent	<input checked="" type="checkbox"/> the defence of self-defence and how it can be applied; reasonable and necessary force <input checked="" type="checkbox"/> definition of and rules for duress by threats defences <input checked="" type="checkbox"/> definitions and rules for duress of circumstances and necessity defences <input checked="" type="checkbox"/> definition of consent and the main rules / elements of the defence
Preliminary offences	
<input type="checkbox"/> Attempts: the <i>actus reus</i> and <i>mens rea</i> ; impossibility	<input checked="" type="checkbox"/> <i>actus reus</i> and <i>mens rea</i> of attempt <input checked="" type="checkbox"/> factual and legal impossibility

Content	Guidance
Evaluation	
<input type="checkbox"/> Critical evaluation of: <ul style="list-style-type: none"> • non-fatal offences against the person • defences: intoxication, self-defence and consent • ideas for reform 	Common frameworks include whether an area of non-fatal offences or defence is: <ul style="list-style-type: none"> ✓ fit for purpose ✓ up-to-date ✓ just or unjust ✓ effective or ineffective ✓ balances principle and policy ✓ fair or unfair ✓ based on sound moral principles

2c. Content of H418/02 – Law making and the law of tort

Section A: Law making

This section focuses on law making in England and Wales as well as the European Union. Learners will study law making methods and their underpinning concepts. They will develop an understanding of legal method and reasoning as used by lawyers and the judiciary.

Content	Guidance
Parliamentary law making	
<input type="checkbox"/> Legislative process – Green and White Papers, different types of Bill, legislative stages in the House of Commons and the House of Lords, and the role of the Crown <input type="checkbox"/> Advantages and disadvantages of the legislative process	<input checked="" type="checkbox"/> Public Bills, Private Bills and Private Members' Bills <input checked="" type="checkbox"/> Hybrid Bills, Ten-minute rule Bills and details about pre-legislative procedures in either House is not required <input checked="" type="checkbox"/> no need to give a detailed account of the Parliament Acts 1911 & 1949. No need to cover commencement
Delegated legislation	
<input type="checkbox"/> Types of delegated legislation: Orders in Council, Statutory Instruments and By-laws <input type="checkbox"/> Controls on delegated legislation by Parliament and the courts, and their effectiveness <input type="checkbox"/> Reasons for the use of delegated legislation <input type="checkbox"/> Advantages and disadvantages of delegated legislation	<input checked="" type="checkbox"/> brief description of each type of delegated legislation with a supporting example for each <input checked="" type="checkbox"/> Legislative Reform Orders, Henry VIII powers, Orders of Council <input checked="" type="checkbox"/> parliamentary control to include approval of Parent Act, Negative Resolution Procedure, Affirmative Resolution Procedure and scrutiny by committee <input checked="" type="checkbox"/> judicial review to include procedural <i>ultra vires</i> , substantive <i>ultra vires</i> and 'Wednesbury Unreasonableness' <input checked="" type="checkbox"/> you do not need to cover procedures, <i>locus standii</i> or remedies for judicial review <input checked="" type="checkbox"/> effectiveness and ineffectiveness of parliamentary and judicial controls

Content	Guidance
Statutory interpretation	
<ul style="list-style-type: none"> <input type="checkbox"/> Rules of statutory interpretation: the literal rule, the golden rule and the mischief rule <input type="checkbox"/> The purposive approach <input type="checkbox"/> Intrinsic and extrinsic aids to interpretation <input type="checkbox"/> Impact of European Union Law and the Human Rights Act 1998 on statutory interpretation <input type="checkbox"/> Advantages and disadvantages of the different rules and approaches to statutory interpretation 	<ul style="list-style-type: none"> ✓ brief description of the operation of each rule/ approach, any relevant features and examples ✗ the need for statutory interpretation ✓ brief description of some of each type of aid with examples where appropriate ✓ position regarding human rights law
Judicial precedent	
<ul style="list-style-type: none"> <input type="checkbox"/> The Doctrine of Precedent including <i>stare decisis</i>, <i>ratio decidendi</i> and <i>obiter dicta</i> <input type="checkbox"/> The hierarchy of the courts including the Supreme Court <input type="checkbox"/> Binding, persuasive and original precedent; overruling; reversing; distinguishing <input type="checkbox"/> Advantages and disadvantages of precedent 	<ul style="list-style-type: none"> ✓ explain both the civil and criminal court hierarchies and appreciate their relevance to <i>stare decisis</i> ✓ explain the exceptions to the general rule of <i>stare decisis</i>: the UK Supreme Court under Practice Directions 3 & 4; The Court of Appeal under the doctrine set out in <i>Young v Bristol Aeroplane</i> ✗ the Court of Appeal's historic resistance to the doctrine of <i>stare decisis</i> in relation to being bound by the UKSC ✓ types of precedent and the methods used by judges when dealing with such precedent, illustrated with cases
Law reform	
<ul style="list-style-type: none"> <input type="checkbox"/> Influences on Parliament: political, public opinion, media, pressure groups and lobbyists including the Law Commission <input type="checkbox"/> Law reform by the Law Commission <input type="checkbox"/> Advantages and disadvantages of influences on law making 	<ul style="list-style-type: none"> ✓ specific influences with some supported examples of Acts they have brought in or amended ✗ explain how these influences work in anything other than outline detail ✓ who the Law Commission are, what do they do and how do they do it
Content	Guidance
European Union law	
<ul style="list-style-type: none"> <input type="checkbox"/> Institutions of the European Union <input type="checkbox"/> Sources of European Union law <input type="checkbox"/> Impact of European Union law on the law of England and Wales 	<ul style="list-style-type: none"> ✓ the membership, role and legal functions of the European Commission, the European Parliament, the Council of the European Union and the Court of Justice of the European Union ✓ treaties, regulations and directives ✓ the extension of rights to individuals through doctrines developed by both the CJEU and domestic courts ✓ the concept of supremacy of EU Law over the domestic law of member states with a focus on impact on Sovereignty of Parliament during the UK's membership of the European Union

Section B: The law of tort

This section focuses on the rules of tort, liability in negligence, occupiers' liability and remedies. It provides an introduction to civil liability. Learners will develop knowledge and understanding of the law of tort and the skills to apply their legal knowledge to scenario-based situations and gain a critical awareness of the present state of the law of tort.

Content	Guidance
Rules and theory	
<ul style="list-style-type: none"> <input type="checkbox"/> An outline of the rules of the law of tort <input type="checkbox"/> An overview of the theory of the law of tort 	<ul style="list-style-type: none"> ✓ the aims of Tort Law ✓ understand tortious liability ✓ recognise who is the claimant and who is the defendant ✓ whether proof of fault is required and, if so, the nature of the fault ✓ the relevance of any possible defences ✓ the aim of a tortious action ✓ understand that the parties to a civil action may include any combination of both 'natural' and 'legal' persons ✓ the protected interests in Tort ✓ issues raised by the so-called 'compensation culture' ✓ the basic differences between tort and contract, and tort and crime
Liability in negligence	
<ul style="list-style-type: none"> <input type="checkbox"/> Liability in negligence for injury to people and damage to property <input type="checkbox"/> The duty of care: <i>Donoghue v Stevenson</i> (1932) and the neighbour principle, the <i>Caparo</i> test and <i>Robinson v Chief Constable of West Yorkshire</i> (2018) <input type="checkbox"/> Breach of duty: the objective standard of care and the reasonable man; risk factors <input type="checkbox"/> Damage: factual causation; legal causation 	<ul style="list-style-type: none"> ✓ recognise a potential action in negligence ✓ the elements required for an action in negligence ✓ the relevance of any actionable defence, appreciate the burden and standard of proof and the role of compensation in the form of damages ✗ economic loss (negligent misstatement), psychiatric injury or liability for defective products ✗ no need to go into any specific detail on the way negligence applies to special groups such as the police, fire and other emergency services, lawyers and judges, local authorities and other public bodies, social services etc

Content	Guidance
Occupiers' liability	
<input type="checkbox"/> Liability in respect of lawful visitors (Occupiers' Liability Act 1957) <input type="checkbox"/> Liability in respect of trespassers (Occupiers' Liability Act 1984)	<input checked="" type="checkbox"/> definition of a lawful visitor <input checked="" type="checkbox"/> the duty owed to a lawful visitor and when that duty is breached <input checked="" type="checkbox"/> defences <input checked="" type="checkbox"/> definition of a trespasser <input checked="" type="checkbox"/> the duty owed to a trespasser and when that duty is breached <input checked="" type="checkbox"/> defences
Torts connected to land	
<input type="checkbox"/> Private nuisance <input type="checkbox"/> <i>Rylands v Fletcher</i>	<input checked="" type="checkbox"/> basic elements of private nuisance, who can claim, what amounts to a nuisance, what amounts to an unreasonable interference, who may be sued, defences, remedies <input checked="" type="checkbox"/> define the tort in <i>Rylands v Fletcher</i> , requirements to bring a claim, defences
Vicarious liability	
<input type="checkbox"/> Nature and purpose of vicarious liability <input type="checkbox"/> Liability for employees, including traditional tests of employment status, 'akin to employment' tests, liability for torts committed in or not in the course of employment <input type="checkbox"/> Liability for torts 'closely connected' to employment	<input checked="" type="checkbox"/> the Salmond test for imposing liability in relation to unintentional torts <input checked="" type="checkbox"/> the basic tests for establishing that the tortfeasor is an employee <input checked="" type="checkbox"/> whether the tort has occurred in/within or not in/outwith the course of employment <input checked="" type="checkbox"/> new approaches when dealing with tortfeasors who do not fit in the classic employer-employee relationship
Defences	
<input type="checkbox"/> Contributory negligence <input type="checkbox"/> <i>Volenti non fit injuria</i> <input type="checkbox"/> Defences specific to claims connected to private nuisance and <i>Rylands v Fletcher</i>	<input checked="" type="checkbox"/> contributory negligence and <i>volenti non fit injuria</i> : what it is and how it operates <input checked="" type="checkbox"/> private nuisance: defences available and not available <input checked="" type="checkbox"/> <i>Rylands v Fletcher</i> : defences available
Remedies	
<input type="checkbox"/> Compensatory damages <input type="checkbox"/> Mitigation of loss <input type="checkbox"/> Injunctions	<input checked="" type="checkbox"/> the basis of damages <input checked="" type="checkbox"/> the basic concept of mitigation <input checked="" type="checkbox"/> the basic concept of an injunction

Content	Guidance
Evaluation	
<input type="checkbox"/> Critical evaluation of: <ul style="list-style-type: none"> • liability in negligence • occupiers' liability • vicarious liability 	Common frameworks include: <ul style="list-style-type: none"> ✓ advantages and disadvantages ✓ the fairness or unfairness of a particular area ✓ the balancing of competing interests ✓ the extent to which any tort achieves one or more of the aims of tort law (or indeed their own aims) ✓ comparing and contrasting two similar torts

Section B: Human rights law

This section focuses on human rights, including their nature, protection and constitutional position under UK law. Specific rights are explored in detail as are the restrictions upon them and the process of enforcement through the courts. Learners will

develop knowledge and understanding of human rights law, the skills to apply their legal knowledge to scenario-based situations and gain a critical awareness of the present state of human rights law.

Content	Guidance
Rules and theory	
<ul style="list-style-type: none"> <input type="checkbox"/> An outline of the rules of human rights law <input type="checkbox"/> An overview of the theory of human rights law 	<ul style="list-style-type: none"> ✓ features and underpinning principles of human rights law: universality, interdependence, inalienable and indivisible rights, dignity, pluralism ✓ constitutional theories which underpin human rights law: rule of law, democracy, separation of powers ✓ approaches to interpretation including balancing of rights, proportionality, margin of appreciation
Protection of the individual's human rights and freedoms in the UK	
<ul style="list-style-type: none"> <input type="checkbox"/> The history of the European Convention on Human Rights and the European Court of Human Rights <input type="checkbox"/> The impact of the Human Rights Act 1998 <input type="checkbox"/> The entrenched nature of the Human Rights Act 1998 in the devolution settlements of Scotland, Wales and Northern Ireland 	<ul style="list-style-type: none"> ✓ contextual background of the Second World War for the creation of the ECHR ✓ understand the relationship between the ECtHR, the Convention and the Council of Europe ✓ the provisions in the main sections within the Human Rights Act and the impact they have on domestic law ✓ understanding that the devolution settlements contained guarantees that human rights would be respected
Key provisions of the European Convention on Human Rights	
<ul style="list-style-type: none"> <input type="checkbox"/> Article 5: the right to liberty and security <input type="checkbox"/> Article 6: the right to a fair trial <input type="checkbox"/> Article 8: the right to respect for family and private life <input type="checkbox"/> Article 10: the right to freedom of expression <input type="checkbox"/> Article 11: freedom of assembly <input type="checkbox"/> Restrictions permitted by the European Convention on Human Rights 	<ul style="list-style-type: none"> ✓ definitions of key terms within the articles ✓ understand that the restrictions consist of a combination of limitations within the articles of the ECHR and within domestic law in statute and common law

Content	Guidance
Human rights and English law	
<input type="checkbox"/> Public order offences <input type="checkbox"/> Police powers <input type="checkbox"/> Interception of communications <input type="checkbox"/> Duty of confidentiality <input type="checkbox"/> Obscenity <input type="checkbox"/> Torts of defamation and trespass <input type="checkbox"/> Harassment	<input checked="" type="checkbox"/> public order offences in relation to restricting Articles 10 and 11: breach of the peace, criminal offences under the Public Order Act 1986 of riot, violent disorder and affray, illegal forms of assembly <input checked="" type="checkbox"/> police powers in relation to Articles 5 and 6 to stop and search, arrest and detain under the Police and Criminal Evidence Act 1984, including the rights of the individual <input checked="" type="checkbox"/> interception of communications in relation to restricting Article 8 including acquisition of data and surveillance under Regulation of Investigatory Powers Act 2000, and general privacy protections and lawful interceptions under Investigatory Powers Act 2016 <input checked="" type="checkbox"/> duty of confidentiality in relation to rights under Articles 8 and 10 <input checked="" type="checkbox"/> obscenity in relation to restricting Article 10 <input checked="" type="checkbox"/> torts of defamation in relation to restricting Article 10 and trespass to land in relation to restricting Article 11 <input checked="" type="checkbox"/> harassment in relation to restricting Article 10
Enforcement of human rights law	
<input type="checkbox"/> Role of domestic courts <input type="checkbox"/> The process of judicial review <input type="checkbox"/> The role of the European Court of Human Rights	<input checked="" type="checkbox"/> role of domestic courts in interpreting and applying human rights <input checked="" type="checkbox"/> the mechanisms within the domestic courts for enforcing human rights pre and post 2000 <input checked="" type="checkbox"/> the process of enforcing human rights through judicial review <input checked="" type="checkbox"/> the procedure for bringing a case before the ECtHR, including the criteria for admission of a case; the guiding principles of the ECtHR
Evaluation	
<input type="checkbox"/> Critical evaluation of human rights protection in the UK: <ul style="list-style-type: none"> • Articles 5, 6, 8, 10 and 11 of the European Convention on Human Rights • the Human Rights Act 1998 • ideas for reform 	<input checked="" type="checkbox"/> the protections and restrictions offered by the ECHR and English law <input checked="" type="checkbox"/> criticisms of the Human Rights Act 1998 <input checked="" type="checkbox"/> idea of a UK Bill of Rights

