

## **KEBLE COLLEGE LAW STUDENT SURVIVAL KIT\***

[This guide should be read in conjunction with the 'Law Induction Course' which will be provided by the Law Faculty]

### **General Considerations**

This guide is intended to assist you through your Law degree by giving you some introductory advice on study skills and the conduct of relations with tutors. We will provide further advice when you get here, but you should also keep this guidance to refer to throughout your time at Oxford. It is true that different students will have different ways of studying, and prescriptions can be constraining. That said, what follows represents techniques which previous generations of students (often by painful trial and error) have, in our experience, found effective. Some of what we say may appear rather obvious, but what is obvious to some students is not necessarily obvious to all.

The majority of you are aspiring professionals who at the end of your degree courses will go into careers requiring high levels of commitment, efficiency and personal organisation. It is fitting that these same professional standards should apply during your time at Oxford, and it is by these standards that you will be judged.

### **Reading Lists**

One of the most intimidating aspects of learning at Oxford, initially, is the reading list. Your tutor should give you some guidance as to the order of priority to be observed among items, whether they are cases, statutes, articles, or chapters from textbooks (common forms of this guidance are the use of an asterisk or bolding to indicate items of the greatest significance). A sample extract from a reading list is provided in the Appendix.

### **Reading and Taking Notes**

Your reading should always be active. It is perfectly possible to spend long hours in the library but to make zero intellectual progress. This happens when you read passively; in other words without a set of questions in your mind. To generate a set of questions (if they have not already been provided by the tutor) think about the assignment you have been set; think about how the case you are reading relates to others that you have read; think about definitional and conceptual issues; think about other essays you have covered in related areas.

Effective note-taking depends to a considerable extent on how you read. Following the advice given below may seem time-consuming at first, but rest assured that experience has shown it to be the most effective and economical method.

The worst form of note-taking is that where the student sits in the library with one finger in the page s/he is reading, while his/her other hand faithfully replicates the contents of the page. You need to learn how to summarise only the most important points. Note down questions as you read: is the case you are reading inconsistent with another case or something said elsewhere? Can you see strange results or effects that the decision might have?

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\*With thanks to Dr. Ian Archer, upon whose original this guide is based.

Contrary to popular belief, photocopying or downloading is not the same as reading. You must get into the habit of reading and taking effective notes;. If you do take copies of articles, or download them, then at least make notes in the margin, or condense the article to one side of an A4 page; otherwise when you come back to read it again, it will be like reading it for the first time.

Make sure that your notes, reading lists, and essays are kept in well organised files, or folders (if you store them only in electronic form).

It is important that you realise that different types of text require different types of reading:

### ***Textbooks***

Ideally, you should read the relevant chapter(s) from textbooks first, and reasonably quickly, to get an overview of the week's work, without taking any notes or taking only brief notes. This will give you an idea as to the relative significance of the cases and statutory materials on the list. If you have time, read the textbook again, after you have read the other items on the list.

### ***Articles***

There are usually hundreds of articles on every topic. If a tutor has put one on the reading list, it is because s/he thinks it is important and you should, therefore, read it. Articles can, sometimes, tend to labour their point and you should seek to cultivate the skill of skim-reading. Look out for the framework of the argument, and don't allow yourself to be swamped by detail.

### ***Cases***

Case reports are the lifeblood of the law and, consequently, the mainstay of most areas. Even if an area is largely based on statutes (e.g. Land Law), cases will be relevant to the interpretation of the relevant sections of the statutes. You will need to acquire the skill of reading case reports reasonably quickly and taking effective notes. To begin with, however, this will be a relatively slow process and you simply have to persevere.

### ***Case notes***

These are, effectively, short articles which comment on a particular case, rather than a particular topic. They will often appear in parentheses after the citation of the case. You may find them very useful to read before you read the case, because they will tell you what is important about the case in more detail than a textbook.

### ***Statutes***

Statutes are usually dull things to read, because they are simply rules. They only come to life, as it were, when they are applied to cases and the judges have to interpret their true intention and meaning.

For example, the basic definition of theft in the Theft Act 1968 section 1(1) is:

‘A person is guilty of theft if he dishonestly appropriates property belonging to another with the intention of permanently depriving the other of it...’

This short definition spawned hundreds of cases on the meaning of ‘dishonestly’, ‘appropriates’, ‘property’, ‘belonging to another’ and ‘intention permanently to deprive’. Many of them are now reflected in the definitions given to these concepts in the 1968 Act itself, but there is still room even for their interpretation

Nevertheless, you **should not ignore references to statutes on the reading list**. You must always start with the basic rule laid down in the statute, as must the courts. In some subjects, tutors will recommend that you buy a collection of relevant statutes.

### **Use of libraries**

Students are inclined to complain that they have been unable to get hold of books. Sometimes this is for valid reasons (books do, annoyingly, go missing and there may be a certain amount of pressure of use), but sometimes it reflects laziness or poor organisation. Remember that in Oxford you are extraordinarily privileged as compared with students in other universities, who only have one source of books; you have, at least, three.

Your first point of call is the College Library. Keble has a very good Law section containing most major series of Law Reports and Periodicals. It is less strong in its holdings of textbooks, though it is improving. Because it is essential to maintain access to these materials, everything in the Law section is for reference only (there is no borrowing and any illegal borrowing will be punished for the selfish act that it is: the library is also monitored by cameras and security sensors). The Law section is not big enough to accommodate all Law students at the same time. Many of you will prefer to work in the University library (the Bodleian Law Library – ‘the Bod’), but those who decide to stay in the College Library must be prepared to share it with your colleagues. **DO NOT:** (i) stockpile books at your desk - you can only read one report at a time and it is very annoying if a book is not on the shelf, yet is not actually being read by somebody else; (ii) leave your files, books etc at the desks in the library if you are not planning to return for a long time - contrary to popular belief, you cannot make a proprietary claim to these seats; (iii) talk in the library (iv) deface the books in any shape or form (this will be severely punished). **DO:** (i) return books to the shelves after use - the librarian is a librarian and not a shelver and, curiously enough, the index system works better when books are at their allotted place on the shelves, rather than randomly scattered about the reading desks.

You will be given a tour of the Bod. There is no book which you will need during your three years as an undergraduate which the Bod does not hold - the excuse that the College Library did not have a particular book will, therefore, get you about as far as you might imagine. The Bod is a reference only library. Since the Bod also contains the lecture theatres for Law, you will find that you need to use it between lectures, even if your normal work-base is the College Library.

Finally, if you want the real ‘Oxford experience’ you might consider working in the Codrington library in All Souls College. Its one drawback is that it is so warm and quiet that you are more likely to fall asleep than to work. If you wish to use it, you will have to fill in an application form - they can be collected from All Souls.

Increasingly, students do not work in a library at all; they work in their rooms at their computer screen such is the widespread availability of resources on-line.

## Essays & Problems

Your knowledge and understanding of the Law will be tested in two ways - by the writing of essays and the solving of problems. The two disciplines are quite different. Essays require you to analyse critically a particular area of the law and, often, consider what the law ought to be as well as what it is. Problems simply require you to apply the law *as it is* to a hypothetical set of facts. The discipline with which you will struggle to begin with is the unfamiliar test of problem solving.

### Essays

#### *Essay Planning*

Planning is essential and you should ensure that you leave enough time to do it properly. It is, in fact, something you should have been doing throughout the week's work. Some students are paralysed at the point when they come to write the essay, often because they have not been thinking about the demands of the question while researching the assignment. It is a good idea to keep a sheet of paper (or its electronic equivalent) separate from the main body of your notes on which you should record thoughts and ideas relevant to the essay title as they occur to you in the course of your reading. These jottings do not need to be elaborate, but making them will assist you in shaping an essay.

#### *Essay Writing*

Essays in law subscribe to the same basic pattern as for any other type of essay. Your guiding principle here should be clarity. Much of what is said below relates to making your logic explicit and providing signposts to your argument.

**Introductions** have a number of functions. They can be used to **identify** the issues which the question raises. Where opinion on an issue is divided - and it usually is - the introduction also provides an opportunity to **evaluate** the arguments, albeit in a preliminary fashion. This evaluation should help you to **signpost** your own approach; in other words, to establish an analytical strategy. The type of strategy you adopt will depend on the kind of question you are asked but it often helps to break the question down into a series of sub-questions, each of which can be addressed in a separate paragraph.

Your essay should be clearly organised into paragraphs. Each paragraph should have an argument that is related to the main question; if it does not, it should be eliminated.

Some students have difficulty linking their paragraphs. One strategy is to give a brief summary of the argument so far, pulling the strands together, and indicating the thus far unanswered questions. Another is by providing a numbered sequence of points, e.g. 'There are three reasons for this...' then list them in summary form...then devote a paragraph to each. Numbered sequences can also be used to organise materials within paragraphs.

Another common source of difficulty lies in the use of evidence, which, in legal terms, means cases and statutes (and not the opinions of writers). Academic writing can certainly be called upon in support of your argument but even the opinions of writers must be based on evidence. When writing an essay do not fall into the trap of identifying which area of the law the question relates to and turning it into 'everything I know about...' in which you provide summaries of the cases you have just read but no real argument. The evidence should be made to fit the argument you have constructed *before* you put pen to paper.

Your essay should be concise (remember you will only have 45 minutes to produce an essay in the examination). Some tutors will insist that you do not produce more in your essay than you are capable of writing in the 45 minutes you would have to answer the question in an exam.

If your tutor has marked an essay, always read his/her comments, and try to act on advice given. If you cannot read the comments, ask for them to be deciphered.

### ***Common errors to avoid in writing essays***

#### **Error 1: Summarising the law**

Your tutors and examiners are primarily interested in your understanding of the law and capacity for critical analysis. They are not interested in a bald summary of the law.

#### **Error 2: Including irrelevant material in your essay**

It is obvious that your essays should address the question. However, it is extremely common to encounter essays which have little or no connection to the question. You should continuously ask yourself whether each and every sentence in your essay is material to the question.

#### **Error 3: Failing to support controversial propositions or propositions that are not self-evidently true with authority**

You should cite authority when doing so is useful, that is, when it adds something to your essay. There is no need to give authority in support of propositions that are common knowledge. For instance, there is no need to support the statement that murder is a criminal offence with authority.

#### **Error 4: Making bald assertions**

Such assertions will not earn you any marks. Your claims must be supported by reasons.

### **Problems**

Problems are quite different from essays. Whereas with essays you are asked to state what the law is and then provide some form of assessment of its merits, problem questions require you to state what the law is, or how it might be interpreted, by applying it to a given set of facts.

Problem questions usually consist of a set of hypothetical facts in relation to which you are asked either to advise certain of the parties or discuss what offences may have been committed or liability incurred. The facts are usually quite improbable in that they will raise several legal issues whereas, in reality, cases usually boil down to one or two issues at most.

The skill in answering problem questions is to spot the legal issues to which the facts give rise and then indicate how a court is likely to resolve them on the basis of the existing law. Needless to say, problem questions cannot be answered without a clear understanding of the relevant areas of law. If you add to this the fact that problem questions can cut across several different topics on a particular paper, whereas essays tend to be fairly one dimensional, you can begin to see why problems are viewed by many tutors as the best way of assessing whether a student has a real understanding for the law. There is no way of acquiring the skill of answer problems questions well other than through practice. Some tutors will give problem-question classes. You should obtain copies of past examination papers for each subject you take and look closely at the type of problems you are likely to come up against.

When answering problems, you have to adopt a well-structured approach: use headings and paragraphs to divide up your answer into the separate issues and sub-issues which are raised by the facts. How you do this will vary with the type of paper but your tutor should, in most cases, give you guidance.

### **Style**

When writing essays or answering problems in exams, it is helpful to underline the names of cases. You do not need to cite the case in full; a reasonably identifiable abbreviation will do, e.g. *R v Home Secretary ex parte Bentley* can be cited as *ex p. Bentley* or *Entick v Carrington* as *Entick*. You do not need to use a ruler or otherwise be too precise when underlining; a freehand stroke will be fine.

Some abbreviations are entirely acceptable: J. for Mr. Justice, LJ for Lord Justice. Others can be used if you indicate what they are on the first occasion they are used: e.g. Sale of Goods Act (SGA). You will pick up common abbreviations very quickly.

You do not need to cite the reference for cases or the year, though if chronology is important (because one case has overruled/distinguished another) you should ensure that you get cases in the right order.

### **Plagiarism**

The University takes plagiarism very seriously. It is important that you do not plagiarise the work of others. You must not copy the work of commentators or other students and pass it off as if it were your own. Keep the following in mind when writing, which will help you to avoid committing plagiarism:

- Writing an answer to an essay or a problem question requires you not to merely give information, but to take a step back and to think critically about what you have read. It is an opportunity for you to develop your own ideas.
- You are encouraged to use the work of others in developing your arguments. However, when you rely on another person's work you must acknowledge that reliance.

### **The Skills of a Lawyer**

We are often asked what makes a good lawyer. It is not an easy question to answer but we think four qualities are paramount: (i) the ability to differentiate the relevant from the irrelevant: e.g. in a set of new facts, which of them really contain any form of legal issue; (ii) the ability to make very often fine distinctions between sets of facts: e.g. in all areas of law you will find a dividing line between liability and no-liability, between guilt and innocence. Needless to say the difficult cases (and those for which a lawyer might be consulted) fall close to this dividing line and you have to be able to say on which side they should fall; (iii) common sense; and (iv) a sense of justice. Despite the better efforts of one or two judges, law is still based fundamentally on common sense, logic and good judgement – don't forget this when you become embroiled, as you will, in the labyrinthine technicalities which infest certain areas of the law.

### **Tutorials**

The tutorial should be a mutual exploration of a topic. *It is not a one-way transaction*; you are not here to be spoon-fed. If you are not already aware of the fact, it should be apparent from the minimal contact time

which tutorials provide that you are here, very largely, to teach yourself. You have left school behind; dependency is out and independence is in.

You should expect your tutor to provide some feedback on the content and structuring of your essay, but you should not let the initiative lie always with him/her. You should always go into the tutorial with an agenda of problems you feel need discussing. If you feel a little intimidated by the set up - and some of you may do at first - then write down the things you want to discuss before you go in. You should pay careful attention to the issues the tutor raises with you and the range of alternative approaches s/he suggests. By all means take notes during the tutorial, but not at the expense of your own intellectual engagement. If you do not take notes during the tutorial, then write down what you have learned immediately the tutorial is over. Make sure that your notes are clear - it is a very good habit to acquire to write up in full those few scribbles you have made in the tutorial; very quickly they will become meaningless and tutors get irritated when they find themselves going over, in revision, stuff which they know they have laboured in tutorials.

Always listen patiently to what your tutorial partner(s) say, and be prepared to comment on their arguments. Don't always wait on your tutor's judgement. Never dismiss another person's point of view without arguing a case, and avoid posturing.

### **Classes**

Tutorials may be supplemented by, and in some cases, replaced by classes where you will usually meet as a year group. Classes are often used to consider a problem question, but may also be used to cover essential issues in the week in a way which avoids repetition in several tutorials. The dynamic is the same as for a tutorial.

### **Lectures**

Lectures are voluntary but are, nonetheless, an essential component of your course work. Some of you will go to fewer lectures than others, simply because some will find that it is more effective to spend more time reading materials themselves than have them distilled by somebody else, but all of you should attend a certain number. Many of the lecturers at Oxford can put you in touch with up-to-date research and materials while others will be able to provide you with a broad interpretative framework, filling in the gaps between what can be the isolated pools of knowledge provided by tutorials. Some are genuinely entertaining. You should take your tutor's advice as to good lectures and lecturers, and you should shop around for a bit in the first week for what is stimulating and informative. Occasionally your tutors will tell you that certain lectures are essential. If you miss those lectures it will be at your peril.

During the first two terms leading to Moderations, you will find lectures closely tailored to the demands of the papers for which you are working. Thereafter, it is a weakness of the Oxford system that lectures and tutorials do not often run in tandem; you have to be willing and able to attend lectures for some papers, before or after you have studied them in tutorials, though this is no bad thing in many ways.

It is difficult to give advice on techniques for taking notes in lectures because the style of individual lecturers varies. However, much the same principles apply as for taking notes from books and articles. Always leave ample space between your notes in case you wish to amplify them after the lecture. Some lecturers will provide handouts but very often these will just be a list of references to the material contained in the lectures.

## **Revision**

This course is not simply about passing examinations with the highest possible grades, but this is an important objective and one which will exercise your mind the closer you get to examinations. For every paper, always look at past papers to get an idea of the type of questions asked. This will also assist you in identifying gaps in your knowledge, which you may then rectify. It is often helpful to re-read some of the key texts on any given topic, because they may make more sense than they did on the occasion of your first reading. Once this has been done, you should work by means of detailed essay plans and practising problems, tackling questions of a different kind from those you did for tutorial assignments. Be warned that the worst thing you can do in any examination is to fail to answer the question; you will never get more than a lower second class mark, and you run the strong chance of a third. This is why you must gain experience in turning your mind to new questions.

## **Oxford Marking Scheme**

The Oxford marking scheme is as follows:

<u>Grade</u>	<u>Class</u>	<u>Approximate percentage of the year group in final degree</u>
70 +	First	15-20%
60-69	Upper Second	70-75%
50-59	Lower Second	5-10%
40-49	Third	0-2%
30-39	Pass in Finals/Fail in Moderations	0-1%
0-29	Fail	0-0.5%

These figures refer to marks for a whole paper, which may be made up of three or four questions. When you are set individual questions for tutorials, your tutor may use this scale, or may reflect the fact that it is just one question which is being set (e.g. for a four question paper he or she may award a mark out of 25).

You will notice that there are a large number of students that fall within the Upper Second range of degrees. This is why a First class degree is highly prized. It is an extremely easy way for employers to differentiate Oxford students. For instance, a First is now almost a pre-requisite for a pupillage at the Commercial Bar and it is usually a requirement for any student that wishes to do an additional year to complete a BCL (the Master's degree in law at Oxford which is the best regarded master's degree in the world and a highly sought after qualification). Oxford can be very intimidating and very few people arrive in Oxford believing that they are capable of a first class degree. You should all dispel these ideas from your mind. You have been selected for Keble because we believe that you are capable of taking a first class degree. If you decide to commit yourself to working hard (although it is, of course, important that you enjoy yourself as well) then, with the guidance of your tutors you will be capable of a first class degree.

## **Monitoring Progress**

Students often complain that they do not know where they stand. There are a number of mechanisms for feedback. Sometimes tutors do not use them properly, and students have cause for complaint. But remember that any act of communication involves two parties, and if the mechanism has broken down, it may be because you have done little to activate it. Your tutor should provide feedback on essays in tutorials. If s/he does not, ask. If s/he still lets you down, speak with the Director of Studies (currently Professor Peel (unless of course he is the problem) and/or the Senior Tutor.

## **End-of-Term Reports**

At the end of each term you will have a report on the term's work in front of your tutors. Note that this is a level of feedback greater than that provided in other institutions of higher education - please bear this in mind when you think you may have been short-changed in any way.

## **College examinations (Collections)**

Your tutor will also set you college examinations (collections) at the start of each term, usually on the previous term's completed papers, and you should get an indication of the level of your performance with suggestions for improvement. College examinations are treated seriously at Keble. They provide you with an opportunity to get experience in writing to time and to revise as you go along. Students whose academic progress is unsatisfactory or who perform badly in start of term college examinations may, with the approval of the Governing Body, be set penal collections, failure to achieve the specified grade in which will lead to their being sent down (expelled) (please consult the section on Academic Discipline in the College Handbook). Remember also that if you are in receipt of public funds, the College is expected to confirm to the Local Education Authority at the end of each academic year that you have made satisfactory progress.

## **What is your tutor looking for?**

*Initiative:* How hard have you tried in seeking out materials? E.g. if a case is not available in one series of reports, have you tried to find it in another?

*Intellectual curiosity:* Have you asked intelligent questions in tutorials?

*Argumentative flair:* Have you structured your essays well? Have you shown an interest in conceptual issues?

*Fluency:* What is the standard of your written English? How wide is your vocabulary?

*Responsiveness:* Have you made an effort to implement any advice your tutor may have given to you? Do you make an effort in tutorials? Do you engage with the work of your tutorial partners?

*Originality:* Have you made a real effort to engage with the contents of what you have read? have you thought critically about the arguments of the judges and writers?

*Professionalism:* Have you been punctual for meetings? Have you responded promptly to tutors' request for information? Have you respected the many additional calls on your tutors' time?

*Efficiency:* How well have you managed the balance between academic and other commitments? Have your assignments been completed on time?

*Team-work:* Have you contributed constructively in seminars? Have you managed to avoid the expression of personal animosities in your academic dealings with your peers?

This may seem like a tall order, but these are precisely the range of qualities on which we are regularly required to comment to employers. Please do not expect us to perjure ourselves in writing references for you.

## **Balance between academic and other commitments**

The first call on your time must be your work, but it would be an occasion for great sadness if that was all you did in your three years at Oxford. You are encouraged to engage in other activities (sport, drama, music, College and University Societies). The flexibility of your timetable is one of the chief advantages of a course like Law. But you must learn to organise your timetable so that your work does not suffer. Some hints on time management are offered below. But one important point to be emphasised is that

before undertaking any particularly time-consuming activity (e.g. holding a College or University Office) you should discuss the matter with your tutor. You should avoid such commitments in your final year.

### **Time management**

In many ways this is the biggest challenge of your time at Oxford. For much of your previous academic career you have been bound by timetables imposed by external agencies. It is also worth emphasising that most future careers will also impose demanding schedules. While at Oxford, however, you are given a considerable degree of freedom to manage your own time.

- (i) The most important point is to make sure that you work steadily. Do not leave your work until the last minute, but allocate a set number of hours each day to your work.
- (ii) One source of problems is the cycle whereby students do one set of assignments weekly and another concurrent set of assignments fortnightly. This means that in some weeks one essay has to be completed; in others two. It is tempting to take things easier in the 'lighter' weeks, but this is foolish as it piles up work for the following week. Create a timetable for each week which allocates time for both assignments.
- (iii) Some students know that because of major extracurricular commitments they will be extremely pressed in particular terms. If this is the case, then they should discuss the matter in advance with the tutor. In these cases a sensible course of action is to build up an essay bank during the vacation preceding the term in question (i.e. prepare a number of essays beforehand).
- (iv) Another common fallacy is that while you have to work for Mods in the first year, you can take things easy in the second year and turn things on in the third year. This is the single biggest cause of underachievement at Oxford. The standards expected of candidates in Finals are higher than those in Mods. Students who switch off in the second year are unlikely to realise their full potential.
- (v) Your vacations are not simply a holiday - achieve an appropriate balance between work and other activities - paid work, work experience, travel etc.
- (vi) Keep your financial affairs in good order, because disentangling them will take up a lot of your time; settle your bills promptly; ensure that you have the funds to meet your obligations; and apply for grants and loans at the start of the year. Failure in this area is rarely balanced by academic success.

### **Welfare**

If you have a personal problem, you may discuss it with your tutor. You may, understandably, not wish to discuss it with him/her, and there are a number of other channels of advice. You should have been assigned a Personal Tutor to whom you can turn in cases of difficulty. You may also approach the Warden, College Doctor, College Nurse, and the Chaplain, who will all respect confidences. Sometimes you may find it helpful talking things over with the JCR Welfare Officers who may be able to advise you on the best course of action. But note that if your problem has academic implications, it is best raised with your tutors in addition to any of the above channels.

### **Enjoying the Course**

Oxford can be an incredibly vibrant and stimulating intellectual and cultural environment. How far you benefit from this will be the real test of the next three years (or four years for those of your taking the Law with Law Studies in Europe course), because the fulfilment of your intellectual and cultural potential depends on the choices you make. Many of those choices are outlined above, but note the following tips to increase your enjoyment.

- (i) Be prepared to talk about legal topics with your peers. Law is a dynamic and high-profile subject upon which many non-Lawyers also have opinions.

- (ii) Seek out some of the special lectures, particularly those given by visiting academics. They will broaden your horizons.
- (iii) Keep up to date with recent developments in the Law generally.
- (iv) Take the opportunity to put your legal skills into practice - the University and the College (in Michaelmas term of year 2) hold mooted competitions.

**Finally...**

Please remember that the demands on your tutors are multiple. They are not merely undergraduate teachers, important though that is to their role. They have administrative duties in both the College and the University. They have responsibility for graduate students both in Keble and elsewhere and, most importantly, they are part of an international research community. This is not to discourage you from approaching them, but it is to encourage you to observe the guidelines outlined above. Remember that Oxford gives its students a unique level of access to its faculty members, and you should therefore respect the demands on their time by conducting your relations with them in a thoroughly professional and mature manner. In that way you will get the most from them.

## APPENDIX

### INTRODUCTORY READING

Below is a list of general sources of information about how to approach studying law which you may find helpful, but none of them are regarded as compulsory reading.

McBride: *Letters to a Law Student* (4<sup>th</sup> edn, London, Pearson, 2017)

Williams: *Learning the Law* (17<sup>th</sup> edn, London, Sweet and Maxwell, 2020)

S Strong *How to Write Law Essays and Exams* (5<sup>th</sup> edn, Oxford, Oxford University Press, 2018)

### AN EXTRACT FROM A READING LIST

#### Negligence as Fault - Breach of Duty

*Winfield* ch.6 [textbook]

Nolan 72 CLJ 651 [article]

**\*Bolton v Stone [1951] AC 850**

***The Wagon Mound (No.2) [1967] 1 AC 617, 640-644***

*Paris v Stepney Borough Council [1951] AC 367*

*Roe v Minister of Health [1954] 2 QB 66*

**\*Bolam v Friern Hospital Management Committee [1957] 1 WLR 582, 586-587**

***Nettleship v Weston [1971] 2 QB 691***

*Mullin v Richards [1998] 1 WLR 1304*

*Baker v Quantum Clothing Group [2011] UKSC 17; [2011] 1 WLR 1003, [15]-[26], [91]-[101]*

***Montgomery v Lanarkshire Health Board [2015] UKSC 11, [2015] AC 1430***

*Dunnage v Randall & UK Insurance Ltd [2015] EWCA Civ 673, [2016] QB 639, [131]*

Note the use of bolding and/or \* to indicate the priority materials

### A BRIEF OUTLINE OF THE LEGAL SYSTEM

#### A. Law-making bodies

1. The legislature
  - Acts of Parliament (also called statutes)
  - Delegated legislation (the main species is statutory instruments)
2. The courts
  - Do the courts really make law? If so, how do they make it? Should they have a law-making function?
  - Unlike the courts in some jurisdictions, the courts in England do not have the power to declare legislation invalid.

## B. Some fundamental distinctions

1. Common law *vs* statute law
  - Statute law displaces the common law to the extent of any inconsistency. Think about why this might be the case.
2. Civil law *vs* criminal law
  - Civil law is by far the larger body of law
  - Civil law consists mainly in tort law, contract law and the law of trusts
  - Civil proceedings are between *claimants* (*plaintiffs*) and *defendants*
  - Criminal proceedings are normally brought by or on behalf of the state. In cases that you are likely to read the Queen will usually represent the state. Such cases will be styled '*R v...*' or '*Regina v ...*' or '*Reg v ...*'. Criminal proceedings are brought against *defendants*.
3. Common law *vs* equity
  - the principles of equity are part of the common law in the sense that they are 'judge made'
  - however, we distinguish between rules developed by the common law courts and rules created by the Court of Chancery. The latter rules make up equity.
  - equity prevails over the common law
4. Trials *vs* appeals
  - a litigant is usually entitled to one appeal
  - in rare cases two or more appeals may be permitted
  - those who lodge appeals are called *appellants*. Their opponents are *respondents*.
  - in civil cases either party can appeal. Generally speaking, in criminal cases only the defendant can appeal on liability. Both the defendant and the Crown can appeal against a sentence.

## C. The court hierarchy

1. Trial Courts
  - Magistrates' Court (hears most criminal proceedings; trials for summary offences)
  - Crown Court (trials on indictable offences)
  - County Courts (hears most civil litigation)
  - High Court (hears expensive/complex civil litigation)
2. Intermediate Appeal Courts
  - Crown Court (hears appeals from the Magistrates' Courts)
  - Divisional Court (part of High Court) (hears appeals from Crown Court and County Courts)
  - Court of Appeal (hears appeals from High Court, Crown Court and County Courts)
3. Final Court of Appeal
  - Supreme Court
    - previously the Appellate Committee of the House of Lords
    - hears appeals from Court of Appeal and the High Court

- Also hears civil appeals from Scotland and Northern Ireland and criminal appeals from Northern Ireland

#### 4. Other Bodies

- Privy Council
  - Not technically part of the UK court hierarchy
  - hears appeals from certain courts in the Commonwealth

## PRECEDENT

### A. The basics

The courts distinguish between *ratio decidendi* (the reason for decision) and *obiter dicta* (observations not essential to the decision). Only the *ratio decidendi* of a case is binding. The principle that the *ratio* is binding is known as the doctrine of precedent (also known as the doctrine of *stare decisis* (let decided things stand)).

Why do we have a system of precedent?

- Stability
- Discoverability – note that judicial decisions change the law retrospectively (especially important for the purposes of the criminal law)
- Fairness – treat like cases alike

### B. Identifying the *ratio*

According to Sir Rupert Cross, the *ratio* of a case is any rule of law accepted by the judge as a necessary step in reaching his or her decision (*Precedent in English Law* (4<sup>th</sup> edn, 1991) 72).

A somewhat different definition was suggested by Glanville Williams. He said that the doctrine of precedent requires that cases which have *materially* identical facts be decided the same way (*Learning the Law* (13<sup>th</sup> edn, 2006) 92–93).

Decisions often have several *rationes decidendi*.

### C. Appellate courts

Majority vs minority (dissenting) opinions.

How do we work out which judges are in the majority?

What is the position where the majority judges give different reasons for their decisions?

### D. The judicial hierarchy

Generally speaking, the decisions of higher courts are binding on lower courts.

Courts are not technically bound by their own decisions but they will only depart from them if there are good reasons to do so.