

Chapter 1

Introduction to the nature of law (1)

After reading this chapter you should be able to:

- Understand the distinction between enforceable legal rules and principles and other rules and norms of behaviour
- Understand the connections between law, morality and justice
- Understand the differences between civil and criminal law

1.1 Law and rules

1.1.1 The character of a rule

In all societies there are rules for keeping order. These rules often develop from the 'norms of behaviour': that is, from the behaviour that the particular society has, over a long period of time, accepted as the 'correct' or 'normal' behaviour. Many of these norms of behaviour will be rules about morality.

Rules exist in many contexts. The term 'rule' has been defined by academics Twining and Miers as 'a general norm, mandating or guiding conduct'. In other words, a rule is something that determines the way in which we behave. This can be either because we submit ourselves to it voluntarily, as would be the case with moral rules, or because it is enforceable in some way, as would be the case with the law.

As well as legal rules and moral rules there are other types of rules which operate in specific contexts. A classic example of this is the rules that operate in sport. These rules started to define the sport, and have evolved over time to ensure fair play. In some instances a rule may have developed for the protection of the players. These rules will also be enforced through a set of sanctions.

For example, in football, a breach of the rules may mean that a free kick is given to the other side, or a player may be sent off. In serious cases or repeated breaches of rules a player may even be banned from playing for a certain number of games.

Rules that come about through custom or practice will involve the disapproval of the community rather than any legal sanction if such a rule is broken. Also the

individual may become conditioned to accept the rules and so such rules are enforced by a feeling of self-guilt. Some such rules may 'harden into rights' and can be so widely accepted that they become the law. The early common law of England and Wales developed out of customs that were commonly accepted.

Rules are generally obeyed for one of three reasons:

- 1 because they carry with them a sense of moral obligation
- 2 because the rule is reasonable and relevant
- 3 because a penalty may be imposed if the rule is broken.

1.1.2 Legal rules

Law has been described as a formal mechanism of social control. It is a set of rules imposed and enforced by the state. There is a system of courts which apply and enforce the law.

Legal rules are enforced through the courts. In criminal law there are penalties for breaking the law. The most severe penalty is imprisonment for life. In civil law the courts can order the party who has broken the rules to compensate the innocent party, or the courts can make some other order trying to put right the wrong that was done.

1.1.3 Law and rules

Law applies throughout a country to the people generally. There are other rules that apply only to certain groups or in limited situations, such as in sport as discussed above.

There are also unwritten 'rules' within communities. These come from local custom or practice, or they may be connected to religious

beliefs. They enforce what is regarded by the community as the norm for behaviour. If you break such rules, others in the community may disapprove of your behaviour, but there is no legal sanction to force you to comply or to punish you if you refuse to do so. Such normative values are often connected with sexual behaviour and the concept of morality. The relationship of law and morality is explored in the next section of this chapter.

1.1.4 Norms of behaviour

Norms are values, customs and traditions which represent individuals' basic knowledge of what others do and think that they should do. Norms exist as collective representations of acceptable group conduct as well as individual perceptions of particular group conduct. They evolve slowly through time.

Norms may be based on religious ideas: the Bible teachings provide a code for Christian communities and the teachings in the Koran for Muslims.

The law of a country will usually reflect the moral values accepted by the majority of the country, but the law is unlikely to be exactly the same as the common religious moral code. One example is adultery: this is against the moral code for both Christians and Muslims but is not considered a crime in Christian countries; however, in some Muslim countries (though not all) it is against the criminal law.

Law	Norms of behaviour
Can change instantly	Develop over time
Must be obeyed	Ought to be obeyed
Are enforced by the courts	Are enforced by disapproval of the community
Are obligatory and apply to everyone	Are voluntary and apply only to those who accept them

Figure 1.1 Differences between norms of behaviour and law

1.2 The connections between law, morality and justice

1.2.1 Law and morality

The moral values of communities lay down a framework for how people should behave. Concepts of morality differ from culture to culture, although most will outlaw extreme behaviour such as murder.

The moral standards of a community are recognised as having a profound influence on the development of law, but in complex societies, morality and law are never likely to be co-extensive. Major breaches of a moral code (such as murder and robbery) will also be against the law, but in other matters there may not be consensus.

In England and Wales there has been a move away from religious belief and the way that the law has developed reflects this. Abortion was legalised in 1967, yet many people still believe it is morally wrong. A limited form of euthanasia has been accepted as legal with the ruling in *Airedale NHS Trust v Bland* (1993), where it was ruled that medical staff could withdraw life-support systems from a patient who could breathe unaided, but who was in a persistent vegetative state. This ruling meant that they could withdraw the feeding tubes of the patient, despite the fact that this would inevitably cause him to die. Again, many groups believe that this is immoral as it denies the sanctity of human life.

Extension activity



In *Re A (conjoined twins)* (2000) the Court of Appeal had to decide whether doctors should operate to separate conjoined twins when it was certain that the operation would kill one twin as she could not exist without being linked to her twin.

- 1 Search on the internet for a report of this case. Try www.bailii.org and look under the England and Wales reports and search using the case citation (reference) of [2000] EWCA (Civ) 254.
- 2 Discuss:
 - a whether this sort of decision should be made by judges
 - b whether you think that, knowing one child would die, it was right for the operation to go ahead.

Right to die

This is another area where law and morality can be in conflict. In medical cases, doctors and nurses should act in the best interests of the patient. This may be in conflict with the patient's wishes. Where a patient is mentally capable of deciding what treatment they wish to receive, then the medical staff must act in line with those wishes. A good example of this conflict is the case of *Re B (Adult: Refusal of Medical Treatment)* (2002).

Key case**Re B (Adult: Refusal of Medical Treatment) (2002)**

Ms B was a 43-year-old woman, who was paralysed from the neck down. She needed a ventilator to breathe. There was no prospect of her recovering. She made numerous requests for her ventilator to be switched off, knowing that it would inevitably lead to her death. The doctors refused to do this, so she applied to the High Court for a declaration that she had the necessary capacity to refuse treatment and that her ventilator should be removed.

The court held that she was competent to decide on her medical treatment and that any continued treatment would be unlawful.

The judge in the case pointed out that the fact that a patient's wishes go against the medical team's values and their beliefs about what is in the patient's interests is not a valid justification for refusing the patient's request.

If the team in charge of the patient is unwilling to act on the patient's request, they must find someone who will.

Differences between law and morality

There are also differences between law and morality in the way the two develop and the sanctions imposed. The following is a suggested list of such differences.

- 1 Morality cannot be deliberately changed; it evolves slowly and changes according to the will of the people. Law can be altered deliberately by legislation: this means that behaviour which was against the law can be 'decriminalised' overnight. Equally, behaviour which was lawful can be declared unlawful.
- 2 Morality is voluntary with consequences, but generally carries no official sanction (though some religions may 'excommunicate'); morality relies for its effectiveness on the individual's sense of shame or guilt. Law makes certain behaviour obligatory with legal sanctions to enforce it.
- 3 Breaches of morality are not usually subject to formal adjudication; breaches of law will be ruled on by a formal legal system.

1.2.2 Law and justice

It is often said that the law provides justice, yet this is not always so. Justice is probably the ultimate goal

towards which the law should strive, but it is unlikely that law will ever produce 'justice' in every case.

First there is the problem of what is meant by 'justice'. The difficulty of defining justice was commented on by Lord Wright, a judge in the House of Lords in the mid-twentieth century, who said:

“ the guiding principle of a judge in deciding cases is to do justice; that is justice according to the law, but still justice. I have not found any satisfactory definition of justice ... what is just in a particular case is what appears just to the just man, in the same way as what is reasonable appears to be reasonable to the reasonable man. ”

In some situations people's concept of what is justice may not be the same. Justice can be seen as applying the rules in the same way to all people, but even this may lead to perceived injustices – indeed rigid application of rules may actually produce injustice.

This can be seen in the case of *London & North Eastern Railway Co. v Berriman* (1946).

Key case**London & North Eastern Railway Co. v Berriman (1946)**

Mr Berriman (V) was a railway worker who was killed while doing maintenance work, oiling points on a railway line. Regulations said that a look-out person should be provided for those working on the railway line 'for the purposes of relaying or repairing'.

Mrs Berriman claimed compensation for her husband's death, but her claim was rejected because he had not been 'relaying or repairing' the line.

This illustrates that following the exact wording of laws can lead to an injustice. It was correct that Berriman was not 'relaying or repairing', but most people would agree that applying the law in this way was not justice. You will come across this case again in Chapter 18 on statutory interpretation.

In the law of tort, an example of where many people thought that justice had not been done by the law were the cases which arose out of the Hillsborough Football Stadium disaster in 1989. Families of the victims tried to claim for psychiatric injuries they had suffered as a result of the death of their loved ones in the disaster. Judges in *Alcock v Chief Constable of South Yorkshire* (1992) rejected such claims on the basis of public policy.

1.2.3 Morality and justice

People's ideas of what justice is may be founded on their religious beliefs and the moral code they follow. In this way there is an overlap between morality and justice. However, many people with no religious views will still have a sense of justice. This may come from the law that operates in their country or it may come from a wide view of what is just.

From the sections above it is clear that the three concepts of law, morality and justice are quite distinct. There is, however, a large overlap between law and morality, law and justice and also between morality and justice. This idea of the overlapping of the three is illustrated in diagram form in Figure 1.2.

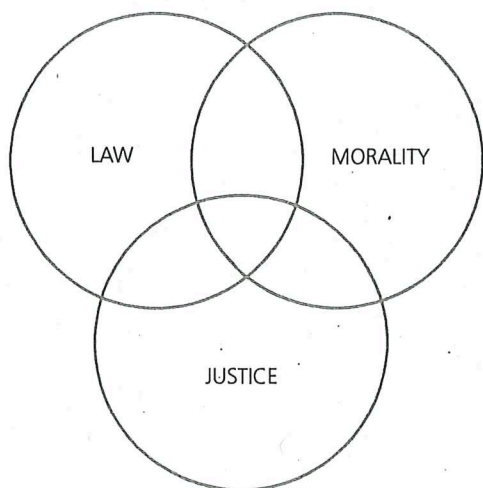


Figure 1.2 Diagram of the relationship of law, morality and justice

1.3 Civil law and criminal law

In the English legal system criminal and civil law are quite separate. The purpose of the law is different and the cases are dealt with in different courts.

1.3.1 Civil law

Civil law is about private disputes between individuals and/or businesses. There are several different types of civil law. Some important ones are:

- law of tort
- contract law
- human rights
- family law
- employment law
- company law.

If you are doing OCR AS Law you will study areas of the law of tort. These are covered in Chapters 22–25 of this book. If you are doing OCR A Level Law you will study both law of tort and law of contract or human rights. The further areas of the law of tort, criminal law and the areas of contract law and human rights that you need for A Level are covered in Book 2.

Law of tort

Consider the following situations:

- a A child passenger in a car is injured in a collision (the tort of negligence).
- b A family complains that their health is being affected by the noise and dust from a factory which has just been built near their house (the tort of nuisance).
- c A woman is injured by faulty machinery at work (the tort of negligence, but may also involve occupiers' liability and/or employer's duty under health and safety regulations).

All these cases come under the law of tort. A tort occurs where the civil law holds that, even though there is no contract between them, one person owes a legal responsibility of some kind to another person, and there has been a breach of that responsibility. If there is a breach of this responsibility, then the person affected can make a claim under the law of tort. If successful the court can award damages – that is, a sum of money to compensate the person.

Where there is a situation which is continuing (such as in (b) above), it is also possible for the court to award an injunction. This is an order to the defendant to do or to stop doing something.

There are many different types of tort, and the above examples demonstrate only some of them. Many cases arise from road traffic crashes, since drivers owe a duty of care to anyone who might be injured by their negligent driving.

Law of contract

Look at the following situations:

- a A family complains that their package holiday did not match what was promised by the tour operator and that they were put into a lower-grade hotel than the one they had paid for.
- b A woman has bought a new car and discovers the engine is faulty.
- c A man who bought a new car on hire purchase has failed to pay the instalments due to the hire-purchase company.

All these situations come under the law of contract. There are, of course, many other situations in which

contracts can be involved. A contract is where the parties have made an agreement and each side has put something into the agreement. In (a) the tour operator provided the holiday and the family paid for that holiday. In (b) a garage had sold the car to the woman and she had paid for it. In (c) the hire-purchase company had provided the money for the man to have the car, while the man promised to pay back that money in instalments to the company.

If one party to the contract has not kept their side of the bargain, then the other party can bring a claim against them.

Human rights law

Consider the following situations:

- A man is arrested and held in a police station for longer than the law allows.
- At the trial of a woman in the Crown Court, one of the jurors is a police officer. This officer knows (and has worked with) one of the police who gives important evidence in the case.
- The eight-year-old child of a well-known author is photographed by a journalist as he goes to school. The journalist does not have permission to take the child's photo. The photo is then published in a newspaper.

All these situations involve breaches of human rights. In (a) there is a breach of Article 5 of the European Convention on human rights – the right to liberty. In (b) there is a breach of Article 6(1) of the Convention – the right to a fair trial. In (c) there is a breach of Article 8 of the Convention – the right to respect for private life. These rights will be upheld in the English courts. There is also a right to take the case to the European Court of Human Rights.

Compensation can be awarded where there is a breach of human rights. It is also possible for other remedies to be given, such as an injunction to prevent the future publication of photographs.

1.3.2 Criminal law

Criminal law sets out the types of behaviour which are forbidden at risk of punishment. A person who commits a crime is said to have offended against the state, and so the state has the right to prosecute them. This is so even though there is often an individual victim of a crime as well. For example, if a defendant commits the crime of burglary by breaking into a house and stealing, the state prosecutes the defendant for that burglary. The criminal courts have the right to punish those who break the criminal law. So, at the end of the case where the defendant is found guilty,

that defendant will be sentenced. The courts have a wide range of sentences that they can use. These include sending the defendant to prison, making a community order or fining the defendant.

Any individual victim of the crime will not necessarily be given any compensation though, where possible, the courts will order the offender to pay the victim compensation, as well as passing a sentence on him or her.

1.3.3 Differences between civil and criminal law

There are many differences between civil cases and criminal cases. The newspaper articles below show some of these differences. There are other differences as well and it is important to understand fully the distinctions between civil and criminal cases.

Purpose of the law

Civil law upholds the rights of individuals and the courts can order compensation in an effort at putting the parties in the position they would have been in if there had not been any breach of the civil law.

Criminal law is aimed at trying to maintain law and order. So, when a person is found guilty of an offence, that offender will be punished. There are also the aims of trying to protect society and trying to deter criminal behaviour, and these are the justifications for sending offenders to prison.

Person starting the case

In civil cases the person starting the case is the individual or business which has suffered as a result of the breach of civil law.

Criminal cases are taken on behalf of the state, and so there is a Crown Prosecution Service responsible for conducting most cases. The person starting the case is given a different name in civil and criminal cases. In civil cases they are called the **claimant**, while in criminal cases they are referred to as the **prosecutor**.

Key terms

Claimant – the legal term for a person or organisation starting a civil claim in the courts.

Prosecutor – the legal term for the person or organisation bringing a criminal charge against a defendant.

Courts

The cases take place in different courts. In general, civil cases are heard in the High Court or the County Court.

The High Court deals with more serious cases while the County Court deals with cases of lower value. Family cases, however, take place in the Family Court.

In both the High Court and the County Court a judge will try the case.

Criminal cases will be tried in either the Magistrates' Courts or the Crown Court. The Magistrates' Courts deal with less serious offences and the case is tried by a panel of lay magistrates or by a single legally qualified District Judge. Serious offences are tried in the Crown Court. The case is tried by a judge sitting with a jury. The judge decides points of law and the jury decides the verdict of 'guilty' or 'not guilty'.

Standard of proof

Criminal cases must be proved 'beyond reasonable doubt'. This is a very high standard of proof, and is necessary since a conviction could result in the defendant serving a long prison sentence.

Civil cases have to be proved 'on the balance of probabilities'. This is a much lower standard of proof, where the judge decides who is most likely to be right. This difference in the standard of proof means that it is possible for a defendant who has been acquitted in a criminal case to be found liable in a civil case based on the same facts. Such situations are rare, but have sometimes occurred.

Outcome of case

A defendant in a civil case is found 'liable' or 'not liable'. A defendant in a criminal case is found 'guilty' or 'not guilty'. Another way of stating this in criminal cases is to say that the defendant is 'convicted' or 'acquitted'.

At the end of a criminal case a defendant found guilty of an offence may be punished. The courts

have various sentences available depending on the seriousness of the offence.

At the end of a civil case, anyone found liable will be ordered to put right the matter as far as possible. This is usually done by an award of money in compensation, known as damages, though the court can make other orders such as an injunction.

	Civil cases	Criminal cases
Purpose of the law	To uphold the rights of individuals	To maintain law and order: to protect society
Person starting the case	The individual whose rights have been affected	Usually the state through the Crown Prosecution Service
Legal name for that person	Claimant	Prosecutor
Courts hearing cases	County Court High Court	Magistrates' Court Crown Court
Standard of proof	The balance of probabilities	Beyond reasonable doubt
Person/s making the decision	Judge	Magistrates in Magistrates' Court A judge and jury in Crown Court
Decision	Liable or not liable	Guilty (convicted) or not guilty (acquitted)
Powers of the court	Usually an award of damages (compensation) Other remedies are also possible e.g. injunctions	Prison, community order, fine

Figure 1.3 Differences between criminal and civil cases

Activity



Read the newspaper article below and decide whether it is about a civil or a criminal case. Explain what specific points or words led to your decision.

Rip-off plumber danced jig of joy in OAP's garden after overcharging her £6,000

A rogue plumber was spotted dancing a jig outside a frail pensioner's house after he conned her out of nearly £8,000, a court heard.

Dodgy tradesman Russell Lane, 38, made no attempt to hide his joy after shamelessly ripping off Patricia Binks, 72, who had called for help after suffering a blocked drain.

But yesterday he was counting the cost of his dishonesty after the company he worked for was fined £15,000 in fines and costs.

Lane was also found guilty of fraud and is due to be sentenced in March. Bournemouth Crown Court heard Mrs Binks contacted Plumbers 24/7 Ltd after finding the number in Yellow Pages.

Lane, who was with a second unnamed man, produced paperwork he ordered Mrs Binks to sign. It had no prices on and the men told her that if she didn't sign they wouldn't be able to carry out the work.

The men worked on the drains for five hours – then handed Mrs Binks a bill for £7,800. They produced a →

card machine and ordered her to pay the full amount immediately.

... Officials called in an expert to examine the work who found Lane overcharged Mrs Binks by £6,000.

The jury agreed the price charged by Lane was so

significantly above a reasonable charge that the demand to pay that amount could only have been made dishonestly.

Source: Adapted from an article by David Pilditch, in the *Daily Express* online, 21 January 2016

Summary



- Law and rules
 - A rule is something that determines the way in which we behave.
 - Rules often develop from the 'norms of behaviour'.
 - Law is a formal mechanism of social control and legal rules are enforced by the state.
 - Norms of behaviour are enforced by the attitudes of the community and by personal guilt.
- Connections between law, morality and justice
 - Law of a country will usually reflect the moral values.
 - Major breaches of a moral code will also usually be against the law.
 - Justice is the ultimate goal towards which the law should strive.
- Rigid application of laws may actually produce injustice.
- People's ideas of what is justice may be founded in their religious beliefs.
- Civil and criminal law
 - Civil law governs private disputes between individuals and/or businesses.
 - Criminal law sets out the types of behaviour which are forbidden at risk of punishment.
 - Civil cases are heard in the County Court and the High Court.
 - Criminal cases are heard in the Magistrates' Court and the Crown Court.
 - The standard of proof for criminal cases is 'beyond reasonable doubt': the standard of proof for civil cases is the 'balance of probabilities'.