

EXTRACTS

Introduction to Law Course Civil & Criminal

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The SAS Introduction to Law Course

PART 1

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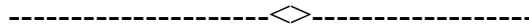
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The SAS Introduction to Law Course

Preface

The subject of Law is one that attracts and interests many. You may be a person who has even thought of studying law but felt that it is beyond your ability. This Introduction to Law course may be just what you need to help you decide.

Based on English Law this course will give you a taste of the academic requirements needed to study law as a full time subject. As a consequence you may realize that studying law is indeed well within your ability and something that you really want to do.



The SAS Introduction to Law Course

Introduction To Part 1

Having an understanding of law and the legal system can give you a great deal of general confidence. Despite the area of employment, it can also assist you to rise to a better position, and make it easier to receive more responsibility.

Quite a few who now work in non law related positions in both the public and private sector started off with a law degree; law is not just for lawyers.

As a consequence we have made part one of this short course 'An Introduction to General Principles & Procedure in English Law'. After completing part one you will receive Part two which is entitled 'An Introduction to Criminal and Civil Law'.

The SAS Introduction to Law Course

PART 1

How To Work Your Way Through Part 1

- 1/ Before attempting to answer any of the questions read through the whole material.
- 2/ Then answer each question as directed on the answer sheet.
- 3/ When you have finished send only the answer sheets back to us.

**An Introduction
To General Principles &
Procedure In English Law**

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1. THE ENGLISH LEGAL SYSTEM

1.1 **What is Law?**

Rules of conduct imposed by the State upon its members and enforced by courts.

Such rules are the law of the land, the object of which is to enforce certain standards of behaviour among citizens in the interests of peace and good order.

1.2 **Law can be divided into two main areas:**

1.21 **Public Law** - is that part of the law which governs relationships of citizens with the State and of one state with another, eg: Criminal law.

1.22 **Private Law** - is that part of the law of a country which governs relationships of citizens among themselves, eg: Law of Contract.

1.3 **English and Roman Law**

In most parts of Europe and in many other parts of the world, the main systems of law are as follows:

1.31 **English Common Law**

To the foreign observer, probably the most distinct characteristic of English Law is its antiquity and continuity. Most countries on the continent of Europe have a modern legal system which has emerged over the past 200 years or so.

English Law, on the other hand, has an unbroken history which can be followed right back to Ethelbert who was King of Kent from 560-616.

English Law has absorbed only a few rules of Roman Law and today is applied in most parts of the Commonwealth and the USA.

1.32 **Modern Roman Law**

Derived from the ancient laws of the Roman Empire, modernised and applied in France, Spain, Italy, South America and Quebec.

Scottish Law is Roman law based.

1.4 **The Accusatorial Procedure**

(Another distinct characteristic in English Law)

1.41 **The Adversarial Method** - In English law, the judge remains neutral throughout the procedure and hears the argument put forward by both sides in civil and criminal cases.

1.42 **The Inquisitorial Procedure** - In some foreign legal systems, it is for the court itself to adduce (present) evidence which will be heard and considered.

Whenever a case is tried by judge and jury, the judge decides on the "points of law" ie: admissible evidence that the jury is permitted to hear.

The jury decides on matters of fact presented to them in evidence. The jury must decide the case in terms of the law contained in the judge's direction.

1.5 **Sources of English Law** - principle sources are:

1.51 **Custom** - most legal systems have their origins in the ancient customs of a nation or tribe, eg: Roman Law or customs of Anglo-Saxons. Customs provided the basis on which original English Common Law was based. Custom is the oldest source of English Law.

1.52 **Legislation** - means enacted law which is the law laid down by a body constituted for the purpose, eg: British Parliament. Enacted laws of this kind are called "statutes" and may be direct or indirect.

1 Direct: laws enacted by the legislature itself, eg: Acts of Parliament.

2 Indirect: delegated legislation. Rules/laws that are laid down by a person who the legislature has delegated power to, to make such rules, eg: under an Act of Parliament, a governing Council could make legislation that will affect the running of a local government (Health and Safety Minister).

If that delegated Minister exceeds his powers, he will be dealt with by the courts by a procedure called Doctrine Ultra Vires (outside the powers).

3 In Britain today, Parliament is the supreme legislative body and can, therefore, enact any law it chooses and these are binding on all courts and all citizens.

Delegated legislation has become increasingly important in recent years as a source of new law for the following reasons:

1.524 **Lack of parliamentary time.** Parliament has insufficient time to debate in detail all the day-to-day management needs for efficient government.

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PART 1

33 Questions on GENERAL PRINCIPLES and PROCEDURES in ENGLISH LAW

Notes to students:-

First read through to get an overall view of the material.

Using the answers sheets for General Principles and Procedures answer the questions below. (When answering make sure you follow the guidelines on the answer sheets)

For True or False Questions state which page supports your answer. - Do not simply answer True or False.

Questions:

- 1/ True or False: English law is mainly based Roman Law. Explain.
- 2/ What position should a Judge take in the Accusatorial Procedure?
- 3/ What is the most outstanding characteristic of English Law?
- 4/ Who is the head of the Judicial system?
- 5/ True or False: Solicitors are officers of the court.
- 6/ True or False: Magistrate Courts only deal with Criminal matters. Explain.
- 7/ Which court/s will only hear appeal cases on points of Law only?
- 8/ What is a contract?
- 9/ What can invalidate a contract?
- 10/ Describe a situation where the parties to an agreement have no intention to be legally bound.

Answer Sheet Introduction To Law Part 1

Your Name

Your address

Your email address

Instructions on answering:- General Principles and Procedure In English Law

- 1/ State the Q number (Q = Question) e.g. 5 and the P number (P = Page) e.g. 32
- 2/ State Heading or Sub Heading e.g. Blackmail
- 3/ Give your answer (it should be as described on the page DO NOT use your own words. If the answer is too long just write the first few words and the last few words of the paragraph.)

To separate your answers underline before answering the next one.

| Q | P | Heading or Subheading | Your Answer |
|---|---|-----------------------|-------------|
|---|---|-----------------------|-------------|

Photocopy/Print more answer sheets as required



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Part Two of Two

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PART 2

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PART 2

How To Work Your Way Through Part 2

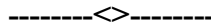
- 1/ Before attempting to answer any of the questions read through the whole material.
- 2/ Then answer each question as directed on the answer sheet.
- 3/ When you have finished send only the answer sheets back to us.

**An Introduction to
UK Criminal & Civil Law**

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INTRODUCTION TO UK CRIMINAL & CIVIL LAW

1.0 Basic Principles of Criminal and Civil Law & Litigation

Litigation, in our adversarial system, is often likened to a competition or game. We talk of winners and losers. Rules in relation to procedure and evidence proscribe and prescribe the steps that may be taken by competitors. The winner of the game is the contestant who achieves the goal. What the goal is, is determined by the application of the rules of evidence to the substantive law.

The winner is the party who succeeds in proving to the required standard that which he is required by the substantive law to prove. Most importantly the substantive law determines the elements in a cause of action, whether criminal or civil, and it is the proof of the elements that determines the success or failure of the case.

When a solicitor is first approached for advice, litigation may not be what the client wishes to engage in. The advice may be sought to prevent litigation, or to seek alternative methods of resolving a dispute. There may not even at that stage be a dispute. If the matter is a criminal case however the decision as to whether litigation is commenced may not be for the client. His concern may be to seek advice, help in the conduct of the case on his behalf, an explanation of what to expect, guidance through the process and for help in damage limitation.

As far as criminal litigation is concerned, issues as to whether litigation can be avoided rarely arise save in the context of plea negotiation and the acceptance of formal cautions. This however will be of crucial importance to the client, and may be the difference between a conviction or not, or a prison sentence or not.

At every stage it is important to analyse the client's wishes and interests, and not to be merely carried along by the litigation.

In order to decide whether to embark upon litigation, or in order to decide how to respond to litigation forced upon the client, as a defendant to a criminal or civil case the legal adviser needs to consider a number of matters.

The prime consideration of the adviser is to determine what the issues in the case are. In order to do this s/he must understand not only the legal issues, but also the issues of fact. S/he must also be able to analyse upon whom the burden of proving those issues lies, and whether the burden can be discharged, Who has to prove the case? Can they do it? How can s/he prove the case/prevent the opposing side from proving theirs? Is it worth contesting? An essential consideration will be to examine what evidence - for or against the client - exists. We therefore start by considering some basic evidential matters. Particular rules of evidence will be addressed as they most naturally arise.

1.1 What is evidence?

Evidence is any material which tends to persuade the court of the truth or probability of some fact asserted before it.

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PART 2

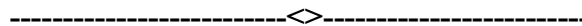
15 Questions on INTRODUCTION TO CRIMINAL & CIVIL LAW

Note to students:-

First read through the material.

True or False Questions:

Use the answer sheets to answer the true or false questions below. **(State which page supports your answer. - Do not simply answer True or False)**



Answer Sheet Introduction To Law Part 2

Your Name
Your address
Your email address

Instructions on answering:- Introduction to UK Criminal and Civil Law

- 1/ State the Q number (Q = Question) e.g. 5 and the P number (P = Page) e.g. 32
- 2/ State Heading or Sub Heading e.g. Expert Evidence: Procedure
- 3/ Give your answer (state True or False and give the page number that supports your answer e.g. page 23.)
- 4/ Comments (only if you want to make one)

To separate your answers underline before answering the next one.

| Q | P | Heading or Subheading | Your Answer & Page No | Comments |
|---|---|-----------------------|-----------------------|----------|
|---|---|-----------------------|-----------------------|----------|

Photocopy or Print more answer sheets as required.



The SAS Introduction to Law Programme

Part Three of Three

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Part 3

ON THE WAY TO COURT

12 You are now ready to set off to complete your assignment/s. Between the lawyers' office and the court house there are a couple of things you need to make sure that you accomplish. The first thing is, you must 'make sure that you know what is required of you'. The journey to the court is not the time to be doing the crossword, planning your holiday or day dreaming. Your assignment should be clear in your head, because sometimes, the minute you step through the court house doors things will happen in a rush and it will be easy to make mistakes.

13 Making sure you know what is required of you on the way to court, is one of the important principles of this type of assignment and you should have it firmly imbedded in your mind.

14 The reason being that when a lawyer sends you off on an assignment he or she wants to feel confident that he/she can entrust their clients' welfare into your hands. A particular assignment may seem inconsequential yet in fact may carry a heavy penalty if not carried out properly and in accordance with the lawyer's instructions. We will look at a set of instructions in a little while.

15 The second thing you should accomplish before arriving at the court, is make sure you know what the case is all about. To do this you will need to read the following documents from the client's case file:- a/ Brief To Counsel, b/ Client's Affidavit/Statement of Truth, c/ Witness Statements...

MEANINGS

Counsel: Another word for a Barrister.

Brief to Counsel: Lawyers instructions to Counsel, detailing the case explaining what needs to be accomplished at court on the day of the hearing.

Affidavit/Unsworn Statement of Truth: An affidavit is a sworn statement.

INSTRUCTIONS

TO: JOHN

FROM: LOUISE

**RE: LINA JANOS - 912242 - WILLESDEN COUNTY COURT
EX PARTE APPLICATION - 1ST DECEMBER 1992 –**

COUNSEL: LORNA TAGLIAVINI

DATE: 30TH NOVEMBER 1992

The Janos case is a very complex one. I am sending you down to clerk Lorna Tagliavini usually on a District Judge's appointment because of the complexity of the case and the number of things that need to be done.

Could you please attend to the following:-

1. In the blue ring binder file under the Legal Aid section you will find behind the yellow marker labelled 912242 defend 36303 a blue offer of Legal Aid Ms Janos must accept this offer of Legal Aid. If she does not her Legal Aid certificate numbered 1 91 36303B will be revoked and all her Legal Aid will be put in jeopardy. There is already a long history of Legal Aid Board problems on this file and I am absolutely certain that if she does not sign the offer of Legal Aid immediately we will not be able to do anything further for her because we will not be able to get Legal Aid to do so. Please ask Ms Janos' interpreter to explain that she needs to sign the offer of Legal Aid and give it to you. I will send it to the Legal Aid Board. She will then get from Legal Aid Board an instalment payment book and she will need to then start the monthly instalments of £49.50 in the first month followed by 11 instalments of £48.50.
2. Please issue the application. You will find two copies of the notice of application on the top of the file. Counsel already has a copy as do Latima Thobani who acts for the Claimant. You may find they charge you a fee and there will be a cheque in the file.
3. You will also find 3 copies of the second affidavit/statement of truth of Ms Janos on the top of the file. Please take her to the Court office and ask her to swear to the truth of the matter. You will need to file the original affidavit/statement of truth at

20 Picture yourself sitting on a train going over your instructions. As you check to make sure you know what is required of you, you notice that in your instructions are words and expressions that you don't know the meaning of. Remember what was mentioned earlier, the best place to find out things is at the court house. You will always find willing help, just have the courage to ask. In the mean time in order to help you fully understand your instructions, let us look at what some of these words and expressions mean.

MEANINGS

Ex parte/Without Notice: An application made to court for a hearing where only one side is represented and no notice is given to the other side before the hearing.

Legal Aid Certificate: A certificate guaranteeing that legal representation to the extent defined on the certificate will be paid for by the government. Sometimes this will not cover the entire amount.

Issue the application: To register details of an application for a hearing together with the reasons for wanting the hearing, and a time estimate of how long the hearing will take. With a view to obtaining from the court a hearing date, and for either the court or the lawyer to notify the other side and any other party who has a right to be informed.

To file: To lodge documents pertaining to a case at the court office. The documents, having been lodged, will then be placed in the court's own file of the case. Make sure documentation has case number and the party's name clearly visible.

Claimant: Person who starts an action against another in the civil courts.

Notice of application: A document to the court and to the other side informing of the hearing and the date of the hearing.

Jurat: The last page of the affidavit/statement of truth showing the details of when and by whom it was sworn.

Warrant of execution: Court authorization to carry out a court order.

Stay of execution: A court order to temporarily stop a previous order from being carried out.

21 Now that you have read through your instructions do you feel that if this were your very first assignment you would be able to carry out everything being asked of you? Shall we see how well you understand your assignment. Try and answer the following questions.

QUESTIONS

Answer the following questions.

- 1 According to paragraph 1 of your instructions, who apart from Mrs Janos would be the other person who you would need to locate on arriving at court? Why?
- 2 Before getting Mrs Janos to sign the Legal Aid Offer, what things would you ask the interpreter to explain to her. Why?
- 3 According to paragraph 2 and bearing in mind the meaning of the expression 'to issue the application', where do you think the issuing would take place:
a) at a post office? b) before the Judge of the day? c) at the court office?
- 4 Why do you think it mentions you may be charged a fee in paragraph 2.? Is it because: a) you must always pay a fee before an application can be issued? b) because Mrs Janos has only literally, in the last few minutes, signed the Legal Aid Offer and consequently the court may not consider her covered as at that precise moment in time? c) the court office sometimes charges and sometimes does not?

Write your answers on the Answer Sheet.

22 Now you have answered the above questions it might be a good idea to look at an example of 'issuing an application' referred to in paragraph 2 of your instructions. The example we are going to look at is not related to the same case. However, the layout and information is typical, and will help you in visualising that part of your instructions...

56 The third skill is to be able to write quick and accurate notes. For example if during a trial the Judge said '12 months suspended for 2 years', it would be poor note taking to write '12 months suspended for 1 year'.

AT THE END OF THE HEARING

57 Often, the end of the hearing will take your client by surprise. The Judge's order makes little sense to them. Have they won or lost? Let your client know that Counsel will explain the Judge's order outside the courtroom.

58 Sometimes, even after a conference with Counsel the client may still not fully understand what has happened and the implications of the Judge's order.

59 After Counsel has said goodbye ask your client if everything is clear. If not try and re-explain and also make a note to let the lawyers know that the client could do with a letter explaining things in full.

60 At the end of the hearing most lawyers appreciate a phone call from the court house letting them know the outcome. Ring before leaving the courthouse. Also, before arriving back and handing in the case file the Court Attendance Report Sheet should be filled out. The Court Attendance Sheet is a very useful document. At a glance, it tells the lawyer the things he most wants to know; such as, 'what did the Judge order and what needs to be done before the next hearing. All the information to fill in this sheet should be in your notes. Simply go over your trial notes and extract the needed information.

61 Usually, you will be expected to return the case file, together with your notes, at the end of the hearing. If however, the case is going into the next day, it will be alright to leave the file in the courtroom. This is often done at criminal trials, which can go on for several days...

88 At a glance the Court Attendance Sheet gives the lawyer all the information he...

ANSWER SHEETS

Please remember to:-

- 1/ Keep your answers brief and to the point.
- 2/ Always state which question number you are answering, e.g. Q8.