

# 1 The nature of law

After reading this chapter you should be able to:

- Understand the distinction between legal rules and other rules or norms of behaviour
- Understand the differences between criminal and civil law
- Have a basic understanding of the sources of law

## 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, or 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.

## 1.2 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.

**Figure 1.1** Differences between norms of behaviour and law

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

## 1.3 Criminal and civil 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 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, although it is also possible for the victim to bring a private prosecution if the state does not take proceedings. This very rarely happens in cases where the victim is an individual. However, some private organisations do bring cases against

offenders. An example is the RSPCA which will often prosecute in cases of cruelty to animals.

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 an order that the defendant do a certain number of hours of unpaid work, fining the defendant or disqualifying the defendant from driving for a certain period of time.

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.

### 1.3.2 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 AQA AS Law you will study topics from the law of tort. These are covered in Chapters 23 to 26 of this book. If you are doing AQA A-level Law you will study both law of tort and either the law of contract or human rights. The further areas of law of tort and the areas of contract law or human rights that you need are covered in Book 2.

In order to give you a basic understanding of the areas covered by tort, contract and human rights some examples of each are given in the following sections.

#### 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).

- d A man complains that a newspaper has written an untrue article about him, which has affected his reputation (the tort of defamation).

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.