



**Extracts are from
Units 1- 4 of Stage 2 of the
Senior Paralegal Course**

There are 10 Units of Law in Stage 2

tel: +44 (0) 845 299 7174
e-mail: law@saslawcourses.org
The SAS Law School, 404 Albany House,
324-326 Regent St, London W1B 3HH, UK.

Preface

Use these course extracts to help you determine if this course is within your capabilities. And, also to see if it will keep your interest.

Do remember that as a distance learning course there are no time constraints for finishing. You can go at your own pace and by e-mail you will always have the support of the help-desk. There you can ask your course advisor for personal assistance whenever you feel you need it.

Stage 2 is The Academic Module

No books need to be purchased. All reading materials are supplied.

MODULE 1 : GENERAL PRINCIPLES OF LAW

Unit 1.

THE ENGLISH LEGAL SYSTEM

THE NATURE AND DEVELOPMENT OF ENGLISH LAW

EXTRACTS FROM LESSON 1:

We start this course by looking at, and discussing, the English Legal System. If we are to understand English law and procedure, it is obviously essential that we understand the system in which it operates. I make no apology, therefore, for the fact that this Unit is a fairly lengthy one, because without a sound knowledge of the system it will be impossible to properly understand all the other Units. I suppose I could have condensed it somewhat, but right from the start I want to interest you in the whole area of law and I am conscious of the fact that, for the majority of students taking this step, they will not have any previous knowledge of this fascinating area known as 'the Law'. Brevity, therefore, does not lead to good understanding!

Just one more thing before we start. Throughout this course I will be using the masculine gender (he, him, his) but only for the sake of convenience. It saves having to write 'he/she; him/her or his/hers'. If you are of the female gender, then I mean no discourtesy whatsoever and I hope that you will forgive me. All the way through, therefore, the masculine gender includes the feminine gender unless specifically mentioned to the contrary.

So let's begin!

THE NATURE OF LAW:

"LAW" DEFINED.

The purpose of this lesson is to introduce you, briefly, to the philosophy of the law, called 'jurisprudence'. As we go through the various lessons, I will put certain words which are important, and which you will not, perhaps, have come across before, in bold type, so that you are better able to remember them.

Jurisprudence is the study of why we have laws. Suffice to say that we do not, as Paralegals, have to go into the study of jurisprudence in any great depth, but it is important that we understand what

law is, and why it is important. An understanding of this Lesson will make other matters easier to understand as you progress on this course.

It is not easy to properly define "law" or "the law". If you were to turn to the Dictionary you would find the following definition, or something similar :-

"A rule or set of rules instituted by Act of Parliament, custom or practice, in order to punish those who offend the conventions of Society".

Collins Dictionary.

Do you have a Dictionary? If not, may I suggest that you get one! If there is ever a word that you do not understand, then you can look it up. *Look up the word "convention" - what does it mean?*

There are various reasons, as we shall see, why I do not like this definition very much - so let's come back to it later. As definitions go, I much prefer this one :-

"The law is a body or set of rules within a State, which the State will enforce and which are designed to regulate human conduct within that State".

Just take a moment to read over that definition and to think about what it means. Notice three things:-

1. The law is, in its simplistic sense, merely a set of rules that regulate the way in which Society conducts itself.
2. Law varies between States (Countries). Thus English Law differs from French Law and French Law is different from Russian Law which is different from, say Indian Law. Each country has its own set of rules to regulate the conduct of its own Society.
3. The law is enforceable by the State. If a law is breached, then the State (through the Courts) can do something about it, or allow individuals to do something about it.

So...the law of Great Britain is that set of rules that Great Britain has decided are to regulate the way in which its citizens and those who reside here are to conduct themselves. The question must be asked, however - why does society need these rules?

Take a few minutes and write down in your notebook some reasons why you think that society need rules.

Well, we all realise the limitations that are imposed upon us all individually. Limitations of wealth, limitations of resources, limitations of knowledge and skill, limitations of health, limitations of opportunity and limitations of strength or power. It follows, therefore, that we all realise that whoever we are, great or small, there are others who have greater advantages or benefits in some particular area or another. Because of this we are all open to exploitation by others. Some people are open to greater exploitation than others are.

In Great Britain we are under a democracy. This means that we insist upon fundamental rights and freedoms. The freedom of speech, of movement, of religion and of privacy for example. However, in order to exercise such freedoms, we must invariably have to impeach upon someone else's rights. Freedom of speech could result in the **defamation** of another (i.e. the speaking ill of someone) - freedom of expression could result in our causing a **nuisance** to another - freedom of movement could result in our **trespassing** on another's property.

In order to exercise freedoms, therefore, we have to ensure that other people's freedoms and rights are not interfered with. We therefore need laws (rules) to guarantee this. The law can be said, therefore, to guarantee our essential freedoms, or human rights, by ensuring that everyone respects them. A famous lawyer of ancient Rome called Cicero expounded that:-

"We must all be slaves to the law if we are to be free"

This is known as "**Cicero's paradox**" - an apparently self-contradictory statement.

Of course, as Society becomes more complex, so will its laws (rules), and in the United Kingdom today, the rules which govern the way in which we conduct ourselves are multitudinous.

Rules of Law -v- other Rules:

If you think about it for a moment, you will realise that we are subject to rules other than legal rules. We have, for example rules of morality, private rules and rules of natural justice all of which affect our lives. We must, however, realise that as Paralegals we are only interested in legal rules, i.e., those that are enforceable by the State.

Moral Rules may affect our lives considerably. Some breaches of conduct are unacceptable to society even though such conduct may not be illegal. On the other hand some acts, which are against the law, are not considered by society to be immoral. In many cases, however, rules of law and rules of morality clearly coincide and there is no doubt that the influence of Christianity and its moral ethics have played an extremely important part in the formation of our legal rules in the past.

Let us have a closer look at the difference between these two types of rules. First of all we must understand what we mean by 'morality'. The Dictionary defines it as "conformity to conventionally acceptable standards of conduct" On the one hand, for example, homosexual acts between consenting adults in private are not illegal, i.e., there is no rule of law prohibiting them. Abortion, provided that it takes place in accordance with the provisions of The Abortion Act, is not illegal. Adultery does not form part of our criminal law. However, there are multitudes in society who would consider some or all of these things to be morally offensive. On the other hand, however, parking a motor car on double yellow lines is illegal. There is a rule of law that prohibits it and provides for the punishment of anyone who may contravene such a rule - but very few would find it morally offensive!!

Private Rules: Do you belong to a Club or Association? If so then you will know that there are rules that govern your membership. If you go to a night-club or a disco or even a restaurant, you will find that there are rules governing your admittance and conduct there. For example, you may not be allowed to go in without a jacket or tie. Again, however, the difference between these private rules and legal rules is that the private rules are only enforceable by those who make them and not by the State. If I went to a disco and was not allowed in because I did not have a tie on, and then went all the way home, put on a tie and went all the way back only to find when I got in that there were people in there who were not wearing ties, there is nothing I could do about it except to complain to the management. I could not force the management to do anything about it nor could I enforce the other individuals to put ties on!

We must also distinguish between **Rules of Law** and **Justice**. The basic aim of any legal system must surely be the attainment of justice within its society, but unfortunately the two rules are not synonymous. The exercise of a rule of law does not necessarily result in "justice". Let me give you an example. In any legal dispute there are always two, or more, parties involved. Each of them may think that they are right and that the others are wrong. Each party will, most likely, have had the advice and guidance of a lawyer - maybe more than one lawyer - who will argue the merits of their client's case. Only one party, however, will be successful - the other/s will lose. The loser, I am

sure, would consider that they didn't obtain "justice". I wouldn't mind a £5 note for every **litigant** (i.e.. person involved in litigation - the conduct of a law suit) who I have heard, coming out of a courtroom, saying - "I don't call that justice".

Sometimes Courts have to decide between two parties, who are both "innocent", as to which one will have to bear the loss. For example, *Lewis -v- Averay (1972)* was a legal case where a Mr. Lewis advertised his car for sale and accepted a cheque from a buyer who made himself out to be a famous actor (Richard Green who was the star of a very popular T.V. series running at the time - "Robin Hood". As it was some 30 years ago, you may not remember it! However, it had a very catchy 'signature tune' that you may have heard! - ++ Robin Hood, Robin Hood, riding through the glen. ++ Robin Hood, Robin Hood, with his merry men. + Takes from the rich, gives to the poor; Robin Hood, Robin Hood, Robin Hood+?!). Mr. Lewis said that he only accepted a cheque because he thought he was dealing with the real Richard Green. He wasn't - and the cheque bounced! Mr. Averay in the meantime had purchased the car, in good faith, from the spurious Mr. Green. Mr. Lewis tried to recover the car from Mr. Averay. Both were innocent parties. Either Mr. Lewis would lose his car, or Mr. Averay would lose the money that he paid for it. Whoever won, it wouldn't be fair on the other. In fact the Court found in favour of Mr. Averay for reasons to do with mistake and **misrepresentation**, which we shall see later on in the course when we look at the Law of Contract. Suffice to say that Mr. Lewis, through no fault of his own, lost his car and, I am quite convinced, did not consider that he had obtained "justice" at the hands of the law!

This is the first "case" that you have come across. As we go through the course you will find that you have to remember cases. Why do you have to remember cases? -Because they are authority for a point, or principle, of law. As a rule, never make (or write) a statement concerning the law without being able to back it up by citing the authority for that statement. Get into the habit of remembering cases. Every time you come across one, it is a good idea to put it on an Index Card - the name of the case and the year of the case and a very brief outline of what the case was about. As you collect your cards, you can take them about with you in your pocket, or whatever, and whenever you have a spare moment, you can take them out and read and re-read them. By far the best way to remember the name of a case is by repeatedly looking at it.

Self-Test:

Take a short time to explore the nature of different kinds of rules.

Classify the following rules. Are they rules of law, rules of morality, private rules, mixed rules, rules of nature, some other form of rule or, indeed, are they rules at all?

1. Men should not wear hats in church
2. Fishermen must always dry their nets within 50 meters of the beach.
3. The Highway Code
4. The Code of Practice under the Mental Health Act 1983.
5. Thou shalt not commit adultery.
6. Thou shalt not steal
7. The rules of the game of chess.
8. Winds blow from high to low pressure, but due to the rotation of the earth, are deflected to the right of their path in the northern hemisphere, and to the left of their path in the southern hemisphere.

9. People in glasshouses shouldn't throw stones.

10. The person who, for his own purposes, brings on to his land and collects and keeps there something likely to do mischief if it escapes, must keep it at his peril, and if he does not do so is **prima facie** (this is Latin for "on the face of it") answerable for all the damage which is the natural consequence of its escape.

11. You should not speak ill of the dead

12. The survivor of joint owners of the property is entitled to the whole of the property.

13. A body displaces its own weight in water.

14. All human beings should have care and respect even before birth.

15. Everyone has a right to work.

16. A fair shall be held at St. Giles in Oxford each year in the first week in September.

17. You must not tell lies

18. Whilst driving a vehicle, you must not cross a double white line

19. You must not smoke in this cinema

20. A Bill that has duly passed through Parliament must be signed by the monarch before it can become law.

How did you get on?

Take time to do the self-tests as it makes your brain think about things. It's a difference between "passive" learning and "active" learning. With active learning you will achieve more in a shorter time.

Let's have a look at these rules, then and see how you fared!

1. It may very well be a convention of the church or religion (especially the Christian religion), that men should not wear hats when in a church, but this is only a private rule of the church. If you persisted, you may very well be asked to leave the congregation by the Minister, but the State would not interfere. Other religions differ. In Judaism, for example, men are required to cover their heads and the same is true in Islam.

2. This may very well be a legal rule. It could be that the Local Authority has made a **bye-law** (a bye-law is what is termed "**delegated legislation**" and is equivalent to a **statute** (i.e. an Act of Parliament) in its effect - we will look at delegated legislation later on in this Unit) about the drying of nets and if a fisherman tried to dry nets, say, 100 meters from the beach, then he could perhaps be summonsed and fined.

3. The Highway code is not a legal rule as may be supposed. Nowhere is it contained in or referred to by statute. However, in certain areas of **substantive law**, (that part

END OF EXTRACTS FROM UNIT 1 LESSON 1 of STAGE 2

MODULE 1 : GENERAL PRINCIPLES OF LAW

UNIT 2:

THE LAW OF CONTRACT

EXTRACTS FROM LESSON 1:

THE FORMATION OF THE CONTRACT.

INTRODUCTION

You are about to start one of the most important areas of substantive law in the English Legal System - that of the law of Contract. You will find, therefore, that this Unit is, perhaps, the longest Unit in this course of study.

Why is it so important? Well, you could, very well, go through your life without coming into direct contract with, say, the criminal law or matrimonial law or even tort. I know it is unlikely, but it is possible. However, it would be virtually impossible to go through even one day without entering into some sort of contractual relationship with another. Every time we buy a bar of chocolate or anything else for that matter, get on a bus or train or taxi, book a holiday, order something out of a catalogue, park our car in a car park or take a book out of the library we enter into a contractual relationship. We do it so often that it is purely automatic and we do not give it a second thought. It is only when something goes wrong that we have to consider what our contractual rights or responsibilities are. The examples that I have given above are, of course, very simple examples of contractual relationships. Other contracts could be very complicated and involved, for example, buying a house or buying a new car, entering into a business Partnership or negotiating a loan from the Bank. In business, particularly, some contracts are both complicated and extremely important. The majority of disputes that come to the Courts by way of litigation involve damage that has resulted from a breach of contract.

A word of warning, before we go any further. The vast majority of legal principals concerning contract law are based on Precedent - past decided cases. This means that in order to understand why a particular principle of contract law exists, you must be able to cite the appropriate case that laid down that principle. This means learning/remembering cases. The only way in which you will learn and remember cases is by constantly refreshing your memory of them. In an examination you should never quote a legal principal without stating the authority for that principle. In legal practice this is even more important. If you are embarking upon litigation on behalf of a client then you must research the authorities for the submissions that you are to make.

The best way to learn case law is to (every time that you come across a new case), write it down on one of those cards that are used in a card index system. Write the name and date of the Case at the top, and a short note on what the case is about. You can then carry the cards around with you and keep looking at them whenever you have a moment. The following is an example:

HYDE -v- WRENCH (1840)

A counter-offer will act as a rejection of an offer which brings the offer to an end: The Defendant offered to sell his Farm for £1000. The Plaintiff said that he would pay £950 and the Defendant said that he would think it over for a few days. The Defendant then wrote saying that he would not accept the £950, whereupon the Plaintiff wrote back saying “All right I’ll pay the £1,000”. The Defendant then decided not to sell and the Plaintiff sued for specific performance. Held: There was no contract as the Plaintiff’s counter offer of £950 was an implied rejection of the original offer to sell for £1,000 and a rejection of an offer brings that offer to an end.

DEFINITION OF A CONTRACT:

How would you define a Contract? Just spend a few minutes thinking about it and write in your notebook what you think a contract is:

Some text books go to great length to spell out the definition of a contract. There is really no need to do so, because, very simply:-

“A contract is a legally enforceable agreement”

It follows from this that there is, therefore, a difference between an agreement and a contract. Let me try and illustrate this for you. A wife may say to her husband “The hinge on the garden gate has come loose, would you fix it?” Hubby, being the dutiful spouse that he is, says “Certainly, my love, I’ll do it this afternoon”. Here we clearly have an agreement. Husband agrees that he will fix the garden gate that afternoon. Unfortunately, around lunchtime, a friend of the husband calls round and they both go off to the Pub and the gate doesn’t get fixed. Clearly, whatever else she may do, the wife is not going to sue him in the Courts for not doing what he promised to do. The agreement was not a contract because clearly it was not intended that it should be legally enforceable.

We enter into these kind of agreements all the time. Agree to go to the Cinema with a friend, or meet them for lunch or what have you. If we fail to turn up the friend is not going to sue us - or if they did they would not get very far because such agreements clearly are not intended to be legally enforceable.

So.....**whereas all contracts are agreements, not all agreements are contracts!**

Contracts are those agreements that the courts will enforce. How do we know exactly what does and what does not constitute an agreement which the courts will enforce? That is easy! In order to constitute a contract, an agreement must have seven specific ingredients, which are known as **the seven requirements of a valid contract.** We shall spend this lesson, and the next one, specifically looking at these seven requirements. Suffice to say, at this point, that if even one of these seven ingredients is missing, then the agreement is not a legally binding one and cannot constitute a contract.

Before we go on to look at these seven ingredients, however, we must first acclimatise ourselves with some of the terminology of contracts:

THE CLASSIFICATION OF CONTRACTS

There are several ways to classify the different types of contracts, but a simple method of doing this is to divide them up into:

SPECIALITY CONTRACTS (CONTRACTS UNDER SEAL):

These are contracts executed in the form of a **deed** and their validity is derived *from the form of deed alone*. The deed will always be in the form of a written document, which is subsequently signed as a Deed. There are certain features that distinguish this type of contract from a simple contract. Perhaps the most important of these is that a simple contract has to be supported by consideration (see below), whereas it is not necessary for consideration to support a speciality contract. It can be said, therefore, that if an agreement is contained in a formal Deed then, even though the seven requirements of a valid contract may be missing, the agreement may still be legally binding.

SIMPLE CONTRACTS

The majority of binding contracts are of this type and may be created orally, in writing, or by implication. It is important at this early stage to understand this. A simple contract (provided that it has all the seven requirements of a binding contract) will be of full effect even though it is made verbally. Simple contracts do not have to be in writing. They may be difficult to prove if they are not, but this is a matter of evidence and not a matter of the substantive law.

TERMS USED TO DESCRIBE CONTRACTS

Although the above is a method of classifying contracts, there are various terms that are frequently used to describe contracts in this Unit. These are:

VALID CONTRACT. This is a contract which one party can enforce against the other in a Court of law if the other party, say, does not do what he has agreed to do. Such a contract may be either a Speciality Contract or a Simple Contract. If the latter, it must contain all of the seven requirements for a valid contract.

UNENFORCEABLE CONTRACT. A contract that is valid, but, because of certain circumstances, one or both of the parties cannot enforce it against the other, even with a legal action. An example of this would be where someone has agreed to sing at a concert but dies before the date. The contract would have been validly entered into but impossible to enforce!

VOIDABLE CONTRACT. A contract which is binding but which may be set aside by one of the parties (provided the law permits it) if he wants to do so. An example of this could be a contract entered into as a result of a misrepresentation (as to 'misrepresentation generally, see later). 'A' buys a car having been informed by the seller that it is mechanically perfect. After driving it he finds that it is not mechanically perfect. As he had relied upon the representation as a factor that induced him to buy, he can, if he wants apply to the Courts to have the contract voided (cancelled) and get his money back. On the other hand he may want to keep the car (because, perhaps, it is an unusual or rare model) and so he would merely seek damages for the cost of any necessary repairs. You can see, therefore, that he has the option. The contract is not, therefore, a *void* contract but it is one that can be avoided if he so wishes. It is, therefore, a *voidable* contract. You must understand (and some students find this difficult to grasp) that such a contract is a fully valid contract *up until the time that it is avoided* after which the contract becomes void. It is important for you to grasp this, as we shall

come across it again and again. The important point is this: all the time that the contract is valid, the purchaser has a valid title to any goods that he has acquired under the contract and if he sells them then he passes a valid title to the third party. Do you remember the case of Lewis -v- Averay (1971) which we looked at in Unit 1? Let me refresh your memory of it:

Mr. Lewis agreed to sell his car to a rogue who called after seeing the advertisement. The buyer looked like and gave the impression that he was the actor Richard Green who was currently starring as Robin Hood in the serial on Television. He signed a cheque for the price, in the name of R.A. Green which Mr. Lewis accepted after being shown a film studio pass in that name. The cheque bounced. In the meantime the rogue had sold the car on to a Mr. Averay. Lewis sued Averay for the return of the car or damages in conversion on the basis that the contract was void through mistake (i.e. he would not have sold the car to the rogue had he not mistakenly believed that he was the actor).

The court held that the transaction did not involve mistake but only misrepresentation and misrepresentation (as we shall see later on in this Unit) did not make a contract void but only voidable. As Mr. Lewis had not avoided the contract at the time that the rogue sold the car on to Averay, the rogue had a good title to the car at that time and was able to pass on that good title to Mr. Averay. Mr. Lewis lost!

VOID CONTRACT. A void contract is really a ‘contradiction in terms’, because a void contract is not really a contract at all and as such has no binding effect whatsoever. If a contract is void, it is void *ab initio* (Latin for “from the very beginning”).

EXECUTED CONTRACT is a contract in which both parties have carried out all that they were required to do under the terms of the contract. For example if I say to you “I will sell you this book for £2.00” and you say “OK I’ll buy it for £2.00” and you pay over the money and I hand over the book, the contract is an executed contract. Both you and I have performed our respective parts of it. Either party still has rights in respect of any breach - for example if you, when reading the book, find that there are pages missing.

EXECUTORY CONTRACT. A contract in which one or both parties still have to carry out obligations that they have agreed to do under the terms of the contract. If we take the above example of the book, but instead of you handing over the money you say to me “I’ll pay you on Friday” and I agree then it is an executory contract. The contract is in force but you have yet to perform your part by handing me the money. Once you do that, then the contract becomes an executed one.

We now need to look at how a contract **comes into existence**. Remember that in order to constitute a contract, an agreement must contain the seven requirements of a valid contract.

Let’s just a pause here for a moment! Some textbooks may say that there are only three, or five, requirements of a valid contract and the other ingredients they bring in elsewhere. I find that this is confusing to the student and by far the easiest way to get to grips with the subject is the one that I suggest here. So, remember - in order for a simple contract to be valid, it must comprise the following seven requirements and it is important that you learn and become absolutely familiar with each one of them.

REQUIREMENTS OF A VALID CONTRACT

The following, then, are the seven essential requirements of a valid and enforceable contract:

- (1) **There must be an offer by one party (known as the offeror) and an acceptance of it by another (known as the offeree).** In its simplest form - I offer to sell you something and you agree to buy it.
- (2) **There must be an intention to create legal obligations.** As I mentioned early on in this lesson, there are many agreements that exist where the parties do not intend them to be legally binding. These are usually contracts of a domestic or a social nature, between relatives or friends.
- (3) **All parties to the contract must have the relevant legal capacity.** As we shall see, the law recognises that there are some classes of persons that are under a disability whether by age or mentality and the law protects them by introducing special provisions for them
- (4) **With the exception of contracts under seal (i.e. a ‘speciality’ contract), all contracts need to be supported by ‘consideration’.** This means, in effect, that if I am to pass something to you, I must get something in return, however small. If you buy my book from me for £5, the consideration that passes between me and you is the book. The consideration that passes between you and me is the money. There is no consideration if I get nothing in return for what I promise. So, if I say to you that because I have won the Lottery I am going to give you £100 next Friday, there is nothing that you can do if, come Saturday, I have not come up with the money. Why not? Because I am getting nothing from you in return for the promise I have made. It is what is called a “bare promise”, or a ‘gift’. No consideration - no contract.
- (5) **The contract must be one that is not contrary to public policy.** e.g. the contract must not be illegal, against public policy or, or (in some cases) immoral.
- (6) **Where special formalities are necessary, these must be carried out,** e.g. if the law specifies that a contract must be by way of deed or in writing, then it is either void or unenforceable if it is not.
- (7) **All parties to the contract must be genuine in their consent to the terms of the contract.** This, in law, is called ‘*Consensus ad idem*’, which means a ‘meeting of the minds’. Some people may be coerced into entering into a contract by undue influence or duress. Some may be induced by a misrepresentation and some may be genuinely mistaken as to what they think they are contracting for. For example - suppose I have a valuable pedigree dog called ‘My Rover’ and I also have a Rover motorcar. I say to you ‘Do you want to buy my Rover for £1,000?’ You say ‘Yes, I would’. Here we have an offer that has been accepted and (for the sake of the example) we can assume that all the other requirements of a valid contract are in existence. You, however, think that you are buying my car, whereas I was offering to sell the dog. There is obviously no contract because we were both mistaken as to the subject matter of the contract. There was no ‘consensus ad idem’. (Lawyers usually leave off the “ad idem” bit and just talk about the ‘consensus’, e.g. - “there is no consensus.”)

So... If an agreement does not satisfy all the above points, it could either be described as a void, voidable or unenforceable contract depending upon the circumstances.

When tackling a problem to do with contract, it is best to start with seeing whether there is a valid contract in existence. This means looking at these seven ingredients and seeing whether any are missing. If an ingredient is missing that is usually the end of the matter because no valid contract exists. I recommend, therefore, that you commit the above list to memory. You ought to be able to reel off the seven requirements by rote!

It is essential to have a comprehensive understanding of all of these features; consequently, I am now going to discuss them in detail.

OFFER AND ACCEPTANCE

A contract is founded upon an agreement that arises from an **offer** being **accepted**. Pollock L.J. expanded on this statement by saying that

“One party proposes his terms, the other accepts, rejects or meets them with a counter proposal and thus, they go on until there is a final refusal and breaking off, or, until one of them names terms which the other can accept as they stand”.

On the rare occasions that litigation results, it is essential for the Court to decide on the facts presented to it, whether a firm offer was made, and, if so, whether it was accepted.

To be enforceable at English law by an action in the civil courts, an agreement must satisfy a number of criteria. They are as follows:

There must be agreement in the form of an identifiable offer and a valid acceptance.

A contract cannot come into existence merely because two parties have achieved a consensus. Thus if A writes to B offering to buy his car for £500 and at the same time B writes to A offering to sell his car to him for £500, there is agreement but no contract.

Why not? because whereas both parties want the same conclusion, there has been no specific acceptance of a specific offer. The contract will not come into existence until either A accepts B's offer to sell or B accepts A's offer to purchase.

OFFERS

An offer is an undertaking by the person making it to be bound to a contract under the terms of their offer. When an offer is accepted it becomes a binding contract if the other essentials are present.

- **The Offer must be definite:**

In the first instance, it is essential to prove the existence of a definite offer, which may be made orally (i.e. verbally), in writing, or by implication.

The offer must be clear and unequivocal.

In Harvey -v- Facey (1893), when negotiating the purchase of a property, Harvey asked “Will you sell us Bumper Hall Pen? Telegraph lowest price.” The following reply was made by Facey, the owner: “Lowest cash price for B.H.P. £900.” Harvey then replied: “We agree to buy B.H.P. for £900 asked by you. Facey would not sell the property to Harvey, who then commenced an action for specific performance.

Held. A binding contract had not been formed. For, Facey's statement was not an offer to sell, it was merely a statement of price (i.e. 'an invitation to treat').

Offers may be made to one person, a group of persons or to the whole world (i.e. a general offer). With regard to acceptance, then, only the offeree (or offerees if the offer has been made to more than one person), may accept. However, where the offer is a general offer (an offer to the whole world), anyone may accept by complying with the terms of the offer. Let's have a look at examples of these.

By the way - An 'offeror' is the person who makes the offer. The 'offeree' is the person to whom the offer is made. During the course of your legal studies you will come across many words like this. Always remember that if the word ends in 'or', it refers to the person who makes it - if it ends in 'ee', it refers to the person who receives it. In land law, for example, we come across a 'Mortgagor', the person who grants a Mortgage to a 'Mortgagee' the person who receives the mortgage.

END OF EXTRACTS FROM UNIT 2 LESSON 1 of STAGE 2

MODULE 1 : GENERAL PRINCIPLES OF LAW

UNIT : 3

THE LAW OF TORT

EXTRACTS FROM LESSON 1:

INTRODUCTION

You will, I hope, remember that when we looked at the nature of law, back in Lesson 1 we saw that a good definition of “law” is :-

“A body of rules within a State, which the State will enforce, designed to regulate human conduct within that state”

We also saw that there are, basically, three types of these rules:-

- (i) those that forbid certain types of behaviour under threat of penalty (which we call “crimes”),
- (ii) those that require people to be responsible for their own actions, if such actions should harm others, and to compensate for such harmful actions (which we call “civil wrongs”), and
- (iii) Those that specify the procedure that must be adopted in certain circumstances to bring about a legal recognition of an action (which we call “procedure”).

Well... Torts come within the second of these - i.e. **civil wrongs**.

There are two types of civil wrongs, and we looked at the first of these - i.e. those arising from a breach of contract - in the last Unit. The second type of civil wrong arises from *the breach of a duty fixed by law, and owed to people generally* and is called a “Tort”.

Like a breach of contract, the breach of a legal duty is remedied by a civil action. The damages sought would be unliquidated damages, i.e. damages, the amount of which would be fixed by the court (in court proceedings this is called an “Unspecified amount claim”).

The word “Tort” is an unusual one and conveys little meaning to the layperson. It has two root sources. One is from Norman French, meaning “wrong”, which in turn springs from the Latin “Tortus” meaning “twisted” or “wrung”.

A “Tort” signifies a “wrong” recognised by law. It can be differentiated from a “crime” (which is also a “wrong” in law) as follows :-

Crime

Tort

Part of public law

Part of civil (or private) law

A wrong against the State
(or the people as a whole)

A wrong against individuals

Punishable by the State

Subject to a civil action by an
individual to enforce their rights

“The province of tort is to allocate responsibility for injurious conduct”
Lord Denning

Despite its weird name, you will soon get used to it and as we shall see, Tort embraces subjects that we are all familiar with in every day life, such as :-

Negligence

Nuisance

Defamation; either Libel (written) or Slander (spoken)

Trespass which can be: to land (i.e. entering on someone’s land without permission) : to the person (i.e. assault, battery or false imprisonment), or to goods (i.e. conversion, detention)

The situations and problems that we shall be looking at will be familiar to most of you and the subject does not put up any major barriers to students, other than :-

- There is a fair amount of case law for you to remember, but not so much as in the law of contract
- There is a fair amount of Latin phrases to remember.

In this First Lesson, we shall look, overall, at the nature of Tortious liability and then we shall look at:-

- * The “general defences” available to a claim in Tort (i.e. those defences which will completely defeat such a claim)
- * The persons who can sue and be sued in Tort, and
- * The remedies that are available if successful.

Then, in subsequent Lessons, we shall look at the specific torts covered by the syllabus for this course, i.e.:

1. Negligence
2. Nuisance (both Public and Private)
3. Trespass to Land.

4. Occupiers' Liability.

A question often asked is:

“Do we talk about the Law of Tort, or should it be the Law of Torts?”

Well, there are two schools of thought:-

(a) The first is the “Law of Tort” school of thought that argues that all harm should be actionable in the absence of just cause or excuse.

This is called the “*general principle of liability theory*”.

Under this theory the law of tort would be forever growing and no cause of action should be refused because it is new or novel.

(b) the second is the “Law of Torts” school of thought which argues that the law should be a law of specific, existing, torts (e.g. negligence, etc.), and that no new torts should be created by the Courts - only by statute.

Well, the second school of thought is supported by modern case law. For example, the case of Perera -v- Vandiyar (1953) refused to recognise “wrongful eviction” as a tort, and the case of Hargreaves -v- Bretherton (1958) refused to recognise “perjury” as a tort (although it is a crime), however harmful it may be.

It would seem, therefore, that we should really classify the subject as “The Law of Torts”, but we don't !! So it remains generally known as and called “The Law of Tort”.

Whereas the Courts are not disposed to extend the number of Torts beyond those that already exist, they are prepared to develop and expand existing torts to cover new situations. For example, when we look at the tort of Negligence, we shall come across perhaps the most famous of all cases in the Law of Tort - that of Donoghue -v- Stevenson (1932). Like the case of “Carlill -v- The Carbolic Smoke Ball Company” that you came across in contract law, it will be a case that you will forever remember!

The case, as we shall see later, is a very interesting one. It decided that the manufacturer of a product owes a duty of care to a consumer to take reasonable care not to cause injury and if it does not (take such care) then it will be liable to the consumer in negligence. The case extended the scope of the tort of negligence and established the common law protection of the consumer against the manufacturer which has now been further extended by statute to cover the concept of “product liability”

Damage and Liability:

As a general principle, a claimant will only succeed in tort if he can prove :-

- (a) That the defendant has infringed his legal rights (i.e. has committed a tort), and
- (b) As a result he has suffered damage.

In the law of tort, these two elements have specific names: -

(a) the first element - the legal right that is infringed (i.e. the specific tort) is called the “**Injuria**”, and

(b) the second element - the damage that is suffered as a result of the tort, is called the “**Damnum**”

So.....

Injuria

This is the actionable interference of a person’s rights (i.e. one of the established torts, e.g. nuisance, negligence, trespass, defamation, etc.)

Damnum

this is the actual damage, loss or harm suffered by the claimant as a result of the injuria.

As an example: If ‘A’ suffers a broken leg as a result of ‘B’s’ negligent driving, the negligent driving (the tort of negligence) would be the **injuria** whilst the broken leg (coupled with pain and suffering, loss of earnings, etc.) would constitute the **damnum**.

In tort, it is usually necessary for a claimant to establish both injuria and damnum to be able to succeed and so we say, generally: -

“No damnum without injuria”

Often, however, we have situations where a person has suffered damage and yet the law does not provide a remedy because there is no established tort to cover it. This is known as **damnum sine injuria** (i.e. damage without a legal wrong).

Let me give you a couple or so examples:-

(a) Whilst I am driving my car I suffer a blackout and as a result I injure another road user. I have no history of any medical problems and could not have been aware of any condition that would result in my having the blackout. It is what we would call pure accident. I was not negligent because there is no precaution that I could have taken to prevent such an occurrence. The injured person would have no recourse against me because there was no injuria - no actionable wrong. I had committed no tort.

Now this is very unfortunate for the poor injured person and there is a very strong school of thought that supports the concept of ‘no fault’ liability, especially for road accidents, i.e. that Insurance Companies should pay out irrespective of fault (or to be more precise, irrespective of injuria). But, so far, this has not happened and so if there is **damnum sine injuria** there will be no liability to compensate.

(b) A giant supermarket sets up near to, and in competition with, an established small family grocer. The goods of the supermarket are cheaper and therefore attracts local custom to the detriment of the small retailer. The result is that the small family grocer is forced out of business. He suffers great loss and harm. However, there is no actionable wrong recognised in law. Business or trade competition is not a tort. As there is **damnum sine injuria**, there is, again, no compensation.

(c) In Best -v- Samuel Fox & Co.. Ltd. a wife sued her husband's employers for loss of consortium (in particular, sexual intercourse) with her husband who had been emasculated (castrated) in an accident at work. Her claim failed as it was held that a wife had no proprietary right (i.e. the husband was not her property) and thus there was no *injuria* - no actionable wrong recognised in law.

Now, how about the converse? Can there be an actionable wrong without the claimant having suffered any damage?

This is called *injuria sine damno* (i.e. a legal wrong without damage) and the answer to the question is that in certain cases it can be an exception to the general rule that there must be damage or injury before an action may be brought.

Certain torts are actionable *per se* (i.e. actionable by themselves) and an action can be brought in respect of them even if it is not possible to prove that as a result of the tort, damage was suffered. These torts are trespass and libel (not slander) and in either of these torts no loss needs to be established.

So, if 'A' trespasses on 'B's' land or if he removes 'B's' goods without lawful authority, 'A' may be sued in trespass.

Similarly in libel - there mere publication of the libel constitutes a wrong that is actionable even though the party defamed may not be able to show that he has suffered any loss whatsoever as a result of it. This only applies to libel (a 'written' defamation, or more precisely a defamation in permanent form) and does not apply to slander (a spoken defamation, or a defamation in transitory form)

Intent:

When we come to look at criminal law in the next Unit, you will find that an essential ingredient of nearly all crimes is the intention to commit the crime (in criminal law, as we shall see, this is called the 'mens rea' of the crime). If there is no intention (as defined in law) then there is no crime.

This does not apply in tort. Intention, usually, does not enter the equation and if a tort is committed it is irrelevant that the *tortfeasor* (the person committing the tort) did not intend to do so. In fact, the very essence of negligence is that it is unintended.

In tort law it is more common to talk of "malice" than intent. In law, the word "malice" has two meanings:-

1. The intentional doing of an act without just cause or excuse
2. The doing of an act with some improper motive.

It can be seen, therefore, that it has a different meaning in law than that which we usually give it. (i.e.. "ill will", or the desire to do harm).

For example, (again in the area of criminal law), the short definition of murder is "an unlawful killing with malice aforethought". This does not mean, however, that it requires "ill will". If my wife is suffering from terminal cancer and is in great pain and begs me to help her die and, in an act of compassion and love, I administer an overdose to her to put her out of her suffering, this is still murder. I am not acting maliciously in the usual understanding of the word but I am acting with 'malice aforethought', so far as the law is concerned.

So...in law, the word 'malice' essentially means the 'intention' to commit an act, and this applies to the law of tort as well.

As I have said, with regard to the law of tort, the defendant's intentions (generally speaking) are irrelevant. So...

(a) On the one hand, the presence of malice (intention) will not (generally speaking), turn a legal action into an illegal one

(b) But on the other hand, the absence of malice (intent) will not be a defence where a wrongful act has been committed.

Let me give you two real life examples:-

(i) In The Mayor of Bradford (Bradford Corporation) -v- Pickles (1895), the defendant owned land through which water percolated to feed springs which Bradford Corporation tapped into for the Town's water supply and wanted the Corporation to buy his land (at an inflated price). In order to 'encourage' this, he sank a well on his land which, in law (at that time) he was perfectly entitled to do. The result of the well, however, as the defendant knew, would be to interrupt the Town's water supply and to discolour it. The Corporation sued him on the basis of his intention to harm the Corporation. They failed because the defendant had a legal right to do what he liked on his own land and his malice (his bad motive) did not make illegal that which was legal. (see also Landbrook Properties -v- Surrey County Council (1969)).

(ii) In Wilkinson -v- Downton (1897), the defendant, as a practical joke, told the claimant that her husband had broken both his legs in an accident. As a result, the claimant suffered nervous shock and was seriously ill. She sued for false and malicious representation (trespass against the person). The fact that the defendant was only joking (and therefore did not intend harm) was irrelevant and the claimant received damages.

So the intention (or lack of it), in tort, is generally irrelevant.

There are, however, certain exceptions to this. In the following cases, for example, malice (in the sense of improper motive or 'ill will') is relevant:

Malicious Prosecution, where it can be proved that a Prosecutor brought a prosecution out of private spite and without just cause

END OF EXTRACTS FROM UNIT 3 LESSON 1 of STAGE 2

MODULE 1 : GENERAL PRINCIPLES OF LAW

UNIT : 4

CRIMINAL LAW

EXTRACTS FROM LESSON 1:

INTRODUCTION

In this Unit we shall learn what many consider to be the most interesting area of substantive law - crime! Beware, however - it may be, to some, the most interesting, but it is not necessarily the easiest! There are some areas (for example, 'recklessness'), which are quite difficult to grasp. As before, however, read and re-read, going over in your mind what you have read, until you are satisfied that you have a firm grasp and understanding. If you are ever in difficulty, then contact us and we shall clarify matters for you.

In the last two Units we looked at the Law of Contract and the Law of Tort. Both of these are laws of "obligations". An "obligor" owes responsibility, or duty, to an "obligee". In the Law of contract, for example, where an obligation arises under a contract, the obligor (or promisor) is required to perform certain contractual obligations and is liable in damages if he does not perform them, or does not perform them adequately.

In Tort when someone owes another a duty of care or a duty not to cause a nuisance etc., then this obligation will be enforced by way of injunction or damages.

Indeed, the whole of civil law is mainly concerned with obligations. Matrimonial Law, Employment Law, Welfare Law and Property Law - all consist of obligations from one person/class, to another, giving rise to the performance of a duty or, failing this, compensation for a breach of the obligation.

Criminal Law is different. In criminal law there is no *obligee*. It is true that criminal duties may exist for the *benefit* of others, but they are not owed to them. It is not possible, generally speaking, to obtain damages in respect of the commission of a crime, nor to obtain an injunction to prevent one happening. Fines, if they are imposed, go to the State and not to the victim.

OK! It's true that under the powers of the Criminal Courts Act 1973 a compensation order can be obtained by a victim against the perpetrator of a crime, but this is part of the concept of "sanctions" (i.e. punishment), not of obligations.

Criminal Law is different in other ways. It is dealt with in different courts, which have different procedures to the civil courts. There are different rules of evidence and a different burden of proof.

Criminal law is linked to issues of moral philosophy and the ‘punishment’ of offenders - the protection of a way of life, reflecting community values. This, of course, often produces problems where society is divided over whether certain issues should be criminalised or de-criminalised. Many people, for example (indeed the Lord Chief Justice has expressed his views on the subject) advocate that the possession of drugs (especially ‘soft’ drugs) should be de-criminalised arguing the differentiation between the supplier and/or dealer, who, they say, are the real criminals exploiting the weak for profit, and the user who, perhaps, is addicted and cannot (without help) stop.

Supporters of this further argue, for example, that alcohol and tobacco are legal but just as addictive and dangerous. The prohibition of possession of alcohol in America in the 1930s caused real problems in terms of criminal activity.

See if you can remember the Criminal Court structure. Draw a structure plan in your notebook, with routes of appeal, and then check it with Unit 1. It is very important that you fully understand the court structures and the jurisdiction and composition of each.

The age of consent for consenting homosexuals, pornography and other areas cause arguments between sections of society. Should the State take a moral stand (the “Back to Basics” of John Major’s Conservative Government of the early 1990s), or should the criteria be the liberty of the individual at all costs.

Well, we as a country have gone down this road, to some extent, but moves, for example, to de-criminalise sexual relations with children (as in the Netherlands) or incest (sexual relations with members of the family) as in Sweden, are, thank goodness, still unthinkable in Britain!

These are some of the issues that make criminal law different from its civil counterpart. To simplify matters, however, we can say that whereas the civil law deals with “wrongs” between individuals dealing with compensation in some form or other, crimes are wrongs against society as a whole for which the State will ‘punish’ the wrongdoer.

I shall be dividing this Unit up as follows: -

- Firstly I shall introduce you to crimes in general and how they are classified, in particular to the necessary *ingredients* or *elements* of a crime (called the **actus reus** (pronounced ‘aktus rey-us’) and the **mens rea** (pronounced ‘mens ree-er’));
- Then we shall look at *general defences* to a crime (i.e. defences that are available in respect of all crimes) and *criminal capacity*.
- I will then deal with the specific crimes that are included in the course syllabus - Fatal Offences against the person (*murder and manslaughter*) and Offences against property (*Theft, Obtaining by deception and Burglary*)
- Finally we shall be considering the various types of sentences that can be imposed by the Courts.

Criminal liability

Crime and criminal liability

The nature of crime

There is no statutory definition of 'crime', and it is even conceded that it "*is not possible to discover a legal definition of crime which can be of value for English law*" (J W C Turner in *Kenny's Outlines of Criminal Law*). For practical purposes, however, a crime may be defined as

"a public wrong whose commission will result in criminal proceedings, which may in turn result in the punishment of the wrongdoer".

Let us just 'dissect' this definition:

Public wrong:

It is the chief characteristic of crimes that, unlike torts or breaches of contract, it is not left to the individual affected (the 'victim') to bring an action in court - though they may, of course, initiate such an action by reporting the commission of offences to the police. If the State is unwilling to prosecute, it is only in certain circumstances that the victim may be able to take out a private prosecution himself.

A criminal prosecution (as opposed to a civil action for damages) is therefore usually brought by the State, represented by the Crown (though, as mentioned above, private prosecutions are still possible in some cases). The corollary is that, whereas the claimant to a civil action may, if he so wishes, withdraw from his action, for whatever reason he chooses, a criminal action can neither be terminated nor compromised (that is, the parties concerned cannot agree to stay proceedings). The only way in which it can be brought to a speedy end is if the Judge finds that there is no case for the accused to answer or if the prosecution 'offers no evidence'.

Criminal proceedings:

A clear distinction can be made between criminal and civil proceedings. In relation to the more serious offences, at least, a criminal case will involve a judge and jury, whereas in a civil action, the judge will normally sit alone. There is a presumption, in a criminal trial, that the accused person is innocent and it is the task of his prosecutors to produce evidence that convinces the jury of his guilt 'beyond all reasonable doubt'. No such presumption exists in civil actions, the burden of proof being to establish one's case "on the balance of probabilities"

This matter of the burden of proof has already been touched upon in Unit 1, when we discussed the difference between an 'adversarial' and an 'inquisitorial' system in criminal trials. It will also be touched upon, again, in Unit 8 in the Procedural Law Module.

Punishment:

Whereas the outcome of a successful civil action is usually the award of damages, the purpose of which is to compensate the injured party, a successful prosecution normally results in some form of punishment. This may involve imprisonment, a fine, supervision orders or a combination of these. A prison sentence, however, may be 'suspended' or the accused may be discharged either absolutely or conditionally upon good behaviour. While these are not exactly 'let-offs', they do seem to depart from the traditional notion of punishment. There is a school of thought that criminal 'punishments' should not be punitive at all, but should serve to deter others, or the offender himself, from committing similar crimes by setting an example. In practice, judges seem to comply with both

punitive and deterrent theories. The concept of *why* sanctions are imposed upon convicted criminals will be dealt with at the end of this Unit and it is also dealt with in Unit 7 (Criminal Procedure) in the Procedural Law Module.

Crimes that are also torts:

As we have already seen from the last Unit (Tort) some crimes may also be torts, e.g. assault and battery, public nuisance, libel (sometimes - there is a crime called criminal libel). In fact, the requirements for criminal prosecutions often only differ slightly from those necessary for civil liability, e.g. a public nuisance must affect a '*class of Her Majesty's subjects*', to be criminal. Whether the wrong is a tort or a crime will depend, purely and simply, on the nature of the proceedings that are taken. If the person is prosecuted in a criminal court, then it will be a crime - if he is sued in a civil court, then it will be a tort. Thus, we may speak of a person being guilty of the crime of assault if he is successfully prosecuted in a criminal court. The same person will be liable for the tort of assault ('trespass against the person') if the action is brought in the civil court.

Classification of crimes:

The classification of crimes has changed over time. The earliest classification divided crimes up into **felonies** and **wrongs (or trespasses)**. Felonies were the more serious offences, which were regarded as putting "good order" in jeopardy and included murder, rape, and theft. The most serious offence of all, in that it was directed at the State itself, or rather, the Monarch, constituted treason. A wrong that was in 'breach of the King's peace', but which fell short of a felony, was normally categorised as a trespass, which explains why several torts today are also crimes as well, or are similar to crimes in their nature.

From time to time, however, other offences were created to maintain order. These were often less serious than felonies and were generally created by statute, though a number were introduced by the Court of Star Chamber, between 1487 and 1641. They were known generally as **misdemeanours**. This distinction between felonies and misdemeanours was important, because a person convicted of a felony was liable to the forfeiture of his property and, in some cases, to the loss of his life but neither of these measures applied to misdemeanours. In 1870, forfeiture was abolished and the death penalty removed for felonies other than murder and treason (and a couple of others - arson in a navel dockyard and piracy) but the distinction between felonies and misdemeanour persisted until 1967 when the distinction was finally abolished.

Modern classification:

In 1967 the old scheme of classifying offences, according to whether they were felonies or misdemeanours, was abolished by the Criminal Law Act 1967, s.5. Whereas the old classification was based, in theory at least, purely on the seriousness of the offence, the newer classification reflected also certain practical considerations. These were:

- (a) Whether or not the offence was an *arrest able* one, and
- (b) Whether or not the offence was an *indictable* one

Arrestable offences:

The Criminal Law Act 1967 classified all offences into two categories - those offences in respect of which a power of **summary arrest** (arrest without warrant) applied and those in respect of which no such power existed (i.e. arrest could only take place with a warrant).

The basic system has now been incorporated into the Police and Criminal Evidence Act (abbreviated as PACE) 1984, ss.24-25. This is an extremely important Act in relation to Police Powers and will be dealt with in more detail in Unit 8 (Criminal Procedure). However, in order to fully understand Criminal Law, it is necessary to touch upon it here.

The exact definition of an arrestable offence, as well as the circumstance in which the power of summary arrest may be exercised was changed by PACE and the current law is as follows: -

■ **Arrestable offences** - these are defined in PACE as:

- (i) Offences where the penalty is fixed by law (e.g. murder, which carries a mandatory life sentence);
- (ii) Offences for which an offender aged 21 years or more may be sentenced to five years imprisonment, or more, or which involves criminal damage to property (other than arson);
- (iii) Certain named offences listed in the Act and including customs (tax) offences and some sexual offences;

General powers of summary arrest -

Powers of summary arrest (i.e., arrest without warrant), are possessed by both private citizens and police constables.

The citizen's powers of arrest:

- (i) Anyone may arrest, without warrant, any person who is in the act of committing an arrestable offence or whom he has *reasonable grounds* for believing to be in the act of committing an arrestable offence;
- (ii) Where an arrestable offence has been committed, any person may arrest anyone who is guilty of the offence or whom he suspects, on *reasonable grounds*, of being guilty of that offence; and as anyone enjoys these powers, they are enjoyed not only by private citizens, but also by police constables, although a constable enjoys considerable additional and 'extended' powers of arrest under PACE.

You have, most likely, heard the expression "a citizen's arrest" - well, this is what it is.

The police constable's powers of arrest:

These are:

(a) As well as the powers of arrest enjoyed by citizens generally, the police constable has the important power of arresting on suspicion of an arrestable Offence, which is defined in PACE as follows:

(i) Where a constable suspects, on reasonable grounds, that an arrestable offence has been committed, he may arrest, without warrant, anyone whom he reasonably believes to be guilty of the offence; and

(ii) A constable may arrest, without warrant, anyone whom he suspects, on reasonable grounds, to be about to commit an arrestable offence.

(b) As well as the general powers possessed by a constable mentioned above, PACE provides for certain 'extended powers' of arrest that can be employed by a constable in certain circumstances. For example, a constable can arrest a person whom he suspects to be guilty of an offence that is not, normally, an arrestable offence if this is necessary for one of a number of reasons, these reasons being embodied in a number of 'general arrest conditions'. If a constable is to use his extended power of arrest, at least one of these conditions must be satisfied:

- the suspect's name is unknown and cannot be ascertained so that a summons can be served (e.g. he refuses to give it or is unconscious);
- the suspect fails to give a satisfactory address;
- the constable reasonably suspects that the name or address given are false;
- arrest is necessary for the protection of property or a person (including the suspect himself).

Once the arrest has been made, the Code of Practice (which came into force in April 1991) spells out the procedures required to comply with PACE. I won't go into these, however, as they are beyond the scope of this Unit.

Indictable and summary offences

Offences can also be classified according to the *mode of trial* employed. We have already mentioned the concept of 'hybrid' offences in Unit 1, when we looked at the

END OF EXTRACTS FROM UNIT 4 LESSON 1 of STAGE 2

Please note that there are no extracts from Units 5-10