Now Test Yourself Answers

Chapter 1 The legal system

1.1 Civil courts and other forms of dispute resolution

1. Contract, tort and family law
2. ‘cost, delay and complexity’
3. Answers should reflect the following:

<table>
<thead>
<tr>
<th>Court</th>
<th>Value</th>
</tr>
</thead>
<tbody>
<tr>
<td>Small claims</td>
<td>Not more than £10,000</td>
</tr>
<tr>
<td>Fast-track</td>
<td>Between £10,000 and £25,000</td>
</tr>
<tr>
<td>Multi-track</td>
<td>Between £25,000 and not more than £50,000</td>
</tr>
<tr>
<td>High Court</td>
<td>Over £50,000</td>
</tr>
</tbody>
</table>

4. To deal with specific areas of law concerning social and welfare legislation, for example employment rights

5. Advantage: tribunals are usually quicker than going to court. Disadvantage: public funding is not available in most cases.

6. ADR is less formal, lawyers are not generally required, and it is generally cheaper than litigation.

7. Negotiation is where an individual will attempt to resolve the issue directly, privately and possibly face-to-face with the other party. Mediation is where a neutral third-party mediator attempts to resolve the issue with both parties, without providing an opinion.

1.2 Criminal courts and lay people

1. Bail is a form of security in exchange for the temporary freedom of an arrested person, as a guarantee that they will appear in a criminal court when required.

2. The defendant had a premeditated decision to commit a crime, the defendant’s use of a weapon, or that the defendant was in a position of authority or trust.
3 The key functions of a criminal court are to try summary offences and most either-way offences, carrying out plea-before-venue hearings for either-way offences, and sentencing defendants if found guilty.

4 Imprisonment. Here the offender’s behaviour is so serious that none of the other sentences will suffice.

5 This refers to either magistrates or jurors who are legally unqualified (although judges and lawyers can sit as jurors) ordinary unpaid members of the community.

6 Passing a sentence, generally of up to six months’ imprisonment for a single offence (12 months in total), a conditional discharge, and/or a fine of up to £5,000

7 Public confidence, jury equity and the open system of justice

1.3 Legal personnel

1 Being briefed by a solicitor, providing advice for clients and representing clients in the crown or the appeal courts

2 Undertaking conveyancing matters, providing advice for clients, e.g. in matrimonial matters, and representing clients in the magistrates’ courts

3 To ensure a safe, secure and responsible environment for lawyers and their clients

4 Barristers hold rights of audience in the Crown Court and above, whereas solicitors generally have rights of audience in the magistrates’ courts and county court; barristers are generally self-employed, whereas solicitors are generally employed by firms; and solicitors can be approached directly by clients, whereas barristers can only be accessed through a solicitor.

5 Answers should reflect the following:

<table>
<thead>
<tr>
<th>Statement</th>
<th>True</th>
<th>False</th>
</tr>
</thead>
<tbody>
<tr>
<td>Barristers, and not solicitors, generally have rights of audience in the Crown Court or higher</td>
<td>✔</td>
<td></td>
</tr>
<tr>
<td>Barristers cannot be approached directly by clients. Only a solicitor can speak directly to a barrister.</td>
<td>✔</td>
<td></td>
</tr>
<tr>
<td>Solicitors can work for small high street firms, larger city firms and for large multi-national businesses.</td>
<td>✔</td>
<td></td>
</tr>
<tr>
<td>Legal executives have the same rights of audience as barristers.</td>
<td></td>
<td>✔</td>
</tr>
</tbody>
</table>

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Legal executives are not allowed to draft legal documents such as wills, only solicitors are allowed to carry out this task. ✓

6 To hear appeals on points of law in both civil and criminal cases
7 To hear appeals in criminal cases against conviction and/or sentence or on points of law, or to hear appeals in civil cases on finding of liability and/or amount awarded or on points of law
8 In office judges must not be fearful of being made redundant if they make a decision that is later criticised or proved incorrect.
9 Judges are free from any legal action while serving correctly in their capacity as a judge.

10 Answers should reflect the following:

<table>
<thead>
<tr>
<th>Statement</th>
<th>True</th>
<th>False</th>
</tr>
</thead>
<tbody>
<tr>
<td>District Judges sit in both the Crown Court and the High Court.</td>
<td></td>
<td>✓</td>
</tr>
<tr>
<td>Inferior judges include those of the Supreme Court.</td>
<td></td>
<td>✓</td>
</tr>
<tr>
<td>Superior judges can be removed by the Lord Chancellor, provided the Lord Chief Justice consents to the dismissal.</td>
<td>✓</td>
<td></td>
</tr>
<tr>
<td>It is important that the executive has control over the judiciary, or else judges might make decisions which go against government policy.</td>
<td>✔</td>
<td></td>
</tr>
</tbody>
</table>

1.4 Access to justice

1 Conditional fee agreements provide a further alternative to private funding, they remove the anxiety of having to pay huge costs and any deductions for costs are set at a maximum of 25%.

2 Solicitors generally charge a higher fee to cover the risk of losing the case, some court costs may still need to be paid and a limited number of firms are contracted to take on certain publicly funded cases restricting the pool of potential firms available.

3 They provide free legal advice on many areas of law especially social and housing law.

4 Answers should reflect the following:

<table>
<thead>
<tr>
<th>Statement</th>
<th>Type of private funding</th>
</tr>
</thead>
<tbody>
<tr>
<td>Client remortgages home to pay for legal services</td>
<td>Client’s own financial resources</td>
</tr>
</tbody>
</table>

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**Chapter 2 Criminal law**

2.1 *Rules and theory*

1. By an act of Parliament or by common law
2. The act must be forbidden by the state and must be punished by the state.
3. To avoid liability for accidents
4. To remove liability
5. It is higher in criminal law because liberty is at stake.
6. A shared morality that binds society
7. When they are not an adult or do not have the mental capacity of an adult

2.2 *General elements of criminal liability*

1. Because criminal law requires a positive AR
2. Because the thin skull test requires the defendant to take the victim as they find them
3. Objective = AR is virtually certain; subjective = the defendant realises this
4. The defendant must be able to appreciate the risk of the AR occurring to have sufficient MR for subjective recklessness.
5. When the AR is not the same
6. To avoid liability for accidents; however, judges are prepared to be flexible and consider the AR as continuing or a single transaction

2.3 *Fatal offences against the person*

1. Oblique intent for GBH
2. Intent to kill or cause GBH
3. Capable of independence of its mother
4 A considered desire for revenge and sexual infidelity by itself
5 Section 52 amends the previous law; s 54 replaces the previous law.
6 A reasonable person would consider it abnormal as determined by the jury.
7 Would all sober and reasonable people consider it dangerous?
8 Because an MR, to cause death, would give rise to a murder charge
9 Civil law tests

2.4 Non-fatal offences against the person
1 The victim must be aware they are about to be subjected to violence.
2 Because the victim thought it was a joke
3 Subjective recklessness
4 Because there is implied consent
5 None
6 DPP v K (1990)
7 Direct intent
8 GBH
9 Yes. Could cause problems with colds and flu for ABH
10 The MR, because serious injury caused intentionally should be dealt with differently from that caused recklessly

2.5 Offences against property
1 Appropriates (s 3), property (under s 4) and belonging to another (under s 5).
2 Dishonestly (under s 2) and intention to permanently deprive (under s 6).
3 In its basic form, it is the opinion of a magistrate or juror, so: (a) it is a subjective opinion, differing between age groups and cultures, or (b) the definition changes as society progresses.
4 The sections provide a complicated definition for what is in practice a fairly straightforward crime. However, there are many not-so-common situations that each of the sections cover, e.g. selling someone’s property without moving it or being overpaid and refusing to return the overpayment.

5 The AR is the defendant steals; uses force on any person or puts or seeks to put any person in fear of being then and there subjected to force; uses force in order to steal; uses force immediately before or at the time of stealing. The MR is dishonesty with the intention to permanently deprive (both from theft) and an intention to use force to steal.

6 The term ‘force’ is a matter for the jury to decide. It need not be violence as a mere nudge or push would suffice.

7 The defendant had a defence under the Theft Act 1968, s 2(1)(a). Following a tussle with the ‘victim’ he honestly believed that he had a right in law to take the money and believed he was not dishonest.

8 The section does provide a complicated definition since its purpose is to catch all differing methods of the offence, therefore the offence may seem wordy but is in fact very specific in its requirements.

9 Entry of a building or part thereof, trespass, plus (for Theft Act 1968, s 9(b)) theft or attempted theft, GBH or attempted GBH.

10 Under s 9(1)(a) it is sufficient to enter with the MR for one of the other offences; for s 9(1)(b) theft or GBH must at least be attempted, if not fulfilled.

2.6 Mental capacity defences

1 They were established in order to placate the public following the unlawful killing of a high-profile victim and to frame a legal definition of insanity around 1841.

2 The defendants were both diabetics and had ‘committed’ crimes. In Hennessey the courts stated that insanity was the correct verdict, confirmed by the Court of Appeal – it was the diabetes, an internal cause covered by the M’Naghten Rules; while Quick – who had taken insulin, an external factor, but failed to eat afterwards – had his conviction quashed by the Court of Appeal.

3 Hill v Baxter: the defendant must provide prima facie evidence in support of a plea of automatism. R v T: in cases involving MR, automatism must be an external factor and be an absolute loss of control.
A-G Ref. No. 2 of 1992: there must be a loss of total control and any awareness, however slight, would not support a plea of automatism.

4 Here the defendant knows or has reasonable knowledge of the onset of a condition, such as diabetes or epilepsy, but nevertheless continues with an act such as driving or operating machinery and does nothing to counter the onset.

5 Because people could simply get drunk or ‘high’ on drugs and, in consequence, plead not guilty for lack of MR to crimes such as those involving violence. Instead, an intoxicated condition simply casts doubt on the culpability of crimes of specific intent, but not those of basic intent.

6 A defence has to exist to recognise that the defendant's ability to form intention has been impaired, however to allow intoxication to protect all defendants from criminal liability would be to give a licence to commit crime, so it cannot be a general and complete defence, ie it cannot apply to all crimes and it cannot give complete legal justification for the defendant's actions.

2.7 General defences

1 The situations are: (a) actions needed to defend oneself from attack; (b) actions taken to defend another person; and (c) under s 3 of the Criminal Law Act 1967, actions taken to prevent a crime or arrest an offender, suspected offender or person at large.

2 By using a subjective test based on the defendant’s genuine, even if mistaken, belief and whether it was reasonable to do so. The situation must be assessed by what the defendant honestly and instinctively thought was reasonable, and the force must be used when the danger of the situation is still ongoing and not be excessive or ‘disproportionate’.

3 Defence of duress by threats is controversial. To its critics, it provides an excuse for the coward; to others it is simply an acknowledgement of human frailty in fraught situations.

4 The Graham test provides a bench-mark test for cases of duress by threats to give solid guidance to juries should the defence be raised.

5 Duress by threats operates where a defendant, or someone in a close relationship to them, is threatened with death or serious injury by another person in order to carry out a crime. This defence is not available to murder. Duress of circumstance operates where the defendant finds themselves in circumstances in which they were forced to commit a crime rather than from a direct threat from another. The defence of necessity is similar to duress of circumstance and allows a defendant to act in order to
prevent a greater evil. However, unlike the other two defences, necessity can allow the killing of a human being in very strict circumstances.

6 Martin established a test for the defence of duress of circumstances which capitalised upon the Graham test for duress by threat.

7 Consent must be obtained without fraud – this means the victim must not be deceived about the defendant’s identity or the nature and quality of their actions if the defence is to be successful.

2.8 Preliminary offences

1 To prevent defendants avoiding convictions for crimes simply because they failed to carry out the full crime

2 They were both found not guilty. They were stopped before the commission of the full crime that arguably they had clearly intended and therefore stopped before the stage of more than merely preparatory.

3 They were both found not guilty, when arguably they were trying to commit offences. In Easom the court couldn’t prove he was trying to steal a specific item (the law has subsequently accommodated this situation in what is termed ‘conditional intent’) and in Millard, as attempted crimes are specific intent (requiring intent as the MR) crimes, recklessness will not suffice.

4 Before the Criminal Attempts Act 1981, if the crime was impossible, no crime was committed. This was clearly a problem for the hapless, but lucky, criminal who tried to commit a crime, but was unable to do so.

5 This is a matter of opinion. Section 1(1) has stabilised the definition of the law, however the potential imprecision of the definition has produced some unusual and awkward results in court.

Chapter 3 Law making

3.1 Parliamentary law making

1 Political influence is the source of most legal change.

2 A Green Paper is a consultation document inviting suggestions. A White Paper is a statement of information.

3 Monarch, Commons and Lords

4 The monarch is a theoretical source of executive power – which is exercised, in practice, by the government – with the permission of Parliament.

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5 Yes. Parliament has always maintained the right to repeal or pass any law it chooses.

6 An advantage is that they save parliamentary time by getting lots of small provisions through at the same time. A disadvantage is that it is impossible to have the correct experts to scrutinise all the different provisions in the committee stage, so poor provisions could slip through – this has been argued to be the case with the new law on voluntary manslaughter, which is tucked away in the Coroners and Justice Act 2009.

3.2 Delegated legislation
1 Primary legislation is made in Westminster by the Commons, Lords and monarch. Secondary legislation is made by a body delegated power by Parliament.

2 Because it doesn’t have the time, expertise or local knowledge to make all laws required

3 Statutory instruments, because they are made by government departments headed by a minister

4 Beyond the powers – the secondary body has exceeded the powers given to it by Parliament

5 Unlike primary legislation, judges can declare secondary legislation void.

3.3 Statutory interpretation
1 Because of ambiguity, words used being too broad, progress of technology, drafting errors

2 Because it supports the principle of parliamentary sovereignty

3 The Golden Rule

4 Pepper v Hart (1993)

5 Because judges are not looking at what Parliament said, but deciding what they believe Parliament meant

3.4 Judicial precedent
1 Let the decision stand

2 D

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3. It allows the Supreme Court to depart from its previous decisions.
4. One that must be followed
5. Give reasons why they are not following it

3.5 Law reform
1. A full-time body with the aim to suggest reform and updates to the law
2. By the Law Commissions Act 1965
3. Repealing outdated law (over 3,000 Acts)
4. Offences Against the Person (Law Com. 218)

3.6 European Union law
1. Regulations are binding and automatically apply. Directives often require implementation by member states.
2. The European Parliament
3. The Council of the European Union
4. It appears to limit parliamentary supremacy, however the European Communities Act is capable of being repealed by the UK Parliament.

Chapter 4 The law of tort
4.1 Rules and theory
1. Because liberty is not at stake
2. Nuisance, Rylands v Fletcher, vicarious liability
4. To return the claimants to their original position
5. When the activity is socially useful
6. When judges exercise caution in imposing liability and setting new precedents. They exist to limit claims to what is fair, just and reasonable in order to protect public services and public money
7. Because of insurance and responsibility

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8 Because leaving it to the defendant’s own judgement would be incredibly vague and provide no common test

4.2 Liability in negligence
1 It modernised the language and inserted the ‘fair, just and reasonable’ test as the neighbour principle was felt to be too wide.
2 In Bourhill the claimant chose to see the incident – to which she was not related. In Mcloughin the mother had no choice but to see her family in hospital.
3 It would raise it and a high degree of care would be needed.
4 Using the ‘but for...’ test
5 The damage does not pass the ‘foreseeability test’.

4.3 Occupiers’ liability
1 Because the law offers less protection to trespassers
2 Under the Occupiers’ Liability Act 1957, s 2(3)(a) an occupier should be prepared for children to be less careful than adults; warning signs should be relevant to children; occupiers should be aware of allurements.
3 The Occupiers’ Liability Act 1984 is limited to claims for death and personal injury only.
4 Because they had not taken reasonable steps to ensure they were insured
5 When the trespass becomes regular and the defendant is aware of it

4.4 Torts connected to land
1 A legal interest in the land interfered with
2 Unreasonable use which impacts upon the claimants’ use or enjoyment of their land
3 Locality, duration, sensitivity and malice
4 A class. There is no set number so we assume more than one, i.e. two, would be sufficient.
5 Only if it moves from the defendant’s land to the claimant’s land

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6 The thing must move from a set of circumstances that the defendant controls, to a set of circumstances that he does not control.

4.5 Vicarious liability
1 To show that a tort was committed and that they were an employee and were acting in the course of their employment
2 Was there a sufficient connection between the employee’s position and their wrongful conduct?
3 Where the defendant is held to be acting outside the course of their employment
4 Probably, depending on more detailed circumstances
5 Because Cox was an inmate in a prison – it may look odd in light of the policy decisions in the other two cases

4.6 Defences
1 It allows proportionality rather than the ‘all or nothing’ approach.
2 Expressly or by implication
3 They are obliged to act due to their position.
4 Any injury sustained within the application of the Queensbury Rules
5 It does not give permission for nuisance but may change the nature of the locality.
6 By claiming statutory authority
7 Twenty years
8 This is a defence – so the defendant cannot be held liable.
9 An event that happened independently of any human action
10 Because they had a statutory authority to maintain water pressure

4.7 Remedies
1 To return the claimant to their original position
2 Property damage under special damages
Pre-trial earnings are calculated as special damages; post-trial loss of earnings are calculated using Multiplicand × Multiplier = Future loss of earnings.

The burden rests with the party in breach – so the defendant.

Because the impact of cricket was socially important

A prohibitory injunction

Chapter 5 The nature of the law

5.1 Introduction to the nature of law

1 Theft: substantive; evidence: procedural; Parliament: public; wills: private substantive; health and safety: public substantive

2 Punishment of wrongs

3 Criminal

4 Judges through precedent

5 Excessive power of the state / dictatorship

6 Access to lawyers and the court is not free. Financial help to access justice has been severely reduced in recent times.

7 Judges are not influenced by politicians, politics or the need to seek re-election.

8 Two from: fair trial; judicial independence; trial by peers; Habeus Corpus

9 The key principles of human rights are central to modern interpretation of the rule of law.

10 In common law systems judges act as a referee between the two conflicting sides, known as the adversarial system. In civil law systems judges act as investigators in a joint effort to arrive at the truth, known as the inquisitorial system.

5.2 Law and morality

1 The state does not impose a set of values. A variety of cultures, religions and political beliefs are tolerated.

2 The Ten Commandments: theft, murder, divorce, licensing laws

3 Aristotle, Jeremy Bentham, John Stuart Mill and HLA Hart

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4 Natural Law theorists: Thomas Aquinas, James Fitzjames-Stephens, Lord Devlin, Lord Simons and Lon Fuller

5.3 Law and justice
1 The idea that the law is fair in how it seeks to punish wrongs and protect rights
2 Denning believed judges had the power to change the law in order to achieve justice. Megarry believed judges had no jurisdiction to change the law – merely to administer it.
3 The fair and accurate application of legal rules
4 Most of the system is just – and achieves justice most of the time.

5.4 Law and society
1 Systems are adequate, but justice is subjective; it is utilitarian most of the time.
2 To maintain public confidence in our institutions of justice
3 Because it is a social norm to do so. We submit voluntarily to the law or it is enforced against us.
4 Through a system of judicial precedent, which seeks to develop alongside society's needs

5.5 Law and technology
1 This is due to a number of factors – most notably through a lack of desire and motivation for change in an industry which sees tradition as more important than modernisation. Firms seem sceptical at the advantages of technology and are put off by the cost of introducing systems that could streamline their services and ironically reduce costs.
2 Differences could include: a movement from paper-based information to more technology-based information, such as computers, smartphones, the internet, etc; different methods of communication from face-to-face meetings and the necessity to physically travel to places to the more modern methods of communication such as email, file-sharing, computer-based conference meetings, etc.
3 The defendant wouldn’t need to be physically present at a hearing and could make a plea remotely via computer link or via email. This would
reduce the stress of an appearance and reduce the costs to the defendant who, for example, wouldn’t need to have time off from work, or a prisoner on remand wouldn’t have to be moved to a court.

4 Biometrics is concerning as it uses statistical data to predict a particular person’s attitude and behaviour based on their biological make-up – age, gender, etc. As such information is not person-specific it currently doesn’t factor in individualism or a person’s own personality and could be incorrect, corrupt or restrictive.

5 Globalisation is the homogenisation of products and services. This has the danger of restricting growth and talent, and allowing cartels to operate in business, especially in legal services.

Chapter 6 Human rights law

6.1 Rules and theory

1 The European Convention on Human Rights was drafted in 1950 and came into force in 1953; the Human Rights Act 1998 came into force in 2000.

2 This means that citizens are not allowed to have their lives taken by anyone else unless certain and specific conditions are met through due process of law. Some citizens argue that this should be further restricted to allow a right to die and include the right to suicide or the right to allow another person to help them commit suicide.

3 This means that no one without just cause can interfere with your right to live a free life. There are legitimate restrictions, such as lawful arrest or imprisonment for those who have or are reasonably suspected of committing offences.

4 This means that no one without just cause can interfere with your right to live a free life within the confines of your home. There are legitimate restrictions, such as in the public interest, or to protect the public, or through the press’s scrutiny of celebrities.

5 This promotes and encourages healthy debate and challenge, so that citizens can express ideas, views and opinions freely. There are legitimate restrictions, such as prevention in the public interest, to protect the public, their health and their morals.

6 This refers to rules which are not necessarily written down as laws but are nevertheless followed by citizens.

7 Marx argued that rights are maintained by laws which simply protect and prop up the dominant group or groups in society.
8 This is a qualified right, balanced and restricted, generally temporarily, for the benefit of society. Citizens are able to go where they want, when they want. But, this does not include going to places where they would be trespassing.

9 The freedom to report and a free press is important in a democracy. However, this must be balanced with a citizen’s right to not have their lives and activities reported on if it is not in the public interest.

10 An absolute right is fundamental to the safety and security of life, for example the right not to be tortured. This type of right cannot be restricted. A limited right is more common than an absolute right, and there are many examples under the Human Rights Act 1988. A qualified right tries to balance an individual’s right against the needs of other peoples. Therefore, by default these rights are restricted, for example restricting articles being published in the media.

6.2 Protection of the individual’s human rights and freedoms in the UK

1 A constitution is a document containing all the rights of its citizens, whereas a Bill of Rights is a document which sets out the civil rights of its citizens.

2 Statute law in the UK is passed by the British Parliament, whereas the common law is developed through the decisions of judges in the English legal system.

3 In the case of Entick, arguably Article 8 could have been breached; while in Bushell, arguably Article 6 could have been breached.

4 This was passed by the British Government in 1998 and became law in 2000. It was the first specific Act that was passed in the UK that solely enforced basic human rights for its citizens.

5 Decisions and opinions of the ECHR must be taken into account by English courts even if there is a conflicting decision of an English court.

6 It seems paradoxical and can be criticised, since even though each new Act of Parliament must include a ‘statement of compatibility’, s 19 continues by stating that the minister can nevertheless make a declaration of incompatibility and still proceed with the Bill, thus avoiding Convention rights.

7 Under s 10, if an Act is found to be incompatible with a Convention right under s 4, a statutory instrument can be used to amend the Act to comply with the Convention. However, under s 10(2), the relevant
government minister ‘may by order make such amendments to the legislation as he considers necessary to remove the incompatibility’.

6.3 Key provisions of the European Convention on Human Rights

1 So that no one without just cause can interfere with your right to live a free life

2 Lawful arrest or lawful imprisonment

3 A citizen must be able to present and argue against any evidence produced in court. Otherwise, there would be no defence case. Article 6(1) enshrines that a court case must be fair, in public (where possible), within a reasonable time and heard by an impartial judge and/or jury.

4 An argument for censorship would be to stop the press reporting something that would jeopardise national security. An argument against censorship would be where a citizen doesn’t want information being reported simply because it would be embarrassing, etc.

5 A citizen has the right to live their own life in a way that they choose to do so in private: Douglas v Hello! Ltd (2001); Laskey, Jaggard and Brown v United Kingdom (1997).

6 This means respecting a person’s choices on how they conduct their family relationships, such as sexual activity, being married or unmarried, having children within or outside of marriage, and allowing those families seeking immigration or settlement to live together until status is granted.

7 This is achieved by different means, for example through artistic mediums such as painting or drawing or via theatrical performances, and the ability to express views graphically is just as important as by using text.

8 Answers may vary and can agree or even challenge this contention. Some will argue that it is acceptable to say or publish information that, to some, may ‘offend, shock or disturb the state or any sector of the population’ or else we will live in a puritanical and prudish society.

9 Answers may vary and can agree or even challenge the case decision of Steel and Morris v United Kingdom (1997). Some could argue that the David v Goliath case encourages the ‘sharp’ practices of huge multi-national companies to not go unchecked, while others could argue that the use of deliberate or recklessly made statements is unacceptable regardless of the situation.

10 Freedom of peaceful assembly means that citizens can meet and gather with other citizens as a group for lawful purposes. Freedom of
association means that citizens can form lawful groups, organisations or clubs for their own interests.

6.4 Restrictions on human rights law

1. Where a person is imprisoned after a conviction at trial.
2. Where there is a matter of national security to not allow an open trial.
3. It benefits national security, the public’s safety and the financial safety of the country.
4. It protects the health and morals of citizens, for example in *R v Lemon and Gay News* (1979).
5. It prevents disorder or crime.
6. It adds a further restriction to Article 10. The section requires courts, when granting ‘relief’, to have particular regard to the importance of the freedom of expression.
7. Public order offences prevent citizens simply causing noise and disturbance to other citizens, for example preaching the hatred of others in public.
8. This is important for the security services in specific and exceptionally controlled circumstances to identify communications of criminals to prevent crime and the loss of life.
9. While it is important to be able to enjoy a freedom of the press and a citizen’s right to publish material on topics that interest them, it is equally important to uphold moral values and prevent the corruption of others.
10. A citizen has the right to go about their business and live their lives without the unnecessary and unlawful interference by others. This is particularly relevant where a citizen targets another citizen through a sustained campaign to cause them fear and distress. Such activities need to be prevented.

6.5 Enforcement of human rights law

1. The Court is based in Strasbourg in France and includes judges representing each of the member countries. The judges act independently and not in the interests of their own states. There is usually a panel of seven judges to hear a case. Even if the case is sent to the Court, a panel
of three judges will first hear its merits before agreeing, or not, to fully hear the complaint.

2 A petition can be made by the citizen to the ECHR. The Commission will investigate whether the citizen’s petition has any merits before agreeing to pass the petition on to the full Court. The petition must be made within a specific period of time, usually six months, from the time of being denied redress from the last court in their country. In the United Kingdom, this would generally be the Supreme Court.

3 The process which allows certain decisions of the government or other public bodies to be challenged by citizens to see if they are ‘reasonable’

4 Illegality, irrationality or irregularity

5 Prohibition, certiorari, or mandamus.

6.6 Evaluation

1 It was introduced as a means to ‘bringing rights home’.

2 It allows incompatible laws to be passed in contradiction to the European Convention of Human Rights.

3 It said that the Act had been widely misunderstood by the public and had been misused in a number of situations.

4 The Commissioners couldn’t agree on a common position, so each one published their own findings under the one report.

5 A British Bill of Rights was promised by the Conservatives Party as part of their 2010 election manifesto. It would be a legal document to replace the Human Rights Act 1998 and, in their opinion, operate as a solution to criticisms of the Act.

6 The Conservative Government in 2017 decided to suspend its proposals for a British Bill of Rights in their election manifesto, which stated that while ‘Brexit’ is in process, the Human Rights Act would not be scrapped and the UK would remain signatories of the ECHR for the duration of the Parliament.

Chapter 7 The law of contract

7.1 Rules and theory
1 An agreement between two parties who are bound by law to carry out the obligations under the contract, which can be enforced or compensated in court
2 Agreement (offer and acceptance), consideration and an intent to create legal relations
3 A defect in a contract, for example a misrepresentation or through economic duress
4 Through performance, frustration or breach of contract
5 Unliquidated, liquidated and quantum meruit
6 Specific performance, injunctions, rescission and rectification of a document
7 This is dependent upon whether they are legally enforceable. Agreements are generally not enforceable, for example agreeing to meet someone before school or college, whereas contracts are generally enforceable, for example agreeing to sell a textbook or DVD to a school or college friend.
8 Buying a sandwich for lunch, using public transport having bought a ticket, or paying an entrance fee at a concert

7.2 Formation
1 By looking at each case on an individual basis. Any negotiations before the forming of an offer would likely to be considered invitations to treat.
2 A unilateral offer is made by one party ‘to the world’ and can be considered a reward and operates as an offer, whereas an invitation to treat is an invitation for a party to make an offer, for example by using a display in a shop window.
3 It nullifies the original offer and creates a new replacement offer, so that the offeree now becomes the offeror.
4 There is a rebuttable presumption that in social and domestic situations there isn’t an intent to form legal relations, but there is no such presumption in business situations.
5 In Balfour v Balfour the parties had been living in harmony, whereas in Merritt v Merritt the parties were separated and intending to divorce.
6 In *Stilk v Myrick* the complainant was simply performing an existing obligation, so no further consideration was provided, whereas in *Hartley v Ponsonby*, in continuing in what became a dangerous situation, there was sufficient additional consideration.

7 Consideration need not be adequate means that in the absence of duress or undue influence, the courts are not interested if a party makes a bad deal or agreement.

8 This is an exception to the rule that consideration must not be in the past. If there was a reasonable expectation or implicit suggestion that a payment would be made by the defendant in return for the complainant carrying out a service, then a payment of an amount which is consequently agreed after the service is carried out is enforceable.

7.3 Terms

1 Mere representations, statements of opinion/fact or trade ‘puffs’ are not automatic terms under a contract as they are not, at that moment in time, intended to form terms of a contract.

2 The ratio was important in setting clear rules on incorporating representations into a contract as the defendant’s statement was an innocent representation made without any expertise and the expert complainant couldn’t therefore rely upon it.

3 Custom, through common trade practices, or to preserve business efficac

4 Essentially through the Consumer Rights Act 2015

5 A condition is a fundamental term which carries the main purpose of the contract, whereas a warranty is an ancillary term. A contract can end on the breach of a condition but not following a breach of a warranty.

6 A term of a contract which is neither a clear condition nor a clear warranty and is decided upon by the courts depending upon the level of ‘injury’ following a breach.

7 A clause in a contract which purports to exclude liability should a specific event occur, or not occur

8 The clause must be incorporated into the contract as part of the contract and when the clause is constructed by the courts it must protect the party from damage caused and not seek to gain an undue advantage from it.
9 The courts’ general approach is to hold that such will only be binding if the parties had express knowledge of it at the time of the contract.

10 The rule provides that any ambiguity regarding a clause must be interpreted against the party proposing or having drafted the clause and wishing to rely upon it.

7.4 Vitiating factors

1 A misrepresentation under contract law is a false statement of material fact.

2 Fraudulent, negligent and innocent

3 Damages are available under the Misrepresentation Act 1967 and at common law. Common law damages are based on foreseeable loss under tort law and contributory negligence can reduce the amount of damages.

4 Where there is a threat to a person’s financial situation

5 Claims depend upon whether the injured party protested, whether they have an alternative course open to them, whether they were independently advised and whether they took steps to avoid the economic duress.

7.5 Discharge

1 By establishing that to end or vary a contract by agreement, consideration must be provided

2 Breach of a general term, a condition or an anticipatory breach

3 An unforeseen event prevents the absolute performance of the contract.

4 Illegality, impossibility or where future performance would be fundamentally different

5 Where one party induces the frustrating event, the contract will be breached.

6 In Krell v Henry the central purpose was to observe the procession and therefore the contract was frustrated, whereas in Herne Bay Steamboat Co. v Hutton the central purpose of the contract, a trip around the Solent, remained, so there was no frustration.
7.6 Remedies

1. They are not ‘as of right’ like common law remedies, for example damages, but instead are at the discretion of the courts. Two of the most important equitable remedies are specific performance and rescission.

2. They operate when both parties to the contract have, at the time of contracting, fixed an amount of damages in a clause in the contract that would be paid should there be a breach of contract.

3. The courts look closely at the principle of placing the party in the position they would have been in had the breach not occurred.

4. The injured party should, as best as possible, try to lessen any actual or potential loss.

5. This compels the defendant to carry out their agreed obligations under the contract. An order for specific performance would be denied if it would be unfair to grant the order, or if it would mean excessive hardship for the party.

6. Rescission’s purpose is to bring the parties back, as best as possible, to the position they were in before they entered the contract.