

Congratulations on securing your place at Brunel

We're looking forward to meeting you - either in person or online - and introducing you to life at Brunel.

To help us get started, we've put together a short activity and some further information to help you prepare for your course - including a snapshot of the topics you'll cover and useful resources.

If you have any questions please email cbass-tpo-esgw@brunel.ac.uk.

Pre-arrival activity

We'd like you to complete a short activity before you join us. We can discuss your answers in one of your first personal tutor sessions. Your work will not be officially assessed however it will allow your tutor to get to know you better.

One of the most important things you will learn during the course of studying for your law degree, is how to locate, analyse, and apply legal rules.

As the United Kingdom is a common law system, judgments in real-life cases are a key source of law. Reading a case effectively is a fundamental skill for all law students and for all lawyers.

A great resource for explaining how to read a case, and how to study law in the UK in general is Nicholas J McBride's *Letters to a Law Student: A guide to studying law at university* (4th edn, Pearson 2017). You may wish to purchase a copy for yourself from Amazon to assist your studies, or borrow a copy from a library.

In the meantime, here is a summary of the core elements of reading a case.

The doctrine of Precedent/"stare decisis"

English courts must follow previous decisions from other English courts (of equivalent or higher status in the court hierarchy), when the material facts of the cases are the same.

Material facts

Are the facts relevant to the legal principle under consideration?

There will be many facts in the case, including the names of people; where they lived; where they worked; their age. Not all of them will be relevant and you will have to judge this on a case-by-case basis.

When you begin, you can follow the lead of the judge(s): which facts does he/she emphasise?

As you progress in your studies, you can reflect critically: was this the right focus? Was something left out that may have made a difference?

Ratio decidendi

This is the rule of law upon which a case is decided. It is the reason why the judge(s) decided the case in the way that they did. Locating this rule is the most important thing you will do when reading a case. It is the *ratio decidendi* that is binding in common law systems, and which other judges in courts of lower or equal status, must apply in materially similar cases.

The *ratio* often comes towards the end of a case, and may not make sense unless you read the case from start to finish. Focus on the majority decisions when relevant; you will not find the *ratio* in a dissenting opinion. A dissenting opinion is one in which a judge/judges register their disagreement with the majority judgment and explain their reasons for dissent.

Sometimes multiple judges will agree with each other in a decision but give slightly different *ratios*. Your job is to spot all of them and then to see which one(s) is/are repeated in future cases. Your textbooks can be helpful in this regard, as can academic articles analysing the case(s) in question.

Obiter dictum

Obiter dictum refers to legal points made in a judgment that do not act as the deciding rule of the case. This occurs because judges often make legal points in a judgment not meant to bind as law. They might bring up other legal rules as examples or analogies. It can be challenging to distinguish between the *ratio* and *dictum*. As yourself: is this point of law necessary for the decision? Is it a key issue in this case?

Hierarchy of authority

It is crucial that you locate the court in which the case was decided, and understand the hierarchy of English courts. Below is a rough illustration of the present hierarchy of the present civil and criminal courts in England and Wales. A higher court has the power to overrule the decision of a lower court and to change the *ratio decidendi*, for example, by declaring that the previous judgment was overly broad and by offering a narrower rule. You will study this hierarchy in detail in your first year.

It is your turn to see if you can locate and then find the key elements of the following cases:

1. R v Dudley and Stephens (1884) 14 QBD 273 DC <https://la.utexas.edu/users/jmciver/357L/QueenvDS.PDF>

This is an important criminal law case that raises the question as to whether necessity can ever be a defence to murder.

2. Carlill v Carbolic Smoke Ball Company [1893] 1 QB 256

<https://www.bailii.org/ew/cases/EWCA/Civ/1892/1.html>

This is an important contract law case that examines whether statements in advertisements can become terms of a contract and therefore be legally binding. Or whether they are merely 'advertising puffs' made only for marketing purposes, and should not be taken seriously.

Sample coursework questions

Murder or Manslaughter?

The **actus reus** of murder consists of the “unlawful killing of a human being in the Queen’s peace”.

The **mens rea** of murder is “malice aforethought”, which has been interpreted by the courts as meaning an “intention to kill or to cause grievous bodily harm”.

What principle(s) of law, i.e. murder or manslaughter, should be applied to the following material facts?

- a. A tram takes a sharp bend at speed and runs off the tracks, killing seven people.
- b. A bin lorry mounts the pavement killing six people and injuring fifteen. The driver fell asleep at the wheel.
- c. A lorry mounts the pavement running over and killing a 12 year old boy.
- d. A man aims a sawn-off shotgun at another man at point blank range and fires four shots into him.

Reading list

Essential reading

- Moore, I & Newbery-Jones, C. *The Successful Law Student: an Insider’s Guide to Studying Law* (OUP 2018) - ISBN 9780198757085
- Embley, J, Goodchild, P & Shephard, C. *Legal Systems and Skills: Learn, Develop, Apply* (4th edition OUP 2020) Chapters 5 & 7 - ISBN 9780198834328

Further reading

- Elliott, C & Quinn, F. *English Legal System* (20th edition, London: Pearson 2019)
- Finch, E & Fafinski, S. *Legal Skills* (7th edition, OUP 2019)
- Foster, S. *Legal Writing Skills* (5th edition, Pearson 2019)
- Gillespie, A. *The English Legal System* (7th edition, OUP 2019)
- Holland, J & Webb, J. *Learning Legal Rules* (10th edition, OUP 2019)
- Knowles, J. *Effective Legal Research* (4th edition Sweet & Maxwell 2016)
- McBride, N. *Letters to a Law Student: A Guide to Studying Law* (4th edition Pearson 2017)
- Wilson, S. Rutherford, H. Storey, T. Wortley, N & Kotecha, B. *Learning the Law* (4th edition OUP 2020)

Websites

- [UK Justice website](#) - recent reforms and research as well as government departments and courts.
- [UK Parliament website](#) - parliament and the law-making process
- [All statutes in force in the UK since 1267](#)
- [Her Majesty's Courts and Tribunals Service](#)
- [Judiciary of England and Wales](#)
- [Law Commission](#) - reforming the law
- [Law Society](#) - for solicitors
- [Bar Council](#) - for barristers
- [European Court of Human Rights](#) - human rights
- [European Union](#) - information on EU Law
- [Law in Action - Radio 4](#)

We look forward to meeting you in Welcome Week (Monday 21 – Friday 25 September).

Law School



Find out more about Welcome Week
brunel.ac.uk/welcome-week

 @brunelcampus

 @brunelcampuslife



Brunel
University
London