

**LEVEL 1**

October-June: 250 hrs.: 100 hrs. compulsory class attendance; 150 hrs. independent study time: = 10 ECTS/20 UK credits

- 1. INTRODUCTORY TOPICS [items listed below can be introduced at different points in Levels 1-4]**
- 1.1 Welcome to the course: map, a training to provide advice on English law and related legal services, a fresh chip, 'odious comparisons' and 'lost translations', dual training for a global world
- 1.2 Course method explained: exploring the 'pond', black-letter law, practice competencies and transferable skills, continuing assessment, the evaluations, the 'cut', pass marks
- 1.3 'Skyscrapers', 'hole in the ground', 'scales' 'pendulum' (the Overton Window), 'spider's web'
- 1.4 What makes us tick?
- 1.5 "Islands"
- 1.6 What need for law (social harmony or anarchy)
- 1.7 Around the camp fire: deciding the substantive rules, ensuring procedures to ensure the fair application of substantive rules (procedure)
- 1.8 "Lady Justice"; scales, sword, blindfold; balancing social priorities and individual freedoms, balancing the conflicting interests of individuals
- 1.9 The social contract: three playing fields for everyone: 'must do or must not do (criminal Law), 'should do or should not do' (tort), 'better do or not do' (social codes), and a fourth playing field for some: 'to agree to do or not to do'(contract)
- 1.10 Why courts and judges, how to judge: codified principles and their application (ascertaining the facts, applying the principle); having special regard for previous stories and their endings ('precedent')
- 1.11 Level playing fields: burden of proof, standard civil law, standard criminal law, why different, Genesis 18:23-32, Maimonides 12th century; compare Bismark, Pol Pot, Wolfgang Schäuble (prevention not punishment), guarantees (police enthusiasm, judge's caprice, standard of proof, presumption of innocence, the appeal process)
- 1.12 'Housekeeping': files, sections (class notes, class material, secondary material, language skills, practice competencies, evaluations, case study, further information), tabbing, numbering, dating, identifying documents, cross referencing); reasons for housekeeping (having things to hand and under control, avoiding mistakes, time management, peace of mind, holidays, negligence, insurance)
- 1.13 Forming the 'firm'; (partners, a team on the rock face, reputation, a business vehicle)
- 1.14 Letter paper: (creating template: name, image, file and matter references, dating, top and tail)
- 1.15 Attendance notes: (continuity, prediction, protection, charging, creating template)
- 1.16 Working with case, statute, definition and expression cards.
- 1.17 Types of lawyers in England and Wales: barristers, solicitors, registered paralegals (registered and unregistered), legal executives, others
- 1.18 Relationship lawyer/client (long term, trust, 'GP' or 'Surgeon')
- 1.19 The practice of law: types of legal organization: barristers' chambers, solicitors' practices (partnerships, LLP's, limited companies, ABS's, recognised sole practitioners), other legal business organisations, hierarchies (barristers, solicitors, paralegals, others)
- 1.20 Invoicing clients, retainers, terms of business, lawyers' remuneration
- 1.21 Regulation and conduct, professional indemnity insurance (SRA, PPR and CILEx)
- 1.22 Setting up a legal services business: for reserved activities (SRA regulated), for unreserved activities (PPR, regulated, unregulated).
- 1.23 Business plans and marketing (permitted advertising)
- 1.24 Professional duty of care, contractual liability
- 1.25 Introduction to Statutes (Occupiers Liability Act 1957)
- 1.26 Looking for cases, legislation, civil and criminal procedure rules (updating), EU primary and secondary legislation
- 1.27 The 'holistic' approach (the English legal system 'tree')

- 2. THE ENGLISH LEGAL SYSTEM** [items listed below can be introduced at different points in Levels 1-4]
- 2.1 Common Law and Equity: what is 'equity'? (Judicature Acts 1873 and 1875), emergence of parliament and legislation
- 2.2 'Doctrine of Precedent': High Court (HC decision binding on County Court, not binding on other HC judge, convention, reasoning for disagreement), Court of Appeal (binding on lower courts and self), Supreme Court binding on all lower courts but not itself (circumstances to overrule)
- 2.3 Distinguishing: makes new law (contrast with overruling which changes old law)
- 2.4 '*Per incuriam*'
- 2.5 Certainty v. flexibility
- 2.6 Following the *yellow brick road* to a fair and just solution: The Common Law method of resolving disputes, reaching decisions via the application of precedents (*stare decisis*), case law, interpretation and construction of statute, FIRAC: Facts, Issues (legal implications of a factual scenario), Rules ('black letter law', EU Law, Statute, Common Law and Equity), Application (of the rules to the factual scenario), Conclusion (reaching a decision, the variables in the *ratio decidendi*)
- 2.7 Finding the common-law rules ('upstairs')
- 2.8 Other sources of law and rules incorporated into English law: (natural justice, human rights, treaties and conventions, jurisprudential supranational law)
- 2.9 The Role of judges and lawyers in the English legal system (contrasts between Common Law and Civil Law; judges, barristers and solicitors in a 'conspiracy' for Justice, interaction between barristers and solicitors, reliance of the judge on the parties for full disclosure of the facts and the law each side wishes to argue)
- 2.10 Ensuring the law works fairly: civil and criminal procedure rules, the 'Overriding Objective', pre-action protocols, practice directions, alternative dispute resolution (ADR), funding litigation, acting in person,
- 2.11 Human Rights
- 2.12 Judges and magistrates [status, appointments, training, immunity]
- 2.13 DPP, CPS, Law Officers, Clerks, Ushers and Bailiffs
- 2.14 The Judge as 'lawmaker' (limitations, law reform)
- 2.15 The parties; (witnesses and experts)
- 2.16 The police and 'extended police family' [powers, accountability]
- 2.17 Trial and appeals
- 2.18 Limitation
- 2.19 New evidence (balancing 'finality' and 'justice')
- 2.20 Interpretation of statutes, literal rule, golden rule, mischief rule or purposive construction (the law before the enactment, the mischief or defect the earlier law had, the solution provided, the reason for the remedy), beneficial construction:
- 3. TORT (I)\***
- 3.1 The basic idea: (getting on with others; 'should do and should not do', the concept of a civil wrong, resulting damage to 'person' (physical, mental), 'property', 'pocket', 'heart')
- 3.2 'Tort' and 'criminal law' distinguished
- 3.3 Types of tort (skeleton list), negligence
- 3.4 Who sets the standard: the reasonable person, who is the reasonable person, the approach to establishing what the reasonable person should have done or not done
- 3.5 Duty of Care' the abstract notion, Lord Atkin's definition (*Donoghue v Stevenson; Caparo*), three considerations (foreseeability of any harm; proximity; fair, just and reasonable to impose a duty of care, confined concept of 'my neighbour in law')
- 3.6 Liability for negligent acts or omissions: the 4 tests: was there a duty of care, was the duty breached (i.e. were reasonable steps taken to avoid or prevent the contemplated harm), was the damage the result of the breach (causation, the *sine qua non*, or 'but-for' element [substantial factor test]), was the actual damage that occurred foreseeable (remoteness [egg shell skull rule], 'but for' or 'substantial factor' test)
- 3.7 Defences: *volenti non fit injuria*, *ex turpi causa non oritur actio* (illegality), necessity
- 3.8 Contributory negligence, Law Reform (Contributory Negligence) Act 1945, *Nettleship v. Weston* 1971
- 3.9 Causation, remoteness
- 3.10 Remedies: compensation, injunctions
- 3.11 Limitation (principles)
- 3.12 Claims for pure economic loss

- 3.13 Negligently inflicted psychiatric injury
- 3.14 Misstatement (*Hedley Byrne*)
- 3.15 Employers liability (vicarious liability)

#### **4. CONTRACT (I)\***

- 4.1 The basic idea (the third playing field – getting on with it'; can and cannot do)
- 4.2 Contract and Tort distinguished
- 4.3 Agreement and Contract distinguished
- 4.4 Classification and types of terms (simple, bilateral, unilateral, by deed)
- 4.5 The Essential elements of a contract: (mnemonic: ACIFCCL , Agreement (agreement or enforceable contract), Offer (invitation to treat); Acceptance (postal rule, silence, revocation, termination of offer, counter-offer, requests for information); Consent (duress, undue influence, unconscionable bargains, inequality of bargaining power, unfair relationships, Consumer Credit Act 2006), Intention (domestic and social agreements [presumptions], intention and consideration, mere puff); Form (contracts to be evidenced in writing, sale of land, S.40 Law of Property Act 1925, marine insurance policies, Marine Insurance Act 1906, guarantees); Consideration (past, sufficiency, past payment, promissory estoppel) ; Capacity (minors, mental incapacity, drunk or drugged, corporations, effect); Legality (illegality, in restraint of trade, contrary to public policy, effect)
- 4.6 Contents (express terms, implied terms, incorporation distinguished from representation, implied by fact, law and custom, implied by Statute (description, quality, and title of goods, Sale of Goods Act 1979, Consumer Rights Act 2015)
- 4.7 'Void' Contracts
- 4.8 Voidable Contracts (repudiation)
- 4.9 Unenforceable Contracts

#### **5. CIVIL LITIGATION, PRACTICE AND PROCEDURE (I)**

*Case Study: Anthony v. Cleopatra*

- 5.1 Attracting the client (word of mouth, web site, advertising (The Solicitors (Advertising) Regulations 2002), SRA Code of Conduct-Chapter 8: Publicity)
- 5.2 Arranging the first meeting, receiving the client
- 5.3 Interviewing the client, 'know your client', asking the right questions to obtain appropriate facts (potentially relevant, material) to identify the legal issues involved and the rules of law that apply, client is first source of evidence, how reliable, reading body language
- 5.4 Opening the file, retainer and terms of business
- 5.5 Obtaining evidence to support facts (documentary evidence - reports, correspondence, bills, etc.; visual evidence - photographs, videos, physical exhibits, etc., site inspections, enquiries, witnesses, assessing your chances, strengths and weaknesses, dedicating effort and imagination to improving your chances and to distinguish), how diligent/creative do you need to be, proportionality
- 5.6 Pre-action protocols: principle and purpose, cards on table, agreeing facts with opponent, timescales, court control, consequence of non-performance
- 5.7 The pre-action protocol for personal injury cases
- 5.8 Case briefs (FIRAC approach)

#### **6. PROFESSIONAL CONDUCT AND ACCOUNTS (I)**

- 6.1 Outcomes focused regulation (contrast with rule based regulation]
- 6.2 General overview of Solicitors' Code of Conduct, Bar Standards Code of Conduct, Paralegal Code of Conduct
- 6.3 SRA Code of Conduct: the mandatory principles, client care (chapter 1), equality and diversity (chapter 2), conflict of Interest (chapter 3), confidentiality and disclosure (chapter 4), the client and the court (chapter 5), the client and Introductions to third parties (chapter 6)
- 6.4 Keeping client money and assets safe; client and office account (SRA Accounts Rules 2011)

#### **7. CRIMINAL LAW (I)\***

- 7.1 Level playing field, presumption of innocence, burden and standard of proof
- 7.2 Classification of crimes (summary only, either way offences, indictable only offences)

- 7.3 Categories of criminal offences; personal crimes: homicide, violent crimes (e.g. assault and battery), arson, child abuse, domestic abuse, kidnapping, rape, statutory rape; property crimes: (e.g. theft offences – burglary, robbery, shoplifting, etc.); inchoate crimes: (e.g. encouragement, assistance, attempt, conspiracy – a substantial step towards the completion of the crime); statutory crimes: (e.g. driving under the influence, minors in possession of alcohol, drunk and disorderly; financial crimes: (e.g. deception, fraud, blackmail, embezzlement, money laundering, tax evasion, cybercrime)
- 7.4 Actus Reus (conduct, result crimes, liability for acts/omissions, existence of necessary circumstances before a crime can be committed, causation)
- 7.5 Mens Rea (motive, intent, oblique intention, virtually certain consequences, recklessness, transferred malice, crimes of negligence, crimes of strict liability, liability of corporations)
- 7.6 Parties to a crime (principal offender, requirements for secondary participation, joint enterprise, accomplice liability)
- 7.7 Strict liability
- 7.8 Defences (state of mind/capacity, insanity, automatism, intoxication, mistake, self-defence, duress, necessity, marital coercion offences requiring intent, public and private defence, infancy)
- 7.9 Partial defences to specific crimes (e.g. consent for ‘assault and battery’, loss of control, diminished responsibility for murder)

## **8. WORKSHOPS: PRACTICE COMPETENCIES AND TRANSFERABLE SKILLS**

Exercises and assessments relating to practice competencies in modules 1-7 including opening a file, working on the ‘music’ of English, reading cases, oral adversarial development of factual scenarios, written tort problem (AvL), written contract problem (D&A), oral topic presentations (prepared and unprepared), writing letters (apology, condolence), writing an essay, writing attendance notes, filing and recording, mock interviews (listening, taking notes, encouraging the client to talk, understanding the client’s concerns, courtesy and professionalism, no rushed decisions, invite client to ask questions, advising on confidentiality rights, attendance note of meeting, CV and covering letter, diarising and prioritising, finding the law.