

CHAPTER 1: THE NATURE OF ENGLISH LAW

QUESTION 1

Consider the following cases and decide whether criminal or civil proceedings would result, and make a note of the parties in the action.

- a) Ali is being prosecuted for careless driving.
- b) Joe returns a faulty stereo to the shop where he bought it but the shop manager refuses to give him a refund.
- c) Kurt drives his car at 70 mph through town one Saturday night. He fails to see Gita on a zebra crossing and knocks her down.
- d) Sally is being sued by her landlord for non-payment of rent for three months.
- e) Jane is an alcoholic. She is pregnant and continues to drink heavily throughout her pregnancy and as a result her child is born with foetal alcohol syndrome.

Answer:

- a) The case is criminal. The prosecutor is the State and the defendant is Ali.
- b) The case is civil. The claimant is Joe and the defendant is the shop owner.
- c) There is a criminal and a civil case here. In the criminal case, the prosecutor is the State and the defendant is Kurt. In the civil case, the claimant is Gita and the defendant is Kurt.
- d) The case is civil. The landlord is the claimant and Sally is the defendant.
- e) No offence has been committed by Jane and no civil action can be taken against her.

QUESTION 2

Explain what is meant by the term 'common law'.

Answer:

'Common law' has several different meanings. It is often used to mean the law created by the decisions of the judges i.e. the law that is not made by Parliament or delegated legislation. When common law is given this meaning it encompasses cases that have may have elements of equity (law developed in the Chancery Courts) and common law.

Another meaning of the term common law is when it refers to case law that has been developed through the old common law courts as opposed to the old Chancery Courts. It distinguishes common law from equity.

A less usual meaning of the term common law is law that is common to the whole of England as opposed to local law.

Sometimes common law is used to mean the law of England, or of other countries (such as America) that have adopted English law as a starting-point. In this sense it may be contrasted with Roman, Islamic or French law, and here it includes the whole of English law.