

# Lesson One: Thinking About Law and Justice

## Lesson One - Lesson Plan

### PLTS:

Creative thinkers and effective participants

### FUNCTIONAL SKILLS:

Brainstorming ideas, organising thoughts and information, applying ideas to relevant situations, orally presenting ideas and working as a team

### OBJECTIVES:

- Student will be introduced to the key concepts underpinning the Rule of Law: equality, fairness, liberty and justice
- Students will explore how the concepts of equality, fairness, liberty and justice are applicable in their everyday lives at school
- Students will consider how these concepts come into play at school and how they come into play at the level of national law

### OUTCOMES:

- Students will demonstrate a basic understanding of the following concepts: equality, fairness, liberty and justice
- Students will be able to explain that these concepts should underpin the law

### KEYWORDS:

equality, fairness, liberty, justice

## I.I Introduction

Read or paraphrase the following for the class:

This lesson will provide a background on what law is and what its functions are. You will also be introduced to and asked to discuss the concepts of equality, fairness, liberty and justice that underpin Rule of Law issues. You will be encouraged to think about the meaning of these concepts within the law and the legal system.



### I.I.I STARTER ACTIVITY: A World Without Laws (15 minutes)

- P 1. Tell the students that they are going to imagine a world without laws. They are going to think about the following question:  
*What would the world be like without laws?*
2. Write the following key words on the board which the students may use for guidance when thinking about the world without laws.

Crime

Government

Prison

Health

Security

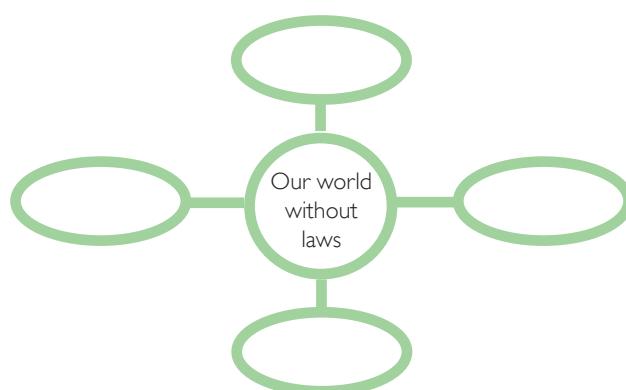
Education

Housing

Safety

3. Draw out any other key words from the students.

4. Divide Students into groups of four or five. Give each group a large sheet of paper. Ask the students to draw some mind maps to illustrate their ideas on what the world would be like without laws. Draw this diagram on the board as guidance.



5. Give the students 5-10 minutes to work in their groups to write down some of their ideas.

6. Ask the groups to feedback their ideas to the class.

7. As a class draw out some thoughts on these questions:

*In which areas of life do you think we need strict laws?*

*What is the law for?*

8. Note down some of the student ideas on the second question, “*What is the law for?*” Keep the answers on the board. At the end of the class in the *plenary* section, students will be asked to look back at their answers and add to them.



## 1.1.2 STARTER: A World Without Laws - Background for teachers

### What is law?

Some writers have defined the law as a social construct made up of custom and practice<sup>1</sup>, that is, a set of rules which a country or community recognises. But what are those customs and practices typically designed to achieve? The law has been described as a tool to achieve justice or the common good<sup>2</sup> or as a mechanism to mediate between different interests<sup>3</sup>. Law does this by regulating the actions of the country or community that recognises it, through imposing penalties on those who do not comply with it.

### What are the functions of the law?

The exercise pushes students to think about what the purpose of law is by imagining a situation where law does not exist. Students may give answers such as crime, violence, fraud, injustice, abuse of the weak by the strong – in general, chaos – where there are no laws.

If students have not already done so, you may wish at this point to make the link between the situations just described, and the function of the law in preventing these situations. Possible answers may include:

- To keep the peace and to maintain public order;
- To protect members of the community;
- To deter bad behaviour;
- To resolve disputes;
- To make everyday situations fairer.

The question on functions of the law is intended to draw out the point that the law does not only regulate behaviour that could amount to a crime. Students may associate the force of the law with deterring criminality, which concerns wrongs against the state. The law is also important in upholding civil rights and obligations too, which concern relationships between individuals. For example, where there are road works, a fence must be put around them to protect people from walking into them. The key point to make is that the law is just as necessary to regulate behaviour and relations between ordinary people in the civil sphere as it is to deal with “bad” people in the criminal sphere.

## MAIN ACTIVITIES

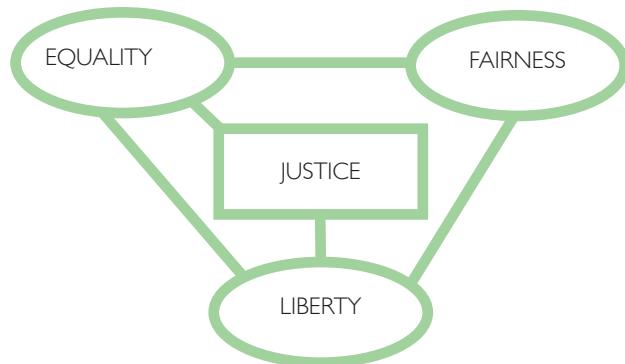
### 1.2 Equality, Fairness, Liberty and Justice



#### 1.2.1 Equality, Fairness, Liberty and Justice

Teacher-led introduction (5 minutes)

P 1. Draw this diagram on the board:



2. Explain to the students that all the concepts that they are about to consider relate to one another. For example, it is not possible to have justice without equality, fairness or liberty. It is not important to explain the concepts in detail at this stage of the lesson. Let the students know that they will explore the concepts in this class. You may refer back to this diagram throughout the class as you cover the concepts.



#### 1.2.2 Equality, Fairness, Liberty and Justice

- Background for teachers

##### Equality, Fairness, Liberty and Justice

These concepts are fundamental to understanding what the law is designed to achieve and therefore the elements that make up the Rule of Law. Students may not have much of a grasp of the legal system and how it functions but this knowledge will be developed throughout this course of study.

It is also important to get across to students that Rule of Law issues are relevant not just to legal processes or the application and enforcement of the law but also to the exercise of power by government and to non-court based resolution of disputes between private parties.

## 1.3 Equality



### 1.3.1 Equality: Teacher led introduction and discussion (10 minutes)

1. Obtain initial answers from the class to the following question:

*What does equality mean?*

2. Read or paraphrase the following to the class:

*In general, we would expect that we as citizens should be treated equally when it comes to basic rights that we are entitled to and may come across in our daily lives. This means that we should not be treated differently on the basis of different characteristics that we may have, such as being rich or poor, our ethnicity, our beliefs and so on.*

*However, there are some occasions where achieving equality means not treating people in exactly the same way. This is because we are not all exactly the same.*

3. Read the following example to the class or write up on the board:

**P Example:**

*Priya finds Maths easy and History difficult. Jamila finds History easy and Maths difficult.*

4. Obtain initial responses to the following question from the class:

*How can Priya and Jamila be given an equal opportunity to understand the subjects?*

5. Read or paraphrase the following from the example:

**P Example:**

*By giving Priya more help with History than Jamila, and by giving Jamila more help with Maths than Priya, the students will have an equal opportunity to understand the subjects. If the two students did not get extra help with the subjects that they found difficult, they would not have an equal opportunity to understand the subjects.*



## 1.3.2 Equality - Background for teachers

### What is equality?

The concept of equality is the idea that people will not be treated differently based on the characteristics that they possess, for example, ethnicity, gender, socio-economic status, or any other personal characteristic.

What does this mean in the context of the Rule of Law? There are two key principles.

The Rule of Law requires:

- (a) **Equal application of the law**, meaning that for all those to whom the law applies, the rule applied must be the same and it must be applied in the same way;
- (b) **Equality in the substance of the law**, meaning that the content of the law should not require the unequal treatment of one individual or group compared to another in the community.

There are exceptions to these principles, but before we think about those, let us illustrate the two principles by way of an example.

Imagine that a law that has come into force in the UK saying that men must work ten hours a day in order to qualify for a state pension whereas women only need to work seven hours in order to qualify for the same pension. To satisfy principle (a), this law must apply equally to all men and all women. That means that there can be no exceptions – as long as you are a man or woman in the UK, the law applies to you. To satisfy principle (b), the substance of the law would have to change. The content of the law would have to treat men and women equally – women, too, would have to work ten hours a day rather than seven in order to qualify for a state pension.

Moving to the exceptions to the principles, equality can be more complex than simply fulfilling principle (a) or principle (b). In fact, sometimes, in order to achieve equality, the law has to be applied differently so that it treats different people or groups differently.

For example, those who start life with particular advantages tend to fare better than those who start off without. For this reason, true equality sometimes requires providing advantages to those without them so as to 'level the playing field' between them and those who already possess those advantages. For example, people who are particularly vulnerable or disadvantaged may need particular protection or assistance to be able to make use of an opportunity, or to benefit or to receive protection from the law on an equal basis to those who do not have that particular vulnerability or disadvantage. This is known as providing *equality of opportunity*, that is, providing an equal starting point to individuals seeking to benefit from an opportunity.<sup>4</sup>

Let us look at our first example with this exception in mind:

- (a) **Equal application of the law** – to offer equality of opportunity, a law requiring minimum work hours in order to qualify for a state pension should not be applied equally to all men. For example, a man with a disability that allows him to work for only a few hours a day should have a lower threshold of working hours in order to qualify for the pension.
- (b) **Equality in the substance of the law** – to offer equality of opportunity, the substance of the law should not necessarily be modified so that both men and women must satisfy the same number of working hours. For example, because women are more likely to carry the childcare burden, to achieve greater equality of opportunity to qualify for the benefit of a state pension, women with children should have to satisfy a lower number of working hours to qualify for the pension.



### 1.3.3 Activity 1: Equality video (5 minutes)

Play the video on equality in the 'Expert Interviews' folder on the CD-ROM. This video may be used either as an alternative to the above introduction to equality, or as supplementary to the introduction on equality.

In this video, Lord (David) Pannick QC, one of the UK's leading barristers and a cross-bencher in the House of Lords, explains what equality means, its importance in our day-to-day lives and what happens when rules aren't equal for all, or are not applied equally.

## 1.4 Fairness



### 1.4.1 Fairness – Teacher-led introduction (5 minutes)

1. Ask the class the following questions:

*What is fairness? When we complain that something 'isn't fair', what do we mean?*



### 1.4.2 Fairness: Background for teachers

The concept of fairness is inherent in the concept of equality. Fairness is the idea that people should be treated equally where it is appropriate for them to be treated equally and differently where it is appropriately for them to be treated differently.

Considering fairness in the context of equality, in general, if people have had equal opportunity to benefit from the law, in both its application and its substance, then we would say that the situation is fair. This might mean that people with a similar starting point and characteristics should be treated in the same way, or it might mean that they should be treated differently in order to try and balance the effects of an unequal starting point.

However fairness also incorporates a notion of people getting what they deserve. For example, having started with an equal opportunity to everyone else, if someone were to receive an additional benefit due to hard work then we would not usually consider that to be unfair. In general, fairness requires a correlation between benefit and effort (or sacrifice), rather than benefit resulting from position, luck, or some other arbitrary factor.



### 1.4.3 Activity 2: School Rules: Fair or Unfair?

- Print out for students

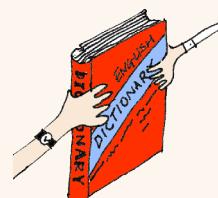
## School Rules: Fair or Unfair?

You have been given a set of fictional rules that have just been agreed by the school's governing board and that you have been told you must follow. Are these rules fair, and if not, why not?

1. Girls will be allowed to have break times, but boys will have to work through break.



2. Students who speak English as a second language will have extra help to understand questions set for homework.



3. Anyone who does extra relevant work for the project that has been set will get more marks.



4. Students may have their personal items confiscated by teachers or be given detention without notice or explanation at any time as long as the teacher feels that it is necessary for any reason they decide.





### 1.4.4 Activity 2: School Rules: Fair or Unfair - Instructions for Teachers (10-15 minutes)

P (Choose either activity 2 or 3 if there is not time for both)

1. Divide the students into pairs.
2. Depending on how much time you wish to spend on the activity, either ask the students to note their answers next to each school rule, or otherwise they may just discuss it.
3. Ask students to feed back some of their answers to the class, while drawing out their ideas on what 'fairness' means.



### 1.4.5 Activity 2: School Rules: Fair or Unfair? - Background and answers for teachers

In this exercise, through judging whether situations are fair, students will be encouraged to think about what Fairness means, and what makes something fair or unfair. This will incorporate the concept of equality discussed previously.

In **rule 1**, the idea to be drawn out is unfairness resulting from *unequal treatment*. Girls are given a benefit (a break) which boys are not given. Moreover, the difference in treatment between girls and boys is based on innate characteristics which they cannot control ie, their sex. There is no obvious inequality between girls and boys which might be said to justify this unequal treatment.

In **rule 2**, the idea to be drawn out is the unfairness that results from *equal treatment* because students who don't have English as a first language need extra help in order to arrive at the same starting point as those who do speak English as a first language and for the two groups to have **equality of opportunity**. (The students may then go on to perform differently, with some doing better than others, resulting ultimately in an *unequal outcome*, but they will have been equipped equally to understand the homework question.)

**Rule 3** builds on question 2 by drawing out the idea that inequality of outcome is not necessarily unfair. Where someone has put in greater work or contribution, it

is not necessarily unfair that they achieve a better outcome than those who are unwilling to put in more work (assuming that all are equally capable of putting in more work) because the outcome is deserved.

**Rule 4** leads in to the next section on Liberty. The situation is unfair because the **liberty of the students has been interfered with for no good reason**. (See section below on Liberty, justifiability of interference and proportionality.)

## 1.5 Liberty



### 1.5.1 Liberty - Teacher-led introduction (10 minutes)

1. Ask the class initial answers to the following:

*What is liberty?*

2. Read or paraphrase and obtain responses from the class from the following:

*Liberty is the freedom to do something or not do something. It can mean freedom in a physical sense of the word, for example, not being imprisoned, but it can mean the freedom to do anything else too.*

**Example:**

*If you are at liberty to speak about something, it means that you are allowed to speak about it, and nobody would be able to interfere with your speaking about it.*

*When the law stops us from doing something, this is a restriction on our liberty. The question is when can the law restrict our liberty? Usually, the law will stop us from doing something to prevent some sort of harm to other people.*

**Example:**

*The law says that we can't steal, because that would cause harm to others by stopping them from enjoying their possessions. This is a perfectly good reason to restrict the liberty of people to act in a certain way (stealing).*

*On the other hand, there may be occasions when there is a less good reason for the law stopping us from doing something.*

**Example:**

*What if the law banned everyone from owning a dog as a pet for the reason that sometimes dogs make a mess on the pavement and their owners don't clean it up?*

*Would that be a good reason for the law to stop us from having a dog?*

*We would say that the law was a disproportionate response to that mess and a disproportionate restriction on our liberty (to own a dog). In other words, the law has gone 'over the top'.*

Where we are stopped from doing something without a good reason (e.g. the dog ban example), or where the punishment for doing something is 'over the top,' (e.g. life imprisonment for stealing an apple), we would say that our liberty has been unduly restricted. This also means that the situation is unjust for the person or people who have had their liberty restricted.

3. Look back at the question: *What is liberty?*

Ask the students to add some more ideas based on the examples they have heard.



### 1.5.2 Liberty: Background for teachers

Liberty is the freedom to do or not do something. The absolute protection of liberty means that others cannot interfere with your freedom to do something you want to do and cannot compel you to do something you don't want to do. Sometimes there are good reasons to restrict people's liberty.<sup>5</sup> For example, laws against theft restrict everyone's freedom to take what they want from others, but protect the liberty of everyone else to enjoy their property without interference. This reflects the fact that increasing the liberty of some often means restricting the liberty of others.<sup>6</sup>

When considering the appropriateness of a restriction on liberty, the central issue is the *proportionality* of the restriction, ie, the balance between the liberty increased and the liberty restricted. There are two aspects to this. The first is whether the good achieved is proportionate to the restriction imposed. The second is whether the penalty imposed on an individual/group for breaching the restriction on liberty is proportionate.

To illustrate the first aspect, most people would consider it disproportionate to ban everyone from having a dog in order to avoid the nuisance of having dirty streets and parks where owners don't clean up after their dogs. The wider liberty being preserved here is perhaps the liberty to enjoy going out for a walk in a clean space. But this good is insufficient to justify restricting everyone's freedom to own a dog as a pet. However, turning to the second aspect, even where the restriction of the act itself is justifiable, the penalty that comes with it may not be. For example, few would argue against the existence of laws prohibiting stealing. Few would argue against having a penalty for breaching such laws. However, most would find a penalty of life imprisonment for stealing an apple to be disproportionate and unfair.

An illegitimate restriction on liberty (which includes a disproportionate restriction) is unjust for the person/group being restricted.

## 1.6 Justice



### 1.6.1 Justice – Teacher-led introduction (5 minutes)

1. Ask the class for initial answers to the following:

*What is justice?*

2. Read or paraphrase the following:

*When someone says that 'justice has been done,' what does that mean? Generally it suggests that where someone has done something wrong, or two people have a dispute over something, the 'right result' has been achieved, and that the procedure used to get to that result was fair. It also requires that those involved in the situation had an equal opportunity to tell their side of the story.*

*Generally, where that procedure was not fair, justice will not have been done as the 'right result' will not have been achieved, or it may be uncertain whether the 'right result' has been achieved. We will think more about fairness of procedure in the legal system in Lesson 3.*



### 1.6.2 Justice: Background for teachers

The concept of justice incorporates the notions of equality, fairness and liberty. It is about getting the right result in the situation, and what is 'right' depends on the different circumstances of the situation and on the circumstances of the parties involved. It describes an outcome that is fair. It takes into account equality and fairness both in terms of the ultimate benefit that the law provides, and also the procedure by which that law is administered.<sup>7</sup> Unfairness or inequality at any stage of the legal process will be likely to lead to injustice. A just outcome also describes a situation where any interference with liberty is for a good reason, as discussed above.



## 1.6.3 ACTIVITY 3: Justice at School: Option 2

### - Print outs for students

#### Role Play Card 1: Rob

You are a student at Hightrees School. You accuse another student, Darcy, of punching you and giving you a black eye. You are called to the Head teacher's office with Darcy. Your parents also come. Your friend Mohammed comes too. You know he will agree with everything you say, even if it is not true. You know your parents will back you up too.

Act out the scene in the Head teacher's office.



#### Role Play Card 2: Darcy

You are a student at Hightrees School. You saw another student, Rob, trying to steal some money from your bag. He realised that you had seen him and he ran away. As he ran away, he fell over and hit himself on a desk, giving him a black eye. Five other students saw what happened.

Rob went to the teachers and accused you of hitting him. You are called to the Head teacher's office with Rob. When you arrive, you find that Rob's friend Mohammed is there. Rob's parents are also there.

Act out the scene in the Head teacher's office.



#### Role Play Card 3: Mohammed

You are a student at Hightrees School. You are Rob's best friend. Rob got a black eye and he has accused Darcy of hitting him. You agree with Rob that you will back up his story, even if he is not telling the truth. You are called to the Head teacher's office with Rob, Darcy and Rob's parents.

Act out the scene in the Head teacher's office.



#### Role Play Card 4: Rob's parents

You are the parents of a student, Rob, at Hightrees School. Your son, Rob, has a black eye. He says another student, Darcy, hit him. You believe your son and you will back him up in front of the Head teacher. The Head teacher is your friend and he is bound to listen to you. You want Darcy to be punished. You think she should be given detention every day after school and community service in her spare time at the weekend for one year. You will push the Head teacher to do this.

The Head teacher calls you to ask you to come to his office to discuss the issue further with your son and Darcy.

Act out the scene in the Head teacher's office.



#### Role Play Card 5: Head Teacher

You are the Head teacher at Hightrees School. One of your students, Rob, has a black eye. Rob accuses another student Darcy of hitting him. You are close friends with Rob's parents who support Rob. You think Rob's parents have good judgment and you believe what Rob and his parents say. You don't want to upset them.

Darcy tells a different story. Darcy says other students saw what happened. You don't want to waste time and ask the other students what happened. You think Darcy is not telling the truth. You want to give her the punishment that Rob's parents suggest.

You call Rob, Darcy, Rob's friend Mohammed and Rob's parents to your office.

Act out the scene in your office.





## 1.6.4 Activity 3: Justice at School - Instructions for Teachers (15-20 minutes)

(choose either activity 2 or 3 if there is no time for both)

In this activity, we provide an example of justice in a fictional school for discussion. There are two alternative ways to use the example in the classroom:

**Option 1:** Hand out the role play cards provided. Ask some of your students to improvise the scene in front of the class. Summarise the scenario below so the students have a grasp of the situation. Afterwards, use the discussion prompts to explore the concept of justice.

**P Option 2:** Read the example scenario provided in the box to the students. If you wish, change the names provided in the example to the names of students in your own class to personalise the materials. After reading the example scenario, use the discussion prompts provided to explore the concept of justice.

Rob, a pupil at Hightrees School, accuses Darcy, another student, of punching him and giving him a black eye. Darcy and Rob are called in to the head teacher's office along with Rob's parents (who are very upset about the situation), and Mohammed who is Rob's best friend and who agrees with everything that Rob says. Darcy denies punching Rob, saying that what actually happened was that Rob tried to take some money from her (Darcy's) bag. When Rob realised that Darcy had seen him trying to take money from her bag, he ran off very quickly, not looking where he was going, and fell over, which is how he got his black eye. Darcy says that there were five other pupils there at the time who saw Rob fall over. They have not come into the head teacher's office with Darcy, but she asks the headmaster to call them in to confirm her story.

At this point, Rob's parents, who are good friends with the head teacher, say that they don't want to waste any more time on this. They feel sure that their son and his best friend Mohammed wouldn't lie, and they would just like Darcy to be given an appropriate punishment. Specifically, they would like her to be given detention every day after school and community service in all her spare time at weekends for a year. The head teacher agrees with Rob's parents and gives Darcy the detention and community service, partly because he feels sure that Rob's parents are people with good judgment and partly because they are his friends and he doesn't want to offend them.



### 1.6.5 Activity 3: Justice at School: - Prompts for class discussion (5-10 minutes)

(For all options) Discuss the following as a class:

*Has justice been done? Why/why not?*

*If not, what could the Head teacher have done to make sure justice was done?*



### 1.6.6 Activity 3: Justice at School - Background for teachers

Most students would agree that justice has not been done. We don't know for certain whether Darcy did punch Rob, but the problem is that the procedure for deciding on the outcome of the situation was not fair. Darcy has been punished for something that she may not have done. There are several points in this example which are problematic.

Firstly, Rob is given the opportunity to bring someone (Mohammed) in to the headmaster's office with him to confirm his story. He also has the support of his parents. Darcy on the other hand is not given the **equal opportunity** to bring people in to the office to confirm her story, (even though she mentions that there are five other pupils who could do so), or to have the support of her parents while the headmaster is trying to find out what happened. This **inequality** between the support Rob has and Darcy's lack of support makes the situation **unfair**.

Secondly, the headmaster who is the person deciding the outcome of this situation does not act **impartially**. By this, we mean that he does not treat Rob and Darcy on **equal terms**. He is friends with Rob's parents and is therefore willing to agree with what they ask, and not investigate further what really happened, despite the fact that Rob's parents are obviously on Rob's side. He does not want to offend Rob's parents and so he does what they ask. However, this is **unfair** because the fact that he does not want to offend Rob's parents is **irrelevant** to whether Darcy did in fact punch Rob and should not have affected the headmaster's decision on investigating the matter further, and his decision on what punishment he gave to Darcy.

Lastly, going back to the idea of **liberty** or freedom that we discussed earlier. Even if Darcy had punched Rob, the punishment that she has been given by the headmaster is probably too harsh as taking away from Darcy her freedom to use her free time after school and at weekends how she wants for a whole year is a very serious consequence.

We conclude, because of all the unequal and unfair elements to the procedure in this situation, that justice has not been done.

## 1.7 Round-up of Law and Justice



### 1.7.1 Activity 4: Law and Justice Round-Up - Print outs for students

1. Who should make rules?

2. How do you feel about rules that benefit others more than you? Is this necessarily unfair?

3. If you were told that a student had run off one break time, leaving school premises, and therefore the school had decided that nobody would be allowed break time anymore, what would you think of that?





## 1.7.2 Activity 4: Law and Justice Round-Up - Instructions for teachers (10 minutes +)

This activity is optional and can either be used for further discussion in class, or as a written homework activity. It can be used as an assessment opportunity to see how much students have grasped of the fundamental concepts underpinning the Rule of Law and their ability to apply them to everyday situations. Understanding these concepts in general will be fundamental to being able to see their importance in the legal system later on.



## 1.7.3 Activity 4: Law and Justice Round-Up - Background for teachers

When discussing/considering the questions, the following should be drawn out:

**Question 1:** Rules should not be made by one person for his own benefit, or in line with arbitrary personal views. The rule is likely to give one person or group of people a benefit over others for no valid reason which means that there is no equality of opportunity and therefore the situation is likely to be unfair.

**Question 2:** Rules should be designed to give people with any background or characteristics an equal opportunity to benefit from an opportunity or a right and an equal opportunity to participate in society. This does not always mean treating everybody in the same way. For example, someone who is disadvantaged or more vulnerable than others to start with, may need to be given extra protection or help in order to be able to have an equal opportunity to benefit or participate.

Thus it is not necessarily unfair that some people are treated differently in accessing rights, benefits or opportunities in life.

However, is it fair that for some people, there is a better outcome? It depends - most people would agree that certain factors leading to a better outcome are not unfair; for example, where someone has worked harder in order to achieve that better outcome.

The point is that in general, there should be a legitimate reason for extra

benefit or advantage given over others. Where there is no such reason, then the outcome is likely to be unfair.

**Question 3:** This draws out the ideas of liberty and proportionality that have been discussed before. Students might agree that some sort of action is necessary to prevent pupils from running off at break time, but should be able to see that abolishing break time altogether is not a proportionate response and this is therefore not a legitimate restriction on freedom. The result for the majority of students is unjust.

## 1.8 Conclusion



### 1.8.1 Plenary

**P** 1. Look back at the answers you obtained from the students in the starter activity on:

What is the law for?

2. Ask the students to make additions to this question, reflecting on the concepts they have looked at in this lesson. Ask the students whether this lesson has changed the way they think about the law and, if so, why?

Footnotes:

<sup>1</sup> H.L.A. Hart, *The Concept of Law* (1961).

<sup>2</sup> M Moore in 'Law as a Functional Kind,' in R George (ed), *Natural Law Theory* (1994).

<sup>3</sup> J Raz, *The Authority of Law* (1979).

<sup>4</sup> It should be noted that some thinkers have gone further in suggesting that *equality of opportunity* is insufficient as a concept and that true equality requires *equality of outcome*. This means that all individuals or groups concerned should achieve the same result, regardless of their personal characteristics. For example, a clever child may be able to achieve a complete understanding of a concept with little help. A less clever child may need much greater help in order to understand the concept. The *equality of outcome* school of thought would give the less clever child all the help that he needs in order to gain the same understanding as the child who is more clever. John Rawls, for example, explains in his *Theory of Justice* (1999) that we are not all born with the same attributes, and those who have a natural advantage do not deserve it by virtue of being born with it. While the *equality of outcome* doctrine may be less controversial when applied to acquisition of knowledge, applying this in all spheres would not take into account other factors such as different contribution, effort and will of different people.

<sup>5</sup> John Rawls writes that such restriction to an individual or a group is justifiable only when it increases liberty as a whole. To understand this, we must revisit the concept of equality. Everyone is equally entitled to his/her liberty. Therefore, restriction on liberty is justifiable where that restriction has the effect of increasing everyone else's equal right to liberty, in other words, 'for the greater good.'

<sup>6</sup> Our society in the UK puts this concept of liberty into practice by allowing us to do what we like as long as it is not prohibited by the law. (Political theorist and philosopher Isaiah Berlin defined this as 'negative liberty' in the essay 'Two Concepts of Liberty'.)

<sup>7</sup> Some thinkers such as Nussbaum focus on justice only as an outcome rather than as a fair procedure that leads to the right outcome. The thinking behind this is that a fair procedure is only of any worth if it leads to the 'right result.' It is however difficult to see how one could be sure that the right result had been reached as an outcome of a legal process, if that legal process were full of unfair elements leading to uncertainty in the outcome.

## Lesson 1 Glossary

**Arbitrary** – based on criteria that are subjective and therefore are not fair

**Breaching a law** – breaking the law

**Civil law** – the law governing rights and obligations between individuals, companies, governments, organisations, etc, or non-state parties. In civil matters one party takes legal action against (or sues) another party. Breach of contract or injury caused by negligence are examples of civil legal matters.

**(A law) Coming into force** – when a law comes into force it becomes legally effective and everyone to whom the law applies needs to start complying with it

**Criminal law** – the law governing wrongs that are punishable as crimes. In criminal matters the state prosecutes individuals in the courts. Theft or murder are examples of crimes.

**Equal application of the law** – the law being applied in the same way to all people and to the same standard i.e not more favourably or leniently in some cases than others

**Equality in the substance of the law** – the law providing for equal treatment of individuals or groups

**Equality of opportunity** – in this context, this means all people have the same starting point so that nobody is in a stronger position to benefit from the law. This may mean giving help to those who are starting in a weaker position in order to bring them onto an equal footing as others.

**Impartiality** – the state of being unbiased

**Justifiable** – legitimate; can be shown to be right or reasonable

**Legal process** – civil or criminal proceedings in order to resolve a legal dispute or determine whether someone is guilty of a crime

**Legitimate** – justifiable; can be shown to be right or reasonable

**Proportionality (of a restriction)** – a restriction is proportionate if it is at the right level for the harm it is trying to prevent

**Unduly restrictive (measure)** – where a restriction is too severe and therefore disproportionate to the harm it is trying to prevent