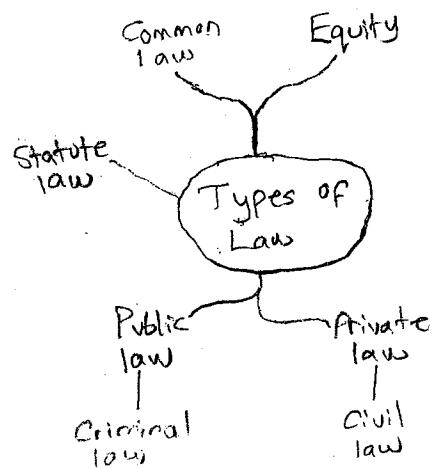
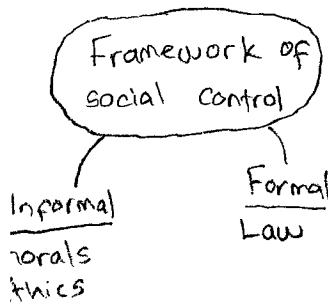


# -EGAL SYSTEM



## Common law

- \* created when judges of the Norman era amalgamated local laws into 'Law of the Land'
- \* Remedies are monetary, known as damages.
- \* created by judiciary

## Statute law

- \* usually for complicated & unique areas
- \* created by parliament

## Public law

- \* criminal law and law affecting councils & public organisations.

## Private law

- \* deals with interactions between private individuals, groups & organisations.
- \* individuals must take action themselves, state does not get involved.
- \* includes civil law

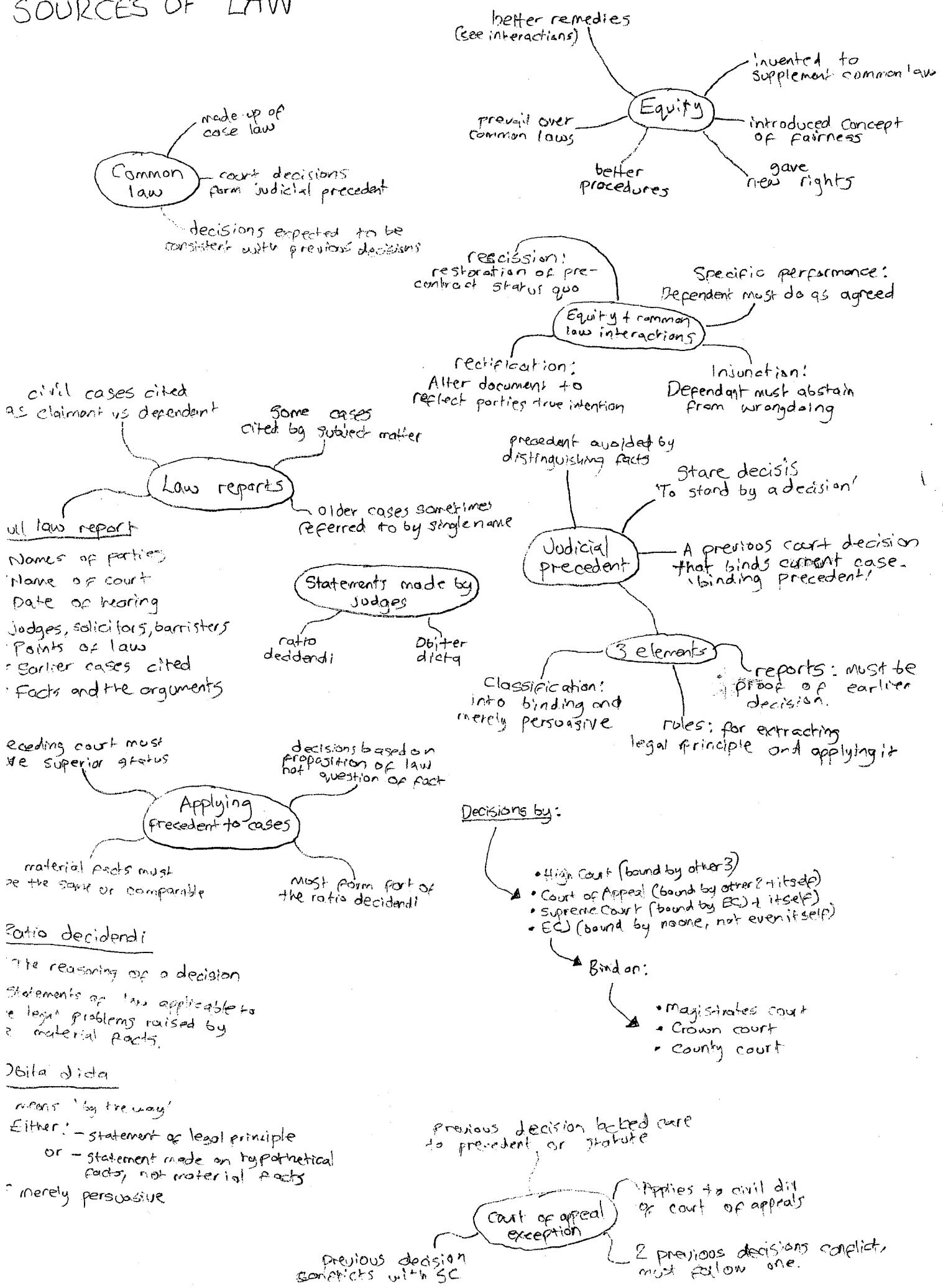
## Criminal law

- \* punished by the state
- \* cases cite 'R vs' or 'Regina vs'
- \* fines, imprisonment, community punishment
- \* police then CPS prosecute
- \* burden of proof on prosecution
- \* standard of proof 'beyond reasonable doubt'

## Civil law

- \* regulates disputes over rights & obligations of people dealing with each other
- \* compensates injured parties (no punishment)
- \* standard of proof 'balance of probability'
- \* can choose to settle out of court
- \* claimant vs defendant

# SOURCES OF LAW



# SOURCES OF LAW

3

## Literal rule

words should be given their literal, grammatical meaning.

## Golden rule

extends literal rule to mean plain, ordinary meaning

unless this gives rise to absurdity or inconsistencies

## Mischief rule

Judge considers what mischief the Act was intended to prevent

## Pragmatic approach

not just ordinary, literal, grammatical sense

Also context + purpose

'what is legislation trying to achieve?

## Contextual rule

words should be construed in context

look at whole statute to gain meaning

## Side notes

## Long title of the Act

## Intrinsic aids

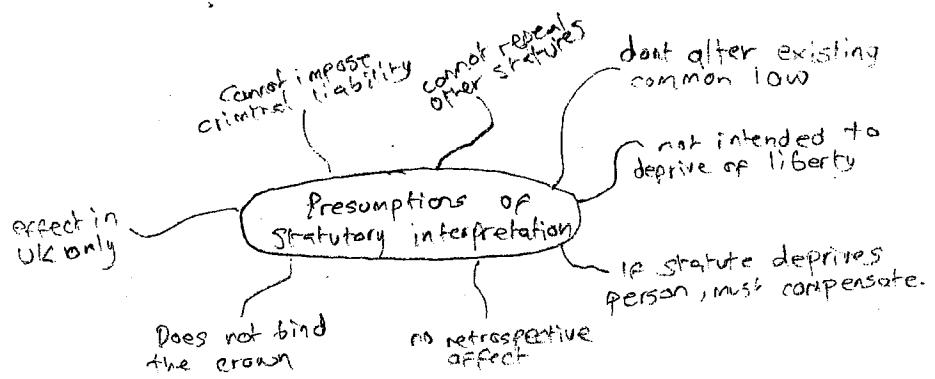
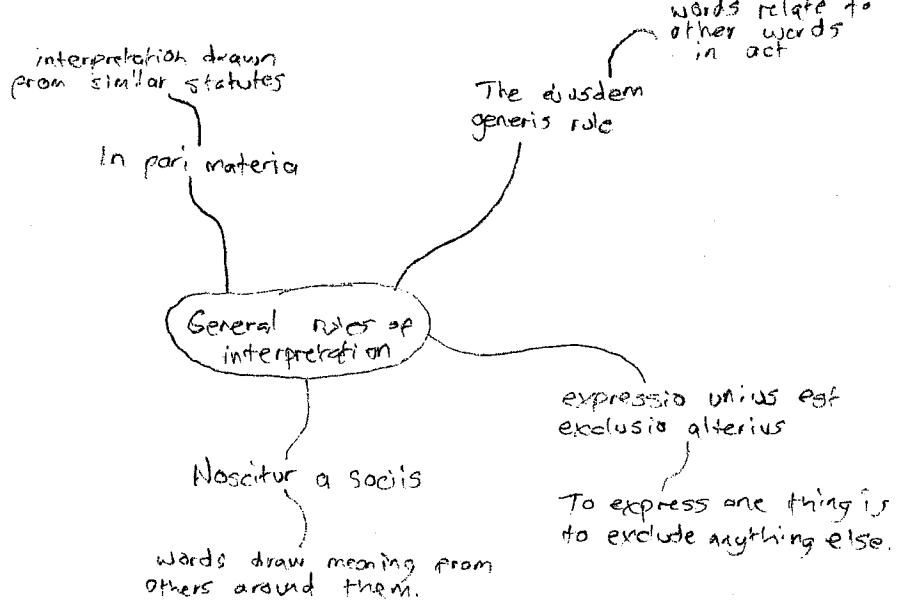
## Preamble of the Act

## Interpretation Sections

## Hansard

## Extrinsic Aids

- \* Law commission
- \* Royal commission
- \* Law reform committee
- \* Other committees



## Convention rights cited

## EU conventions on human rights

gave birth to HRA 1998

agreement on basic human rights

ECHR is final appeal court

binds public authorities  
government departments  
local authorities  
courts  
schools

case law of EC must be considered

## HRA 1998

Impact statement of compatibility before 2nd reading of legislation

legislation interpreted with convention rights courts can issue declaration of incompatibility for secondary legislation

# SOURCES OF LAW

Higher courts disregard lower court verdicts

If higher court overrules ratio then doesn't have to be followed in future

Court Statute Actions

Higher courts can overrule lower courts this doesn't reverse decision

Supreme court refers EU matters to EU

## Persuasive precedents

may be followed in other case but doesn't need to be

## per incuriam

rule of case to the facts

Make new law

Overrule or modify case law

Repeal earlier statutes

Parliamentary Sovereignty

can't prevent future parliament changing law  
Judges may find new interpretation

declare it in conflict with point of law

declare earlier precedent too wide.

Avoiding binding precedent

distinguishing the facts.

declare previous decision 'per incuriam'

declare ratio decidendi obscure.

Known as statute law

Acts of parliament

Legislation

Delegated legislation

must come into line with EU Treaty of Rome directives

## Parliamentary procedure

1st reading: introduced, no debate

2nd reading: debate on merits, no amendments

Committee stage: 20 ppl, main parties + specialists, amendments

Report stage: reported to house for approval

3rd reading: final approval

olidating statute: its case law into statutory basis

Consolidating statute: incorporate statute + amendments into one.

Types of legislation

Private Acts: specific individuals + groups

ublic Acts: for general public

Enabling legislation

Orders in Council

Ministerial powers exercised by statutory instrument

Delegated legislation

Local authorities given powers to make bye-laws

Professional regulations delegated to authorized bodies

Literal rule

Golden rule

Contextual rule

Mischief rule

Purposive approach

Statutory interpretation

## Control

No statutory instruments require approval by resolution

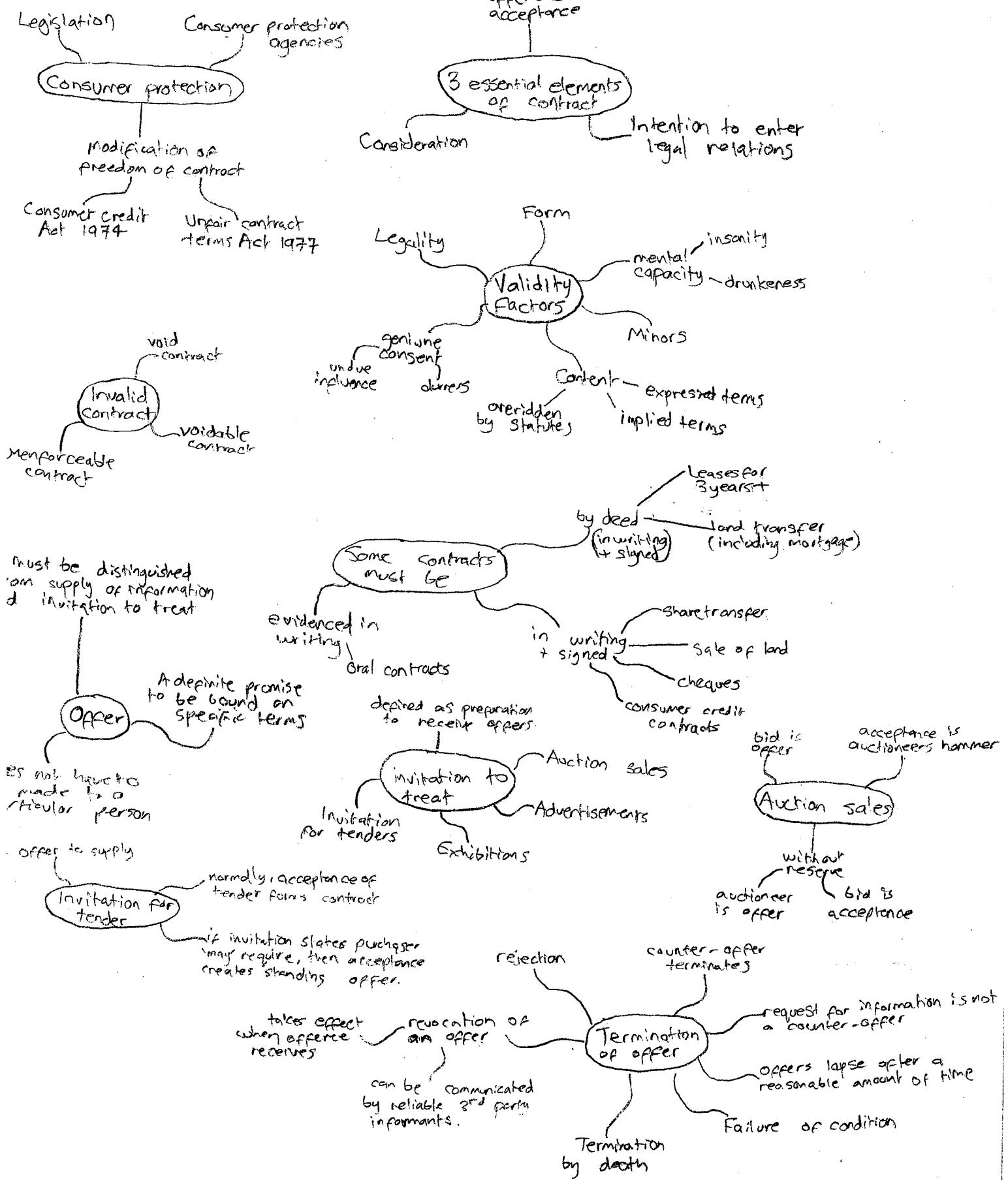
Some must be laid before parliament for 40 days.

Scrutiny committees in both houses.

IRAs give court power to strike out delegated but not primary legislation.

# LAW OF OBLIGATIONS

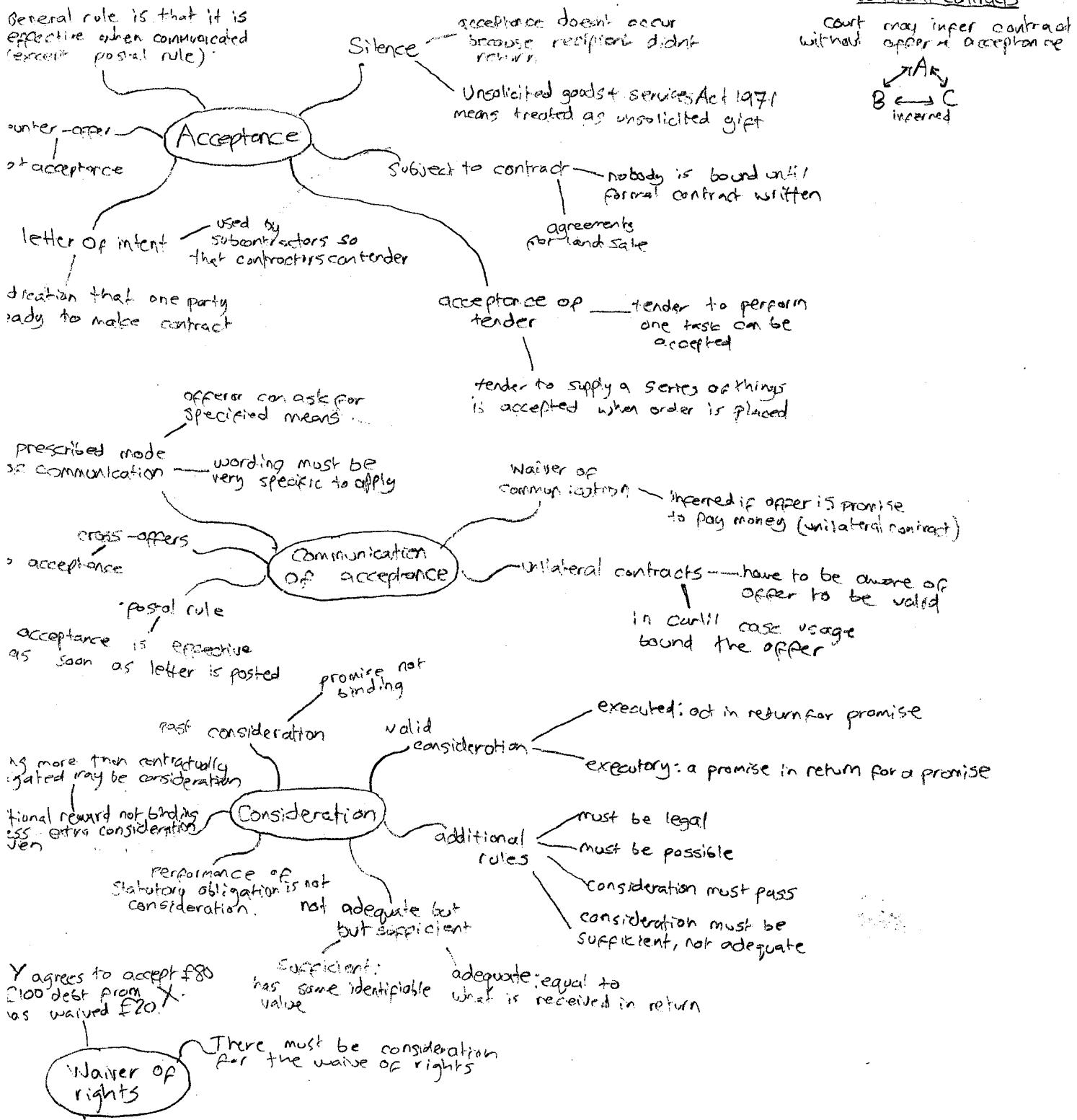
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# LAW OF OBLIGATIONS

6

General rule is that it is effective when communicated (except postal rule).



## septions:

Alternative consideration:

- goods instead of cash
- early payment
- anything Y not entitled to.

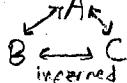
Waiver between creditors - creditors accepting part payment in full entitlement have consideration with each other

3rd party payment - is valid consideration

Promissory estoppel - stops retrospective claims on voluntary promises of waiver

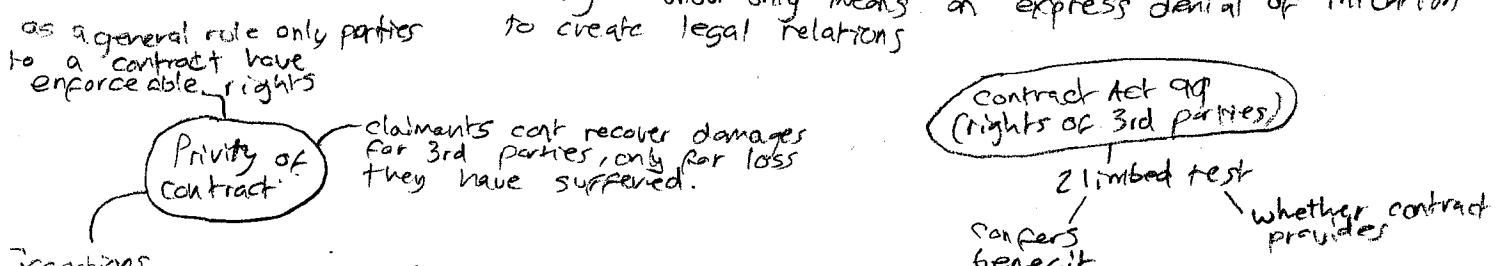
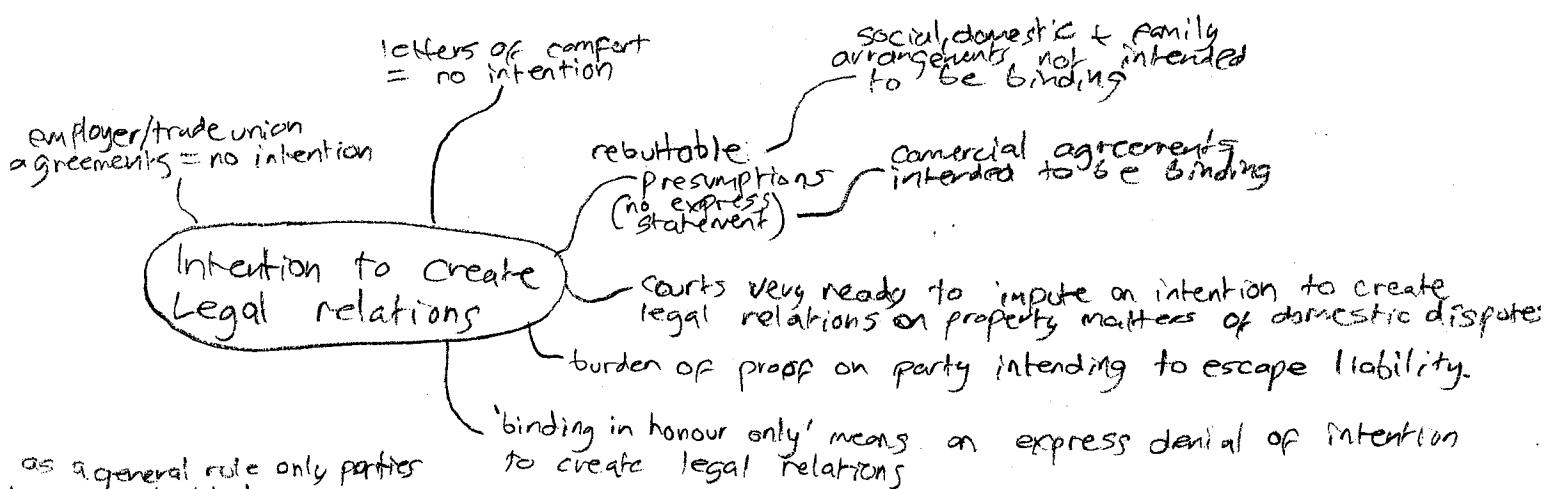
## collateral contracts

Court may infer contractual without offer or acceptance



# LAW OF OBLIGATIONS

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## Exceptions

3rd party can sue in another capacity - suing as a representative.

Collateral contracts - 3rd party involves themselves (parties)

Valid assignment - benefit transferred to 3rd party via writing

Loss to 3rd party - original party can sue on 3rd party behalf

statutory exceptions

implied trusts

agency - agents no right or liability.

covenants - on land, restrictive.

posted rule may apply  
in writing?

## Electronic contract

automated IT programs cause problems.  
Signed? digital signature acceptable

## Legal issues

\* websites must be constructed as shop windows with invitations to treat, rather than offers.

\* T's & C's must be explicit and clear.

\* disclaimer of liability can be used.

\* web pages must not contravene local laws, (ad(s))

\* time limits should be set on all offers

# LAW OF OBLIGATIONS

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