SYNOPSIS

Compliance of law

Ignorantia juris non excusat (ignorance of law is no excuse)

The law does not accept ignorance or mistaken understanding of legislation as a defence for non-compliance. Blackstone reasoned that if ignorance were an excuse, laws would lose effect, as people could evade them with impunity. He illustrated that a mistaken belief in a right to kill an excommunicated or outlawed person would still amount to murder, since a mistake in law—which all persons of discretion are bound to know—is no defence in criminal cases. Coke's maxim, *ignorantia facti excusat; ignorantia juris non excusat*, confirms that ignorance of fact may excuse, but ignorance of law does not. Knowing the facts but not recognising them as constituting an offence does not absolve liability—for example, aiding and abetting is still culpable. While the maxim does not prevent a right of appeal and courts sometimes mitigate its harshest effects, there is no legal presumption that everyone knows the law. The rule applies equally to foreigners and to cases where the ignorance stems from incorrect advice of a professional. However, its application can be excluded where an Act's wording allows, such as when benefits are conferred subject to conditions satisfied by ignorance, or where reasonableness is a standard for judging conduct. The rule does not extend to executive instruments made under statute in relation to a named individual only. [*Bennion on Statutory Interpretation (2019) pp. 217–219*]

Duty to comply with legislation: Everyone to whom legislation applies—whether a private individual, corporation, public official, or public body—has a legal duty to comply with it. This obligation extends equally to Acts of Parliament and legislative instruments made under prerogative or delegated powers. Ignorance or misunderstanding of the law is not a valid excuse for non-compliance. Where an Act specifies sanctions for breach, those apply; otherwise, it is presumed that Parliament intended to rely on sanctions under general law principles. [*Bennion on Statutory Interpretation (2019) p. 215*]

Common sense in compliance with statutory requirements

Courts apply common sense when deciding if a purported compliance meets statutory requirements, avoiding an over-technical approach. Literal compliance without fulfilling the substance is insufficient—implied obligations, such as truthfulness when providing information, may be read into duties. Even an absolute statutory duty is not interpreted to require unreasonable acts, as law must align with reason. Conversely, compliance is inadequate if done unreasonably. Doing more than required discharges the duty, following the maxim *omne majus continent in se minus* ("the greater includes the less"), and similarly, what is permitted includes anything less. Hardship is generally no excuse for non-compliance, though absolute necessity may be a defence. [*Bennion on Statutory Interpretation (2019) p. 216*]

Effect of failure to comply with statutory requirements

When an Act imposes a procedural or other requirement without specifying the consequences of breach, the key question is whether Parliament can fairly be taken to have intended that non-compliance should render the act totally invalid. The older distinction between "mandatory" and "directory" requirements—where failure to meet a mandatory requirement invalidated the act, but breach of a directory one did not—has been criticised as artificial and outdated. Modern interpretation focuses instead on the legislative intention regarding the effect of non-compliance, rather than the judge's personal assessment of its seriousness in the particular case. [*Bennion on Statutory Interpretation (2019) pp. 220–221*]

No special significance to the word 'must'

The terms "must" and "shall" are synonymous in legislation, both indicating something that is required rather than optional. While they impose an obligation, their use alone—without considering the statutory scheme as a whole—does not determine whether the legislature intended that non-compliance should result in invalidity or nullity. [*Bennion on Statutory Interpretation (2019) p. 223*]

Substantial compliance

For public bodies, especially in public law and judicial review contexts involving procedural requirements, courts may accept substantial rather than strict compliance, focusing on whether, in substance, the statutory purpose has been met despite imperfect adherence. In contrast, where a statute grants property or similar rights to private persons, compliance is judged strictly—particularly for statutory notice provisions in acquiring or resisting such rights. Here, the court determines validity solely by whether the notice satisfies the statute's exact terms, guided by legislative intent rather than the parties' knowledge, state of mind, or prejudice. Critical omissions within the statutory scheme usually lead to total invalidity, whereas ancillary defects are less likely to do so. [*Bennion on Statutory Interpretation (2019) p. 221*]

Waiver or contracting out of statutory requirements

Legislative Intention as the Determinant

Whether a person can waive performance of, or contract out of, a statutory requirement depends entirely on legislative intention, determined primarily from the Act's wording and, if unclear, from its scheme and policy.

Historically, under a laissez-faire approach, courts presumed that those of full capacity could give up statutory benefits, as in *Rumsey v North Eastern Rly Co*.

Modern policy, however, often prohibits contracting out where public protection is at stake, e.g., an employer's statutory duty to pay a pension. [*Guardians of the Poor of Salford Union v Dewhurst [1926] AC 619 (HL)*]

Two opposing maxims guide interpretation:

- *Quilibet potest renuntiare juri pro se introducto* (a person may renounce a right introduced for their benefit), allowing waiver of statutory requirements benefiting identifiable persons.
- *Pacta privata juri publico derogare non possunt* (a public right cannot be overridden by private agreement), preventing waiver where the benefit serves the public interest or affects others' equal rights.

Property rights conferred by statute can generally be renounced unless Parliament intends otherwise, based on public policy or the protection of others. Waiver is common in procedural rules benefiting a litigation party, statutory defences, and certain notice requirements, provided the protected party knowingly yields that protection. The distinction lies between benefits for a specific class (renounceable) and benefits for the community at large (not renounceable). Waiver requires full awareness of the facts establishing the right and an intention to give it up; ignorance of relevant facts prevents a presumption of waiver. [*Bennion on Statutory Interpretation (2019) pp. 224–226*]

Waiver by joint beneficiaries: A statutory right can only be waived by its beneficiary, and if there are joint beneficiaries, a waiver by one is binding on all. Third parties have no standing to object to such a waiver. [*Bennion on Statutory Interpretation (2019) p. 226*]

Contracting out with court's approval

Legislation may expressly state whether contracting out of statutory requirements is permitted. In some cases, Parliament may prohibit contracting out except where allowed by a court upon application. If a contract contains a void clause relieving a party from a statutory duty, the rest of the contract remains valid if severable, but not where the entire agreement is founded on illegal consideration. Courts will prevent private bargains from setting aside statutory provisions enacted for public policy, particularly in criminal law, where procedural protections cannot be waived by the accused. Likewise, parties cannot contract out of court-imposed permissions or statutory jurisdiction that overrides contractual rights. Any agreement attempting such waiver, when not legally possible, is void and the court must prevent orders based on it; contracting out may also be barred if it would oust the court's jurisdiction. [*Bennion on Statutory Interpretation (2019) p. 228–229*]

Carltona principle – delegation of ministerial powers

Ministerial powers may be exercised by authorised officials unless legislation shows a contrary intention. This principle, from *Carltona Ltd v Commissioner of Works [1943] 2 All ER 560 (CA)*, recognises that ministers, being constitutionally responsible to Parliament, cannot personally perform all functions entrusted to them; their officials' acts are deemed the minister's acts, with the minister answerable for them in Parliament. The principle applies to statutory office-holders where consistent with the creating provisions and has been upheld for functions such as signing stopping-up and traffic restriction orders, including legislative functions. However, it may be expressly or impliedly excluded by the legislative framework, which must be examined to determine the scope for such delegation. [*Bennion on Statutory Interpretation* (2019) p. 230, Sec 7.5]

Statutory enforcement

Presumption of Correct Performance by Public Authorities

Unless an enactment indicates otherwise, the law presumes—under the maxim *omnia praesumuntur rite et solemniter esse acta*—that all acts of a public nature are correctly and properly performed until proven otherwise. This presumption, recognised as a fundamental legal principle since Coke, applies to the passing of Acts, making of delegated legislation, and the administration of laws. Courts assume, in the absence of contrary evidence, that judicial and administrative officials act lawfully, that public officers are duly appointed, and that official acts comply with statutory requirements. It can extend to presuming the proper functioning of official mechanical or electronic devices. However, in criminal cases, courts exercise caution in applying the presumption. Even an order not made in good faith remains legally effective until lawfully quashed or set aside. [*Bennion on Statutory Interpretation* (2019) pp. 234–235]

Sanctions and Remedies for Breach of Statutory Obligations

A statutory command is generally presumed to carry a sanction or remedy for disobedience, in line with the maxim *ubi jus ibi remedium* ("where there is a right, there is a remedy"), though Parliament may choose not to provide one. Legislative intent determines whether the remedy is special (set out in the enactment or related legislation), general, criminal, civil, or both. Criminal sanctions aim to punish, remove dangerous offenders, and deter wrongdoing, while civil remedies focus on compensating victims. The absence of a criminal penalty strengthens the inference of intended civil enforcement. Statutes may also establish civil penalty regimes or impose duties of care, which may give rise to common law claims. Public rights or duties may be enforced through a *relator action* brought with the Attorney General's consent, acting as guardian of the public interest; once consent is given, the relator conducts the proceedings and bears the costs, with the court unable to override the Attorney General's discretion. [*Bennion on Statutory Interpretation* (2019) p. 236]

Breach of Statutory Duty as a Tort

A breach of statutory duty that causes damage to a person may, depending on legislative intent, give rise to the tort of breach of statutory duty—a recognised species of tort in both common law and statutory language. The right to sue arises only if the claimant is within the class the statute was designed to protect and has suffered the type of harm the statute sought to prevent.

Parliament may expressly provide for, or exclude, such a remedy; absent express provision, the question is whether the statute's scheme and purpose imply a private law right of action.

Factors indicating no private remedy include:

- The statute prescribes an alternative enforcement method.
- An adequate civil remedy already exists.
- The duty is general, administrative, or regulatory in nature, or involves policy discretion rather than operational execution.

Indicators supporting a private remedy include duties addressing high-risk social mischief or aiming to protect personal safety, though this is not conclusive. Delegated legislation can only create actionable rights if Parliament so authorises. Malice alone does not establish liability where no civil remedy is intended.

For liability, the claimant must prove breach, causation, and actionable damage. Duties may impose strict liability or require proof of failure to take reasonable care. Damages are assessed as in other tort actions, with contributory negligence reducing recovery and potential defences where the claimant seeks to benefit from their own wrongdoing. Unlike negligence, foreseeability is not implied unless the statute indicates otherwise. [*Bennion on Statutory Interpretation* (2019) p. 239]

Breach of Legislation and Criminal Liability

In modern law, a breach of legislation is not treated as a criminal offence unless the legislation expressly provides for criminal sanctions. Historically, under the doctrine of *contempt of statute*—described by Coke as contempt of the king's law—disobedience to statutory commands could be punished at the suit of the Crown, even if no penalty was specified. Later commentators referred to this as punishment for contempt of the statute. However, this doctrine is now regarded as an outdated rule of construction with little application to interpreting modern statutes. [*Bennion on Statutory Interpretation* (2019) p. 251]

Extra-Statutory Concessions in Tax Matters

Tax authorities may, within limits, grant extra-statutory concessions to reduce or waive a tax liability that would otherwise arise under the strict letter of the law. Such concessions are typically used to address minor or temporary anomalies in legislation or to relieve hardship in marginal cases where a statutory remedy would be difficult or disproportionately lengthy to enact. They provide relief the taxpayer is not legally entitled to but are not a licence to disregard the law. Fundamentally, the executive cannot authorise a breach of the law, and acting under a superior's orders is no defence to unlawful conduct. [*Bennion on Statutory Interpretation* (2019) p. 252]