

Module Manual – Undergraduate L1 2010/2011
For LLB Students

English Legal Systems

1 & 2

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Bradford University Law School

CONTENTS

Module Manual

- 1 Overview
- 1.1 Aims and Objectives
- 1.2 Module coverage
- 1.3 Reading
- 1.4 Teaching and Learning Philosophy
- 1.5 Feedback
- 1.6 Module Team
- 2 Tutorials
- 3 Assessment
- 4 Education for sustainable development
- 5 Module descriptor
- 6 Blackboard access details

Workbook

- 1 Law and Legal Study
- 2 Sources of Law
- 3 Judicial reasoning and interpretation
- 4 Civil Court Structure
- 5 The magistrates
- 6 Criminal trial process
- 7 The judiciary

Tutorials

- Tutorial 1: The nature of law
- Tutorial 2: Sources of Law
- Tutorial 3: Sources of law
- Tutorial 4: sources of law
- Tutorial 5: Judicial reasoning
- Tutorial 6: Judicial reasoning and interpretation
- Tutorial 7: Civil Court Structure
- Tutorial 8: Consolidation
- Tutorial 9: The magistrates
- Tutorial 10: The Criminal trial process
- Tutorial 11: The Criminal Trial Process

1.0 GENERAL OVERVIEW

For the student an appreciation the structure of the English Legal System is vitally important in the context of legal studies. An understanding of that system and the principles on which law is founded is crucial to the ability to contextualize the study of law. A proper appreciation and comprehension of the English Legal System provides an essential foundation for the study of law at undergraduate level.

1.1 Aims and objectives

The module aims and objectives are to:

- introduce students to the fundamental aspects of the English Legal System;
- provide an understanding of the nature of law together with the principle sources of law;
- develop an appreciation of the structure of the Civil and the Criminal Justice System, the courts and the key personnel therein.
- provide an appreciation and an understanding of the process of arbitration, alternative dispute resolution and the operation of the tribunal system.
- provide an understanding of police powers.

1.2 Module coverage

The module is divided into 24 teaching weeks. There are 12 lectures in the first semester, 12 in the second semester. There are 11 tutorials in the first semester, 12 in the second semester. Table 1 gives an overview of the topics discussed in the various lectures and the reading requirements for each session (see also Section 1.3).

Table 1: Overview of the module topics and tutorial work

Date:	Week	Topic	Tutorial
30/9	1	Law & Legal Study	No Tutorial
7/10	2	Sources of Law	1. The nature of law
14/10	3	Sources of Law	2. Sources of law
21/10	4	Sources of Law	3. Sources of law
28/10	5	Judicial reasoning & Interpretation	4. Sources of law
4/11	6	Civil Court structure	5. Judicial reasoning
11/11	7	The Magistrates	6. Judicial reasoning & Interpretation
18/11	8	The Magistrates	7. Civil Court structure
25/11	9	Criminal Trial Process	8. Consolidation
2/12	10	Criminal Trial Process	9. The Magistrates
9/12	11	The Judiciary	10. Criminal Trial Process
16/12	12	The Judiciary	11. Criminal Trial Process
27/1/11	13	The process of appeals	Test re semester One
3/2	14	The process of appeals	Feedback on assignment
10/2	15	The process of appeals	Appeals
17/2	16	The process of appeals	Appeals
24/2	17	Arbitration, Tribunals & ADR	Appeals
3/3	18	Arbitration, Tribunals & ADR	Arbitration, Tribunals & ADR
10/3	19	The jury system	Arbitration, Tribunals & ADR
17/3	20	The jury system	The jury system
24/3	21	Sentencing	The jury system
31/3	22	Sentencing	Sentencing
7/4	23	The Legal Professions	Sentencing
14/4	24	Review	Test

1.3 Reading requirements

Primary readings are mostly drawn from one of the two following text books.

- Slapper & Kelly *The English Legal System*, (11th Ed), Routledge 2010/11
- *English Legal System* - Elliot & Quinn (11th ed) 2010/11 Pearson
- Students are strongly encouraged to purchase a copy of one of the above texts. The texts provide an adjunct to the material provided for the lectures each week. The chapters do not exactly follow the material covered in the taught part of the module and thus the reading should be viewed as a means of extending knowledge of key issues (and a source of practical examples) and not simply a direct reiteration of material covered. Chapters to be read for the following week may be announced in lectures, but students will see what the next topic is and be able to find the appropriate chapters with relative ease.

There are many other textbooks and Cases and Materials books in the area and, if you feel more comfortable with a particular book, you should feel free to buy it instead of the recommended text: but do not buy any law book more than two years old – the areas change so rapidly it is likely to be very out of date.

An awareness of current issues, gleaned from reading a (quality) newspaper regularly is likely to make the module relevant to the student.

1.4 Teaching and learning philosophy

Although the basic foundation for learning is provided in the lecture each week, this is only one element of the learning process. The English Legal System is very broad, too broad to be sufficiently translated into 24 lecturing sessions. Various other elements are therefore critical to the learning process:

- the required reading for each week which is designed to facilitate the acquisition of basic knowledge elements .
- the case examples and group work (within the tutorial sessions) which is designed to provide a forum for students to develop their skills in application of basic concepts.

Students are expected to be able to structure their own work; they must take primary responsibility for their own learning process. However, the lecturers are available for questions and encourage suggestions during the weekly tutorials and during a weekly office hour.

Students differ in their learning styles. Most students tend to prefer a more pragmatic approach, where they clearly see the practical applications of what they are studying. The case study analysis should help in this process. Other students prefer to focus more heavily on theoretical and conceptual development. Students also tend to differ in the extent to which they want to be actively involved in their own learning process. The teaching philosophy of this module therefore combines a mix of more reflective learning methods (lectures) and more active learning methods such as discussion, exercises and tutorial group work.

1.5 Feedback

Feedback is an ongoing process involving the tutor and the students and helping to maximise student understanding of and performance in the module. The process is interactive and takes place in discussions in class or outside of it in meetings with the tutor.

Feedback is formative and summative. Formative feedback takes place during the learning process in class or in one-to-one meeting with the tutor. Summative feedback takes place after the assessment.

In this module you will have the opportunity for formative and summative feedback.

Formative feedback will be given in class or in meetings with students at the request of the latter. The tutor will explain to students what they have to do to improve their learning. Students can reflect upon the feedback given to them and use it to improve their learning and their performance in the assessment.

Summative feedback will be given after the assessment. The tutor will nominate a feedback day in which the students will be invited to discuss their work with him. The announcement will be communicated to the students via Blackboard and email. Where the assessment involves an assignment a feedback sheet will be also given to the students in a prescribed date (or in the feedback day)

The tutor will be available for formative feedback to those students who failed in the initial assessment and take the supplementary one. These students could contact their tutor and arrange a feedback session (or sessions) with him.

Discussion between students is another form of feedback and the students are encouraged to exchange views on the topics with their peers. This process improves student learning. However, students should make sure that this form of cooperation does not amount to breach of plagiarism rules.

1.6 Module Team

The ELS team comprises of: Tim Connor and Ilias Kapsis

The module leader is Ilias Kapsis. We value student feedback and therefore, several structured ways and means have been created to enable you to communicate or get in touch with us, viz.:

- Email is the preferred communication medium. The contact e-mail addresses are:
i.kapsis@Bradford.ac.uk
T.Connor@Bradford.ac.uk
- Office hours: The weekly office hours will be posted on their door (Level 2: Heaton Mount Annex. Rooms 29 and 44 respectively). It is unlikely that Jess or Ilias will be able to see you outside this time without a specific appointment – which can be arranged if necessary by e-mail (see above).
- Tutorial hour: There will usually be time for short questions and feedback just after the lecture or during the tutorial hour.

2.0 THE TUTORIAL PROGRAMME

2.1 Aims and objectives

There are two principle aims of the tutorial programme:

1. To develop basic skills: some of these are specifically related to the English Legal System (particularly those concerned with analysis and problem solving) while some are basic research and writing skills.
2. To extend knowledge by doing. This means exploring issues, discussing themes and sharing information and knowledge with others.

2.2 Organisation of tutorials

Tutorials will be based around Tutorial topics available to students from the start of the module. This material is designed to provide a platform for knowledge and skills development. It is critical that students read the case material and study the questions on the worksheet before attending each session. A failure to come prepared will invariably undermine the quality of the learning process.

3.0 ASSESSMENT

This module is assessed by a group assignment of 5000 words and an examination. The submission of the group assignment will take place in January 2011. The students will be allocated to groups by their tutor. The 1.5 hour examination will take place at the end of semester 2 in May 2011.

Students failing to successfully complete either assessment will have to take the relevant supplementary assessments for this module in August 2011. The supplementary assessment for students failing the group assignment will be individual assignment of 3500 words.

Assessment submission instructions - electronic

Assessed module work must be submitted electronically through a 'digital drop box' which you will be able to access through Blackboard at the relevant time. A hard copy must also be submitted to the School of Management Undergraduate office. It is your responsibility to ensure that you submit your work on time. If either copy is late, your work will be classed as incomplete and will be subject to the normal penalties for late assessed work outlined by the University. Work must be accompanied by a securely attached and fully completed cover sheet available from Blackboard. Make sure your work holds well together, so it doesn't get mixed with other assignments! However, please do not use fancy binders, a simple staple will do.

Please be aware that **plagiarised or copied work will not be acceptable**. Work which is found to be plagiarised or copied will be investigated and be subject to disciplinary action. The penalties for plagiarised or copied work are severe, with a minimum penalty being a mark of zero. The University, however, may wish to impose a more severe penalty. To make sure you avoid plagiarism and reference all your work correctly please refer to the 'Guide to Referencing in Law' available in the library or on Blackboard.

The Law School retains the work you submit. You should therefore always keep your own copy of the assignment you have handed in, in case material is mislaid or stolen and to make the most use of feedback given.

4.0 EDUCATION FOR SUSTAINABLE DEVELOPMENT

One of the School of Management's main aims is to address major challenges for business and society such as global responsibility and sustainable development.

Accordingly, the School seeks to prepare students who are able to contribute in an effective manner to debates about sustainable development and critically appraise the relationship(s) between the social, economic and environmental dimensions. Our intention is to nurture students who can apply the principles of sustainable development in their professional capacity. More specifically, we seek to encourage our students to be:

- aware of the underpinning principles, ethics, current issues and relevant policies affecting sustainable development pertaining to their particular field of study;
- able to recognise cultural differences influencing the application of the principles of sustainability through the world;
- able to exercise strong leadership in establishing a culture of sustainability within organisations.

5. Module Descriptor

Provider: School of Management

Related Department / Subject Area: School of Management: Law School

Principal Co-Ordinator: Dr Ilias Kapsis

Additional Tutors: Tim Connor

Module Title: English Legal Systems 1 & 2

Module Type: Linked 10+10

Module Code: MAN1051L

Module Credit: 20

Teaching Period: Semester 1 & 2

Academic Year: 2010/11

Module Occurrence: A

Level: 1 (Undergraduate)

Prerequisite(s): None

Corequisite(s): None

Aims:

To introduce students to the fundamental aspects of the English Legal System; to provide an understanding of the nature of law together with the principal sources of law; to develop an appreciation of the structure of the Civil and the Criminal Justice System together with the courts and the key personnel therein; to provide an appreciation and an understanding of the process of arbitration, alternative dispute resolution and the operation of the tribunal system.

Teaching Strategy:

Student learning is through the medium of lectures reinforced by staff led seminars. These will use practical application of cases and case studies with oral feedback given in the class. Students will be directed to appropriate study text and cases and will be set tasks to monitor their progress in addition to formal assessment. All teaching will be supported by information supplied on Blackboard, the virtual learning environment.

Study Hours:

Lectures:	24.00	Directed Study:	150.50
Seminars/Tutorials:	24.00	Other:	0.00
Laboratory/Practical:	0.00		
Formal Exams:	1.50	Total:	200.00

Learning Outcomes:

1. Knowledge & Understanding

To understand the sources of English law, the legal system and its various institutions and the role and function of the personnel participating in the legal system.

2. Discipline Skills

To use legal terminology and undertake research into legal concepts and provide reasoned judgements about those concepts using effective communication skills.

3. Personal Transferable Skills

The student who has completed this module will have acquired the ability to:

- Present word processed coursework to an acceptable standard which displays clarity and logical coherence
- Present, discuss and defend ideas, concepts and arguments through the written medium of coursework presentation
- Use appropriate information technology skills both to aid research and presentation of assessed work
- Evaluate own performance and to reflect on learning
- Apply the required presentational skills, to present structured and reasoned arguments

Mode of Assessment:

1.	Assessment Type	Duration	Percentage
	Coursework		50%
	Description		
	An assignment: Maximum 5000 word group		
2.	Assessment Type	Duration	Percentage
	Examination - closed book	1.50 hours	50%

Supplementary Assessment:

3. Assessment Type	Duration	Percentage
Coursework		50%
Supplementary: Individual assignment of up to 3,500 words or equivalent.		

4. Assessment Type	Duration	Percentage
Examination - closed book	1.50 hours	50%

Outline Syllabus:

All or any combination of the subjects below:

Law and legal study
 Sources of law
 The judiciary
 The jury system
 The legal professions
 Magistrates
 Judicial reasoning
 The civil court structure
 The Criminal Court structure
 The criminal trial process
 The civil process

Arbitration, Tribunal and Alternative Dispute Resolution

Paying for Legal Services

The Criminal Justice system

The Civil Justice System

Sentencing

Young Offenders

Appeals

Law reform

The Police

Version No: 3

English legal systems – list of indicative reading

The current edition of:

Essential reading

Slapper, G. and Kelly, D. *The English legal system*. London, Cavendish

Elliot & Quinn *English Legal System* Pearson Longman

Further reading

Crownie, F., Bradney, A and Burton, M. *English legal system in context*. Oxford, Oxford University Press

Gillespie A. *The English Legal System*, Oxford University Press

Ingman T. *The English legal process*. Oxford, Oxford University Press

Malleson, K. *The legal system: core text series*. Oxford, Oxford University Press

Partington, M. *Introduction to the English legal system*. Oxford, Oxford University Press

Slapper, G. and Kelly, D. *English law*. London, Cavendish

Smith & Keenan's, *English Law*, Pearson.

Stychin, C. and Mulcahy, L. *Legal method: text and materials*. London, Sweet & Maxwell

Ward, R. and Wragg, A. *Walker and Walker's English legal system*. Oxford, Oxford University Press

Wilson S., Mitchell R., Storey T., and Wortley N. *English Legal System, Directions*, Oxford University Press.

Zander, M. *Cases and materials on the English legal system*. London, LexisNexis UK

Zander, M. *The law-making process*. Cambridge, Cambridge University Press

6. BLACKBOARD ACCESS DETAILS

To access course materials:

- Go to: <http://blackboard.brad.ac.uk>
- Click "Login"
- Enter your University of Bradford username and password.
- Click "Login"

You will then see the modules which you are enrolled on and any announcements relating to those modules.

- To access a module, click on its title.
- To access different areas of module content use the links on the left hand side.

To download files from Blackboard to your PC

- Right click on the link to the file you wish to save
- Select "Save Target As..."
- Choose where you want to save the file and click Save

To print from Blackboard

- Open the file in Blackboard
- Right click on the content of the opened file, select "Print" from the context menu that appears

The print options for the appropriate application (Word, PowerPoint, Excel, Acrobat) will appear

- Select your preferred print options

For more detailed documentation see:

<http://www.bradford.ac.uk/acad/management/external/resourcesblackboard.php>

Workbook Semester 1

1. Schedule of Work & Reading

Important notice:

There are new editions of these textbooks available on a regular basis (virtually annually). Due to Government activity, this is a period of ongoing change in the English Legal System. The new editions of ELS textbooks attempt to reflect these changes. **It is important that your purchase is a current edition of the recommended textbook.** The recommended texts for this module are *Slapper & Kelly* and *Elliot & Quinn*. You should purchase **one** of these texts. Anyone considering purchasing anything other than either of these texts should see me first.

Topic	<p><u>Reading:</u> S & K - <i>The English Legal System</i> – Slapper & Kelly, (11th Edition), Routledge. E & Q – English Legal System - Elliot & Quinn (11th edition) Pearson The reading for the topics below <u>is contained within</u> the various chapters identified below</p>
1. Law and Legal Study	S & K: Chapter Law & Legal Study E & Q: Introduction
2. Sources of Law	S & K: Sources of Law E & Q: Part 1
3. Judicial Reasoning	S & K: Judicial Reasoning E & Q: Chapter 3
4. Civil Court Structure	S & K: The Civil Court Structure E & Q: Chapter 22
5. The Magistrates	S & K: The Criminal Court Structure E & Q: Chapter 13
6. The Criminal trial process	S & K: The Criminal Court Structure E & Q: Chapter 19
7. The Judiciary	S & K: The Judiciary E & Q: Chapter 10

2. Lecture Outlines

Topic 1

LAW & LEGAL STUDY

Learning outcomes

This lecture provides an introductory examination of the nature of law. It introduces some basic concepts about the place of law in society. It examines the sources of law bringing into focus the respective roles of Parliament, the judiciary and the relationship between them. At the end of this session you should have an appreciation of the various ways in which law is formed in modern society.

Outline

1. Introduction

2. Law & nature of law

3. The English constitution

4. Constitutional Doctrines and the ELS

4.1. The separation of powers

- Sovereignty of Parliament
- The independence of the judiciary
- *R v. Hinds* (1979)
- *R v. Parliamentary Commissioner for Standards, ex Parte Al Fayed* (1998)

4.2. Parliamentary sovereignty

- Separation of powers (*R v. Hinds* (1979))
- *Jackson v HM Attorney General* (2005)
- Constitutional Reform Act 2005
- Human Rights Act 1998
- EU law

4.3. Judicial Independence

- Human Rights Act 1998

4.4. The Rule of Law

- Delegated legislation
- Tribunals
- Planning
- Pressure group Justice issued a manifesto on rule of law (2007)

4.5 Human Rights Act 1998**5. The categories of law****5.1 Common law and:**

- Civil law
- Equity
- Statute (created by Parliament)

Common law	Civil law	<i>Comments</i>
Case-centred	Codified	<i>Oversimplified</i>

Common law		<i>Comments</i>	Equity	Comments
Unitary system	<i>Courts</i> <ul style="list-style-type: none"> • Exchequer • Common Pleas • Kings Bench 	<i>formalistic</i>		Emerged as specific courts
<p style="text-align: center;"><i>Judicature Acts 1873-75</i></p> <p><u>One</u> term – ‘Common law’ Remedies – <i>as of right</i> (<i>Equitable</i> – <i>discretionary</i>)</p>				

5.2 Private & Public law

Public & private

- State & citizen
- Private sphere
- Combination

3.3 Civil & Criminal Law

(a) Distinguished

- Civil law – private law (c/f role of state)
- Criminal law
R [Regina] v Smith
[c/f civil: *Smith v Jones*]

(b) Proof

- burden
- standard

(c) Blurring

Examples

<ul style="list-style-type: none"> • The Protection from Harassment Act 1997 	<i>Thomas v News Group Newspapers</i> (2002)
<ul style="list-style-type: none"> • <i>Section 1(1) Crime and Disorder Act 1998</i> 	ASBO extended - Anti-Social Behaviour Act 2003.

(d) Prosecution - prerogative of the state

- Stephen Lawrence
- Macpherson Inquiry
- Rule of *double jeopardy*
Criminal Justice Act 2003 ss 75-79

Topic Two

SOURCES OF LAW

Learning outcomes

This lecture identifies the sources of law. It considers both legislation and case law as sources of law. It examines the hierarchy of the Court system and the system of precedent. Finally it considers the concept of law reform.

The aim is to provide an understanding of the role of the legislature and the courts within the system of English law. At the end of these sessions, you should have an appreciation of the system of precedent within the structure of English law.

Outline

1. Legislation

1. 1 The pre-parliamentary Process

(b) Government

Private Members' Bill

- Ballot procedure
- Standing Order, Rule 39
- 10 min rule bill (SO 13):

(c) *Which Government bills?*

- *Future Legislation Committee*
- *Legislation Committee*

(d) *Green papers*

(e) *White papers*

1.2 Legislative Process

- Both Houses of Parliament
- Royal Assent

1.2.1 Presentation of bill for royal assent

Five stages:

- *First reading*
- *Second reading*
- *Committee stage*
- *Report stage*
- *Third reading*

1.2.2 House of Lords – blocking

- R (on the application of Jackson and others) v Attorney General (2005)

1.2.3 ‘Royal assent’

1.3 The drafting of legislation

- *Legal effectiveness.*
- *Procedural legitimacy*
- *Timeliness*
- *Certainty*
- *Comprehensibility*
- *Acceptability*
- *Brevity*
- *Legal compatibility*

Francis Bennion, 'Statute law obscurity and drafting parameters'
((1978) British JLS 235)

1.4 Legislation - Types

- *Public Acts*
Government & private bills
- *Private*
- *Enabling legislation*
statutory instrument

Functions

- *Consolidating*
- *Codifying*
- *Amending*

1.5 Delegated/subordinated legislation

Eg: *Deregulation and Contracting Out Act 1994*
Legislative and Regulatory Reform Act 2006

Why is delegated legislation necessary

- Insufficient parliamentary time
- Speed
- Technicality of the subject matter
- Need for knowledge
- Flexibility
- Future needs

Disadvantages

- Lack of democratic involvement
- Accountability
- Scrutiny
- Bulk

Types of delegated legislation

- *Orders in Council*
- *Privy Council*
- *European Communities Act 1972 s 2(2)*
- *Statutory Instruments*
- *Bylaws*
 - LGA 1972
- *Court Rules Committee*
 - The Supreme Court Act 1981, the County Courts Act 1984 and the Magistrates Courts Act 1980.
- *Professional Regulations*

1.5.1 Controls

- *By Parliament*
Affirmative and negative resolution procedures
Joint Select Committee on Statutory Instruments
- *By the judiciary*

- **'Judicial Review'**
- Ultra vires
- unreasonableness
- HRA 1998

1.6 Case Law

- Binding precedent (*stare decisis*)

1.7 Precedent within the hierarchy of the Courts

See diagram

1. House of Lords

See Practice Statement [1966] 3 All ER 77

Note London Tramways Co Ltd v London County Council
(1898)

ECJ and the European Court of Human Rights

Mistakes by the House of Lords:

R v Shivpuri (1986)

Rigidity of precedent released

Examples:

Discovery of documents,

Conway v Rimmer (1968)

Duncan v Cammell Laird and Co (1942)

Occupier of premises

Herrington v British Railways Board (1972)

Addy and Sons v Dumbreck (1929)

Damages

R v United Railways of Havana and Regalia Warehouses Ltd (1961)

Milanangos v George Frank (Textiles) Ltd (1976)

Immigration

R v Secretary of State for the Home Department ex parte Khawaja
(1983)

R v Secretary of State for the Home Department ex parte Zamir (1980)

Tort

Murphy v Brentwood District Council (1990)

Anns v Merton District Council (1978)

Barristers

Hall v Simmons (2000)

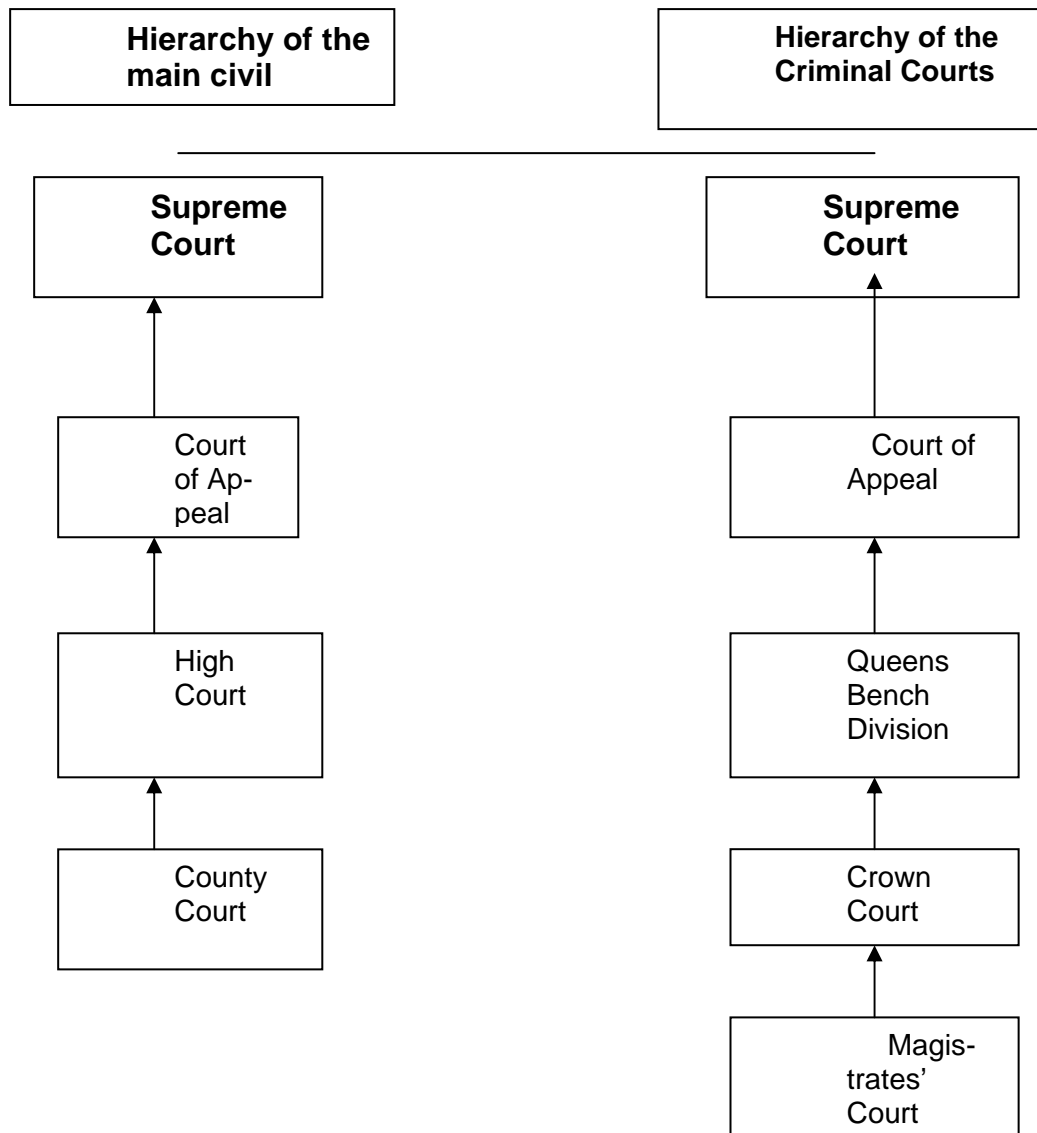
Rondel v Worsley (1969)

Human Rights Act 1998

R v Lambert, (2001)

R.v Kansal (2001)

The Hierarchy of the English Courts



2. The Court of Appeal

Relationship: Supreme Court - Court of Appeal

'In an appellate court of last resort a balance must be struck between the need on the one side for legal certainty resulting from the binding effect of previous decisions and on the other side the avoidance of undue restriction on the proper development of the law. In the case of an intermediate appellate court, however, the second desideratum can be taken care of by an appeal to a superior court, if reasonable means of access to it are available, while the risk to the first desideratum, legal certainty, if the court is not bound by its own previous decisions grows ever greater with increasing membership and the number of three-judge decisions in which it sits ... so the balance does not lie in the same place as the court of last resort'.

Lord Diplock in *Davis v Johnson* (1979).

- *Mendoza v. Ghaidan* (2002)
- *Fitzpatrick v Sterling Housing Association Ltd* (1999)

Civil cases: - generally bound

Exceptions

[per LORD Greene in *Young v Bristol Aeroplane Co Ltd* (1944)] **exceptions** to this general rule are:

- **Conflict between two previous judgments**
 - *Tiverton Estates v Wearwell Ltd* (1974)
 - *Law v Jones* (1974)
- **Expressly/implicitly overruled**
 - *Family Housing Association v Jones* (1990)
 - *AG Securities v Vaughan* (1988)
 - *Street v Mountford* (1985)
- ***Per incuriam***
 - *Williams v Fawcett* (1985)
 - *Rickards v Rickards* (1989)
 - *Podbury v Peak* (1981)
 - *Laine v Eskdale* (1891)

Since *Young v Bristol Aeroplane Co Ltd* (above) the following exceptions have become apparent.

- Section 3 *European Communities Act* 1972
- S.2 HRA 1998
- *Director General of Fair Trading v Proprietary Association of Great Britain* (2001)
- *R v Gough* (1993)
- *R (on the application of Kadhim) v Brent London Borough Housing benefit review Board* (2001)

Criminal judgments

Not bound

3. Divisional Courts

Bound by *stare decisis*

Bind lower courts

Bound by own decisions

Young v Bristol Aeroplane Ltd (1944) (Civil)

Criminal appeal cases & judicial review

Examples

R v Manchester Coroner ex p Tal (1984)

R v Surrey Coroner ex p Campbell (1982)

Supreme Court Act 1981

O'Reilly v Mackman (House of Lords) (1982)

R v Stafford Justices ex p Commissioners of Customs and Exercise (1990)

R v Ealing Justices ex p Dixon (1990).

Section 37, PACE. 1984.

DPP v Butterworth (1994)

DPP v Corcorran (1993)

DPP v Shaw (1993)

4. High Court

Cannot create precedent

5. Crown Court

No precedent created

6. County Courts and Magistrates' courts.

Never create precedents

7. Effect of HRA

Follow ECtHR

Precedent in conflict – not be followed

Secretary of State for the Home Department v AF (2009).

1.8 Binding precedent

- *ratio decidendi*
binding
- *obiter dictum*
persuasive

1.9 Advantages of case law

(a) re the principle of stare decisis

- *Consistency*
- *Certainty*
- *Efficiency*
- *Flexibility*

(b) The alteration or avoidance of precedent

- *Overruling*
 - *R v R (1992)*
 - *Curry v DPP (1994)*
 - *Doli incapax* - Crime and Disorder Act 1998 s34
- *Reversing*
- *Distinguishing*

1.10 Disadvantages of case law

- *Uncertainty*
- *Fixity*
eg: *R v R (1992)*
- *Unconstitutionality*
 - (a) Innovation: legal rules
 - (b) Reform

Precedent: Its practical importance

Fairchild v Glenhaven Funeral Services Ltd & others (2002)

1.11 Books of Authority

- Glanvill (12th century),
- Bracton (13th century)
- Coke (17th century)
- Blackstone (18th century)
- Bennion's *Statutory Interpretation*
 - *Wilson v Secretary of State for Trade and Industry* (2003)

1.12 Custom

- time immemorial
- exercised continuously
- without opposition
- obligatory
- consistent
- reasonable
 - eg *Egerton v Harding* (1974)

2.13 Law Reform

Parliament

Examples

(i) *Green papers*

(ii) *Advisory standing committees*

- Law Reform Committee
- Criminal Law Revision Committee

(iii) *Royal Commissions*

- Commission on Criminal Procedure

(iv) *Committees reviewing particular areas of law*

- Woolf
- Auld
- Leggat

(v) *Law Commission*

- eg: Law Reform (Year and a Day Rule) Act 1996.
- Criminal Justice Act 2003.
- *Privity of Contract*, and the Trustee Act 2000
- Contracts (Rights of Third Parties) Act 1999 (Law Commission Report 180)
- Judicial review procedures

(iv) *Civil Justice Council*

2.14 European Community Law

The effect of:

- *R v Secretary of State for Employment, ex Parte Equal Opportunities Commission* (1994)

- Courts

R v Secretary of State for Transport ex parte Factortame (1990)

Marleasing SA v La Comercial Internacional de Alimentacion SA (1990)

ECJ

Topic 3

JUDICIAL REASONING

Learning Outcomes

This topic aims to give some insight into the process of judicial reasoning. The approach taken by the judiciary to the issue of interpretation of statutes is examined in some detail. This involves the rules as to interpretation adopted by the courts as well as the aids to statutory construction that are employed. Finally, it is a process in which certain 'presumptions' can be adopted by the courts; these are also considered.

At the end of these lecture sessions you should understand the process interpretation employed by the judiciary when deciding questions of this nature.

Lecture outline

1.1 Introduction

Reasoning in general

- Deductive
- Inducting
- By analogy

1.2 Precedent

- Inductive
- Intuitive

1.3 Statutory Interpretation

1.3.1 Approaches to statutory interpretation

- *The literal approach*
- *The purposive approach*

Pickstone v Freemans plc (1988)

Litster v Forth Dry Dock (1989)

Three Rivers DC v Bank of England no 2 (1996)

Shah v. Barnet LBC (1983)

1.3.2 Rules as to interpretation

[Note: **Human Rights Act 1998**]

Three traditional rules:

(i) *The literal rule*

- *Inland Revenue Commissioners v Hinchy* (1960)
 - 25(3) *Income Taxes Act 1952*
- *R v McGinnis* (1987)

(ii) *The golden rule*

two versions

(a) *The narrow meaning*

Adler v George (1964)

(b) *The wider meaning*

'inconsistency, absurdity or inconvenience'

- *River Wear Commissioners v Adamson* (1877)

Re Sigsworth (1935)

(iii) *The mischief rule* (*Heydon's case* (1584))

Corkery v Carpenter (1950)

1.3.3 Relationship between the rules

1.3.4 Aids to construction

(a) Intrinsic assistance

1. *Title*

Royal College of Nursing v DHSS (1981)

2. *Preamble*

3. *Schedules,*

4. *Headings/marginal notes*

DPP v Schildkamp (1969)

5. *Punctuation*

(b) Extrinsic assistance

Interpretation Act 1978

- Commission reports, working papers, discussion and Parliamentary debate
- *Hansard*.
- Law Commission reports, Royal Commission reports and the reports of other official commissions.
- *Pepper v Hart* (1993)
 - *Three River DC v Bank of England no 2* (1996)
 - *Mellusih (Inspector of Taxes) v BMI (no 3) Ltd* (1995)
- *Wilson v Secretary of State for Trade and Industry* (2003)

1.4 Presumptions

(i) Against the alteration of the Common law

(ii) That a mental element is required for criminal offences

mens rea

Sweet v Parsley (1970)

[c/f strict liability *R v Hussain* (1981)]

(iii) Against retrospective effect of new law

Home Secretary v Wainwright (2002)

War Crimes Act 1991

(iv) Presumption against deprivation of liberty

‘...if Parliament intends to exclude effective judicial review of the exercise of a power in restraint of liberty, it must make its meaning crystal clear.’

[*R v Secretary of State for the Home Department ex p Khawaja* (1983)]

(v) Against application to the Crown

(vi) Against breaking international law

(vii) Meaning from context

- Noscitur a sociis rule
IRC v Frere (1969)
- Ejusdem generis rule
Powell v Kempton Park Race Course (1899)
- Expressio unius exclusio alterius rule
The Inhabitants of Sedley (1831)

Topic 4

CIVIL COURT STRUCTURE

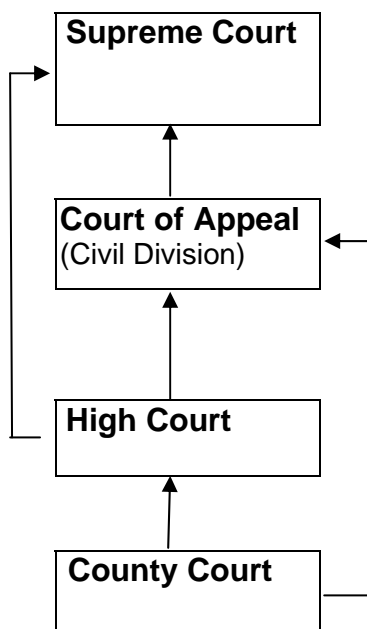
Lecture Outcomes

These lecture sessions introduce you to the organization and the structure of the civil courts.

At the end of the lectures you will have an appreciation both of the range and role of the respective courts that together comprise the civil system of courts.

Lecture Outlines

The Civil Courts



1. Civil v Criminal: *key differences*

2. The Court Service

3. Magistrates' Courts

4. The County Court

5. The High Court of Justice *Three administrative divisions*

- Chancery
- Queen's Bench
- Family

Composition

- Lord Chancellor
- Vice Chancellor
- Lord Chief Justice
- The President
- Senior Presiding Judge
- 106 High Court Judges (*puisne* judges)

(i) The Queen's Bench Division

(ii) The Queen's Bench Divisional Court

exercises *appellate* jurisdiction

(iii) The Chancery Division

(iv) The Chancery Divisional Court

exercises *appellate* jurisdiction

(v) The Family Division Administration of Justice Act 1970

(vi) The Family Divisional Court

6. Appeals from the High Court

Note:

'leap frog'

(ss 12-15 Administration of Justice Act 1969).

7. The Court of Appeal (Civil Division)

8. The Supreme Court

- *Final Court of Appeal for all UK civil cases*
- *Hears appeals on arguable points of law of general public importance*
- *Concentrates on cases of the greatest public and constitutional importance*
- *Maintains and develops the role of the Highest UK Court as a leader in the common law world*

9. Problems with the Civil Justice system

- It cost too much to bring cases to court;
- The system is too slow
- Court procedures are unnecessarily complex; and
- Even if an issue is decided by a court it might be impossible to enforce the decision.

10. Reforms

- Civil Procedure Rules

- Pre-action protocols
- Track allocation and case management
- Legal language
- Forms
- Use of experts
- Alternative dispute resolutions

11. The European Court of Justice

Article 234 EC

'The Court of Justice shall have the jurisdiction to give preliminary rulings concerning:

- (a) the interpretation of this Treaty;
- (b) the validity and interpretation and acts of the institutions of the Community *and of the ECB*;
- (c) the interpretation of the statutes of bodies established by an act of the Council, where those acts so provide.

Where such a question is raised before any court or tribunal of a member state, that court or tribunal may, if it considers that a decision on the question is necessary to enable it to give judgement, request the Court of Justice to give a ruling thereon.

Where any such question is raised before any such court or tribunal of a Member State against whose decision there is no judicial remedy under national law, that court or tribunal shall bring the matter before the Court of Justice'.

Note: European Communities Act 1972

12. The European Court of Human Rights

European Convention on Human Rights, 1950

13. The Judicial Committee of the Privy Council

14. Civil Court Fees

Topic 5

THE MAGISTRATES

Lecture Outcomes

These lecture sessions examine the magistrates' courts and the role played by them. The background to the magistrates' courts is considered, its personnel and its jurisdiction.

When these lecture sessions are completed, you should have an appreciation of the nature of the magistrates' courts and the role that they play within the English court system.

Lecture Outlines

Magistrates' courts

Introduction

- Ministry of Justice
- Courts Act 2003
- Sir Robin Auld: Review of the Criminal Courts in 2001

1. History

- Justices of the Peace Act 1361,
- Justices of the peace, or JPs
- 'District judges (magistrates' courts)' - Access to Justice Act 1999.
- Stipendiary magistrates
- Access to Justice Act 1999
- Constitutional Reform Act 2005

2. Selection and appointment

- local Advisory Committees
- Minister of Justice
- qualifications
- exclusions
- Courts Act 2003

3. Removal & Retirement

4. Background

(i) Class

Royal Commission on Justices of the Peace (1948)

Rod **Morgan** and Neil Russell (2000)

(ii) Age

(iii) Politics

(iv) Race

(v) Sex

5. Training

6. Criminal Jurisdiction

Three main functions

- Bail
- Trial.
- Appeals.
- s. 49 of the Crime and Disorder Act 1998
- Criminal Law Act 1977,
 motoring offences, and criminal damage worth less than £2,000
 (now £5,000 Criminal Justice and Public Order Act 1994)
- The vast majority of new offences are summary only
 ‘Aggravated vehicle-taking’ - Criminal Justice and Public Order Act 1994.
- Public Order Act 1986.

7. Civil jurisdiction

8. The Justices' clerk and legal advisers

- 250 justices' clerks
- must be qualified solicitors or barristers
 since 1 January 1999 -
- advise on law and procedure
- Section 49(2) of the Crime and Disorder Act 1998
- S. 29 of the Courts Act 2003

9. Lay magistrates versus professional Judges

Report: The Judiciary in the Magistrates' Courts (2000)
Rod Morgan and Neil Russell

10. Advantages of lay magistrates

(i) Cost

Research - Rod Morgan and Neil Russell (2000)

(ii) Lay involvement

(iii) Weight of numbers

(iv) Local knowledge

11. Disadvantages of lay magistrates

(i) Inconsistent

- Managing Criminal Justice (1985)
- Research:- Flood-Page and Mackie
- Sentencing Guidelines Council

(ii) Inefficient

Research - Rod Morgan and Neil Russell (2000)

(iii) Bias towards the police

R v Bingham Justices, ex parte Jowitt (1974)

(iv) Background

- Royal Commissions (1910 and 1948) & Review of Criminal Courts (2001)
- Research: Elizabeth Burney (1979)
- Bond and Lemon (1979)
- The Machinery of Justice in England (1989) - Jackson

12. Suggested reforms

(i) Professional judges

- Royal Commission on Criminal Justice - 1993

(ii) The role of the justices' clerk

- Auld Review of the Criminal Courts in 2001,
Submission by Association of Magisterial Officers - rejected

(iii) Selection process

- Review of the Criminal Courts (2001)
- The Auld Review (2001)

(iv) Consistency

(v) A District Division

- Sir Robin Auld - Review
- District Division.
- The three divisions
 1. Crown Division (currently the Crown Court)
 2. Magistrates' Division (currently the magistrates' court)
 3. A new intermediate District Division
- District Division

(vi) Community Justice centres

Topic 6

THE CRIMINAL TRIAL PROCESS

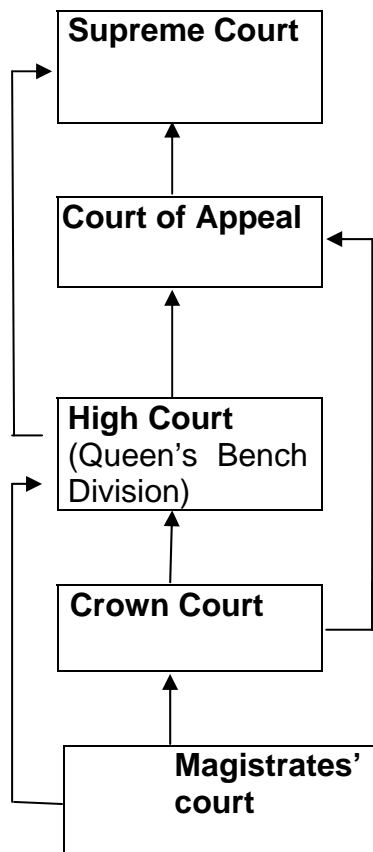
Lecture Outcomes

These lecture sessions concentrate on the procedure adopted in the process of the criminal trial. In addition to court procedure, the role of the Crown Prosecution Service is examined.

At the end of these sessions, you should be familiar with the practical concepts involved in the process of the criminal trial.

Lecture outline

The Criminal Justice system



1. The adversarial process

- adversarial
- inquisitorial
- mistrust of the English criminal justice system
- Royal Commission on Criminal Justice

research (Leigh and Zedner), 1992

2. Criminal Procedure Rules

- Judges - active role in case management
- Rule 3

3. The Crown Prosecution Service

- JUSTICE, (The Prosecution in England and Wales, 1970).
- Royal Commission on Criminal Procedure 1981.
- Prosecution of Offences Act 1985

i. Administration of the CPS

- Review of the Crown Prosecution Service (Glidewell Report)

ii. Powers of CPS employees

Access to Justice Act 1999

s. 37

Crime and Disorder Act 1998

s. 53

Criminal Justice and Immigration Act 2008

s.55

iii. Charging and prosecuting defendants

- **Criminal Justice Act 2003 (s. 28)**
- **S. 10 of the Prosecution of Offences Act 1985**
criteria - **Code for Crown Prosecutors.**
- Glidewell Report & Narey Report - Review of Delay in the Criminal Justice System (1997)
- Criminal Justice Units

iv. Private prosecutions

v. Historical powers of the Attorney General and Director of Public Prosecutions

- **Law Commission 1998.**
- Attorney General
nolle prosequi
- Hillsborough
- *R v DPP, ex parte Duckenfield*
- *R v South Yorkshire Police Authority, ex parte Chief Constable of South Yorkshire* (1999)

vi. Public defenders

Access to Justice Act 1999

4. Appearance in court

- By:
 - summons, or
 - charge following arrest without a warrant
- Note Arrest under a warrant
 - s. 1(1) of the Magistrates' Courts Act 1980
- Plead guilty by post: summary offence
 - s.12 of the Magistrates' Courts Act 1980
- Magistrates' Courts (Procedure) Act 1998
- s. 57 of the Crime and Disorder Act 1998

5. Classification of offences

- Summary
- Indictable
- Offences

6. Mode of trial

- Triable either way offence
 - can insist on a trial by jury
 - guilty plea: sentence/commit to the Crown Court
 - not guilty plea, court decides the mode of trial
- Criminal Justice Act 2003, Schedule 3
- Committal for sentence - abolished
- Dr Andrew Herbert (2003) – Research Criminal Justice Act 2003
- Hedderman and Moxon (1992) research

7. Sending for trial

- s. 51 of the Crime and Disorder Act 1998
- Criminal Justice Act 2003

8. Plea and case management hearings

- Criminal Procedure Rules in 2005
- 'arraignment'

9. Disclosure

- Criminal Justice Act 2003

10. Plea bargaining

- McConville and Baldwin - Research 1977
- *R v Turner* (1970)
- Crown Court Study 1993 Zander
- *R v Goodyear* (2005).

Should plea bargaining be allowed?

Zander and Henderson (1993)

11. The trial

- *R v Jones* (2000)
- Youth Justice and Criminal Evidence Act 1999

i. Evidence of bad character and previous convictions

- ss. 101-103 Criminal Justice Act 2003
- *R v Hanson* (2005)

Topic 7

The Judiciary

Learning Outcomes

This lecture topic provides a study of the role of the judiciary. It highlights the role of the personnel within the judiciary and examines the arguments concerning the abolition of the House of Lords.

At the end of this session you will be familiar with the personnel of the judiciary together with some of the arguments with respect to the abolition of the House of Lords.

Lecture Outline

1. The constitutional Role of the Judiciary

Act of Settlement (1701)

2. The Constitutional role of the Lord Chancellor

2.1 The wide powers of the Lord Chancellor

- Judicial
- Legislative
- Executive

2.2 Abolishing the office of Lord Chancellor

- The Council of Civil Service Unions v Minister for the Civil Service (1985)
- The ECHR (Art.6)
- Minister for Constitutional Affairs - Lord Falconer
- The constitutional Reform Act 2005

2.3 The current reduced powers of the Lord Chancellor

3. The constitution and the role of the House of Lords and Supreme Court

- The highest court of law In UK

3.1 Reasons for abolishing the House of Lords

- Need to enhance the transparency and independence of the judiciary
- Growth in judicial review cases

- Article 6 ECHR
- The HRA 1998
- The devolution

3.2 The Supreme Court

- *Operational from October 2009*
- *Separation from Parliament*
- *Jurisdiction*
- *Membership*
- *Privy Council*

4. Does the UK need a second Appeal Court? Could the Court of Appeal be the Final Appellate Court?

- *Some arguments for abolition*
- *Against abolition*

Gillick v West Norfolk & Wisbeck AHA (1985)

5. Judicial Offices

1. *Lord Chancellor*
2. *Lord Chief Justice*
3. *Master of the Rolls*
4. *President of the Family Division of the High Court of Justice.*
5. *Vice Chancellor*
6. *Senior Presiding Judge for England & Wales.*

7. New offices created under the Constitutional Reform Act 2005

8. Judicial hierarchy

1. *Lords of Appeal in the Ordinary - Law Lords.*
2. *Lord Justices of Appeal*
3. *High Court Judges*
4. *Circuit judges*
5. *Recorders*
6. *District judges*
7. *Magistrates*

9. Legal offices

1. The Attorney General
2. The Solicitor General
3. The Director of Public Prosecutions

10. Appointment of judiciary

- Constitutional Reform Act 2005
- Tribunals, Courts and Enforcement Act 2007

11. Retiring and removal

12. Judicial immunity from suit

Tutorials Semester 1

Tutorial One

The Nature of Law

Qu 1. What part does law play in a modern society?

Q.2. Do you agree that law should follow moral codes or do you think that law should be disconnected from morality?

Qu 3. How did the system of Common law arise?

Qu 4. Distinguish between the systems of common law and civil law and give a practical example of each system.

Qu 5. If the common law was an affirmation of central sovereign power, why was there a need for equity?

Qu 6. Distinguish between public and private law. Consider some of the instances in which the two might overlap.

Qu 7. Outline (only) the difference between civil and criminal law.

Distinguish between the burden and standard of proof. What does it mean when the standard of proof is 'on the balance of probabilities'?

Qu 8. Give some examples of Acts of Parliament that have criminalized what would otherwise have been non criminal behaviour. Is there an advantage in such a method of law making, to whom?.

Qu 9. In maintaining social order in society, which do you think is the most important, civil or criminal law?

Qu 10. In terms of a domestic law maker, should Parliament be sovereign?

Tutorial Two

Sources of Law

Qu. 1

Identify the sources of English law.

Qu. 2

Describe the legislative process undertaken by a bill after it has been introduced into the House of Commons and before it becomes an Act of Parliament.

Qu. 3

'All legislation is proposed by the Government of the day'. Is this a true statement? Explain your answer.

Qu. 4

In which circumstances can the House of Lords block the passage of a bill?

Qu. 5

Is it sufficient that a bill is considered by both Houses of Parliament for it to become law? Explain the concept of 'Royal Assent'. In what context is it important? What would happen if the Monarch refused to give the 'Royal Assent' to a particular bill?

Qu. 6

When drafting legislation, what parameters should the parliamentary counsel take into account? Are the principles listed by Francis Bennion, in 'Statute law obscurity and drafting parameters' ((1978) British JLS 235) necessarily compatible?

Qu. 7

Distinguish between Public Legislation, Private Legislation and Enabling legislation.

Qu. 8

What are the differences between legislation which consolidates, codifies or amends existing legislation?

Qu. 9

Distinguish between a green paper and a white paper.

Qu. 10

How does the Government decide which bills are to be laid before Parliament?

Tutorial 3

Sources of Law

This Tutorial is concerned with sources of law.

As a vehicle for an examination of the sources of law it uses: The (imaginary) Mobile Phones (Protection of Health) Act 200 The Act was passed last year.

Instructions

Read the background to 'The (imaginary) Mobile Phones (Protection of Health) Act 200 ...,' and the extracts from the act as given below in the **annex** to this tutorial. Then answer the following questions based upon the detail of the Act.

Background

In the recent past, concern has been expressed both by the medical profession and by Members of Parliament in relation to the use of mobile phones by young persons. The matter was first debated in Parliament some 6 years ago. Due to pressure on Parliamentary time, the Government had not translated that expressed concern into a Bill. The Right Honorable Bernard Sprout MP proposed the legislation to the House and was successful with that proposal. The Bill became law.

Questions

Qu 1. Where will you be able to find a report of the original debate in Parliament on the use of mobile phones by young persons?

Qu 2. What type of bill was it that led to the current act? In which House of Parliament would it have been introduced? How would the MP have been able to propose the legislation?

The bill is now law. What would have been the procedure adopted to get it through the house? In which House would it have commenced its journey?

Qu 3. To become an Act of Parliament, the Bill received Royal Assent. Is the Monarch required to give that assent? Is there any likelihood that she would not have done so? As a note, the Royal Assent for this Act was received on 1st April last year. Which date did the Act therefore come into force?

Qu. 4. Why do you think that the right Honourable Bernard Sprout MP was successful when he proposed legislation on the use of mobile phones to the House?

Qu 5. Could the House of Lords have delayed the process of this bill? Would that have been likely in this instance?

Qu 6. What type of Act is this?

Annex

The (imaginary) Mobile Phones (Protection of Health) Act 200 [Extracts]

<i>Mobile phones</i>	<p>An (imaginary) Act relating to the purchase of mobile phones in general and to prohibit persons between the ages of 18 years and 21 years old from carrying, owning and using a mobile phone in a place normally open to the public; to enable restrictions to be imposed in relation to all types of mobile phones which present a serious health danger to the public.</p> <p>Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—</p> <p>This section applies to-</p> <p>1. (1) Any mobile phone manufactured and sold in the United Kingdom (2). No person shall possess a mobile phone or be seen to carry it in a place normally open to the public. (3). After such day as the Secretary of State may by order appoint for the purposes of this subsection no person shall have in his possession or custody a mobile phone except— (a) in pursuance of the power of seizure conferred by the subsequent provisions of this Act; or (b) in accordance with an order for its destruction made under those provisions. (c) Any person who contravenes this section is guilty of an offence and liable on summary conviction to imprisonment for a term not exceeding six months or a fine not exceeding level 5 on the standard scale or both.</p> <p>(9). The power to make orders under this section shall be exercisable by statutory instrument which, in the case of an order under subsection (1) or (5) or an order containing a scheme under subsection (3), shall be subject to annulment in pursuance of a resolution of either House of Parliament.</p> <p>4. Purchase of a mobile phone.</p>
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<p><i>Definition section</i></p>	<p>(i) In relation to the purchase of a mobile phone by any person, the statutory terms of the Sale of Goods Act 1979 shall apply.</p> <p>(ii) In relation to the purchase of a mobile phone by any person under 18, the contract will be enforceable only if it is <i>necessary</i> to his/her station in life.</p> <p>5. (1) A police constable is authorized to exercise the powers conferred by this Act (a) any person which appears to him to be a person to which section 1 above applies and who is in a place normally open to the public — (i) after the time when possession of a mobile has become unlawful by virtue of that section; or (ii) which an order under section 2 above applies and in respect of which an offence against the order has been or is being committed; and </p> <p>(7) Any person who contravenes this section is guilty of an offence and liable on summary conviction to imprisonment for a term not exceeding six months or a fine not exceeding level 5 on the standard scale or both</p> <p>(9) The power to make orders under this section shall be exercisable by statutory instrument which, in the case of an order under subsection (1) or (5) or an order containing a scheme under subsection (3), shall be subject to annulment in pursuance of a resolution of either House of Parliament.</p> <p><u>Place open to the public</u> Any place generally open to the public <u>Mobile phone</u> Any phone connected to the network that is not a landline <u>Necessaries</u> For the purposes of this act, the term 'necessaries' will cover anything considered to be 'necessary' to maintain the standards of every day life</p>
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Tutorial 4

Sources of Law

Prepare the answers for these questions in groups of two.

In this tutorial, the answer prepared for question 1 will be peer assessed.

1. Drafting

i.

You are parliamentary counsel to the Treasury. In recent months, there have been a number of attacks on individuals by dogs that are considered dangerous. The Government has decided to act in relation this public concern and have instructed you as parliamentary counsel to draft a bill which will eventually make it unlawful for persons to allow dogs bred for fighting and other dogs considered dangerous to stay in public places.

a. Are there any duties placed on you as parliamentary counsel to the Treasury with respect to your task?

b. Draft the clause (only) in the bill which will identify the dog(s) that are to be banned.

ii. An Act of Parliament has been drafted to deal with increases in prostitution in town centres. Section 1 of the Act provides

“It is an offence to solicit in a street for the purpose of prostitution”

The following situations are ones which have been quoted in Parliamentary debates as giving cause for concern:-

- a) Mary a known prostitute sits in a large bay window lit by a red light on the first floor of a house on a busy street. She taps on the window to attract attention of men on the street and beckons them upstairs.
- b) Jane a known prostitute is unable to speak and stands at the entrance to a shopping mall. She hands out cards to men with her address on as they pass by after leaving the nearby pubs & clubs.
- c) Simon a known prostitute walks round a city centre park at night and approaches men as they cut through the park.

1. Consider whether any of the above situations would be caught by the wording of the Act and

2. Draft an amended clause together with any definition clauses that would clearly cover the above situations

iii. Consider the definition section of the ‘The (imaginary) Mobile Phones (Protection of Health) Act 200 ...’. (See last week’s tutorial). Do you consider the definitions given in this section to be adequate? Draft your own definition of a *Place open to the public and Mobile phone*.

Note: A recognized example of good practice in drafting is *The Arbitration Act 1996*.

The Arbitration Act 1996 is considered a beacon of good practice with respect to drafting. In a glowing tribute, Alec Samuels praised it for its many virtues, 'How to do it properly.' - Statute Law Review 1997, pp 58 – 64.

Statutes are published by the Office of Public Sector Information. You can find the acts at <http://www.opsi.gov.uk/acts.htm>

2. Delegated Legislation

- i.* What is delegated legislation?
- ii.* What are the types of delegated legislation?
- iii.* What are the disadvantages of Parliament resorting to delegated legislation?
- iv.* What are the advantages of Parliament resorting to delegated legislation?
- v.* What controls exist with respect to the use of delegated legislation?

3. EU law

- i.* How does the law of the European Union affect English law?
- ii.* What must an English court do if it finds out that an English statute is in conflict with directly effective Community law?

Tutorial 5

Judicial Reasoning & interpretation

Qu. 1 Outline the hierarchy of the English courts. Explain the position of the European Court of Justice in relation to this system. In which city is that court situated?

Qu. 2 Explain in general terms the system of precedent within the hierarchy of the English courts. Draw an outline plan of the Court system in England and Wales.

Qu. 3 Comment on the proposition that the accepted view of the constitutional role of the judiciary is for judges to apply the law and for parliament to create the law.

Qu. 4

‘Current practice allows the House of Lords to adapt English law to changing social conditions’.... (per Slapper & Kelly).

Explain what this means as far as the House of Lords is concerned and the change in practice in 1966 in so far as the ability to overrule itself.

Qu. 5 Comment on the exceptions to the general rule that the Court of Appeal is generally bound by its own decisions.

Qu. 6 ‘Not everything in a case report will form a binding precedent.’
Explain this statement.

Qu. 7 What are the advantages and the disadvantages in relation to the principle of *stare decisis*?

Qu. 8 How is precedent avoided or altered by the judiciary?

Qu. 9 Comment on some of the vehicles that Parliament uses for law reform. What role in reform of the law does the Law Commission perform?

Qu. 10 Explain the literal and the purposive approaches to statutory interpretation? From which legal system does the purposive approach originate?

Tutorial 6

Judicial Reasoning & Interpretation

Read the following facts and then answer the related questions

Facts: Towards the end of last year, James Dean drove his car into a public park to assist an old man who had called for help. The old man said he was suffering a heart attack and was in need of urgent transfer to the nearby hospital. James took him to the hospital where the doctors said that he was absolutely healthy and that they found no heart problem.

A few days later James was informed that by entering into the public park with his car, he had breached the provisions of an Act of Parliament which prohibited access to public parks to all vehicles except in situations of emergency.

He was also told that the aim of the Act was to protect the public using the park from accidents caused by reckless driving in the park.

James claimed that he drove into the park to save the life of the old man who had called for help.

Consider the issues of interpretation that arise in this case:

Qu.1 What is Parliamentary intention and how does it affect the interpretation of legislation?

Qu.2 What methods are available in this instance to the court to adopt in the approach to statutory interpretation?

As regards James, how will the court decide if the situation involving the old man was a situation of emergency as described in the Act?

Qu. 3. Identify the secondary aids to construction of a statute. Would any of those aids be of use in the present circumstances?

Qu. 4 How would the courts assess application of the Act in James's case if the 'purposive' approach to interpretation was adopted? Would the outcome be different if the court adopted the *literal* approach to interpretation?

Qu. 5 Following a series of car accidents around parks in recent weeks, which killed a number of pedestrians, the Minister of State for Health made a statement in Parliament that the Act should be interpreted strictly so as to allow access to public parks in situations of emergency only to ambulances and police cars and not to private vehicles.

Advise the court whether it could in this instance refer to the record in *Hansard* of this statement in helping it to come to a conclusion as to the meaning of the Act and its application in relation to James.

Qu. 6

In the process of the interpretation of statute, what presumptions may be made by the court?

Tutorial 7.

The Civil Court structure

This seminar is concerned with material relating to the structure of the civil court.

Qu. 1 Identify and explain some of the key differences between a civil and criminal case.

Qu. 2 Explain the function of the Court Service.

Qu. 3 Identify the civil jurisdiction of the magistrates' court.

Qu. 4 Identify the jurisdiction of the County Court. What kind of actions set down for trial in the High Court are considered too important for transfer to the county court?

Qu. 5 What is the small claims limit in the county court?

Qu. 6 Identify the divisions of the High Court of Justice and identify the categories of cases that each of the divisions undertake.

Qu. 7 Describe the work of the Court of Appeal (Civil Division).

Qu. 8 Identify the role of the Supreme Court.

Qu. 9 By what procedure do the judgments of the European Court of Justice impinge upon English law?

Qu. 10 What function does the Judicial Committee of the Privy Council perform?

Tutorial 8

Consolidation

This tutorial is designed to act as a consolidation exercise of material you have covered in English Legal Systems to date. It uses the judgments of the House of Lords in *Transco Plc v Stockport Metropolitan Borough Council* [2003] 3 All E.R. 330 (March 31; April 1, 2; Nov 19) and in *Rylands v Fletcher* (1868) L.R. 3 H.L. 330 as vehicles for such consolidation.

Instructions

Read both the judgments of LORD SCOTT OF FOSCOTE para 70 – 91 in **Transco** and that of the House of Lords in *Rylands v Fletcher* before you start the preparation for this tutorial.

For this purpose, you will find **both** judgments on Westlaw.

Qu. 1 *Transco* was judgment of the House of Lords. The judgments of the House of Lords (now Supreme Court) are binding on all lower courts in the hierarchy. Identify which courts these are.

Qu. 2

Explain what is and the effect of the *ratio decidendi* of a judgment. Have a go at drafting the *ratio decidendi* of *Rylands v Fletcher* (H/L). Don't spend too long on this.

Qu.3

Which body was responsible for the case report of *Rylands v Fletcher*? Can it be regarded as an accurate report of the judgment?

Qu. 4. For the system of precedent, why is it important to have an accurate system of law reporting? Is the same body that reported *Rylands v Fletcher* still in operation today?

Qu. 5. In the *Transco* judgment, the House of Lords held that the judgment of the High Court of Australia in *Burnie Port Authority v General Jones Pty Ltd* (1994) that the rule in *Rylands v Fletcher* has been absorbed into the law of negligence ought not to be followed.

What is the status of judgments of Australian courts as far as the English courts are concerned?

Qu. 5 *Rylands v Fletcher* was a House of Lords judgment. Judgments of the House of Lords bind all courts in the legal system. Is the House of Lords bound by its own judgments?

Qu. 6 In what circumstances and from which courts can appeals be made to the House of Lords? From which court did the appeal in *Transco* arise?

Qu. 7 In which court did *Transco* originate?

Tutorial 9

The Magistrates

Qu. 1 Outline the history of the magistrates' courts

Qu. 2 What are the criteria for the selection and the appointment of magistrates?

Qu. 3 Consider the background of the persons who are magistrates. Is this satisfactory?

Qu. 4 Identify the criminal jurisdiction of the magistrates.

Qu. 5 What is the civil jurisdiction of the magistrates?

Qu. 6 What is the role of the Justices' clerk?

Qu. 7 What are the advantages and the disadvantages of lay magistrates?

Qu. 8 Comment on the reforms to the system of magistrates as identified in the lecture.

Tutorial 10

The Criminal Trial Process

Qu. 1 Explain the concept of the adversarial system. What is the alternative to this system? Comment on the respective merits of each of these systems?

Qu. 2 The new Criminal Procedure Rules emphasise that judges need to take an active role in case management. Explain what this means.

Qu. 3 What function does the Crown Prosecution Service perform? What recommendations did the Glidewell Report make with respect to the administration of the CPS?

Qu. 4 What are the issues concerned with CPS employees undertaking advocacy in the Crown Court? How have these issues been addressed?

Qu. 5 Which bodies are responsible for charging and prosecuting defendants? What is the procedure adopted by the prosecutor?

Qu. 6

‘Private prosecutions play an important role, particularly in highlighting or encouraging public concern over relevant issues.’

Comment on this statement and refer to examples to underpin your arguments.

Qu.7 Identify issues of criticism of police practices during arrest and detention

Tutorial 11

The Criminal Trial Process

Qu. 1

Examine the historical powers of the Attorney General and the Director of Public Prosecutions.

Qu. 2

What are the mechanics of the calling to court of a defendant charged with an offence?

Qu. 3

How are offences classified?

Qu. 4

What is the 'mode of trial' and in what circumstances is it appropriate?

Qu. 5

Research has concluded that the reforms in the Criminal Justice Act 2003 are doomed to fail to reduce the number of cases referred to the Crown Court.

Comment on the findings of this research by Andrew Herbert

Qu. 6

Identify the procedure of sending the defendant for trial.

Qu. 7

What is process of disclosure prior to a trial?

Qu. 8

What are the advantages and disadvantages of plea bargaining?

Qu. 9

Outline the procedure adopted at the trial.