Introduction to the English Legal System
Why study English law?

- English as *lingua franca*?
- Mother jurisdiction for all common law jurisdictions
- Commercial awareness of English law
- Useful tool for comparatist
- Requirement for German legal education (optional)
- Requirement in leading law firms

Law and Equity

- Law = common law, statute + equity
- Equity = fairness
  - historically separate from law
  - More flexible set of remedies
  - Administered by Court of Chancery
  - merged by Judicature Acts 1873-75
- Maxims:
  - He who comes to equity must come with clean hands
  - He who seeks equity must do equity
  - Delay defeats equities
- Today branch of law
Introduction to the English Legal System

Overview

- Sources of Law
  - Statute Law
  - Case Law
- Legal Personnel
- Adversarial Process
- Principles of Constitutional Law
- Human Rights Act 1998

Statute Law I

- Parliament – The House of Commons
- Parliamentary democracy, based on universal suffrage
- 650 Constituencies, which each elect a Member of Parliament
- Members sit in the House of Commons

<table>
<thead>
<tr>
<th>Party</th>
<th>Seats</th>
<th>Percentage</th>
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<tr>
<td>Conservative</td>
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<td>Labour</td>
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<td>4.7</td>
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<td>Lib Dems</td>
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<td>7.9</td>
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Statute Law II
Parliament – the House of Lords
- Historically – dominated by hereditary peers
- House of Lords Act 1999
- Situation now - 617 life peers, 92 hereditary peers and 26 bishops
- Further reform – 80/100% elected house? but not until after the next General Election.

Role of Parliament
- The UK Parliament plays a number of important roles, including:
  - Scrutinises government business – Select Committees
  - A public forum for debate in which the government is held to account (e.g. parliamentary questions)
  - Debates, scrutinizes and passes legislation

Statute Law III
- Types of Acts:
  - Public Acts, e.g. Education Act 2005
  - Private Acts, e.g. University of Cardiff, Wales Act 2004
- Legislation:
  - 3 stage process in both Houses
  - Objections of the Lords can be disregarded after certain period lapses (max. 1 year), Parliament Act
- Royal Assent (formal enactment)
Statute Law IV

Supremacy of Parliament

- Sovereign is Queen in Parliament
- A V Dicey: “Parliament ... under the English constitution, [has] the right to make or unmake any law whatever; and further that no person or body is recognised by the law of England as having a right to override or set aside the legislation of Parliament....”
- Scotland Act 1998 s 28(7): “rights, powers, liabilities, obligations and restrictions ... are without further enactment to be given legal effect.”
- Collision with EU law: Factortame

Statutory Interpretation I

- Main task is to establish parliamentary intention
- Interpretation Act 1978
- Rules of interpretation
  - **Literal rule**: words must be given their ordinary meaning
    - *R v City of London Court Judge* (1892): "if the words of an Act are clear, you must follow them. Even though they lead to a manifest absurdity. The court has nothing to do with the question of whether the legislature has committed an absurdity” (per Lord Esher)
Statutory Interpretation II

– **The golden rule**: judge can substitute a reasonable meaning if literal rule creates an unplanned absurdity

– **The mischief rule**: Heydon’s case (16th cent.)
  - What was law before the enactment?
  - Which mischief did Parliament try to remedy?
  - Which remedy was Parliament trying to provide?

Statutory Interpretation III

– Internal Aids to Interpretation

- Statute itself (other provisions)
- Explanatory notes
- Rules of Language
  - *Ejusdem generis / Noscitur a sociis*
  - *Expressio unius est exclusio alterius*
- Presumptions
  - No change of common law
  - No matter to be removed from jurisdiction of courts
  - Existing rights are not be interfered with
  - No retrospective effect
  - Penal statutes are to be interpreted in favour of citizen
  - Statutes do not affect Monarch
Statutory Interpretation IV
– External Aids to Interpretation

• Historical setting
• Dictionaries and textbooks
• Reports (preparing legislation)
• Treaties (no breach of int’l law)
• Previous practice
• Human Rights Act 1998
• Hansard, Pepper v Hart (1993)

Introduction to the English Legal System

Case Law I

• Common Law of England = prime source of law
• Legal principles laid down by courts after Norman conquest (1066)
• Judicial precedent
• Stare decisis
Introduction to the English Legal System

Case Law II – Hierarchy of Civil Courts

- Supreme Court*
- Court of Appeal
- High Court
- County Court

*until recently: House of Lords

ECJ

Case Law III – Hierarchy of Criminal Courts

- Supreme Court
- Court of Appeal (Criminal Division)
- Queen’s Bench Division
- Crown Court
- Magistrates’ Court

Privy Council
Case Law IV

- House of Lords (to be replaced by Supreme Court) = final court of appeal in civil and criminal matters
- Privy Council: final appeal court for 30 Commonwealth countries, same judges as HoL
- Court of Appeal: appeal court in civil and criminal matters

Case Law V
- The High Court

- Queen’s Bench Division:
  - First instance court in criminal and civil cases, incl. Specialist commercial court
  - Queen’s Bench Divisional Court: appeal court for lower courts, judicial review
- Chancery Division
  - Specialist civil jurisdiction (land, trust, bankruptcy, companies, revenue, etc)
  - Chancery Divisional Court: appeal court for income tax and bankruptcy etc
- Family Division
  - All matrimonial matters
  - Family Divisional Court: appeals in family matters
Case Law VI
– Lower courts

• Magistrates’ courts:
  – Certain areas of civil jurisdiction
  – Criminal jurisdiction
  – Magistrates are lay persons
• Crown Court: Criminal jurisdiction
• County courts: small claims and fast track civil action

Case Law VII
– Judicial Precedent

• Stare decisis: let the decision stand
• Ratio decidendi: binding reasoning
• Obiter dictum: persuasive precedent
• Higher courts bind lower courts
• HoL is not bound by own decisions (since 1966, but infrequent use)
• CA bound by HoL
• High Court bound by CA
• Lower courts bound by High Court, but can’t bind other courts
Legal Personnel I
Overview

• 2 types of lawyers:
  – Solicitors
  – Barristers

• Other legal jobs:
  – Legal executives
  – Paralegals

• Judges

Legal Personnel II
Becoming a Solicitor

Likely to change under plans to introduce a Solicitors’ Qualification Exam (SQE)

Solicitor

Training Contract (2 years)
Legal Practice Course (LPC) (1 year)
Qualifying Law degree (LL.B., B.A.) (3 years)
any University degree (3 years)

Training Contract (2 years)
Legal Practice Course (LPC) (1 year)
Graduate Diploma in Law (GDL) (1 year)
Legal Personnel III
– Becoming a Barrister

Barrister

- Pupillage (1 year)
- Bar Professional Training Course (BVC) (1 year)
- Qualifying Law degree (LL.B., B.A.) (3 years)
- any University degree (3 years)

Legal Personnel IV
– Becoming a Judge

- Judges are appointed from the ranks of senior barristers (Queen’s Counsel, QC)
- Certain solicitors with rights of audience at higher courts
- Judicial Appointments Committee
The Human Rights Act 1998

- Requires that public authorities do not ‘act in a way which is incompatible with a Convention Right’, s 6(1).
- Proportionality test requires courts to assess the balance which the decision maker has struck and the relative weight accorded to interests and considerations: a ‘merits’ review
- S 8(1): the Court ‘may grant such relief or remedy, or make such order, within its powers as it considers just and appropriate.’
- Legislation must be read and given effect in a way which is compatible with Convention rights.’ (s 3 HRA)
- Where it is impossible for judges to interpret compatibly a ‘declaration of incompatibility’ must be made, s. 4

The adversarial process

- Adversarialism implies:
- Emphasis on the ‘orality principle’
- Party-led case management
- ‘Procedural Fairness’
  - importance of rules of evidence and procedure
  - conduct rules managing tactical abuses by lawyers
  - ‘umpireal’ role of judge in court