





Introduction to the English Legal System




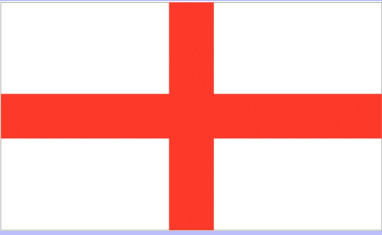
English Legal System




Introduction to the English Legal System



The United Kingdom – 3 jurisdictions








The Royal Courts of Justice

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

The Royal Courts of Justice

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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

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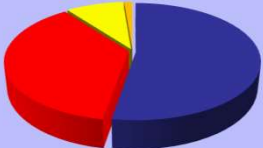


Statute Law I

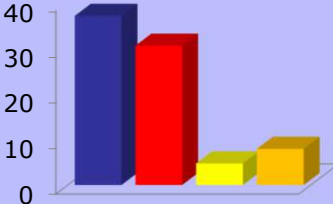
- Parliament – The House of Commons
- Parliamentary democracy, based on universal suffrage
- 650 Constituencies, which each elect a Member of Parliament
- Members sit in the House of Commons




Conservative	330
Labour	232
Scot Nationals	56
Lib Dems	8




Seats





Conservative	36.9
Labour	30.4
Scot Nationals	4.7
Liberal Democrats	7.9









  <p data-bbox="322 763 491 840">Introduction to the English Legal System</p> 	<h2 style="text-align: center;">Statute Law II</h2> <p>Parliament – the House of Lords</p> <ul style="list-style-type: none"> • Historically – dominated by hereditary peers • <i>House of Lords Act 1999</i> • 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. <p>Role of Parliament</p> <ul style="list-style-type: none"> • 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
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  <p data-bbox="322 1664 491 1740">Introduction to the English Legal System</p> 	<h2 style="text-align: center;">Statute Law III</h2> <ul style="list-style-type: none"> • Types of Acts: <ul style="list-style-type: none"> – Public Acts, e.g. Education Act 2005 – Private Acts, e.g. University of Cardiff, Wales Act 2004 • Legislation: <ul style="list-style-type: none"> – 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)
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  <p data-bbox="322 761 491 840">Introduction to the English Legal System</p> 	<h2 data-bbox="651 369 1088 425">Statute Law IV</h2> <h3 data-bbox="518 474 997 515">Supremacy of Parliament</h3> <ul style="list-style-type: none"> <li data-bbox="566 519 1141 555">– Sovereign is Queen in Parliament <li data-bbox="566 560 1220 772">– 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....” <li data-bbox="566 777 1173 907">– Scotland Act 1998 s 28(7): “rights, powers, liabilities, obligations and restrictions ... are without further enactment to be given legal effect.” <li data-bbox="566 911 1165 947">– Collision with EU law: Factortame
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  <p data-bbox="322 1662 491 1740">Introduction to the English Legal System</p> 	<h2 data-bbox="523 1270 1216 1326">Statutory Interpretation I</h2> <ul style="list-style-type: none"> <li data-bbox="518 1384 973 1456">• Main task is to establish parliamentary intention <li data-bbox="518 1460 965 1496">• Interpretation Act 1978 <li data-bbox="518 1500 949 1536">• Rules of interpretation <ul style="list-style-type: none"> <li data-bbox="566 1550 1189 1621">– Literal rule: words must be given their ordinary meaning <p data-bbox="593 1626 1216 1841"><i>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)</i></p>
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  <p data-bbox="322 763 491 840">Introduction to the English Legal System</p> 	<h2 data-bbox="517 371 1230 427">Statutory Interpretation II</h2> <ul style="list-style-type: none"> <li data-bbox="568 483 1190 645">– The golden rule: judge can substitute a reasonable meaning if literal rule creates an unplanned absurdity <li data-bbox="568 658 1214 734">– The mischief rule: <i>Heydon's case</i> (16th cent.) <ul style="list-style-type: none"> <li data-bbox="616 748 1190 779">• What was law before the enactment? <li data-bbox="616 792 1177 853">• Which mischief did Parliament try to remedy? <li data-bbox="616 866 1182 927">• Which remedy was Parliament trying to provide?
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  <p data-bbox="322 1664 491 1740">Introduction to the English Legal System</p> 	<h2 data-bbox="517 1249 1241 1305">Statutory Interpretation III</h2> <p data-bbox="528 1317 1219 1350">– Internal Aids to Interpretation</p> <ul style="list-style-type: none"> <li data-bbox="517 1379 1102 1413">• Statute itself (other provisions) <li data-bbox="517 1424 871 1458">• Explanatory notes <li data-bbox="517 1469 1182 1574">• Rules of Language <ul style="list-style-type: none"> <li data-bbox="564 1503 1166 1536">– <i>Ejusdem generis</i> / <i>Noscitur a sociis</i> <li data-bbox="564 1541 1182 1574">– <i>Expressio unius est exclusio alterius</i> <li data-bbox="517 1585 1246 1861">• Presumptions <ul style="list-style-type: none"> <li data-bbox="564 1619 954 1653">– No change of common law <li data-bbox="564 1657 1206 1709">– No matter to be removed from jurisdiction of courts <li data-bbox="564 1713 1145 1747">– Existing rights are not be interfered with <li data-bbox="564 1751 903 1785">– No retrospective effect <li data-bbox="564 1789 1241 1841">– Penal statutes are to be interpreted in favour of citizen <li data-bbox="564 1845 1011 1879">– Statutes do not affect Monarch
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Introduction to the English Legal System



Statutory Interpretation IV

– External Aids to Interpretation

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

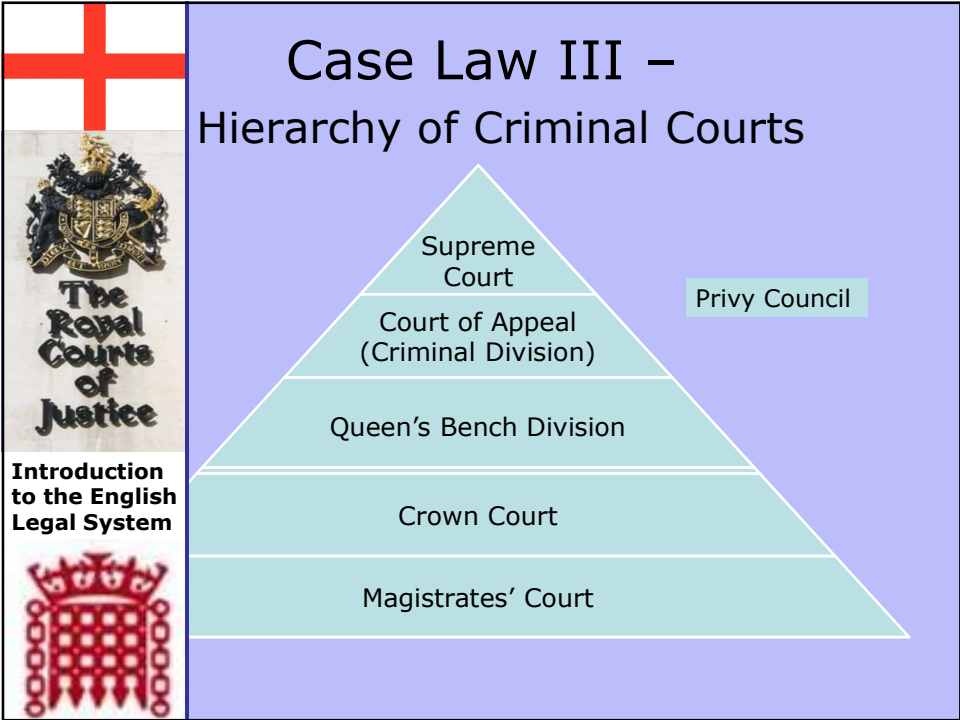
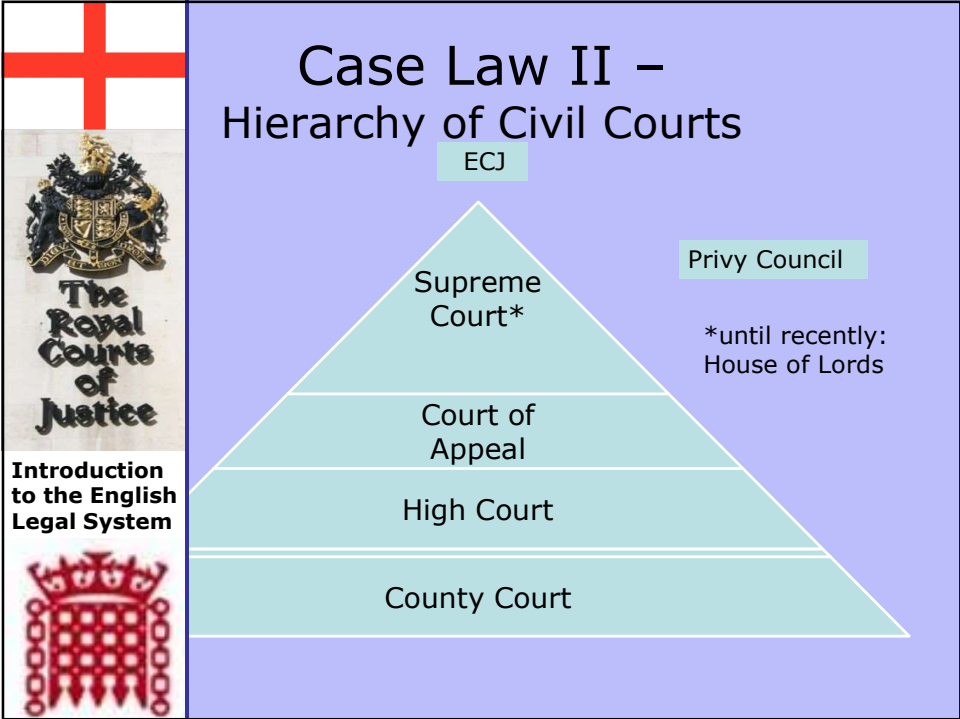






Introduction to the English Legal System






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*



  <p data-bbox="322 763 491 840">Introduction to the English Legal System</p> 	<h2 style="text-align: center;">Case Law IV</h2> <ul style="list-style-type: none"> • 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
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  <p data-bbox="322 1664 491 1740">Introduction to the English Legal System</p> 	<h2 style="text-align: center;">Case Law V</h2> <h3 style="text-align: center;">– The High Court</h3> <ul style="list-style-type: none"> • Queen's Bench Division: <ul style="list-style-type: none"> – 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 <ul style="list-style-type: none"> – Specialist civil jurisdiction (land, trust, bankruptcy, companies, revenue, etc) – Chancery Divisional Court: appeal court for income tax and bankruptcy etc • Family Division <ul style="list-style-type: none"> – All matrimonial matters – Family Divisional Court: appeals in family matters
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  <p data-bbox="322 763 491 840">Introduction to the English Legal System</p> 	<h2 style="text-align: center;">Case Law VI</h2> <p style="text-align: center;">– Lower courts</p> <ul style="list-style-type: none"> • Magistrates' courts: <ul style="list-style-type: none"> – Certain areas of civil jurisdiction – Criminal jurisdiction – Magistrates are lay persons • Crown Court: Criminal jurisdiction • County courts: small claims and fast track civil action
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  <p data-bbox="322 1664 491 1740">Introduction to the English Legal System</p> 	<h2 style="text-align: center;">Case Law VII</h2> <p style="text-align: center;">– Judicial Precedent</p> <ul style="list-style-type: none"> • <i>Stare decisis</i>: let the decision stand • <i>Ratio decidendi</i>: binding reasoning • <i>Obiter dictum</i>: 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
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Introduction to the English Legal System



Legal Personnel I overview

- 2 types of lawyers:
 - Solicitors
 - Barristers
- Other legal jobs:
 - Legal executives
 - Paralegals
- Judges




Introduction to the English Legal System



Legal Personnel II Becoming a Solicitor

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

Solicitor

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




The Royal Courts of Justice

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Legal Personnel III

– Becoming a Barrister

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graph TD
    B[Barrister] --> P1[Pupillage (1 year)]
    B --> P2[Pupillage (1 year)]
    P1 --> BPTC1[Bar Professional Training Course (BVC) (1 year)]
    P2 --> BPTC2[Bar Professional Training Course (BVC) (1 year)]
    BPTC1 --> QLD[Qualifying Law degree (LL.B., B.A.) (3 years)]
    BPTC2 --> GDL[Graduate Diploma in Law (GDL) (1 year)]
    GDL --> UG[any University degree (3 years)]
            
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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

  <p data-bbox="320 763 493 837">Introduction to the English Legal System</p> 	<h2 data-bbox="564 338 1174 450">The Human Rights Act 1998</h2> <ul data-bbox="517 477 1219 913" style="list-style-type: none"> • 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
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  <p data-bbox="320 1664 493 1738">Introduction to the English Legal System</p> 	<h2 data-bbox="517 1272 1219 1330">The adversarial process</h2> <ul data-bbox="517 1391 1193 1800" style="list-style-type: none"> • Adversarialism implies: • Emphasis on the 'orality principle' • Party-led case management • 'Procedural Fairness' <ul data-bbox="564 1599 1177 1800" style="list-style-type: none"> – importance of rules of evidence and procedure – conduct rules managing tactical abuses by lawyers – 'umpireal' role of judge in court
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