









Introduction to the English Legal System

English Legal System





The United Kingdom – 3 jurisdictions












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



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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






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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
Scott Nationalists	56
Lib Dems	8

Seats



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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

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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)



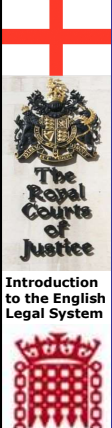

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Statute Law IV

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**



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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)



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Statutory Interpretation II

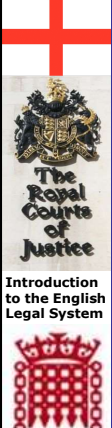
- **The golden rule:** judge can substitute a reasonable meaning if literal rule creates an unplanned absurdity
- **The mischief rule:** *Heydon's case (16th cent.)*
 - What was law before the enactment?
 - Which mischief did Parliament try to remedy?
 - Which remedy was Parliament trying to provide?



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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' law)
- Previous practice
- Human Rights Act 1998
- *Hansard, Pepper v Hart* (1993)

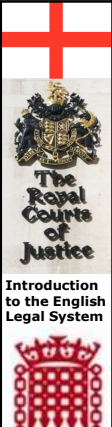
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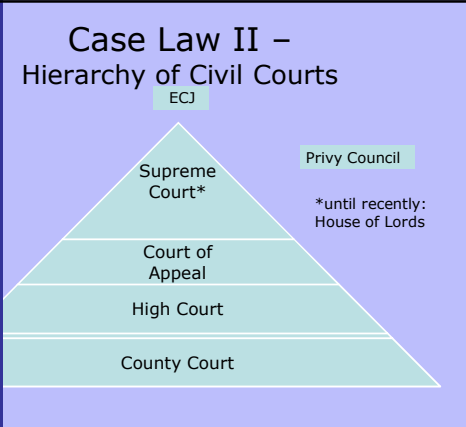
Case Law I

- Common Law of England = prime source of law
- Legal principles laid down by courts after Norman conquest (1066)
- Judicial precedent
- *Stare decisis*

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Case Law II – Hierarchy of Civil Courts



ECJ

Supreme Court*

Privy Council

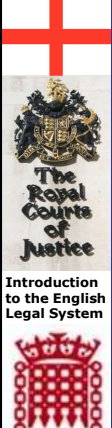
*until recently: House of Lords

Court of Appeal

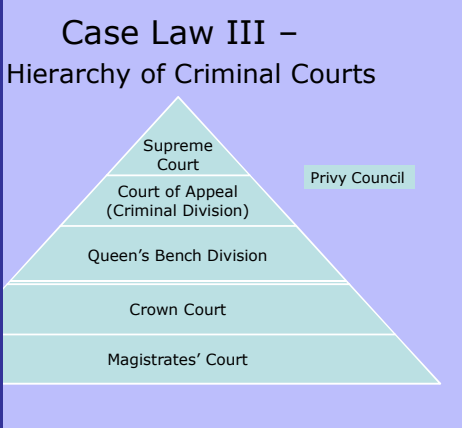
High Court

County Court

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**Case Law III –
Hierarchy of Criminal Courts**



Supreme Court
Court of Appeal (Criminal Division)
Queen's Bench Division
Crown Court
Magistrates' Court
Privy Council

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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


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**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

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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)

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    graph TD
      Solicitor[Solicitor] --> TC1[Training Contract 2 years]
      Solicitor --> TC2[Training Contract 2 years]
      TC1 --> LPC1[Legal Practice Course LPC 1 year]
      TC2 --> LPC2[Legal Practice Course LPC 1 year]
      LPC1 --> QLD[Qualifying Law degree LL.B., B.A. 3 years]
      LPC2 --> GDL[Graduate Diploma in Law GDL 1 year]
      QLD --> UG[any University degree 3 years]
      GDL --> UG
  
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Legal Personnel III
- Becoming a Barrister




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    graph TD
      Barrister[Barrister] --> P1[Pupillage 1 year]
      Barrister --> 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]
      QLD --> UG[any University degree 3 years]
      GDL --> UG
  
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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

  Introduction to the English Legal System 	<h2>The Human Rights Act 1998</h2> <ul 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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  Introduction to the English Legal System 	<h2>The adversarial process</h2> <ul style="list-style-type: none">• Adversarialism implies:• Emphasis on the 'orality principle'• Party-led case management• 'Procedural Fairness'<ul 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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