Introduction to the 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
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

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

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<th>Seats</th>
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<td>Liberal Democrats</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)

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

Case Law II – Hierarchy of Civil Courts

**ECJ**
- Supreme Court*
- Court of Appeal
- High Court
- County Court
- Privy Council

*until recently: House of Lords
Case Law III – Hierarchy of Criminal Courts

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

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

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

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

Legal Personnel III
- Becoming a Barrister

- Barrister
- Pupillage (1 year)
- Bar Professional Training Course (BVC) (1 year)
- Qualifying Law degree (LL.B. or B.A.) (2 years)
- any University degree (3 years)

Bar Professional Training Course (BVC) (1 year)
Graduate Diploma in Law (GDL) (1 year)

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
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