

## English Legal System

### The Basics of the English Legal System

This document contains some notes on the English legal system. Of course, the system is far more complex than this, but these notes could form the seed of your own notes. Feel free to add material over time, drawing on textbooks, articles and other sources, so you have a simple reference point for your own understanding of the legal system.

### Important outline

1. Sources of Law
  1. Legislation and delegated legislation and how they are made
  2. Judicial Law-making
2. Techniques for creating and using law:
  1. Statutory interpretation\*
  2. Rules of precedent\*
3. Institutions
  1. The framework of the UK judicial system including the different courts\*
  2. The more important legal actors, such as the types of judges, prosecutors and others.
4. Constitutional questions
  1. Separation of powers – three arms of government (see esp. Supreme Court)
  2. The Westminster System – merger of the legislative and executive arms

These issues will be for you to fill in, but three particular points will be picked out in a little more detail, to give you a hint about the level of detail you might need. These were marked with a \*, and they are, statutory interpretation, the role of precedent and the structure of the courts. Remember, these are things you will come back to more than once in the course, but getting started now will be to your advantage.

### Statutory interpretation (some general principles)

Most statutes never come before the courts for interpretation, but most of the work of the House of Lords is concerned with statutory interpretation!

The starting point is the sovereignty of Parliament: Parliament can legislate on whatever it wants, however it wants (so long as the process follows its own rules), it is then the task of the judges to interpret these legislative rules. To do so, the courts seek to interpret legislation in a manner that is consistent with the intention of Parliament. This obviously requires the court to decide what Parliament's intention was! There are a number of rules to assist with that.

1. Literal rule = notion that courts should start by trying to give words their ordinary or, in appropriate circumstances, their technical meaning, having regard to the context in which they are used.
2. Inherent problems: (a) reading words in context will almost always involve choices between different meanings; and (b) deciding whether a word should be given its technical or ordinary meaning also always involves choices.
3. Strict constructionist view now less fashionable – although not obsolete.
4. Golden rule = statute should be read as a whole and provisions should be given their ordinary meaning unless when given their ordinary meaning it produces an inconsistency, absurdity or inconvenience so great as to convince the court that the intention of Parliament must have been otherwise.
5. Purposive (or “teleological”) approach = notion that courts should seek to interpret legislation having regard to the ordinary and technical meanings of the words and phrases that are used and the general purpose of the Act. Courts will tend to favour the interpretation that tends to promote the purpose of the Act.
6. All statutes should be interpreted as ‘always speaking statutes’ = essentially part of the purposive approach. It suggests that courts should interpret and apply legislation to the world as it currently stands (not as it was) and in light of the current legal system.
7. Mischief rule = notion that courts should interpret statute in light of the mischief that it seeks to address and seek to give words and phrases the meanings that would most effectively promote a solution to the mischief

## Precedent

Definition = a judgment or decision of a court that serves as an authority for the legal principle(s) embodied in the decision

1. Role of precedent: *stare decisis* (precedents are authoritative and binding) and *res judicata* (judicial decision is conclusive as between the parties)
2. Types of precedents – original (one that creates or applies a new rule), declarative (one that applies a pre-existing rule), authoritative (binding), and persuasive (non-binding, but worthy of consideration, e.g. Privy Council)
3. *Ratio decidendi*: binding aspect of judgments - legal principles relied upon by court to decide case. See for example, Goodhart, “Determining the Ratio Decidendi of a Case” in *Essays in Jurisprudence and the Common Law* (1931) and Cross, “Ratio Decidendi and a Plurality of Speeches in the House of Lords” (1977) 93 LQR 378 on how to find the ratio decidendi. Goodhart considers the ratio to be the material facts of the case and the decision thereon. Where a subsequent case has an additional material fact, the case may be valuable as an analogy. Cross considers the ratio to be any rule of law expressly or impliedly treated by the judge as a necessary step in reaching his conclusion, having regard to the line of reasoning adopted by him.
4. Note the difficulty of discerning the ratio of a case where there are multiple judgments. Cross considers that a majority of the majority (technically a minority) can control the ratio; the more conventional view requires a majority overall. Some (rare!) cases may have no discernible ratio; in others the ratio may only become apparent from subsequent case law.

5. *Obiter dictum* (non-binding aspect of judgments – remarks and principles not relied upon by court to decide case; suggested rules may be persuasive depending on the standing of the individual judge and the court in which the suggestion was made)
6. Since its 1966 *Practice Statement (Judicial Precedent)* (1966) 1 WLR 1234, the House of Lords is no longer bound by its own judgments where this would lead to injustice in a particular case or where it would unduly restrict the development of the law. However, this power is rarely used. The Court of Appeal is bound by its decisions except in the circumstances laid down in *Young v Bristol Aeroplane Co* (1944) 2 All ER 293: where there are two conflicting authorities, where the authority is contrary to a later House of Lords decision, and where the judgment was given *per incuriam*.
7. Courts can however distinguish cases so as not to be bound by precedent. Distinguishing may be restrictive, where the court notes a material fact in the earlier case that cuts down the scope of the ratio so that it does not cover the situation before the court; or non-restrictive, where the court decides that the case before it is not covered by the precedent in question because of a difference in material facts.

## English Court Structure

1. Superior courts (as opposed to the inferior courts) have jurisdiction to hear appeals, supervisory jurisdiction of the High Court (inherent jurisdiction to issue prerogative writs), and restrictions on contempt
2. The superior courts: Judicial Committee of the Privy Council, Supreme Court/House of Lords, Court of Appeal, High Court, Employment Appeal Tribunal, and the Crown Court (although note the High Court can issue prerogative writs in relation to most of the Crown Court's jurisdiction)
3. Some basic information about the courts
  - a. Supreme Court gives judgments (pre-October 1, 2009: House of Lords: Appeal Committee of the House of Lords, opinions (not judgments)); highest domestic court (including Scottish civil and constitutional matters), not bound by its own decisions
  - b. Judicial Committee of the Privy Council: opinions (not judgments), appellate jurisdiction in minor areas of British law (e.g. admiralty, appeals from ecclesiastical courts, appeals concerning expulsion from professional bodies), final court of appeal for other countries, non-binding opinions (persuasive authority)
  - c. Court of Appeal: judgments (not opinions), bound by its own decisions (subject to exceptions), two divisions (civil and criminal)
  - d. High Court: judgments (not opinions), not bound by its own decisions (although it usually follows them unless they are distinguishable), substantial original and appellate jurisdiction, three divisions (Chancery, Family and Queen's Bench), appeal from High Court either to House of Lords (if first heard by magistrates or Crown Court) or to Court of Appeal
  - e. Crown Court: judgments (not opinions), substantial original and appellate jurisdiction (eg. from magistrates courts concerning civil issues), mainly deals with criminal issues, appeals to Court of Appeal (original) or High Court (appellate)
  - f. County Court: specialist civil court, inferior, appeals to Court of Appeal or High Court (only for bankruptcy)
  - g. Magistrates courts: primarily criminal (also youth and civil), inferior