

DIPLOMA COURSE

AN INTRODUCTION TO ENGLISH AND EUROPEAN LAW

EXAMPLE EXTRACTS FROM ENGLISH LEGAL SYSTEM

WORKBOOK 1

BLC Tutors

BLC Course Workbooks normally include :-

1. General introduction on subject
2. Index of main topics to be covered
3. Detailed information on the subject including full sources of legislation or case law, with extracts from original material such as cases or views of academics.
4. Original materials.e.g. extracts from cases, legislation, academic articles or reports.
5. Self-assessment questions follow each topic/ section
6. Discussion questions for consideration in class meetings.

Extracts from the first workbook on English Legal System follow to give potential students an idea of the kind of material used on the BLC course

EXTRACTS FROM AN INTRODUCTION TO THE ENGLISH LEGAL SYSTEM WORK BOOK 1

The Sources of English Law

Aims

To explain the historical origins of the present English Legal System and the sources of English constitutional law. To consider some problematic areas of contemporary UK constitutional law.

Objectives

You should be able to :

1. Explain the development of the English 'common law' system.
2. Describe the various sources of English constitutional law.
3. Understand the role played by statutes and case law.
4. Evaluate the impact of recent changes to English constitutional law.

Contents

Unit 1

English Legal History

Unit 2

The Contemporary English Constitution

Unit 3

Problems in Contemporary English Constitutional Law

Appendices

1. The *Human Rights Act 1998*
2. The *Disability Discrimination Act 1995*
3. The Queen's speeches from 1997 and 2006
- 4.

INTRODUCTION

A basic knowledge of English legal history is important for anyone wishing to study English law, for a number of reasons. Although the UK's modern legal system, following centuries of legal reforms, is vastly different from that of the 11th century, many fundamental principles and philosophical ideas present in the modern legal system derive from centuries past. Equally, many existing rules of law have their origin in legal history and to fully understand the reason for the current legal norms, it is necessary to appreciate the historical events surrounding their creation.

Some argue that the English legal system is too conservative and reluctant to adapt to modern conditions. Whilst this claim should not be over-exaggerated, it should also not be ignored. The UK today represents a country with an extremely rich legal history, but also one which seeks to play an active role in the modern global environment. Today's world, with modern methods of transportation, global economic transactions, the existence of numerous international organisations and more legal harmonisation than at any previous time, is far different from the world of the 11th century, where our historical analysis begins. Often, the UK is faced with a difficult choice between maintaining traditional approaches to its legal system and adapting the system in order to be more in line with other countries. The direction that is taken on any individual issue is rarely predictable and even more rarely a complete abandonment of the 'old' approach. This can leave the law in a state of flux, between the 'old' and the 'new' and our role as lawyers is to evaluate whether existing laws are adequate and whether, if at all, legal reforms have improved on the earlier situation.

Recent reforms to the English legal system have raised the question of the extent to which the UK can maintain its traditional legal foundations whilst seeking to integrate with a European legal system. Equally, within the UK itself, legal reforms have affected the way in which Britain's component parts (i.e. England, Wales, Scotland and Northern Ireland) interact. Such reforms mean that, in addition to the amendment of substantive law (contract law etc.), the very nature of the English legal system is changing. Thus, the first series of workbooks provides a necessary backdrop to discussion of substantive legal topics in subsequent workbooks. Try to assess, as you read the various workbooks, how changes in the legal system are causing changes in substantive law and *vice versa*.

As you progress throughout this course, you should aim to develop your ability to evaluate the law *in context*. All legal developments take place against a backdrop of social, cultural, political and economic factors which shape their form and lawyers cannot simply ignore these. To learn merely what the law *is* at any certain time is simply not enough. A lawyer must appreciate laws in a wider context so that they may argue (whether in court, in Parliament, on the internet, or in academic essays) whether the current law is achieving the goal for which it was intended. Equally, when existing law appears to have no conclusive answer for a particular problem (and no legal system can realistically claim to have an answer for *every* potential problem) it is the responsibility of the lawyer to provide policy reasons justifying the way in which he/she suggests the court should answer those problems. Finally, since the law is always subject to change, it is unwise to simply attempt to learn a long list of rules, since they may change at any moment. It is necessary to understand the trends and aims of legal reforms in order to evaluate their relative strengths and weaknesses.

The course workbooks aim to help you develop your analytical skills, but you must read the workbooks with an objective and active mind. They are not designed to provide *the answer* to legal disputes (if, in fact, there *is* a single answer) but rather to present you with information to help you to form your own opinions on topics of legal discussion. You may also supplement your reading with textbooks which either have been placed in your University library or you have purchased, although be careful to note the difference between sections of a book where the author describes a fact (such as the decision in a case) and where the author offers their own opinion (such as the *reasons* for the decision in a case). You should always consider whether you actually agree with the author's opinions (including the authors of the various workbooks on this course!) and not be afraid to offer counter-arguments.

Finally, in addition to the materials provided by the course, you may wish to supplement your reading with internet searches or newspaper articles. Law is a dynamic subject and can change drastically between the time that a textbook is written and the time a student reads it. Whilst the materials we provide are sufficient for you to pass the course, and we do not expect you to be fully aware of all legal developments in English law, you may find it interesting to follow-up certain issues via the internet. Be aware, however, that plagiarism (i.e. copying) from *any* materials will not be tolerated and that your teachers will be checking to ensure that you have used your materials only to prove your argument, rather than having entirely stolen an argument from other materials or simply copied word-for-word someone else's argument!

UNIT 1: ENGLISH LEGAL HISTORY

(a) Formation of the English Common Law System

You may be wondering why we speak of the *English* legal system when the United Kingdom is also comprised of Scotland, Wales and Northern Ireland. The reason for this is that our analysis begins at a time when the United Kingdom did not exist as a country. Scotland, Wales and Ireland were different countries, with their own rulers and, even within England itself, there was no real national legal system. Despite a short-lived occupation by the Roman Empire, beginning in AD43 and ending almost 400 years later, England avoided the extent of Roman influence which existed in mainland Europe and continued to have a system of local, rather than national, laws which were enforceable only within the region of their origin (e.g. Wessex, Mercia).

When King Edward (the Confessor) died in 1066, he had no surviving children, brothers or sisters to succeed him to the throne and when the King's Council (a small group of advisors who advised the King) chose Harold Earl of Wessex to be the new King, William (Duke of Normandy) attacked.

Following the Norman Conquest, King William (the Conqueror) sought to maintain control of England by granting control over land and castles to various barons and nobles, who in turn pledged their allegiance to the new King and provided knights and soldiers for his armies. As King, William retained legal ownership of the whole of England whilst granting a right to use the land to the various barons – this was known as the *feudal system*. The King originally granted user-rights over large areas of land to the tenants-in-chief, but these were themselves large and difficult to govern, so sub-tenancies were granted to various knights who, in turn, granted lesser sub-tenancies. This system of granting rights over land (estates) is still reflected in English land law today, as you will see in later workbooks.

As regards the legal system, William considered it necessary to develop a system of national (or 'common') laws. He dispatched representatives throughout the country who were entrusted to set up local courts in each region and to return to the new Royal courts at Westminster with a description of the customs existing in each of these regions. By 1250, the King's advisors had created a list of 'chosen customs' which were applied nationally, producing a 'common law' for the country. At the same time, certain of the travelling judges became known as Justices of the Peace and formed part of the 'assize system', whereby judges would travel between regions and hear cases on a particular date. Since the King's judges had an important role in deciding which of the regional customs to adopt/adapt as national law, early common law was derived almost entirely from judge-made law. Even today, the judiciary continues to play an important part in the development of English law.

Before the Norman Conquest in 1066, the King represented the highest 'court' of appeal in the land. Given the enormous number of requests (or 'common pleas') for the King to reverse a judicial decision, the Curia Regis (King's Council) was created to assist in the administration of justice. The Curia Regis continued to function even after the Norman Conquest and it was the ancestor of the original three royal courts:

- | | |
|------------------------------------|--|
| (i) <i>Court of the Exchequer</i> | - the oldest, responsible for revenue (taxes) |
| (ii) <i>Court of King's Bench</i> | - cases in which the King retained an interest |
| (iii) <i>Court of Common Pleas</i> | - established as a forum to resolve disputes between individuals |

These three courts remained in existence, joined by the Court of Chancery, until the modern restructuring of the court system in the *Judicature Acts of 1873 -1875*. More will be said about reform of the court system in *Workbook 2* of this Module.

With the creation of laws which were applicable throughout England and the creation of national courts to hear disputes, William the Conqueror and his ancestors may be described as the architects of the 'common law' system.

NB. 'Common law' has acquired a number of meanings in addition to the above. Textbooks will refer to common law systems, (meaning case law based systems), when distinguishing those from the continental civil law system. It will also be used to describe judge-made law (case-law) as opposed to legislation. Lastly it is often used to distinguish the two parallel systems of law used in England and Wales, common law and equity (discussed below).

(b) Development of English Legal Procedure – the *writ* system

In addition to advising as to which regional customs should become national laws, the King's judges also began to formulate rules of procedure for the courts. To begin a legal action, the person bringing the claim (originally known as the 'plaintiff' but

now referred to as the 'claimant') was required to seek a royal *writ*, which would set out:

- (i) the parties to the claim (the litigants)
- (ii) the cause of action (the nature of the claim); and
- (iii) the grounds on which the claim was based (the reasons for the claim).

The royal writs were prepared with set *forms of action* (like a 'standard-form' contract). If your claim did not fit within the existing forms then you could not claim. At first, officials were allowed to create new writs if requested to do so by a claimant. This steady growth in the number of writs was halted by The *Provisions of Oxford 1258*, which required claimants to fit within existing *forms of action* and greatly reduced the possibility to create new *forms of action*.

e.g. If you wished to sue someone who had trespassed (unlawful entered) your land in his wagon then you would not be able to do so if the only *form of action* available was in respect of someone who had trespassed *on foot*.

The limitation on new writs, and consequent rigidity in the system, prevented many injured persons from claiming in the courts. Such persons often petitioned (applied to) the King as the ultimate '*fountain of justice*', in order to seek justice from a non-judicial source when the courts were unable to act. As the number of petitioners grew, the King appointed his Lord Chancellor, then a churchman (also known as '*the Keeper of the King's Conscience*') to investigate such claims and decide whether justice demanded that a remedy should be available. The Lord Chancellor was able to act outside the strict rules of court procedure that had been developed by the Common Law and decided claims using only his own sense of morality and fairness. Petitions became so numerous that the Lord Chancellor was permitted by the King to create the *Court of Chancery* to hear these claims. The non-common-law justice delivered by this court and its judges came to be known as *Equity* (discussed below).

(c) The Rule of *Stare Decisis* ('let the decision stand')

The national court system was developed in order to provide the law with predictability and to avoid differences between regional court's judgments on the same issues. For the same reason, the rule of *stare decisis* was developed within the national courts.

The *stare decisis* rule states that when a court is faced with a legal issue or principle which had already been the subject of an earlier case previously decided by that court, the relevant legal principle should be interpreted in an identical manner so that the new case is decided in the same way. As the national court system developed and different layers of appeal courts were introduced, *stare decisis* also meant that a lower court judge must follow the decision of higher court judges.

The existence of a system of precedent is argued to be an alternative way to provide stability in legal decision-making in the absence of a written constitution. Most civil law jurisdictions do not have a system of precedent, at least formally, since consistency in the legal system is intended to be provided by the written constitution. However, many civil law systems adopt an 'informal' and less strict version of precedent in at least some of their courts. Nevertheless, some countries even expressly forbid judges from deciding cases purely on the basis of a previous court decision (e.g. France's *Code Civil* contains such a prohibition in *Article 5*.)

Since the rules of *stare decisis* (also referred to as *precedent*) are of tremendous importance to the English legal system, they are discussed in more detail in Unit 2 below.

(d) The Development of Equity

As mentioned above, the problems caused by the rigidity surrounding *forms of action* and *stare decisis* led many people to petition the King for justice, who in turn passed these cases on to the Lord Chancellor. The latter was permitted to create a *Court of Chancery* to work alongside the courts of the Exchequer, the King's Bench Court and the Court of Common Pleas (see above). The Lord Chancellor or his representatives would hear cases which sought to petition for justice and they would be decided on the basis of fairness or *equity*.

Early Lord Chancellors were not lawyers and their decisions were often contradictory. It was common to say that '*Equity varies with the length of the Chancellor's foot*' because whenever the Lord Chancellor changed, the incomers sense of justice or equity might be completely different to his predecessor's. The need for consistency saw lawyers with some experience of precedent being appointed as later Lord Chancellors. In consequence, equitable "precedents" arose and, particularly throughout the 15th Century, equity developed its own system of rules, separate to those of the 'common law'.

Since the Chancery Court had jurisdiction to hear a claim which could simultaneously be commenced in one of the other three courts, this created the potential for different courts to give contradictory decisions about the same case:

e.g. X and Y owed each other £10. X could find a writ which fitted his claim, but Y could not. The Court of Common Pleas ordered Y to pay X the money. However, the Chancery Court made an injunction preventing X from claiming the money from Y.

It was necessary to decide which court's decision prevailed in order to prevent continued conflict and to establish a fundamental principle in the English Legal System. In the case of *The Earl of Oxford (1615)*, the King (James I) himself decided that Equity should prevail. To this day it is said that, in the event that common law and equity are in conflict, equity shall prevail.

Although equity was only meant to be '*a gloss on the Common Law*' (Maitland), intended to fill-in gaps left by the common law, it soon came to wholly regulate some areas which fell outside the sphere of common law (e.g. trusts). As described above, equity initially operated separately to common law, in separate courts and with separate judges, but the increasing overlap between issues regulated partly by common law and partly by equity led to the administration of equity and common law by the same courts and the same judges.

Equity and common law were merged by the *Supreme Court of Judicature Acts 1873-1875* which created the *Supreme Court of Judicature*. In fact, this "Court" was not a single court but rather a collective name given to 5 previously separated courts which became "divisions" of the Supreme Court. Those divisions were as follows:

1. the Court of the Exchequer;
2. the King's Bench Court;
3. the Court of Common Pleas;
4. the Chancery division;
5. the Probate, Divorce and Admiralty Court (the areas dealt with by this court previously fell outside both common law and equity).

(NB. The Supreme Court of Judicature should not be confused with the Supreme Court which was created by the *Constitutional Reform Act 2005* – discussed in workbook 2):

As of 1873, a claimant may rely on common law and equity before the same court.

i.e. a claimant can issue a writ/claim for breach of contract (common law) and a defendant can apply for an injunction (equity) to stop the claim in the same court.

In cases of conflict, however, the Acts of 1873-5 state that equity continues to prevail.

In 1880, the first 3 branches were merged into the *Queen's Bench Division of the High court*. The High Court, at that time, also had a *Chancery Division* and a *Probate, Divorce and Admiralty Division* (see Workbook 2 for further details and reforms to the High Court).

Although the twentieth century has seen many further developments in equitable case-law, its historical role continues largely unchanged; to provide a remedy where reliance on common law rules alone would lead to injustice.

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Unit 1 will continue to discuss other aspects of the history of the English system and then will conclude with the following self assessment question which may be considered individually by the student but could also

Self-Assessment Questions

1. What do you understand by the term 'common law' in reference to the English legal system?
2. What do you understand by the term *stare decisis*? Why was this rule adopted in England? Is this rule present in your legal system? What are the advantages and disadvantages of having such a rule?
3. What do you understand by the term 'equity'? What is the nature of the relationship between 'equity' and 'common law'? What are the advantages and disadvantages of having both 'equity' and 'common law'? What special features may be noted

about 'equitable' remedies? Is there an equivalent to 'equity' in your legal system?

4. Should the UK continue to have a Monarchy? If so, what powers should be exercised by the Monarch? How should it be decided who succeeds to the throne, following the death (or abdication) of an earlier Monarch? What would happen if Prince Charles (the Queen's son and heir to the throne) married a Roman Catholic? Is the

5. What do you understand by the term 'Parliamentary Sovereignty'? How did this doctrine come into existence in England? Which powers of State do you think should be exercised by Parliament and which should be reserved for the Monarch or President? How are State powers divided in your country?

6. Does a procedure similar to that contained in the *Parliament Acts 1911 and 1949* exist in your country? Is it widely used?

UNIT 2: THE CONTEMPORARY ENGLISH CONSTITUTION

Introduction

Despite the existence of the *Magna Carta 1215* and the *Bill of Rights 1689*, it was not possible to say that England had a constitution or a Bill of Rights similar to those in other continental countries, containing the political and social rights and liberties of all citizens and the way in which the country would be organized. As discussed earlier, the Magna Carta - although important historically - was largely intended to deal with power struggles between the Monarch and wealthy barons and was not intended to fundamentally restructure society as a whole. Equally, the Bill of Rights had more to do with the struggle for power between Monarch and Parliament, than with the concerns of the average English citizen. The reason for the absence of a comprehensive Bill of Rights lies mainly in England's history which, whilst turbulent, was considerably more settled than its continental neighbours. Despite the civil wars and constitutional struggles for power between Monarchy and Parliament (discussed above), since 1689 England has not had any fundamental revolutions seeking to overthrow the very essence of government or had any reason to begin anew as countries in other parts of Europe or the USA.

Although the UK's constitution is often classified as 'unwritten', in the sense that there is no single constitutional text, many of the sources of British constitutional law are contained in written texts, such as Acts of Parliament. It is often difficult, however, to gather all of the relevant documents together and to decide which are truly 'constitutional' issues. For example, the issue of pornography in the UK is regulated by the *Obscene Publications Act 1959* (as amended) but it has proved difficult to decide whether such matters are 'constitutional' issues or not; whereas in the USA, the same issue would clearly be categorized as 'constitutional', since the freedom of speech is guaranteed by the First Amendment to the Constitution (*Ross v US [1957] 354 US 476*).

Some important constitutional written texts have already been mentioned (eg. *Magna Carta 1215, Bill of Rights 1689, Act of Settlement 1700, Acts of Union of 1707, 1801, 1922, Parliament Acts of 1911 and 1949*) but these offer only a basic constitutional guideline for the balance of power between Monarch and Parliament at the times when they were adopted. It is not possible to understand contemporary British constitutional law based on these documents alone, so it is necessary to look at other sources.

The main sources of British constitutional law are as follows (and in this order of importance):

1. Constitutional Conventions
2. Acts of Parliament
3. Case law
4. Custom
5. Books of authority

We will now examine each of them in more detail.

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Again let us move to questions on this topic.

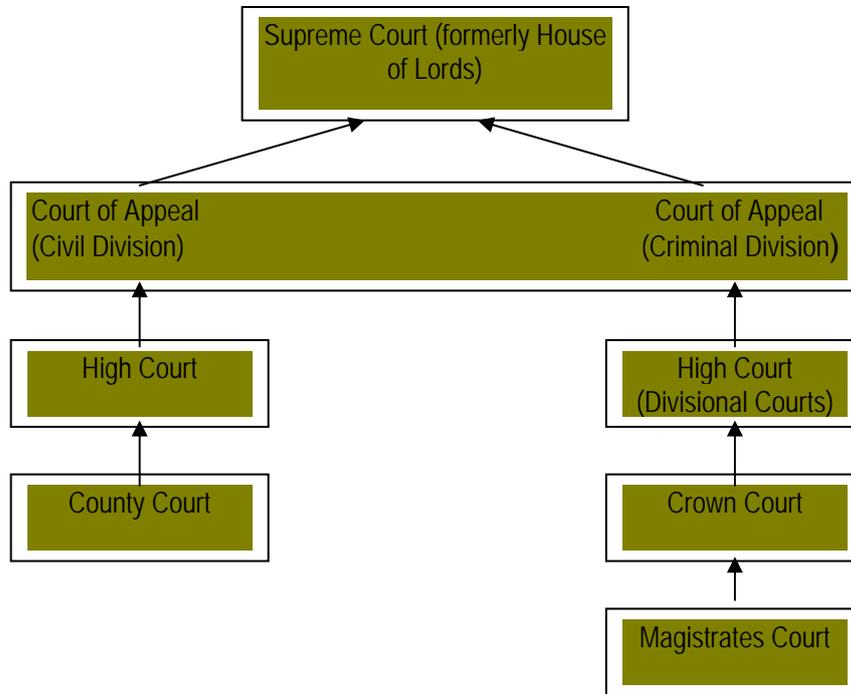
Self-Assessment Questions

1. What is the purpose of constitutional conventions and how do they come into existence?
2. Is it true to say that the UK has an 'unwritten constitution'? Why was a written constitution never adopted?
3. What are the advantages and disadvantages in not having a written constitution? (Return to this question when you have completed the workbook).
4. Does your legal system have any constitutional conventions? If so, how did they evolve?

Let us now look briefly at another main section of this book which considers the role of the English court as creators of law.

Which courts can create precedent?

The following is a simple diagram indicating the basic UK court structure. Although workbook 2 will discuss the courts in much more detail, it is necessary at this stage to be aware of the hierarchy of the courts in order to discuss which of them may create binding precedent.



When considering precedent, we should always ask whether the court binds courts below it and is bound by courts above it (*vertical precedent*) and also whether the court is bound to follow earlier decisions from the same court (*horizontal precedent*).

The Supreme Court (formerly House of Lords Judicial Appeals Committee)

As the highest English appeal court, the Supreme Court binds all lower courts. In its former guise as the House of Lords Judicial Appeals Committee, it was even bound by its earlier decisions, meaning that there was no possibility for the highest court to review an earlier decision or change its mind (other than by *distinguishing* (see later) the facts of the new case from the earlier decision, a technique which, if used for this purpose, would lead to unnecessary complexity in the law.

This rigid position was changed by a **1966 Practice Statement** (not a statute but a judicial "proclamation" from the members of the court) in which the then House of Lords judges stated:

"Their Lordships regard the use of precedent as an indispensable foundation upon which to decide what is the law and its application to individual cases. It provides at least some degree of certainty upon which individuals can rely for the conduct of their affairs, as well as a basis for orderly development of legal rules. Their Lordships nevertheless recognise that too rigid adherence to precedent may lead to injustice in a particular case and also unduly restrict the proper development of law. They propose, therefore, to modify their present practice and, while treating former decisions of this House as normally binding, to depart from a previous decision when it appears right to do so..."

Since then there have been very few cases in which the House of Lords overruled a previous decision relying on this statement. Some examples are given below.

British Railways Board v Herrington [1972] AC 877

The Lords overturned previous cases which had stated that there was no tortious duty of care to keep fences repaired in order to stop children being able to trespass on railway lines.

Miliangos v George Frank (Textiles) Ltd. [1976] AC 443

The Lords overturned previous law that money awards by the courts could only be made in pounds sterling.

R v Shivpuri [1987] AC 1

The Lords overturned an earlier decision which was only 12 months old - *Anderton v Ryan [1985] AC 567* - because it felt it was wrong in saying that a charge of attempt could not be successful if the attempted act was, in fact, impossible.

Murphy v Brentwood District Council [1990] 2 All ER 908

The Lords overturned *Anns v Merton London Borough Council [1978] AC 728* on the issue of whether it was possible to sue in tort for pure economic loss.

Pepper (Inspector of Taxes) v Hart [1992] 3 WLR 1032

The Lords overturned a long-established authority that Parliamentary debates could not be used as a source of information when interpreting statutes.

Arthur J Hall & Co v Simons [2000] 3 WLR 543

This recent case overturned the previous position that a lawyer could not be sued for negligence in the way he conducts a case in court.

R-v-R [1991] 4 All ER 481

In this case, the House of Lords took the opportunity of abolishing the rule (existing since the 18th Century) that a husband cannot be criminally liable for rape if he forces his wife to have sex with him. Lord Keith of Kinkel said: "*The common law is ... capable of evolving in the light of changing social, economic and cultural developments. Hale's proposition (1764) reflected the state of affairs in these respects at the time it was enunciated. Since then the status of women, and particularly of married women, has changed out of all recognition in various ways which are very familiar ... Hale's proposition involves that by marriage a wife gives her irrevocable consent to sexual intercourse with her husband under all circumstances and irrespective of the state of her health or how she happens to be feeling at the time. In modern times any reasonable person must regard that conception as quite unacceptable.*"

Naturally Parliament may replace any judgment of the House of Lords and in fact has now amended criminal legislation to introduce the statutory offence of marital rape.

The House of Lords did not wish to overrule its earlier cases on a regular basis, since this would cause tremendous uncertainty in the law. One of the Law Lords, Lord Reid, gave some reflections on when he thought the discretion to ignore a previous decision should or should not be exercised.

- The freedom granted by the 1966 Practice Statement, ought to be exercised sparingly.
- Any departure from a previous decision should not to upset the legitimate expectations of people who have entered into contracts or settlements or otherwise regulated their affairs in reliance on the validity of that decision.
- Re-interpretation of statutes or other documents should only be done in rare and exceptional cases.
- A decision should not be overruled if it would be impracticable for the Lords to foresee the consequences of departing from it, or if the law would be better changed by a new Act of Parliament.
- A decision should not be overruled merely because the Law Lords consider that it was wrongly decided. There must be some additional reasons to justify such a step.
- A decision *should* be overruled where it causes such great uncertainty in practice that the parties' advisers are unable to give any clear indication as to what the courts will hold the law to be.
- A decision *should* be overruled if, in relation to some broad issue or principle, it is not considered just or in keeping with contemporary social conditions or modern conceptions of public policy.

The position of the Supreme Court remains the same and it is to be assumed that it will prove as unwilling as ever to overturn a previous precedent of the House of Lords.

Although there is no higher UK court, the House of Lords was required by statute to follow the judgments of the European Court of Justice (ECJ) in Luxembourg, as far as interpretation of EC law is concerned (*EC Act 1972 s.2(1)-(4)*). It has also recently been made to "take into account" judgments from the European Court of Human Rights (ECtHR) in Strasbourg (*Human Rights Act 1998*), as far as interpretation of the European Convention of Human Rights is concerned. More will be said about these developments later in this workbook.

Other courts are now considered and then some guidance is given in the use of legal terminology .

- Essential Legal Terminology

The legal terminology used to describe the judges' choices is distinctive. It should be carefully learnt and practised.

'*Follow*' - if the case has sufficiently similar facts to an early binding precedent, the precedent must be followed.

'*Distinguish*' - where facts are sufficiently different to an earlier precedent, then it can be distinguished, allowing the judge the freedom not to follow the precedent.

(A famous English judge, Lord Denning M.R., used this technique in a number of his cases, arguably sometimes as a device to allow him the freedom to develop the law in a different direction.)

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Followed again by self assessment questions to conclude Unit 2. .

Self-Assessment Questions

1. What are the advantages and disadvantages of the doctrine of precedent? What would be the effect on English law of abolishing the doctrine of precedent?
2. Should it be left to judges to develop law in the light of changing social circumstances or should the judges leave this for Parliament? Do you think that English judges possess more freedom to 'make' law than judges in your own country?
3. *"There are two main problems with the UK's system of judicial precedent - firstly, the difficulty of locating the ratio and, secondly, the ease with which the judiciary can ignore that ratio if they so wish. In such circumstances, the doctrine of judicial precedent becomes nothing more than an illusion."* Discuss.
4. Why do you think the 1966 Practice Statement is limited only to the House of Lords (now Supreme Court)? What would be the effect of allowing the Court of Appeal to avoid precedent whenever it considered that justice demanded?

The remaining units are now discussed in the same manner and at the end will come the Seminar/ Tutorial questions which are the main source for discussion during the classes taught by the visiting tutors and often include questions used as earlier assignment assessment topics to give students practice as to the methodology to be used.

Students are also encouraged to make a note of any points that they wish to clarify or query and to raise these points during the tutor visits or can write independently to tutors using the BLC designated moodle web site.

Seminar Questions

Class discussions will involve some of the questions from the 'Self-Assessment Questions' throughout this workbook, together with the following questions.

1. *"The English legal system has undergone a quiet revolution in recent years. The judiciary now have greater powers than ever, Parliamentary sovereignty is more of a memory than a reality and many of the other traditional features of England's common law tradition have been replaced by an increasingly 'European' approach. All of this means that the question whether England will adopt a written constitution is now one of timing than one of principle"* Discuss this quotation.

2. Is the constitutional principle of Parliamentary sovereignty convincing nowadays? Has the theory changed over time?
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5. Answer the following questions about the *Human Rights Act 1998*

(a) What type of statute is the Human Rights Act (i.e. codifying, consolidating, etc.)?

(b) What is the purpose of the Act?

(c) When did the Act come into force?

(d) Against whom is the HRA enforceable?

(e) What happens if a judge considers some/all of the provisions of an English statute to be in contravention with the European Convention on Human Rights?

(f) Can you think of any criticisms of the HRA's 'fast-track' amendment procedure?

(g) How is the role of the judiciary affected by the coming into force of the HRA?

(h) How is the theory of Parliamentary sovereignty affected by the coming into force of the HRA?

(i) Why do you think some commentators have expressed concerns about the possible increase in power of the judiciary following the HRA?

(j) Would the HRA in any of the following situations?

- A railway, in which the government owns 50% shares, takes a policy decision not to employ any women.

- A University dismisses a student for cheating in exams without giving him any opportunity to give evidence in his defence or to challenge this decision.

- A gas company operating under licence from the Ministry of Energy installs video cameras into the toilets at work in order to ensure that none of its employees are trying to avoid working.

- A nursery school punishes naughty children by locking them in a dark cupboard for up to 3 hours.

Many workbooks also have an appendix which contains original materials, as we can see below.

APPENDICES

Containing:

1. The *Human Rights Act 1998*
2. The *Disability Discrimination Act 1995*
3. The Queen's speeches from 1997 and 2006
4. A discussion of the *Legislative and Regulatory Reform Act 2006*

Part of the the Queens speech extract follows

WEDNESDAY, 14TH MAY, 1997

MY LORDS AND MEMBERS OF THE HOUSE OF COMMONS

The Duke of Edinburgh and I look forward to receiving State Visits by His Excellency the President of Brazil in December and by Their Majesties the Emperor and Empress of Japan next year. We also look forward to our visit to Canada and to our State Visits to Pakistan and India.

My Government intends to govern for the benefit of the whole nation.

The education of young people will be my Government's first priority. They will work to raise standards in schools, colleges and universities and to promote lifelong learning at the workplace. They will cut class sizes using money saved as a result of legislation phasing out the assisted places scheme. A further Bill will contain measures to raise educational standards, develop a new role for local education authorities and parents, establish a new framework for the decentralised and equitable organisation of schools, propose reforms to the teaching profession, and respond positively to recommendations from the National Committee of Inquiry into the future of higher education.

The central economic objectives of my Government are high and stable levels of economic growth and employment, to be achieved by ensuring opportunity for all. The essential platform for achieving these objectives is economic stability.

To that end a Bill will be introduced to give the Bank of England operational responsibility for setting interest rates, in order to deliver price stability and support the Government's overall economic policy, within a framework of enhanced accountability. My Government will also ensure that public borrowing is controlled through tough fiscal rules and that the burden of public debt is kept at a stable and prudent level. They will aim to deliver high and sustainable levels of growth and employment by encouraging investment in industry, skills, infrastructure and new technologies; by reducing long-term unemployment, especially among young people; by promoting competition; and by helping to create successful and profitable business. These policies will enhance Britain's position as a leading industrial nation.

My Government has pledged to mount a fundamental attack upon youth and long-term unemployment and will take early steps to implement a welfare-to-work programme to tackle unemployment, financed by a levy on the excess profits of the privatised utilities which will be brought forward in an early Budget.

A new partnership with business will be at the heart of my Government's plans to build a modern and dynamic economy to improve the competitiveness of British industry. They will bring forward legislation to reform and strengthen competition law and introduce a statutory right to interest on late payment of debts. My Government is committed to fairness at work and will introduce a national minimum wage.

Legislation will be brought forward to amend criminal law and to combat crime, including reform of the youth justice system and measures against anti-social behaviour. A Bill will be introduced to prohibit the private possession of handguns.

My Government will improve the National Health Service, as a service providing care on the basis of need to the whole population. They will bring forward new arrangements for decentralisation and co-operation within the service and for ending the internal market. Legislation will be introduced to clarify the existing powers of NHS Trusts to enter into partnerships with the private sector. A White Paper will be published on measures to reduce tobacco consumption, including legislation to ban tobacco advertising.

My Government will contribute to the achievement of high standards of food safety and protection of public health throughout the food chain, will ensure openness and transparency of information to consumers, and will consult widely on recommendations for a Food Standards Agency.

A Bill will be introduced to ensure that as many people as possible have access to the benefits of the National Lottery including for health and education projects.

Measures will be introduced to enable capital receipts from the sale of council houses to be invested in housebuilding and renovation as part of my Government's determination to deal with homelessness and unemployment.

My Government is committed to open and transparent Government. They will introduce a Bill to strengthen data protection controls. They will enhance people's aspirations for better, more accessible and accountable public services, using Information Technology to the full. A White Paper will be published on proposals for a Freedom of Information Bill.

A Bill will be introduced to incorporate into United Kingdom law the main provisions of the European Convention on Human Rights.

Decentralisation is essential to my Government's vision of a modern nation. Legislation will be introduced to allow the people of Scotland and Wales to vote in referendums on my Government's proposals for a devolved Scottish Parliament and the establishment of a Welsh Assembly. If these proposals are approved in the referendums, my Government will bring forward legislation to implement them. Legislation will be introduced to provide for a referendum on a directly elected strategic authority and a directly elected mayor for London. A Bill will be brought forward to establish Regional Development Agencies in England outside London.

In Northern Ireland my Government will seek reconciliation and a political settlement which has broad support, working in co-operation with the Irish Government. They will work to build trust and confidence in Northern Ireland by bringing forward legislation to deal with terrorism and to reduce tension over parades, and other measures to protect human rights, combat discrimination in the workplace, increase confidence in policing and foster economic development.