

CHAPTER 3 SOURCES OF ENGLISH LAW

After studying this chapter students should be able to:

IDENTIFY THE SOURCES OF ENGLISH LAW

- A source of law means the process by which law comes into existence.
- English law is mainly derived from legislation (both Acts of Parliament and delegated legislation), case law, and EU law. Custom is a minor source of law.

EXPLAIN HOW ACTS OF PARLIAMENT AND DELEGATED LEGISLATION ARE CREATED

- An Act of Parliament is created by a bill being passed through various stages in the House of Commons and the House of Lords and receiving Royal Assent.
- Parliament may pass an enabling Act giving powers to ministers, local authorities, and other bodies to make delegated legislation.
- If bodies pass delegated legislation outside their authority, the courts have power to quash the legislation.
- Courts have no power to quash Acts of Parliament. An Act must generally be repealed by another Act.

IDENTIFY THE RULES AND PRESUMPTIONS JUDGES USE TO INTERPRET STATUTES

- Judges interpret statutes made by Parliament and, as a general principle, judges aim to give the disputed term the meaning that Parliament is thought to have intended.
- To ascertain Parliament's intention, judges take the literal approach looking primarily at the words in the legislation, or the purposive approach where the judge establishes why the statute was enacted and interprets it in the light of that purpose.
- In order to assist judges in statutory interpretation, some rules and presumptions have been evolved by the courts. The main rules are the literal rule, the golden rule, and the mischief rule.

BE FAMILIAR WITH THE DOCTRINE OF JUDICIAL PRECEDENCE

- Judicial precedence is part of English law and means that, where a case has established a principle of law, that principle must be followed by courts of lower authority (and sometimes of the same authority) in deciding subsequent cases with similar issues.
- The doctrine of judicial precedence provides certainty, flexibility, and detail to laws but it can mean the law becomes rigid, complex, and cumbersome.

EXPLAIN THE SOURCES OF EU LAW AND IMPACT OF MEMBERSHIP OF THE EU ON THE ENGLISH LEGAL SYSTEM

- The UK became a member of the EU from 1 January 1973. The majority vote in the UK referendum in June 2016 was to leave the EU. Negotiations to withdraw are expected to commence in 2019.
- Treaties signed and ratified by Member States are the primary source of EU law. EU regulations, directives, and decisions are secondary sources of EU law.
- Some EU laws are directly effective in Member States; other EU laws have to be implemented by the Member State. EU law prevails over conflicting domestic law of each Member State.

When the UK leaves the EU it is expected that all EU law in force at the time of exit will be incorporated into UK domestic law.

EXPLAIN THE IMPACT OF THE HUMAN RIGHTS ACT 1998 ON THE ENGLISH LEGAL SYSTEM

- The Human Rights Act 1998 incorporates the European Convention on Human Rights into English law and makes the Convention part of English law.
- It is unlawful for public bodies to act in a way which is incompatible with the Convention.
- UK courts are bound, as far as possible, to interpret all legislation in a way which is compatible with the Convention.
- If a statute conflicts with the Convention, the courts must make a declaration of incompatibility.