

CHAPTER 3: SOURCES OF ENGLISH LAW

QUESTION 1

What are the three main sources of law in England in the 21st century? Which do you think is the most important and why?

Answer:

- 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 European Union law.
- 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. An Act of Parliament is the highest form of English law. Parliament may pass an enabling Act giving powers to ministers, local authorities, and other bodies to make delegated legislation.
- The UK became a member of the European Union from 1 January 1973 and is bound by EU law until it completes its exit from the EU. The sources of EU law are treaties signed and ratified by member states, EU regulations, directives, and decisions. Some EU laws are directly effective in member states; other EU laws have to be implemented by member states. EU law prevails over conflicting English law while the UK is a member of the EU. On exiting the EU some EU law will be converted to UK law.
- Case law is an important source of English law. When judges make their decision in cases they sometimes state and develop common law principles; however, in other cases, in order to apply the law, judges interpret statutes made by Parliament. Where a case has established a principle of law, that principle (*ratio decedendi*) must be followed by courts of lower authority (and sometimes of the same authority) in deciding subsequent cases with similar issues.
- Students may consider Acts of Parliament to be the most important source of law as Parliament is the supreme lawmaker in the UK and under the doctrine of Parliamentary Sovereignty, Parliament can make laws on any subject matter.

QUESTION 2

Explain the concept of judicial precedent in the English legal system. In England and Wales, both statute and common law exist together: which of these is a more superior form of law? Explain your answer.

Answer:

- The doctrine of binding judicial precedent is part of English law. Where a case has established a principle of law, that principle must be followed by courts of the lower authority (and sometimes of the same authority) in deciding subsequent cases with similar issues. The legal reasons vital to the decision are known as the *ratio decidendi*. It is this part of the judgment that will bind future courts when deciding later cases with similar facts.

- A judgment may also include comments on the law which are related, but not strictly relevant, to the case before the judge. These statements are called *obiter dicta*. Judges in later cases may be influenced by *obiter dicta* statements but they are not bound to follow them.
- Sometimes judges may distinguish a case on its facts, which means that the judge finds that the facts of the case before him are too different from the earlier cases for them to be binding on the present case.
- Statutes are made by Parliament and under the UK Constitution, Parliament has the power to enact or revoke any laws. Parliament can pass statutes changing case law. However it is up to the courts to interpret the meaning of statutes. In a dispute, a judge will have to determine the meaning of a particular word or section of a statute. As a general principle judges should aim to give the disputed term the meaning that Parliament is thought to have intended and judges should not be changing or modifying statutes.
- An Act of Parliament is the superior form of law and can always amend common law made by judges.

QUESTION 3

Parliament passes the Safety at Work Act 2016 (fictitious) giving the power to the Secretary of State to pass regulations (delegated legislation) relating to workplace safety. The Act was passed to comply with an EU law directive. The Secretary of State passes a regulation making it an offence for businesses employing more than six people not to have a trained first aid officer on the premises during working hours. Explain the meaning of 'Act', 'delegated legislation', and 'directive', and discuss the relationship between them.

Answer:

- An Act of Parliament (also known as a statute) is the highest form of English law. An Act is created by a bill being passed through various stages in the House of Commons and the House of Lords and receiving Royal Assent. The courts cannot quash an Act of Parliament.
- Delegated legislation is law made by bodies other than Parliament. An Act of Parliament will lay down the basic framework of the law and delegate the power to create the detail to government departments, local authorities, and other bodies. Delegated legislation is subject to review by courts and can be declared invalid if bodies act outside the powers given to them by Parliament.
- Directives are a source of EU law. They are statements of policy that require member states to alter their national laws so that they conform to the directive within a specified time limit. A directive instructs all member states to accomplish a certain goal but allows the government of each member state to choose how that goal is to be achieved in their country. If a member state fails to implement a directive within the time limit, an individual may be able to cite and rely on the directive in their dealings with the state (but not another individual) in court proceedings, provided that the directive is sufficiently precise and clearly worded. While the UK is a member of the EU it is bound by directives. On leaving the EU it is expected that all EU laws already in force in the UK will become UK law.
- Directives may be implemented in the UK by statute or delegated legislation.

QUESTION 4

Jamie has just opened a new themed 1970s wine bar and reads in the paper about the new 'Alcoholic Drinks Bill' which appears to forbid the sale of alcohol in certain public outlets. The bill has had a First Reading in the House of Commons. Explain to Jamie the stages the new bill will have to go through before it becomes an Act of Parliament and, if the Act is made, how its sections will be interpreted by a court.

Answer:

- Before a bill can become an Act it must pass through five stages in both Houses of Parliament. Usually a bill will commence in the House of Commons (although some bills can start in the House of Lords).
- The stages are: **First Reading** - title of the bill is read out in Commons (or Lords), **Second Reading** - The government minister (or MP in charge of the bill if it is a Private Members' bill) explains the bill to the House, and the principles of the bill are debated. **Committee Stage** where the bill is debated by a committee and amendments to the bill may be proposed and drafted. The committee reports back to the House and any proposed amendments are debated and voted upon. **Third Reading** - The bill is re-presented to the House. There may be a short debate and minor amendments made. A vote is taken whether to pass the bill or not. The bill is then transferred to the other House and undergoes a similar procedure. Finally the bill receives **Royal Assent** - that the monarch must give her consent to all bills before they can become law, but this is a formality as, under constitutional rules, a monarch cannot refuse Royal Assent.
- 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.