

Sources of english law

Law



Sources of English Law By Christopher Richards 9/11/09 Executive Summary

In this report I will be discussing the English Legal System, its structure and its primary sources. English law and its legal structure forms the basis of many countries common law legal system, this includes most commonwealth countries and the United States. English law falls into two broad categories: Civil law - derived from Roman law, it is applied when "wrongs" have been made against individuals; it is also known as a claim or an action.

Criminal law - first instrumented following the Norman Conquest of 1066, its offences relate to "wrongs" against property and, or persons which affects the whole community, it is often referred to as prosecution.. I will explain why the methods and tools of statutory interpretation are necessary for the correct implement of statutes and how judicial precedent formed the backbone of English common law. Introduction The English legal system stems from The Norman Conquest, William of Normandy invaded England in 1066 and upon successfully defeating his adversary he gained the crown of England.

William formed the first basic government "The King's Council" (Magnum Concilium) comprised of Lords, Bishops, Barons and other trusted figures whose advice which the monarch relied on. Introduced the separation of lay courts and church courts with a binding jurisdiction leading to church law i. e. : clergy were tried in their own courts. As the Monarch William owned all of England with lords, bishops and barons possessing land as tenants or sub tenants, this prompted the introduction of Feudalism of land tenure and judicial activity. Common law" would be established by Judges discussing conduct and behaviour throughout the land, still at this point no legislation was ever

written down. Further changes arise, these include the advancement of "Case law" setting precedent through facts of similar cases that have already been decided so that it can be judged equally, additionally the hierarchy of binding precedents and court structure. Statutory Interpretation Some statutes have a vague or misleading words or phrases many with homonyms which can make the process of implementing the correct ruling a difficult one,

A few areas to look at are a Broad term (words that are used to cover many possibilities), Ambiguity (where the word has two or more meanings and its not defining in which one should be used), a drafting error (an error that was made when drafting the bill or when it was amended), new developments (developments in technology means that old acts may not cover present day situations) and use of language (words that have changed in meaning over time), this is why statutory interpretation as a tool is so important, it allows judges to look at statutes and deduce the true reasoning behind it, there are three methods which are used to do this.

Literal Rule This is the most commonly used construction and takes precedent over the following rules; it means to take words written into the statute literally in the sense that if the words are clear then they should be applied. The literal rules had been scrutinised by many lawyers, and said to be " a rule against using intelligence in understanding language. Anyone who in ordinary life interpreted words literally, being indifferent to what the speaker or writer meant would be regarded as a pedant, a mischief-maker or an idiot".

An example of this is in the Hotel Proprietors Act 1956, it provides that the hotel proprietor is liable for loss of or damage to guests' property, but does not extend to guest vehicles or property left "therein", so does the proprietor fall liable to property left on, rather than inside the vehicle?

Interpreted literally yes, the proprietor is liable, because if the act had intended to exclude property left on a vehicle the act would have said "therein or thereon" so great care must be applied when using this rule. The Golden Rule

The golden rule is very much a modification to the literal rule, whereas instead of taking the literal meaning the courts will use a narrow or a wide approach of interpreting the word to avoid an absurd result. If the narrow approach is applied it would usually be because the words themselves lead to an absurd result for example if there is a sign that says "do not use lifts in case of a fire" interpreted literally it would mean "to never use lifts, in case of a fire" which would lead to an absurd result but clearly it is to prevent people from using the lifts if there is a fire nearby.

The wide approach is where the word has only one meaning but the meaning could result in a repugnant situation, the wider golden rule would be applied to modify the words in the statute to avoid an unfair result this is shown in the case *Re Sigsworth* (1935) A son had murdered his mother then committed suicide, The mother had not made a will and under the Administration of Justice Act 1925 the son would be entitled to her inheritance, the decision had to be made whether her inheritance was to be passed onto the mother's family or her son, there is no ambiguity of the act so due to the circumstances the judge used the golden rule to favour the

mother's family rather than the son benefiting from his crime. This rule is favoured by Lord Wensleydale in the case of *Grey vs.*

Pearson (1857) he stated "In construing statutes, and all written instruments, the grammatical and ordinary sense of the words is to be adhered to, unless that would lead to some absurdity or inconsistency with the rest of the instrument, in which case the grammatical and ordinary sense of the words may be modified, so as to avoid that absurdity or inconsistency, but not farther". The Mischief rule This third rule gives a judge more discretion than either the literal or the golden rule. This rule requires the court to look to what the law was before the statute was passed in order to discover what gap or mischief the statute was intended to cover. The court is then required to interpret the statute in such a way to ensure that the gap is covered. The rule is shown in

Heydon's Case (1584), where it was said that for the true interpretation of a statute, four things have to be considered: 1. What was the common law before the making of the Act. 2. What was the mischief and defect for which the common law did not provide. 3. What remedy Parliament hath resolved and appointed to cure the disease of the Commonwealth. 4. The true reason of the remedy, and then the office of the Judges is to make such construction as shall suppress the mischief and advance the remedy. An example of the mischief rule in use is found in the case of *Corkery v Carpenter* (1951). In 1951 Shane Corkery was sentenced to one month's imprisonment for being drunk in charge of a bicycle in public.

The defendant was drunk and was pushing his pedal bicycle along Broad Street in Ilfracombe. He was charged under section 12 of the Licensing Act 1872 with being drunk in charge of a carriage. The 1872 Act made no reference to bicycles. The court elected to use the mischief rule to decide the matter. The purpose of the Act was to prevent people from using any form of transport on a public highway whilst in a state of intoxication. The bicycle was a form of transport and therefore the user was correctly charged.

Purposive approach This rule exceeds the mischief rule by not just looking for gaps in statutes but for judges to decide what parliament actually meant to achieve.

One of the true supporters of this rule is Lord Denning, his attitude towards this rule is shown in the case of *Magor and St Mellons v Newport Corporation* (1950) “ We sit here to find out the intention of parliament and carry it out, and we do this better by filling in the gaps and making sense of the enactment than by opening it up to destructive analysis” This approach does have its drawbacks and many a judge has voiced its shortcomings saying that, should judges refuse to follow the clear words of parliament and how do they know what parliament’s intentions were? Summary Statutory interpretation as tool is paramount, without it, statutes that were written 100 years ago just wouldn’t be able to be implemented unless statutory interpretation was used. It allows judges and Lords the flexibility to look into statutes and decide whether it is still fair to implement, to break down statues and to interpret how they were original intended, additional if bills have been written incorrectly the judge can use statutory interpretation to

avoid absurd results and not make a mockery of the English Legal System.

Rules of Language

Eiusdem generis (of the same kind) In addition to the rules above, the courts also rely on rules of language to assist in statutory interpretation. Firstly, *eiusdem generis* Latin for "of the same kind," used to interpret loosely written statutes. The general words are to be taken as referring only to those things of the same class as specifically mentioned e. g. 'cats and dogs' does not include wild animals. There must be at least two specific words in a list before the general word or phrase for this rule to operate. (the phrase 'theatre or other place of public entertainment' includes a funfair even though it was not of the same kind as theatres).

Expressio unius est exclusio alterius (the mention of one thing excludes others) This is when one or more things of a particular class are mentioned but others may be silently excluded this can be seen in the case of *Tempest v Kilner* (1846) the court had to decide whether stock and shares were affected by the Statute of Frauds 1677 (which states that the contract of goods, wares and merchandise of the value of ? 10 or more must be evidenced in writing) but it was deemed that list of goods, wares and merchandise was not followed by general words (stocks and shares) and were not affected by the statute. *Noscitur a sociis* (a word is known by the company it keeps)

This rule of language used by the courts helps interpret legislation, under which the questionable meaning of a doubtful word can be derived from its association with other words. This can be seen in the case *Foster v Diphwys*

Casson (1887), this involved a statute which stated that explosives taken into a mine must be in a "case or canister". Here the defendant used a cloth bag. The courts had to consider whether a cloth bag was within the definition. Under *noscitur a sociis*, it was held that the bag could not have been within the statutory definition, because parliament's intention was referring to a case or container of the same strength as a canister. Intrinsic Aids are things inside the act which assist the judge to interpret or apply the law.

Extrinsic Aids are things outside the act which assist the judges to apply or interpret the law. For example the judges can look at previous acts of Parliament and the historical setting. Judicial precedent A judicial precedent is a decision of the court used as a source for future decision making. This is known as *stare decisis* (stand upon decisions) and by which precedents are binding and must be followed. When new cases are brought to court for the first instance and there are no previous cases to base the judgement, this is called Original precedent. Binding precedent is where past judgements of a similar set of facts are implemented to help courts to keep cases fair by deciding the outcome based upon previous cases.

The common law has been developed by passing down from precedent to precedent. In giving judgement a judge will state the law, set out the facts and then provide a decision, it is only the *ratio decidendi* (the legal reasoning for judicial decision) which is binding in later courts. *Obiter dicta* (other things said) may be put forward in future cases but it is not binding, the difficulty is the separation of the two from past judgement as they are not usually listed separately. Judicial precedent is an important source of <https://assignbuster.com/sources-of-english-law/>

English law as an original precedent is one which creates and applies a new rule. However, the later decisions, especially of the higher courts, can have a number of effects upon precedents.

In particular, they may be:

- **Reversed:** where on appeal in the same case the decision is reversed, the initial decision will not continue to have any effect
- **Overruled:** In a later case a higher court decides that the outcome of the first case was wrong.
- **Distinguished:** where an earlier case is rejected, either because the material facts differ or because the statement of law in the previous case is too narrow to be properly applied to the new set of facts
- **A refusal to follow:** this arises where a court, not bound by the decision, cannot overrule it but does not wish to follow it so it simply refuses to follow the earlier decision
- **Explained:** a judge may seek to interpret an earlier decision before applying it, so the effect of the earlier case is varied in the circumstances of the present case.

Court hierarchy and structure

In England and Wales there is a strict hierarchy of the court system, every court is bound by a decision made by a superior court in its hierarchy and appellate courts (courts that hear appeals) are generally bound by its own decision. Courts of first instance is where the original case was heard, The ECJ, House of Lords, court of appeal and divisional courts do not hear any original cases as they only hear cases of appeal. European Court of Justice The ECJ is the highest court in the English Legal system; European law will be decided in this court and will be binding on the rest of the courts within its structure although some laws are unaffected by ECJ and the House of Lords is supreme. One important feature of the ECJ is that it can overrule its own past decisions if deemed necessary. House of Lords

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Is not bound by its own decisions and is the most senior national court, its decision binds all courts lower in its hierarchy. Court of appeal is subsequently split into two divisions, civil and criminal, both are bound by superior courts (House of Lords and ECJ) generally they will follow past decisions of their own but some flexibility (more so criminal division) is accepted. Divisional court decisions are bound by the ECJ, House of Lords and court of appeal and are also usually bound by its own decisions although some flexibility similar to that of the Court of appeal can be used. High court decisions are always bound by courts higher than them but none below.

All other courts below the High Court are bound by higher courts and will not set precedent in subsequent cases. [pic] Unknown author. The Court Structure of Her Majesty's Courts Service [online] Available at <http://www.hmcs-service.gov.uk/aboutus/structure/index.htm> accessed 16/11/09 Use of Practice Statement Introduced in 1966, practice statements allowed the House of Lords to change a law and deviate from following earlier cases if they have been considered to have been wrongly decided. There is very little guidance when implementing therefore many judges have been reluctant to use it. The first instance of its use was in the *Herrington v British Railways Board* (1972) this involved the law of their duty and care owed to a child trespasser.

In an earlier case *Addie v Dumbreck* (1929) the lords had decided that the land occupier is only responsible for the duty of care to injuries of child trespassers if the injuries were deliberate or reckless. In the *Herrington* case the lords had decided that social and physical conditions had changed since 1929 and so should the law. Summary Judicial precedent is a crucial segment <https://assignbuster.com/sources-of-english-law/>

in English law, it has formed the backbone of common law by passing rulings from president to president, binding or none binding and has given Judges and lords the power to keep every case fair through binding president and in the eventuality of changes (social circumstances, politics, technology) it can use it to adapt and move with the times accordingly. -----

European Court of Justice