Provide continuity and uniformity to the civilization law public essay

Law

There are various sources of law in the United Kingdom. The question is ��What is meant by various sources of law?��. Before we start discussing the sources of law in detail, we must be able to understand what is meant by the word ��source��. The word ��source�� in law has several different meanings, but in this context it describes how the law comes into existence. The sources of law in the United Kingdom can be divided into primary and secondary. Primary sources include common law, equity, legislation and European Law. Apart from that, customs and work of authority fall within secondary sources. The English legal system originates from the common law system. Common law and case law have essentially the same meaning in the legal system. Common law is the decision made by judges according to the cases before them. In other words, common law applies general laws to a specific case. Once a judge makes common law or interpreting an existing law, the interpretation of the common law will be binding within the jurisdiction under the doctrine of stare decisis which means ��stand by what is decided.�� The rationale made for the judgment is known as ratio decidendi. This part of judgment has binding effect and thus forming common laws. ��Things said by the way�� which do no form part of the rationale are known as obiter dicta which may be a persuasive authority for future use. Since similar cases will be treated alike under the doctrine of stare decisis, certainty can be achieved. Communities can predict and plan their own affairs by referring to previous judgments made by the courts since it has a binding effect. The additional advantage of common law is flexibility. Flexibility allows common law to deal with changes that lead to unanticipated controversies. Common law can be more flexible

than Parliamentary statutes and this obvious sign can be viewed in the radical change of House of Lords in the field of criminal law. Judges would no longer be bound by their own decisions in accordance to the Practice Statement 1966. Although common law was seen for the better, it came with problems. One of the problems was the rigidity of the writ system. If the writs are not similar to the existing ones, the cases will not be heard in court. The systems are so rigid provided that if there is no writ, courts will not grant any remedies. Furthermore, the common law uses damages as remedies. The aim of damages is to monetarily compensate the claimant which sometimes may not be adequate. This is because in some cases such as trespass, claimant would prefer the building or objects to be removed from the premises rather than getting a sum of money as compensation. Sometimes common law are too strict as a result of the writ system. Equity, which is another system of law will merely fill the lacuna in the common law and soften the strict rules that exist. Equity simply means fairness in ordinary language, but in law, it is a set of legal principles. Because previous judgments were not followed blindly and each case was considered purely on its merits, justice could appear arbitrage in equity. Conflicts between equity and common law came to a head in The Earl of Oxford��s Case where the King advised that equitable principle takes precedence over the common law if there was a conflict between common law and equity. Due to the dual system of courts administering, alternative remedies may occur and thus causing conflicts between common law and equity. The s 25 of the Judicature Acts of 1873-75 provided that equity should prevail if conflicts happened between common law and equity. Thus, the court system is reformed. The

Court of Chancery can now apply both common law and equity. Equity is able to fill in the lacuna of the common law by using guidelines called maxims of equity. These maxims were designed to ensure that the decisions made were morally fair. One of the better known maxims is ��He who comes to equity must come with clean hands��. This means parties who acted in bad conscience will not be granted an equitable remedy. In D&C Builders v Rees , Lord Denning refused to apply the doctrine of equitable estoppel since Rees took advantage of the builders�� financial difficulties and therefore had not come ��with clean hands��. Equity created not only new rights but also subsequently increased the number of remedies available. Since common law only grants monetary damages, equity developed four more types of remedies. They are injunction, specific performance, rescission and last but not least, rectification. These remedies can be more suitable for those claimants who want alternative solutions instead of getting a lump sum of money as compensation. Equity usually comes hand in hand with the common law systems, claimants which are unable to seek justice in the common law are able to seek for what they deserved in equity. With the existence of equity, the strict writ system and inadequacy of common laws can be altered. Legislation in the United Kingdom can be divided into primary and secondary legislation. We shall now proceed to look into the primary sources of the legislation which is usually known as statute law. Statute law refers to the legislation made by Parliament, which consists of House of Commons, House of Lords and the Monarch in the form of Acts of Parliament. Statute has been regarded as the supreme source of law due to the doctrine of parliamentary sovereignty.

Herbert CJ in Godden v Hales set out the rule where no parliament may bind its successors when he remarked that ��if an Act of Parliament had a clause in it that it should never be repealed, yet without question, the same power that made it may repeal it��. Statutes override all conflicting common law provisions due to the doctrine of parliamentary sovereignty and binding precedent. Common law has the advantage of being enforced instantaneously compared to the Acts of Parliament which must undergo sets of procedure until it is finally given the Royal Assent by the Monarch. Time consuming process is the main problem of statute law. The slow pace of reforming statute laws sometimes leads to incompatible common law due to social changes, as we can see in the well known case of R v R. In this case, it was the first time a man was held guilty for raping his wife. Due to the slow pace of statutory reform, the defendant was not guilty according to the law that time but due to the retrospective effect caused by the slow enactment of statutes, the defendant was held guilty. Sometimes developments in common law may also lead to statutory reform or codification in statutory form. Because of the slow pace of reform in statute law, Parliament delegates power to another person or body to make legislation by Enabling Act. This is also known as delegated legislation or referred as secondary legislation. The function of delegated legislation is to allow the Government to amend laws without waiting for a new Acts of Parliament to be passed. Furthermore, delegated legislation can be used to make technical changes to the law too. There are three main forms of delegated legislation which are statutory instruments, By-laws and Orders in Council. Statutory instruments are made by the Government Ministers and they insert the details to the Acts

of Parliament. By-laws are made by local authorities in order to deal with matters within their locality. Last but not least, Orders in Council are made by the Queen on the advice of the Government and are usually made when there is no Parliament sitting. Orders in Council are normally used in emergency situations. An example of an Order in Council being used to amend law is The Misuse of Drugs Act 1971 which downgraded cannabis from a Class B to a Class C drug. The question is ��Why is delegated legislation necessary?��. There are several reasons why delegated legislation is necessary. The first and main reason for the necessity of delegated legislation is because of the insufficient parliamentary time. Parliament does not have enough time to debate every detailed rule. Secondly, delegated legislation allows rules to be made quicker than statute laws. Thirdly, delegated legislation allows law to be made by those who have the relevant expertise knowledge. As illustration, local authorities can make law in accordance to what the locality needs since they have more local knowledge compared to Parliament. Finally, delegated legislation can be used to overcome or solve the problems that the Parliament had not anticipated at the time it enacted the piece of legislation, which makes delegated legislation has more flexibility than Parliamentary statutes. Delegated legislation is not criticism free. It is criticised that delegated legislation lacks democracy since it is made by unelected people. Secondly, delegated legislation is subject to less Parliamentary scrutiny than the primary legislation. Parliament therefore has lack of control over delegated legislation and this may cause inconsistency in law. Lastly, delegated legislation lacks publicity. Since there are lots of laws made by delegated

authorities, the public are not able to follow up the changes made to the law. However, it is notable that the delegated legislation may be struck down by the courts as ultra vires when the person or authorities making it exceeds the powers delegated to them by statute. This can be examined in the case of Commissioners of Customs & Excise v Cure & Deeley Ltd.. Although delegated legislation may be an express alternative way to pass or amend law, but sometimes it may be overused for political or personal benefits. Thus, Parliament must have an adequate control over it in order to prevent abuse of power from delegated authorities towards the localities. Delegated legislation may not be able to gain certainty compared to common law. This is because there are too many laws made by the delegated authorities and the public are not able to follow up the rapid changes and makings of the law. Besides that, common law can avoid the abuse of power since the judgement was made based on the case itself but not according to the needs of authority. Abuse of power may happen in delegated legislation if the delegated authority set the law for their benefits and comfort. European law is one of the primary sources of law in the United Kingdom too but we will discuss this later on. Now let us proceed to the secondary sources of law which are customs and works of authority. Custom in law can be defined as the established pattern of behaviour that can be objectively verified within a particular social setting. Its main purpose is in cases where local custom and traditional practices are tried to be established to have such long standing that they should be given the force of law. Although customs nowadays have only a small role, but it is not completely obsolete. Works of authority on the United Kingdom constitution are books written by constitutional theorists

that are used as guidance in the United Kingdom��s constitution. As far as we are concerned, there are three most prominent works of authority. Let us get back to the other primary sources of law in the United Kingdom. European law was initially introduced as European Community Law. European Union Law, hereinafter referred as European law, is a body of court judgments, treaties and laws which combines with the other law systems in the 27 union member states which form the European Union. The law is given priority over the national law if conflicts arose since the law is highly respected. The EU Law can be categorized into three sources which are primary law, secondary law and supplementary law. The primary law basically comes from founding treaties of the European Union. Paris Treaty of 1951 and the Rome Treaty 1957 are the founder treaties of European Union. The treaties are brought into agreement and directly negotiated between the member states of European Union. The agreements made are laid down in the form of treaties which defines the important role of each authority in the European Union. The power giving treaties establish the institutions the main role to ensure broad policy goals are achieved by enacting legislation. The legislative acts in European Union are in two forms and directives. A regulation normally will become legally enforceable in all the member states of European Union immediately after they come into force. Regulations can also override conflicting domestic provision in each member state. For further knowledge, Article 288 of the ��Treaty on the Functioning of the European Union�� is the legal basis for the enactment of regulations. On the other hand, directive requires member states of European Union to achieve a certain or particular result while leaving them cautious as to how

to achieve the result. Directives can be adopted by means of a variety of legislative procedures depending on their subject matter. Directives and regulations share the same legal basis of enactment too. Since the implementation of European Union occurs in the national level, the European Court of Justice ensures the interpretation of European law will be similar within the member states. Secondary law consists of agreements and acts signed by the member countries to govern their activities, and the last category of European law is the supplementary law which generally refers to the uncodified principle of law developed by common law in the European Court of Justice. European law also constitutes supplementary that enable its court to deviate or bridge the lacuna left by primary and secondary law. The United Kingdom joined the European Union in 1973 after the two failed attempts to join in the year of 1961 and 1967. It has been centuries when the United Kingdom prided on the Parliamentary Sovereignty. However, in a case named Costa v ENEL that was taken to the European Court of Justice, the United Kingdom reluctantly recognises the supremacy of European Union Law in s 2(4) of the European Communities Act 1972 leading the glory of parliamentary sovereignty to be history. Although parliament still claimed to be supreme in United Kingdom, but when there is contradiction between national law and Communities law, the latter will prevail. This seems to affect the parliamentary sovereignty in the United Kingdom. According to s 2 of the European Communities Act 1972, legislation made by any member countries before or after the formation of European Union must be amended in order to comply with the community law. The direct application of European law can be illustrated in the case of R v Secretary of State for

Transport, ex p Factortame where the European Court of Justice held that the Merchant Shipping Act 1988 was in conflict with the European Law. The United Kingdom��s courts are needed to reconcile this paradoxical situation since parliamentary sovereignty and European Union supremacy are in contradiction. The House of Lords struck down the Merchant Shipping Act 1988 since it contradicts with the Treaty of Rome. Secondly, the law on sex discrimination conferred by the European law has major impacts on the interpretation of English law. European law provides equality of men and women in all the member countries. They ensure that no one will be discriminated on gender basis at all social places such as work place. A good example of this impact can be examined in the case of Lisa Jacqueline Grant v South West Trains Ltd . The judgment made in this case protects the rights of individuals and thus leading to a fairer treatment. The Parliament would be likely to make these changes in future since the European law acts as a catalyst for Britain to bring their law in line with the European law. The introduction of European Conventions of Human Rights by the Council of Europe also influenced the United Kingdom to enact an Act of Parliament which is known as the Human Rights Act 1998. Its aim is to ��enhance" the English law to the individual rights contained in the Convention for the Protection of Human Rights and Fundamental Freedoms. The European Union conferred fundamental rights to individuals which can be enforced using the doctrine of direct effect in their own domestic courts. The s 3 of Human Rights Act 1998 allows the courts to deviate from traditional principles of statutory interpretation by purposive approach. This can be illustrated in the case of R v A where the courts held it requires more than ordinary statutory

interpretation. Under s 4 of the Human Rights Act 1998, courts are given powers to declare both primary and secondary legislation incompatible if the duty of interpretation under s3 has first been attempted. The use of s 4 of the Human Rights Act can be seen in the case of International Transport Roth GMBH and others v Secretary of State for the Home Department. In a nutshell, the sources of law in the United Kingdom are improving and developing day by day due to the necessity of social changes. The inclusion of the United Kingdom into the European Union, thus joining it to the European community at large, has resulted to substantial changes to the English legal system.