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The system ofcommon law is a legal system which provides great precedential weight to commonlaw, on the principle of prejudice to asses’ comparable facts contrarily in varioussituations. This system of precedence is what is known as a common law and itis binding on the future verdicts, or it’s used to signify laws applied by thecourts as established by the body of precedent without reference to legislationpassed by the parliamentThe Englishlegal system is the inventive system of common law, so it is essential to understandthe essence of common law.

It is also an explanation of a cluster of connectedlegal systems which was disseminated across the globe during the colonialperiod. However, there are different unique characteristics in differentcountries. The advantagesof the system of common law in the English legal system is that it is concernedto govern legal disagreements in accordance with their individual situationsand the pertinent judge – made case law instead of applying universal statutesof legal principle. English commonlaw also affords certainty. This was the initial aim for the commencement ofthe common law.

This meant that people would have a better understanding of whatthe action of the courts were in treating their cases, hinging on past similarcases. Certainty is one of the vital principle in common law and the rules andit therefore, supports in providing certainty. Common law is not like civil lawand does not have a codified set of rules developed through intellect, the commonlaw was built to respond to real situations which are intricated and nuanced.

Commonlaw has lesser reliance compared to the statutory law or codified law on thebasis of theory and logic. Thus, common law is more analogous to situationsthat plaintiffs find themselves caught in. Civil Law, however is a codifiedset of laws. Countries following the civil law system have complete and frequentlychanging legal codes that stipulate all the problems that are capable of beingpresented before a court, the required procedures and the necessary consequencesfor the offenses.

In a system of civil law, the role of the judge is to understandthe facts regarding the case and to use the provisions of the relevant code.  The doctrine of precedent is a simple conceptof common law. It means that the judges must use the references of past casesand its decisions to ensure certainty. It also states that the inferior courtsmust adhere to the decisions of the superior courts. The purpose of precedentis for steadiness and certainty of the law, the wish to provide justice to allparties involved, to not need to assume the role of the parliament, to validatedecisions by a rational argument and to base any deduction on one of the issuesput forward by the parties. The power of binding earlier decisions varies frommerely persuasive and strictly binding precedents. The decisions of an earliercase will only be a binding precedent in a later case if it: -1.     Comprise a statement ofthe law2.

It forms a part of theration decidendi3.     It was finalised by the superiorcourt which verdict was binding. The doctrine of binding precedent can be understood more efficientlythrough the assessing of a few case laws which have adopted this law of bindingprecedent. Case Law:- Rookes v Barnard 1964 UKHL 1The claimant was an accomplished draughtsmanand an employee of the British Overseas Airways Corporation (BOAC), resignedhis membership of the Association of Engineering and Shipbuilding Draughtsmen(AESD), a registered trade union. It was settled between BOAC and AESD (amongothers) that no strike or lockout should take place and disputes should behandled by negotiation. The claimant refused to re-join AESD and his unionmember colleagues decided to withdraw their labour unless the claimant wasremoved from their office. The claimant was thus suspended and later terminatedwith a week’s pay in lieu of notice.

The Court of Appeal reversed the decision, holding that notwithstanding the tort of intimidation, the threat to break acontract was not covered by it. The claimant appealed to the court, the defendantscross-appealed. (Huckle -v- Money 2 Wil’s KB 205, 1763) (Wilkes -v- Wood CCP, 1763)This case and its judgement was used as abinding precedent for officiating in the case of Cassell v Broome 1972 HL. Case Law: – Cassell v Broome 1972 HLThis was a case of being defamed. Theplaintiff appealed against the damages that had been considered.

The case wasconcerned on a book about a naval disaster. The Court of Appeal alleged that the decisionthe House of Lords have taken in the case of Rookes v Barnard 1964 was madeand it was disregarded. Once the Parliament has finalised and passedan Act, it is then in the power of the courts to apply these acts or statutesin a case, this is what is known as statutory interpretation. This often leadsto complications where the facts about a case may not have been planned by theParliament or when errors in drafting or vagueness of the statute exists. Inaddition, the courts have invented rules to help the judges to interpret the statutes. The three rules developed to interpret thestatutes are: – ·        The literal ruleThe literal rule states that the court has the duty ofproviding literal meaning to the words of a statute regardless of whether theyare insensible or absurd.

The literal rule is often applied by judges who havea belief that their role is limited only to carrying out and applying laws thathave been enacted by the Parliament. Case Law: – Whitley v Chappel 1868 LR 4 QB 147A statuteprovided that the “ impersonation of a person to be entitled to vote” as anoffence. The defendant impersonated a deceased person to vote. The statute thatinvolved voting rights stated that a person had to be living in order to beentitled the right to vote. The literal rule of interpreting statutes was implementedin this case and the defendant was acquitted of his crime. ·        The golden ruleThe golden ruleis implemented wherever the literal rule produces a result when the Parliament’sintention would be avoided rather than applied. If the literal rule results inabsurdity, the ordinary and the grammatical interpretation of the words must bechanged, to not be absurd or inconsistent. Case Law: – R v Allen 1988 Crim LR 698In the case of Rv Allen 1988, Allen had been married to two women and was being accused ofbigamy.

The law stated that ‘ anyone who has been married once shall not marryanother person while the former husband/wife was still alive, or it shallresult in bigamy’. The courts applied the golden rule and Allen was foundguilty of bigamy. To go forward with the opposite decision and let Allen be notfound guilty would have resulted in absurdity.

·        The mischief ruleThe rule ofmischief is the last rule to be followed while interpreting a statute accordingto which a judge attempts to understand the intentions of the legislator. Thefour points to be concerned when using the mischief rule are: -1.     What was the common law prior tothe making of the Act? 2.     What was the mischief or defect notprovided by the common law? 3.     What was the solution the Parliamenthath determined and implemented to cure the disease of commonwealth? 4.

The true reason behind the solution. Therefore, whenan act was passed it was required to find a remedy for the defect in the law, the interpretation that could correct this defect is the option to be followed. Case Law: – Corkery v Carpenter 1951 1 KB 102This case involvedthe defendant being drunk while in charge of his bicycle. At that time it wasconsidered an offence to be drunk while in charge of a carriage. The court decidedand held that the bike was a “ carriage”, the mischief in the case was of beingdrunk on the highway while being in control of the transport.  Works Cited and Bibliography                                                                                     19 McGill L. J.

121 (1973) . (n. d.). (1763). Huckle -v- Money 2 Wil’s KB 205.

Commonlii. LR 4 QB 147. (n. d.)..

Uren -v- John Fairfax & Sons Pty Ltd ((1966) 117 CLR 118, Austlii, 1966 HCA 40)  Uren -v- John Fairfax & Sons Pty Ltd. (1966). Austlii. Ley -v- Hamilton HL ((1935) 153 LT 384)  (1763). Wilkes -v- Wood CCP.

Bailii. (1944). Young -v- The Bristol Aeroplane Co Ltd CA . Hamlyn. Fielding -v- Variety Incorporated CA (1967 2 QB 841)  www. lawteacher. net http://www. lawade. com/the-english-legal-system/statutory-interpretation/the-mischief-rule/ http://www. lawade. com/the-english-legal-system/statutory-interpretation/the-golden-rule/ http://swarb. co. uk/cassell-co-ltd-v-broome-and-another-hl-23-feb-1972-3/ https://sixthformlaw. info/02\_cases/mod2/cases\_stat\_interp. htm https://sixthformlaw. info/02\_cases/mod2/cases\_precedent\_other\_issues. htm https://lawprojects. wordpress. com/2012/03/01/whitely-v-chappel-1868-lr-4-qb-147/ (Coates v Crown Prosecution Service Admn, 2011) (Taylor v Goodwin QBD 4 QBD 228, 1879) http://swarb. co. uk/