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The system of common law is a legal system which provides great precedential weight to common law, on the principle of prejudice to assess comparable facts contrarily in various situations. This system of precedence is what is known as a common law and it is binding on the future verdicts, or it's used to signify laws applied by the courts as established by the body of precedent without reference to legislation passed by the parliament. The English legal system is the inventive system of common law, so it is essential to understand the essence of common law.

It is also an explanation of a cluster of connected legal systems which was disseminated across the globe during the colonial period. However, there are different unique characteristics in different countries. The advantages of the system of common law in the English legal system is that it is concerned to govern legal disagreements in accordance with their individual situations and the pertinent judge – made case law instead of applying universal statutes of legal principle. English common law also affords certainty. This was the initial aim for the commencement of the common law.

This meant that people would have a better understanding of what the action of the courts were in treating their cases, hinging on past similar cases. Certainty is one of the vital principle in common law and the rules and it therefore, supports in providing certainty. Common law is not like civil law and does not have a codified set of rules developed through intellect, the common law was built to respond to real situations which are intricately 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 1 The claimant was an accomplished draughtsman and an employee of the British Overseas Airways Corporation (BOAC), resigned his membership of the Association of Engineering and Shipbuilding Draughtsmen (AESD), a registered trade union. It was settled between BOAC and AESD (among others) that no strike or lockout should take place and disputes should be handled by negotiation. The claimant refused to re-join AESD and his union member colleagues decided to withdraw their labour unless the claimant was removed from their office. The claimant was thus suspended and later terminated with 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 a contract was not covered by it. The claimant appealed to the court, the defendants cross-appealed. (Huckle -v- Money 2 Wils KB 205, 1763) (Wilkes -v- Wood CCP, 1763) This case and its judgement was used as a binding precedent for officiating in the case of Cassell v Broome 1972 HL. Case Law: – Cassell v Broome 1972 HL This was a case of being defamed. The plaintiff appealed against the damages that had been considered.

The case was concerned on a book about a naval disaster. The Court of Appeal alleged that the decision the House of Lords have taken in the case of Rookes v Barnard 1964 was made and it was disregarded. Once the Parliament has finalised and passed an Act, it is then in the power of the courts to apply these acts or statutes in a case, this is what is known as statutory interpretation. This often leads to complications where the facts about a case may not have been planned by the Parliament or when errors in

drafting or vagueness of the statute exists. In addition, the courts have invented rules to help the judges to interpret the statutes. The three rules developed to interpret the statutes are: - · The literal rule The literal rule states that the court has the duty of providing literal meaning to the words of a statute regardless of whether they are sensible or absurd.

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

The law stated that ‘ anyone who has been married once shall not marry another person while the former husband/wife was still alive, or it shall result in bigamy’. The courts applied the golden rule and Allen was

found guilty of bigamy. To go forward with the opposite decision and let Allen be not found guilty would have resulted in absurdity.

The mischief rule The rule of mischief is the last rule to be followed while interpreting a statute according to which a judge attempts to understand the intentions of the legislator. The four points to be concerned when using the mischief rule are: -1. What was the common law prior to the making of the Act? 2. What was the mischief or defect not provided by the common law? 3. What was the solution the Parliament had determined and implemented to cure the disease of commonwealth? 4.

The true reason behind the solution. Therefore, when an 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 102 This case involved the defendant being drunk while in charge of his bicycle. At that time it was considered an offence to be drunk while in charge of a carriage. The court decided and held that the bike was a “ carriage”, the mischief in the case was of being drunk on the highway while being in control of the transport. Works Cited and

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