

# [The interests of the vulnerable person”.3 this](https://assignbuster.com/the-interests-of-the-vulnerable-person3-this/)

Theimpact of ‘ Brexit’ will cause a significant change if Accountants UK relocatesto Berlin, as they will have to follow the Civil Law system. This can play at adisadvantage for the company, as they will have to follow a set of systematicrules. The UK follows the English Common Law system, which has many advantagesover the Civil Law system. In addition, the English Common Law has manyfeatures such as the Doctrine of Precedent and Statutory Interpretation, whichis fundamental for applying decisions on cases.

However, there are somedrawbacks of the English Common law as being undemocratic because it isjudge-made law. 1 This results in positiveand negative aspects of the English Common Law system, which will be providedbelow. English Common Law system is derived frompublished precedential opinions which are then followed by the judge to makedecisions regarding the similar cases. One of the benefits of the EnglishCommon law is that “ common law codes are not intended to be entire statement ofthe whole law.

.. meant to be supplemented by the judicial opinions”. 2This indicates that the cases are checked thoroughly and compared to theprevious precedents which are more flexible than the Civil Law as “ it has thepower to draw upon the common law to act in the best interests of thevulnerable person”. 3 This is crucial as thecases can be judged fairly since the judges are not controlled by laws andcodes which encourages justice.

On the other hand, this can be seen asundemocratic since judges play the main role in making decisions. Doctrine of Precedent is an important aspect for the English Commonlaw since the judges must check if similar cases have been publishedpreviously. It is based on ‘ stare decisis’ which “ binds all of the lower courtsof a jurisdication to determination rendered by the highest court in that samejurisdiction” 4. The judges have toprovide 2 types of states. One of the state being ‘ ratio decidendi’ meaning “ reason for decising” 5which is applied in the future case decision. An example of the ‘ ratiodecidendi’ in Donoghue v Stevenson (1932)6  was that “ the manufacturer owed Mrs.

Donoghue a dutyof care in the absence of contractual relations contrary to established caselaw” 7. Another sate is called ‘ obiter dicta’meaning ‘ things said by the way’ which “ do not carry the same weight as the ratio decidendi of a case” 8. This is    There are two types of precedents: binding and persuassive. Bindingprecedent is when it is mandatory to follow the precedent.

This signifies thatthe judge should obey the precedent as it is mandatory however, if theprecedent was set by an inferior court then the judge will not have tonecessary follow the precedent as the decision of lower courts are not bindingon courts higher in the hierarchy. Persuassive precedent is when the judes are not obliged to followthe precedent but can use them for abundant reasoning. This is seen as moreflexible as judges are free to use ‘ obiter dicta’ and also precedents made bylower courts. An example The advantages of precedents are they bring certainty andconsistency in law as the judges wll not be able to make biased decisions. thiscreates fairness as cases will be treated the same way It also encouragesflexibility as judges in the higher court are consented to update the law associety is always evolving.

In addition, precedents are judge made law which isseen as more practical as they are not obliged to follow codified statues likethe Civil law.  On the other hand, there are disadvantages regarding precedents asthe method is seen as rigidy since the precedents must be followed by a judgeeven if it is outdated, The change can only occur in the higher appeal courts. Itcan also be time consuming and complex to find relevant law cases as there areso many cases issued and some may remain unjudicated.     A judge can avoid precedents by four methods. Distinguishing “ allowsa court to escape a binding precedent”. 9This can be clearly shown in Balfour vBalfour (1919)10and Merrit v Merrit (1971)11.

Both of thecases were for breach of contract between a wife and a husband. Only Merrit v Merrit12 was successful as there was a form ofagreement in writing which permitted distinguishing. Overruling is when                          Statutory Interpretation is “ a court’s power to give meaning tolegislation by clarifying ambiguites, providing limits, and ultimately applyingthat statutory law to a specific fact pattern in litigation”. 13The methods of Statutory Interpretation are not inspected Parliament, but bythe judges. There are four rules concerning the Statutory Interpretation: The literal rule which suggests that “ the judge is required toconsider what the legislation actually says rather than considering what itmight mean”. 14 An example of this in useis Fisher V Bell15 where the display of an item was not an offer for sale but aninvitation to treat. The benefits of the literal rule are it creates certaintyin the court and prevents unelected judges from constructing law.

This is dueto the fact that the literal rule follows the words of the parliament. Thisallows the lawyers to predict the result as the law will be interpreted exactlyits written. However, “ the judge sometimes refer to their own interpretation ofthe meaning” 16as the use of the literal rule. This can lead to harsh decisions as illustratedon London and North Eastern Railwayv Berriman 194617 as the widow was notentitled to anything even though her husband died. The reason was because hewas not ‘ relaying or repairing’ the tracks which made the claim futile. Inaddition to this, another case Whitely v Chappell (1868)18 concerned a man using avote of a dead man. Literal rule was applied to this and the defendant wasclaimed as not guilty. Due to this, the literal rule was condemned as it cansometimes convey unfairness.

The golden rule isused when ” the literal rule is likely to result in what appears to the courtto be an obviously absurd result” 19as this allows the judge to adjust decisions to ensure fairness and justice.  Lastly the mischief rule is applied as a last resort To conclude, the English Common Law        1 Antonin Scalia, A Matter of Interpretation9(1997)2 Robert W. Emerson, Business Law (? Barron’sEducational Series, 2009) 93 Alisdair Gillespie, The English Legal System (5th edn, OUP Oxford 2015) 134 Robert W.

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