

The interests of the
vulnerable person”.3
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The impact of ‘Brexit’ will cause a significant change if Accountants UK relocate to Berlin, as they will have to follow the Civil Law system. This can play at a disadvantage for the company, as they will have to follow a set of systematic rules. The UK follows the English Common Law system, which has many advantages over the Civil Law system. In addition, the English Common Law has many features such as the Doctrine of Precedent and Statutory Interpretation, which is fundamental for applying decisions on cases.

However, there are some drawbacks of the English Common law as being undemocratic because it is judge-made law. ¹ This results in positive and negative aspects of the English Common Law system, which will be provided below. English Common Law system is derived from published precedential opinions which are then followed by the judge to make decisions regarding the similar cases. One of the benefits of the English Common law is that “common law codes are not intended to be entire statement of the whole law.

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

On the other hand, this can be seen as undemocratic since judges play the main role in making decisions. Doctrine of Precedent is an important aspect for the English Common law since the judges must check if similar cases have

been published previously. It is based on 'stare decisis' which "binds all of the lower courts of a jurisdiction to determination rendered by the highest court in that same jurisdiction" 4. The judges have to provide 2 types of states. One of the state being 'ratio decidendi' meaning "reason for deciding" 5 which is applied in the future case decision. An example of the 'ratio decidendi' in *Donoghue v Stevenson* (1932)⁶ was that "the manufacturer owed Mrs.

Donoghue a duty of care in the absence of contractual relations contrary to established case law" 7. Another state 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 persuasive. Binding precedent is when it is mandatory to follow the precedent.

This signifies that the judge should obey the precedent as it is mandatory however, if the precedent was set by an inferior court then the judge will not have to necessarily follow the precedent as the decision of lower courts are not binding on courts higher in the hierarchy. Persuasive precedent is when the judges are not obliged to follow the precedent but can use them for abundant reasoning. This is seen as more flexible as judges are free to use 'obiter dicta' and also precedents made by lower courts. An example The advantages of precedents are they bring certainty and consistency in law as the judges will not be able to make biased decisions. this creates fairness as cases will be treated the same way It also encourages flexibility as judges in the higher court are consented to update the law as society is always evolving.

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

Both of the cases were for breach of contract between a wife and a husband. Only *Merrit v Merrit*¹² was successful as there was a form of agreement in writing which permitted distinguishing. Overruling is when Statutory Interpretation is “ a court’s power to give meaning to legislation by clarifying ambiguities, providing limits, and ultimately applying that statutory law to a specific fact pattern in litigation”.¹³ The methods of Statutory Interpretation are not inspected by Parliament, but by the judges. There are four rules concerning the Statutory Interpretation: The literal rule which suggests that “ the judge is required to consider what the legislation actually says rather than considering what it might mean”.¹⁴ An example of this in use is *Fisher v Bell*¹⁵ where the display of an item was not an offer for sale but an invitation to treat. The benefits of the literal rule are it creates certainty in the court and prevents unelected judges from constructing law.

This is due to the fact that the literal rule follows the words of the parliament. This allows the lawyers to predict the result as the law will be interpreted

exactly its written. However, " the judge sometimes refer to their own interpretation of the meaning" 16 as the use of the literal rule. This can lead to harsh decisions as illustrated on London and North Eastern Railway v Berriman 1946¹⁷ as the widow was not entitled to anything even though her husband died. The reason was because he was not ' relaying or repairing' the tracks which made the claim futile. In addition to this, another case White v Cartwright (1863)¹⁸ concerned a man using a vote of a dead man. Literal rule was applied to this and the defendant was claimed as not guilty. Due to this, the literal rule was condemned as it can sometimes convey unfairness.

The golden rule is used when " the literal rule is likely to result in what appears to the court to be an obviously absurd result" 19 as 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's Educational Series, 2009) 93 Alisdair Gillespie, The English Legal System (5th edn, OUP Oxford 2015) 134 Robert W.

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