Structure of english law

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This paper covers the basis of law which takes president in the UK. Case law, Statute Law and European Law, along with other areas that form the structure of Common Law. Relevant cases will be used to back statements.

Case Law and Statute law are two pillars of what makes English Law; formed to regulate actions of citizens to govern behaviour and impose penalties on those who brake it. Case Law is based on the doctrine of Judicial Precedent which in turn refers to " Stare decisis" meaning ' standing by of previous decisions'. This mean that once a law has been passed by a Judge in a previous case, it binds all lower courts holding future cases based on the same material facts.

In order for Judicial Precedent to work, points of law need to be determined. When a judge makes a ruling, the reasons for reaching such decisions derives from the ' ratio decidendi' (the reason for deciding). An example of this would be the case of *Donoghue V Stevenson [1932]* duty of care came down to the manufacture owing Mrs Donoghue on the grounds of negligence. This set the precedent for the following case *Grant v Australian Knitting Mills [1936].* However, it is important to separate Ratio decidendi from Obiter dicta (by the way).

Obiter dicta does not refer to the decision from a previous ruling. It looks at the areas of the case that rely on interpretation from the judge which is not necessary for the decision. It does not form part of the ratio decidendi. In the case of *R v Howe & Bannister [1987]* the obiter dicta of the case is:

somebody who attempts murder should not be able to plea a defence of duress.

Statute Law (also known as Acts of Parliament or Legislation) is laws made by Parliament, which is split into two Chambers: The House of Lords and the House of Commons. After a bill is approved by the two Chambers, it will receive formal approval from the ‘ Monarchy’ referred to as ‘ Royal Assent’. This turns a bill into law known as an Act of Parliament. Statute law referrers to written law and gives a rigid and formal interpretation of the law. Case law comes from Judicial Precedent.

Statutory interpretation falls to the court to apply it in certain cases. The statue will not cover all ambiguities / eventualities in each case. Therefore, rules have been created to avoid an unfair ruling.

Firstly, the Literal rule: when the meaning of the words written in the statute are applied such as in the case of *Fisher V Bell [1961].* A flick knife was displayed with a price tag therefore presented an ‘ invitation to treat’ and not presented as an offer.

Secondly, the Golden rule: when the action of the literal rule would lead to an unacceptable result. In the case *Re Sigsworth [1935]* , the son who murdered his mother to inherit the estate was denied.

Finally, the Mischief rule: when an ambiguity in the statute occurs. Such as in *Corkery v Carpenter [1951]* , as the defendant was in charge whilst drunk of his bike, he presented a danger to others on the road.

Another source of English Law is Equity. It is an important aspect of the law as it is about fairness and justice. Common law can be quite harsh at times and can result in someone losing a case through no fault of their own. Equity provides a judge the ability to deviate from the strict written law in order not to disadvantage someone. One example is *Bull v Bull[1955].* Due to the mother's contribution to the house, she could not be evicted.

Together these areas of law are designed to keep people safe and to preserve order. If an issue arises that cannot be decided on precedent, statutory law decides the case. Contract law, tort law and property law exist mostly with case law, however, there are some written statutes that are relevant to these areas.

Parliamentary Sovereignty is the supreme legal authority in the UK that can create or end any law. Courts cannot overrule legislation made by parliament although no parliament can bind a future parliament. In 1972, the UK handed over sovereignty to the EU meaning Europe overrule and takes precedence over Acts of Parliament. Any are outside of where the EU operates, Parliament retains its supremacy.

The European Parliament and the Council of the European Union and 2 institutions of the European Union that create new laws and codes. The reason European law was created was to encourage economic growth, increase movement of people, goods and services between member states and allowing a common market to exist.

TheEuropean Communities Act 1972came into effect when the UK joined the EU January 1st 1973. Section 2(1) of the Act dictates European Law will take

precedence over domestic law. Section 2(4) provides that when a judgment of a statute is interpreted, it is in accordance and consistent with EU law. Section 3(1) provides interpretation of legislation and treaties to be treated as a question of law. Courts must accept judiciary supremacy comes from EU law. This is evident in the case between *Flaminio Costa v ENEL[1964].* The claimant lost the case because the ECC (European Civil Code) Treaty created its own legal system which became integral to the legal system of each member state. In this case the Italian legal system taking precedence over national law.

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Task 2

Alternative Dispute Resolution (ADR) gives parties involved in commercial disputes and attractive alternative than going to trial. The Civil Procedure Rules 1998 (CPRs) actively encourage its use. Here we can see how these rules effect the Pre-Trial Conduct and what the likely position regarding costs to the Montague Builders Ltd will be.

There are 2 types of ADR process, Adjudication and Consensual. Adjudication consists of a third party to consider a dispute and provides a judgment (normally a judge, arbitrator or adjudicator). The decision made is enforceable on both parties. The consensual process is alternative method of dispute resolution. Here a third party is assigned to facilitate a solution. The disputing parties are to make the final decision, not the third-party member.

The Civil Procedure Rules 1998 derives from Lord Woolf being commissioned in 1994 to writing a report Access to Justice released 1996. Reasons being it is too expensive, too slow, lacking equality and uncertainty over the amount of time and cost when reaching a settlement. The report recommended procedural change designed for a less confrontational and faster settlement. Simpler terminology was brought in to make courts more user friendly. These reforms are known as the Woolf Reforms. Practice Directions are placed within the Rules as guide lines to how: parties should operate, documentation required to be filed to the court and what would happen if not carried out properly. *(Jones, 2011)*

The Civil Procedure Rules have an effect on the Pre-Trial Conduct. This could come down to costs assigned by a court if a party has not complied or ignored order made during an adjudication. Practice Direction 44 – General Rules About Costs, *(Justice. gov. uk, 2016)* section 44. 2 has a breakdown of costs a court would commonly make. Therefore, regardless of the result of the trial, that party will most likely incur the costs of both parties. Rules such as this are in place to get parties to attempt settling disputes rather than brining a claim to trial.

European Convention of Human Rights Article 6(1) – " Right to Fair Trial" (Legislation. gov. uk, 2016) This means if pressured to use an ADR method, this would infringe their right to a fair trial. A party can however wave their right by contractually agreeing to resolve a dispute through the ADR Adjudication process such as in the case of *Deweer V Belgium [1980].*

Mediation is an effective way of setting a dispute as it assigns a third party, (who will be mutually appointed) to acts as a go-between facilitating discussions for the parties to come up with a solution. The solution however in not binding and cannot be enforced by the courts. At the end of the mediation, the parties will enter into a contract to carry out the solution achieved. The contact is binding and must be carried out.

Many benefits come with mediation. Examples such as it enables the parties to control the settlement, produce creative ideas, keep the process informal, allows for collaboration between the parties. Relationships can be restored but one benefit in particular is that the case stays confidential. It prevents " Washing dirty linen in public", meaning the details of the case becoming public record.

Benefits of attempting Pre-Action Protocol is that chance of a settlement satisfying both parties becomes more likely as a third party whilst being in a neutral position, will actively seek the best result for both sides. If a settlement cannot be agreed and a trial is set, one or both sides will have to show all has been done in an attempt to settle. Mediation is not compulsory as it is a consensual process of dispute resolution. If one party refuses to attempt finding a solution through ADR and insists on a trial, that party is acting unreasonably.

Taking into account how mediation has been offered to the client by Montague Builders Ltd and the refusal by the client without offering an alternative to mediation, lends itself to a likely conclusion that Montague Builders Ltd acted in a just and reasonable manner and the client showed

themselves to be unreasonable. Should the client continue to refuse any attempts to settle through mediation, an appeal for the costs for the trial to be paid by the client regardless of the outcome would be justified. Such as in the case between *Dunnett v Railtrack [2002].*

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