

# Business law: an introduction essay sample

[Law](#)



1. Identify & describe the source of legislation that are binding in Scots Law and quote at least one example.

Legislation comes in 4 main sources in Scotland; UK Parliament, Scots Parliament, European Union and delegate legislation.

### UK Parliament

Laws that are passed by Parliament come from proposals that are made by the Government. These proposals aim to shape society or address certain problems. Once such proposals have been consulted on they are turned into bills. A Bill is the draft of an Act of Parliament. The bills are submitted for debate to be scrutinised by both House of Commons & House of Lords.

All bills pass through the process outlined below:

- First Reading – Bill read out in Parliament
- Second Reading – MP's discuss & debate the proposals of the bill
- Committee Stage – Committee of MP's consider bill. Closely scrutinised. Any amendments will be proposed and voted on.
- Report stage – The bill with any amendments is reported to House of Commons. All members can review bill. Amendments can be proposed & voted on. Anyone involved in amendments at the previous stage cannot suggest further changes.
- Third Reading – MP's debate and vote on final bill. It will usually be passed at this stage.

The bill then goes through the same procedure in House of Lords, where further amendments can be made. On its return to House of Commons the amendments are approved or rejected. Once approval from both Houses the

bill receives formal approval from the Queen. This is when the bill is given Royal Assent. A bill becomes law or an Act of Parliament.

Examples of Acts that UK Parliament has passed are: Sale of Goods Act (1979) and Employment Rights Act (1996).

### Scottish Parliament

In 1998, UK Parliament passed the Scotland Act which gave powers to the Scottish Parliament. Certain powers were given to Scots Parliament to make decisions & to pass legislation on certain matters. Such powers are called devolved powers or devolved matters.

The Scottish Parliament has power to produce legislation on devolved matters only. It does not have to consult Westminster or go through UK Parliament to pass new laws.

Powers that have been kept by UK Parliament are called reserved powers or matters. Devolved powers include health, social work, education, training, local Government, housing & economic development. Reserved matters include; constitution, foreign affairs, defence & immigration to name a few. All UK Parliament laws take precedent over Scots Law; however UK Parliament won't normally legislate in any devolved matter without prior agreement of Scottish Parliament.

The Scots Parliament has power to pass primary legislation but cannot legislate on reserved matters. Tax rates set in UK Parliament apply to all the UK however; Scottish Parliament has power to alter income tax by up to 3p in £1.

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A bill for any new legislation goes through the following process:

- Stage 1 – Committee & Parliament consider general principles of Bill. Debate & agree on principles
- Stage 2 – Lead Committee consider the details of the bill with great scrutiny & suggest any amendments
- Stage 3 – Final consideration of bill by Parliament & a decision made whether to reject or pass.

After the bill is passed and it receives Royal Assent, it is then an Act of Scottish Parliament and a binding source of legislation.

Examples of such Acts are: Abolition of Bridge Tolls (Scotland) Act 2008.

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## EU Law

Another binding source of legislation in Scotland is the European Union. The European Communities Act (1972) is an Act of Parliament which when passed the UK became members of the European Union thus giving inclusion of European Community Law into UK law system. The laws of EU are binding and take precedence over any Scottish or British law.

As UK & Scotland are both members of EU, they are both bound by EU law. Where Scots law or UK contradicts EU law, EU law must be followed. Scots & UK Parliament cannot pass a statute that contradicts EU law. If this happens then an action will be raised to the European Court of Justice. A famous case

which confirmed supremacy of EU law in Great Britain was *R v Secretary of State, ex Factortame*. The Shipping Act (1988) banned registration of fishing vessels as British by companies whose shareholders were not British citizens. An action was raised by Spanish companies that were registered in Britain but consisted of Spanish shareholders. This prevented them taking advantage of UK fishing quotas assigned to the UK under Common Fisheries policy. The action was held as EU law should have been followed under European Communities Act (1972). The Secretary of State settled to claimants who received £26 million.

The main source of primary law is the treaties establishing the European Union. Secondary sources include regulations & directives which are based on the treaties. Treaties set out distribution of competences between the union & member states, which establish the powers of the European Institution. Treaties determine the legal framework within which the EU institution implements European policy.

The Treaty of Rome established the European Economic Community. This created a common market of goods, workers & services within member states. Primary legislation is agreed by direct negotiations between the governments of member states.

Secondary legislation in EU law can be categorised by 3 legislative acts of the EU. The 3 acts are regulation, directives & decisions. Regulations have direct effect. Member states are prohibited from obscuring the direct effect of regulations. Regulations are binding legislation in member states and do

not require any further legislation to be passed in member states law systems to be enforceable. They are directly applicable in all member states.

Directives are never directly applicable because member states need to create new legislation in order to adopt any directives. Member states have slight discretion on how to incorporate directives. Most commonly directives are in relation to employment and health & safety regulations.

### Delegated Legislation (Secondary legislation)

Delegated legislation is the power given by Parliament to a minister or another to make law. This allows government to make changes to a law without needing to make a new Act of Parliament. Often an Act contains broad framework of its purpose and more complex content is added through delegate legislation.

Statutory instruments are usually referred to as regulations. These form a type of delegated legislation. The source of delegated legislation is found in an enabling section of an Act of Parliament. It's the enabling section that allows for ministers to make laws. Enabling sections allows ministers to make technical changes to the law and avoiding drowning Parliament with more work.

An example of such is the Road Traffic Act (1998) was amended to ban the use of mobile phones while driving.

Secondary legislation is used to amend, update or enforce existing primary legislation. By-laws made by local authorities are an example. This helps with

local problems in relation to parking & drinking alcohol outside. By-laws will vary from local authority to another.

## 2. Explain judicial precedent

Judicial precedent is a rule established in a previous legal case that is binding. Lower courts are bound by precedent set by higher courts.

Therefore in any similar cases after this, the courts must use. Precedence is established when there is no case law or statute law that would cover a particular point of law in a case.

When lower courts are bound by precedent set by higher courts this is called stare decisis. Binding precedent relies on stare decisis. It ensures certainty and consistency when precedent is used.

For example in the case of Donoghue v Stevenson. The House of Lords held that a manufacturer owed a duty of care to the ultimate consumer of the product. This set a binding precedent which followed in subsequent cases.

Below is a diagram of hierarchy of courts. The courts at the bottom are bound by the next court at the next level and so forth. If precedent has been set by High Court of Criminal Appeal then all courts below are then bound by such precedent. If you disagree with a decision made by a court then you can appeal to the next level of court on such decision.

Source (Wikipedia)

## 3. Explain Institutional Writing & its role in Scots Law

Academic writers that codified the law are called Institutional Writers. The writings are a formal source of law in Scotland since 18th Century. The writers played an important role in codifying Scots Law into published books, making the law for the first time accessible to the wider public & setting out principles on which Scots law is based.

These writings can be used in the absence of precedent, case law or statute law for the courts to use. They are an authority which can be used in court. Lawyers in Scotland today still look at what the institutional writers said about the law and apply these principles to modern day situations.

Perhaps the most influential institutional writer was James Dalrymple (Stair). He was a lawyer educated at University of Glasgow. 'Stair's Institutions of the Law' was first published in 1681. This was the foundation of modern Scots Law.

#### 4. Explain custom

Custom is a source of Scots Law where certain practices have occurred over a long period of time can be regarded as law. Customs must be fair, reasonable and not be inconsistent with the law or any other precedents.

In 16th & 17th centuries a high percentage of law was based on custom. Udal law is an example. Udal Law is found to still exist in Shetland & Orkney Isles. Udal law is the traditional rights afforded to people in Orkney and Shetland under the ancient Norse system. Scottish courts acknowledge supremacy of udal law in property cases up to the present day. Under udal



law, you can own shorelines where the rest of the UK shorelines are owned by the Crown.