



An Introduction to Law

Session One: Law is Everywhere

Reading: An Introduction to the English Legal System

History of the Development of the Common Law

The English legal system is a common law legal system. This piece is a brief introduction to the history of the development of this system. The 'common law' refers to the way in which English law, since the thirteenth century, has been developed in a unified or common way throughout the country and applies to all. This process of standardising English law started after the Norman Conquest when in 1066 William the Conqueror became King. Before this time, different rules and customs applied in the different parts of the country. The King's representatives travelled throughout the country and ruled on disputes. These early judges brought back to Westminster their decisions, which were considered and rationalised over a period of about 200 years, to form a body of 'common law'.¹

Over time the common law developed further by courts using the legal rules developed in cases brought before them to similar cases. The development of the common law relied heavily (and still does) on the principle known as *stare decisis*. This is a Latin phrase which translates as 'let the decision stand'. Sometimes lawyers will refer to this as the doctrine of precedent. It is a straightforward concept and means that once a legal rule has been established in a case, then that rule must be followed by courts hearing similar cases. This ensures consistency and fairness (very important in a legal system) by requiring that similar cases are treated in the same way. Over time, the common law continued to evolve and develop as new issues and disputes were brought before the courts to resolve. As you can appreciate, the role of judges in creating legal principles to create the common law has been very significant. It is for this reason that sometimes you may see the common law referred to as 'judge made' law.

You may be wondering how we find out about the judgements made by the courts so that we can ascertain what the law is? The important decisions of the courts are published in law reports. Lawyers use the reports to research cases with similar issues to those faced by their client, the legal principle involved and then to use and apply that principle to advise their client. You will have seen in the video the St Mary's law library which contains thousands of reported cases.

If you study law you will study two important areas of law: contract and tort law. Contract concerns the law relating to legally enforceable agreements. Tort law is slightly more complicated to explain. A tort is a civil wrong (as contrasted to a criminal wrong). It is defined as an act or omission that gives rise to injury or harm to another for which courts impose liability. You may be aware of the tort of negligence which is the duty to take reasonable care in certain situations such as driving a car. A very large number of the legal rules which make up contract and tort law are found in cases decided by the courts. So

¹ Catherine Elliott and Frances Quinn, *English Legal System* (17th Edn 2016/17, Pearson) p.10.

when you are learning these areas much of your time will be spent reading cases to learn the legal principles that they contain. For example, when learning tort law all law students are asked to read the very famous case of *Donoghue v Stevenson*². This case created the law of negligence. The court decided that Mrs Donoghue, who had suffered a very nasty case of food poisoning after drinking a bottle of ginger beer in which there was a decomposing snail, was owed a duty of care by Stevenson, the manufacturer of the drink. The duty of care existed because it was reasonably foreseeable that failure to ensure the product's safety would cause consumers harm. This allowed her to receive damages (compensation) for the injury (the food poisoning) she had experienced. In legal terms it was very significant because Mrs Donoghue did not have a contractual relationship with the seller of the drink or the manufacturer, Stevenson, so could not have used contract law to claim for her injuries. If you are interested to read more about this case, there is a link you can use in the footnotes below.

Similarly, many of the elements of the most serious crimes such as murder are set out in the case law and are not contained in statutes.

Today the English legal system is a highly developed and complex system incorporating very well established principles of law. It would be unlikely for the English courts to create a new legal concept as was created in *Donoghue v Stevenson*. The higher courts (the Supreme Court and the Court of Appeal) generally refine existing principles of law rather than create new ones. The common law is not the only type of law found in a common law legal system. As you will read below, a common law legal system also includes legislation (statutes passed by Parliament).

The common law is applied within former British colonies across continents or by countries which have been influenced by the Anglo-Saxon tradition. So for example, Australia, Canada, the United States and certain African countries are all considered to be common law legal systems.

Common Law and Civil Law Legal Systems

There is another type of legal system which it is now important to consider. We classify legal systems into common law and civil law systems. Countries which have civil law systems include all the European Union states (except the UK and Ireland), much of Central and South and Middle America, Russia and Turkey. The main difference between common law and civil law systems is the sources of law. In a common law system case law is considered a very important source of law, along with legislation. However, in civil law systems comprehensive codes have been drafted in an attempt to provide law for all possible situations. It is also important to understand that in civil law systems there is not the doctrine of binding precedent which is key to the operation of the common law system.

It is also noteworthy to mention another type of legal system which is common in the Middle East. Sharia law is used in Egypt, Sudan, Afghanistan, Iran, Iraq, Pakistan, Qatar, Saudi Arabia, Yemen and the United Arab Emirates. Sharia law is a body of law made up from the Qur'an, the sayings of the Prophet and the rulings of Islamic scholars.

Sources of Law in the English Legal System

As you will have heard in the video, there are three main sources of law in the English legal system. These are EU law, legislation and the case law.

EU Law

You will know that on 23 June 2016 the United Kingdom voted in a referendum to leave the European Union. This is often referred to as Brexit. At the time of writing, the UK government has not yet begun the process of negotiating the terms of Brexit. At present EU law is an important source of law in the English legal system. The provisions of two types of

² <http://www.bailii.org/uk/cases/UKHL/1932/100.html>

EU law: treaty articles and regulations apply directly in the English legal system and do not need to be turned into English legislation to take effect. There is a third type of EU law, directives. These are different from the other two types of EU law. They 'direct' the United Kingdom to pass legislation to achieve the aims set out in the directive. Much English law is based on EU directives. For example, the provisions of the Working Time Directive, various Health and Safety Directives and Environmental directives have been turned into English law. When the terms of Brexit are negotiated, EU law will no longer be a part of the English legal system as it is now. This means that treaty articles and regulations will no longer be law in the English legal system. However, the provisions of directives which have been turned into English legislation will remain unless the government decides that they should be repealed. Repeal is where legislation is revoked or annulled. This will be a very interesting and challenging legal issue to be addressed and would be good to follow if you are interested in current legal topics.

Legislation

Another very important source of law is law made by Parliament. These laws are referred to as legislation, statutes or Acts of Parliament. Under the English constitution, Parliament, as an elected body, is the supreme law making body in the United Kingdom. This is often expressed as Parliamentary sovereignty meaning that laws made by Parliament take precedence over other types of law.³ However, it is accepted now that in some areas Parliament's sovereignty has been impacted by the UK's membership of the European Union. To achieve the aims of the European Union, in particular the creation and operation of the internal market, each member state agreed to allow the European Union to create law in this area to ensure consistent and efficient operation of this market. This EU law has to take precedence over English law otherwise each member state could defeat the operation of the market by passing laws which impeded its operation. You may be aware that in the EU referendum the issue of sovereignty was much debated. When the United Kingdom leaves the European Union, full Parliamentary sovereignty will be restored.

Case Law

Case law (or judge made law) is the final source of law in the English legal system. As explained above, in a common law legal system the decisions of the courts (known as case law) contain important legal rules.

In conclusion, this piece has introduced you to the concept of a common law legal system and the three current sources of law in the English legal system. If you are interested in reading more about any of the topics covered in this piece, please see the bibliography below.

Bibliography

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³ See note 1 at p.3.