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Acknowledgements

This book is dedicated to STG.

We are, as ever, grateful to all who have offered feedback on the last edition of *Law Express: English Legal System*, particularly the anonymous academic reviewers who provided some suggestions for improvement. We have been pleased to incorporate these as best we could.

We'd really like to hear what you think of the book, which you can do by visiting **www.finchandfafinski.com**, Twitter at **@FinchFafinski** or via email to **hello@finchandfafinski.com.**

Emily Finch and Stefan Fafinski

January 2016

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Our thanks go to all reviewers who contributed to the development of this text, including students who participated in research and focus groups which helped to shape the series format.

Introduction

A thorough understanding of the English legal system is vital for law students. It sets the foundations upon which all other legal study is based. It also introduces students to the 'tools of the trade' – specifically, how to read, understand and apply case law and statute law; how the court system works and who fulfils the various roles associated with the administration of justice. Equipped with this knowledge, students will be well placed to cover all other areas of the law.

Since study of the English legal system underpins other legal study, it is usually taught at the start of the overall course. This presents some unique problems – the subject is typically encountered by students experiencing their first taste of undergraduate level law, who are only just beginning to learn how to think, write and analyse like lawyers. Therefore, you will need greater help in beginning to formulate your essay-writing and problem-solving technique. This book will aim to give you some guidance in those areas in specific relation to the English legal system. If you have already studied law at A-level, don't fall into the trap that so many students do of assuming that you've 'done all this before' and neglecting your studies on English legal systems in favour of some newer or seemingly more exciting topics: the level required of an undergraduate is higher and you will be expected to go into greater depth than in previous study.

This revision guide is just what it says – a guide to *revision*. It is not a substitute for attendance at lectures and seminars; it does not provide an excuse not to read and follow your own course materials and textbooks; it should not cut down on the amount of reading and thinking that you have to do. The English legal system is a vast and complex subject – you should be able to realise that from looking at the size of your recommended textbooks. It follows that a revision guide such as this could never be expected to cover the subject in the depth required to succeed in exams, and it does not set out to do so. Instead, it aims to provide a concise overview of the key areas for revision – reminding you of the headline points to enable you to focus your revision and identify the key points you need to know.

While there are outline answers to the questions within the book and on the website, we have purposely avoided providing 'model' answers. It is important that you develop your own approach to answering questions based on knowledge and understanding rather than on memory. Also, it is very unlikely that you will be asked *exactly* the same question in an exam; you must always try to answer the precise question set, not something closely related but different in focus.

A further word of warning – the English legal system is a very broad topic. Unlike some other areas of the law, the material covered from institution to institution can vary greatly. This book attempts to cover the most common areas. However, you may find that there are topics in this book that are not covered on your particular course; that there are topics on your course that are not covered in this book; or that there are topics in this book that are covered in much greater depth on your course. Therefore, you *must* make sure that you are fully aware of the content of your own course before beginning to revise, and to use this book with care for what it is – a signpost to the major areas you will need to revise in order to do well.

Finally, note that the 'English legal system' is a convenient label – remember that it currently extends to both England *and Wales*. Scotland, the Isle of Man and the Channel Islands have separate systems.

REVISION NOTE

Things to bear in mind when revising the English legal system:

- If you have encountered the subject before, don't assume you know it all.
- Do rely on this book to help guide your revision.
- Don't simply rely on this book to tell you everything you need to know.
- Make sure you have your syllabus to hand.
- Make use of your lecture notes, textbooks and other materials as you revise – this will ensure you understand the subject in depth – which is the only way to do well.
- Take every opportunity to practise your essay-writing and problem-solving technique: get as much feedback as you can.
- Many topics in this book are linked – the English legal system as a subject provides almost unlimited scope for cunning examiners to cover more than one topic in a single question – if you choose to revise selectively, you could easily find yourself caught out.

Before you begin, you can use the study plan available on the companion website to assess how well you know the material in this book and identify the areas where you may want to focus your revision.

Guided tour

How to use features in the book  and on the companion website 

Understand quickly

Topic maps – Visual guides highlight key subject areas and facilitate easy navigation through the chapter. Download them from the companion website to pin on your wall or add to your revision notes.

Key definitions – Make sure you understand essential legal terms.

Key cases and key statutes – Identify and review the important elements of the essential cases and statutes you will need to know for your exams.

Read to impress – These carefully selected sources will extend your knowledge, deepen your understanding, and earn better marks in coursework and exams.

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Test your knowledge – How well do you know each topic? Test yourself with quizzes tailored specifically to each chapter.

Podcasts – Listen as your own personal Law Express tutor guides you through a step-by-step explanation of how to approach a typical but challenging question.

Revise effectively

Revision checklists – Identify essential points you should know for your exams. The chapters will help you revise each point to ensure you are fully prepared. Print the checklists from the companion website to track your progress.

Revision notes – These boxes highlight related points and areas where your course might adopt a particular approach that you should check with your course tutor.

Study plan – Assess how well you know a subject prior to your revision and determine which areas need the most attention. Take the full assessment or focus on targeted study units.

Flashcards – Test and improve recall of important legal terms, key cases and statutes. Available in both electronic and printable formats.

Take exams with confidence

Sample questions with answer guidelines – Practice makes perfect! Consider how you would answer the question at the start of each chapter then refer to answer guidance at the end of the chapter. Try out additional sample questions online.

Assessment advice – Use this feature to identify how a subject may be examined and how to apply your knowledge effectively.

Make your answer stand out – Impress your examiners with these sources of further thinking and debate.

Exam tips – Feeling the pressure? These boxes indicate how you can improve your exam performance when it really counts.

Don't be tempted to . . . – Spot common pitfalls and avoid losing marks.

You be the marker – Evaluate sample exam answers and understand how and why an examiner awards marks.

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Table of legislation

Statutory instruments

Procedural rules

European legislation

International conventions

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1

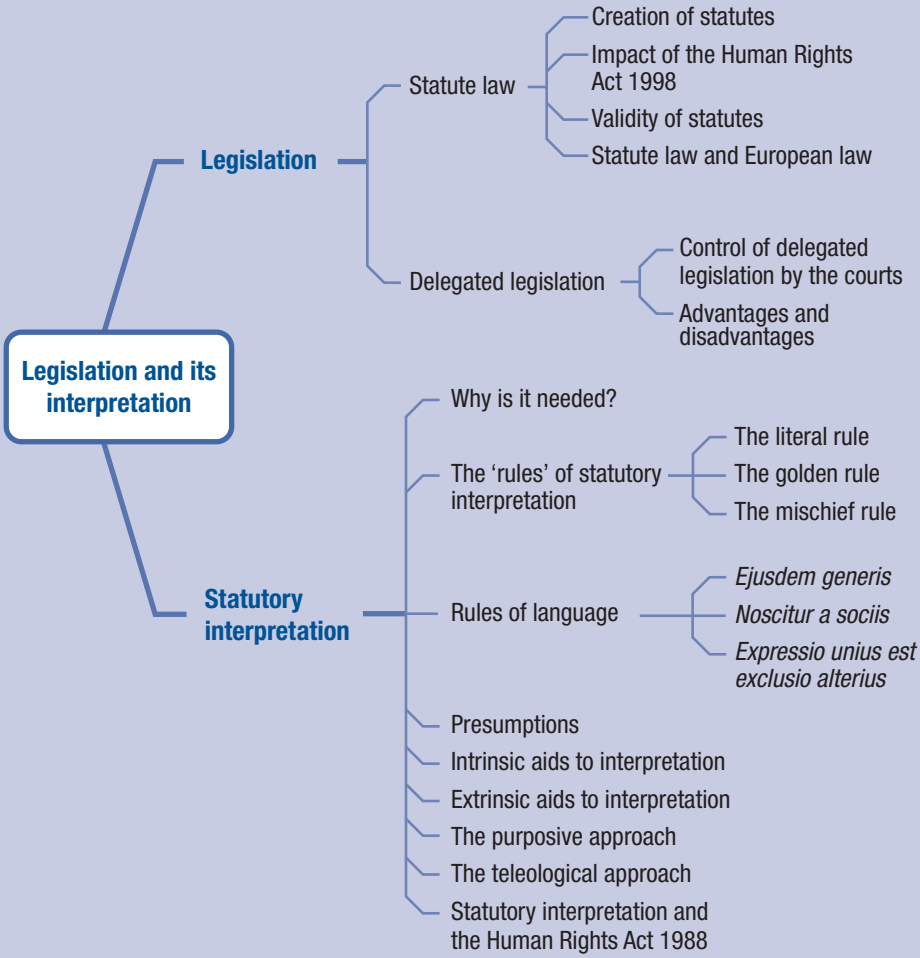
Legislation and its interpretation

Revision checklist

Essential points you should know:

- ☐ The process by which legislation comes into being
- ☐ The distinction between statutes and delegated legislation
- ☐ Why interpretation of legislation is necessary
- ☐ Each of the 'rules' of statutory interpretation

Topic map



A printable version of this topic map is available from **www.pearsoned.co.uk/lawexpress**

Introduction

Legislation is the primary source of English law but can be open to interpretation

This chapter deals with legislation and its interpretation. An understanding of how legislation is made and how it is interpreted by the courts is an essential legal skill. Remember that virtually every legal topic will be governed in part by legislation, so the ability to analyse legislation critically will be relevant to every legal topic you study and revise, not just in isolation as a topic in the study of the English legal system. Statutory interpretation is also a popular topic for examiners as, unlike some other topics, it lends itself equally well to both problem and essay-type questions. Therefore, as you work through this chapter, think how you might use the material in both an essay and a problem situation.

ASSESSMENT ADVICE

Legislation and its interpretation is a topic that lends itself to both essay and problem questions.

Essay questions

Essay questions in this area will tend to require a good level of description of either the legislative process or the rules of interpretation. Remember, where you can, to illustrate your description with appropriate examples from case law. As with all essay questions, your answer will stand out if you can use the description to support an in-depth analysis of the question; a merely descriptive answer (however thorough) is unlikely to achieve high marks.

Problem questions

Problem questions on statutory interpretation will usually involve analysis of one or more provisions of a piece of legislation. This could be a real statute or a piece of fictitious legislation made up to fit the particular points that the examiner is trying to bring out. It is important to be methodical and meticulous; remember to consider each of the rules, approaches and aids to interpretation in turn, even if their use seems inappropriate. Remember that the marker can only evaluate what you write down. Therefore, if you think that, for example, the literal rule would not help since it would produce a stupid outcome then say so, rather than just discounting it in your mind and moving on.

Sample question

Could you answer this question? Below is a typical essay question that could arise on this topic. Guidelines on answering the question are included at the end of the chapter, while a sample problem question and guidance on tackling it can be found on the companion website.

ESSAY QUESTION

'Three so-called rules of statutory interpretation have been identified . . . each originating at different stages of legal history. To call them "rules" is misleading: it is better to think of them as general approaches' (Smith, Bailey and Gunn (2002) *The Modern English Legal System*, 4th edn, London: Sweet & Maxwell, p. 409).

Discuss the above quotation in relation to the role of the judiciary.

Legislation

KEY DEFINITION: Legislation

Legislation is a broad term which covers not only *statutes* (i.e. Acts of Parliament) but other types of legislation such as *delegated* legislation, covered later in this chapter (and sometimes called **subordinate legislation**) and European legislation (see Chapter 2).

REVISION NOTE

When revising legislation, it may be useful (if you have covered constitutional law in another course) to refresh your memory regarding the concept of parliamentary sovereignty. This is covered very briefly in this chapter when looking at the validity of statutes, but a more in-depth reminder now might enhance your understanding of the legislative process.

Statute law

Parliament passes **legislation** in the form of statutes or Acts of Parliament. Such Acts will often begin as either a Public Bill, a Private Bill or a Private Member's Bill. Bills can be introduced in the House of Commons or, less frequently, in the House of Lords.

Public Bills	Private Bills	Private Member's Bills
Introduced by the government as part of its programme of legislation	Introduced for the benefit of particular individuals, groups of people, institutions or a particular locality	Non-government Bills introduced by MPs of either House
Affect the public as a whole	Often fail to become law because of insufficient time in a particular parliamentary session	Often deal with relatively narrow issues
	Very rare nowadays	

Statute law may also be passed to *consolidate* or *codify* the law. In addition, hybrid bills contain both public and private elements and money bills are purely financial.

KEY DEFINITION: Consolidating statute

Consolidation does *not* change the law. A consolidating statute is one in which a legal topic, previously contained in several different statutes, is re-enacted (for example, the Limitation Act 1980 and the Insolvency Act 1986).

> *'All consolidation Acts are designed to bring together in a more convenient, lucid and economical form a number of enactments related in subject-matter [which were] previously scattered over the statute book'* – Lord Simon in *Farrell* v *Alexander* [1977] AC 59, HL.

Codification may change the law. A **codifying statute** is one in which a legal topic, previously contained in the common law, custom and previous statute, is restated (for example, the Theft Act 1968).

Creation of statutes

Government proposals on topics of current concern are set out in *White Papers*. These signify the government's intention to enact new legislation, and may involve setting up a consultation process to consider the finer details. *Green Papers* are issued less frequently – they are introductory higher-level government reports on a particular area without any guarantee of legislative action or consideration of the legislative detail.

Stage	Comment
Commons: First reading	No resolution required. Title of Bill is read. Bill is printed and published. Minister must also state whether the Bill is compatible with Convention rights or, if not, that nevertheless the Government wishes to proceed.
Commons: Second reading	Main debate
Commons: Committee stage	Provisions examined in detail and amendments proposed
Commons: Report stage	Further debate; House votes on amendments
Commons: Third reading	Final debate and vote on Bill as amended
Proceedings in the House of Lords	Stages are as for proceedings in the House of Commons
Amendments by the House of Lords	If any amendments have been made in the House of Lords, the Bill is passed back to the House of Commons after its third reading for further debate. Therefore, a Bill can go back and forth between the chambers until proceedings are terminated or the parliamentary session runs out of time. However, in practice, the Lords often accept the second offering from the House of Commons.
The Parliament Acts 1911 and 1949	These Acts provide a means by which the House of Commons can bypass the House of Lords to present a Bill for Royal Assent without it having been passed by the House of Lords (provided that the House of Lords has rejected the Bill twice). It is used infrequently (however, the Hunting Act 2004 provides a recent example of its use). See also *R (on the application of Jackson)* v *Attorney-General* [2005] EWCA Civ 126.
Royal Assent	The Royal Assent is required before any Bill can become law. The monarch is not required by the constitution to assent to any Act passed by Parliament. However, it is conventionally given (it has not been refused since Queen Anne refused to assent to the Scottish Militia Bill of 1707). Indeed, the Royal Assent Act 1967 has marginalised the personal involvement of the monarch to the extent that all that is now required for Royal Assent is a formal reading of the short title of the Act in both Houses of Parliament.

The proposed legislation is passed to the parliamentary draftsman (officially the 'Parliamentary Counsel to the Treasury') who drafts the Bill. The process thereafter can be depicted as shown in Figure 1.1.

Without express provision to the contrary, an Act of Parliament is deemed to come into force on the day (and for the whole of the day – *Tomlinson* v *Bullock* (1879) 4 QBD 230, DC) that it receives Royal Assent. Otherwise, it will come into force on a date specified within the Act itself, or an 'appointed day' provision which allows the Act to be brought into force via a statutory instrument (see below). Parts of the Act may be brought into force on different dates (e.g. the provisions of the Anti-Social Behaviour Act 2003 relating to high hedges did not come into force until June 2005).

Impact of the Human Rights Act 1998

Section 19 of the Human Rights Act 1998 provides that the Minister in charge of each new Bill in either House of Parliament must, before the second reading of the Bill, either:

- make a statement of compatibility – that is, state that the provisions of the Bill are compatible with the European Convention on Human Rights; or
- make a statement acknowledging that it is not possible to make a statement of compatibility, but, despite this, the Government still wishes the House to proceed with the Bill. This is typically done on the first reading.

Moreover, the courts have *no* power to set aside any Act of Parliament that is incompatible with Convention rights; this is the prerogative of Parliament (which has a fast-track procedure which it may use in such cases if it wishes to do so).

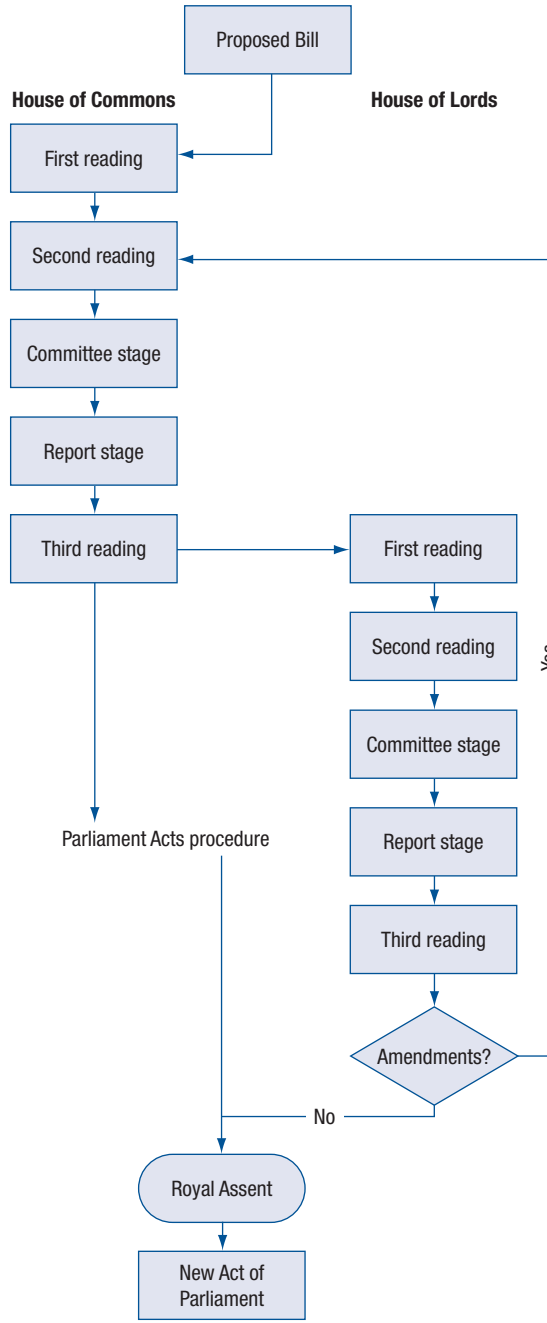
Validity of statutes

The doctrine of parliamentary sovereignty means that the validity of any statute passed by Parliament cannot be challenged. It is most commonly associated with Dicey (1982), who defines sovereignty as consisting of:

- the right to make any law whatsoever (unlimited legislative competence), and
- the principle that there is no competing legislative body to Parliament.

In *British Railways Board* v *Pickin* [1974] AC 765, HL, Lord Morris confirmed that the courts could not argue whether a statute 'should be on the statute book at all'. However, T.R.S. Allan (1985) has proposed that the courts should be able to challenge Acts of Parliament in exceptional circumstances (for instance, if the Act challenged the basis of democracy or was made by an unrepresentative Parliament).

Figure 1.1


Proposed Bill
House of Commons
House of Lords
First reading
Second reading
Committee stage
Report stage
Third reading
First reading
Second reading
Committee stage
Report stage
Third reading
Amendments?
Yes
No
Parliament Acts procedure
Royal Assent
New Act of Parliament

✓ Make your answer stand out

Although parliamentary sovereignty is a matter of constitutional law, and therefore outside the scope of most English Legal Systems courses, it is always useful to consider how it relates to the role of the courts in interpreting legislation. If Parliament is supreme, then to what extent should the courts intervene in interpreting Parliament's words? Should the courts go as far as Allan proposes?

Statute law and European Union law

REVISION NOTE

The interrelationship between statute law and European Union law is covered in Chapter 2 on European Union law and human rights law.

Delegated legislation

KEY DEFINITION: Delegated legislation

Delegated legislation is sometimes referred to as **subordinate legislation**. Check to see which term is used within your course.

Parliament has delegated the power to legislate to various persons and bodies. Hence, **delegated legislation** is a law made by such persons or bodies *with the authority of Parliament*. This authority is granted by an enabling Act (sometimes called a parent Act), which confirms the extent of the authority and any procedural stipulations which are to be followed. The different persons and bodies are as follows:

Person or body	Delegated legislative power
Ministers of the Crown	Statutory instruments (regulations, rules and orders). The procedure for introducing a statutory instrument is usually laid down partly in the enabling (parent) Act and partly in the Statutory Instruments Act 1946. The use of statutory instruments is widespread. In 2003, Parliament passed 45 Acts; almost 3,500 statutory instruments were made in the same period.
Local authorities	May make by-laws under the Local Government Act 1972 (but by-laws cannot come into force until affirmed by the appropriate minister).

Person or body	Delegated legislative power
Semi-public organisations	May also make by-laws under statutory powers (e.g. railway/transport authorities, the National Trust).
Court rule committees	Make procedural rules for the courts – for example, the Civil Procedure Rule Committee, the Criminal Procedure Rule Committee and the Family Procedure Rule Committee.
The Privy Council	May make Orders in Council, such as emergency regulations which have the force of law, or implement resolutions of the United Nations Security Council.

Control of delegated legislation by the courts

Unlike Acts of Parliament, delegated legislation may be challenged in the courts via the doctrine of ***ultra vires***.

KEY DEFINITION: ***Ultra vires***

Ultra vires is a Latin term meaning *beyond (his) powers*.

REVISION NOTE

If you have studied administrative law, you may already be familiar with the concept of *ultra vires* as a potential ground for challenge for **judicial review**; that is, the procedure by which, on the application of an individual, the courts may determine whether a public body has acted lawfully.

If a body acts beyond the powers that are delegated to it, then the delegated legislation can be declared void by the court. This may be procedural (where the delegated legislation was created without following the proper procedure); substantive (where the provisions of the delegated legislation were outside the enabling Act); or where the provisions are irrational (such that no reasonable rule-maker could have arrived at them). Delegated legislation is also *ultra vires* if it conflicts with an earlier Act of Parliament or European legislation (s. 2(4) European Communities Act 1972 – see Chapter 2). You may have covered *Commissioners of Customs & Excise* v *Cure & Deeley Ltd* [1962] 1 QB 340, DC and *R* v *Secretary of State for Social Security, ex parte Joint Council for the Welfare of Immigrants* [1997] 1 WLR 275, CA