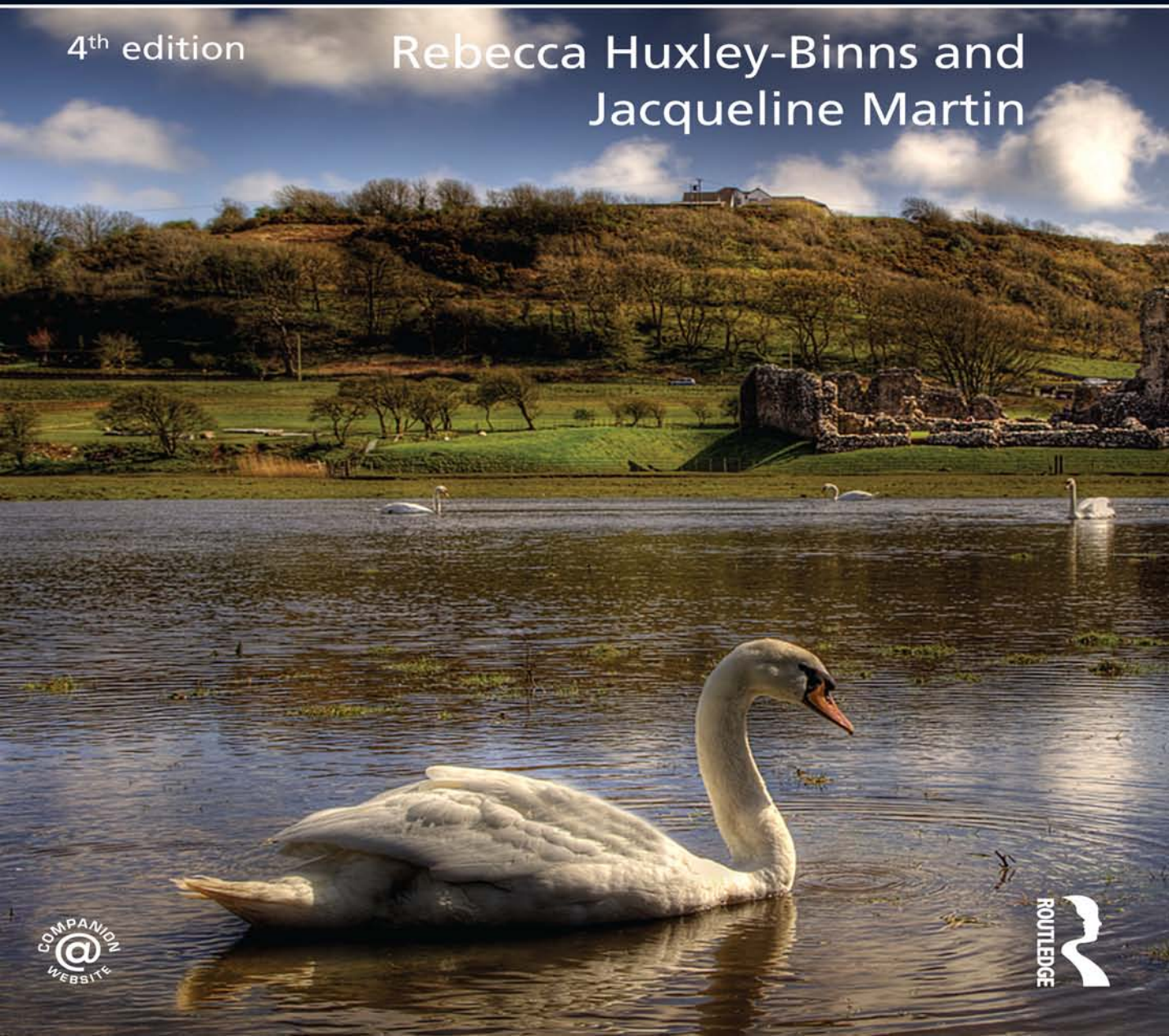


# UNLOCKING THE ENGLISH LEGAL SYSTEM

4<sup>th</sup> edition

Rebecca Huxley-Binns and  
Jacqueline Martin



UNLOCKING THE LAW

# UNLOCKING THE ENGLISH LEGAL SYSTEM

4<sup>th</sup> edition

Rebecca Huxley-Binns  
and  
Jacqueline Martin



 **Routledge**  
Taylor & Francis Group  
LONDON AND NEW YORK

Fourth edition published 2014  
by Routledge  
2 Park Square, Milton Park, Abingdon, Oxon OX14 4RN

and by Routledge  
711 Third Avenue, New York, NY 10017

*Routledge is an imprint of the Taylor & Francis Group, an informa business*

© 2014 Rebecca Huxley-Binns and Jacqueline Martin

The right of Rebecca Huxley-Binns and Jacqueline Martin to be identified as authors of this work has been asserted by them in accordance with sections 77 and 78 of the Copyright, Designs and Patents Act 1988.

All rights reserved. No part of this book may be reprinted or reproduced or utilised in any form or by any electronic, mechanical, or other means, now known or hereafter invented, including photocopying and recording, or in any information storage or retrieval system, without permission in writing from the publishers.

*Trademark notice:* Product or corporate names may be trademarks or registered trademarks, and are used only for identification and explanation without intent to infringe.

First edition published by Hodder Education 2005  
Third edition published by Hodder Education 2010

*British Library Cataloguing in Publication Data*

A catalogue record for this book is available from the British Library

*Library of Congress Cataloging in Publication Data*

Huxley-Binns, Rebecca, author.

Unlocking the English legal system / Rebecca Huxley-Binns & Jacqueline Martin. – [Fourth edition].

pages cm

1. Law—England. I. Martin, Jacqueline, 1945- author. II. Title.

KD661.H89 2014

349.42—dc23

2013042688

ISBN: 978-1-444-17423-6 (pbk)

ISBN: 978-0-203-78278-1 (ebk)

Typeset in Palatino

by Wearset Ltd, Boldon, Tyne and Wear

# Contents

<i>Acknowledgements</i>	<i>xii</i>
<i>Guide to the book</i>	<i>xiii</i>
<i>Preface</i>	<i>xv</i>
<i>List of figures</i>	<i>xvi</i>
<i>Table of cases</i>	<i>xviii</i>
<i>Table of statutes and other instruments</i>	<i>xxiii</i>
<b>1 THE SOURCES OF LAW</b>	<b>1</b>
1.1 The English Legal System	1
1.2 The sources of law	2
1.3 The courts	3
1.3.1 The Supreme Court of the UK	3
1.4 The common law	5
1.4.1 Problems of the common law	5
1.4.2 Development of equity	6
1.5 Parliament	9
1.5.1 Legislation	9
1.5.2 The enactment process	9
1.6 Delegated legislation	12
1.6.1 Statutory instruments	12
1.6.2 By-laws	14
1.6.3 Orders of the Legislative Committee of the Privy Council	14
1.6.4 Parliamentary control of secondary legislation	15
1.6.5 Judicial control of secondary legislation	16
1.7 The European Union	18
1.7.1 A brief history of the European Union	18
1.7.2 UK membership of the EU	19
1.7.3 The role of the Court of Justice of the European Union	20
1.7.4 Effect on parliamentary sovereignty	21
1.8 European Convention on Human Rights	22
1.8.1 The Human Rights Act 1998	23
1.9 Law reform	26
1.9.1 Judges	26
1.9.2 Parliament	27
1.9.3 The law reform agencies	28
1.9.4 Royal Commissions	29
1.9.5 Academics	29
1.9.6 Pressure groups	29
1.9.7 Media pressure	30
1.9.8 Europe	30
Sample essay question	30
Further reading	32

<b>2</b>	<b>THE DOCTRINE OF JUDICIAL PRECEDENT</b>	<b>35</b>
2.1	What is the doctrine of precedent?	36
2.2	How does the doctrine of precedent operate?	37
2.2.1	The court hierarchy	37
2.2.2	<i>Ratio decidendi</i> and <i>obiter dicta</i>	38
2.2.3	Persuasive precedent	41
2.3	The doctrine as applied in individual courts	43
2.3.1	The Supreme Court	43
2.3.2	The Court of Appeal (Civil Division)	47
2.3.3	The Court of Appeal (Criminal Division)	51
2.3.4	The Divisional Courts of the High Court	52
2.3.5	The High Court	53
2.3.6	The Crown Court	53
2.3.7	County Courts and Magistrates' Courts	53
2.3.8	Other courts	53
2.4	The Human Rights Act 1998	54
2.5	The declaratory theory	57
2.6	Avoiding precedents	60
2.6.1	Distinguishing	60
2.6.2	Reversing	62
2.6.3	Overruling	62
2.7	Pros and cons of precedent	63
	Sample essay question	64
	Further reading	66
<b>3</b>	<b>STATUTORY INTERPRETATION</b>	<b>67</b>
3.1	Introduction	67
3.1.1	The need for statutory interpretation	67
3.1.2	Applying the law	70
3.1.3	Judicial law-making	71
3.1.4	Interpretation or construction?	72
3.1.5	Parliamentary definitions	73
3.2	The three 'rules'	73
3.2.1	The literal rule	74
3.2.2	The golden rule	76
3.2.3	The mischief rule	78
3.3	The purposive approach	81
3.3.1	European influence	85
3.4	Literal approach versus purposive approach	87
3.5	Rules of language	94
3.5.1	The <i>eiusdem generis</i> rule	94
3.5.2	<i>Expressio unius est exclusio alterius</i> (the express mention of one thing excludes others)	95
3.5.3	<i>Noscitur a sociis</i> (a word is known by the company it keeps)	95



3.6	Presumptions	96
3.7	Intrinsic and extrinsic aids	98
3.7.1	Intrinsic aids	98
3.7.2	Extrinsic aids	98
3.7.3	The use of <i>Hansard</i>	99
3.7.4	Law reform reports	103
3.7.5	International conventions	104
3.8	The effect of the Human Rights Act 1998	106
	Sample essay question	108
	Further reading	110
<b>4</b>	<b>CIVIL COURTS</b>	<b>111</b>
4.1	Introduction to the courts system	111
4.1.1	Civil and criminal cases	111
4.1.2	Superior courts and inferior courts	114
4.1.3	Appellate courts and trial courts	115
4.1.4	Courts and tribunals	115
4.2	Civil courts of trial	116
4.2.1	Queen's Bench Division	116
4.2.2	Chancery Division	117
4.2.3	Family Division	117
4.2.4	County Court	117
4.2.5	Small claims	118
4.2.6	The track system	118
4.2.7	Transfer of cases between the County Court and the High Court	119
4.3	Problems in the civil justice system	121
4.3.1	The Civil Justice Review	121
4.3.2	The Heilbron–Hodge Committee	122
4.4	The Woolf Report	123
4.4.1	The track system	124
4.4.2	Civil procedure	124
4.4.3	Case management	125
4.4.4	Pre-action protocols	125
4.4.5	Encouraging ADR	126
4.4.6	Strict timetables	128
4.4.7	Judgment in default and summary judgment	129
4.4.8	Part 36 offers to settle	129
4.4.9	Are the Woolf reforms a success?	129
4.5	Enforcement of judgment	135
4.6	Tribunals	137
4.6.1	Administrative tribunals	137
4.6.2	Tribunals, Courts and Enforcement Act 2007	138
4.6.3	Composition and procedure	140
4.6.4	Advantages and disadvantages of tribunals	140
4.6.5	Domestic tribunals	142

4.7	ADR	142
4.7.1	Negotiation	143
4.7.2	Mediation	143
4.7.3	Conciliation	144
4.7.4	Dispute resolution services	144
4.7.5	Arbitration	145
4.7.6	Encouraging the use of ADR	148
	Sample essay question	151
	Further reading	153
<b>5</b>	<b>CRIMINAL COURTS AND PROCEDURE</b>	<b>155</b>
5.1	Introduction	155
5.2	The Criminal Procedure Rules	157
5.3	The Crown Prosecution Service	157
5.3.1	Code for Crown Prosecutors	158
5.3.2	The Glidewell Report	160
5.3.3	Victims' Right to Review	160
5.4	Advance sentence indication	161
5.4.1	Advance indication of sentence <i>not</i> plea-bargaining	161
5.4.2	The <i>Goodyear</i> rules	162
5.5	Courts exercising criminal jurisdiction	162
5.6	Appellate courts	162
5.6.1	The Court of Justice of the European Union	163
5.6.2	The Judicial Committee of the Privy Council	163
5.6.3	The Supreme Court	164
5.6.4	The Court of Appeal (Criminal Division)	164
5.6.5	The High Court of Justice	164
5.6.6	The Crown Court – appellate jurisdiction	164
5.7	Criminal courts of first instance	164
5.7.1	Adversarial system	164
5.7.2	The Crown Court	165
5.7.3	The Magistrates' Court	165
5.8	Classification of criminal offences	166
5.8.1	Indictable only offences	166
5.8.2	Summary offences	167
5.8.3	Offences triable either way	167
5.8.4	The choice: Magistrates' Court or Crown Court?	170
5.9	The 'right' to trial by jury	170
5.9.1	The Mode of Trial Bills	170
5.9.2	The Auld Report	172
5.9.3	The Criminal Justice Act 2003	172
5.9.4	Do we have the 'right' to elect jury trial?	173
	Sample essay question	176
	Further reading	177

<b>6</b>	<b>APPEALS</b>	<b>179</b>
6.1	Appeals in civil proceedings	180
6.1.1	The Access to Justice Act 1999	180
6.1.2	The Court of Appeal (Civil Division)	182
6.1.3	The Supreme Court of the UK	182
6.1.4	Other appeals in civil cases	183
6.2	Appeals in criminal proceedings	183
6.3	Prosecution appeals	183
6.3.1	Section 36 Criminal Justice Act 1972	183
6.3.2	Section 36 Criminal Justice Act 1988	184
6.3.3	Sections 54 and 55 Criminal Procedure and Investigations Act 1996	184
6.3.4	Appeals against a judge's erroneous decision – Criminal Justice Act 2003	185
6.3.5	Abolition of the rule against double jeopardy – Criminal Justice Act 2003	185
6.4	Defence appeals	187
6.4.1	Appeal following summary trial	187
6.4.2	Appeal following trial on indictment	188
6.5	The Supreme Court	192
6.6	Other courts	192
6.7	The Criminal Cases Review Commission	192
	Sample essay question	197
	Further reading	198
<b>7</b>	<b>FUNDING</b>	<b>201</b>
7.1	Access to justice	201
7.2	Public funding	202
7.2.1	History	202
7.2.2	The Access to Justice Act 1999	203
7.3	The Legal Aid, Sentencing and Punishment of Offenders Act 2012	204
7.3.1	Service providers	204
7.3.2	Criteria for civil legal aid services	204
7.3.3	Availability of legal aid	204
7.4	Government funding in civil cases	205
7.4.1	Means testing	205
7.4.2	Problems with funding of civil cases	206
7.5	Private funding	208
7.5.1	Conditional fee agreements	208
7.5.2	How conditional fees work	209
7.5.3	Success fee	209
7.5.4	Insurance premiums	210
7.5.5	Are conditional fees working?	210
7.6	Advice in civil cases	211
7.6.1	Community Legal Advice Centres	211



7.6.2	Service providers	211
7.6.3	Other advice agencies	211
7.6.4	Citizens Advice Bureaux	212
7.6.5	Law centres	212
7.6.6	Schemes run by lawyers	212
7.6.7	Insurance	213
7.7	Legal aid in criminal cases	213
7.7.1	Merits test	214
7.7.2	Means test	214
7.7.3	Advice and assistance for individuals in custody	215
7.7.4	The Public Defender Service	215
	Sample essay question	216
	Further reading	218
<b>8</b>	<b>JURIES</b>	<b>219</b>
8.1	Introduction	219
8.1.1	The independence of the jury	219
8.1.2	Modern-day use of the jury	220
8.2	Jury qualifications	220
8.2.1	Basic qualifications	220
8.2.2	Disqualification from jury service	222
8.2.3	Excusal from jury service	222
8.2.4	Discretionary excusals	223
8.2.5	Make-up of jury panels	224
8.2.6	Police and prosecutors on jury service	225
8.3	Selection at court	228
8.3.1	Lack of capacity	229
8.3.2	Vetting	229
8.3.3	At court	230
8.3.4	Challenging	230
8.3.5	Aids for the jury	231
8.4	Juries in civil cases	231
8.4.1	Defamation cases	232
8.4.2	Damages in defamation cases	235
8.4.3	Juries in personal injury cases	236
8.5	Juries in Coroners' Courts	238
8.6	Juries in criminal cases	238
8.6.1	Verdicts	239
8.7	Secrecy of the jury room	240
8.7.1	Common law rule	241
8.7.2	Human rights and jury secrecy	243
8.7.3	Practice Direction	244
8.8	Research into juries	245
8.9	Advantages of trial by jury	247
8.9.1	Public confidence	247
8.9.2	Jury equity	248
8.9.3	Panel of 12	248

8.10	Disadvantages of trial by jury	248
8.10.1	Racial composition and bias	248
8.10.2	Media influence	251
8.10.3	Perverse verdicts	251
8.10.4	Fraud trials	252
8.10.5	High acquittal rates	254
8.10.6	Other disadvantages	255
8.11	Alternatives to trial by jury	256
	Sample essay question	257
	Further reading	259
<b>9</b>	<b>LAY MAGISTRATES</b>	<b>261</b>
9.1	Introduction	261
9.1.1	Lay magistrates	261
9.1.2	District Judges	262
9.2	History of the magistracy	262
9.3	Qualifications for lay magistrates	262
9.3.1	Age	263
9.3.2	Limitations	263
9.3.3	Six key personal qualities	263
9.3.4	Area	264
9.3.5	Commitment	264
9.3.6	Allowances	264
9.4	Selection and appointment of lay magistrates	264
9.4.1	Recruitment	264
9.4.2	Advisory committees	265
9.5	Training of lay magistrates	266
9.5.1	Training for new magistrates	267
9.6	Resignation and removal of lay justices	269
9.6.1	Retirement	269
9.6.2	Removal	269
9.7	Magistrates' duties	270
9.7.1	Criminal cases	270
9.7.2	Civil cases	271
9.7.3	Youth Court	271
9.7.4	Family Proceedings Court	272
9.7.5	Immunity from suit	273
9.8	The magistrates' clerk	273
9.9	Advantages of using lay magistrates	275
9.9.1	Cross-section of society	275
9.9.2	Local knowledge	276
9.9.3	Cost	277
9.9.4	Legal adviser	277
9.9.5	Few appeals	277

9.10	Disadvantages of lay magistrates	277
9.10.1	Middle-aged, middle-class	277
9.10.2	Prosecution bias	277
9.10.3	Inconsistency in sentencing	278
9.10.4	Reliance on the clerk	278
	Sample essay question	280
	Further reading	282
<b>10</b>	<b>THE LEGAL PROFESSIONS</b>	<b>283</b>
10.1	Paralegals and legal executives	284
10.1.1	Training routes to become a solicitor	286
10.2	Solicitors	287
10.2.1	Organisation	287
10.2.2	Education and training	288
10.2.3	Work	290
10.2.4	Complaints	294
10.3	Barristers	296
10.3.1	Organisation	297
10.3.2	Training	297
10.3.3	Work	299
10.3.4	Complaints	301
10.4	The legal profession – the future?	303
	Sample essay question	305
	Further reading	306
<b>11</b>	<b>THE JUDICIARY</b>	<b>309</b>
11.1	Introduction	309
11.1.1	The Lord Chancellor	310
11.1.2	The Constitutional Reform Act 2005	311
11.1.3	The Supreme Court	312
11.2	The judicial hierarchy	313
11.3	Training	313
11.4	A note about judicial appointments	314
11.5	The inferior judges	315
11.5.1	District Judge (Magistrates' Court)	315
11.5.2	District Judge (Civil Court)	315
11.5.3	Recorder	316
11.5.4	Circuit Judge	316
11.6	The senior judges	316
11.6.1	High Court Judge	316
11.6.2	Lord Justice of Appeal	317
11.6.3	Head of Division	318
11.6.4	Justice of the Supreme Court	318

11.7	The composition of the judiciary	319
11.8	Dismissal and judicial independence	322
	Sample essay question	325
	Further reading	326
<b>12</b>	<b>SENTENCING</b>	<b>327</b>
12.1	Introduction	327
12.1.1	Maximum sentences	327
12.1.2	Minimum sentences	328
12.1.3	Dangerous offenders	328
12.1.4	Young offenders	329
12.2	Purposes of sentencing	329
12.2.1	Punishment	330
12.2.2	Deterrence	332
12.2.3	Reform and rehabilitation	333
12.2.4	Protection of the public	333
12.2.5	Reparation	334
12.2.6	Denunciation	335
12.3	Custodial sentences	336
12.3.1	Life sentences	336
12.3.2	Fixed-term sentence	337
12.3.3	Suspended sentences	337
12.4	Community orders	338
12.4.1	Unpaid work requirement	339
12.4.2	Activity requirement	339
12.4.3	Curfew requirement	339
12.4.4	Exclusion order	340
12.4.5	Supervision requirement	340
12.5	Young offenders	340
12.5.1	Custodial sentences	340
12.5.2	Youth Rehabilitation Orders	341
12.6	Fines and discharges	341
12.7	Sentencing practice	342
12.7.1	Seriousness	342
12.7.2	Reduction for a guilty plea	344
12.7.3	Thresholds	344
12.7.4	Pre-sentence reports	345
12.8	Prison statistics	346
	Sample essay question	348
	Further reading	349
	<i>Appendix</i>	<b>351</b>
	<i>Index</i>	<b>355</b>

# Acknowledgements

The authors and publishers would like to thank the following for permission to reproduce copyright material: extracts on p. 174 from 'Jury trials in the dock once more' by Joshua Rozenberg, *Daily Telegraph*, 1 April 2004 © Telegraph Media Group; tables on pp. 288 and 291 © The Law Society © Crown copyright material is reproduced with permission of the Controller of HMSO and the Queen's Printer for Scotland.

Every effort has been made to trace and acknowledge ownership of copyright. The publishers will be glad to make suitable arrangements with any copyright holders whom it has not been possible to contact.

# Guide to the book

In the Unlocking the Law books all the essential elements that make up the law are clearly defined to bring the law alive and make it memorable. In addition, the books are enhanced with learning features to reinforce learning and test your knowledge as you study. Follow this guide to make sure you get the most from reading this book.

## AIMS AND OBJECTIVES

---

Defines what you will learn in each chapter.

## SECTION

---

### definition

Find key legal terminology at a glance

Highlights sections from Acts.

## ARTICLE

---

Defines Articles of the EC Treaty or of the European Convention on Human Rights or other Treaty.

### tutor tip

Provides key ideas from lecturers on how to get ahead

## CLAUSE

---

Shows a Bill going through Parliament or a draft Bill proposed by the Law Commission.

## CASE EXAMPLE

---



Illustrates the law in action.

## JUDGMENT

---



Provides extracts from judgments on cases.





Indicates that you will be able to test yourself further on this topic using the Key Questions and Answers section of this book on [www.unlockingthelaw.co.uk](http://www.unlockingthelaw.co.uk).

## QUOTATION

---

Encourages you to engage with primary sources.

## ACTIVITY

---



Enables you to test yourself as you progress through the chapter.

### student mentor tip

---

Offers advice from law graduates on the best way to achieve the results you want

## SAMPLE ESSAY QUESTIONS

---

Provide you with real-life sample essays and show you the best way to plan your answer.

## SUMMARY

---

Concludes each chapter to reinforce learning.

# Preface

The Unlocking the Law series is an entirely new style of undergraduate law textbook. Many student texts are very prose dense and have little in the way of interactive materials to help a student feel his or her way through the course of study on a given module.

The purpose of this series, then, is to try to make learning each subject area more accessible by focusing on actual learning needs, and by providing a range of different supporting materials and features.

All topic areas are broken up into 'bite-size' sections, with a logical progression and extensive use of headings and numerous sub-headings. Each book in the series will also contain a variety of charts, diagrams and key facts summaries to reinforce the information in the body of the text. Diagrams and flow charts are particularly useful because they can provide a quick and easy understanding of the key points, especially when revising for examinations. Key facts charts not only provide a quick visual guide through the subject but are useful for revision purposes also.

The books have a number of common features in the style of text layout. Important cases are separated out for easy access and have full citation in the text as well as in the table of cases, for ease of reference. The emphasis of the series is on depth of understanding much more than breadth. For this reason, each text also includes key extracts from judgments, where appropriate. Extracts from academic comment from journal articles and leading texts are also included to give some insight into the academic debate on complex or controversial areas.

Finally, the books also include much formative 'self-testing', with a variety of activities ranging through subject-specific comprehension, application of the law and a range of other activities to help the student gain a good idea of his or her progress in the course.

Note also that for all incidental references to 'he', 'him', 'his', we invoke the Interpretation Act 1978 and its provisions that 'he' includes 'she' etc.

English legal method and the English legal system are important as they underpin understanding of the development and practice of all substantive areas of law. This book starts with an outline of the sources of law, followed by detailed consideration of the operation of judicial precedent and statutory interpretation. There are also additional exercises on these topics. The court structure in England and Wales is then explained, together with how cases are funded. Chapters 8–11 concentrate on the personnel, both professional and lay, in the legal system. Finally, there is a chapter on sentencing. The book should provide students with a clear understanding of our legal system.

This fourth edition has been updated throughout to include developments in the law since the publication of the last edition. In particular it includes the changes to the legal aid system under the Legal Aid, Sentencing and Punishment of Offenders Act 2012 and also changes to sentencing under the same Act.

The book is designed to cover all of the main topic areas on undergraduate and professional syllabuses and help provide a full understanding of each.

The law is stated as we believe it to be on 1 August 2013.

*Rebecca Huxley-Binns and  
Jacqueline Martin*

# List of figures

1.1	The court hierarchy	4
1.2	Uses of the term 'common law'	5
1.3	Equitable remedies	8
1.4	Passage of a Bill	10
1.5	Advantages and disadvantages of legislation and the legislative process	12
1.6	The types of delegated legislation	13
1.7	Advantages and disadvantages of secondary legislation	17
1.8	The member states of the European Union	19
1.9	The European Convention on Human Rights: key provisions	24
1.10	The sources of law reform	27
1.11	Essay map on delegated legislation	30
1.12	The sources of law	31
2.1	Precedent and the court hierarchy	37
2.2	Precedent and the House of Lords	47
2.3	Precedent and the Court of Appeal	52
2.4	Essay map on precedent	64
3.1	The literal and golden rules	77
3.2	Presumptions in statutory interpretation	98
3.3	Essay map on statutory interpretation	108
4.1	First instance civil courts	118
4.2	Starting and trying cases in the civil courts	120
4.3	Number of claims commenced in the Queen's Bench Division and the County Court	131
4.4	Structure of the tribunal system	139
4.5	Different methods of ADR	145
4.6	Essay map on civil courts	151
5.1	The criminal prosecution process	156
5.2	Criminal court hierarchy	163
5.3	Factors influencing a defendant's decision to elect trial by jury in an either way offence	170
5.4	Criminal procedure	171
5.5	The Auld recommendations and the CJA	172
5.6	Essay map on the 'right' to trial by jury	176
6.1	Appeals in civil proceedings	180
6.2	Appeals in criminal proceedings	184
6.3	Appeals following summary trial	188
6.4	Appeals following trial on indictment	189
6.5	Essay map on appeals	197
7.1	Minimum and maximum limits for legal aid	206
7.2	Illustration of conditional fees	209
7.3	Essay map on funding	216
8.1	The use of juries	221
8.2	Qualifications for jury service	225
8.3	Conviction and acquittal rates of juries	255
8.4	Essay map on juries	257

9.1	New magistrates' training and appraisal pathway	268
9.2	Role of magistrates	271
9.3	Essay map on lay magistrates	280
10.1	The eight regulated legal services professions	284
10.2	Solicitors' qualification routes: graduates and CILEx	286
10.3	Location of solicitors and number of solicitors per 1,000 population in 2010	288
10.4	Categories of work undertaken by solicitors, 2010	291
10.5	Essay map on the legal profession	305
11.1	The historic roles of the Lord Chancellor	310
11.2	The changing roles of the Lord Chancellor	311
11.3	Inferior judges	313
11.4	Senior judges	313
11.5	Appointments process for judges up to and including the High Court	317
11.6	Appointments process for senior judges	318
11.7	Extract from the Annual Judicial Statistics, as at 1 April 2001	320
11.8	2011 Judicial Diversity statistics – gender, ethnicity and profession	321
11.9	Essay map on the role of the Lord Chancellor	325
12.1	Sentences given at Magistrates' Courts and the Crown Court in the 12 months to September 2012	328
12.2	Extracts from the Sentencing Council's guidelines on assault causing actual bodily harm	331
12.3	Reduction for guilty plea	344
12.4	Average daily prison population for England and Wales, 1951–2012	347
12.5	Essay map on sentencing	348
A.1	Dealing with hybrid crimes	352

# Table of cases

Key:

CA – Court of Appeal; EAT – Employment Appeal Tribunal; HL – House of Lords;  
PC – Privy Council; SC – Supreme Court; SCS – Scottish Court of Session

A (children) (conjoined twins: surgical separation), Re [2000] 4 All ER 961 .....	60
Addie & Sons v Dumbreck [1929] AC 358, HL .....	44
Adler v George [1964] 2 QB 7 .....	77, 89
Allen v Emmerson [1944] KB 362 .....	95
Anderton v Ryan [1985] 2 All ER 355 .....	45, 104
Anns v Merton Borough Council [1978] AC 728 .....	44, 45
Arthur J S Hall v Simons [2000] 3 All ER 673 .....	302–3
Arthur J S Hall v Simons [2000] 3 All ER 673 .....	60
Attorney General for Jersey v Holley [2005] UKPC 23 .....	54
Attorney General v Associated Newspapers Ltd [1994] 1 All ER 556 .....	240
Attorney General v British Broadcasting Corporation [1980] 3 All ER 161 .....	115
Attorney General v Frail and Seward [2011] EWCA Crim 1570 .....	241, 242
Austin v Southwark London Borough Council [2011] 1 AC 355 .....	47
B (a minor) v DPP [2000] 1 All ER 833 .....	97
Beta Construction Ltd v Channel Four TV Co Ltd [1990] 2 All ER 1012 .....	234–5, 237
Black-Clawson International Ltd v Papierwerke etc AG [1975] 1 All ER 810 .....	103, 104, 106
Boardman v Sanderson [1964] 1 WLR 1317 .....	60, 61
Brock v DPP, <i>The Times</i> , 23 July 1993 .....	68
Bromley London Borough Council v Greater London Council [1982] 1 All ER 129 .....	95
Broome v Cassell & Co Ltd [1971] 1 All ER 801; [1972] AC 1136 .....	49
Bulmer (HP) v J Bollinger SA [1974] 2 All ER 1226 .....	86
Bushell's Case, Re [1670] Vaugh 135 .....	219–20, 239
C v DPP [1995] 2 All ER 43 .....	58
Cable & Wireless plc v IBM United Kingdom Ltd [2002] EWHC 2059 (Comm) .....	126, 146
Carlill v Carbolic Smoke Ball Co [1892] All ER Rep 127 .....	38, 39, 41
Carlisle and Cumberland Banking Co v Bragg [1911] 1 KB 489 .....	49
Chalkley, Re [1998] 2 All ER 155 .....	353
Cheeseman v DPP, <i>The Times</i> , 2 November 1990 .....	69, 75, 87
Conway v Rimmer [1968] AC 910 .....	44, 47
Costa v ENEL [1964] CMLR 425, ECJ .....	21
Cranfield v Bridgegrove Ltd [2003] EWCA Civ 656; [2003] 3 All ER 129 .....	129
Cunningham, Re [1957] 2 QB 396 .....	46
Cutter v Eagle Star Insurance Co Ltd [1998] 4 All ER 417 .....	88
D & C Builders v Rees [1966] 2 QB 617, CA .....	7
Davis v Johnson [1978] 1 All ER 1132 .....	49, 99
Donoghue v Stevenson [1932] AC 562 .....	5
Dowling, Re [1967] 1 AC 725 .....	45
DPP for Northern Ireland v Lynch [1975] 2 WLR 641 .....	45
DPP v Bull [1994] 4 All ER 411 .....	70, 72, 73, 101
DPP v Gomez [1993] 96 Cr App R 359 .....	61, 62
Duncan v Cammell Laird & Co [1942] AC 624 .....	44
Dunn v R [2010] EWCA Crim 1823 .....	189
Dunnett v Railtrack plc (in administration) [2002] EWCA Civ 303; [2002] 2 All ER 850 .....	126, 149
Earl of Malmesbury v Strutt and Parker [2008] EWHC 424 (QB) .....	127
Earl of Oxford's Case [1616] 1 Rep Ch 1 .....	8
Eastbourne Borough Council v Stirling, <i>The Times</i> , 16 November 2000 .....	79, 89

Elder Dempster v Paterson Zochonis [1924] AC 522 .....	41
Elliott v C [1983] 1 WLR 939 .....	46
Ellis v Deheer [1922] 2 KB 113 .....	241–2
Fisher v Bell [1960] 3 All ER 731 .....	75, 79, 89, 109
Fitzpatrick v Sterling Housing Association [1999] 4 All ER 705; [2001] 1 AC 27; [2004] UKHL 30 .....	55, 56, 58–9, 71, 72
Fothergill v Monarch Airlines Ltd [1980] 2 All ER 696 .....	105, 106
Franklin v Attorney General [1973] 1 All ER 879 .....	72
General Medical Council v British Broadcasting Corporation [1998] 3 All ER 426 .....	116
Godwin v Swindon Borough Council [2001] EWCA Civ 1478; [2001] 4 All ER 641 .....	128–9
Goldsmith v Pressdram Ltd [1987] 3 All ER 485 .....	233–4
Grant v Southwestern and County Properties Ltd [1975] Ch 185 .....	92
Great Peace Shipping v Tsavlis Salvage [2002] 4 All ER 689 .....	48
Gregory v United Kingdom [1997] 25 EHRR 577 .....	243–4, 249
Grey v Pearson [1857] 6 HL Cas 61 .....	76, 77
H v Ministry of Defence [1991] 2 All ER 834 .....	237
Halsey v Milton Keynes General NHS Trust and Steel v Joy and another [2004] EWCA Civ 576 .....	126
Harrow London Borough Council v Shah and Shah [1999] 3 All ER 302 .....	96
Hedley Byrne v Heller [1963] 2 All ER 575 .....	302
Herrington v British Railways Board [1972] 1 All ER 749 .....	44, 47
Heydon's Case, Re [1584] Co Rep 7a .....	77
Hill v East and West India Dock Co [1884] 9 App Cas 448 .....	73
Hobbs v CG Robertson Ltd [1970] 2 All ER 347 .....	95
Hodges v Harlad and Wolff Ltd [1965] 1 All ER 1086 .....	237
Horncastle, Re [2010] 2 AC 373 .....	55
Horton v Sadler [2006] UKHL 27 .....	47
Inco Europe v First Choice Distribution [2000] 1 LR 586 .....	84, 85
Inland Revenue Commissioners (IRC) v Frere [1964] 3 All ER 796; [1965] AC 402 .....	95, 106
James, Re [2006] EWCA Crim 14 .....	54
John v Mirror Group of Newspapers [1996] 2 All ER 35 .....	236
Jones v DPP [1962] AC 635; [1962] 2 WLR 575; [1962] 1 All ER 569 .....	77
Jones v Secretary of State for Social Services [1972] 1 All ER 145 .....	45, 47
Jones v Tower Boot Co Ltd [1997] IRLR 168 .....	83, 89
(Jury: Stand By; Jury Checks) [1988] 3 All ER 1086 (Practice Note) .....	230
King v Philips [1953] 1 QB 429 .....	60, 61
Kleinwort Benson v Lincoln City Council [1998] 4 All ER 513 .....	58
Laroche v Spirit of Adventure (UK) Ltd [2009] EWCA Civ 12 .....	105
Leach v R [1912] AC 305 .....	96
Locabail Ltd v Bayfield Properties [2000] WLR 870; [2000] 1 All ER 65; [2000] IRLR 96 .....	323, 325
London & North Eastern Railway Co v Berriman [1946] 1 All ER 255 .....	68, 76, 89
London Tramways Co Ltd v London County Council [1898] AC 375 .....	43
Lord Advocate v Dumbarton District Council [1990] 1 All ER 1 .....	97
Luc Thiet Thuan v R [1996] 2 All ER 1033 .....	54
Magor and St Mellons v Newport Corporation [1950] 2 All ER 1226 .....	81–2
Marshall v Southampton Health Authority [1986] 2 All ER 584, ECJ .....	20, 21
Mattison v Hart [1854] 14 CB 357 .....	76
McDonald's Corporation v Steel and Morris, <i>The Times</i> , 20 June 1997 .....	234
McWhinney, Re [1999] Woolwich Crown Court, unreported .....	229
Mendoza v Ghaidan [2004] UKHL 30; [2002] EWCA Civ 1533; [2003] 2 WLR 478 .....	55, 56, 65, 71, 72, 107



Metropolitan Police Commissioner v Caldwell [1981] 1 All ER 961 .....	104
Miliangos v George Frank (Textiles) Ltd [1975] 1 All ER 1076 .....	45, 47
Morelle v Wakeling [1955] 1 All ER 708 .....	48
MPC v Caldwell [1982] AC 341 .....	45–6
Murphy v Brentwood Borough Council [1991] 1 AC 398 .....	44–5, 47
Northern Regional Health Authority v Derek Crouch Construction Co Ltd [1984] 1 QB 644 .....	145
Notham v London Borough of Barnet [1978] 1 All ER 1243 .....	87
Oliver v Calderdale Metropolitan Council, <i>The Times</i> , 7 July 1999 .....	235
Orme v Associated Newspapers Group Ltd, 31 March 1981, unreported .....	233
Pepper (Inspector of Taxes) v Hart [1993] 1 All ER 42 .....	87–8, 99, 100, 101, 102, 103, 106
Petrovic v Austria [2001] 33 ECHR 14 .....	56
Pickstone v Freemans plc [1988] 2 All ER 803 .....	86
Ponting’s Case, Re [1984], unreported .....	248
Poplar Housing Association and Regeneration Community Association Ltd v Donoghue [2001] 3 WLR 183 .....	107
Powell v Kempton Park [1897] 2 QB 242 .....	106
R (Cowl and others) v Plymouth City Council [2001] EWCA Civ 1935 .....	126
R (Crown Prosecution Service) v Guildford Crown Court [2007] EWHC 1798 (Admin) .....	114
R (Quintavalle) v Secretary of State for Health [2003] UKHL 13 .....	69, 84, 89
R (Ullah) v Secretary of State for the Home Department [2004] 2 AC 323 .....	55
R (W a minor) v Leeds Crown Court [2011] EWHC 2326 (Admin) .....	85
R v A [2001] 2 WLR 1546; UKHL 25 .....	25, 72, 107
R v A [2008] EWCA Crim 2908 .....	186
R v Abroikof; R v Green; R v Williamson [2007] UKHL 37 .....	225, 226, 227, 228
R v Allen [1872] LR 1 CCR 367 .....	68
R v Bow Street Metropolitan Stipendiary Magistrate and Others, ex parte Pinochet (No 2) [1999] 2 WLR 272 .....	323, 325
R v Bristol Betting and Gaming Licensing Committee, ex parte O’Callaghan [2000] QB 451 .....	324
R v Connor and Rollock; R v Mirza (Conjoined appeals) [2004] UKHL 4 .....	243, 244
R v Crown Court at Sheffield, ex parte Brownlow [1980] 2 All ER 444 .....	229
R v Cunningham [1957] 2 QB 396 .....	104
R v Curl [1727] 2 Stra 788 .....	59
R v Danvers [1982] Crim LR 680 .....	230
R v Davies, Rowe and Johnson [2001] 1 Cr App R 115 .....	354
R v Eccles Justices, ex parte Fitzpatrick [1989] 89 CR App R 324 .....	274
R v Field [2003] 1 WLR 882 .....	97
R v Ford [1989] 3 All ER 445 .....	230, 248, 249
R v G [2003] UKHL 50 .....	46, 47, 104
R v Gilderdale [2010], unreported .....	252
R v Goodyear [2005] EWCA Crim 888 .....	162, 175
R v Governor of Brockhill Prison, ex parte Evans (No 2) [2001] 2 AC 19 .....	58
R v Green [2007] UKHL 37 <i>see R v Abroikof; R v Green; R v Williamson</i> [2007] UKHL 37	
R v Howard [2012] EWCA Crim 890 .....	251
R v Howe [1987] AC 417 .....	45, 47
R v Ireland and Burstow [1997] 3 WLR 534 .....	27
R v JTB [2009] UKHL 20 .....	102
R v Judge of the City of London Court [1892] 1 QB 273 .....	73
R v Karakaya [2005] EWCA Crim 346 .....	242
R v Kelly [2000] QB 198 .....	106
R v Kendrick and Hopkins [1997] 2 Cr App R 524 .....	61, 62
R v Khan [2008] EWCA Crim 531 .....	228
R v Kronlid and others [1996], <i>The Times</i> , 31 July .....	252
R v KS [2010] EWCA Crim 1756 .....	173
R v Maginnis [1987] 1 All ER 907 .....	81
R v Magro [2010] EWCA Crim 1575 .....	52

R v Mason [1980] 3 All ER 777 .....	229
R v Matten, <i>The Times</i> , 5 March 1998 .....	194
R v Mazo [1997] 2 Cr App R 518 .....	61, 62
R v McFarlane [1994] 2 All ER 283 .....	70
R v McKenna [1960] 2 All ER 326 .....	220
R v Mullen [1999] 2 Cr App R 143 .....	190–1, 192, 353
R v Offen [2000] 1 WLR 253 .....	106
R v Pigg [1983] 1 All ER 56 .....	240
R v Pratt [1993] 4 All ER 769 .....	163, 164
R v R (Marital Exemption) [1992] 1 AC 599 .....	62, 63
R v Randle and Pottle, <i>Independent</i> , 26 March 1991 .....	251–2
R v Registrar General, ex parte Smith [1991] 2 All ER 88 .....	77, 82–3, 89, 109
R v Reynolds [1981] 3 All ER 849 .....	239
R v Secretary of State for Education and Employment, ex parte National Union of Teachers, <i>The Times</i> , 8 August 2000 .....	17
R v Secretary of State for Health (Respondent), ex parte Quintavalle (on behalf of Pro-Life Alliance) (Appellant) [2003] UKHL 13; [2001] 4 All ER 1013; [2001] Admin 918; [2002] EWCA Civ 29 .....	90, 94
R v Secretary of State for the Home Department, ex parte Lichniak and others [2001] 3 WLR 933 .....	336
R v Secretary of State for Transport, ex parte Factortame (No 2) [1991] 1 All ER 70, HL/ECJ .....	20, 21
R v Secretary of State for Transport, ex parte Factortame (No 3) [1991] 3 All ER 769, ECJ .....	20, 21
R v Shivpuri [1986] 2 All ER 334 .....	45, 47, 104
R v Simpson [2003] EWCA Crim 1499 .....	52
R v Smith [2003] EWCA Crim 283 .....	249
R v Sussex Justices, ex parte McCarthy [1924] 1 KB 256 .....	227, 274
R v T and others [2009] EWCA Crim 1035 .....	176
R v Taylor [1950] 2 All ER 170 .....	51, 56
R v Taylor and Taylor [1994] 98 Cr App R 361 .....	251
R v Thompson [1962] 1 All ER 65 .....	241
R v Togher [2001] 3 All ER 463; [2001] 1 Cr App R 33 .....	191, 353, 354
R v Turner [1970] 53 Cr App R 352 .....	161
R v Twomey and others [2009] EWCA Crim .....	239
R v West [1996] 2 Cr App R 374 .....	251
R v Williams, <i>The Times</i> , 30 March 2001 .....	354
R v Williamson [2007] UKHL 37 <i>see R v Abroikof; R v Green; R v Williamson</i> [2007] UKHL 37	
R v Wilson and R v Sprason, <i>The Times</i> , 24 February 1995 .....	230–1
R v Young [1995] 2 WLR 430 .....	242
Rantzen v Mirror Group Newspapers [1993] 4 All ER 975 .....	235–6, 237
Rondel v Worsley [1967] 3 All ER 993 .....	302
Rookes v Barnard [1964] 1 All ER 367 .....	49
Royal College of Nursing v DHSS [1981] 1 All ER 545 .....	69, 79, 81, 84, 89, 93
Saif Ali [1978] 3 All ER 1033 .....	302
Salomon v Commissioners of Customs and Excise [1967] 2 QB 116 .....	104–5
Sander v United Kingdom [2000] 31 EHRR 1003 .....	244, 249
Saunders (Executrix of Estate of Gallie) v Anglia Building Society [1970] 3 All ER 961 .....	49
Scruttons v Midlands Silicones [1962] AC 446 .....	41
Shaw v DPP [1962] AC 220 .....	59, 60
Sigsworth, Re [1935] Ch 89 .....	77, 89
Singh v London Underground [1990], unreported .....	237
Smith (Morgan) [2000] 4 All ER 289 .....	53, 54
Smith v Hughes [1960] 1 WLR 830; [1960] 2 All ER 859 .....	78, 79, 89
Sweet v Parsley [1970] AC 132 .....	96–7
Tanfern Ltd v Gregor Cameron-Macdonald [2000] 2 All ER 801 .....	180, 181
Tempest v Kilner [1846] 3 CB 249 .....	95, 106
Three Rivers District Council v Bank of England (No 2) [1996] 2 All ER 363 .....	101
Timmins v Gormley [2000] QB 451 .....	324

United Railways of Havana & Regla Warehouses Ltd, Re [1960] 2 All ER 332 .....	45
Vaise v Delaval [1785] 1 TR 11; 99 ER 944, KB .....	241
Vinos v Marks and Spencer plc [2001] 3 All ER 784 .....	128
von Colson v Land Nordrhein-Westfalen (Case 14/83) [1984] ECR 1891; [1986] 2 CMLR 430 .....	86
Walkley v Precision Forgings [1979] 2 All ER 548 .....	47
Ward v James [1965] 1 All ER 563 .....	236–7, 237
Webb v EMO Air Cargo [1994] 4 All ER 115 .....	21
Whiteley v Chappell [1868] 4 LR QB 147 .....	73, 89
Williams v Fawcett [1985] 1 All ER 787 .....	48
Williams v HM Inspector of Taxes [2000] WLR 870; [2000] 1 All ER 65; [2000] IRLR 96 .....	324
Wilson v First County Trust (No 2) [2003] UKHL 40 .....	102
Wood v Commissioner of Police of the Metropolis [1986] 2 All ER 570 .....	95
Young v Bristol Aeroplane Co Ltd [1944] 2 All ER 293 .....	48, 49, 50, 51, 52, 56, 65

# Tables of statutes and other instruments

## STATUTES

<b>Abortion Act 1967</b> .....	69, 79, 80
<b>Access to Justice Act 1999</b> .....	165, 180–181, 182, 203, 204, 205, 209, 215
s 54 .....	180
<b>Act of Settlement 1701</b> .....	322
<b>Administration of Justice Act 1925</b> .....	77
<b>Administration of Justice Act 1960</b>	
s 1 .....	187, 192
<b>Administration of Justice Act 1969</b>	
s 12 .....	182
s 13 .....	182
s 14 .....	182
s 15 .....	182
<b>Administration of Justice Act 1985</b>	
Part II .....	292
<b>Administration of Justice Act 1999</b> .....	294
<b>Administration of Justice (Miscellaneous Provisions) Act 1933</b> .....	231
<b>Adoption Act 1976</b>	
s 51(1) .....	82
s 51(4) .....	82
s 51(6) .....	82
<b>Appellate Jurisdiction Act 1876</b> .....	318
<b>Arbitration Act 1996</b> .....	147
s 1 .....	145
s 2 .....	98
s 15 .....	146
s 33 .....	145
<b>Attachment of Earnings Act 1971</b> .....	136
<b>Bill of Rights 1688</b>	
Art 9(s1) .....	100
<b>Child Abduction and Custody Act 1985</b> ....	117
<b>Children Act 1989</b> .....	117, 271, 272
<b>Children and Young Persons Act 1933</b>	
s 44 .....	329
s 53 .....	340
<b>Civil Partnership Act 2004</b>	
s 210 .....	15
s 210(6) .....	15
s 240 .....	15
s 241 .....	15
s 244 .....	15
<b>Civil Procedure Act 1997</b>	
s 1(3) .....	124
<b>Constitutional Reform Act (CRA) 2005</b> ....	310, 314, 318, 323, 325
Part 3 .....	312
s 3 .....	311–312
s 3(7) .....	312
s 23 .....	312
s 24 .....	312
ss 67–75 .....	318
ss 76–84 .....	317
ss 85–93 .....	316, 317
<b>Contempt of Court Act 1981</b>	
s 8 .....	240, 243, 244, 245
s 8(1) .....	240
s 8(2) .....	240
s 19 .....	116
<b>Coroners and Justice Act 2009</b> .....	238
<b>Countryside Alliance against the Parliament Act 1949</b> .....	11
<b>County Courts Act 1846</b> .....	116
<b>County Courts Act 1984</b>	
s 5(3) .....	316
s 40 .....	119
s 66 .....	233
<b>Courts Act 2003</b> .....	124, 165, 266, 272, 276
s 10 .....	264
s 11 .....	269, 273
s 11(2) .....	269
s 11(2)(b) .....	270
s 11(2)(c) .....	270
s 19(3) .....	267
s 63 .....	317
s 98 .....	136
<b>Courts and Legal Services Act 1990 (CLSA 1990)</b> .....	122, 130, 165, 235, 273, 294, 305
s 17(1) .....	292
s 27 .....	292
s 37 .....	292
s 58 .....	209, 210
s 58(6) .....	210
s 62 .....	302
<b>Crime (Sentences) Act 1997</b> .....	106
<b>Crime and Courts Act 2013</b> .....	116, 118
<b>Crime and Disorder Act 1998</b> .....	175, 274
s 34 .....	103
s 49(3) .....	275
s 51 .....	352
s 51(1) .....	167, 169, 171
s 51B .....	168
s 51C .....	168
<b>Criminal Appeal Act 1968</b> .....	188, 352
s 2 .....	191

s 4 .....	190	Sch 1, para 1 .....	232
s 17 .....	192, 193, 194, 195	Sch 3, para 7 .....	168–169
s 33 .....	189, 192	Sch 21 .....	336
<b>Criminal Appeal Act 1995</b> .....	183, 352	<b>Criminal Justice and Court Services Act 2000</b>	
s 2 .....	191	s 28 .....	97
s 8 .....	193, 354	<b>Criminal Justice and Immigration Act</b>	
s 9 .....	193, 354	<b>2008</b> .....	329
s 10 .....	193, 354	<b>Criminal Justice and Public Order Act 1994</b>	
s 11 .....	193, 354	s 41 .....	229
s 12 .....	193, 354	<b>Criminal Procedure and Investigations Act</b>	
<b>Criminal Attempts Act 1981</b> .....	166	<b>1996</b> .....	255
<b>Criminal Damage Act 1971</b> .....	104	s 54 .....	184–185
s 5 .....	248	s 55 .....	184–185
<b>Criminal Evidence Act 1898</b> .....	95	<b>Cyprus Act 1960</b> .....	73
<b>Criminal Justice Act 1972</b> .....	221		
s 36 .....	183–184	<b>Dangerous Dogs Act 1991</b> .....	68
<b>Criminal Justice Act 1988</b>		<b>Domestic Violence and Matrimonial</b>	
s 36 .....	184	<b>Proceedings Act 1976</b> .....	99
<b>Criminal Justice Act 1991</b> .....	335	<b>Domestic Violence, Crime and Victims</b>	
<b>Criminal Justice Act 2003 (CJA 2003)</b> .....	30,	<b>Act 2004</b> .....	239
168, 172–173, 175, 183, 198, 221–222,		s 17 .....	176, 254
223, 224, 225, 226, 253–254, 255, 328,		s 17(2) .....	174
330, 333, 337, 339, 351		s 18 .....	176, 254
s 28 .....	160	s 19 .....	176, 254
s 29 .....	160	s 19(1) .....	173
s 30 .....	160	s 20 .....	254
s 31 .....	160		
s 43 .....	173, 254	<b>Emergency Powers Act 1920</b> .....	13
s 44 .....	172, 173, 176, 238–239	<b>Equal Pay Act 1970</b> .....	97
s 57 .....	185	s 1(2)(c) .....	86
s 58 .....	185, 354	<b>European Communities Act 1972</b> ....	23, 26, 32
s 59 .....	185	s 2 .....	19, 22
s 60 .....	185	s 2(1) .....	19
s 61 .....	185	s 2(2) .....	13, 19
s 75 .....	186, 354	s 2(4) .....	22
s 75(6) .....	186		
s 76 .....	186, 354	<b>Finance Act</b>	
s 76(3) .....	198	s 63 .....	100
s 77 .....	186	<b>Fraud Act 2006</b>	
s 78 .....	198, 354	s 6 .....	105
s 142 .....	329, 335, 348		
s 142A .....	329, 348	<b>Government of Wales Act 2006</b> .....	2
s 143(1) .....	342–343		
s 143(2) .....	343	<b>Health and Safety at Work etc Act 1974</b> ....	97
s 144 .....	344	<b>Homicide Act 1957</b>	
s 145 .....	343	s 2 .....	3, 9
s 146 .....	343	s 3 .....	3, 54
s 151 .....	345	<b>Human Fertilisation and Embryology Act</b>	
s 156 .....	345	<b>1990</b> .....	69, 89, 94
s 170 .....	169	s 1 .....	90
s 177 .....	338	s 1(1) .....	91
s 177(1) .....	338–339	s 1(1)(a) .....	84, 93
s 205 .....	340	s 1(2) .....	91, 93
s 227 .....	114	s 1(3) .....	91
s 269 .....	336	s 1(4) .....	91

s 3 .....	90	s 1(1) .....	293
s 3(1) .....	91	s 1(2) .....	293
s 3(2) .....	91	<b>Legislative and Regulatory Reform</b>	
s 3(3) .....	91	<b>Act 2006</b> .....	14
s 3(3)(a) .....	91	<b>Licensing Act 2003</b> .....	271
s 3(3)(b) .....	91	<b>Local Government Act 1972</b> .....	13
s 3(3)(c) .....	91		
s 3(3)(d) .....	90, 91	<b>Magistrates' Court Act 1980</b>	
s 3(4) .....	91	s 17A .....	167, 351
<b>Human Rights Act 1998 (HRA 1998)</b> .....	3, 23, 32, 54–57, 64, 132, 191, 249	s 19 .....	168, 169
s 2 .....	54–55, 56, 65	s 20 .....	168
s 2(1) .....	55	s 21 .....	168–169
s 3 .....	25, 26, 72, 106, 107	s 29(2) .....	85
s 4 .....	23, 26, 107	<b>Magna Carta 1215</b> .....	219
s 4(2) .....	107	<b>Mental Health Act 1983</b>	
s 19(1) .....	26	Part 7 .....	222
Sch 1 .....	23	s 7 .....	222, 232
<b>Hunting Act 2004</b> .....	11	<b>Merchant Shipping Act 1988</b> .....	20
		<b>Misuse of Drugs Act 1971</b> .....	96
<b>Interpretation Act 1978</b> .....	73	s 5 .....	81
		<b>National Lottery Act 1993</b>	
<b>Judicature Act 1873</b> .....	8–9, 182	s 13(1)(a) .....	95
s 25 .....	9	s 13(1)(c) .....	95
<b>Judicature Act 1874</b> .....	8–9		
<b>Judicature Act 1875</b> .....	8–9, 182	<b>Occupiers' Liability Act 1957</b> .....	28, 97
<b>Judicial Pensions Act 1959</b> .....	319	<b>Offences Against the Person Act</b>	
<b>Judicial Pensions and Retirement Act</b>		<b>1861</b> .....	27, 332
<b>1993</b> .....	322	s 57 .....	68
<b>Juries Act 1974</b>		<b>Official Secrets Act 1911</b>	
s 1 .....	232, 249	s 2 .....	248
s 1(1) .....	221	<b>Official Secrets Act 1920</b> .....	77
s 5 .....	230, 232		
s 9B(2) .....	229	<b>Parliament Act 1911</b> .....	172
s 17(3) .....	239	<b>Parliament Acts 1911–49</b> .....	11
Sch 1 .....	221, 222	<b>Parliament Act 1949</b> .....	11
<b>Justices of the Peace Act 1979</b>		<b>Police and Criminal Evidence Act 1984</b>	
s 16(3) .....	262	<b>(PACE 1984)</b> .....	203
s 28(3) .....	273	s 60(1)(a) .....	15
		s 60A(1)(a) .....	15
<b>Latent Damage Act 1986</b> .....	28	s 66(1)(a)–(d) .....	15
<b>Law Commissions Act 1965</b>		s 67(7B) .....	16
s 3 .....	28	s 80 .....	95
<b>Legal Advice and Assistance Act 1972</b> .....	203	<b>Poor Prisoners' Defence Act 1903</b> .....	202
<b>Legal Aid Act 1988</b> .....	203	<b>Poor Prisoners' Defence Act 1930</b> .....	202
<b>Legal Aid and Advice Act 1949</b> .....	203	<b>Powers of Criminal Courts (Sentencing)</b>	
<b>Legal Aid, Sentencing and Punishment of</b>		<b>Act 2000</b> .....	343
<b>Offenders Act 2012</b> .....	203, 209, 210, 217, 328	s 3 .....	171
s 10(3) .....	204	s 3A .....	168, 352
Sch 1 .....	204–205	s 91 .....	340
Part 2 .....	205	s 100 .....	341
<b>Legal Services Act 1990</b> .....	305	s 130(2) .....	334
<b>Legal Services Act 2007</b> .....	283, 284, 296, 297, 305	s 148(1) .....	345
s 1 .....	293	s 152 .....	344
		s 152(2) .....	344



<b>Prosecution of Offences Act 1985</b> .....	175	s 6 .....	73
s 3(2) .....	158	s 9(4) .....	73
s 10 .....	158	s 25 .....	105
<b>Protection of Freedoms Act 2012</b>		<b>Town Police Clauses Act 1847</b>	
s 133 .....	254	s 28 .....	75
<b>Public Health Act 1875</b> .....	13	<b>Tribunals, Courts and Enforcement Act</b>	
<b>Public Health Amendment Act 1902</b>		2007 .....	136, 138–140, 153, 315
s 81 .....	75	s 2(3)(d) .....	140
<b>Race Relations Act 1976</b> .....	83–84	<b>Vagrancy Act 1824</b>	
s 32 .....	84	s 4 .....	95
s 32(1) .....	83	<b>War Crimes Act 1991</b> .....	11, 97
<b>Rent Act 1977</b> .....	72, 107	<b>War Damage Act 1965</b> .....	97
s 2(1) .....	71	<b>Welsh Church Act 1914</b> .....	11
s 2(2) .....	71	<b>Youth Justice and Criminal Evidence Act</b>	
s 3(1) .....	71	<b>1999</b>	
Sch 1		s 41 .....	25
para 2 .....	71	s 41(3) .....	25
para 3 .....	71	s 41(5) .....	25
<b>Restriction of Offensive Weapons Act 1959</b>		<b>Statutory Instruments</b>	
s 1(1) .....	75	<b>Air Navigation Order 2000</b> .....	105
<b>Road Traffic Act 1988</b> .....	88	<b>Civil Partnership (Registration Abroad</b>	
s 41(1) .....	13	<b>and Certificates) (Amendment) Order</b>	
s 41(2) .....	13	2012 .....	14–15
<b>School Teachers' Pay and Conditions Act 1991</b>		Art 2 .....	15
s 2 .....	17	<b>Civil Procedure Rules 1998 (CPR 1998)</b> .....	124,
<b>Senior Courts Act 1981</b> .....	322	133, 134, 157, 198	
s 2(3) .....	317	Part 24 .....	129
s 29(3) .....	114	Part 29 .....	120
s 49(1) .....	9	Part 36 .....	129
s 66 .....	237	Part 52 .....	180
s 69 .....	233, 235	r 1.1 .....	125
s 69(1) .....	234, 237	r 1.2 .....	125
s 69(3) .....	237	r 1.4(1) .....	125
<b>Sex Discrimination Act 1975</b> .....	20, 21, 83	r 1.4(2)(e) .....	126, 148
<b>Sexual Offences Act 1956</b>		r 6.7(1) .....	128
s 14 .....	340	r 6.9 .....	128–129
<b>Sexual Offences Act 2003</b> .....	186	r 30.3 .....	119–120
s 13(1) .....	102	r 44.3(5) .....	135
<b>Sexual Offences (Amendment) Act 2000</b> ...	11	<b>Conditional Fee Agreements Regulations</b>	
<b>Solicitors Act 1974</b> .....	296	1995 (SI 1995 No 1674) .....	209
<b>Statute of Frauds 1677</b> .....	95	<b>Criminal Procedure Rules 2005</b>	
<b>Street Offences Act 1959</b>		(CrimPRs) .....	157, 164, 198
s 1(1) .....	70, 71, 78, 103	<b>Education (School Teachers' Pay and</b>	
s 1(2) .....	70	<b>Conditions) (No 2) Order 2000</b> .....	17
s 1(3) .....	70	<b>Justices' Clerks Rules 1999</b>	
s 2(1) .....	70	(SI 1999/2784) .....	275
<b>Theft Act 1968</b> .....	28, 61, 62, 98, 166	<b>Police and Criminal Evidence Act 1984</b>	
s 1 .....	73	(Codes of Practice) Order 2004 .....	15
s 2 .....	73	<b>Road Vehicles Lighting and Goods Vehicles</b>	
s 3 .....	73	<b>(Plating and Testing) (Amendment)</b>	
s 4 .....	73	<b>Regulations 2009/3220</b> .....	14
s 5 .....	73		

<b>European and International Legislation</b>	
Equal Pay Directive (75/117/EEC) .....	86
<b>Equal Treatment Directive 1976</b>	
(76/207/EEC) .....	20
<b>European Convention on the Protection of</b>	
<b>Human Rights and Fundamental Freedoms</b>	
<b>1950 (ECHR 1950)</b> .....	22–26, 48
Art 2 .....	24
Art 3 .....	24, 106
Art 4 .....	24
Art 5 .....	24, 106
Art 6 .....	23, 24, 25, 126, 191, 213, 226, 228, 243, 244, 249
Art 6(1) .....	25, 191, 228, 353
Art 6(3) .....	213
Art 6(3)(c) .....	214
Art 6(3)(d) .....	25
Art 7 .....	24, 59
Art 8 .....	24, 55
Art 9 .....	24
Art 10 .....	24
Art 11 .....	24
Art 12 .....	24
Art 14 .....	24, 55, 56, 71
Art 26 .....	55
Art 27(2) .....	55
Art 31 .....	55
<b>Lisbon Treaty 2009</b> .....	18
<b>Maastricht Treaty (Treaty on European Union,</b>	
<b>EC Treaty) 1993</b>	
Art 234 .....	18, 20
<b>Single European Act 1986 (SEA 1986)</b> .....	18
<b>Treaty of European Union 2009</b>	
<b>(TEU 2009)</b> .....	18
<b>Treaty of Paris 1951</b> .....	18
<b>Treaty of Rome (EEC Treaty) 1957</b>	
Art 177 .....	18, 20, 21
Art 234 .....	26
Art 267 .....	163, 183
Art 345 .....	22
<b>Treaty on the Functioning of the European</b>	
<b>Union 2009 (TFEU 2009)</b>	
Art 267 .....	18, 20, 20–21
<b>Warsaw Convention 1929 (Convention for the</b>	
<b>Unification of Certain Rules Relating</b>	
<b>to International Carriage by Air)</b> .....	105

This page intentionally left blank

# 1

## *The sources of law*

### AIMS AND OBJECTIVES

---

After reading this chapter you should be able to:

- Identify the main sources of English law
- Distinguish common law and equity, and common law and legislation
- Distinguish primary and secondary legislation and understand what controls exist on the latter
- Recognise the difference between the European Union and the Council of Europe
- Explain the difference between the Human Rights Act 1998 and the European Convention on Human Rights
- Form an opinion concerning how laws are reformed

### 1.1 The English Legal System

What is the English Legal System? Well, it isn't so much a system as an amalgamation of various agencies, processes and institutions, and the term often includes the personnel involved in the resolution (formal or informal) of legal disputes too. It is certainly more about procedure than the substantive law of, say, contract law or land law, although there is a degree of overlap, as Cownie and Bradney point out:

### QUOTATION

---

'Legal systems are there to determine what will happen when people have disputes. Legal rules are also there so people can order their lives in such a way as to avoid such disputes.'

*F Cownie and A Bradney, English Legal System in Context  
(2nd edn, Butterworths, 2000), p 6*

There is no agreed definition for the term 'English Legal System' (ELS) or for the required content of the subject taught on an undergraduate law course, but, as Smith, Bailey and Gunn warn:

## QUOTATION

'Some [students] even have the misguided belief that the study of the institutions and processes of our law does not carry the intellectual challenge of other legal subjects. Yet a failure to understand the English legal system will make much of what the student learns of those other subjects either incomprehensible or misleading.'

*SH Bailey, M Gunn, D Ormerod and J Ching, Smith, Bailey and Gunn on the Modern English Legal System (4th edn, Sweet & Maxwell, 2002), p 1*

The subject is dealt with differently in the numerous texts available all called *English Legal System*, or *English Legal Process*, and the module is taught and assessed differently in university law schools, because the schools have the freedom to choose the subject content of the modules. However, all texts and courses do, to some extent, cover aspects of the personnel, the law-making machinery and the rules governing each of them, which we proceed to do throughout this text.

There is also an important historical perspective to the study of the ELS, because we can understand how the system operates today only by having a sense of how it developed. Hence, we start by looking at the sources of English law.

First, a note on the terminology. When we refer to the '*English Legal System*', we are usually deliberately not referring to Scotland, Northern Ireland, the Isle of Man and the Channel Islands, which have separate legal systems; but to England and, on the whole, Wales. According to context, however, we might use the terms '*Great Britain*' or the '*United Kingdom*' where relevant, especially when considering the broader sources of law, such as the European Union and the European Convention on Human Rights, each of which has affected the UK as a whole.

Second, a brief note on Welsh law. Under the Government of Wales Act 2006, the National Assembly for Wales may pass primary and secondary legislation under devolved responsibility (these laws are known as Assembly Measures) on areas including agriculture, education, food, housing and town planning. English laws continue to apply to Wales, unless Welsh law has been passed which conflicts, so some commentators regard Welsh law as a branch of English law. That said, some laws which apply in England do not apply in Wales, and some laws apply in Wales which do not apply or even exist in English law.

## 1.2 The sources of law

Where does the law come from? The obvious answer is the law-makers. The key law-makers in the ELS are:

<b>Parliament</b>	Parliament is the principal law-maker in the ELS because of the doctrine of <b>parliamentary sovereignty</b> .
<b>The courts</b>	Historically vital as law-makers because we had judges before we had a Parliament, the courts continue to be integral to the constitutional framework of the ELS under the <b>Rule of Law</b> and the <b>Separation of Powers doctrine</b> .

The words in bold in the explanations above are important key terms which you need to understand. They are defined below.

<b>Parliamentary sovereignty</b>	Parliament is able to pass laws on any subject; these laws can regulate the activities of anyone, anywhere; Parliament cannot bind its successors as to the content of subsequent legislation; and laws passed by Parliament cannot be declared void by the courts.
<b>The Rule of Law</b>	Individuals' liberties can be ensured only by regulating behaviour <b>by</b> the law (not arbitrarily), punishing only <b>according</b> to law and making all citizens <b>subject</b> to the law.
<b>The Separation of Powers doctrine</b>	Abuse of state power can be prevented only by sharing the power of the state among the Executive (the government), the Legislature (Parliament) and the Judiciary (the courts). In this way, checks and balances are in place to reduce the risk of abuse.

The key law-makers from outside the ELS but which affect the citizens governed by English law are:

<b>The European Union</b>	The UK's membership of the EU dictates an obligation to incorporate into UK law the laws of the institutions established by the EU treaties (see section 1.7 below).
<b>The Council of Europe</b>	As you will see at section 1.8, the European Convention on Human Rights is the work of the Council of Europe (not the EU) and is fundamental to the operation of UK law – whether made by Parliaments or the courts – because of the Human Rights Act 1998.

There are some other sources of law which are considered later in this chapter (for example, law reform agencies and academics).

## 1.3 The courts

There is no legislative or express democratic authority for the courts to be law-makers but, nevertheless, it is clear that judges do make the law (see section 2.5 for more information). How do the judges make the law? In two key ways:

- developing the common law;
- interpreting Acts of Parliament.

We will consider each of these roles below. First, you need to understand that there is a court hierarchy. The structure you will see in Figure 1.1 does not merely indicate which courts hear which cases (the basic jurisdiction of each court is shown, but note that this is not detailed and you must refer to Chapters 4, 5 and 6 for more detail), but also that because there is a clear hierarchy, courts at the top of the diagram have more seniority and authority than the courts below. This is one of the reasons the courts at the top of the hierarchy hear appeals. Appeals are almost always on points of **law**, so this is where the law made by the judges stems from.

### 1.3.1 The Supreme Court of the UK

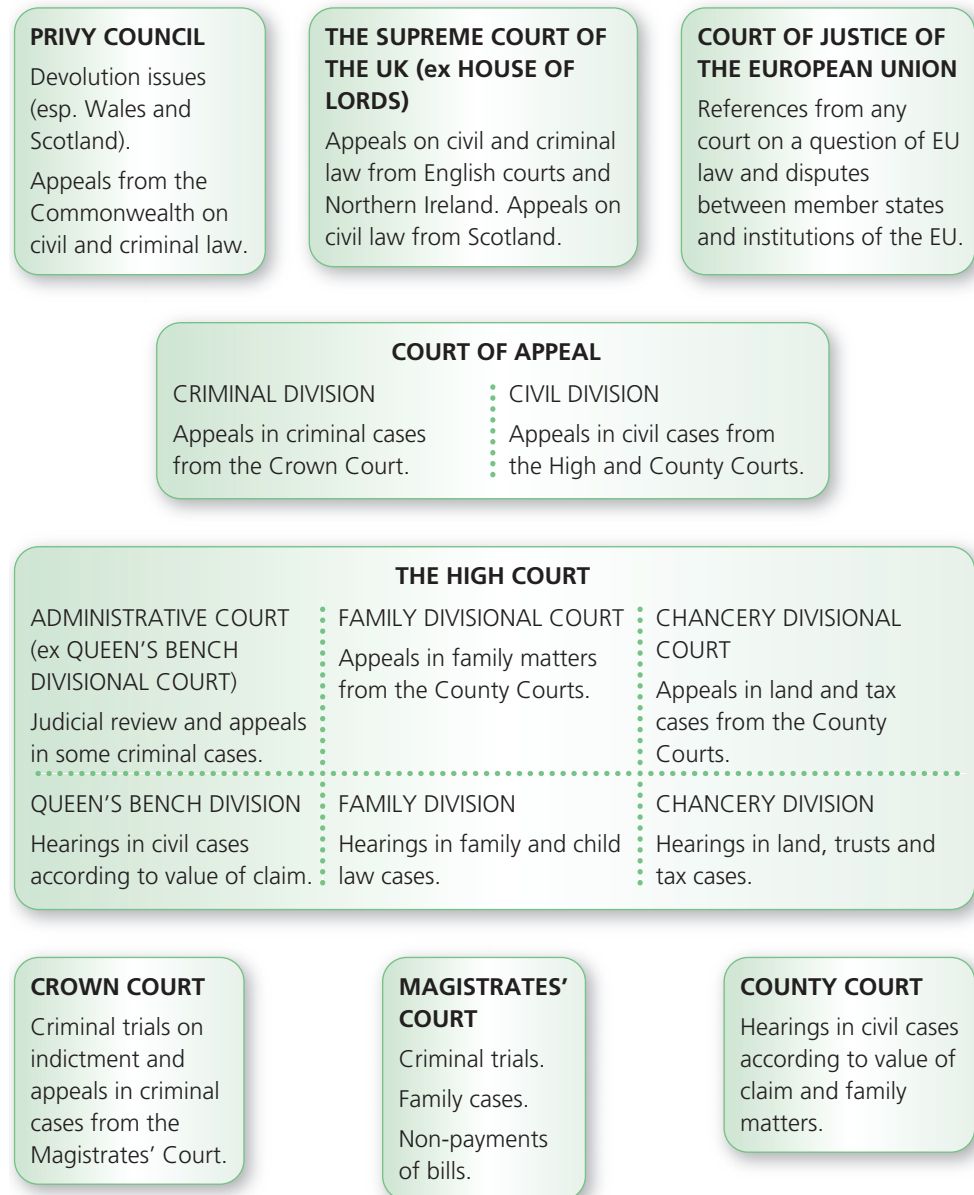
Until 2009, when lawyers referred to 'the House of Lords', they meant *either*:

- the House of Lords in its legislative capacity, as part of Parliament; or



- the House of Lords as the most superior of the courts in England and Wales (and, for civil cases, Scotland too) which was its judicial or appellate capacity. The court was housed in the Houses of Parliament building, and the Law Lords could, in theory, also sit in the legislative chamber of the House of Lords and enter into the debates (something they rarely did in practice).

In July 2009, the House of Lords *as a court* ceased to exist and was replaced in October 2009 by a Supreme Court of the UK. You will find more information on the Supreme Court in Chapters 6 (Appeals) and 11 (The judiciary).



**Figure 1.1** The court hierarchy

## 1.4 The common law

As stated above, one of the ways in which the judges make the law is by developing the common law. However, the phrase ‘common law’ is not a particularly easy one to get to grips with because it can have up to five different meanings, according to the context in which it is used.

	Meaning	Example
1.	The term ‘common law’ can be taken to refer to the system of law which is common to the whole country.	Murder is an offence under the common law of England; however, walking on the grass in a local park may be an offence under a local by-law, but is not part of the common law of England.
2.	The term may also be used to distinguish that law which is not equity (see further below).	Damages (a monetary award; compensation) are common law remedies, whereas the injunction is an equitable remedy.
3.	It might be used to mean case law: that is law developed by judges through cases. This is the context in which the term was used at section 1.3 above.	The common law principle that a manufacturer is liable in negligence to the ultimate consumer of its products derives from the case of <i>Donoghue v Stevenson</i> [1932] AC 562.
4.	It could be used to indicate law which has not been made by Parliament (the law made by Parliament is called a statute or legislation).	Murder is a common law offence, but the defences of diminished responsibility and provocation are statutory under ss2 and 3 Homicide Act 1957.
5.	The term may also be used to describe those legal systems that developed from the English system. In this final sense, a common law system is distinguished from a civil law system. Civil law developed from the Romano–Germanic legal system and is the dominant legal system in continental Europe including the European Union itself.	France does not have a common law system because it developed from the Roman tradition with a civil law system. On the other hand, England, Australia and New Zealand are common law jurisdictions.

**Figure 1.2** Uses of the term ‘common law’

An understanding of the historical development of the common law of England will assist you in using the term correctly; but to understand this, you also need to have a grasp of the development of equity.

### 1.4.1 Problems of the common law

The story starts before William the Conqueror conquered England in 1066. Before this date, there was no national legal system. Local laws were enforced by local lords or sheriffs. When William took the throne in 1066, he was a shrewd leader and he recognised that he would have to establish a system of central or national government and, with that, a centralised system of justice over which he would have control. Only in this way would he attain real power and control over his new subjects.

William travelled throughout the land, listening to people’s grievances. He and his most powerful advisers would judge the merits of the complaints and deliver judgments.

**stare decisis**

Stand by what is decided; it means that judges are bound by previous decisions. See Chapter 2 for more detail

This travelling court system became known as the *Curia Regis* (King's Court) and it is from this court that we see the development of the common law. Subsequent kings appointed judges to the *Curia Regis* and over time a national and uniform system of laws was put in place. In this way many local customary laws were replaced by new national laws. As these national laws would apply to everyone, they would be common to all. These laws therefore became known as the common law. However, there were a number of problems with the operation of the common law.

- First, the common law operated on the basis of *stare decisis*; that means binding precedent. One of the main criticisms of this doctrine is that a court is bound to follow a previous decision even if the judge disagrees with that previous decision. Mechanisms do exist in the modern ELS for a judge to avoid this process today, but such mechanisms did not exist, or were rarely used, in the more antiquated system. This meant that the common law did not develop and parties could not persuade a judge to change the law, even when it was obviously in need of change.
- Second, cases in the common law courts were started by means of a writ. A writ is a document used by a party to commence a legal action. Documents are still used today, but in a different form (for example, in order to start a civil action, the claimant must issue a 'claim form'). Under the old common law system, the bureaucracy of the rules dictated that if the wrong writ had been chosen or a mistake had been made on the writ, that writ was void and could not be amended as happens today. Instead the plaintiff (the old term for 'claimant') had to go to the expense and trouble of starting all over again. Additionally, the common law rules required that certain civil actions (this was in the days before a formal legal system for the resolution of criminal cases existed) had to involve certain types of conduct. For example, an action for trespass had to involve an allegation that violence had been used against the plaintiff. Therefore, in theory, if no violence had been used, the action could not succeed. In practice, some common law judges were prepared to imply that violence had occurred when they knew very well that none had.
- Third, the only remedy available at common law was damages. This is a monetary award (compensation). In many cases, for example a breach of contract, this remedy was perfectly adequate, but if we continue with the trespass example above, the successful plaintiff would not have found money to be an adequate remedy – he wanted the trespasser to stop (but the order we now call an injunction did not exist).

## 1.4.2 Development of equity

Many people felt let down by the common law system because it was unable to remedy these defects for itself so, as had been the practice before the *Curia Regis*, they petitioned the king directly for a remedy. Initially, kings would consider these petitions themselves but at some time during the fifteenth century this work was handed over to the Lord High Chancellor, known subsequently just as the Lord Chancellor. The number of petitions rose dramatically, so the Lord Chancellor established a court to hear the petitions. This court was called the Court of Chancery. The rules which the Lord Chancellor adopted in this court were not the rules from the common law courts. Actions were started by a petition rather than a writ, and the Lord Chancellor was not bound by precedent. Instead, rules were established to ensure that justice was obtained in those cases where the parties were able to show that the common law courts were not able or prepared to provide a suitable remedy. These rules became known as the **rules of equity**, 'equity' meaning even-handedness and fairness. It was never intended that the principles of equity would replace the common law rules, simply that they would fill the gaps in it and make up for its defects.

## Maxims of equity

One of the ways in which equity was able to plug the gaps of the common law was by using guidelines called **maxims of equity**. One of the better-known maxims is 'He who comes to equity must come with clean hands.' This means that equity will not assist a party who has acted in bad conscience.

## CASE EXAMPLE



### *D & C Builders v Rees* [1966] 2 QB 617, CA

The plaintiff company sued Mr and Mrs Rees for failure to pay a bill in full for building work done to their home. The plaintiffs had sent three bills and the defendants had paid only one-third 'on account'. The defendants then made complaints about the quality of the work and, knowing that the plaintiff company was in severe financial difficulty, offered to pay a further third, but 'in full settlement'. The plaintiff company agreed, only because without the money the company would have gone bankrupt. The company later sued the defendants for the outstanding amount.

Lord Denning MR (denoting that he was, at the time of the judgment, the Master of the Rolls) held at the Court of Appeal:

## JUDGMENT



'The creditor [the plaintiff] is only barred from his legal rights when it would be *inequitable* for him to insist upon them. Where there has been a *true accord*, under which the creditor voluntarily agrees to accept a lesser sum in satisfaction, and the debtor *acts upon* that accord by paying the lesser sum and the creditor accepts it, then it is inequitable for the creditor afterwards to insist on the balance. But he is not bound unless there has been truly an accord between them.

... In the present case, on the facts as found by the judge, it seems to me that there was no true accord. The debtor's wife held the creditor to ransom. The creditor was in need of money to meet his own commitments, and she knew it. When the creditor asked for payment of the £480 due to him, she said to him in effect: "We cannot pay you the £480. But we will pay you £300 if you will accept it in settlement. If you do not accept it on those terms, you will get nothing. £300 is better than nothing." She had no right to say any such thing ... There is also no equity in the defendant to warrant any departure from the due course of law. No person can insist on a settlement procured by intimidation.'

As you can see, Lord Denning was scathing of the conduct of Mr and Mrs Rees. The other Lord Justice, Danckwerts LJ, found that the Reeses 'really behaved very badly'. A person who behaves 'very badly' is unlikely to benefit from equity's protection, as the Reeses found to their cost. As equity would not intervene on behalf of the couple to protect them from having to pay the full amount, the common law rules prevailed. One of these rules is that part-payment of a debt does not satisfy (fulfil) the debt. They had to pay up.

The 'clean hands' maxim is one of many maxims of equity. Others include:

- 'equity is equality' (unless there is clear evidence one way or another, property should be divided in equal shares);
- 'equity looks to the intention and not the form' (equity looks at what the parties meant to do, not necessarily what they did do);

- 'equity acts *in personam*' (equitable remedies take effect against the person, not their property, so in the days of the development of equity, a defendant could go to prison for failure to honour an equitable remedy made against him);
- 'equity will not suffer a wrong without a remedy' (if equity considers that a person has a good claim, equity will ensure that that person has the right to bring a legal action).

### The trust

What is a trust? The distinction between law (i.e. the common law) and equity is most apparent if you consider that **different** people can own the **same** piece of property in **different** ways, at the same time. This is called a trust and is recognised only in equity.

### Example

Sidney (S, the settlor) is writing his will. He has 10,000 shares in BT and he wants to leave these shares to Betty, his nine-year-old granddaughter. In his will (and in accordance with the common law rules), S appoints Trevor (T) to be the trustee of the will. When S dies, T, as trustee, is the **legal** owner of the shares. He, and only he, can exercise the legal rights over the shares. However, B, as beneficiary of the will, also has rights in the shares; she is entitled to the dividends on the shares because she is the **equitable** owner of them, but she cannot sell them because T is the legal owner. Despite T's legal ownership, B has the benefit of the equitable interests in the property. It may be that when B attains the age of 18 (or at some other specified age or on some specified event, such as marriage), B will become the legal owner of the shares and T's rights will be extinguished.

### Equitable remedies

Equity created not only new rights, such as the trust above, but also new remedies. As stated above, the only common law remedy was damages. Equity recognised the limits of the usefulness of money as an award and developed, among others, the following additional remedies:

<b>Injunction</b>	This is an order of the court compelling or restraining the performance of some act.
<b>Specific performance</b>	This is an order compelling a party to perform his part of an agreement that he had promised to fulfil.
<b>Rescission</b>	This is an order restoring parties to a contract to their pre-contractual positions, releasing them entirely from their contractual obligations.

Figure 1.3 Equitable remedies

### Conflict with the common law

The common law judges came to view the Court of Chancery as a rival to their authority. This rivalry came to a head in the *Earl of Oxford's Case* [1616] 1 Rep Ch 1 where the common law judges refused to recognise the interest of a beneficial owner of a trust; yet the Chancery judges threatened to imprison the trustees (the legal owners) unless they recognised that same interest. James I was required to intervene and he settled the situation: where the common law and equity conflict, equity was to prevail. Had James I not decided the matter in this way, the purpose of equity would have been fundamentally undermined.

Having a dual system of courts administering different remedies did cause other problems, however, and by the passing of the Judicature Acts of 1873–75, the court system was

reformed. The result was that the administration of the common law courts and the Court of Chancery was merged, to create a unified system of courts and procedures. Thus, all courts in the modern legal system can use both common law and equitable principles and give either type of remedy. In the event of a conflict, s25 of the Judicature Act 1873 provided that equity should prevail and s49(1) of the Senior Courts Act 1981 is the modern embodiment of that rule. Common law rules and equitable 'rules' have not merged into one source of law, however. For example, common law rules have a strong influence in contract, tort and criminal law, and common law remedies such as monetary damages are frequently used in the first two mentioned areas. By contrast, the Chancery Division of the High Court (the modern Court of Chancery) deals with matters of company law, partnership, conveyancing (the legal transfer of property involved in the buying and selling of land and buildings), wills and probates (administration of the property of persons who have died) and patent and copyright law where the rules of equity are used frequently. Another important aspect of Chancery work is the administration of trusts.

## ACTIVITY



### Self-test questions

1. The first national court system was evolved by the Judicature Acts 1873–75. True/False
2. The main defects in the common law system of the *Curia Regis* were
  - (a) rigidity,
  - (b) the writ system and
  - (c) the limited remedies available. True/False
3. Equity will not intervene to protect a defendant unless he has 'clean hands'. True/False
4. A trust is an invention of the common law rather than of equity. True/False
5. If the common law and equity conflict, the common law prevails. True/False

## 1.5 Parliament

### 1.5.1 Legislation

You should be aware that lawyers often use the terms 'Act', 'statute' and 'legislation' interchangeably. A statute is a document containing the laws made by Parliament. Parliament consists of the Queen, the House of Lords and the House of Commons. Parliament is the originator of all legislation. All Acts of Parliament (note that we use an upper-case 'A' for Act of Parliament; we never use a lower-case 'a' when we mean legislation) consist of formally enacted rules dealing with a particular subject-matter and are broken down into sections for ease of reference (for example, s2 of the Homicide Act 1957). An Act of Parliament must begin life in draft form as a Bill, but a Bill may begin life as consultation paper, sometimes called a Green Paper; or a White Paper which is a document containing the government's proposals for legislative changes. A Bill must be debated by both Houses of Parliament and must undergo set procedures, until it is finally given the Royal Assent by the monarch, at which stage it becomes an Act (it is **enacted**) and enters into force on the day the Bill receives the Royal Assent, unless the Act provides for other dates.

### 1.5.2 The enactment process

- *First Reading*: this not a reading of the full Bill. Its purpose is to point out to MPs the existence of the Bill so that they can read it. The Speaker of the House (Commons or Lords) reads out the short title and sets the date for the Second Reading.