

### ***The main sources of English law***

In UK there are three main sources of English law, Legislation (Statute Law), Common Law (Judge-made Law) and the European Communities law. English Law was historically based on customs and social traditions. Today Custom Law is a part of Common Law, notably being in cases where there was no judicial precedent but which were known to exist since time memorial (i.e. since 1189). Many of these laws such as the *Fisherman's Case* (1894) 2 East PC 661 (<http://wilmington.butterworths.co.uk/citator-o/Citator.ASP?WCI=tmpSearch&WCE=Form&WCU=>) in criminal law and *Beckett Ltd v. Lyons* [1967] 1 All ER 833 the law of user in Land Law are still good law. Custom law can still be used to argue a case provided the conditions set out by law are met. It is important to remember though that 'law never goes out of date, and it does not become obsolete because of passage of time' (Pg 41, Longshaw, A & Hughes, M W200: *Understanding Law - Manual 1* (6th Edition), (2002), Oxford University Press, Oxford).

Legislation however, is probably the most important source of law in the UK. It is made by 'the Queen in Parliament', i.e. the House of Commons, the House of Lords and the Monarch. Proposals for legislation ('Bills') are presented to debate by and voted upon by the House of Commons and the House of Lords, finally receiving the assent of the Monarch and thus becoming Acts (Statutes) of Parliament.

Public Bills are intended to alter the general law and be generally applicable. Bills can be introduced by the government as a part of its legislative programme or by a Member of the Parliament as a Private Member's Bill, for example *the Disability Bill* or if there is an urgent problem for example the introduction of *the Dangerous Dog Bill*. Parliament can delegate the power to legislate to various bodies such as local authorities, the Crown and ministers. Delegated legislation has same legal force and effect as the Act of Parliament. The advantages of delegated legislation are: time saving, access to particular expertise and, flexibility. On the other hand it can be a disadvantage due to lack of accountability and effective scrutiny as it can erode the constitutional powers of the Parliament.

Another major source of law comes from judges deciding cases before them, also referred to as Case Law. Judges use various rules to interpret legislation and the intention of the Parliament. For example, in the case of *Royal College of Nursing v. DPP* [1981] 1 All ER 545, three judges gave their judgment using the mischief rule and two judges used the literal rule to interpret the Abortion Act 1967, and the intention of the Parliament (*173 and 174 Slapper G. and Kelly D. The English Legal System* (5<sup>th</sup> Edition), (2001) Cavendish Publishing Ltd, London, Sydney). One example of when judges have actually made new law is the case of *R v. R* [1994] 4 All ER 48 decided in the House of Lords. The court re-interpreted the legislation so that a husband could be found guilty of raping his wife.

'*Stare decisis*' or binding precedent is at the heart of the English legal system and case law is particularly dependent on it. It refers to the hierarchy of the English courts **See Fig. 1** (Pg 64 Slapper G. and Kelly D. *The English Legal System* (5<sup>th</sup> Edition), (2001) Cavendish Publishing Ltd, London, Sydney) and it is reliant upon widespread reporting service. Law reporting and binding precedent is of utmost importance to judges and counsel, to ensure that law is applied consistently.

Interpretation of legislation by judges is one aspect of the relationship between Statute and Common Law. Common Law serves to resolve areas where the Law passed by an Act of Parliament is poorly drafted and makes for ambiguities. Another is that, where laws are drafted by Parliament, draftsmen will often look to Common Law for guidance, as precedent will usually be sought.

The third source of law in England is European Community Law. The most important source of EC legislation comes from the founding treaties: the Treaty of Rome, the Treaty of European Union, and the Treaty of Amsterdam. The other forms of legislation made by the European Community are the regulations, directives and also the decisions made by the European Courts of Justice.

The EC Law did not become binding on the UK until it was incorporated into our national law by the European Communities Act 1972. This is because international law is not regarded as a part of the UK legal system until an Act of Parliament has incorporated it. Once the European Communities Act 1972 had been enacted all EC Law became part of our national law. This means that if a national law conflicts with the EC law, the UK courts are required to apply the EC law in preference to the national law. Although nothing abridges the ultimate power of Parliament to set, for example, stricter standards than EC Law demands.

#### BIBLIOGRAPHY

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