



SQE Study Notes: The Legal System

THE ENGLISH LEGAL SYSTEM

SOURCES OF LAW:

The below list is in **order of priority** starting with the highest priority. Statute will always take precedence over common law and equity and common law will, most of the time, take precedence over equity.

Statute:

Acts, made by Parliament. Unless Parliament expressly repeals it, it remains in effect.

Common law:

A precedent or case law. The reason for having common law is because it would be unjust to handle the same facts in different ways at various times.

Stare decisis = 'the decision stands'. Judicial precedent will have binding power. This roots in ancient tradition.

Equity:

Fills up the gaps that the common law has left by creating rules supplementing the common law to achieve justice. Equitable remedies entail a judge ordering one party to do or refrain from doing something.

Equitable remedies include the following:

- * Injunctions, both permanent and interim
- * A unique performance
- * Contract revocation or reformation
- * Trust

Custom:

Local legislation or a long-standing tradition.

THE COMMON LAW SYSTEM:

The English legal system is a **common law system**. In this system, the court makes decisions by referring to statutes, regulations, and judgments from previous cases.

The role of the judges:

In this system, the judges act as **umpires** between the parties and decide on the outcome of the dispute. They do not act as **inquisitors** and thus, will not question witnesses.

Parts of an act of Parliament:

In the exam, you may be asked to identify parts of an act by name, so make sure that you remember the below list.

- * **Preamble:** "BE IT ENACTED by the Queen's/King's most Excellent Majesty, by and with the advice of the Lords Spiritual and Temporal, and Commons, in this Present Parliament Assembled, and by the Authority of the same, as follows:"
- * **Extent Provision:** "The following provisions of this Act extend to England and Wales, Scotland, and Northern Ireland – (a) sections 1 to 4; (b) section 12; (c) sections 32 to 53."
- * **Short title:** Companies Act 2006
- * **Enabling Provision:** "The following provisions come into force on such day as the Secretary of State may by regulations appoint."

Types of legislation:

1. **Primary legislation** – legislation passed directly by Parliament.
2. **Secondary legislation** – statutory instruments (these are called Codes, Orders, Regulations, Rules)
3. **Tertiary legislation**

STATUTORY INTERPRETATION:

In the UK, the **doctrine of parliamentary sovereignty** (supremacy) applies.

Parliamentary sovereignty = the courts do not have the power to amend Acts of Parliament or find that an act is invalid.

The courts will **interpret statute** and use different **methods to interpret them**. You need to memorise the different rules of statutory interpretation for your exam and be able to tell which example belongs to which rule.

Literal rule:

The court will use the **ordinary and literal meaning** of the words of the statute.

Use this rule if the meaning of the words in the statute is unambiguous. If the words in the statute are clear, they must have been intended to be applied using their ordinary meaning.

Example:

A statute makes it an offence to vote with another person's name who is entitled to vote. David votes using his deceased friend's name. The judge held that David was not guilty of an offence as a dead person is not entitled to vote.

The judge applied the literal rule because the words of the statute were unambiguous, even if the intention of the legislator must have been different from this judgment, which may thus be harsh/undesirable.

Golden rule:

The court will use **something other than the ordinary and literal meaning** of the words of the statute to avoid an absurd result.

If the plain meaning of the phrases results in a "manifest absurdity," use the golden rule to avoid absurdity and inconsistency.

Example:

A statute makes it an offence to be in the vicinity of a commercial warehouse without authorisation. A man is found inside a commercial warehouse, so technically, not in the vicinity, but the judge still finds her guilty of an offence.

Mischief rule:

The mischief rule focuses on the **reason** for which Parliament passed the legislation rather than the wording of the statute. What **problem** was the statute designed to remedy?

Example:

A statute makes it an offence to sell illegal drugs in any public place. A woman was arrested for selling illegal drugs in her flat. The judge interpreted the statute as including selling illegal drugs from a private place.

The purposive approach:

The court may also **look at extraneous documents** such as Hansard (contains debates on the statute) to determine the reason why the statute was passed.

Ejusdem generis:

If there are any ambiguous general words in a statute, which follow specific words, the general words should be interpreted as **referring to things of the same type** as the specific words.

Example:

A statute prohibits the use of firearms, explosives, knives or any other type of offensive weapon in the cinema. A man then proceeded to stab another person in the cinema with a pen. The man was charged with possession of a dangerous weapon under this statute.

The judge applied the ejusdem generis rule and found that the term "offensive weapon" was referring to items of the same type as in the list: so items such as firearms, knives and explosives. A pen did not fit into this list as it is not an offensive weapon.

Noscitur a sociis:

The **context** might help you understand words with ambiguous meaning. When the word has been defined, it does not apply.

Expressio unius exclusio alterius:

If there is a **list** in the statute, listing specific items of a class without a **general catch-all term**, other items of the same class are impliedly excluded.

Example:

A statute provides that places of public entertainment that sell food must obtain a licence. This statute provides that cinemas that sell popcorn, ice cream and/or sweets are excluded from this requirement. A cinema owner, selling sandwiches in addition to popcorn and sweets was fined for not having a licence.

The judge held that because there was no general term after the "popcorn, ice cream and/or sweets", this meant that cinemas selling anything else will not fall within the exemption.

Pari materia:

Ambiguous words should be **interpreted consistently with the same words in other statutes** touching on the same matter.

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