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English for Law

A toolkit for discourse and genre-based approaches to ESP language

For classroom or self-study use

SEVENTH EDITION - 2022

Giappichelli

Preface

Purpose

English for Law 2022 – A toolkit for discourse and genre-based approaches to ESP language is the revised edition of the earlier textbook *English for Law* 2021. This book provides a useful tool for the study of the theoretical and practical topic areas of law that constitute the traditional core of Anglo-American Law studies. It also provides a practical tool for the study of texts of legal language as they originate from theory-informed perspectives on discourse and genre analysis. Handy, bulleted, templated text and flow charts with fully integrated references provide students with a readable exposition of the theoretical and practical topics through the medium of English. Theory-informed perspectives on discourse and genre analysis, although written about in greater detail elsewhere, are explained in straightforward, easy-to-read language in an attempt to help law students find the best ways to use them for their own academic and professional development and skills. The book is an **intermediate** (**B1/2**) to **advanced** (**C1/2**) level English legal language source reference for non-native under/postgraduate students of **Law**, **International Relations**, **Economics** and **Political Science** as well as legal practitioners who need to be able to use English in academic or professional legal contexts.

Structure and content

This book is divided into two Parts, **Part One** and **Part Two**, which cover seven Units.

Part One provides a practical approach to selected topic areas in law, with Units 1, 2, and 3 synthesising and applying knowledge within the chosen areas which constitute the traditional core of Anglo-American Law studies. Reinforced by Review and Spot-Check sections, these Units are complemented with practical exercises in Worksheets 1 and 2, which give students useful 'hands on' experience of tackling the traditional form-dominated approach to legal English skills combined with genre-based English legal language learning. These skills are firmly set in their wider academic and professional contexts of use to encourage an integrated appreciation of legal language skills. Legal English skills covered in the Worksheets include *Student Presentations* (to measure student's understanding and knowledge in oral presentational skills in guided format), *legal letter* writing (to help students practise legal advice in guided format), *Legal Problem Question* writing (to base student's answer on a set of facts by 'thinking like a lawyer'), and *Legal Essay* writing (to measure student's understanding and their ability to synthesise and evaluative skills in topic areas.

Part Two brings together the vast area of discourse and genre analysis relevant to English for Specific Purposes and English for Legal Purposes and guides students in gradually putting theory into practice. To this end, Units 4, 5, 6, and 7 provide only a brief orientation to the analytical approaches to and methodological tools used in discourse and genre analysis, and how the academic and professional goals of English for Legal Purposes may be defined in theory and practice. These Units engage students with theoretical and descriptive topics in discourse analysis applied to legal texts and reinforce their understanding by Reviews and Self-assessment questions placed at the end. Likewise, the Units encourage students to consider the linguistic forms and discourse structures within the context of specific genres, such as the *research article*, relate those forms and structures to the legal discourse or disciplinary community and practice, and present students with reading and writing Tasks of genre materials, offering the chance to try out their ideas in practical contexts using their acquired knowledge.

How to use

Students are advised to use the Worksheets immediately after studying the relative Units. The book can be used either for self-study, as comprehensive answers are given, or in the classroom, and can be completed in any order.

The Author – 2022

Unit 1

The law: sources, classifications, systems, and personnel

1. Understanding law

law 🔊
UK /lɔː/ US /lɑː/

The word **law** does not have a universally accepted definition because of several different theories succeeding over time. However, law is very often defined by the **customs**, **practices**, and **rules of conduct** developed by the **government** or **society** over a certain territory.

Regarded as law, rules of conduct are meant to **enforce justice** and **prescribe duty** or **obligation**. In the United Kingdom, rules or laws resulting in **statutes** or **legislation** prescribe certain actions that are *imperative*, *prohibitive*, or *permissive* by law, and their **enforcement** is through the **power** and **authority** of Parliament and a system of **penalties** for failure or refusal to obey. For example, if John steals a car from Mark, John may be **prosecuted** before the court and may be **punished**. The court may then order the **restitution** of the car to its **rightful owner** (Mark). The penalty used is known as a **sanction** which the State administers to enforce obedience to its rules or laws. In Common Law countries, state-enforced laws can also be made by judges through **judicial precedent**, or they may be influenced by a **constitution** and the rights encoded therein, such as the uncodified Constitution of the United Kingdom.

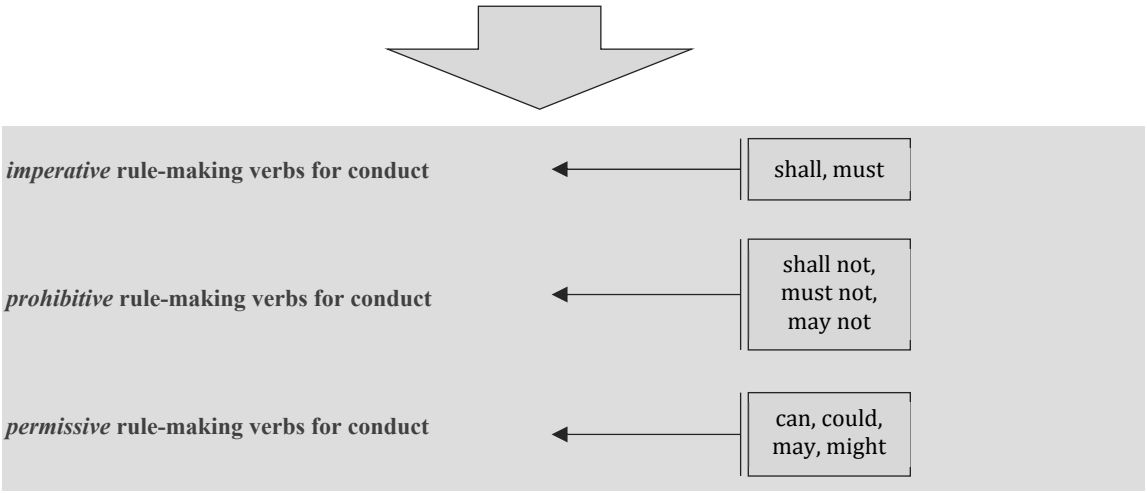
EXAMPLES

However, rules of conduct are also regarded as law when they regulate behaviours in a human community and are generally based on the **moral principles** of **society**. These rules describe how people are expected to behave in accordance with what a **society** has defined as **right** or **wrong**. For example, they tell the individual that it is immoral and unlawful to steal (*committing theft*), or to obtain money dishonestly (*committing fraud*), referred to as **moral** and **legal rules**. Because **law** and **morality** are intimately related to each other, the observance of rules, principles, and values defines the **normative system** that controls and regulates **social** and **civil relations** among people and maintains **public order** in society.

EXAMPLES

1.1 Law simply defined

Under these terms, one simple way of defining the law is to say that law is concerned with the whole body of customs, practices, and rules of conduct of a community that are formally recognised as binding by a controlling authority and used for the guidance of human conduct.

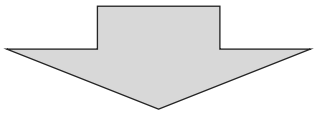


Environment Act 2021

(1) The Secretary of State must prepare an environmental improvement plan.

(2) The OEP may give advice to a Minister of the Crown about any changes to environmental law proposed by a Minister of the Crown.

(3) The regulations may not provide for an offence to be punishable —
(a) on summary conviction, by imprisonment, or
(b) on conviction on indictment, by a term of imprisonment exceeding two years.



law / RULE (countable noun)	►a rule that is used to order the way in which a society behaves *There are **laws against** illicit drugs*
law / THE LAW (uncountable noun)	►the body of rules of a particular country, community, or area of activity *Courts exist to uphold **the law*** *We have to provide a contract **by law*** *A study of **international human rights law***
law (uncountable noun)	►the area of knowledge or work that involves studying or working with the law *to study for a career in **law*** *a **law firm** in London*
law / THE POLICE	►the agency of established law *When he saw the man robbing, he called in the **law***
Law in Fixed Phrases	**Meaning**
above the law	allowed to not obey the law
against the law	contrary to law, act in disregard of law
at law / by law / under law	according to law, under or within the provisions of law
break the law	fail to observe a law, regulation, agreement
enforce the law	comply with a law, rule, or obligation
go to law	resort to legal action in order to settle a matter → *litigate*: to sue or prosecute at law → *litigate a claim*: to decide and settle in a court of law
obey the law	abide by the law
be a law unto yourself	to behave in a way that does not follow the usual rules for a situation
law and order	a situation characterized by obedience to the rules of a society
lay down the law	make a strong statement about what people are or are not allowed to do
rule of law	a situation in which the people in a society obey its laws and enable it to function properly
take someone to law	initiate legal proceedings against someone
take the law into your own hands	to do something illegal in order to punish someone because you know the law will not punish that person

2. The political and legal system of the United Kingdom

All legal systems worldwide deal with the same basic issues of law, but distinct legal jurisdictions have their own legal and political systems.

The political system and structure

The United Kingdom is a **parliamentary democracy** and **constitutional monarchy**. This means that government is voted into power by the people to act in the interests of the people, known as **parliamentary democracy**, and the **head of state** is the monarch who remains politically impartial and with limited powers, known as **constitutional monarchy**.

There are two directly elected chambers of Parliament, the **House of Commons** and the **House of Lords**, and the **Crown** is an integral part of the institution of Parliament. The Monarch plays a **constitutional role** in **opening** and **dissolving** Parliament and approving **Bills** before they become law.

The legal system

The United Kingdom has three separate legal systems which reflect its historical origin:

- English law operating in England and Wales,
- Northern Ireland law operating in Northern Ireland, and
- Scots law operating in Scotland.

English and Northern Ireland law are based on **common law** principles, while Scots law is a **hybrid** system based on Civil Law and Common Law traditions – for example in property law where Scots law resembles civil systems more than English law.

Common Law meaning

English Common Law is so called because it was the ancient law applied uniformly throughout the kingdom of England following the **Norman Conquest** in 1066. As such, Common Law is derived from the broad and comprehensive principles included in the unwritten laws of England and applied in most English-speaking countries across the centuries, including the United States, where it is also called **Anglo-American** law. These principles are created and modified by **judicial decisions**, passed on through **custom**, and **precedent**. Because common law principles are made by judges through the system of **judicial precedent**, they are also known as **case law** or **judge-made law**.

Note
Case law is distinguished from **jurisprudence**, which means the study or philosophy of law.

Linguistic traditions

Following the Norman invasion, English Common Law was characterized by three languages: **French** was the language of legal proceedings and many legal words in current legal use such as *lease*, *estate*, or *property* originate from this period, **Latin** was the language of formal records and statutes, and **English** was the spoken language of the majority of ordinary people.

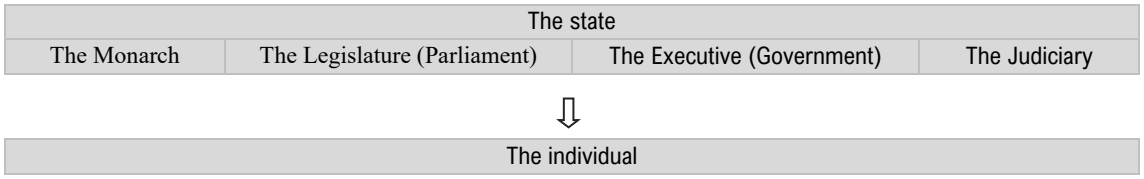
2.1 The UK Constitution

What is common to all UK legal systems is the absence of a complete code. This is because the United Kingdom does not have a single written document in the same way as the United States does. The foundational constitutional text for what is now the UK is the **Magna Carta 1215**, or **Great Charter**.

The **Constitution** of the United Kingdom contains principles that have emerged over the centuries from a variety of sources. Some of these sources are written, such as **statutes** passed by Parliament, while others such as **common law rules** and **political conventions**, are unwritten and govern how the country is run and where power lies. An example of a political convention is that the monarch always gives Royal Assent to a Bill, if advised to do so by the Prime Minister. For these reasons, the **British Constitution** is often described as an **unwritten** or **uncodified** constitution.

Institutional powers under the UK constitution

The UK Constitution defines both a horizontal relationship between the various **institutional powers** of state and a vertical relationship between the state and the individual:



This results in three of the most important principles of the UK Constitution:

- the **separation of powers**: this means that a division of power between the three branches of the state, the **Legislature**, the **Executive** and the **Judiciary**, prevents the accumulation of too much power in the hands of one person or body and provides a system of **checks and balances**;
- the **sovereignty of Parliament**: this means that Parliament is the supreme law-making body in the UK; and
- the **rule of law**: this means that there are factors necessary for a well-functioning state and limiting the exercise of arbitrary power.

2.2 The defining logics of Common Law in the UK

The Common Law system in the UK influences the **decision-making process** and the **trial procedure**.

The defining logic of Common Law is that it arises from **judicial precedent** set by judges as they make **rulings** on cases, as opposed to rules and laws made by Parliament through statutes. In a precedent-setting case, the process of **decision making** involves judges reasoning from the **facts** of the case in hand and then subsuming the facts under the law (**precedent**) they have found in order to provide common-sense solutions to the case in hand. This kind of reasoning is realistic and pragmatic in character and always emphasises context because English judges habitually situate their method of decision making within their common-sense context of case solving. This way of legal reasoning contrasts with the logic of Civil law judges who reason from abstract principles embodied in codified law.

The defining logic of Common Law **trial procedure** is the **adversarial** system. This means that there are two opposing parties, called **adversaries**, who present their case before a neutral judge who moderates. So, the case is decided by a judge, or a jury, who does not investigate the facts but acts as a **neutral umpire**. This logic contrasts with the **inquisitorial** system of adjudication in Civil law jurisdictions, where one or more judges try criminal cases alone, without juries; they inquire into the case, direct investigations and question witnesses.

3. Classifications of law

In the United Kingdom, law is classified as either **Private law** or **Public law**, although in practice a distinction is made between **Civil law** and **Criminal law**.

3.1 Public law

Public law is concerned with the relations between the state and its citizens and aims at the promotion of social objectives by protecting **collective interests**. Public law comprises several branches such as:

- **Constitutional Law** – This law regulates the institutions of government within the UK and encompasses the internal governance of supranational legal orders such as the European Union. In regulating the institutions of state, this branch of law is concerned with the relationships between the three institutional powers of state in the British constitution:

  - the **Legislature**: this is the UK Parliament which is composed of the Monarch, House of Lords and House of Commons and is responsible for the enactment of new law;

▪ the **Executive**: this branch consists of the Government elected from the Members of Parliament who hold responsibility for the governance of the state, the Crown and the Civil Service;
▪ the **Judiciary**: this branch consists of judges and magistrates who interpret and determine legal disputes.

Unlike the United States, where there is a rigid **separation of powers** between the organs of the state, the UK has only a soft separation of powers in the constitution because persons and bodies within these branches must communicate with each other to run the state effectively according to the system of **checks** and **balances** – each branch has an eye on the others and protects against interference by others. The United States Constitution adheres closely to the separation of powers. The *Constitutional Reform Act 2005* creates a complete separation of powers between the UK's Executive and the Judiciary with the establishment of a new Supreme Court of the UK separate from the previous judicial function of the House of Lords and an independent Lord Chief Justice responsible for the Judiciary.

● **Administrative Law** – This law deals with the relationships between government bodies and individuals and allows the courts to rule on the legality of decisions made by such bodies under the procedure called **judicial review**. Under this procedure, a person who has been affected by an unlawful decision, or a failure to make a decision by such bodies, can appeal against this decision if they have a **sufficient interest** in the disputed case, known as ***prima facie* case** (there appears to be a case to answer), and have the right to bring the case, known as ***locus standi***. These two elements must be satisfied before **leave** (permission) is given by the court to commence an **action for judicial review**. For these reasons, judicial review is a significant mechanism by which the judiciary can have control over the executive power – courts ensure that public bodies act within their powers and do not exceed or abuse their powers, and is part of the separation of powers within the British constitution.

● **Criminal Law** or **Penal Law** – This law deals with **crimes** against the State or society at large, and regulates the **apprehension**, **charging**, and **prosecution** of suspected criminals by fixing **penalties**. Criminal offences are regarded as **public wrongs** because they infringe the values and interests for which the society has a shared and mutual concern and are therefore punishable by the state.
Five major **objectives** are usually attributed to criminal law by **punishments**:

Note
A **criminal wrong** is one in which the state and the public have a shared interest. By contrast, a **civil wrong** is a private wrong, such as a **tort** or **contract violation**, done to a person or property. Civil and criminal wrongs are collectively known as **legal wrongs**.

▪ **incapacitation / incarceration:** this is the most extreme form of restricting a person's freedom for their criminal offence. Offenders restrained in prison and removed from society cannot cause further wrong or harm to the general public during the length of their sentence;

▪ **retribution:** this is punishment imposed on a **convicted offender** for purposes of repayment and revenge of the wrong committed. The severity of punishment is proportionate to the seriousness of the crime;

▪ **deterrence:** this aims to impose a sufficient penalty to discourage individual criminals from becoming **repeat offenders** (**individual deterrence**) and to discourage others in society from engaging in similar criminal activity (**general deterrence**);

▪ **rehabilitation:** this aims to prevent criminals from committing other crimes by forcing them to undergo training or some form of psychological or social education and transforming offenders into valuable members of society;

▪ **restoration:** this aims to repair any injury inflicted upon the victim by the offender by restoring the victim's emotional and material losses.

3.2 Private law

Private law is concerned with the rights and duties of private individuals towards each other, and aims at the protection of **individual interests**. Private law includes several areas, such as:

● **Contract Law** – This law deals with the interpretation and enforcement of **legally binding agreements**, the nature of the **obligations** undertaken by the parties, and the legal consequences of breaking **contractual promises**. Agreements relate to an exchange of goods, services, properties, or money.

● **Tort Law** – This law deals with **civil wrongs** or **wrongful acts**, whether intentional or negligent, done by one party against another, and includes cases of *negligence*, *trespass*, *nuisance*, and *defamation* from which injury occurs to another. Some intentional torts may also be **criminal wrongs**, such as the *trespass of assault* and *battery*, or *defamation*.

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✓ If you shake your fist at someone, this will be *assault* (*trespass to person*); if the blow is struck on someone (that is, you punch someone in the face and run off), this will be *battery* (*trespass to person*)
✓ If you take hostages during a robbery, or medicate someone without their consent, this will be *imprisonment* (*trespass to person*)
✓ If you remove a bicycle from a shed, this will be *trespass to goods*

Because torts involve a civil action between private parties, punishment does not include a fine or imprisonment. The punishment for tortious acts is usually by **damages** (financial compensation).

● **Property Law** – This law deals with the rights which may arise in relation to the various forms of **ownership** in **real property** (land and the things that go along with land) and **personal property** (what people possess that is moveable).

English public and private law are part of **national** or **municipal law**, which is the law operative within a country. National law is distinguished from **international law**, which is the law operative outside a country, and is also recently called **supranational law**. International law is usually subdivided into **public international law**, which is the law regulating relationships between states, and **private international law**, which is the law regulating relationships between individuals outside a country where there is a **foreign element**.

EXAMPLES

A sues B, an Italian citizen, in England because B broke a contract about a business to be run in Egypt. In this case the judge will refer to the rules of **Private International Law**.

International law is created in two main ways: by **treaty** and by **custom**. **Treaties** are political agreements between two or more states, and are binding on the nation states involved (called **contracting states**) if they have given their consent to be bound under international law. **Customary law** describes the situation whereby states have adopted consistent practices towards a specific matter and have acted in this way outside of legal obligation.

Substantive law and **procedural law** are two main categories within an area of law. **Substantive law** deals with the rules which govern individual rights and duties under the law, such as **substantive criminal law** which defines conduct that is unacceptable and punishable, or **criminology** which provides the sociological and psychological study of the causes, development, and control of crime. **Procedural law** (or **adjective law**) defines the practice and procedure by which those rules are to be enforced when bringing a civil or criminal case to court. For example, **criminal procedure** consists of the steps that are followed from the **criminal event** through to **punishment** or **release** of the **offender**.

4. Sources of law in the United Kingdom

United Kingdom law originates from **legislative sources** and **judicial sources**. **Legislative sources** consist of **domestic law**, which includes primary legislation, known as **Acts of Parliament** or **statutes**; **secondary** or **delegated legislation**; and **European Union legislation** and the **European Convention on Human Rights**. **Judicial sources** consist of **common law** and **equity precedents**, known as **case law**. In addition, there are a number of minor sources, such as **textbooks** and **commentaries** by legal writers.

Domestic law also includes important statutes enacted by Parliament over the centuries, such as the **Magna Carta 1215**, which embodies the principle that government must be conducted according to the law and with the consent of the governed, the **Bill of Rights 1689**, which impose limitations on the powers of the monarch, and the **Act of Settlement 1701**, which establish the constitutional independence of the judiciary.

4.1 Parliamentary sovereignty in the United Kingdom

Note
BrE: Act, piece of legislation
AmE: Bill

In the United Kingdom, **authority of parliament** is a fundamental principle of the British **democratic constitution** and is significant for two reasons.

Firstly, Parliament is the originator of the most important source of law, **Acts** or **statutes**, emanating from the parliamentary chambers of the **House of Commons** and the **House of Lords**. Secondly, Parliament may delegate power to a government minister and the law that is enacted is referred to as **secondary** or **delegated legislation**, which is published as **Statutory Instruments** (**SIs**), **By-laws**, and **Orders in Council**. Judicial sources derived from **common law** and **equity precedents** are both subordinate to legislation, which means that Acts of Parliament take priority in case of conflict between primary legislation and judicial sources, that is, **judge-made law** as developed through **cases**. The reason for this is constitutional because under the UK's unwritten constitution Parliament is the supreme legal authority to make laws without restriction. In other words, Parliament can **enact** or **repeal** any law that it likes on any topic and courts cannot declare that Acts of Parliament are invalid. This results in the doctrine of **parliamentary sovereignty** or **parliamentary supremacy** – sovereignty itself being a derived form of Latin super ('over') meaning 'chief ', 'ruler'.

Unlike Acts of Parliament, delegated legislation can be **challenged** in the courts via the **doctrine of ultra vires** – Latin term meaning 'outside one's legal power or authority. Ultra vires is when the law goes beyond the powers which were granted by Parliament in the **Enabling Act**, so that any delegated legislation can be declared void by the court.

5. Sources of law in the United States of America

The primary sources of law in the United States are:

- **United States constitution**
- **state constitutions**
- **federal** and **state legislation** also known as **statutory law**
- **case law**, and
- **administrative regulations**.

The **US Constitution** is the **'supreme Law of the Land'**, meaning that federal statutes, state statutes, judicial opinions and administrative laws must all comply with the Constitution's rules. So, the Constitution is the foundation of the **federal government** of the United States and establishes the fundamental freedoms and rights of people contained in the **Bill of Rights**.

The United States **Congress**, the federal legislative body consisting of the **House of Representatives** and the **Senate**, **enacts federal statutes** and these statutes apply in all 50 states. **State statutes** are enacted by the 50 state legislatures which are **separate sovereigns** with their own state constitutions, state governments, and state courts, and therefore apply only within the state. Courts then must apply statutes to the facts of a case. If no statute exists, courts defer to **case law**, consisting of judicial interpretations of

the Constitution, a statute or common law. Federal law is superior to state law, which means that federal law must be applied in case of conflict between federal and state law.

6. Sources of law in the European Union

The sources of European Union law originate from:

- **primary legislation**, consisting of several **treaties** which contain broad statements of principles and policies pursued by the Union, and
- **secondary legislation**, consisting of law made by the Council, Parliament and Commission under the authority of the various treaty articles.

Secondary legislation comprises:

- **Regulations, Directives** and **Decisions**, referred to as **binding legal acts**, and
- **Recommendations** and **Opinions**, referred to as **non-binding acts**.

Like primary legislation, secondary legislation constitutes **hard law** and differs from non-binding instruments, which constitute **soft law**.

In EU constitutional law, a distinction is made between **direct applicability** and **direct effect**. **Direct applicability** is the principle that a provision of EU law immediately becomes part of the law of a member state without the need for the member state to enact its own law on the matter. This provision is said to be **self-executing**. **Direct effect** is the principle that Union law may confer rights on individuals or institutions which the courts of EU member states must recognise and enforce.

So, the Union can adopt:

- **Regulations –** these have general, binding and direct applicability in all member states, meaning that they cannot be varied or amended by national legislation.
- **Directives** – these are binding on the member states as to the *results* to be achieved, but leave open to each member state the form and method of **implementation** (or **transposition**).
- **Decisions –** these are binding in their entirety upon those to whom they are addressed. As an individual measure ruling on a particular matter, a Decision must specify the person to whom it is addressed. This feature distinguishes a Decision from a Regulation.

There are, in addition, advisory **recommendations** and **opinions** which do not confer any rights or obligations on those to whom they are addressed, but may provide guidance as to the interpretation and content of Union law.

Together with the primary law (treaties) and the **case law** of the European Court of Justice, these secondary instruments comprise the **Community *acquis*** – the body of EU law.

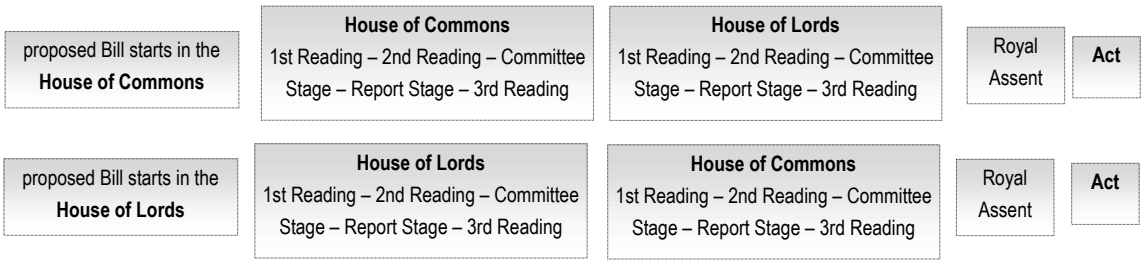
7. Legislative process in the United Kingdom: how a Bill becomes an Act

Before an item of legislation becomes law in the UK, it is known as a **Bill**. A Bill normally comes from the government, called **government-sponsored Bill**, or from an ordinary member of parliament (MP), called **private member's Bill**, and is preceded by a **White Paper** or a **Green Paper** during a **consultative process**. **White Papers** set out definite government proposals on topics of current concern and signify the government's intention to enact new legislation. **Green Papers**, on the other hand, are introductory reports on a particular area and are tentative proposals for discussion issued by a government minister without any guarantee of legislative action.

After the consultation process is completed, the **drafting** process follows. This is when the Bill is set out in a draft legislation by **Parliamentary draftsmen**, officially the **Parliamentary Counsel to the Treasury**. The Bill then goes through a number of **parliamentary readings** which are the formal stages

of **enactment** (the passing of legislation) by both Houses of Parliament (Commons and Lords). In their simplified form, these stages are:

- **First reading:** the Bill is introduced in either House such as the Commons and no debate or vote takes place at this stage.
- **Second reading:** this is the first general debate on the main principles and purpose of the Bill in the House. A government minister opens the debate by setting out the case for the Bill and explaining its provisions. The opposition responds and then other members are free to discuss it. At the end of the debate the House votes on the Bill.
- **Committee stage:** the Bill is debated in detail by a small group of MPs in a Standing Committee and may be amended in each clause.
- **Report (**or **Consideration) stage:** MPs who were not part of the Committee debating the Bill may consider any of the amendments made by the Committee. Any amendments may be accepted or reversed.
- **Third reading:** this is the final debate on the Bill in the House. No amendments are possible.
- **Moving to the other House:** once the Bill has passed the third reading in the House of Commons, it is referred to the House of Lords, known as **passage through the Lords**. The process in the House of Lords is very similar to the process in the House of Commons, and the Bill may move backwards and forwards between the two Houses a number of times before agreement is reached, a process called **'ping pong'**.
- **Royal Assent:** when both Houses have formally agreed on the content of the Bill it is then presented to the reigning monarch for approval, known as **Royal Assent**. Once Royal assent is given, the Bill becomes an **Act of Parliament** and is law.



8. Legislative process in the United States of America: how a Bill becomes a Law

In the United States, the **federal legislative powers** – the ability to consider Bills and enact laws – reside with **Congress**, which is made up of the US **Senate** and the **House of Representatives**.

In order to become a **federal** or **state law** in the United States, a **Bill** must go through a number of stages by both Houses of Congress. In their simplified form, these stages are:

- **Introduction:** a representative sponsor or a senator introduces the Bill to Congress by placing it in a wooden box called **'the hopper'** (if introduced on the House Floor), or by submitting it to clerks (if introduced on the Senate Floor).
- **Committee consideration:** once a Bill is introduced, it is assigned to the appropriate committee for study. At this stage, the formal committee action on a Bill is a **hearing** (committee members and the public can hear about the strengths and weaknesses of a proposal for law), and a **markup** (the proposal may be accepted, amended, or rejected by members of the committee).
- **Congressional debate and vote:** members of the House debate the Bill and propose amendments before voting. If the Bill is passed by majority voting, it moves to the Senate and goes through a similar process of committee consideration and voting. At this stage, both Houses must agree on the same version of the Bill.

• **Enrollment:** once both chambers of Congress have each agreed to the Bill, the Government Printing Office prints the final text in a process called enrolling – it is now prepared in its final official form and then presented to the President.
• **Presidential options:** when receiving the Bill from Congress:

a) the President may approve and sign the Bill into law, which is then printed in the **Statutes at Large** – the law is now codified and published in the **United States Code**. Alternatively:
b) the President may **veto** the Bill by refusing to sign it and return it to Congress with the reasons for veto, but Congress can override the veto by successful voting and the Bill becomes law,
c) the President may **take no action** on the Bill while Congress is in session, and the Bill automatically becomes law; or
d) the President may **take no action** on the Bill while Congress adjourns its session, and the Bill dies, a process known as **'pocket veto'**.

9. Statutory interpretation

Statutory interpretation is the process by which judges interpret and apply legislation in common law countries. The meaning of law in a statute should be clear and explicit, but this is not always achieved because there is often some **ambiguity** and **vagueness** in the words of the statute that must be resolved by the judge. Examples of **vague** expressions in statutes include *reasonable conduct*, *substantial damages*, or *so far as applicable*, which give a choice to the interpreter of the provision as to their specific meaning. This is also to say that many of the cases which come before the courts concern a dispute over the meaning of an expression used in a statute.

In order to solve an issue of statutory interpretation, judges use three different **rules of interpretation**. They are:

• **Literal rule** (or **literalism**) – this provides that words in a statute must be given their *ordinary* and *literal* meaning and must be interpreted according to the intention of Parliament which passed the Act.
• **Golden rule** – this provides that words in a statute must be given their *ordinary* and *literal* meaning as far as they do not produce *inconsistency* with the rest of the document.
• **Mischief rule** – this involves an examination of the former law and determines the *defect* (*mischief*) that the statute in question has set out to remedy. The application of this rule is more discretionary than the literal and the golden rule because it allows judges to deduce Parliament's intention – ascertaining the meaning that the legislature intended to give to the statute known as **intentionalism**.

In addition to these rules, the **purposive approach** allows the judges to look beyond the wording of the legislation to find an interpretation which gives effect to its *general purpose*, and the **teleological approach** which allows the judges to consider the *general spirit* of the legislation, rather than merely its *purpose*. While the purposive approach is based upon the mischief rule, the teleological approach is much broader than the purposive approach and is particularly important when interpreting European law. This law is often drafted in terms of *wide general principles* and not in the detailed manner found in UK domestic legislation.

There are also **rules of language** which the judges may apply. They are:

• **ejusdem generis**: general words only apply to things of the same type,
• **noscitur a sociis**: words derive meaning from others surrounding them, and
• **expressio unius est exclusio alterious**: when one or more things of a class are expressly mentioned others of the same class are excluded.

In addition to the rules of interpretation and rules of language, judges can make **presumptions** about the law, such as a presumption that *mens rea* (guilty mind) is required in criminal cases, known as **presumption against criminal liability without *mens rea***, or a presumption that a statute does not operate retrospectively, known as **presumption against retrospective operation of statute**. Or, they can make use of **internal aids**, such as the long title of the Act, and **external aids** to statutory interpretation, such as legal dictionaries and case law.

Note
A **legal presumption** is an inference established by the law as universally applicable to certain circumstances.

Finally, other tools of statutory interpretation include:

• **statutory definitions**: many statutes contain a *definitions* section that defines the key terms used in the statute. These definitions are important because they suggest that legislatures intended for a term to have a specific meaning that might differ from its common usage.

EXAMPLES

In this Act—
"officer", in relation to a body corporate, means—
(a) a director, manager, secretary or other similar officer of the body corporate, and ….

• **commonly used terms**: these are commonly found in statutes and often used purposely to define the scope and function of the statute.

EXAMPLES

Term	Function
And v. *Or*	'and' typically signifies a conjunctive list that must be satisfied, while 'or' signifies a disjunctive list
Except / Unless	signify an exception to the statute
For the purposes of … / Subject to … / Within the meaning of …	limit the scope of the statute, or may indicate that a certain part of the statute is controlled by another section or statute
If … then … / Provided that …	indicate that for one part of a statute to take effect, a requirement must be satisfied
Notwithstanding	signifies that a certain term or provision is not controlled by other parts of the statute, or by other statutes – 'in spite of'
Shall v. *May*	'shall' signifies that certain (obligatory) behavior is mandated by the statute, while 'may' grants the agent some discretion

9.1 Components of statutory provisions

Statutory provisions impose **duties** or **obligations**, or confer **rights**, **privileges** or **powers** on the recipient of the rule. Because of this, the expression of legislative provisions consists of various components. They are:

• the **legal subject**: this is the person on whom a right, privilege or power is conferred, or a duty/obligation imposed;
• the **legal action**: this is the statement of the right, privilege, or power, or the duty/obligation conferred or imposed on the legal subject;
• the **conditions** and **exceptions**: these are the special cases that must be satisfied before the legal subject may perform the legal action.

EXAMPLES

For example, in the legislative provision:

Where an application is made by the prosecutor, the prosecutor –
must (unless the court directs otherwise) inform the court of the identity of the witness.

The components of legislative expression are:

• **legal subject:** the prosecutor (identified in relation to the **duty** he is to perform)
• **legal action:** *must* inform the court of the identity of the witness (a statement of such a **duty**)
• **condition:** Where an application is made by the prosecutor (the case in which the provision is to operate)
• **exception:** unless the court directs otherwise (the case to be satisfied before the legal subject performs the legal action

Describing **conditions** and **exceptions** in legislative sentences is essential because the law is not of universal application, so they must be added to the description of the **legal subject** and the statement of the **legal action**.

10. Judicial precedent

Note
In the US, **federal case law** comes from federal courts, while **state case law** comes from state courts.

English and American judges decide the law applicable to a case not only by interpreting statutes but also by applying **judicial precedent** \joo-dish-*uh* lpres-i-d*uh* nt\. In doing so, they decide cases along the lines of previous decisions (**precedents**) where the **material facts** are of sufficient similarity, that is, facts which are legally relevant should be decided in a similar manner. In this way, judges are said **to be bound by precedent** in the process of creating **case law**.

More precisely, precedent describes the specific part of a judgment which establishes a legal principle to be followed in later cases, known as the Latin phrase **ratio decidendi** \rA-shE-"O-"de-s&-'den-"dI\ – 'the reason for the decision'. Typically, this ratio is referred to by the Latin phrase **stare decisis** \stɛəridɪsaɪsis\ – 'stand by what has already been decided', and is used to set forth a **binding precedent** in the **instant case** – the decision of the case before the court. Sometimes a precedent-setting case is called **reasoning by analogy** because the facts of a case are analogous with those of an earlier decision.

Note
BrE: binding precedent
AmE: mandatory/binding authority

eXtension

The **ratio decidendi** is the '**holding**' of the judicial decision and applies the law to the facts of the case. A **procedural holding** (what the court did procedurally with the case) usually follows the **substantive holding**.

For the reasons set out in this judgment **[substantive holding]**, in my view, the Appellant's appeal must be dismissed **[procedural holding]**.

Not only this, but judicial decisions often contain **incidental statements** that are not directly relevant to the issue in the instant case, known by the Latin phrase **obiter dicta** – 'things said in passing'. Such remarks made in passing may only be cited as **persuasive authority**. Because these statements create no binding precedent in the case before the court, they are called **persuasive precedent**.

Precedent and hierarchy of courts

However, legal precedent works in the context of hierarchy of courts. This is to say that the **ratio** and **obiter** depend on the relationship between the court in which the original decision was made and the case in which the precedent is to be applied. In this hierarchical context, the general rule is that each court is bound by the decisions made in a higher or equivalent court, such as the Court of Appeal being bound by decisions of the Supreme Court (higher in the hierarchy of courts) and other Court of Appeal decisions (equivalent in the court hierarchy).

10.1 Avoiding precedents

There are three main methods used by judges to deviate from a binding precedent that is difficult in the case being decided. They are:

• **Overruling:** a court higher in the hierarchy **overturns** the decision of a lower court in a *different* case, creating a different decision on the same material facts in later cases.
• **Reversing:** a court higher in the hierarchy **overturns** the decision of a lower court in the *same* case.
• **Distinguishing:** the judge finds that the facts or the law of the case for decision are sufficiently different from the previous precedent, and so **departs from** the precedent.

10.2 Legal cases: structure

Through precedent, **legal cases** (also known as **legal decisions**, **legal judgments**, or **judicial opinions**) provide a statement of reasons explaining why and how the **decision** is reached and are openly recognized as **authoritative**. This means that cases often have a traditional **structure** that follows a particular order:

• **Case identification.** This section identifies the case by including the court's name, the parties' names, the judge's name, and the title of the document, such as **Opinion** or **Judgment**.
• **Facts of the case.** This section provides a summary of the material facts and legal points raised in case: what the case is about, who the parties are (called by their legal names such as *appellant, appellee*, *petitioner*, *respondent*, *plaintiff*, *defendant*), and how the case came before the court. The summary is based on the **procedural history** of the case consisting of various hearings and proceedings and presented through a chronological and impartial narration of the **issues** or **questions of fact** in the case, showing the nature of **litigation**.
• **Applicable law.** This section states explicitly the **issues** or **questions of law** raised by the **facts** peculiar to the case. These issues will be used by the judge to decide the case and reach a particular outcome.
• **Legal reasoning.** This section involves the judge applying the **law** to the **facts** in the case and explaining why the decision is justified in a detailed analysis of each issue. This is because every legal case raises issues of fact and issues of law which require an answer by the judge solving the case, so the case relies on a series of **reasoned arguments** leading to the decision. Usually, judges include a closing paragraph after each issue has been analysed where they summarise the **holding** of the case (with the words *I/We hold that …*), as well as any **dicta** the opinion may contain.
• **Decision** or **disposition.** This section concludes the Opinion or Judgment by stating the final decision the judge reached - the judge's **holding** or **ruling** disposing of the case as to **procedural law**. The decision, or holding, is the result of applying reasoning to the case facts based on **substantive law** and is the **new rule of the case**. The decision disposing of the case as to procedural law may run along different lines, such as *I my judgment, I would therefore dismiss/allow the appeal*, or appear as **case reversed**, **case remanded**, or **case affirmed**, and tells what action the court is taking with the case.

10.3 Cases: types

In providing reasoned arguments for the decision, cases are not always supported by a unanimous ruling. If a judge agrees with the opinion, the judge writes a **concurring opinion**, which explains why the judge agrees, with the words '*I agree*' appearing at the conclusion of the judgment. If more than one judge disagrees with the judicial opinion, there will be a **dissenting opinion** explaining why the judges *disagrees*. A **per curiam opinion** is written by all the judges in a relatively unimportant case and usually with no one individual judge responsible for authoring the decision.

10.4 Cases: functions

In this way, legal cases can be said to serve two main **functions**. They communicate a court's conclusions and the reasons for them to the parties and their lawyers. When published, cases announce the law to judges, academics, other lawyers, and the interested public.

11. The UK system of courts and their jurisdictions

In the UK, the court system consists of **Magistrates Courts**, **County Courts**, **Tribunals**, the **Crown Court**, the **High Court**, the **Court of Appeal**, and the **Supreme Court**. Some courts are classified as **inferior courts**, such as the Magistrates' Courts and County Courts, while others are classified as **superior courts**, such as the High Court, Crown Court, Court of Appeal and Supreme Court.

Note
The court systems in both the UK and the US are very similar to one another but terminology differs. So, UK **trial courts** are called **district** courts in the US while UK **appellate courts** to which trial court decisions can be appealed are known as **circuit** courts of appeal in the US.

Inferior courts vs. superior courts

In this system, inferior courts decide the majority of cases at first instance and make an appropriate ruling on **points of fact** and **law** before any **appeals**, and are known as **trial courts** or **first-instance courts**. By contrast, superior courts review decisions of a first-instance court on important **points of law** and **public interest** and are known as **appellate courts**.

Court jurisdiction

The County Courts only hear civil cases while Crown Courts only hear criminal ones. The others exercise both types of **jurisdiction** – they handle both civil and criminal cases.

Types of court

The **Magistrates' Courts** are set up to deliver justice in a speedy manner without **jury trial**. Although magistrates' courts can hear a limited number of civil cases relating to *family law* and *licenses*, they are the lower courts where most criminal cases start and finish. The less serious cases (such as, *traffic offences*, *vandalism*, *being drunk and disorderly*), called **summary offences**, start and finish in these courts. Other cases of median seriousness (such as, *deception*, *burglary*, *drugs offences*), called **'triable either way' offences**, are heard either summarily in the magistrates' court or on **indictment** at the Crown Court. The most serious cases (such as, *murder*, *rape*, *robbery*), called **indictable offences**, are heard only in the Crown Court by **judge** and **jury**.[1] Although civil cases are sometimes dealt with by magistrates, most of them are heard in the **County Courts** or the **High Court**.

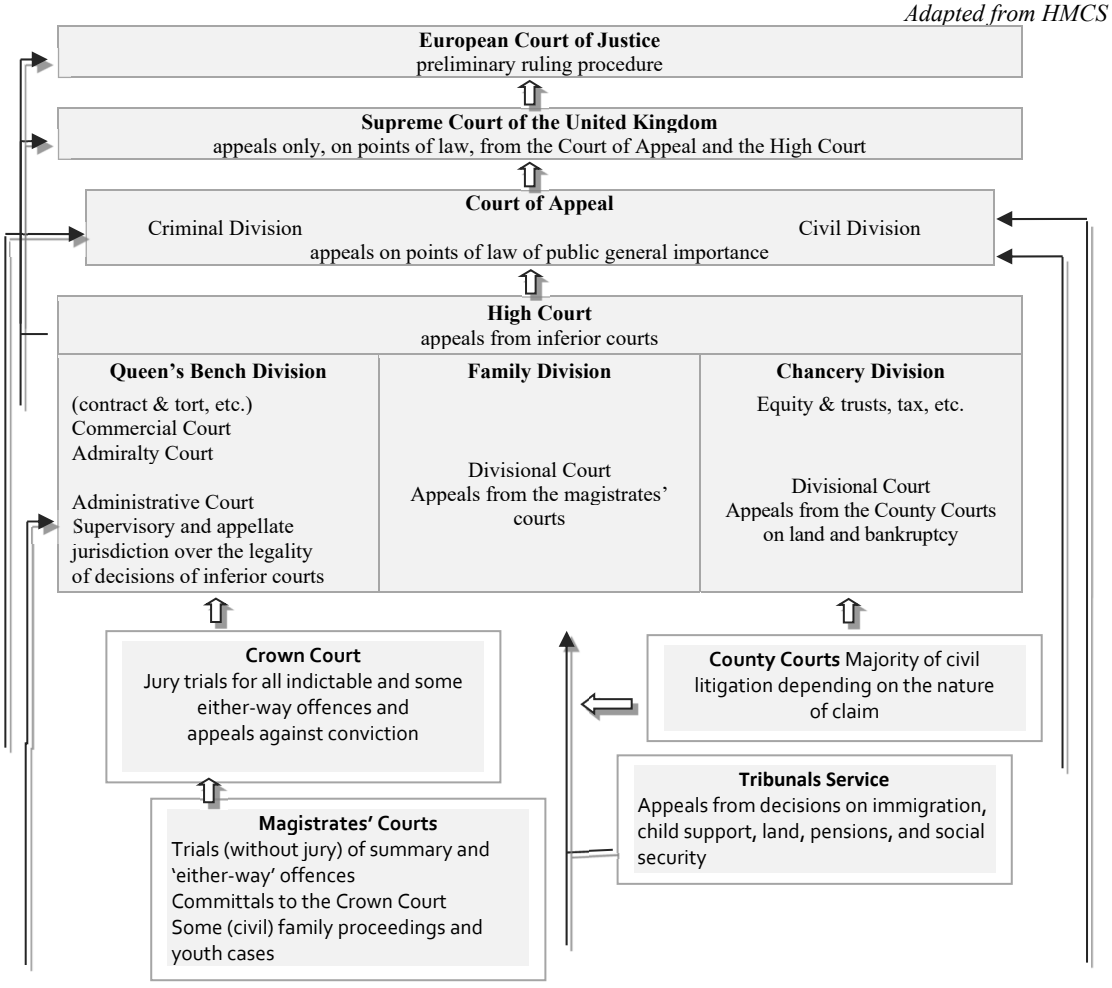
The **Court of Appeal** hears criminal and civil appeals from the Crown Court and the High Court, and deals with permissions to appeal to the Supreme Court, known as **applications for leave**. The **Supreme Court** is the **court of last resort**, meaning that it is the final court of appeal in both civil and criminal cases where *points of law* of public general importance are considered. It refers some cases to the **European Court of Justice** for a ruling on the interpretation of a point of European law.

There are also specialist **ombudsmen** who deal with complaints about an organisation. Using an ombudsman is a way of trying to resolve a complaint without going to court.

[1] For more details, see Unit 3.

UK Court System and Jurisdiction

Adapted from HMCS



12. The EU institutional system

European institutions are the heart of the EU legal system. They include:

- The **European Union Council**
- The **European Commission**
- The **European Parliament**
- The **European Court of Justice**
- The **European Court of First Instance**

The **Council of the European Union** (formerly known as the **Council of Ministers**) is the main **legislative arm** of the Union. The Council is the body which, in co-operation with the Parliament, enacts the vast majority of Union legislation (Regulations and Directives) following proposals put to it by the Commission, and is therefore the **Community's legislature**.

The **European Commission** is the main **executive body** to promote the common interest of the Union. The European Commission has three main roles:

• **Initiating legislation**. While the Council has the final say on nearly all matters of legislation, the Commission has the **right of initiative**. This means that the

Commission is responsible for drafting proposals for new European laws after consultation with national governments. These proposals are then sent to the European Parliament and the Council for adoption.

• **Guardian** (or **watchdog**) **of the treaties**. Once the new laws have been adopted jointly by the Parliament and Council, it is the responsibility of the Commission to ensure that the EU legal provisions are correctly applied.

• **Representing the Community and implementing the EU budget**. As well as proposing legislation and enforcing European law (jointly with the Court of Justice), the Commission represents the Union on the international stage.

The **European Parliament** is mainly a **consultative** and **advisory body**. Members of the European Parliament – **MEPs** – sit in political groupings. The powers of the European Parliament include:

• **Legislative power**. Parliament passes European laws jointly with the Council in many fields. It can deliver **non-binding opinions** (as in **consultation** procedure) or **binding opinions** (as in **assent** procedure) depending on the degree to which it interacts with the Council in the enactment of legislation.
• **Power over the budget** (or **power of the purse**). Parliament shares joint responsibility with the Council for approving the EU's annual budget, and debates the budget in two successive **readings**.

Parliamentary questions are a method to supervise the activities of the Commission and the Council. Each MP can address to the Commission and the Council **written questions**, **oral questions**, and **questions during Question Time**. Parliament can also make **recommendations**.

The **European Court of Justice** is the **judicial institution** of the European Union. Article 220 provides:

The Court of Justice shall ensure that in the interpretation and application of this Treaty the law is observed.

This provision ensures that the **rule of law** is applied throughout the Union. The Court hands down **judgments** on cases brought before it which are binding on the parties to whom they are addressed, whether member states or individuals. The Court of Justice:

• Hears **appeals** from the European Court of First Instance on **points of law**.

• Hears **direct actions** against member states for failure to meet Treaty obligations. These actions are known as **actions for failure to fulfil obligations** (**infringement procedures**), **actions for annulment**, and **actions for failure to act**.

• Gives **preliminary rulings**. These are determinations of the European Court of Justice on the interpretation of European Union law, given in response to a request made from a national court or tribunal, with no scope for appeal. They are in the form of a binding Opinion or Decision. This procedure is known as **reference** (or **question**) **for a preliminary ruling**.

The **European Court of First Instance** hears a wide variety of European cases **at first instance** brought by individuals against decisions of EU institutions rather than by member states and delivers **judgments**.