Professional Issues
Com6650 and 6655
Part II:
Introduction to English Law
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• 1. Introduction

• Laws are formalised rules for regulating the behaviour of individuals and organisations in society.

• We focus on English law, which is the law governing England and Wales.
1.1. History of common law

• Before 1066, life was governed by customary rules which varied from one locality to another.

• Following the Norman Conquest, a unified system of law (common law) slowly came into existence.

• Common law developed by using the decision of a judge in a particular case as a guide (precedent).

• The Court of the King of England had central authority.
• Codified law versus common law
  • Codified law obtains in most of Europe, South America and elsewhere
  • Contrasts to common law basis of England, former British colonies, USA and most of Canada
Common law is “essentially unwritten, non-textual law”
- It evolved historically
- Building blocks are cases
- Emphasis on precedent
1.1.1. Writs

- Claimants were granted writs by the King as a means of starting the legal process.

- Writs defined rights and obligations that were enforceable within the King’s courts.

- The writ system eventually extended to civil matters, and was formalised in the register of writs.
1.2. Equity

• If a common law remedy produced an unfair result, the Court of Chancery could decide the issue.

• The Court appointed a Chancellor, who considered the merits of each case.

• The Chancellor was a priest, and was only concerned with what was fair, not common law concepts.

• The justice dispensed by Chancellors became known as equity.

• Q. What was the problem with this system?
“...Equity is a roguish thing; for law we have to measure to know what to trust to. Equity is according to the conscience of him who is Chancellor: as it is larger or narrower so is equity. ‘Tis all one as if they should make the standard for the measure we call a foot to be the Chancellor’s foot...” (John Selden, 1617)
1.3. Parliament

• In the 15th century, the legislative power of the King was transferred to Parliament.

• Courts were reorganised in the 19th century, so that all courts could apply common law and equity.

• By the end of the 19th century, legislation much more important than common law or equity.

• Q. Why?
1.4. Civil law and criminal law

• Civil law is concerned with resolving disputes between individuals or groups of individuals.

• Civil cases are initiated by an aggrieved party (plaintiff), who takes legal proceedings against (sues) another party (defendant).

• Normally the objective is to obtain damages (money compensation) or an injunction (court order).
• Criminal law concerns the punishment of acts which can be seen as offending against society as a whole.

• Criminal cases are normally brought by the Crown, e.g a case against Smith will be referred to as  R. v. Smith.

• If an individual is acquitted, he cannot be prosecuted again for the same offence on the same evidence.
Double Jeopardy

- Double jeopardy: a procedural defence that forbids a defendant from being tried again following a legitimate acquittal or conviction.

- But in England and Wales the Criminal Justice Act 2003 changed this, and a retrial can take place for serious criminal cases if new and compelling evidence comes to light.
Criminal law vs civil law burden of proof

Criminal law

prosecution must demonstrate they are guilty beyond all reasonable doubt

被告 is innocent until proven guilty

prosecution has to prove its case

Civil law

to win case, need to show claim is correct on the balance of probabilities

both parties present evidence and must convince court of their correctness

(OJ Simpson)
2.2. The legislative process

- A Bill (a proposed new Act) is drafted, normally under the supervision of a government minister.

- The Bill is introduced either into the House of Commons or the House of Lords (normally it must be passed by both houses).

- Several stages of reading and amendment follow.

- The Bill becomes an Act of Parliament following Royal Assent.
2.3. Delegated and autonomic legislation

- It is now considered important to legislate on almost every aspect of life.
- Parliament cannot find time to attend to every detail.
- Power to make regulations is delegated to other bodies, such as local authorities and government ministers.
- Such regulations are known as delegated legislation.
• An important form of delegated legislation is the statutory instrument.

• E.g. the Copyright (Computer Programs) Regulations 1992

• Some autonomous (self-governing) bodies have legislative power that is binding only on their members

• So-called autonomic legislation.

• Example: Church of England, most trade unions.
2.4. European Union

- European Economic Community (EEC) established in 1957 by the Treaties of Rome.

- Single European market introduced in 1992, intended to promote free trade between member states.

- The Council of the European Union and European Parliament have legislative powers. The European Commission proposes draft legislation.

- EU legislation often attempts to harmonise laws of the member states.

- Growing influence on English law.
• who is in the European Union?

• 28 member states

• Austria, Belgium, Bulgarian, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, United Kingdom
2.4.1. Legislative tools of the EU

• Regulations. New laws directly enforceable by English Parliament and Courts.

• Directives. An instruction to member states to alter their existing laws.
• A Directive requires transposition into national legislation (which may introduce subtle national variations)

• e.g. Directive on sourcing, collection, and storage of tissue

• Decisions. Specific decisions regarding a member state, enterprise, company or individual.
• British Bill of Rights?

• In 2014 Conservatives pledged to repeal the 1998 Human Rights Act which incorporates the European Convention on Human Rights into British Law
2.5. Judicial precedent

• Common law was created on an ad hoc basis, each problem being settled as it arose.

• How did people know what was a crime, or what their rights were in a dispute?

• The decision of a court is binding on the parties involved, but may also be binding on future cases.

• The principle sets a precedent which is incorporated into the common law.
• Precedent is also called case law (the law to be discovered by reading earlier cases).

• For the last 400 years, important cases have been recorded in Law Reports, which constitute a major source of law.

• There are two kinds of precedent, binding precedent and persuasive precedent.
3. The system of courts

- The system of courts has a hierarchical structure.

- Arrows indicate appeals.

More information is available from the Ministry of Justice site, at
<http://www.justice.gov.uk>
The Supreme Court

• “The Supreme Court is the final court of appeal in the UK for civil cases. It hears appeals in criminal cases from England, Wales and Northern Ireland. It hears cases of the greatest public or constitutional importance affecting the whole population.”

3.1. Supreme Court

- Highest appeal court

3.2. Court of Appeal and High Court

- Court of Appeal hears appeals in criminal cases from the Crown Court and civil cases from the High Court.

- High Court hears civil cases not dealt with by the county courts. Consists of three divisions
  - Queen’s Bench, Family and Chancery.
3.3. Crown Court

- Sits with a judge and jury, who decide whether the defendant is guilty or not guilty.
- Jurors selected at random from local residents.
- The verdict of the jury should ideally be unanimous, but the court may accept a majority verdict $\geq 10:2$.
- Defendants committed from the magistrate’s court.
- Tries all serious criminal charges.
3.4. County court and magistrates’ courts

- **County Courts** created in 1846 to settle small claims locally and cheaply.

- Deal with claims below £25,000. Complex or important cases are referred to the High Court.

- **Magistrates’ Courts** hear minor criminal offences and civil cases. They also enforce payment of local taxes.

- There is no jury in County or Magistrates’ Courts.
3.5. European court of justice

- The European court has jurisdiction on matters that have a European element.

- House of Lords is bound to refer such cases to the European Court and must follow their ruling.
3.6. Tribunals and arbitration

- Tribunals are concerned with resolving disputes in specific areas; they involve legal experts and experts from the field concerned (e.g., data protection).

- Arbitration is used in many civil cases (particularly in the field of business), and involves the appointment of an independent arbitrator to resolve the dispute.
• Why should you obey the law?
• Why do we need laws?
• why should you obey the law?
• to be protected by law you should obey it first
• for the benefit of society in general
• to make life easier, to know what to do
• to avoid punishment
• Why do we need laws?
• to protect ourselves
• for order and stability
• having regulations - knowing how to get redress
• to allow better communication
The duty to obey the law.....

Wacks (2009) Understanding Jurisprudence

Fear of punishment, or habit

Fair play: legal system is fair, and price for its benefits (e.g. security, order, justice) is obedience to its requirements

Consent: by belonging to society I consent to its rules

The common good: widespread disobedience would result in pandemonium

Gratitude: because you get benefits from society, you should follow its rules
4. Basic legal concepts
4.1. Persons

- A person in law is an entity which is capable of having rights and undertaking duties.
- A thing is the subject of rights and duties.
- Persons may be either natural or artificial. A natural person is a human being. An artificial person is a corporation created under the law.
4.2. Rights and duties

- A right is some liberty relating to a person that is protected by the law.
- Example: the possession of property.
- Where a person exercises a right, he does so by virtue of another person owing a duty towards him.
Where a person exercises a right, s/he does so by virtue of another person owing a duty towards her/him.
4.3. Obligation

• An obligation exists where parties are in a relationship of right and corresponding duty.

4.4. Liability

• A person is under a liability (or is liable) when he owes a duty or an obligation to another.
4.5. Property

• Legal ‘property’ is that which is the subject of rights.

• Land and other things that can be owned by a person.

• Real property is land.

• Personal property (‘chattels’) is all other kinds of physical property and also includes contract rights, company shares, patents and copyrights.

4.6. Ownership

• Ownership is the concept that relates a person to property over which he has exclusive control.
4.7. Possession

- To exercise possession over property, a person must:
  - Have physical control of the property;
  - Have the intention to exercise control; and
  - Ensure that there are visible signs of his possession.

- The person in possession is protected by the law except against another party that has a stronger claim for possession.

- This is what is meant by the old saying that ‘possession is nine tenths of the law’.
4.8. Ownership and possession are different

• In a sale of goods, the seller may deliver the goods to the buyer on the condition that entitlement to the goods does not pass until payment is made.

• The buyer is in possession of the goods, but the seller still has ownership until payment.

• If Tom lends Harry his car for the evening, Harry is in possession of the car but Tom still has ownership.

• Possession is all that is required for a plaintiff to have a right of action.
5. Criminal law

• The definition of crime adopted by the House of Lords is:

• A crime is an unlawful act or default which is an offence
  • against the public
  • and renders the person guilty of the act liable to legal punishment.

• Criminal law aims to:
  • Define each crime
  • Set up procedures for finding the guilt or innocence of the accused
  • Establish punishments for the guilty.
• 5.1. Principles of criminal law

• A criminal act itself does not constitute guilt unless the mind is guilty.

• The criminal act is called the actus reus (from the Latin meaning ‘guilty act’).

• The mental element of a crime is called the mens rea (from the Latin meaning ‘guilty mind’).
5.2. The mens rea

- Involves an intention or a recklessness in carrying out a criminal act.
- ‘..It is a general principle of our criminal system that there must be as an essential ingredient in a criminal offence some blameworthy condition of mind. Sometimes it is negligence, sometimes malice, sometimes guilty knowledge, but as a general rule there must be something of that kind which is designated by the expression mens rea..’ (statement from a Judge in 1829)
• **Example: shoplifting**
  - actus reus. Leaving the shop without paying
  - mens rea. Doing this deliberately and dishonestly.

• **Example: murder**
  - actus reus. Wielding the axe etc.
  - mens rea. Doing so ‘with malice aforethought’

• Q. Why bother with the question of intent at all?
5.3. Criminal defences

• A defence is available if the defendant can show that there was no intent when the act took place.

5.3.1. Mistake

• The accused may be able to show that he was under a mistake such as to negate intention or recklessness.
• Ignorance of the law is no excuse.

5.3.2. Insanity.

• Insanity may be proven if the accused was ‘labouring under a defect of reason, from disease of the mind’
• Accused didn’t know the nature of what he was doing.
5.3.3. Intoxication.

- A type of legal insanity. May negate mens rea with regard to particular offences.
- May be taken into account when pleading mistake.

5.3.4. Compulsion.

- Involuntarily act due to duress by threats, necessity, obedience to orders etc.
• acting under duress
5.4. Prosecution of criminal offences

- When a criminal offence has been committed, the normal procedure is for the police to be informed.
- If the police suspect a certain person of having committed the crime, they charge them and then pass the case to the Crown Prosecution Service (CPS).
- The CPS decides whether to prosecute and what charges to bring.
- The accused will appear before a Magistrate’s Court.
- Either his case will be heard by the Magistrate (summary trial) or he will be committed for trial in the Crown Court (trial on indictment).
- Some offences can be tried ‘either way’, i.e. summarily or on indictment depending on the choice of the defendant.
- If the CPS declines to act, it is still possible to bring a private prosecution.
5.5. Criminal offences

5.5.1. Theft

• ‘..a person is guilty of theft if he dishonestly appropriates property belonging to another with the intention of permanently depriving the other of it..’ (Theft Act 1968)

Q. What are the actus reus and the mens rea in this definition?

Q. If someone steals a computer disk, copies the information on it and returns the disk to the owner, has a theft been committed?
5.5.2. Fraud  

- ‘..fraud is proved when it is shown that a false representation has been made (i) knowingly, or (ii) without belief in its truth, or (iii) recklessly, careless whether it be true or false..’ (Lord Heschell, 1889)
- The 1968 Theft Act defines a number of fraud offences, as follows:
  - Dishonestly obtaining property by deception, with the intention of permanently depriving another of it.
  - Dishonestly obtaining a pecuniary advantage by deception.
  - Destroying, defacing, falsifying or concealing any record or document required for an accounting purpose, or producing an account which is misleading, false or deceptive (false accounting).
6. The law of tort

- The word ‘tort’ is Norman French, meaning ‘wrong’.
- A tort is a wrong which can be resolved by civil courts.
- The purpose of the law of torts is to compensate those suffering loss or injury caused by another’s actions.
- Usually an action for damages (money compensation).
- If damages are not available, an injunction (restraint order) may be made.
6.1. Relationship between tort and criminal law

• Most crimes which cause injury or damage to persons or property are also torts.

• So, a wrongdoer may be punished by the criminal courts and sued in tort for compensation by the person who suffered the injury or loss.

• Example: A car accident caused by breaking the laws that govern the driving of cars.
7. The tort of negligence

- Negligence involves a duty of care, and the damage which is suffered as a result of a breach of that duty.

- To succeed in a claim for negligence, the plaintiff must show that the damage or injury suffered was caused by the defendant’s breach of duty.
Two questions arise:

Did the breach of duty cause the damage? (factual).

Is any part of the damage too remote? (legal).

The test of remoteness asks whether a reasonable person, at the time of the breach of duty, would have foreseen the damage which has occurred.

If the damage is reasonably foreseeable, then the defendant is liable for it.
Example: *Donoghue v. Stevenson (1932)* •

modern law of negligence came about because of a fizzy drink

• **May** Donoghue was given a bottle of ginger beer. She drank some, refilled her glass and a semi-decomposed snail came out. The bottle had dark glass, so the snail could not have been seen until then. She later suffered a bout of gastroenteritis

Donoghue’s friend bought her the ginger beer

Donoghue had no contract with the cafe

Neither she nor her friend had a contract with the ginger beer manufacturer

a writ was issued by Donoghue against Stevenson the manufacturer

3 years later, a panel in the House of Lords ruled in Donoghue’s favour
The Snail and the Ginger Beer
The Singular Case of Donoghue v Stevenson
Matthew Chapman

Wikdy, Simonds & Hill Publishing
8. Contract law

- A contract is a legally enforceable agreement.
- A contract is enforceable since there is legal action available in case one party should fail to comply with his promise under the agreement.
- The usual remedy is money compensation, known as damages.
- When a party does not comply with terms of a contract, a breach of contract is said to have occurred.
- An important and doctrine of English Law is privity of contract.
- This states that third parties are unable to sue on a contract that does not concern them.
9. Summary

• Historical origins of English Law, including the development of our current legal system from common law and equity.

• Sources of law — legislation and precedent. Before 2016 there has been an increasing influence of EC law on English Law.

• The system of courts in England and Wales.

• Basic legal concepts, such as rights, duties, persons, liability, property, ownership etc.

• Criminal law and the prosecution of criminal offences.

• Theft and fraud.

• The law of Tort, negligence and strict liability.

• Contract law.