



# Introduction to English Law

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# Scope of the Presentation

- Categorising Legal Systems
- Component Jurisdictions
- Branches of Law:
  - Constitutional Law
  - Criminal Law
  - Tort
  - Contract
  - Equity
  - Other branches





# Categorising Legal Systems (I)

- National legal systems are frequently placed into five divisions: Common Law; Civil Law; Religious Law; Customary Law; or Mixed.
- This model is open to criticism, as it is Western-centric in its approach, but is useful for some purposes.
- Common Law- legal systems derived from the framework that emerged in England following the Norman Conquest.
- Civil-legal systems derived from Roman law, often but not always via the Napoleonic Code.

# Categorising Legal Systems (II)

- **Common Law systems:**
  - They operate a formal and sophisticated system of precedent
  - Decisions are frequently reported and read because of this.
  - They are not contained within overarching civil and criminal codes, although they may have pockets of codification.
  - They tend to be individualistic/libertarian in approach, e.g. no legal duty to rescue strangers.





# Categorising Legal Systems (III)

- **Common Law-Precedent:**

- Basic rule-courts are bound to follow the ratio decidendi of previous cases decided by courts of the same level or below.
- *Ratio decidendi*=reasons for deciding. It encapsulates the legal principle that determined the outcome of the case.
- Courts can develop principles, but cannot invent them. Their proper function is to interpret law, rather than make it, although the line can become blurred!
- Established precedent must be either followed or distinguished.



# Categorising Legal Systems (IV)

- Common Law systems also tend to be rooted in parliamentary democracy, along the lines of the Westminster model, although there are exceptions.
- Nevertheless, the operation of Parliamentary Sovereignty is a distinctive feature of the United Kingdom.
- Parliament is the most powerful constitutional organ and will always have the last word-at least according to orthodox theory.
- The courts have no power to “strike down” Acts of the British legislature.





# Component Jurisdictions

## (I)

- How many jurisdictions exist within England and Wales is a moot point.
- Scotland has always maintained its own system of criminal and civil law-this was part of the horse-trading prior to the Act of Union 1707.
- Northern Ireland, of course, has its own unique and complex history.
- The process of devolution from the 1990s onwards has meant that Northern Ireland, Scotland and Wales have increased their legal autonomy.



# Component Jurisdictions (II)



- Although for many purposes England and Wales are thought of as a single jurisdiction, there are now some very significant points of divergence.
- E.g. It remains legal in England for parents to hit and otherwise physically discipline children (within certain limits), but the Children (Abolition of Defence of Reasonable Punishment) (Wales) Act 2020 has made this a criminal offence in Wales.



# Branches of Law

- For the purposes of analysis, it is helpful to divide the legal system up into different branches of law.
- Each branch exists for its own purposes and is governed by its own principles.
- However, it is crucial to bear in mind that all of these branches are part of the same tree.



# Constitutional Law (I)

- Uncodified.
- Pillars-Parliamentary Sovereignty, Rule of Law, Checks and Balances/Separation of Powers; Human Rights.





# Constitutional Law (II)

- UK is a dualist State.
- International treaties do not automatically form part of the domestic legal framework.
- For many practical purposes, therefore, International Law is weaker than national law.
- Parliament can choose to incorporate principles from International Law into the domestic law framework, but it can equally choose to remove them, e.g. Human Rights Act 1998



# Constitutional Law (III)

- Human Rights:
- The HRA 1998 incorporates ECHR into domestic law.
- Key Articles in relation to religion and belief: 8, 9, 10, 12 and 14
- The HRA 1998-As noted above, it does not permit courts to strike down an Act of Parliament, but it does give courts powers in relation to secondary legislation (including acts of devolved legislatures) and public authorities.





# Constitutional Law (IV)

- Convention rights do not have horizontal effect.
- Nonetheless, the State does have a duty to protect individuals from having their rights infringed by third parties-this means that the law must operate to safeguard Convention rights.
- In many disputes both sides have human rights engaged, and there is no hierarchy of rights. Sometimes rights can/must be limited, meaning that the courts will need to decide whose interests give way in a concrete situation.

# Criminal Law

- Most coercive form of law.
- Principle of liberal democracy that liberty should only be limited when necessary- therefore, criminal regulation/sanctions should **ONLY** be imposed when needed for the public good.
- Criminal offences are prosecuted by public authorities. There does not always need to be a direct human victim.





# Tort (I)

- From the French word for “wrong”.
- Tort and criminal law have the same origins: early in the Common Law.
- Liability does not arise in tort because the defendant has made any special promises or agreement, it is imposed because as a matter of public policy, certain actions should not be tolerated, and victims should be entitled to seek compensation.
- It is up to claimants (formerly plaintiffs) to decide whether or not to claim.



# Tort (II)

- It is quite common for the same facts to give rise to both a crime and a tort. Whether the public authorities choose to prosecute the crime and whether the claimant chooses to sue are separate decisions.
- There are many different types of torts or civil wrongs, e.g. trespass, defamation, conversion, negligence, public nuisance, private nuisance and breach of statutory duty.
- Different legal principles apply to different torts.



# Tort (III)

- Tort has a key role in protecting human rights.
- Tort often provides individuals with the mechanism to protect their fundamental rights and/or seek a remedy if these are infringed.
- Not only torts are dependent on showing damage that a doctor can identify as physical or psychiatric injury, or that can be related in simple terms to money
- E.g. Trespass to the person; Breach of Confidence.
- Both are key to protecting Article 8 rights.





# Contract (I)

- Unlike tort, obligations arise in contract because the parties have chosen to enter into them.
- Not all agreements are accepted as legally enforceable in contract.
- Generally, speaking there must be: intention to create legal relations, offer and acceptance, as well as consideration.
- Some contracts are forbidden/unenforceable for public policy reasons. Other contracts are heavily regulated, especially where there is an imbalance of power.



# Contract (II)

- English courts will not adjudicate on theological questions, but they will recognise and enforce the terms of contracts made in religious settings, provided that this does not require resolving spiritual disputes.
- Contract is important for regulating many aspects of the lives of faith groups.



# Equity (I)

- Parallel jurisdiction that developed from the residual power of the monarch to dispense justice.
- The Court of Chancery operated for centuries in its own sphere.
- Own set of lawyers and legal rules.
- Equity solidified into a body of law.
- Common law courts did not operate according to the rules of Equity, or even recognise them.
- It was, consequently, critical that litigants started proceedings in the correct courts.





# Equity (II)



- By the XIX century, this twin track system was becoming untenable, and the two jurisdictions were merged.
- In the contemporary context, courts in England apply both the principles of law and equity.
- However, the origins of equity remain important. Equitable remedies tend to be discretionary, and those seeking to rely on them must generally have acted in good faith: “he who comes into equity must come with clean hands”. In practice, the position is rather more complex than this

# Equity (III)



- Examples of interaction between equitable and Common Law rules.
- *Foakes v Beer (1884)*-Common Law demands that partial payment of a debt is NOT good consideration for payment of the whole. Therefore, if A owes B £500, but is struggling to find the full amount, he might offer to pay £300 if B promises not to sue him for the remaining £200. As far as the Common Law is concerned, B's promise is not contractually binding, and he can change his mind and seek the outstanding £200 if he is inclined.

## Equity (IV)

- Nevertheless, equitable doctrine of “Promissory Estoppel” may come to A’s rescue-Central London Property Trust v High Trees House (1947)
- Although B’s agreement does not have contractual force, equity may “estop” or prevent B from going back on his promise in these circumstances.



## Equity (V)

- Equity is a crucial part of the legal framework, and very important for religious organisations.
- Trusts exist in equity, rather than Common Law.
- Trust/Equity are essential to the operation of Charity Law.





# Other Branches

- There are, needless to say, other legal disciplines that are relevant to religious organisations, and Canon Law as a result.
- E.g. Family Law.
- These will, of course, be expanded upon later in the course, as and when they arise in relation to topics studied.

