

*Business Law: CIMA Year One*  
**The English Legal System**

There are two types of legal system: civil, and criminal.

Civil law governs occasions when two individuals have a dispute, and go before a judge to resolve the dispute. The judge rules either on precedent or by developing principles.

The defendant, if found liable, must pay damages to the claimant – not as a form of punishment but merely to resolve the situation.

Criminal law is intended for situations in which the behaviour of an individual is too reprehensible to escape punishment. The state takes one party to court to punish them; it is not sufficient to simply compensate the victim.

*Burden of Proof*

In a civil case, the burden falls on the claimant, and must be proven on the balance of probabilities: is it more likely that the claimant is telling the truth?

In a criminal case, the burden falls on the prosecution, and must be proven beyond reasonable doubt: the defendant must be acquitted if there is an explainable doubt.

It is possible for a single offence to have both criminal and civil proceedings. For example, OJ Simpson was taken to criminal court over murder, but acquitted since the evidence was not sufficient. He was taken to civil court by the relatives of the victims and found liable, since the necessary proof was less.

**Sources of Law (1.2)**

Before 1066, there was no centralised law, leading to chaos and anarchy. William sent judges out around England to rule on disputes, who would then return to London and discuss the rulings they'd made. The law of England was therefore made "common" over dinners at Grays Inn, Lincoln's Inn, and Inner and Middle Temple. This led to equity of disputes, and robustness.

Common law is very rigid and sometimes unfair. If someone is unhappy with a decision, they must petition the king. Equity law developed to ensure fairness; for example, trust funds and co-habitation.

A trust fund is a contract between a father and a bank to pay the son a fixed sum when he is age 21. However, if the father dies the bank could refuse to

pay, since they have no contract with the son. Common law dictates that there is privacy in the contract, but this is not necessarily fair. Equity rules that the son is included in the contract as a beneficiary in the trust.

Common law and Equity are now included in one court

Legislation overrules common law and equity – it is supreme and sovereign. Parliament can make and unmake any law with a majority decision – it is impossible to define any law as unrepealable in the UK (many other Western countries have two layers of law: normal state or federal law passed by a congress; and constitutional law which cannot easily be changed).

Laws defined by legislation must be enacted in the courts, with two exceptions:

- EU law overrules UK legislation if there is a conflict
- The Human Rights Act 1998, which incorporated the European Convention of Human Rights into UK law, also overrules other UK legislation

There is therefore a mechanism to allow the courts to make a declaration of incompatibility if other law conflicts. This is not a direct repeal, it just points out to parliament that there is a conflict – the defendant must still go to the European Court of Human Rights.

An example of the European Communities Act 1992:

One aspect of the European Union is free trade. There was a problem with Spanish fishermen fishing off of the coast of Cornwall; parliament passed a law that only those with a British-owned boat were allowed to fish off of Cornwall. This however clashes with EU law, and the UK courts were therefore forced to choose between UK and EU law.

## **Delegated Legislation**

Parliament has the power to enable other bodies to make legislation – this is delegated. Examples include regulations made by local councils or ministers. Parliament can remove these powers at any time.

## **Precedent**

Law is often set by precedent – that is, the rulings in one case can be applied to another. Directly applicable cases are binding; to decide whether previous cases apply we must separate the judgement into two areas:

- the reasoning behind the previous case (the *ratio decidendi*)
- other things which were said as an aside (the *obiter dicta*)

Only the first of these is relevant when considering precedent.

## **EU Law**

There are four institutions responsible for EU Law:

- the European Commission (civil servants who are charged with implementing European law and its principles)
- the Council of Ministers (this handles large initiatives, and comprises of the relevant ministers of member states – for example, all transport ministers discuss transport law)
- the European Parliament (elected, but not that powerful)
- the European Court of Justice (which rules on disputes of EU law)

The primary sources of EU law are the treaties; the Treaty of Rome in 1967 formed the economic union of six countries, and this has been amended by subsequent Treaties (Paris, Maastricht, and so on). The forthcoming European Constitution is merely a tidying-up of the Treaty of Rome incorporating all amendments.

The secondary sources are the directives. These require more action than regulations; and recommendations are not actually law.