

FOREWORD

English for Law Students is designed

- to meet the students' needs in acquiring both language through law and law through language;
- to strengthen their reading and writing skills;
- to develop the students' ability to analyse, summarise and interpret legal texts concerning particular legal area or issue;
- to introduce common law terms, concepts and institutions to the students of a different law system;
- to increase their competence in legal language usage;
- to provide thought provoking materials;
- to encourage analytical approach to and comparative studies of current legal issues and reforms;
- to equip students with linguistic tools to advance in their scholarly activity.

English for Law Students contains five UNITS: History and Sources of English Law, Constitution, Monarchy, Parliament, The Executive. Each unit includes a number of texts on a particular theme followed by LANGUAGE PRACTICE AND COMPREHENSION CHECK with TASKS ranging from word building to complicated legal vocabulary, grammar, syntax, discussion points. They focus on reading comprehension, speaking and writing activities. Each unit ends with the task to write an essay based on the texts of the unit on one of the exam questions.

The KEY at the end of the book gives the answers to some exercises.

The GLOSSARY provides definitions for most legal terms used in the units.

English for Law Students is designed for all those who strive for academic excellence and professional success.

UNIT I

HISTORY AND SOURCES OF ENGLISH LAW

TEXT 1

CASE LAW

The word source can mean several different things with regard to law, but for our purposes it primarily describes the means by which the law comes into existence.

English law stems from seven main sources, though these vary a great deal in importance. The basis of English law today is case law, a mass of judge-made decisions which lays down rules to be followed in future cases. For many centuries it was the main form of law and it is still very important today. However, the most important form of law, in the sense that it prevails over most of the others, is statute, or Act of Parliament, which today is the source of most major changes in the law. As well as being a source of law in their own right, statutes contribute to case law, since the courts occasionally have to interpret statutory provisions, and such decisions lay down new precedents. Delegated legislation is a related source, laying down detailed rules made to implement the broader provisions of statutes.

An increasingly important source of law is the legislation of the European Community, which is the only type of law that can take precedence over statutes in the UK, and is increasingly influencing the decisions of the courts in interpreting statutes.

Finally, custom, equity and obligations relating to international treaties are minor sources of law, though Britain's obligations under the European Convention on Human Rights have produced notable contributions to law reform.

Before the Norman conquest, different areas of England were governed by different systems of law, often adapted from those of the various invaders who had settled there; roughly speaking, Dane law applied in the north, Mercian law around the midlands, and Wessex law in the south and west. Each was based largely on local custom, and even within the larger areas, these customs, and hence the law, varied from place to place. The king had little control over the country as a whole, and there was no effective central government.

When William the Conqueror gained the English throne in 1066, he established a strong central government and began, among other things, to standardize the law. Representatives of the king were sent out to the countryside to check local administration, and were given the job of adjudicating in local disputes, according to local law.

When these 'itinerant justices' returned to Westminster, they were able to discuss the various customs of different parts of the country and, by a process of sifting, reject unreasonable ones and accept those that seemed rational, to form a consistent body of rules. During this process – which went on for around two centuries – the principle of *stare decisis* ('let the decision stand') grew up. Whenever a new problem of law came to be decided, the decision formed a rule to be followed in all similar cases, making the law more predictable.

The result of all this was that by about 1250, a 'common law' had been produced, that ruled the whole country, would be applied consistently and could be used to predict what the courts might decide in a particular case. It contained many of what are now basic points of English law – the fact that murder is a crime, for example.

The principles behind this ‘common law’ are still used today in creating case law (which is in fact often known as common law). From the basic idea of *stare decisis*, a hierarchy of precedent grew up, in line with the hierarchy of the modern court system, so that, in general, a judge must follow decisions made in courts which are higher up the hierarchy than his or her own. This process was made easier by the establishment of a regular system of publication of reports of cases in the higher courts. The body of decisions made by the higher courts, which the lower ones must respect, is known as case law.

Case law comes from the decisions made by judges in the cases before them (the decisions of juries do not make case law). In deciding a case, there are two basic tasks; first, establishing what the facts are, meaning what actually happened; and secondly, how the law applies to those facts. It is the second task that can make case law, and the idea is that once a decision has been made on how the law applies to a particular set of facts, similar facts in later cases should be treated in the same way, following the principle of *stare decisis* described above. This is obviously fairer than allowing each judge to interpret the law differently, and also provides predictability, which makes it easier for people to live within the law.

The judges listen to the evidence and the legal argument and then prepare a written decision as to which party wins, based on what they believe the facts were, and how the law applies to them. This decision is known as the judgment, and is usually long, containing quite a lot of comment which is not strictly relevant to the case, as well as an explanation of the legal principles on which the judge has made a decision. The explanation of the legal principles on which the decision is made is called the *ratio decidendi* – Latin for the ‘reason for deciding’. It is this part of the judgment, known as binding precedent, which forms case law. All the parts of the judgment which do not form part of the *ratio decidendi* of the case are called *obiter dicta* – which is Latin for ‘things said by the way’.

These are often discussions of hypothetical situations: for example, the judge might say ‘Jones did this, but if he had done that, my decision would have been . . .’ None of the *obiter dicta* forms part of the case law, though judges in later cases may be influenced by it, and it is said to be a persuasive precedent.

LANGUAGE PRACTICE AND COMPREHENSION CHECK

ACTIVE VOCABULARY

case	possible crime and its investigation by the police
court case	legal action or crime
case law	law as established by precedents
to stem from	to derive from, to originate
to lay down	to declare or start firmly
statute	law passed by a law making body
to interpret	to place a particular meaning on
precedence	the right to be put or dealt with before others, especially because of the greater importance
to take precedence	
to give precedence	
to apply the law	to effect; be directly related
justice	1. fair treatment (in law) 2. magistrate 3. title given to High Court judge
itinerant justice	traveling justice
evidence	the answers given in the court of law
judgment	a decision made by a court in respect of the matter before it

TASK I. a) *Complete the following sentences using the above words:*

1. This rule does not ... to your particular case.

2. The police do all they can to bring criminals to
3. He passed ... on the guilty man.
4. were sent out to the countryside to check the local administration.
5. In the dispute over custody of the child, the court decided to to mother's claims.
6. My ... against the local council will be heard today.
7. The police have a clear ... against the prisoner.
8. The witness gave her ... in a clear firm voice.

b) *Learn the following legal terms and Latin expressions:*

- **Source of law** Something (such as a constitution, treaty, statute, or custom) that provides authority for legislation and for judicial decisions; a point of origin for law or legal analysis.
- **Ratio decidendi** [Latin 'the reason for deciding'] 1. The principle or rule of law on which a court's decision is founded. 2. The rule of law on which a later court thinks that a previous court founded its decision; a general rule without which a case must have been decided otherwise.
- **Obiter dictum** [Latin 'something said in passing'] A judicial comment made while delivering a judicial opinion, but one that is unnecessary to the decision in the case and therefore not precedential (although it may be considered persuasive). Often shortened to dictum.
- **Stare decisis** [Latin 'to stand by things decided'] The doctrine of precedent, under which a court must follow earlier judicial decisions when the same points arise again in litigation.
- **Precedent** 1. The making of law by a court in recognizing and applying new rules while administering justice. 2. A decided case that furnishes a basis for determining later cases involving similar facts or issues.

TASK II. Complete the following table:

Verb	Noun	Adjective
?	?	<i>different</i>
<i>accept</i>	?	?
?	<i>Precedent</i>	?
?	<i>judge</i>	?
?	<i>Evidence</i>	?
?	?	<i>predictable</i>
?	<i>report</i>	?
<i>Apply</i>	?	?
?	?	<i>relevant</i>

TASK III. Match the words on the left with their **synonyms** on the right:

- | | |
|---------------|-----------------------------------|
| 1. modern | a. affect, persuade, motivate |
| 2. stem from | b. add, bestow |
| 3. prevail | c. originate |
| 4. vary | d. acquire, get |
| 5. influence | e. consider, deal with |
| 6. contribute | f. create, set up |
| 7. treat | g. arise, come, derive |
| 8. source | h. predominate |
| 9. gain | i. justice |
| 10. body of | j. accumulation, collection, mass |
| 11. establish | k. change, deviate, differ |
| 12. judge | l. present |

TASK IV. Match the words on the left with their **antonyms** on the right:

- | | |
|---------------|-----------------------|
| 1. accept | a. general, easygoing |
| 2. gain | b. general, national |
| 3. occasional | c. frequent, regular |

- | | |
|----------------|-------------------------|
| 4. particular | d. distinctive, unusual |
| 5. common | e. reject |
| 6. local | f. miss |
| 7. obvious(ly) | g. hidden, obscure |

TASK V. *Change the form of the words by adding **negative prefixes** so that the meaning becomes opposite:*

relevant, important, effective, equality, legal, reasonable, rational, consistent, regular, predictable, relevant, representation

TASK VI. *Add adjectives to the following nouns and make up sentences with the word combinations to describe **case law**:*

- | | |
|------------------|-----------------|
| j----- precedent | l---- custom |
| b----- precedent | t----- justice |
| p----- precedent | i----- justice |
| l---- law | l---- argument |
| c----- law | w----- decision |
| j---- m---- law | l---- principle |

TASK VII. *a) Study and compare the meanings of the words **various** and **different**:*

Different able to be distinguished; unlike in nature, form or quality

Various 1. different; diverse (e. g. the modes of procedure were various; types so various to defy classification).
2. separate, several; more than one (come across various people; for various reasons).

*b) Use **different**, **differently**, **various** in the following sentences:*

1. It is useful to explore ... aspects of the democratic principle of the supremacy of the sovereign will of the people laid down in the Constitutional law.

2. To some extent the variation of law reflects ... social conditions and ... attitudes by the public toward similar problems.
3. ... justices use oral argument
4. Both Canadian and British laws are ... from American jurisprudence in a way that directly impacts court reporting.
5. Cases scheduled for oral argument are handled quite
6. There are ... ways of solving the problem.
7. For ... reasons it has not been possible to carry out improvements.

*c) Find the sentences with **different, differently, various** in the text and translate them.*

TASK VIII. *a) Fill in the gaps with the following words: **separate, differences, association, ruled, originally, single, substantial, similar, unitary.***

Characteristics of English Law

1. The United Kingdom is a ... State, not a federation of States.
2. Nevertheless, it does not have a ... system of law within that State.
3. There are ... systems operating in (i) England and Wales, (ii) Northern Ireland, and (iii) Scotland. Due to the closeness of the ... since the twelfth century between England and Wales on the one hand and Northern Ireland on the other, these countries have ... legal systems. There are, however, ... between the law of Scotland, influenced by Roman law, and that of the remainder of the United Kingdom, although since the Union with Scotland Act, 1707, these ... are now less marked on broad issues.
4. Two important links uniting the system are: (a) Parliament at Westminster is the supreme authority throughout the United Kingdom; (b) The House of Lords is the final court of appeal.

5. English law is one of the great legal systems of the world, and a ... proportion of it is ... today by laws that came ... from this small island.

*b) Compare the following definitions of **source of law** borrowed from Black's Law Dictionary and explanations offered by the two scholars:*

- 'The term 'sources of law' is ordinarily used in a much narrower sense than will be attributed to it here. In the literature of jurisprudence the problem of 'sources' relates to the question: Where does the judge obtain the rules by which to decide cases? In this sense, among the sources of law will be commonly listed: statutes, judicial precedents, custom, the opinion of experts, morality, and equity. In the usual discussions these various sources of law are analyzed and some attempt is made to state the conditions under which each can appropriately be drawn upon in the decision of legal controversies. Curiously, when a legislature is enacting law we do not talk about the 'sources' from which it derives its decision as to what the law shall be, though an analysis in these terms might be more enlightening than one directed toward the more restricted function performed by judges. Our concern here will be with 'sources' in a much broader sense than is usual in the literature of jurisprudence, Our interest is not so much in sources of laws, as in sources of law. From whence does the law generally draw not only its content but its force in men's lives?' (Lon L. Fuller, *Anatomy of the Law* – 1968).
- 'In the context of legal research, the term 'sources of law' can refer to three different concepts which should be distinguished. One, sources of law can refer to the origins of legal concepts and ideas ... Two, sources of law can refer to governmental institutions that formulate legal

rules ... Three, sources of law can refer to the published manifestations of the law. The books, computer databases, microforms, optical disks, and other media that contain legal information are all sources of law'. (J. Myron Jacobstein & Roy M. Mersky, *Fundamentals of Legal Research*—1990)

c) Compare the definition of 'precedent' with the comments made by the scholars:

- 'In law a precedent is an adjudged case or decision of a court of justice, considered as furnishing a rule or authority for the determination of an identical or similar case afterwards arising, or of a similar question of law. The only theory on which it is possible for one decision to be an authority for another is that the facts are alike, or, if the facts are different, that the principle which governed the first case is applicable to the variant facts'. (William M. Ule et al., *Brief Making and the Use of Law Books* — 1914)
- 'A precedent ... is a judicial decision which contains in itself a principle. The underlying principle which thus forms its authoritative element is often termed the ratio decidendi. The concrete decision is binding between the parties to it, but it is the abstract ratio decidendi which alone has the force of law as regards the world at large'. (John Salmond, *Jurisprudence* 191 (Glanville L. Williams ed. — 1947))
- 'One may say, roughly, that a case becomes a precedent only for such a general rule as is necessary to the actual decision reached, when shorn of unessential circumstances'. (James Parker Hall, *Introduction, American Law and Procedure* — 1952)
- 'One may often accord respect to a precedent not by embracing it with a frozen logic but by drawing from its thought the elements of a new pattern of decision'. (Lon L. Fuller, *Anatomy of the Law* — 1968)