

Unit 23: Aspects of the Legal System and Law-making Process

Unit code:	L/502/5454
QCF Level 3:	BTEC National
Credit value:	10
Guided learning hours:	60

● Aim and purpose

The aim of this unit is to introduce learners to the English legal system. Learners will investigate the way in which law is made and the people involved in the administration of the law through the courts.

● Unit introduction

An understanding of the English legal system is important as a basis for the study of any area of law. It is important that learners understand the difference between the various sources of law used in the English legal system. The first part of the unit explores the structure and framework of the courts, the personnel involved in the administration of the law and the types of cases heard in the various courts. The unit then considers how law is made by the courts (precedent) and by Parliament (statutes/legislation).

The purpose of the unit is to help learners understand that the English legal system is essentially practical in nature and provides solutions to everyday problems. It will enable learners to understand the fundamental difference between the civil and criminal courts. The unit will also develop learner knowledge of the court structure, both civil and criminal, and relevant routes of appeal.

Learners will be introduced to the sources of law and the development of common law through precedents. The emphasis in the part of the unit concerning precedents is intended to show learners that the law is not static, but develops as society changes, and the importance of precedents when giving legal advice.

Learners will also look at domestic and European legislative processes in the creation of legal rules. When a statutory legal rule has been enacted it often falls to the judiciary to apply it and learners will explore the mechanisms the judiciary uses to interpret these legal rules.

In addition, learners will be introduced to problems of sovereignty and the impact of the European Court of Justice. To develop this area, learners should understand the concept of sovereignty and that Parliament can legislate on any matter, and how membership of the European Union impinges on this, especially the role of the European Court of Justice.

Learners will also develop an understanding of the roles of those who serve the courts in both a professional and lay capacity and the role of the legal professions.

● Learning outcomes

On completion of this unit a learner should:

- 1 Understand the hierarchy of the court system
- 2 Know the role undertaken by the personnel of the courts
- 3 Understand how legal rules are created by precedent
- 4 Understand how statutory rules are made and interpreted.

Unit content

1 Understand the hierarchy of the court system

Civil courts structure: role, function and jurisdiction of small claims court, county court, High Court, Civil Division of the Court of Appeal, House of Lords, European Court of Justice; difference between first instance and appeal courts

Criminal courts structure: role, function and jurisdiction of Youth Court, Magistrates courts, Crown Court, Criminal Division of the Court of Appeal, House of Lords; first instance and appeal courts

2 Know the role undertaken by the personnel of the courts

The legal profession: work, training and regulation of barristers, solicitors, legal executives, paralegals; the Legal Services Ombudsman and complaints

The judiciary: organisation; selection and appointment of judges; roles in civil and criminal cases; judicial independence and immunity; removal from office

Lay people: magistrates – selection and appointment; training; role and powers; jurisdiction in civil and criminal cases; removal; advantages and disadvantages; juries – qualifications and disqualification, selection and role, summoning, vetting and challenging, advantages and disadvantages

3 Understand how legal rules are created by precedent

Judicial precedent: development of the system; law reporting; binding authorities; persuasive authorities; ratio decidendi; obiter statements

Avoiding judicial precedents: distinguishing previous decisions; reversing decisions; overruling previous decisions; practice statements

4 Understand how statutory rules are made and interpreted

Statutory legal rules: stages in making an Act of Parliament; Public and Private Members' Bills; doctrine of parliamentary sovereignty; primary and delegated legislation; effect of EU membership; Effect of Human Rights Act 1998

Principles of statutory interpretation: literal rule; mischief rule; golden rule; integrated and purposive approaches to statutory interpretation

Assessment and grading criteria

In order to pass this unit, the evidence that the learner presents for assessment needs to demonstrate that they can meet all the learning outcomes for the unit. The assessment criteria for a pass grade describe the level of achievement required to pass this unit.

Assessment and grading criteria		
To achieve a pass grade the evidence must show that the learner is able to:	To achieve a merit grade the evidence must show that, in addition to the pass criteria, the learner is able to:	To achieve a distinction grade the evidence must show that, in addition to the pass and merit criteria, the learner is able to:
P1 describe the hierarchy of the civil courts	M1 compare and contrast the role and function of judges, lawyers and lay people within the English courts [TW]	
P2 describe the hierarchy of the criminal courts		
P3 explain the difference between the two hierarchies [CT, TW, EP]		
P4 describe the role of lay people in criminal cases [EP]		D1 evaluate the effectiveness of lay people in the English courts [CT]
P5 outline the role of judges and lawyers in civil and criminal cases [IE, EP]		D2 evaluate the role of the judiciary in the formulation and interpretation of legal rules. [CT]
P6 explain how precedents are applied in court [CT, EP]	M2 compare and contrast the methods of law making	
P7 describe the process when making an Act of Parliament		
P8 explain the rules of statutory interpretation.	M3 apply the rules of statutory interpretation.	

PLTS: This summary references where applicable, in the square brackets, the elements of the personal, learning and thinking skills which are embedded in the assessment of this unit. By achieving the criteria, learners will have demonstrated effective application of the referenced elements of the skills.

Key	IE – independent enquirers CT – creative thinkers	RL – reflective learners TW – team workers	SM – self-managers EP – effective participators
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Essential guidance for tutors

Delivery

Delivery methods for this unit will include an explanation of the main concepts but the unit is essentially practical in nature. Learners will benefit from court visits in the local area. Magistrates, solicitors and barristers could be invited to talk to learners. Visits to the UK and EU parliaments and the European Court of Justice may also benefit learners.

Much of the material in this unit can be delivered actively through the use of case studies and learner-centred individual and group learning. Case studies and statutes can be used as a means of encouraging individual and group learning and providing a vehicle for assessment. This may be particularly useful when assessing learner understanding of the application of precedents, statutory interpretation and conflicting domestic and European legal rules.

The concept of judicial precedent needs to be explored with learners. Again, case studies should be used to illustrate how precedents are formed and applied in later cases to enable learners to fully appreciate the doctrine and its importance within the English legal system. Learners should be encouraged to understand the advantages and disadvantages of the common law and the techniques available to the judiciary to distinguish between precedents. Again, this can be explored through the use of cases such as *Donoghue versus Stevenson*.

Understanding the differences between the use of precedents and statutory rules requires some initial theoretical input which can then be developed practically through the use of case studies which show how statutory rules can affect precedents. Learners should also be introduced to statutory interpretation techniques and because of the language used how the drafting of statutory rules can be subject to a variety of general interpretations. Statutory interpretation skills can be developed through a series of interpretation tasks based on current statutory provisions using the literal, golden and mischief rules. In addition, they will be able to study, in a practical manner, how the use of differing interpretation of statutory rules can have an impact on the outcome of a case. This may be done through the use of centre-written tasks rather than specific decided cases. Small-group, tutor-led, workshops can be used to develop learners' understanding of individual outcomes and their conclusions may be used to develop their knowledge base.

As a development of precedents and statutory interpretation, learners can be introduced to the concept of parliamentary sovereignty to emphasise the role of statutory interpretation. A theoretical explanation of the concept can be developed through case studies which demonstrate how this concept is used by the judiciary and is central to interpretations. Learners can also be introduced to the problems of sovereignty when there is a European element to a case and how this impacts on the judiciary and the potential outcome of a legal problem. In these instances, case studies should include a European element and a conflicting, or contradictory, English precedent or statutory rule and consider how the case will be resolved. The emphasis here is on the role of the European Court of Justice in applying and interpreting European provisions and the impact on domestic legislation.

When assessing the function of those who work in the English legal system learners should be introduced to members of the legal professions. The role and functions of members of the English legal system, professional and lay elements, can be explored through looking at the training and recruitment processes as well as their daily activity. In this context it may be beneficial to invite local solicitors, barristers, legal executives or members of the judiciary as guest speakers to explain how they see their roles. In addition, lay magistrates may be invited in a similar capacity. As an alternative, court visits may be arranged to give learners the opportunity to present pre-arranged questions, sent in advance of the visit, to relevant personnel, both professional and lay members.

Outline learning plan

The outline learning plan has been included in this unit as guidance and can be used in conjunction with the programme of suggested assignments.

The outline learning plan demonstrates one way in planning the delivery and assessment of this unit.

Topic and suggested assignments/activities and/assessment
Introduction to unit content
Basic legal terminology
The court hierarchy
Group work and research on diagrams
Assignment 1 – The Court Structure
Identification of local courts
Court visit
Personnel in the courts
Lay people – magistrates – including visit from magistrate
Juries – including a walkthrough of the cjs online website
Legal profession – research into becoming a solicitor, barrister, legal executive
Judges – including, from a judge’s job advertisement investigation of pay and conditions of service and attributes required
Assignment 2 – People in the Courts
Judges and judicial precedent
The working of precedent
The role of the judges
Independence of the judiciary
Exercises in applying precedents
Passage of an Act of Parliament
Parliamentary sovereignty and the letters on it including Human Rights Act 1998 and the effect of membership of the EU
Basic principles of statutory interpretation – different methods – cases as examples
Application of different methods to an invented Act of Parliament
Evaluation of Parliamentary law making
Delegated legislation and its uses and controls; internet research for local bylaws
Assignment 3 – Law Making and Interpretation
Supervised assignment time
Non-supervised study time and completion of assignments

Assessment

Learners can build on the pass criteria to demonstrate their understanding of the English legal system for the higher grades. They can achieve this through the use of scenarios, cases studies and Acts of Parliament which lend themselves to the learner demonstrating their understanding of the courts, the formulation of legal rules and the roles and functions of court personnel.

To evidence understanding of different areas of the English legal system, learners will produce and present information and research. This may be through individual and group work.

For P1 and P2, a description of the courts could be presented which includes a diagrammatic representation of the hierarchy of courts. For P3, the learner should explain the differences between the two hierarchies, for example personnel in courts and allocation to courts. This knowledge will be needed to progress to M1 where the learner needs to show their understanding of the courts structure. To do this, the learner will compare the courts structure and role within the courts. The learner should describe how a case would be dealt with, for example which court an appeal would lie. It would also be possible to link this to P4 and P5 by describing the roles of the magistrate and jury in a criminal scenario, and the roles played by lawyers and the judiciary in a civil scenario. The learner needs to explain the variety of roles undertaken by professional and lay personnel. The learner is required to explain the role of judges in civil and criminal cases rather than the interpretation of legal rules.

For P5, the learner should outline the roles undertaken by professional personnel including judges, solicitors, barristers and legal executives. This will include their relative functions and the part they play in court processes. Distinctions will be made between solicitors and barristers and the role of the judge. The learner must explain the role of the lay personnel which can be contrasted to that of those who work within the English legal system in a legal capacity. For M1, the learner needs to compare and contrast the different roles of the personnel involved.

For P6, learners will explain how precedents are used, created and distinguished. To achieve P7, the learner should describe the process involved when making an Act of Parliament. P6 and P7 can then lead to achieving M2 by comparing the role of precedents and their importance today with that of law making by legislation. This also links to P8 and an explanation of the rules of statutory interpretation. As part of this, learners could demonstrate their understanding of this area through an explanation of the role of the judiciary when setting precedents in the light of statutory interpretation and the role of the European Court of Justice. D2 could then be achieved through the learner demonstrating an understanding of the rules concerning statutory interpretation and then evaluating these rules and how they may have been constrained by the European Court of Justice.

To achieve D1, learners need to show an understanding of the role of lay personnel by evaluating their relative effectiveness. The learner will evaluate clearly the role of the jury in criminal cases and the difference between lay magistrates and stipendiary magistrates. The problems associated with trial by jury can be highlighted.

D2 will require evaluation of judicial precedent as a source of law and decided cases will be necessary to illustrate it.

The assessment criteria require the learner to apply the legal rules in a practical manner. In some circumstances it may be desirable to give learners a suitable case study and relevant documents on which to base the assessment. In this situation, care should be taken to ensure that the case study has been developed in sufficient detail to mirror the complexities of a real life scenario.

Programme of suggested assignments

The table below shows a programme of suggested assignments that cover the pass, merit and distinction criteria in the grading grid. This is for guidance and it is recommended that centres either write their own assignments or adapt any Edexcel assignments to meet local needs and resources.

Criteria covered	Assignment title	Scenario	Assessment method
P1, P2, P3	The Court Structure	Explaining the court structure to immigrants.	Wallchart and explanatory leaflet.
P4, P5, M1, D1	People in the Courts	Description of court visit or screen grab from cjsonline with descriptions, comparisons and evaluation for courts that are not visited.	Group presentation with individual hard copy narrative.
P6, P7, P8, M2, M3, D2	Law Making and Interpretation	How a new Act of Parliament is created and interpreted through precedent.	Diagram with accompanying leaflet.

Links to National Occupational Standards, other BTEC units, other BTEC qualifications and other relevant units and qualifications

This unit forms part of the BTEC Business sector suite. This unit has particular links with the following unit titles in the Business suite:

Level 2	Level 3
Consumer Rights	Aspects of Contract and Business Law
	Aspects of Civil Liability for Business
	Aspects of Criminal Law relating to Business

Essential resources

For this unit learners should have access to a suitable business teaching environment with access to the internet to carry out research. Tutors may consider building a bank of resource materials to ensure there is a sufficient supply of relevant information on the subjects of the legal system and law-making process. Learners can generate evidence from a work placement or from work experience.

Employer engagement and vocational contexts

Centres should develop links with local businesses. Many businesses are often willing to provide work placements, visit opportunities, information about businesses and provide visiting speakers.

Indicative reading for learners

Textbooks

Most textbooks that include the English legal system are very technical. However some aspects are contained in AS and A2 law books such as:

Elliot C and Quinn F – *English Legal System* (Longman, 2006) ISBN 1405835486

Ingman T – *The English Legal Process* (Oxford University Press, 2004) ISBN 019926869X

Martin J – *AS Law Hodder* (Arnold, 2008) ISBN 0340965134

Martin J – *The English Legal System* (Hodder Arnold, 2005) ISBN 0340899913

Wortley R et al – *AS Law* (Nelson Thornes, 2008) ISBN 074879865X

Wortley R et al – *A2 Law* (Nelson Thornes, 2009) ISBN 0748798668

Journal

New Law Journal (Butterworths/LexisNexis Direct/Reed Elsevier (UK) Limited)

Newspaper

The Times – especially *Law Times* on Tuesdays

Websites

www.a-level-law.com/contract.htm	For general points on law and links to other resources
www.barcouncil.org.uk	The legal profession
www.bbc.co.uk/watchdog	General information sites
www.compactlaw.co.uk	Provider of legal documents and information
www.guardian.co.uk/politics/2003/jul/02/hunting.immigrationpolicy	A newspaper article on policy
www.ilex.org.uk	The Institute of Legal Executives
www.intute.ac.uk/	Links to many other bodies
www.judiciary.gov.uk	Information on the judiciary of England and Wales
www.lawsociety.org.uk	Information and support for solicitors in England and Wales
www.parliament.uk/about/how/laws/acts	For creation of Acts of Parliament

Delivery of personal, learning and thinking skills

The table below identifies the opportunities for personal, learning and thinking skills (PLTS) that have been included within the pass assessment criteria of this unit.

Skill	When learners are ...
Independent enquirers	researching the law applying the law to problem scenarios
Creative thinkers	asking questions to extend their thinking
Team workers	Working in teams, eg for moots
Effective participators	discussing in groups aspects of law or the courts .

Although PLTS are identified within this unit as an inherent part of the assessment criteria, there are further opportunities to develop a range of PLTS through various approaches to teaching and learning.

Skill	When learners are ...
Independent enquirers	planning and carrying out research into courts and law making
Creative thinkers	looking at how the courts operate and law is made
Reflective learners	setting goals, with success criteria, for researching information inviting feedback on their own work and dealing positively with praise, setbacks and criticism evaluating their experiences and learning to inform future progress
Team workers	working in groups to discuss activities to reach agreements and achieve results
Self-managers	seeking out challenges or new responsibilities and showing flexibility when priorities change dealing with competing pressures, including personal and work-related demands responding positively to change, seeking advice and support when needed
Effective participators	planning and carrying out research into law and the courts.

● Functional Skills – Level 2

Skill	When learners are ...
ICT – Use ICT systems	
Select, interact with and use ICT systems independently for a complex task to meet a variety of needs	researching the legal system and law-making process
Use ICT to effectively plan work and evaluate the effectiveness of the ICT system they have used	tabulating information
ICT – Find and select information	
Select and use a variety of sources of information independently for a complex task	finding illustrative materials for presentations and tabulations creating diagrams, presentations and tabulations for information presentation
Access, search for, select and use ICT-based information and evaluate its fitness for purpose	exploring, extracting and assessing the relevance of information from websites
ICT – Develop, present and communicate information	
Enter, develop and format information independently to suit its meaning and purpose including: <ul style="list-style-type: none"> • text and tables • images • numbers • records 	bringing together a variety of materials gathered through research preparing information to present
Bring together information to suit content and purpose	
Present information in ways that are fit for purpose and audience	
Evaluate the selection and use of ICT tools and facilities used to present information	
Select and use ICT to communicate and exchange information safely, responsibly and effectively including storage of messages and contact lists	communicating with other members of a group

Skill	When learners are ...
Mathematics	
Understand routine and non-routine problems in a wide range of familiar and unfamiliar contexts and situations	using numerical data
Identify the situation or problem and the mathematical methods needed to tackle it	
Select and apply a range of skills to find solutions	
Use appropriate checking procedures and evaluate their effectiveness at each stage	
Interpret and communicate solutions to practical problems in familiar and unfamiliar routine contexts and situations	
Draw conclusions and provide mathematical justifications	
English	
Speaking and listening – make a range of contributions to discussions and make effective presentations in a wide range of contexts	carrying out group work making presentations
Reading – compare, select, read and understand texts and use them to gather information, ideas, arguments and opinions	reading law and the courts
Writing – write documents, including extended writing pieces, communicating information, ideas and opinions, effectively and persuasively	writing reports to provide information about law producing labelled charts and diagrams showing information.