

ELS: Areas & Concepts to Focus on:**Topic 1: Law & Sources of Law**

- ELS: Key features/principles
 - Unwritten constitution
 - Separation of powers
 - Executive,
 - Legislature
 - Judiciary
 - Parliamentary sovereignty
 - Rule of law
 - The state should be governed in accordance with the law, and not arbitrarily
 - Professor Dicey (1885)
 - everyone is entitled to access justice
 - Rights and freedoms should be clearly set out in ordinary law opposed to abstract/arbitrary declarations
- Classifications in law
 - Public vs Private Law

Public Law	Private Law
People and the State	Disputes between individuals

- Common-Law vs. Civil Law System

Common-Law Systems	Civil-Law Systems
<ul style="list-style-type: none"> ● Judge Made Law ● Found throughout the world ● Reflects prior British colonisation ● Adversarial Approach ● Based on doctrine of precedent 	<ul style="list-style-type: none"> ● Codified Rules ● European Continental System is derived from Roman Law ● Inquisitorial

- Substantive vs. Procedural Law

Substantive Law	Procedural Law
<ul style="list-style-type: none"> ● The part of law that deals with rights, duties and all other matters that are not purely of practice and procedure. ● What the law is <ul style="list-style-type: none"> ○ e.g. Land Law <ul style="list-style-type: none"> ■ Land Registration Act 2002 - substantive 	<ul style="list-style-type: none"> ● As the word suggests, the procedure and practice of dealing with that area of law ● How to implement it <ul style="list-style-type: none"> ○ e.g. Land Registration rules 2003 - procedural

○ Adversarial vs Inquisitorial

Adversarial	Inquisitorial
<ul style="list-style-type: none"> ● A trial or legal proceedings in which the parties in a dispute have the responsibility for finding and presenting evidence. ● The judge and the jury - are not the investigators 	<ul style="list-style-type: none"> ● A trial or legal procedure characterised by the judge performing an examining role. ● Court is the interrogator itself, investigates and interrogates witnesses

○ Common law & Equity

Common-Law	Equity
<ul style="list-style-type: none"> ● Mean's the law that is not the result of legislation; <ul style="list-style-type: none"> ○ Law which comes from cases decided by judges & judicial precedents that these decisions set. ● Major source of domestic law <ul style="list-style-type: none"> ○ Since a great deal of law has not been enacted as legislation and is therefore found in the results of decided cases. 	<ul style="list-style-type: none"> ● The Courts of Chancery/ 'of Equity' proceeded not on the basis of strictures of common law, but on the principle of justice and they could dispense equitable remedies. <ul style="list-style-type: none"> ○ Fairness and an equitable outcome ● New equitable rights & remedies were introduced <ul style="list-style-type: none"> ○ To combat harsh and unfair results of common law procedures ○ Remedies <ul style="list-style-type: none"> ■ injunction ■ performance ■ rescission <ul style="list-style-type: none"> ● set aside a contract ● The Courts of Equity recognised certain concepts that the common law courts did not.

Equity is based on maxims:

Maxim	Meaning
He who comes to equity must come with clean hands	Equity will not be available to a party that has behaved unreasonably in relation to the disputed matter
Equity looks on that as done which ought to be done. Equity looks to intent rather than to form	Equity will enforce the intentions of the parties rather than enforcing the position reached by inflexible adherence to the common law
Delay defeats equity	Equity will not be available to someone who seeks it after an unreasonable delay
Equity is a shield not a sword	A party cannot bring a claim in equity (sword) but may rely on equity to protect their own position (shield)
Equity will not suffer a wrong to be without a remedy	Equity will allow a party that has been wronged the capacity to ask for a remedy
Equity follows the law	Equity will not allow a remedy that is contrary to law
Where there is equal equity, the law will prevail	Equity will not provide a remedy where the parties are equal, or where neither has been wronged
Equity will not assist a volunteer	Equity will not assist someone who has given no consideration for a promise
Equity will not allow a statute to be used as an instrument of fraud	Equity will not allow someone to rely upon an absence of a statutory formality if to do so would be unconscionable and unfair
Equity will not perfect an imperfect gift	In general, equity will not complete a gift where the formalities required at common law have not been effected (similar to <i>equity will not assist a volunteer</i>). However there is an exception in <i>Strong v Bird</i> :6 where the donor appoints the intended donee as executor of their will, and the donor subsequently dies, equity will perfect the imperfect gift

Equity will not allow a trust to fail for want of a trustee	Where there is no trustee, whoever has title to the trust property will be considered the trustee, or the court may appoint a trustee
Equality is equity	If a trust does not specify how property is to be divided, then there is a presumption of equal shares

- **Sources of law**

- Primary vs. Secondary

Primary sources of EU law (legislation made by parliament, case law)	Secondary sources of EU law (Secondary Sources of Law - commentary on the law, academia)	Supplementary law
Treaty of Rome 1957	Regulations	Case law of the CJEU
Single European Act 1985	Directives	Principles of international law
Treaty on European Union (Maastricht Treaty) 1992	Decisions issued by the Commission	Unwritten principles of law and justice
Treaty of Amsterdam 1996	Opinions	
Treaty of Nice 2001	Recommendations	
Treaty of Lisbon 2009	Conventions and agreements	
	Academic Journals, Textbooks Newspapers, Journals articles	

- **Domestic Sources:**

- Common law - Case Law

- based on the doctrine of precedent.

- principle of 'let the decision stand'.

- Once a principle of law is decided in a superior court, the principle or 'ratio'/reasoning on which that case was decided must be followed in future cases in the same or lower courts.

- 'judge made law'

- law that developed through the courts as opposed to in Parliament by means of statute.

- Statute (Acts of Parliament)

- Legislation

- Custom

- Regional (EU & International)

- International

- UN Conventions

- Treaties and Conventions.

- Treaties are agreements between states.

- Conventions are international documents that states sign up to

- Enforceability
- 'International' Law
 - Options to study Public International Law, International Criminal Law (LLM), International Trade Law etc. in Year 3 and at Masters level.
- EU law & Brexit
 - Context
 - European Communities Act 1972 s2, 3(1)
 - Brexit
 - R (Miller) v Secretary of State for Exiting the European Union [2017] UKSC 5, [2017] 2 WLR 583
 - the triggering of Art.50
 - 2nd. The Miller/Cherry case SEP 2019
 - It is important to emphasise that the issue in these appeals **is not when and on what terms the United Kingdom is to leave the European Union.** [para 1]
 - **A matter of political controversy, has never been sufficient reason for the courts to refuse to consider it.** [para 31]
 - **courts responsibility to determine the legal limits of the powers conferred on each branch of government, and to decide whether any exercise of power has transgressed those limits** [para 39]
 - Article 50, TEU



31 January 2020

31 December 2020

UK left EU - transition period

END OF TRANSITION PERIOD

The UK left the European Union and entered a transition period that is due to run until the end of the year.

Unless there is a decision to extend it, this is when the transition period established by the Withdrawal Agreement will end.