

English Legal System

Tenth Edition

Catherine Elliott
and
Frances Quinn



Harlow, England • London • New York • Boston • San Francisco • Toronto
Sydney • Tokyo • Singapore • Hong Kong • Seoul • Taipei • New Delhi
Cape Town • Madrid • Mexico City • Amsterdam • Munich • Paris • Milan

Contents

<i>Guided tour</i>	xii	3 Statutory interpretation	49
<i>Preface</i>	xv	Introduction	50
<i>Acknowledgements</i>	xvi	How are statutes interpreted?	51
<i>Table of cases</i>	xvii	Rules of interpretation	51
<i>Table of statutes</i>	xxiv	Interpreting European legislation	60
<i>Table of statutory materials</i>	xxviii	Aids to interpretation	60
<i>Cases, law reports and case references: a guide</i>	xxx	How do judges really interpret statutes?	67
Introduction	1	Reform of statutory interpretation	70
The unwritten constitution	2	<i>Answering questions</i>	71
A written constitution?	6	<i>Summary of Chapter 3</i>	72
		<i>Reading list</i>	73
Part 1		<i>Reading on the Internet</i>	73
SOURCES OF LAW			
1 Case law	11	4 Delegated legislation	74
Historical background	12	Introduction	75
Judicial precedent	12	The power to make delegated legislation	75
The hierarchy of the courts	13	Why is delegated legislation necessary?	76
How judicial precedent works	20	Control of delegated legislation	77
How do judges really decide cases?	21	Criticism of delegated legislation	80
Do judges make law?	25	<i>Answering questions</i>	82
When should judges make law?	28	<i>Summary of Chapter 4</i>	84
Advantages of case law	30	<i>Reading list</i>	85
Disadvantages of case law	31	<i>Reading on the Internet</i>	85
<i>Answering questions</i>	34		
<i>Summary of Chapter 1</i>	35	5 European law	86
<i>Reading list</i>	36	Introduction	87
<i>Reading on the Internet</i>	37	The aims of the European Union	87
2 Statute law	38	The institutions of the European Union	89
Introduction	39	Making European legislation	96
House of Commons	39	Types of European legislation	97
House of Lords	39	How does EU law affect the UK?	103
Making an Act of Parliament	40	<i>Answering questions</i>	107
<i>Answering questions</i>	46	<i>Summary of Chapter 5</i>	108
<i>Summary of Chapter 2</i>	47	<i>Reading list</i>	109
<i>Reading list</i>	47	<i>Reading on the Internet</i>	109
<i>Reading on the Internet</i>	48		

6 Custom	110	Appointments to the judiciary	151
Introduction	111	Wigs and gowns	157
When can custom be a source of law?	111	Training	158
<i>Answering questions</i>	113	Pay	158
<i>Summary of Chapter 6</i>	113	Promotion	159
<i>Reading list</i>	114	Termination of appointment	159
		Independence of the judiciary	161
7 Equity	115	Criticisms of the judiciary	162
Introduction	116	Reform of the judiciary	170
How equity began	116	<i>Answering questions</i>	172
Common law and equity	117	<i>Summary of Chapter 10</i>	174
The Judicature Acts	118	<i>Reading list</i>	176
Equity today	118	<i>Reading on the Internet</i>	176
<i>Answering questions</i>	121		
<i>Summary of Chapter 7</i>	121	11 The legal professions	178
<i>Reading list</i>	122	Introduction	179
		Solicitors	179
8 Treaties	123	Barristers	187
Introduction	124	Background of barristers and solicitors	193
Implementation of treaties	124	Performance of the legal professions	198
<i>Answering questions</i>	125	The future of the professions	200
<i>Reading on the Internet</i>	125	Fusion of the professions	206
		Other legal personnel	211
9 Law reform	126	Do we need legal professionals?	212
Introduction	127	<i>Answering questions</i>	213
Judicial change	127	<i>Summary of Chapter 11</i>	215
Reform by Parliament	128	<i>Reading list</i>	216
Pressures for reform	129	<i>Reading on the Internet</i>	217
Agencies of law reform	131		
Performance of the law reform bodies	135	12 The jury system	218
Problems with law reform agencies	139	History	219
<i>Answering questions</i>	140	The function of the jury	220
<i>Summary of Chapter 9</i>	141	When are juries used?	221
<i>Reading list</i>	142	Qualifications for jury service	224
<i>Reading on the Internet</i>	142	Summoning the jury	228
		Jury vetting	229
Part 2		Challenges	230
PEOPLE WORKING IN THE LEGAL SYSTEM		Discharging the jury	232
		The secrecy of the jury	233
10 The judges	145	The verdict	235
The role of the judges	146	Arguments in favour of the jury system	235
Judicial hierarchy	146	Criticisms of the jury system	238
A reduced role for the Lord Chancellor	148	Reform of the jury	245

<i>Answering questions</i>	249	<i>Habeas corpus</i>	310
<i>Summary of Chapter 12</i>	252	<i>Civil action</i>	310
<i>Reading list</i>	252	<i>Compensation</i>	312
<i>Reading on the Internet</i>	253	<i>Criminal proceedings</i>	313
13 Magistrates	254	<i>Criminal Injuries Compensation Scheme</i>	313
<i>The magistrates' courts</i>	255	<i>The European Court of Human Rights</i>	314
<i>Magistrates</i>	256	<i>Disciplinary proceedings</i>	314
<i>Answering questions</i>	270	<i>The admissibility of evidence</i>	315
<i>Summary of Chapter 13</i>	272	<i>The right to exercise self-defence</i>	316
<i>Reading list</i>	272	<i>Parliamentary controls</i>	316
<i>Reading on the Internet</i>	273	<i>The Ombudsman</i>	316
14 Administration of justice	274	<i>Answering questions</i>	317
<i>Introduction</i>	275	<i>Summary of Chapter 16</i>	318
<i>Answering questions</i>	279	<i>Reading list</i>	319
<i>Summary of Chapter 14</i>	279	<i>Reading on the Internet</i>	319
<i>Reading list</i>	280		
<i>Reading on the Internet</i>	280	Part 4	
		DISPUTE RESOLUTION	
Part 3			
HUMAN RIGHTS		17 Paying for legal services	323
15 Introduction to human rights	283	<i>Introduction</i>	324
<i>Introduction</i>	284	<i>Unmet need for legal services</i>	324
<i>The European Convention on Human Rights</i>	285	<i>State-funded legal services</i>	326
<i>The scope of the Convention</i>	285	<i>State funding of legal services today</i>	330
<i>The Human Rights Act 1998</i>	286	<i>The Access to Justice Act: an assessment</i>	339
<i>Advantages of incorporation</i>	291	<i>Conditional fee agreements</i>	346
<i>Disadvantages of incorporation</i>	293	<i>Are lawyers always necessary?</i>	352
<i>The administration</i>	295	<i>Proposals for further reform</i>	353
<i>The European Court of Human Rights and the ECJ</i>	296	<i>Answering questions</i>	357
<i>Today's debates</i>	297	<i>Summary of Chapter 17</i>	359
<i>A Bill of Rights for the UK?</i>	301	<i>Reading list</i>	360
<i>Answering questions</i>	306	<i>Reading on the Internet</i>	360
<i>Summary of Chapter 15</i>	307		
<i>Reading list</i>	308	18 The police	362
<i>Reading on the Internet</i>	308	<i>Introduction</i>	363
		<i>The miscarriages of justice</i>	363
16 Remedies for infringement of human rights	309	<i>The response to the miscarriages of justice</i>	366
<i>Introduction</i>	310	<i>Human Rights Act 1998</i>	367
<i>Judicial review</i>	310	<i>The organisation of the police</i>	367
		<i>Police powers</i>	369
		<i>Criticism and reform</i>	396
		<i>Answering questions</i>	401
		<i>Summary of Chapter 18</i>	403

<i>Reading list</i>	404	The civil courts	512
<i>Reading on the Internet</i>	406	The civil justice system before April 1999	513
19 The criminal trial process	407	The civil justice system after April 1999	516
The adversarial process	408	Criticism of the civil justice system	529
Criminal Procedure Rules	408	Reform	540
The Crown Prosecution Service	410	<i>Answering questions</i>	544
Appearance in court	416	<i>Summary of Chapter 22</i>	546
Classification of offences	417	<i>Reading list</i>	547
Mode of trial	418	<i>Reading on the Internet</i>	548
Sending for trial	420		
Plea and case management hearings	420	23 Tribunals	549
Disclosure	421	Introduction	550
Plea bargaining	421	History	550
The trial	423	Reforming the tribunals	552
Models of criminal justice systems	424	Tribunals today	554
Criticism and reform	425	Advantages of tribunals	557
<i>Answering questions</i>	438	Disadvantages of tribunals	558
<i>Summary of Chapter 19</i>	440	<i>Answering questions</i>	559
<i>Reading list</i>	442	<i>Summary of Chapter 23</i>	560
<i>Reading on the Internet</i>	442	<i>Reading list</i>	561
		<i>Reading on the Internet</i>	562
20 Sentencing	444	24 Appeals and judicial review	563
The Criminal Justice Act 2003	445	Appeals	564
Purposes of sentencing	445	Appeals in civil law cases	564
Sentencing practice	449	Appeals in criminal law cases	566
Types of sentence	454	Criticism and reform of the appeal system	575
<i>Answering questions</i>	478	Judicial review	587
<i>Summary of Chapter 20</i>	479	<i>Answering questions</i>	596
<i>Reading list</i>	481	<i>Summary of Chapter 24</i>	598
<i>Reading on the Internet</i>	482	<i>Reading list</i>	600
		<i>Reading on the Internet</i>	600
21 Young offenders	484	25 Alternative methods of dispute resolution	601
Introduction	485	Introduction	602
Criminal liability	486	Problems with court hearings	602
Young people and the police	487	Alternative dispute resolution mechanisms	603
Remand and bail	487	Examples of ADR	605
Reprimands and warnings	487	Advantages of ADR	609
Trial	489	Problems with ADR	610
Sentencing	491	The future for ADR	612
<i>Answering questions</i>	505	<i>Answering questions</i>	612
<i>Summary of Chapter 21</i>	506	<i>Summary of Chapter 25</i>	613
<i>Reading list</i>	508		
<i>Reading on the Internet</i>	508		
22 The civil justice system	510		
Introduction	511		
History	511		

Reading list	615	Summary of Chapter 27	645
Reading on the Internet	615	Reading list	646
		Reading on the Internet	646
Part 5			
CONCEPTS OF LAW			
26 Law and rules	619	28 Law and justice	647
Introduction	620	Introduction	648
Austin: the command theory	620	Aristotle	648
Hart: primary and secondary rules	620	Natural law theories	648
Dworkin: legal principles	622	Utilitarianism	648
The natural law theory	622	The economic analysis of law	649
The function of law	622	Rawls: <i>A Theory of Justice</i>	649
Why are laws obeyed?	626	Nozick and the minimal state	650
Answering questions	627	Karl Marx	651
Summary of Chapter 26	628	Kelsen and positivism	651
Reading list	629	Justice in practice	652
		Summary of Chapter 28	653
		Reading list	654
27 Law and morals	630	Appendix: Answering examination questions	655
Introduction	631	Essay questions	657
Law and morality	632	Problem questions	658
Changes in law and morality	633		
Differences between law and morality	633	Glossary	661
Should law and morality be separate?	634	Select bibliography	664
Answering questions	644	Index	676

Visit the *English Legal System*, tenth edition mylawchamber site at www.mylawchamber.co.uk/elliottquinnels to access valuable learning material.



FOR STUDENTS

Do you want to give yourself a head start come exam time?

Companion website support

- Use the **multiple-choice questions**, **flashcards** and **practice exam questions** to test yourself on each topic throughout the course.
- Use the **updates** to major changes in the law to make sure you are ahead of the game by knowing the latest developments.
- Use the live **weblinks** to help you explore the law as it relates to you.

Also: The regularly maintained Companion Website provides the following features:

- Search tool to help locate specific items of content
- E-mail results and profile tools to send results of quizzes to instructors
- Online help and support to assist with website usage and troubleshooting

For more information please contact your local Pearson Education sales representative or visit www.pearsoned.co.uk/elliottquinnels