

Seminar 2 Questions

The English Legal System

> An amalgamation of various agencies, processes and institutions... including the personnel involved in the resolution (formal or informal) of legal disputes

Separation of powers

Put forth by Montesque. French legal philosopher (legal theory - why we have laws). Supposed to prevent against dictatorships. *Executive* runs the country on a day to day basis. New laws, administers new law. Any organization funded by tax payer. *Legislative* is the Houses of Parliament, monarchs. They create the law. *The judiciary* uphold and enforce the law. Lord Chancellor (barrister, sat in cabinet). Was a member of the house of lords, and was head of the judiciary. This role used to offend the principle of separation. Judiciary develop principles of equity. They have a role in law creation. Parliament can delegate law making power to other people. Local council can create laws through powers of delegation. Semi-public and private companies can create by-laws. National Trust can too. More controversially, the Queen, Monarch and privy council can have law making power. Members of the Executive can be delegated law making power. Manifestos are not legally binding documents.

Purpose of the legal system

To avoid disputes, and when unsuccessful, resolve them.

Who creates common law?

The judiciary.

What is meant by a common-law based legal system?

Many primary legal principles have been made and developed by judges from case to case through a system of precedent, whereby the lower courts are bound to follow principles established by higher courts in previous cases. This common law has been exported to English colonies.

Why was it exported?

Example of an offence that was developed by common law

Murder

Has the Law Reform (Year and a Day Rule) Act 1996 and the Murder (Abolition of Death Penalty) Act 1965 had any impact on the common law definition of murder laid down originally by Coke?

The abolition of the year and day act, whereby an act of omission is conclusively presumed not to have caused a person's death if more than a year and a day prior to the death.

Donoghue vs Stevenson

The neighbour test was established. > You must take reasonable care to avoid acts or omissions which you can reasonably foresee would be likely to injure your neighbour.

What is the primary difference between the torts of negligence and occupiers liability?

Research Task 1

1. Delegated legislation - Legislation/law that is passed otherwise than in Act of Parliament
2. Legislation - A set of laws made by a Government and officialised by parliament.
3. Ratio decidendi - The rationale for a decision, the point in a case that determines the judgement
4. Obiter dicta - A judge's expression of opinion, not legally binding
5. Judicial precedent - A decision of the court used as a source for further similar cases
6. Stare decisis - the legal principle of determining points in litigation according to precedent.
7. Distinguishing - The rule that one decision in a similar case should not apply to another
8. Indictable offence - an offence which can only be tried on an indictment after a preliminary hearing to determine whether there is a prima facie case to answer or by a grand jury
9. Habeus corpus - Allows detainees to seek relief from unlawful imprisonment
10. Barrister - A person called to the bar and entitled to practise as an advocate, particularly in the higher courts.
11. Judicial review - A procedure whereby a court can review an administrative action by a public body and secure a declaration, order, or award
12. Defamation - The communication of a false statement that harms an individual/group e.g. business, religion, government etc.
13. Bail - Term given to person charged with criminal offence whereby they are released from police custody until they appear next in court or police station
14. Privity of contract - The relation in a contract which allows the two relevant parties to sue each other, but prevents a third party from doing so
15. Slander - A false or malicious claim that may harm someone's reputation
16. Libel - Expression of defamation through print
17. Original precedent - A precedent that creates and applies a new legal rule
18. Consideration - Consideration must be of value (at least to the parties), and is exchanged for the performance or promise of performance by the other party
19. Judge - Conduct the trial impartially and in an open court
20. Frustration - A device to set aside contracts where unforeseen events render obligations impossible, or change parties purpose for entering the contract.

Research Task 3

The Supreme Court is the final court of appeal in the UK for civil cases, and for criminal cases from England, Wales and Northern Ireland. It hears cases of the greatest public or constitutional importance affecting the whole population.

Established 1st October 2009, located at Middlesex Guildhall in London. Authorized by 'Constitutional Reform Act 2005'.

The House of Lords was no longer the final and highest appeal court in the UK. The nature of their work was changed.