



INSTEP-WFU London

LAW AND SOCIETY

**Syllabus:**

This course provides a general introduction to the sources of law of the English and Welsh legal system and how that law is implemented and enforced. It starts with a general outline of the various sources that the United Kingdom draws upon for its law, which will then be discussed in more detail throughout the course. It then examines the relationship that exists between the three institutions that make up the constitution of the United Kingdom, the executive, the legislature and the judiciary, and their respective parts in the law-making process. The course then covers how legislation is created through Parliament and the political process which led to the enactment of the Human Rights Act, and the effect the Act has had on the traditional relationship between Parliament and the Courts. The course then outlines the role of the courts and the court structure and the methods the judiciary use to interpret legislation through the courts. Judicial law-making is then discussed through the development of the common law and how judges create law through case law and the system of precedent. The course then focuses on the area of judicial review, which is the means by which the courts control the exercise of governmental power and the conflict this creates between the executive and the judiciary. Finally the course focuses on the European Community and Union and how community law is incorporated into United Kingdom law as well as the impact of Brexit.

**Course structure:**

There will be a two hour seminar each week.

**Assessment:**

The assessment is two essays of 2,500 words each (excluding footnotes and bibliography).

Deadlines: weeks 6 and 12 (exact dates to be confirmed)

**Reading Materials:**

Barnett H., *Constitutional and Administrative Law*, 12<sup>th</sup> edition (Routledge: 2017) or any other recent public law textbook.

Malleson K. and Moules R., *The Legal System*, 4<sup>th</sup> edition (OUP: 2010)

Partington M., *Introduction to the English Legal System* (OUP: 2016)

*Public Law* academic journal (Sweet and Maxwell) available on Westlaw online database UK via the Senate House Library

Feldman D., 'None or Several? Perspective on the British Constitution', *Cambridge Law Journal*, 2005, 64. Available through the online resources at Senate House Library (Westlaw, Lexis, JTSOR, Hein online).

*In addition, you will be asked to read short articles and other resources in preparation for class or during class – references for those will be given out on a weekly basis. You are advised to keep in touch with current affairs as this course is very topical and there will no doubt be many developments in the fall. You may want to start watching BBC News at 10 or tune in to the BBC News channel.*

### **Useful Online Resources:**

The Law Society website: [www.lawsociety.org.uk/](http://www.lawsociety.org.uk/)

The Ministry of Justice: <https://www.gov.uk/government/news/welcome-to-the-new-home-on-the-web-for-the-ministry-of-justice>

The Prime Minister's Office: <https://www.gov.uk/government/organisations/prime-ministers-office-10-downing-street>

The Supreme Court: <https://www.supremecourt.uk/>

Westminster Parliament: [www.parliament.uk](http://www.parliament.uk)

See also the Public Law blogs: <http://publiclawforeveryone.com/>

And <https://ukconstitutionallaw.org/blog/>

## **Seminar outline:**

### **1. SEMINAR ONE**

#### **Topic: Introduction to the course and the sources of law**

This seminar introduces the course and outlines the sources of law such as legislation, case law, the European Union and the Human Rights Act.

#### **Reading:**

Partington, *Introduction to The Legal System*, chapter 2

#### **Questions for Discussion:**

What is law?

Where is law? Is there a British Constitution?

What are the different types of law?

Why do we need laws?

Why do people obey the law?

**Task for the class:** Please bring a broadsheet newspaper such as *The Guardian*, *The Times*, *The Independent*. You can also bring in *The Daily Mail*, *The Metro*, *The Evening Standard* etc.

### **2. SEMINAR TWO**

#### **Topic: The separation of powers**

This session discusses the three institutions which make up the constitution of the UK: the executive, the legislature and the judiciary and the relationship between them.

#### **Reading:**

Barnett, *Constitutional and Administrative Law*, chapter 4

#### **Questions for discussion:**

What is the role of the executive, the legislature and the judiciary?

Why is there potential for conflict between them?

Why has the role of the Lord Chancellor had to be changed?

Is it important that the judiciary should be independent of the executive?

Is the legislature merely an extension of the executive?

**Task for the class:** Please research the separation of powers in the United States and be prepared to report to the class. How is it different from the UK?

### **3. SEMINAR THREE**

#### **Topic: Parliament (I), Parliamentary Sovereignty, The House of Commons and the legislative process**

This session discusses the functions of Parliament, the personnel of the House of Commons and the legislative process through the House of Commons.

#### **Reading:**

Barnett, chapter 6

Malleson and Moules, chapter 5

**Questions for discussion:**

What are the functions of Parliament?

Who are the members of Parliament? What is meant by the front and back benches?

What is the difference between public and private bills?

What are the advantages and disadvantages of the strong executive control of the legislative process?

What is meant by delegated legislation? What are the advantages and disadvantages of it?

**Task for the class:** Take some time to explore these online resources and be prepared to discuss with the class. <http://www.parliament.uk/education/teaching-resources-lesson-plans/what-is-the-house-of-commons/>

**4. SEMINAR FOUR****Topic: Parliament (II): The House of Lords and the legislative process**

This lecture discusses the composition of the House of Lords and the legislative process through the House of Lords, and also discusses the proposed reforms.

**Reading:**

Barnett, chapter 16

**Questions for discussion:**

Who sits in the House of Lords?

Does it matter that the members of the House of Lords are unelected?

Where is the balance of power between the Commons and the Lords?

What proposals have been put forward to reform the Lords?

**Task for the class:** Find out about the legislative process in the United States and be prepared to report to the class. How is it different from the process in the UK?

**5. SEMINAR FIVE****Topic: The Human Rights Act**

This session discusses the enactment of the Human Rights Act and the changes it has brought about to the legal system in England and Wales. It discusses the effect the Act has had on the traditional relationship between the courts and Parliament.

**Reading:**

Barnett, chapter 18

**Task for the class:** Please find a version of the HRA 98 and bring it to class for discussion.

**Questions for discussion:**

Why was the Human Rights Act enacted?

What is meant by a negative concept of rights?

What is the effect of a declaration of incompatibility under s.4 HRA?

Should judges be given the power to strike down legislation that is not compatible with the HRA?

## 6. SEMINAR SIX

### Topic: Human Rights in the UK: A case study – Freedom of Religion

#### Reading:

Article 9 and 14 of the European Convention on Human Rights

Bacquet, S. (2019) *Religious Symbols and the Intervention of the Law: Symbolic Functionality in Pluralist States*. (Routledge).

#### Further Reading:

Bacquet, S. (2008) 'School uniforms, religious symbols and the Human Rights Act 1998: the 'Purity Ring' case, *Education Law Journal*, 9(13).

Bacquet, S. (2009) 'Manifestation of Belief and Religious', *Symbols at Schools: Setting Boundaries in English Courts' Religion and Human Rights*, Vol. 4, pp. 121-135, 2009.

#### Questions for discussion:

Can freedom of religion ever be limited? Why?

What is the legal test for determining breach of article 9?

What is justification? Interference?

To what extent can and should judges interfere with one's article 9?

**Task for the class:** Read one of the cases below and write a brief case note

*R (on the application of Begum) v. Headteacher and Governors of Denbigh High School* [2006] UKHL 15

*R (on the application of Playfoot) v. Governing Body of Millais School* [2007] EWHC 1698 (Admin)

*R (on the application of Sarika Angel Watkins-Singh v. Aberdare Girls' High School* [2008] EWHC 1865 (Admin)

*Eweida and others v. the UK*, 15, January, 2013, ECtHR,

<http://www.bailii.org/eu/cases/ECHR/2013/37.html>

## 7. SEMINAR SEVEN

### Topic: The role of the courts and the court structure

This session discusses the court structure in England and Wales and explains the differences between the lower trial courts and the top appellate courts and their role in the law-making process.

#### Reading:

Barnett, chapter 22 A

#### Questions for discussion:

What is the criminal law structure in England and Wales?

What is the civil law structure?

Why are people discouraged from taking their cases to the higher courts?

What is the Privy Council?

Why was the Supreme Court created?

**Task for the class:** Please visit either the Supreme Court:

<https://www.supremecourt.uk/visiting/visiting-us.html> or the Public Galleries of the Old Bailey

<https://courtribunalfinder.service.gov.uk/courts/central-criminal-court> and be prepared to report to the class.

## **8. SEMINAR EIGHT**

### **Topic: Statutory interpretation, precedent and judicial law-making**

This first part of this session discusses the two approaches the courts use, the literal approach and the purposive approach, when interpreting statutes and discusses whether judges are just interpreting the will of Parliament or whether they are creating law. It also discusses the effect the Human Rights Act has had on statutory interpretation. The second part discusses the rules of precedent which determine when courts are bound by earlier decisions. It discusses whether judges should be creating law.

### **Reading:**

Barnett, chapter 22 B

See also Malleson and Moules, chapters 6 and 7

### **Questions for discussion:**

What is meant by the 'purposive approach' to statutory interpretation?

What are some of the problems of the literal approach?

What effect has the Human Rights Act had on this area?

Do you think that judges create law when they interpret it?

What is meant by the doctrine of precedent?

What are the advantages and disadvantages of it?

Does it hinder judges in adapting the law to changing circumstances?

Should unelected, unaccountable judges be creating law?

**Task for the class:** Read the case below and prepare a short case note.

RvR [1991] UKHL 12 <http://www.bailii.org/uk/cases/UKHL/1991/12.html>

## **9. SEMINAR NINE**

### **Topic: Executive Accountability & Judicial Review**

This lecture discusses the means by which the courts control the exercise of governmental power to ensure that governmental departments, local authorities, tribunals, state agencies, and agencies exercising powers which are governmental in nature are acting in a lawful manner.

### **Reading:**

Barnett, chapters 15&23 (especially the first half)

### **Questions for discussion:**

What is the task of the judiciary in judicial review cases?

What is the outcome of judicial review?

Who can apply for judicial review?

What are some of the grounds for judicial review?

Does this power provide a satisfactory check on the actions of the Government?

**Task for the class:** Read either:

*Austin v. UK* [2012] ECHR <http://www.bailii.org/eu/cases/ECHR/2012/459.html> or

*Laporte v. Chief Constable* [2006] UKHL

<http://www.publications.parliament.uk/pa/ld200607/ldjudgmt/jd131206/lapor-1.htm> and write a brief case note to present to the class.

## 10. SEMINAR TEN

### **Topic: The European Community and Union**

This session discusses the sources of European Community law and how community law is incorporated into the English and Welsh legal system as a source of law with a focus on Brexit and its implications on the UK constitutional set up.

### **Reading:**

Barnett, chapters 7 and 8

### **Questions for discussion:**

What are the institutions of the European Community?

What are the different types of European Community law? How do they effect the member states?

What role does the European Court of Justice play in the English and Welsh legal system?

What is the difference between the European Court of Human Rights and the European Court of Justice?

What is Brexit? How will it impact the UK?

Task for the class: find at least two recent newspapers articles about Brexit and bring them to class to discuss.

## 11. SEMINAR ELEVEN

### **Topic:** Putting it all together: The British Constitution in Context

In this seminar, we put it all together and discuss the British Constitution in context with particular focus on current issues and reforms.

**Reading / Task for the class:** read the Brexit case and prepare a case note highlighting the key issues.

*R (on the application of Miller and Dos Santos) v Secretary of State for Exiting the European Union and associated references* [2017] UKSC 5 available at <https://www.supremecourt.uk/news/article-50-brexit-appeal.html>

### **Question for discussion:**

Has the absence of a written constitution allowed the UK Executive to become too powerful? Discuss in light of the Brexit case

## QUESTIONS FOR ASSESSMENT:

1. 'The role of judges in the legal system is principally determined by their ability to interpret legislation.' Discuss
2. Is it appropriate for judges to adapt the law to meet changing social conditions?
3. 'It is right that in a stable democracy the executive retains a strong control over the law-making process in Parliament.' Discuss
4. In the light of the growing importance of statutory provisions, is it any longer meaningful to describe England and Wales as a common law system?
5. What changes might be introduced to parliamentary procedures to improve the efficiency and effectiveness of the law-making process?
6. 'The traditional rules of statutory interpretation have been fundamentally altered by the provisions of the Human Rights Act 1998.' Discuss
7. 'Judges should follow precedent whether they like them or not. Otherwise why have a system of precedent?

Consider this statement in the context of both binding and non-binding precedent.

8. 'The House of Lords has proven to be undemocratic, outdated and unnecessary in the law-making process.' Discuss
9. The doctrine of the separation of powers in England and Wales works better in theory than it does in practice.' Discuss
10. 'So long as the UK will remain a member state of the EU, the traditional concept of Parliamentary Sovereignty will remain of historical significance.' Discuss in relation to Brexit
11. Have English courts become the new arbiters of faith? Discuss in relation to the case law on manifestation of belief at school and compare with the situation in the US.

*In addition, if you were particularly interested in a specific aspect of the course that you would like to focus on please suggest your own question but this MUST be approved by the class tutor.*