

London
School of Business
& Finance



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ACCA Paper F4 (ENG)

**Corporate and
Business Law**

Class Notes

June 2011

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Introduction to the paper



AIM OF THE PAPER

The aim of the paper is to develop knowledge and skills in the understanding of the general legal framework, and of specific legal areas relating to business, recognising the need to seek further specialist legal advice where necessary.

OUTLINE OF THE SYLLABUS

Business Law	Corporate Law
1. English Legal System	5. Law of Agency
2. Law of Contract	6. Partnership law
3. Law of Tort	7. Company law
4. Law of Employment	8. Corporate Governance
	9. Fraudulent Behaviour

ACCA's Study Guide sets out the syllabus in detail – see *page 304* of these Notes.

FORMAT OF THE EXAM PAPER

The syllabus is assessed by a three hour paper-based examination.

The examination consists of:

- seven 10-mark questions assessing knowledge of the law, and
- three 10-mark scenario questions assessing application of the law.

ANALYSIS OF PAST EXAM PAPERS

	Pilot	D07	J08	D08	J09	D09	J10	D10
ELS	●	●	●	●	●	●	●	●
Contract	●●	●●	●●	●●	●●●	●●●	●●	●●
Tort	●	●	●	●	⓪	●	●	●
Employment	●	●	●	●	●	●	●	●
Agency		⓪	⓪	⓪			⓪	
Partnership			⓪	⓪			⓪	●
Company	●●●	●●●●⓪	●●●	●●●●	⓪●●●	●●●	⓪●●●	●●●●
Corporate Governance	●		⓪				⓪	
Fraudulent behaviour	●		●		●	●		

Chapter 1

English legal system

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SYLLABUS CONTENT (as set by ACCA's study guide)

1. Court structure

- a) Define law and distinguish types of law.
- b) Explain the structure and operation of the courts and tribunals systems.

2. Sources of law

- a) Explain what is meant by case law and precedent within the context of the hierarchy of the courts.
- b) Explain legislation and evaluate delegated legislation.
- c) Illustrate the rules and presumptions used by the courts in interpreting statutes.

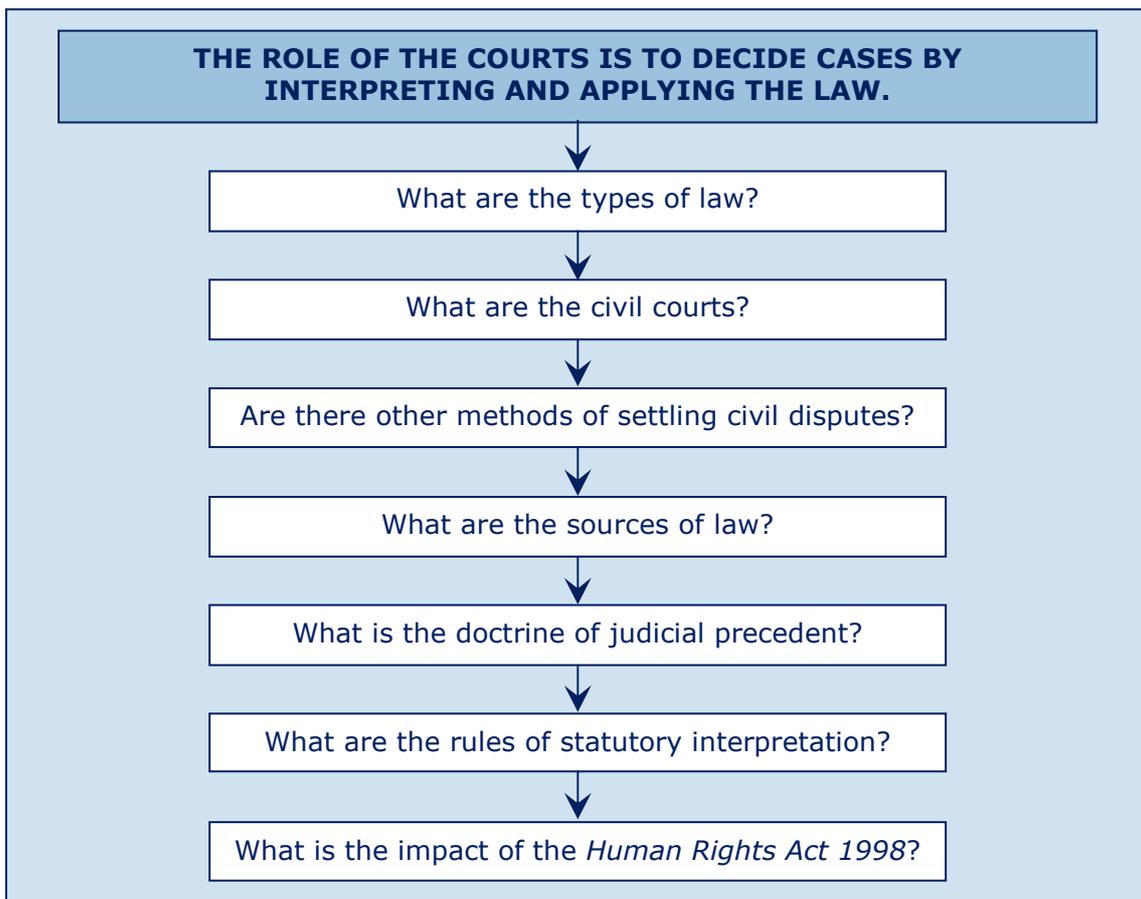
3. Human rights

- a) Identify the concept of human rights as expressed in the Human Rights Act 1998.
- b) Explain the impact of human rights law on statutory interpretation.
- c) Explain the impact of human rights law on the common law.

ANALYSIS OF PAST EXAM QUESTIONS

	Pilot	D07	J08	D08	J09	D09	J10	D10		
knowledge	•	•	•	•	•	•	•	•		
scenario										

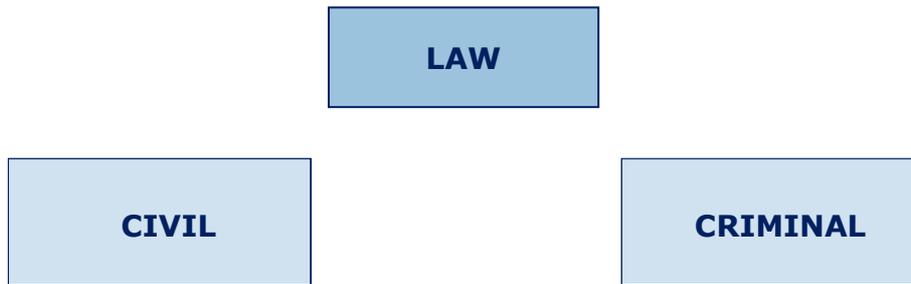
CHAPTER CONTENT DIAGRAM



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DISTINCTION BETWEEN CIVIL LAW AND CRIMINAL LAW



Civil law sets out the rights and duties of persons as between themselves. The person whose rights have been infringed can claim a **remedy** from the wrongdoer. The aim, therefore, of the civil law is to provide a means whereby an injured party can obtain compensation.

The **claimant** **sues** the **defendant**.

If the claimant can prove the **wrong** on **the balance of probabilities** (ie his litigation is successful and the defendant is held liable)

the civil court will order the defendant to pay **damages** or it might order some other remedy such as **specific performance** or **injunction**.

The major civil courts are dealt with in the next section.

Criminal law is concerned with conduct that is considered so undesirable that the State **punishes** persons who transgress. The aim, therefore, of the criminal law is to regulate society by the threat of punishment.

The **State** **prosecutes** the **accused / defendant**.

If the **State** can prove the **offence beyond reasonable doubt** (ie the prosecution is successful and the defendant is found **guilty** and **convicted**)

the criminal court will **sentence** the defendant to a **fine** or it might impose some other punishment such as **imprisonment**.

The major criminal courts are:

1. The **Magistrates Courts**, where magistrates conduct trials of minor crimes.
2. The **Crown Courts**, where a judge sitting with a jury conducts trials of serious crimes.

THE CIVIL COURTS

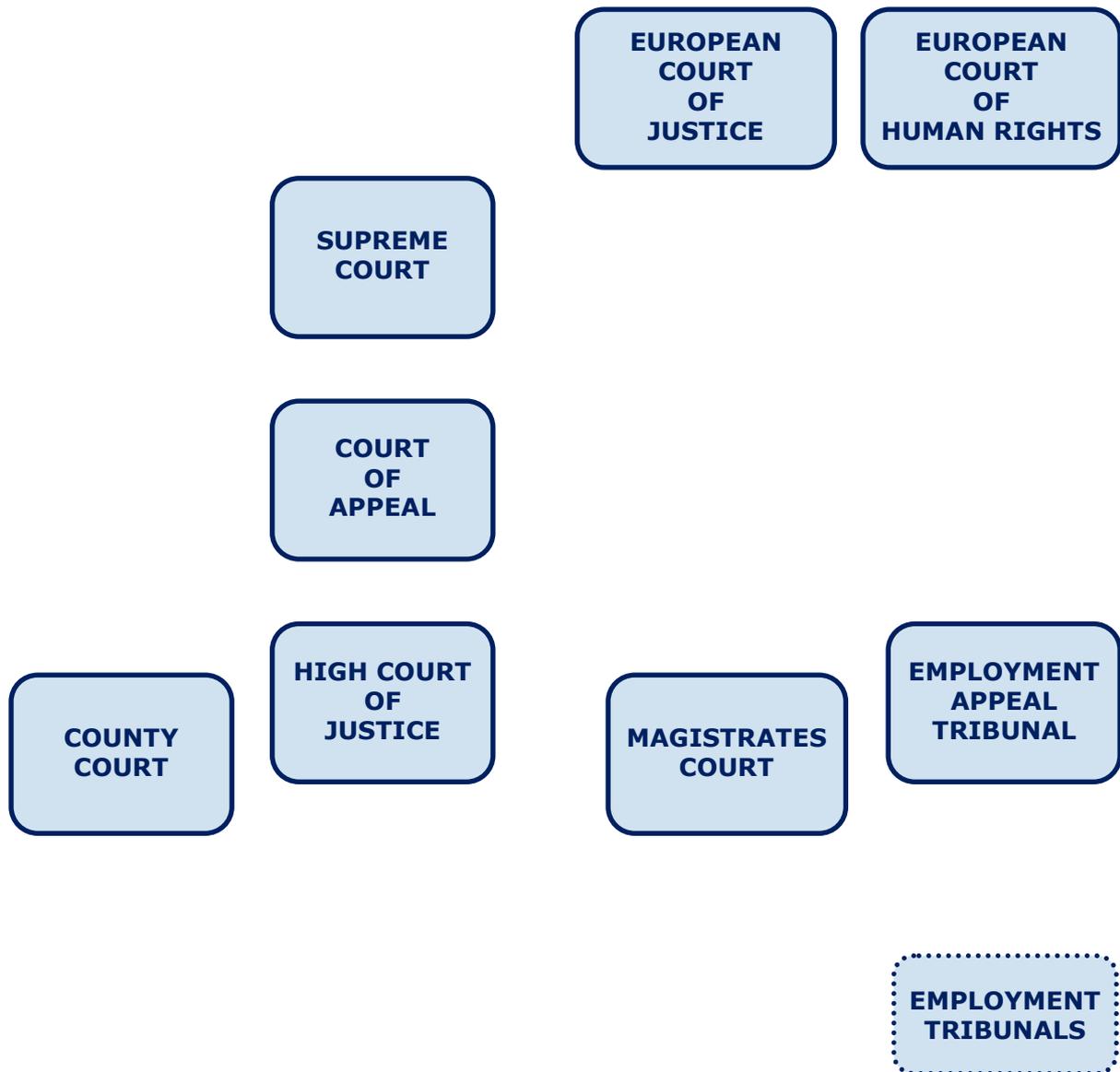
Overview

THE MAIN COURTS

- Supreme Court
- Court of Appeal
- High Court of Justice
- County Courts

OTHER COURTS

- Magistrates Courts
- Employment Appeal Tribunal
- European Court of Justice
- European Court of Human Rights



Detail

County Courts

Jurisdiction: first instance civil claims in eg contract*, tort*, landlord & tenant, probate, and insolvency.

Composition:

- a single District judge sitting alone deals with small track* claims.
- a single Circuit judge sitting alone hears fast track* and multi-track* claims.

Appeal: in the main lies to the Court of Appeal, but probate and insolvency appeals lie to the Chancery Divisional Court.

High Court of Justice

Jurisdiction: for jurisdictional purposes the High Court has 3 divisions: the Queens Bench Division, the Chancery Division and the Family Division.

The Queens Bench Division: mainly first instance contract* and tort* multi-track* claims.

The power of judicial review is exercised by the Queens Bench Divisional Court.

The Chancery Division: its first instance civil jurisdiction includes probate, company law, partnership law, and insolvency.

The Chancery Divisional Court hears appeals from the County Courts on probate and insolvency matters.

The Family Division: it has first instance civil jurisdiction in all matrimonial matters.

The Family Divisional Court hears appeals from the Magistrates Court on family matters.

Composition: at first instance a single High Court judge sits alone; but as a Divisional (appellate) Court two or sometimes three High Court judges sit.

Appeal: appeal from the High Court's first instance jurisdiction lies to the Court of Appeal; although exceptionally a leap-frog appeal may be made direct to the Supreme Court if the appeal is on a point of law of importance on which there is already in existence a binding Court of Appeal precedent. Appeals from the Divisional Courts lie to the Supreme Court.

***The three-track system** (mainly of relevance to contract and tort claims in the County Court and the High Court)

On receipt of a claim, the court will allocate the case to one of three tracks for the hearing.

The County Court hears all cases allocated to the small claims track, the majority of fast track cases and some multi-track cases. The High Court hears some fast track cases and most multi-track cases.

- The **small claims track** is for simple claims valued at no more than £5,000. The hearing is informal, there are limited grounds for appeal and costs of lawyers are not usually awarded.

- The **fast track** provides a streamlined procedure for moderately-valued claims (£5,000 to £25,000).
- The **multi-track** provides a flexible procedure for high value (over £25,000) and/or complex claims.

Court of Appeal (Civil Division)

Jurisdiction: hears appeals from the County Courts and the High Court of Justice.

Composition: three Lords Justice of Appeal sit to hear a case.

Appeal: lies to the Supreme Court.

Supreme Court

Jurisdiction: hears appeals from the Court of Appeal and the High Court of Justice.

Composition: usually five Law Lords (Lords of Appeal in Ordinary) sit to hear a case.

[Prior to 1st October 2009 the Supreme Court was called the House of Lords.]

Magistrates Courts

Jurisdiction: Although its jurisdiction is mainly criminal; sitting as a 'family proceedings court' it has a small but important civil first instance jurisdiction dealing with matters under the *Children Act 1989* such as council care orders.

It also has jurisdiction to deal with recovery of council tax arrears.

Employment Appeal Tribunal

Jurisdiction: Hears appeals on a point of law from the local Employment Tribunals. The ETs deal with actions by employee v employer (eg unfair dismissal).

Composition: one High Court judge plus 2 or 4 expert laymen.

Appeal: Court of Appeal.

TRIBUNALS

Introduction

There are 2 types of tribunal.

1. Domestic. These are so-called because they are set up by a particular body to regulate the conduct of their members.
2. Administrative. These are set up by an Act of Parliament as a means of settling certain specialised civil disputes as an alternative to the court system. The most important are the Employment Tribunals.

Employment Tribunals

There are numerous Employment Tribunals around the country.

Jurisdiction: The ETs deal with actions by employee v employer (eg unfair dismissal).

Composition: 1 Employment Judge plus 2 expert laymen drawn from panels representing both sides of the industry.

Appeal: Employment Appeal Tribunal.

Advantages

- Accessibility.
- Less intimidating.
- Speed.
- Cost.
- Input of expert laymen leads to practicality of result.

Disadvantages

- Legal Aid not available.

SOURCES OF LAW

Identification

Case Law

Legislation

European Community Law

Further knowledge is not
in the syllabus

Case law

This is law developed by the judges as they are deciding cases.

Case Law

- Common law
- Equity

1. Common Law, in developing from local customs which became common to the whole country, is a complete system of law.
Equity, in developing piecemeal to remedy injustices of the common law, is an incomplete system.
2. Common law rights & remedies are available as of right.
Equity is based on fairness & justice and so its rights and remedies are given at the discretion of the court. The court exercises its discretion according to well-known principles, eg
 - “Delay defeats the Equities”
 - “He who comes to Equity must come with clean hands”.
3. If there is a conflict, Equity prevails over Common Law.
4. Both are a product of the doctrine of judicial precedent.

Legislation

This is law made by or on behalf of Parliament. There are 2 sub-types:

Act of Parliament

Delegated legislation

1. Act of Parliament

Made by Parliament itself.

An Act of Parliament starts life as a Bill. Most Bills are introduced into Parliament by the Government of the day. The Bill, in order to become an Act of Parliament, must go through the full Parliamentary procedure in both the House of Commons and the House of Lords and then receive the Royal Assent.

Although the Bill becomes an Act (ie law) at the date of Royal Assent, it does not necessarily become operative immediately. Most Acts come into force piecemeal either on dates specified in the Act or by Commencement Order.

Doctrine of sovereignty of Parliament

Parliament is sovereign, ie it has supreme law-making authority.

- In theory Parliament can make any law, and in any way, it sees fit.

- In theory it is only Parliament that can make new law.

- Each Parliament is sovereign.

2. Delegated Legislation

Made on behalf of Parliament.

Types/who makes/uses

1. **Statutory Instruments** are commonly made by Government Ministers under powers delegated by Act of Parliament.
SIs are commonly used:
 2. **Bye-laws** are made by local authorities. They are therefore local laws.
 3. **Orders-in-Council** are made by the Privy Council in the name of the Queen on the advice of the Prime Minister. They are often used as emergency measures.

Advantages and disadvantages of delegated legislation as compared with statute

- | | |
|---------------|---|
| Advantages | <ol style="list-style-type: none"> 1. saves Parliament's time. 2. timeliness and speed because it is easy to make and unmake. 3. possibility of expert/local input. 4. flexibility because it is easy to make and unmake. |
| Disadvantages | <ol style="list-style-type: none"> 1. difficult to keep up with because of its volume and lack of publicity. 2. undemocratic because delegated legislation is not made by elected representatives of the people (although some SIs are required to be laid before Parliament). 3. possibility of loss of control. |

There are, however, the following controls:

1. **Parliament** exercises control through
 - ♦ the enabling Act
 - ♦ the Scrutiny Committee
 - ♦ the laying procedures.

2. The **courts** exercise control through the power of judicial review. Anyone can challenge the validity on the ground that the maker has acted ultra vires in that he exceeded his statutory powers. The courts will declare anything ultra vires to be illegal and void.
3. Further, under the **Human Rights Act 1998**, the courts can refuse to apply delegated legislation (except Orders-in-Council) to the extent that it contravenes Human rights (*see later – the syllabus topic 'Human Rights'*).

E&SQ 1

DOCTRINE OF JUDICIAL PRECEDENT

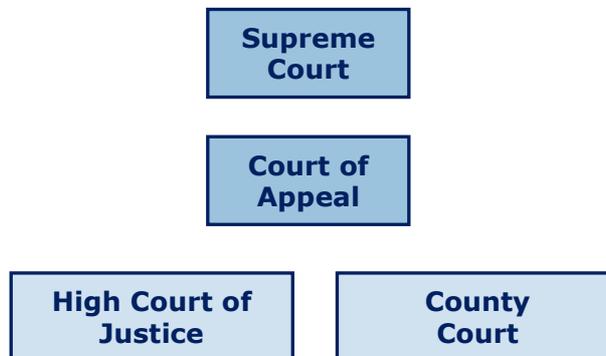
What is the doctrine?

The system, adopted by the judges, of following previous precedents.
Some precedents are **binding** whereas others are merely **persuasive**.

3 factors are relevant in determining whether or not a precedent is binding:

1. the hierarchy of the courts

In general precedents of the higher courts bind the lower ones but not vice versa.



In particular:

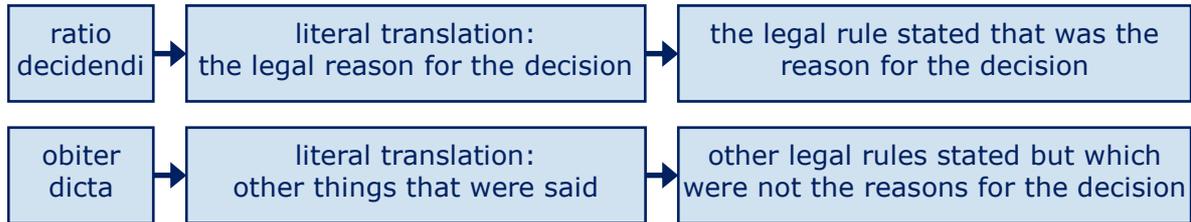
- Precedents of the Supreme Court bind all the lower courts.
The Supreme Court is not bound by its own previous precedents.
- Precedents of CA bind all the lower courts.
The CA is usually bound by its previous precedents.
- High Court is not bound by its own previous precedents.

Note: County Court decisions are not reported.

Further:

- Precedents of the European Court of Human Rights (ECtHR) are not binding but they are highly persuasive.
- Precedents of the ECJ bind all UK courts.
- Precedents of foreign courts are not binding but they may be persuasive.

2. ratio decidendi (binding) and obiter dicta (not binding)



3. material facts of the cases

Same → binding.

Similar → persuasive.

Advantages and disadvantages of judicial precedent

Advantages

1. **Consistency, certainty & clarity** promote **predictability**.
2. **Flexibility** allows **development** to meet the changing needs of society.
3. Arises from actual events and therefore **practical**.

Disadvantages

1. Vast number of cases leads to **bulk, complexity** and **inconsistency**.
2. **Rigidity** leading to **loss of flexibility** and **loss of development**.
3. **Patchwork nature** means that case law is **reactive** rather than **proactive**.

E&SQ 2