HAKEMLİ MAKALE

UZUN SÜRELİ TEAMÜL VE GELENEKLERLE HUKUK SİSTEMİ HALİNE GELEN ORTAK HUKUKUN YENİDEN DEĞERLENDİRİLMESİ: İNGİLİZ HUKUKU*

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ÖZET

Ortak Hukuk, yazılı bir hukuk düzeninden ziyade teamüller ve yargısal içtihatlara dayanan bir hukuk sistemidir. Lakin, Amerikan hukukuna karşılık İngiliz hukuku söz konusu olduğunda, dikkat edilmesi gereken bir husus mevcuttur; Birleşik Krallık'taki bir hakim, egemen parlamento tarafından çıkartılan bir yasayı veya tüzüğü anayasaya aykırı olarak ilan edemez, çünkü İngiliz hukukunda anayasa yoktur.

İngiltere'deki yargıçların rolü, parlamento tarafından çıkartılan ve her türlü durum veya gerçekleri ihtiva edecek ayrıntılara sahip olmayan yasaları yorumlamaktır. Yasaları yorumlamak ve parlamentonun çalışmalarına anlam vermek İngiliz hukukunda çok önemlidir, çünkü yasalaşan eylemler yalnızca gerçeğe veya uygulamaya her zaman uymayacak teorilerdir.

Bu çalışmada, ortak hukukun kökeni ve nedeni, İngiliz mahkeme sistemi, hukuk hiyerarşisi ve yasal yorumu incelenecektir.

Anahtar kelimeler: Ortak Hukuk, Yargı kararları, İngiliz Hukuku, Adet, Yasal Yorum

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PEER-REVIEWED ARTICLE

RECONSIDERING THE COMMON LAW SYSTEM AS A LAW FROM LONG-STANDING CUSTOMS AND TRADITIONS: ENGLISH LAW

ABSTRACT

Common Law is a legal system based on customs and judicial decisions rather than enacted statutes. There is, however, one discrepancy between American law and English law, both of which are adopters of the common law. The point is that judges in the United Kingdom (Hereinafter UK) cannot merely declare an act or a statute established by the sovereign parliament as unconstitutional because there is no constitution in English law.

The role of judges in the UK is to interpret bills introduced by the parliament since all the situations and facts can not be covered by the bills in question. Interpreting laws and giving sense to the work of the parliament is very important in English law because the acts is like wider theories that may not always fit into a practice.

In this study, the origin of common law and its raison d'être, English court system, hierarchy of law and the statutory interpretation will be analysed.

Keywords: Common Law, Judicial decisions, English Law, Customs, Statutory Interpretation

INTRODUCTION

Common law consists of those laws of the land that people have to comply with, which are essentially created, improved and applied by judges sitting in courts deciding on disputes arising from individual cases whether civil ones as in civil justice system or criminal cases in criminal justice system. The broad common law comprises of legal principles articulated by judges while dealing with matters that have been addressed to them. In other words, common law is often referred to as case law because here laws are made from individual cases.

The common law is developed by judges following the decisions of other judges who have previously decided on similar cases. When they are following the reasoning of those judges who evaluated the cases before them, they follow the doctrine of precedents by looking back and see how a similar issue was dealt with by judges, in this respect they conclude the operation of doctrine of precedents. Judicial decisions are documented in the collection of case laws also known as year book report as in the United Kingdom.

In this paper, we will essentially focus on the development of Common Law in English law. Documentary method have been use as our main method to get information about the issue in hand which had included various topic research writings on Common Law and English Law in particular. This work is divided in four points: Historical background of English Law, English legal system, Common law and Equity and the statutory interpretation. This work is closed with a conclusion and list of references used while gathering necessary information for he sake of this research.

1. HISTORICAL BACKGROUND OF ENGLISH LAW

The first scholar who attempted to collect all the common laws together was Sir William Blackstone while lecturing at Oxford in 18th century, on the meaning of common law, He wrote that:*"... to be found in the records of our several courts of justice in books of reports and judicial decisions, and in treastises of learned sages of the profession, prescribed and handed down to us from the times of ancient antiquity. They are the laws which gave rise and origin to that collection of maxims and customs which is now known by the name of common law."*[1] He tried to systematize all the common law decisions concluded by judges over many years, his collection; Commentaries on the Laws of England may be considered as the most comprehensive document regarding common law to have ever been written by a single author.

The reasonable starting point for Common law is spotted by 1066 with William the Conqueror who invaded Britain from Falaise in Normandy, northern France of today. After defeating king Harold II at the battle of Hastings on 14th October 1066, he became the King of England. William found that England had already a functioning system of law under local justice but each area was governed by the law brought by those who invaded it. For example, Danelaw was a law used by those who lived under the power of Anglo-saxons in the large area of East Anglia of

[1]Sir William Blackstone, Commentaries on the Laws of England in Four Books, vol. 1 [1753], p.60.

today, but there was no unitary system of the law within the whole territory that King William was coming to invade.[2]

The English legal system existed from massive oral customs from place to place. Each county had actually its own local courtand they were varied from community to community, the existence of local courts in England in 11th century were not a kind of courts that can be reasonably recognized today as courts. Managing a decision concerning who is guilty and who is not was sometimes difficult and the judges would use ordeal trial by exposing pain to the accused and surving this physical hardship would mean innocence while dying would absolutely confirm the guiltness of the accussed because they thought that God is the one who showed the real criminal by saving the innocent and killing the criminal.[3] This kind of trial continued until 13th century and stopped by the church.[4]

William the Conqueror was interested by then, in establishing his power and order. He led the foundation of the legal system because he understood that in order to establish a respected order in the country one must have a central unitary system of justice. Even though he initiated the plan to make a unitary system of the law, Anglo-Saxons were allowed to freely follow and use the existing laws. The real establishment or the success of a unitary legal system that prevailed all the years up today in England was from 1200 by the rule of the King Henry who perfectly centralized Common Law.[5]

2. ENGLISH LEGAL SYSTEM

English legal system is the mother of the Common Law legal family. It consists of legal system operated by courts in England and Wales. This sytem is divided in two main branches; one of criminal justice system and another of civil justice system, each one of them has its own procedures and courts. In this section, we will discuss on the distinction between these two sytems that function under the umbrella of English legal system, we will also study how courts are organized and the relationship of their hierarchy to the doctrine of precedents.

2.1. The Distinction Between Criminal And Civil Justice System In English Law

With the justification that the crime is committed against the society, in most countries legal actions in criminal matters are undertaken by the public prosecution(the state) in the name of the people. In English law, the legal actions against criminal

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[2] What was the Danelaw?, available at: http://www.ancientpages.com/2016/06/04/what-was-the-danelaw/ accessed on 23 October, 2018.

[3]Paul R. Hymas(1970), The Trial by Ordeal: the Key to Proof in the Early Common Law, available at http://www.law.harvard.edu/faculty/cdonahue/courses/lhsemelh/materials/FSThorne_Hyams_90_126.pdf accessed on 23 October 2018.

[4]Margaret H. Kerr, Richard D. Forsyth and Michael J. Plyley, Cold Water and Hot Iron: Trial by Ordeal in England, The Journal of Interdisciplinary History Vol. 22, No. 4 (Spring, 1992), pp. 573-595, The MIT Press, available online at: https://www.jstor.org/stable/205237?seq=1 accessed 23 October 2018.

[5]Vivek Khanna, A Brief History of English Legal System, http://www.privatelawtutor.co.uk/a-brief-history-of-english-legal-system/ published 18 November, 2015, accessed on 23 October 2018.

defendents is initiated by the Crown. To understand the dissimilarities that are found between civil case and criminal case we need to check first on how cases are named.

If Mr. Patrick injuries Mr. Thomas, then a criminal action will be brought to attention of the criminal court by the state. This case will be named **R v Patrick.** The letter R stands for the latin Rex which means king or Regina which means queen, depending on whether there is a king or a queen on the throne at the time the decision was taken.[6] Abbreviating Regina or Rex does not always work because sometimes the full form is written (Rex/Regina versus someone). When the accused is less than 13 years, the court cannot reveal his identity rather it will type the first initial letter of his name, for our case it will be R v P. Another thing to add on criminal case, is that the case mighty be initiated by Attorney General (AG) or Director of Public Prosecutions (DPP) their initials will be written while naming a case. In case the State failed to file a criminal action against the offender, the victim(s) to the case will file it and the case will consist of their names. Here it will be, **Thomas v Patrick.**[7]

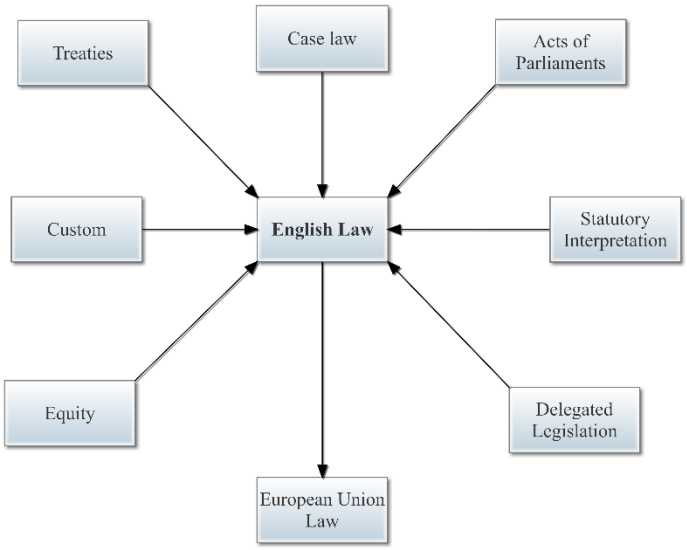
On the other side, civil case are characterized by duties of persons to others, the Crown does not participate in these issues because they do not concern the whole society. In naming these case, for example if John has a debt of Joseph, the case will be named **Joseph v John.** In this situation the letter v for versus stands for 'and' rather than 'against' which appears in criminal cases. The name of the plaintiff is the one that has to be written in the first place. Sometimes the State appears in civil matters with the interest of judicial review, for example if Joseph is not happy with the council of Liverpool city for not taking action in a dispute he had with John while he has requested its action, he will sue the city of Liverpool and the case will be named **R v Liverpool City Council ex parte Joseph.**[8]

Civil and criminal case have so much dissimilarities in Common law as we will step by step noting the difference in the following points, such as organization of the courts and in interpretation of statutory laws.

[6]CATHERINE, E. & FRANCES, Q., English Legal System, Pearson Education Limited, Essex, 10th ed., 2009, p.31.
[7]Ibidem.
[8]Ibidem, p.32.

2.2. Source of the Law

English law stems its existence from eight main sources. Even though these are not equally important when considering their frequent utilization, they all remain as pillars of the whole legal system.[9]



The above eight sources can be summarized in four main parts; legislation, case (common) law, human rights law and EU law. Custom and equity are often counted under the part of case law, because they are among the elements of this part.[10] The existence or the basis of the English law is case law and even today is still the essential part of English legal system. However, the most important source is the acts of parliaments or statutes because they prevail over all other remaining sources.[11] These statutes contribute more to the existence of case law because judges while interpreting them, the outcome of their decisions create new precedents. Administration create delegated legislations which attempt to provide details on the work of the legislature.

EU law is still the sole source of law to prevail over the acts of parliament. Even though UK under Brexit showed an intention to leave the European Union, the relationship between EU laws and UK laws has not yet been erased, it will require existing laws to be amended and from this period only decisions of EU directives made before Brexit will affect UK.[12] As for remaining sources; custom, equity and international treaties are considered as minor sources in English legal system because

[9]Ibidem, p.44.
[10] All Answers ltd, 'Explain the sources of English law' (Lawteacher.net, October 2018) https://www.lawteacher.net/free-law-essays/constitutional-law/explain-the-sources-of-english-law-essays.php?vref=1 accessed 25 October 2018.
[11] CATHERINE, E. & FRANCES, Q., p.44.
[12]Brexit - UK and EU legal framework, July 2018 http://www.nortonrosefulbright.com/knowledge/publications/136975/brexit-uk-and-eu-legal-framework accessed on 25 October 2018

they are not used very often in addition to this, all these sources are subject to change anytime they need to reflect a change that is happening in the society.[13]

After the conclusion on Brexit, some sectoral agreements could be agreed on, especially in the field of commerce and telecommunication, where British markets would still be in touch with the European ones. This would preserve at least some ties between the UK and the EU. As long as sources of law are concerned, some activities involving such ties would purely continue with EU regulations so long as EU treaties on those domains are not terminated.

2.3. Organization of the Courts

English Legal system is the most complicated legal system in the world because of the fact that it kept judicial tradition of over 1000 years. The difference between how serious a certain legal action is, will mostly define which category of court that it competent to deal with such matter. England and Wales have the same courts structure; the tribunals system covers England, Wales, and with some rare case; Northern Ireland and Scotland.[14] Besides differenciations based on whether a case is civil or criminal, other ways of differenciating English courts would be courts of general jurisdiction, courts of limited jurisdiction, appellate courts, constitutional courts, courts in federal systems and transnational courts.

Unlike Roman law-system (Civil Law) where a judge has to be active and counsel has to be passive;[15] the role of judge in Common law system when it comes to criminal matters, judges only serve as legal referee who will control the well conducting of the adjudication, the prosecutor and defense are free to produce all possible evidences which is different from the former because judges in this system provide the ways certain kinds of evdence can be produced. The procedure in Civil Law system is inquisitorial whereas in Common Law is adversarial.[16]

The State has no active role in civil courts except the one of ensuring that disputes between the parties have been resolved under an impartial forum and accepted rules. The only time the government can be a party to civil case if it is involved in a civil litigation like any other private side in a civil case. The difference between civil litigation in Common law system and in Civil law system comes when dealing with civil responsibility from a criminal responsibility. In civil law system, two responsibilities can be dealt in one single court where the judge will examine the criminal responsibility of the offender and also hears the claim for compensation resulting from that responsibility, something that is inapplicable in Common law system because here there will always be two different independent actions.[17]

The courts of general jurisdiction are able to handle all type of cases brought to their attentions. These kind of courts include the High Court of Justice in England and Wales and other examples are found in the USA. They are considered to be

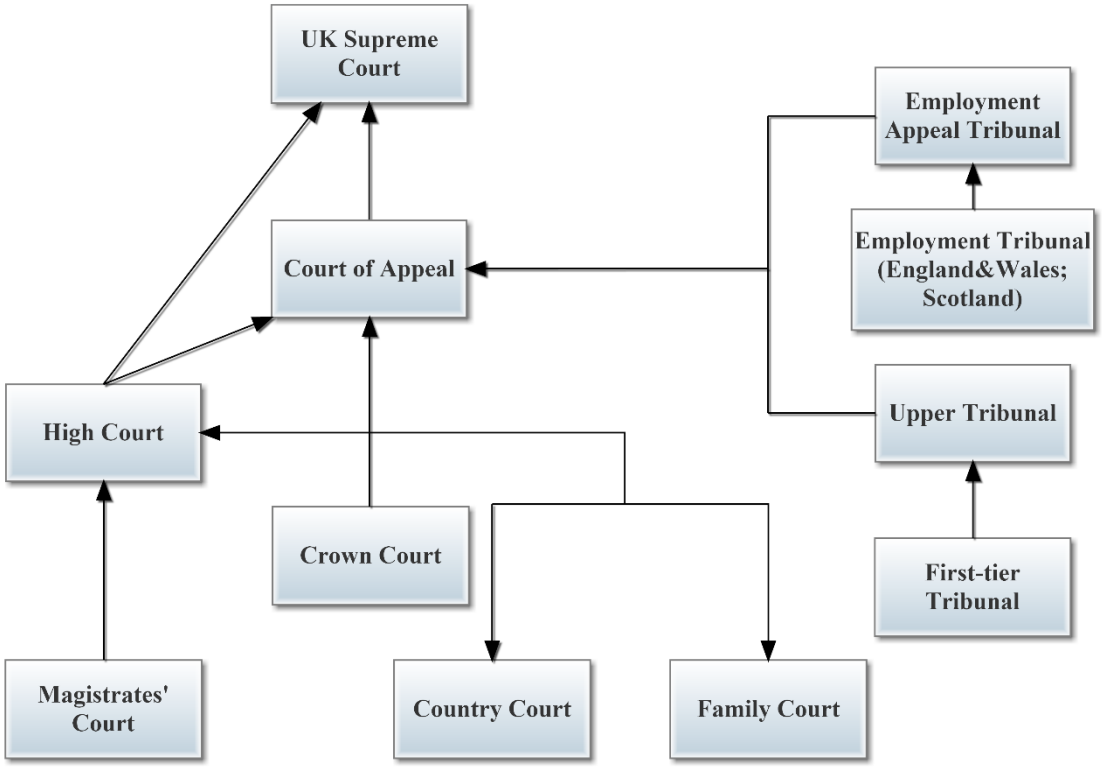
[13]Idem, 44.
[14] Structure of The Courts and Tribunal System, available at https://www.judiciary.uk/about-the-judiciary/the-justice-system/court-structure/ accessed on 31 October 2018.
[15] Sheherazade AQIL, What is the difference between Common Law and Civil Law?, 5 June 2017. available at https://www.apprendre-le-droit.fr/anglais-juridique/what-is-the-difference-between-common-law-and-civil-law/ accessed on 31 October 2018.
[16] Ibidem.
[17]Structure of The Courts and Tribunal System, id.6.

superior courts because they can handle srious criminal case and very important civil case with a large sum of money.[18] A judge under this court may be transferred from one branch of proceeding to another like juvenile, employment, crminal, and so forth proceedings.

Another type of courts is the one of courts of limited jurisdiction or special jurisdiction. These are courts that only deal with a certain category of cases. For example; Probate courts which deal with the estates of deceased people, commercial courts, Labour courts, Juvenile courts, traffic courts and inferior courts which only deal with minor civil and criminal cases where there is a use of part time judges who are not necessarily required to be trained in law.[19]

Appellate courts category is also a type of courts that can help us identifying and differenciating English Courts, since these courts review and correct any errory that may have been committed under the trial courts or courts of the first instances. In short English courts are structured at the top by the supreme court of UK, and the lowest level maybe county courts which are available in all 160 counties of the UK.

Below we can see how the courts are structured in the following chart:



Even if you may found some other tribunals outside this structure like School exclusion panels, this remain the principle structure in English legal system.[20]

2.4. From Higher to Lower courts: The doctrine of precedent

[18]id.
[19]id
[20]The courts of England and Wales, July 2015 available at https://www.judiciary.uk/wp-content/uploads/2012/08/courts-structure-0715.pdf accessed on 31 October 2018.

One may ask to which extent a higher court judge may influence the lower court judge since they are supposed to be bound by this hierarcy of courts? In Common law judges are free to interpret laws at any instance but still have to be bound by the precedents of higher courts. The doctrine of precedent as we noticed in the introduction of this work, is the approach undertaken by the court in the same context as the one found in court's previous ruling. This doctrine has its root in the latin maxim ' *stare decisis et non quieta movere"* which mean; '*stand by what has been decided and do not unsettle the established"*.[21] The court ruling in England must comprise two main parts: *Ratio dicidendi and obiter dicta.*

Ratio dicidendi stands for the reason the court has taken a certain decision or the rationale of its decision. This rationale must be followed in the future cases when similar facts in the same legal issues happen. In addition however, the future case can examine the extent of previous ration which prove the uniqueness of every case. To the other hand, *Obiter dicta* are composed by comments and observation made by judges while undertaking a ruling. The future case are not bound to follow these comments but they play an important role when judges are considering similar facts in cases.[22]

Precedents are divided in three categories: the original precedents, binding precedents and persuasive precedents. As the doctrine of precednts dictate, courts are binded by the rulings of higher courts or to their own rulings.

Original precedents are those precedents that courts take where there were no previous known similar fact examined by other higher courts or themselves. At this point, in order to provide what will be called an original precedent, the court will use previous precedents that may present a certain good level of similarity by reading both the ratio dicidendi and obiter dicta for reaching a relevant decision.[23]

Binding precedent occur when the presented matter to the court matches sufficiently the one that has been previously decided by judges from a higher court. When the original precedent has no longer legal value like in case there was a change in norms or in law, it can be overturned by the court. However, higher court is the sole court than can overturn a binding precedent.[24]

The last kind of precedents are persuasive precedents, they are precedents that are not binding to other courts. However they play a helpful role because judges can use them in case their reasoning and used principles match with most of the facts of the current matter that the court is trying to decide upon. They may be found in the decisons of lower courts, those made by privy council, all *obiter dicta* in previous decisions, dissenting opinions made by judges who were not in agreement with the previous rulings and rulings of courts in other jurisdictions.[25]

3. COMMON LAW AND EQUITY

[21] Precedents: What are they and when are they used?, availaable at : https://www.inbrief.co.uk/legal-system/precedents/ accessed on 1 November 2018.
[22] *Id.*
[23] Neil Duxbury, *The Nature and Authority of Precedent*, Cambridge University Press, 2008, p. 114.
[24] *Id.*
[25] Persuasive precedent, https://www.inbrief.co.uk/legal-system/precedents/ accessed on 1 November 2018.

After the introduction of common law system in England, litigants who were not happy with the decisions taken by established court turned to the council and the king hoping to get justice. These petitions were addressed to the lord chancelor who with time collected those claims and made a series of relevant remedies. The law of equity has been created by the Chancery court with the aim to reduce the hashness of the common law in England.[26] The chancery court, is one of the three of the High Court of Justice in England (Chancery, Queen's Bench and Family Division). It hears cases relating to business and property; such as those related to intellectual-property, estates, trusts and other related disputes. It is considered today as the court of equity and as a separate jurisdiction which has emerged since 15th century to provide remedies that the courts of common law were not able to provide.[27] They serve an important role because they can fill the gaps available in common law.

In common law only addressed remedy under monetary form, it was unable to compensate a remedy out of monetary scope. The law of equity was able provide monetary remedy or rule without bodering on financial ground such as injuction.[28]The limited competence of common law was mainly the reason the law of equity came into existence.

In 19th century, England established the merger which combined the common law and the law of equity in one system because firstly the law of equity was only a form of remedy without a full established legal system and secondly, the common law showed weakness in its gaps. The merger brought together the principles of both common law and the law of equity in one full unitary law system.[29]

4. STATUTORY INTERPRETATION

Statutes are written laws established by the parliaments. The role of the judge is to interpret the meaning of these legislations. Interpreting statutes is not always an easy task to perform since in some cases, judges upon call are requested to interpret them by using existing laws as well as rules of statutory interpretation. In situations that the meaning of the law is not certain or where it is hard to understand a judge's interpretation is required.[30] Even though legislators use their skills to enact clear and unumbiguous legislaation, the possibility of unclear close is inevitable and sometimes words may change meaning time to time until they have different meaning as for today.

4.1. Rules of Interpretations

Once a statute is interpreted, it becomes one of other judicial decisions which will serve as precedents in future decisions. In this case different interpretations have

[26] Diana Wicks, 26 September 2017, The Relationship Between Common Law and Equity, availaable at https://bizfluent.com/info-12042701-relationship-between-common-law-equity.html accessed on 1 November 2018.
[27] The Editors of Encyclopaedia Britannica, Court of Chancery, 19 October, 2018 available at https://www.britannica.com/topic/Chancery-Division accessed on 1 November 2018.
[28] Diana W, supranote 23
[29] İd.
[30] Statutory interpretation, available at https://www.inbrief.co.uk/legal-system/statutory-interpretation/ accessed on 1 November 2018.

been conducted over time under the Interpretation Act of 1978[31]. A framework for interpretation developed three rules: the Literal Rule, the Golden Rule and the Mischief Rule.[32]

4.1.1. The Literal Rule

This is the approach that focuses on the ordinary meaning given to words, sentences or paragraph by the legislators. The literal meaning provide a simple way to follow the will of the parliament enacted in a legislation. Whether the written words contain silly meaning is not the work of judge to change them. Under this rule logical meaning in a provision has nothing to serve, it must be followed as such. Lord Esher expressed this view in R *v* City of London Court Judge (1892) as : '*If the words of an Act are clear, you must follow them, even though they lead to a manifest absurdity. The court has nothing to do with the question of whether the legislature has committed an absurdity.'*

For example[33] :

Whitely v Chapell (1868) a statute with the purpose to restrict electrol fraud made it a crime to impersonate 'any person entitled to vote' at any election. The accused was found not guilty since he impersonated a dead person and a dead person was absolutely not under the category of those who are entitled to vote.

London and North Eastern Railway Co v Berriman (1946) a worker in the railway was killed after being knocked down by a train, his wife came to claim for damage but she got nothing since the applicaable statute of that time provided that compensation is only available when an employee was engaging 'relaying or repairing' tracks; in this case the dead person was doing routine maintenance and oiling when a train knocked him down, the action which the court did not find in the meaning of 'relaying and repairing'.

The literal rule though it respects all the work of the parliament as it is, it may still make different mistakes by blindly following all the words in the legislation. In attempt to respect the will of legislator, judges may make injustice like in the second example we have come to see, as well as supporting absurdity as in first case law example.

4.1.2. The Golden Rule

Golden rule is the exact opposite of Literal rule because it supports the idea that if the legislation contains words that sound absurd and that they do not match the intention of the parliament while establishing that legislation, the role of the judge in this case is to provide a reasonable meaning that will substitute what is written in the statute. Lord Wensleydale in **Grey** *v* **Pearson** (1857), he said: *'The grammatical and ordinary sense of the word is to be adhered to, unless that would lead to some absurdity, or some repugnance or inconsistency with the rest of the instrument, in*

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[31] Interpretation Act of 1978, available online at https://www.legislation.gov.uk/ukpga/1978/30/pdfs/ukpga_19780030_en.pdf accessed on 1 November 2018.

[32] *İbid.*

[33] CATHERINE, E. & FRANCES, Q., pp. 52-53.

which case the grammatical and ordinary sense of the words may be modified so as to avoid that absurdity and inconsistency, but no further.'[34]

Let check some examples where some provisions in the statute have been given a different meaning by judges while explaining the statute because those existing provions contained barriers to justice:

In *Re Sigsworth [1935]*[35] the son killed his mother. Because the mother had not left any will about how her property will be shared aftern her death, the literal rule provided that in this case the next of kin is the one to benefit from succession. Although there was no ambiguity or absurdity in this act, judges did not allow literal rule to be applied rather they chose golden rule because they could not allow a murderer to benefit from his offence.

The court used a golden rule to interpret section 57 of the offences against the person Act of 1861. In R v Allen (1872), [36] the person was being accused of bigamy and under this act, the offence of begamy would not be possible because courts would not allow a second marriage to a person who is already married. The satute stated that: *'whosoever being married shall marry any other person during the lifetime of the former husband or wife is guilty of an offence'*. The court held that the word *'mary'* should be mean *'to go through a marriage ceremony'.*

As advantage, the golden rule corrects all errors that can happen in a literal meaning of a statute which was not under the intention of the parliament. It also allow the judge to use the most reasonable meaning where there is a possibility of a word having more than one meaning. As negative point, golden rule can be a material to undermine the sovereignty of the parliament because by trying to give a sensible meaning judges can make a different provision which will abuse the principle of separation of powers in this case, legislature and judiciary.

4.1.3. The Mischief Rule

This is the oldest rule of interpretation established under the Heydon's case in 1584, the main purpose in this interpretation is to reveal what was the intention of the parliament. It laid down four factors that have to be followed while undertaking it,[37] so that the judge arrives at resolving issues that were under the legislator's mind during legislation:[38]

1. What would be considered (common law) before the act was passed.
2. What was the problem the act was trying to resolve but the common law did not,
3. What the parliament was trying to resolve as a problem.
4. What is the rationale of this remedy;

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[34] [1857] 6 HL Cas 61, [1857] EngR 335, (1857) 6 HLC 61, (1857) 10 ER 1216.
[35] Re Sigsworth: Bedford V Bedford: 1935, available at https://swarb.co.uk/re-sigsworth-bedford-v-bedford-1935/ accessed on 2 November 2018.
[36] *R v Allen* (1872) LR 1 CCR 367, http://www.e-lawresources.co.uk/R-v-Allen.php accessed on 2 November 2018.
[37] 3 Co Rep 7, [1584] EWHC Exch J36, (1584) 3 Co Rep 7, 76 ER 637, Pasch 26 Eliz, [1584] EngR 9 available at *http://www.bailii.org/ew/cases/EWHC/Exch/1584/J36.html* accessed on 2 November 2018.
[38] Ibidem.

Here are some examples, where judges followed the intention of the parliament:

Under the street Offence Act 1959, it is a crime for a prostitute to sollicit clients on the street or in public. In *Smith v Hughes* (1960)**[39]** a prostitute who was not in public but sitting in her house tapping by the window in order to gain of attention of men passing a long side the street near her house on the first floor. Even if the prostitute in question was not at the street, her intention was to sollicit people in the public and prohition of solliciting public into prostitution was the intention of the parliament as explained in the case not the presence of prostitute on the street or in the public.

According to the Road Traffic Act 1930, it was an offence to use uninsured vehicle on the road. In *Elliot v Grey (1960),* the defend's car which was found packed on the road had been jacked and had its battery removed because it was found uninsured. [40]The accused person argued that his car was not being used on the road because it was packed and not driveable. Since what was in the mind of the parliament when establishing the Act was to establish a way people should be compensated angainst any potential hazards from others and being insured would be inevitable at such incident, therefore the defendant was held liable for representing a hazard on the road. The phrase was covered as '*used on the road'*[41].

The mischief rule is more satisfactory than golden and literal rules because it allows flexibility by avoiding absurdity and injustice in any case. However, some scholars argue that the establishment of the mischief rule was in the time the supremacy of the parliament was not yet really in place and statute was considered as minor source of the law. From this perspective, as for today the situation and the way legislation is made and the value of a statute have changed over time, this rule would be considered as less appropriate.[42]

4.2. The Purposive Interpretation

This approach is the modern version of the mischief rule of interpretation. It does focus on the intention of the legislators when passing a new Act. This approach has root in the European approach[43] which gives the effect to the aims of the legislations and it influenced a good number of modern judges in England. The difference between mischief and purposive approaches iss that one gives a liberal approach(Purposive) and the other(mischief) provides a more traditional approach. Lord Denning in Magor and St Mellons Rural District Council *v* Newport Corporation (1952) stated that : *We do not sit here to pull the language of Parliament to pieces and make nonsense of it . . . we sit here to find out the intention of Parliament and carry it out, and we do this better by filling in the gaps and making sense of the enactment than by opening it up to destructive analysis.[44]* His view was

[39] Smith V Hughes: Qbd 1960, avalaible at https://swarb.co.uk/smith-v-hughes-qbd-1960/b accessed on 2 November 2018.
[40] Elliot v Grey [1960] 1 QB 367, available at http://e-lawresources.co.uk/Elliot-v-Grey.php accessed on 2 November 2018.
[41] CATHERINE, E. & FRANCES, Q., p. 55.
[42] CATHERINE, E. & FRANCES, Q., p. 56.
[43] İbid.
[44] [1951] 2 All ER 839, [1952] AC 189, availaable at https://swarb.co.uk/magor-and-st-mellons-rural-district-council-v-newport-corporaion-hl-1951/ accessed on 2 November 2018.

that the mischief interpretation should be broad to look at the history of the case and carrying out the intention of the legislators. So his views have been considered as pure usurpation on appeal to the House of the Lords, they were able to come to a conclusion over time that Purposive approach should be considered appropriate in certain cases.[45]

Pepper (Inspector of Taxes) v Hart (1993[46]) is a good a example on purposive example where the problem was on how to interpret s63 of the Finance Act 1976, where the court ruled that in case there is obscurity in the legislations, statements made in parliament by the people who are in charge of promoting a relevant legislation should be considered while giving interpretation to that legislation.

CONCLUSION

This work studied the Common law system, its history and its development, courts under this system and how precedents are created. As we have seen, the system is established over the long preserved customs of british people in many previous centuries. In this paper, we can conclude by establishing the positive points as well as negative points applicable to this legal system.

The common law allows parties to the case to be represented at the best possible way since the case is won by how smart representation is and the judge plays a passive role. For this reason, common law is predictable because parties to the case can foresee what would be the outcome of their case since there are precedents around to be referred to. Common law system is also fair because it applies equal treatment to those who are exposed to the same facts and it is very efficient because cases here are conducted faster than in Civil law system where judges will have to decide each case individually.Under this system, examples of already concluded cases are there to just refer to.

As a negative aspect, Common law can be a nightmare in justice in case a bad ruling was made by a higher court, the ruling will be applicable as long as the same court or a higher court overrule the decision. Another case is when a court is faced with an issue that has never been exposed to courts before, the court will have to rule over unsatisfactory approaches. For this perspective, new problems like those related to internet and intellectual properties, new form of employment will base mostly on written laws rather than common law.

[45] CATHERINE, E. & FRANCES, Q.,p.57.
[46] [1992] 3 WLR 1032, [1992] UKHL 3, [1993] RVR 127, [1993] ICR 291, [1993] AC 593, [1992] STC 898, [1993] IRLR 33, [1993] 1 All ER 42, available at *http://www.bailii.org/uk/cases/UKHL/1992/3.html accessed on 2 November 2018.*

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