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Sources of law: Where does law come from?

Please remember all through your course in Business Law that you are studying the law operating in England and Wales only. Please never say “British law” because there is no such thing as British law. Students unfortunately have often been known to use the expression, “under UK law”, in their work. Please don’t think, say or write this. If you do, the person marking your work will have a fit and will probably need medical assistance to recover from severe trauma. Occasionally, one or two of my students have made this elementary mistake in their final exams. Oh dear...

English law has a variety of origins. Most books refer to these as “sources of law”. The main sources of English law are the following:

- Acts of Parliament – A major source. Also called legislation or Statute law.
- Delegated legislation – A major source. Sometimes called secondary legislation or secondary (subordinate) legislation.
- Case Law or judge made law – A major source. Also often called common law.
- Equity- also part of judge made law and an active source of law.
- ECHR (European Commission on Human Rights and The Human Rights Act 1998) – both major source of law (for the moment).
- Ecclesiastical law – a minor source for our purposes. Ecclesiastical law concerns religious regulations of the various churches and church members. It’s very specialised and needn’t concern us apart from being aware of its existence.
- Maritime Law – A minor source of law for our purposes. Maritime law (as the name might give away) concerns the courts of the admiralty - essentially, it’s shipping law and collisions at sea etc.
- Local custom – a minor source of law and a bit of an annoyance for our purposes. Although certain old customs my still exist in some localities,

they really shouldn't concern us too much as you'll never be examined on them. Every student seems to have some story about how, for example, an old law still exists making it an offence for an MP to wear armour in the Houses of Parliament. A common story offered by students is that it is lawful to urinate in a policeman's helmet if you are pregnant – it isn't lawful in any circumstances – much as we might like it to be.

Please note that the last three sources of law above really are minor and in a business studies course you will not be asked directly about these. However, it is possible that you could be asked in a multiple-choice exam whether any of the three are a major source of English law. They are not.

We will take the major sources one by one and see how they fit into your business law course.

Acts of Parliament – Legislation – Statute Law

All three of the above terms mean the same thing and are completely interchangeable. Not only are they interchangeable, I suggest you practice using these terms interchangeably. Although you could use the term 'statute', for example, all the way through an essay or in an exam, I think it's better, to 'ring the changes' a little bit. That way you get a little less bored and so will the person who has to mark your work. Remember that the average business law lecturer may well have to mark hundreds of similar pieces of work. Believe me, this can get a little tedious after the first couple of hundred scripts. So, the more you can do to lighten up the life of the marker, the better we'll all feel. In the following paragraphs I am going to use all three of these terms to show you how it's done.

An Act of Parliament can be written with or without capital letters. Using capitals you can give an impression of your knowledge of how important they are. The choice of the use of capitals is yours. An Act of Parliament is a new law which has been passed by Parliament. Acts have to go through all the necessary processes of debate and amendment and be voted upon by members of Parliament.

When first introduced into Parliament, the document is called a *bill* and it can be introduced into either the House of Commons (sometimes called the 'lower tier') or the House of Lords (the 'higher tier') – though generally all finance bills and other high-importance bills start in the Commons. So a bill is able to be started in either House. After it has passed through several stages

of debate in the first House, it is sent to the other. If the bill is amended in the second House, it is sent back to the originating House for approval. Assuming that this bill has gone through all the stages in both the higher and lower tiers and has successfully passed the debating and amendment processes, it is by tradition presented to the then ruling, Queen or King (currently the Queen) for her approval.

Nowadays this is not much more than a formality. The Queen, God bless her, would probably not understand much of the content of these pieces of legislation anyway as some of them can be very technical indeed. Of course, these days we cannot expect the ruling monarch to pay a great deal of detailed attention to these new pieces of legislation as they have enough on their hands already dealing with royal marriages (and divorces) and other intricate family matters must take up a lot of their time.

I hope that your business law tutor is not mean enough to expect you to remember in detail all the steps that a bill has to go through in order to achieve the stages of a new piece of legislation. If so, it's actually not that difficult as the stages the bill goes through in the House of Commons are simply repeated in the House of Lords. Just a quick note here, if as part of your exams, there is included a multiple-choice section of questions (MCQs) it is quite likely that these more detailed sorts of questions might appear. This is because it's really simple for your business law lecturer to ask something like "which of the following three stages are one of the stages which a bill goes through in its progress through Parliament in the process of becoming a statute?"

So, check if you're going to be taking multiple choice questions as part of your exam. If so, then concentrate for your main exam on the 'core' areas of your course for the written exam. These are highly likely to be contract law and the law of tort. Take a close look at your course specification which will be online or tucked away in your unit handbook or some such document with a similar title. Unfortunately for you, these MCQs are becoming more common in business studies courses as it is a very quick way for your tutors to check how much detailed knowledge of the subject you have. Here there is no substitute for repeatedly skimming through any up to date law book. Actually, there's no excuse for not doing this anyway.

So, by the above process we arrive at a new piece of legislation or a statute or Act of Parliament. These are said to be democratically arrived at as all members of Parliament have the chance to vote for or against the proposed new statute. This is why legislation produced by parliament is so important. Such