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Legal System of Scotland

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This chapter discusses the formal sources of Scots law – answering the question of where the law gets its binding authority from. The chapter considers the role played by human rights in the Scottish legal system and their importance both for individuals and for businesses. While most commercial contracts are fulfilled and do not end up in court, some do, and sometimes businesses are sued for negligence, and they may also fall foul of the criminal law. Therefore the latter part of the chapter discusses the civil and criminal courts of Scotland and the personnel that work in the justice system. The Scottish legal system is also set in its UK and European context, and the chapter links closely with Chapters 3 and 4, where two rather different legal systems – those in Dubai and Malaysia – are explored, in order to provide some international comparisons.

The formal sources of Scots Law: from where does the law derive its authority?

What is the law and why should we obey it? These are important questions. Rules come in many different guises. There are legal rules and other rules that may appear similar in that they invoke a sense of obligation, such as religious rules, ethical or moral rules, and social rules. People live by religious or moral codes and consider themselves bound by them. People honour social engagements because personal relationships depend on this. However, legal rules are different in that the authority of the state is behind them and if they are not honoured, ultimately the state will step in

and enforce them, in the form of civil remedies such as damages, or state-sanctioned punishment for breach of the criminal law.

All law comes from a formal source. The formal sources of Scots law have different levels of authority over us. Their order of importance is:



■ Legislation

Legislation that is binding in Scotland can be enacted by various law-making institutions: it may be enacted by the European Union or by the UK or Scottish parliaments or by a body to which power to legislate has been delegated. The Crown also has residual legislative power.

There are four sources of legislation that are binding in Scotland. They are:



Firstly, **European legislation**. The EU is made up of 28 member states (including the UK) covering four million square kilometres, stretching from Cyprus in the east to the Azores in the west, which are home to 503 million people. The EU affords certain important freedoms to its citizens.

The 'four freedoms' offered to EU citizens, including businesses

- free movement of goods
- free movement of workers
- freedom of establishment and to provide services
- free movement of capital

The EU is a free market, and its citizens can work in all the other member states and travel freely between them, and be treated without discrimination. Businesses are free to set up branches and form companies in other member states, and must be treated in the same way as local businesses. Many EU member states have a common currency, the Euro.

European legislation comes in various layers:

- **Treaties** are agreed between the member states, and create the rules for the European Community (now European Union). The first treaty was the Treaty of Rome in 1957, the most recent being the Lisbon Treaty in 2009.
- **Regulations** are laws made by the EU which are directly applicable to the citizens throughout the EU and do not have to be enacted into domestic law in order to be binding, for example the new general data protection regulation which has recently been agreed by the EU, and is expected to come into force in 2018.
- **Directives** are binding on member states as to the results to be achieved, but they have first to be enacted by member states into their laws – for example there are directives on health and safety, which have been enacted as statutes (acts of parliament) by the member states.
- There are also **decisions** which are binding on the parties to whom they are addressed; and finally
- **Recommendations** and **opinions** which have no binding force.

The member states of the EU have agreed that the EU should have legislative competence in certain areas only and within those areas all member states are bound by EU law, and can be taken to the European Court of Justice in Luxembourg if they do not comply. Much of EU law relates to the creation of the single European market, and to enabling free movement of workers. Examples of areas influenced to a greater or lesser extent by EU law are equality law, health and safety law, environmental law, consumer law, banking and financial law, intellectual property law, and company law. In its areas of application, European legislation is a more important source of law than statutes than come from national parliaments.