

CHAPTER 2: SOURCES OF LAW

LEARNING OUTCOME

At the end of the chapter, you should be able to:

- TLO A2a** : Explain what is meant by case law and precedent.
- TLO A2b** : Explain legislation and evaluate delegated legislation
- TLO A2c** : Illustrate the rules and presumptions used by the courts in interpreting statutes
- TLO A2d** : Explain the concept and impact of human rights law

2.1 Case Law and Precedent

Learning Outcome (ACCA Study Guide Area A)

A2a: Explain what is meant by case law and precedent.

Definition

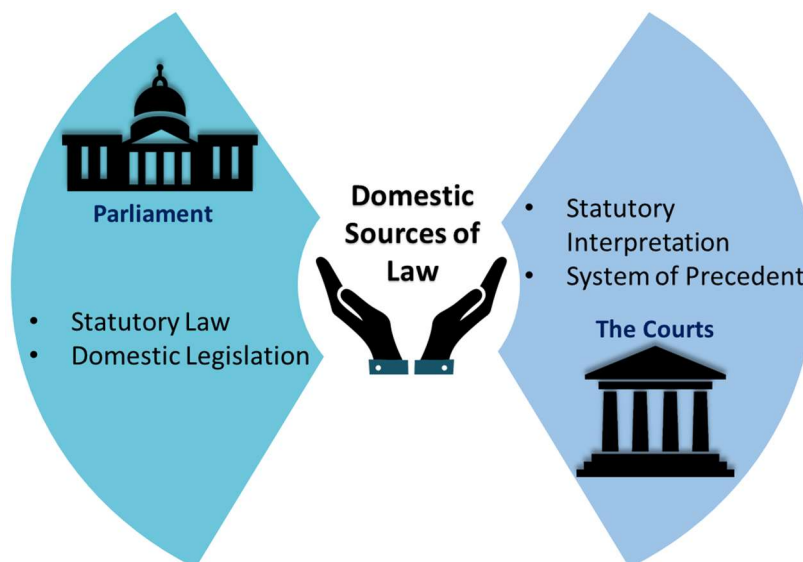
The term case law refers to law that comes from decisions made by judges in previous cases.

Case law, also known as “common law,” and case precedent, provides a common contextual background for certain legal concepts, and how they are applied in certain types of cases.

Part of common law, consisting of judgments given by higher (appellate) courts in interpreting the statutes (or the provisions of a constitution) are applicable in cases brought before them.

Called precedents, they are binding on all courts (within the same jurisdiction) to be followed as the law in similar cases.

Diagram 2.1: Sources of Law



2.1.1 Doctrine of Judicial Precedent

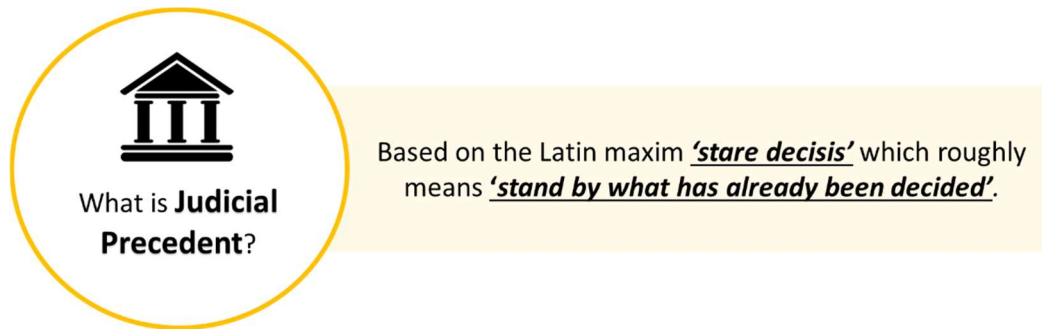
In England the Common Law (law of the courts) is found mainly in the decisions of judges from the High Court, the Court of Appeal, and the Supreme Court.

The law in a country is made by the Parliament and the court's main task is to interpret the law in accordance with the directions of the

parliament. Parliament does not directly state its intentions but it is implied indirectly (through its sanctions). In performing their duties, the judges are bound to follow certain accepted principles, which are known as precedents. They do not act arbitrarily according to their whims and fancies.

2.1.2 Judicial Precedent

Diagram 2.1.2: Judicial precedent



This means that judgements reached in earlier cases should be followed in later cases unless there are sound reasons why they should not be.

In other words, judges can create binding precedents by the judgements they make because other courts are bound to follow these judgements. In simple words, a binding precedent means that judges follow what their predecessors had decided earlier in a similar situation (treating 'like cases as alike')

The usage of precedent is regarded 'as an indispensable foundation upon which to decide what is the law and its application to individual cases'.

2.1.3 Elements of Stare Decisis

Ratio Decidendi

This system provides fairness and certainty in the law because defendants can expect to be treated fairly no matter where the case is heard, and the courts will be reasonably certain how the law should be applied in particular cases. Precedent can only operate effectively if the legal reasons for past decisions are made clear.

Therefore, at the end of a case, the judge will make a speech giving his decision and, most importantly, giving his reasons for his decision. This is called the 'ratio decidendi' (reason for deciding), and it is the part of the judgement in which the judge explains the principles of law upon which his decision is based. This is what creates a precedent for judges to follow in future, similar cases. Judgements made by a higher court are binding on all courts beneath them.

Obiter dicta

A judge's speech may also include obiter dicta (other things said). For example, a judge may comment on what his decision would have been if the facts of the case had been different. These comments are not binding in future cases, but they may help other judges understand the legal reasoning for the ratio decidendi.

In other words, 'obiter dicta' refers to 'things said by the way'. They are therefore the opinions of the judge. However, they may have highly persuasive authority especially if they were made by influential and eminent judges of the higher courts (Central London Property Trust v Hightrees House) where Lord Denning created the Doctrine of 'Equitable Estoppel'.

2.1.4 Avoidance of Precedents

As society changes and develops, our laws must be able to reflect these changes if they are to be seen as fair and relevant. Judges have a number of ways to avoid precedent, so they have room to manoeuvre in giving judgement.

Distinguishing

Distinguishing is the main device used by judges in all courts for avoiding a binding precedent. No two cases are exactly the same. Therefore, a judge may regard the facts of the case before him to be sufficiently different from the facts of the case in which the binding precedent was set. In these circumstances, the judge is not bound to follow the original precedent; they may distinguish the case on its material facts. This creates a second binding precedent. The original precedent remains binding in cases of the same material facts.

Overruling

Overruling occurs where a court in a later case states that the legal rule decided in an earlier case is wrong. For example, the House of Lords can overrule a decision of the Court of Appeal by declaring the Court of Appeal reached the wrong legal rule. For example, in *Davis v Johnson* (1979) the Lords ruled that judges could not use *Hansard* (the record of what is said in Parliament) to try and decide what certain words in an Act of Parliament meant. However, in *Pepper v Hart* (1993) the Lords overruled *David v Johnson*

Reversing

Reversing occurs where a higher court reverses the decision of a lower court on appeal in the same case. In other words, reversing is where the same case has gone to appeal and the higher court reaches the opposite decision to that of the lower court. For example, in *Fitzpatrick v Sterling Housing Association Ltd* (2000), the Court of Appeal refused to allow a homosexual partner of the deceased tenant to take over the tenancy as he could not be considered part of his family as required under the

Distinguishing	Overruling	Reversing
<p>These two cases show how the distinguishing process operates. <i>Balfour v Balfour</i> (1919) and <i>Merritt v Merritt</i> (1971) both involved a wife making a claim against her husband for breach of contract. However, in <i>Balfour</i> there was merely a domestic agreement between husband and wife, while in <i>Merritt</i> husband and wife had made an agreement in writing after they separated. The court distinguished the facts between the cases and created a new precedent based on <i>Merritt</i>. <i>Balfour</i>, of course, remained the precedent for cases similar to itself.</p>	<p>(1979) and created a new precedent allowing judges to consult <i>Hansard</i>.</p>	<p>Rent Act 1977. <i>Fitzpatrick</i> appealed to the House of Lords who reversed the decision of the Court of Appeal, so giving same-sex partners the same right as different sex partners.</p>

2.1.5 Importance of the Doctrine

- It helps to achieve **certainty and uniformity** in the law.
- The law developed through the cases is more **practical as it is based on actual situations** rather than on hypothetical ones.
- Although judges of the lower courts are generally bound by the decisions of the higher courts, there is also a **degree of flexibility**. A judge may avoid following an earlier precedent if the case was decided '**per incuriam**'. He could also avoid it by distinguishing the precedent from the facts of the present case. This flexibility allows the law to be adapted to the changing needs of society.

2.1.6 The doctrine of precedent

The doctrine of binding judicial precedent has several advantages and disadvantages.



Advantages

Certainty

One of the greatest advantages of the doctrine is that it results in greater certainty and predictability in the law so that people can plan their actions with a degree of confidence. Thus, greater uniformity in the law is achieved. At the same time, the working of the judicial system is not too rigid as to completely stifle judicial discretion in adapting the law to the ever-changing needs of society.

Practicality

The law evolved and is based on **actual cases rather than on hypothetical situations**. It is developed through actual experience and not abstract theory. Thus, the law is more practical.

Flexibility

Although there is a degree of rigidity as the lower courts are bound by the decisions of the higher courts, there is still an amount of flexibility in that judges can avoid following an earlier case if it had been decided '**per incurium**' or by '**distinguishing**' precedents. Thus, the law is adapted to the changing needs of society. The court can still get around a case through the technique of distinguishing.



Disadvantages

Rigidity

Although the doctrine does have a degree of flexibility, one of its disadvantages is that it is **too rigid**. **A lower court is bound to follow an earlier precedent even if it is wrong**. The case may not go on appeal to a higher court and thus, the opportunity of correcting the earlier decision may be lost. Judges must justify their reasons for refusing to follow earlier precedents.

Discovering the ratio decidendi

Sometimes it is difficult to discover the ratio decidendi of a case as there may be **more than one ratio decidendi**. This makes it very difficult for a lower court judge to find the right ratio decidendi.

Bulk and complexity

A major problem with the doctrine is the **voluminous and ever-increasing number of cases**. This adds to the complexity of the law and there is a danger that important relevant authority may inadvertently be overlooked.



Check Understanding

Topic 2.1: Case Law and Precedent

Learning Outcome (ACCA Study Guide Area A)

A2a: Explain what is meant by case law and precedent.

Question 1

What do you understand by 'binding' precedent?

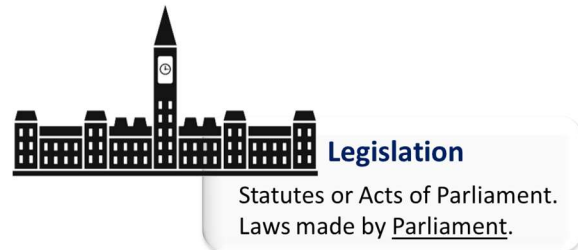
2.2 Legislation and Evaluation of Delegated Legislation

Learning Outcome (ACCA Study Guide Area A)

A2b: Explain legislation and evaluate delegated legislation.

Diagram 2.2.1: Legislation vs delegated legislation.

Parliament's legislative supremacy was developed in a series of cases. For example, [M v Home Office and another](#), Lord Templeton, established its supremacy over the Crown, over the executive and over the judiciary. In fact, the sources of Parliamentary Sovereignty are to be found within the UK constitution, which in the absence of a written constitution is to be found in statute law, common law and constitutional conventions.



The main principles of Parliamentary Supremacy are:

- Parliament is the supreme law-making body and can enact laws on any subject matter.
- No court of law (or other body) can question the validity of Parliament's enactments

An Act of Parliament creates a new law or changes an existing law. An Act is a Bill that has been approved by both the House of Commons and the House of Lords and been given Royal Assent by the Monarch. Taken together, Acts of Parliament make up what is known as Statute Law in the UK.

There are three different types of Bill: Public, Private and Hybrid Bills. There is also another kind of Public Bill called Private Members' Bills.

A Bill is a proposal for a new law, or a proposal to change an existing law that is presented for debate before Parliament. Bills are introduced in either the House of Commons or House of Lords for examination, discussion and amendment.

When both Houses have agreed on the content of a Bill it is then presented to the reigning monarch for approval (known as Royal Assent). Once Royal Assent is given a Bill becomes an Act of Parliament and is law.

Different types of Bills can be introduced by the government, individual MPs or Lords and private individuals or organisations.

A Bill is a proposal for a new law, or a proposal to change an existing law, presented for debate before Parliament. A Bill can start in the Commons or the Lords and must be approved in the same form by both Houses before becoming an Act (law).

2.2.1 Stages Involved

First Reading

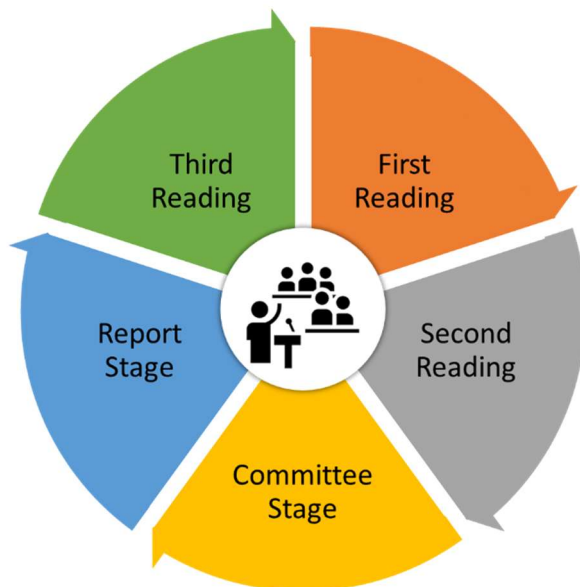
The first stage is the **First reading** is the first stage of a bill's passage through the House of Lords - usually a formality, it takes place without debate. First reading of a bill can take place at any time in a parliamentary session.

At first reading the long title (indicating the content of the bill) is read out by the member of the Lords in charge of the bill. Once formally introduced, the bill is printed.

Second Reading

The next stage is **Second reading** - the first opportunity for members of the Lords to debate the main principles and purpose of the bill. Second reading is the first opportunity for members of the Lords to debate the key principles and main purpose of a bill and to flag up any concerns or specific areas where they think amendments (changes) are needed. Before a second reading debate takes place, members who would like to speak add their name to a list – the 'speakers list'.

Diagram 2.2.2: Stages Involved.



At second reading the government minister, spokesperson or a member of the Lords responsible for the bill opens the second reading debate. Any member can speak during second reading – this stage can indicate those members particularly interested in a bill, or a specific aspect of it, and those who are most likely to be involved in suggesting changes at later stages. Second reading debates usually last for a few hours but can sometimes stretch over a couple of days.

After second reading the bill goes to committee stage – where detailed line by line examination and discussion of amendments takes place.

Committee Stage

Committee stage involves detailed line by line examination of the separate parts (clauses and schedules) of a bill. Starting from the front of the bill, members work through to the end. Any member of the Lords can take part. Usually starting about two weeks after the second reading debate, committee stage generally lasts for up to eight days, but can go on for longer. Before committee stage begins, amendments (changes) are gathered together and placed in order, then published in the 'marshalled list'. Updated lists are produced before the start of each day of committee stage. During committee stage every clause of the bill has to be agreed to and votes on any amendments can take place. All suggested amendments have to be considered, if a member wishes, and members can discuss an issue for as long as they want. The government cannot restrict the subjects under discussion or impose a time limit. This is a key point of difference with procedure in the House of Commons. After committee stage if the bill has been amended it is reprinted with all the agreed amendments. At the end of committee stage, the bill moves to report stage for further scrutiny.

Third reading

Third reading in the Lords is the chance for members to 'tidy up' a bill, concentrating on making sure the eventual law is effective and workable – without loopholes. Before third reading, amendments (changes) are gathered together and placed in order, then published in the 'marshalled list'.

At third reading unlike the House of Commons, amendments can be made at third reading in the House of Lords, provided the issue has not been fully considered and voted on during either committee or report stage. Amendments at third

Report Stage

Report stage gives all members of the Lords a further opportunity to examine and make amendments (changes) to a bill. It usually starts 14 days after committee stage has concluded and can be spread over several days (but is generally shorter than committee stage). During report stage detailed examination of the bill continues. Any member of the Lords can take part and vote on any amendments may take place. After report stage, the bill is reprinted to include all the agreed amendments. The bill then moves to third reading, a further chance for the Lords to discuss and amend the bill as it nears conclusion. If the bill is amended it is reprinted to include all the agreed amendments. The bill moves to third reading – the final chance for the Lords to amend the bill.

reading are often used to clarify specific parts of the bill and to allow the government to make good any promises of changes they made at earlier stages of the passage of a bill.

After third reading if the bill started in the Lords, it goes to the House of Commons for its first reading. The Commons reprints the bill with the Lords amendments. If the bill began in the Commons, it is sent back after third reading in the Lords for consideration of Lords amendments, or, if there have been no amendments in the Lords, is sent to the monarch for royal assent.

Each House considers the other's amendments

When a bill has passed through third reading in both Houses it is returned to the first House (where it started) for any amendments made by the second House to be considered. If the Commons makes amendments to the bill, the Lords must consider them and either agree or disagree to the amendments or make alternative proposals. If the Lords disagrees with any Commons amendments, or makes alternative proposals, then the bill is sent back to the Commons.

A bill may go back and forth between each House until both Houses reach agreement on the exact wording of the bill – this is known as 'ping pong'. After consideration of amendments when the exact wording has been agreed by the Commons and the Lords, the bill is ready for royal assent. Once a bill receives royal assent it is made an Act of Parliament (the proposals in the bill become law).

In exceptional cases, when the two Houses do not reach agreement, the bill falls. If certain conditions are met, the Commons can use the Parliament Acts to pass the bill, without the consent of the Lords, in the following session.

Bill becomes an Act of Parliament

Once a bill has completed all the parliamentary stages in both Houses, it is ready to receive royal assent. This is when the Queen formally agrees to make the bill into an Act of Parliament (law). There is no set time period between the conclusion of consideration of amendments/ping pong and royal assent. When royal assent has been given, an announcement is made in both Houses – by the Lord Speaker in the Lords and the Speaker in the Commons.

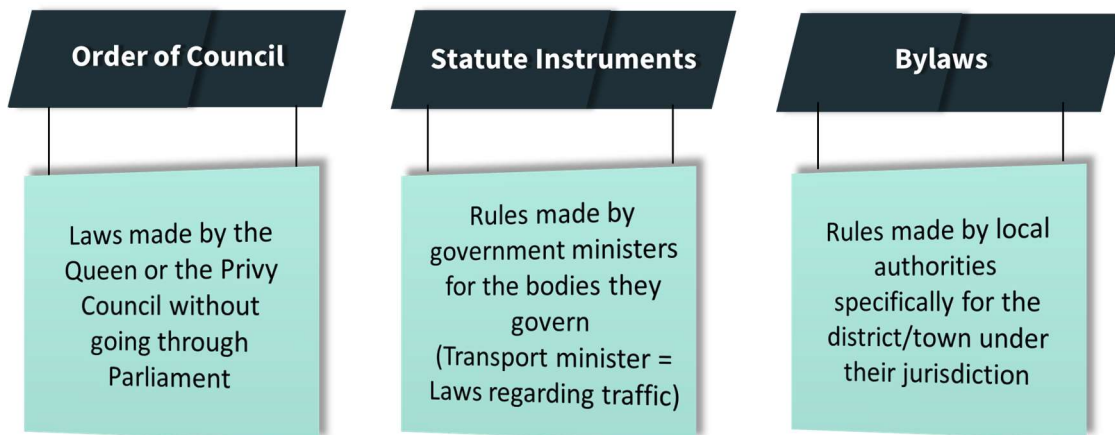
After royal assent the legislation within the bill may come into effect immediately, after a set period or only after a commencement order by a government minister. A commencement order is designed to bring into force the whole or part of an Act of Parliament at a date later than the date of the royal assent. If there is no commencement order, the Act will come into force from midnight at the start of the day of the royal assent. The practical implementation of an Act is the responsibility of the appropriate government department, not Parliament.

2.2.2 Delegated Legislation

Delegated legislation is law made by some person or body other than parliament, but with the permission of parliament. The authority is laid down in a parent Act of parliament, known as an enabling Act which creates the structure of the law and then delegates' powers to others to make more detailed law in the area.

Secondary legislation is law created by ministers (or other bodies) under powers given to them by an Act of Parliament. It is used to fill in the details of Acts (primary legislation). These details provide practical measures that enable the law to be enforced and operate in daily life. Secondary legislation can be used to set the date for when provisions of an Act will come into effect as law, or to amend existing laws.

Diagram 2.2.3: Three (3) different types of delegated legislation



There are **three different types** of delegated legislation:

Types of Delegated Legislation	Explanation
Orders in Council	The Queen and the Privy Council have the authority to make orders in the Council. The Privy Council is made up of the prime minister, and other leading members of the government. This type of delegated legislation effectively allows the government to make legislation without going through parliament. Its main use today, is to give legal effect to European directives. However, the Privy Council has power to make laws in emergency situations under the Emergency Powers Act 1920 and the Civil Contingencies Act 2004. Orders in Council will be used to make other types of law. A good example is in 2004 an order in Council was used to change the Misuse of the Drugs Act 1971 to make cannabis a class B drug.
Statutory Instruments	Statutory Instruments refers to the rules and regulations made by government ministers. They are given authority to make regulations for areas under their particular responsibility. A good example of what this means is that the Lord Chancellor has power regarding the legal aid schemes, while the minister for transport is able to deal with necessary road traffic regulations. The use of statutory instruments is a major method of law-making as there are about 3,000 statutory instruments brought into force each year. There are many Acts which give a minister of state, power to make delegated legislation. Some examples are the Constitutional Act 2005, in which Section 65 gives the Lord Chancellor the power to issue guidance on the procedure for the judicial appointments commission which recommends who should be appointed as judge. Also, within the Serious Act Organised Crime and Police Act 2005 section 27 gives the

Types of Delegated Legislation	Explanation
	secretary of state the power to make regulations requiring equipment used by the serious crime agency to satisfy certain levels of design and performance.
By laws	Bylaws can be made by the local authorities to cover matters within their own area for example West Yorkshire County Council can pass laws affecting the whole county but a district or a town council can only make bylaws for its district or town. Local bylaws can involve traffic control, such as parking restrictions. Bylaws can also be made by public corporations and certain companies for matters within their jurisdiction which involve the public. This means that bodies such as the British Airports authority and the railways can enforce rules about public behaviour on their premises. An example of this can be the smoking ban on the London underground system.

2.2.3 Advantages of Delegated Legislation

- **Speed and flexibility** – Subsidiary legislation can be passed very speedily and also rescinded or varied just as speedily. This flexibility may be needed when it is necessary to adapt to new situation quickly. The process of Parliament is slow and not suitable for passing of laws very urgently.
- **Lack of parliamentary time** – Subsidiary legislation is intended to save valuable time of the Parliament as the Parliament does not have time to look into the finer rules that may be required.
- **Technical knowledge and skill** - Where the matter that is to be dealt with requires experts with special knowledge and skills, it is preferable to rely on subsidiary legislation.
- **Future needs** – The Parliament may not be able to foresee the problems which may arise out of the implementation of a particular legislation. Future difficulties may be better dealt with by subsidiary legislation.

2.2.4 Disadvantages of Subsidiary Legislation

- **Breach of separation of powers** - Law is not being passed by persons elected for the purpose by the electorate. Instead, it is being passed by the officers of the government departments. These are members of the civil sector who are not accountable. This goes against the doctrine of separation of powers.
- **Lack of effective supervision** - Subsidiary legislation is not effectively supervised by Parliament as it does not have sufficient time. As a consequence, the merits or demerits of the rules being created may not have been properly considered.
- **Too many laws are passed by subsidiary legislation.** Statutory instruments far outnumber the Acts passed each year. Parliament only passes about seventy to eighty statutes in a year compared to a few hundred thousand instruments

2.2.5 Controls

Method of Control	Explanation
Consultation	Prior consultation with relevant advisory bodies and interested groups is often required before the finalisation of the subsidiary legislation. Sometimes the main legislation makes such consultation as compulsory. To disregard this requirement may result in the subsidiary legislation becoming procedurally 'ultra vires and void'.
Parliamentary Control	Parliament may exercise control over subsidiary legislation by REPEALING (taking away) the main legislation or the subsidiary legislation. However, this is rarely done.
Affirmative Resolution	A small number of statutory instruments will be subject to an affirmative resolution . This means that the statutory instrument will not become law unless specifically approved by Parliament. The need for an affirmative resolution has to be included before enabling an act. Most other statutory instruments will be subject to negative resolution which means that the relevant statutory instrument will be law unless rejected by the parliament within 40days. Individual ministers can also be questioned about MP's in Parliament on the work of their departments and this can include questions about proposed regulations.
Judicial Review	Where the subsidiary legislation is OUTSIDE THE POWERS contained in the enabling legislation (main statute), the court may declare such legislation as ultra vires the parent legislation and therefore invalid.
Publicity	The general rule is that the subsidiary legislation must be published in the Gazette. It will become effective only from the date of such publication or on such other date as may be specified.



Check Understanding

Topic 2.2: Legislation and Evaluation of Delegated Legislation

Learning Outcome (ACCA Study Guide Area A)

A2b: Explain legislation and evaluate delegated legislation.

Question 1

A draft of a proposed legislation is known as _____

- A. Act of Parliament
- B. A bill
- C. A statute

2.3 The Rules and Presumptions used by The Courts

Learning Outcome (ACCA Study Guide Area A)

A2c: Illustrate the rules and presumptions used by the courts in interpreting statutes.

Introduction

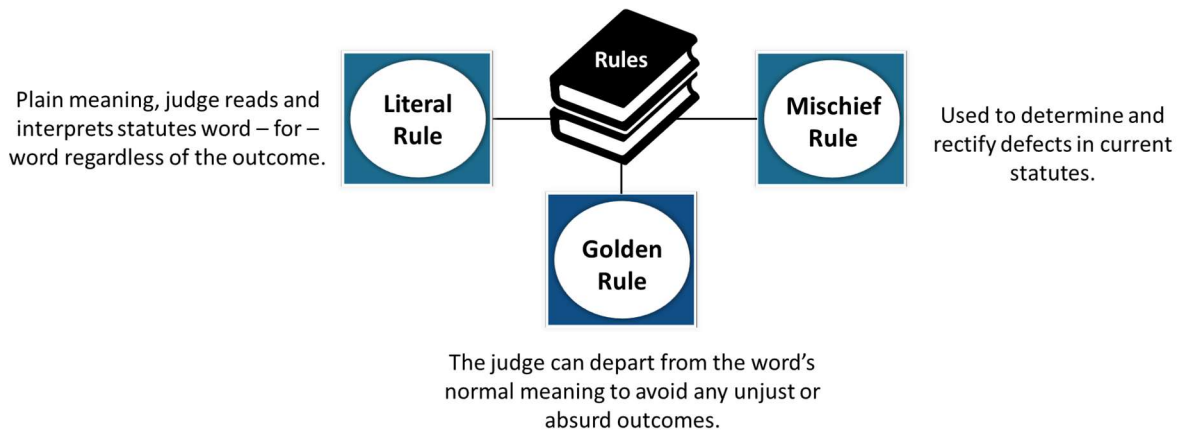
Statutory interpretation is the process by which courts interpret and apply legislation. Some amount of interpretation is often necessary when a case involves a statute. Sometimes the words of a statute have a plain and straightforward meaning; but in many cases, there is some ambiguity or vagueness in the words of the statute that must be resolved by the judge. To find the meanings of statutes; in common law jurisdictions, the judiciary may apply rules of statutory interpretation to legislation enacted by the legislature.

Judge-made law and legislation are related to one another within a philosophy of law. Parliament makes statutory law and it is the duty of the courts to give effect to them if they are properly enacted. While the courts may rule that a particular statute or section is invalid for various reasons, they cannot say 'we shall change this Act because it is not appropriate'. That function belongs only to the Parliament.

The courts have evolved a number of rules to assist in the interpretation of a statute, where there is doubt as to the meaning of any part of it. One must bear in mind that these rules are only guidelines to help the judge arrive at a fair judgment

2.3.1 Canons of Interpretation

Diagram2.3: Rules used by the courts in interpreting statutes.



1. The Literal Rule

The plain meaning rule, also known as the literal rule, is a rule of statutory construction traditionally applied by courts. The plain meaning rule dictates statutes are to be interpreted using the ordinary meaning of the language of the statute. In other words, a statute is to be read word for word and is to be interpreted according to the ordinary meaning of the language, unless a statute explicitly defines some of its terms otherwise or unless the result would be cruel or absurd.

The Literal Rule allows the judge to literally interpret the meaning of the word or words according to the ordinary, grammatical meaning of the word or words. It does not matter even if the meaning does not make sense.

This rule is the basis of all court decisions in relation to statutes. Here judges rely on the exact wording of the statute for the case. They don't interpret meaning. Lord Diplock in the **Dupont Steel v Sirs** case (1980) defined the rule: Where the meaning of the statutory words is plain and unambiguous it is not then for the judges to invent fancied ambiguities

as an excuse for failing to give effect to its plain meaning because they consider the consequences for doing so would be inexpedient, or even unjust or immoral.

This definition says that a judge should not deviate from the literal meaning of the words even if the outcome is unjust. If they do they are creating their own version of how the case should turn out and the will of Parliament is contradicted.

One Example of The Literal Rule was the **Fisher v Bell** case. Under the offensive weapons Act of 1959, it is an offence to offer certain offensive weapons for sale. Bristol shopkeeper, James Bell displayed a flick knife in his shop window. When brought to trial it was concluded that Bell could not be convicted given the literal meaning of the statute. The law of contract states that having an item in a window is not an intention of sale but is an invitation to treat. Given the literal meaning of this statute, Bell could not be convicted.

The R V Harris case where the defendant bit the nose off the victim. The statute stated the offence was 'to stab or wound'. Under the Literal Rule, biting is not stabbing, cutting or wounding (implying the use of an instrument). The defendant was proven not guilty.

2. Golden Rule

The golden rule allows a judge to depart from a word's normal meaning in order to avoid an absurd result. The Golden Rule was applied as a result of the inadequacy of the Literal Rule. The Golden Rule states that words in a statute must be interpreted according to their natural, ordinary and grammatical meaning, but to the extent that such an interpretation does not produce a manifestly absurd result.

The rule was defined by Lord Wensleydale in the *Grey v Pearson* case as: "The grammatical and ordinary sense of the words is to be adhered to unless that would lead to some absurdity or some repugnance or inconsistency with the rest of the instrument in which case the grammatical and ordinary sense of the words may be modified so as to avoid the absurdity and inconsistency, but no farther."

The Golden Rule is a modification of The Literal Rule to be used to avoid an absurd outcome. The Golden Rule was used in the R v Allen case. In this case the defendant was charged with bigamy (S57 of offences against the Person Act 1861) which, under statutes states: 'whosoever being married shall marry any other person during the lifetime of the former husband or wife is guilty of an offence'.

Under The Literal Rule, bigamy would be impossible because civil courts do not recognise second marriages, so The Golden

This was also echoed by Lord Esher in the case of R v Judge of the City of London Court: '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 whether the legislature has committed an absurdity'.

Rule was applied to determine that the word 'marry' should be seen as 'to go through ceremony' and the conviction was upheld. The Golden Rule was applied in the *Adler v George* case. Under Section 3 of the Official Secrets Act (1920) it was an offence to obstruct HM Forces in the vicinity of a prohibited area. Adler was arrested for obstructing forces whilst in a prohibited area. Under the Literal Rule, Adler was not in the VICINITY of the area – he was IN the area – and so was not infringing the terms of the Act. The Golden Rule was applied to extend the meaning of 'vicinity' and avoid the possible absurd outcome.

The main advantage of The Golden Rule is that drafting errors in statutes can be corrected immediately. This is seen in the R v Allen (1872) case where the loopholes were closed, the decision was in line with Parliament's intentions and it gave a more just outcome.

The rule was also applied in the classic case of *Sigsworth* where the court applied the rule to Section 46 of the Administration of Estates Act 1925. This statute required that the court should 'issue' someone's inheritance in certain circumstances. The court held that no one should profit from a crime, and so used the golden rule to prevent an undesirable result, even though there was only one meaning of the word 'issue'.

A son murdered his mother and then committed suicide. The courts were required to rule on 'who' then inherited the estate: the mother's family, or the son's descendants. There was never a question of

the son profiting from his crime, but as the outcome would have been binding on lower courts in the future, the court found in favour of the mother's family.

3. The Mischief Rule

The main aim of the rule is to determine the 'mischief and defect' that the statute in question has set out to remedy, and what ruling would effectively implement this remedy. In applying the Mischief Rule the court is essentially asking what part of the law did the law not cover, but was meant to be rectified by the Parliament in passing the bill.

The rule was first set out in *Heydon s Case* [1584] where the court ruled that there were four points to be taken into consideration when interpreting a statute:

- What was the common law before the making of the Act?
- What was the mischief and defect for which the common law did not provide?
- What remedy the Parliament that resolved and appointed to cure the disease of the commonwealth.
- The true reason of the remedy; (suppress the mischief, and advance the remedy).

The rule is intended to rectify 'mischief' in the statute and interpret the statute justly. The Mischief Rule uses common law to determine how the statute is interpreted.

In *Smith v Hughes* (1960), the defendants were charged under the Street Offences Act (1959) with soliciting in a public place. The prostitutes were soliciting from windows, technically not a public place. The Mischief Rule was applied to interpret that the

prostitutes were doing what the statute was trying to abolish so they were convicted.

The Golden Rule was used to handle a dispute in the *Royal College of Nursing (RCN) v DHSS* (1981) case. Here the RCN challenged the involvement of nurses in abortions. Under the offences against the person (1861) it is an offence for anyone to carry out an abortion. However, the Abortion Act (1967) claims an absolute defence for medically registered practitioners to carry out abortions. Hormonal abortions are commonly administered by nurses. The Mischief Rule was used to interpret that the statute of 1861 was trying to combat backstreet abortions and therefore nurses fall within the 1967 Abortion Act.

In the case of *Crokey v Carpenter*, Section 11 of the Licensing Act 1872, states 'a person found drunk and in charge of a "carriage" on the highway maybe arrested without a warrant. The main issue was the meaning to be given to the word 'carriage'.

The facts of the case tell us that a man was found drunk on the highway with a bicycle and was subsequently arrested by a police officer. The court held that the arrest was justified as the word 'carriage' meant any mode of transportation.

The Mischief Rule gives the most discretion to judges and is suited to specific, often ambiguous cases. The rule allows statutes to be refined and developed.

When comparing the three rules there are differences and similarities.

- The Literal Rule is the basis of all cases. By providing no scope for the judges input, it upholds the separation of powers and respects parliamentary supremacy. However, its inflexibility can also create injustices.
- The Golden Rule tries to compliment the Literal Rule by allowing judges to

change the meaning of statutes in order to give justice. However, this infringes the separation of powers.

- The Mischief Rule gives the most discretion to judges and is suited to specific, often ambiguous cases. The rule allows statutes to be refined and developed. However, the increased role of the judge means that his views and prejudices can influence the final decision.

4. Other rules

- **The Ejusdem Generis Rule (of the same kind, class or nature)**

When a list of two or more specific descriptors is followed by more general descriptors, the otherwise wide meaning of the general descriptors must be restricted to the same class, if any, of the specific words that precedes them. For example, where 'cars, motor bikes, motor powered vehicles' are mentioned, the word "vehicles" would be interpreted in a limited sense (therefore vehicles cannot be interpreted as including airplanes).

This is a rule that is applied where the document concerned contains a class of specific words followed by a general word. By the application of this rule, the general word is interpreted to refer to words of that class only. For example a statute which states it applies to lions, tigers, cheetahs and other animals would apply also to leopards but not to a horse.

For example, An Act of Parliament (Dangerous Drugs Act) may prohibit the procession without lawful excuse of 'heroin, opium, cocaine, marijuana and any other drugs. The phrase 'any other drugs' does not mean all other drugs but drugs of the same class as those preceding them. Therefore, possession of a drug such as penicillin would not be within that provision but possession of cannabis would be.

In *Kempton v Park Race Course*, The Betting Act 1853 made it an offence to keep a house, office, room or other place for the purposes of betting. The House of Lords had to decide if the statute applied to Tattersall's enclosure at Kempton Park Racecourse. The court applied the 'ejusdem generis rule' and held that the other items mentioned in the statute related to places indoors whereas Tattersall's enclosure was outside. There was thus no offence committed.

- **The Purposive Approach**

The term purposive approach refers to a mischief rule which judges sometimes apply when interpreting statutes. It is sometimes argued that the purposive approach is the same as the mischief rule because the courts are simply trying to find out the purpose of the act. The mischief rule however is different to the strict criteria set out in Heydon's case. The purposive approach goes further by seeking to determine Parliament intentions in passing the act.

It is been much more widely used since membership of the European Union in 1972 as EU law is much broader and not as detailed. The approach is teleological or consequentiality. When applying the purposive approach, the judges are

- **Expressio unius est exclusio alterius**

This means the express mention of one thing excludes all others. So, if a statute stated it applies to lions and tigers (without stating and other) it would only apply to lions and tigers and not leopards and cheetahs. In **R v Inhabitants of Sedgely (1831)** a statute

- **Noscitur a sociis**

(When a word is ambiguous, its meaning may be determined by reference to the rest of the statute). This applies where there is a list of items in the statute and the item under consideration is included in the list, but the context of the items in the list suggests that the item should not be in the list. For example, if a statute stated it applied to cat baskets, toy mice, flea collars and food, under this rule a loaf of bread would not be within the remit of the statute.

In **Inland Revenue v Frere [1964]** the respondent sought to deduct the interest

sometimes, under certain criteria, allowed to refer to Hansard. The purposive rule could take this further and look at Hansard to determine Parliament's real intentions when passing this act.

Main arguments for using a purposive approach are that it is realistic approach, acknowledging that the courts are being creative when they interpret legislation, and that they should exercise that creativity in a way that support the purpose of the legislation, thereby paying due respect to the sovereignty of Parliament. While giving greater weight to the purposive element is, therefore, the most sensible approach to take, it is not always easy for the courts to indemnify the purpose of the legislation.

raised taxes on 'lands, houses and coalmines. The court held that it did not apply to limestone mines as these were not specifically mentioned nor did the statute suggest that it would apply to other types of mines.

paid on a short-term loan from his income for the purposes of assessing his liability to pay tax. The Income Tax Act of 1952 allowed 'the amount of interest, annuities or other annual interest' to be deducted from the income. The court held that under the 'noscitur a sociis' rule, the mention of amount of interest related only to annual interest as the other items related to annual payments. The respondent's interest payment was not an annual interest payment and therefore he could not deduct it from his income and he was required to pay tax on it.

2.3.2 Aids to Interpretation

There is a wide range of sources that may be considered by a judge to determining the primary meaning of statutory words and where there is ambiguity, in pointing the way to the interpretation that is to be preferred. There are many aids to interpretation and it divided into two:

Internal aids to interpretation

In internal aids to interpretation, there are few ways to aids the interpretation such as:

- Heading, side notes and punctuation- The judge must be considered as a part of the context to help the interpretation.
- Short title- There is some question whether the short title should be used to resolve doubt.
- Preamble- When there is a preamble it is generally in its recitals that mischief to be remedied and the scope of the Act are described. It is clearly permissible to have resource to it as an aid to construing the enacting provision.

External aids to interpretation

External aids to interpretation:

- Historical setting- A judge must be considering the historical setting of the provision that is being interpreted.
- Dictionaries and other literary resource- Dictionary are commonly consulted as a guide to the meaning of the statutory words. Textbooks in law may also be consulted in a judgment.
- Treaty and International Conventions- There is a presumption that Parliament does not legislate in such a way that the UK would be in breach of its international obligation.
- Parliamentary resources- This is for the purpose to connect with interpretation of statutes. The prohibition covered such resources as a report of debated in the House and committee, and the explanatory memoranda attached the Bills.

2.3.3 Presumptions

Where a statute does not expressly provide otherwise, it is presumed the following apply:

- Statutes do not affect the monarch
- Statutes do not operate retrospectively
- Existing rights are not to be interfered with
- Statutes do not change the common law
- Mens rea is required for criminal liability

2.3.4 Conclusion

In a nut shell, there are four rules in the interpretation such as literal rule, golden rule, mischief rule, and purposive approach can apply and depend upon the nature of the ambiguity or the content in which it arises. Statutes require interpretation because they cannot be communicated except by words. Without these rules, judicial interpretation cannot be done.

Therefore, the interpretation of statutes plays an important role to ascertain the intention of the Parliament can run smoothly nowadays. In order for consistency in interpreting the meaning of legislation, court must choose the proper and suitable rule or approach in order to resolve ambiguity appearing in statutes.



Check Understanding

Topic 2.3: The Rules and Presumptions used by The Courts

Learning Outcome (ACCA Study Guide Area A)

A2c: Illustrate the rules and presumptions used by the courts in interpreting statutes.

Question 1

When a statute uses words 'such as oxen, bulls, goat, cows, buffaloes, sheep, horses, etc,' the word etc cannot include _____; but may include _____.

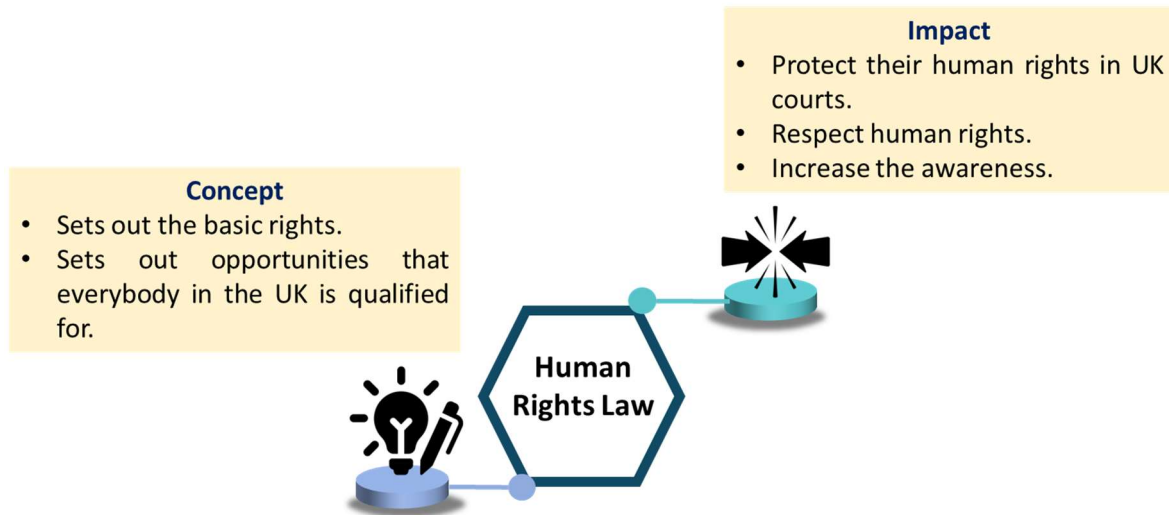
- A. Wild animals such as lions or tigers; dogs and cats
- B. Wild birds; dogs and cats
- C. Wild animals such as lions or tigers; cockerel and hen
- D. None of the above

2.4 The Concept and Impact of Human Rights Law

Learning Outcome (ACCA Study Guide Area A)

A2d: Explain the concept and impact of human rights law.

Diagram 2.4: Concept and impact of human right law.



The Human Rights Act 1998 is an Act of Parliament of the United Kingdom which received Royal Assent on 9 November 1998, and mostly came into force on 2 October 2000. Its aim was to incorporate into UK law the rights contained in the European Convention on Human Rights. The Act makes a remedy for breach of a Convention right available in UK courts, without the need to go to the European Court of Human Rights (ECHR) in Strasbourg.

In particular, the Act makes it unlawful for any public body to act in a way which is incompatible with the Convention, unless the wording of any other primary legislation provides no other choice. It also requires the judiciary (including tribunals) to take account of any decisions,

judgment or opinion of the European Court of Human Rights, and to interpret legislation, as far as possible, in a way which is compatible with Convention rights. However, if it is not possible to interpret an Act of Parliament so as to make it compatible with the Convention, the judges are not allowed to override it. All they can do is issue a declaration of incompatibility. This declaration does not affect the validity of the Act of Parliament: in that way, the Human Rights Act seeks to maintain the principle of Parliamentary sovereignty. However, judges may strike down secondary legislation. Under the Act, individuals retain the right to sue in the Strasbourg court.

2.4.1 The Human Rights Act 1998

The Human Rights Act allow one to defend their rights in the UK courts and compels public organisations (government, police and local authorities) to treat everyone equally, with fairness, dignity and respect. The Human Rights Act protects all of us – young and old, rich and poor.

The Human Rights Act may be used by every person resident in the United Kingdom regardless of whether or not they are a British citizen or a foreign national, a child or an adult, a prisoner or a member of the public. It can even be used by companies or organisations (like Liberty).

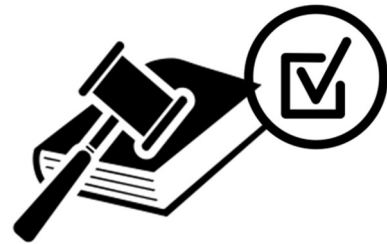
The human rights contained within this law are based on the articles of the European Convention on Human Rights. The Act 'gives further effect' to rights and freedoms guaranteed under the European Convention. Judges must read and give effect to other laws in a way which is compatible with Convention rights. It is unlawful for a public authority to act in a way which is incompatible with a Convention right.

- The right to life: protects your life, by law. The State is required to investigate suspicious deaths and deaths in custody.
- The prohibition of torture and inhuman treatment: you should never be tortured or treated in an inhuman or degrading way, no matter what the situation.
- Protection against slavery and forced labour: you should not be treated like a slave or subjected to forced labour.
- The right to liberty and freedom: you have the right to be free and the State can only imprison you with very good reason – for example, if you are convicted of a crime.
- The right to a fair trial and no punishment without law: you are innocent until proven guilty. If accused of a crime, you have the right to hear the evidence against you in a court of law.
- Respect for privacy and family life and the right to marry: protects against unnecessary surveillance or intrusion into your life. You have the right to marry and enjoy family relationships.
- Freedom of thought, religion and belief: you can believe what you like and practise your religion or beliefs.
- Free speech and peaceful protest: you have a right to speak freely and join with others peacefully, to express your views.
- No discrimination: everyone's rights are equal. You should not be treated unfairly – because, for example, of your gender, race, disability, sexuality, religion or age.
- Protection of property: protects against state interference with your possessions.
- The right to an education: means that no child can be denied an education.
- The right to free elections: elections must be free and fair.

2.4.2 Impact of the Act

This key piece of legislation has three goals:

- **Bringing rights home**, by ensuring that all individuals in the UK have protected their human rights in UK courts, without the need to go to Strasbourg in first place;
- **Introducing strong constitutional mechanisms** in order to ensure that all powers (i.e. Parliament, Executive and Judiciary) respect human rights in their work with the aim of enhancing the democratic process;
- **Increasing the awareness** of human rights throughout society.



In achieving these aims, it was critical to preserve the sovereignty of Parliament. The UK did not incorporate into domestic law the ECHR just after the ratification in 1953 mainly because it was believed that parliamentary sovereignty, the supreme constitutional dogma in the UK, could be compromised.

Unlike other countries whose written constitutions provide for legislation to be subject to judicial review with the purpose of respecting human rights, the UK's constitutional traditions did not allow such judicial review, as it would contravene parliamentary sovereignty.



Check Understanding

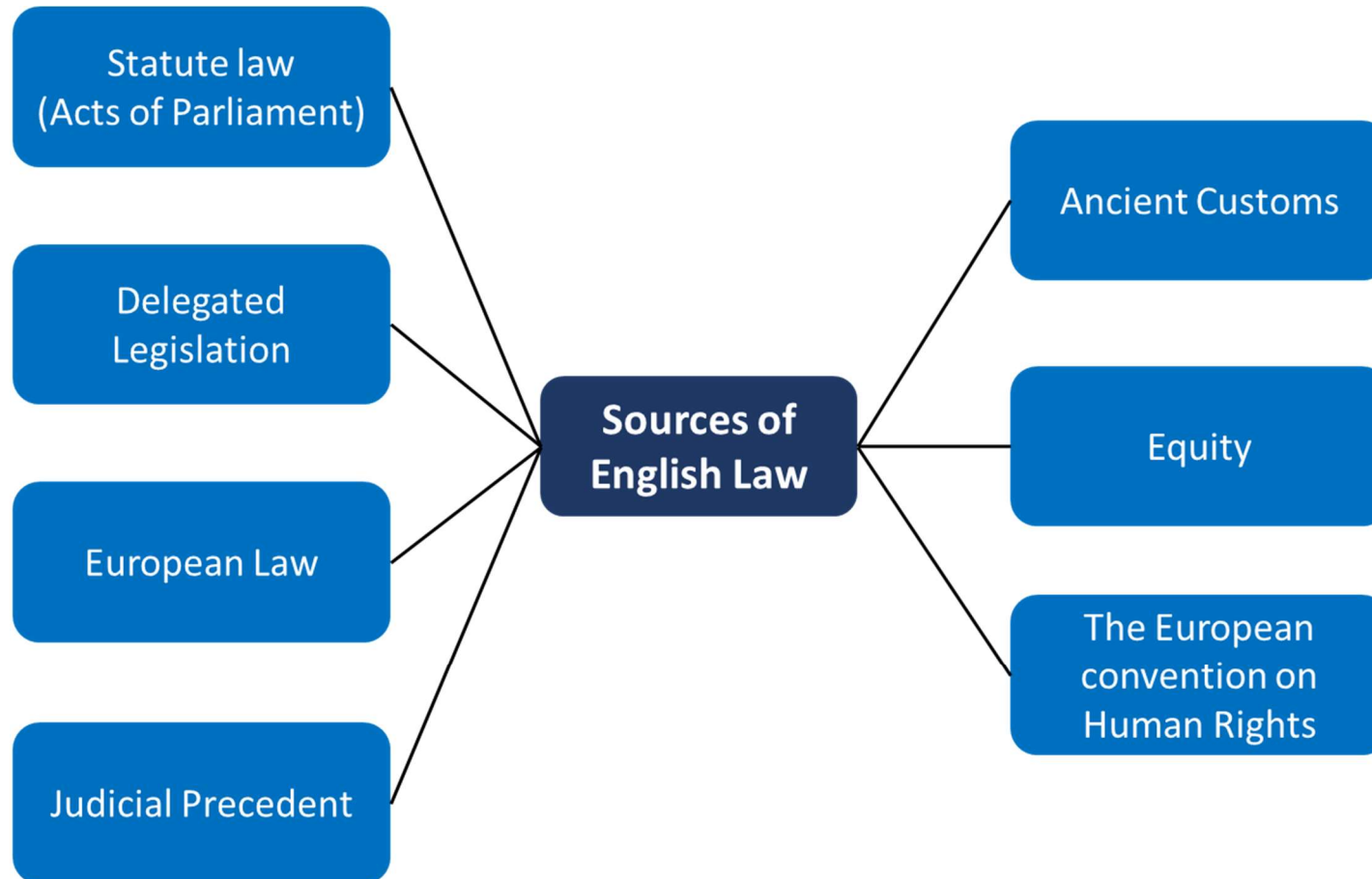
Topic 2.4: The Concept and Impact of Human Rights Law
Learning Outcome (ACCA Study Guide Area A)
A2d: Explain the concept and impact of human rights law.

Question 1

Name one main goal of the Human Rights Act

2.5 Chapter 2: Summary

Diagram 2.5: Summary of Sources of Law



2.6 Chapter 2 Check Understanding: Answer

Topic 2.1: Case law and precedent

Answer: A binding precedent means that judges follow what their predecessors had decided earlier in a similar situation.

Topic 2.2: Legislation and evaluation of delegated legislation

Answer: B

Topic 2.3: Rules and presumptions used by the courts in interpreting statutes

Answer: A

Topic 2.4: The concept and impact of human rights law

Answer: Any one of them

1. Bringing rights home, by ensuring that all individuals in the UK have protected their human rights in UK courts, without the need to go to Strasbourg in first place;
2. Introducing strong constitutional mechanisms in order to ensure that all powers (i.e. Parliament, Executive and Judiciary) respect human rights in their work with the aim of enhancing the democratic process;
3. Increasing the awareness of human rights throughout society.