

The purpose of this worksheet is to enable you to identify the primary and secondary sources of law and to understand the main classifications of law. Key questions to answer, therefore, include:

- What is law?
- How is law classified?
- Where does the law come from?

So, what is law? You may find it helpful at this point to consider your own definition and to write the key elements of your definition in the space provided.

Your definition may have included the idea that the law is a system of legal rules that have been sanctioned by the State and which the State enforces. Thus:

‘Law ... is definable as a system of rules. It guides and directs our activities in much of day to day life: the purchases we make in a shop, our conduct at work and our relationship with the state are all built upon the foundation of legal rules’ (*Holland and Webb, 1996*).

If law, then, is a system of legal rules, these rules may reveal different purposes to which the law can be put by the State. Thus, what functions do you believe are fulfilled by law? The comment box below is a place where you can record the functions of the law which occur to you.

Braye and Preston-Shoot (1997) identify a number of functions of the law, with special reference to social issues that are the concern of social workers. They argue that the law can be used to:

1. preserve the power structures of society
2. social engineering
3. provide “solutions” to social problems
4. shape attitudes and behaviours
5. promote particular (political) ideologies
6. avoid confronting particular social issues.

If the law can serve a number of functions or purposes, then the need to classify law arises. However, any classification should attempt to avoid the danger of fragmentation, where issues and problems are compartmentalised. In real life, of course, people’s concerns do not necessarily fall into neat subject classifications.

However, some common classifications of legal rules and functions include:

- distinguishing between civil law and criminal law, where criminal law is concerned with acts or omissions that are contrary to public order, and where civil law is concerned with the rights and duties of persons to one another and with the remedies that exist when inter-personal relationships break down (*Farrar and Dugdale, 1990*).
- separating public law and private law, where private law is concerned with the relationships between people and where public law is concerned with the relationship between individuals and the State.
- relationships between domestic and international law, where the former encompasses the law relating to England (in our instance since Scotland, Northern Ireland and to some extent now also Wales have different legal traditions and systems), and where the latter includes the European Court of Human Rights and the European Court of Justice. Decisions in these courts, when they are considering European Community law and the European Convention on Human Rights and Fundamental Freedoms, can have major implications for domestic law.

So, at this point, identify a number of social issues and consider which of the above classifications might apply. Again, the comment box is available for your use.

Having considered classifications, the next step is to identify sources of law.

The primary source of law is legislation or statute. Parliament considers Bills which, when approved by Parliament and gaining Royal Assent, become Acts. Government then sets, or in some cases never sets, dates for their implementation. For example, *The NHS and Community Care Act 1990* was implemented in phases between 1991 and 1993. *The Human Rights Act 1998* was implemented in 2000 after a period of training for judges and other personnel within the legal system. Sections of the *Disabled Persons Act 1986*, concerned with advocacy and the *Family Law Act 1996*, in respect of divorce reform, have never been implemented.

A secondary source of law is known as delegated legislation or secondary legislation. This arises when an Act delegates additional law-making powers to another body or person, for example a Secretary of State. Examples of secondary legislation include Statutory Instruments and Regulations, in relation to social issues. *The Children (Leaving Care) Act 2000* and the *Adoption and Children Act 2002* are two examples where the intention of primary legislation has been fleshed out by regulations.

A criticism of this process of delegating law-making powers is that it denies Parliament the opportunity to debate the activities of government ministers.

Acts of Parliament could be looked upon as skeletons, onto which further defining detail is added by secondary legislation. Additional detail is then provided by government departments by means of guidance documents. For instance, the Department of Health and the Department for Education and Skills issue both *Policy Guidance* and *Practice Guidance*, which provide further detail about how an Act is to be understood, interpreted and implemented. Policy Guidance, for this purpose, is issued under Section 7, *Local Authority Social Services Act 1970*, and is binding on those agencies to which it applies, principally councils with social services responsibilities. Practice Guidance is not binding but should not be departed from lightly, because it represents a view of best practice.

Further clarification about the scope, purpose and interpretation of an Act is provided by *Case Law*. Cases which are decided by the House of Lords, the most senior court in England, are binding on all lower courts. Cases decided by the Court of Appeal are binding on lower courts. This system is known as binding precedent, with courts also reluctant to depart from an earlier decision of a court of the same level of authority. Cases decided in other courts are not binding in this sense. If, then, you are to understand the law, you must familiarise yourself through case law with how the law has been interpreted. In a decided case courts distinguish between 'ratio decidendi' (the reasons for a decision) and 'obiter dicta' (other comments).

Law is administered through a hierarchical system of courts, briefly from the 'bottom' as follows:

- Magistrates Courts deal with adult criminal cases, the more serious of which are committed to Crown Court. As a Youth Court, they deal with young offenders (10-17 years of age). As a Family Proceedings Court, magistrates dispose of matters

brought under the *Children Act 1989*, the more complex of which can be remitted to the High Court. Magistrates also dispose of civil matters such as licensing. In criminal cases appeal against conviction or sentence is to the Crown Court, and on points of law to the Queens Bench Division of the High Court. In family proceedings appeal is to the Family Division of the High Court.

At the next level:

- Crown Court deals with the more serious criminal cases. Appeal is to the Court of Appeal (Criminal Division) and then on to the House of Lords.
- County Court deals with some civil matters such as undefended divorce petitions, some civil disputes, and hearings under the Children Act 1989. Appeal is to the Court of Appeal (Civil Division).

At the next level:

- The High Court, divided into Chancery (tax, trusts, mortgages), Family (all types of family cases, including appeals from the Family Proceedings Court) and Queens Bench (complex civil law cases, judicial review). Appeal from the Family Division is to the Court of Appeal (Civil Division). Other appeals may possibly leapfrog to the House of Lords.

At the next level is the Court of Appeal where three judges determine the case. Appeal from here, when allowed, is to the House of Lords where normally five judges determine the case.

In some areas, jurisdiction is being transferred to tribunals. Most tribunals have a legally qualified chairperson and two lay members. The procedure is less formal than a court and rules of evidence are less strict. They are subject to judicial review. Examples include:

- Industrial tribunal – dealing with disputes over redundancy and other matters affecting the relationship between employers and employees. Appeal is to the Employment Appeal Tribunal and then the High Court.
- Social Security Tribunal – dealing with claims and questions arising under social security legislation. Appeal is to the Social Security Appeal Tribunal.
- Mental Health Review Tribunal – deals with disputes over the justification of continued detention of mentally disordered persons in hospital.

Another source of law derives from Britain's membership of the European Community. As a result, European Community law gives UK citizens substantive legal rights which are enforceable through the legal system of this country and through the European Court of Justice. Community law is binding on member states, unless they negotiate specific opt-outs. When UK and European Community law conflict, the latter is supreme and UK law must be amended to comply.

A further source of law derives from the *European Convention on Human Rights and Fundamental Freedoms*, which is overseen by the European Court of Human Rights. Prior to October 2000 this Convention was not integrated into English law and, therefore, any person who believed that their human rights had been abused had to pursue their case through the English courts and if dissatisfied with the outcome, petition the European Court of Human Rights for a hearing. If the European Court of Human Rights found against the UK government, invariably the law would then be amended to reflect the Court's decision. With the implementation in October 2000 of the *Human Rights Act 1998*, the *European Convention on Human Rights and Fundamental Freedoms* has been integrated into English law. When considering Bills, Parliament will have to ensure their compatibility with the Convention. When considering cases, courts will also have to apply the Convention to their analysis and decision-making.

In conclusion, then, this handout has provided some preliminary information which enables you to answer the question: "what is law?" The handout has provided some ideas that enable the identification of functions or purposes to which the law is put, and classification of different types of law or legal rules. The handout has also summarised sources of law, distinguishing for example between primary and secondary legislation and identifying the hierarchy of decision-making in the court system.

References

Braye, S. and Preston-Shoot, M. (1997) *Practising Social Work Law (2nd ed)*. London: Macmillan.

Farrar, J. and Dugdale, A. (1990) *Introduction to Legal Method (3rd ed)*. London: Sweet and Maxwell.

Holland, J. and Webb, J. (1996) *Learning Legal Rules: A Student's Guide to Legal Method and Reasoning (3rd ed)*. London: Blackstone Press.