

CILEX

CPQ

F1 – Legal Systems

Foundation Stage

2021

F1: Legal Systems

The aim of this module is to give you a fundamental knowledge and understanding of key elements of the English legal system and the constitution. The module explores the distinction between civil and criminal law and that between common law and equity, as well as the hierarchy of the courts. There is a focus on the creation of law, legislative and executive powers as well as the power of the judiciary, including interpretation, precedent, and judicial review. In addition, the module will introduce the framework for the protection of civil liberties, human rights and equality within the UK.

On completion of the module, you will be able to assess the appropriate track for a civil case and decide the appropriate court of first instance for a criminal matter. You will demonstrate practical knowledge of the most appropriate method of ADR based on circumstances, be able to identify whether a case has merit to warrant application for judicial review and analyse whether a particular characteristic is protected under the Equality Act 2010.

The module covers:

- Structure and classification of law; common law and equity
- The English legal system; criminal and civil courts and procedures
- Provision and regulation of legal services
- The nature of the UK constitution – the roles and powers of the legislature, the executive and the judiciary and sources of law
- The protection of civil liberties, human rights and equality

Learning Outcomes

By the end of this module you will be able to:

1. Explain the structure and classification of the law and how the UK legal system operates, understanding court hierarchy, objectives and available remedies
2. Be able to make sound assessments of the appropriate court, procedures and remedies based on a set of facts and recommendations for methods of settling disputes outside the court system
3. Identify key roles and personnel involved in the provision of legal services in England and Wales, including lay persons, and explain how the sector is regulated
4. Describe how legislation is created and interacts with common law, and demonstrate practical knowledge of the doctrine of precedent, being able to rationalise a case decision in a given scenario
5. Explain the nature and structure of the UK constitution and its key principles, and be able to assess whether there are sufficient grounds for judicial review based on a set of facts
6. Describe how human rights and equality are protected in law, and be able to practically apply this knowledge to a given scenario

Linked online assessment: F1

1. The structure of law and its classifications

As a trainee in any legal services role, you must be able to explain how the law is classified. This requires understanding of the distinction between civil and criminal law, and common law and equity, especially in relation to remedies. Therefore you will need to know the following:

- a) The classification, impact and all-pervasive nature of law
 - How law affects our daily lives
 - Definitions of civil and criminal law
 - Definitions of, and comparisons between, common law and equity and legislation
 - Common law and civil law systems

- b) Distinguishing civil and criminal law
 - Burden and standard of proof
 - Objectives
 - Remedies
 - Case citation

- c) Distinguishing common law and equity
 - The meaning of equity
 - Why and how equity was created, and its relationship to the common law, including the Judicature Acts 1873-75
 - The maxims of equity and equitable remedies
 - Equitable innovations; mortgages and trusts

2. The English legal system

It is vital that you, as a trainee legal practitioner, have an overview and understanding of both the criminal and civil courts in England and Wales; the protocols in relation to civil cases, the prosecution of criminal offences and alternatives to judicial resolution of disputes. You will therefore need to have practical knowledge of:

- a) The criminal legal system in England and Wales:
 - The roles, function, jurisdiction and personnel of the Magistrates Court, Crown Court, Court of Appeal and Supreme Court, including the role of laypersons

- b) Different types of offence: summary offences, offences triable either way and offences triable only on indictment
 - The main objectives of the Criminal Procedure Rules 2015 including the purpose of the overriding objective
 - The prosecution of criminal offences by the Crown Prosecution Service, including the Full Code Test, and an understanding of private prosecution

- c) The civil legal system in England and Wales:

- The roles, function and personnel of the County Court, the High Court, the Court of Appeal and the United Kingdom Supreme Court
 - The main objectives of the Civil Procedure Rules 1998 including the purpose of the overriding objective
 - Jurisdiction of the County Court or High Court; allocation of cases and the three-track system (small claims, fast track and multi-track)
 - Practice direction 26
 - The Practice Direction - Pre-action conduct and protocols
- d) The system of appeal routes within the court hierarchy, for both civil and criminal cases, including:
- Appeals in criminal cases
 - From the Magistrates to the Crown Court, including appeals against conviction and to the Divisional Court of the High Court by means of case stated on a point of law
 - Crown Court appeals against conviction and/or sentence to the Court of Appeal
 - The role of the Criminal Division of the Court of Appeal
 - The role of the Criminal Cases Review Commission
 - Appeals in civil cases
 - County Court or High Court appeals against Judgment to Civil Division of Court of Appeal
 - Appeals to the Supreme Court
- e) The concept of the legal personality; natural and juristic persons, including incorporated companies and limited liability partnerships, and examples of when it may be appropriate to 'pierce the corporate veil'
- f) The options for settling disputes outside the court system and the advantages and disadvantages of different types of Alternative Dispute Resolution (ADR), including:
- Alternative Dispute Resolution (ADR) and comparison of the features of negotiation, mediation and conciliation, arbitration
 - Online Dispute Resolution (ODR)
 - Circumstances in which and by whom these different types of resolution might be used
 - Alternative criminal out of court solutions, including:
 - Penalty notices
 - Warnings
 - Cautions
 - Conditional caution and diversion
- g) Emerging concepts of online courts

3. The provision of legal services and its regulation

As a trainee in the legal services sector, you will work alongside various qualified legal professionals in the administration of legal cases. You are responsible for ensuring that the work you do is compliant with relevant regulatory requirements, and that you work in an ethically responsible manner. Therefore, you will need to know the following:

- a) The formal training and work undertaken by different legal professionals within England and Wales, including:
 - Chartered legal executive
 - Solicitor
 - Barrister
- b) The role of the Lord Chancellor/Secretary of State for justice and the main types of judge, including the appointment and jurisdiction of each level of judge:
 - Justices of the Supreme Court
 - Lords Justices of Appeal
 - High Court Judges
 - Circuit judges
 - Recorders
 - District judges

This section follows on from learning in the Ethics and Professional Responsibility 1. module:

- c) The role, purpose and authority of regulatory bodies relevant to the legal profession, including:
 - Solicitors Regulation Authority (SRA)
 - Chartered Institute of Legal Executives (CILEx)
 - Bar Standards Board (BSB)
 - Financial Conduct Authority (FCA)
- d) Regulatory safeguards and professional ethics governing professional services and client/customer engagement in legal, financial, and accounting services, including:
 - Collection, storage and use of client data, with reference to the Data Protection Act 2018 and General Data Protection Regulation and cybersecurity
 - Financial crime and associated legislation including compliance with anti-money laundering guidance, with reference to the Money Laundering and Terrorist Financing (amendment) Regulations 2019
 - Receiving and dealing with client money with reference to CILEx Regulation accounts outcomes and the Solicitors Regulation Authority Accounts Rules
 - Compliance with the Principles set out in the Solicitors Regulation Authority Code of Conduct for Solicitors, particularly in relation to maintaining trust and acting fairly,

	<p>competence, conflict of interests and confidentiality and disclosure</p> <ul style="list-style-type: none"> • Personal responsibility for compliance with regulatory requirements
<p>4. The nature of the UK constitution</p>	<p>Legal practitioners must have an underpinning knowledge of how the UK constitution was formed and has developed over time, in order to understanding the many conventions still prevalent in modern law and politics. Therefore, you will need to know the following:</p> <ul style="list-style-type: none"> a) Understanding the UK constitution <ul style="list-style-type: none"> • The purpose, function and uncodified nature of the UK constitution • The key doctrines of parliamentary sovereignty <ul style="list-style-type: none"> ○ The rule of law ○ The separation of powers b) Sources from which the UK constitution is derived <ul style="list-style-type: none"> • Key constitutional documents (including Magna Carta and the Bill of Rights) • Acts of Parliament • Common law • Royal Prerogative • Constitutional conventions • International law; including impact of European Convention on Human Rights and the Human Rights Act 1998, and of EU law c) Political governance and power <ul style="list-style-type: none"> • The Westminster model of government and its key elements • The unitary nature of the state and the devolution of power to Scotland, Wales and Northern Ireland
<p>5. Legislative power</p>	<p>Building on your knowledge of the UK constitution, in order to become an effective legal practitioner, you must be able to effectively navigate and analyse sources of law. This requires an understanding of the location and operation of legislative power within the UK. Therefore, you will need to know the following:</p> <ul style="list-style-type: none"> a) The structure of the UK legislature <ul style="list-style-type: none"> • The bicameral system • The composition and functions of the House of Commons and House of Lords • The role of the monarch b) Primary legislation; creation of Acts of Parliament

	<ul style="list-style-type: none"> • Definition of primary legislation • Consultation processes prior to the introduction of a bill to Parliament: green and white papers; the Law Commission; formal consultation processes • Types of Bills: Public Bills (Government and Private Members' Bills); Private Bills; Hybrid Bills • The stages and creation of an Act of Parliament: Speaker's Certificate; First Reading; Second Reading; Committee Stage; Report Stage; Third Reading and Royal Assent in the House of Commons and House of Lords • The Parliament Acts 1911-1949 • The Structure and content of an Act of Parliament <p>c) Secondary (or delegated) legislation, its creation and control</p> <ul style="list-style-type: none"> • Types of delegated legislation • Parliamentary control over delegated legislation: publication, laying before Parliament; Parliamentary committees; how the controls are effected in practice. • Judicial control over delegated legislation; substantive and procedural <i>ultra vires</i> • Advantages and disadvantages of delegated legislation
<p>6. Executive power</p>	<p>It is essential for a trainee in the legal services sector to understand the role, function and power of the executive in the governance of the country. Therefore, you will need to know the following:</p> <p>a) Key roles within the executive branch of the constitution</p> <ul style="list-style-type: none"> • Prime Minister • Secretaries of State • Cabinet ministers • Civil Service <p>b) The role of the Crown</p> <ul style="list-style-type: none"> • Exercise of prerogative powers, including the interaction between prerogative and legislative power <p>c) Mechanisms of political accountability for the exercise of executive power, including the conventions of individual ministerial responsibility and collective cabinet responsibility</p>
<p>7. Judicial Power</p>	<p>Trainee legal practitioners must develop skills and knowledge to effectively analyse and apply the law. It is therefore crucial that you acquire an understanding of the role and function of the judiciary, the development of the common law, the meaning of key phrases and</p>

	<p>terms such as <i>ratio decidendi</i> and how case law interacts with legislation. Therefore, you will need to know the following:</p> <ol style="list-style-type: none"> a) Judicial independence and impartiality, including the independence of the Supreme Court b) An overview of common law <ul style="list-style-type: none"> • Citation of cases • How common law is developed, including judgments, <i>ratio decidendi</i> and <i>obiter dicta</i> • The hierarchy of the Courts and the doctrines of precedent and <i>stare decisis</i> • Binding and persuasive judgments • The interplay of common law and legislation c) The status of decisions and impact of the following <ul style="list-style-type: none"> • The United Kingdom Supreme Court (with reference to the Practice Statement on Judicial Precedent 1966) • The Court of Appeal (with reference to <i>Young v Bristol Aeroplane Co Ltd</i> (1944) and other relevant case law) • The High Court • Other influential courts: the European Court of Justice, The European Court of Human Rights and the Privy Council • EU law following the United Kingdom's withdrawal from the European Union
<p>8. Judicial review</p>	<p>Legal practitioners must have a foundational understanding of the use of judicial review as a mechanism for challenging executive decision making. Therefore, you will need to know the following:</p> <ol style="list-style-type: none"> a) The purpose of judicial review and its constitutional significance b) The grounds for judicial review: illegality, procedural unfairness and irrationality (including <i>Wednesbury</i> reasonableness) c) Remedies for successful application for judicial review: <ul style="list-style-type: none"> • Mandatory orders • Prohibiting orders • Quashing orders • Injunctions • Declarations • Damages d) The role of the Upper Tribunal in judicial review, with reference to the Tribunals, Courts and Enforcement Act 2007.

9. The protection of civil liberties, human rights and equality

All trainees in the legal services sector, regardless of their branch or specialism, will need to have an understanding and awareness of how the law protects human rights and equality within the UK. Therefore, you will need to know the following:

- a) The European Convention on Human Rights and its impact on domestic law, including:
 - The rights protected by the Convention
 - The enshrinement of ECHR into domestic law by the Human Rights Act 1998
- b) The protection of human rights under the Human Rights Act 1998
 - Section 2 and the impact of the case law of the European Court of Human Rights in UK courts
 - Section 3 and the power to interpret legislation compatibly with convention rights
 - Section 4 and declarations of incompatibility
 - Section 6 and legal challenges to unlawful acts of public authorities
- c) An overview of the powers of the state and rights of the individual in the investigation and process of criminal proceedings, in particular the use of force, investigation of crime and detainee's rights, with relevance to the convention rights
- d) An overview of the Equality Act 2010, including:
 - Protected characteristics
 - Direct discrimination
 - Indirect discrimination