

CHAPTER 1: THE NATURE OF ENGLISH LAW

After studying this chapter students should be able to:

EXPLAIN WHAT IS MEANT BY LAW

- Laws are rules and regulations which govern the activities of persons within a country.
- Some laws prohibit actions, other laws state conditions that must be fulfilled or complied with.

OUTLINE THE HISTORICAL DEVELOPMENT AND CHARACTERISTICS OF ENGLISH LAW

- In England and Wales, laws are composed of: legislation which is created through Parliament, common law, and EU law which is incorporated into UK law
- Since the 11th century, English common law has developed partly through the decisions of judges and it is accepted that judges do make and change the law.
- English law is uncodified, which means that unlike other European countries, the laws have not been systemized into a code.
- The usual type of procedure in English courts is described as adversarial.
- The doctrine of binding precedent means that, in deciding a case, a judge is bound to apply the law decided by earlier cases heard in courts of superior status (and sometimes one of equal status).

UNDERSTAND THE DIFFERENCE BETWEEN PUBLIC AND PRIVATE LAW AND THE DIFFERENCE BETWEEN CIVIL AND CRIMINAL LAW

- Public Law concerns the relationship between individuals and the state and is concerned with the decisions by, and control of, government bodies.
- Private Law is concerned with the rights and duties between individuals.
- In Civil Law an aggrieved person, the claimant, commences court action against the defendant and must prove his case on the balance of probabilities.
- In Criminal Law, action is usually taken by the state (CPS). A prosecutor must prove the defendant is guilty beyond reasonable doubt. The defendant does not have to prove his innocence.
- The purpose of a civil action is to provide a remedy for a civil wrong.
- The purpose of a criminal case is to punish the offender.