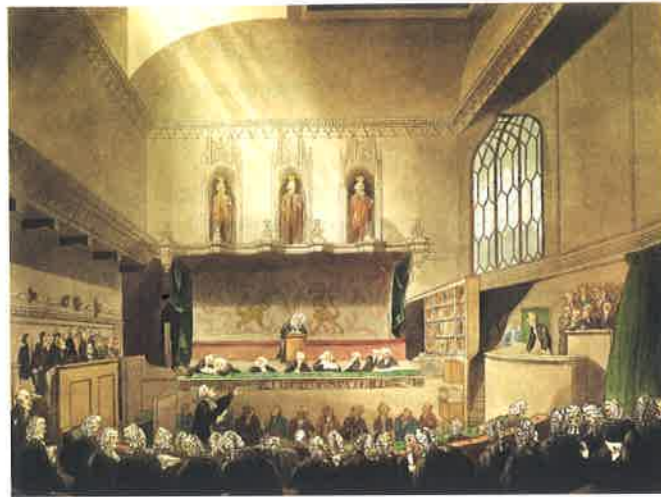


idea caused Lord Justice Coke in the seventeenth century to describe these customs as being 'one of the main triangles of the laws of England'. Custom is an historical source and is unlikely to create new law today.



The Court of the King's Bench, 1805

1.4.2 Common law

Common law is the basis of our law today: it is unwritten law that developed from customs and judicial decisions. The phrase 'common law' is still used to distinguish laws that have been developed by judicial decisions from laws that have been created by statute or other legislation. For example, murder is a common law crime while theft is a statutory crime. This means that murder has never been defined in any Act of Parliament, but theft is defined by the Theft Act 1968. Involuntary manslaughter is also a common law offence.

In tort law most of the law on negligence has been developed by the judges. Also in the law regarding formation of a contract many of the rules on offer and acceptance come from decisions by the judges in the nineteenth century. The judges can still create new law today. However, they can only do this when a relevant case comes before them. And then they can only rule on the point in that case. This then becomes the law for future cases. Judges cannot make wide-ranging changes to the law. This can only be done by statute law.

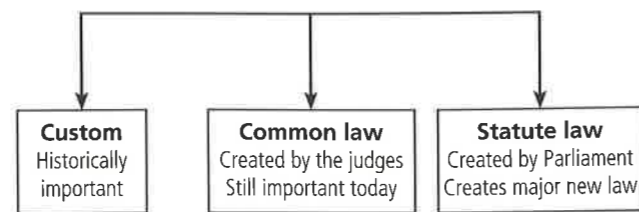


Figure 1.3 Sources of law

1.4.3 Statute law

An Act of Parliament is law that has been passed by both Houses of Parliament and received Royal Assent. Law can be changed by an Act of Parliament or new law can be created. This is useful for new situations or inventions such as computer technology. Parliament has created new offences involving computer hacking. It has also created new rules in respect of 'designer babies' and what is allowed (the laws surrounding choices which can be made when creating a baby through in-vitro fertilisation).

Statute law can bring together all the existing law in one area in a single Act of Parliament. This was done in the Consumer Rights Act 2015.

Statute law can create, change or revoke any law. It is useful for make wide-sweeping changes to the law.

The process for enacting a new Act of Parliament is explained in Chapter 3.

However, statutes often recognise the common law and create laws which rely on the common law. For example, the criminal offences of assault and battery are common law offences but s 39 of the Criminal Justice Act 1988 sets out the maximum penalty for these offences.

In addition the judges still play an important role as they may have to interpret the meaning of words in a statute if they are not clear. This problem of statutory interpretation is dealt with in Chapter 5.

Check your understanding

- In which court would a defendant, who has committed minor criminal offence, be dealt with?
 - Crown Court
 - High Court
 - Magistrates' Court
 - County Court
- Which one of the following statements accurately defines the standard of proof required in a civil case?
 - It must be proved beyond reasonable doubt
 - It must be proved on the balance of probabilities
 - There must be sufficient evidence
 - There is a low standard of proof
- Using an example from both civil and criminal law to illustrate your answer, explain two differences in the way civil and criminal cases are dealt with in court.

Summary

- A rule is something that determines the way in which we behave.
- Rules often develop from the 'norms of behaviour'.
- Norms of behaviour are enforced by the attitudes of the community and by self-guilt.
- Law is a formal mechanism of social control and legal rules are enforced by the state.
- Criminal law sets out the types of behaviour which are forbidden at risk of punishment.
- Civil law governs private disputes between individuals and/or businesses.
- Criminal cases are heard in the Magistrates' Court and the Crown Court.
- Civil cases are heard in the County Court and the High Court.
- The standard of proof for criminal cases is 'beyond reasonable doubt': the standard of proof for civil cases is the 'balance of probabilities'.
- The earliest source of law was custom.
- The common law was developed from custom and the decisions of the judges.
- Today most law is made by Acts of Parliament.
- Judges still have a role in the interpretation of statutes.