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ACCA F4

Corporate and Business Law (ENG)

公司法与商法

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Part A Essential elements of the legal system

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1. Law and the legal system

2. Sources of law



CHAPTER GUIDE

2.1 Case law and precedent

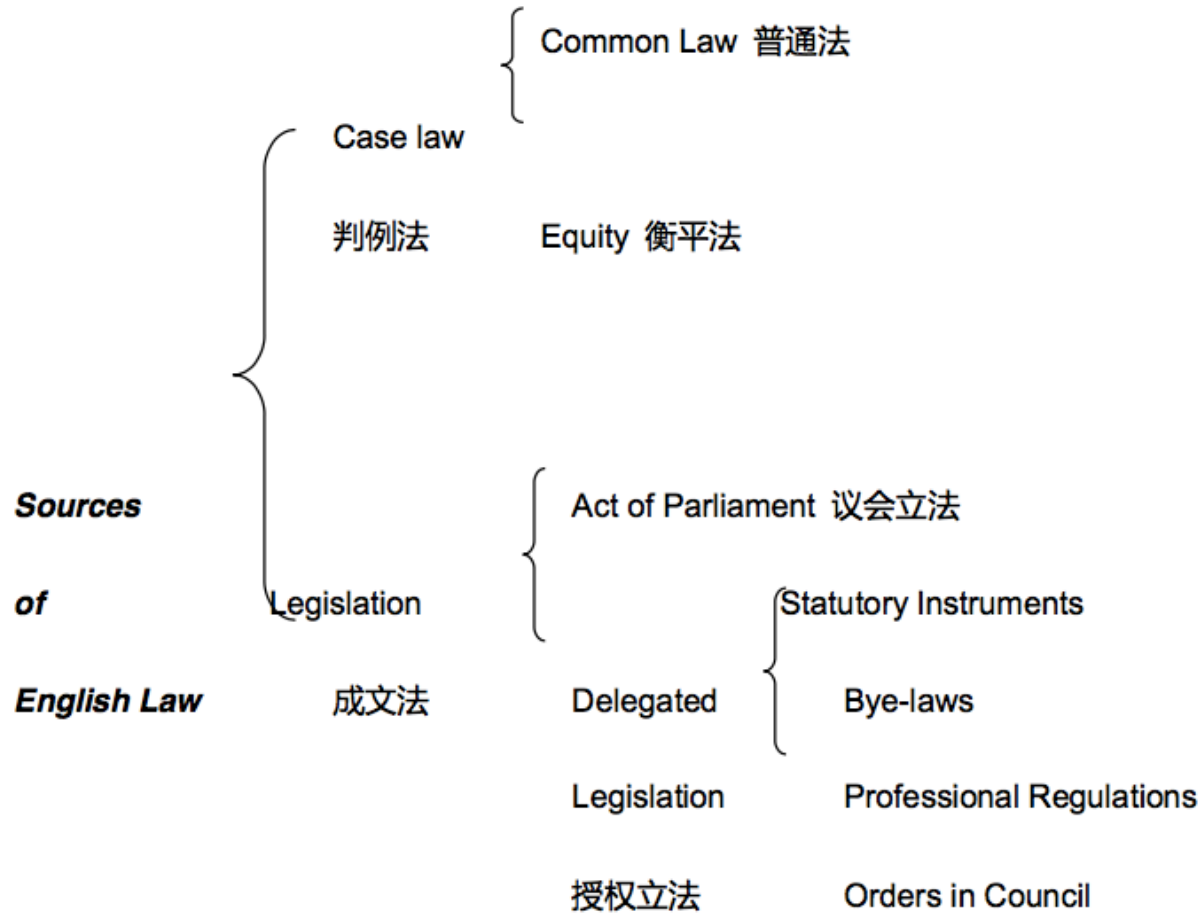
2.2 Statute and delegated legislation

2.3 Statutory interpretation

2.4 Human rights law



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European Union Law—since the UK' entry in 1973



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2.1.1 Case law

The first law source of law, consisting of decisions made in the courts, is case law, which is judge-made law based on the underlying principle of consistency

- **Common law** : Common law is the body of legal rules common throughout the whole country which is embodied in judicial decisions.
- **Equity** : Equity refers to the set of legal principles developed by the Court of Chancery to supplement (but not replace) the common law rules **where their application leads to harsh consequences**. (fairness and justice)
- **Precedence** : Where there is conflict, **equity prevails over common law**.



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Common law and equity distinguished: Common law rights and remedies are available as of right, i.e. they are based on what the statute and earlier precedents have stated in the past

However, rights and remedies in equity are **discretionary**(自由裁定权), i.e. based on what the court understands as just and fair for the issue at hand.

Both are the product of the doctrine of judicial precedent.



2.1.2 The doctrine of judicial precedent

Definition:

- A. The principle requires that courts will follow their previous decisions. 该原则要求法院将遵循先前确定的判决先例。

- B. This means similar cases will receive similar treatments. 具体而言，同样的案件可以获得同样的处理。

- C. In this way, English law rules will stand the test of time. 这样一来，英国法的规则不会因为时间的经过而灭失效力。

- D. The doctrine is also frequently referred to as the “doctrine of consistency” or “stare decisis” (literally means “to stand by decisions and not disturb settled matters”), all means that judges are obliged to respect the precedent established by prior decisions. 该原则又通常称为“前后一致”或“遵循先例”原则，均要求法官必须尊重先前判决所确定的司法先例。(Stare decisis 的字面意思为“坚持先前的决定，不改变已被确定的先例”。)



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Judicial precedent:

When a legal rule is established by an appropriate court in a judgment, it is a precedent that lower courts are bound to follow by deciding similar cases in the same way.

当某一法律规则被有关法院在判决中予以确认时，该法律规则即为司法先例，下级法院必须遵守该司法先例，即在前后案件事实完全一致时，必须适用同样的法律规则得出同样的裁判结果。

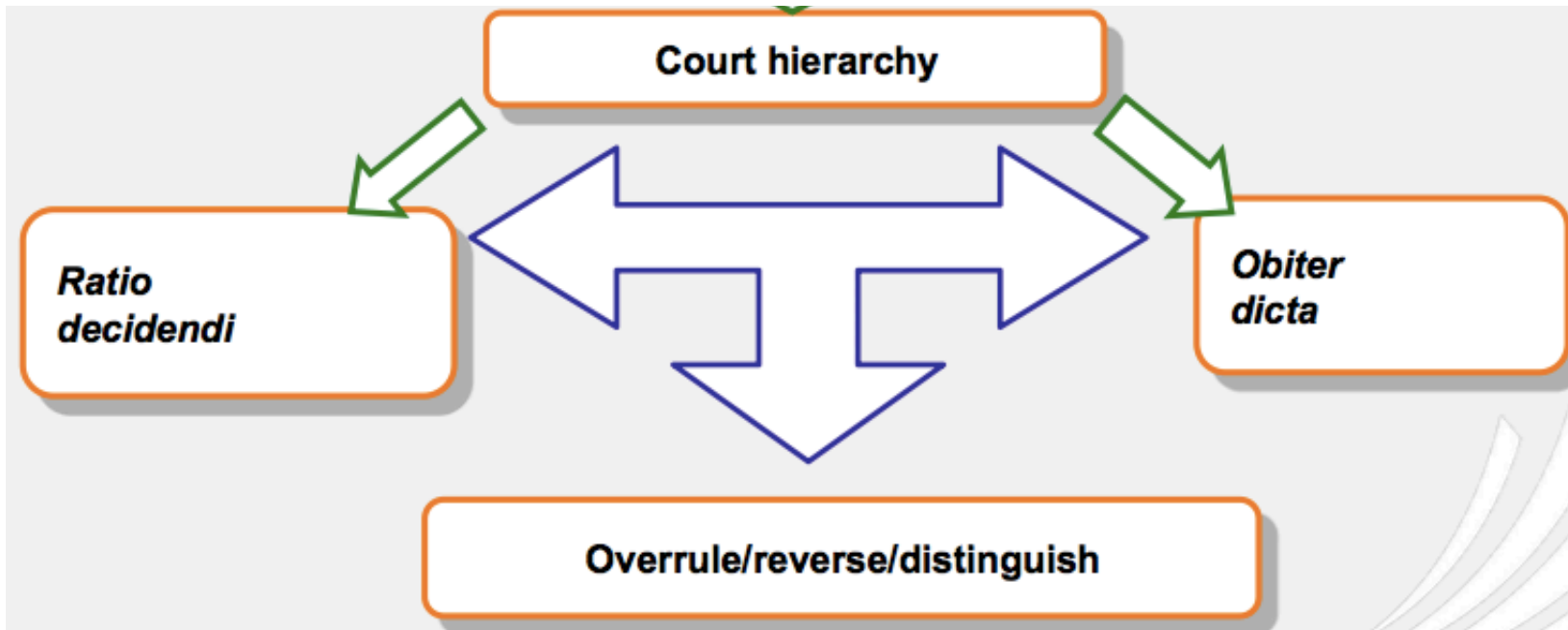
Types of precedents:

A. Binding precedents: they must be followed by a judge.

有约束力的司法先例:法官必须遵循该先例。



2.1.3 Factors determining whether or not a precedent is binding





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➤ Hierarchy of the courts

- In general, precedents of the higher courts bind the lower ones but not vice versa. A court of higher status is not only freely to disregard the decision of a lower court. It may also deprive it of authority and expressly overrule it.
 - A higher court might hear a case on appeal, and reverse the decision of the lower court in the same case.

 - The general rules are as follows:
 - The Supreme Court, the highest court in the UK, is free to overrule all its own decisions and those of the Appellate Committee of the House of Lords. Supreme Court decisions bind all inferior courts.

 - The Civil Division of the Court of Appeal is bound by its own decisions, as well as those of the Supreme Court/House of Lords. Court of Appeal stated three exceptions to this principle: 1. Two of its previous decisions conflict and the court must decide which to follow. The other case is automatically overruled. 2. If the previous decision was overruled by a subsequent Supreme Court decision, it need not be followed. 3. If a Court of Appeal decision is per incuriam (“through lack of care”), it need not be followed.

 - The Criminal Division is bound by its own decisions, as well as by those of the Supreme Court/House of Lords. The above exceptions that apply to civil divisions also apply to the Criminal Division. However, since criminal cases involve the potential to deprive defendants of their liberty, precedent is wider than civil division.
- (a) Supreme court - binds **all** lower courts, but not itself.
(b) Court of Appeal - binds **all** lower courts, and itself.
(c) High Court - binds **all** lower courts, and **usually** itself.
(d) Crown/Magistrates/County courts **cannot create** precedent.



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Ratio decidendi and obiter dicta (判决内容)	<ul style="list-style-type: none">✦ Ratio decidendi (binding): the legal reason for the decision. This is the vital element in a judgement that binds future judges. (判决理由)✦ Obiter dicta (persuasive): other things that were said. Everything in a case which does not form the ratio may be said to be obiter dicta. They are not binding on future judges but are merely persuasive. (附带意见)
Material facts of the cases (案例事实的相似性)	<ul style="list-style-type: none">✦ Same – binding: if there is little difference, the court is inclined to follow the earlier case.✦ Similar – persuasive: if the differences appear significant the court may distinguish the earlier case on the facts and thereby avoid following it.



2.1.4 Established precedents will not binding in the following circumstances:

(a) Overruling (否決) - the procedure whereby a court higher in the legal hierarchy sets aside a legal ruling established in a previous case. As this is a direct challenge to the basis of stare decisis the judiciary are reluctant to overrule longstanding authorities

(b) Reversing (改判)

A procedure whereby a court higher in the hierarchy reverses the decision of a lower court **in the same case**.



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Advantages	Predictability	A consistent and clear body of earlier precedents promotes the predictability of litigation results.
	Flexibility	The system allows developments to meet the changing needs of society.
	Practicality	Case law is based on experience of actual cases brought before the courts, thus court decisions will directly address the problems that individual case presented.
Disadvantages	Size	Vast number of cases accumulated throughout centuries of legal experience leads to a bulky, over-complex and sometimes inconsistent system of precedents.
	Rigidity	Rigidity of case law will lead to loss of flexibility and loss of development, in that unfair precedents may be created that allow wrongdoings to be perpetrated and continued.
	Reactive and patchy in nature	Courts and the case law they developed can only deal with social problems in a patchwork manner. In particular, courts could only address socially wrongdoing reactively rather than proactively.

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