

A

Common law in the UK

Penny Arkwright practises in the High Court. She is speaking at an international convention for young lawyers.

'The legal system in many countries, including Australia, Canada (except Quebec), Ghana, Hong Kong, India, Jamaica, Malaysia, New Zealand, Pakistan, Tanzania, the USA (except Louisiana), the Bahamas, and Zambia, is based on common law. The common law consists of the substantive law and procedural rules that are created by the judicial decisions made in the courts. Although legislation may override such decisions, the legislation itself is subject to interpretation and refinement in the courts.



Essential to the common law is the hierarchy of the courts in all of the UK jurisdictions and the principle of binding precedent. In practice, this means that the decision of a higher court is binding on a lower court, that is, the decision must be followed, and in the course of a trial the judges must refer to existing precedents. They'll also consider decisions made in a lower court, although they're not bound to follow them. However, a rule set by a court of greater or equal status must be applied if it's to the point – relevant or pertinent.

During a trial, counsel will cite cases and either attempt to distinguish the case at trial from those referred to or, alternatively, argue that the rule at law reasoned and established in a previous case is applicable and should be followed. Hence the term case law. A case will inevitably involve many facts and issues of evidence. The eventual decision itself doesn't actually set the precedent. The precedent is the rule of law which the first instance judge relied on in determining the case's outcome.

Judges in a case may make other statements of law. Whilst not constituting binding precedents, these may be considered in subsequent cases and may be cited as persuasive authority, if appropriate. Since the Human Rights Act of 1988, all courts in the United Kingdom must now refer to the ultimate authority of the European Court of Human Rights, including all previous decisions made by that court.'

Note: practises – qualified to work professionally

B

Law reports

'The development and application of the common law system pivots upon the existence of a comprehensive system of reporting cases. The Law Reports, published annually by the Council of Law Reporting, are perhaps the most authoritative and frequently cited set of reports, differing from other series of law reports, such as Butterworth's All England Law Reports [All ER] or specialist reports like Lloyds Law Reports, in that they contain summaries of counsel's arguments and are revised by the judge sitting in each respective case before publication. Cases aren't always reported in the year that they are decided so a case citation will refer to the volume and year in which the case was published, for example *Meah v Roberts*, [1978] 1 All ER 97. Developments in electronic databases have increased public access to recent cases.'

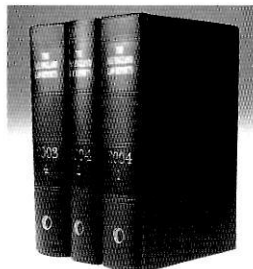
Note: Latin terms used for the legal principles outlined in the above texts are:

stare decisis – principles of binding precedent

ratio decidendi – the rule at law reasoned

obiter dictum – persuasive authority

In a civil case citation, for example *Meah v Roberts*, [1978] 1 All ER 97, v (Latin for *versus*) is said 'and'.



Butterworth's All England Law Reports

- 3.1 Penny Arkwright is talking about her experience of court cases to a Russian colleague. Replace the underlined words and phrases with alternative words and phrases from A and B opposite. Pay attention to the grammatical context. There is more than one possibility for one of the answers.

1 The courts are compelled to apply the precedent set by a higher court.

5 It is, however, the role of counsel to refer to relevant previous case decisions.

2 During the court case the judge will evaluate all the evidence and the legal issues.

6 The principle of following the decisions of higher courts is fundamental to case law.

3 Judges are required to follow the ratio, or reasoning, in relevant previous decided cases.

7 The Law Reports series are the most frequently cited reports because the text is edited by the trial judge.

4 However, the judge may note a case cited as precedent by counsel as materially different from the one at trial.

8 New legislation may pay no attention to the decision of an earlier court judgment.

- 3.2 Complete the table with words from A and B opposite and related forms. Put a stress mark in front of the stressed syllable in each word. The first one has been done for you.

| Verb | Noun | Adjective |
|---------|------------|-----------|
| 'cite | ci'tation | |
| apply | | |
| precede | | |
| | persuasion | |
| bind | | |

- 3.3 Penny is working with a trainee barrister. Complete her sentences with appropriate words from the table above.

1 Well, that decision of the Appeal Court is going to be on the case we've got at trial just now.

3 Can you check the case ? I think the year's wrong.

2 We need to be able to convince the judge that the rule in *Meah v Roberts* is to this case.

4 Should we add to our argument that *Edwards v Peck* is a precedent given the legal issues, although the judge isn't bound to follow it?

Over to you

Explain to a colleague from a different jurisdiction how cases are used and recorded in your legal system.

To look at some recent UK case reports, go to: www.courtservice.gov.uk and www.lawreports.co.uk/.