

# Common Law and the Legal System in England and Wales



The Supreme Court, London: by P. Coleman (supremecourt.uk) via Google.



The Great Hall, Royal Courts of Justice, London: from Flickr (flickr.com) via Google.

## 1. About the module<sup>1</sup>

This module will explore the origins and development of the common law, and how the system specifically operates within the jurisdiction of England and Wales (E&W).<sup>2</sup> It's main focus will be on the ideas, principles, and sources that underpin its contemporary set-up; the distinct branches or 'jurisdictions' and areas of legal practice that exist within it before, then, examining the institutions, personnel, customs, and methods that are essential to its everyday operation.

In the latter respect, the module will specifically focus on some of the policies, practices and procedures that have contributed or inhibited the development of common law in E&W, as well as the various attempts that have been made to modify or reform the system in to the form it is presently found.

To better appreciate the most important features of the legal system in E&W, and common law in general, the lectures, seminars, and materials will occasionally refer to comparative sources, comparing the jurisdiction of E&W to that of common law, civil, and/or code-based systems in other parts of the world – European and the commonwealth legal systems being the two most obvious arenas.

Given the likely impact it will have on the legal system in E&W, part of the module will consider the prospective consequences facing the United Kingdom (UK) following its departure from the European Union (EU). As of 23.00 hours on 31 October 2019 the UK cease to be a member of the EU.<sup>3</sup> This follows the British electorate having been invited by the UK Government to participate in a referendum on continued membership of the EU, held on 23 June 2016. The vote led to a narrow majority of the British electorate voting to leave the EU, and the UK Government invoking Article 50 of the Treaty of the EU (Withdrawal).<sup>4</sup>

This module will not directly consider the social and political ramifications surrounding the UK's vote to leave the EU. Rather, its focus will be on the legal processes leading up to and following the vote, and the likely changes in its laws and legal structure that will follow as a result of its departure. You may be aware that the former 'Brexit' date was 29 April 2019 at 23.00 hours, however, this was changed on the 12 April 2019, after the European Union granted the UK a six-month extension. The UK therefore has until 31 October 2019 to arrange to leave the EU, and may leave before then, where its Parliament agrees a deal, and the European Parliament votes to accept this. If not, the UK may be compelled to leave the EU without a deal.

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<sup>1</sup> This may be subject to change, as required by FU Berlin or changes in the law before or after the course commences.

<sup>2</sup> E&W means 'England and Wales'; as appropriate, it may also mean 'English and Welsh'. Any discussion of Northern Ireland will be given as NI; Scottish law may be referred to as 'Scots law' or 'Scot.', and common law may be given as CL.

<sup>3</sup> At the time of writing (20 May 2019), this date is the subject of widespread debate, owing to the lack of agreement between politicians in the UK. Should a deal be agreed, and the EU accepts this, then, the departure date may well prove to be earlier than 31 October 2019. If a deal is not agreed and the departure date is not altered, then, 23.00 hours on 31 October 2019 may remain the official leave date and the UK leaves the EU without a deal. In the event of a no deal outcome, it is likely the 'transition period' will be used to agree a deal. If a deal is agreed before then and the date is altered, then, this will merely mean that the point at which some of the proposed changes of 'Brexit' will come in to force sooner than first envisaged, after which point the transition period will then commence. The process and effect of such changes will be discussed during the module, regardless of the date, a deal being agreed, and any unforeseen change in the UK Government's decisions.

<sup>4</sup> TEU, Art 50 (1) and (2) << <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A12012M%2FTXT> >> accessed on 3 February 2019. A total of 33,551,983 of the electorate turned out to vote: 17,410,742 in favour of leaving and 16,141,241 in favour of remain, with a majority of 1, 269,501 tipping the balance in favour of leave. The UK has an estimated population of 66 million people (England, Wales, Scotland and Northern Ireland) with 46,500,001 of these eligible to vote (ONS 2016).

Overall, this module will entail a workload of approximately 30 hours, not including your consultation of reading and materials, and any extra-curricular study, which you will be expected to pursue in your own time. Teaching and sessions will take place over the course of 6 weeks, beginning on the week commencing 3 June 2019; details on the classes are listed further along in the module outline. The course will end following your examination on 12 July 2019.

The language of instruction will be English (British / United Kingdom), though your Lecturer / Professor speaks a number of other languages, and may occasionally refer to certain terms or expressions in these languages for ease, understanding, and/or comparison. No prior knowledge of the laws of E&W or the common law is required to participate. Your Lecturer / Professor, Kieran Lee Marshall, welcomes any questions you may have ahead of or during the course; a brief biography and his contact details can be found overleaf.

## 2. Your Lecturer / Professor

Your Lecturer / Professor for this module will be Kieran Lee Marshall and can be contacted on [k.l.marshall@durham.ac.uk](mailto:k.l.marshall@durham.ac.uk) **OR** [kieranlee.marshall@kcl.ac.uk](mailto:kieranlee.marshall@kcl.ac.uk), before or during the course. **His Durham email is preferred.**

Kieran Lee is a Teaching Fellow in Law at The Dickson Poon School of Law, King's College London and a Visiting Lecturer and Researcher in Law at Durham Law School, University of Durham. He presently teaches the law of property (LLB, King's); the law of trusts and equity (LLB, King's / LLB, Durham), and the law of employment (LLB / LLM, Durham). He has also taught several specialist and commissioned modules, including introductory courses on legal systems and methods, and the law of torts (Birkbeck College, University of London and FU Berlin). His research interests concern all things that are professional regulation, discipline, liability, and employment related. Other interests include corporate law (directorship, trusteeship, and fiduciary duties); sustainability and the environment; food and waste policy, and the interaction between law, social sciences, and the humanities.

Kieran Lee will be visiting the Freie Universität Berlin as the Erasmus Lecturer and Professor in Law for the duration of summer 2018/2019, combining research with teaching. His visit has been made possible through a partnership formed between the Schools of Law at FU Berlin and University of Durham ([www.durham.ac.uk/law](http://www.durham.ac.uk/law)).

### 3. Module dates, location and access requirements

This module will begin on the week commencing 3 June 2019, and will end on the week commencing 8 July 2019, with classes being hosted on Thursdays and Fridays every week. The first class will take place on Thursday 6 June 2019, while the last class and examination will be on Friday 12 July 2019.

**Classes on Thursdays will run from 14.00 to 16.00 and will be held at 2213 Übungsraum (Boltzmannstraße 3).** Classes will comprise of a 2-hour lecture (attendance required) with a 10-minute break (optional) between the lectures, Part A and B.

**Classes on Fridays will run from 09.00 to 12.00 and will be held at 2215 Hörsaal (Boltzmannstraße 3).** Classes will comprise of a 1-hour seminar, then, from 10.00 to 12.00 a 2-hour counselling, feedback, and ‘question and answer’ sessions (attendance required at the agreed time slot), with a 10-minute break (optional) between the seminar and sessions. If required, and sessions are not fully booked, seminars may occasionally run over the allocated 1-hour, to ensure topics are covered in full.

Despite being listed above, the specific location of classes will be advertised by the FU Berlin at the start of the course, and may be subject to change – please check before attending the class. Further detail on the content of both days and each week is available from the guidance that follows, and will be discussed during your first lecture and introductory seminar.

**Weeks 5 and 6** are the only exception to the above pattern, with a mini-moot due to take place on week 5, and revision classes and the examination being held on week 6: further information is available on the week-by-week guidance that follows.

Any questions about the course should be directed to your Lecturer / Professor, Kieran Lee Marshall using his Durham email address, noted above. Any access requirements or additional needs should be communicated to your course administrator at the FU Berlin, so adjustments can be made in advance in order so you may participate – this includes any concessions to which you may be entitled to during the examination, if applicable.

Should you think your Lecturer / Professor can in anyway help, then, please email him or ask your support teacher / assistant / translator or interpreter to contact him on your behalf. Naturally, any support staff / animals you are assisted by and are approved by the university are very welcome at the lectures / seminars and sessions, for which no prior permission is required.

#### 4. Teaching and feedback, advice, and support

All lectures will be hosted on Thursdays, while seminars and one-to-one or group counselling, feedback, 'question and answer' sessions will be hosted on Fridays – see the note on previous pages. The latter is based on an individual time slot basis only. Attendance to both is compulsory, unless otherwise agreed with prior consent, or to attend to some other FU Berlin or degree related commitment.

With respect to sessions, details on appointments and how to sign up will be shared by your Lecturer / Professor on the day of your first lecture. Absence from lectures, seminars or sessions, if any, should be reported to your Lecturer / Professor via email, or to your course administrator at the FU Berlin who can forward this on; please carefully read the notice on the sign-up list.

An outline of each lecture and seminar, along with details on the course structure, is available on the pages that follow and is set out on a week-by-week basis.

At the end of the module, there will be a 1-hour revision lecture / counselling, feedback, and 'question and answer' session ahead of your examination. The lecture will be used to broadly summarise the module lectures, seminars, reading and materials, and to offer you guidance on how to compile an essay plan (20%) in advance of your examination (80%) (of your overall mark). Your examination results will be made available by FU Berlin once these have been assessed and moderated. See the last section for further information. **Please note:** you will be expected to have undertaken revision by yourself before the revision lecture. There will be a dedicated session the week before this lecture takes place.

## 5. Reading and materials

Each week there will be set reading and materials, to help you engage with the topics presented during lectures, seminar and/or either of your counselling / feedback / ‘question and answer’ sessions.

Reading and materials will take one of two forms. ‘**Essential Reading and Materials**’ are compulsory, since these will help you to understand the core concepts and contemporary debates surrounding the topic(s) in question. ‘**Further Reading and Materials**’ are just that – they are intended to further your knowledge of the particular subject, by advancing on that which has been covered in the course of your lectures, seminars, and essential reading and materials.

For better or worse, the law of E&W (and the UK in general) has a plethora of good quality reading and online media covering the common law, legal systems, and legal methods. Consequently, this course will adopt three core works, and will supplement these with other books, chapters, articles and other materials, as relevant.

The **three core text** for this module will be:

1. E. Finch and S. Fafanski, *Legal Skills* (6<sup>th</sup> edn, OUP 2017) (see Note A)
2. I. McLeod, *Legal Method* (9<sup>th</sup> edn, Palgrave MacMillan 2013) (see Note B)
3. J. Holland and J. Webb, *Learning Legal Rules* (9<sup>th</sup> edn, OUP 2016). (see Note C)

**Note A:** A new edition of Finch and Fafanski’s work will be published on the same week as the module begins (7<sup>th</sup> edn, OUP 2019), however, the materials found in this work are up-to-date enough so as to reflect the points discussed during the course. **A reference copy of the 6<sup>th</sup> edn will be deposited in the FU Berlin law library for access in print.** Please be considerate of your fellow students when accessing this work.

**Note B:** This edition has not since been updated, nor is a new edition forthcoming. However, the work is widely respected for how accessible and clear is in its explanation of important features of the E&W legal system, which is important when learning about the system for the first time – that and having to get to grips with difficult terminology in a new language! Like the previous work, it is also up-to-date enough so as to reflect the points discussed during the course. A reference copy of this work will not be deposited in the library, but may be bought cheaply as a second-hand work online. Amazon.co.uk / Amazon.de is a good outlet for this kind of purchase.

**Note C:** A new edition of Holland and Webb’s work will be published the same week as the module ends (10<sup>th</sup> edn, OUP 2019)! However, the materials found in this work are update enough so as to reflect the points discussed during the course. **A reference copy of the 9<sup>th</sup> edn will be deposited in the FU Berlin law library for access in print.** Please be considerate of your fellow students when accessing this work.

A range of other leading works on this subject, are also available:

1. E. Allbon and S. Kaur Dua, *Elliot and Quinn's English Legal System* 2018/2019 (19<sup>th</sup> edn, Pearson 2018)
2. A. Gillespie and S. Weare, *The English Legal System* (6<sup>th</sup> edn, OUP 2017)
3. M. Partington, *Introduction to the English Legal System* (11<sup>th</sup> edn, OUP 2018)
4. F. Cownie, A. Bradney and M. Burton, *English Legal System in Context* (6<sup>th</sup> edn, OUP 2013)
5. M. Zander, *Cases and Materials on the English Legal System* (10<sup>th</sup> edn CUP 2017)

**PDF copies** of your '**Essential Reading and Materials**' will be made available for you during the course, and are for your own use only – this means they are **NOT** to be distributed. These will be emailed to you each week on a **Thursday or Friday**, a week ahead of the upcoming class.

You will be expected to obtain access to any '**Further Reading and Materials**' yourself, either via the FU Berlin law library, online, or by purchasing a copy. Please consider using Amazon.co.uk / Amazon.de or Abebooks.co.uk for these too, since both outlets both stock a good supply of second-hand works in this area.

As with your reading and materials, **lecture slides** will be provided on the day of each lecture, either on paper, or via email, alongside your seminar questions for the following week. During your lectures, your Lecturer / Professor will highlight the most important themes for that week, along with which of your reading and materials to draw upon. You will be expected to make notes during the lecture (and/or during your seminar discussions) as no additional lecture notes will be provided. This is to ensure you make full use of your reading and materials, and that you are not overburdened with further reading when revising. It also encourages you to put the materials in to your own words, which further helps you remember the topics considered during the lecture.



## 6. Module overview: coverage and content

### Week 1 | The UK and its law

2-hour lecture, 1-hour introductory seminar, and 2-hour one-to-one or group counselling, feedback, 'question and answer' sessions

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**Thursday 6 June 2019, from 14.00 to 16.00**

#### **Lecture 1, Part A: Understanding the basics**

- (a) Module Overview and Introduction
- (b) A Brief History and Geography Lesson: Welcome to the UK!
- (c) The UK Constitution and the Laws of England and Wales (in Europe)
- (d) Structure, Institutions and Personnel: Who's Who and Who does What?
- (e) A Few Essentials
- (f) So, What is Common Law?

- 10-minute break (optional) -

#### **Lecture 1, Part B: Finding and using the law**

- (a) Sources of Law: Domestic
- (b) Sources of Law: Cases
- (c) Sources of Law: European and International
- (d) Finding and Using the Law: Research, Legal Databases, and Citation
- (e) Tradition, Conventions and Customs
- (f) Practice *v* Scholarship

**Friday 7 June 2019, from 09.00 to 10.00, seminar and 10.00 to 12.00 sessions**

#### **Introductory seminar**

Unlike other seminars, this introductory version is intended to ensure you have the opportunity to ask questions about the first lecture, upcoming lectures, the module structure and content, assessment, and/or to provide you with general guidance on your reading and materials and the first seminar planned for Week 2. No formal preparation is required for this class save for having read this module outline and your own notes on Lecture 1. This seminar will be the opportunity for you to discuss some of your initial thoughts about the differences and similarities between your own legal system and the one you are studying about.

- 10-minute break (optional) -

#### **Counselling, feedback, and 'question and answer' sessions**

Per the guidance noted on page 5 and 6, sessions and appointments will be available on a one-to-one or group basis. Please sign up as advised by your Lecturer / Professor during your first class.

## Reading and materials for Week 1

### Essential Reading and Materials

1. E. Finch and S. Fafanski, *Legal Skills* (6<sup>th</sup> edn, OUP 2017)  
pt I, ch 1, 3, 4 and 6
2. I. McLeod, *Legal Method* (9<sup>th</sup> edn, Palgrave MacMillan 2013)  
ch 1, 2 and 3
3. J. Holland and J. Webb, *Learning Legal Rules* (9<sup>th</sup> edn, OUP 2016)  
ch 2

### Further Reading and Materials

1. Faculty of Law, University of Oxford, *OSCOLA* (University of Oxford 2012)
2. The Supreme Court, *An Educational Resource for Higher Educational Institutions* (UKSC 2012)
3. F. A. R. Bennion, *Understanding Common Law Legislation* (OUP 2009, pbk)  
(2<sup>nd</sup> edn, OUP 2003, hbk)
4. A. Riley and P. Sours, *Common Law Legal English and Grammar* (Hart 2014)
5. M. Zander, *The Law Making Process* (7<sup>th</sup> edn, Hart 2015)

## Preparation for Week 2

This week you should ensure to reflect upon the lecture, introductory seminar and reading and materials linked to week 1, Lecture 1 – Part A and B ahead of Seminar 1 in Week 2, for which you will be provided set questions.

## **Week 2 | Legal reasoning and methods in England and Wales**

2-hour lecture, 1-hour seminar, and 2-hour one-to-one or group counselling, feedback, 'question and answer' sessions

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**Thursday 13 June 2019, from 14.00 to 16.00**

**Lecture 2, Part B:** From finding and reading to applying

- (a) Statutory Interpretation
- (b) The Case Law Method
- (c) The Doctrine of Precedent
- (d) The Relationship Between Case Law and Precedent
- (e) Two Principles: *ratio decidendi* and *obiter dictum*
- (f) Other Important Concepts

- 10-minute break (optional) -

**Lecture 2, Part B:** Some issues with the current legal system

- (a) Meaning, Mischief and Interpretation in Modern Law
- (b) Parliament and the Judges, Statute and the Common Law
- (c) Civil Law and the Common Law: Old *v* Young?
- (d) Equity and the Common Law: Justice *v* Injustice, Flexible *v* Inflexible?
- (e) Judicial Independence, Diversity, and Bias
- (f) The Qualifying Law Degree, Professional Education, and Practice
- (g) Making New Laws and Reform

**Friday 14 June 2019, from 09.00 to 10.00, seminar and 10.00 to 12.00 sessions**

**Seminar 1:** Understanding the E&W legal system

This seminar is intended to review week 1 of the course, and the reading and materials specifically linked to Lecture 1 (Part A and B). It has been structured in such a way as to help you understand the systems and concepts introduced by this lecture, so that you will better understand the topics introduced by Lecture 2 (Part A and B). The questions provided are intended as a guide, and to help facilitate discussion.

- 10-minute break (optional) -

**Counselling, feedback, and 'question and answer' sessions**

Per the guidance noted on page 5 and 6, sessions and appointments will be available on a one-to-one or group basis. Please sign up as advised by your Lecturer / Professor during your first class.

## Reading and materials for Week 2

### Essential Reading and Materials

1. I. McLeod, *Legal Method* (9<sup>th</sup> edn, Palgrave MacMillan 2013) ch 8 to 14 and 16
2. J. Holland and J. Webb, *Learning Legal Rules* (9<sup>th</sup> edn, OUP 2016) ch 5, 6 and 7

### Further Reading and Materials

1. D. Bailey and L. Norbury and D. Feldman (eds) *Bennion on Statutory Interpretation* (7<sup>th</sup> edn, LexisNexis 2017)
2. F. Reynolds, *Disagreement and Dissent in Judicial Decision-Making* (Wildy, Simmonds and Hill Publishing 2013)
3. E. Freer, *Social Mobility and the Legal Profession: The Case of Professional Associations and Access to the English Bar* (Routledge 2018)
4. M. Zander, *The Law Making Process* (7<sup>th</sup> edn, Hart 2015)
5. P. Darbyshire, *Sitting in Judgment* (Hart 2011)
6. F. A. R. Bennion, *Tangling with the Law: Reforms in the Legal Process* (London: Chatto and Windrus 1970)

If you are interested in profession (e.g. solicitors and barristers) and specialisation-based (e.g. notaries) works, then, please ask your Lecturer / Professor for further recommendations.

## Preparation for Week 3

This week you should ensure to reflect upon the lecture, seminar, reading and materials linked to week 2, Lecture 2 – Part A. Alongside this, you should read one case: *R v Bentham* [2005] UKHL 18 << <https://www.bailii.org/uk/cases/UKHL/2005/18.html> >> The case will form a part of a discussion in Seminar 2 in Week 3, for which you will be provided set questions.

## **Seminar 1: Understanding the E&W legal system**

### **Questions**

1. Explain in brief the geographic, governmental, and legal system up of the UK and what this means for Parliament and law making? You may refer to your set reading and external sources. Please use your own words.
2. Does the UK have a constitution? If so, where is it to be found? If not, then, how does it make laws and govern the country?
3. What is the most senior court in the UK? What is its role and who may appeal to it? Name the courts before it? And, are all legal disputes handled by a court?
4. Briefly explain what is meant by common law?

### **Week 3 | Systems and Classifications: Criminal v Civil, Public v Private?**

2-hour lecture, 1-hour seminar, and 2-hour one-to-one or group counselling, feedback, 'question and answer' sessions

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**Thursday 20 June 2019, from 14.00 to 16.00**

#### **Lecture 3, Part A: Systems and classifications**

- (a) A Brief Re-cap
- (b) The Justification for Systems and Classifications and Recent Reforms
- (c) The Criminal Justice System
- (d) The Civil Justice System
- (e) Other Jurisdictions and Systems

-10-minute break (optional) -

#### **Lecture 3, Part B: Understanding the public and private divide**

- (a) Common Ground
- (b) Understanding Public Law
- (c) Understanding Private Law

**Friday 21 June 2019, from 09.00 to 10.00, seminar and 10.00 to 12.00 sessions**

#### **Seminar 2: Legal method and reasoning**

This seminar will explore some of the materials covered in week 2, Lecture 2 – Part A. In particular, it will explore the ideas and process underpinning statutory interpretation, the case law method, and the doctrine of precedent, which are essential features of common law and system in place in E&W. In addition to your reading, the seminar draws upon one case in particular: *R v Bentham* [2005] UKHL 18, for which you will be provided set questions.

- 10-minute break (optional) -

#### **Counselling, feedback, and 'question and answer' sessions**

Per the guidance noted on page 5 and 6 sessions and appointments will be available on a one-to-one or group basis. Please sign up as advised by your Lecturer / Professor during your first class.

### Reading and materials for Week 3

#### Essential Reading and Materials

1. I. McLeod, *Legal Method* (9<sup>th</sup> edn, Palgrave MacMillan 2013) ch 2
3. J. Holland and J. Webb, *Learning Legal Rules* (9<sup>th</sup> edn, OUP 2016) ch 1
2. The Crown Prosecution Service, *The Criminal Justice System* (CPS 2019) < <https://www.cps.gov.uk/criminal-justice-system> > accessed on 20 May 2019.
3. The Courts and Judiciary, *Jurisdictions* (Judiciary 2019) < <https://www.judiciary.uk/about-the-judiciary/the-justice-system/jurisdictions/> > accessed on 20 May 2019.
4. J. Smits, 'What is Private Law for?' (Maastricht University 2017) < <https://www.maastrichtuniversity.nl/blog/2017/02/what-private-law> > accessed on 20 May 2019.
5. The Public Law Project, 'What is Public Law?' (PLP 2019) < <https://publiclawproject.org.uk/what-is-public-law/> >

A wide range of accessible and well-regard materials exist online. Please access Westlaw or LexisNexis via your FU Berlin law database, where you will be able to consider many of these under 'Books' or 'Commentary'. Please ask your Lecturer / Professor if you would like further guidance.

#### Further Reading and Materials

1. A. Burrows (eds) *English Private Law* (OUP 2013) (available from Oxford Scholarship online)

There are a wide range further reading and materials available for this topic. If you are interested, then, please ask your Lecturer / Professor for recommendations.

### Preparation for Week 4

This week you should ensure to reflect upon the lecture, seminar, reading and materials linked to week 2, Lecture 2 – Part B. These will form a part of a discussion in Seminar 3 in Week 4, for which you will be provided set questions.

## Seminar 2: Legal method and reasoning

### Questions

1. What is statutory interpretation?
2. Expand on your answer by discussing:
  - i. What is the case law method?
  - ii. What is the doctrine of precedent?
3. What is meant by *ratio decidendi* and *obiter dictum*?
4. Having read *R v Bentham* [2005] UKHL 18, explain in brief what the case is about, and why this is a good example of the above concepts?



**Week 4 | The EU-UK Relationship: Life Before and After ‘Brexit’**

2-hour lecture, 1-hour seminar, and 2-hour one-to-one or group counselling, feedback, ‘question and answer’ sessions

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**Thursday 27 June 2019, from 14.00 to 16.00**

**Erasmus Lecture: ‘The EU-UK Relationship: Putting it all in Brexpective’**

Lecture 4, Part A: The EU-UK Relationship (I): The European Communities Act, Pre-Brexit Issues, the Vote and the Case of Employment

- 10-minute break (optional) -

Lecture 4, Part B: The EU-UK Relationship (II): The Legal System and Law-Making Post-Brexit

**Friday 28 June 2019, from 09.00 to 10.00, seminar and 10.00 to 12.00 sessions**

**Seminar 3: When Law Gets It Wrong**

This seminar is intended to help you understand what happens when errors occur, or when conflicts arise, and how the legal system seeks to revise this or make new laws. It will specifically review materials covered in week 2, Lecture 2 (Part B) and Lecture 3 (Part A and B), for which you will be provided set questions.

- 10-minute break (optional) -

**Counselling, feedback, and ‘question and answer’ sessions**

Per the guidance noted on page 5 and 6 sessions and appointments will be available on a one-to-one or group basis. Please sign up as advised by your Lecturer / Professor during your first class.

## Reading and materials for Week 4

### Essential Reading and Materials

1. I. McLeod, *Legal Method* (9<sup>th</sup> edn, Palgrave MacMillan 2013) ch 5, 6 and 15
2. J. Holland and J. Webb, *Learning Legal Rules* (9<sup>th</sup> edn, OUP 2016) ch 9, 10 and 11
3. Faculty of Law, University of Cambridge, 'Brexit' (UoC 2019) < <https://www.cels.law.cam.ac.uk/brexit> > accessed on 20 May 2019
4. UK Government, 'Brexit' (UK Government 2019) < <https://www.gov.uk/government/brexit> > accessed on 20 May 2019.

### Further Reading and Materials

There are a wide range further reading and materials available for this topic. If you are interested, then, please ask your Lecturer / Professor for recommendations.

## Preparation for Week 5

This week you should ensure to reflect upon your lecture, seminar, reading and other media as linked to Lecture 4 – Part A, and prepare by reading two cases in particular: *R (on the application of Miller) v Secretary of State for Exiting the European Union* [2016] EWHC 2768 (Admin) (<https://www.bailii.org/ew/cases/EWHC/Admin/2016/2768.html>) and *R (on the application of Miller) v Secretary of State for Exiting the European Union* [2017] UKSC 5 (<https://www.supremecourt.uk/cases/uksc-2016-0196.html>), for which you will be provided set questions.

**Week 5** will be structured differently to the pattern so far, as there will be a moot: see next week's outline for further information.

### **Seminar 3: When the Law Gets it Wrong**

#### **Questions**

1. What do you understand private and public law to be? Do the public and private legal systems ever merge or hold any common ground?
2. What is the difference between the criminal justice and civil justice system? Cite a practical example. Briefly consider what an ideal version of these systems may look like?
3. How does equity mitigate the harshness of the common law?
4. What does it mean to give something its plain meaning, and what might the consequences if this rule is not followed?
5. How is reformed? Cite a practical example.

## **Week 5 | The Law and Court ‘In Action’ – A Moot**

2-hour moot, 1-hour seminar, and 2-hour one-to-one or group counselling, feedback, ‘question and answer’ sessions – Revision *in focus*

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### **Thursday 4 July 2019, from 14.00 to 16.00**

#### **The Law and Courts ‘In Action’ – A Moot**

No break will occur today, as the time will be dedicated to the moot.

This class is intended to help you reflect on how you put in to action the concepts, customs, and practices you’ve been introduced to so far.

You will therefore be randomly allocated in to two groups and given a case, (in Week 4). You will then appear on behalf of the claimant/appellant or defendant/respondent, presenting your appeal case to the court.

### **Friday 5 July 2019, from 09.00 to 10.00, seminar and 10.00 to 12.00 sessions**

#### **Seminar 4: The EU-UK Relationship: From *Miller*, Brexit and Beyond**

This seminar is intended to help you explore the two *Miller* decisions offered by the EWHC and UKSC. It will help you engage with some of the most important legal principles underpinning the E&W legal system, and how these are adhered to, challenged, and altered or reinforced by the courts.

- 10-minute break (optional) -

### **Counselling, feedback, and ‘question and answer’ sessions – Revision *in focus***

Per the guidance noted on page 5 and 6 sessions and appointments will be available on a one-to-one or group basis. Please sign up as advised by your Lecturer / Professor during your first class. **Please note: these sessions will be dedicated to revision only. Appointment attendance is compulsory.** During this appointment you will be offered guidance on how to make an essay plan.

## Reading and materials for Week 5

There is no Essential or Further Reading and Materials for this week, as there will be a moot and your revision lecture and your examination next week. If you are keen on mooting, however, you may read the following:

1. E. Finch and S. Fafanski, *Legal Skills* (6<sup>th</sup> edn, OUP 2017) pt III, ch 18
2. D. Pope and D. Hill, *Mooting and Advocacy Skills* (3<sup>rd</sup> edn, Sweet and Maxwell 2015) ch 1 and 2 especially

## Preparation for Week 6 – Revision and the Examination

**Week 6** will be structured differently to the pattern so far, since there will be a revision lecture and your examination. The first half of lecture will consist of a brief summary by your Lecturer / Professor. The second half will consist of your questions and requests. You are strongly encouraged to email these to your Lecturer / Professor **by Monday 8 July 2019, 09.00 latest.**

In preparation for your revision lecture and examination, you are strongly encouraged to reflect upon your lecture notes, reading and materials and moot papers covered during weeks 1 to 5.

## **Seminar 4: The EU-UK Relationship**

### **Questions**

1. Under current law (pre-Brexit), which court has supremacy over the majority of UK laws? Within the frame of the forthcoming reforms (post-Brexit), which court will this default to once new laws are enacted?
2. Briefly summarise the *Miller* decision at the EWCA?
3. What was the basis of the *Miller* appeal to the UKSC and how did the court decide?
4. What did the decision seek to stop/prevent/ensure?
5. Why has employment law and employee rights been cited as an importance example of how Brexit will change the face of EU-UK relations?

## **Week 6 | Revisiting the Module and Your Examination**

2-hour 'nutshell' lecture, 1-hour 'question and answer' pre-exam session, 1.5-hour essay plan and examination, 30-minutes post-exam feedback

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**Thursday 11 July 2019, from 14.00 to 16.00**

### **Lecture 5: Common Law and the Laws of England and Wales in a Nutshell**

**Part A:** Key Themes and Topics

- 10-minute break (optional) -

**Part B:** Your Questions and Requests

Guidance: Making an Essay Plan

**Friday 12 July 2019, from 09.00 to 10.00, seminar, from 10.00 to 11.30 essay plan and examination, and from 11.30 to 12.00 post-examination feedback**

### **Pre-examination 'question and answer' session**

In difference to previous weeks, there will be no sign up for this session. This will be first come, first serve only, as it is intended to address any last-minute queries you may have ahead of your examination.

### **Essay plan and examination**

This will take place from 10.00 to 11.30. This will be provided to you on Thursday 4 July 2019 or Friday 5 July 2019. While this is an 'open' book examination, you will not be able to take your notes in to the examination, except your essay plan.

### **Post-examination feedback**

Your Lecturer / Professor invites you to meet up at the Mensa after your examination for some brief feedback and an end of module discussion. This may be followed by refreshments and a social gathering.

## **7. Module assessment and credits**

Module assessment will be in two-parts, both of which must be submitted by Friday 12 July 2019, by 11.30 hours.

The first part will require you to construct an essay plan (20%) (to help you prepare for the exam, and the essay you opt to write during the examination). The second will require you to write up a seen examination (80%) (made up of some multiple-choice questions and your essay).

Guidance will be offered during your revision lecture as to how the essay plan ought to be constructed, and on the questions and themes contained in your examination. Both parts of the examination will be seen, which means you are free to take them home and prepare in advance of the examination. However, on the day of the examination, you will only be permitted to take your essay plan in to the examination with you.

Assessment information will be released a week before the examination on Friday 5 July 2019. The examination will be 1.5 hours long, and will be held on Friday 12 July 2019, from 10.00 to 11.30 hours. Taken together, module attendance, the essay plan, and the examination are worth 5 ECTS credits as a contribution to your FU Berlin studies.

## **8. Further information**

For further information, or any module related questions, please feel free to get in touch with your FU course administrator or contact your Professor / Lecturer, as noted at the start of this guide.

**KLM**  
**20 May 2019**  
**Cambridge, UK**