

1.1 Case Study - The constitution in the U.K.

The UK has a common law legal system. It is very difficult to give a simple definition of the legal system in the UK, but you may find it helps to think of it as the system that covers how all **civil** and **criminal** laws are made, used and enforced.

A fundamental part of any legal system is its **constitution**. A constitution is the basic law of the state providing the rules by which the state is governed and setting out the rights and responsibilities of the state and its citizens. For example, in the UK, adults aged over 18 who have the right to vote in a general election have a constitutional responsibility to vote.

Constitutions are important because they essentially set out the broad principles concerning who can make law. They also allocate the balance of power between the main institutions of the state – the **government**, **Parliament** and the **judiciary** – and provide the framework for the use of these institutions' powers.

A constitution may also indicate the basic principles by which a country should expect to be governed, for example, that people should not be punished unless they have broken the law; or that certain rights and freedoms, such as freedom of speech, thought and conscience, are guaranteed. In the UK, we have an unwritten constitution that comes from many sources. This is unusual as every other Western democracy has a written constitution. In many cases, such as for France, Germany and the United States of America, the document containing the constitution was written after a major change, such as a revolution or war.

The sources of the UK's unwritten constitution include Acts of the UK Parliament, judicial decisions and conventions. Conventions are not laws but are long established traditions which are followed because they have just simply become recognised as the right way to do things. One example of a convention is that judges do not undertake activities associated with political parties.

Underlying our unwritten constitution are three important principles:

1. the separation of powers
2. the supremacy of Parliament
3. the rule of law.

The separation of powers recognises that all state power can be divided into three types: executive, legislative and judicial. The executive element represents the government (and its 'servants' or employees), the legislative side is Parliament and the judicial element means the judges. The idea behind this separation is that these three types of power should not be concentrated in the hands of any one person, as this could lead to absolute control with no one to check whether that power was exercised for the good of the country as a whole.

The supremacy of the UK Parliament is another important part of the constitution. The UK Parliament is regarded as the highest source of law. It has the right to make any law it chooses, and no person or body is able to override or set aside laws made by the UK Parliament (only the UK Parliament itself may do so). The UK Parliament is made up of two houses: the House of Commons and the House of Lords. Members of the House of Commons are democratically elected and therefore it is thought that Parliament should have the supreme

authority when making laws that determine the rights and responsibilities of every individual in the country.

The rule of law stems from the work of a respected nineteenth-century writer called A. V. Dicey. It has three elements. First, it states the law is applicable to everyone; second, that no one should be punished by the state unless they have broken a law; and third, that the rights of the individual are secured by decisions of the judges made in court cases. Once again the idea is that the state should use its power according to agreed rules and not arbitrarily.

