

## 2.3 Statutory interpretation and common law

### 2.3a Statutory interpretation

Although Acts of Parliament are debated and discussed in detail and are very carefully written by experts, there are occasions when the wording is not clear. If this occurs then the courts have to provide a definition as there is no time for referral back to Parliament for amendment. In these cases, the job of the courts is to determine Parliament's intentions and to put these into practice. This links back to the idea that the UK Parliament is the supreme law-making authority and therefore it is the courts' constitutional role to implement what they think Parliament actually intended. The next activity will demonstrate the importance of statutory interpretation.

#### Activity 1: Statutory interpretation

0 hours 20 minutes

Take a moment and think about how you would define the words 'in the vicinity'.

#### Discussion

The words 'in the vicinity' generally mean near to or nearby. The courts were required to consider the meaning of 'in the vicinity' in a case that involved the Official Secrets Act 1920. This Act made it an offence for anyone to obstruct members of the armed forces in the vicinity of any prohibited place. A prohibited place included air force bases. In the case of *Adler v George* [1964] 2QB 7, the defendant was arrested on an air force base. The defendant argued that the meaning of 'in the vicinity' meant near to and not on. The court agreed that 'in the vicinity' meant near to but decided that it was reasonable to interpret the Act as covering being on the prohibited place. This was a reasonable meaning because of the behaviour the Act was trying to prevent.

End of discussion

### 2.3b Common law

This may be a familiar term that you have encountered in newspaper reports or on the television or radio. Common law has its roots in history. In 1066, William the Conqueror began to establish a strong central government and to standardise the law in England. Representatives of the King were sent out into the country to check the local administration and were given the job of adjudicating local disputes according to local law. When these individuals returned to London they were able to discuss the various local laws from different parts of the country and began to use those that seemed rational to form a consistent body of laws. By about 1250 a common law had been produced that applied to the whole country. It could be applied consistently and could be used to predict what the courts might decide in particular cases.

Common law now, in effect, comes from case law, that is, the decisions made by judges in the court cases they judge. When considering a court case a judge has two tasks: first,

establishing what the facts are (what actually happened), and second, how the law applies to those facts. It is the second aspect that makes case law. Once the decision has been made on how the law applies to a particular set of facts, later cases with similar facts should be treated in the same way. This is known as a system of judicial **precedent**. This means that in any decision there is a *ratio decidendi* – the reason for deciding. This is the principle of law on which the facts of the case have been decided.

Common law is created by a system which relies on a court hierarchy. This means that courts lower down in that hierarchy (such as the Magistrates' Courts, Crown Court, County Court or High Court) are bound by the decisions made by the higher courts (such as the House of Lords).

