ELLIOTT & QUINN'S ENGLISH LEGAL SYSTEM

Emily Allbon & Sanmeet Kaur Dua

Pearson

Twenty-first Edition 2020/2021

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Emily Allbon and Sanmeet Kaur Dua

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Emily Allbon and Sanmeet Kaur Dua

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In loving memory of Catherine Elliott, creator and author of numerous best-selling law titles, whose writing has inspired generations of law students across the world.

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Preface

As with the previous edition, we hope that this edition does justice to the work done by both Catherine and Francis over many years. We have continued to employ our signature style of writing by engaging students via topical and current examples in order to help them understand how the law, processes and procedures that are discussed in this book relate to their everyday lives.

The key updates to this edition can be found in Parts 1, 2 and 5, although other necessary updates appear throughout. Some updates were more challenging than others. For example, with Brexit we had hoped that matters may have moved on since the previous edition but alas matters have simply got more complicated and Brexit has still not been delivered. The material on Brexit in this edition only reflects the state of affairs up to the point of writing and it is hoped that a significant update on Brexit can be provided in the edition that will follow this. It is thanks to Brexit that once in a lifetime constitutional questions have been raised. The landmark ruling from the Supreme Court in ***Miller* v *Prime Minister*** [2019] UKSC 41 has had the whole world gripped and talking about constitutional affairs like never before. It is largely down to Brexit that so many young people are now talking about law and politics. While the writers in no way express their own views as to whether Brexit should or should not go ahead, an upshot of Brexit is that it has engaged the public's interest, in legal, political and constitutional matters on an unprecedented scale. Developments on Brexit can be found in the introduction and Chapter 5.

Some key updates have been made to Chapter 9 on law reform. In particular, there is discussion of the Upskirting Act and how that was brought about through a Private Members' Bill and the #MeToo movement. This movement has courted much publicity in recent times but actually the action does not require there to be reform of the law but rather reliance on existing law to deal with such issues. A further important update to Chapter 9 relates to the series of cases that have been heard on the so called 'gig' economy involving the likes of Uber and Deliveroo and the status of those who work for them. Are they employees or workers with better rights than are afforded to those who are self-employed? Chapter 23 has been significantly updated with explanations and references to the modernisation of the administration of the civil justice system. Notable cases are discussed, such as ***Owens* v *Owens*** [2018] UKSC 41 and its resonance through our legal system. As a result of this case, which involved a wife in an unhappy marriage prevented from obtaining a divorce, we now have the Divorce, Dissolution and Separation Bill. This Bill will allow people in the position of Mrs Owens to obtain a divorce without having to find a way to demonstrate fault or blame on their spouse which is the principle method of obtaining a divorce under the current law.

Chapter 15 has also seen some updates in order to incorporate the Ministry of Justice's long-awaited review of LASPO 2012. This edition also includes more detailed discussion of the issues surrounding exceptional cases and inquests, and greater coverage of the means test.

We have been grateful for the guidance of Paul Keleher QC (25 Bedford Row) on Chapter 19 and are happy to once again have our academic colleague (and criminal law practitioner) Ffyon Reilly involved, this time editing Chapters 20–22.

The ethos of the book remains the same in that this text is designed to provide a clear explanation of the English legal system and how it works in practice today. As ever, the legal system and its operation are currently the subject of heated public debate, and we hope that the material here will allow you to enter into some of that debate and develop your own views as to how the system should develop.

A priority in writing this text has been to explain the material clearly, so that it is easy to understand, without lowering the quality of the content. Too often, law is avoided as a difficult subject, when the real difficulty is the vocabulary and style of legal textbooks. For that reason, we have aimed to use 'plain English' as far as possible and explain the more complex legal terminology where it arises. There is also a glossary of difficult words at the back of the text. In addition, chapters are structured so that material is in a systematic order for the purposes of both learning and revision, and clear subheadings make specific points easy to locate.

Although we hope that many readers will use this text to satisfy a general interest in law and the legal system, we recognise that the majority will be those who have to sit an examination on the subject. Therefore, each chapter features typical examination questions (with detailed guidance on answering them, using the material in the text, available on the companion website at **go.pearson.com/uk/he/resources**). This is obviously useful at revision time, but we recommend that when first reading the text, you take the opportunity offered by the question sections to think through the material that you have just read and look at it from different angles. This will help you both to understand and to remember it. You will also find a section at the end of the text which gives useful general advice on answering examination questions on the English legal system.

We would like to thank our families for their continuing encouragement, support and, most of all, patience when writing this edition.

We have endeavoured to state the law as at 1 October 2019.

Emily Allbon and Sanmeet Kaur Dua
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Cases, law reports and case references: a guide

In order to understand the table of cases and the reference to cases in this text generally, you need to know about the naming of cases, law reports and case references.

Case names

Each legal case that is taken to court is given a name. The name of the case is usually based on the family name of the parties involved. Where there are more than two parties on each side, the case name tends to be shortened to just include one name for each side. In essays, the name of the case should normally be put into italics or underlined, though in this text we have chosen to put them in bold italics. The exact case names in civil law and criminal law are slightly different so we will consider each in turn.

Criminal law case names

If Ms Smith steals Mr Brown's car, then a criminal action is likely to be brought by the state against her. The written name of the case would then be ***R*** v ***Smith***. The letter 'R' stands for the Latin *Rex* (King) or *Regina* (Queen) depending on whether there was a king or queen on the throne at the time of the decision. Sometimes the full Latin terms are used rather than the simple abbreviation R, so that the case ***R*** v ***Smith*** if brought in 2004 while Queen Elizabeth is on the throne could also be called ***Regina*** v ***Smith***. The idea is that the action is ultimately being brought by the state against Ms Smith.

The 'v' separating the two parties' names is short for 'versus', in the same way as one might write ***Nottingham Forest Football Club*** v ***Arsenal Football Club*** when the two teams are going to play a match against each other. When speaking, instead of saying 'R versus Smith' one should really say 'The Crown against Smith'.

If Ms Smith is only 13, and therefore still a minor, the courts cannot reveal the identity of the child to the public and therefore the case will be referred to by her initial rather than her full name: ***R*** v ***S***.

Occasionally, criminal prosecutions are brought by the Government's law officers. If an action was brought by the Attorney General against Ms Smith it would be called ***AG*** v ***Smith***. If it was brought by the Director of Public Prosecutions it would be called ***DPP*** v ***Smith***. Should the state fail to bring an action at all, Mr Brown might choose to bring a private prosecution himself and the case would then be called ***Brown*** v ***Smith***.

Civil law case names

In civil law, if Mr Brown is in a neighbour dispute with Ms Smith and decides to bring an action against Ms Smith, the name of the case will be ***Brown*** v ***Smith***. This is orally expressed

as 'Brown and Smith', rather than 'Brown versus Smith'. At the original trial, the first name used is the name of the person bringing the action (the claimant) and the second name used is that of the defendant. If there is an appeal against the original decision, then the first name will usually be the name of the appellant and the second name that of the respondent, though there are some exceptions to this.

In civil law, the state can have an interest in what are described as judicial review cases. For example, Mr Brown may be unhappy with his local council, Hardfordshire City Council, for failing to take action against his neighbour. He may bring an action against the council and the action would be called ***R* v *Hardfordshire City Council, ex parte Brown***.

In certain family and property actions, a slightly different format may be used. For example, if Ms Smith's child, James Smith, is out of control and needs to be taken into care, a resulting legal action might be called ***Re Smith*** or ***In re Smith***. '*Re*' is Latin and simply means 'in the matter of' or 'concerning'. So the name ***Re Smith*** really means 'in the matter of James Smith'.

As with civil cases, there is sometimes a need to prevent the public from knowing the name of the parties, particularly where children are involved. The initials of the child are then used rather than his or her full name. So the above case might be called ***Re S*** rather than ***Re Smith*** to protect James.

The Law Reports

Because some cases lay down important legal principles, over 2,000 each year are published in law reports. Some of these law reports date back over 700 years. Perhaps the most respected series of law reports are those called *The Law Reports,* because before publication the report of each case included in them is checked for accuracy by the judge who tried it. It is this series that should be cited before a court in preference to any other. The series is divided into several sub-series depending on the court which heard the case, as follows:

Appeal Cases (containing decisions of the Court of Appeal, the former House of Lords, the Supreme Court and the Privy Council).

Chancery Division (decisions of the Chancery Division of the High Court and their appeals to the Court of Appeal).

Family Division (decisions of the Family Division of the High Court and their appeals to the Court of Appeal).

Queen's Bench (decisions of the Queen's Bench Division of the High Court and their appeals to the Court of Appeal).

Neutral citation

Following the Practice Direction (Judgments: Form and Citation), a system of neutral citation was introduced in 2001 in the Court of Appeal and the High Court. This form of citation was introduced to facilitate reference to cases reported on the internet and on

electronic databases. Unlike reports in books, these reports do not have fixed page numbers and volumes. A unique number is now given to each approved judgment and the paragraphs in each judgment are numbered. The system of neutral citation is as follows:

Civil Division of the Court of Appeal:	[2018] EWCA Civ 1, 2, 3, etc.
Criminal Division of the Court of Appeal:	[2018] EWCA Crim 1, 2, 3, etc.
Administrative Court:	[2018] EWHC Admin 1, 2, 3, etc.

The letters 'EW' stand for England and Wales. For example, if ***Brown* v *Smith*** is the fifth numbered judgment of 2018 in the Civil Division of the Court of Appeal, it would be cited: ***Brown* v *Smith*** [2018] EWCA Civ 5. If you wished to refer to the fourth paragraph of the judgment, the correct citation is [2018] EWCA Civ 5 at [4]. The neutral citation must always be used on at least one occasion when the judgment is cited before a court.

Case reference

Each case is given a reference(s) to explain exactly where it can be found in a law report(s). This reference consists of a series of letters and numbers that follow the case name. The pattern of this reference varies depending on the law report being referred to. The usual format is to follow the name of the case by:

A year. Where the date reference tells you the year in which the case was decided, the date is normally enclosed in round brackets (often where the reference includes a volume number). If the date is the year in which the case is reported, it is given in square brackets. The most common law reports tend to use square brackets.

A volume number. Not all law reports have a volume number; sometimes they simply identify their volumes by year.

The law report abbreviation. Each series of law reports has an abbreviation for its title so that the whole name does not need to be written out in full. The main law reports and their abbreviations are as follows:

All England Law Reports	(All ER)
Appeal Cases	(AC)
Chancery Division	(Ch D)
Criminal Appeal Reports	(Cr App R)
Family Division	(Fam)
King's Bench Division	(KB)
Queen's Bench Division	(QB)
Weekly Law Reports	(WLR)

A page number. This is the page at which the report of the case commences. For example, ***Cozens* v *Brutus*** [1973] AC 854 means that the case was reported in the Appeal Cases law report in 1973 at page 854; ***DPP* v *Hawkins*** [1988] 1 WLR 1166 means that the case was reported in the first volume of the Weekly Law Reports of 1988 at page 1166; and ***R* v *Angel*** (1968) 52 Cr App R 280 means that the case was reported in the 52nd volume of the Criminal Appeal Reports at page 280.

These references can be used to go to find and read the case in a law library which stocks the relevant law reports. This is important as a textbook can only provide a summary of the case and has no legal status in itself – it is the actual case which contains the law.

Where a case has been decided after the Practice Direction of 2001 introducing neutral citations for the Court of Appeal and Administrative Court, the neutral citation will appear in front of the law report citation. For example: ***Brown*** **v** ***Smith*** [2004] EWCA Civ 5, [2004] QB 432, [2004] 3 All ER 21.

Introduction

This introduction discusses:

- the principle that too much power should not be invested in the hands of a single person or body (known as the separation of powers);
- the supremacy of Parliament; and
- the rule of law, which means that the state should govern according to agreed rules.

The legal system in context

This book examines the legal system of England and Wales, looking at how our law is made and applied. This introduction will make many references to the inescapable ***R (Miller)* v *The Prime Minister*** [2019] UKSC 41 judgment delivered by the Supreme Court in 2019, which has helpfully demonstrated the application of many principles that will be addressed here. We start with a quote from paragraph 1 of ***Miller*** about the strength of the judicial system, which speaks volumes:

> It arises in circumstances which have never arisen before and are unlikely ever to arise again. It is a 'one off'. But our law is used to rising to such challenges and supplies us with the legal tools to enable us to reason to a solution.

To understand the legal system, however, you first need to know something about the context in which this legal system is operating: the constitution. A constitution is a set of rules which details a country's system of government; in most cases it will be a written document, but in some countries, including Britain, the constitution cannot be found written down in one document, and is known as an unwritten constitution.

Constitutions essentially set out broad principles concerning who makes law and how, and allocate power between the main institutions of the state – Government, Parliament and the judiciary. They may also indicate the basic values on which the country should expect to be governed, such as the idea that citizens should not be punished unless they have broken the law, or that certain rights and freedoms should be guaranteed, and the state prevented from overriding them.

The unwritten constitution

Britain is very unusual in not having a written constitution – every other Western democracy has one. In many cases, the document was written after a major political change, such as a revolution or securing independence from a colonial power. The fact that the British constitution is not to be found in a specific document does not mean that we do not have a constitution: if a country has rules about who holds the power to govern, what they can and cannot do with that power, and how that power is to be passed on or transferred, it has a constitution, even though there is no single constitutional document.

In the ***Miller*** judgment at paragraph 38, Lady Hale summarises the position that:

> [a]lthough the United Kingdom does not have a single document entitled "The Constitution", it nevertheless possesses a Constitution, established over the course of our history by common law, statutes, conventions and practice. Since it has not been codified, it has developed pragmatically, and remains sufficiently flexible to be capable of further development. Nevertheless, it includes numerous principles of law, which are enforceable by the courts in the same way as other legal principles. In giving them effect, the courts have the responsibility of upholding the values and principles of our constitution and making them effective.

In other words, that we do not have a single document containing all the vast principles does not matter as we still have a Constitution which has been built upon over a number of years and is practical as a result of being formed in this way and indeed flexible to be responsive to modern problems such as the attempt to prorogue Parliament in 2019.

Having said that, the exact details of some areas of our constitution are subject to debate. This is because its sources include not only Acts of Parliament and judicial decisions, which are of course written down (although not together in one document), but also what are known as conventions. Conventions are not law, but are long-established traditions which tend to be followed, not because there would be any legal sanction if they were not, but because they have simply become the right way to behave. In this respect they are a bit like the kind of social rules that most people follow – for example, it is not against the law to pick your nose in public, but doing so usually invites social disapproval, so we generally avoid it. In the same way, failing to observe a constitutional convention is not against the law, but provokes so much political disapproval that conventions generally are followed, and most people concerned would see them as binding.

An example of this source of law can be found in the 2019 ***Miller*** judgment at paragraph 30:

> First, the power to order the prorogation of Parliament is a prerogative power: that is to say, a power recognised by the common law and exercised by the Crown, in this instance by the sovereign in person, acting on advice, in accordance with modern constitutional practice. It is not suggested in these appeals that Her Majesty was other than obliged by constitutional convention to accept that advice.

Some other well-established examples of conventions are that the Queen does not refuse to give her consent to Acts of Parliament; judges do not undertake activities associated with a political party; and the Speaker of the House of Commons does his or her job impartially, despite being a member of one of the parties represented in the House.

Because conventions are not law, they are not enforced by the courts; but someone who has broken a convention may end up being forced to resign as a result of the disapproval it causes.

Three basic principles underlying the British constitution are the separation of powers, the supremacy of Parliament and the rule of law.

The separation of powers

One of the fundamental principles underlying our constitution is that of the separation of powers. According to this principle, developed by the eighteenth-century French philosopher, Montesquieu (see Cohler *et al.*, 1989), all state power can be divided into three types: executive, legislative and judicial. The executive represents what we would call the Government and its servants, such as the police and civil servants; the legislative power is Parliament; and judicial authority is exercised by the judges.

The basis of Montesquieu's theory was that these three types of power should not be concentrated in the hands of one person or group, since this would give them absolute control, with no one to check that the power was exercised for the good of the country. Instead, Montesquieu argued, each type of power should be exercised by a different body, so that they can each keep an eye on the activities of the other and make sure that they do not behave unacceptably.

The executive's role (in other words the Government) is to enact the legislation made by the legislature (Parliament), and the judiciary's role (the courts) is to interpret the legislation as produced by the legislature and implemented by the executive.

Montesquieu believed that England, at the time when he was writing, was an excellent example of this principle being applied in practice. The heavy weight attached to this very

fundamental principle has been prominently highlighted at paragraph 34 in the 2019 ***Miller*** judgment:

> [I]f the issue before the court is justiciable, deciding it will not offend against the separation of powers. As we have just indicated, the court will be performing its proper function under our constitution. Indeed, by ensuring that the Government does not use the power of prorogation unlawfully with the effect of preventing Parliament from carrying out its proper functions, the court will be giving effect to the separation of powers.

The world's attention was on the outcome of the ***Miller*** judgment and the Supreme Court was not afraid to discuss the application of the separation of powers at work in modern times and offer a very public proclamation of observance and relevance of the separation of powers in this instance.

The supremacy of Parliament

A second fundamental principle of our constitution has traditionally been the supremacy of Parliament (also called parliamentary sovereignty). Now the profile of this principle has been considerably raised in recent times due to Brexit. It is clear that it has different meanings to different people and that it is misunderstood in many quarters.

Helpfully the most recent and public iteration of it has been set out in paragraph 41 of the ***Miller*** judgment, explaining this fundamental principle of our constitutional law:

> [T]he principle of Parliamentary sovereignty: that laws enacted by the Crown in Parliament are the supreme form of law in our legal system, with which everyone, including the Government, must comply. However, the effect which the courts have given to Parliamentary sovereignty is not confined to recognising the status of the legislation enacted by the Crown in Parliament as our highest form of law. Time and again, in a series of cases since the 17th century, the courts have protected Parliamentary sovereignty from threats posed to it by the use of prerogative powers, and in doing so have demonstrated that prerogative powers are limited by the principle of Parliamentary sovereignty.

What it means is that Parliament is the highest source of English law; so long as a law has been passed according to the rules of parliamentary procedure, it must be applied by the courts. The legal philosopher, Dicey (1982), famously explained that according to the principle of parliamentary sovereignty Parliament has 'under the English Constitution, the right to make or unmake any law whatever; and, further, that no person or body is recognised by the law of England as having a right to override or set aside the legislation of Parliament'. So if, for example, Parliament had passed a law stating that all newborn boys had to be killed, or that all dog owners had to keep a cat as well, there might well be an enormous public outcry, but the laws would still be valid and the courts would, in theory at least, be obliged to uphold them. The reasoning behind this approach is that Parliament, unlike the judiciary, is democratically elected, and therefore ought to have the upper hand when making the laws that every citizen has to live by.

Parliament is the supreme legal authority which can create and end any law; any law that it creates must be applied by the courts. Parliament has however passed laws that to some degree impact on its sovereignty, such as devolution, the Human Rights Act, the UK's entry into the EU and the decision to establish a UK Supreme Court in 2009. These developments should not be understood in a way that undermines parliamentary sovereignty as Parliament could repeal these laws when it decides.

This approach of parliamentary sovereignty is unusual in democratic countries. Most comparable nations have what is known as a Bill of Rights. This is a statement of the basic rights which citizens can expect to have protected from state interference; it may form part of a written constitution, or be a separate document. In many countries, the job of a Bill of Rights is done by incorporating into national law the European Convention on Human Rights, an international treaty which was agreed after the Second World War, and seeks to protect basic human rights such as freedom of expression, of religion and of movement. A Bill of Rights takes precedence over other laws, and the courts are able to refuse to apply legislation which infringes any of the rights protected by it.

Although Britain is one of the original signatories of the European Convention on Human Rights, for many years it was not incorporated into English law. Parliament has since passed the Human Rights Act 1998, which came into force in October 2000. This Act at last incorporates the Convention into domestic law, but it does not give the Convention superiority over English law. It requires that, wherever possible, legislation should be interpreted in line with the principles of the Convention, but it does not allow the courts to override statutes that are incompatible with it, nor does it prevent Parliament from making laws that are in conflict with it.

Section 19 of the Act requires that when new legislation is made, a Government Minister must make a statement before the second reading of the Bill in Parliament, saying either that in their view the provisions of the Bill are compatible with the Convention or that, even if they are not, the Government wishes to proceed with the Bill anyway. Although the implication is obviously that, in most cases, Ministers will be able to say that a Bill conforms with the Convention, the Act's provision for the alternative statement confirms that parliamentary supremacy is not intended to be overridden. The Act does make one impact on parliamentary supremacy, though a small one: s. 10 allows a Minister of the Crown to amend by order any Act which has been found by the courts to be incompatible with the Convention, whereas normally an Act of Parliament could only be changed by another Act. However, there is no obligation to do this and a piece of legislation which has been found to be incompatible with the Convention would remain valid if the Government chose not to amend it.

An interesting and unusual view of the present constitutional position has been put forward by John Laws (1998), writing in the academic journal *Public Law*. He suggests that, even without a Bill of Rights, it can be argued that Parliament is not quite so all-powerful as traditional constitutional doctrine would suggest. His point is that Parliament draws its power from the fact that it is democratically elected: we accept its authority to make law because we all have a say in who makes up Parliament. Therefore, says Laws J, it must follow that Parliament's power is restricted to making laws which are consistent with democracy, and with the idea that if we are all entitled to a vote, we must also be entitled to a certain minimum level of treatment. That would mean that our example of a law that all newborn boys had to be killed, which would clearly conflict with this entitlement, might actually be beyond Parliament's law-making powers and, according to Laws J, the courts, therefore, would be constitutionally entitled to refuse to uphold it. This view has not been tested by the courts, but it certainly provides an interesting contribution to the debate.

In 1998, some important constitutional changes were made which passed some of the powers of the Westminster Parliament to new bodies in Scotland and Northern Ireland. The new Scottish Parliament, created by the Scotland Act 1998, can make laws affecting Scotland only, on many important areas, including health, education, local government, criminal justice, food standards and agriculture, though legislation on foreign affairs, defence, national security, trade and industry and a number of other areas will still be made for the whole of the UK by the Westminster Parliament. In September 2014 a referendum was held in

Scotland, asking its populace whether they would want to remain part of the UK or declare independence. Following a vote to remain part of the UK, further powers were promised to the Scottish Parliament, including full control over taxation. The Northern Ireland Act 1998 similarly gives the Northern Ireland Assembly power to make legislation for Northern Ireland in some areas, though again, foreign policy, defence and certain other areas are still to be covered by Westminster.

In the same year, the Government of Wales Act established a new body for Wales, the Welsh Assembly but, unlike the other two bodies, the Welsh Assembly has only limited powers to make primary legislation; legislation made in Westminster will continue to cover Wales. However, the Welsh Assembly is able to make what is called delegated legislation (discussed in Chapter 4).

Membership of the European Union is the arena in which parliamentary sovereignty seems to be most confusing and/or misunderstood. The UK's membership of the EU left the fundamental principle of parliamentary sovereignty intact. This was the conclusion of the Supreme Court in ***R (on the application of Miller and Dos Santos*** **v** ***Secretary of State for Exiting the European Union*** (2017). The Supreme Court ruled that Government Ministers could only withdraw the United Kingdom from the European Union after Parliament had passed an Act of Parliament giving the Ministers the authority to do so. In March 2017, the European (Notification of Withdrawal) Act 2017 was passed allowing the UK to formally trigger the withdrawal process through Article 50.

Nevertheless, it has become quite commonplace to hear from 'Brexiteers' that they would like the UK to have its sovereignty back. This is to say that, the UK should be governed by UK law. This statement needs to be juxtaposed with the contention that, even if it can be said that sovereignty has been limited by the UK's accession to the EU, has this been to the UK's detriment and is the discussion about sovereignty mere propaganda to stir up publicity?

When the UK acceded to the EU in 1973, Parliament agreed to limit its sovereignty in matters governed by EU law whereas all other matters continued to be governed by national law unless this would present a conflict in which case, EU law should take precedence.

The Court of Justice of the European Union in ***Amministrazione delle Finanze dello Stato*** **v** ***Simmenthal SpA*** (1978) made clear that:

> Every national court must . . . apply community law in its entirety . . . and must accordingly set aside any provision of national law which may conflict with it . . . [A]ccordingly any provision of a national legal system which might impair the effectiveness of community law by withholding from the national court having jurisdiction to apply such law the power to do everything necessary at the moment of its application to set aside national legislative provisions which might prevent community rules from having full force and effect are incompatible with those requirements which are the very essence of community law.

This means that wherever there is a conflict between EU and national law, EU law must take priority.

While there are divergent views on the position of the UK's sovereignty, it is the case that EU law has force only because an Act of Parliament, namely the European Communities Act 1972, has deemed it so. Therefore, only another Act of Parliament can change this position. Presently this is being done through the enactment of The European Union (Withdrawal) Act 2018 which sets out that the European Communities Act 1972 will be repealed on exit day. The UK just needs to determine when exit day will be! At the time of writing, exit day will be 31 January 2020 unless matters change and a further extension to Brexit needs to be negotiated. The Prime Minister of the day has remained steadfast that Brexit will happen.

Looking back, the decision to join the EU was a conscious one and not something that was imposed upon the UK. It was not something taken from us but rather something that the UK determined would be beneficial for the whole nation. At any rate, we are where we are today and the UK has shown its supremacy by determining that only by an Act of Parliament can it leave the UK. That is what was determined by the decision in ***Miller***; the Government of the day could not by itself, make such a determination.

Further unprecedented times from a constitutional point of view continue. Rather extraordinary constitutional circumstances have arisen thanks to Brexit. Three of the most recent ones are: prorogation, the implementation of the Fixed Term Parliaments Act and the Standing Order No. 24 (SO24) that allows MPs to take control of the Parliamentary timetable.

Prorogation

Prorogation is the term for the formal end of a parliamentary session. Parliament stands 'prorogued' between the end of one session and the State Opening of Parliament which marks the beginning of a new session.

In the distant past, prorogation was used to control Parliament so that it was *summoned* for when it was needed to pass certain laws such as in relation to taxes, and *prorogued* to limit its powers and activities. One may argue that this was an abuse of the separation of powers. In modern times, prorogation has been something of a perfunctory nature, which sees a parliamentary session prorogued but then opened a few days later. The important point to note is that when a parliamentary session closes, any Government business ceases. In 2019, Parliament was unlawfully prorogued on the evening of 9 September and was due to be reopened on 14 October when the new Queen's Speech was scheduled to be held. The timing of this move could not have been more controversial. Gina Miller once again took to the courts to contest the Prime Minister's decision to prorogue Parliament in a time that she described as being one of acute political crisis.

There are many important facets of this legal challenge, which include the fact that the challenge was crowdfunded through 'Gina Miller's Legal Battle to stop Johnson Proroguing Parliament'. This was an extraordinarily high-profile case and the level and speed at which support was given by the public demonstrates how interested and invested the public is in its legal and political system. But one may doubt why she funded the action through such means when she has the means to fund such legal action personally. Why did she bother to go through the crowdfunding as a means of funding this legal action? The reason: gathering funds in this way engages with the public's interest in the outcome of the action. It gives them a sense of ownership of the outcome. It brings with it publicity on the widest scale. The outcome of the Brexit negotiations and any subsequent deal will unequivocally impact on us all, so in one way or another funding the action in this way must be appropriate.

Gina Miller's challenge was initially rejected and she amended her crowdfunding campaign to 'Gina Miller's Supreme Court battle against Boris Johnson in order to appeal the matter to the Supreme Court' for which leave was granted given how important this matter is. Proroguing of the Parliament on 9 September was announced on 28 August and the case was heard before the High Court on 6 September. This is an incredibly short space of time to produce an outcome of this level. The High Court gave leave to appeal directly to the Supreme Court, which once again happened by use of the leap-frog procedure so that the matter could speedily reach the highest court of the land.