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Chapter 1 : The three dimensions of the relationship between UK law and the ECHR â€“ Public Law for Ev

This chapter examines the sources of domestic law. There are two sources of law (primary sources and secondary sources). Primary sources are considered to be those 'authoritative' sources that are produced by the legal process itself.

Give your arguments for and against this view. Tajul Islam Diploma in Law Roll no: The philosopher Aristotle â€" B. He described a constitution as creating the frame upon which the government and laws of a society are built. British history that has led to a new beginning: The nearest Britain came to such an event after that was in the civil war in the mid 17th century. A document, called the Instrument of Government, was drawn up in , and would have provided the basis for the future government of the country without a monarchy but with matters firmly under the control of Parliament. However, this was abandoned following the restoration of the monarchy in Professor King is his Hamlyn Lecture offered the following definition: A constitution is a thing antecedent to a government, and a government is only the creature of a constitution. Since , there has been no break in its constitutional history, apart from the constitutional upheavals of the late 17th century. Instead of the constitution preceding and making the government, the arrangements for government came into being and subsequently developed. In other words, the British constitution was not made, it has grown â€" Sir Ivor Jennings. Here are some of the characteristic of UK Constitution: The constitution is flexible and based on continuity of development. In the absence of a written constitution having the status of fundamental, or higher law, the concept of Parliamentary sovereignty or legislative supremacy represents the cornerstone of the constitution. There is no strict separation of powers between the executive, legislature and judiciary, although a separation of functions exists and the concept retains importance under the constitution. The United Kingdom has a constitutional monarchy. The United Kingdom is a unitary, as opposed to a federal state 6. The legislature is bicameral in nature. The judiciary is independent. Source of UK constitution We can now identify the sources of the British constitution, both legal and non-legal, as follows: The people who play crucial role for constitution are the crown, the prime minister, minister, members of the commons and lords and the judges. The constitution of UK is a written one. This is one of the most controversial issues regarding the constitution of UK. Accordingly, it is strictly speaking more accurate to describe the constitution as not codified. A written constitution is a codified constitution in which key constitutional provisions are collected within a single document, it is commonly known as written constitution. In a codified constitution the document itself is authoritative in the sense that it constitutes higher law. The constitution binds all political institutions, including those who make ordinary law. The provisions of the constitution are all said to be entranced. This means that they are difficult to amend and abolish. Written source of the constitution: Acts of Parliament 2. European Union law 3. Scholarly Writings Acts of parliament Acts of parliament is the highest form of law within the United Kingdom. Over the centuries there have been many Acts of Parliament which have been of fundamental constitution importance. This Act was enacted to protect citizens from arbitrary power and guarantee the right to a fair and trail by the jury. This act united England and Scotland under a single Parliament. The House of Commons is more supreme than the House of Lords. Community law was enforceable in United Kingdom. This Act incorporates most of the rights and freedoms guaranteed under the European Convention on Human Rights into domestic law. This Act removes the right of most hereditary peers to sit and vote and a second stage of reform is planned, although its final form remains unknown at the time of writing. This includes Police Acts, Public Order Acts and other Acts which regulate state power and define the scope of civil liberties. Under this Act the Supreme Court was established; separate from the Parliament. Under this Act it introduced fixed-term elections for the first time to the Westminister Parliament. Under the provisions of the Act, parliamentary elections must be held every five years, beginning in European Union law There are two principal forms of European law which are sources of the constitution. It was to be before Britain became a member of the Community as it then was, now European

Union. The Human Rights Act now enables most Convention rights to be enforced within the domestic legal system rather than in Strasbourg. They were designed in this case to impose supra-national controls over the raw materials of war and to provide for a common market for the free movement of goods, services, capital and workers. Common law may be defined as those rules which are product of slow process of long historical growth being based upon customs and traditions. These principles are not set down in any statute or ordinance. The Courts recognize these principles. The prerogatives of the crown, the right of trial by jury the right of freedom of speech rest almost entirely on common law. Historically important court judgments include those in the Case of Proclamations, the Ship money case and Entick v. Carrington, all of which imposed limits on the power of the executive. A constitutional precedent applicable to British colonies is Campbell v. Hall, which effectively extended those same constitutional limitations to any territory which has been granted a representative assembly. This is an example though of where the convention has failed to apply in modern government. Works of authority on the United Kingdom constitution are books written by constitutional theorists that are considered to be authoritative guides to the UK constitution. The three most prominent works of authority are: Unwritten constitution refers to an uncodified set of laws established through traditional practice. They are means of many laws passed over time to decide how things are run in the government. The UK constitution is based on unwritten constitution. Unwritten source of the constitution: Dicey Convention are those customs or understanding as to the mode in which various members of sovereign legislative body should exercise their discretionary authority. The substantial portion of U. Constitution is based on convention. These are not codified in any book of law. The Courts do not enforce conventions but however, these rules are recognized by the constitution. Rules of the constitutional behavior which is considered to be binding by and upon those who operate the constitution but which are not enforced by the law Courtsâ€¦nor by the presiding officers in the House of Parliament. The prime minister must be the leader of the political party winning a general election. The monarchy has a significant constitutional presence in these and other areas, but very limited power, because the prerogative is nowadays in the hands of the prime minister and other ministers or other government officials. Certain powers pre-dating the establishment of the present parliamentary system are still formally retained by the Queen. In practice almost all of these powers are exercised only on the decision of Ministers of the Crown the Cabinet. These powers, known as the royal prerogative, include the following: However, a significant element is unwritten and indeed not law, being the Conventions of the constitution, which oil the wheels and plug the gaps. Vitally important matters like the existence of the Prime Minister and the real powers of the Queen are governed by convention.

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Chapter 2 : Constitution of the United Kingdom - Wikipedia

20 2 DOMESTIC SOURCES OF LAW: PARLIAMENTARY MATERIAL Domestic law This chapter discusses the sources of domestic law and we need to be clear at the very beginning of this chapter what that means.

Mark Elliott on December 5, Lectures by senior judges on the relationship between UK and European law are rather like the proverbial bus: In the last few weeks, the nature of that relationship has been considered, extra-judicially, by Lord Sumption on which see this post , Laws LJ on which see this post , Lady Hale and, most recently, Lord Judge , who retired earlier this year as Lord Chief Justice. A significant difficulty with the presentation of this matter in the mediaâ€"and, to a much more limited extent, its treatment in the recent judicial contributions to the debateâ€"is a tendency to run together three interrelated but simultaneously distinct issues. In the interests of promoting greater clarity of debate, this post seeks to disaggregate the domestic law position, the international law position, and the wider political issues. Domestic law At the domestic level, two points are particularly germane. First, it is a general principle of UK law that courts will seek, where possible, to interpret domestic legislation compatibly with the international obligations into which the UK has entered. This is based upon the reasonable assumption that Parliament is not lightly to be taken to have legislated so as to place the UK in breach of those obligations. Second, that general principle is given specific forceâ€"and perhaps modifiedâ€"by section 2 1 of the Human Rights Act A court or tribunal determining a question which has arisen in connection with a Convention right must take into account any â€¦ judgment, decision, declaration or advisory opinion of the European Court of Human Rights, â€¦ whenever made or given, so far as, in the opinion of the court or tribunal, it is relevant to the proceedings in which that question has arisen. And in fact, Ullah and the mirror principle notwithstanding, it is also clear thatâ€"as Roger Masterman explains in an excellent post on the UK Constitutional Law Blogâ€"UK courts do not believe that their jurisprudence must invariably track precisely the Strasbourg case law. Where do we go from here? It would, I believe, make sense for s 2 1 of the Act to be amended, to express a that the obligation to take account of the decisions of the Strasbourg Court did not mean that our Supreme Court was required to follow or apply those decisions, and b that in this jurisdiction the Supreme Court is, at the very least, a court of equal standing with the Strasbourg Court. As well as arguing that UK courts are not obliged to jump when Strasbourg tells it to and that the HRA should make this even clearer than it presently does , Lord Judge says that British membership of the ECHR system does nothing to detract from the authorityâ€"the sovereigntyâ€"of the UK Parliament: The consequence of the sovereignty of Parliament is that whether they like it or not, judges are bound to apply an Act of Parliament even where that Act provides for the application of judicial authority from a foreign court. This was the result of the European Communities Act The position of the judiciary is frequently misunderstood. Judges have no choice. Our judiciary cannot set aside the law enacted by Parliament, nor suspend it nor dispense with it. To do so would contravene the Bill of Rights. Exactly the same principle applies to the enactment of the Human Rights Act The courts are required by domestic legislation to implement the European Convention of Human Rights just because the Human Rights Act is legislation enacted by Parliament. As matter of purely domestic law, the analysis if we accept an unvarnished account of parliamentary sovereignty is unassailable. On this view which, I note in passing, overlooks the royal prerogative as a distinct source of authority , any authority enjoyed in the UK by other bodies of lawâ€"whether deriving from the EU, the ECHR or elsewhereâ€"is enjoyed only because, to the extent, and on the terms that Parliament ordains. In my view, the Strasbourg Court is not superior to our Supreme Court. It is not, and it is important to emphasise, that it has never been granted the kind of authority granted to the Supreme Court in the United States of America, authority, let it be emphasised, which is well established in the constitutional arrangements of that country. It is perfectly true that the UK Supreme Court, as the court of final appeal, is the highest judicial authority in the United Kingdom. However, it is equally true that the ECtHR is the body with ultimate authority to decide what the Convention means. As Lord Bingham

put it in Ullah: Yet the difficulty with this analysis is that those spheres of influence are not mutually exclusive. If, however, there is an irreconcilable difference of opinion, there must be some way of determining which view prevails. Article 46 1 ECHR says that: The alternative is to acknowledge that, for as long as the UK is a party to the ECHR and a member of the EU, its legal freedomâ€”viewed as a construct not only of domestic but also of international lawâ€”is curtailed. This does not make the purely-domestic analysis irrelevant: Nor does it make less worthwhile attempts to understand how we account, in domestic terms, for the influence of international norms upon our legal system. The point remains, however, that such domestic analysis must be situated within a wider context that takes due account of the international obligations by which, for the time being, the UK is legally bound. A separate question is whether the current position is one that ought to obtain. On this matter, Lord Judge said: My profound concern about the long-term impact of these issues on our constitutional affairs is the democratic deficit. As I emphasised at the outset, in our constitutional arrangements Parliament is sovereign. It can overrule, through the legislative process, any decision of our Supreme Court. In relation to the Strasbourg Court, and the Convention, is this principle negatived by our accession to the treaty obligation contained in Article 46? Can that possibly be required if Parliament disagrees? For me the answer is, of course not. But these observations clearly indicate the intended route, and the future is long as well as short. The issue upon which Lord Judge is touching here is the extent to which judicial review of legislation on human-rights grounds can be properly regarded as dialogic. Viewed from a purely domestic perspective, when a UK court issues a declaration of incompatibility under section 4 of the HRA, it is open to Parliament to ignore it. In this sense, Parliament can have the last word. Equally, when a UK court interprets legislation compatibly with the ECHR pursuant to section 3 of the HRA, Parliament can legislate so as to reverse the effect of such an interpretation. Again, Parliament can have the final say. Once again, however, the picture changes markedly when the blinkers are removed and the international dimension is properly appreciated. There is nothing startling about this: Looked at in this way, judicial review on human-rights grounds is anything but dialogic. Unless the UK Parliament is prepared to act in a way that places the UK in breach of its international obligations, it is forced to concede the final word to Strasbourg. For one thing, it invites deeper questions about what, in the first place, we mean about democracy. It does, however, mean that the form of constitutional review to which UK legislation is subject is far stronger in form than is generally supposed. This conceals an important paradox lying at the heart of the present debate: For there to be an honest and effective debate, both sides must first acknowledge that, for the time being at least, European law has a constraining effect upon the United Kingdom than cannot be neutralised by reliance upon constructs of purely domestic constitution law. Only then can the appropriateness of that constraining effect be properly challenged or defended as the case may be. All views on this blog are expressed in a purely personal capacity.

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Chapter 3 : Nature and Sources of the UK Constitution | Atikul Hridoy - blog.quintoapp.com

Sources of UK Law L a w L i b r a r i a n - A u g u s t 2 0 1 1 legislation referred to and other key features Introduction Primary Sources o Refers to the law itself - the original and authoritative statements of law.

House of Representatives Portfolio: Infrastructure and Regional Development Commencement: On the day of Royal Assent. The National Law is intended to replace current State and Territory laws governing the operational safety of commercial vessels, in particular their construction, operation and crew qualification standards. Although it is being developed using these laws as a base, the National Law will be established through separate legislation in each jurisdiction and will be applied as if it were a law of that jurisdiction. This will ensure national coverage and allow any standards, rules and subordinate legislation such as regulations and Marine Orders to have consistent application and effect around the country. The intention is that all domestic commercial vessels that travel beyond nautical miles i. Although such vessels will be covered by the proposed Navigation Act , they will be exempted from the application of that legislation on the condition that they comply with the National Law and relevant standards. This does not include vessels that undertake international voyages i. These vessels will be subject to the proposed Navigation Act without exception. It will ensure that nationally agreed standards - the NSCV - are applied consistently around the country. The Committee noted the following in The question of accountability arrangements in relation to decisions made by delegates who are officers of a State or Territory agency is of particular interest to the Committee. In relation to this issue, the explanatory memorandum makes two main points at page First, the National Regulator will provide directions to promote appropriate standards and consistency. Secondly, decisions made by officers who are employed by the States and Territories will not be excluded from administrative law accountability mechanisms. However, it seems probable that the provision means that in litigation either the principal or delegate could be nominated as the defendant. Furthermore, although there are older cases which cast doubt on the extent to which State decision-makers exercising Commonwealth powers would be subject to judicial review jurisdiction under s 75 v of the Constitution and section 39B of the Judiciary Act , it is doubtful whether this position would be maintained where a state officer exercises powers delegated to them under Commonwealth law. For these reasons, the Committee leaves to Senate as a whole the question of whether the proposed approach is appropriate. In light of the above explanation, the committee leaves the question of whether the proposed approach is appropriate to the consideration of the Senate as a whole.

Chapter 4 : Domestic Sources of Law:: parliamentary material - Law Trove

Extrinsic material: Material that does not form part of an Act but that may assist in the interpretation of that Act. Such material includes explanatory memoranda, reports of law reform commissions and parliamentary committees, and second reading speeches.

Introduction Ghana attained independence from colonial British rule on March 6, On July 1, , it became a republic, the first of four civilian republics that were interspersed with periods of military rule. On January 7, , the Fourth Republic was inaugurated, complete with a new Constitution. The law and legal system in Ghana is heavily marked by its history. In , the Portuguese lost Elmina to the Dutch. The Portuguese left the Gold Coast permanently. The next years were defined by conflict and diplomatic maneuvers, as the various European powers, including the British, struggled to maintain or establish a position of dominance in the profitable trade along the Gold Coast. Both the Dutch and the British formed companies to advance their African ventures and to protect their coastal establishments. The British gained possession of all Dutch coastal forts by the last quarter of the nineteenth century and became the dominant European power on the Gold Coast by The British involvement in the Gold Coast was initially through their merchants and traders. It was not until that Captain Hill, as Governor, signed a treaty with the coastal Fanti chiefs to keep the trade routes open and to protect them from Ashanti incursion. This treaty, the Bond of , also required the chiefs to submit serious crimes such as murder and robberies to British jurisdiction. This laid the legal foundation for subsequent colonization of the coastal area. British control was gradually extended over the other small African states or communities on the coast. In time, this system of irregular jurisdiction was formalized with the establishment of a Supreme Court on the Gold Coast, in , as part of the West African Settlements. Section 1 of the British Settlements Act, Section 14 of the said Ordinance stipulated that: This was in conformity with the emerging British colonial policy of indirect rule. Section 19 reads, in part, as follows: The legal pluralism that was recognized under the Supreme Court Ordinance still persists today. It is moderated by elaborate choice of law rules. The current choice of law rules are stated in Section 54 of the Courts Act No. The Constitution; Enactments made by or under the authority of the Parliament established by the Constitution [or legislation]; Any Orders, Rules and Regulations made by any person or authority under a power conferred by this Constitution [or subsidiary or subordinate legislation]; The existing law or the written and unwritten laws of Ghana that existed immediately before the coming into force of the Constitution; and The common law [or the English common law, English doctrines of equity, and the rules of customary law]. The Constitution Since the first republican Constitution in , Ghana has had three other Constitutions. These are the , and Constitutions. The earlier constitutions can be located in the historic constitutions volume of Constitutions of Countries of the World. New York, Oceana, The current Constitution is available in the modern constitutions volumes of Constitutions of the Countries of the World. The current Constitution is available free of charge online see also here. In January , the Government of Ghana established a Constitutional Review Commission to conduct a consultative review of the Constitution. The Commission submitted its report on December 20, On October 2, , the Attorney-General of Ghana, inaugurated a five-member Constitutional Implementation Committee charged with the responsibility of preparing the people for a referendum on the entrenched provisions of the Constitution as well as facilitating the passage of bills to amend the non-entrenched provisions of the Constitution. They would undertake the latter by developing legislative proposals for legislative changes recommended by the Constitutional Review Commission. The legality of the Constitutional Review Commission and the activities of the Constitutional Implementation Committee were tested in a lawsuit. However, in October , the Supreme Court of Ghana, by a majority, dismissed the suit, Asare v. Attorney General, as meritless. Legislation and Legislative History Ghana is a unitary state with a unicameral legislature. The Constitution provides for one Parliament , which exercises all primary legislative functions. There is a Council of State, which is an advisory body to the President. The President may refer bills or even laws to the Council of State for its comments.

Parliament, however, is only required to consider or reconsider such comments, and is not bound by them. According to Article 11 of the Constitution, no bill becomes law unless it has been published in the official gazette. The Ghana Gazette is thus an obvious source for locating legislation in Ghana. Ghana has ten regions. All regions are under the central government and no regional institution possesses any legislative authority. Colonial legislation was styled Ordinances. There is no jurisprudential basis for the differences in terminology. All laws continue to apply to the extent that they are not expressly repealed or abrogated. A bill may be introduced by a Minister of State or by a private Member of Parliament. In addition, the bill should be published in the Ghana Gazette at least fourteen days before the date of its introduction. The Gazette is, therefore, a source for locating bills or proposed legislation in Ghana. In general, a bill must go through certain stages before becoming law. Articles 4 through 6 of the Constitution mandate that a bill has to go through a first reading, after which it is referred to a committee of Parliament. This committee shall issue its report to the full house after considering representations from interested parties and the general public. The Standing Orders of the present Parliament require each bill to be subjected to a second and a third reading as well as a consideration stage. The second reading occurs after a bill has been referred to the appropriate parliamentary committee. The report of the committee, the bill and its explanatory memorandum shall be subjected to a full debate by the full house. It is at this stage that amendments may be entertained. If there are more than twenty proposed amendments to any bill at this stage, the bill has to undergo the winnowing process before the appropriate parliamentary committee. All bills move from then to the consideration stage where it is reviewed clause by clause. The third reading occurs after a bill has passed through the consideration stage. It is signified by a formal Motion and is not accompanied by a debate. Parliament shall reconsider this bill in the light of the comments by the President or the Council of State. Such a bill will need the favor of support from two-thirds of all members of Parliament to mandate a Presidential assent and become law. The debates of the committee of Parliament as well as those of the full house are recorded verbatim by the Hansard department of the Office of the Clerk of Parliament. These recordings and other documents of Parliament, including bills are published as Official Report or the Hansard of the Parliament of Ghana. It constitutes a rich source for the legislative history of the laws of Ghana. Official Compilations and Session Laws of Ghana During the colonial regime, the government, from time to time, would publish consolidated statutes in force as of a certain date. In , on the authority of the Revised Edition of the Laws Gold Coast Ordinance, , a Commissioner was appointed to prepare a revised edition of the laws of the Gold Coast, covering the period from to It was published in four volumes. Another revised edition was published in that extended the accumulation to That had nine volumes. Regrettably, that practice was not followed after independence except for the singular effort in with the publication of the Consolidated Acts of Ghana. In , an Index to the Statutes in Force was also published. The result is that it is often difficult for even lawyers to tell whether a statute or a particular section of a statute is in force. The Review of Ghana Law publishes a section, titled Statutory Intelligence, where it notes those statutes and sections of existing statutes that have been repealed or amended. It does the same for subsidiary legislation. In , Sozo Law Consult started the publication of a digest of laws passed each year, noting the new laws, amended laws and revoked laws. It is presently current up to This publication is called Legislative Watch. Sozo Law Consult, Successive Governments in Ghana have been concerned about the difficulty of tracking and locating the laws of Ghana. Until recently, the response was piece-meal, by passing legislation to identify laws that should be repealed or revoked. In , Government assumed a legislative obligation under the Laws of Ghana Revised Edition Act, Act , to revise, compile and publish a consolidated laws of Ghana as of January 1, It took nine years and two legislative amendments for Government to make good on this promise. It is in a loose-leaf format, allowing for annual updates by means of service issues. It includes a chronological index of statutes from to showing the action taken on each law. The following official sources exist for locating legislation in Ghana. Primarily they are only print sources: Laws of the Gold Coast: Government Printer, Consolidated Acts of Ghana. National Liberation Council Decrees. State Publishing Corporation, Laws and Decrees of the National Redemption Council. Ghana Publishing Corp, Acts of the Supreme

Military Council. Accra; Ghana Publishing Corp Information Services Department, Laws of Ghana Revised Edition , Ghana Statute Law Revision Commission,

Chapter 5 : Sources of international law - Wikipedia

S2(4) European Communities Act sets out, where discrepancies occur between UK domestic law and EU law, EU law overrides all UK domestic sources of law. Another source of law is Human Rights; the Human Rights Act came into force in October

Parliamentary sovereignty means judges cannot invalidate legislation. In the 19th century, A. Dicey , a highly influential constitutional scholar and lawyer, wrote of the twin pillars of the British constitution in his classic work Introduction to the Study of the Law of the Constitution These pillars are the principle of Parliamentary sovereignty and the rule of law. Parliamentary sovereignty means that Parliament is the supreme law-making body: There has been some academic and legal debate as to whether the Acts of Union place limits on parliamentary supremacy. Historically, "No Act of Parliament can be unconstitutional, for the law of the land knows not the word or the idea. For example, Parliament has the power to determine the length of its term. By the Parliament Acts and , the maximum length of a term of parliament is five years but this may be extended with the consent of both Houses. This power was most recently used during World War II to extend the lifetime of the parliament in annual increments up to Parliament also has the power to change the make-up of its constituent houses and the relation between them. Examples include the House of Lords Act which changed the membership of the House of Lords, the Parliament Acts and which altered the relationship between the House of Commons and the House of Lords, and the Reform Act which made changes to the system used to elect members of the House of Commons. The power extended to Parliament includes the power to determine the line of succession to the British throne. Parliament also has the power to remove or regulate the executive powers of the Monarch. In recent times the House of Commons has consisted of more than members elected by the people from single-member constituencies under a first past the post system. Following the passage of the House of Lords Act , the House of Lords consists of 26 bishops of the Church of England Lords Spiritual , 92 representatives of the hereditary peers and several hundred life peers. The power to nominate bishops of the Church of England and to create hereditary and life peers is exercised by the Monarch, on the advice of the prime minister. By the Parliament Acts and legislation may, in certain circumstances, be passed without the approval of the House of Lords. Although all legislation must receive the approval of the Monarch Royal Assent , no monarch has withheld such assent since Such a motion does not require passage by the Lords or Royal Assent. The House of Lords has been described as a "revising chamber". By the Constitutional Reform Act it has the power to remove individual judges from office for misconduct. Additionally, Dicey has observed that the constitution of Belgium as it stood at the time "comes very near to a written reproduction of the English constitution. These principles include equal application of the law: Another is that no person is punishable in body or goods without a breach of the law: Unity and devolution[edit] Main articles: England, Wales , Scotland and Northern Ireland. Parliament contains no chamber comparable to the United States Senate which has equal representation from each state of the USA , the Brazilian Senate, which has three senators from each state, or the German Bundesrat whose membership is selected by the governments of the States of Germany. Scotland, Wales and Northern Ireland have devolved legislatures and executives, while England does not. The authority of these devolved legislatures is dependent on Acts of Parliament and, although it is politically very unlikely, they can in principle be abolished at the will of the Parliament of the United Kingdom. In England the established church is the Church of England. In Scotland, Wales and Northern Ireland, there is no state church; in Wales and Northern Ireland their respective state churches were disestablished that is, they were not disbanded but had their "established" status abolished by the Welsh Church Act and the Irish Church Act In Scotland, its national church had long held its independence from the state, which was confirmed by the Church of Scotland Act England and Wales share the same legal system, while Scotland and Northern Ireland each have their own distinct systems. These distinctions arose prior to and were retained after the unions according to the terms of the Treaty of Union ,

ratified by the Acts of Union , and the Acts of Union The Scottish Parliament in Edinburgh is an institution created by recent devolution in the United Kingdom. Reforms since have decentralised the UK by setting up a devolved Scottish Parliament and assemblies in Wales and Northern Ireland. The UK was formed as a unitary state , though Scotland and England retained separate legal systems. Some commentators [33] have stated the UK is now a "quasi- federal " state: Attempts to extend devolution to the various regions of England have stalled, and the fact that Parliament functions both as a British and as an English legislature has created some dissatisfaction the so-called " West Lothian question ". European Union membership[edit] Main article: In his judgment in Factortame, Lord Bridge wrote: Thus, whatever limitation of its sovereignty Parliament accepted when it enacted the European Communities Act was entirely voluntary. Under the terms of the Act of it has always been clear that it was the duty of a United Kingdom court, when delivering final judgment, to override any rule of national law found to be in conflict with any directly enforceable rule of Community law. Thus there is nothing in any way novel in according supremacy to rules of Community law in those areas to which they apply and to insist that, in the protection of rights under Community law, national courts must not be inhibited by rules of national law from granting interim relief in appropriate cases is no more than a logical recognition of that supremacy.

Chapter 6 : Oxford Public International Law: I The Nature of International Law and the Concept of Sources

In summary, it is demonstrable that legislation introduced by Parliament is the most important domestic source of English Law. In there were 24 general public Acts of Parliament passed and 3, Statutory Instruments, having a direct effect on UK domestic legislation.

It requires the Court to apply, among other things, a international conventions, whether general or particular, establishing rules expressly recognized by the contesting states; b international custom, as evidence of a general practice accepted as law; c the general principles of law recognized by civilized nations; d subject to the provisions of Article 59, judicial decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law. This consensual view of international law was reflected in the Statute of the Permanent Court of International Justice , and was later preserved in Article 38 1 of the Statute of the International Court of Justice. It is also argued however that international treaties and international custom are sources of international law of equal validity; this is that new custom may supersede older treaties and new treaties may override older custom. Also, jus cogens peremptory norm is a custom, not a treaty. Nevertheless, treaty, custom, and general principles of law are generally recognized as primary sources of international law. Treaties as law[edit] Main article: Treaties Treaties and conventions are the persuasive source of international law and are considered "hard law. Treaties can also be legislation to regulate a particular aspect of international relations or form the constitutions of international organizations. Whether or not all treaties can be regarded as sources of law, they are sources of obligation for the parties to them. Article 38 1 a of the ICJ, which uses the term "international conventions", concentrates upon treaties as a source of contractual obligation but also acknowledges the possibility of a state expressly accepting the obligations of a treaty to which it is not formally a party. For a treaty-based rule to be a source of law, rather than simply a source of obligation, it must either be capable of affecting non-parties or have consequences for parties more extensive than those specifically imposed by the treaty itself. Thus, the procedures or methods by treaties become legally binding are formal source of law which is a process by a legal rule comes into existence: While the purpose is to establish a code of general application, its effectiveness depends upon the number of states that ratify or accede to the particular convention. Relatively few such instruments have a sufficient number of parties to be regarded as international law in their own right. Most multi-lateral treaties fall short of achieving such a near universal degree of formal acceptance and are dependent upon their provisions being regarded as representing customary international law and, by this indirect route, as binding upon non-parties. This outcome is possible in a number of ways: When the treaty rule reproduces an existing rule of customary law, the rule will be clarified in terms of the treaty provision. A notable example is the Vienna Convention on the Law of Treaties , which was considered by the ICJ to be law even before it had been brought into force. It is not always easy to identify when this occurs. Where the practice is less developed, the treaty provision may not be enough to crystallize the rule as part of customary international law. Alternatively, it is possible to regard the treaty as the final act of state practice required to establish the rule in question, or as the necessary articulation of the rule to give it the opinion juries of customary international law. Convention-based "instant custom" has been identified by the ICJ on several occasions as representing customary law without explanation of whether the provision in question was supported by state practice. This has happened with respect to a number of provisions of the Vienna Convention on the Law of Treaties If "instant custom" is valid as law, it could deny to third parties the normal consequences of non-accession to the The United Nations Charter[edit] Pursuant to Chapter XVI, Article of the United Nations Charter , the obligations under the United Nations Charter overrides the terms of any other treaty. Meanwhile, its Preamble affirms establishment of the obligations out of treaties and source of international law. Customary international law Article 38 1 b of the ICJ Statute refers to "international custom" as a source of international law, specifically emphasizing the two requirements of state practice plus

acceptance of the practice as obligatory or opinio juries save necessitatis usually abbreviated as opinion juries. Derived from the consistent practice of originally Western states accompanied by opinion juries the conviction of States that the consistent practice is required by a legal obligation , customary international law is differentiated from acts of comity mutual recognition of government acts by the presence of opinion juries although in some instances, acts of comity have developed into customary international law, i. Treaties have gradually displaced much customary international law. This development is similar to the replacement of customary or common law by codified law in municipal legal settings, but customary international law continues to play a significant role in international law. State practice[edit] When examining state practice to determine relevant rules of international law, it is necessary to take into account every activity of the organs and officials of states that relate to that purpose. There has been continuing debate over where a distinction should be drawn as to the weight that should be attributed to what states do, rather than what they say represents the law. In its most extreme form, this would involve rejecting what states say as practice and relegating it to the status of evidence of opinion juries. The principal means of contribution to state practice for the majority of states will be at meetings of international organizations, particularly the UN General Assembly , by voting and otherwise expressing their view on matters under consideration. Moreover, there are circumstances in which what states say may be the only evidence of their view as to what conduct is required in a particular situation. There has to be a sufficient degree of participation, especially on the part of states whose interests are likely to be most affected, [13] and an absence of substantial dissent. A rule may apply if a state has accepted the rule as applicable to it individually, or because the two states belong to a group of states between which the rule applies. Also, rules of the jus cogens have a universal character and apply to all states, irrespective of their wishes. Even within traditional doctrine, the ICJ has recognized that passage of a short period of time is not necessarily a bar to the formation of a new rule. Practice by international organizations[edit] It may be argued that the practice of international organizations, most notably that of the United Nations , as it appears in the resolutions of the Security Council and the General Assembly , are an additional source of international law, even though it is not mentioned as such in Article 38 1 of the Statute of the International Court of Justice. Article 38 1 is closely based on the corresponding provision of the Statute of the Permanent Court of International Justice , thus predating the role that international organizations have come to play in the international plane. Opinio juris[edit] A wealth of state practice does not usually carry with it a presumption that opinio juris exists. The fact that no nuclear weapons have been used since , for example, does not render their use illegal on the basis of a customary obligation because the necessary opinion juries was lacking. Jus cogens[edit] A peremptory norm or jus cogens Latin for "compelling law" or "strong law" is a principle of international law considered so fundamental that it overrides all other sources of international law, including even the Charter of the United Nations. The principle of jus cogens is enshrined in Article 53 of the Vienna Convention on the Law of Treaties: For the purposes of the present Convention, a peremptory norm of general international law is a norm accepted and recognised by the international community of States as a whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character. However, some define criminal offenses which the state must enforce against individuals. Generally included on lists of such norms are prohibitions of such crimes and internationally wrongful acts as waging aggressive war , war crimes , crimes against humanity , piracy , genocide , apartheid , slavery and torture. The evidence supporting the emergence of a rule of jus cogens will be essentially similar to that required to establish the creation of a new rule of customary international law. Indeed, jus cogens could be thought of as a special principle of custom with a superadded opinions juries. The European Court of Human Rights has stressed the international public policy aspect of the jus cogens. General principles of law[edit] The scope of general principles of law, to which Article 38 1 of the Statute of the ICJ refers, is unclear and controversial but may include such legal principles that are common to a large number of systems of municipal law. Given the limits of treaties or custom as sources of international law, Article 38 1 may be looked upon as a directive to the Court to fill any gap in the law and prevent a nonliquet by reference

to the general principles. In earlier stages of the development of international law, rules were frequently drawn from municipal law. In the 19th century, legal positivists rejected the idea that international law could come from any source that did not involve state will or consent but were prepared to allow for the application of general principles of law, provided that they had in some way been accepted by states as part of the legal order. Thus Article 38 1 c , for example, speaks of general principles "recognized" by states. An area that demonstrates the adoption of municipal approaches is the law applied to the relationship between international officials and their employing organizations, [26] although today the principles are regarded as established international law. The significance of general principles has undoubtedly been lessened by the increased intensity of treaty and institutional relations between states. Nevertheless, the concepts of estoppel and equity have been employed in the adjudication of international disputes. For example, a state that has, by its conduct, encouraged another state to believe in the existence of a certain legal or factual situation, and to rely on that belief, may be estopped from asserting a contrary situation in its dealings. However, the principles of estoppel and equity in the international context do not retain all the connotations they do under common law. The reference to the principles as "general" signify that, if rules were to be adapted from municipal law, they should be at a sufficient level of generality to encompass similar rules existing in many municipal systems. Principles of municipal law should be regarded as sources of inspiration rather than as sources of rules of direct application. It is difficult to tell what influence these materials have on the development of the law. Pleadings in cases before the ICJ are often replete with references to case law and to legal literature. Judicial decisions[edit] The decisions of international and municipal courts and the publications of academics can be referred to, not as a source of law as such, but as a means of recognizing the law established in other sources. In practice, the International Court of Justice does not refer to domestic decisions although it does invoke its previous case-law. There is no rule of stare decisis in international law. The decision of the Court has no binding force except between the parties and in respect of that particular case. Often the International Court of Justice will consider General Assembly resolutions as indicative of customary international law. The scholarly works of prominent jurists are not sources of international law but are essential in developing the rules that are sourced in treaties, custom and the general principles of law. This is accepted practice in the interpretation of international law and was utilized by the United States Supreme Court in The Paquete Habana case US at

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Chapter 7 : Domestic violence in Australiaâ€"an overview of the issues â€“ Parliament of Australia

Sources of law are the origins of laws, the binding rules that enable any state to govern its territory.. The term "source of law" may sometimes refer to the sovereign or to the seat of power from which the law derives its validity.

Section of the Constitution addresses the various circumstances in which international agreements or treaties are applicable in South Africa. This provision provides that as a general rule, a n international treaty that has been ratified and approved by the National Parliament, becomes locally enforceable by the courts as part of domestic law when it is transformed or incorporated into local law. Both transformation and incorporation are legislative measures, meaning that they involve the adoption of local legislation to give effect to the treaty in question. In the event of incorporation, the local legislation simply adopts the treaty in toto as being applicable as domestic law. Interestingly, section 4 specifies that a self-executing provision of an international agreement is applicable without transformation or incorporation, if it is approved by parliament and consistent with the Constitution. Some scholars have argued that the vagueness of what is meant by a self-executing provision may provoke debate. Customary international law refers to rules that are developed as the result of consistent widespread state practice, which practice is viewed as legally binding by those states. In addition, section of the Constitution obliges every court when interpreting legislation to prefer any reasonable interpretation of the legislation which is consistent with international law over any interpretation which is not. Importantly, Section 39 1 b of the Constitution obliges courts in South Africa to consider international law when interpreting the Bill of Rights of the Constitution. The Constitutional Court has held that reference to international law in this provision includes both binding as well as non-binding international law. Sources of Legislation Print form: Acts of Parliament are initially published in the official Government Gazette. The official version of an Act of Parliament is published in the Government Gazette. The Gazette is usually the only printed source of regulations - subordinate legislation issued by government ministers in terms of enabling statutes. Draft bills are occasionally published in the Gazette, but bills are issued as a separate series and obtainable from the Government Printer. The Gazette also includes proclamations, government notices, commencement dates of statutes, price regulation measures and industrial regulations. This is a loose-leaf publication of consolidated acts, kept by up-to-date by annual supplements. The index volume vol. The chronological index also lists repealed acts, with details of the repealing legislation. Although the full text of regulations is not reproduced in this work, there is a section containing references to regulations passed in terms of the acts. These references include the regulation gazette or the government notice number, the Government Gazette number and date of publication. Juta publishes an annual edition of its seven-volume set of consolidated statutes. Juta classifies the acts into 18 groups and subgroups according to their subject matter. The full text of principal acts is given, but amending acts appear in abbreviated form, because the amendments will have been incorporated into the relevant principal acts. Substantive provisions in amending acts are reproduced in full. The index volume provides alphabetical and chronological tables of statutes and an alphabetical index to groups and subgroups. Butterworths Regional Legislation Service: Loose-leaf service containing the acts and regulations of the nine provincial governments. Butterworths publishes selected acts as part of its Butterworths Legislation Service. This service is aimed at legal practitioners, and the acts selected tend to be those which are used in everyday legal practice and which change frequently e. This loose-leaf service is updated quarterly, and is thus reasonably up-to-date. Unlike the main Butterworths set of statutes, these works reproduce the full text of the regulations and rules made in terms of the acts. There are several other loose-leaf services to specific acts, often published under the name of an individual editor. These works include both the principal acts and the regulations made in terms of these acts, and regulations are thus more easily accessible. There is usually editorial commentary discussing the statutory material. Blackman - Commentary on the Companies Act. Erasmus - Superior Court Practice. Harms - Civil Procedure in the Superior Courts. Meskin - Henochsberg on the Companies Act. Meskin - Insolvency law and its Operation in Winding-up. Reyburn -

Competition Law of South Africa. Juta and Butterworths products: The electronic versions of the South African Statutes products are substantially similar to the print versions, including all indexes, and may thus be used in the same way. However, the electronic versions also allow a range of keyword searching options. The statutes collections published in electronic form include the full text of many regulations. These electronic libraries typically include relevant statutes, case law and commentaries, and some include journal articles, full text electronic textbooks, and regulations. Free Sites Available on the Internet: Policy and Law Online News: This is a privately-run site, providing a wealth of government information. The site includes the full text of legislation: Bills since , and Acts since , and also provides the full text of: The official website of the Parliament of South Africa provides full text of acts passed from onwards, and the full text of bills since The site also provides background information on Members of Parliament and the legislative process; selected Parliamentary papers, Parliamentary Committee reports and Hansard reports. The official website of the South African Government provides full text of acts passed since , and the full text of bills since The full text of many regulations is also reproduced here. The site provides the full text of many speeches and policy and information documents, including white papers and green papers. It also provides useful background information on various aspects of the South African governmental structure and process, as well as links to the various Government Departments and the Provincial Governments. The Parliamentary Monitoring Group site tracks the activities of Parliament and the Parliamentary Select Committees, and follows the progress of discussion papers, white papers, and bills i. There are links to the various provincial governments from the South African Government site. Many of the provincial governments publish provincial legislation and official policy documents online. The World Legal Information Institute provides links to some of the sites mentioned above, as well links to a few other South African acts. Search under South Africa in the Worldlii catalogue. Case Law Sources 5. From onwards, decisions of the Appellate Division were reported in addition to the separate reports for the four Provincial Divisions. These cases have been collected and published in a single volume: Juta, , covering the period - These include Judgements on Copyright first issued in ; Insolvency Judgements: This four-volume work contains tables of all cases reported in the series since ; a table of Case Annotations for both local and foreign cases referred to in South African judgments outlining the nature and extent of the consideration given to the prior judgement ; a table of legislation considered by the courts and a two-volume subject index. Juta has also published various indexes to its law reports for each division of the High Court for the period There are separate indexes for other series of law reports including the Butterworths Index to Constitutional Cases since , which indexes cases on constitutional matters reported in the Butterworths Constitutional Law Reports and the South African Law Reports. This cumulative index is updated annually. Another annually cumulated index, the Butterworths Labour Law Reports Index covers cases reported in this series since Translations of the South African Law Reports: South African judgments were historically reported in the language in which they were delivered. In the past, this was in either of the two official languages, English and Afrikaans. Both Juta and LexisNexis Butterworths produce electronic versions of the post law reports outlined above and the Appellate Division since South African cases are reported very selectively, but both Juta and LexisNexis provide access to cases that were considered for publication, but did not subsequently appear in the printed law reports. Free Case Law Online: Links to judgments from other Courts can also be accessed from the Constitutional Court website. The World Legal Information Institute provides links to the sites listed above, as well links to a few other sites offering free access to reported and unreported South African cases. These judgments are removed from the Hot off the Bench site when they are incorporated into one of the subscription databases. A free Case Locater service is also available from the LexisNexis web page. The locator provides a sophisticated search engine enabling you to find out where a case has been published in any of the leading South African law reports series. The locator also shows whether judgments have received negative or positive treatment in subsequent cases. It is also possible to search for cases discussing a particular piece of legislation. Some university law schools provide very limited access to judgments from their local high court. Treaties South African treaties are not easy to

find in full text form. The Department of International Relations and Co-operation provides some information about both bilateral and multilateral treaties signed by South Africa on its website. It does not provide the full text of the agreements, but does provide a summary of their main provisions and gives useful background and policy information. The site is not comprehensive. A private site, the South African Cyber Treaty Series lists the multilateral treaties signed by South Africa and provides ratification information. Where possible, the site links to full text versions available on the Internet. The site does not cover bilateral agreements. This treaty series is based primarily on the United Nations Multilateral Treaties Deposited with the Secretary-General, and is arranged according to the categories found in the United Nations Treaty Series. It includes several additional topics for which the United Nations does not act as depository, such as intellectual property and civil aviation. This site has not been updated since November Volumes 1 - 17 were published under the title Cape Law Journal. A list of Southern African law journals currently in publication can be found here. This SABINET subscription database has a user-friendly search engine permitting searches by article title, author, keyword, and journal title.

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Chapter 8 : 1, words / If EU law is supreme, can Parliament be sovereign? â€“ Public Law for Everyone

If you are looking for the current law you must always make sure that you look in a source that includes amendments. Legislation is covered by many of the legal databases - see the box on the left for further details of which database contain amended and unamended legislation.

Introduction Each culture has its sayings and songs about the importance of home, and the comfort and security to be found there. Yet for many women, home is a place of pain and humiliation For too long hidden behind closed doors and avoided in public discourse, such violence can no longer be denied as part of everyday life for millions of women. It is intended as an update to previous Parliamentary Library publications on this topic. It also covers policy approaches designed to prevent domestic violence, a survey of current Australian Government programs and initiatives and a review of future directions in domestic violence prevention. Appendix A contains links to sources of further information on domestic violence in Australia. Defining domestic violence There has been much debate regarding the most appropriate terminology to use for violence between spouses and partners. Domestic violence refers to acts of violence that occur between people who have, or have had, an intimate relationship in domestic settings. The traditional associations of domestic violence are with acts of physical violence within relationships occurring in the home but this understanding fails to grasp the complexity of the phenomenon. This term also covers a complexity of behaviours beyond that of direct physical violence. Given the scope of this definition of domestic violence, the private nature of the relationships within which violence occurs and the fact that most incidents of domestic violence go unreported, it is impossible to measure the true extent of the problem. We do know, however, that domestic violence in Australia is common and widespread. We know that a woman is more likely to be killed in her home by her male partner than anywhere else or by anyone else. Information was collected through personal interviews with approximately 16 people in all states and territories. A total of 6 women aged between 18 and 69 years participated in the survey and provided information on their experiences of physical and sexual violence. While this includes information on sexual assault and the relationship of offenders to victims, it does not include analysis of other forms of domestic violence-related data. The next National Community Attitudes Survey is likely to be in the field in , with results expected in Prevalence and types of violence The ABS Personal Safety Survey , which defined violence as any incident involving the occurrence, attempt or threat of either physical or sexual assault, found: No males reported sexual assault by a current or previous partner. Of respondents aged 15 years and over three per cent of males and two per cent of females reported being a victim of physical assault in the previous 12 months. The figures for sexual assault of respondents aged 18 years and over were 0. Younger people were more likely to report being a victim of physical assaultâ€”6 per cent of those aged 15â€”24 years, dropping to one percent of those aged 65 years and over. Most males 89 per cent and females 67 per cent who were victims of physical assault reported that the offender was male. One in five females 20 per cent reported that the offender was a current or previous partner, compared with two per cent of males. Of the women who had a current or former intimate partner, six per cent reported that their partner had forced them to have sexual intercourse at some stage during their lifetime; this is the most common form of sexual violence perpetrated by intimate partners. A further three per cent of these women reported that their partners had attempted to force them to have sexual intercourse and four per cent experienced unwanted sexual touching. Of the women who were in a current relationship spouse, de facto partner, or boyfriend , ten per cent reported that they had experienced violence from their current partner over their lifetime, and three per cent over the past 12 months. Physical violence was more commonly reported nine per cent, lifetime than sexual violence one per cent, lifetime. Almost four in ten women between 37 and 40 per cent who were in a current relationship reported experiencing at least one type of controlling behaviour over their lifetime; six per cent experienced controlling behaviour in the past 12 months. Women experienced higher levels of violence from a previous partner than a current partner. Of women who have had a past

relationship, 36 per cent reported experiencing violence from a previous partner over their lifetime, compared with ten per cent for a current partner. Previous partners were also reported as perpetrating more severe violence than current male partners. For example, less than one per cent of women in a current relationship reported that their current partner had used or threatened to use a knife or gun on them. However, six per cent of women who had a former relationship reported that their previous partner had used or threatened to use one of these weapons on them. Financial stress, personal stress and lack of social support are also strong correlates of violence against women. Further research is necessary, however, to determine whether these factors are primarily causes or consequences of violence against women. A longitudinal analysis of alcohol outlet density found a relationship between alcohol availability and domestic violence. Packaged liquor outlets that sell alcohol for off-premise consumption were particularly implicated. Between and , 44 percent of intimate-partner homicides were alcohol related. The overwhelming majority 87 per cent of Indigenous intimate-partner homicides were alcohol related. The IVAWS found that women who experienced abuse during childhood were one and a half times more likely to experience violence in adulthood than those who had not experienced abuse during childhood. Those who experienced physical abuse as children were more than twice as likely to experience violence by a partner as those who had not experienced child physical abuse. Of women who experienced partner violence since the age of 15, some 36 per cent reported experiencing violence from a previous partner during pregnancy; 18 per cent experienced domestic violence for the first time while they were pregnant. Some 15 per cent reported experiencing violence from a current partner during pregnancy; eight per cent for the first time. It may be the case that violence follows separation, or the decision to separate is due to violence in the relationship. Overseas studies indicate that leaving a violent partner may increase the risk of more severe, or even lethal, violence. The IVAWS found that experience of current intimate partner violence during the previous 12 months varied little according to education, labour force status or household income. Women reliant on government pensions and allowances as their main source of household income were also at increased risk of violence by a previous partner over their lifetime. However, they were less likely than older respondents to understand complex aspects of violence in relationships such as the range and seriousness of behaviour that constitutes domestic violence, if and when it can be excused and who is most likely to be a victim of it. They were also more likely than older people to agree with some misconceptions about rape, for example that it is usually perpetrated by strangers. Further, pro-violence attitudes were greatest in the youngest age group 12â€”14 years and decreased with age. The Personal Safety Survey found that 12 per cent of women aged 18â€”24 years experienced at least one incident of violence in the last 12 months. See the chart below for more detail. Some seven per cent 65, of women aged 18 to24 years experienced physical assault and 3 per cent 28 experienced sexual assault in the last 12 months. Experience of physical and sexual assault decreased with age to less than one percent of women aged 55 and over. Reports of such physical violence increased with age to 42 per cent of women aged 19 to 20 years. While rates for male victimisation were similar, females were at least four times as likely as males to have been frightened by the experience. Some 14 per cent of females, compared with three per cent of males, indicated that they had been sexually assaulted. The figure is highest amongst young women aged 19 to 20 years 20 per cent. It often takes place in public and can involve a number of people. Indigenous women may be more likely to fight back when confronted with violence than non-Indigenous women. What data exists suggests that Indigenous people suffer violence, including family violence, at significantly higher rates than other Australians. Indigenous women in particular are far more likely to experience violent victimisation, and suffer more serious violence, than non-Indigenous women. Indigenous males are also over-represented as victims when compared to non-Indigenous males, with a rate four times higher. This was substantially higher in remote areas 37 per cent than non-remote areas 21 per cent. One-half 50 per cent of the hospitalisations for females for assaults were as a consequence of family violence, whereas the corresponding proportion for males was 19 per cent. Domestic violence may be less likely to be disclosed in rural and remote areas due to the ideology of self-reliance, and informal sanctions and social control. Factors such as access to services, a perceived lack of confidentiality

and anonymity, stigma attached to the public disclosure of violence and lack of transport and telecommunications may compound the isolation victims of domestic violence already experience as part of the abuse. Data from the ABS Personal Safety Survey on the prevalence of violence indicate similar rates of physical and sexual assault in the past 12 months between capital cities and balance of state. The likelihood of experience of violence by current partner since the age of 15 was similar whether respondents lived in, or outside capital cities. However, experience of previous partner violence since the age of 15 was higher for those living outside the capital cities, particularly for females. Some 18 per cent of females living outside capital cities experienced violence by a previous partner since the age of 15, compared with 13 per cent of females in capital cities. However, there is evidence that women with disabilities are more likely than those without disabilities to experience domestic violence. A study examined the nature and extent of violence against women with disabilities who accessed services for family and domestic violence in Western Australia. By far the most common perpetrators of violence against these women were male partners, accounting for 43 per cent; with a further 11 per cent experiencing violence by a female partner. However, 19 per cent of women born overseas in main English-speaking countries reported previous partner violence since the age of 15, compared with 16 per cent of Australian-born women and 7 per cent of those born in other countries. However, it is possible that personal, cultural, religious and language factors may have resulted in NESB women who had experienced violence not participating in the survey, or those who did participate being less likely to report incidents of physical and sexual violence or openly discuss such information with survey interviewers. Only one in ten women 11 per cent who experienced violence from a current husband or partner considered the most recent incident to be a crime compared to almost four in ten women who experienced violence from a former husband or partner 38 per cent. For women who experienced violence from a current boyfriend, 18 per cent considered the most recent incident to be a crime compared with 22 per cent who experienced violence from a former boyfriend. Older victims, those who were married and victims of assaults that did not involve weapons or serious injury were less likely to report to police. According to ABS data, of females who experienced physical assault or sexual assault by a male in the previous 12 months, there was greatest reluctance to report incidents to police when the perpetrator was a current partner. In terms of sexual assault, none of those assaulted by a current partner in the latest incident told police, compared with 30 per cent of those assaulted by a boyfriend or date and 21 per cent of those assaulted by a previous partner. They may feel confused, loyal and forgiving about a current partner. A more accurate assessment of the violence might emerge on leaving the relationship, with the passage of time and the benefits of safety and hindsight. Women were more likely to talk to someone else about a violent incident than they were to tell police or contact a specialised agency. Some 75 per cent of women spoke to someone else about a violent incident involving an intimate partner. Of those women who had experienced current partner violence at any time since the age of 15, only 10 per cent had a violence order issued. For women who had experienced previous partner violence since the age of 15, some 25 per cent had a violence order issued. The strategy aims to ensure that responses by Australasian jurisdictions are based on more consistent policies and practices; it outlines priorities for action to improve information and intelligence sharing between police, as well as between partner agencies. While legal reforms of the late s and s strengthened police powers to deal with domestic violence, the trend towards pro-arrest policies has only recently begun to influence operational policing in Australia. In general, Australian police agencies have adopted policies that promote arrest as the primary intervention where there is a belief on reasonable grounds that an offence has been committed. The ACT has a pro-arrest, pro-charge policy on domestic and family violence; such cases are fast tracked through the courts. The FVIP integrates the activities of the police, prosecution, courts and corrections and coordinates with other key agencies, such as domestic violence advocacy services. There was a per cent increase in the number of family violence matters handled by the Department of Public Prosecutions DPP over the eight years from â€”99 to â€” This program represented ground-breaking reform when it was initiated in An independent review of Safe At Home found four key strengths of the program: The average number of family violence

incidents per month increased from to 11 per cent between â€”05 and â€”07, and then decreased to in â€” The number of new applications then declined in â€—06 to orders and was relatively steady across the following two financial years. In August the Code of Practice for the Investigation of Family Violence, was introduced to improve police responses to family violence incidents and encourage community confidence to report these offences to police.

Chapter 9 : Sources of law - Wikipedia

The Official Papers extensive print collection situated in the Bodleian Law Library is an incredible primary resource for researchers from all disciplines. The Official Papers collection dates from the 16th century to present day and can boast a Bound Set of parliamentary papers from to the present day on open shelf.

Sources of international law International Treaties Governments may sign International Conventions and Treaties; but these normally [7] become binding only when they are ratified. Most conventions come into force only when a stated number of signatories have ratified the final text. European nations that join the EU thereby adopt all EC Law to date the acquis communautaire , namely: National sources[edit] Legislation Legislation is the prime source of law. Legislation can have many purposes: A parliamentary legislature frames new laws, such as Acts of Parliament , and amends or repeals old laws. The legislature may delegate law-making powers to lower bodies. Delegated legislation may be open to challenge for irregularity of process; and the legislature usually has the right to withdraw delegated powers if it sees fit. Similarly, although parliaments have the power to legislate, it is usually the executive [12] [13] who decides on the legislative programme. The procedure is usually that a bill is introduced to Parliament, and after the required number of readings, committee stages and amendments, the bill gains approval [14] and becomes an Act. Case Law Judicial precedent aka: Precedent is the accumulated principles of law derived from centuries of decisions. Judgements passed by judges in important cases are recorded and become significant source of law. When there is no legislature on a particular point which arises in changing conditions, the judges depend on their own sense of right and wrong and decide the disputes from first principles. Authoritative precedent decisions become a guide in subsequent cases of a similar nature. The dictionary of English law defines a judicial precedent as a judgement or decision of a court of law cited as an authority for deciding a similar state of fact in the same manner or on the same principle or by analogy. Another definition [15] declares precedent to be," a decision in a court of justice cited in support of a proposition for which it is desired to contend". Compared to other sources of law, precedent has the advantage of flexibility and adaptability, and may enable a judge to apply "justice" rather than "the law". Equity England only Equity is a source of law peculiar to England and Wales. Equity is the case law developed by the now defunct Court of Chancery. There are a number of equitable maxims , such as: Parliamentary Conventions UK mainly not to be confused with International Conventions Parliamentary Conventions are not strict rules of law, but their breach may lead to breach of law. Typically, parliamentary conventions govern relationships, such as that between the House of Lords and the House of Commons ; between the monarch and Parliament; and between Britain and its colonies. For instance, after the Finance Act , the House of Lords lost its power to obstruct the passage of bills, and now may only delay them. A "Particular Custom" or "private custom" may arise and become a right with the force of law when a person, or a group of persons has from long usage obtained a recognised usage, such as an easement. Books of Authority England mainly Up until the 20th century, English judges felt able to examine certain "books of authority" for guidance, and both Coke and Blackstone were frequently cited.