

# BUSINESS LAW

---

## Table of Content

Introduction.....	4
Section 1 – Nature of legal systems.....	4
a) Explain the structure of the English legal system and discuss the different sources of laws that organisations must comply with. (P1) .....	4
b) Explain the role of government in law-making and how statutory and common law is applied in the justice courts. (P2) .....	6
Section 2 – Impact of the law on business organizations (P3) .....	7
a) Briefly explain employers’ legal obligations in relation to; .....	7
i. Occupational Health and Safety: Health and safety act 1974.....	7
ii. Workers compensation: Compensation Act 2016 .....	7
iii. Harassment: Protection of Eviction Act 1974’ and the ‘Public Order Act 1986 .....	7
iv. Equal opportunities: Equality Act 2010.....	7
Section 2.....	8
b) How the relevant employment and contract law will have a potential impact upon the business in this scenario .....	8
Section 3.....	9
Legal solutions to business problems .....	9
Case study 1 .....	9
Case study 2 .....	11
Advising Dan on the matter relating to insurance law and providing legal remedies to his problem .....	11
Section 4.....	13
Recommending appropriate legal solutions based upon alternative legal advice.....	13
a) Explain the concept and benefits of using Alternative Dispute Resolution process .....	13
b) Recommend alternative legal solutions to the following business problem. You can consider another country’s legal system or a different legal framework. ....	16
Conclusion .....	17
References.....	19

## Introduction

In the UK the legal system of England and Wales are controlled and monitored by the legislative body. As per the political structure the government of the UK has been divided into three separate bodies legislative, judiciary and executive that have the responsibility to take care of the nation and the interest of the citizen. The legislative body of UK is known as one of a most stratified legislative body that helps the citizens in UK to get proper justice. The Supreme Court is the extreme body of the legislative body that has the right to challenge the decisions of other court. In this detailed study, the learner would keep focus on the various laws and regulations of the UK that had defined under the constitution of the UK.

## Section 1 – Nature of legal systems

a) Explain the structure of the English legal system and discuss the different sources of laws that organisations must comply with. (P1)

### Structure of English Law

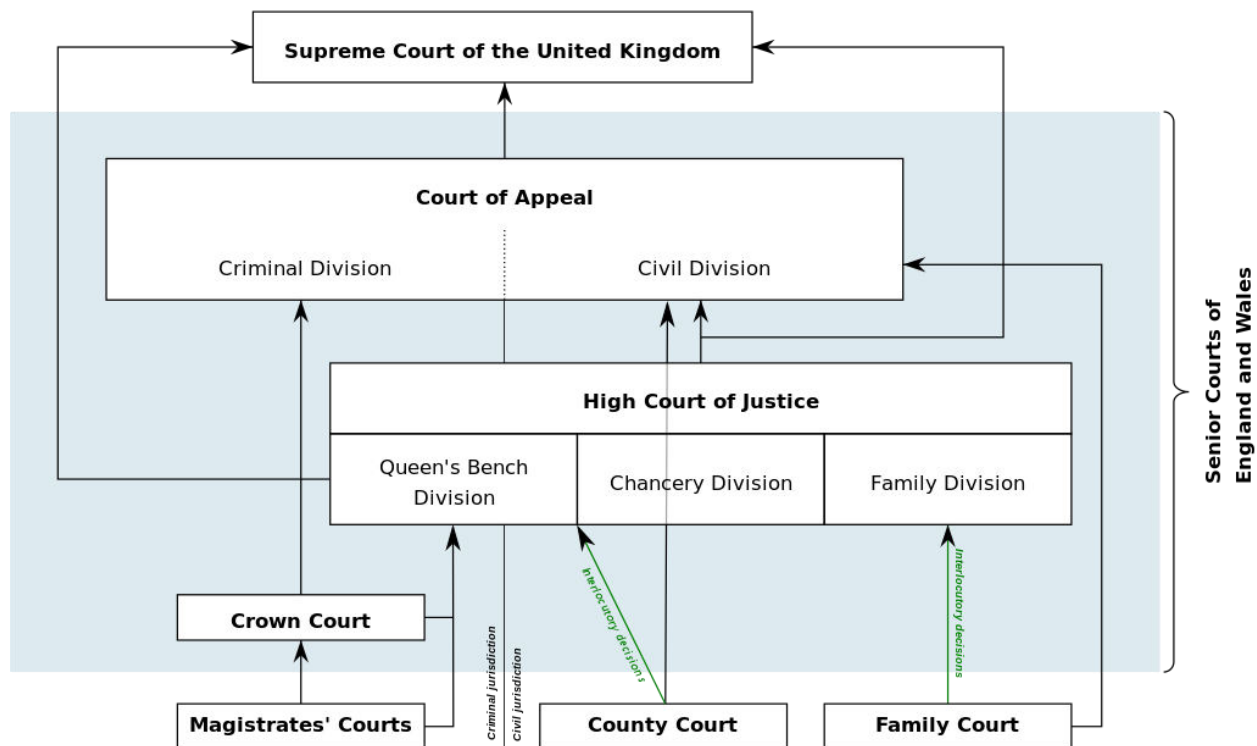


Figure 1: The legal Structure of English Court

(Source: Allen and Kraakman, 2016)

The legal system of England and Wales has been structured in four major stages. In the ground level, magistrates' courts, county courts and family court has been listed. In the next stage high court is the next respective body then court of appeal and the extreme level, Supreme Court is the head. In the UK if any kind of criminal, business and civil law takes place than only these legislative bodies has the responsibility to provide justice to the innocent. Allen and Kraakman (2016) stated that as the UK legislative body has the responsibility to take care of the citizen of UK and hence the respective bodies should follow the ethics of legislations. The statement is directly indicating the injustice faced by innocents has been highlighted. In this context it has been mentioned that the respective body should take care of this. Each of the court has its legal procedure to solve out the case but at the end the result has been generated in the favour of the innocent.

### **Sources of Law**

*Ivet vs Genting and Robinson (AP) v Chief Constable of West Yorkshire Police* are the two good examples of the legal system of the UK. Barnett (2017) stated that there are two sources of law has been available among which the major source is constitution of UK. The statement has explained that in the UK the legal system there are two kinds of sources are available common law and statutory law. Both of these have its individual impact on the functions as well as performance of the organisation.

**Common law:** The common law has been defined as those rules as regulations, which are intentionally created based on the situation of the environment. Such examples are traffic rules, black marketing all these rules and regulations has not defied under the constitution of the UK. However, these rules and regulations are not mentioned in the constitution of the nation but indirectly connected to the constitution of UK.

**Statutory law:** The statutory law has been defined as the legal system or law, which are strictly written in the constitution of the UK. Each of the organisations has to follow the laws that have been framed for them such as company act, health and safety at work act, equality act etc. All of these rules and regulations are being defined under the constitution of law and has specially framed for the organisation.

**b) Explain the role of government in law-making and how statutory and common law is applied in the justice courts. (P2)**

***Role of government in law-making***

**As per the governmental body the English law has been divided into two different categories:**

***Criminal Law:*** All kind of case that is related to the life of human being is treated as criminal activities and further these cases are taking care by criminal law. Blattman *et al.* (2014) stated that the legal structure of England and Wales has well defined structure that helps the citizens to take care of their local communities.

***Civil law:*** On the other hand, the cases related to the social issues are treated as civil activities that are further treated under civil law. Boylan-Kemp (2014) mentioned that the civil has been framed at the time of Roman emperor before the formation of UK. The entire procedure is now following by the current legal structure of UK.

As defined in the above section, the common law is being applied in the court of justice based on the requirements of the situation (Clayton, 2015). For example, the time of adjourned of court. The court is running under the official timing and hence it opens at specific time and close at specific time. Another example is when the court is giving date to the advocate for detail investigation.

On the other hand, the statutory laws are applied as per the requirement of the case for providing justice to the innocent (Deschamps, 2015). The health and safety act, Worker compensation act etc are the respective laws that are being defined as statutory law applied on the case as per its requirements.

## **Section 2 – Impact of the law on business organizations (P3)**

### **a) Briefly explain employers' legal obligations in relation to;**

#### **i. Occupational Health and Safety: Health and safety act 1974**

In an organization, the need for health and safety of the employees is mandatory and hence in order to secure their life the health and safety act 1974 has been framed by the legal body of UK. Fisher (2016) mentioned that in the workplace, employees have the risk of life loss and hence there must be proper rule to protect them. This law has fulfilled these criteria that framed the organization to take care of their employees at workplace.

#### **ii. Workers compensation: Compensation Act 2016**

It is general that in the workplace worker might get hurt or injury. In the respect to this, the constitution of England and Wales has framed a law named worker compensation act. The compensation act 2016, has been define with the purpose to provide adequate compensations from the organization in case of loss such as accident at work place, any health issue, termination without notice and other misbehaves from the management to their employees.

#### **iii. Harassment: Protection of Eviction Act 1974' and the 'Public Order Act 1986**

It has been strictly defined by the constitution of the UK that there should be no mental or physical harassment done with the employees. If it has been found than the management of the organisation would be punished by the court of UK, as per the framed law, Protection of Eviction Act 1974' and the 'Public Order Act 1986 (Fowler, 2017).

#### **iv. Equal opportunities: Equality Act 2010**

The respective Equality Act 2010 has been defined in the context to provide justice to an employee at workplace. According to this law, employee should get equal remuneration as per their designation. There should be no racism between male and female employee, which has been noticed in most of the cases (Goldberg *et al.*, 2014). Hence, according to this law all these activities should not be repeated in the organisation.

## Section 2

### **b) How the relevant employment and contract law will have a potential impact upon the business in this scenario**

#### **Case study**

According to the given case study, a 16-year-old girl used to work in a fast food outlet. At the time when she was working, she had fallen by slipping over the wet floor, which causes to be hazardous for her, as she end up to burning herself. This has happened due to the fault of the owner, as it was the duty of the owner for providing the safe working environment to the employee. As the consequences of the scenario, she has suffered the major injury due to high temperature of the oil. The employer had not even bothered to hire any supervisor who could have been assisting the employees while working in the kitchen. In spite of the fact that she had suffered an injury at her workplace while working, the employer has refuses to compensate her for the injury. Now the responsibility of the employer comes into the scenario that there should have a valid contract between the employer and the employee.

The contract should consist of the following essential elements, which both the parties should have agreed. As per the case the legal remedies, which are available to the employee, are highlighted below-

As per the contract, it was the duty of the employer to provide the safe working condition to the employee, which he was unable to provide. Due to which the girl has suffered an injury. After the occurrence of the incident, the girl shall be provided with the leave from the work as because of the severe damage under the act of the **Family and Medical leave Act**. The employee has also the right to get a minimum of the 12 weeks leave. Even the local authority of health and safety department should notify about the incident because of the fault on the employer part, which he was unable to access due to which accident happened (Legislation of United Kingdom, 2017).

The employee is also liable to get compensation under the provision of the act of **Workmen Compensation Act 1906**. The employee is also liable to **sue** the employer as under the **Health and Safety Act and Workmen Compensation Act**, as due to the negligence on the part of the

employer. However, the employer is also liable to compensate the employee in monetary aspects for providing the treatment to the girl.

### **Section 3**

#### **Legal solutions to business problems**

##### **Case study 1**

##### **Advising Calvin of any right under unfair dismissal and protection against relevant law**

According to the given case study, Calvin is the designer as well as the employee of the big fashion house. Calvin was working as the designer in that company for four year. On Monday morning Donna the employer of the fashion house find his employee Calvin acting in a suspicious manner. Later she discovered that £ 100 was missing from the petty cash box. Without investigating the matter, she terminated her employer Calvin from his job. In spite of the fact, that other four employees were also working there. Donna sacks Calvin from his job that without any notice. However, Donna also stated that she would not tolerate ant thief working there for her.

##### **Legal solution, which Calvin can adopt against his employer Donna are mentioned below-**

The termination of Calvin from his job without any notice was an act of injustice towards him. In the above case, Calvin was terminated from in employment without any reasonable ground. Termination of the employee without any valid reason is unacceptable in the eye of law. Calvin was even deprived of getting the prior notice from his employer Donna. Donna has terminated Calvin based on suspicion which is unacceptable. There are cases where the employer is not required to provide the prior notice to their employee. However, it is mandatory on their part that there must exist any of the following circumstances which is provided below-

- Existence of the valid reason to justify
- Acted unreasonably



In the above-sited case study, Donna was not aware of the present scenario that was happening in her office. She was not even bothered to investigate the case and without any legal evidences, she terminated her employer Calvin from his employment. However, Calvin was not even found guilty of something. Without getting the opportunity to prove his innocence and to defend him his employer, Donna sacks him from his job.

Therefore, the legal remedies, which are available to Calvin, are being discussed below-

### **Reporting the grievances**

Calvin has the opportunity to file a complaint against his employer Donna in the court of law for terminating him without having any legal evidences. Donna was not having any valid reason as well as the evidences, which will prove Calvin guilty. Donna just based on the assumption that Calvin might have taken the money from box does not prove him guilty. Termination of the employer from his job without any legal evidence was against the law. Calvin was not even proving culprit of any misconduct (Legislation of United Kingdom, 2017).

### **Reporting the case in the Employment Tribunal**

Calvin has also the advantage of complaining the case in the tribunal against the misfortune, which was conducted against him. He can file a complaint within a specific period. He can also complaint in matter regarding defamation as well as on the basis of the termination in an illegal manner.

### **Involvement of Trade Union**

Calvin is also having the advantage of consulting the case with trade union as well, if Donna is not willing to accept the mistake of terminating Calvin in an illegal manner.

### **Legal counseling**

Calvin can appoint a legal advisor who can help him in the legal matter as well as provide him with the legal remedies according to the employment act. The legal advisor will provide the legal solution of the matter relating to the employee rights and the employment acts as well. He will guide Calvin in defending himself. He will also try to prove that Calvin is not guilty of any misconduct (Legislation of United Kingdom, 2017).

## **Positive Aspect**

The positive impact of the case are highlighted below-

- The allegations, which are being, impose on Calvin if proved wrong, and then he will be liable for compensation from his employer Donna.
- Calvin will get back the status of an employee of the company.
- Calvin will also be liable to regain back his job with dignity and respect.

## **Negative Aspect**

The negative impact of the case are highlighted below-

- Until the innocence of the Calvin not proved, he cannot regain the position of the employee of the company.
- For the case to be solved and to prove Calvin innocent, it might be able to take some time.
- The money and time, which Calvin is wasting, is cannot be compensate back to him.

## **Case study 2**

### **Advising Dan on the matter relating to insurance law and providing legal remedies to his problem**

In the above quoted case study, Dan is the owner of the small shop, which has been destroyed by fire. He eventually opens a new store in some other location and simultaneously applied for fire insurance. The new business was also insured by the insurance but there exist a clause that the parties are not entitled to get a claim within a period of two year. However, while making the contract with the insurance company he somehow missed out to explain the company about his previous claim. In the meantime, his new store also got damaged by fire. The insurance company refuses to pay him the claim money, as it was the policy of the company that for claiming the insured amount he has to fulfill the criteria of two years.

## **Legal solution**

The remedies, which are available to Dan in the following circumstances, are discussed below-

### **Compensation of the losses**

Dan is required to calculate his loss caused due to fire so that he can get his compensation for his damages from the insurance company according to the Fire Insurance act. However, before giving the claim amount the insurance company will investigate the actual amount of losses that is been caused due to fire for compensating him accordingly (Legislation of United Kingdom, 2017).

### **Providing evidences**

In order to claim the compensation from the insurance company Dan is required to provide the legal evidences, which will prove his creditability.

### **Investigation of loss by the insurance company**

The damages, which are caused due to fire, will be compensated accordingly. The insurance company will send their officers who will calculate the actual amount of loss, which shall be compensated.

### **Proper communication**

The parties must have the proper communication between them. Dan is required to provide all the necessary information to the insurance company so that the company could calculate the actual amount of loss. The company should also try to communicate with Dan regarding the incident and should ask for the evidences. However, Dan is also required to have a proper knowledge about the policies in order to claim the compensation (Legislation of United Kingdom, 2017).

### **Positive Aspect**

The positive impact of the case are provided below-

- The loss, which Dan has suffered due to fire, will compensate to him in the form of the insurance claim.
- Dan can reestablish its business with the money, which he will receive in the form of the claim amount.

### **Negative Aspect**

The negative impact of the above quoted case are highlighted below-

- The recovery of the claim amount from the insurance company will involve certain procedure, which will consume time.
- The insurance company is not liable for compensating the whole amount of loss. The company will estimate the amount of loss, in monetary term, which is destroyed in actual terms.

## **Section 4**

### **Recommending appropriate legal solutions based upon alternative legal advice**

#### **a) Explain the concept and benefits of using Alternative Dispute Resolution process**

##### **Concept of Alternative Dispute Resolution**

The alternative dispute resolution is a technique of resolving the conflict between the two parties without the involvement of the court. This is the procedure of settling the dispute without filing the lawsuit in the court of law. This is the form of dispute resolution is the most simple and common form which often leads to a solution. The mechanism is usually applied in solving the cases, which are of civil in nature. However the case, which are involving criminal proceeding are kept outside the preview of the ADR mechanism. The government is also encouraging this type of settlement procedure as they involve less time for solving the case. The mechanism involves the appointment of the arbitrator who will judge the case based on the facts and evidences and provide the legal solution to solve the dispute between the parties (Nicolson, 2015). The parties are at full liberty to appoint the arbitrator of their own by mutual

understanding. The appointed arbitrator will be an impartial person and provide the solution based on the facts and evidences provided by the parties. The mechanism of ADR is an informal technique, which involve the out of court settlement of cases (Oakland, 2015). In U.K. the most commonly used technique of ADR are **Arbitration** and **Mediation**. There are various well-established ADR scheme in some of the regulated sector in U.K. which include-

- Telecom sector
- Financial services
- Energy

Beside the above-mentioned sector, many established businesses are implementing the ADR mechanism for resolving the dispute.

### **The advantages of using the Alternative Dispute Resolution**

The parties can choose the mechanism of ADR as it involve the less time for providing the decision. Instead of filing the lawsuit, the parties can implement the mechanism, which will help the parties to avoid the lengthy procedure.

- The process of ADR is more flexible. The parties are allowed to appoint their own arbitrator who will assist them in solving the dispute.
- The parties are liable to receive the compensation, if there is a default on the part of the other party.
- The process involves the less expense. However filing the lawsuit could be rather more expensive than this.
- The decision of the arbitrator can be kept confidential.
- The decision is obtained in less time.
- The mechanism also tries to help the parties in resolving the dispute with cooperation and mutual understanding.

There are different types of **Alternative Dispute Resolution** highlighted below-

- Arbitration
- Mediation
- Conciliation
- Adjudication

### **Arbitration**

Arbitration is the process of dispute resolution with the help of an arbitrator. It is one of the commonly used mechanisms of the ADR. The technique involves the out of the court settlement of the dispute. The parties are at full liberty to appoint the arbitrator with mutual consent. The arbitrator shall be an impartial person who will assist both the parties to arrive at the solution (Pritoni, 2017). The judgment of the arbitrator will be based upon the facts and the evidences provided by the parties. The decision of the arbitrator will be binding upon the parties and the decision will have the validity of the order of the civil court.

### **Mediation**

Mediation is the process of resolving the dispute of the parties. This method is applied before the process of arbitration, as the process is less formal. Mediation applies the best possible way for solving the dispute. The process is highly confidential and voluntary in nature. The process involves the appointment of the impartial person who will act as the mediator for solving the case (Redpath *et al.*, 2013). The judgment will be based upon the facts provided by the parties. The mediator will study the case and provide a solution, which shall be mutually beneficial for the parties. In order to reach the solution it is mandatory for the parties to have a proper communication.

### **Conciliation**

Conciliation is an ADR process where the conciliator meets with the parties separately in attempt to resolve the differences. The process involves the lowering of tension, improving the communication, encouraging the parties to explore for solution (Reese, 2015). The process assist

the parties for finding the mutually accept results. It generally settles the case of relating to the **Labour Dispute**.

### **Adjudication**

The decision of the adjudicator shall be based upon the written evidences provided by both the parties. If a person wanted to be an adjudicator then he will need the approval of the **Chartered Institute of Arbitration**. The process of adjudication is less formal than that of the arbitration and the judgments are independent totally based upon the evidences.

**b) Recommend alternative legal solutions to the following business problem. You can consider another country's legal system or a different legal framework.**

### **Case study**

The case involves the dispute between the owner of the large investment firm Mr. Antwon and Mr. Tyrell the owner of the company that makes computer software. The dispute between the two went on for several weeks, which were ultimately hampering the business negatively of both the parties. Both the parties wanted to maintain their business relationship. As both the parties were being benefitted from each other so it was the mutual decision of them that they will continue doing business with each other. Both the parties wanted to resolve the differences for the benefit of their respective business.

The parties can consider Alternative Dispute Resolution for solving their dispute.

Both the parties can consider **Arbitration and Mediation** for resolving the dispute.

The legal need of the company has been changed over the last decades. Whenever the person faced any dispute, they find it easier to adopt the principles of ADR mechanism as it is advantageous for both the parties. It is the practical and the private agreement than to fight for years and spending huge amount of money in courtroom battles.

### **Arbitration**

Arbitration is the method where the disputing parties can refer their case to one of the arbitrator who shall be an impartial person. The judgment will be provided based on the facts and the

evidences provided by the parties. The decision of the arbitrator shall be final and will be binding upon the parties. The process involves the out of court settlement so the parties of the case Mr. Antwon and Mr. Tyrell are advised that they should adopt this technique. The process will help the parties to solve their differences and improve their relation. Instead of filing the lawsuit which will involve the procedure, which can take months for providing the decision and which will negatively hamper the business of both the parties.

## **Mediation**

The process involves appointing the mediator who will be solely responsible for the dispute resolution. The process involves the proper communication between the parties so that the differences can be sorted out (Slapper and Kelly, 2013). The role of the mediator will play a major role in solving the dispute as he will be responsible for clarifying the problem and will provide a solution for resolving the conflicts. For reaching the optimal solution, the mediator uses the specialized communication technique and negotiation process.

The above quoted case study has helped in referring on the ADR, which can be adopted, to the business organization for solving the dispute. Antwon and Tyrell can implement either of the method for resolving their conflict. Both the parties are independent to appoint their arbitrator who will provide the solution to their problem. Instead of filing the lawsuit, which in turn will involve a lengthy procedure, they are advice to adopt the ADR mechanism, which will improve the relationship between the parties.

## **Conclusion**

The English law has no formal codification. The law is mostly comprised of the judges sitting in the courtroom and providing the judgments based upon the precedent. The Supreme Court decision will be binding upon all other subordinate court. The law comprise of the criminal as well as the civil laws. The common law has developed within each jurisdiction and described as the **Judge Made Law**. In order to avoid the lengthy procedure the corporate organization are adopting the procedure of Alternative Dispute Resolution, as it is the convenient process and time saving. The disputed parties can apply out of the court settlement procedure in order to avoid hectic procedure of jurisdiction.





## References

- Allen, W.T. and Kraakman, R., 2016. *Commentaries and cases on the law of business organization*. Wolters Kluwer law & business.
- Barnett, H., 2017. *Constitutional and administrative law*. Taylor & Francis.
- Blattman, C., Hartman, A.C. and Blair, R.A., 2014. How to promote order and property rights under weak rule of law? An experiment in changing dispute resolution behave
- Boylan-Kemp, J., 2014. *English legal system: the fundamentals*. Sweet & Maxwell.
- Clayton, C.W., 2015. *The Politics of Justice: Attorney General and the Making of Government Legal Policy*. Routledge.
- Deschamps, M., 2015. *External review into sexual misconduct and sexual harassment in the Canadian Armed Forces*. National Defence and the Canadian Forces.
- Fisher, R.J., 2016. Assessing the contingency model of third-party intervention in successful cases of prenegotiation. In *Ronald J. Fisher: A North American Pioneer in Interactive Conflict Resolution* (pp. 133-153). Springer International Publishing.
- Fowler, S., 2017. Comparative Law for Spanish-English Speaking Lawyers: Legal Cultures, Legal Terms and Legal Practice. By SI Strong, Katia Fach Gomez, and Laura Carballo Piñeiro. Cheltenham, UK: Edward Elgar Publishing, 2016. Pp. xii, 672. ISBN: 978-1-84980-786-9£ 175.00; \$280.00. *International Journal of Legal Information*, 45(1), pp.62-62.
- Goldberg, S.B., Sander, F.E., Rogers, N.H. and Cole, S.R., 2014. *Dispute resolution: Negotiation, mediation and other processes*. Wolters Kluwer Law & Business.
- Legislation of United Kingdom, 2017, *About legislation of United Kingdom*, available at: <http://www.legislation.gov.uk> [Accessed on 27<sup>th</sup> July 2017]
- Nicolson, P., 2015. *Gender, power and organization: a psychological perspective on life at work*. Routledge.

Oakland, J., 2015. *British civilization: an introduction*. Routledge.

Pritoni, A., 2017. Decision-making potential and ‘detailed’ legislation of Western European parliamentary governments (1990–2013). *Comparative European Politics*, 15(2), pp.157-179.

Redpath, S.M., Young, J., Evely, A., Adams, W.M., Sutherland, W.J., Whitehouse, A., Amar, A., Lambert, R.A., Linnell, J.D., Watt, A. and Gutierrez, R.J., 2013. Understanding and managing conservation conflicts. *Trends in ecology & evolution*, 28(2), pp.100-109.

Reese, C.D., 2015. *Occupational health and safety management: a practical approach*. CRC press.

Slapper, G. and Kelly, D., 2013. *The English Legal System: 2012-2013*. Routledge.