
ACTIVITY 18

The doctrine of implied repeal (allow 1 hour)

This activity is in two parts. Part 1 enables you to examine the traditional doctrine of implied repeal and Part 2 enables you to explore possible qualifications to it which the courts have developed in recent years.

**Online****PART 1**

Using the internet (e.g. the Westlaw UK legal database), find the case of *Ellen Street Estates v. Minister of Health* [1934] 1 KB 590. Please read the headnote and the judgments of Scrutton LJ and Maugham LJ.

What happens if there are two Acts on the statute books which conflict with one another?**COMMENT**

Under the doctrine of implied repeal, a later statute which is inconsistent with an earlier statute impliedly repeals the earlier statute to the extent of the inconsistency. The courts in effect regard the later statute as representing the will of Parliament. The court does not therefore have to reconcile the two Acts, and it is irrelevant that the earlier Act states that it cannot be repealed.

**Online****PART 2**

Again using the internet (e.g. the Westlaw UK legal database), find the case of *Thoburn v. Sunderland City Council* [2002] 3 WLR 247. Please read the headnote and paragraphs 60 to 63 inclusive of the judgment of Laws LJ.

Laws LJ proposed that a distinction be drawn between two types of statute, 'ordinary' and 'constitutional'.

1 On what basis did Laws LJ propose the distinction between 'ordinary' and 'constitutional' statutes?

2 How did Laws LJ suggest that the courts will decide which statutes are 'constitutional'?

COMMENT

1 The rationale behind such a distinction is based on the common law. Statutes which are 'constitutional' are of such significance that the courts would require actual intention of Parliament to alter them, not merely an implied intention. Such statutes could not therefore be impliedly repealed: any repeal would have to be express.

2 Laws LJ suggested a two-fold test for such a statute: (i) it must condition the legal relationship between citizen and state; or (ii) it must change the scope of fundamental constitutional rights.

Laws LJ said that several statutes satisfied this test: the Magna Carta, the Bill of Rights 1689, the European Communities Act 1972 and the Human Rights Act 1998.

3.2 Limitations arising from membership of the European Union

In political terms, the most important of the possible limitations upon parliamentary supremacy derives from the UK's membership of the EU. The UK became a member of the (then) European Community on the 1 January 1973 as a result of signing the Treaty of Rome — subsequently the EC Treaty (signed in May 1972). The Treaty provides the basic constitutional framework of the EU. Before we can start to look at the limitations to the doctrine of parliamentary supremacy