**The Rule of Law**

The rule of law is the supremacy of law. It embodies three concepts:

1. The absolute predominance of regular law, so the government has no arbitrary authority over the citizen.
2. The equal subjection of all (including officials) to the ordinary law administered by the ordinary courts.
3. The Citizen’s personal freedoms are formulated and protected by the ordinary law rather than by abstract constitutional declarations.

“Credit for coining the expression ‘the rule of law’ is usually given to Professor A.V. Dicey... Even if he coined the expression he did not invent the idea lying behind it.” – Bingham 2010

“Whether as the late Professor Lawson wrote, Dicey ‘coined’ the phrase ‘the Rule of Law’ or whether he merely popularised it, he was effectively responsible for ensuring that no discussion of modern democratic government can properly omit reference to it.” – Bingham 2002

The rule of law is an aspirational philosophy with idealistic views. Securing compliance with law? Some say rule of law is over-used and therefore now meaningless. As explained by Raz; “the rule of law has an enduring importance as a central artefact in our legal and political culture.”

**Heart of modern government?**

David Cameron (2008) – “Freedom under the rule of law. This simple, yet profound, expression explains almost everything you need to know about our country, our institutions, our history, our culture – even our economy.”

Margaret Thatcher (1988) – “The freedom of people depends fundamentally on the rule of law.”

Tony Blair (2003) – “Ours are not Western values, they are the universal values of the human spirit...freedom not tyranny; democracy not dictatorship; the rule of law not the rule of secret police.”

**History of the Rule of Law**

- Natural law – intrinsic link between law and reality. Stems from moral foundation.
- Derives from divine natural source such as religion.
- Aristotle; “It is better for the law to rule than one of the citizens... even the guardians of the laws are obeying the laws.”
- Aquinas and ‘God-given’ law.
- Social Contract Theory and the Rule of Law. (Hobbes, Locke, Rousseau.) Relates to this idea of law and more to this individual consideration of citizens. Authority of law is voted.
- Marxist perspectives derive from the idea of people power.
- Joseph Raz states that the rule of law is a political ideal. One of the virtues that a political system may possess and by which can/ will be judged
  - “The King shall not be subject to men, but to God and the law: since rulers were subject to law.” – Bracton
- Magna Carta 1215: Bound the power of the legal monarch? Magna Carta was the first document forced onto a King of England by a group of his subjects, the feudal barons, in an attempt to limit his powers by law and protect their privileges.
• **Entick v Carrington (1765)**
  On 11 November 1762, the King's Chief Messenger, Nathan Carrington, and three other King's messengers, James Watson, Thomas Ardran, and Robert Blackmore, broke into the home of the Grub-street writer, John Entick (1703?-1773) in the parish of St Dunstan, Stepney "with force and arms". Over the course of four hours, they broke open locks and doors and searched all of the rooms before taking away 100 charts and 100 pamphlets, causing £2000 of damage. The King's messengers were acting on the orders of Lord Halifax, newly appointed Secretary of State for the Northern Department, "to make strict and diligent search for . . . the author, or one concerned in the writing of several weekly very seditious papers entitled, The Monitor, or British Freeholder". Entick sued the messengers for trespassing on his land.
  Held: The judgment established the limits of executive power in English law: the state can only act lawfully in a manner prescribed by statute or common law.

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**Dicey and the Rule of Law**

Dicey’s rule of law had 3 meanings.

“It means in the first place, the absolute supremacy or predominance of regular law as opposed to the influence of arbitrary power, and excludes the existence of arbitrariness, or prerogative, or even of wide discretionary authority on the part of the government...; a man may with us be punished for a breach of law, but he cannot be punished for nothing else.” – Dicey

In summary, Dicey’s three meanings were:

1. **Prevent use of arbitrary power**

2. **All are equal under the law and no man is above the law.** (Exceptions to this meaning; for example there can be discretion of power without power abuse. Police have more power to stop and search someone, whereas ordinary members of the public don’t. The Queen is immune from criminal prosecution in her own courts.)

**M v Home Office (1994)**

(Couldn’t find case, but it illustrates the idea of equality before the law.)

**Malone v MPC (1979)**

The plaintiff, an antique dealer, was tried at the Crown Court on a number of offences of handling stolen property. During the trial the prosecution counsel stated that the plaintiff’s telephone had been intercepted on behalf of the police on the authority of a warrant issued by the Secretary of State. Police practice regarding telephone tapping (ie the interception, monitoring and recording of private telephone conversations) was to obtain a warrant (a document giving official authorisation) to tap from the Home Secretary. The warrant was sent to the Post Office and the Post Office then made a recording of conversations on the line being tapped and forwarded that recording to the police. The plaintiff issued a writ against the police claiming declarations from the court (i) that any tapping of the plaintiff’s telephone lines without his consent or disclosure of the contents of conversations on those lines to third parties was unlawful, even if done pursuant to the Home Secretary’s warrant, (ii) that the plaintiff had rights of property, privacy and confidentiality in respect of
3. The laws of the land should apply equally to all, save to the extent that objective differences justify differentiation.

4. Ministers and public officers at all levels must exercise the powers conferred on them in good faith, fairly, for the purpose for which the powers were conferred, without exceeding the limits of such powers and not unreasonably.

5. The law must afford adequate protection of fundamental human rights.

6. Means must be provided for resolving without prohibitive cost or inordinate delay, bona fide civil disputes which the parties themselves are unable to resolve.

7. Adjudicative procedures provided by the state should be fair.

8. The Rule of Law requires compliance by the state with its obligations in international law as in national law.

**Rule of Law in practice**

- **Law and order**
  Duty to obey the law/right to disobey the law

- **Principle of legality**
  Legal authority for government power.

  **IRC v Rossminster (1980)**
  The Inland Revenue had certain powers under s20 of the Taxes Management Act 1970 which enabled them to apply to the court for a search warrant in connection with suspected tax fraud. Under the terms of the Act, once a warrant was granted the Revenue had 15 days in which to execute it and seize any appropriate evidence. One such warrant was obtained against a number of persons including Rossminster Limited. After the police and Revenue inspectors searched the relevant premises and seized a number of documents. They did not inform the persons of the offences of which they were suspected, nor did the search warrant contain particulars of the alleged offences. Rossminster judicially reviewed the grant of the warrants in the Queen’s Bench Divisional Court. The Divisional Court refused the application, but its decision was later overturned by the Court of Appeal. The Revenue then appealed to the House of Lords.

- **Accessibility of the law**

- **Natural Justice**

- **Independence of the judiciary**

**The rule of the good law**

Constitutionalism and the rule of law.

International dimension.

“It is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law.” UN, 1948

“The rule of law is a dynamic concept for the expansion and fulfilment of which jurists are primarily responsible and which should be employed not only to safe-guard and advance the civil and political rights of the individual in a free society, but also to establish social, economic, educational and cultural conditions under which his legitimate aspirations and dignity may be realised.” International Commission of Jurists, 1959
Parliamentary Sovereignty

What parliamentary sovereignty represents:

1. Parliament has supreme law-making powers in the UK
2. Parliament may pass or amend or repeal any primary legislation it chooses
3. No body in the UK (including the executive and the courts) may challenge its legal validity.

Sovereignty pre-1688

• “Kings are not only God’s lieutenants on earth... but even by God himself they are called Gods...They exercise a manner or resemblance of divine power on earth... they make and unmake their subjects; they have power of raising and casting down; of life and of death, judges over all their subjects, and in all causes, and yet accountable to non but God only.” James I in 1610.

• The Case of Proclamations (1611)
The Case of Proclamations [1610] EWHC KB J22 was a court decision during the reign of King James VI and I (1603-1625) which defined some limitations on the Royal Prerogative at that time. Principally, it established that the Monarch could make laws only through parliament. The judgment began to set out the principle in English law (later developed by future Parliaments and other members of the judiciary in subsequent cases, for example Dr. Bonham’s Case) that when a case involving an alleged exercise of prerogative power came before the courts, the courts could determine: i) whether the proclaimed prerogative existed in law and how far it extended; ii) whether it had been limited by statute, and if so, in what way; and iii) whether there was any requirement that the Crown pay compensation after the exercise of the prerogative.

• Dr Bonham’s case (1610)
“And it appears in our books, that in many cases, the common law will control Acts of Parliament, and sometimes adjudge them to be utterly void: for when an Act of Parliament is against common right or reasons, or repugnant, or impossible to be performed, the common law will control it, and adjudge such Act to be void.” – Chief Justice Coke

Sovereignty post-1688

• The political source of parliamentary sovereignty: the ‘glorious revolution’ and the Bill of Rights 1688.
The Bill of Rights established a new political contract between King and Parliament. That the pretended power of suspending of laws or the execution of laws by regall authority without consent of Parliament is illegal and that for redresse of all grievances and for the amending, strengthening and preserving of the laws Parliaments ought to be held frequently. That levying of money for or to the use of the Crown by pretence of prerogative without grant of Parliament is illegal. That the freedom of speech, and debates or proceedings in Parliament ought not to be impeached or questioned in any court of place out of Parliament.

themselves in business in the territory of another Member State (the freedom of establishment), nor should they discriminate on the basis of nationality.

In the event, the ECJ found the nationality requirements in the Merchant Shipping Act 1988 discriminatory and contrary to Article 43 EC as a restriction on the freedom of establishment. It also violated articles 12 and 221 EC. The residence and domicile conditions also breached Article 43. In effect, by introducing a requirement based on an individual's residence and domicile, the Act operated an unfair distinction between UK nationals and those from other Member States as "the great majority of nationals of the [UK] are resident and domiciled in that State and therefore meet that requirement automatically, whereas nationals of other Member States would, in most cases, have to move their residence and domicile to [the UK] in order to comply with the requirements of [the 1988 Act]." In respect of the condition that the vessel should be managed and its operations directed from the UK, the ECJ found, however, that this requirement was compatible with Community law. The UK government had argued that the conditions imposed by the 1988 Act were justified on the basis that the Common Fisheries Policy allowed for a system of national quotas and the 1988 Act ensured the effectiveness of that system. This was rejected by the ECJ which stated that fishing vessel registration criteria were permitted, but not where they violated Community law. It was, in that respect, open to the UK government to introduce conditions ensuring that a 'real economic link' existed between the ship and the State of registration, but such a link had to "concern only the relations between the vessel's operations and the population dependent on fisheries and related industries". In other words, it would have been possible for the UK government to prescribe conditions which protected UK fishing communities from the effects of the opening up of national fishing waters to other Member States, but it could not do that through the imposition of explicit nationality and residence conditions.

**R v Secretary of State for Transport, ex p Factortame (No 3) [1992] QB 680**

**Liability**

Following the ECJ's second ruling, the case returned once more to the High Court which, on 18 November 1992, requested a third ruling from ECJ concerning the conditions under which a Member State may incur liability for damage caused to individuals by breaches of Community law attributable to that State. At around the same time the German Federal Court had asked for a ruling on a similar question in the case of Brasserie du Pêcheur v Bundesrepublik Deutschland and so the two cases were joined. At this time the ECJ had just delivered judgment in **Francovich** which established the principle that "a State must be liable for loss and damage caused to individuals as a result of breaches of Community law." The Factortame case provided the court for an opportunity to elaborate on the principles underlying the liability of Member States. It was a case in which almost all Member States intervened to deny, whether wholly substantially, the right to claim damages; the UK accepted that there was, in principle, such a right. The EC Treaty does not deal expressly with the consequences of a breach of Community law by a Member State, and so it was for the court to rule on the question having regard to "the fundamental principles of the Community legal system and, where necessary, general principles common to the legal systems of the Member States." In its judgment delivered on 5 March 1996 the ECJ reaffirmed the right of reparation, and stated that it existed irrespective of whether the provision of Community law in question has direct effect. Furthermore, the principle applies to any case where a Member State breaches Community law, irrespective of which organ of the State was responsible for the breach. The ECJ rejected the contentions that the right to reparation required the introduction of legislation by the EU, and that the availability of damages should be decided, in each case, on the basis of the national law of the State in question.
proceedings without actually making any order.

2. **Injunctions**
   They tell an authority to do something or not to do something. Positive injunction: tells the authority what to do. Negative injunctions: tells the authority not what to do.

3. **Damages**
   There is no general remedy of damages in public law.

**History of Judicial Review**

Prior to 1977 this matter of remedies was complex. It was complex in the sense that the 3 prerogatives were sorted in one court and the other 2 in another court. There were different time limits. So what you could find happening was, you chose a remedy, went to the right court, have a strong case but the court may say you have the wrong remedy and refuse. You would then go to another court and chose another remedy however you then ran out of time. This had an affect on the willingness to work with the litigation in public law. Therefore in 1977 a report was commissioned in the state of remedies in public law. The report was produced and it recommended a radical simplification of the process. There was to be a single application, known as an application for judicial review. You could have any remedy and claim them in any combination. In 1981, the suggestive reforms were implemented by change to the Supreme Court Act. At the same time, a new chapter was inserted into the Supreme Court Act, or rather the rules of the Supreme Court—known as Order 53.

Order 53 set out all the rules of the judicial review application. It was annotated with lots of notes, which gave details of decided cases, they gave considerable insight into judicial review itself. The result was a massive cultural change over the period of a few years. It hopes these reforms people were not willing to partake in public remedies, even solicitors whereas after the reforms solicitors were more likely to understand judicial review and were more willing.

E.g. 1974—160 judicial review applications only.
1982—685 judicial review applications
1992—2,349 judicial review applications
2010—10,500 judicial review applications.

Explosion in popularity of judicial review. Due to the increase in judicial cases being held a year, there is bound to be increase in development of that area of law. From 160 cases to 10,500 means more judges to handle them, and this means more judicial discussion, which therefore means this area of law has a wider variety of opinion and development.

**Judicial Review Cases**

Judicial review is extremely varied. Immigration case, criminal cases, commercial cases etc can all be challenged by the way it was decided. This is where the case becomes a judicial review case. If this happens it is straight away put in a High Court to be discussed by expert judges. It may even be a very small case which may have had something go wrong, which will then make the case increase and you may find yourself in the Supreme Court. It might start off as a very low key case, but if something in particular goes wrong in the way in which it was decided, the pace of the case would rather dramatically increase, to a high court such as the Supreme Court for judicial review. There is a three month time limit for a case to be heard and dealt with when involving judicial review.
Procedure

- Judicial review proceedings have two stages. A party must apply for permission (or leave) to the court to proceed with its claim. If permission is granted, the parties then prepare for the substantive hearing of the claim.

- There is a pre-action procedure applicable to judicial review. A claimant must send a Letter before Claim to a potential defendant. The defendant should then respond with a Letter of Response. Failure to comply with the pre-action procedure may have costs consequences.

- All claims for judicial review are brought in the Administrative Court, a division of the High Court and part of the Queen's Bench Division. However, later in 2014 it is expected that disputes over major developments will be fast-tracked to a new Planning Court with specialist judges.

- A claim must be brought promptly and, in any event, not later than three months after the grounds to make the claim first arose. Under reforms introduced and effective from 1 July 2013, this time frame is reduced to 30 days for procurement decisions and six weeks for planning decisions.

- A claimant is under a duty to make full and frank disclosure of all relevant facts to the court. This extends to providing the court with information on any impediments to an application for judicial review such as the existence of an alternative remedy or the claimant's delay. The duty of disclosure also extends to the defendant.

- A judge will usually consider the claimant's application for permission on paper. If permission is refused, the claimant has the right to request an oral hearing by way of appeal. Under reforms introduced and effective from 1 July 2013, a claimant is denied such an oral hearing if the court, having reviewed the application for permission, determines the claim to be "totally without merit."

- If permission is given the defendant or any other person who has been served with the claim (such as an interested party) and who wishes to contest the claim must file detailed grounds for contesting the claim and any written evidence.

- Because judicial review does not generally require the resolution of factual disputes, disclosure is rarely ordered in judicial review claims.

- A judge will usually consider the substantive aspects of the matter at a hearing. Cross-examination of witnesses is rare at the hearing which is generally taken up with oral argument.

- The courts in judicial review proceedings have exercised a degree of discretion in awarding costs and have not merely followed principles employed in private law. As in other proceedings, however, the general rule is that the loser pays the winner's costs.

- The court has the power, in judicial review proceedings, to make an order which assures a claimant or defendant at an early stage in the proceedings that either no or limited costs will
Who is subject to judicial review?

Any party or body exercising a “public function” may be subject to judicial review.

R v Electricity Comm [1924]

Lord Justice Atkin; “Any body of persons having legal authority to determine questions affecting the rights of subjects and having the duty to act judicially.”

Positive ways in which a body is judicially reviewable

Ridge v Baldwin 1964

The Brighton police authority dismissed its Chief Constable (Charles Ridge) without offering him an opportunity to defend his actions. The Chief Constable appealed, arguing that the Brighton Watch Committee (headed by George Baldwin) had acted unlawfully (ultra vires) in terminating his appointment in 1958 following criminal proceedings against him. Ridge also sought financial reparation from the police authority; having declined to seek reappointment, he sought a reinstatement of his pension, to which he would have been entitled with effect from 1960 had he not been dismissed, plus damages, or salary backdated to his dismissal.

This case has something to say about the issue of ability to review. The main judge was Lord Reid, in his speech he considered the definition by Lord Justice. Concentrated on the third of its three elements; the duty to act judicially. He felt those words had been misunderstood, they didn’t mean to be amenable, the body needed to behave like a court, making decisions like a court would make decisions, e.g. hearing witnesses, applying strict rules of evidence. Not what Lord Justice meant, rather Lord Reid held that the words meant that whenever the first 2 elements of the 1924 decisions are present, the meaning of the third element will automatically be satisfied. True meaning whenever a body has a legal authority to determine questions etc they will have acted judicially.

R v Criminal Injuries ex parte Lain [1967]

(Can’t find case summary)

This was a challenge to criminal injuries compensation board. The question arose whether the board was amenable to review. The Crown for the board had two submissions, ‘the board does not have legal authority’ and ‘does not have the authority to determine questions of such subjects.’ It was proposed the board did not have legal authority because the boards did not have statute authority, its authority in fact came from the royal prerogative. It was being said that it didn’t determine questions that affected the rights of subjects because it did not create rights, their payments were execrated, i.e. couldn’t be obliged to compensation. Though the board didn’t create rights, it was an important process, which affected the rights of individuals. That second proposition doesn’t altogether add up. The court wished to find the board reviewable. The first gets broadened, while the second gets pushed aside. Lord Parker says the board is clearly performing public duties. He is speaking about the boundaries of the judicial review jurisdiction, and specifically about the quashing order, the most sought after remedy. This case finds that judicial review is way more flexible than thought.

This also arises in the case of:

R v Panel [1987]

The Panel on Take-overs and Mergers is the City of London’s self-regulating mechanism for dealing with mergers and acquisitions. The applicant complained about the conduct of their competitors in a takeover bid and were unhappy with the Panel's decision. When it was refused leave to seek judicial review by the High Court, it appealed to the Court of Appeal. The main issue facing the Court was whether to review the decision of a Panel set up under private law using the standards usually applied in administrative law.
There may be others which seem relevant but which don’t have to be taken into account. There may be some which seem irrelevant which the authority is not banned in considering. There may be others that seem so irrelevant that they must not be taken into account. There may be some which may be granted as irrelevant and most certainly be taken out.

The Crown v Somerset County Council ex parte Fewings

The council took the decision to ban the hunting of deer on common land which it owned. It did so because the majority of councillors were impressed with the ‘cruelty argument.’ At the time the council thought it could impose the ban as simply the owner of the land. Justice Lords explained, the council had to be able to point to a positive power to do this. The power was found in the local government act, it was a power to acquire land for the benefit, improvement or development of the area. If there is power to acquire there should be power to also manage it. The main issue in this case was the status of the ‘cruelty argument’ was it relevant or irrelevant consideration? Mr Justice Lords said it was irrelevant. He explained that what the councillors have been doing is giving free rein to their own moral views and it was not proper for them to do that. He gave an explanation by saying that he was not proposing that moral views will always be irrelevant, suppose that young people are resorting to some public place in the evening which leads to offending behaviour, if the council acting to ban that as it was morally offensive to residence then it could be fine. Morality could come into relevant consideration. The case went on appeal and the appeal was turned down. Lord justice Swinton Thomas agreed that the ‘cruelty argument’ was irrelevant, he said he hadn’t found the issue all together easy, if that’s not right then the council could ban marching over the land as a rule of democratic support against military. Justice Simon Brown said the ‘cruelty argument’ was relevant and the authority was free to treat it as decisive. Bingham also said it was not absolutely irrelevant. All depends on the legal context in which it is considered. Here it was irrelevant because there was no legal context. If the councillors said we have power to exercise the benefit, development, improvement and we thought the ban was exercising that power, then it would have been fine.

The task of the authority is to identify relevant considerations and to leave out the irrelevant considerations. Once that has been done it will not make the decision. Wrong weighing is not challengeable. The weighing of consideration is exclusively of the decision maker, not of the court. The court judges the allocation of weight, then it is remaking the decision on the merits and that is not the way it works. The decision on weight, on the merits has been intrusted by parliament to the original decision maker. The courts role is to review not remake decisions. There are certain exceptions, certain considerations must be given proper weight e.g. an authority must give proper weight to its duty to local taxpayers. If the weighing is so bad that the decision is irrational then it will be quashed.

There is overlap between these two grounds of challenge. If an authority pursues an improper purpose that means the authority must be taking into account an irrelevant consideration. Also if the authority takes into account irrelevant consideration it may lead to improper purpose. Which is the better fit? Depends on the case.

iii) Irrationality

GCHQ

Lord Diplock explains that was is needed is a decision which is so unreasonable that no
and without Mr Cooper being heard.

**Cinnamond v British Airports Authority [1980]**
The authority exercised power under byelaws to ban 6 mini cab drivers from entering Heathrow airport. The drivers had been doing all manners of things wrong, grossly over charging innocent tourists, loitering, and they’d been offering what they call ‘services’ (naughty.) They all had a long line of convictions from the past, they had been fined and they had never paid the fines. The ban actually only let them enter the airport to leave the country. The drivers claimed their natural justice had been breached, they had not had the chance to put their case. The court held they had been deprived of nothing, there was nothing they could have said, they had had plentiful of opportunity in the past to make their case and they had been summoned previously, they could have got in touch with the authority etc etc. That degree of bad behaviour had lost them their case of natural justice. But the case has been criticised because how could the court know they had nothing to say? That wasn’t in evidence before the court.

**Glynn v Keele University [1971]**
A students offence had been sunbathing naked on campus. Students complained that he had not been heard before being rusticated but the court held that there was nothing he could have said that would stop his rustication.

**McInnes v Onslow-Fane [1978]**
The plaintiff in this case had held a number of licenses with boxing. All his license had been withdrawn. He applied for a manager’s license, five times. In addition to applying, he said that he would like notice of anything that was going against them and on opportunity to be heard, the board of boxing said in his 6th application had also been refused. Here there is a right of notice for the charges, and there is a right to be heard. On the facts of this case the plaintiff was not being deprived of anything that he does not have. Mr Justice claimed there was no obligation to hear the following cases; 1) For fixture cases — Somebody being deprived of something they already do not have. A right to be noticed of the charges and to be heard. 2) Application cases — Somebody seeking something they had not previously had. Minimal procedural protection. 3) Expectation cases — A case where you have good reason to think you would probably get what you want.

ii) Rules against bias.
First problem is in the 19th century to competing tests were formed for the rules of the appearance of vires. One line of cases what was required was a real likelihood of vires, according to the other line of cases all that was needed was a real need for suspicion. The House of Lords took the opportunity to sort this matter out for one and for all. Lord Goff, “the test was to be a real danger, of bias having occurred.” He said he had in mind possibility rather than probability. Lord Goff changed the reasonable person test, he said that the reasonable person simply represents the court so we will might as well be candid about it, it’s what the court think and reference to the reasonable person can be dropped. The court investigated all the facts creating the appearance of vires, and if satisfied that there was no vires, then the court lets the decision stand. Back in the days of the reasonable person the reasonable person simply looked at the situation and decided like that, there was not necessary any investigation of facts.
Secondly, it is inconsistent with the decision of the House of Lords in the 2003 case of Aston Cantlow, in which Lord Hope made clear that 'it is the function that the person is performing that is determinative of the question whether it is, for the purposes of that case, a "hybrid" public authority', whereas the focus in assessing whether a body comes within the 'core' category of public authorities is upon 'the nature of the person itself, not the functions which it may perform' (para 41).

Lastly, it is inconsistent with the approach of the European Court of Human Rights, which has made clear that 'the State cannot absolve itself from responsibility ... by delegating its obligations to private bodies or individuals'.

What are the latest developments?
In January 2007, the Court of Appeal gave judgment in the case of YL v Birmingham City Council, in which it considered itself bound to follow its previous decision in Leonard Cheshire. However, the matter is now on appeal to the House of Lords and will be heard on 30 April. JUSTICE is intervening in the case, together with Liberty and the British Institute of Human Rights, to argue for a broad interpretation of 'public function' and 'public authority'.

R (Heather) v Leonard Cheshire Foundation [2002]
Aston Cantlow and Billesley Parochial Church Council v Wallbank [2003]
The Defendants were the freehold owners of former rectorial land and consequently, as lay rectors or lay impropriators were liable at common law to repair the chancel of their parish church. In September 1994 the plaintiff, the parochial church council, served the first defendant with a notice under section 2 (1) of the Chancel Repairs Act 1932 calling upon her to repair the chancel. She disputed the liability, and the plaintiff subsequently brought proceedings against the defendants, pursuant to section 2(2) of the 1932 Act, to recover the cost of the chancel repairs. On a preliminary issue the judge held that the defendants were liable for the cost of the repairs. The Court of Appeal allowed the defendants appeal and held that the plaintiff could not recover the cost of chancel repairs from the defendants on the grounds that a parochial church council was a public authority for the purposes of section 6 of the Human Rights Act 1998 since it had powers unavailable to private individuals to determine how others should act, that therefore it could not act in a manner which was incompatible with the defendants’ rights under the Convention for the Protection of Human Rights and Fundamental Freedoms, and that the defendants’ liability to defray the cost of chancel repairs was in indiscriminate form of taxation and amounted to an infringement of their right to peaceful enjoyment of their possessions guaranteed by article 1 of the First Protocol to the Convention and unlawful discrimination as between landowners contrary to article 14.

In allowing the appeal by the Plaintiff it was held:

(1) that a ‘public authority’ for the purposes of section 6 of the 1998 Act could be either a core public authority which exercised functions which were broadly governmental so that they were all functions of a public nature, or a hybrid public authority some of whose functions were of a public nature; that although the Church of England, as the established church, had special links with central government and performed certain public functions, it was essentially a religious organisation and not a governmental organisation, and parochial church councils were part of the means whereby the
Convention rights (“a statement of compatibility”); or (b) Make a statement to the effect that although he is unable to make a statement of compatibility the government nevertheless wishes the House to proceed with the Bill.

2. The statement must be in writing and be published in such manner as the Minister making it considers appropriate.

However, section 10 illustrates how parliamentary sovereignty is not necessarily the case,

Section 10: Empowers executive to use delegated legislation to amend primary legislation so as to ensure compatibility with ECHR rights.

Freedom of Expression

1. Fundamental for democracy, political and social debate.
2. Necessary for governmental scrutiny.
3. People have a qualified right of freedom of expression.

Without freedom of expression, you could not say what you want without punishment. You cannot criticise or seek accountability (most crucially).

1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.
2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

Historical development

- Article IX, Bill of Rights 1689
  ‘That the Freedome of Speech and Debates or Proceedings in Parylament ought not to be impeached or questioned in any Court of Place of Parlyament.’

- **Derbeyshire County Council v Times Newspapers (1993)**

- Parliamentary Papers Act 1840: MPs cannot be sued for defamation for anything they say in the House of Commons. Necessary for constitutional development. ‘It should be noted of importance that a democratically elected body/government should be open to uninhibited public criticism.’ Newspapers have the right to publish fair and accurate reports of parliamentary proceedings.

- Blackstone:
  “The liberty of the press is indeed essential to the nature of a free state. Every free man has an undoubted right to lay what sentiments he pleases before the public; to forbid this is to destroy the freedom of the press; but if he publishes what is improper, mischievous or illegal, he must take the consequences of his own temerity.”
Obstructing the police
s.89 Police Act 1996:

1. Any person who assaults a constable in the execution of his duty, or a person assisting a constable in the execution of his duty, shall be guilty of an offence.

2. Any person who resists or wilfully obstructs a constable in the execution of his duty, or a person assisting a constable in the execution of his duty, shall be guilty of an offence.

Duncan v Jones [1936]

Obstructing the highway
Section 137, Highways Act 1980 –

(1) If a person, without lawful authority or excuse, in any way wilfully obstructs the free passage along a highway he is guilty of an offence and liable to a fine

Hirst v Chief Constable for West Yorkshire (1986)

DPP v Jones (1999)