

Constitutional law:

*What is a state? A governed entity (such as a country) or sub-entity (such as an autonomous territory of a country). A state is an organized political community, living under a government.

*What is a constitution? A body of fundamental principles or established precedents according to which a state or other organization is acknowledged to be governed. A written record of this.

AV DICEY: [T]hat set of rules which directly or indirectly affect the distribution and exercise of sovereign power in the state.

*How are constitutions classified? Written or unwritten, contents, legality, effectiveness, adaptability, relationships with other laws.

*Regulates relationship between the state, the citizen and different organs of government.

*The UK Constitutions classified? Unwritten, like Israel. Uncodified (not found in one single document), supreme, unitary, flexible, parliamentary sovereignty, monarchical, a political constitution.

*The UK Constitution – sources? statutes, common law, prerogatives powers (appoint/dismiss ministers, make treaties, issue passports, use the military), EU law, conventions, academic opinion

*Structure? Monarchy (not elective head of state).

*Characteristics? Has not got a great deal of separation of power.

HISTORY

*Revolution? – Civil Wars 1642-48/ Commonwealth 1649-60

*New Constitutional settlement – 1688 Glorious Revolution/ 1689. Constitutional monarchy/ Act of Settlement 1701.

*Expansion of the franchise – Great Reform Act 1832, 67, 84, 1918

*Parliament Act 1911.

CONVENTIONS

*‘...conventions, understandings, habits or practices, which, though they may regulate the conduct of officials are not in reality laws at all since they are not enforced by the courts...’ DICEY

*‘The short explanation of constitutional conventions is that they provide the flesh which clothes the dry bones of the law’ JENNINGS

*Informal modes of constitutional behaviour: royal assent/ loss of confidence vote.

*what happens if they break down? Reference re Amendment to the Canadian Constitution (1981)/ Parliament Act 1911.

CONSTITUTIONAL REFORM?

*HRA 98, Devolution – Scotland Act 98, Constitutional Reform Act 2005, European Communities Act 1972 – more legal and less political in nature?

Human Rights

ECHR 1950

HRA 1998, who can bring a claim? Against which bodies? The rights and how to balance them. Horizontal effect eg privacy law.

***R v SSTE (Factortame)* – UK statutes may be disapplied when they conflict with EU laws, but this does not overrule them.**

Administrative Law

scope of judicial review

how judicial review fits into constitutional law

who can bring a claim? state

Against which bodies? 4 main grounds of judicial review: unreasonableness, illegality, procedural impropriety, irrationality

– basis of challenge; crossover with HR law (proportionality)

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