

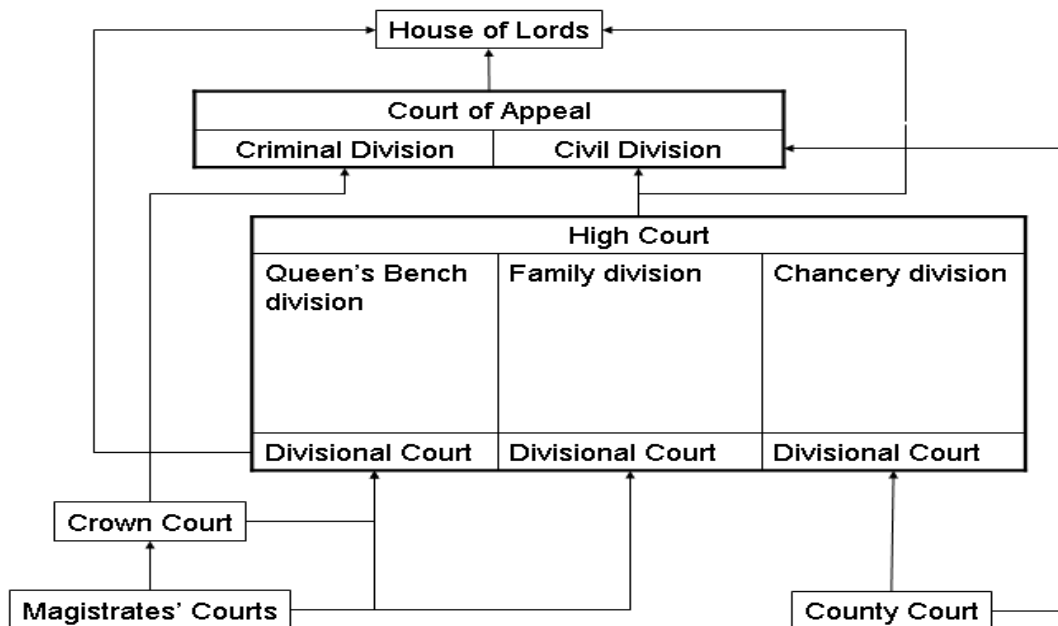


# English Law and Terminology.

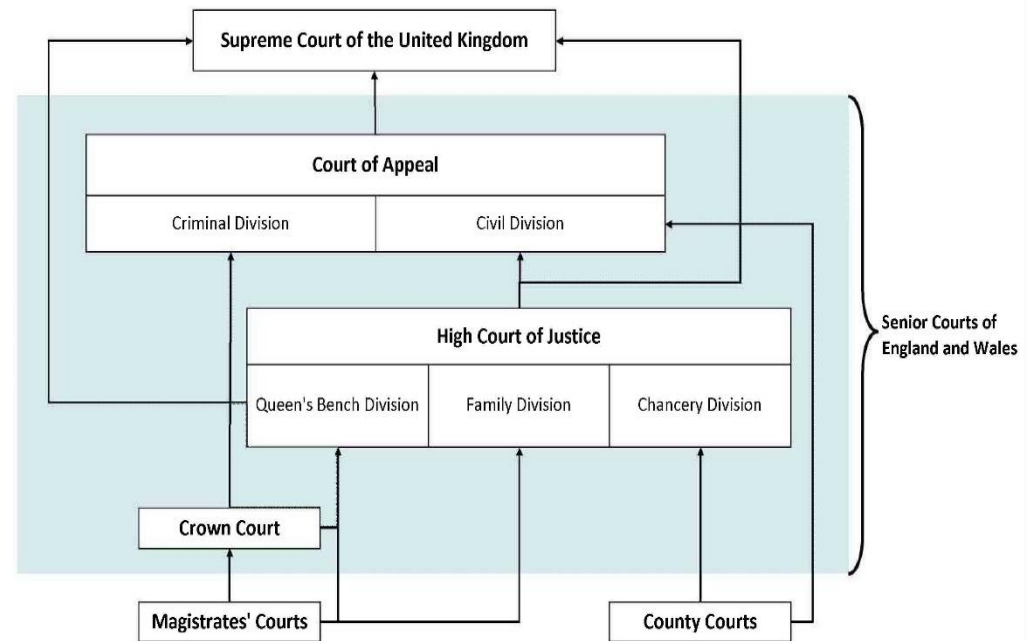
JUSTINE K. COLLINS

# The English Court System.

## The old structure.



## The new structure

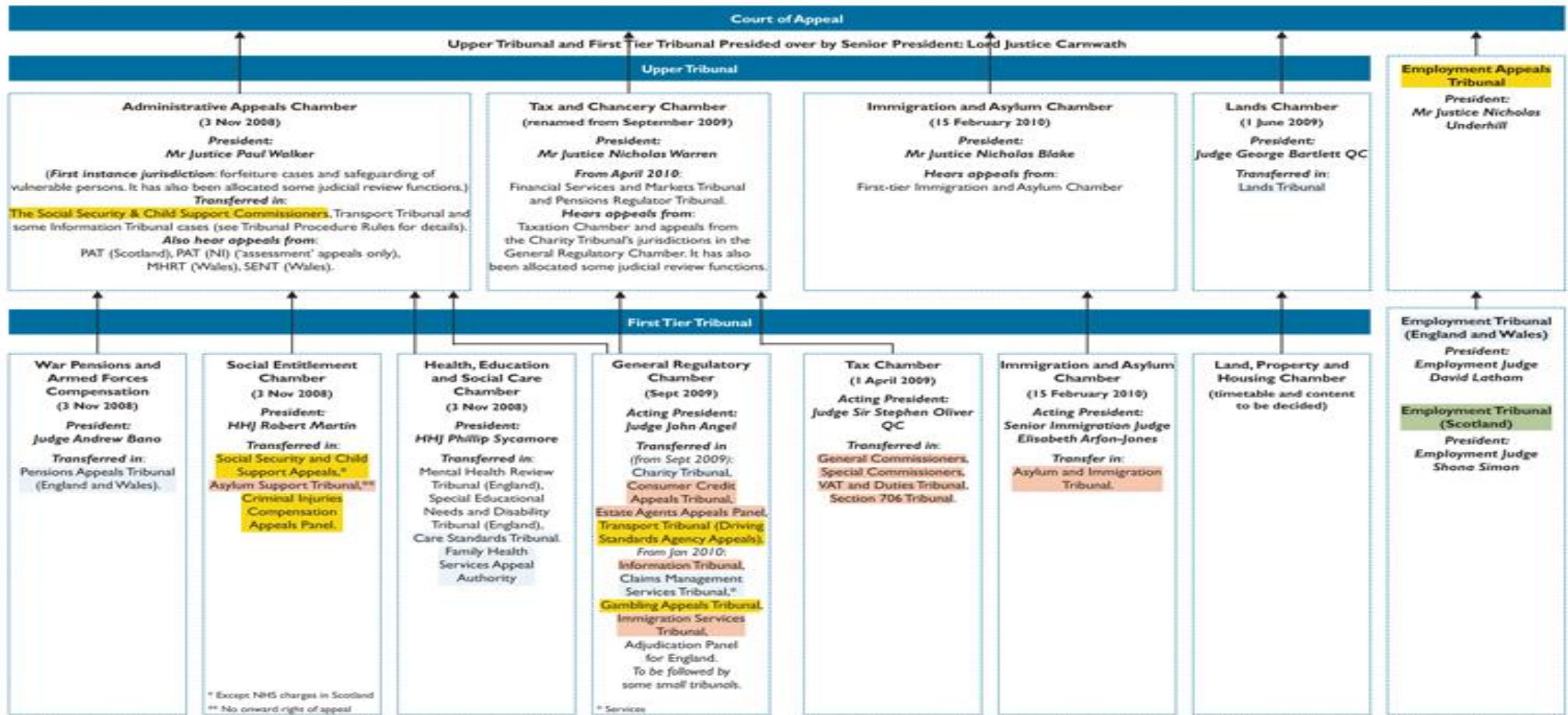


# Introduction.

- The English Court system is two-tiered- with one branch for civil cases and one for criminal cases.
- The English Court structure is complicated and – in places – confusing, because it has developed over 1,000 years rather than being designed from scratch.
- There is no branch for administrative law and no constitutional court.
- Civil and criminal jurisdictions are not exclusive to certain courts as most courts deal with both types of law.
- The courts structure covers England and Wales; the tribunals system covers England, Wales, and in some cases Northern Ireland and Scotland.
- The present court system was established by the Judicature Acts of 1873-75. The Constitutional Reform Act 2005 is the most recent legislation regarding the court system and it established the Supreme Court which succeeded the House of Lords.



Figure 1 - Tribunals structure



\* Except NHS charges in Scotland  
\*\* No onward right of appeal

\* Services

# The Breakdown- Magistrates Court.

- ▶ Magistrates' Courts have both civil & criminal jurisdiction.
- ▶ Civil matters- deal largely with specific debt recovery- utility bills, domestic and matrimonial matters.
- ▶ Criminal matters- deal with minor offences or petty crimes. The court is of particular practical importance here as many criminal cases start and end here (**summary trial**).
- ▶ Magistrates can impose fines and limited imprisonment sentences.
- ▶ Cases are typically heard by a panel of 3 unpaid lay magistrates. Most complicated or sensitive cases are presided over by a district judge.

## LAYOUT OF A MAGISTRATES' COURT



**Key:** A Witness B Magistrates C Clerk of the court  
D Lawyers for the prosecution and the defence  
E Court usher F Defendant G Others

# Magistrates Court cont.

- ▶ Magistrates are appointed by the Lord Chancellor on advice of a local committee (*Lay magistrates*) or on via an application process (*Stipendiary magistrates*).
- ▶ Lay magistrates are assisted by *Clerks* and can act on their advice or not- its their discretion.
- ▶ Magistrates generally oversees proceedings & makes a decision based on evidence presented and hands down suitable sentence.
- ▶ Where however they cannot make a decision on evidence only they hold a *committal hearing* for indictable offences.
- ▶ The also preside over bail hearings.
- ▶ Appeals from the magistrates' court goes to the *High Court* for civil matters and to the *Crown Court* & a *Divisional Court* of the High Court for criminal matters.

## Court personnel Magistrates courts

**Lay magistrates** – Judge cases in magistrates courts usually groups of three on the “bench”. Unpaid and members of local community rather than trained lawyers

**Stipendiary magistrates** – (District judges) Professional lawyers who are paid to sit as full-time magistrates

**Clerk to the court** – The clerk has legal training and can assist the magistrates with advice on points of law



# Magistrates Court cont.

- ▶ **Committal Hearings:** are held in Magistrates' Courts prior to a criminal case going to trial in a Crown Court or the Supreme Court. The aim of a committal hearing is to:
  - ▶ 1. *Determine whether a prima facie (on first sight) case exists*, that is whether the evidence is of sufficient weight to support a conviction by a jury at trial.
  - ▶ 2. *Clarify the issues* prior to attending trial and thereby avoid taking a matter to trial when the evidence is weak, saving the time and resources of higher courts.
  - ▶ 3. Allow an *early guilty plea*, which avoids the time and cost of a trial.
  - ▶ 4. *Inform the defendant of all the evidence against them*, putting them on equal footing with the prosecution and allowing them to best prepare their case.



# Family Courts.

- ▶ The Family Court was established in April 2014 when the relevant sections of the *Courts and Crime Act 2013* came into force.
- ▶ It has a national jurisdiction (the whole country) and brought all levels of family judiciary to sit together in the same court for the first time – *magistrates, District Judges, District Judges (Magistrates Court), Circuit Judges and High Court Judges*.
- ▶ Family cases are no longer heard in the County Court or the Family Proceedings Court (which was abolished). One of the principal advantages of the new Court is that *time and resources are not wasted in transferring cases between different courts* which was a feature of the previous structure.
- ▶ The Family Court comes under the judicial leadership of *Designated Family Judges (DFJs)*. The Court is divided into some *42 DFJ* areas. Each DFJ area will have a *Designated Family Centre* which will be the principal Family Court location for each DFJ area.
- ▶ This is the location where all family applications issued in that DFJ area will be sent to for initial consideration and allocation. A typical DFJ area will have several locations where the Family Court sits but responsibility for listing, allocation and judicial deployment rests with the DFJ and each DFJ area has a single listing system.
- ▶ Proceedings issued in the Family Court are considered by an *allocation team of a legal adviser and a District Judge* who allocate cases to the appropriate level of judge according to their type and complexity.

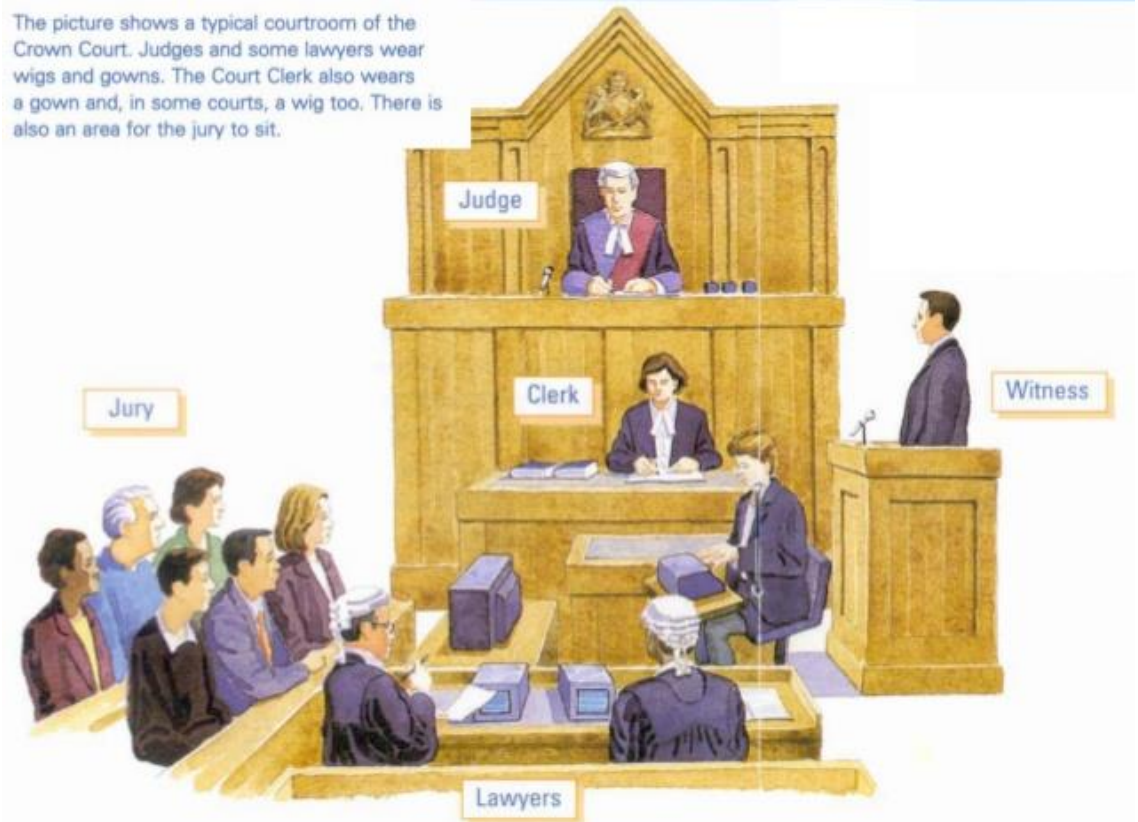
# County Courts.

- ▶ County Courts in their current state were established in 1846.
- ▶ These Courts are first instance for civil matters in contract, torts, landlord & tenant, probate and insolvency.
- ▶ They are geographically limited in jurisdiction to local areas. *The country is divided into districts and grouped into circuits.*
- ▶ This means the case must be connected to the area (*county*) in which the county court is, for the court to preside on the matter.
- ▶ Hence, a case would either be brought to the *place of residence or place of business of the defendant or in the district where the event which led to the action occurred.*
- ▶ County courts are presided over by circuit judges and are assisted by district judges.
- ▶ District judges have limited judicial authority and therefore hear *small claims cases*, they also supervise the administration of the courts.
- ▶ Circuit judges hear the fast track or multi-track cases.
- ▶ Each circuit judge may sit in several county courts and if need be will move between circuits.
- ▶ Appeal from the County court goes to the *Court of Appeal*, with the exception of bankruptcy cases which will go to the *Divisional Court of the High Court*.

# Crown Court.

- ▶ It is not as plentiful as magistrates or county courts, in fact there is only one Crown Court.
- ▶ It can sit at anytime, anywhere in the country and sometimes in several different places simultaneously. There are six court circuits: south-eastern (with London as the administrative centre); Wales and Chester (with Cardiff as the centre); western (Bristol); midland and Oxford (Birmingham); north-eastern (Leeds); and northern (Manchester).
- ▶ When in London it retains its old name of Central Criminal Court and is informally known as the Old Bailey due to the street on which it is located (Bailey Street).
- ▶ It has an exclusive criminal jurisdiction. It deals with all criminal cases not heard by the magistrates court-hence those more serious in nature. It can also hear appeals from the magistrates courts.
- ▶ Where a defendant pleads not guilty, he/she is tried before a judge and a jury of 12 lay persons of the public.

The picture shows a typical courtroom of the Crown Court. Judges and some lawyers wear wigs and gowns. The Court Clerk also wears a gown and, in some courts, a wig too. There is also an area for the jury to sit.

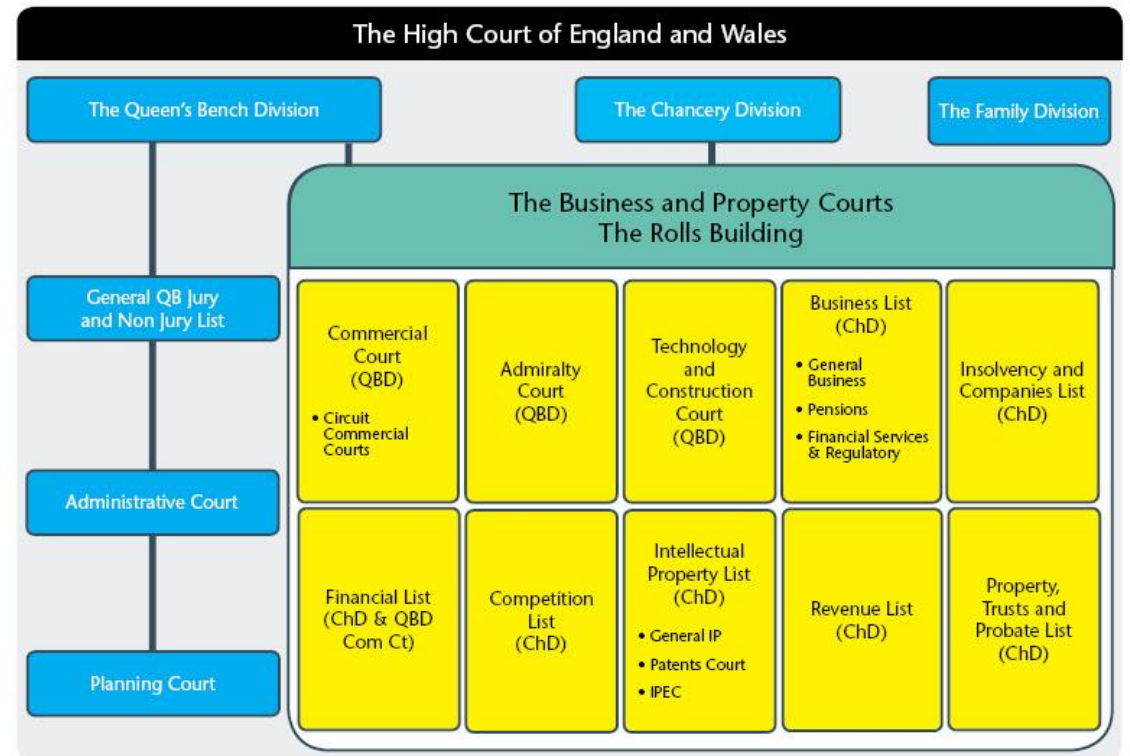


# Crown Court cont.

- ▶ Crown Court judges are *High Court* judges, circuit judges and *Recorders*- who are experienced solicitors & barristers acting as part time judges.
- ▶ The offences that the Crown Court cover are classed into four categories- depending on their nature and gravity.
- ▶ Hence, the more serious the offence, most likely the High Court judges will deal with such whereas less serious offence are brought before circuit judges and recorders.
- ▶ The Crown Court hears trials on *indictment*, as well as sentencings and appeals from the magistrates' courts.
- ▶ Crown Court appeals can go to both the Divisional Court of the High Court and the Court of Appeal (Criminal Division).
- ▶ Where a defendant is acquitted-found not guilty- the Attorney General can refer the case to the Court of Appeal- on any point of law- which he deems needs full discussion- *Attorney- General's Reference*.
- ▶ The Court of Appeal in turn can refer the case to the Supreme Court. *The defendant's acquittal is not affected by decision of the Court of Appeal of the Supreme Court.*

# High Court of Justice.

- ▶ Similar to the Crown Court, the High Court is a single court which can sit anywhere in England or Wales. It is made up of **three divisions**- *Queen's bench Division, Chancery Division and Family Division*.
- ▶ The High Court is staffed by the High Court of *puisne judges* who are divided between the three divisions. This court hears the more serious and complex civil and family cases at first instance.
- ▶ All divisions of the High Court can appeal to the Court of Appeal. However, in certain circumstances an appeal can be made directly to the Supreme *Court-leapfrog procedure*. Criminal cases go directly to the Supreme Court on appeal.



# The Queen's Bench Division.

- ▶ The QBD is the largest of the three divisions and is headed by its President- Lord Chief Justice. It mainly handles cases of 1<sup>st</sup> instance for civil matters mostly in tort and contract laws.
- ▶ It has the most varied jurisdiction. Included within it are a number of specialist courts: *the Admiralty Court, Commercial Court & Technology, Mercantile and Construction Courts* are all part of QBD.
- ▶ It can hear appeals in civil matters from certain tribunals but most appeals are criminal and come from the magistrates' & Crown Courts. This jurisdiction is the entire criminal jurisdiction of the High Court and it is appellate only. The Divisional Court deals with appeals, and two or three judges preside in this division.
- ▶ Court has *prerogative orders*- **Supervisory jurisdiction**- which gives it the power to control inferior courts, tribunals and other public bodies.

## Queen's Bench Division of the High Court

- Largest division of the High Court.
- Hears cases involving tort and contract.
- Divisional Court deals with judicial review, applications for habeas corpus and appeals on a point of law from the Magistrates' Court.



# Specialist Courts of the QBD.

- ▶ The *Admiralty Court* is the oldest of all the Division's specialist courts and deals principally with the legal consequences of collisions at sea, salvage, and damage to cargoes.
- ▶ The *Commercial Court* has a wide jurisdiction over banking and international credit, insurance, commodities and trade matters; the judges of this court can arbitrate in commercial disputes. Hence it is also the principal supervisory court for London arbitration disputes.
- ▶ The *Mercantile Courts* operate in eight regional centres throughout England and Wales. Established in the 1990s, they decide business disputes of all kinds apart from those which, because of their size, value or complexity, are dealt with by the Commercial Court. They also decide smaller disputes.
- ▶ The *Planning Court* deals with all judicial reviews and statutory challenges involving planning matters including appeals and applications relating to enforcement decisions, planning permission, compulsory purchase orders and highways and other rights of way. It forms part of the Administrative Court.
- ▶ The *Technology and Construction Court* covers areas including traditional building cases, adjudication enforcement, arbitration and professional negligence claims, and engineering and Information Technology disputes. In addition to London, the work of the Technology and Construction Court is carried out in eleven regional centres around the country.
- ▶ The *Administrative Court* exercises the 'supervisory jurisdiction' of the High Court, which means that it has the power to oversee the quality and legality of decision-making in the lower courts and tribunals and hears applications for *judicial review* of decisions of public bodies.
- ▶ Sitting as the Divisional Court of the QB, its judges also hear certain criminal appeals originating in the magistrates' courts and the Crown Court, as well as applications for judicial review which are so important that they are heard by two or three judges sitting together. Queen's Bench Division judges also sit in the Court of Appeal Criminal Division on appeals from the decisions of the Crown Court. When doing so they sit as a bench of two or three judges, usually presided over by a judge of the Court of Appeal.

# The Chancery Division.

- ▶ The *Chancery Division* is mainly a court of 1<sup>st</sup> instance but it does have limited appellate jurisdiction- in terms of bankruptcy cases- dealt with by the *Divisional Court of the Chancery Division*.
- ▶ It is presided over by the *Chancellor of the High Court*. It took over those matters covered by the now abolished Court of Chancery. It covers land law, mortgages, trusts, the administration of estates of deceased persons and bankruptcy.
- ▶ Other areas such as landlord and tenant disputes were added by legislation. It also deals with patent, probate and taxation cases.
- ▶ The division includes three specialist courts: *the Companies Court, the Patents Court and the Bankruptcy Court*.
- ▶ *The Bankruptcy and Companies Courts* deal with personal actions for bankruptcy and compulsory liquidation of companies and other matters arising under Insolvency and Companies Acts.
- ▶ *The Patents Court* deals with a range of intellectual property matters and hears appeals from the decisions of the Comptroller General of Patents, Designs and Trademarks.
- ▶ The Division normally sits in London but also hears cases in Cardiff, Bristol, Birmingham, Manchester, Liverpool, Leeds & Newcastle.



# The Family Division.

- ▶ Created in 1970 from the old Probate, Admiralty and Divorce division.
- ▶ Its creation reflected the growing importance of family law and its recognition as an area of specialisation in its own right.
- ▶ It is presided over by its own President and deals with all matrimonial issues and children matter than arise before the High Court.
- ▶ Matters such as legitimacy, adoption and proceedings under the Family Law Act 1986 and the Children Act 1989.
- ▶ It has original jurisdiction in some matters such as *Wardship- (guardianship over a child)* proceedings must commence therein. It also has appellate jurisdiction and hears appeals from magistrates' courts mainly.
- ▶ The Family Division does not have the same range of specialist courts for its work as the Queen's Bench Division, but it does contain the *Court of Protection*, which gives judgments on behalf of those who are unable to make decisions for themselves, such as persistent vegetative state victims.
- ▶ It is also responsible for undisputed cases of probate - the legal recognition of the validity of a will - through the Probate Registry of the Family Division across England and Wales. Under its President, who is a member of the Court of Appeal.
- ▶ The *Financial List* is a specialist Queen's Bench/ Chancery cross-jurisdictional list set up to address the particular business needs of parties litigating on financial matters.

# The Court of Appeal.

- ▶ The Court of Appeal together with the High Court comprise of the *Senior Courts of England and Wales*.
- ▶ The Court of Appeal can sit anywhere in the country however it mainly resides in London. It is an appellate court and is divided into two divisions a Civil and Criminal.
- ▶ Cases are generally heard by three judges- the *Lord Justices of Appeal or Lady Justices*, who are the most senior judges.
- ▶ There may be a sitting of full court of five judges where a case is of immense importance.
- ▶ Each Lord Justice delivers his own judgment and where they differ, an appeal is decided by the majority.
- ▶ The Court of Appeal's decisions are binding (precedent) on all lower courts and on the Court of Appeal itself.
- ▶ Appeals from either division of the CA reside with the Supreme Court.

# Divisions of the Court of Appeal.

- ▶ The *Civil Division* is headed by the Master of Rolls.
- ▶ It hears appeals- *on points of fact & law*- in all leading cases in civil and family justice from the High Court and, in some instances, from the County Courts and certain tribunals as well such as the Employment Appeal Tribunal.
- ▶ In the Court of Appeal civil division, there is a bench of three Lord or Lady Justices.
- ▶ Each of the three judges reaches an individual decision. The Court's overall verdict can be made either unanimously or by a two-to-one majority. When this happens, the judge who is in the minority gives a dissenting (disagreeing) judgment, explaining why they do not agree with the others.
- ▶ Bringing an appeal is subject to obtaining '*permission*', which may be granted by the High Court or, more usually, by the Court of Appeal itself. Applications for permission to appeal are commonly determined by a single judge of the Court of Appeal.
- ▶ Cases are refused permission where the case *has no realistic prospect of success*.
- ▶ The Civil Division can allow or dismiss the entire appeal, or it can allow one part of an appeal and dismiss the other.

# Divisions of the CA cont.

- ▶ The Criminal Division is presided over by the Lord Chief Justice.
- ▶ The bench in this Division usually consists of a Lord or Lady Justice and two High Court judges - they hear appeals against conviction and sentence.
- ▶ It hears appeals in criminal matters from the Crown Court on various grounds, and *points of law referred by the Attorney General following acquittal in the Crown Court or where the sentence imposed was unduly lenient*.
- ▶ Appeals on other grounds apart from points of law- for example- *those appeals against sentences* mentioned above- can only be brought with *leave*- that is, *permission*, of the Court of Appeal.
- ▶ The Criminal Division can admit an appeal, dismiss it or quash the conviction in question.
- ▶ The most important Criminal appeal cases are often heard by the *Lord Chief Justice, the President of the Queen's Bench Division or the Vice-President of the Court of Appeal Criminal Division*, sitting with two judges of the High Court.
- ▶ Their decisions are always unanimous; if one judge disagrees, he or she will follow the others and not give a dissenting judgment.
- ▶ It is hesitant to allow new evidence unless it is *material* to the case and then they can order a new trial.

# The Supreme Court & The House of Lords.



# The Supreme Court & the House of Lords.

- ▶ The Supreme Court is the final court of appeal in the United Kingdom. However until 2009, the House of Lords was the highest court of appeal for England and Wales.
- ▶ The CRA 2005 transferred the powers of the HL to the new independent Supreme Court, which commenced operation on 1.10.09.
- ▶ For centuries, the HL had both political and judicial powers- acting as one of the two Parliamentary chambers ( the other being *House of Commons*). Its judicial functions operated solely via *Appellate Committee of the HL*.
- ▶ Its creation achieved a complete separation between the United Kingdom's senior Judges and the Upper House of Parliament, emphasising the independence of the Law Lords and increasing the transparency between Parliament and the courts.
- ▶ (The Law Lords, also known as *Lords of Appeal in Ordinary*, were highly qualified, full-time judges who carried out the judicial work of the House of Lords until July 2009, when they left Parliament to become the *Justices of the Supreme Court*).
- ▶ It represented a significant constitutional change- it is the first court to allow the filming and broadcasting of its proceedings.
- ▶ The former Lords are now the 12 Justices of the Supreme Court, the senior Law Lord is now the *President of the Supreme Court*.
- ▶ Like in the HL, the Supreme Court Justices will normally presides in 5 unless case is important and require full court of 9. Each Justice can deliver their judgment- *opinion*. Majority decides the ruling.
- ▶ Usually Justice would not give their *opinion* but rather agree with reasoning of others- unless they disagree- in which case they can prepare a *dissenting opinion*.
- ▶ It hears appeals *on arguable points of law of the general public importance*, for the whole of the United Kingdom in civil cases, and for England, Wales and Northern Ireland in criminal cases.
- ▶ In Scotland, appeals can be made from the lower courts in criminal cases to the High Court of Justiciary, which is Scotland's supreme criminal court.
- ▶ Appeals typically come from the Court of Appeal however in certain circumstances can obtain an appeal directly from the High Court- *leapfrogging*.
- ▶ Parties must obtain permission to appeal. Decisions of the Supreme Court- like the HL- are binding (precedent) on all lower courts.

# Other Specialist Courts.

- ▶ *The Privy Council*- has dual functions- originally the final remnant of the *Curia Regis*- see last week's notes.
  - ▶ Its members are former and present *cabinet ministers and Lords of Appeal in Ordinary*- lead by the *Lord President of the Council*.
  - ▶ Specialist appeals- from the ecclesiastical courts of the Church of England.
  - ▶ Its devolutionary powers were removed in 2005- but it is still the highest court of appeal for the British colonies and a number of members of the commonwealth- this is declining.
  - ▶ Decisions are based on the laws of the country which submitted the appeal and hence is binding in that country- but not in English courts- (*though persuasive*) and in turn decisions of English courts are not binding on Privy Council.
- ▶ *Coroner's Court*- the role of the coroner is to investigate sudden, violent or unnatural deaths. They do this by holding an inquest.
  - ▶ The court hears evidence relating to the body and the circumstances of the death. There is no prosecution or defence case in an inquest, simply a search for the truth.
  - ▶ The evidence is considered, and from that evidence the cause of death is established. Unlike with an inquiry, it is not a public hearing with set terms of reference.
  - ▶ The coroner and the jury (if there is one - inquests with juries accounted for only 2% of all inquests in 2012) cannot express any opinion on any matters other than who the deceased was, who, when and where they came by their death and the particulars required by law to be registered concerning the death.

# Other Specialist Courts cont.

- ▶ *The Office of the Judge Advocate General- The Court Martial*- this deals with the criminal trials of Servicemen and women in the Royal Navy, the Army and the Royal Air Force for serious offences or cases where the defendant chooses not to be dealt with by his or her Commanding Officer.
- ▶ The Court Martial is an independent standing court which is part of a separate jurisdiction called the Service Justice System which broadly mirrors the civilian justice system, although it has a UK wide jurisdiction and can sit anywhere in the world where armed forces are present.
- ▶ Every Court Martial trial has an independent civilian judge on the bench, known as the Judge Advocate, who presides over the conduct of the proceedings and rules on all legal matters arising, in the same way as in a civilian Crown Court trial.
- ▶ *Tribunals*- This is an important, specialised part of the judicial system. Tribunals are independent judicial bodies set up by Parliament to rule on disputes between individuals or private organisations and state agencies.
- ▶ Tribunals sit across the United Kingdom. Within England and Wales, there are almost 100 different Tribunals, each dedicated to a specific area. Amongst the most common are those dealing with Agricultural Land, Employment, Asylum and Immigration and Mental Health reviews and Tribunals which make decisions affecting the finances of the public.
- ▶ Tribunals adopt procedures that are less complicated and more informal than those typically associated with the courts. They are split into a First-Tier, and an Upper Tier, a system created by the *Tribunals, Courts and Enforcement Act 2007*.



# Terms & Fun Facts.

- ▶ *Circuits* are the six distinct geographical regions which England and Wales are split into for the practice of law. They are the areas around which the High Court judges travel ('go out on circuit') as they try the most important cases.
- ▶ The Senior Presiding Judge oversees the work of Presiding Judges on each Circuit in England & Wales and provides a general point of liaison between the Judiciary, the courts and government departments.
- ▶ The role of Circuit Judge was first established by *King Henry II in 1166*. That year, Henry issued a Declaration at the Assize of Clarendon (*an assize was an early form of the King's Council; the term later became the name for a sitting of a court*).
- ▶ *The Assize of Clarendon* ordered judges to travel the country – which was divided into different circuits – deciding cases. To do this, they would use the laws made by the judges in Westminster, a change that meant many local customs were replaced by new national laws. These national laws applied to everyone and so were common to all. Even today, we know them as the 'Common Law'.
- ▶ The system of judges sitting in London while others travelled round the country became known as the 'assizes system'; it survived until 1971.

# Terms & Fun Facts cont.

- ▶ An *indictment* involves a bill of indictment to be presented to the court when the person accused has been committed to trial by a magistrate and in certain other cases.
- ▶ An indictment must establish the jurisdiction of the court to try the case, provide adequate notice to the defendant of the charges against him, enable the court to pronounce judgment upon conviction, and prevent a second prosecution for the same offense.
- ▶ *Puisne Judge*- is a legal term of art for those of 'inferior rank'-a junior judge. Today, puisne judge refers to any judge of the English High court, apart from the chief justice.
- ▶ *Bail Hearings*- a pre-trial court hearing to determine whether a defendant charged with an offence can be released on bail. This means the defendant will be able to go home until their court hearing.
- ▶ *Appeals*- If you are unhappy about the decision made by the judge in your case, you may be able to appeal against the decision to a judge in a higher court or in the case of tribunals to the Upper Tribunal or Employment Appeal Tribunal.
- ▶ A *Divisional court*, in relation to the High Court of Justice of England and Wales, means a court sitting with at least two judges. Matters heard by a divisional court include some criminal cases in the High Court as well as certain judicial review cases.
- ▶ Although often referred to in practice as *the* Divisional Court, a divisional court is in fact not a separate court or division of the High Court but essentially refers to the number of judges sitting. Usually a divisional court sits with two judges but occasionally the bench comprises three judges.
- ▶ The best known divisional court is that of the Administrative Court, which is a specialist court in the Queen's Bench Division which deals with criminal and judicial review cases. There are also divisional courts of the Family and Chancery Divisions to deal with certain cases. The usual constitution of a divisional court is one Lord Justice of Appeal and one High Court judge, in comparison to other sittings of the High Court which are usually before a single High Court judge.