



Max Planck Institute
LUXEMBOURG
for Procedural Law

Sources of Law in the English Legal System

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Law of the European Union

- Proposed and agreed by the EU legislative institutions;
- Primary law (Treaties) set out and govern the fundamental framework of the EU;
- Secondary law (e.g. directives) govern other legal areas in which the EU has competence (power) to make law (e.g. consumer law) – Member States have to make the same.
- Interpreted by a court – the European Court of Justice, when asked questions by national courts.



EU Law and the UK

European Communities Act 1972

- Following referendum of UK to join the (then) European Communities;
- Obliges the UK to as regards its membership of the EU;
- Binds the UK to EU law and dictates that EU law can have a direct influence on the laws of the UK;
- Via the principles of primacy and direct effect of EU law (developed by the ECJ) – limits parliamentary sovereignty.

→ Primacy or supremacy of EU law - EU law prevails over domestic law both statute and common law.



International Law (Focus on ECHR)

European Convention on Human Rights (signed 1950):

- Drafted by the Council of Europe (made up of states);
- International treaty to protect human rights and political freedoms;
- Interpreted and violations of the ECHR are determined by the European Court of Human Rights in Strasbourg.



International Law (Focus on ECHR)

UK is a contracting state and founding state of the CoE:

- In 1998, Human Rights Act 1998 – allows individuals in UK to rely on the ECHR before courts in the UK;
- Limits parliamentary sovereignty;
- The HRA 1998 gives judges special powers of interpretation to make all domestic law convention compatible.





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The Court and Trial System

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The Court and Trial System - Outline

1. Introduction to the Court System of England and Wales
2. The Jurisdiction and Hierarchy of Courts
3. Key Terminology
4. The Nature of the English Legal System – An Adversarial System
5. The Jury in the English Legal System



Introduction to the Court System

Current system established and reformed via:

- Judicature Acts 1873-1875 – replaced old common law courts with new courts
- County Courts Act 1846
- Courts Act 1971 and Supreme Court Act 1981
- Constitutional Reform Act 2005 – created a new UK Supreme Court, replacing the judicial function of the House of Lords



The Jurisdiction and Hierarchy of Courts

A hierarchy of courts and appeals:

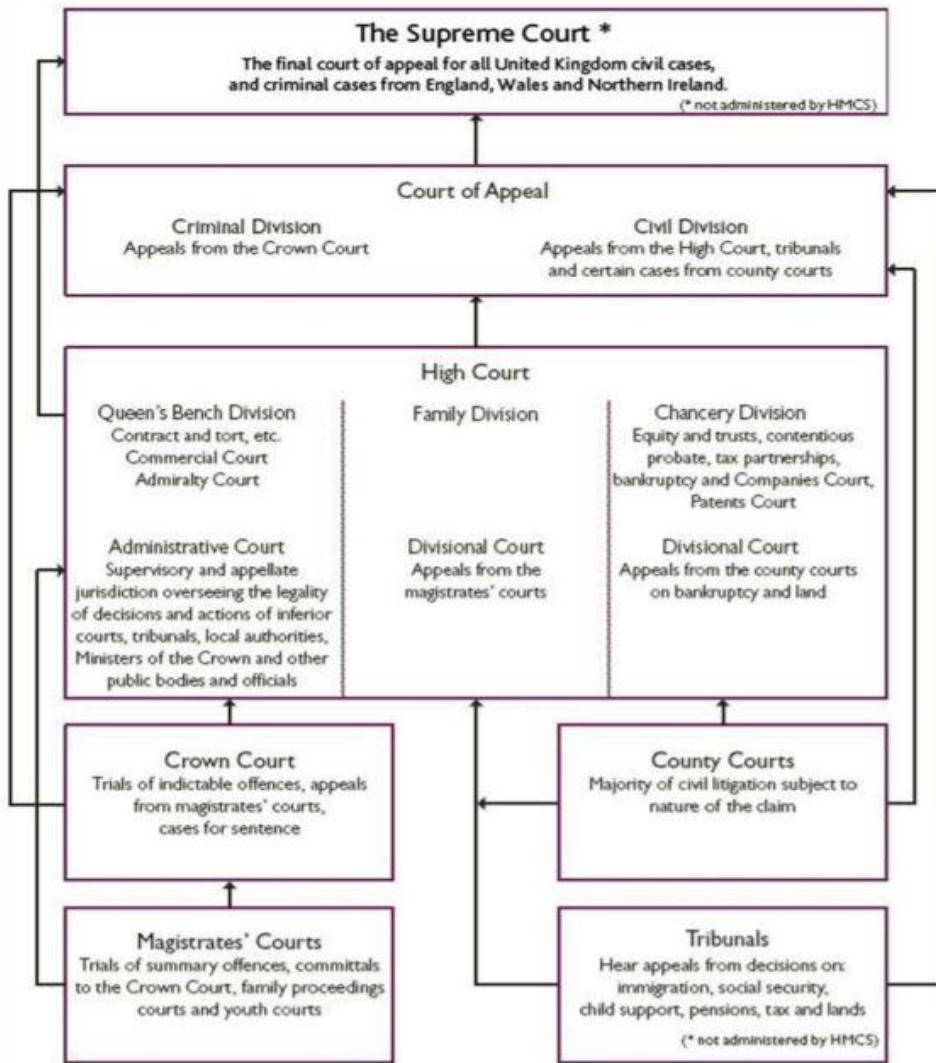
- Higher courts (appellate and UKSC) set precedents in finding reasons for deciding cases – must be followed by lower courts;

Jurisdiction:

- The possibility to hear a case;
- Original jurisdiction: to hear a case at first instance;
- Appellate jurisdiction: to hear an “appeal” – if one party to the case is unhappy with the decision given.



The Jurisdiction and Hierarchy of Courts



- Criminal (left) and civil (right);
- A hierarchy or pyramid of courts.

Magistrates' Courts

What jurisdiction?

- Original or first instance jurisdiction.

What types of cases heard?

- Minor criminal offences (the majority) and civil cases.

Who hears the case and decides?

- Panel of three unpaid lay magistrates (receive training but usually no legal education) or by a district judge (lawyers or barristers; for more complex cases).
- Assisted by a court clerk (legally trained; non-binding advice on legal questions, practice and procedure).

To which court can an appeal be made?

- HC (civil); Crown court or Divisional court of HC (criminal).



County Courts

What jurisdiction?

- Original or first instance jurisdiction; local to a district, grouped into circuits.

What types of cases heard?

- Only civil cases; only with small claims.

Who hears the case and decides?

- Circuit judges, who sit in different districts and may travel, assisted by district judges who supervise.

To which court can an appeal be made?

- To the CoA (for all except bankruptcy – DC of HC).



Crown Court

What jurisdiction?

- Original and appellate jurisdiction; a single court that sits either in London (Old Bailey) or travels.

What types of cases heard?

- Only criminal cases (those deemed too serious for the magistrates' courts) and appeals therefrom.

Who hears the case and decides?

- High court judges; circuit judges and recorders (part-time judges), depending on seriousness of case (4 categories).

To which court can an appeal be made?

- DC of HC and Criminal division of CoA; Attorney General
Reference to CoA if important issues and defendant acquitted.



High Court of Justice

What jurisdiction?

- Original and appellate jurisdiction; one court sitting anywhere in the country.
- Three divisions: Queen's Bench; Chancery and Family.

What types of cases heard?

- Criminal and civil.

Who hears the case and decides?

- High Court judges.

To which court can an appeal be made?

- Court of Appeal (civil matters) or UKSC (leapfrog in civil matters); UKSC for all criminal appeals.



High Court of Justice: Queen's Bench Division

What jurisdiction?

- Admiralty, Commercial and Technology and Construction Courts;
- First instance jurisdiction and appeals in civil cases;
- Appeals in criminal matters from MC and the CC, heard by DC.
- Supervision jurisdiction – using prerogative orders to control courts.

What types of cases heard?

- Criminal appeals and first instance civil cases.

Who hears the case and decides?

- High Court judges, headed by its President.



High Court of Justice: Chancery Division

What jurisdiction?

- First instance jurisdiction and limited appellate jurisdiction.

What types of cases heard?

- Cases that had been dealt with by the Court of Chancery prior to its abolition in 1873 – eg land matters, mortgages, trusts, estates of deceased persons, bankruptcy.
- Patent Court – patent actions.

Who hears the case and decides?

- High Court judges, headed by the Chancellor of the High Court.



High Court of Justice: Family Division

What jurisdiction?

- First instance jurisdiction and appellate jurisdiction (from the Magistrates' Courts).

What types of cases heard?

- All cases concerning family matters, including matrimonial issues and children (eg legitimacy and adoption); also proceedings under certain Statutes – including the Family Law Act 1986 and the Children Act 1989.

Who hears the case and decides?

- High Court judges, headed by its President.



Court of Appeal

What jurisdiction?

- Appellate jurisdiction; can sit anywhere but mostly in London.

What types of cases heard?

- Civil division (headed by Master of the Rolls); appeals on fact and law; leave to appeal must be granted – if real prospect of success.
- Criminal division (headed by Lord Chief Justice); appeals on point of law always possible; on facts and sentencing requires leave.

Who hears the case and decides?

- Lords Justices of Appeal, in panels of three or full court of five; can sit in any division; separate judgments; majority decision.

To which court can an appeal be made?

- Decisions binding on lower courts and CoA; appeals to UKSC.



UK Supreme Court

Constitutional Reform Act 2005:

- Created a new UK Supreme Court in 2009;
- Replaced the judicial function of the House of Lords and transferred its jurisdiction and judicial function.

Why this significant constitutional change?

- HofL previously combined political and judicial functions;
- Judicial function exercised by the Appellate Committee of the HoL, consisting of Lords of Appeal in Ordinary;
- Overlap was limited and Law Lords rarely participated in political debates but appearance of a lack of separation;
- New building and no longer given peerages in HoL.



UK Supreme Court

What jurisdiction?

- Appellate - from CoA (normally) or HC (certain issues).

What types of cases heard?

- Civil and criminal matters; issues of devolution;
- Only issues raising arguable points of general public interest;

Who hears the case and decides?

- 12 Supreme Court Justices led by President, Baroness Hale;
- Each delivers their own opinion, or expresses agreement with another; a dissenting opinion is delivered if they disagree;
- Case decided the majority.



Privy Council

What jurisdiction?

- 1) Curia Regis (advisory body of the Sovereign); 2) hears certain specialist appeals; 3) hears appeals from British colonies and Commonwealth countries (appeals decreasing over time).

Who hears the case and decides?

- Composed of former and current cabinet ministers (politicians) and former Law Lords;
- Decisions are based on law of the country making the appeal; binding on all courts in that country (not binding on English courts but have persuasive authority and may be followed).



Other Forms of Dispute Resolution: Tribunals and Alternative Dispute Resolution

Tribunals:

- Exercise of judicial or quasi-judicial functions as regards specialist issues; eg Employment Tribunal.
- Not courts but render binding decisions; and outside of the judicial system;
- Typically cheaper and quicker.

ADR:

- Alternative to courts; dispute resolution via independent third party – arbitration, mediation or conciliation;
- Binding decisions (arbitration) or non-binding advice.



Key Terminology

- ADR
- Appeal
- Civil and criminal
- Courts
- Jurisdiction
- Lay persons/lay magistrates
- Permission to appeal
- Tribunals





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