

Sources of Law

Where our law comes from

Legislation

Initial Idea	Not yet in Parl
Green Paper	Consultation document of ideas. Can be amended.
White Paper	Firm proposals based on consultation
First Reading	In HOC first (elected) Title read out
Second Reading	2 weeks later. Debate, vote, amend
Committee Stage	Detailed committee looks through clause by clause
Report Stage	Report back any changes
Third Reading	Final vote. HOC get final say on HOL amendments – Parl Acts 1911 and 1949
House of Lords	Repeat process from First-Third. Appointed body. Can block bill for a year – Parl Acts 1911 and 1949
Royal Assent	Queen or someone on her behalf signs bill and it becomes an AOP.

HOC Elected	Slow, long process. Act may be out of date
Act can be passed when needed	Judges may interpret Act different and lose intention
Long, detailed, accurate	Parliament political – too much time on politics

Case Law

- Each case lays down a rule = common law
- Precedent operates in case law: each case lays down a rule which may or must be followed

Precedent Needs:

- Law reporting (keeps a historical record of precedents)
- Hierarchy of the courts (so each court knows who they are bound to follow)

Supreme Court	Binds lower. Not bound by own decisions (1966 Practice Statement)
Court of Appeal	Bound by above, binds below. Crim division less strictly bound
High Court	Bound by above, binds below. High Court Judges do not have to follow each other
Crown Court	Bound by above, binds below, especially Mac Court
Inferior Courts	Bound by above. Bind no one

Judgement

Precedent is drawn from the judgement. 2 types:
 Ratio decidendi – the reason for the decision, must be followed = binding precedent.
 Obiter dicta – other things said, may be followed.

Persuasive precedent – made by obiter dicta statements, decisions of lower courts, or of other courts e.g. **Wagon Mound** was decided in the Privy Council and we **decided** to follow.

Law can be added to and grow	Inflexible – once made hard to change
Certainty – prec followed	Judges avoid cases based on minor facts = illogical
Rules are practical and detailed	Bulk and complexity – can be hard to find precedent

EU Law

- Joined in 1973 by passing **European Communities Act 1972**
- 2 types of EU law we need to follow

Regulations: we must follow right away and they are immediately binding: **Re Tacographs**



Directives: we need to make a Statutory Instrument to give the force of law.

Courts

Lower courts can choose whether to refer EU issue to European Court of Justice. Higher Courts (SC) **must** refer case to ECJ

Supremacy of Parliament

Supremacy: parliament can make any law it chooses. People who try to challenge an Act will fail: **Cheney v Conn**



Power Limited

<p>The EU</p> <p>If EU and UK law conflicts, EU law wins. Factortame shows even if <u>part</u> of UK law conflicts, we had to suspend it.</p>	<p>The Courts</p> <p>1) Courts may interpret Acts differently</p> <p>2) Areas not with laws – Judges have to make it (contract/ Tort)</p>	<p>HRA 1998</p> <p>Any Act must have statement that it complies/ does not with HR. All must comply in practice = less power.</p>
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Criminal Courts and Processes

1 Bringing to court

Case needs brought to court either by **summons** or **arrest**

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Police can arrest anyone who is about to, is in the act of or who has committed an offence

- They can arrest to:
- 1) Gain correct name/address
 - 2) Prevent
 - (i) physical injury or damage to property
 - (ii) obstruction of the highway
 - (iii) public indecency
 - 3) To protect a vulnerable person
 - 4) To allow prompt investigation

- Other people can arrest:
- 1) Anyone who is in the act committing an indictable offence (including 'either-way' offences)
 - 2) Where an indictable offence has been committed, **provided** they believe it is not practicable for a constable to make the arrest instead.

- If making a citizen's arrest
- 1) Only reasonable force
 - 2) Detained for the time it takes for the police officer to arrive
 - 3) The police must be called ASAP

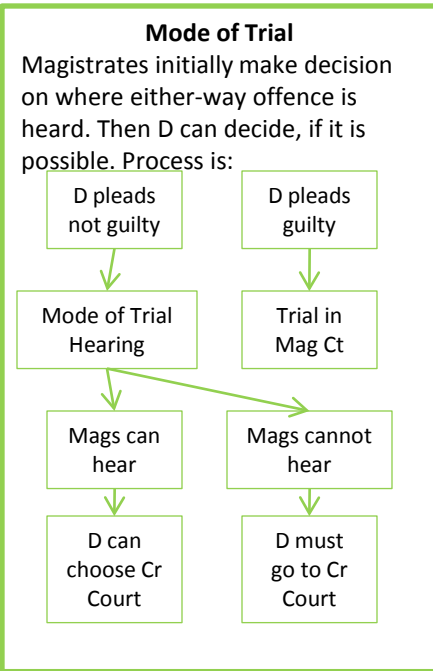
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CPS

They advise police, review the cases, determine charges in big cases, prepare and present cases in court.
 They decide to prosecute on whether there is enough evidence and if its in the public interest
 + Objective: saving time and money
 - Spend too much money on admin and lack independence

Offence is Classified					
Class	Serious	Court	Decision	Sentence	E.G
Summary	Least	Magistrates	Mag/DJ verdict and sentence	6 months/ £5000 fine	Common assault, motoring
Either-Way	Middle	Mag or Crown: D decides	Above or jury in Crown	Above or up to max	Theft, ABH
Indictable	Most	Crown	Jury verdict and judge sentence	Max	Murder, Rape

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Duty Solicitors

Police Station
 Person arrested get free legal advice. Can be over phone if minor.

Magistrates' Court
 Free legal advice on first court appearance if has potential prison sentence.

Both funded by Legal Services Commission

+ Valuable advice, free of charge, but rep not automatically free. Can be given over phone. Must pass competence assessments to be accredited.
 -Advice not for minor offences. Can give inferior service.

6

Bail

Freedom until trial. Types: Police Bail/Street Bail/Court Bail. Under **Bail Act 1976** as amended by **CJA 1988 & 2003** presumption that bail will be granted.

Refused If	Considerations when Granting	Conditions Attached to Bail
<ul style="list-style-type: none"> •D will fail to surrender •Commit further offences •Interfere with witnesses •Obstruct justice 	<ul style="list-style-type: none"> •Nature and seriousness •Likely sentence •Strength of evidence •Previous record •Community ties 	<ul style="list-style-type: none"> •Surety •Report to police •Residence •Curfew with tag •Restrictions/surrender passport

7 The Trial

Magistrates Court Trial

1. Prosecution rep opening speech, calls witness, produces evidence. Witness examined, cross-examined, re-examined.
2. Def rep repeats process. Some D's rep themselves.
3. Closing speeches
4. Magistrates retire to consider verdict. Chairperson will deliver verdict. Guilty if satisfied beyond reas doubt
5. Probation may prepare a pre-sentence report
6. If guilty – 6 months or £5000 fine. Send to Crown if powers insufficient.

Youth Court Trial

D's aged 10-17 come here, except murder. No crim resp if under 10. Youth courts different:

- 1) Less formal procedure and language
- 2) Specially trained mags
- 3) No press permitted and name private
- 4) Sentences tailor made
- 5) Youth offending team get involved.

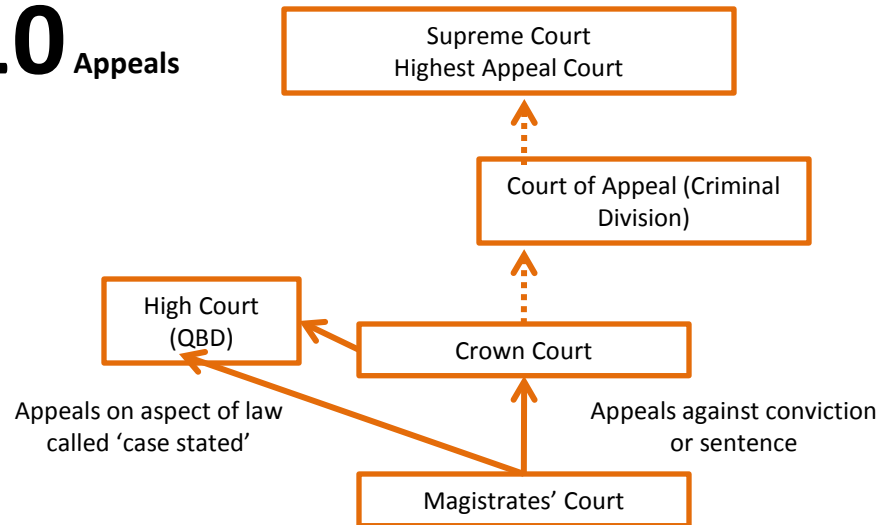
Crown Court Trial

1. Jury sworn in
2. Pros opening speech, witnesses examined, cross examined, re-examined
3. Defence repeats
4. Closing speeches
5. Jury retires to consider verdict. Guilty if they are "certain". If guilty judge passes sentence.

8 Sentencing

Aims	Types	Aggravating Factors	Mitigating Factors
Retribution and Denunciation	Custody – immediate or suspended. Suspended not served unless further offences committed. Custody – in prison if over 21, Young Offenders Institution if 15-20.	Seriousness of crime Racial motive (can add up to 2 years) Antecedents – previous convictions Weapon On bail when offending Vulnerable victim	First offence Young or old defendant Remorseful Early guilty plea (can take 1/3 of sentence) Background of offence
Rehabilitation			
Reparation	Community Order – over 16. e.g. unpaid work, supervision, programmes.		
Deterrence	Fines – most common		
Protection of Society	Discharges – absolute or conditional		

10 Appeals



Civil Courts and Processes

1 Seeking Advice

Solicitors	Professionals, Throughout UK Los-Cost initial interview	Qualified, Best source, Negotiate and send letters Represent in court	Expensive, If on public funding must find sol with that contract
CAB	3,300 in UK, Staffed by volunteers, Charitable, Qualified solicitor might be present	Free (likely), Specialists in social/welfare	Do not specialise in all areas, High demand = delays, Unable to negotiate or represent
Law Centres	In larger towns and cities, Salaried professionals, Funded by Gov't and charitable donations	Specialists in social/welfare Free advice on low income	Not in small towns and villages – ½ in London Demand for service = huge volume of work Rely on having sufficient resources
Websites	General legal advice, E.g. CLS website	Easily accessible, anonymous, free, can refer specific issues to other source	Not always reliable General advice, not specific
Specialist Bodies	Legal advice for issues in their expertise e.g. trade unions	Specialist in their area	Advice limited to specific areas Quality may vary

2 Negotiation

Both parties or rep's meet to discuss problem and reach mutually acceptable compromise agreement.	
Less bad feeling No winner/loser Low costs Flexible – any agreement	1 may be vulnerable Settle for less beneficial agreement May not reach agreement

3 Financing Advice/Rep

	Legal Help	Representation
What is it?	Advice pre-trial. Solicitor or other body with contract with Legal Services Commission gives initial advice/assistance/preliminary letters	Representation in court
Who funds it?	Community Legal Service – public funding (Gov't)	Government Funded
Who gets it?	Means tested – those on low income and with low savings. Depends on likelihood of winning	Low income, low savings, likely to win, and win substantial amount
Excluded Areas?	Small claims, personal injury cases	Small claims, PI, and if CFA would be given

Conditional Fee Agreement

- No win no fee
- Agreement with solicitor
- Claimant pays nothing if lose
- If win must pay a success/uptift fee on top of normal rate (usually met by other party)
- Take out insurance policy for if lose

4 Procedure of Suing

1. C fills out claim form and pays fee
2. Complete track allocation form
3. Allocated to track
4. Directions from DJ
5. Hearing

5 Track Allocation

Civil Procedure Act 1997		
Small Claims	Fast Track	Multi-Track
<ul style="list-style-type: none"> •Below £5000 or £1000 PI •DJ in County Court •Heard in Chambers •Informal – any method to resolve •Costs minimum, represent self, legal costs not awarded to C if wins •Limited appeals 	<ul style="list-style-type: none"> •£5,000-£25,000 •Fast track in County Court •Legally rep •Trials held within 6months of claim form •1 day hearings •Low costs •Cases managed by Circuit Judge who do timetables etc 	<ul style="list-style-type: none"> •Over £25,000 •Either County or High Court depending on complexity

6 The Trial

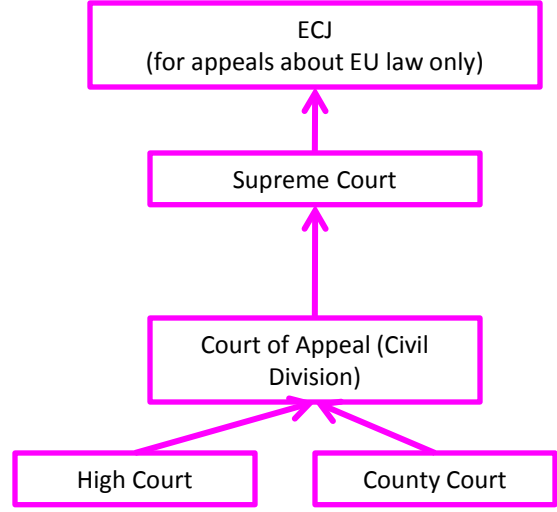
- County Court Trial**
1. C rep opening speech, witnesses examined, cross-examined, re-examined
 2. D rep repeats
 3. D and C's rep closing speeches
 4. Judge gives judgement (liable or not)
 5. If liable = remedy

7 Remedies

Damages – money compensation. Damages are awarded for the losses incurred because of the wrong.

Injunctions – at the discretion of the court. Court orders which prevent or compel a person to carry out a specific task e.g. stay away from a person, stop an activity.

8 Appeals



Lay People in the Law

Juries

Info

Ordinary people. Must attend unless disqualified/deferred. Unpaid but can claim loss of income up to designated max.

<p>Qualification Juries Act 1974 (amended by CJA 2003) – must be 18-70, Resident in UK for min 5 years since 13, Must be on electoral register</p>	<p>Disqualification Disqualified if; on bail pending criminal trial, ever had custodial sentence of 5 years, ever been in custody or community penalty in last 10 years, mentally ill.</p>
<p>Selection At random from electoral register by computer at Central Summoning Bureau. If summoned, legal obligation to attend. 12 names selected by ballot in court. Juror may be challenged if known to anyone or other cause e.g. bias. Jury sworn in, take oath to give true verdict.</p>	<p>Deferral/Discharge Can have service deferred 6 months if good reason e.g. holiday. Can get discharged if not capable of sitting in court, bad English, long-term disability, in army and would prejudice service. Won't get discharge if deferral possible.</p>

<p>Role Criminal Jury of 12, decide verdict in Crown Court. Listen to evidence, decide facts. Send note to judge through clerk, discuss evidence in secret (or against Contempt of Court Act 1981), apply law, unanimous but after 2 hours can accept 10:2, deliver verdict,</p>	<p>Role Civil Cases of false imprisonment, malicious prosecution, defamation, cause of death in Coroners Court; listen and decide facts, ask judge by sending note, discuss evidence, apply law, reach verdict of liable (or not), deliver verdict, decide on damages (normally too high)</p>
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<p>Public confidence, keeps proceedings clear to ordinary person as language has to be clear for jury, 12 viewpoints makes it unbiased, juries represent 'peers' as from variety of backgrounds where as judges not representative, juries can decide based on conscience (Bushell's Case)</p>	<p>Difficult to know if reach right decision as secret (R v Young – Ouija board), may be influenced by media in high profile cases or by forceful spokesperson, may not understand law or technical points, no basic test of understanding, perverse verdicts may be reached (Blythe – acquitted even though clear he grew the cannabis), jury service inconvenient – many rush, jurors may be nobbled/bribed</p>
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Magistrates

Info

Over 30,000 hearing 95% of criminal cases

<p>Selection and Appointment Apply to Mag Court, applications sifted by Local Advisory Committee, invited for interview based on Justices of the Peace Act 1997 criteria: 18-70, balanced bench, not in police, no criminal convictions or bankrupts. 6 key qualities sought good character, understanding and communication, social awareness, maturity and sound temperament, commitment and reliability. Second interview: practical decision making activities, if successful passed to Lord Chief Justice who recommends to Lord Chancellor to appoint you.</p>	<p>Role <ul style="list-style-type: none"> • Sit for 26 ½ days per year. Employer obliged to release • Sit as bench of 3 – chairperson and 2 wingers. Chair speaks. Retire and discuss verdict. • Hold summary trials for summary and either-way. Listen to evidence, decide verdict. Sentence if guilty. • Punish up to 6 months/£5000 fine • Advised by legal adviser/clerk – also does training, court admin and paperwork • Admin tasks: bail hearings, grant arrest and search warrants, transfer indictable offences to Crown Court, committals for sentencing to Cr Court. • Trained panel = Youth Court for 10-17 year olds. • Specially trained JPs sit in Family Proceedings Court (judicial sep, adoption, maintenance) • 2 JP's sit with judge to hear appeals from Mag Court </p>
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<p>Thousands of volunteers who are committed, more representative of and more knowledge of local communities, bench of three means it is balanced, few successful appeals means they get it right,</p>	<p>Criticised of being unrepresentative with too many middle-aged, middle-class people as can only appoint from who applies, can become case hardened if hear same types of case, believe police too easily, slower at decision-making and rely on clerk, inconsistent sentencing between areas.</p>
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Legal Professionals – Solicitors and Barristers

Solicitor Role
 Over 100,000. Most form partnerships and specialise in specific area e.g. conveyancing. Main provider of legal advice. Clients approach directly, problem solved through writing letters, interview, advice, negotiation. If not – sol carries out litigation procedure: prepare court documents, interview witnesses, correspond and instruct barrister. Full rights of audience in all courts but must demonstrate competence for Crown Court and above and become solicitor-advocate. Responsibility to client and can sue them for non-payment and can be sued for negligence.

Barrister Role
 Approx 12,000. Self-employed legal professionals, or employed by companies/public bodies as in house counsel. If an advocate in court cannot form partnership but share chambers and a clerk. Full rights of audience in all courts in civil and criminal. Usually work comes from solicitor. Clients can't usually get direct access but since 2004 can access barristers who are specially trained in this. Accountants can instruct directly. Give counsel's opinion to solicitors. Can be objective. Operate under cab rank rule meaning obliged to take next case. Responsibility to court so no contractual relationship. Cannot sue client for non-payment but have blacklist system for sol's who do not pay. Since **Hall v Simons** can be sued for negligent work.

Queen's Counsel
 Experienced barristers or solicitor advocates can apply to become QC, awarded by independent body, based on merit, can be revoked

Divided Legal Profession (Barr's and Sol's – UK)	Single Legal Profession (lawyers – US)
Each can specialise in own area (barr in advocacy, sol in advice)	Training same so law students do not have to decide early on what type
Barr can be objective as never met client, and judge case purely on evidence	No breakdown in communication or duplication of work or fees. Same person from start to finish
Cab Rank rule means person can always find someone to represent them	Client feel more confident if dealt with same person throughout rather than meeting barrister on day

Solicitor	Barrister
The academic stage is completed in one of three ways: 1. Completing a qualifying law degree (which covers core legal subjects) 2. Completing a degree in another subject than the Common Professional Exam/Graduate Diploma in Law 3. Becoming an ILEX Fellow (of the institute of Legal Executives)	The academic stage is completed in one of three ways: 1. Completing a qualifying law degree (class 2:2 or above) 2. Completing a degree in another subject than the Common Professional Exam/Graduate Diploma in Law 3. Exceptional candidates without a degree may be accepted by the Bar Council
The prospective solicitor must then become a student member of the Solicitors Regulation Authority .	The prospective barrister must then become a member of an Inn of Court : Grays, Lincoln, Inner Temple or Middle Temple. These provide support, training and resources for their members.
The vocational stage of training begins with a one-year Legal Practice Course , learning the practical skills required for the profession.	The vocational stage of training begins with a one-year Bar Professional Training Course , learning the practical skills required for the profession. One successful completion, they are " called to the Bar " (and can be called a barrister), but cannot practise as an advocate at this stage.
Next they must find a two-year training contract with an authorised training organisation (usually a firm of solicitors). ILEX fellows are exempt. During this, the Professional Skills Course must be completed.	The next stage is to find a one-year pupillage with an authorised training organisation (usually barristers' chambers). In the second six months they are able to take on their own cases.
The solicitor is then fully qualified and is admitted to the Roll of Solicitors , usually working in a partnership with other solicitors. If they wish to represent clients in the Crown court or above they must undertake further training to become a solicitor-advocate.	The barrister is then fully qualified and is able to represent clients in all courts. They must work alone but usually share chambers.

Legal Professionals – Judges

Title of Judge	Name of Court	Cases Heard	<u>Role: Keeping Order</u>	<u>Role: Ruling on points of law</u>	<u>Role: Deciding the verdict or outcome</u>	<u>Role: Deciding the sentence or remedy</u>
District Judge (Magistrates' Court)	Magistrates	Criminal Summary and either-way offences	Empty	Yes	Yes	Same sentencing powers as Magistrates
District Judge	County	Civil Small claims cases and some fast-track cases	Yes	Yes	Yes	Yes
Recorders	Crown	Criminal Either-way and indictable offences	Yes	Yes	No (jury)	Can sentence up to the maximum
Circuit Judge	County	Civil Fast-track and some multi-track cases	Yes	Yes	Yes	Yes
Circuit Judge	Crown	Criminal Indictable Offences	Yes	Yes	No (jury)	Yes
High Court Judge	Crown	Criminal The most serious indictable offences e.g. murder	Yes	Yes	No (jury)	Can sentence up to the maximum
High Court Judge	High Court	Civil The most complex or high-value civil cases (multi-track)	Yes	Yes	Yes	Yes
Lord Justices of Appeal	Court of Appeal	Civil and Criminal Appeal cases from courts below	Yes	Yes	May uphold or reverse the lower court's decision (civil), uphold or quash a conviction (criminal), or order a retrial	May change the sentence (criminal) or change the remedy (civil) if appropriate
Justices of the Supreme Court	Supreme Court	Civil and Criminal	Public do not attend – no need to keep order	Yes	Their rulings on the law may mean the original verdict is changed	Appeals on a point of law only – therefore do not generally rule on sentence or remedy

Under the **Constitutional Reform Act 2005** the Judicial Appointments Commission has been responsible for appointing judges from 2006. The Lord Chancellor, a government minister, is no longer the head of the judiciary, which is now the Lord Chief Justice. The new Supreme Court opened in 2009 and is separate from the Houses of Parliament.

A Recorder; an experienced barrister or solicitor-advocate who works as a part time judge for 15-30 days per year.