

GCSE LAW

REVISION BOOKLET

Unit 1

Classification
of law?

Criminal
Courts and
Processes?

Civil Courts
and
Processes?

People in the
Law?

Sources of
Law?



Believe you can
achieve!!

GCSE Law Revision Booklet

Time of exam: 90 minutes

What Can I Do to be Prepared?

To be prepared for the Unit 1 Exam you must make sure you are confident with the key areas of law within this booklet.

This exam paper is 90 minutes long, and 90 marks are available. This means you should be thinking about achieving a mark per minute. This therefore means that a 5 mark question should be briefer than a 10 mark answer.

Trigger Exam Words to look out for

When the examiners make your exam paper, they deliberately use key TRIGGER WORDS - this gives you a huge hint as to what the examiner is asking you to do. You should look out for the following (and underline them when reading the question):

- | | | |
|-------------------|---|----------------------------------|
| Name | - | Require little development |
| State | - | Require little development |
| Identify | - | Require little development |
| Describe | - | Require a more in depth approach |
| Discuss | - | Require a more in depth approach |
| Comment on | - | Require a more in depth approach |

Commentary/evaluation questions

This is a simple rule - if the question asks you to comment on/evaluate/discuss the merits of something, look at both sides and draw a reasoned conclusion.

Other Key Points

If the examiner asks for three examples - do not write down five. You may find there will be a penalty if even just one of your answers is wrong!!!

Using Authority

If there is ever anything you can use to support your answer (a case, Act of Parliament or an example) - USE IT AND GAIN EXTRA CREDIT!!!

Quality of Written Communication

Do the obvious things!!! Start your sentences with capital letters, finish with a full stop and spell words correctly! 5% of your marks are awarded for QWC.

HOW TO USE THIS BOOKLET

- 1) Read each topic through
- 2) Answer the questions at the end of the topic (in blue)
- 3) Tick the topic checklist to make sure you are CONFIDENT with each of the areas
- 4) Learn the contents of this booklet.
- 5) Create condensed 1 page sheets for each topic – with key facts on each.
- 6) Practice exam style questions and the end of topic questions

TOPIC 1

Introduction to Law

★ Checklist - to be completed once you have read the section and answered the questions.

★ I am confident with the following:

- ★ ☐ Definition of and need for law
- ★ ☐ Classification of law
- ★ ☐ Public Law
- ★ ☐ Private Law
- ★ ☐ Criminal Law
- ★ ☐ Civil Law
- ★ ☐ The UK Courts

★ Definition of and Need for Law

★ There is no single correct definition of law, although most definitions will include similar elements. Put simply, law may be defined as: a set of compulsory rules about human behaviour, created and enforced by the State.

★ We need law to:

- ★ - provide minimum standards of acceptable behaviour
- ★ - provide a method of obtaining justice and resolving disputes
- ★ - promote order in society

Key Words:

State - defined territory covered by a system of government e.g. the UK

Source - where the law comes from/how it was made

★ Classification of Law

★ There are two main ways of classifying law:

- ★ 1) Public or Private Law
- ★ 2) Criminal or Civil Law

<p style="text-align: center;"><u>Public</u></p> <p>Public law means laws which affect the interactions between the State and its citizens. These laws may be about the way the government and laws are to be created (constitutional law); they may be about how government departments or public institutions are going to work in practice (administrative law); they may be rules about offences against the State (criminal law) or about human rights.</p>	<p style="text-align: center;"><u>Private</u></p> <p>Private law is about how individuals interact with one another in specific situations, such as in business law, in family law and in civil wrongs such as negligence.</p>
<p style="text-align: center;"><u>Criminal</u></p> <p>Criminal law is made up of rules about offences which the State considers to be so important that they are said to be actions against the State as a whole; so the State (through institutions including the Police service; the Crown Prosecution Service and the Courts and Prison service) brings the person before a criminal court to answer the charge.</p>	<p style="text-align: center;"><u>Civil</u></p> <p>Civil law is the same as private law as it is made up of rules about how individuals interact with one another in situations where an individual could bring a court case against them.</p>

★ Comparisons between Criminal and Civil Law

Comparison	Criminal Law	Civil Law
Is about interactions between...	The State and its citizens	Individuals
The purpose is to...	Punish offenders	Put right wrongs against individuals
The names of the parties in a court case are	R v Defendant	Claimant v Defendant
The process ...	The State prosecutes	The Claimant sues

Comparison	Criminal Law	Civil Law
Originally cases are heard in either...	Magistrates' or Crown Court	County or High Court
The verdict in a trial is...	A person is found guilty or not guilty	The defendant is liable or not liable
The burden of proof is...	Beyond reasonable doubt (current test = if the jury is certain)	On the balance of probabilities
The outcome is...	A punishment if guilty	A remedy for the claimant
Examples are...	Murder and theft	Tort and family law

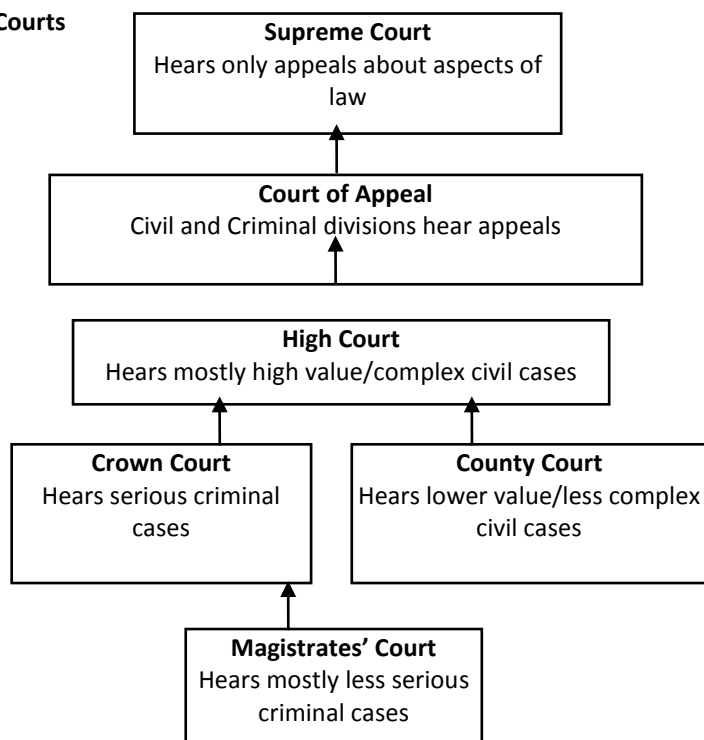
Key Words:

R/Regina - (the Queen), in whose name the prosecution is brought

Claimant - the person bringing the civil case

Tort - a civil wrong such as negligence, nuisance, trespass

The UK Courts



Court of First Instance

These are courts where original trials are held - these include the Magistrates' Courts and the Crown Court for criminal trials, and the County Courts and High Court for civil trials.

Appeal Courts

These hear appeals against the decision made in the original trial - the major appeal courts are the Court of Appeal and the House of Lords.

Questions (check the TRIGGER WORDS)

1. **State** why we need a reliable system of law.
2. **Describe** the differences between public and private law, and civil and criminal law.
3. **State** the names of the 6 UK courts in order of importance in the hierarchy.
4. **Identify** which of the courts are courts of first instance, and which are appeal courts.
5. **State** which court would hear a murder trial.

TOPIC 2

Sources of Law

Checklist - to be completed once you have read the section and answered the questions.

I am confident with the following:

Legislation

☐ The legislative process

☐ Advantages and disadvantages of parliamentary law-making

Case Law

☐ Case law/common law

☐ Law reporting

☐ Hierarchy of the courts

☐ Binding and persuasive precedents

☐ Advantages and disadvantages

Relationship between the different sources

European Law

☐ Regulations

☐ Directives

☐ Parliamentary Supremacy

☐ Human Rights

Introduction

Law is made by a variety of persons or bodies, and may take different forms. The law of England and Wales takes the following main forms: legislation (Acts of Parliament), case law and European Union Law. Together, these are said to be the laws of England and Wales.

Legislation – is law made by Parliament, and is the highest (supreme) form of law passed within England and Wales. When law is being passed by Parliament, it is known as a Bill. Once the Bill has been passed, it is known as an Act of Parliament or Statute. There are different types of Bill which are passed by Parliament. We are most concerned with Public Bills, of which there are two types i.e. Bills that are sponsored by the Government, and others which are sponsored by individual Members of Parliament (Private Members Bills).

Case law (or the common law) – is judge-made law. The judges have a number of roles to play in creating and developing law, such as interpreting legislation passed by Parliament. They therefore add to the existing law in terms of judgments which set precedents. In addition, many areas of law have been created by judges making rules in cases which appear before them. Collectively, these judge-made laws are known as the case law.

European Union (EU) law – is the highest-ranking form of law and takes precedence over all the others. If the European Union passes a new law, or changes an existing law, then English law must follow. If English law is different to EU law, then English law must change.

LEGISLATION

Every Act of Parliament must follow a set procedure through both Houses of Parliament and beyond. If this procedure is not followed or completed, then the Bill cannot become law.

Drafting – Bills are drafted by specialist barristers known as Parliamentary Counsel to the Treasury. Drafting is a highly specialized skill involving detailed technical language which judges, in court, are eventually going to have to interpret.

The procedure is as follows:

Ideas and Discussion	Ideas come from a variety of sources, the most obvious of which is the Government. Bills can also come from other sources, e.g. individual Members of Parliament and law reform agencies such as the Law Commission.
Green Paper	A Government Bill may start out with a Green Paper, which is a statement of Government intent inviting discussion, comment and criticism from interested parties. Government published document.

White Paper	This is usually followed by a White Paper which contains the firm Government proposals. Gov't published doc.
First Reading	The first reading is the formal presentation of the Bill to Parliament, and MP's will have an opportunity to read the Bill.
Second Reading	This follows about 2 weeks later. The Bill will be debated in the Commons (general principles only). Following the debate there is a Division (vote). Assuming the Bill is carried, it will pass to the next stage.
Committee Stage	A small committee of about 18 MPs will meet to discuss the Bill in detail. Changes can be made at this stage. These are known as amendments. Committees can be specialists i.e. if the Bill relates to transport then a transport committee will discuss this Bill in detail.
Report Stage	Any changes are reported back to the House
Third Reading	This is a final debate in the Commons on the Bill and any amendments made, and is followed by a final vote.
House of Lords	The whole process is repeated in the Lords. Their Lordships can put amendments to the Bill and can even block its progress altogether for up to a year. As a result of the Parliament Acts 1911 and 1949 the Commons has the final say on all Lords amendments.
Royal Assent	Nowadays, this is just a formality. However, the Queen or someone acting on her behalf must sign the Bill before it can become an Act of Parliament

Publication – all Acts must be published through Her Majesty's Stationery Office.

Advantages and Disadvantages of the process

Advantages	Disadvantages
The House of Commons is elected by the people, so Parliamentary law-making is a democratic process	The whole process of passing an Act, from initial ideas to Royal Assent is very slow and can take years. The Act could be out-of-date before it is even passed.
Parliament controls what legislation it passes, so the Act can be passed when it is needed and will cover exactly what Parliament intends to legislate on.	The judges have to apply the new Act in court, and how they interpret the Act can mean that the original intention of Parliament can be lost.
The process of passing an Act is lengthy and detailed and great care is taken when the Bill is drafted and when it is being considered by both Houses of Parliament.	Parliament is a political body, and too much time and effort is spent on politics and not enough on law-making.

Questions: (CHECK TRIGGER WORDS)

1. **Identify** and describe the process of a Bill becoming an Act of Parliament.
2. **Describe** the role of the Parliamentary Counsel to the Treasury.
3. **Comment** on the advantages and disadvantages of the process of a Bill becoming an Act of Parliament

CASE LAW

There are over 500,000 reported cases in English law, each of which lays down a rule or rules of law. Collectively, these rules are known as case law or the common law.

Cases are vital in areas where Parliament has not legislated e.g. tort and contract. Even where Parliament has legislated e.g. theft, case law is still important for interpreting the meaning of the Act.

The 'backbone' of the common law is known as the doctrine of **precedent** i.e. the rule which states that each case lays down a rule(s) of law which **may or must** be followed in later cases involving the same point of law, irrespective of the facts. This is sometimes known as *stare decisis* (the standing of decisions).

The doctrine of precedent relies on 2 key things:

- a) The System of Law Reporting

Nowadays all cases heard in the superior courts are officially reported and appear within various editions of law reports e.g. the All England Law Reports, the Weekly Law Reports. In addition, some newspapers regularly print law reports e.g. The Times, The Guardian, and The Independent. Law reports can also be found on online databases e.g. Lawtel and LexisNexis.

- b) The Hierarchy of the Courts

Judgments in higher courts, such as the House of Lords, have always commanded the greatest respect. The rule is that the decisions of higher courts are binding on lower courts i.e. lower courts must follow the rule of law (precedent) set by the higher court. The order of the hierarchy is as follows:

Supreme Court	Binds all lower courts. Not bound by its own previous decisions since the 1966 Practice Statement
Court of Appeal	Bound by the Supreme Court. Binds all lower courts. Civil Division is generally bound by its own previous decisions. The Criminal Division is not so strictly bound.
High Court	Bound by all the appeal courts above. Binds the inferior courts below. High Court Judges do not have to follow each other's decisions.
Crown Court	Bound by the appeal courts above. Binds the inferior courts below, in particular the Magistrates' Court. Bound by own decisions? Depends on the status of the judge.
Inferior Courts (Magistrates, Youth, County, Tribunals etc)	Bound by all the above. Bind no-one, including themselves.

KEY AUTHORITY – PRECEDENT – 1966 PRACTICE STATEMENT

Lord Gardiner, on behalf of the Law Lords said:

*"Their Lordships regard the use of precedent as an **indispensable foundation** upon which to decide what is the law and its application to individual cases. It provides at least some degree of **certainty**... Their Lordships nevertheless recognise that **too rigid adherence** to precedent may lead to **injustice** and **restrict the proper development of the law**. They propose therefore to modify their present practice and while treating former decisions of this House as **normally binding**, to **depart from a previous decision** where it appears **right** to do so...This announcement is not intended to affect the use of precedent elsewhere than in this House."*

Having heard a case argued before him, the judge(s) must pass judgment. It is from this judgment that the precedent is drawn.

However, not all of the judgment is relevant in determining the precedent. Later judges will only be looking for one specific part of that earlier judgment.

Structure of a judgment

- 1) A statement of the relevant facts
- 2) A review of the relevant law i.e. cases, Acts etc
- 3) A summary of counsel's arguments
- 4) The reason for the decision (**ratio decidendi**)
- 5) Other things said by the way (**obiter dicta**)
- 6) The decision

The precedent in a case is based on the **ratio decidendi**, and it is this part of the judgment that **may or must** be followed in later cases.

Other matters which the judge comments on (**obiter dicta**) cannot form binding precedents even if the comment comes from a Law Lord. However, obiter dicta statements can form persuasive precedents.

Binding and Persuasive Precedent

BINDING	PERSUASIVE
<p>Must be followed</p> <p>This does not mean that he must follow the decision, but he must follow the ratio decidendi i.e. he must follow the reason for the decision.</p> <p>The ratio decidendi will be binding, depending on which court the previous case was decided in.</p>	<p>May be followed</p> <p>Various ways of creating persuasive precedent:</p> <p>a) judgments made by lower courts</p> <p>b) obiter dicta statements</p> <p>c) statements and decisions of the Judicial Committee or the Privy Council e.g. The Wagonmound (1967)</p>

Advantages and Disadvantages

ADVANTAGES	DISADVANTAGES
<p>Certainty</p> <p>Once a precedent has been set in the appeal courts, this will lay down a rule of law which will then be applied in similar fact situations. Thus it is possible to predict, with a fair degree of certainty, what the decision would be in a current dispute and therefore whether it is worth taking or defending the claim.</p>	<p>Inflexibility</p> <p>Once a precedent has become established, it becomes very difficult to change, especially where society has moved on. Thus the precedent can become out-of-date.</p>

Possibility of Growth Existing rules can be added to and new rules created by decisions in the courts without the need for Parliament to pass a new Act.	Illogical Distinction between Cases A judge who does not like a previous binding precedent will often point to some minor difference in the facts (this is called distinguishing between cases) so that he can avoid having to follow that precedent. He may feel he has done justice in his case, but often he will leave the law in a confused and uncertain state.
Practical Measures of the Rules Obviously cases are from real life, where as Acts of Parliament are only theoretical	Bulk and Complexity There are over 1,000 volumes of official English Law Reports, containing over 500,000 cases, with the precedents 'hidden' within each case. This can be regarded as both cumbersome and difficult to both find and learn.
Detail It would be impossible for Parliament to replace all the detailed rules contained in cases by legislation.	

Questions: (CHECK TRIGGER WORDS)

1. **Describe** the main features of the doctrine of precedent
2. **Explain** the importance of law reporting, and give an example of a law report.
3. **Outline** the importance of the hierarchy of the courts in judicial precedent.
4. **Explain** the key differences between a persuasive and a binding precedent.
5. **Explain** what "stare decisis" "obiter dicta" and "ratio decidendi" mean.
6. **Evaluate** the process of judicial precedent.
7. Pick three courts and **explain** their position in the hierarchy of the courts, in relation to judicial precedent. Where possible use authority.
8. **Explain** the importance and the effect of the 1966 Practice Statement.

EUROPEAN UNION LAW

A completely new source of law was created when Parliament passed the **European Communities Act 1972** and the UK joined the Common Market (now called the European Union) on 1st January 1973. As a result of this Act, all English courts are bound to recognise and apply EU law, wherever it comes from. There are different forms of EU legislation.

Regulations

Regulations apply to all member states and are immediately binding in English law without any need for parliament to do anything

CASE – Re Tachographs: EC Commission v UK (1979)

The UK Government did not implement a regulation that tachographs should be installed in all vehicles used for carrying goods. Instead the Government left it to the road haulage industry to introduce the regulation on a voluntary basis. The matter went before the European Court of Justice, which decided that:

- a) The regulation provided that member states must adopt the law and
- b) regulations are immediately binding on member states.

Directives

Directives bind all member states, but action needs to be taken to give the directive the force of law. In the UK this is normally done by statutory instrument. A statutory instrument is a law made by a government minister, with the approval of Parliament.

European law also has had an important effect on the courts where an issue of European law is raised in a case. Lower courts have discretion (can choose) whether or not to refer the case to the European Court of Justice (in Luxembourg) for a ruling. The Supreme Court has little discretion; it usually must refer the case to Luxembourg. Such rulings are then binding on English law and judges must follow them.

Questions: (CHECK TRIGGER WORDS)

1. **Describe** how the UK became a member of the EU
2. **Explain** the effect of a regulation on the UK, using authority.
3. **Explain** the effect of a directive on UK law.
4. **Explain** how becoming a member of the EU has had an effect on UK Courts.

The Relationship between the Different Sources of Law

Parliamentary Supremacy – the principle, that under English law, Parliament is the highest law-making body.

The constitutional theory is that Parliament can make any law it chooses and in that sense is supreme. People who try to challenge the authority of an Act of Parliament before a court are unlikely to be seen: **Cheney v Conn (1968)**

Parliamentary Supremacy has been limited in three ways:

1. The European Union

In practice however, there are a number of restrictions on the power of Parliament. In cases of conflict between English law and European law, EU law prevails. This was settled in the **Factortame Cases (1990-2000)**.

It can be argued that if the UK were to leave the EU, we could take back the powers we have given to the EU. This is legally true, but economically and politically very unlikely.

2. The Courts

The judges accept that it is their job to carry out the will of Parliament, and that an Act of Parliament is the supreme source of law. However,

A) It is the courts' job to interpret the Act, and how this is done is up to individual judges

B) There are large areas of law not governed by Statute (the common law), where Parliament has not made the rules, so the judges must. Parliament retains the right to pass a new Act to change an area of the common law which Parliament does not like.

3. Human Rights

The **Human Rights Act 1998** came into effect in October 2000. Since that time, any new Act of Parliament must contain a statement that it complies (or fails to comply) with the European Convention on Human Rights. In practice, the vast majority of Acts will comply and this somewhat restricts the power of Parliament. The ability to ignore the Convention, which Parliament still has, would only rarely be exercised.

Factortame Ltd v Secretary of State for Transport (No 2) (1991)

The issue in this case was the **Merchant Shipping Act 1998**, which provided that 75% of shareholders in companies operating fishing boats in UK waters had to be British. Spain argued that this was contrary to the Treaty of Rome. It would take 2 years to get a ruling. Spanish boat owners asked the English courts to suspend the 1998 Act until the issue had been decided. The House of Lords referred the matter to the ECJ which decided that EU law must take priority over domestic (national) law, even where there only **may** be a conflict. The case was referred back to the House of Lords, which was obliged to suspend the relevant part of the 1988 Act.

The importance of Factortame is thus that it shows that, if the British Parliament passes a new law which arguably conflicts with European law, the British Courts have power **in some circumstances** to grant a temporary injunction to prevent the UK authorities from enforcing that UK law while the matter is being sorted out.

Cheney v Conn (1968)

The claimant objected to his tax assessment on the ground that the Government was using some of his tax to make nuclear weapons. His objection was that this was illegal under the Geneva Convention.

The Court applied the Finance Act 1964 (under which his tax had been assessed) in preference to the Convention which had been accepted by Parliament in 1957 i.e. applying the rule that the later Act prevails. The judge commented *"it is not for the court to say that an Act of Parliament, the highest law in this country, is illegal"*

Questions: (CHECK TRIGGER WORDS)

1. **Describe** what the term 'parliamentary supremacy' means, and give an **example** of when the courts have upheld parliamentary supremacy.

2. **Explain** the three main ways in which parliamentary supremacy has been limited. Where possible to do so, give authority.

TOPIC 3

Criminal Courts and Processes

Checklist - to be completed once you have read the section and answered the questions.

I am confident with the following:

Pre-Trial Issues

☐ Summons

☐ Arrest

☐ Crown Prosecution Service

Classification of Criminal Offences

☐ Summary

☐ Triable-either-way

☐ Indictable

☐ Duty Solicitors

☐ Bail

Procedure in Criminal Trials

☐ Magistrates' Court

☐ Crown Court

Post-Trial Issues

☐ Sentencing

☐ Appeals

Introduction

At the end of this topic you must understand how criminal cases are brought to court, and the legal processes before, during and after a criminal trial. You must also know how criminal offences are classified in terms of seriousness.

If a person is suspected of having committed a crime, the police will investigate and charge the person with an appropriate offence. For minor offences the defendant will be sent a summons requiring them to attend the trial and for more serious offences police will arrest the defendant. The Crown Prosecution Service will decide if the charge is appropriate and also whether it is in the public interest to bring the case to trial. If so, they will prosecute minor crimes in the Magistrates' Court and more serious crimes in the Crown Court. This means that either a bench of Magistrates or a jury will decide the verdict. Magistrates also decide the sentencing, but in the Crown Court the judge will decide the sentencing, rather than the jury.

Pre-Trial Issues 1

How Criminal Cases are brought to Court

Criminal cases are brought to court in one of two ways, depending on the seriousness of the crime: by summons or arrest.

Powers of Arrest without a warrant

These powers are outlined in the Police and Criminal Evidence Act 1984 (PACE) as amended by the Serious and Organised Crime Act 2005 (SOCPA). There are different rules to be followed dependent on whether it is a private citizen or a member of the police who is arresting.

Summons

A document ordering the person to attend court, at a specified time, to answer a minor criminal charge.

Arrest

(With or without a warrant) is for more serious offences. A warrant is a document, issued by magistrates, ordering the arrest of a named or described individual.

By Police

Police can arrest:

- Anyone who is about to (or s/he has reasonable grounds for suspecting is about to) commit an offence
- Anyone who is in the act of (or s/he has reasonable grounds to for suspecting to be) committing an offence
- Anyone who has (or whom s/he has reasonable grounds for suspecting has) committed an offence.



So, provided s/he has reasonable grounds to believe that arrest is necessary - why can the police arrest?

- To gain correct name/address
- To prevent physical injury or damage to property, obstruction of the highway, public indecency
- To protect a vulnerable person
- To allow prompt investigation

By Private Citizens

Other people may arrest:

- Anyone who is in the act of (or whom s/he has reasonable grounds for suspecting to be) committing an indictable offence (including 'either-way' offences)
- where an indictable offence has been committed, anyone who is guilty of the offence or whom he has reasonable grounds for suspecting to be guilty of it, provided they believe it is not practical for a constable to make the arrest instead, and they have reasonable grounds for believing that it is necessary to prevent physical injury/damage to property or to prevent them escaping before police can assume responsibility.

If making a citizen's arrest certain rules must be followed:

- 1) only reasonable force must be used in order to detain the person
- 2) the person must only be detained for the time it takes for a police officer to arrive
- 3) the police must be called as soon as possible



Role of the Crown Prosecution Service

The CPS is the body responsible for:

- ➡ advising the police
- ➡ reviewing cases submitted by police
- ➡ determining charges (except minor cases)
- ➡ preparing and presenting cases in court

Their decisions to prosecute are made based on:

- ➡ whether there is sufficient evidence to provide a realistic prospect of conviction
- ➡ whether it is in the public interest to do so

Key Terms

Objective - seeing things from an independent or outside viewpoint
Subjective - seeing things from an inside/personal viewpoint

Evaluation of the CPS

- ♣ The CPS is objective in deciding if a case should be prosecuted, potentially saving time and money. The police are likely to be more subjective, having been involved in the investigation.
- The CPS has been criticised for overspending on administration and for lacking independence, having to rely on police for information.

Classification of Criminal Offences

Criminal offences are classified according to seriousness, as either summary, triable-either-way, or indictable. The chart below outlines the key differences between them:

Classification	Seriousness	Court Heard In	Decision Maker	Max Sentence	Examples
Summary	Least	Magistrates (summary trial)	Magistrates/District judge determines both verdict and sentence	6 months imprisonment and/or £5000 fine for single offence	Common assault, minor motoring offences

Classification	Seriousness	Court Heard In	Decision Maker	Max Sentence	Examples
Triable-either way	Mid-range	Either Mag or Crown Court. Mag's and def decide which.	As above if Mag's. Or a jury in Crown Court	Up to max. for the crime in question	All forms of theft, ABH
Indictable	Most	Sent to Crown Court by magistrates - for trial on indictment	Jury decides verdict, judge sentences if found guilty	As Above	Murder, rape

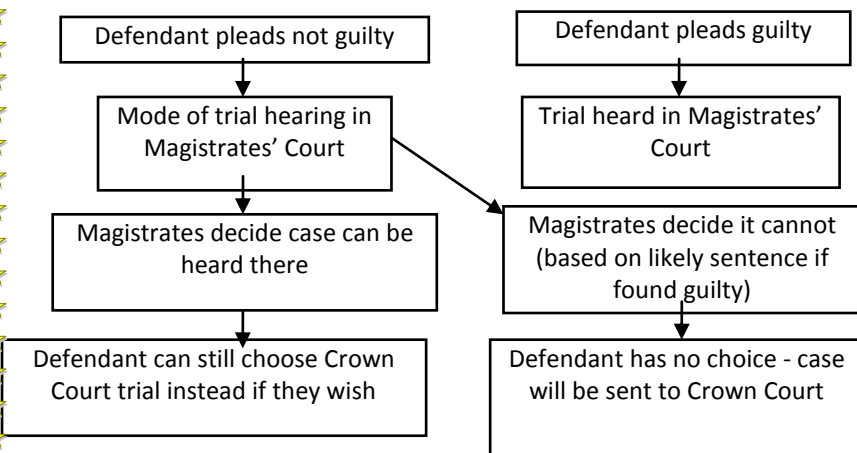
Questions: (CHECK TRIGGER WORDS)

1. **State** the two main ways in which a person can be requested to attend court.
2. **Identify** in what situation a police officer can use their power of arrest without a warrant.
3. **Describe** the reasons why a police officer may arrest someone.
4. **Discuss** the role of the CPS.
5. **Identify and describe** how criminal offences can be classified.
6. **State** the role of the CPS

Pre-Trial Issues 2

How to decide which court should hear an offence that is 'triable-either-way'?

The decision regarding the trial court for triable-either way offences is initially made by the magistrates. Their decision is based on the likely sentence if the defendant was to be found guilty. The magistrates can only sentence up to 6 months/£5000 fine - so if the punishment is likely to be more severe than this - then they know they should send the case up to the Crown Court. If they decide that they can hear the trial, then the defendant still has the right to choose a jury trial in the Crown Court instead.



If magistrates find the defendant guilty of a triable-either-way offence and they consider that their sentencing powers are insufficient, they can send the defendant to the Crown Court for sentencing.

The Duty Solicitor Scheme

Duty Solicitor in 2 areas:

You must be aware of the role of the

1) At the police station

The scheme enables a person who has been arrested to receive free legal advice. This advice may be provided over the telephone if it is a minor offence.

2) At the Magistrates' Courts

A duty solicitor gives free legal advice on the defendant's first court appearance, after being charged with a criminal offence which carries a potential prison sentence.

Both schemes are funded by the Legal Services Commission.

Evaluation of Duty Solicitors

- Duty solicitors provide valuable advice, free of charge, but representation in court is not automatically free.
- In court, advice is not available for minor offences.
- At a police station, advice may be given by phone.
- Although criticised for giving an inferior service, duty solicitors must pass rigorous competence assessments to be accredited

Bail

There are two main types of bail that you must know about:

Police Bail

Bail means the defendant is released until their trial. 'Street bail' may be given by the police to appear at a police station; or by a custody officer at the police station, following charge.

Court Bail

Bail may also be granted by the Magistrates' Court. Under the Bail Act 1976, as amended by the Criminal Justice Acts (CJA) 1988 and 2003, there is a presumption that bail will be granted unless there are good reasons to refuse it.

This presumption means it is up to the prosecution to show why it should not be granted, rather than the other way around.

When deciding whether to grant the bail, magistrates will consider:

- the nature and seriousness of the offence
- the likely sentence
- strength of evidence
- previous convictions/record
- community ties

If the bail has been granted, then there are various conditions that can be attached to it:

- 1) A surety - another person is made responsible for ensuring you attend court, and if you do not then they may have to pay a specific sum
- 2) Reporting to the police station at specified intervals
- 3) Residence at a specific address
- 4) Curfew (which may be enforced by electronic tagging)
- 5) Restrictions e.g. staying away from a specific person or place.

Bail will be refused if there is a serious risk that:

- the defendant will fail to surrender
- they will commit further offences
- they will interfere with witnesses/obstruct justice

... And the attaching of bail conditions would not avert this risk.

If a person fails to attend court (this is called absconding) on the specified date they may be arrested.

Questions: (CHECK TRIGGER WORDS)

1. **Identify** who gets to decide which court hears a triable-either-way offence.
2. **Describe** the method by which it is decided which court hears a triable-either-way offence.
3. **Evaluate** the role of the duty solicitor.
4. **Identify** and **describe** the different types of bail that are available.
5. **State** what would be taken into account when deciding whether bail should be granted.
6. **Describe** three situations in which bail would be refused.
7. **Identify** and **explain** three types of conditions that may be attached to bail.
8. **Evaluate** the effectiveness of one of the conditions discussed in question 7.

Procedure in Criminal Trials

Magistrates' Court Trial

Magistrates hear summary and either-way offences in summary trials. The vast majority of criminal trials (over 95%) are heard here, and most defendants plead guilty, meaning the magistrates will sentence them according to the circumstances of the crime. If a defendant pleads not guilty, the process is as follows:

- 1) The prosecution representative (usually a solicitor, but may be a barrister) gives an opening speech and calls their witnesses and produces their evidence. Witnesses are examined, cross-examined and re-examined if necessary.
- 2) The defence representative repeats the above process of calling, examining and cross-examining witnesses.
- 3) Some defendants represent themselves, especially if they are charged with a minor offence.
- 4) Closing speeches by both representatives - summing up the key points of evidence.
- 5) Magistrates retire to consider the verdict. Although all three magistrates will contribute to the discussion and the verdict, only the chairperson speaks in court to deliver the verdict.
- 6) They will return a guilty verdict if they consider the case against the defendant is proved 'beyond reasonable doubt'.
- 7) Sometimes a pre-sentence report by the Probation Service is required before sentencing.
- 8) If found guilty, magistrates will sentence up to 6 months/£5,000 fine for a single offence or will send the defendant to the Crown Court if they consider their powers are insufficient.

Youth Courts

Youth Courts are held in the Magistrates' Court, for defendants aged 10-17 who have committed all by the most serious crimes e.g. murder. There is no criminal responsibility for those below the age of 10. Youth Courts differ from adult courts in the following key ways:

- 1) There is a less formal procedure, with less formal language used in court so that the defendant can understand the proceedings and the legal professionals wear no formal clothing such as wigs and gowns, which may intimidate the defendant.
- 2) The bench comprises of specially trained magistrates, with at least one of each gender.
- 3) No press are permitted and names will not normally be published in order to protect the defendant's privacy and to prevent them from being known as a 'criminal', which may prevent them from reoffending.
- 4) The sentences available are tailor-made to the young offender, mainly in order to rehabilitate (prevent re-offending), rather than to punish.
- 5) A Youth offending team becomes involved when a young offender is charged with an offence and they provide a variety of perspectives as to the best way forward as they come from a variety of backgrounds.

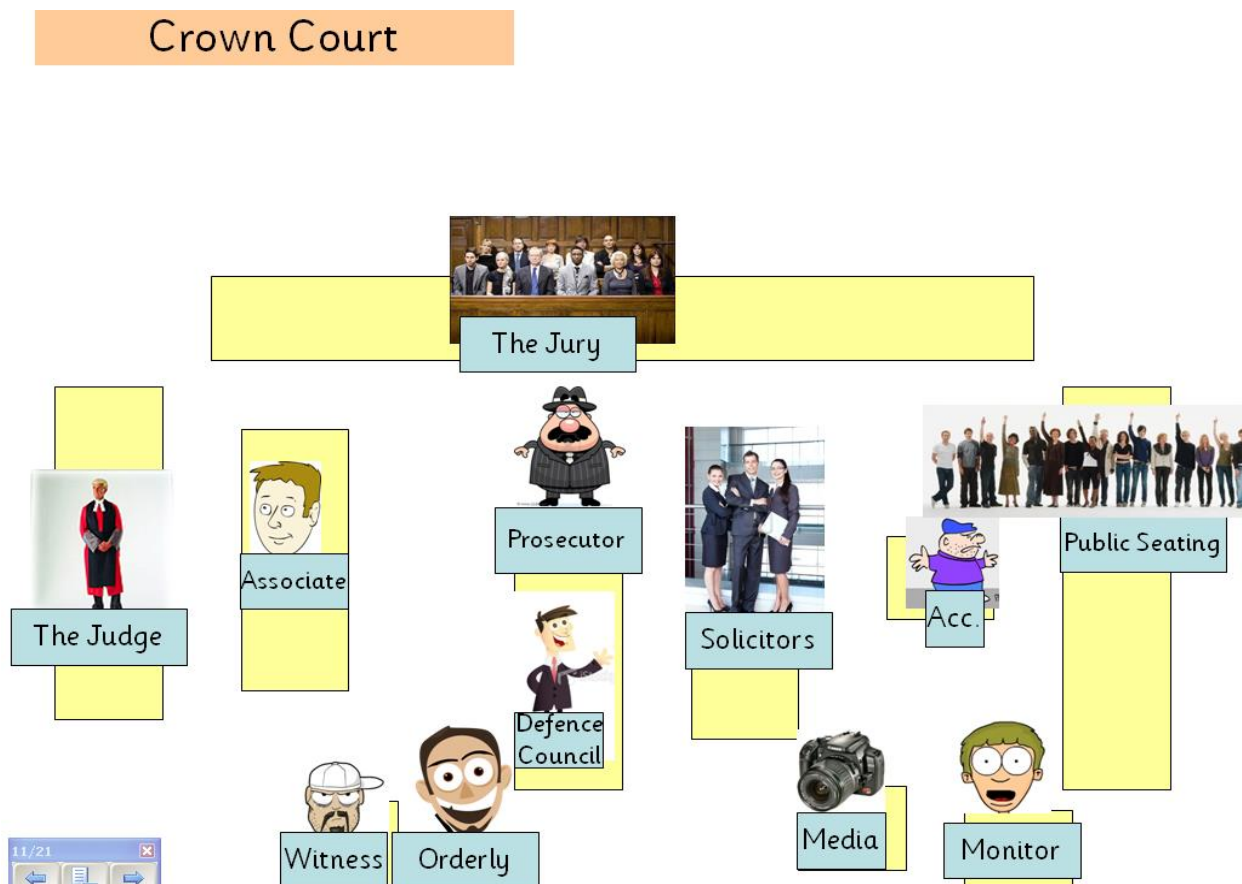
Trial in the Crown Court

A jury in the Crown Court tries indictable offences and either-way offences sent by the Magistrates' Court. A judge will oversee the trial and determine the sentencing if found guilty. The most famous Crown Court is The Old Bailey in London, where the most serious or high-profile cases are heard. Only the most serious crimes are heard in the Crown Court and the process is as follows:

- 1) Jury is sworn-in
- 2) Prosecution opening speech and witnesses are examined; cross-examined and re-examined if necessary (by barristers or solicitor-advocates)
- 3) Defence repeats the above
- 4) Closing speeches
- 5) Jury retires to consider verdict
- 6) Guilty verdict if jury considers the prosecution case is proved 'beyond reasonable doubt'
- 7) If guilty, judge passes sentence.

Who Sits Where?

It is vital to know who sits where in the Magistrates' and Crown Court.



The diagram illustrates the layout of a courtroom, showing the positions of various participants:

- Magistrates:** Located at the front left of the court, represented by an image of three people in judicial robes.
- Clerk:** Positioned next to the Magistrates, represented by a cartoon drawing of a man in a suit.
- Defence:** Located in the center, represented by a cartoon drawing of a man in a suit and a sign labeled "Defence".
- Prosecution:** Located in the center, represented by a cartoon drawing of a man in a suit and a sign labeled "Prosecution".
- Witness:** Positioned at the front center, represented by a cartoon drawing of a man in a suit and a sign labeled "Witness".
- Defendant (Def.):** Located at the front right, represented by a cartoon drawing of a man in a suit and a sign labeled "Def.". A yellow box indicates the area for the defendant's legal representation.
- Press:** Located at the back left, represented by an image of a camera and a sign labeled "Press".
- Probation:** Located at the back center, represented by a cartoon drawing of a man in a suit and a sign labeled "Probation".
- Public Seating:** Located at the back right, represented by an image of a group of people and a sign labeled "Public Seating".
- Usher:** Positioned at the very back, represented by an image of a man in a suit and a sign labeled "Usher".

Magistrates' Court	Crown Court
Vast majority of criminal trials are heard here.	Only the most serious cases are heard here and these can be complicated and/or traumatic.
Find more people guilty than juries. However, most defendants actually plead guilty in the magistrates' court.	Juries acquit more defendants, possibly because they are less prosecution minded than magistrates and more likely to be sympathetic.
Cases are dealt with more quickly and cheaply.	Trials take longer and are much more expensive.
Procedures are much simpler and the sentences likely to be less severe. Sentences up to 6 months/£5,000 fine for a single offence.	As procedures are more complicated, it is unusual for defendants to represent themselves and often both solicitor and barrister attend court and must both be paid.

1. **Identify** and **describe** the role of the magistrates in summary trial, and trial of either-way offences.
2. **Describe** the role of the judge and jury in trying indictable offences, and including offences triable-either way.
3. **Identify** and **explain** the key differences of the Youth Court.
4. **Evaluate** the effectiveness of the two criminal courts.
5. Draw a diagram of both the Magistrates' Court and Crown Court and identify who sits where.

Sentencing

If a defendant has been found guilty, by magistrates or by a jury, they will be sentenced. In the Magistrates' Court this will be decided by the magistrates, and in the Crown Court this will be decided by the judge.

📌 Aims of Sentencing

There are several reasons for sentencing offenders, including:

- 1) Retribution and denunciation - meaning punishment to fit the crime and showing society's disapproval.
- 2) Rehabilitation - meaning assisting in reform of the offender.
- 3) Reparation - to put right the wrong to society
- 4) Deterrence - to deter others from committing the same crime.
- 5) Protection of society - to prevent society from being harmed.

Types of Sentence

There are several options for sentencing offenders:

Magistrates' Association Guidelines

These are guidelines on sentencing and permit magistrates to make structured decisions, based on:

- 1) An entry point for the offence
- 2) Maximum sentences
- 3) Potential aggravating and mitigating factors

Custody

A prison sentence can be immediate or suspended. A suspended sentence will not have to be served unless further offences are committed within the given time period, and so acts as a deterrent. Custodial sentences are served in prison for those aged over 21, and in Young Offenders' Institutions for offenders 15-20 years old. Custodial sentences must be given only where the offence is so serious that this is the only justified sentence.

Community Orders

These are sentences which will be served in the community. The orders are given to those aged over 16, where an offence is serious enough to justify it. Appropriate requirements will be attached to the order, the most common being: unpaid work of between 40 to 300 hours; supervision by the probation service; and a programme to address offending behaviour e.g. drugs rehabilitation.

Fines

These are the most common sentence, given where the offence is not serious enough to merit a community penalty.

Discharges

Absolute discharges are given where no punishment is appropriate and conditional discharges are given where no punishment is given as long as specific conditions are met within a period of up to three years.

Aggravating Factors

Those which make the offence and therefore the sentence more severe. E.G:

Seriousness of the crime
Racial Motive (can add up to 2 years)
Antecedents (previous convictions/criminal records)
Use of a weapon
On bail when offence committed
Vulnerable victim

Mitigating Factors

Those which make the offence and the sentence, less severe. E.G:

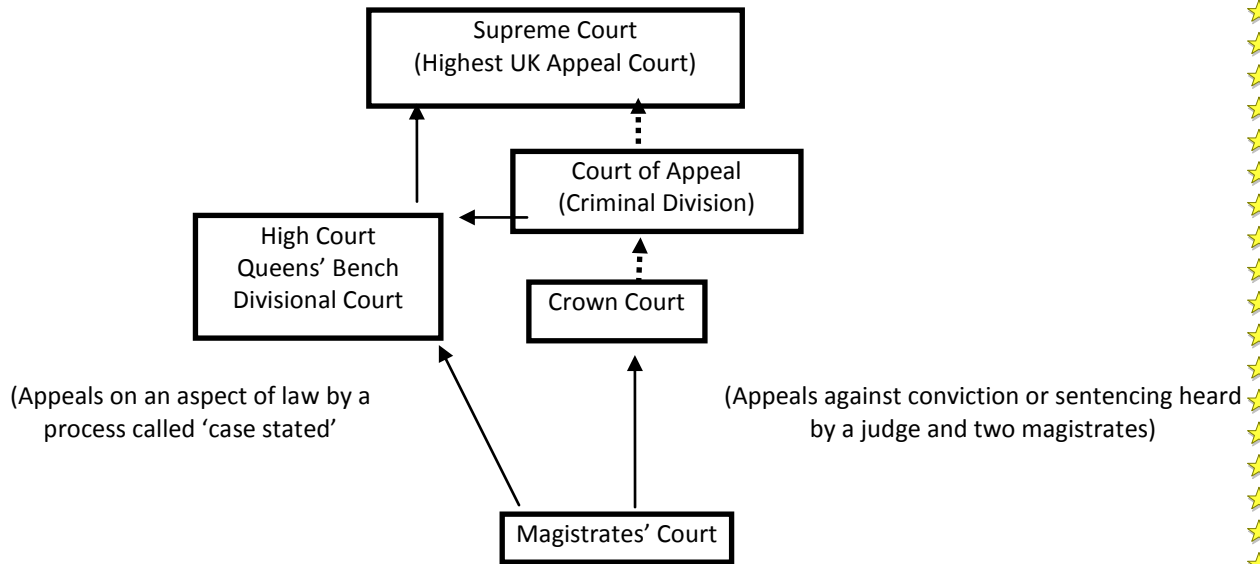
First offence
Age of offender - either young or elderly
Offender shows remorse
Early guilty plea - can take up to 1/3 off sentence if made at earliest opportunity
Background, or other mitigating circumstances.

Their powers are to sentence up to 6 months' imprisonment and/or a £5000 fine for a single offence. In the Crown Court, judges may sentence up to the maximum sentence for the crime, and in some cases there are mandatory sentences e.g. life imprisonment for murder. Pre-sentence reports are generally obtained from the probation service before a decision is made.

Routes of Criminal Appeals

There are two courts of first instance in the criminal justice system: Magistrates and Crown.

There are four appellate courts, depending on the grounds for appeal and where the original trial was heard (see below) - the Crown Court, High Court, Court of Appeal, Supreme Court.



KEY:

⬆ = appeals from trial on indictment in Crown Court

↑ = appeals from summary trial in Magistrates' Court

Questions: (CHECK TRIGGER WORDS)

1. **Identify** and **describe** what the aims of sentencing are.
2. **Explain** what types of sentence could be available.
3. **Describe** the different types of factors that could affect the sentence given.
4. **Identify** and **explain** the appeal route, from the magistrates' court, all the way to the Supreme Court if the appeal is:
 - a) on an aspect of law
 - b) against conviction.
5. **State** what aims would be achieved by:
 - b) sending an offender to prison
 - c) giving a community order with an unpaid work requirement
 - d) ordering payment of a fine
 - e) granting a conditional discharge?

TOPIC 4

Civil Courts and Processes

Checklist - to be completed once you have read the section and answered the questions.

I am confident with the following:

Pre-Trial Issues

☐ Seeking Legal Advice (solicitors, CAB, other sources)

☐ Negotiation

☐ Financing advice and representation

☐ Private Funding

☐ Public Funding - legal help

☐ Conditional Fee Agreements

☐ Track Allocation (small claims/fast/multi)

Procedure in County Court Trials

☐ Trial in County Court

Post-Trial Issues

☐ Remedies

☐ Damages

☐ Injunctions

☐ Civil Appeals

Introduction

Many civil disputes can be resolved through the legal process including: torts such as negligence, nuisance and trespass, family law and laws of succession, contract and employment law.

Before a civil dispute goes to court, there are several pre-trial issues to consider. First, it is wise to gain legal advice. If it is necessary to pay for legal advice and representation in court, there are several financing options available. Many civil claims can be resolved through negotiation between the parties, without the need for the case to go to court.

If the case does go to court, then a judge will decide the outcome and, if the verdict is in the claimant's favour, will award a remedy.

If either party is unsatisfied with the outcome of the trial, there is a civil appeals system.

Civil Process

Seeking Legal Advice

It is wise to seek legal advice for a civil dispute, if it cannot be resolved between the parties themselves. The table below outlines and evaluates the key sources of legal advice:

Source of Advice	Features	Advantages	Disadvantages
Solicitors	Legal professionals. Available throughout UK. Many offer low-cost initial interviews to advise on strength of case.	Best known source of advice. Legally qualified. Will negotiate on client's behalf and send appropriate letters. Can represent client in court if necessary.	Probably the most expensive form of legal advice. If relying on public funding (legal aid) then must find a solicitor with a contract for this type of work.
Citizens Advice Bureau (CAB)	3,300 bureau in the UK. Staffed mainly by volunteers. Charitable organisations. May have a qualified solicitor for certain issues.	Advice is likely to be free. Specialists in social/welfare problems e.g. housing; employment; welfare benefits.	Do not specialise in all aspects of law. Appointment times may be delayed if in high demand. Unable to negotiate or represent clients in court.
Law Centres	Available in larger towns and cities. Staffed by salaried	Specialists in social/welfare law issues. Free advice to those on low	Not available in smaller towns and villages – half are in London. Demand for their service means

	professionals. Funded by government and charitable donations e.g. from the Lottery	income.	there is a huge volume of work. Rely on having sufficient resources.
Websites	Websites exist for the purpose of giving general legal advice. An example is the government funded CLS website.	Easily accessible advice. Advice is accessed anonymously. Free advice on general issues. Often refer specific enquiries to another source.	Not always a reliable source of information as websites change or are removed and anybody can set up a website offering inaccurate legal advice. The advice given will be general and not relate to a specific person so further advice is likely to be required.
Specialist Bodies	Professional bodies often give legal advice for issues relating to their expertise e.g. trade unions, insurance companies, motoring organisations.	Specialist advice in their own area of expertise.	Advice is limited to specific areas. Quality of advice may vary.

Negotiation

The vast majority of civil disputes are not settled through **litigation**, but through other methods of dispute resolution, particularly negotiation. Negotiation means that both parties or their representatives discuss the problem and seek to reach a mutually acceptable compromise solution.

Advantages over litigation include the fact that there is less bad feeling, as the solution is agreed by both parties, so there is no winner and loser. Costs are kept to a minimum as no court or representation costs are involved. It is also flexible, since any type of agreement can be made – not just the remedies granted by the courts!

Disadvantages include the fact that one party may be in a vulnerable position and may settle for a solution which is less beneficial than they would have received in court. Also, it is not guaranteed that a decision will be reached.

Litigation – the process of deciding an issue through a court case.

Pro bono – for free

Means tested – dependant on proof of low income and savings/investments

Financing Advice and Representation in Civil Cases

1) Private Funding

Some solicitors offer **pro bono** services under certain circumstances (if it is a deserving case or in the public interest). However, paying privately for legal advice and representation often costs in excess of £150 an hour from a solicitor. This is therefore not an affordable option for many people.

2) Public Funding – Legal Help

The Community Legal Service provides public funding (Legal Aid) for certain civil cases. **Legal Help** is a type of assistance whereby a solicitor, or other body with a contract with the Legal Services Commission, is paid to give initial legal advice and assistance, and may write preliminary letters. This free funding is **means tested**, meaning only those on very low income will qualify. Qualifying will also depend on the likelihood of winning the case and whether more is likely to be gained than it costs.

In 2008 to qualify for public funding, income had to be below £2500 per month, with savings below £8,000.

Excluded Areas

Not all civil disputes will be publicly funded. Many key areas are excluded from this scheme and must be paid for either privately or through Conditional Fee Agreements. Such areas include small claims (those where under £5,000 is claimed) and personal injury cases (in negligence).

3) Legal Representation

This is representation in court and will be refused if chances of success are low or if likely financial outcome is low (stated in the Funding Code Criteria). Will also be refused if a CFA is likely to be granted. Government funded. Excluded areas; PI

4) Conditional Fee Agreements

For many types of civil case, public funding is unavailable and therefore a conditional fee agreement may provide a way of bringing a case to court if a person cannot afford private funding. Conditional Fee Agreements (CFA's), commonly called 'no win no fee' agreements, are made with solicitors. These agreements mean a claimant pays nothing to their own solicitors if they lose the case but has to pay a 'success/uplift fee' on top of the normal hourly rate if they win (although this is usually met by the other party). They must usually take out an insurance policy to pay the other party's costs in case they lose.




Questions: (CHECK TRIGGER WORDS)

1. **Identify** and **describe** three places where a person could seek legal advice.
2. **Describe** and **discuss** two types of legal advice.
3. **Comment** on the effectiveness of negotiation in civil disputes.
4. **Explain** three ways in which a person can finance advice/representation in civil cases.
5. **Identify** and **describe**:
 - a) What pro bono representation is
 - b) What Legal Help is.
 - c) How a person would qualify for legal help.
 - d) What specific areas are excluded from being eligible for legal help.
 - e) What a conditional fee agreement is.
 - f) Who the conditional fee agreement is with.
 - g) What happens if the claimant wins.
 - h) Why would a person usually take out an insurance policy?

Civil Process 2

Track Allocation

Under the **Civil Procedure Act 1997** cases are allocated to one of 3 tracks.

Small Claims Track	Fast Track	Multi Track
		
<p>Claims below £10,000 (or £1,000 for personal injury)</p> <p>Heard by district judge of County Court, usually in chambers.</p> <p>Procedure is informal, as the judge can adopt any method of dealing with the hearing that they consider fair, and they may ask questions of the witnesses before allowing anyone else to do so.</p> <p>Judge may limit the time that parties or witnesses have to give evidence.</p> <p>Costs are kept to a minimum and parties are encouraged to represent themselves, as legal costs will not be awarded to the claimant even if s/he wins. This does put some claimants at a disadvantage if the other party is a large company that is willing to meet its own representative's costs.</p> <p>There are limited appeals from small claims cases, mainly where the judge misapplied the law.</p>	<p>Claims between £10,000 and £25,000</p> <p>In the County Court</p> <p>Parties are usually legally represented (by solicitors)</p> <p>Trials are held within six months of the claim form issue, and are limited to one-day hearings, so costs are kept as low as possible.</p> <p>Cases are managed by judges (usually circuit judges), who determine timetables and determine issues such as which witnesses will be called and control costs.</p>	<p>Claims over £25,000</p> <p>Heard in either the County Court or the High Court, depending on complexity and value</p> <div style="border: 1px solid black; padding: 5px; margin-top: 20px;"> <p>Chambers (judges) – in the judge's room rather than in open court.</p> <p>Claimant – the person bringing the civil court case.</p> </div>

Trial in County Court

The County Court deals with small claims; fast track and multi-track claims in contract and tort cases, undefended divorce cases, bankruptcy cases, family law cases, and probate (wills). The trial process is as follows:

1. Claimant representative's opening speech: claimant witnesses are examined, cross examined and re examined (usually by solicitors)
2. The process is repeated by the defendant's representative and witnesses.
3. Defendant's and claimant's representatives closing speeches.,
4. The judge gives a judgement – whether defendant is liable or not.
5. If liable, a remedy will be granted to the claimant.

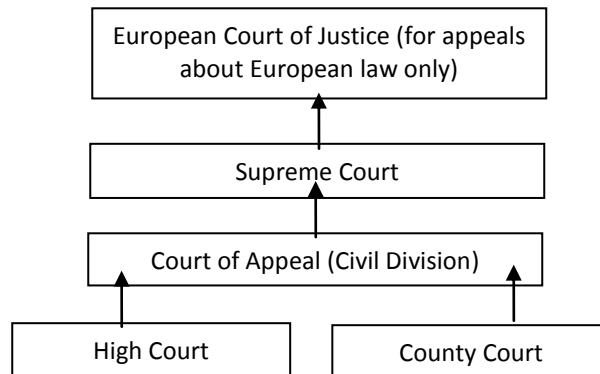
Remedies

Damages is the correct term for money compensation. A claimant has the right to be awarded damages if a civil wrong has been committed. Damages are awarded for losses incurred because of the wrong.

Injunctions are granted at the discretion of the court. They are court orders, preventing a person from or compelling a person to, carry out a specific activity e.g. to stay away from a specified person or place.

Civil Appeals

The routes of appeal depend on the court in which the case was originally heard, and also the level of judge who heard it:



- 1) If a trial is heard by a DISTRICT JUDGE then the appeal is to a CIRCUIT JUDGE IN COUNTY COURT.
- 2) If a trial is heard by a CIRCUIT JUDGE then the appeal is to the COURT OF APPEAL.

Questions: (CHECK TRIGGER WORDS)

1. **Identify** and **describe** what the Civil Procedure Act 1997 lays down.
2. **Outline** 3 key features of the small claims track, and the fast track.
3. **Explain** what the key differences are between the small claims track and the fast track.
4. **Outline** the process of trial in the County Court
5. **Describe** the appeals process in a civil case
6. **Describe** and **explain** what remedies can be awarded by the judge in a civil case.

TOPIC 5

People in the Law

★ Checklist - to be completed once you have read the section and answered the questions.

★ I am confident with the following:

★ Lay People

★ ☐ Juries Qualification/disqualification

★ ☐ Juries Selection/deferral/excusal/discharge

★ ☐ Role of juries in civil and criminal trials

★ ☐ Magistrates' selection and appointment

★ ☐ Magistrates' role in civil, criminal, administrative and appeal cases.

★ The Legal Profession

★ ☐ Solicitors training and role

★ ☐ Barristers training and role

★ Judges

★ ☐ Titles of judges

★ ☐ Role in civil, criminal and appeal cases.

Introduction

★ The key people who work in the civil and criminal justice systems may be classed as either lay people or legal professionals. Lay people are those who are not legally qualified and are not paid, other than expenses. These are magistrates and juries. Legal professionals are legally qualified and are paid. These are solicitors and barristers (the legal profession) and judges. Virtually all criminal trials are decided by **lay people**.

Juries

★ Juries are ordinary members of the public who are summoned to jury service (usually in the Crown Court) and must attend unless they have been officially disqualified or have been granted a deferral or excusal. Jurors are unpaid but can claim loss of income up to a designated maximum, reasonable travel costs and meal expenses. However, not everyone qualifies to be on a jury.

Qualification/Disqualification

★ There are three qualifications for jurors, outlined in the **Juries Act 1974** (amended by the **Criminal Justice Act 2003**) :

★ 1. Jurors must be aged between 18 and 70

★ 2. They must have been resident in the UK for a minimum of 5 years since the age of 13

★ 3. They must be entered on the **electoral register**.

★ Even if a person meets these three qualifications, they may actually be disqualified from serving on a jury. This happens if they:

★ 1. are currently on bail pending a criminal trial

★ 2. have ever been given a custodial sentence of over 5 years

★ 3. have been sentenced to a custody or community penalty within the last 10 years

★ 4. are mentally ill.

Selection

★ Jurors are selected at random from the electoral register, by computer at the Central

★ Summoning Bureau. If summoned, jury service is a legal obligation. Twelve names will be

★ selected by ballot in court. A juror may be challenged if they are known to anyone in the

★ court or there is other cause e.g. bias. Jurors are sworn in, taking an oath to give a true

★ verdict.

Deferral/Discharge

★ Any person can ask to have jury service **deferred**, or to be discharged from jury service. A discharge will not be granted if service

★ can be deferred (put off to a later time). Deferral, for up to 6 months, will usually be allowed by the judge for a good reason e.g.

★ an exam or pre-booked holiday.

★ A potential juror can be **discharged** for example if:

Lay person – not legally qualified or paid
Electoral register – electronic register of people registered to vote
Deferred – put off to a later time
Unanimous – all agree with the decision

- they are not physically capable of sitting in court
 - their command of English is not sufficient for court proceedings
 - they have a long-term disability, such as blindness
- Members of the armed forces will be discharged if their absence from duty would prejudice the service.

The Jury's Role in Criminal and Civil Trials

Role in Criminal Trials	Role in Civil Trials
A jury of 12 will decide the verdict in serious criminal cases (triable-either-way or indictable offences) in the Crown Court	Juries don't routinely hear civil cases but may be called to decide on cases of false imprisonment, malicious prosecution or defamation. They may also have to decide the cause of death at a Coroner's Court.
Listen to the evidence and decide the facts.	Listen to the evidence and decide the facts.
Ask the judge to explain things, by sending a note through the court clerk.	Ask the judge to explain things, by sending a note through the court clerk.
Discuss the evidence and the verdict with other jury members.	Discuss the evidence and the verdict with other jury members.
Jury deliberations are secret, so they cannot talk about the case to anyone outside the jury room, where all jury members must be present. Only the 12 jurors are allowed in the jury room under the Contempt of Court Act 1981 . This prevents a deaf person from sitting on a jury as they would not be permitted to take an interpreter into the jury room.	
Apply the law, as explained by the judge, to the facts, to reach a verdict of guilty/not guilty.	Apply the law, as explained by the judge, to the facts, to reach a verdict of liable/not liable and, if required, decide on the amount of damages payable if liability is established.
Juries must try to be unanimous in their verdict. However, after just over 2 hours, the judge is permitted to accept a majority verdict of a minimum of 10:2.	
Deliver the verdict. The foreman (spokesperson elected by the jury) delivers the verdict and the jury is discharged.	Deliver the verdict. The foreman (spokesperson elected by the jury) delivers the verdict and the decision regarding the amount of damages (compensation) to be awarded. This is a notoriously difficult decision for them and they may award large sums of money which are out of proportion to the wrong committed, resulting in an appeal.

Compare the Role of a Judge and Jury in the Crown Court

- A judge's role is to:
- keep order in the court
 - make rulings concerning the law and the admissibility of evidence
 - sum up the main facts of the trial and legal arguments
 - give an appropriate sentence if the jury finds the defendant guilty.

Perverse Verdict – a verdict that goes against the evidence: voting with conscience
Subjective – seeing things from an inside/personal viewpoint
Jury nobbling – threatening or bribing jurors

Bushell's Case (1670) – The case confirms that juries have the right to decide verdicts according to their own conscience.

R v Young (1995) – Jurors reached the verdict by communicating through a Ouija board with the murder victim, resulting in a re-trial!

R v Blythe (1998) – Example of a 'perverse' jury verdict – a man was acquitted of cultivating cannabis to ease the suffering of his wife who had multiple sclerosis, despite clear evidence the offence had been committed.

Evaluation of Juries

ADVANTAGES	DISADVANTAGES
Public confidence – many polls indicate that the public are confident that juries will reach the correct decision.	It is difficult to evaluate whether juries reach the right decisions, using the right processes, due to the secrecy of the jury room and the fact that they are not required to give reasons for their verdicts.
Having a jury keeps proceedings clear to the ordinary person and avoids the danger that the language used in court will become unintelligible to ordinary people, as everything must be explained in terms the jury (and therefore the defendant and everyone else) will be able to understand.	They may reach their decisions by unauthorised methods and nobody would know if it were not made known to the court at the time. (R v Young)
Having 12 different viewpoints/strengths helps in making unbiased decisions. It is unlikely that 10 out of the 12 will be biased, or that they would all vote a certain way purely because of threat or expectations on them.	Jurors may be influenced by media in a high profile case and may have already decided their opinion as to innocence or guilt when hearing about the alleged crime. They may also be influenced in the jury room by a forceful spokesperson or in the court by an eloquent lawyer, rather than purely by the evidence.
Juries represent the defendant's "peers", meaning ordinary people, like them. They will come from a variety of backgrounds and experiences and skills, as they have been randomly selected. Judges do not generally represent the public in the same way, with most coming from a narrow, often privileged section of society.	Jurors may not fully understand legal or technical points made during the trial. There is no test of basic understanding of verbal or written communication.
Juries are able to make decisions based on their conscience and are more likely to vote according to common sense or a sense of justice than a legal professional would, who may stick exactly to the wording of the law even if it means an unjust result (Bushell's Case)	Perverse verdicts are based on subjective opinion regarding justice and may lead to an outcome which our law makers did not intend. It makes the outcome at the whim of that individual jury and may mean that there is a different verdict in a similar case with a different jury. (R v Blythe)
	Jury service is inconvenient for many jurors and much of their time is spent waiting around for a suitable trial. Because of this, some may rush through their decision to bring the trial to an end more quickly.
	Jurors may be " nobbled " or threatened to make sure they vote a certain way. They may also be traumatised by the evidence they are required to see and hear.

Questions: (CHECK TRIGGER WORDS)

1. **Describe** the process of becoming a member of the Jury.
2. **State** what the three qualifications are for a juror, as outlined in the **Juries Act 1974**.
3. **Describe** how jury members are selected.
4. **Explain** how a juror would go about
 - a) deferring their service
 - b) being discharged from service
5. **Explain** the key differences in the jury's role in civil and criminal trials.
6. **Explain** in what circumstances a jury would be required in civil trials.
6. **State** the role of the judge in the Crown Court.
7. **Discuss** the advantages and the disadvantages to using juries in trials.

Magistrates/Justices of the Peace/JP's

There are over 30,000 magistrates throughout the UK, hearing over 95% of all criminal trials.

Selection and Appointment

A potential magistrate applies to the Magistrates' Court.

Applications are then sifted by a Local Advisory Committee, which invites applicants for interview based on the criteria in the

Justices of the Peace Act 1997:

- a) Applicants must be aged between 18 and 70 (although over 65s are unlikely to be appointed)
- b) The need must be taken into account for a balanced bench to represent the local community
- c) Certain professionals are ineligible, including members of the police service
- d) Applicants with criminal convictions or bankrupts may be disqualified.

There are 6 qualities which are sought in potential magistrates:

1. good character
2. understanding and communication
3. social awareness
4. maturity and sound temperament
5. sound judgement
6. commitment and reliability

The second interview consists of practical decision-making activities and successful candidates will be passed to the Lord Chief Justice who will recommend them for appointment by the Lord Chancellor.

Role of Magistrates

Magistrates must commit to sitting for a minimum of 26 ½ days per year, although most exceed this. Employers are legally obliged to release them for a reasonable time to perform their duties.

They usually sit as a bench of three, with a chairperson and two “wingers”. The chairperson is the only one who will speak in court. The bench will retire to discuss the verdict in a similar way to juries and the chairperson will deliver that verdict in court.

- Magistrates hold summary trials for summary and either-way offences. They listen to the evidence and decide a verdict.

However, unlike a jury, their role also includes sentencing those found guilty

- Their sentencing powers are up to 6 months custody and/or £5,000 for a single offence

- They are advised on the law by a Legal Advisor/Court Clerk, who is also responsible for training, court administration and paperwork.

- They carry out many administrative tasks e.g. bail hearings, granting arrest, and search warrants (often from home), transferring indictable offences to Crown Court, committals for sentence to the Crown Court, if they find a defendant guilty but their sentencing powers are insufficient.

- A trained panel of JP's may sit in the **Youth Court** to hear all crimes by young offenders between 10 and 17 except the most serious, e.g. murder which are held in the Crown Court. The Youth Court proceedings are less formal, with no press permitted and sentences are based primarily on rehabilitation.

- Specially trained JP's sit in **civil proceedings** in the Family Proceedings Court for matters such as judicial separation, adoption and maintenance.

- Two JP's sit with a judge to hear appeals from the Magistrates' Court in the Crown Court.

Case Hardened – magistrates may see the same types of case on a regular basis and may hear the same kinds of defences or excuses.

Evaluation of Magistrates

Magistrates are sometimes called the ‘backbone’ or the ‘workhorse’ of the criminal justice system because they hear the vast majority of all criminal cases.

ADVANTAGES	DISADVANTAGES
There are thousands of committed volunteers who willingly give up their time to serve the community.	Some benches have been criticised as being unrepresentative of the community, with too many middle-aged and middle-class people appointed. (Although it could be counter-argued that they can only appoint from those who apply and meet the criteria and many either do not know they could apply or their work does not permit them to).
Magistrates are more representative of, and have more knowledge of, local communities than judges.	Magistrates may become case hardened as they see cases on a regular basis where as a jury will only hear one case and judge it purely on its own merits.
A bench of three allows for a balanced view.	Magistrates have been criticised for believing the police version of events too readily.
The fact that there are few successful appeals indicates they reach correct decisions most of the time.	Magistrates are slower at decision-making than a district judge as they have to discuss issues as a bench of three and rely on a clerk for legal issues.
	Magistrates are criticised for inconsistency of sentencing for the same crimes in different local areas.

Questions: (CHECK TRIGGER WORDS)

1. **Describe briefly** how to become a magistrate
2. **Describe in detail** how to become a magistrate
3. **Explain in detail** the role of a magistrate
4. **Outline** the role of a magistrate in a Youth Court and a Family Proceedings Court
5. **State** who/where appeals are heard from the Magistrates' Court
6. **Evaluate** the role of the magistrate – looking at the advantages and disadvantages.

The Legal Profession (THIS IS WHERE WE ARE UP TO WHEN YOU JOIN)

Solicitors and Barristers

Unlike most other countries, in the UK the legal profession is divided into two main branches: solicitors and barristers. Some argue that this is a better system, as each is able to specialise in their field – solicitors mainly advise clients and complete the necessary paperwork, and barristers mostly act as advocates in court and give objective opinion on legal issues. However, a single, fused profession works well in most other countries, where the lawyers decide for themselves which areas to specialise in and have a common system for training. This reduces costs and makes for better communication. Since solicitors and barristers tend to specialise in specific areas of work, their training, following a law degree, is different.

Role of Solicitors

There are over 100,000 solicitors practising in the UK, with most forming partnerships and specialising in specific areas of work e.g. **conveyancing**, commercial, criminal and family work.

Solicitors are the main providers of legal advice. Clients approach them directly, and often a legal problem is solved through interview, advice, letter-writing and negotiation. For those that are not, solicitors carry out the litigation process, preparing court documents, interviewing witnesses, corresponding on behalf of the client and instructing a barrister, if required.

Solicitors have full rights of audience to act as **advocates** in all courts, although they must demonstrate competence through further training in advocacy, and become a solicitor-advocate, to act in the Crown Court and above. A solicitor's responsibility is to their client and they enter a contractual relationship with them, so can sue a client for non-payment of fees and be sued by them for negligence.

Role of Barristers

There are approximately 12,000 barristers, who act as self-employed legal professionals, although many others are employed by companies or public bodies as 'in-house' **counsel**, meaning they work in the legal department of the organisation but do not act as advocates in court.

Barristers who practice as advocates in court are not allowed to form partnerships and so must work alone but usually share **chambers** and a clerk. These barristers have **rights of audience** in all the UK courts, representing clients in civil and criminal trials.

Barristers' work usually comes to them from solicitors and clients are not usually allowed to contact barristers directly (called **direct access**). Since 2004, the public can access barristers who are specially trained in public access, in limited areas of work, not including litigation procedure. Organisations such as firms of accountants can instruct barristers directly through the licensed access scheme.

Apart from advocacy their other main role is to give **counsel's opinion** (legal advice) to solicitors. They are able to be objective in assessing a case as they have not been involved with the client, as solicitors have.

Barristers operate under the **cab rank** rule – which means that they are obliged to take the next case which is presented to them. This avoids them 'cherry-picking' only the best cases, leaving some defendants with no legal representation.

A barrister's responsibility is to the court and they are prevented from forming a contractual relationship with their clients and so cannot sue them for non-payment. They operate a blacklist system for solicitors who do not pay the barristers' fees.

Since the case of **Hall v Simons (2000)** barristers, like solicitors, may be sued for negligent work, both in and out of court.

SOLICITORS WORK FOR A CONTRACTUAL OR CONDITIONAL FEE

BARRISTERS WORK FOR A NON-CONTRACTUAL FEE OR HONORARIUM.

Conveyancing – buying and selling of land

Advocate – someone who represents a client in court

Counsel – the name by which barristers are known

Chambers (barristers) – offices, facilities and clerks shared by a group of barristers

Rights of audience – the authority to represent clients in court

ILEX Fellows – a fellow of ILEX is a legal executive. They must be aged over 25 and pass Parts 1 and 2 of the ILEX exams and have been working in 'qualifying employment' for 5 years.

TRAINING OF SOLICITORS



Eek!!!

TRAINING OF BARRISTERS

Stage 1

The **academic stage** is completed in one of three ways:

4. Completing a qualifying law degree (which covers core legal subjects)
5. Completing a degree in another subject than the Common Professional Exam/Graduate Diploma in Law
6. Becoming an **ILEX Fellow** (of the institute of Legal Executives)

Stage 2

The prospective solicitor must then become a student member of the **Solicitors Regulation Authority**.

Stage 3

The **vocational stage** of training begins with a one-year **Legal Practice Course**, learning the practical skills required for the profession.

Stage 4

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.

Stage 5

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.

Stage 1

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

Stage 2

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.

Stage 3

The **vocational stage** of training begins with a one-year **Bar Professional Training Course**, learning the practical skills required for the profession. During this, they must complete 12 qualifying units through attending training, seminars and dining events. On successful completion, they are "**called to the Bar**" (and can be called a barrister), but cannot practise as an advocate at this stage. Many work in legal departments of companies rather than practicing in court.

Stage 4

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.

Stage 5

The barrister is then fully qualified and is able to represent clients in all courts. They must work alone but usually share chambers.

Phew! I did it!!

Queen's Counsel

Experienced barristers and solicitor-advocates may apply to become Queen's Counsel (QC), which is awarded by an independent body, based on merit, and can be revoked if necessary.

TWO PROFESSIONS OR ONE?

Arguments for a divided legal profession as in the UK (Barristers and Solicitors)	Arguments for a single profession as in the US (lawyers)
Each can specialise in their main areas – barristers specialise in advocacy and solicitors in giving advice to clients and drafting legal documents.	Training is the same and so law students do not have to decide at an early stage which type of work they want to do when they qualify.
A barrister can give objective advice on a legal problem as they have never met the client so is not personally involved and is able to judge the issues purely on the basis of the evidence presented.	There is no breakdown in communications, or duplication of work or fees, as the same person could deal with a case right from the initial client interview through to representing them in court.
The “Cab Rank” rule for barristers means that a person should always be able to find somebody to represent them in court.	A client is likely to feel more confident if they have dealt with the same person throughout their case rather than meeting the barrister on the day of the trial, as is often the case.

Questions: (CHECK TRIGGER WORDS)

1. **Explain** in detail the role of a solicitor
2. **Explain** in detail the role of a barrister
3. **Explain** the key differences between solicitors and barristers in terms of their relationship with client/court and what type of fee they work for
4. **Outline** the process of training to become a solicitor
5. **Outline** the process of training to become a barrister
6. **Explain** what system is in place to ensure that all clients have access to a barrister
7. **Evaluate** whether we would be better served by a single or divided legal profession.
8. **Explain**, for both solicitors and barristers, whether they can be sued.
9. **Outline** the key differences between solicitors and barristers.
10. **Describe** what it means to be “Queen's Counsel”
11. **Outline** the key differences in rights of audience of solicitors and barristers
12. **Outline** how a solicitor would obtain rights of audience in courts above the Magistrates' Court.

Judges

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 2009) is separate from the Houses of Parliament, so the Law Lords will not be part of the House of Lords.

The Role of a Judge

Depending on the court the judge sits in, his/her role will vary. See chart on next page.

Judges Positions

Supreme Court

Title of judges: Lord Justices of Appeal

Head: Lord Chief Justice

Role of judges: 5-12 Law Lords hear appeals on points of law from the Court of Appeal or High Court (by **leapfrogging** CA)

Court of Appeal

Title: Lord Justices of Appeal (LJ)

Head of Civil Division: Master of the Rolls

Role: Civil appeals from High/County Court

Head of Criminal Division: Lord Chief Justice

Role: Criminal Appeals from Crown Court

Cases are usually heard by a bench of 3 LJ's

High Court

Title: Puisne Judges (High Court Judges)

The work of the High Court is divided into 3 divisions:

Queens Bench Division

Head: Lord Chief Justice

Role: To hear complex or high value cases in Patents, Contract, Tort, Commercial, Admiralty

Family Division

Head: President of Family Division

Role: Family cases

Chancery Division

Head: Chancellor of the High Court

Role: Equity, trusts, probate, tax, bankruptcy, companies

Each division of the High Court can also hear appeals from the courts below. These are called Divisional Courts.

QBD Divisional Court

Supervises and rules on legality of decisions of public bodies and lower courts

Family Divisional Court

Appeals from Magistrates' Court – family proceedings

Chancery Divisional Court

Appeals from County Court on bankruptcy/land

County Court

Title: Circuit Judges and District Judges

Role: Hear undefended divorce and most civil cases of lower value/complexity

Keep order, rule on law, decide outcome, and also decide remedy if liable

Crown Court

Title: High Court Judges, circuit judges and **Recorders**

Role: Trial of serious crimes, keep order, rule on law, sum up to jury, sentence offenders.

Also hear appeals based on fact and sentencing and committals for sentencing from Magistrates' Court

Magistrates' Court

In place of a bench of magistrates, District judges sit in larger towns, hearing minor crimes

The Role of the Judge

Title of Judge	Name of Court	Cases Heard	Role: Keeping Order	Role: Ruling on points of law	Role: Deciding the verdict or outcome	Role: Deciding the sentence or remedy
District Judge (Magistrates' Court)	Magistrates'	Criminal Summary and either-way offences		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

Key Terms:

Leapfrogging – when the Court of Appeal is 'missed out', and the appeal is taken to the Supreme Court directly from the High Court, as the Supreme Court made the law that is the subject of the appeal.

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

Questions: (CHECK TRIGGER WORDS)

1. Make a list/diagram of which judge sits in which court

2. Make a fact sheet which sets out the type of work which each judge will do, depending on the court and the case heard.