

The civil courts

The court of first instance – the court that first tries a case

The basic structure:

Initial hearing: County court or High court (QBD)

First appeal: Court of Appeal (Civil division)

Final appeal: Supreme Court

The courts of first instance

Cases are generally heard depending on which track they fit in: small claims, fast track or multi track. If a negligence case is to be heard in High court, it will be in the QBD.

Appeals

Either side of a civil case can appeal against the judge's decision. If the appeal is based on a District judge's decision then the appeal will go to a circuit judge. These are usually on procedural matters or smaller claims in county court. Therefore appeals go to the Court of Appeal with a further appeal to the Supreme Court. The leapfrog procedure can take a case straight from County Court or High court to the Supreme Court, but this is only used in cases of extreme significance.

Appeals don't take the form of a complete re-hearing, but a consideration of the documentary evidence and the judge's notes of witness evidence. They rarely change the trial judge's findings in fact, as the judge would have seen the witnesses' behaviour whilst under oath.

The appeal court has 3 options: it may affirm the original decision, vary the decision (i.e. change amount of damages awarded) or reverse the decision by finding in favour of the other party.

The burden and standard of proof

In civil cases the burden of proof is on the C to prove his claim on the balance of probabilities. This is lower than the standard in criminal cases. The C must prove that it is 'more likely than not' that D had been negligent (standard of proof). The burden of proof is the obligation on a party to establish the facts in issue in a case to the required degree of certainty.

There are 2 exceptions to this. The first is **criminal duplicity**. This is where if D has been criminally convicted of a crime based on the same event, the court will immediately be satisfied that D was wrongful beyond all reasonable doubt (standard of proof in criminal cases). This comes from the **Civil Evidence Act 1968**. The D would then have the opportunity to prove that he is not negligent, which would seem impossible given the conviction. The court would then only need to deal with the issue of awarding damages.

Res ipsa loquitur is the second exception which literally means 'the thing speaks for itself'. The idea is that the accident that caused the claim would not have happened if someone had not been