

Useful links to websites to help you research further your studies in law

www.parliament.uk

The official Parliament website; use it to track all criminal bills currently before Parliament, explore the role of the House of Lords in law-making, and search for delegated legislation.

www.legislation.gov.uk

The official website for the Stationary Office; use it to search for newly enacted and revised legislation, draft legislation and statutory instruments for the United Kingdom, Scotland, Northern Ireland and Wales.

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Preface

The Course Notes series is intended to provide students with useful notes, which are presented in a way that helps with visual learning.

The series is also interactive with:

- Workpoints for students to work through
- Research Points where students are invited to further their knowledge and understanding by referring to important source materials
- Checkpoints to see whether the reader has understood/learned the key points on each topic
- Examination style questions at the end of each chapter.

There is also support available on the companion website where students can check their own answers to the examination-style questions against the suggested answers on the site, as well as interactive questions and useful links for research.

Jacqueline Martin

Course Notes: The English Legal System

A strong knowledge of the fundamentals of the English Legal System provides the essential backdrop of any English law course. The sources of the English Legal System and how they interact provide the context for further, detailed study in all areas of law. These are then placed alongside an understanding of the practicalities of the English Legal System with a focus on the court system, legal personnel and procedure. This text is an indispensable revision aid which succinctly and clearly provides the required English Legal System knowledge, making full use of current examples and diagrams. The workpoints and suggestions for further research guide students towards developing as independent learners and achieving their full potential, not only in English Legal System assessments but also in all future English legal study.

Catherine Easton

Chapter 1

Sources of Law

1.1 The English Legal System

The English legal system (ELS) draws upon the following sources:

- Common law: the law held in judges' decisions
- Equity: a source of law based on fairness
- Legislation: Acts of Parliament and secondary (delegated) legislation
- European Union law
- The European Convention on Human Rights

1.2 Sources of Law

Who are the law-makers?

Parliament

The **supreme** law-maker

The Courts

Crucial to the development of the common law

The law-makers

The European Union

Creates law under the EU treaty
Incorporated in the ELS by the
European Communities Act 1972

The Council of Europe

Created the European Convention on
Human Rights.
Incorporated into the ELS by
the Human Rights Act 1998

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Definition

Royal Assent: No Bill can become an Act without the Royal Assent. Traditionally this means that the monarch must consent to the Bill becoming law. However, this is merely a formal process: the monarch does not read every Bill and give personal consent (it has not been withheld since 1707).

When does an Act come into force?

Definition

In force: Able to be relied upon in a court.

If a Bill has received the Royal Assent and is on the Statute Book, is it automatically in force? Answer: It depends on its commencement.

Example: Section 27 of the Budget Responsibility and National Audit Act 2011 states

Commencement

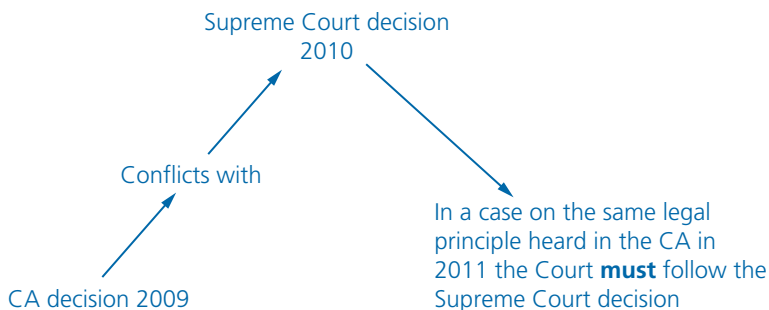
1. This Part comes into force on the day on which this Act is passed. *Therefore one Part comes into force on the day the Act received the Royal Assent (22nd March 2011).*
2. Section 27 and Schedule 6 come into force at the end of the period of two months beginning with the day on which this Act is passed. *Therefore these parts come into force on the date stated (22nd May 2011).*
3. The other provisions of this Act come into force in accordance with provision made by order made by statutory instrument by the Treasury. *The remaining sections will not come into force until a Minister in the Treasury makes a commencement order (a type of secondary legislation) to bring them into force.*

Therefore, an Act of Parliament does not automatically come into force on the day it receives the Royal Assent. You need to check its commencement.

Research Point

Locate an Act passed this month (either on paper or in a database) work out whether or not none, some, or all of it is in force.

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3. Where the previous Court of Appeal decision was decided *per incuriam* then the Court of Appeal will not be bound to follow it, e.g.:

Binding CA decision 2008

In the Court of Appeal in 2011 finds the past decision to be *per incuriam* it will not be bound to follow its *ratio decidendi*

Definition

Per incuriam: 'Through lack of care'. If the judgment overlooked either a binding precedent or relevant statutory provision and, due to this, the final decision was incorrect.

The case of *Williams v Fawcett* (1985) 1 All ER 787 extended this definition to apply in cases when:

- The mistake is easy to determine
- The case concerns individual liberty
- There is likely to be no further route of appeal.

2.3.3 Issues relating the Court of Appeal (Criminal Division)

It was stated above that strict adherence to *stare decisis* can be relaxed in criminal cases. This is because criminal cases can have severe implications for the liberty of individuals.

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It can be said that judges, within the constraints of the doctrine of precedent outlined above, do have some discretion in relation to the decisions they make and can impact on the law's development. Lord Reid said that where there is some discretion in relation to a decision, judges should have regard to (in this order):

1. Common sense
2. Legal principle
3. Public policy.

However, does judicial discretion not undermine Parliament's role as the supreme law-maker and the separation of powers? This area links to sources of law in Chapter 1 and statutory interpretation in Chapter 3.

Workpoint

To what extent do you agree with the statement 'judges make law'?

2.6 Avoiding Precedents

Throughout this chapter we have discussed *stare decisis*, the doctrine of **binding** precedent. However, what happens if you are advising a client and the court following a **binding** precedent in a previous case would lead to your client losing?

Remember Mr A's case at the very beginning of the chapter? It was stated that Ms C's case is very similar to Mr A's but Ms C lost and was not awarded damages. Do you have to follow the legal principles in this case?

Following strict *stare decisis*, the answer would be **yes**. However, remember the definition of *ratio decidendi*: it is 'the legal principle upon which a case is decided in the light of the **material facts**'.

If it can be proved that key facts in Mr A's case are sufficiently different from Ms C's (if, for example, Mr A's building was domestic and Ms C's building was commercial), then the binding precedent can be avoided. This is known as **distinguishing**.

Definition

Distinguishing: The process by which a past binding precedent is avoided by proving that its material facts were sufficiently different.

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Checkpoint

Task	Done
I can define the doctrine of judicial precedent	
I can outline the necessary requirements for the doctrine to function	
I can define the different elements of a judgment	
I know how courts bind each other in the court hierarchy	
I know the rules relating to how courts bind themselves	
I can analyse the advantages and disadvantages of precedent	
I understand the impact the Human Rights Act 1998 has had on judicial precedent	
I can outline and evaluate the deconstruction theory	
I can define the terms distinguishing, reversing and overruling	

Potential exam questions

- 1) To what extent do judges make law?
- 2) What are the essential ingredients in a system of judicial precedent?
- 3) Explain why it is important to distinguish between *ratio decedendi* and *obiter dictum*.
- 4) Draw a diagram of the court hierarchy.
- 5) Explain, with reference to case law examples, the effect of the Practice Statement of 1966.
- 6) Is the Court of Appeal bound by its own previous decisions?

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countries and the European Union itself take a purposive approach to interpretation as the ultimate mechanism of legal interpretation upon failure of the grammatical/literal approach.

Definition

The purposive approach: Interpret the law in the light of its wider general aims and principles. This particularly applies when interpreting a statute in the light of EU law. However, this approach is becoming increasingly more common throughout the English legal system.

Case:

***R v Registrar General, ex p Smith* (1991)**

The applicant was a convicted murderer detained in a high security psychiatric hospital who wanted to obtain his birth certificate and learn the identity of his mother. The relevant statute stated that the Registrar General 'shall... supply' the documentation. It was determined that the applicant could pose a danger to his mother. The judges took a wide approach, looking at the general aims of the statute and decided that Parliament could not have intended to promote serious crime. Therefore, despite the words of the statute, they ruled that the Registrar did not have to supply the birth certificate.

Again is this not the judges 'making law' and second guessing Parliament. How do they know the general aims of the statute?

Research Point

Increasingly statutes are published with Explanatory Notes which may outline the general aims of the law. Find an Act which has Explanatory Notes and determine to what extent you believe they are useful in the interpretation of the aims of the Act.

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Contextual approaches

(Mischief Rule and Purposive Approach)

Pros

- Words may not always express intention; there is a need to look beyond words to give light to the intention Parliament effectively.
- Allows judges to use their expertise to avoid absurdities to come to the result that Parliament would have intended.
- The purposive approach is a more modern approach to statutory interpretation and puts us more in line with European countries and the EU.

Cons

- Give judges far too much power and allows them to second guess the intention of Parliament and 'make law'.
- How do judges know what Parliament's intention is? There are some extrinsic aids to interpretation (see below) but these themselves require interpretation.
- When do judges decide to look at the context of the Act—always? When the result does not match their own notion of what is correct?

3.5 Rules of Language

At the beginning of the chapter, the difficulties of drafting an effective statutory provision were noted. Due to this, a number of legislative shortcuts have been identified to aid the drafting and interpreting of legislation. These are:

- *Ejusdem generis*
- *Expression unius est exclusion alterius*
- *Noscitur a sociis*.

Definition

Ejusdem generis: 'Of the same kind'. General words are to be interpreted as being of the same kind as specific ones which come before them. There needs to be more than one specific word. We interpret the general terms according to the 'common and dominant' characteristics of the specific words.

Case:

***Powell v Kempton Park Racecourse*
(1899)**

The statute prohibited keeping a 'house, office, room or other place for betting'. In this case the 'place' was outdoors. Was it covered by the statute? Answer: no, as the specific places referred to in the statute are all indoors.

- There is no definitive rule as to whether these can be used but, for example, in the Fraud Act 2006, the Government allowed an important principle to be included in the Explanatory Notes and not the Act itself.

Workpoint

Which rule(s) to statutory interpretation would make use of Explanatory Notes and which would not?

3.7.4 Hansard

Definition

Hansard: An official word-for-word record of what is said in the proceedings and debates in Parliament.

Research Point

Access Hansard online at www.parliament.uk/business/publications/hansard/. Find a debate on a recent Bill. Determine who was the proposer of the Bill. What reading of the Bill have you found? Are the statements clear?

Workpoint

Can you think of how Hansard could be useful to a judge trying to interpret a statute in which there is a perceived absurdity?

3.7.4.1 Hansard timeline

Pre 1978: Rule that the courts **cannot** look at Hansard to help in statutory interpretation

1978: *Davis v Johnson* (1978)

Denning strongly criticises this rule. Admits: '*I do it anyway*'

1992: *Pepper v Hart* (1993)

The rule against the use of Hansard is relaxed in the following circumstances:

- When a statute is found to be ambiguous; and
- The statement in Hansard is made by the relevant minister or promoter of the Bill; and
- This statement is clear.

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4.6.2.1 First-tier tribunal

300,000 cases each year, 200 judges, 3,600 lay members. It includes the following Chambers:

- [Social Entitlement](#)
- [Health, Education and Social Care](#)
- [War Pensions and Armed Forces Compensation](#)
- [General Regulatory](#)
- [Taxation](#)
- **Land, Property and Housing**
- Asylum and Immigration

Upper Tribunal

The appellate tribunal

It includes the following Chambers (the cases heard correspond to the formatting of the legal areas)

- [Administrative Appeals](#)
- [Tax and Chancery](#)
- **Lands**
- Asylum and Immigration

Judicial Review

to the Queen's Bench
Administrative Court

The Court of Appeal

4.6.3 Composition and procedure

A tribunal judge sits, sometimes aided by two lay members with relevant and balanced expertise.

4.6.4 The Administrative Justice and Tribunals Council

Established under the Tribunals, Courts and Enforcement Act 2007. It:

- Reviews the work of tribunals.
- Reports on the constitution and working of tribunals.
- Reports on and considers any other relevant matters.

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Chapter 5

Criminal Courts and Procedure

5.1 Introduction

The vast majority of crimes are investigated by the police. This chapter focuses upon the roles of:

- The police
- The Crown Prosecution Service (CPS)
- The criminal courts.

Workpoint

Look back at Chapter 4 and write down the key differences between civil and criminal cases.

5.2 The Criminal Procedure Rules

Definition

The Criminal Procedure Rules: A set of rules, mainly codified in 2005 after the Auld Review, which relate to the practices and procedures in the criminal courts.

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Court	Appeals heard
High Court	Hears appeals in the Divisional Court
Court of Appeal (Civil Division)	Hears civil appeals from the multi track
Supreme Court	Hears appeals in civil cases from England, Northern Ireland and Scotland
Privy Council	Civil appeals from the Commonwealth Hears devolution issues

Remember: The European Court of Justice (ECJ) does **not** hear appeals but answers references on questions of European Union law. See page 17.

Leave to appeal is nearly always needed.

The Appeal Court will **review** the decision of the lower court and grant leave if:

The decision of the lower court is **wrong**

The decision was unjust due to serious procedural or other irregularity.

The Appeal Court has all the power of the lower court and can.

- Affirm
- Set aside
- Vary the lower court's order or judgment
- Refer a claim for determination by the lower court
- Order a new trial
- Make a costs order.

Definition

Senior Courts of England and Wales: The High Court, the Crown Court and the Court of Appeal.

The key courts

- *Established by Judicature Act 1873
- *There are 37 Lords Justices of Appeal plus:

- Lord Chief Justice
- President of the Family Division of the High Court
- Vice-Chancellor of the Chancery Division of the High Court
- Master of the Rolls.

Court of Appeal (Civil Division)

- *High Court judges may sit
- *Judges sit in threes but can sit in fives for important cases
- *There are usually four or five courts each day

*Twelve Justices of the Supreme Court sit

*Created in October 2009 to replace the Appellate Committee of the House of Lords

The Supreme Court

- *Hears appeals from:
 - High Court – leapfrog (see below)
 - Court of Appeal Civil Division (with permission from CA or SC)
 - Courts in Northern Ireland and Scotland.
- *In general, hears appeals of general public importance

Definition

Leapfrog appeal: A **civil** appeal from the High Court can bypass the Court of Appeal and go straight to the Supreme Court, e.g.

Supreme Court

Court of Appeal (Civil)

High Court



Leapfrog

This can happen if the trial judge finds:

- A point of law of general public importance is involved.
- The point of law is one in which the judge is bound following the doctrine of *stare decisis*.
- The Supreme Court gives leave (permission) to appeal.



However, in relation to 'social welfare' matters, generally only advice is covered. Help will only be given where there is sufficient benefit to the client.

7.4.3 Reasons to refuse funding

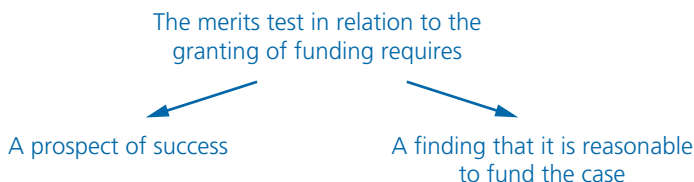
If other avenues (e.g. Ombudsman) should be and have not been pursued. Full representation will be refused if a conditional fee agreement is likely to be available.

Full representation will also be refused if prospects of success are:



Access to Justice Act 1999 Schedule 2: Matters excluded from funding

- Allegations of negligence (not clinical)
- Conveyancing
- Boundary disputes
- Making a will
- Trusts
- Defamation/Malicious falsehood
- Company/partnership law
- Other business matters
- Matters not relating to the law of England and Wales



Following this, Full Representation will be refused unless:

	Moderate	Good	Very good
Prospects of success are:	50%	60%	80%
Ratio of damages to costs needs to be:	4:1	2:1	Damages will exceed costs

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Some criticisms of Civil Legal Aid

- In some areas there are no Legal Aid-funded advice providers. This could lead to higher fees
- Sometimes clients are not referred to appropriate advice providers
- Some advice can be poor or even damaging
- **[ECtHR]** *Steel and Morris v UK* (App No 6841/01): Denial of Legal Aid in defamation cases infringes Art 6 of the ECHR

Legal Aid reform

In June 2011 the Government introduced the Legal Aid, Sentencing and Punishment of Offenders Bill for its first reading in the House of Commons. This Bill outlines plans to cut Legal Aid from areas such as employment, immigration, debt and medical negligence. If these proposals become law they will have a significant impact on access to civil Legal Aid.

Advice and assistance

- Limited to one hour
- Means-tested (although duty solicitor can see all under the Advice and Assistance scheme free of charge)
- Not available when:
 - Offender is on bail charged with a non-imprisonable offence
 - Trial is in the Magistrates' court

Representation covers:

Cost of solicitor preparing case

Cost of representation in court

Cost of barrister if required

Test = based on merits (this test is waived for Crown Court cases)

Schedule 3 Access to Justice Act 1999, key factors:

1. The likelihood of loss of liberty or serious damage to reputation.
2. Whether a substantial point of law will arise.
3. The capacity of the individual to understand the case.
4. The likelihood of the need for tracing, interviewing or expert cross-examination.
5. If it is in the interests of another person that the individual is represented.

The Public Defender Service

- Established under the Access to Justice Act 1999
- First five set up in 2001 (plus one in 2002 and two in 2003)
- Controversy: the State both prosecutes and defends

Positive:

- Lawyers more likely to attend police stations, leading to less likelihood of a charge being made

Negative:

- Clients more likely to plead guilty with no advantage
- Not as cost-effective as private firms, four offices therefore closed down in 2007

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Research Point

Analyse why it is a human right that representation is available in criminal cases. To what extent do you believe that the current system achieves justice?

7.6 The Legal Profession and Public Funding

The number of legal aid solicitors has decreased (in 2011 only 6% of lawyers undertook legal aid work). The key reason: lawyers are unhappy about changes to legal aid contracts.

R (Law Society) v Legal Services Commission and Dexter Montague (2007) 1 WLR 2761 [2007] EWCA Civ 1264.

- A challenge was successful in relation to the changes to contracts to legal aid work.
- Almost all in the power of amendment to the contract was not sufficiently transparent.

7.6.1 Reform

7.6.1.1 The Carter Report: Legal Aid – A Market-Based Approach To Reform July 2006

Key recommendations:

- ‘Best value’ tendering
- Fixed fees for solicitors working in police stations
- Revise graduated fees for Crown Court advocates
- Graduated fee scheme for Crown Court litigators.

This could lead to fewer firms providing legal aid services and the increased potential for ‘advice deserts’.

7.7 Private Funding

Paying for legal advice and representation can be:



This led to the introduction of **Conditional Fee Agreements (CFAs)**.

Chapter 8

Juries

8.1 Juries: Timeline

Pre-1215 Some evidence that juries were used

1215 The Magna Carta recognises right to trial by judgment of peers. Juries become usual method for the trying of criminal cases

The role of juries develops with a focus on local knowledge rather than decision-making

Late 1400s Role of juries becomes akin to independent assessors and decision-makers

1670 *Bushell's Case* (1670) Vaughan 135: Juries are the sole arbiters of fact, a judge cannot challenge their decision

1960 [CA] *R v McKenna* [1960] 2 All ER 326: Judges cannot put undue pressure on a jury

Court	Crown Court	High Court Queen's Bench Division	County Court	Coroner's Court
Number of jurors	12	12	8	7–11
When used	In all trials	Rarely. In cases of defamation, false imprisonment and malicious prosecution	Very rarely used. In cases of defamation, false imprisonment and malicious prosecution	In certain cases in which deaths occur in custody, where police officers are involved or which occurred in certain accidents
Role	Decide guilt	Decide liability and amount of damages	Decide liability and amount of damages	To determine the cause of death

Defamation cases

- 'Conveniently' was taken in *Goldsmith v Pressdram Ltd* (1987) as relating to the achievement of justice. However, in the case *McDonald's Corporation v Steel and Morris* (1997), a jury trial was denied due to the potential length of the case.
- *Beta Construction Ltd v Channel Four TV Co Ltd* (1990) lays down some considerations in the determination of whether a jury trial should be allowed. These include:
 - How much the jury's presence will affect the length of the trial
 - Any practical difficulties relating to evidence
 - Any special complexities or technicalities.
- After some very large awards of damages made by juries, the Court of Appeal under the Courts and Legal Services Act 1990 can now, and often does, reduce the awards made.

Malicious prosecutions

- Presumption in favour of jury trial but no automatic right
- As with defamation cases, if the circumstances in s 69(3) Senior Courts Act 1981 arise, then jury trial can be denied

Juries in Personal Injury Cases

- Applications are very rare
- *Ward v James* (1965) 1 All ER 563 Guidelines:
 - Personal injury cases should normally be tried by a single judge applying conventional scales of damages
 - Jury trials should only be allowed in exceptional circumstances (an example could be where injuries resulted from a deliberate misuse of power)
- Since *Ward v James* there has only been one other jury trial on a personal injury case

Workpoint

To what extent do you think that it is necessary to have jury trials in civil cases?

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8.5 Juries in Coroners' Courts

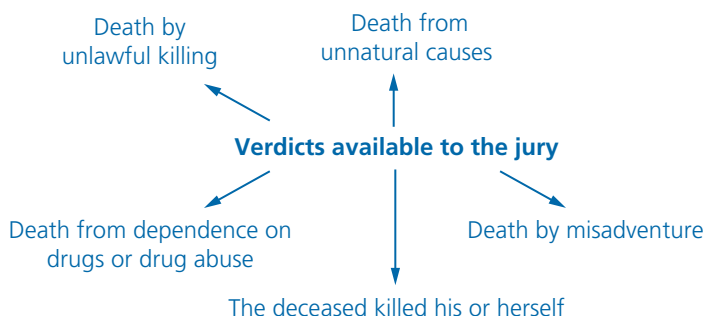
Key issues

- Use of a jury is discretionary unless a death occurs:
 1. In prison
 2. In an industrial accident
 3. In circumstances concerning the public's health and safety
 4. In police custody

57 Coroners and Justice Act 2009
(new vet in place).

Jury will only be used if a death occurred in police custody if:

- The death was violent or unnatural or the cause was unknown
- The death resulted from the act or omission of a police officer
- The death was caused by a notable accident, poisoning or disease



8.6 Juries in Criminal Cases

Workpoint

Before you look at this area, turn back to Chapter 5 and revise your understanding of the criminal court system.

This is the most important use of juries (in around 1% of all criminal cases).

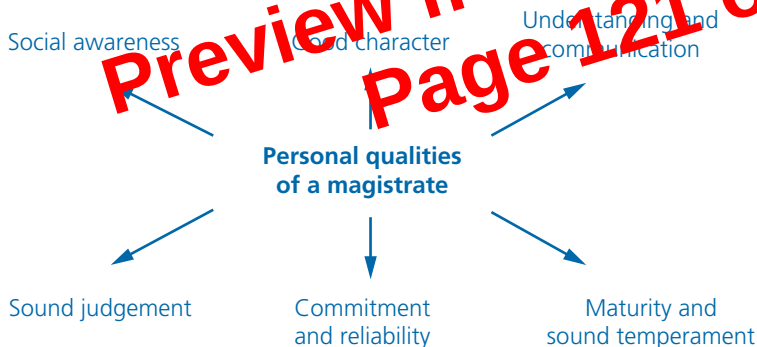
They are expected to live or work within the relevant local justice area.

Ineligible:

- Those involved in law enforcement.
- Members of the armed forces.
- Close relatives of those employed in the criminal justice system in the local area.
- Two close relatives will not be employed on the same bench.

Allowed to claim the following **actual** allowances:

- Travel.
- Subsistence.
- Financial loss.



Workpoint

Think of yourself and those you know. Who do you think would make a good magistrate and why? Would the people who you believe could make a good magistrate have the time and resources to commit to the role?

9.4 Selection and Appointment of Lay Magistrates

- From 1,700–2,200 appointed each year.
- Appointments are made by the Lord Chancellor ‘*on behalf of and in the name of Her Majesty*’.
- Advisory Committees recommend candidates for appointment.

9.6.1.2 Removal

The Lord Chancellor can remove a magistrate due to:

- Incapacity (including illness) or misbehaviour (e.g. conviction for an offence).
- Persistent failure to meet standards of competence (as reinforced by MNTI2 – see above).
- Failure to take proper part in the exercise of the role's functions (e.g. not attending the required number of sittings).

9.7 Magistrates' Duties

Criminal cases
Magistrates: • Try 98% of cases • Decide guilt • Pass sentences • 6 months' imprisonment for a single offence (Criminal Justice Act 2003 will allow for 12 months if it comes into force) • 12 months' imprisonment for two or more offences (Criminal Justice Act 2003 will allow for 15 months if it comes into force) • Deal with preliminary matters such as early administrative hearings and bail applications • Deal with young (between 10 and 17 years old) offenders in the Youth Court
Civil cases
Magistrates deal with matters such as: • Enforcement of debts in relation to utilities (e.g. gas, electricity, water) • Non-payment of council tax and television licences • Appeals from the refusal of a licence to sell alcohol
Family cases
Magistrates with special training deal with matters such as: • Domestic violence orders • Adoption orders • Proceedings under the Children Act 1989 relating to, for example, residence and contact in relation to children

9.8 The Magistrates' Clerk

Each Bench has a clerk (legal adviser) and the senior clerk has to be qualified as a barrister or solicitor for at least five years.

Advantages	Disadvantages
Cost • Much cheaper than District Judges (approx. several millions of pounds per year). • Cost of magistrates' trials is much cheaper than the Crown Court.	Inconsistency in sentencing • Geographical disparities in sentencing and in charging.
Legal expertise: • Since 2010, legal advisers have to be legally qualified which increases legal expertise in the court. • MNT12 improves the training of magistrates, as does the role of the Judicial Studies Board.	Reliance on the clerk • The clerk can give legal advice but not aid in sentencing, too much reliance on a clerk may lead to inconsistencies.
Fewer appeals • Approx. 5,000 appeals against conviction a year, with around 2,000 allowed. • Approx. 6,000–7,000 appeals against sentence a year with 3,000–3,500 allowed. • Approx. 100 appeals on a point of law to the Queen's Bench Divisional Court a year with 50 allowed. • Given the amount of cases these courts hear (approx. two million a year), these are very small numbers.	

Workpoint

If you were developing a country's legal system from scratch, would you include a role for lay magistrates? If so, what would their role entail and how would they be trained?

Definition

The **cab-rank rule**: Under paragraph 2 of the Code of Conduct of the Bar of England and Wales, a barrister must accept the brief which they are assigned and cannot refuse to provide services (this does not apply to the Public Access scheme)

Workpoint

Think about how a citizen's right to access justice could be affected if the cab-rank rule did not exist. To what extent do you believe that the rule is necessary?

10.3.2 Queen's Counsel (QC)

- Becoming a QC is known as 'taking silk'.
- QCs wear a silk gown and sit in the Court's front row, are invited to speak first and don't specialise in a particular area.
- Most High Court judges are appointed from QCs.
- The selection process has been reformed (and may be again) due to a lack of transparency.

10.3.3 Making a complaint against a barrister

The process is regulated by the Code of Conduct of the Bar of England and Wales.

First: Approach the solicitor who directed the barrister (if the barrister was not accessed directly)



Next: Approach the barrister to try to resolve the issue



If there is no resolution: Approach the Bar Standards Board (BSB). The BSB's complaints procedure is overseen by the Complaints Commissioner. The Board has the power to:

- Request that the barrister apologise to the client
- Disbar the barrister
- Suspend the barrister
- Fine the barrister
- Order that fees be repaid



Finally: If the matter is not resolved then the Office for Legal Complaints can be approached. The Legal Ombudsman tries to informally resolve the case and can issue orders for compensation.

10.4.2 The Legal Services Act 2007 and Alternative Business Structures (ABSs)

Definition

Alternative Business Structures: A business structure, provision for which is contained in the Legal Services Act 2007, in which legal professionals form partnerships with non-lawyers such as accountants, tax consultants and estate agents.

ABSs would allow for more than 25% of the organisation to comprise non-legal personnel and may permit sole external ownership. This significantly transforms the traditional restrictions on the business structures available to solicitors and barristers.

Aim of ABSs

To provide a consolidated 'one-stop shop' providing professional services.

Advantages	Disadvantages
Direct access, convenience, consumer choice, professional choice	Loss of the legal profession's independence, concentration of high-quality professionals thereby reducing choice, potential for conflicts of interest, issues of confidentiality and professional privilege, difficulty regulating professional conduct

Workpoint

If you were to buy a house, would you prefer that your estate agent, surveyor and conveyancer were all part of the same organisation with one main contact point? Give reasons for your answer.

Checkpoint

Task	Done
I can outline the different roles undertaken in the legal profession	
I understand the ways in which an individual can qualify to be a solicitor	

11.4.1 Different types of inferior judges

Circuit judges

- Need to be qualified barristers or solicitors with seven years of legal experience or be a Recorder or be holder of a full-time judicial office for at least three years.
- They are permanently assigned to one of the six circuits.

Recorders

- Need to be qualified barristers or solicitors with seven years of legal experience.
- They are part-time judges, appointed for five years which is usually extended in further five year terms.
- They retire at 65.

District judges (Civil Court)

- These comprise the majority of District Judges known as Registrars.
- They need to be qualified barristers or solicitors with five years of legal experience.
- They usually will have sat as a part-time Deputy District Judge for at least two years.

District judges (Magistrates' Court)

- Must have been qualified for five years.
- They usually have been a part-time Deputy District Judge previously.
- ILEX Fellows can now be appointed to this post.

11.4.2 Different types of superior judges

Justices of the Supreme Court

- Need to have held one or more of the judicial offices outlined in the Appellate Jurisdiction Act 1876.
- They are usually the most experienced judges from the Court of Appeal, the Court of Session in Scotland and the Court of Appeal in Northern Ireland.
- Appointments are made by the Queen on the advice of the Prime Minister and Lord Chancellor.

Figure continued overleaf

12.2.6 Denunciation

This is not specifically mentioned in the Criminal Justice Act 2003.

- Through punishment, society expresses its disapproval with criminal behaviour.
- This highlights society's moral boundaries and the nature of acceptable conduct.

Workpoint

Imagine that you are a judge and, after a period of nationwide violent unrest, a defendant is brought before you on charges relating to criminal damage and looting. Take each of the aims of punishment in turn and outline the sentence you would impose, justifying it on the basis of the aim. Look back at your list, which sentence do you think you would actually impose?

Research Point

Take a look at the website of the Sentencing Council of England and Wales: <http://www.sentencingcouncil.judiciary.gov.uk/>. To what extent do you believe that it will be effective in achieving consistency of sentencing?

12.3 Custodial Sentences

These are the most serious punishment a court can impose.

12.3.1 Life sentences

Mandatory life sentence

- Has to be imposed where a person over 21 has pleaded or is found guilty on a charge of murder.
- This is not incompatible with Articles 3 (torture) and 5 (liberty) of the ECHR.
- The judge, following s 269 of the Criminal Justice Act 2003, sets a minimum period to be served within the boundaries of full life down to 12 years.
- Whole life should be set if:
 - Two or more people have been murdered with premeditation or sadistic conduct.
 - A child has been murdered following abduction or with sadistic motivation.
 - The murder advances a political, religious or ideological cause.
 - The offender had been previously convicted of murder.

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