



Islamic Azad University Damghan Branch



LAW TEXTS (1)

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The English Legal System

The English legal system also applies to Wales and is often closely followed in Northern Ireland. It has types of law:

- (a) **Common law:** the basic principles of law as applied in past cases (case law) where Parliament has not made any special rulings or Acts. The existence of common law means that a judge does not have to refer to Parliament when an unfamiliar case comes up. Instead, he looks for precedents (past cases of a similar kind) and for general principles;
- (b) **Statute law:** specific laws passed as acts of parliament. Statute law takes priority over common law so far as it covers the case being heard. If it does not give specific guidance (e.g. in a new type of case which was not envisaged when the law was passed), the judges apply the common law, trying as far as possible to do what they think Parliament would have wanted them to, if it had known about the case in hand."

This system gives a lot of power to judges. They do not, however, have an entirely free hand. They are always bound by the decisions of more important courts than their own- and the most powerful court in the country is Parliament. Judges need not give the same verdict as a higher court; that would be too vague a rule and would lead to bad decisions. They must, however, apply the law in the same way and adopt the higher court's reasoning in their own consideration of the case.

Civil and Criminal

There is another two-way division of English law into **civil law and criminal law**. These two branches give their names to the two kinds of court: civil courts and criminal courts. The basic difference between civil and criminal law lies in who is seen to be the injured party. Some offences are felt to be so serious that the offence is seen as being against society as a whole. These offences are termed criminal offences and include crimes such as arson, murder, theft and rape as well as motoring offences. Under recent legislation, the criminal law also includes Health and Safety at Work and other industrially related law. Cases are tried in the criminal courts, where the accused is prosecuted by the Crown and is found guilty or not guilty.

Civil law covers cases which are seen as being conflicts between two individuals, not involving the public interest or society as a whole. Civil offences include breach of contract, divorce, trespass, etc. and (in the industrial field) some of the anti-discrimination laws and the employment protection laws. Cases are tried in civil courts where the defendant is sued by the plaintiff and found liable or not liable.

Criminal Courts

There is a hierarchy of criminal courts: the Magistrates' Court, the Crown Court, the Court of Appeal and the House of Lords.

The Magistrates' Court are the lowest of the criminal courts. Minor criminal offences are tried there by Magistrates, who are respected members of the local community without legal training magistrates are sometimes known as JPs (Justice of the Peace) and they cannot sit alone. In some cities, though, there is a legally qualified full-time **Stipendiary Magistrate** who can sit alone.

Cases tried in the Magistrates' Courts are of three kinds:

"(a) Minor criminal offences where a jury is not required. These cases are known as **summary proceedings** since an offence which does not require trial by jury is a **summary offence**.

(b) First consideration of major criminal offences which do require a jury trial. These are known as committal proceedings because, if the prosecution is judged to have a case, the Magistrates will commit the accused for trial by jury in the Crown Court.

(c) Young persons' cases which take place in a special, less formal session called a juvenile Court. To sit as a Juvenile Court, there must normally be three Magistrates, of whom at least one must be a woman"

The Crown Court is next highest in the system. Here cases are tried by fully qualified full-time **Judges** or part-time **Recorders**, and by a jury. Cases heard in the Crown Court are of four kinds:

"(a) Serious criminal cases requiring a jury trial.

(b) Appeals on the basis of evidence against convictions in the Magistrates' Court, or against the sentence of that Court.

(c) Sentencing, where the Magistrates' Court brought in a conviction but did not have enough power to impose the penalty they thought fit (sometimes done by the Recorder).

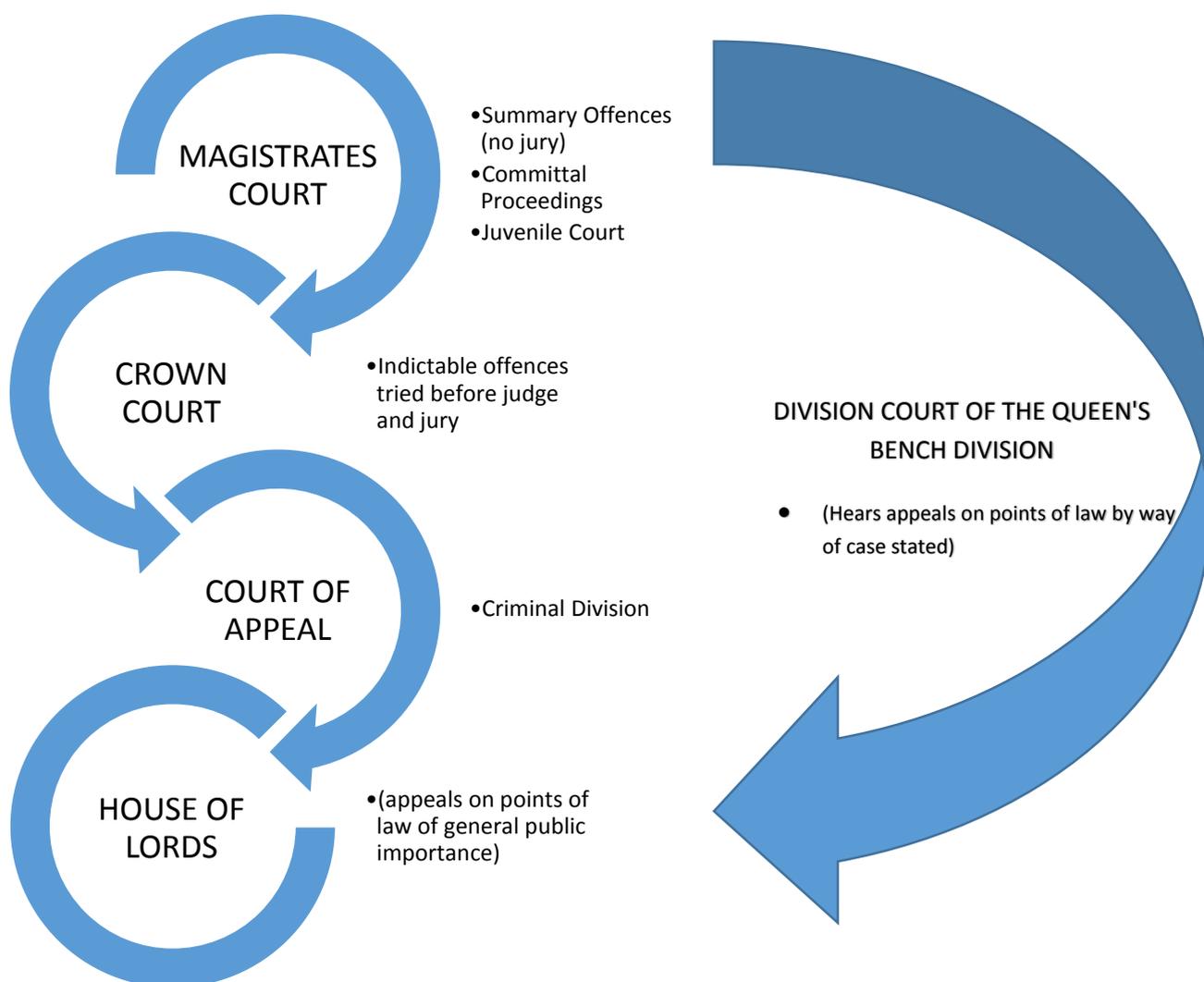
(d) Minor criminal cases where the accused has taken up his right (in the Magistrates' Court) to be tried by jury."

The Court of Appeal is next highest in the chain. This Court has a Criminal Division which hears appeals against the evidence or the sentence of the Crown Court. Three senior judges sit in the Appeal Court. (Appeals from the Magistrates' and Crown Courts which are based on legal points are heard in a separate court: the Divisional Court of the Queen's Bench Division).

The highest court in the land is the House of Lords, to which appeals from the Appeal Court and the Divisional Court can be made. Appeals will only be heard if they are based on general legal points of great public importance. The two lower courts decide how important a point is and either grant or refuse leave to appeal.

The House of Lords as a whole does not judge cases; this is left to the Law Lords.

Criminal Courts System



The Civil System

The lowest court in the Civil hierarchy is the County Court. A judge presides in this court and gives judgments alone.

The County Court only considers small civil wrongs (the limit is financial one) but it also considers more important matters to do with land, wills etc. undefended divorces are heard in the County Court and this court also has a small claims procedure (for disputes about faulty goods etc.).

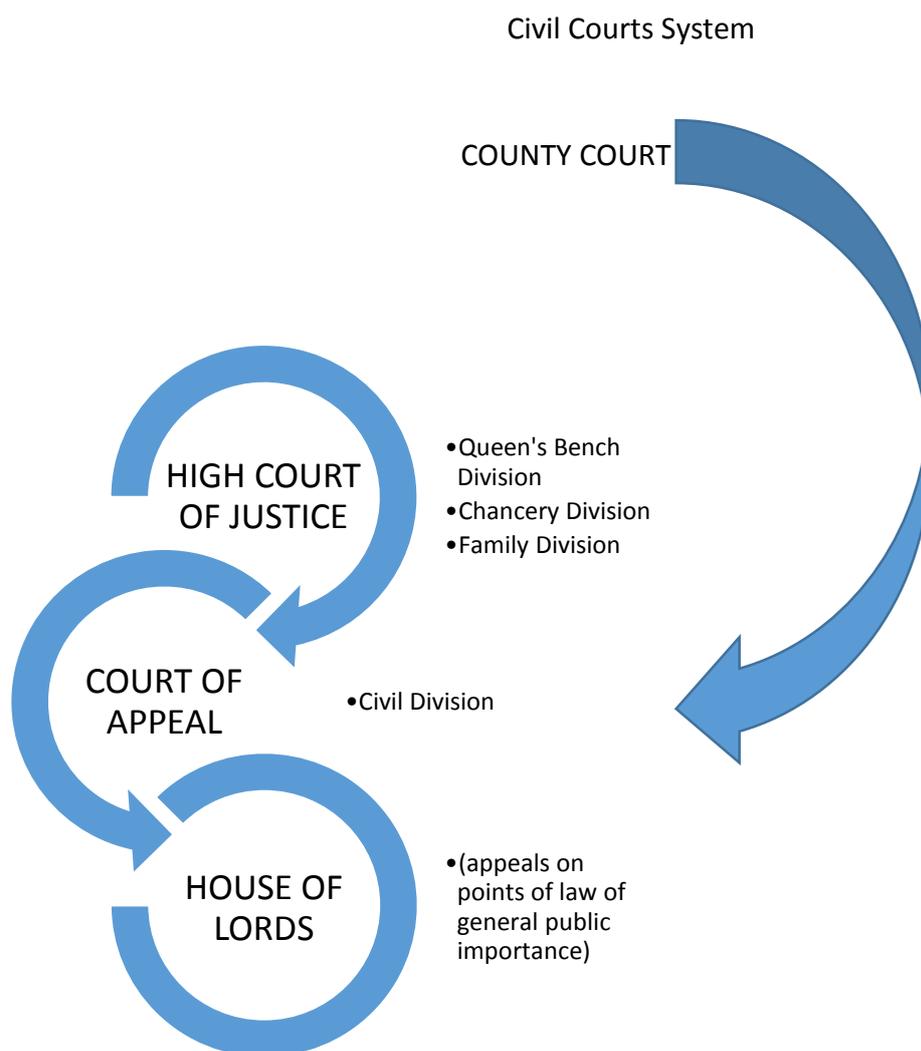
The next highest court is the High Court of Justice. This is effectively three courts: the Queen's Bench Division (which deals with contracts, negligence, trespass etc. over the County Court's financial limit), the Family Division (which deals with defended divorces and complicated family disputes), and the Chancery Division (which deals with land, wills etc. over the County Court's limit). The High Court also hears appeals from some administrative tribunals, but not from the County Court.

Appeals from both the County and High Courts are heard in the Court of Appeal, and from the Appeal Court cases may be taken to the House of Lords on the same basis as in the criminal system.

Who's 'Who in Court?

In all courts there are either judges or magistrates. These are the people who preside over trials and sometimes make decisions on the verdict. Magistrates preside in their own courts and they alone conduct the business, consider the evidence and reach a verdict. They are usually assisted by a trained lawyer, the Magistrates' Clerk, who sits nearby and advises on points of law and detailed procedure. He or she also conducts the general running of the courtroom. Magistrates try to keep their cases informal and the atmosphere in their court is often very different from that where a judge is presiding. Magistrates are also responsible for sentencing (provided they do not need to exceed their limited powers). They can hear preliminary evidence in committal proceedings and also pass convicted criminals for sentencing to the Crown Court.

Judges are qualified lawyers appointed by the Lord Chancellor, the senior members of the legal profession and a political appointee. They may vary in experience and seniority from a Recorder (a part-time judge sitting in the Crown Court) to the Law Lords (who sit in the House of Lords). Except for those in the Crown Court, all judges are responsible for reaching verdicts and passing sentence. Judges preside in all the Courts in the civil and criminal systems except the Magistrates Court.



Juries sit in the Crown Court. They consist of twelve adult British citizens chosen from the Register of Electors to do jury service. Their job is to hear the evidence presented and any legal points raised by the judge; they then consider what they have heard and decide whether there is any reasonable doubt that the accused is guilty. If there is such a doubt, they find him or her "not guilty"; otherwise they convict. The jury in the Crown Court brings in the verdict on the accused, but the judge is responsible for passing sentence. There are no juries in the civil system (which is not concerned with crimes against the public interest). Like the magistrates, the laymen of the jury can be seen as society's representatives in cases dealing with offences against society.

Barristers and solicitors are trained lawyers, although each trains differently from the other. Solicitors are general lawyers who do much of their work out of court (e.g. wills, house conveyancing, etc.). They can only represent their clients in the two lowest courts-the Magistrates' and the County Courts. One special type of solicitor is the "police solicitor" who appears in the Magistrates' Court to put the police case against the accused. If the case goes to a higher court in either system, a barrister must be employed. Barristers are lawyers who are specially trained to present cases in court and they either prosecute/sue or defend, depending on who hired them. Members of the public cannot hire barristers directly; they must be engaged or "briefed" by a solicitor. Judges are recruited from amongst barristers, who are also known as Counsel. A successful barrister may be made a QC (Queen's Counsel) on the recommendation of the Lord Chancellor. QCs are sometimes called "silks" because of their special gowns; they are also known as "leaders" because no QC can plead a case alone, but must "lead" a "junior" or non-QC barrister.

Witnesses may be called by either side in any type of case. They may be members of the public, of the police - in fact, anyone. Their function is to testify on oath by answering questions put to them by the lawyers, the magistrate or the judge. The oath (or some equivalent form of declaration) is an undertaking to tell the truth in its entirety and not tell lies. Lying on oath is known as perjury; since it is an attempt to pervert justice, it is an offence against society and therefore a criminal offence. A witness may be called because of special knowledge of the incident. The case or the accused; the accused can also appear as a witness in his or her own defence. If witnesses do not want to attend the court, the law can force them to do so.

The press and the public are entitled to attend to watch court proceedings unless the court has been cleared or the trial is being held in camera (in closed session). They are there out of family ties, friendship, or general or professional interest. The press is in most cases subject to reporting restrictions (which are automatically in force); these cannot be lifted unless both sides agree.

Multinationals¹

The term "multinational" is used for a company which has subsidiaries or sales facilities throughout the world. Another expression for this type of business enterprise is "global corporation". Many of these giant organizations are household names such as Coca Cola, Heinz, Sony, Hitachi, IBM, Akzo and General Motors. Companies like these control vast sums of money and they operate in countries with widely differing political and economic systems.

Looking back into history, we can find two main reasons for the development of multinationals, **Firstly**, when companies found that their national markets had become saturated, they realized that they could only increase profits by setting up subsidiaries abroad. **Secondly**, if a country set up trade barriers – usually tariffs or quotas – against a company's products, then the only alternative for the company was to establish a factory or sales organization in the country concerned.

More recently, the economic boom of the 1960s led to a rapid growth of globe-trotting enterprises. In the highly industrialized countries rising incomes attracted the multinationals; in the developing countries, the availability of cheap labour lured many companies into building new factories and assembly plants.

In earlier times, most countries gave the multinationals a "red carpet" welcome because they saw such foreign investment as creating much-needed employment, stimulating the business sector generally, and possibly earning foreign currency if the company's products were exported. More recently, however, the tide has turned against the multinationals. They are now viewed by many with suspicion; once heroes, they are now villains on the international business stage.

For reasons outlined below, host countries are now restricting the activities of their guests, the multinationals. Many developing countries will only allow new investment if it is on a joint-venture basis. This means that local entrepreneurs, or state agencies, must participate in the ownership and even management of the foreign enterprise. Other countries, e.g. India and Nigeria, are forcing foreign companies already well-established to reduce their shareholdings to a certain percentage, say 60% or 40% of the total equity of the company.

At interactional level, various attempts have been made to regulate the activities of the multinational. The most gentlemanly of these has been the OECD's² guidelines on multinationals: a kind of book of etiquette advising companies how to behave in public. The code, being voluntary, is not legally enforceable.

¹ Extracts from an Article published in "The International Business Topics", collected by D. Cotton, 1984. Bell and Hyman Publications, p. 5.

² Organization for Economic Cooperation and Development.

Tension between host country and multinational is inevitable in many cases because multinationals do pose a threat to national sovereignty.

The multinational is big and rich. It often operates in industries which are difficult to enter and of vital national importance, e.g. the computer, chemical and automobile industries. Most important of all, the main objective of the multinational is to organize its activities around the world so as to maximize global profits and global market shares. Each subsidiary is part of an international network of affiliates. These all interact with each other. Each part serves the whole. The Centre controlling the network- the multinational's headquarters - is not under the control of the host government. It is frequently thousands of miles away from these subsidiaries.

To illustrate this principle of interaction between affiliates, we can take the example of the Canadian company, Massey Ferguson. It can make tractors in the USA for sale in Canada that contain British engines, French transmissions and Mexican axles: all products of the company's subsidiaries. IBM is another company which is transnational in scope. A typical 360-series computer may include components from four or five countries.

To show how a multinational plans and operates internationally, let us take the cases of SKF¹, a Swedish ball – bearing manufacturer. When it took over its Italian affiliate RIV in 1965, RIV was entirely dependent on the Italian market. It was also near collapse because it had overestimated demand for its products and was suffering from over capacity. SKF immediately started feeding it with export orders and continued until the domestic market picked up again. RIV then concentrated on the domestic market and the export orders were reduced.

Increasingly, in recent years, governments have had to ask themselves whether multinationals are harming their national interests. In highly industrialized countries, a major source of worry has been that these foreign giants will take over smaller companies and gradually dominate an important industry. If this happens, vital decisions affecting the economic interests of the country may be taken in boardrooms thousands of miles away from that country.

The danger of this kind of domination is perfectly exemplified by a controversial takeover which occurred in France. In 1966, the French computer company Machines-Bull had 66% of its stock bought up by General Electric. This meant in effect that France no longer had its own computer industry. As a result, the French government felt bound to set up its own data processing and computer concern which cooperated closely with the German company Siemens and the Dutch company Philips.

Undoubtedly, governments are uneasy when they feel that decisions affecting plants and employment in their countries are being made by remote control. Furthermore, unions often feel that their bargaining power is weakened when they have to deal with people operating from remote decision centres.

¹ Aktiefolaget Svenska Kullagerfabriker.

Developing countries, in particular, have become concerned about their dependence on foreign investment in key sectors of their economy. They have become aware that foreign subsidiaries often take most of their profits out of the country rather than reinvest them in the company. Sometimes, the flow of funds causes disastrous fluctuations in the exchange rates of their currencies. Certain countries have accused the multinationals of political interference. The classic case of this is, of course, the intrusion of ITT (International Telegraph and Telephones) in the political affairs of Chile. This huge conglomerate, involved in every area of industrial and banking activity, was ready to finance attempts to overthrow the Marxist government of the Communist leader, Salvador Allende.

To gain greater control over their industry, some countries, as already mentioned, are beginning to insist on joint ventures. The disadvantage of this tactic is that the foreign subsidiary may then be treated less favourably, in terms of technical assistance and capital investment, by the parent company.

Another strategy used by governments is to limit the amount of profits that a foreign subsidiary may repatriate in a given period.

Arguing against multinationals, critics cry in shrill tones that these organizations engage in anti-competitive activities, insensitively shut down plants, make huge bribes to gain contracts, interfere politically, destabilize currencies, underpay their workers and so on. Those speaking for the defence see these corporations almost as international agencies, promoting peace, providing better, cheaper products, and bringing much needed resources, expertise and employment to the host countries.

THE END

Source

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