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## Outline of Law

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The Law as I see it has two great objects: to preserve order and to do justice; and the two do not always coincide. Those whose training lies towards order, put certainty before justice; whereas those whose training lies toward the redress of grievances, put justice before certainty. The right solution lies in keeping the proper balance between the two.<sup>1</sup>

### What is law?

The law is a body of enforceable rules comprising social, political, moral and economic factors intended to maintain order and social control of society. There are different types of law including common, equity and statute law. Common law is the part of English law developed by judges, who make court decisions (case law) that are binding on lower courts and are known as 'precedent'. Common law legal jurisdictions are widespread throughout the world in those countries formerly part of the British Empire and now forming the Commonwealth. The common law system is also used in the United States. Equity is the part of English law developed in the former Courts of Chancery and designed to mitigate the rigours of the common law. Since the Judicature Acts 1873–1875, the courts administer both common law and equitable principles, and, where there is a conflict between the rules of law and equity, the rules of equity should prevail. Statute law is the law enacted by the legislature in the form of Acts of Parliament. The common law system is noted for its flexibility.

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<sup>1</sup> Lord Denning, cited in Wacks (2008), p. 22.

Common law jurisdictions are to be contrasted with civil law jurisdictions, which are codified systems often based upon the Napoleonic Code and are prevalent in continental Europe, the former French colonies in Africa, and Latin America. Common law courts tend to follow an adversarial approach to litigation, whereas civil law courts usually adopt an inquisitorial system. In civil law jurisdictions less weight is given to precedent. Three basic principles underlying the British Constitution are the separation of powers, the supremacy of Parliament and the rule of law.

## The separation of powers

One of the fundamental principles underlying the British constitution is that of the separation of powers. According to the eighteenth-century French philosopher Montesquieu, this principle means that all state power can be divided into three types:

- Executive
- Legislative
- Judicial

The executive represents the government, the police and civil servants; the legislative power is Parliament; and judicial authority is exercised by judges. The basis of Montesquieu's theory was that these three types of power should not be concentrated in the hands of one person or group, since this would give that group absolute control.

## The Supremacy of Parliament

The Supremacy of Parliament is a central principle of the United Kingdom's constitution, meaning that Parliament is the highest legislative body in the United Kingdom and may enact any law it sees fit. No person or body is recognised by

the law of the United Kingdom as having a right to override or set aside the legislation of Parliament.

Further information: Dicey (1959).

## Judicial precedent

Judicial precedent provides the basis for the development of legal rules, predictability, and a degree of certainty in the common law system. It is strongly coercive in its nature. In broad terms, judges are bound by rules of precedent, or *stare decisis*, to the system of case law in that they must have regard to earlier decisions made by superior courts on the same principles. A general rule of precedent is that the decision of a superior court binds all lower courts by its decisions. Some courts can bind themselves, for example the Court of Appeal binds those courts below it and itself. In the latter case, the judge must search to find the rule of law upon which the earlier decision was based, called the '*ratio decidendi*'.

## Divisions of law

### Common law

Common law is unwritten law, which is derived from judicial precedent and custom. Common law is governed by the doctrine of '*stare decisis*', which means that precedents are binding and must be followed. Under common law, new laws are created through the decisions made by judges. Common law incorporates elements of equity if other branches of the law cannot provide an adequate remedy.

### Statute law

Statute law refers to law that has been created by Parliament in the form of legislation.

## Private law

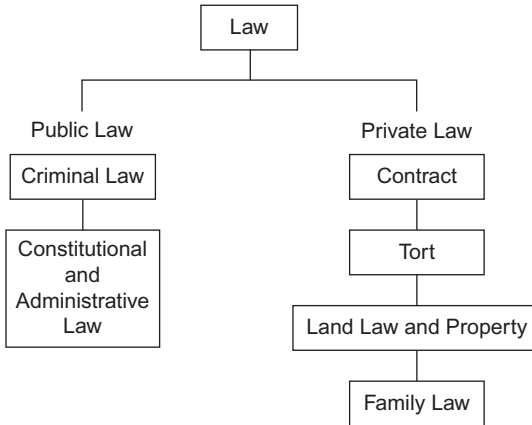
Private law is the body of law that deals with disputes and the legal relationships between individuals that are of no direct concern to the state. Private law includes the law of tort, property and trusts, family law and the law of contract.

## Public law

Public law (also known as 'administrative law') is the body of law that deals with the state. It includes the exercise of powers and duties by public bodies arising under statute. It may include conflicts between the individual and the state. Public law includes the enforcement of building regulations by a local authority. See Figure 1.1.

## Civil law

Civil law is related to the rights, duties and obligations of individuals to each other to do with civil matters such as family, property, contract, commerce, partnerships, insurance,



**Figure 1.1** Public law and private law.

copyright and the law of torts. This definition is to be contrasted with the civil law systems operating in civil law jurisdictions.

## **Criminal law**

Criminal law is the body of law that regulates criminal acts that are deemed by statute or the common law to be public wrongs and therefore punishable by the state in criminal proceedings. There are a number of situations where the conduct or action of an architect may result in criminal proceedings, including dishonesty and fraud. Architects and anyone involved in financial transactions also must take action in relation to knowledge of any criminal activity.

## **Equity**

Equity refers to the system of rules and principles developed by the former Courts of Chancery. Equity provides a measure of fairness, or natural justice, that is not always available under common law. Although equity and common law are implemented by the same courts, the two branches of the law are separate. Equity includes wide remedial principles that allow the courts to protect individuals from strict common law rules.

## **Legal systems in the United Kingdom**

There are three distinct legal jurisdictions in the United Kingdom and each has its own legal system:

- England and Wales
- Northern Ireland
- Scotland

English law prevails in England and Wales. The basis of the legal system in Northern Ireland is English common law but it

has its own law courts and its own statutory provisions. The Scottish legal system is entirely different from that in England and Wales and has its own courts and legal traditions, which were preserved under the Treaty of the Union in 1707.

## Who makes the law?

There are four predominant sources of the law within the English legal system:

- Parliament
- The courts
- The European Union
- The Council of Europe

## Overview of the system of government in the United Kingdom

The United Kingdom is a parliamentary democracy with a constitutional monarch. A king or queen is the head of state, and a prime minister is the head of government.

### The constitution

The United Kingdom is unusual compared with other countries in that it does not have a single written constitution but an unwritten one. Rather than one formal document, the British constitution is formed from various sources including case law made by judges, statute law and international treaties. There are also some unwritten sources, including parliamentary conventions and royal prerogatives. Since 1997 the United Kingdom has been engaged in a process of constitutional reform and has witnessed unprecedented constitutional changes, including:

- Devolution to Scotland and Wales, under the Referendum (Scotland and Wales) Act 1997;

- The Scotland Act 1998, providing for a directly elected Scottish Parliament with a Scottish Executive responsible to it on devolved matters;
- The Government of Wales Act 1998, providing a directly elected National Assembly in Wales;
- The Northern Ireland Act 1998, providing for a referendum on a partnership form of government and devolution in Northern Ireland and the establishment of a directly elected Assembly in Northern Ireland;
- A referendum under the Greater London Authority (Referendum) Act 1998, on a directly elected mayor and assembly in Northern Ireland;
- The Local Government Act 2000, requiring local authorities to abandon the committee system and providing for the possibility of directly elected mayors following referendums;
- The Human Rights Act 1998, requiring government and all other public bodies to comply with the provisions of the European Convention on Human Rights;
- The Freedom of Information Act 2000, providing for a statutory right of access to government information;
- The independence of the Bank of England from government in monetary policy (1997);
- The Constitutional Reform Act 2005, providing for the Lord Chief Justice, rather than the Lord Chancellor, to become head of the judiciary and for the establishment of a new Supreme Court whose members, unlike the law lords, are members of the House of Lords.<sup>2</sup>

## Acts of Parliament

Acts of Parliament (also called 'statutes') contain the main laws made by Parliament acting in its legislative role. Until the statute (or Act) has passed through all its stages and received the royal assent, it is referred to as a 'bill', for example the Localism Bill 2010.

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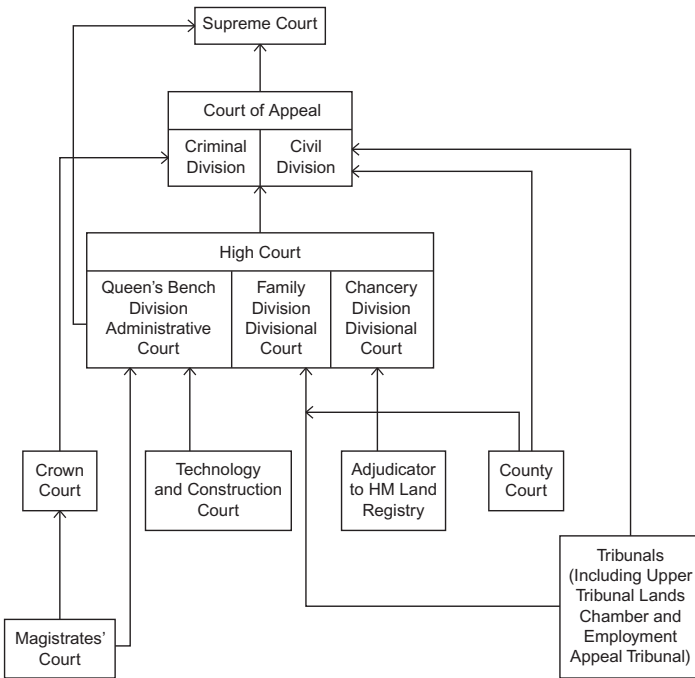
<sup>2</sup> Cited in Bogdanor (2009), pp. 4–5.

## Courts and Tribunals

Figure 1.2 shows the hierarchy of the courts in England and Wales.

### The Supreme Court

The Supreme Court of the United Kingdom was established by the Constitutional Reform Act 2005 and replaced the House of Lords. The appellate jurisdiction of the former House of Lords and the jurisdiction of the Judicial Committee of the Privy Council were transferred to the Supreme Court. The Supreme Court is the final court of appeal for all United Kingdom civil



**Figure 1.2** Hierarchy of courts in England and Wales.

cases and criminal cases in England, Wales and Northern Ireland. The Supreme Court was established to emphasise the independence of the Law Lords and increase the transparency between Parliament and the courts by achieving a separation between the Upper House of Parliament and the United Kingdom's senior judges.

Further information: <http://www.supremecourt.gov.uk>.

## The Court of Appeal

The Court of Appeal has two divisions: the Civil Division and the Criminal Division. It exercises an appellate function over all judgements and orders of the High Court and most determinations of judges of the county courts. Its decisions can be appealed with leave of the House of Lords. Following the enactment of the Constitutional Reform Act 2005, the President of the Criminal Division is the Lord Chief Justice, who is also head of the judiciary.

The Court of Appeal is served by 37 senior judges, termed Lord Justices of Appeal. The most senior judge is the Master of the Rolls. Usually, three judges will sit to hear an appeal, although for very important cases five judges may sit.

Further information: <http://www.hmcourts-service.gov.uk/cms/courtofappeal.htm>.

## The Privy Council

The Privy Council is the highest court of appeal for a number of Commonwealth countries, the Channel Islands and the Isle of Man. The Judicial Committee is also responsible for considering devolution issues and hears appeals from medical and veterinary disciplinary bodies and certain ecclesiastical cases.

Further information: <http://www.privy-council.org.uk>.

## The High Court

The High Court of Justice functions both as a civil court of first instance and a criminal and civil appellate court for cases from lower courts. It consists of three divisions:

- The Queen's Bench Division, which deals with general civil cases such as personal injury, medical negligence, libel and contract disputes. The Technology and Construction Court is one of the specialist courts in the Queen's Bench Division of the High Court, along with the Divisional Court, Admiralty Court and Commercial Court;
- The Chancery Division, which deals with company law cases, disputes involving the sale of land, the redemption or foreclosure of mortgages, company law and bankruptcy, partnerships trusts and trustees, wills and probate;
- The Family Division, which deals with all matrimonial matters, divorce and children.

High Court judges sit mainly in the High Court of Justice in the Strand, London; however, it is possible for the High Court to sit anywhere in England or Wales. Further, the judges of the Queen's Bench Division travel on circuit throughout England and Wales to hear cases.

Further information: <http://www.hmcourts-service.gov.uk>.

## The Technology and Construction Court

The Technology and Construction Court (TCC) is a specialist court that deals with technology and construction disputes, including building, engineering and information-technology disputes; professional negligence claims; and nuisance. A significant part of the TCC's work relates to adjudication. The TCC is based in London. Claims may also be brought in those county courts

that are specified in the Civil Procedure Rules Part 60 Practice Direction,<sup>3</sup> which are: Birmingham, Bristol, Cardiff, Chester, Exeter, Leeds, Liverpool, Newcastle, Nottingham and Manchester.

### **Types of claim appropriate to the Technology and Construction Court**

- Building or other construction disputes, including claims for the enforcement of the decisions of adjudicators under the Housing Grants, Construction and Regeneration Act 1996;
- Engineering disputes;
- Claims by and against engineers, architects, surveyors, accountants and other specialised advisers relating to the services they provide;
- Claims by and against local authorities relating to their statutory duties concerning the development of land or the construction of buildings;
- Claims relating to the design, supply and installation of computers, computer software and related network systems;
- Claims relating to the quality of goods sold or hired, and work done, materials supplied or services rendered;
- Claims between landlord and tenant for breach of a repairing covenant;
- Claims between neighbours, owners and occupiers of land in cases of trespass, nuisance etc.;
- Claims relating to the environment (e.g. pollution cases);
- Claims arising out of fires;
- Claims involving taking of accounts where these are complicated;
- Challenges to decisions of arbitrators in construction and engineering disputes including applications for permission to appeal and appeals.<sup>3</sup>

Further information: Ministry of Justice (2010a); Ministry of Justice (2010b).

<sup>3</sup>Ministry of Justice (2010a).

## The Crown Court

The Crown Court is a single court that has an unlimited jurisdiction over all criminal cases tried on indictment and also acts as a court for the hearing of appeals from magistrates' courts. Crown Courts sit in 77 court centres across England and Wales and are designated into six circuits:

- Midland (Birmingham, Nottingham)
- North-Eastern (Leeds, Newcastle upon Tyne, Sheffield)
- Northern (Liverpool, Manchester)
- South-Eastern (London, Norwich)
- Wales (Cardiff, Swansea)
- Western (Bristol, Exeter, Winchester)<sup>4</sup>

Further information: <http://www.hmcourts-service.gov.uk>.

## County courts

County courts are statutory courts with a purely civil jurisdiction. They are presided over by Circuit Judges and District Judges, and, except in a small minority of cases, the judge sits alone without assistance from a jury. County courts have divorce jurisdiction and undertake private family cases, care proceedings and adoption, together with contract and tort cases and land disputes, particularly possession proceedings by landlords and mortgagees. There are county courts in many towns throughout England and Wales.

Further information: <http://www.hmcourts-service.gov.uk>.

## Magistrates' courts

Magistrates' courts exercise criminal and family proceedings. These courts also have the power to make personal protection orders and exclusion orders in cases of matrimonial violence.

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<sup>4</sup>Ingman (2006), p. 30.

They exercise some civil matters and have powers of recovery in relation to council tax and charges for water, gas and electricity.

Further information: <http://www.hmcourts-service.gov.uk>.

### **Coroner's courts**

The main function of a coroner's court is to inquire into the causes and circumstances of certain deaths and treasure.

Further information: <http://www.hmcourts-service.gov.uk>.

### **The Upper Tribunal (Lands Chamber)**

The Lands Chamber is a separate chamber of the Upper Tribunal. It was formerly known as the Lands Tribunal. The judges and members hear cases under many different acts of Parliament and statutory instruments and can decide certain disputes concerning land. For instance, they have the power under the Law of Property Act 1925, Section 84, to discharge or modify restrictive covenants affecting land and award compensation to any person entitled to the benefit of such a restriction. They also deal with right of light issues in cases where the owner of a building may acquire a prescriptive right to light across adjacent land. This arises if light is enjoyed for 20 years without interruption of a year or more. Under the Rights of Light Act 1959, to prevent the acquisition of such rights, the owner of the adjacent land may apply to the local authority in whose area the building is located for the registration of a notice that is equivalent to the obstruction of the light.

The Lands Chamber also determines disputed land valuation cases with the consent of the parties, and compensation in compulsory purchase and certain other types of land compensation cases. It also hears appeals from Valuation Tribunals, Leasehold Valuation Tribunals and Residential Property Tribunals.

## Small claims courts

A small claims court is used to make a claim to recover money owed, generally for a lower value than £5000. Small claims are usually heard in the county courts but some cases can be heard by the High Court. Before a claim is made to a small claims court the court will look for a resolution to the issue has first been sought.

Further information: <http://www.hmcourts-service.gov.uk>.

## Law of the European Union

European Union law is a body of treaties and court judgments that have direct effect within the member states and, where conflict occurs, takes precedence over national law. The treaties (known as 'primary' legislation) are the basis for a large body of 'secondary' legislation that has a direct impact on the daily lives of citizens of the European Union. Secondary legislation consists mainly of regulations, directives and recommendations adopted by European Union institutions.

## The European Court of Justice

The European Court of Justice is the highest court in the European Union and the ultimate authority on European law. The court sits in Luxembourg and has a number of principal judicial responsibilities including interpreting European treaties establishing the European Union and ensuring the validity and the meaning of community legislation.

## The European Court of Human Rights

The European Court of Human Rights rules on individual and state applications alleging violations of the civil and political

rights set out in the European Convention on Human Rights. These are binding for the countries concerned and have led governments to alter their legislation and administrative practice. The court is based in Strasbourg in a building that was designed by Richard Rogers in 1994. The Convention secures, in particular:

- The right to life
- The right to a fair trial
- The right to respect for private and family life
- Freedom of expression
- Freedom of thought, conscience and religion
- The protection of property

The Convention prohibits, in particular:

- Torture and inhuman or degrading treatment
- No punishment without law
- Slavery and forced labour
- Arbitrary and unlawful detention
- Discrimination in the enjoyment of the rights and freedoms set out in the Convention.<sup>5</sup>

Further information: <http://www.echr.coe.int/echr>.

## The Council of the European Union

The Council of the European Union is the European Union's main decision-making body. The Council has legislative power, which it shares with the European Parliament. The Council also concludes international agreements that have been negotiated by the Commission. The European Union member states take it in turns to hold the Council Presidency for a six-month period. Every Council meeting is attended by one minister from each European Union country.

Further information: <http://europa.eu>.

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<sup>5</sup><http://www.echr.coe.int/echr>.

## **The European Commission**

The European Commission represents the interests of the European Union and the governments of the member states. The Commission has wide powers to manage common policies of the European Union, such as research and technology, overseas aid and regional development. It also manages the budget for these policies. The Commission is answerable to the European Parliament and has responsibility for checking that member states obey European Union laws.

Further information: <http://ec.europa.eu>.

## **The European Parliament**

The European Parliament is a democratically elected body that represents the interests of the citizens of the European Union. The Parliament exercises political supervision over the activities of the European Union and takes part in the legislative process. The European Parliament normally holds its sessions in Strasbourg and any additional sessions in Brussels.

Further information: <http://www.europarl.europa.eu>.