



# Chapter 2

## The legal system

This chapter covers the way the English legal system is organised: the two main branches of law; the personnel of the legal system and their roles; and the courts which make up the system. As court cases very often form the basis of stories, a knowledge of the system will help you understand what is going on when you report on such stories, and will ensure that you use the right terminology when writing about court proceedings.

### TYPES OF LAW

There are lots of different areas of law in terms of subject, but the most important divisions are between:

- criminal and civil law; and
- public and private law.

#### ■ Criminal and civil law

**Criminal law** deals with wrongs that are considered so serious as to be an offence against the whole community, and for this reason they are prosecuted in the name of the state (or specifically, the Queen). It is also possible to bring a private prosecution, but this happens relatively rarely (see p. 23).

**Civil law** covers everything else, from road accident victims suing for compensation or neighbours fighting over who owns a fence, to newspapers being sued for libel or companies disputing tax decisions by the HM Revenue & Customs.

In some cases, the same course of action can lead to both a criminal and a civil case. For example, someone who injures another as a result of dangerous driving may be prosecuted for the crime of dangerous driving, and sued in the civil courts by the person injured.

Criminal and civil law use completely different sets of terminology, and it is important to know which terms apply to which area of law. Not only does it look ill-informed if you refer to, for example, being found guilty of negligence, it could potentially even be libellous, since you would be suggesting that someone had committed a criminal offence, when in fact negligence is a civil wrong, which is generally considered less serious.

#### ■ Public and private law

A second important distinction is between public and private law. Both public and private law are aspects of civil law.

**Private law** comprises disputes between individual parties, such as someone injured in an accident suing the person who caused it, or a celebrity suing a newspaper for libel.

**Public law** is the set of legal principles which governs the way public authorities, including the Government, use their powers. Public authorities cannot act just as they please, but can only exercise the powers given to them by law, and public law is designed to make sure these powers are not exceeded or misused. The main form of action in public law is the application for judicial review, which allows individuals (or organisations) to challenge the decisions or acts of public bodies (see p. 49).

### Know your terms

Criminal law	Civil law
When a criminal case is brought against someone, that person is described as being charged with that offence; if the case comes to court, he/she is described as being prosecuted.	When a civil case is brought against someone, that person is described as being sued.
Someone accused of committing a crime is called a defendant; the other side (acting for the Crown) is called the prosecution.	The person bringing the case is called the claimant and the person the claim is against is called the defendant.
Criminal cases are referred to in writing as <i>R v xxxxx</i> (the name of the person being prosecuted), but in speech this would be read as 'The Queen against xxxxx' (R stands for Regina, Latin for queen).	Civil cases are described with the names of both parties (e.g. <i>Smith v Jones</i> ), with the defendant's name first. In speech this would be read as 'Smith and Jones'.
If the prosecution wins its case, the defendant is described as being found guilty, or convicted.	If the claimant wins the case, the defendant can be described as having lost, or being held liable for the relevant wrong (e.g. libel, negligence). He or she should never be described as being found guilty of (for example) negligence or libel.
A convicted defendant is sentenced.	If the claimant wins, he or she will usually be awarded a remedy. This is most often damages, which is a sum of money, but there are other civil remedies such as, for example, being reinstated in a job from which you have been wrongfully dismissed. You can say that the defendant had damages awarded against him or her; you should never say that he or she was sentenced or fined.

## THE COURT SYSTEM

The English court system consists of:

- magistrates' courts;
- county courts;

- the Crown Court;
- the High Court;
- the Court of Appeal; and
- the Supreme Court.

The Crown Court only hears criminal cases and the county courts only civil ones, but the others hear both civil and criminal cases.

As explained earlier, the courts form a hierarchical system, in which appeals can pass up through the courts, and decisions made in the higher courts have to be followed by those lower down. Traditionally, the House of Lords was the highest appeal court in the UK, but membership of the EU has meant the European Court of Justice is effectively the highest court for cases which concern EU law. In 2009, the House of Lords was replaced by the new Supreme Court, but for the purposes of this book, its role remains the same. The Supreme Court also hears appeals from some other countries within the Commonwealth; when it sits in such a case it is known as the Privy Council. The functions of each court, and the hierarchy of courts for appeals, are explained in Chapter 3, on criminal procedure, and Chapter 4, on civil procedure.

## PEOPLE IN THE LEGAL SYSTEM

The main legal personnel that journalists need to know about are:

- lawyers;
- judges;
- government legal officers.

In all three cases, a knowledge of what these people do, and how to refer to them, will ensure that your reports appear authoritative.

### Lawyers

The English legal profession comprises two different types of lawyer: barristers and solicitors. Traditionally, the two branches did different types of work. Today, this distinction is increasingly breaking down, but the terms 'solicitor' and 'barrister' still describe two different professionals, who each undergo a different training process and set of exams in order to qualify. The term lawyer, however, covers both.

Traditionally, the major difference between the work of the two branches was that solicitors dealt directly with clients, while barristers were usually called on by a solicitor where necessary, either to give advice on a detailed area of law, or to represent the client in court (just as patients usually see a GP first and are then referred to a specialist if necessary). In addition, only barristers could appear in the higher courts. However, changes made in the 1990s have broken down some of the differences between the two branches. Clients can now consult barristers directly without being referred by a solicitor, and solicitors can appear in all courts, provided that they have undergone a specialist training course (solicitors who do this are often known as solicitor advocates). In fact, although it is often believed that barristers do most court work, solicitors have always done a lot of criminal court work, because 95 per cent of criminal cases are heard in the magistrates' courts, where the defendant is usually represented by a solicitor rather than a barrister.

QCs (short for Queen's Counsel) are barristers and solicitors who have been in practice for at least ten years and are considered particularly talented and experienced. Becoming a QC is not, however, automatic – lawyers must apply for the title, and some apply several times before being granted it, while others never get it at all. Becoming a QC generally means a lawyer will be offered higher-paying work.

## ■ Judges

There are six different categories of judge in the legal system, as well as magistrates, who, although they are lay people and not considered part of the judiciary, actually decide 95 per cent of all criminal cases.

**Supreme Court Justices** sit in the Supreme Court. There are 12 of them. They are referred to as, for example, Lord or Lady Brown.

**Lord and Lady Justices of Appeal** sit in the Court of Appeal. There are 38 of them. They are referred to as, for example, Lord or Lady Justice Brown. The most senior judge in the Civil Division of the Court of Appeal is called the Master of the Rolls; in the Criminal Division, the head is the Lord Chief Justice.

**High Court judges** sit in the High Court and also hear the most serious cases in the Crown Court; there are just over 100 of them. They spend some of their time 'on circuit', travelling around the regional courts, where they may, for example, hear Queen's Bench Division cases or Family Division cases which would otherwise have to be held at the High Court in London. In the official reports of legal cases, and in law textbooks, a High Court judge called Smith would be referred to as Smith J, but for journalists, it is more usual to write Mr or Mrs Justice Smith (not Judge Smith).

**Circuit judges** sit in the county court and in middle-ranking Crown Court cases. There are around 650 of them, and they are referred to as, for example, Judge Simon Smith or Judge Ann Jones. Occasionally they may also sit in the Court of Appeal.

**District judges** hear the majority of cases in the county courts; there are around 450 of them. There are also around 100 district judges (formerly known as stipendiary magistrates) who hear the more complex and serious cases in the magistrates' courts of larger cities. Both are usually referred to as, for example, District Judge Jane Brown.

**Recorders** are part-time judges who hear the least serious Crown Court cases and some county court cases. They are usually still working as barristers or solicitors, and the job is viewed as a kind of apprenticeship before becoming a full-time judge. They are referred to as the recorder or, for example, Mr John Smith or Mrs Mary Smith. The title of recorder is also used in a slightly different context: the Recorder of Manchester is the most senior circuit judge in the Manchester Crown Court, and similar titles are used for the same role in Liverpool, Belfast and some other cities. The title Recorder of London applies to one of the senior judges who sits at the Central Criminal Court (the London Crown Court which is better known as the Old Bailey).

**Magistrates** (also known as Justices of the Peace, or JPs) are lay people, drawn from the local community, who sit in the magistrates' courts (usually in a panel of three) hearing both criminal and some kinds of civil cases. Though they receive training in court procedure, they are not required to be legally qualified or to know the law, but have a legally-qualified clerk to advise them. The work is voluntary (magistrates receive expenses, but no pay) and part-time – most magistrates sit for 35–70 half-days per year. Magistrates are selected by local committees,

though they are officially appointed by the Lord Chancellor. When reporting cases involving magistrates, it is usual to refer to them as 'the magistrates' rather than by name, but a magistrate's name can be used if you need to refer to one specifically. In *R v Felixstowe Justices ex p Leigh* (1987) QB 582, *R v Evesham Justices ex p McDonagh* (1988), the Divisional Court of the Queen's Bench ruled that a magistrates' court could not legally withhold the name of a sitting magistrate from the press.

## Government legal officers

There are four government legal officers:

- the Lord Chancellor;
- the Attorney-General;
- the Solicitor-General;
- the Director of Public Prosecutions.

**The Lord Chancellor** is a Cabinet Minister, and the head of the Ministry of Justice, which is responsible for the courts, prisons, probation and constitutional affairs. He or she can be a member of either the House of Commons or the House of Lords.

**The Attorney-General and the Solicitor-General** (together known as the Law Officers) are both Government Ministers, though not members of the Cabinet. The Attorney-General is the main legal advisor to the Government (the Attorney-General at the time of the war in Iraq, for example, gave the Government advice on whether the war was legal under international law), and is responsible for important legal cases involving the Government, whether at home or abroad. Certain types of crime (such as offences under the Contempt of Court Act – see Chapter 6) require consent from the Attorney-General before prosecutions can be brought, and if this consent is given, the prosecution is brought in the name of the Attorney-General. The Solicitor-General is effectively the Attorney-General's deputy, and may fulfil any of his or her functions where necessary.

**The Director of Public Prosecutions (DPP)** is the head of the Crown Prosecution Service (CPS), and is responsible for ensuring the independent review and prosecution of criminal proceedings started by the police in England and Wales. He or she makes decisions about the most complex and sensitive cases and advises the police on criminal matters, and prosecutions for certain types of cases require his or her permission. The DPP reports to the Attorney-General.

## KEY POINTS

### Types of law

English law can be divided into:

- Criminal law, which deals with offences that are considered severe enough to warrant investigation and punishment on behalf of the whole community, in the name of the state.
- Civil law, which covers all other areas of law.

Civil law can be divided into:

- private law, which deals with disputes between individual parties;
- public law, which regulates the way public bodies use their powers.

### The court system

The courts are organised into a hierarchy, and cases decided in a lower court can, in certain circumstances, be sent on appeal to the next court up.

The Supreme Court is the highest court in the UK, except on matters of EU law, where the European Court of Justice is effectively the highest court.

### People in the legal system

There are two types of lawyers in the English system: barristers and solicitors.

There are six different categories of judge:

- Supreme Court Justices
- Lords Justices of Appeal
- High Court judges
- circuit judges
- district judges
- recorders.

Cases are also heard by magistrates, who are non-legally-qualified lay people.

There are four government legal officers:

- the Lord Chancellor
- the Attorney-General
- the Solicitor-General
- the Director of Public Prosecutions.

## TEST YOUR KNOWLEDGE



- 1 Define criminal and civil law.
- 2 Nuisance is a civil wrong. Which of these sentences about it is inaccurate?  
(a) John Smith was convicted of nuisance.  
(b) John Smith was found guilty of nuisance.  
(c) John Smith was charged with nuisance.  
(d) John Smith was sued for nuisance.  
(e) John Smith was fined for nuisance.
- 3 What term applies to someone who brings a civil case? What is the other side called?
- 4 What is a QC?
- 5 If a case is called *R v Smith*, will it be a civil or a criminal case?

- 6 You are reporting a court case, and want to mention a judge by name. How should you refer to him or her if they are:
- (a) a judge in the Court of Appeal
  - (b) a circuit judge
  - (c) a recorder
  - (d) a magistrate?
- 7 What is the highest court in the English legal system?
- 8 Describe the roles of the Lord Chancellor, Attorney-General and Director of Public Prosecutions.



## ONLINE RESOURCES

The Law Society website has information on the solicitors' profession, at:

[www.lawsociety.org.uk](http://www.lawsociety.org.uk)

The Bar Council website has information on the work and training of barristers, at:

[www.barcouncil.org.uk](http://www.barcouncil.org.uk)

Details about the different types of judge, their training and work can be found at the Judiciary of England and Wales website:

[www.judiciary.gov.uk](http://www.judiciary.gov.uk)

Information about the selection, training and work of magistrates can be found at the Magistrates' Association website at:

[www.magistrates-association.org.uk](http://www.magistrates-association.org.uk)

The Ministry of Justice website contains information on the legal system, including the government legal officers:

[www.justice.gov.uk](http://www.justice.gov.uk)

Visit [www.mylawchamber.co.uk/quinn](http://www.mylawchamber.co.uk/quinn) to access discussion questions on topical issues and debates to test yourself on this chapter.

