

# England: the power of common law

by Boris Kasolowsky

## Precedent

A judgment rendered by an English court is binding on that court and any lower court. It becomes automatically a 'precedent'. A precedent may not be departed from because it is considered unjust that different decisions may be made on the same facts.

Where a court has decided a similar issue, a previous decision of the court itself or a higher court is therefore relevant. The previous decision must be followed where the facts are the same.

Where the earlier decision can be 'distinguished' that is to say, a reason can be found why the present case is different from the earlier case, the earlier case does not need to be followed. The circumstance that earlier cases must be followed is known as 'the doctrine of binding precedent'. It is in this manner that English judges are said to make law.

## Legal Profession

The legal profession is divided between advocates known as barristers - who until very recently were the only lawyers entitled to appear before the higher courts - and solicitors. Solicitors prepare the cases and deal with the clients, while barristers argue their cases before judges. A young graduate from Cambridge would never hesitate to follow the far more prestigious "call to the Bar" and become a barrister. There are 7,700 barristers in England and Wales, compared with 76,000 solicitors.

## Court structure

There is a broad division within the English court structure between criminal courts and civil courts.

Criminal cases are heard by the Magistrates' Court and the Crown Court. The Magistrates' Court hears less serious offences. The Crown Court, presided over by one judge and assisted by a jury, hears cases involving graver criminal offences. However, every defendant has the right to choose to have his case heard by the Crown Court and thus have a jury trial.

Appeals from the Magistrates' Court go to the Crown Court, but in those situations the court will not be assisted by a jury. Appeals against decisions of the Crown Court go to the Court of Appeal. Where a jury has decided that a particular defendant is guilty the Court of Appeal is unlikely to overrule that decision.

Civil courts deal with all disputes between persons and/or legal entities such as compa-

nies and trade unions.

A person with a claim, known as the plaintiff, will - depending on the nature and value of the claim - bring it in front of a county court or the High Court. The more valuable claims and more complicated matters will be brought before the High Court. Thus a claim based on breach of contract worth £1,000,000 and a claim against the government are dealt with by the High Court.

There is no distinction, as in French or Lebanese law, between administrative courts and civil courts. A personal injury claim worth £10,000, and disputes between landlord and tenant, are usually judged by the county court.

As the name suggests, there were county courts in every county (an administrative district). The county courts are presided over by one judge who deals with all matters. County court judges are generalists and thus cannot be expert in every area of law. The High Court, on the other hand, has judges who have expertise in particular areas of law and who judge in the main cases within their expertise.

The High Court is divided into three special divisions: the Family Division, which deals with such things as divorce and custody; the

A plaintiff or defendant who is dissatisfied with the decision of the county court may appeal against it. The appeal goes to the High Court. Exceptionally, appeals may be heard by the Court of Appeal. Appeals from the High Court go to the Court of Appeal. The Court of Appeal does not hear evidence again but rules only on points of law.

The Appeal Court consists of a bench of three judges. The Court of Appeal is presided over by the Master of the Rolls, who is the most powerful judge within the English judiciary. Certainly, much of important English 'judge made law' derives from decisions of the Court of Appeal.

Exceptionally, decisions of the Court of Appeal may be appealed to the House of Lords. Appeals are only permitted where the issue is one of law and one of exceptional public importance. Although technically part of the Houses of Parliament, the House of Lords is a judicial body separate from the legislative chamber.

A Law Lord, as he is known (his real title is 'Lord of Appeal in Ordinary'), is appointed from among the most competent Court of Appeal judges. Upon appointment he is "created" a Lord, and will usually add the name of some obscure village to his title so as to preclude any confusion that may arise were his son to become a Law Lord too.

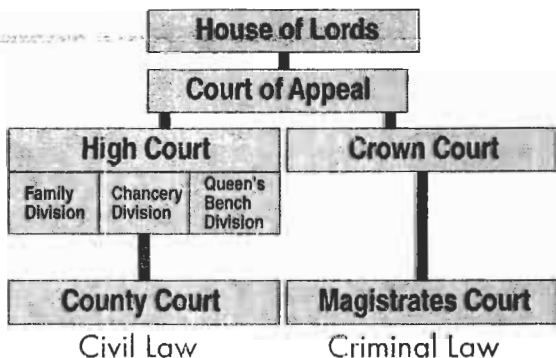
There are currently a total of 12 Law Lords but the Lord Chancellor's Department may increase this number. The House of Lords usually consists of a bench of five Law Lords.

Fewer than 80 cases are heard by this court per year as compared with over 1,000 by the highest French court, the Cour de Cassation. Usually each of the judges writes a judgment. The judgments are much longer than those rendered by comparable courts of other European countries. English lawyers attribute the additional length to the fact that their

judgments are "reasoned".

Since the United Kingdom joined the European Union, the country's highest court has now become, in theory, the European Court of Justice (ECJ). The ECJ's jurisdiction is limited in so far as it rules only on matters of European law - but the scope of European Union legislation is increasing all the time.

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Chancery Division, which deals with trusts and applies the principles of 'equity, justice and good conscience', and the Queen's Bench Division, which regroups all specialities not found within the other divisions (admiralty, commercial, contract, tort).

High Court judges are appointed by the Lord Chancellor's department - the equivalent of the ministry of justice - usually from among the most competent barristers. Although successful barristers may earn much more as independent practitioners, many consider the appointment as a judge an honour, all the more so as the appointment is accompanied by a knighthood.