

UNIT 3

- Court system
- Court personnel
- Civil procedure
- Criminal procedure
- Jurisdiction
- Criminal offences
- Legalese
- Essay writing



KEY VOCABULARY

The basic role of courts in a society is to help people **resolve disputes** fairly and with justice, whether the matter is **between individuals** or **between individuals and the state**. In the process, courts **interpret and establish law**, **set standards**, and raise questions that affect all aspects of the society. The roles of court include **enforcing the criminal law**, **resolving civil disputes**, **upholding the rights** of individuals, ensuring that government agencies stay within the law, and explaining the law.

In resolving disputes courts **consider the evidence** on all sides of the dispute, interpret the law as it applies to that evidence and then **determine a judgment**. Courts are independent and impartial.

It is worth noting that most disputes do not in fact end up in the courts at all. People tend to settle their differences informally - through **alternative dispute resolution**, for instance, or before **boards** and **tribunals** - though often with the idea of "going to court" in the background. Even when things never get to court, the courts influence people's choices and actions. Court decisions provide guidance on what is acceptable conduct and on the nature and limits of the law.

READING

COURT SYSTEM



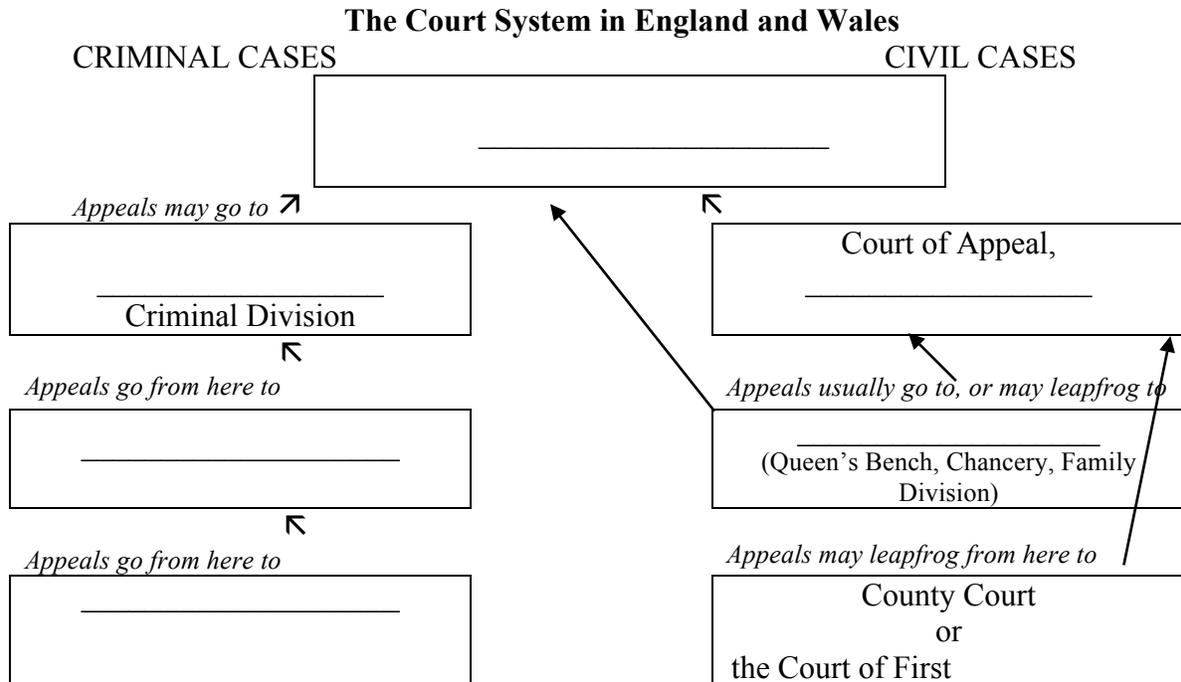
Duncan Ritchie, a barrister, is talking to a visiting group of young European lawyers explaining the UK court system to them. Read the text carefully and try to complete the diagram below the text.

Both criminal and civil courts in England and Wales primarily hear evidence and aim to determine what exactly happened in a case. Broadly speaking, the lower courts decide matters of fact and the upper courts normally deal with points of law. In England, simple civil actions, for example family matters such as undefended divorce, are normally heard in either the Magistrates' Courts or the County Courts.

Judges have different titles depending on their experience, training and level. A single stipendiary magistrate or three lay magistrates sit in the Magistrates' Court. There's no jury in a Magistrates' Court. Family cases may go on appeal from the Magistrates' Court to the County Courts. The County Court also hears complex first instance civil cases, such as contract disputes, compensation claims, consumer complaints about faulty goods or services, and bankruptcy cases. Claimants, previously referred to as plaintiffs, may seek a legal remedy for some harm or injury they have suffered. There are circuit judges and recorders who sit in the County Courts, usually without a jury. Juries are now rare in civil actions, so normally the judge considers both law and fact.

More complex civil cases, such as the administration of estates and actions for the recovery of land, are heard in the High Court of Justice, which is divided into three divisions: Family, Chancery and Queen's Bench. The court has both original, that is, first instance and appellate jurisdiction. From the High Court cases may go on appeal to the civil division of the Court of Appeal, which can reverse or uphold a decision of lower courts. Its decisions bind all the lower civil courts. Civil cases may leapfrog from the High Court to the House of Lords, bypassing the Court of Appeal, when points of law of general public importance are involved. Appellants must, however, apply for leave to appeal. Decisions of the House of Lords are binding on all other courts but not necessarily on itself. The court of the House of Lords consists of twelve life peers appointed from judges and barristers. The quorum, or minimum number, of law lords for an appeal hearing is normally three, but generally there is a sitting of five judges.

About 95% of all criminal cases in England and Wales are tried in the Magistrates' Courts, which deal with petty crimes, that is, less serious ones. In certain circumstances, the court may commit an accused person to the Crown Court for more severe punishment, either by way of a fine or imprisonment. Except in cases of homicide, children under 14 and young persons – that is, minors between 14 and 17 years of age – must always be tried summarily, meaning without a jury, by a Youth Court. A Youth Court is a branch of the Magistrate's Court. Indictable offences, that is, more serious ones, such as theft, assault, drug dealing, and murder, are reserved for trial in the Crown Court. In almost all criminal cases, the State, in the name of the Crown, prosecutes a person alleged to have committed a crime. In England and Wales, a jury of twelve people decides whether the defendant is guilty of the crime she or he is charged with. The Crown Court may hear cases in circuit areas. From the Crown Court, appeal against conviction or sentence lies to the Criminal Division of the Court of Appeal. If leave to appeal is granted by that court, cases may go on appeal to the House of Lords.



Post-reading

I Comprehension check:

1. What do the higher courts usually deal with?
2. Is there a jury in all courts in England and Wales?
3. What is the role of the County Court?
4. What jurisdiction does the High Court of Justice have?
5. Can appellant appeal directly to the House of Lords? In what cases? How?
6. Are children under 14 and young persons (14 – 17) always tried by Youth Court?

II Match the terms from column A with their meaning in column B:

- | A | B |
|---------------------------|---|
| 1. stipendiary magistrate | A) confirm a court decision |
| 2. lay magistrate | B) a geographical division for legal purposes |
| 3. reverse | C) <u>to change a court decision to be the opposite of what it was</u> |
| 4. uphold | D) a paid magistrate (appointed by the Home Secretary in UK) dealing with police cases |
| 5. recorder | E) part time judge with ten years standing as a barrister or solicitor |
| 6. circuit | F) unpaid and not legally trained magistrate who is an established member of the local community |
| 7. quorum | G) <u>the smallest number of people who must be present at a meeting to allow official decisions to be made</u> |
| 8. appellant | H) someone who makes an official request for money from a government, insurance company etc |
| 9. claimant | I) <u>offence for which you can be officially accused and brought to a court for trial</u> |
| 10. petty crime | J) someone <u>who appeals against a decision of a court of law</u> |
| 11. indictable offences | K) a crime that is not very serious |

III Complete the table with the words from the text and related forms.

Verb	Noun – event or action	Noun – person
Sit	Sitting	
appeal		
hear		
try		
claim		

IV Match the two parts of the sentences and complete the gaps with words from the table above. Pay attention to the grammatical context. There is more than one possibility for three of the gaps.

- | | |
|--|--|
| <p>1. The _____ courts can</p> <p>2. An appellant must get</p> <p>3. In a civil action, a _____ who has suffered</p> <p>4. _____ Magistrates _____ generally _____ cases of petty crime as</p> <p>5. Indictable offences are</p> | <p>a. a court of first instance.</p> <p>b. normally _____ in the Crown Court.</p> <p>c. reverse or uphold decisions of lower courts.</p> <p>d. harm or injury seeks a remedy.</p> <p>e. leave to _____ before taking a case to a higher court.</p> |
|--|--|



Speaking

Draw a diagram of your court system and explain the court structure as if to a foreign client who is pursuing an action in your courts. Use your own language for the names of the courts but use English to describe their function.

Vocabulary

I Fill in the gaps with the following words:

- | | |
|-------------------|--|
| County Court ✓ | Court of Justice of the European Communities |
| Magistrates Court | Court of Appeal, Civil Division |
| High Court | House of Lords |
| Crown Court | Court of Appeal, Criminal Division |

Claims of lesser value will start in a County Court. There are 250 of these around the country. They can also deal with divorce and bankruptcy matters. Matters of important legal dispute arising in the Crown Court may be appealed to in the _____. From the Court of Appeal there can be appeal to the _____ on the fact or law, but usually appeal is only allowed on matters of legal importance. If the case involves a serious crime, it is heard in the _____ (there is only one _____ but it has about 70 centres around the jurisdiction). In less serious criminal cases (which comprise over 90% of criminal cases), the case is sent for trial in one of over 400 _____. More substantial civil claims (over around £25,000) are heard in the _____. The _____ was set up under the Treaty of Rome of 1957, by which the European Community was established. The court can overrule all other courts on matters of Community law. Under the system of appeals in civil cases, it is possible to appeal from a County Court or the High Court to the _____.

II Now read the text about the American courts carefully and fill in the gaps with the words given below:

- | | | |
|--------------|-----------------|------------|
| plaintiff | appellate | merits |
| court system | cause of action | civil |
| frivolous | dismiss | appeal |
| jurisdiction | omissions | submitting |
| petition | complaint | |

In order to read cases and decipher case histories, it is necessary to understand the general framework of the American _____. When a _____ (the acts or _____ necessary to trigger a lawsuit) occurs, the _____, or injured party files a _____ (petition) with the court having _____ over the matter. The _____ requests a review of the facts by the court. Every plaintiff who follows the procedure for _____ a petition receives his or her day in court regardless of the _____ of his or her claim. However, trial judges may almost immediately _____ cases they deem to be _____ or the matter may be settled out of court prior to or even during the actual trial of the case itself. In a _____ case, the losing party may _____ at least once as the matter of right. The court that has power to hear that appeal is called the _____ court.

The following chart will help you visualize how the cases move from court to court:

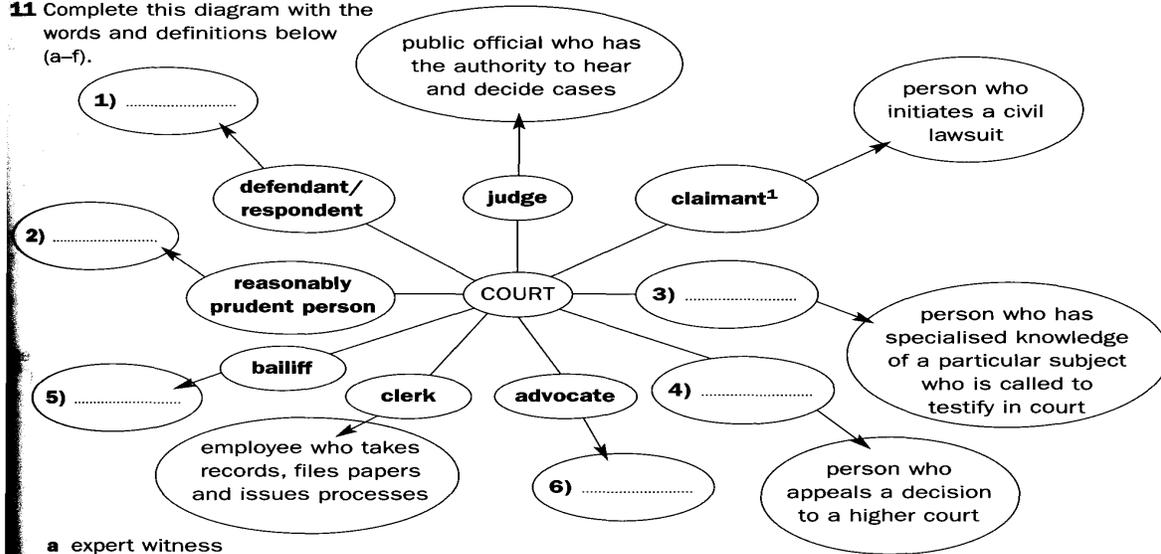
Level 1 <i>Trial Court</i> □	Level 2 <i>Appellate</i> □	Level 3 <i>Court of Last Resort</i>
State System: e.g. Circuit Court of Shelby County, Tennessee	e.g. Court of Appeals of Tennessee	e.g., Supreme Court of Tennessee
Federal System: District Court	U.S. Court of Appeals	U.S. Supreme Court

III Match each of the following types of court (1 - 9) with the explanation of what happens there (a - i)

1. appellate court (or court of appeals, appeals court)
 2. crown court
 3. high court
 4. juvenile court
 5. lower court (or court of first instance)
 6. magistrates' court
 7. moot court
 8. small-claims court
 9. tribunal
- a) This is where a person under age of 18 would be tried.
 - b) This is the court of primary jurisdiction, where a case is heard for the first time.
 - c) This is where small crimes are tried in the UK.
 - d) This is where law students argue hypothetical cases.
 - e) This is where a case is reviewed which has already been heard in a lower court.
 - f) This is where cases involving a limited amount of money are handled.
 - g) This is where serious criminal cases are heard by a judge and a jury in the UK.
 - h) This is where a group of specially chosen people examine legal problems of a particular type, such as employment disputes.
 - i) This is usually the highest court in a jurisdiction, the court of last resort.

Persons in court

11 Complete this diagram with the words and definitions below (a-f).



- a expert witness
- b appellant²
- c person who is sued in a civil lawsuit
- d officer of the court whose duties include keeping order and assisting the judge and jurors
- e person who pleads cases in court
- f hypothetical person who uses good judgment or common sense in handling practical matters; such a person's actions are the guide in determining whether an individual's actions were reasonable

¹ (US) plaintiff
² (US) also petitioner

Court Personnel

I Below are 10 people (or groups of people) who work in the different courts. Can you find them in the word square below?

C	J	U	G	U	I	O	P	P	P	P	O	M	T
H	N	O	E	U	Z	V	U	P	L	F	T	N	P
G	L	O	M	C	V	U	Q	J	B	L	R	E	R
N	A	S	A	D	R	T	J	U	D	G	E	N	O
C	H	I	G	E	T	Y	T	R	B	O	C	P	S
J	U	D	I	C	I	A	R	Y	A	S	O	Y	E
P	L	E	S	F	L	E	S	F	T	A	R	Y	C
M	O	L	T	A	X	R	T	E	V	B	D	A	U
A	B	A	R	R	I	S	T	E	R	G	E	L	T
T	E	R	A	A	T	H	I	L	K	G	R	G	O
A	N	O	T	H	E	T	M	P	L	O	X	C	R
A	C	L	E	R	K	M	L	O	I	R	T	U	K
C	H	Y	H	A	N	B	C	T	P	O	L	T	Z
X	P	L	E	P	R	E	S	I	D	E	N	T	A

II Now complete the following text choosing from the words in the square.

The _____ are perhaps the most prominent amongst those involved in running the court. The largest group of _____ are _____, ordinary citizens who are not legal professionals but are appointed to ensure that the local community is involved in the running of the legal system. They sit as a group of three (as a '_____'). Magistrates sit with a legally qualified _____, who can advise on points of law. A case is presented by the _____, who takes over the case from the police who have already charged the defendant (or accused) with specified crimes.

In the upper courts, the judges are almost all former _____. But many cases are also heard by _____ - part-time barristers from private practice. The Crown Court _____ consists of 12 persons, aged 18 to 70.

Typical Layout of the Criminal Court

I Look at the picture of the typical layout of the criminal Magistrates Court and fill in the gaps in the sentences



1. There are usually three _____. They will hear the case, make the decisions and issue the orders and directions

2. The court _____ or legal adviser is primarily concerned with advising the magistrates on questions of law, legal procedure and practice but also often deals with procedural matters. The clerk will sometimes sit alone to determine directions.

3. _____ play a crucial role in the criminal justice system. They are reporters of crime and providers of evidence. It is expected that there will be provision of witness care in most magistrates' courts within the next three years.

4. The _____ is initiated by the Crown Prosecution Service

5. _____ advocates represent the defendant, the defence advocate may be a solicitor or barrister. Most solicitors are organised into firms, some of which are very large with the partners specialising in different areas of law. Barristers group together to form chambers, (ie rooms together). A lay client cannot instruct a barrister directly, but must go to a solicitor who instructs the barrister.

6. _____ is where the defendant sits during court proceedings. However, to give evidence they go to the witness stand. The defendant is the person who is alleged to have committed a crime or broken the law. Usually they would be represented in court by a defence advocate but they can choose to represent themselves.

7. _____ officers work in direct contact with offenders (and often their families) in order to reduce the likelihood of future offending and protect the public. They give comprehensive and researched advice about offenders to courts when magistrates are deciding a sentence and they supervise offenders on community sentences like probation orders or community service.

8. _____ is present in the courtroom as well. Many local papers still report cases from their local magistrates' courts.

9. The _____ shows people in and out of court and keeps things running smoothly.

10. Most court hearings are open to the _____ with the exception of youth court and family proceeding matters. It is useful to telephone the court first to find out what courts are sitting on the day you wish to observe.

Listening 3



Essential terms

Plaintiff: the aggrieved party who institutes a legal action

Defendant: the party against whom the grievance is filed

Appeal: a request by the losing party in a case to have a higher court review the application of law

Appellant: the party appealing a lower court's decision

Appellee: the prevailing party in a lower court against whom the appellant seeks an appeal

Jurisdiction: the area(s) over which a court has the power to hear cases and impose judgment

Remand: an appellate court may send the case back to the lower court in certain circumstances for further action

Trial court: the court having initial jurisdiction over a case, hearing both facts and law, and basing its decision on an application of the law to the facts

Cause of action: the legal basis for a court case; facts that trigger the application of a particular law; cases are sometimes dismissed for failure to state a cause of action

I Listen to the following conversation on the tape twice. The first time, just listen. The second time, attempt to answer the following questions.

1. In which country is this conversation taking place?
2. What does "pulling someone out of fire" mean?
3. When Simone says "you might want to keep in mind", what does she really mean?
4. Can you address the judge from your seat?
5. What do you call an American judge in the courtroom?
6. Is there a special term for attorneys?
7. Why Simone says, "Touché"?
8. Can you use "Ms." for any American woman?
9. Why does Simone joke with Jens about the term *high time*?

II Use the essential terms and the ones you learned from Jens and Simone to complete the memo we've started for you.

Memo
Lee, Hall, and Hurley, P.C.

To: Jens Weihrauch
From:
Subject: Preliminary Information on the Hradec Case
Date:

Simone Fort has asked me to explain the facts and issues of the Hradec case to you. Our client, Loretta Hradec, a well-known dancer, sued the privately funded Maly Ballet of Prague (hereinafter referred to as MBP) for breach of contract. As attorney for the _____, Ben Johnson attempted to show that MBP has breached the contract signed in New York by not paying Ms. Hradec following her car accident in which she broke her left arm. MBP maintained that it could not be sued in the U.S. since Ms. Hradec was to have performed in MBP's home theatre in Prague, the Czech Republic. The _____ court, mistakenly interpreting this case as falling under the Foreign Sovereign Immunities Act, found for the _____. Ms. Hradec has chosen to _____ the decision. At that point Ms. Fort was given responsibility for the _____.

As attorney for the _____, Ms. Fort must file an _____ brief outlining the grounds for the _____. Ms. Fort feels that our strongest grounds for reversal is the jurisdictional issue: Were there sufficient minimal contacts within the United States to grant the court _____ ? As a jurisdictional expert, you will prove invaluable in convincing the appeals court to _____ the case to the lower court for a reevaluation of the jurisdictional issue.

READING

Group A

Read the text about the civil procedure in England and Wales and do the exercises that follow.

CIVIL PROCEDURE

Civil Procedure Rules

All cases concerning goods, property, debt repayment, breach of contract (with some exceptions such as insolvency proceedings and non-contentious litigation), are subject to Civil Procedure Rules. The Rules, which came into force in 1999 in England and Wales, made radical changes to civil process in the County Court and the High Court.

The judge performs the role of case manager. The court sets a timetable for litigation, with the parties being under an obligation to the court to adhere to timescales which control the progress of the case. Procedure rules are supplemented by detailed instructions made by the judge which support the rules, known as practice directions.

Proceeding with a claim

Most claims are initiated by the use of a claim form, which functions as a summons. The claim form can be used for different types of claim, for example for specified or unspecified monetary sums, or for the claimant to ask the court to make an order. Once a claim has been issued, a copy is served on, that is, delivered to, the defendant with a response pack inviting them to either admit the claim, using a form of admission, or to defend it, using a form of defence. The response pack also contains an acknowledgement of service form to confirm receipt of the claim, and a counterclaim form for the defendant to use if they wish to claim against the claimant. A defendant must respond within 14 days of service of the particulars of the claim. If the defendant does not respond, judgment may be given in favour of the claimant. The defendant may be able to get a time extension for filing a reply on defence by using the part of the acknowledgement of service form which states an intention to defend the claim.

Cases are allocated to a regime or track by a procedural judge according to their monetary value. Claims of £5,000 or less are allocated to a small claims track while claims of up to £15,000 are allocated to a fast track.

More complex claims with a greater value are allocated to a multi track regime. Fast track directions might include disclosure, where the claimant tells the defence of any relevant documents in their possession. This is followed by inspection, initiated by a written request by the claimant to look at relevant documents held by the defence, and an exchange of witness statements. The multi track regime is intended to be flexible and does not have a standard procedure. In all regimes, parties are encouraged to settle their differences and for this purpose a stay in proceedings, that is, a temporary halt, may be agreed. Case management conferences are often conducted by telephone and give parties the opportunity to review the process and make decisions. If a defendant is ordered to pay by a judge and fails to do so, the claimant can enforce the judgment in the Magistrates' Court.

Complete the definitions on the basis of the text you read.

1. _____ - the process by which a claimant may look at written evidence held by the defence.
2. _____ - the document in which the defendant makes a claim against the claimant.
3. _____ - the document in which the defendant agrees to the claim made by the claimant.
4. _____ - the document starting a claim proceedings.
5. _____ - the process by which the claimant is required to inform the defendant of documents they hold relevant to the claim.
6. _____ - the document giving evidence by someone who saw or heard something critical to the case.
7. _____ - the instructions given by a judge on how procedures should be carried out in a case.

Make word combinations using a word from each box. Then use the appropriate word combinations and information in the text to answer the questions.

admit
 agree to
 allocate to
 enforce
 file
 issue
 review
 serve
 set
 settle

a timetable
 a stay
 a claim
 the process
 the judgment
 a claim
 a claim on
 a regime
 differences
 a reply

1. How does a claim proceeding start?
2. What must a defendant do when he or she has been served with a claim?
3. If both parties want time to try to settle the dispute out of court, what should they ask the court to do?
4. What is the purpose of a case management conference?
5. If a defendant is ordered to pay a claimant's costs but does not, what action can the claimant take?

Describe the process of a civil claim in your legal system as if to a client from a different system who wants to initiate a claim. Use an example, if possible.

Group B

Read the text about the criminal procedure in England and Wales and do the exercises that follow.

CRIMINAL PROCEDURE

CRIMINAL JUSTICE

The state prosecutes those charged with a crime. The police investigate a crime and may apprehend suspects and detain them in custody. If the police decide an offender should be prosecuted, a file on the case is sent to the Crown Prosecution Service (CPS) – the national prosecution service for England and Wales. The CPS must consider whether there is enough evidence for a realistic prospect of conviction, and if so, whether the public interest requires a prosecution. They can decide to either go ahead with the prosecution, send the case back to the police for a caution, or to take no further action. Criminal proceedings can be initiated either by the serving of summons setting out the offence and requiring the accused to attend court, or, in more serious cases, by a warrant of arrest issued by a Magistrates' Court. Lawyers from CPS may act as public prosecutors. The Criminal Defence Service provides legal aid, which funds the services of an independent duty solicitor who represents the accused in the police station and in court. However, at the end of a Crown Court case the judge has the power to order the defendant to pay some or all of the defence costs.

Categories of criminal offences

There are three categories of criminal offence. Summary offences, tried without a jury, are minor crimes only triable in the Magistrates' Courts. Indictable offences are serious crimes, such as murder, which can only be heard in the Crown Court. The formal document containing the alleged offences, supported by the facts, is called the indictment. A case which can be heard either the Magistrates' Court or the Crown Court, such as theft or burglary, is triable either way. If the defendant pleads guilty, the Magistrates' Court can either proceed to sentence or commit to the Crown Court for sentence, where more severe penalties are available. If there is a not guilty plea, the court can decide the mode of trial. The person charged may request a trial by jury. If granted, such trials take place in the Crown Court.

Criminal court proceedings

The English system of justice is adversarial, which means that each side collects and presents their own evidence and attacks their opponent's by cross-examination. In a criminal trial, the burden of proof is on the prosecution to prove beyond reasonable doubt that the accused is guilty. A person accused or under arrest for an offence may be granted bail and temporarily released. However, bail may be refused, for example if there are grounds for believing that the accused would fail to appear for trial or commit an offence. In the crown Court there may be a preparatory hearing for a complex case before the jury is sworn in. Prior to the trial, there is a statutory requirement for disclosure by the prosecution and defence of material relevant to the case, for example details of any alibis – people who can provide proof of the accused's whereabouts at the time of the crime - or witness – people who may have seen something relevant to the crime. Once a trial has begun, the defendant may be advised by counsel to change his or her plea to guilty, in expectation of a reduced sentence. If, at the end of the trial, the court's verdict is not guilty, then the defendant is acquitted.

Complete the definitions

1. a _____ - a court document authorizing the police to detain someone.
2. an _____ - a written statement with details of the crimes someone is charged with
3. a _____ - a formal order to attend court

Make word combinations using the words from the box. Then use appropriate word combinations to complete the sentences below.

Criminal	Doubt	sentence	Indictable
Guilty	Proceedings	Prospect	Severe
reasonable	Costs	offences	Plea
Defence	reduced	Penalties	realistic

1. The Crown Prosecutor considers whether there's sufficient evidence to provide a _____ of conviction.
2. There should be no conviction without proof beyond _____.
3. The Crown Court always hears _____ such as manslaughter.
4. In sentencing serious crimes, courts can impose _____.
5. At the end of a trial, a defendant may be ordered to pay a contribution towards _____.

Replace the underlined words and phrases with alternative words and phrases from the text above. Pay attention to the grammatical context. There is more than one possibility for one of the answers.

- a) Bail may be refused and the defendant may be (1) held in police custody.
- b) Alternatively, the defendant may be (2) found not guilty by the court and discharged.
- c) *Once proceedings have been initiated, the defendant (3) comes before the court.*
- d) *The police formally (4) accuse the suspect in the police station.*
- e) *If the offender pleads guilty in the Magistrates' Court, the court imposes a (5) punishment.*
- f) *The police investigate a serious offence and (6) arrest a suspect.*
- g) *The suspect may ask for (7) release from custody before the trial.*

Put the above sentences into the correct order chronologically. Look the text above to help you. The first stage is f.

Describe the process of a criminal trial in your legal system as if to a client from a different system.

CIVIL LAW**Listening 4**

I Listen to a lawyer telling a client about some of the documents involved in his case and answer these questions.

1. What claim has been filed against the client?
2. Will the case go on trial?

II Match these documents (1-9) with their definitions (a-j)

- | | |
|---------------|--|
| 1. affidavit | a) a document informing someone that they will be involved in a legal process and instructing them what they must do |
| 2. answer | b) a document or set of documents containing the details about a court case |
| 3. brief | c) a document providing notification of a fact, claim or proceeding |
| 4. complaint | d) a formal written statement setting forth the cause of action or the defence in a case |
| 5. injunction | e) a written statement that somebody makes after they have sworn officially to tell the truth, which might be used as proof in court |
| 6. motion | f) an application to a court to obtain an order, ruling or decision |
| 7. notice | g) an official order from a court for a person to stop doing something |
| 8. pleading | h) in civil law, the first pleading filed on behalf of a plaintiff, which initiates a lawsuit, setting forth the facts on which the claim is based |
| 9. writ | i) the principal pleading by the defendant in response to a complaint |

III Listen again and tick the documents that the lawyer mentions.

- | | | | | |
|-----------|--------------|-------------|--------------|---------------|
| 1. answer | 2. affidavit | 3. brief | 4. complaint | 5. injunction |
| 6. motion | 7. notice | 8. pleading | 9. writ | |

IV Match each verb used by the lawyer (1–5) with its definition (a–e)

- | | |
|--|--|
| 1 to draft a document | a) to deliver a legal document to someone, demanding that they go to a court of law or that they obey an order |
| 2 to issue a document | b) to produce a piece of writing or a plan that you intend to change later |
| 3 to file a document with an authority | c) to deliver a document formally for a decision to be made by others |
| 4 to serve a document on someone (or to serve someone with a document) | d) to officially record something, especially in a court of law |
| 5 to submit a document to an authority | e) to produce something official |

V Decide which of the nouns in exercise II can go with these verbs. The first one has been done for you.

1. draft *an answer, a brief, a complaint, a motion, a pleading*
2. issue
3. file (with)
4. serve (on someone)
5. submit

LISTENING 5



JURISDICTION

Civil procedure deals with the rules, methods and practice used in taking a civil (as opposed to criminal) case or action through the courts. Each court system has its own civil procedure. The United States has separate court system for each state and the federal government. This means there are over fifty-one different court systems in the United States even if we don't take into account special courts such as the U.S. Claims Court. The state systems and the federal systems are separate but related.

Essential terms:

jurisdiction: the power of a court to hear and decide a case

original: the first court to hear the case; decides facts and law

appellate: a court that hears a case if a party is unsatisfied with the original

decision

subject matter: power over the particular issue in the case

concurrent: both state and federal courts have original jurisdiction to hear

the case

exclusive: either the federal or state court has sole power to hear the case

personal: *in personam* – power over the parties in the case

venue: the geographic location of the actual trial of the case

pleadings: the statements filed in court that detail plaintiff's and defendant's cases

complaint: the statement filed by the plaintiff stating the cause of action

answer: the response filed by the defendant listing defenses to the complaint

demurrer: a statement by the defendant attacking the legal sufficiency of the

plaintiff's complaint

discovery: the process of obtaining information about the other party's case prior to the actual trial

Listen to the following conversation on the tape between a man and his lawyer. After you hear the recorded conversation, answer the following questions:

1. Why is Adam calling his lawyer?
2. What happened to the last case the neighbor began?
3. In which state is the conversation taking place?
4. Did the neighbor ask for a change of venue?
5. What might have been a reason for a change of venue?
6. For what reason does the attorney think the case may be dismissed?
7. How will the attorney see what new information the neighbor may have?
8. How did Adam hear the news about the new lawsuit?
9. How will Dawn get Adam's papers?
10. When should Adam call the lawyer again?

Speaking



Subject matter jurisdiction

Attorneys must be able to determine which court has the power to decide the matter that their clients have entrusted them to handle. In other words, the first decision an attorney must make prior to filing a complaint is to decide which court has subject matter jurisdiction. This might simply refer to the subject matter of the case, such as torts or contracts. However, subject matter jurisdiction also relates to the question of exclusive or concurrent jurisdiction of state and federal courts.

In diversity of citizenship (citizens of different states or even another country) cases, either a state court or the federal court has the power to hear the case. The following table provides a few examples of the subject matter jurisdiction of state and federal courts.

Exclusive Federal	Concurrent (federal and state)	Exclusive State
bankruptcy	federal questions	Probate
patents and copyright	diversity of citizenship	Divorce
suits against the United States		

Working in pairs, read the following scenarios and decide which courts would have subject matter jurisdiction over your case.

1. Your client, Sue Little, feels that portions of her book were used in a television program without the producers of the program first obtaining her permission to use the material.
2. **Mr. Marvin, a resident of Ohio, and your client, Ms. Ching, a resident of Massachusetts, were involved in an automobile accident in Ohio. Mr. Marvin is suing Mr. Ching for \$76,000.**
3. Mr. Forster wants to divorce his wife, Margaret Forster-Simms. Ms. Forster-Simms is your client. Both parties are residents of Illinois.
4. **Your client is executrix (a female administrator) of the estate of her mother who has just died. The mother died in a nursing home in Olympia, Washington. Your client is a resident of Seattle, Washington.**
5. Mr. Batson, a resident of Massachusetts, has been injured by a product manufactured by your client's company, which is incorporated and has its principal place of business in Munich, Germany.

CRIMINAL LAW**SPEAKING**

People around the world have a peculiar fascination with law as it relates to crimes and the criminals who commit them. Open any U.S. newspaper or turn on the television news any day of the year, and no doubt a story involving a crime will be discussed. In law we should only be concerned with legal responsibility for the crime, but moral issues will always play a role in the development of the law (as in legalization of abortion) and defenses to the commission of a crime (such as mental incapacity). How do we reconcile the moral and legal issues involved in the commission of a crime?

I Please read the story, then follow the instructions given below.

Jean's Death

Around 5 pm one evening, a man and his wife entered the Bluebird Bar. The man, Jack, ordered a whiskey for himself and a cola for his wife, Gail. Jack continued to order the same drinks about every ½ hours.

At 11 pm the bar owner refused to serve Jack any more drinks because he was obviously extremely intoxicated and bothering other customers. Gail was used to Jack's behaviour and never asked her husband to quit drinking.

"Are you driving him home or should I call a taxi?" the bar owner asked Gail. Jack shouted, "Get out of my face! I'm driving home and neither of you can stop me!" Jack then shoved the owner aside and walked out the door. The owner just shrugged and walked off. Gail went to pay phone in the corner to call her sister for a ride.

As Jack left the bar a man walking by the bar shouted to him, "Hey Buddy, call a taxi!" When Jack drove off, the man simply shook his head and walked down the street.

Meanwhile, Jean and Carl were having a lovers' quarrel on the next corner. The quarrel soon escalated into a major fight, and Carl struck Jean, saying, "Don't ever tell me not to touch you again. I'll show you who's boss here." At that point, Jean, crying hysterically and paying no attention at all to the traffic, ran into the street directly in front of Jack's car. Jack was not able to stop in time, and Jean was killed instantly.

There are six characters in this story.

The Bar Owner

Jack

Gail

Carl

Jean

Man leaving the bar

II Divide into groups. In your group discuss and rank the characters from 1 to 6 (1 being the most and 6 the least responsible) in the order of their moral responsibility for Jean's death. You must reach a unanimous decision within your group. Present the arguments for your decision to the rest of the class.

III In the same groups determine if the party you found morally responsible for Jean's death could also be found legally responsible from the aspect of criminal law.

Have in mind that in order to find someone guilty of a crime, the prosecution has to prove the defendant guilty of all elements of the crime (as defined by statute or at common law) beyond a reasonable doubt. The essential elements of all crimes are *mens rea*, *actus reus* and *causation*.

The following terms might help you:

Culpability: blameworthiness; requires showing that a person acted **purposely, knowingly, recklessly, or negligently** (a requirement of the Model Penal Code (MPC) – a sample criminal code sponsored by the American Law Institute and approved in 1962; has been adopted in whole or in part in most U.S. states)

Purposely – conscious desire to engage in the conduct or desire to cause the result

Knowingly – person is aware of his or her conduct and is aware that his or her conduct is practically certain to cause the result that it did.

Recklessly – person must be aware of a substantial and unjustifiable risk that he or she consciously disregards

Negligently – person should be aware of a substantial and unjustifiable risk that a reasonable person would have perceived in the circumstances

Mens rea: the mental state - the intent

Actus reus: the act – a wrongdoing that can be an act or an omission

Causation: the act (actus reus) is the cause of (related to) the harm done

Concurrence: the union of the mental state and the act

Standard of proof: the level of evidence that must be presented at trial to establish guilt of the defendant. There are two levels.

Beyond a reasonable doubt: the fact proven at trial MUST establish guilt

Preponderance of evidence: the evidence offered at trial must show that the issue that is to be proved is more probable than not

vocabulary

CRIMINAL OFFENCES

Not all crimes in the US legal system are equal and therefore punishments vary, the degree of the seriousness of a crime determines its category, which in turn determines the punishment that can be imposed.

Misdemeanors constitute a minor class of offenses that are punishable by a fine or imprisonment for up to one year. Examples of misdemeanors are disturbing the peace (an act that interrupts the peace of an area) or reckless driving (poor driving that endangers others). Some states further divide misdemeanors into classes based on the level of punishment imposed for the offense.

Petty offenses are often considered a subset of misdemeanors and are the lowest classification of crimes. Examples include parking tickets or violations of building codes. Depending on the state law, punishment can be a fine (monetary payment), imprisonment in the county jail (local jail for minor offenders or for holding convicted felons, people who have been found guilty of a more serious crime, prior to transport to another prison) or both, depending upon state law.

A **felony** is any crime that is punishable by death or imprisonment in a state or federal **penitentiary** (prison for felons) for more than one year.

I Classify the following offenses according to the system in the United States:

- a. jaywalking (crossing a street at a place other than the marked crosswalk)
- b. truancy (skipping school)
- c. disturbing the peace
- d. drunk driving
- e. murder
- f. theft

II How do you think the offenses from exercise I would be classified in your system?

III Study the words in the box. Use your dictionary to check the meaning:

Abolition	homicide	involuntary	justifiable
Malice	manslaughter	murder	perpetrator
Provocation	recklessly		

IV Read the following text about murder in English law:

Murder

In English law, murder is considered the most serious form of homicide. For the crime of murder to be proved, the perpetrator must have intended to kill, or intended to cause serious injury where death is virtually certain to result. Following the abolition of the death penalty in 1965, the mandatory sentence for murder is life imprisonment.

There are a number of defences to a charge of murder, which can be termed mitigating circumstances. These include self-defence and provocation. There is also the defence of diminished responsibility which refers to the mental state of the accused at the time of the killing. A successful defence could lead to conviction on the lesser charge of manslaughter.

V Look at the pictures on the next page and for each picture, talk about how you think the homicide occurred and what defence, if any, the perpetrator may have.



A WOMAN WRONGED

MRS EDWARDS CONFRONTS A BURGLAR.

2



STRIKING MINER KILLED ON PICKET LINE

JOHN DYSON TRIES TO CROSS PICKET LINE; LASHES OUT AFTER TAUNTS.

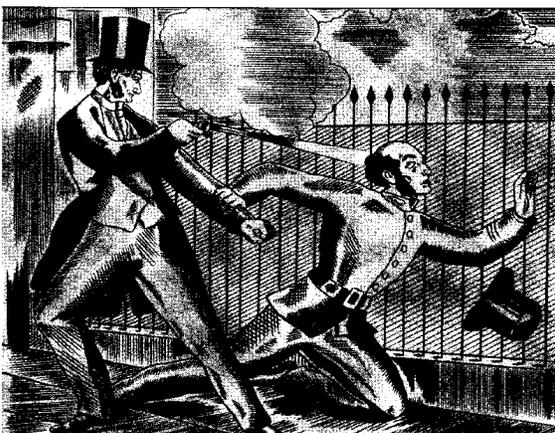


HIS STATE OF MIND WAS SO DIFFERENT FROM THAT OF ORDINARY HUMAN BEINGS THAT THE REASONABLE MAN WOULD TERM IT ABNORMAL.

4

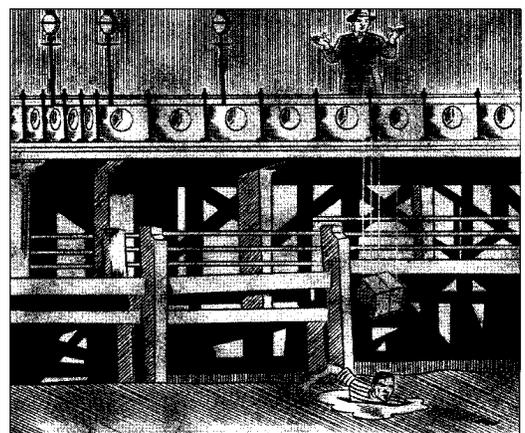


IN DEFENCE OF KING AND COUNTRY.



OUR VALIANT UNARMED DEFENDER OF THE LAW STOOD NO CHANCE AS THE MALICIOUS BRUTE FIRED AT POINT-BLANK RANGE.

6



THE CONSEQUENCES OF RECKLESS ACTIONS CAN BE VERY SEVERE.

VI Read the text about the definition of the offence of homicide in England and Wales and discuss differences and similarities with the definition of the offence of homicide in your country.

Definition of the offence of homicide

In England and Wales, 'homicide' includes the offences of murder, manslaughter and infanticide. In Scotland, 'homicide' includes murder and the offence of culpable homicide, which is the equivalent of manslaughter. Offences of causing death by dangerous or careless driving while under the influence of drink or drugs, or deaths following aggravated vehicle taking are generally not included in homicide statistics.

The offences of murder and manslaughter are common law offences, without origin in statute. However, the definition and sentencing of these offences have been modified by legislation, which affects the statistics.

Manslaughter in England and Wales is the unlawful killing of someone without any malice being expressed or implied. The *Homicide Act 1957* introduced the concept of conviction for manslaughter while accepting diminished responsibility, so-called 'section 2' manslaughter. This defence has largely come to replace findings of insanity.

The 1957 Act also altered the sentencing of murder by abolishing the death penalty, which until then followed any conviction for murder with the exceptions of young offenders, pregnant women, or those to whom the Royal Prerogative of Mercy was extended. For non-capital murder the punishment became life imprisonment.

The death penalty was retained however for capital murder², and for those convicted of murder on a previous occasion, or convicted on the same indictment to two or more murders done on different occasions. This remained the situation until 1965, when the *Murder (Abolition of Death Penalty) Act* abolished capital punishment, making life imprisonment mandatory for all adult offenders. In Northern Ireland, capital punishment for murder was abolished from 1973 by the *Northern Ireland (Emergency Provisions) Act 1973*.

In Scotland, where the offence of common law culpable homicide replaces that of manslaughter, there has always been a concept of diminished responsibility. Thus the Scottish statistics do not show a split in manslaughter offences after 1957.

VII Use all the information you learned to prepare a mock trial. Your teacher will give you further instructions

LEGALESE

Older words and modern equivalents

A number of linking terms are used in older written legal texts (case reports, legislation, court documentation, contracts, etc.) to refer to other parts of the same text, to different legal documents, or to related contexts.

the aforementioned/the foregoing	set out above/written above
the undermentioned	set out below/written below
hereafter	after this
hereby	in this way/by this
herein	in this (document)
hereof	of this
hereto	to this
herewith	with this
notwithstanding	despite
thereafter	after that
thereby	in that way/by that
therein	in that (document)
thereof	of that
thereto	to that
therewith	with that

I Match these words beginning with there (1 – 6) with their equivalents (a-f).

- | | |
|-------------|--|
| 1 thereto | A of it/them |
| 2 thereon | B on it/them |
| 3 thereof | C to it/that |
| 4 therewith | D for it/that |
| 5 therefor | E with that |
| 6 therein | F in or into a particular place or thing |

II Complete the sentences below using the words in the box

Therewith thereon	thereof (x2) thereto	therefore	therein
------------------------------	---------------------------------	------------------	----------------

1. Each partner shall maintain both an individual drawing account and an individual capital account; into the capital account shall be placed that partner's initial capitalization and any increases _____.
2. Every issuer must comply in all respects with the provisions, including all filing and notice deadlines _____.
3. Her experience in corporate finance includes representing banks and other financial institutions in numerous secured financings, including drafting and negotiating credit agreements and security documents in connection _____.
4. The Chair of the Committee shall, in consultation with the other members of the Committee and appropriate officers of the Company, be responsible for calling meetings of the Committee, establishing the agenda _____, and supervising the conduct _____.
5. The circular prescribes requirements for the accounting and reporting of interest on loans and other interest-bearing assets and for the capitalization of interest _____.
6. The memorandum of the company, together with a translation _____, if any, certified and translated as prescribed in regulation 4, shall be lodged with the Register.

Writing

Introduction to essay writing



THESIS STATEMENT

Compose a Thesis Statement

When you have decided, at least tentatively, what information you plan to present in your essay, you are ready to write your thesis statement. The thesis statement tells the reader what the essay will be about, and what point you, the author, will be making. You know what the essay will be about. That was your topic. Now you must look at your outline or diagram and decide what point you will be making. What do the main ideas and supporting ideas that you listed say about your topic?

Your thesis statement will have two parts:

- The first part states the topic.
- The second part states the point of the essay.

Why Should Your Essay Contain A Thesis Statement?

- to test your ideas by distilling them into a sentence or two
- to better organize and develop your argument
- to provide your reader with a "guide" to your argument

!!! *In general, your thesis statement will accomplish these goals if you think of the thesis as the answer to the question your paper explores.*

Characteristics of a strong thesis

1. A strong thesis **takes some sort of stand.**

- your thesis needs to show your conclusions about a subject.

For example, if you are writing a paper for a class on fitness, you might be asked to choose a popular weight-loss product to evaluate. Here are two thesis statements:

There are some negative and positive aspects to the Banana Herb Tea Supplement.

This is a **weak thesis**. First, it fails to take a stand. Second, the phrase "negative and positive" aspects" are vague.

Because Banana Herb Tea Supplement promotes rapid weight loss that results in the loss of muscle and lean body mass, it poses a potential danger to customers.

This is a **strong thesis** because it takes a stand.

2. A strong thesis **justifies discussion**.

- your thesis should indicate the point of the discussion.

If your assignment is to write a paper on kinship systems, using your own family as an example, you might come up with either of these two thesis statements:

My family is an extended family.

This is a **weak thesis** because it states an observation. Your reader won't be able to tell the point of the statement, and will probably stop reading.

While most American families would view consanguineal marriage as a threat to the nuclear family structure, many Iranian families, like my own, believe that these marriages help reinforce kinship ties in an extended family.

This is a **strong thesis** because it shows how your experience contradicts a widely accepted view. A good strategy for creating a strong thesis is to show that the topic is controversial. Readers will be interested in reading the rest of the essay to see how you support your point.

3. A strong thesis **expresses one main idea**.

- Readers need to be able to see that your paper has one main point. If your thesis expresses more than one idea, then you might confuse your readers about the subject of your paper.

For example:

Companies need to exploit the marketing potential of the Internet, and web pages can provide both advertising and customer support.

This is a **weak thesis statement** because the reader can't decide whether the paper is about marketing on the Internet or web pages. To revise the thesis, the relationship between the two ideas needs to become clearer. One way to revise the thesis would be to write:

Because the Internet is filled with tremendous marketing potential, companies should exploit this potential by using web pages that offer both advertising and customer support.

This is a **strong thesis** because it shows that the two ideas are related.
Hint: a great many clear and engaging thesis statements contain

words like "because," "since," "so," "although," "unless," and "however."

4. A strong thesis statement **is specific.**

- A thesis statement should show exactly what your paper will be about, and will help you keep your paper to a manageable topic.

For example, if you write a paper on hunger, you might say:

World hunger has many causes and effects.

This is a **weak thesis statement** for two major reasons. First, "world hunger" can't be discussed thoroughly in five or ten pages. Second, "many causes and effects" is vague. You should be able to identify specific causes and effects. A revised thesis might look like this:

Hunger persists in Appalachia because jobs are scarce and farming in the infertile soil is rarely profitable.

This is a **strong thesis** because it narrows the subject to a more specific and manageable topic and it also identifies the specific causes for the existence of hunger.

Exercise:

I. Work in pairs. Use the techniques for exploring ideas you used in the earlier to explore ideas for the following subjects:

1. What is justice?
2. Prejudices in our society
3. America as a land where all dreams can come true
4. Is globalization a new word for colonization
5. Reform of judiciary in countries in transition

II. After you have explored ideas write a strong thesis statement for each of them. Share the thesis statements with the rest of the class.

III. Discuss with the rest of the class why some of the thesis statements written in the class are weak and some strong.

Additional material