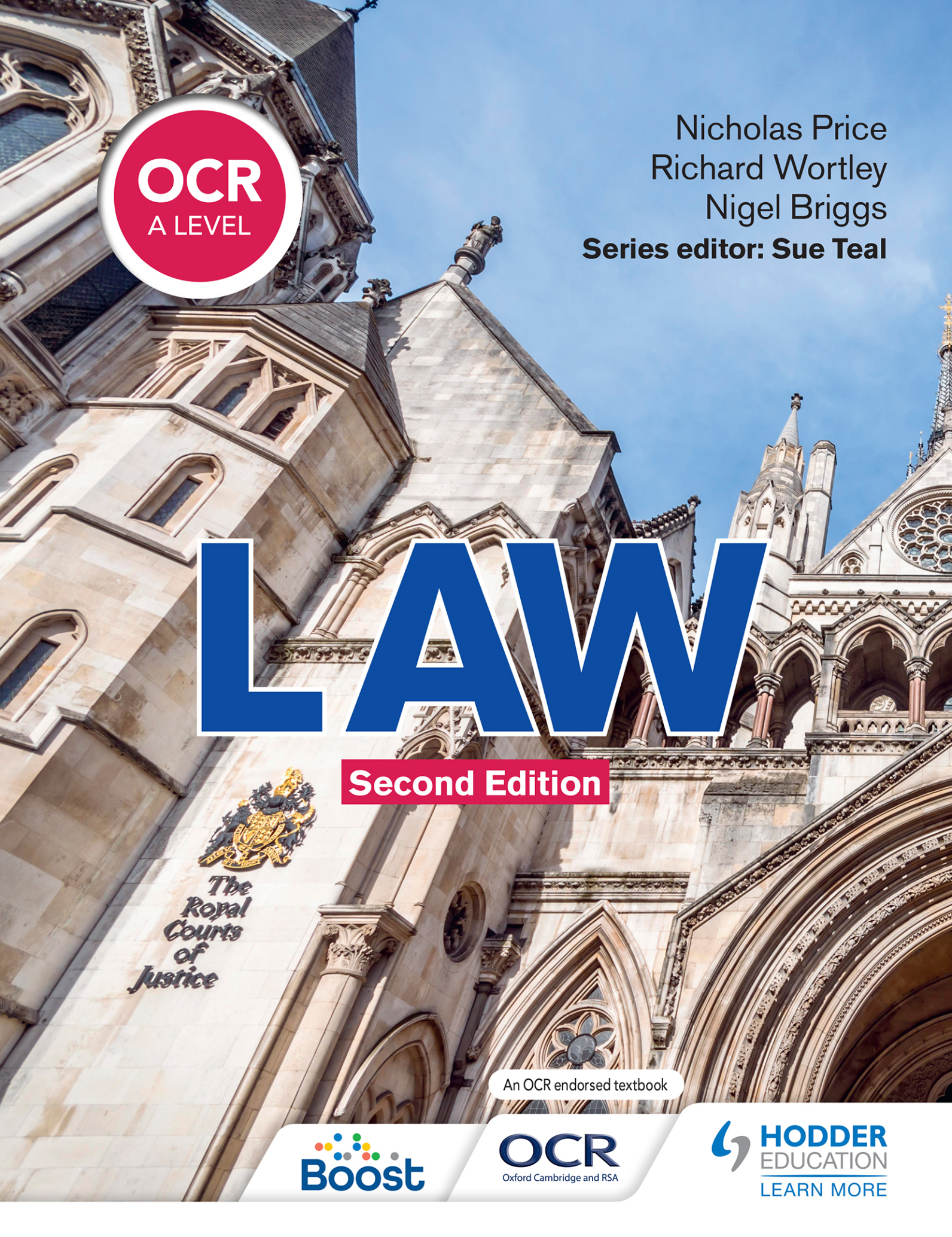
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Introduction

This textbook has been written and designed for the new OCR A Level Law specification (H418) introduced for first teaching in September 2020, with first assessment 2022. To view the full specifications, planning and teaching resources, delivery guides and examples of assessment material for OCR A Level Law, please visit OCR's website **https://www.ocr.org.uk/qualifications/as-and-a-level/law-h018-h418-from-2020/**

The law is as we believe it to be on 1 June 2020.

How to use this book

Each chapter has a range of features that have been designed to present the course content in a clear and accessible way, to give you confidence and to support you in your revision and assessment preparation.

Introduction

Each chapter starts with an overview of the content.

Link

Links to content in other chapters help you navigate through the material.

Key terms

Key terms, in bold in the text, are defined.

Case study

Description of a case and a comment on the point of law it illustrates.*

Tips

These are suggestions to help clarify what you should aim to learn.

Extension activity

These include challenging activities for students striving for higher grades.

Look online

These weblinks will help you with further research and reading on the internet.

Activities

Activities appear throughout the book and have been designed to help you apply your knowledge and develop your understanding of various topics.

Quick questions

Questions at the end of each chapter will help consolidate your knowledge.

Summary

These boxes contain summaries of what you have learned in each section.

* There will be cases in the OCR Teacher Guides that are not covered in this textbook, so do not expect to see every case in the textbook.

Section 1

THE LEGAL SYSTEM

Chapter 1 Civil courts and other forms of dispute resolution

Introduction

Civil courts exist to resolve disputes between individuals or businesses, if the dispute cannot be settled in any other way. Using the courts to resolve a dispute can be costly for the parties in terms of money and time. It can also be traumatic for the individuals involved and may not lead to the most satisfactory outcome. More and more people and businesses are seeking other ways of resolving their disputes without going to court.

Alternative methods are referred to generally as 'ADR', which stands for 'alternative dispute resolution', and include any method of resolving a dispute without using a civil court. There are different methods, ranging from informal negotiations between the parties to a comparatively formal employment tribunal dealing with specific claims arising from employment matters.

1.1 County Court and High Court

Since the Crime and Courts Act 2013 came into force, there has been one County Court in England and Wales, sitting in nearly 500 centres. There is one High Court, based in the Royal Courts of Justice in London, but also sitting in a number of centres around the country.

1.1.1 Jurisdiction

County Court

The County Court can try most civil claims of up to £100,000 in value. Typical cases heard in this court include:

- negligence claims where a person has suffered injury or loss as a result of the action or failure of another
- other tort-based claims such as nuisance or trespassing
- debt claims and consumer disputes which generally involve a breach of contract
- housing claims, including possession of residential and commercial properties, and other landlord and tenant matters, such as eviction
- bankruptcy and insolvency matters
- probate claims and other claims in relation to wills and trusts.

Claims will be heard in open court by a single judge – usually a Circuit Judge but some cases are heard by a Recorder. If the case is straightforward and of relatively low value, it can be heard by a District Judge. The judge will read the case papers before the hearing and can hear evidence and legal arguments in court. At the end of the hearing the judge will decide:

- liability – which side 'wins'
- the compensation payable, if any, or
- any other remedy requested, such as an eviction notice, and
- who should pay the costs of the case.

The Small Claims Track is part of the County Court and deals with claims of less than £10,000 (£1000 in personal injury claims) in an informal way. Cases are heard by a District Judge and lawyers are discouraged. As a result, there is less legal argument and costs will not be awarded.

Link

See Chapter 21 for claims in Negligence and Chapter 23 for tort-based claims relating to land. For the different types of judges, see Chapter 3. See Chapters 26 and 43 for the ways damages are calculated in tort and contract claims.

Key terms

Claim – an action taken in a civil court, either the County Court or the High Court, when a person or business believes that their rights have been infringed and they are due compensation or some other remedy.

Compensation – the amount of money claimed to make good the loss or damage to the claimant. This will also be known in tort and contract claims as damages.

High Court

As with the County Court, claims will be heard in open court by a single judge of the High Court. Judges will be assigned to one of the three Divisions – Queen's Bench, Chancery and Family – and will only hear cases relating to that Division's work. As before, the judge will read the case papers before the hearing and can hear evidence and legal arguments in court.

As with the County Court, at the end of the hearing the judge will decide:

- liability – which side 'wins'
- the compensation payable, if any, or
- any other remedy requested, such as an eviction notice, and
- who should pay the costs of the case.

The Royal Courts of Justice

The Queen's Bench Division

This is the largest of the three divisions. It has the jurisdiction to hear a wide variety of cases including contract and tort claims over £100,000 in value and smaller claims where there is a complicated issue of law involved.

There are several specialist courts of the Queen's Bench Division, including:

- the Administrative Court which hears:
  - applications for judicial review and applications for *habeas corpus*
  - case stated appeals in criminal cases decided at the Magistrates' Court or Crown Court
- Circuit Commercial Courts.

Link

See Chapter 15 for judicial review and Chapter 33 for *habeas corpus*. See Chapter 2 for case stated appeals.

Extension activity

Research the work of the Circuit Commercial Courts.

The Chancery Division

This court has jurisdiction to deal with the following types of cases:

- disputes relating to business, property or land where over £100,000 is in issue
- disputes over trusts
- contentious probate claims
- disputes about partnership matters.

Specialist courts of the Chancery Division include the Insolvency and Companies List.

Family Division

Cases in this Division are generally heard in private as they are often dealing with sensitive matters. It has the jurisdiction to hear:

- cases where a child is to be made a ward of the court and cases relating to the welfare of children under the Children Act 1989
- appeals from lower courts such as Family Proceedings Courts, which are part of the Magistrates' Court, and complicated family cases transferred from the County Court
- cases with a foreign element such as international child abduction, forced marriage, female genital mutilation and where a divorce has taken place outside England but the parties are disputing property situated within England.

Activity

Civil claims are not reported as widely as criminal cases. Research to find two recent examples of cases heard in civil courts.

1 What were the cases about?
2 Which courts heard the cases?
3 What were the results?

1.1.2 Pre-trial procedures

A court claim should only be considered as a last resort if a negotiated settlement cannot be reached or a form of Alternative Dispute Resolution has failed.

Pre-action protocols

The first step to take before issuing any court claim is to follow an appropriate pre-action protocol. They explain the conduct and set out the steps the court would normally expect parties to take before starting any court action.

The aim of a pre-action protocol is to ensure that as many problems as possible can be resolved without the need for a court hearing.

Look online

Outline the steps that should be taken before issuing a court claim for a debt. You can find this information at www.nationaldebtline.org/EW/factsheets/Pages/pre-action-protocol-for-debt/county-court-protocol.aspx

Which court to use?

If a settlement cannot be reached, issuing a court claim may be the only course of action. Which court is used will depend on the amount of compensation being claimed.

Amount of claim	Which court?
Less than £10,000 (or £1000 in a personal injury claim)	Can be started in the Small Claims Court
Less than £100,000 (or £50,000 in a personal injury claim)	Must be started in the County Court
More than £100,000 (or more than £50,000 in a personal injury claim)	Can be started in either the County Court or, more likely, in the High Court

Figure 1.1 Which court to use?

Activity

Advise the people in the following situations:

1 Isaac has bought a state-of-the-art TV and soundbar costing £3700 from a local electrical superstore. He finds that HD pictures do not work and the soundbar is not compatible with the TV. The store refuses to replace the set and soundbar or to refund the purchase price to Isaac. He wishes to claim against the store.
   - In which court should he start a case, and how should he go about this?
2 Tariq has been badly injured at work and alleges that the injuries were the result of his employer's failure to take proper safety precautions. He has been advised that his claim is likely to be worth considerably more than £100,000.
   - Which court or courts could hear his case?
3 Sandra has supplied goods to a manufacturing company which now disputes that they ordered the goods and claims that they do not owe her any money.
   - Which court should she use to claim her money?
4 Ezra and Adah had an extension built on their house. Three months after the work was completed and paid for, it was found that some of the work was defective and there are serious damp problems which are going to cost a lot of money to put right. The builder refuses to negotiate with them.
   - Which court or courts should they start a court case in and what should their first steps be?

Issuing a claim

A claim form N1 has to be completed with the names and addresses of the parties, brief details of the reason for the claim and the amount of money being claimed. The form can be filed at:

- a County Court office
- the High Court if it is a high value claim
- online, for a debt claim.

A fee will be charged for issuing the claim, and the amount of the fee depends on the amount being claimed.

Activity

Miguel bought a set of golf clubs from Direct Sports costing £750. When he first used the clubs, he found several of them bent when he tried to hit the ball and one club broke completely. He complained to the retailer but they refused to refund his money or enter into negotiations with him.

1 Download a Form N1 from **https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/688390/n1-eng.pdf**
2 Complete the N1 claim form for Miguel.

Key terms

Claimant – the person injured or suffering loss who intends to claim money from the defendant.
Defendant – the person or business causing the loss or damage or owing money to the claimant.

Defending a claim

The court will generally send, or serve, the claim on the defendant who then has a choice of actions:

1 Admit the claim and pay the full amount to the claimant or the court. If this option is chosen, the case will end.
2 Admit the claim and pay in instalments. If this option is accepted by the claimant, the case will end when the full amount has been paid.
3 Dispute the claim and file a defence setting out why the claim should not be paid, either in full or part.
4 File an Acknowledgement of Service confirming receipt of the claim form but asking for time to file a defence.

If the defendant fails to respond when receiving the claim, the claimant can apply for judgment in default. This means that the claim is 'won' and an attempt can be made to force the defendant to pay the sum claimed.

1.1.3 The three tracks

If the claim is defended, a judge must allocate it to an appropriate case management track for it to be dealt with in the most just and cost-effective way. There are three tracks that a case can be allocated to, as shown in Figure 1.2.

Type of track	Value of claim	Explanation
Small claims track	Less than £10,000 (or £1000 in personal injury cases)	• The claim will be heard by a District Judge and lawyers are not encouraged. • The time allocated to a hearing will be a maximum of 2–3 hours and each party will be allowed a limited number of witnesses.
Fast track	£10,000–£25,000	• A case allocated to this track will have a strict timetable set at a maximum of 30 weeks. If the parties do not follow the timetable, the claim can be thrown out or judgment in default can be awarded. • The hearing will be a maximum of one day in open court, with a limited number of witnesses called and usually heard by a Circuit Judge. • Each of the parties can be represented by a lawyer.
Multi track	£25,000–£50,000	• Usually allocated to the County Court. • The hearing will take place before a Circuit Judge. • The case will be strictly case-managed by the Circuit Judge, who sets a strict timetable, the disclosure of relevant documents, the number of witnesses and how long the case will last. • If the case involves complicated points of law or evidence, or it involves more than £50,000 in value, it can be passed up to the High Court.

Figure 1.2 Explaining the three tracks

1.2 Appeals and appellate courts

If one of the parties is dissatisfied with the decision of the trial judge about liability and/or the amount of compensation awarded, they can appeal. What does this mean?

- An appeal hearing usually consists of legal arguments as to why the original decision should be altered.
- An appeal is usually made to the next highest court in the hierarchy, and heard by a panel of three judges.
- It is rare for new evidence to be heard. There must be legal grounds for an appeal – more than 'the judge got the decision wrong'.
- An appeal usually has to be made within 21 days of the original hearing.
- If an appeal is made, costs will increase as lawyers will probably be required to argue the reasons for appeal.
- The appeal court can agree with the original decision or reverse it. It can agree the original amount of compensation awarded or alter the amount.

1.2.1 Appeals from the County Court

1. If the original decision was made by a District Judge, for example, in the Small Claims Court, an appeal will be heard by a single Circuit Judge of the same court.
2. If the original decision was made by a Circuit Judge, an appeal can be made to a High Court Judge of the Division that is relevant to the case. For example, if the claim is for personal injury, an appeal will be made to a judge of the Queen's Bench Division.
3. An appeal can be made directly to the Court of Appeal if the case raises an important point of principle or practice, and the Court of Appeal agrees to hear it.

1.2.2 Appeals from the High Court

An appeal from a decision of a High Court Judge will generally be heard by the Court of Appeal (Civil Division).

If one of the parties wishes to appeal further, it can be taken to the Supreme Court, but only if permission is granted by the Court of Appeal. The Supreme Court is the highest court for hearing civil appeals, and permission will only be given if there is a point of law of general public importance involved.

In rare cases, a 'leapfrog' appeal may be made directly from the High Court to the Supreme Court if there is an issue of national importance involved, or the case raises issues of sufficient importance to justify the leapfrog.

Tip

- Make sure you understand the courts that can hear civil cases and the three-track allocation system. These are the basis of the whole court system.
- Be clear about the grounds on which an appeal can be made in civil cases and the courts that can hear appeals.

1.3 Employment tribunals and Alternative Dispute Resolution

Tribunals exist alongside the court system. Some matters have to be heard by a tribunal and cannot be dealt with in court. Employment tribunals deal solely with employment issues, but there are other tribunals which deal with specific issues such as landlord and tenant claims. In addition, there are forms of Alternative Dispute Resolution (ADR) which exist to resolve disputes without having to go through the court or tribunal process.

1.3.1 Employment tribunals

Employment tribunals deal with issues such as a claim of unfair dismissal, discrimination in the workplace or redundancy. An employment tribunal sits in a separate building and has a set process, but this is less formal than a court – no wigs or gowns are worn.

Preliminary matters

A claim on an employment issue has to be brought within three months, less one day, from the event – for example, a dismissal.

In most cases, ACAS (the Advisory, Conciliation and Arbitration Service) must be contacted within this time for early conciliation to see if there can be a resolution. Only if the matter cannot be resolved can a claim be issued.

Most claimants obtain advice on the strength of the case before issuing a claim, though it is possible for a claimant to take their own case. Advice can be obtained from a specialist lawyer or a trade union.

The claim must set out detailed reasons for the action and must be filed with the tribunal within the time limit. Unlike a court claim, there is no fee involved. The claim will be passed to the employer who will have the opportunity to make comment on it.

Link

For more information on ACAS, see section 1.3.4, Conciliation.

The hearing

Hearings are held in individual tribunal rooms. There will be a tribunal panel made up of:

- a judge specialising in employment law who will run the proceedings
- one person representing the employer's organisation
- one person representing the employee's organisation.

If a preliminary hearing is needed, it takes place before a judge sitting without panel members.

In the full hearing, evidence is taken on oath and there are rules about the procedure and the evidence that can be accepted. Either side can represent themselves or be represented by a lawyer or, for example, a union official.

Most hearings are open to the public, though they are rarely publicised.

Hearings are generally quite short as most of the issues will have been identified beforehand and the panel will have read the papers. At the end of the hearing, the panel might decide on the day or give it later in writing.

A collective decision of the panel will subsequently be issued in writing:

- If the tribunal finds in favour of the employee, they may encourage a settlement which could include, for example, writing a favourable reference and some compensation.
- If a settlement cannot be reached, the tribunal can award compensation.
- If the claim is lost, the employee will not have to pay the employer's costs, though they will be responsible for the costs of any lawyer they use.
- If either side is dissatisfied with the panel's decision they can ask, within 14 days, for the tribunal to review its decision.

Appeals

Either side may then appeal within 42 days of the tribunal decision to an Employment Appeal Tribunal, but only on a point of law.

Further appeals can be made to the Court of Appeal (Civil Division) and the Supreme Court, but, again, only on a point of law and with permission from the Employment Appeal Tribunal.

Look online

Use the search term 'Employment tribunal hearing' to find a video on YouTube on how an employment tribunal hearing takes place.

1.3.2 Negotiation and ADR

Anyone in dispute with another person or business can negotiate to settle the dispute in the easiest and least confrontational way possible.

Negotiation can be carried out by:

- face-to-face talking
- writing
- phone or e-mail
- any other suitable method.

It is an attempt to come to an agreement or settlement. The agreement can be verbal or more formally set down in writing.

Negotiation can be conducted by the parties themselves, their representatives, their lawyers or any combination of these. If the negotiation is carried out by the parties, it should not cost them anything, but the involvement of lawyers will inevitably involve cost.

Even if original negotiations are unsuccessful and court proceedings are issued, it can take place right up to a court hearing.

1.3.3 Mediation

This is where a neutral person helps the parties to reach a compromise. The parties will usually be in separate rooms or locations, and the mediator acts as a facilitator, shuttling between the parties to put forward points and opinions.

The parties have control over the process, so they can stay as long as they wish and can withdraw at any time. The mediator will not offer an opinion to either party unless asked to do so.

A successful mediation depends on both parties embracing the concept and actively participating. Eventually it is hoped that the parties themselves

will reach a compromise and agreement acceptable to both.

Mediation is often used in family disputes over children and financial issues. The parties have to show that they have attempted the process before starting court proceedings. A charity such as Relate will provide the mediation service in this case. Another charity offering mediation services is the Centre for Effective Dispute Resolution (CEDR), which promotes the service as an effective form of alternative dispute resolution and provides training for mediators.

Key term

Mediator – a trained person who acts as a go-between in an attempt to help people in a dispute come to an agreement.

Look online

1 Look at the services provided by West Kent Mediation at http://wkm.org.uk/ and the Centre for Effective Dispute Resolution at www.cedr.com/
2 List the areas in which they each can help.

A more formal method of mediation is a 'mini-trial':

- Each side presents its case to a panel, composed of a neutral party plus a decision-making executive from each party in the dispute.
- Once all the submissions have been made, the executives, with the help of the neutral adviser, will evaluate the two sides' positions and try to come to an agreement.
- If the executives cannot agree, the neutral adviser will act as a mediator between them.

Even if the whole matter is not resolved, this type of procedure may be able to narrow down the issues so that if the case does go to court, it will not take so long.

1.3.4 Conciliation

This is similar to mediation, but the conciliator plays a more active role, discussing the issues with both parties and suggesting grounds for compromise or settlement. The parties still have control over the process and may withdraw at any time.

As with mediation, both parties must agree to a final compromise and the process may not lead to a resolution, especially if one or both parties are fixed in their position.

ACAS is an example of a conciliation service:

- It tries to encourage the parties in an employment dispute to reach a settlement before a claim can be issued in an employment tribunal.
- It also gets involved in industrial disputes – for example, if a trade union calls a strike action, ACAS will attempt to conciliate between the parties to reach a compromise.

1.3.5 Arbitration

Arbitration is where both parties voluntarily agree to let their dispute be left to the judgment of a neutral arbitrator or a panel of arbitrators. The arbitrator will normally have experience in the field of the dispute.

The agreement providing for arbitration will usually be in writing, and will be contained in the initial contract between the parties which will be made before any dispute arises. This arbitration clause is called a *Scott v Avery* clause: see Figure 1.3.

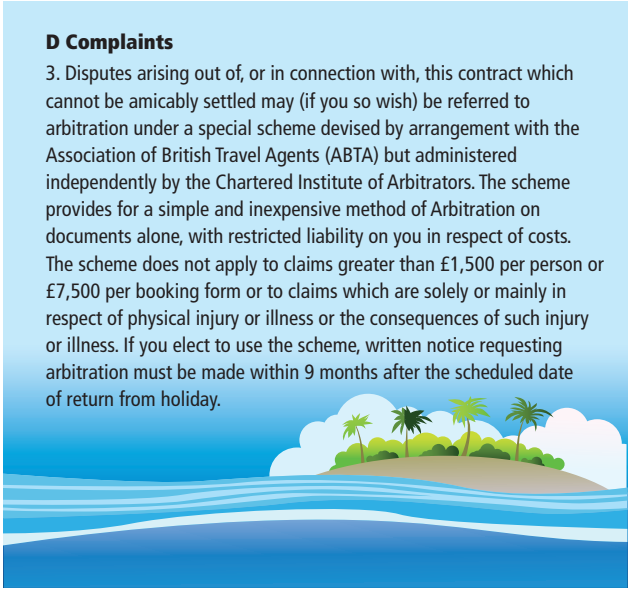

Figure 1.3 A sample *Scott v Avery* clause in a package holiday contract (Adapted from Your Holiday Contract – Terms and Conditions, www.lifestyleholidays.co.uk/terms-conditions/)

- Such agreements are governed by the Arbitration Act 1996, which provides that a court will normally refuse to deal with a dispute when there is a *Scott v Avery* clause.
- The initial agreement will either name an arbitrator or provide a method for choosing one. If there is no selection procedure, a court may appoint an arbitrator.
- It is common to find a *Scott v Avery* clause in building contracts, package holiday contracts and mobile phone contracts.

The parties will agree the procedure for dealing with the dispute which can range from a 'paper' arbitration – where all the points are set out in writing and the arbitrator makes a decision based on this – to a formal court-like hearing. The date, time and place of any hearings are decided by the parties in conjunction with the arbitrator. Any formal hearing will be held in private.

Legal representation is not always necessary. This saves the parties the expense of employing lawyers, and is likely to be less confrontational.

The arbitrator's decision is called an 'award', and is final and binding on the parties. If necessary, it can be enforced in court. An award can only be challenged if there is a serious irregularity in the proceedings or on a point of law.

Activities

1 Find an arbitration clause in a consumer contract; for example, in the insurance contract for your mobile phone.
   - Who will the arbitrator be?
   - How will any hearing be conducted?
2 Make a table explaining the different types of ADR. Include:
   - who deals with the dispute
   - the type of cases dealt with
   - how the dispute is dealt with
   - the possible outcomes
   - whether an appeal is possible.

1.4 Advantages and disadvantages of using the civil courts and ADR to resolve disputes

1.4.1 The civil courts – evaluation

Advantages	Disadvantages
● The case will be presided over by a qualified judge, whether in the County Court or the High Court. Judges are experienced, qualified lawyers who can deal with complex legal matters. They will apply established rules of evidence and procedure to ensure the case is dealt with fairly and without favouring one side or the other. When giving their decision on liability, judges will provide reasoned opinions so that the parties can see how a decision is reached. ● Reasoned judgments can be studied for accuracy of the law used by the judge to reach a decision. If there are inaccuracies, there is a clear, structured appeal route. Appeals can also be made against the amount of compensation awarded. ● A judge will allocate a defended case at an early stage to the most suitable track and court. It will be case managed through the process to a court hearing to minimise delays. Both parties will know, in advance, the number of witnesses allowed and the length of a hearing. ● A legally binding and enforceable decision will be made by the judge. The parties are guaranteed a resolution at the end of the hearing and an enforceable remedy is guaranteed.	● The rule in civil cases is that the loser pays the winner's costs as well as their own. As a result, the costs of taking a case to court can be more than the sum claimed. This can especially be the case with a claim in the High Court. There is a need for lawyers to be used in more complicated cases, whose time has to be paid for. ● Even with the three-track system, there can be considerable delay in completing the preliminary stages of a claim. Once these stages are completed, there is often a further delay in arranging a hearing date. Some complicated cases may take several years to be resolved. ● A claimant can only apply to their lawyer for a no-win, no-fee arrangement in personal injury claims. A lawyer will only agree such an arrangement if a claim stands a high chance of succeeding. If the lawyer decides there is a low chance of success, a claimant must fund the claim from their own resources. Claimants in other cases will have to accept responsibility for their lawyer's fees, and hope that they win the case and can recover their costs from the loser, in addition to any compensation. **Cont.**

Advantages	Disadvantages
• The court system provides open justice as the public and press are able to sit in and report most cases. This can stop individuals and businesses hiding disputes and outcomes that the public should be aware of. • By considering precedent, lawyers can give informed advice to their clients, at an early stage, of the likely outcome of the case. The client can then assess the strength of the case and whether it is worth pursuing. Precedent can be quoted in court in support of the arguments. • In some types of claim, a form of funding may be available for the payment of lawyers' fees; for example, in personal injury claims it may be possible to use a no-win, no-fee arrangement	• Except in small claims, it is very difficult for a claimant to take a case without the assistance of a lawyer. This is due to the requirements of pre-action protocols, the Civil Procedure Rules and the formal nature of hearings. Failure to observe these rules may result in the claim being dismissed. More complicated rules apply if an appeal is required. • Despite the system of precedent, there will be uncertainty of the outcome, and no guarantee of winning a case until a judge (or an appeal court) makes a final ruling. • Using lawyers tends to lead to greater confrontation between the parties. This can produce further delay and costs.

Figure 1.4 Evaluating civil courts

Link

See Chapter 17 for an explanation of precedent. See Chapter 1 for an explanation of the Civil Procedure Rules.

1.4.2 Alternative Dispute Resolution – evaluation

Advantages	Disadvantages

• Using a method of ADR is less formal than using the courts:
  ○ Negotiation can involve just the parties themselves.
  ○ In mediation and conciliation, the parties are encouraged to reach a settlement themselves.
  ○ In arbitration, the parties can set the form of the process.
• Lawyers are not encouraged as:
  ○ the processes are flexible and less formal
  ○ there is no rule that the loser pays the winner's costs.
This is likely to mean lower costs for the parties and less confrontation throughout the process: there will not be a winner/loser situation, and the parties can continue a personal or business relationship.
• It is quicker and easier to arrange a resolution than going through the courts. If there is a hearing, it is likely to be in private and there will be little or no publicity to embarrass the parties.
• Especially in negotiation, mediation and conciliation, the decision does not have to be strictly legal, and is more likely to be based on commercial common sense and compromise. Again, this is likely to preserve the future relationship between the parties.
	• In all forms of ADR, except for tribunals, the parties cannot be forced to engage in the process, and one of them may decide not to. The process will have to be abandoned and court action may be required to resolve the dispute, which will result in further delay and cost.
	• If a claim is settled using one of the methods of ADR, the claimant is likely to receive lower compensation than may be awarded by the courts.
	• No funding is available for claimants using ADR. This may put an unrepresented claimant at a disadvantage in arbitration and employment tribunals, where a business or employer is likely to be legally represented.
	• If an unexpected legal issue appears in either arbitration or an employment tribunal:
	  ○ an unrepresented claimant (one who does not engage a lawyer) might be at a disadvantage
	  ○ a non-legally qualified arbitrator might not be able to resolve it.
	• Proceedings and hearings in employment tribunals have a certain formality, which may be intimidating for unrepresented claimants.
	• There are limited rights of appeal for most forms of ADR:
	  ○ In arbitration, an appeal can only be made on the grounds of serious irregularity.
	  ○ With employment tribunals, an appeal can only be made if there is a point of law involved.
	Any appeal is likely to require a lawyer and involve more costs for a claimant.

Figure 1.5 Advantages and disadvantages of Alternative Dispute Resolution

Advantages	Disadvantages
● Claims will be heard by a specialist panel. ● ACAS will encourage the parties to settle the claim before a hearing. ● The hearing will often be heard without public or press present. This will ensure confidentiality for both parties. ● The hearings will generally be informal and short – less than a day in length. ● The employee can be represented by a non-lawyer including a trade union representative. It will then be cheaper. ● The panel will give a written judgment after the hearing. ● Each party will pay their own costs. ● There are limited appeal rights.	● A claim has to be issued quickly after the issue arises. ● Funding is not available. An employee may be at a disadvantage against an employer who can pay for legal representation. ● It is a more formal process than other forms of ADR – if settlement is not possible. ● Appeals are limited to issues of law. ● There may be delays in setting hearing dates.

Figure 1.6 Advantages and disadvantages of employment tribunals

Advantages	Disadvantages
● It can be by straightforward contact between the parties. ● Low or no cost – no need for lawyers. ● The parties themselves are in control. ● Relationships between the parties are preserved. ● Continued business relationship.	● One of the parties may not be prepared to negotiate with the other. ● One of the parties may be hostile towards the other. ● Either party may believe they are 'right' and not prepared to settle. ● Court proceedings may be the only way to resolve the dispute.

Figure 1.7 Advantages and disadvantages of negotiation

Advantages	Disadvantages
● Cheaper than taking a court case. ● The parties have some control choosing the conciliator and the process. ● Future business relationship can be preserved.	● The conciliator may force a resolution on one or both of the parties. ● The process may not bring about a resolution. ● The result may not be binding on one or both parties.

Figure 1.8 Advantages and disadvantages of conciliation

Advantages	Disadvantages
● Cheaper than a court case. ● The parties are in control over the process. ● Future business and personal relationships can be maintained.	● One of the parties may be unwilling to take part in the process. ● The parties may be unwilling or unable to reach a settlement. ● The result may not be binding on one or both the parties.

Figure 1.9 Advantages and disadvantages of mediation

Advantages	Disadvantages
● Cheaper than a court case. ● The arbitrator will be qualified and experienced. ● The arbitrator's decision is final and binding. ● The arbitrator's decision can be enforced in court.	● The process can be formal and complicated. ● It is likely to be more expensive than other forms of ADR. ● It is not a suitable process if there is a complicated point of law involved.

Figure 1.10 Advantages and disadvantages of arbitration

Quick questions

1. Name the civil trial and appeal courts.
2. Describe how a civil claim for compensation can be taken in court.
3. Describe how a claim for unfair dismissal can be taken.
4. Describe the process of mediation.
5. Describe the process of arbitration.
6. Assess the advantages and disadvantages for an individual claimant taking a civil court action to recover a debt.

Summary

Civil courts

- Civil cases are tried in the County Court or High Court, depending on their value.
- Claims are started by filing a Form N1, setting out what is being claimed and why.
- If a claim is defended, it is allocated to one of three tracks, again based on its value: small claims track, fast track, or multi-track.
- An appeal can be made from the trial court to the Court of Appeal on the grounds of liability and/or the amount of compensation.
- A further appeal lies to the Supreme Court based on an issue of law of public importance.
- Advantages of using the civil courts include: fair process, judge is a legal expert, easier to enforce decisions, appeal system.
- Disadvantages of using the civil courts include: the cost of taking an action, delays, complicated process, uncertain outcome until a final decision is made.

Employment tribunals

- The employment tribunal deals only with employment issues which have to be heard there.
- Cases are heard in the first-tier tribunal by a tribunal judge sitting with two lay members.
- There may be a right of appeal to an upper tribunal and ultimately to the appeal courts.
- Compared to going to court, employment tribunals are cheaper, quicker, more informal, and cases are heard by experts in employment issues.
- Disadvantages of using employment tribunals are: no funding for applicants, more formal than other forms of ADR, delay in complex cases.

Other forms of ADR

- Negotiation is where the parties or their representatives make direct contact to see if an agreement can be made.
- Mediation is where an independent trained mediator helps the parties themselves to reach a compromise.
- Conciliation is where an independent trained conciliator plays a more active role in helping the parties to reach a compromise.
- Arbitration is where an independent qualified arbitrator decides the case after hearing evidence from both parties.
- ADR is cheaper than using the courts, is more flexible, there are fewer delays and less confrontation and it allows the parties to remain on good terms with each other.
- Disadvantages of using forms of ADR are that one of the parties may be unwilling to use a form of ADR and not be prepared to be bound by it.

Chapter 2 Criminal courts and lay people

Introduction

Criminal cases are heard in the Magistrates' Court or the Crown Court, depending on the seriousness of the offence. An adversarial trial will take place when the defendant pleads not guilty. The role of the magistrates or jury is to decide if a defendant is guilty or not guilty. The magistrates can then impose a sentence, but in the Crown Court, this is for the judge to decide. There is a range of sentences that can be imposed, from imprisonment to community penalties, fines or discharges. The court will take into account the aims of sentencing and any aggravating and mitigating factors. There is a long-established tradition of using lay people (people who are not legally qualified) in the decision-making process in criminal cases, as 'trial by your peers' is seen as the fairest form of justice.

2.1 Criminal process

The two courts that hear trials of criminal cases are the Magistrates' Court and the Crown Court. Which court is used for the trial is decided by the category of crime involved (see section 2.1.3).

If a defendant pleads guilty to the charge against them, they will receive a sentence. Where the accused pleads not guilty, there will be a trial to decide if the accused is guilty or not guilty. The burden of proof is on the prosecution who must prove the case beyond reasonable doubt.

The form of the trial is adversarial, with prosecution and defence presenting their cases and cross-examining each other's witnesses. The role of the judge or magistrates is that of a referee, overseeing the trial and making sure that legal rules are followed correctly. The judge or magistrates cannot investigate the case, nor ask to see additional witnesses.

Guilt will be decided by:

- a District Judge or lay magistrates in the Magistrates' Court
- a jury in the Crown Court.

If a guilty verdict is reached, a sentence will be imposed.

2.1.1 Jurisdiction of Magistrates' Courts

There are about 160 Magistrates' Courts in England and Wales. They were established as local courts and deal with cases that have a connection with their geographical area.

Cases are heard by magistrates, who may either be legally qualified District Judges or non-legally qualified lay magistrates (also called justices).

Leeds Magistrates' Court

Magistrates' Courts have the following jurisdiction:

1. To try all summary cases.
2. To try any triable either way cases that can be dealt with in the Magistrates' Court.
3. To deal with the first hearing of all indictable offences. These cases are then immediately sent to the Crown Court.
4. To deal with all preliminary matters connected to criminal cases, such as issuing warrants for arrest and deciding bail applications.
5. To try cases in the Youth Court where defendants are aged 10–17 inclusive.

(The first two categories account for about 97 per cent of all criminal cases.)

2.1.2 Jurisdiction of the Crown Court

The Crown Court sits in about 84 different locations throughout England and Wales. The Crown Court deals with all indictable, or serious, offences. It also deals with any triable either way offences that are sent for trial from the Magistrates' Court.

A judge sits alone to hear pre-trial matters in cases at the Crown Court, and where a defendant pleads guilty. However, when a defendant pleads not guilty, a jury is used to decide the verdict. The judge will:

- control the court
- rule on relevant issues of law
- direct the jury on the law and evidence
- impose a sentence if the defendant is found guilty.

Party	Description
Prosecution	• It is the Crown Prosecution Service (CPS) which initially advises the police on what offence to charge. • Lawyers work for the CPS. They may direct the police on what evidence is required and needs to be obtained. • Once the case comes to court, lawyers present the case and try to prove the defendant guilty beyond reasonable doubt.
Defendant	• This is the person charged with a criminal offence. • They (and their lawyer) do not have to disprove the prosecution case but to cast sufficient doubt on it.

Figure 2.1 Key facts: the prosecution and the defendant

2.1.3 Classification of criminal offences

Summary offences

These are the least serious criminal offences and have to be tried in the Magistrates' Courts. They are subdivided into offences of different 'levels', which carry maximum fines:

- Level 1: maximum £200
- Level 2: £500
- Level 3: £1000
- Level 4: £2500
- Level 5: unlimited.

Examples of summary offences include driving while disqualified, common assault, being drunk and disorderly in a public place and theft from a shop where the value of the goods stolen is less than £200.

Triable either way offences

These offences can be tried in either the Magistrates' Court or the Crown Court.

If it is decided that the case will be dealt with in the Magistrates' Court, then the procedure is the same as for trial of a summary offence. The only difference is that, if the defendant pleads guilty or is found guilty, the magistrates have the power to send the defendant to the Crown Court for sentencing. The magistrates can only do this if they think that they cannot impose an adequate sentence.

If the case is tried in the Crown Court, the trial will proceed in the same way as an indictable offence. If the defendant pleads (or is found) guilty, the judge can impose any sentence up to the maximum for that offence.

Triable either way offences include assault causing actual bodily harm and theft of property over £200.

Indictable offences

These are the most serious offences and can only be tried in the Crown Court.

The first preliminary hearing to establish the defendant's identity will take place in the Magistrates' Court.

- If the defendant pleads not guilty, a jury will decide if the defendant is guilty or not guilty after hearing all the evidence.
- If the defendant pleads guilty, the judge will impose a sentence.

When sentencing, the judge can impose any sentence up to the maximum that is set by the Act

that imposes the offence. Examples of indictable offences include murder, manslaughter and robbery.

Type of offence	Description
Summary offences	The least serious offences: have to be tried in the Magistrates' Court
Triable either way offences	More serious offences: can be tried in either the Magistrates' Court or in the Crown Court
Indictable offences	The most serious offences: have to be tried in the Crown Court

Figure 2.2 Key facts: types of offence and their description

2.1.4 Pre-trial procedures

Summary offences

There is a case management system which aims to complete the case at the earliest opportunity. At the first hearing, the clerk of the court will check the defendant's name and address and take the plea – guilty or not guilty. Over 90 per cent of defendants in the Magistrates' Court plead guilty.

- Whether or not the defendant has legal representation, the magistrates will proceed to consider a sentence if the defendant has pleaded guilty. A sentencing hearing will hear the brief facts of the offence from the prosecution and any statements the defendant wishes to make. The magistrates will then decide on and announce their sentence.
- In some minor driving offences, the defendant can plead guilty by post, so that attendance at court is unnecessary.
- If the defendant pleads not guilty, the magistrates will try to discover the issues involved and then set a date for trial.

Triable either way offences

The procedure is set out in the Magistrates' Courts Act 1980.

Plea before venue

The defendant will be asked to plead.

- If the plea is guilty, the matter is automatically heard by the Magistrates' Court and a sentencing hearing will take place in the same way as with summary offences.
- If the defendant pleads not guilty, the magistrates must decide where the case will be tried and a Mode of trial procedure will take place.

The defendant has no right to request a hearing at the Crown Court but the case can be sent there by the magistrates if they consider they have insufficient sentencing powers.

Mode of trial

This procedure is to decide the most appropriate court for the case to be dealt with. The magistrates decide if the case is suitable for a Magistrates' Court trial and whether they are prepared to accept jurisdiction. They must consider the nature and seriousness of the offence, their powers of punishment and any representation of the prosecution and defence.

- If the case involves complex questions of law, breach of trust or offences committed by organised gangs, it should be sent to the Crown Court.
- If the case is referred to the Crown Court, or the defendant chooses trial there, all pre-trial matters will be dealt with by the Crown Court.

Indictable offences

First hearing

The first hearing will be in the Magistrates' Court shortly after the defendant is charged. The magistrates will deal with:

- establishing the defendant's identity
- whether bail or custody should be ordered
- whether the defendant should receive legal aid for representation.

All further pre-trial matters will then be dealt with in the Crown Court, by a Crown Court judge sitting alone.

Plea and Trial Preparation Hearing (PTPH)

This takes place at the Crown Court as soon as possible after the case has been sent there from the Magistrates' Court. An effective PTPH will:

- 'arraign' the defendant (take the defendant's plea) unless there is good reason not to
- set a trial date
- identify the issues for trial, so far as they are known at that stage
- provide a timetable for pre-trial preparation and give appropriate directions for an effective trial
- make provision for any Further Case Management Hearing (FCMH) that may be required to take place when it can have maximum effectiveness.

The indictment

This document will be prepared before trial and formally sets out the charges against the defendant.

Although the defendant will have been sent for trial charged with specific crimes, the indictment can be drawn up for any further offence that the evidence reveals. In more complicated cases the indictment may have several counts (charges), each relating to a different offence.

Disclosure by prosecution and defence

Both prosecution and defence have to make certain points known to the other before trial. The prosecution must set out all the evidence they propose to use at the trial. They must also disclose previously undisclosed material 'which in the prosecutor's opinion might reasonably be considered capable of undermining the case for the prosecution against the accused'.

The defence must give a written statement to the prosecution that includes:

- the nature of the accused's defence, including any legal defences intended to be relied on
- any matters of fact on which issue is taken with the prosecution
- any point of law to be argued, and the case authority in support
- any alibi and the witnesses to support that alibi – this information allows the prosecution to run police checks on the alibi witnesses.

2.2 Appeals and appellate courts

2.2.1 Appeals from the Magistrates' Court to the Crown Court

This appeal is only available to the defence.

- If the defendant pleaded guilty at the Magistrates' Court, then an appeal can only be made against sentence. The Crown Court can confirm the sentence, or they can increase or decrease it. However, any increase can only be up to the magistrates' maximum powers for the case.
- If the defendant pleaded not guilty and was convicted, an appeal can be made against conviction and/or sentence. The Crown Court, consisting of a judge sitting with two lay magistrates, will hold a complete rehearing of the case including any evidence that was not available in the Magistrates' Court. They can confirm or vary the conviction and/or sentence or find the defendant guilty of a lesser offence.

2.2.2 Case-stated appeals

These are appeals on a point of law that go to the Queen's Bench Divisional Court, either directly from the Magistrates' Court or following an appeal to the Crown Court. Both the prosecution and the defence can use this appeal route.

The magistrates (or the Crown Court) are asked to state the case by setting out their findings of fact and their decision. The appeal is argued on the basis of what the law is on those facts; no witnesses are called. The appeal is usually heard by a panel of two or three judges.

The approach will be that the magistrates came to a wrong decision because they made a mistake about the law. The Divisional Court may confirm, vary or reverse the decision, or send the case back for the magistrates to implement the decision on the law.

There are usually fewer than one hundred case-stated appeals made each year. There is a possibility of a further appeal to the Supreme Court such as in *C v DPP* (1994).

Case study

***C v DPP* (1994)**

A boy of 13 was convicted in the Magistrates' Court of interfering with a motorcycle with intent to commit theft or to take and drive it away without consent. The appeal concerned the presumption of criminal responsibility of children between the ages of 10 and 14. Until this case, it had been accepted that such a child could only be convicted if the prosecution proved that the child knew he was doing wrong. The Divisional Court held that times had changed, children were more mature and the rule was not needed.

The case was further appealed to the House of Lords who overruled the Divisional Court, holding that the law was still that a child of this age was presumed not to know they were doing wrong, and therefore not to have the necessary intention for any criminal offence. The original conviction was confirmed.

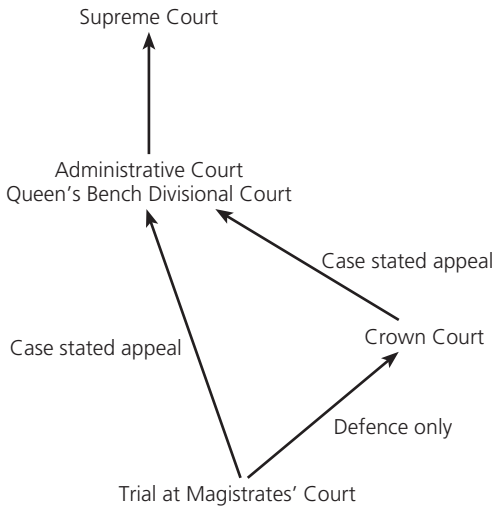

Figure 2.3 Appeal routes from the Magistrates' Court

2.2.3 Appeals from the Crown Court

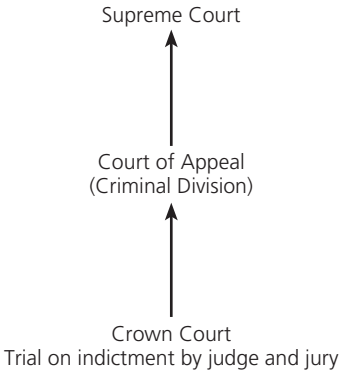

Figure 2.4 Routes of appeal from a Crown Court trial

Appeals by the defendant

If a defendant has been found guilty following a Crown Court trial, they should be advised by their lawyers on the possibility of an appeal. An appeal can be made against conviction and/or sentence to the Court of Appeal (Criminal Division).

Leave to appeal

The Criminal Appeal Act 1995 requires that the defendant must obtain leave (or permission) to appeal, decided by a single judge of the Court of Appeal. The aim is to filter out cases without merit and save the court's time.

The Criminal Appeal Act 1995

The Criminal Appeal Act 1995 simplified the grounds under which the court can allow an appeal. The Act states that the Court of Appeal:

> "shall allow an appeal against conviction if they think that the conviction is unsafe; and shall dismiss such an appeal in any other case."

Since the European Convention on Human Rights was incorporated into law by the Human Rights Act 1998, the Court of Appeal has taken a broad approach to the meaning of 'unsafe'. In particular, a conviction has been held to be 'unsafe' where the defendant has been denied a fair trial.

Link

See Chapter 34 for more on Article 6 of the European Convention on Human Rights.

New evidence

The defendant can apply to introduce new evidence but:

- it must appear to be capable of belief and afford a ground for an appeal
- it has to be considered whether it would have been admissible at the trial, and why it was not produced at that trial.

The Court of Appeal's powers

The Court of Appeal can:

- allow a defendant's appeal and quash a conviction, or
- vary the conviction to that of a lesser offence of which the defendant could have been convicted, and/or
- decrease, but not increase, any sentence imposed, or
- dismiss the appeal, or
- order that there should be a retrial of the case in front of a new jury.

Appeals by the prosecution against an acquittal

The prosecution has limited rights to appeal against an acquittal as follows:

1. Where the acquittal was the result of the jury being 'nobbled'. This is where one or more jurors was bribed or threatened by associates of the defendant.
2. Where there is new and compelling evidence of the acquitted person's guilt, and it is in the public interest for the defendant to be retried. This power is given by the Criminal Justice Act 2003 and it is only available for some thirty serious offences, including murder, manslaughter, rape and terrorism

offences. It is known as double jeopardy, since the defendant is being tried twice for the same offence. The Director of Public Prosecutions has to consent to the reopening of investigations in the case.

Key term

Acquittal – the defendant is found not guilty.

Case studies

Stephen Lawrence

In 2011, two defendants who had been previously acquitted of the murder of black teenager Stephen Lawrence were retried and convicted using the double jeopardy rules, some 19 years after the murder. Part of the new evidence was a DNA match with Stephen's blood found on the clothing of one of them. This evidence became available due to improved DNA testing techniques.

Michael Weir

Michael Weir was jailed for life for the murders of two pensioners. He was convicted twenty years after the killings in a unique double jeopardy case. His original murder conviction was dismissed on appeal on a technicality when prosecutors were late filing legal papers, despite DNA evidence from a glove found at the scene linking him to one of the attacks. By 2018, new DNA evidence linking him to both murders was discovered. Weir was the first defendant to be found guilty of the same murder twice.

Referring a point of law after an acquittal

Following an acquittal, under s 36 of the Criminal Justice Act 1972, the Attorney-General can refer a point of law to the Court of Appeal in order to get a ruling on the law.

The decision by the Court of Appeal on that point of law does not affect the acquittal but it creates a precedent for any future case involving the same point of law.

Link

See Chapter 17 for more information on judicial precedent.

Against sentence after conviction

Also, under s 36 of the Criminal Justice Act 1988, the Attorney-General can apply for leave to refer an unduly lenient sentence to the Court of Appeal.

Cases are brought to the Attorney-General's attention by the Crown Prosecution Service. It is also possible for a member of the public to contact the Attorney-General's office if they feel that the original sentence was too lenient.

Further appeals

Both the prosecution and the defence may appeal from the Court of Appeal to the Supreme Court, but they need to have the case certified as involving a point of law of general public importance, and to get leave to appeal from either the Supreme Court or the Court of Appeal.

An appeal can only be made against conviction or acquittal. The appeal will consist of legal arguments only, and fewer than twenty criminal appeals are usually heard by the Supreme Court each year.

2.3 Sentencing and court powers for adults

Whenever a defendant is found guilty of a criminal offence, the court must impose a sentence as punishment for the wrongful behaviour. In the Magistrates' Courts, the magistrates will decide the sentence. In the Crown Court, the judge will decide the sentence.

There are guidelines on what type and level of sentence are appropriate for each offence. Both judges and magistrates will have to take account of the guidelines and the general aims of sentencing in their decision making.

2.3.1 Aims of sentencing

When judges or magistrates are passing sentence, they look at the sentences available but also have to decide what they are trying to achieve by the punishment. Section 142 of the Criminal Justice Act 2003 sets out the purposes of sentencing for those aged 18 and over:

- punishment of offenders
- reduction of crime (including its reduction by deterrence)
- reform and rehabilitation of offenders
- protection of the public
- offenders making reparations to their victims.

Punishment of offenders

The idea of punishment is that the offender deserves punishment for carrying out a criminal act or acts. It

does not seek to reduce crime or alter the offender's future behaviour.

This idea was expressed in the nineteenth century by Kant in *The Metaphysical Elements of Justice* when he wrote:

> "Judicial punishment can never be used merely as a means to promote some other good for the criminal himself or for civil society, but instead it must in all cases be imposed on him only on the ground that he has committed a crime."

Punishment is concerned only with:

- the offence that was committed
- making sure that the punishment fits the crime.

Punishment contains an element of revenge: society and the victim are being avenged for the wrong done. This is how long prison sentences for serious offences are justified.

The crudest form of punishment can be seen in the old saying, 'an eye for an eye and a tooth for a tooth and a life for a life'. This was one of the factors used to justify the death penalty for the offence of murder.

- One US judge has put this theory into practice in sentencing other offences, by giving victims of burglary the right to go, with a law officer, to the home of the burglar and take items up to the approximate value of those stolen from them!
- In other crimes it is not so easy to see how this principle can operate, to produce an exact match between crime and punishment.

Punishment and tariff sentences

Sentencing is based on the idea that punishment for each offence should have a set minimum term. The Sentencing Council produces guidelines on sentencing for the most common crimes. These include a starting point and a range for the sentence. They also set out factors that make an offence more serious or less serious.

When producing guidelines, the Council also has to identify whether they will probably increase the numbers being sent to prison or using the probation service. This allows the government to forecast the requirements of the prison and probation services.

This system upholds the aim of punishing offenders and leads to consistency in sentencing. However, it can be difficult for courts to impose sentences aimed at reforming offenders, and the guidelines leave very little discretion in sentencing with the judges.

Activity

Research the Sentencing Council's guidelines for the guideline sentences for:

- involuntary manslaughter
- assault occasioning actual bodily harm
- robbery.

Reduction of crime including deterrence

There are two main kinds of deterrence:

- **Individual deterrence** aims to ensure that the offender does not reoffend, through fear of future punishment.
- **General deterrence** aims at preventing other potential offenders from committing crimes.

Both are aimed at reducing future levels of crime.

Individual deterrence

By imposing a severe penalty, the theory is that the offender will think twice in the future, for fear of punishments such as a prison sentence, a suspended sentence or a heavy fine. However, prison does not appear to deter, as about 45 per cent of adult prisoners reoffend within one year of release.

Critics of the theory of deterrence point out:

- It assumes that an offender will stop to consider what the consequences of their action will be. In fact, most crimes are committed on the spur of the moment, often under the influence of drugs or alcohol. These offenders are unlikely to stop and consider the possible consequences of their actions.
- Fear of being caught is more of a deterrent, and because crime detection rates are low, the threat of an unpleasant penalty seems too remote. Use of CCTV in town centres, business and residential properties may act as a deterrent for some potential offenders.

General deterrence

The value of this aim is more doubtful, as potential offenders are rarely deterred by severe sentences passed on other people. However, judges do occasionally make an example of one offender in order to warn other potential offenders of the type of punishment they might face.

- General deterrence relies on publicity, so that potential offenders are aware of the level of punishment they can expect.

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