The English Legal System

Plan:

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II. THE ENGLISH AND WALES COURT SYSTEM
III. POLITICAL INSTITUTIONS IN THE UNITED KINGDOM

I. ORIGINS AND DEVELOPMENTS OF ENGLISH LAW

Occidental legal systems are divided into two traditions:
- The Anglo-Saxon tradition of the common law and
- The Latin/Roman tradition of the civil law.

1. COMMON LAW / CIVIL LAW

Common law is the legal system used in England and Wales. It is mainly based on the idea of precedent: when a court makes a decision about a case, that decision becomes a part of the law of the country.

There are a variety of sources of English law:
- Custom;
- Equity;
- Case law;
- UK legislation;

Civil law is based on legislation. In this legal system, the decisions of judges do not affect the laws of a country. Civil law is the most common legal system in the world. The civil law system was developed from Roman Law, the legal system used in the Roman Empire.

a. Custom

The common law started developing after the Norman conquest in 1066. Before that, local unwritten customs determined most laws originally. But the problem of customs was the lack of unity.

The Norman Conquest in 1066 changed things: travelling justices were appointed by the Norman Kings to examine the different local practices. The aim was to found a set of laws to be applied uniformly throughout the country.

The common law was built up from local practices and judge-made law: that’s why the common law system is based on the principle of stare decisis (= most courts are bound by their own previous decisions in similar cases, and all lower courts should make decisions with previous decisions of higher courts).

b. Equity

Equity is a specific set of legal principles, which add to those provided in the common law. Equity emerged to moderate the inflexibility of common law. Equity follows a variety of doctrines such as the “clean hands” doctrine: equity can only be invoked by someone who came with clean hands, i.e who has done nothing wrong (such as breach of law or breach of contract). Equity grant numerous remedies such as injunction, specific performance and rescission.

c. Case Law (= judge-made law)

Judges play an essential role in influencing English law: they decide upon cases (= the principle of stare decisis) and interprete legislation.
There are 4 steps for a judicial decision:
- Statement of material facts;
- Statement of legal principles upon which the decision is founded = the ratio decidendi. The ratio decidendi is binding upon lower court judge;
- Obiter dictum = a remark made or opinion expressed by a judge in a decision upon a cause. It is an opinion unnecessary for the decision of the case. The obiter dicta are not binding as precedent;
- The decision.

d. **UK legislation**

The British Parliament votes on primary legislation (= Acts of Parliament) whereas government bodies are empowered by Parliament to pass legislation known as secondary legislation or delegated legislation.

2. **THE PASSAGE OF A BILL AND ROYAL ASSENT**

A Bill is:
- A proposal for a new law or
- A proposal to change an existing law.

Once a Bill has been debated and approved by each House of Parliament, and has received Royal Assent, it becomes law and is known as an Act of Parliament.

Any member of Parliament can introduce a Bill. Some Bills are introduced into Parliament by ministers.

The Royal Assent is the final step required for a parliamentary bill to become law. It is considered to be little more than a formality because the Royal Assent is almost always granted.

3. **EUROPEAN UNION LEGISLATION**

European Union Legislation is also a source of English law because UK is a member of European Union. EU law takes precedence over the UK law where there is a conflict between the two: it was declared by the European Court of Justice in the case Costa v ENEL (1964).

There are 4 types of EU law:
- Recommendations ans opinions;
- Decisions;
- Directives and regulations.

II. **THE ENGLISH AND WALES COURT SYSTEM**

1. **INFERIOR OR LOWER COURTS**

a. **Magistrates’ Courts**

They originate from 1285, during the reign of Edward I. It is where almost all criminal proceedings start and about 90 per cent will be completed there. Some civil matters are also decided here, notably family proceedings. Cases are heard by 3 lay magistrates or by a single District Judge (professional judge). The sentencing powers of magistrates are limited to a maximum sentence of 6 months imprisonment for a single offence, 12 months imprisonments for 2 separate offences or more.

b. **County Courts (= tribunal du comté)**

The County Court deal with civil matters. Types of civil case dealt with in the County Court include: personal injury (where the amount demanded is less than £ 50,000), negligence and contract claims, real property claims, bankruptcy and some family proceedings. Circuit judges generally hear cases worth over £15,000 or involving greater importance or complexity. Circuit Judges, Recorders and District Judges all sit in County Courts.
2. **SUPERIOR OR HIGHER COURTS**

a. **The Crown Court**

It deals with **serious criminal cases**.  
It sits in around **92 locations** throughout England and Wales.  
The Crown Court has first instance jurisdiction in cases involving **indictable offences**.  
The Crown Court is presided over by a **professional judge**.

b. **The High Court**

The High Court is the third highest court in the UK.  
It deals with **civil cases and appeals of decisions made in lower courts**.  
It is based in London at the Royal Courts of Justice, as well as in various cities across the country.

It is organised into **3 divisions**:

- **The Queen’s Bench Division** (QBD): it deals with other civil law cases including *libel, slander* and breach of contract. There are also various specialised courts within the QBD such as the Commercial Court;

- **The Chancery Division**: it deals with disputed wills, the appointment of guardians, *trusts*, the rectification of deeds, *wardship*, *land and mortgage actions* etc. ;

- **The Family Division**: it deals with family matters.

Each Division includes a court of appeal called **Divisional Court**.

Most High Court proceedings are heard by a **single judge**, but certain kinds of proceedings, especially in the Queen's Bench Division, are assigned to a Divisional Court, **a bench of two or more judges**.

A **jury** will occasionally sit in the High Court, but only in cases involving defamation, false imprisonment, malicious prosecution and fraud.

The court also hears **applications for habeas corpus** (= applicants claim they are unlawfully detained and ask to be set free).

The High Court exercises **judicial review** of decisions made by government bodies, inferior courts and tribunals.


c. **The Court of Appeal**

It deals with **appeals regarding criminal (Criminal Division) and civil laws (Civil Division)**.  
They are usually **3 judges**.  
Decisions are taken by a **majority**.

**Civil Division**:  
The **Master of Rolls** is the president of the civil division. The other judges are the **Lord Justices of Appeal**.  
If the appeal is accepted, the **original decision can be reversed, affirmed or amended, or a new trial can be ordered**.

**Criminal Division**:  
It deals with appeals against **sentences and convictions in the Crown Court**.  
The **Lord Chief Justice of England and Wales** presides over this division.  
The Criminal Division can **dismiss appeals, It can also quash previous convictions and order retrials**.
d. **The Supreme Court of the UK**

**History:**

The Supreme Court was established by Part 3 of the **Constitutional Reform Act 2005** and started work on 1st October 2009. It assumed the **judicial functions of the House of Lords**, which were exercised by the Lords of Appeal in Ordinary (commonly called "Law Lords"), the 12 professional judges appointed as members of the House of Lords to carry out its judicial business.

On the commencement of the Supreme Court in October 2009, all current Law Lords became its first Justices.

**Role of the Supreme Court:**

The Supreme Court:

- Is the **final court of appeal** for all United Kingdom civil cases, and criminal cases from England, Wales and Northern Ireland;
- Hears appeals on arguable points of law of **general public importance**;
- Concentrates on cases of the **greatest public and constitutional importance**;
- Hears a case where there is a **conflict** between decisions in the House of Lords, judicial Committee of the Privy Council and / or the Supreme Court;
- Hears cases raising an importance point **in relation to the European Convention of Human Rights**.

**Not all cases can be appealed in the Supreme Court.** In most cases, you must first apply for permission to appeal from the court which made the initial decision. If permission is turned down (= rejetée), you can then apply to the Supreme Court for permission.

The majority of the cases are civil law matters.

The decisions are taken by **majority**.

e. **Judicial Committee of the Privy Council (JCPC)**

The JCPC serves as a **final court of appeal for UK Overseas Territories and for a number of Commonwealth countries.**

It is the highest court of appeal in **some cases**.

Judgments of the Judicial Committee are not generally binding on courts within the UK, having only **persuasive authority**, but are **binding on all courts within any other Commonwealth country from which an appeal is heard**.

**Domestic jurisdiction :**

The Judicial Committee of the Privy Council has jurisdiction in the following **domestic matters**: appeals from the ecclesiastical courts, appeals from the High Court of Chivalry etc.

It also deals with final appeals in matters relating to **professional discipline** for medical practitioners, dentists etc.

The Queen also has the power to refer any matter to the JCPC for “**consideration and report**”.

f. **European Courts**

**The European Court of Justice (ECJ) in Luxembourg**: it is a supreme court for the **interpretation** of European Union law.

**The European Court of Human Rights in Strasbourg**: this court hears complaints concerning breaches of the European Convention of Human Rights.

A decision of this court will not change immediately English law: it is up to the Government of the UK to decide what action to take after an **adverse finding**.
III. POLITICAL INSTITUTIONS IN THE UK

1. PARLIAMENT

Parliament is the supreme law-making body: this means that it has complete sovereignty to make or unmake any law that it wishes to.

It is a bicameral legislature, which includes:
- An Upper House called the House of Lords;
- A Lower House called the House of Commons: members of this House are democratically elected whereas members of the House of Lords are not elected by universal suffrage.

His position has now changed, however, following the United Kingdom’s accession to the European Union in 1972. EU law now takes precedence over that of the UK where there is a conflict between the two.

2. THE EXECUTIVE BRANCH

The Government:
The Government performs the executive functions of the UK.
The Government is headed by the Prime Minister and is divided between specialised Departments of State.

The Cabinet:
The Cabinet of the United Kingdom is the main decision making body of the country and consists of the Prime Minister and up of about 20 Cabinet ministers (who are the most senior of the government ministers) of his choosing.
The cabinet ministers include the most important departments (secretary of State of Treasury, Justice, Education…). Cabinet members may have the title of secretary of state.

The Shadow Cabinet:
It comprises a senior group of opposition spokespeople (= porte-paroles) who, under the leadership of the Leader of the Opposition, form an alternative cabinet to that of the government.

3. THE BRITISH MONARCHY

The United Kingdom is a constitutional monarchy, meaning that it has a monarch as head of state.
Nowadays, the monarch’s role is largely ceremonial.
The day-today running of the country is left to the prime minister and the heads of the various ministries of state.

Nevertheless, the monarch does retain some powers, known as the Royal Prerogative, which are generally exercised upon the advice of the prime minister or other ministers.
One of the most important of these is the power to appoint or dismiss prime ministers.
Other powers under the royal prerogative include the power to make war and peace, the power to issue passports, and the power to appoint bishops and archbishops of the Church of England.

Another aspect of the Monarch’s legislative role is the Royal Assent (cf. supra) = a bill becomes an act of parliament.
The Monarch symbolises the sovereignty of the state in foreign affairs and is commander in Chief of the Armed Forces.
**VOCABULAIRE :**

- custom = coutume
- equity = équité
- case law = jurisprudence
- the lack of unity = le manque d’unité
- travelling justices = juges itinérants
- was built up = a été construite
- to found a set of laws = fonder un ensemble de lois
- throughout the country = à travers le pays
- local practices = pratiques locales
- judge-made law = droit jurisprudentiel
- bind = lier
- are bound by = sont liées par
- breach of law = violation du droit
- injunction, specific performance and rescission = injonctions, mesures d’exécution forcée, résiliation/annulation
- they decide upon cases = ils fondent leurs décisions sur des cas précédents
- statement of material facts = exposé des faits matériels
- empowered = habilité
- Royal Assent = assentiment royal
- regulations = règlements
- lay magistrates = magistrats non professionnels
- personal injury = dommages corporels
- negligence and contract claims = manquements contractuels
- bankruptcy = faillite
- worth over = d’une valeur supérieure à
- indictable offences = actes criminels
- libel, slander = diffamation, calomnie
- disputed wills = contestations en matière de testaments
- trusts = fiducies
- deeds = actes
- wardship = tutelle
- land and mortgage actions = actions en matière de terrains et hypothèque
- judicial review = contrôle / révision judiciaire
- sentences and convictions = peines et condamnations
- dismiss appeals = rejeter les appels
- quash = annuler
- order retrials = ordonner des nouveaux procès
- domestic jurisdiction = compétence nationale
- adverse finding = décision défavorable
- bishops = évêques