

Lambarth, Michael. A Really Basic Introduction to English Law and the English Legal System

Chapter 5 – The Court System

Before we look in more detail at what judges do and how their decisions impact on the current law, it is important to know a little about the court structure in the English legal system. In chapter 3 we spent some time differentiating between the criminal and civil justice system, and unsurprisingly the court system is also split between these two aspects. As a general rule, civil cases are heard (decided) in what are known as the “civil courts” and criminal matters are heard in the “criminal courts”. As is always the case in law, it is not quite as straightforward as that, but for our purposes we’ll stick with it.

So what do we mean by the civil courts and the criminal courts? Well, let’s take a criminal case first as most people tend to be more familiar with those. Assume I have stolen some goods from a shop, otherwise known as shoplifting. That is a criminal offence and if caught I will probably be arrested. I may be detained by the security personnel at the shop itself or arrested later by the police once they have tracked me down (using CCTV images and witness reports for example). If the police collect sufficient evidence then they will charge me with the offence and refer my case to the Crown Prosecution Service (which we talked about in chapter 3). They decide whether or not to prosecute me, which you will recall means take me to court. The particular court I will first appear before would be the Magistrates’ Court. This is the “lowest” type of criminal court and the judge is, unsurprisingly, called a Magistrate. In fact there will usually be two or three Magistrates deciding my case. Alternatively it could be a District Judge, who is a legally qualified judge, but let’s stick with Magistrates for now. Magistrates are generally not legally qualified, although they have obviously received training to equip them to do their job, and they do have a qualified clerk to advise them about legal matters should the need arise. More or less anyone can apply to be a Magistrate. The idea is that they are serving their community by administering justice to people who live in that same area. Some people think they become “case-hardened” because they deal with the same types of crimes again and again, and this gives them the reputation of being quite harsh. Whatever the truth is here, it is a fact that Magistrates deal with the vast majority of criminal cases in England and Wales.

The Magistrates’ Court does, however, have limited powers. It can decide cases which are towards the less serious end of the criminal spectrum, known as summary offences. These would include littering, many driving offences, being drunk and disorderly and various technical offences relating to

businesses for example. For an individual offence it can send someone to prison for up to six months or fine them up to £5,000, or make an order that the person should undertake some kind of community sentence.

Due to these restricted powers, it is probably clear that they cannot decide the most serious types of offence. These are referred to as indictable offences, and would include murder, rape and robbery. In these cases, the accused will still appear before the Magistrates in the first instance, but the case will be referred on to a higher court for the full trial (or for sentencing if the accused person pleads guilty). In this case the higher court will be the Crown Court, which we will consider in a moment.

There is also a huge range of crimes which fall between minor offences and very serious offences. In fact, for many of these crimes it depends on the nature of the crime as to how serious they are. These crimes are called "either way" offences and examples include theft, drugs offences, criminal damage and burglary. Take theft for example. If I see someone accidentally drop some money on the bus and I then pick it up and treat it as my own, then this is theft. What I should do is make a reasonable effort to return the money to its owner, or simply leave it where it is of course! However, assuming the amount of money is small, then this is clearly a low level crime and, if it went to court, would be heard in the Magistrates' Court.

We could compare this to the situation where I actively go out and try to steal significant amounts of money from people's handbags when they are not looking, or where I steal a large amount of money from my employer. These crimes are likely to be treated more seriously and if the Magistrates do not feel that the appropriate punishment is within their powers then they can refer the case up to the Crown Court. The Crown Court has unlimited powers and can sentence the accused to anything up to life in prison.

You can probably see how the nature of a burglary, or of criminal damage, can determine whether a crime is heard in the Magistrates' Court or the Crown Court. A case of common vandalism is likely to end up before the Magistrates, whereas deliberately causing major structural damage to a residential building is likely to end up in the Crown Court.

When referring cases up to the Crown Court there will be a delay whilst the case is prepared and a court hearing time can be arranged. In the meantime there is the question of what will happen to the

accused. This is another task of the Magistrates' Court – to decide if bail should be granted. If bail is granted then the accused is free to go pending the Crown Court hearing. Strict bail conditions might be applied by the court, such as the accused being ordered to surrender their passport or refrain from contacting certain people or going to specified places. Bail can also be an issue if the court needs to wait for further information to be produced before it can decide punishment, such as a report from a social worker.

The Crown Court itself differs to the Magistrates' Court. In the Crown Court we will always find a qualified judge, as well as a jury. There is no jury in the Magistrates' Court and so the Magistrates themselves determine the guilt of the accused and then decide on any appropriate punishment. In the Crown Court it is the jury which decides whether a person is guilty. A basic jury consists of 12 people drawn at random from the general population and, like a Magistrate, is an example of the legal system using lay-people (unqualified people) to undertake an important role. The job of the jury is to assess the evidence presented by both the accused (known as the defendant) and by the prosecution. The role of the judge is to ensure that the trial is fair and to decide what punishment should be applied if and when it is necessary. The judge will apply the rules of evidence so that the jury only gets to evaluate evidence which is fair. These rules are complex but essential to ensure that justice is done.

The jury can only convict the defendant if they decide that he or she is guilty beyond reasonable doubt. This is a very high level of proof. It means that the members of the jury must have no doubt in their minds that the defendant is guilty. The evidence must therefore be reliable and credible in order to persuade the jury of the defendant's guilt. If the defendant is found not guilty then they are free to go. If they are found guilty then the judge will pass sentence. Unlimited fines and life sentences are available to Crown Court judges, although each type of offence brings its own limitations on sentencing. Murder carries a mandatory life sentence (although this does not necessarily mean that the guilty person will spend the rest of their life in prison).

Many people who are new to the study of law find the concept of evidence quite difficult. When all is said and done, it is not about what happened, but about what we can prove. Undoubtedly people are not prosecuted, or not found guilty, of crimes they have committed because there is not enough evidence to convict them. Similarly, innocent people are sometimes found guilty because evidence is misunderstood or falsified in some way. The system is far from perfect, but if we start advocating

a system in which people can be found guilty just because “we know” they are guilty, we are starting out on a very dangerous road. Appeal processes are there to correct miscarriages of justice, and we’ll look at those a little later on.

So the first two criminal courts we have encountered are the Magistrates’ Court and the Crown Court. Let’s turn our attention to the civil court system for a while. Remember, the civil courts hear or decide cases which are not criminal; in other words, cases which do not include a crime. We said in chapter 3 that this in fact amounts to a massive body of law and therefore a huge number of cases each year, including commercial cases, family matters, cases about land and property and so on.

The lowest civil court is called the County Court. Like Magistrates’ Courts, they are spread around England and Wales in all major towns and cities. The majority of civil cases will start in the County Court, although some “larger” or more complex cases can be started in the High Court depending on the nature of the case.

Cases in the County Court are heard by a circuit judge or a district judge. Both are legally qualified ^{46 evidenziatori} and work on their own. A circuit judge also hears cases in the Crown Court, and tends to hear the more complex cases in the County Court. Judges try to keep civil cases moving so that they are dealt with quickly and efficiently. There tends to be more toing and froing in and out of court in civil matters due to the variety of cases which arise and the complexity of the particular issues at stake. One of the parties to the dispute might want to slow things down and that is something the courts do not like to see. Remember that in a civil case it is generally one person against another, unlike a criminal case where the Crown Prosecution Service prosecutes the defendant on behalf of the Crown.

There is no jury in civil cases. Exceptions do exist, the main one being for cases involving defamation ^{43 evidenziatori} (where someone tells lies about someone else which damage their character) but the vast majority of civil cases will be heard without a jury. The judge will therefore assess the evidence and the legal arguments of both parties to the case and then make a decision about who has the better case. Rather than having to decide beyond reasonable doubt as in criminal cases, the level here is on the balance of probabilities. This simply means that the judge will decide in favour of the person who has the strongest case. As we said earlier, the parties are usually looking for monetary compensation or some other order of the court (the return of some property for example, or an order to stop trespassing on

land). Some civil cases lead to specialist remedies. For example, a local authority might approach the civil courts for what is known as a care order. A care order is an order of the court to the effect that a child should be placed into the care of the local authority, usually to protect them from potential harm. The variety of civil cases means that the range of potential outcomes from a civil case is wide.

Evidence is still a key component of civil cases, as it is of criminal cases. If I want the court to order someone to pay me a debt they owe me, then I have to prove that such a debt exists and that it has not yet been paid. If I can do this sufficiently well to tip the balance in my favour so that the judge is minded to grant the order, then the other party will need to produce evidence that no such debt ever existed, or that it has been paid, or that there is some other good reason why the court should not order that the debt now be paid. Evidence can consist of anything which helps to prove to the court that what you are saying is true. It can include CCTV images, witness statements, photographs, medical reports, expert reports, documentary evidence and so on. For my debt case, I will want to produce any written agreement we had between us, or any order forms, statements or invoices which prove the amount outstanding. The other party might produce a copy of a cheque or electronic payment or possibly any receipt they have received to evidence the fact that they have paid.

The High Court, which hears civil cases that are more complex or involve larger amounts of money, is presided over by a High Court judge. Again, these judges are legally qualified and usually hear cases alone. The High Court is split into three divisions which cover different areas of law. They are known as the Family Division, the Chancery Division and the Queen's Bench Division.

Unsurprisingly, the Family Division decides cases relating to family issues such as marriage, children and death. The Chancery Division decides cases about tax, bankruptcy, patents, trusts and disputes involving companies. Finally, the Queen's Bench Division hears cases on contractual disputes, commercial matters and general civil matters such as claims for personal injury. Being a civil court, the High Court has no jury of course.

At this point let's just remind ourselves of something we said earlier in the book. In chapter 2 we were talking about the difference between a solicitor and a barrister and we highlighted one of the main differences being that a barrister tends to do more court work than a solicitor. In fact, solicitors are generally allowed to present cases in the two lower courts that we have just been discussing, being

the Magistrates' Court for criminal matters and the County Court for civil matters. If the case proceeds higher, to the Crown Court or High Court, then a barrister would need to be instructed to present the case to the court, unless the solicitor had undergone specialist training to enable them to present before the higher courts.

Once we get above the Crown Court and the High Court, the systems sort of come together in that the next step up the ladder for both the criminal and civil systems is the Court of Appeal. You are likely to have heard about this on the news. The Court of Appeal hears important cases which often have some kind of national interest. It is split into two divisions, being the criminal and civil divisions. Court of Appeal judges are very senior judges and tend to sit three at a time to hear a case. The Court only hears appeals, so they will always be cases which have already been heard by a lower court. In fact, the Crown Court and High Court also hear appeals from the courts below them (the Magistrates' Court and the County Court), but most of their time is spent hearing new cases. The Court of Appeal is the first court we have met which deals solely with appeals.

Finally, at least within England and Wales, we find the UK Supreme Court sitting at the top of the ladder of the court system. This court hears appeals from the Court of Appeal in both civil and criminal matters, and sometimes from the High Court. Its functions used to be undertaken by the House of Lords. Like the Court of Appeal, senior judges decide cases in this court and they tend to sit in fives, or even sevens for very important cases. A majority verdict is needed to reach a decision and it is not uncommon for the judges to be split 3:2 in complex or controversial cases.

When it comes to appeals, they are usually heard by the court which is next "up the chain" in the court system. For example, an appeal from a decision made in a County Court will usually be heard in the High Court. An appeal is the right of a person to challenge the decision that has been made by the court. Obviously, it is usually the person who has lost the court case who will appeal. If the appeal is successful then the decision of the original court is replaced by the decision of the new, higher court.

So there we have a brief summary of the court system in England and Wales as well as the appeal process. There are other types of court which I have not included here in order to keep things simple. For example, you may well have heard of tribunals. These are a type of court found towards the lower end of the court system and tend to deal with specialist areas such as social security matters,

employment disputes and taxation cases. It is also worth noting here that many people decide that the court system is not for them and they seek some form of alternative dispute resolution outside the court system. Our next task is to think about what it is that the courts actually do and how this helps to develop English law.