The Legal Systems of Britain

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The Legal Systems of Britain

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INTRODUCTION

ALTHOUGH the United Kingdom is a unitary state, it does not have a single body of law universally applicable within its limits. This situation results from the composite nature of the country, and was built into the arrangements made when the component parts were united. England and Wales on the one hand and Scotland on the other have their own distinctive legal systems and law courts. The existence of a single Parliament for England, Wales and Scotland since 1707[1] and of a common final court of appeal (the House of Lords) has resulted in substantial similarity on many points, but considerable differences in law and in legal practice and procedure remain. In Northern Ireland the structure of the courts and legal procedure have for centuries closely resembled those in England and Wales, but there are often differences in enacted law.

English law is the historical source of the Anglo-American or 'common law' group of legal systems. It is quite distinct from the Romano-Germanic or 'civilian' systems common in Western Europe and South America which derive from Roman law—the law of the Roman Republic and Empire which was codified in the sixth century by the Emperor Justinian, fell into decay, and began a second life with the renaissance of legal studies in European universities in the twelfth and thirteenth centuries. Scots law belongs to a small group of 'mixed' legal systems which have legal principles, rules and concepts modelled on both Romanistic and English law.

The historical development of English law has been quite different from that of the Romano-Germanic systems, and accounts for some of the existing differences between the legal systems of England and Wales and of Scotland. In the period between the renaissance of Roman law studies at European universities and the codification of European national laws beginning about 1800, the continental systems were dominated by the writings of jurists which strongly influenced legal practice. In contrast, English courts evolved the law case by case, and English lawyers found their law in the reports of the judges' decisions rather than in jurists' writings. The influence of these historical variances is matter for debate, but they are traditionally said to have produced different kinds of legal systems, rules and institutions, and differences in legal approach and outlook.

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[1]A major constitutional change being proposed by the Government to move decision-making closer to the people envisages the establishment of elected assemblies for Wales and Scotland. The assemblies would have certain common characteristics and relationships to the central Government, but would also naturally reflect the existing differences in governmental structure between the two countries, particularly the fact that Scotland has its own distinctive legal system. The Welsh assembly would have certain powers of delegated legislation and some executive functions; the Scottish assembly would assume primary law-making powers in certain devolved domestic subjects, and there would be a Scottish executive with powers to carry out certain executive functions and to make delegated legislation.

The setting up of the assemblies would not, however, detract in any way from the overriding interest of all British people in the determination of United Kingdom policies as a whole, and the United Kingdom Parliament and Government would remain fully responsible for overall British interests.

Fuller details of the proposals are set out in COI reference document, *Devolution in Great Britain*, Factel No 652.

This pamphlet sets out in separate sections the main features of the English legal system (which applies in both England and Wales) and the Scottish legal system. A separate brief summary is given of the Northern Ireland legal system.

European Community Law

On 1 January 1973 the United Kingdom became a member of the European Community.[1] The European Communities Act 1972, which received the Royal Assent on 17 October 1972, gives legal effect in the United Kingdom to directly applicable rights and duties under Community law; it enables the Government to make orders and regulations to give effect to the country's obligations as a member of the Community; and it alters existing United Kingdom law to take account of specific Community obligations.

Community law is the body of law consisting of rights and duties, powers and remedies arising out of the treaties setting up the European Economic Community, the European Coal and Steel Community and the European Atomic Energy Community. 'Primary' Community law is to be found in the treaties; 'secondary' law comprises the instruments—regulations, directives and decisions—made under the authority of the treaties by Community institutions (the Council of Ministers, a body composed either of the foreign ministers of the nine member countries or of the ministers of those countries responsible for the subject under discussion, or the European Commission, a primarily executive body comprising Community officials). The law is normally applied by the domestic courts of the member countries, but the most authoritative rulings are given by the Court of Justice of the European Community (see p 3).

The English, Scottish and Northern Ireland legal systems remain intact, and their courts continue to operate as before. In the event of conflict, however, Community law prevails over domestic law, by virtue of the European Communities Act 1972.

The most commonly used instrument of secondary Community law is the *regulation*, which is binding in its entirety and has the force of law in each member country without further action by the national parliament. A large proportion of regulations deal with agricultural levies and prices, but they can be used in all the fields covered by the Community treaties, including such matters as the common external tariff and the free movement of goods. *Directives*, on the other hand, are binding as to the result to be achieved while leaving each member country to decide the method of implementation. This means that each country amends as necessary its own domestic laws or administrative practices to bring them into line with Community law. Directives are used, for instance, for the harmonisation of member countries' legislation dealing with weights and measures or safety. *Decisions* are usually concerned with specific problems, and are only binding on those to whom they are directed. They may, for example, enjoin a member country to stop an infringement of a treaty, or authorise a particular course of action. The Council of Ministers and the Commission are also empowered to make *recommendations* or to give *opinions*; neither has binding force.

[1]For details of British membership of the Community see COI reference pamphlet, *Britain in the European Community*, R5999.

The main areas covered by the rules of Community law include: agriculture and fisheries; the movement of goods, labour, services and capital; transport; monopolies and restrictive practices; state aid for industry; and the coal, steel and nuclear energy industries.

Court of Justice of the European Community

Under the Community treaties the Court of Justice of the European Community interprets and adjudicates on the meaning of the treaties and of any measures taken under them by the Council of Ministers and the Commission. It hears complaints and appeals brought by or against Community institutions, member states or individuals, and it gives preliminary rulings on questions referred to it by courts in the member states. Thus questions of the validity and interpretation of Community law may be referred to the court by United Kingdom courts, and they must be so referred when the question arises in a court or tribunal from which there is no appeal. In a case of this kind the Court of Justice makes a preliminary ruling on the question referred, and this is binding on the national court on that particular point; it remains with the national court to apply the law thus interpreted and to decide the case. The Court of Justice consists of nine judges assisted by four advocates-general.

ENGLAND AND WALES

ORIGINS AND SOURCES OF ENGLISH LAW

The main sources of English law are legislation, 'unwritten' law and European Community law. Legislation consists of laws made by, or under the authority of, Parliament and may comprise statutes (Acts of Parliament) or delegated legislation—that is to say, 'statutory instruments' (which are Orders in Council, orders, rules and regulations made by a Government minister under the authority of a statute) or by-laws made by local government or other authorities exercising powers conferred upon them by Parliament. Unwritten law consists of the common law and equity. European Community law (see p 2), which arises out of the United Kingdom's membership of the European Community, is largely confined in impact to economic and some social matters. It stands alongside both legislation and the unwritten law, and, in the event of conflict, takes precedence over them.

There is, at present, no code of English law, although the Law Commission (see p 34) is working on the codification of certain of its branches. The law today is contained in about 3,000 Acts of Parliament, some thousands of statutory instruments and statutory rules and orders, and over 300,000 reported cases.

Common Law

The common law of England evolved from spontaneously observed rules and practices, shaped and formalised by decisions made by judges pronouncing the law in relation to the particular facts before them. It was so called to distinguish it from local laws as well as from any law that was particular or special, such as the canon laws emanating from Rome or the law merchant practised in mercantile courts.

In the Anglo-Saxon period (roughly, from the fifth to the eleventh century) the principles applied in local courts broadly reflected the customs of local communities as declared by the freemen of those communities, who were the judges of the courts. After the Norman conquest in 1066, the King's judges gradually welded the many and varied local customs into a single body of general principles which they applied uniformly, first during their periodic circuits through the shires and later at their meetings in London to hear cases at the royal courts.[1] In order to achieve consistency, the judges placed great reliance on previous judgments given in similar cases—a practice which gave rise to the doctrine of judicial precedent[2] upon which all law in England, other than legislation, is based. It is likely that the necessary information was at first passed from one judge to another through personal contact, but towards the end of the thirteenth century some unknown persons began to note down and circulate the rulings of judges both on circuit and in the royal courts and also the arguments of pleaders, as barristers

[1]The courts of Common Pleas, King's Bench, and Exchequer.

[2]Judicial precedent (that is to say, the application of the law to the ascertained facts) binds judges of the lower courts, it also normally binds judges in courts of equal rank, though the House of Lords (see p 14) declared in 1966 that it would in future be prepared to depart from its own previous decisions where it seemed just to do so.

(see p 30) were then called. These notes were contained in Year Books, which covered the period 1283 to 1535 and were the forerunners of the published Law Reports that have existed in one form or another for more than 400 years.

Actions in the common law courts were initiated by writs obtained from the Chancery (the office of the Chancellor and a skilled body of clerks[1]). Originally used by the Sovereign to settle disputes brought to his notice by subjects who had been, or considered themselves to have been, wronged, the writ soon developed from a royal command ordering that an alleged wrong should be righted into a direction to an official to hold an inquiry into a complaint or to a defendant either to concede or to answer a plaintiff's claim. During the twelfth and early thirteenth centuries a great many writs were issued in a wide variety of forms, and presently they began to shape the main branches of common law and the procedure appropriate to those branches. As time went on, a semi-official register of writs appeared, and this came to be regarded as an exhaustive catalogue of the causes of action known to law.

The circumscription of the law within the framework of the writ system (together with a temporary restriction on the office of the Chancellor to create new writs) acted as a brake on the development of the common law. After 1285 litigants were again able to obtain writs, but they ceased to be able to rely upon redress, since the courts of common law had established their right to declare that any cause or action that was not contrary to the established legal rules was unknown to law.

Equity

Among the defects of the medieval common law were that it did not cover the whole field of obligations; it had no means of extracting the truth from litigants (since it relied on documents and refused to listen to the parties themselves); its judgments were not capable of being adapted to special circumstances, and its process in the course of a suit was ineffective—even a successful suit might be an empty victory for the winner.

Some people who failed to get satisfaction in the common law courts were, however, allowed to petition the Sovereign or his council (see p 4). These petitions were handled by the Chancellor who, as well as being 'Keeper of the King's Conscience', was the head of the writ office and in this capacity presumed to be acquainted with the general working of the law. At first the Chancellor made recommendations to the council, but soon he began to take decisions on his own initiative and presently petitions[2] came to be addressed direct to the Court of Chancery rather than to the King.

In certain matters the Court of Chancery was able to enforce rights not recognised at common law (as in trusts and married women's property).

[1]The chief clerks were called Masters. The foremost among them was known as the Master of the Rolls and frequently deputised for the Chancellor in his judicial work.

[2]During the fifteenth century these petitions became more frequent, and although initially such relief was spasmodic and dependent on the facts of the case, by the sixteenth century there were, in addition, certain areas of the law where it was usual for the Chancellor to provide relief. However, in contrast to the common law, remedies in equity were discretionary; this is still true today.

In other matters, such as contract, fraud, accounts and partnerships, it was able either to give an alternative and more efficient remedy or to provide a remedy to replace a common law remedy that had been lost. In matters outside its direct jurisdiction, it could use its special procedure (a) to help to determine the rights of parties in other courts by compelling the disclosure of facts and documents,[1] (b) to secure to the plaintiff, if successful, the fruits of litigation, and (c) to protect a third person from injury through the conflicting rights of others. The Court of Chancery exercised an overriding jurisdiction and could prevent proceedings in the common law courts from being made the instrument of oppression either by restraining their commencement or prosecution, or by forbidding the enforcement of a judgment made under them, as the case might require.

In these ways the Court of Chancery afforded an improved means of attaining justice, but this was the extent of the difference between equity and common law. No Chancellor ever attempted to dispute the right of common law judges to pronounce the law, and gradually—as the vigour of the early Chancellors gave way to the more conservative outlook of successors—the Court of Chancery adopted the common law court practice of relying on the process of legal analogy, holding wherever possible to the maxim that 'equity follows the law'. The result was that, by the end of the eighteenth century, equity had hardened into a body of legal doctrine as settled as the common law, and the systems had grown so much alike—save that equity dealt with different claims and provided different remedies—that there was little to choose between them, particularly as regards simplicity or speed. By the nineteenth century equity rules had become so involved and technical that long delays were frequent and a dispute involving both common law and equity sometimes took years to resolve.

Reforms were made in 1873 and 1875 by the Supreme Court of Judicature Acts, which reorganised the courts and provided that, in their new form, all should use and apply both common law and equity. In order to overcome the difficulty that might arise where a judge was faced with two, possibly conflicting, sets of rules, the Act of 1873 laid it down that where rules of common law conflicted with those of equity the latter were to prevail.

Legislation

The earliest examples of enacted laws in England were the ordinances of the *Curia Regis* (the King and his council), which, in the early Norman period, was the governing body of the realm. Law-making by Parliament did not begin until the thirteenth century; it was not until the sixteenth century that legislative Acts took the form in which they are cast today,[2] and until the late nineteenth century the amount of legislation was comparatively small. The position began to change after the passing of the Reform Act 1832 (the first

[1]The reliance of the common law courts on written documents for the greater part of their evidence rendered them powerless if a necessary document was in the hands of the opposing party, or contained a mistake, or was lost.

[2]'Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—'. An outline of the parliamentary legislative procedure is contained in COI reference pamphlet, *The British Parliament*, R5448.

of several statutes which reformed the electoral system and extended the franchise), and since the beginning of the twentieth century there has been a very great increase both in the volume of legislation and in its scope. Nowadays there is scarcely any aspect of life that is not, in some measure, affected by it.

Since Parliament is the supreme law-making body in the United Kingdom, Acts of Parliament are absolutely binding on all courts, taking precedence over all other sources of law[1], they cannot be *ultra vires* (outside the competence of—in this case Parliament) for, although the principles of natural justice (broadly speaking, rules which an ordinary, reasonable person would consider fair) have always occupied an important position in the British constitution, they have never been defined or codified in the form of guaranteed rights. Thus rights, such as the right of personal freedom, the right of freedom of discussion, and the rights of association and public meeting, which are commonly considered more or less inviolate, are not protected against change by Act of Parliament, and the courts could not uphold them if Parliament decreed otherwise. Acts of Parliament are, in fact, formal announcements of rules of conduct to be observed in the future, which remain in force until they are repealed. The courts are not entitled to question or even discuss their validity—being required only to interpret them according to the wording used or, if Parliament has failed to make its intentions clear, according to certain canons of interpretation. If by either of these means the courts reach a decision contrary to the intentions of Parliament, Parliament must either accept the decision or pass an amending Act. Meanwhile, the court's decision stands.

Delegated Legislation

The system of delegated (or subordinate) legislation, which is used to relieve pressure on parliamentary time, empowers ministers and other authorities to regulate administrative details under the authority of a particular statute. In order to minimise the risk that powers conferred on the executive in this way might supersede or weaken parliamentary government, they are normally delegated to the Queen in Council or to authorities directly responsible to Parliament—that is, to Government ministers, Government departments for which ministers are responsible, or to organisations whose regulations are subject to confirmation or approval by ministers who thereby become responsible to Parliament for them. Moreover, the statutes by which particular powers are delegated usually provide for some measure of parliamentary control over legislation made in the exercise of these powers—for instance, by reserving to Parliament the right to confirm or annul the orders themselves. Certain statutes also require direct consultation with

[1]Considerable discussion has taken place on the effect on the doctrine of parliamentary sovereignty of the United Kingdom's accession to the European Community (see p 2). Much of it has centred on the question that would arise in the event of a conflict between a future Act of Parliament and a provision of existing directly applicable Community law (given legal effect in the United Kingdom by the European Communities Act 1972). Under the traditional doctrine, in the event of a conflict between two statutes, the later Act always prevails over the earlier one, and therefore any Act passed by Parliament must be followed by the courts even though an earlier Act may have purported to prohibit the passing of such an Act.

organisations which will be affected thereby before rules and orders (in the form of statutory instruments) are made.

The principle that the courts do not question the validity of parliamentary legislation does not apply to subordinate legislation, and it is open to any court before which such legislation may come to decide whether it is *intra vires* or *ultra vires*.

BRANCHES OF THE LAW

The two leading branches of the law in England and Wales are criminal law and civil law, a division which began after the Norman conquest when a difference was first made between wrongs within the purview of the State—'pleas of the Crown'—and other wrongs. The distinction lies less in the nature of the acts and omissions covered by the two categories than in the subsequent legal proceedings and the hierarchy of law courts involved. The same wrongful act may often be both a crime and a civil wrong (for example, reckless or dangerous driving, a criminal offence, may also give rise to a civil action if it results in injury to, or damage to the property of, other people); and there is as a rule no reason why a criminal prosecution and a civil action should not both be brought, since proceedings are quite separate and independent, and take place before different courts. Broadly speaking, however, whereas civil law relates to the rights, duties and obligations of individuals between themselves, criminal law is concerned with wrongs affecting the community at large—acts contrary to the order, peace and well-being of society which render the offender liable to punishment by the State.

Other branches of the law are service law, administrative law, industrial law, Admiralty law and ecclesiastical law.

Criminal Law

In most cases the criminal law recognises a particular intention or state of mind as a necessary ingredient of a criminal offence (there are some cases of 'strict liability'). Ignorance of the law on the part of an accused person is, however, never accepted as an excuse. The law punishes not only criminal acts but also—as incitements, attempts or conspiracies—steps towards the commission of a crime which may never take place. A person may be exempted from criminal liability because he has been deprived of his free will and self-control—by coercion or insanity, for instance. Some classes of people, such as children under ten years, may also be exempted from liability. Overseas diplomats in the United Kingdom may be entitled to immunity from criminal proceedings, but are expected to respect the country's laws.

The classification of crimes may be based on the kind of harm done. There are crimes, for instance, against the person of the individual (such as assault or murder), against his or her property (burglary, arson and theft are examples), and against public rights which belong in common to all citizens (such as treason and offences against public order). Classification may also be based on the methods of 'trial' (as criminal proceedings are known); serious crimes are usually tried 'upon indictment' before a judge

and jury, while the less grave are tried 'summarily' before magistrates sitting without a jury.

Civil Law

The main sub-divisions of civil law are: family law, which includes the laws governing marriage, divorce, and the custody of children; the law of property (including intangibles), which governs ownership and rights of enjoyment, the creation and administration of trusts, and the devolution of property on death; the law of contract, which regulates, for instance, the sale of goods, loans, partnerships, insurance and guarantees; and the law of torts, which governs such actionable wrongs as negligence, defamation, malicious prosecution, nuisance and trespass—that is to say, injuries suffered by one person at the hands of another, irrespective of any contract between them.

Other Branches of the Law

Service law is codified in Acts of Parliament for the Royal Navy, the Army and the Royal Air Force (and in the delegated legislation under them). It is administered by courts martial and applies to all serving members of the armed forces of the Crown throughout the world. Its purpose is the preservation of essential discipline, and no change of substantive law can be made except by Parliament. A person subject to military law does not cease to be subject to the ordinary law, his obligations as a member of the armed forces being in addition to, and not in lieu of, his duties as a citizen.

Administrative law is particularly concerned with the executive and judicial powers conferred by Parliament on the administration, and with the effect of the exercise of those powers on the individual. The conception of rules of law governing the relations of governed and governors has existed for centuries, but it is only during the last 60 years, with the growth of state intervention in the life and doings of the subject, that it has been recognised as a separate branch of law.

Industrial law is contained in a number of Acts of Parliament. It is concerned with conditions of employment, relations between employer and employees and the legal position of trade unions, employers' associations and other organisations.

Admiralty law was originally concerned with crime, as well as with tort and contract upon the high seas. It is now limited to civil matters but, because it deals with cases involving foreign as well as British vessels, its rules differ from those which would apply in the same matter occurring on land.

Ecclesiastical law consists of such portions of the old canon law as continued in force after the Reformation in the sixteenth century, together with the post-Reformation statutes and canons of the English Church passed by Parliament, and the General Synod of the Church of England, which under its previous title of National Assembly was set up by Act of Parliament in 1919 and is the central legislative body of the Church, its measures being endorsed by Parliament. In former days ecclesiastical law governed the clergy in all their affairs and the laity in matters of faith and morals and in those aspects of their lives in which the ministrations of the Church were

required, but by the beginning of the nineteenth century many of the offences recognised by the Church in the Middle Ages had become obsolete and others had become the subject of proceedings in the ordinary courts. Later in the nineteenth century the Church's jurisdiction in matrimonial matters and over the personal property of deceased persons was transferred to newly established civil courts. Modern ecclesiastical law is thus concerned only with the regulation of church affairs, the discipline of the clergy in matters of doctrine and conduct, and control over the fabric of churches and over churchyards.

COURTS OF LAW

As a general rule, all court proceedings must be held in public—in so-called 'open court'. There are, however, exceptional circumstances (for instance, where national security is involved, where the subject matter of the suit is a secret industrial or commercial process or where the proceedings relate to the wardship, custody and access, or adoption of any infant) in which the court may sit *in camera*—that is to say, when the press and the public may be excluded. The court's jurisdiction (its authority to decide matters that are litigated before it or take cognisance of matters that are presented in a formal way for its decision) may also be exercised in private, when the judges and other judicial officers such as registrars transact such business as they are authorised by the rules of court to transact in chambers—only parties to the dispute and their legal advisers being admitted.

Courts can nowadays be created only by Act of Parliament. They may be classified in a number of ways. A distinction is sometimes made between courts of record and courts not of record, those of record having an official record of the acts and judicial proceedings that have taken place there as well as authority to fine and imprison for contempt of their authority. There is also a difference between superior and inferior courts—a superior court being one which is not subject to the control of any other court, except by way of appeal, and in which no matter is deemed to be beyond jurisdiction unless it is expressly shown to be so.

The most usual distinction is, however, between courts with criminal and those with civil jurisdiction. Even here, no hard and fast line can be drawn, as in certain circumstances civil cases are heard in criminal courts, while occasionally a criminal case may be heard in what is primarily a civil court.

In criminal cases the courts with original jurisdiction are the magistrates' courts and (for the more serious cases) the Crown Court. In civil matters magistrates' courts have a limited jurisdiction, but the main courts are the county courts (for the lesser cases) and the High Court (where the more important cases are heard). The Court of Appeal in London, which has a Criminal Division and a Civil Division, hears appeals in criminal cases from the Crown Court and in civil cases from the county courts and the High Court. The Court of Appeal, the High Court and the Crown Court together form the Supreme Court of Justice. At the top of the hierarchy of courts is the House of Lords, which, in addition to being part of the legislature, is the final court of appeal in civil cases in the whole of the United Kingdom and in criminal cases in England, Wales and Northern Ireland.

Civil Courts

Magistrates' Courts

Magistrates' courts have certain powers in matrimonial proceedings to make separation, maintenance and affiliation orders and to deal with the custody of children, and appeals on points of law can be made to the Family Division of the High Court. Committees of magistrates exercise semi-administrative functions in relation to the licensing of public houses and betting shops and clubs. Appeals usually lie to the Crown Court with a further (or alternative) appeal on legal points to the High Court.

County Courts

The 337 county courts in England and Wales are located so that no part of the country is an unreasonable distance from one of them. They are not necessarily connected with the boundaries of administrative counties. In the busier centres they may sit every weekday: elsewhere they may sit weekly, monthly or at longer intervals. All judges of the Supreme Court and all circuit judges and recorders have power to sit in the county courts, but each court has one or more circuit judges assigned to it by the Lord Chancellor, and regular sittings are mostly taken by them. Every court has a registrar who deals with procedural matters and the various steps that have to be taken before an action is tried. The registrar also acts as an assistant judge, and tries most small actions. The circuit judge tries the larger actions, and hears appeals from decisions by the registrar.

The jurisdiction of a county court covers, for instance, actions founded on contract and tort (with some exceptions such as defamation cases), where the amount claimed is not more than £1,000; equity matters such as trusts, mortgages and dissolution of partnerships, where the amount does not exceed £5,000; and actions for the recovery of land where the net annual value for rating purposes does not exceed £1,000. Cases outside these limits are usually heard in the High Court, but may be tried in the county court by consent of the parties, or they may be transferred from the High Court in certain circumstances.

Other matters dealt with by county courts include hire purchase, the Rent Act legislation, landlord and tenant questions and adoption cases. In addition, undefended divorce cases are heard and determined in county courts designated as divorce county courts (defended cases are heard by the High Court); outside London bankruptcies are dealt with in certain county courts; and complaints of racial discrimination brought by the Race Relations Board and complaints alleging some forms of sex discrimination are heard in selected courts.[1]

Small Claims Arbitration. The county court is the main tribunal for the determination of small claims, and in 1973 a scheme was introduced to enable consumer claims and other small cases to be decided informally in private by arbitration. The county court registrar can refer cases to this type of arbitration at the request of either party if the sum involved does not

[1]Stronger legislation to combat racial discrimination and promote equality of opportunity is before Parliament. This would allow people complaining of discrimination to have direct access to the courts.

exceed £100. If the amount is greater than £100, both parties can consent or leave it to the registrar to decide whether the case should go to arbitration. A circuit judge can refer a case involving an amount of up to £1,000 to arbitration.

The registrar normally acts as arbitrator. He takes an active part in the proceedings, asking questions to discover the facts at issue and dispensing with strict rules of procedure and evidence. Legal representation is discouraged by providing that for claims of up to £100 in value no legal costs can be recovered unless one of the parties has acted unreasonably. (An exception to the 'no costs' rule is made if a person sues for a personal injury if the damages exceed £5; this is because the inability to recover costs on such a claim may cause hardship, and it may be difficult for a person who has suffered an injury to estimate the damages he can claim or to deal with the case himself.)

Some two-thirds of the cases brought under the arbitration scheme concern goods sold and delivered, work done or material supplied.

Voluntary small claims arbitration schemes, based on the consent of the parties to a dispute and normally working without legal representation, have been started in two areas.

The High Court

The High Court has three divisions—the Queen's Bench Division, the Chancery Division and the Family Division—between which its work is distributed in accordance with statute, the rules of court and custom. Although exclusive jurisdiction in a particular matter is not normally given to any one division, in practice each division has a separate jurisdiction. The judges can sit in any division and can administer both law and equity, but in fact they are assigned to, and specialise in the work of, a particular division.

Among matters that must go to the Chancery Division are: the administration of estates, including those of deceased persons; partnerships and mortgages; contractual rights; and the execution of trusts and settlements. The division also deals with the 'revenue list' which consists mainly of income tax cases (which is always taken by a judge having detailed knowledge of the subject), with the special law affecting companies (including their winding-up) and with some bankruptcy matters when they have been dealt with in the county courts. The Family Division, as its name implies, deals with all jurisdiction of a family kind, including matrimonial cases, and cases relating to wardship, adoption, and guardianship. Most other civil litigation comes before the Queen's Bench Division, which has a wide and varied jurisdiction. Specialisation within this division is recognised to some extent by the assignment of particular cases to different lists. Thus, commercial cases are placed on the 'commercial list' and are heard by one of two or three judges of the division with special experience of this type of litigation. Admiralty and prize jurisdiction (dealing with naval matters and claims over captured ships or aircraft) rests with a specially constituted Admiralty Court within the Queen's Bench Division.

The Lord Chief Justice presides over the Queen's Bench Division; the Lord Chancellor is nominally the president of the Chancery Division, but he never attends, and the administration of the division is the responsibility of the senior

judge, known as the Vice-Chancellor; in the Family Division there is a President. The maximum number of other ('puisne') High Court judges is 75. In November 1975 there were 70—43 in the Queen's Bench Division, 11 in the Chancery Division (including the Vice-Chancellor) and 16 in the Family Division.

For the hearing of cases at first instance, High Court judges sit singly. Appellate jurisdiction in civil matters from inferior courts is exercised by Divisional Courts of two (or sometimes three) judges, or by single judges of the appropriate division nominated by the Lord Chancellor. For instance, appeals from county courts in bankruptcy cases are heard by a Divisional Court of the Chancery Division; appeals on points of law from magistrates' courts come before Divisional Courts of the Queen's Bench Division; and appeals against the decisions of the magistrates' courts in matrimonial proceedings lie to a Divisional Court of the Family Division.

The High Court sits in London at the Royal Courts of Justice (the 'Law Courts'), and is juxtaposed with the Crown Court at 'first-tier' provincial centres (see p 16), where, besides hearing civil cases, High Court judges deal with serious criminal proceedings.

In London the High Court has four sittings: *Michaelmas*, which normally begins on 1 October and ends on 21 December; *Hilary*, which begins on 11 January and ends on the Wednesday before Easter; *Easter*, which begins on the second Tuesday after Easter and ends on the Friday before the Spring Bank Holiday (usually the last Monday in May); and *Trinity*, which begins on the second Tuesday after the spring holiday and ends on 31 July. Two judges are selected at the beginning of each Long Vacation (during the summer) for the hearing of all cases needing prompt attention.

Appellate Courts

Appeals in matrimonial proceedings heard by magistrates' courts go to a Divisional Court of the Family Division of the High Court. Affiliation appeals are heard by the Crown Court (see p 16), as are appeals from decisions of the licensing and betting committees of magistrates.

Appeals from the county courts and the High Court are heard in the Court of Appeal Civil Division, and may go on to the House of Lords (with the leave of the court or of the House). On a point of law of exceptional difficulty calling for a reconsideration of a binding precedent, an appeal may in some cases and with the leave of the House lie directly from the High Court to the House of Lords.

The Court of Appeal has several *ex officio* members: the Lord Chancellor, ex-Lord Chancellors, Lords of Appeal in Ordinary (see p 14), the Lord Chief Justice, the Master of the Rolls and the President of the Family Division of the High Court. Of these members only the Master of the Rolls customarily sits in the court. The ordinary judges are 16 Lords Justices of Appeal. The court usually sits with a bench of three judges, except in appeals in 'interlocutory' matters (questions arising during the course of a case but before the actual hearing) when two judges may sit, and a very limited class of matters, not involving the final determination of an appeal, when one judge sitting alone may make a decision. In ordinary cases each member of the court delivers a judgment, and the majority opinion prevails. On coming to a

decision, the court has power to order a new trial or the reversal of variation of a judgment.

The appellate judicial work of the House of Lords is carried out by at least three judges from among: the Lord Chancellor, peers who hold or have held high judicial office, and the Lords of Appeal in Ordinary (the Law Lords), up to 11 professional paid judges who are given life peerages to enable them to sit in the House. The Lord Chancellor sometimes sits, but five Law Lords form the normal quorum. Lay members of the House do not attend the hearing of appeals, which usually takes place in a committee room and not in the legislative chamber. Proceedings take the form of the normal business of the House: judgments are given in the form of speeches to a motion, and the decision of the House is taken by a vote. The practice of the House is to treat its former judicial decisions as normally binding, but to allow departures from a previous decision where it appears right to do so. The House also exercises judicial authority over claims of peerage and matters relating to its own privileges.

The Judicial Committee of the Privy Council

The Judicial Committee of the Privy Council[1] derives its appellate jurisdiction from the right of all the Queen's subjects to appeal for redress to the Sovereign in Council if they believe that the courts of law have failed to do them justice (see p 5). It is now the final court of appeal from the courts of the United Kingdom dependencies and from the courts of those independent members of the Commonwealth (including some in which the Queen is not Sovereign) who have not elected to discontinue the appeal. The Judicial Committee is also the final court of appeal from the Channel Islands and the Isle of Man (which are Crown dependencies and not part of the United Kingdom), from prize courts in the United Kingdom and dependencies, and from certain professional disciplinary committees. It also has jurisdiction in a limited class of ecclesiastical appeals.

Appeals come to the Judicial Committee either where a right of appeal has been specially created—for instance, by statute, Order in Council or Letters Patent—or by special leave of the Sovereign in Council on the advice of the Judicial Committee. They are heard by a board of the committee, whose members are usually selected from the Lord Chancellor, ex-Lord Chancellors and Lords of Appeal in Ordinary, although Lords Justices of Appeal and other members of the Privy Council who have held high judicial office (including Chief Justices and certain other judges from other Commonwealth countries who have been sworn of the Privy Council) may be asked to sit from time to time. The Judicial Committee does not, in theory, deliver judgment. It advises the Sovereign, who acts on its report and approves an Order in Council to give effect thereto. Its decisions, though not binding on the English courts, are treated with great respect by them.

Criminal Courts

Criminal proceedings are held either in magistrates' courts, where the less important cases are tried under summary procedure without a jury, or in the Crown Court, where the more serious ones are tried on indictment with a jury. Magistrates' courts also conduct preliminary investigations into the more serious cases.

The procedural classification of criminal offences into those triable summarily and those triable on indictment is no longer clear-cut. Broadly, the position is that, while the most grave and complex offences which are considered appropriate for trial only by judge and jury are purely indictable and those minor offences which do not justify the use of a judge and jury are summary, some other offences fall between the two extremes and, in accordance with statutory provisions, are either indictable offences triable summarily, or both indictable and summary ('hybrid' offences) or summary offences triable on indictment. There are different, but overlapping, rules governing the determination of the method of trial for each of these different categories.[1]

One of the principal features of criminal courts in England and Wales is the important part played by laymen who have no special legal qualifications—as justices of the peace (the 'judges' in most magistrates' courts—see p 25), as jurors (see p 27) and sometimes as prosecutors (most criminal prosecutions are initiated by the police—see p 22). About 98 per cent of all criminal cases are finally heard and determined by unpaid lay justices.

Magistrates' Courts

Magistrates' courts, of which there are some 900, normally consist of a 'bench' of three lay unpaid magistrates whose function is to ascertain the facts of a case and apply the law to them. The magistrates are advised on points of law and procedure by the Clerk to the Justices (or one of his assistants) who is normally legally qualified and is also in charge of the administrative matters of the court.

In some large urban areas where the pressure of work is heavy and continuous there are also professional 'stipendiary' magistrates who are full-time, salaried and legally qualified. They usually preside over a court alone.

Generally speaking, magistrates must sit in open court. However, when, as 'examining justices', they carry out preliminary inquiries into a more serious case to see whether there is sufficient evidence to justify the committal of an accused person for trial in a higher court, the evidence must not be reported at the time except at the defendant's request, unless the magistrates discharge him.

On conviction, magistrates cannot as a rule impose a sentence of more than six months or a fine exceeding £400. When an offence carries a higher maximum penalty, they may commit the offender for sentence to the Crown Court if, after obtaining information about his character and past, they consider their sentencing power inadequate.[2]

[1]The Privy Council is the body on whose advice and through which the Sovereign exercises his or her statutory and a number of prerogative powers. It also has its own statutory powers, independent of the power of the Sovereign in Council.

[1]An interdepartmental committee under the chairmanship of Lord Justice James published in November 1975 a report entitled *The Distribution of Criminal Business between the Crown Court and Magistrates' Courts*, Cmnd 6323, HMSO, £2·00, ISBN 0 10 163230 4. In it the committee recommended that there should be three categories of offences: 'indictable' offences triable only on indictment; 'intermediate' offences triable either on indictment or summarily; and 'summary' offences triable only summarily. The committee proposed that there should be a single category of intermediate offences, to which all sets of rules and a single procedure should apply.

[2]The range of penalties available to the courts is set out in COI reference pamphlet, *Criminal Justice in Britain*, R5984.

Juvenile Courts. Care or criminal proceedings involving children and young people under 17 years of age are held before special types of magistrates' courts known as 'juvenile courts'. The case of a young person charged jointly with someone over 17 is heard in a normal magistrates' court or in the Crown Court; if the young person is found guilty and not discharged or fined, the court remits the case to a juvenile court. If a child or young person is charged with an offence which, in the case of an adult, is punishable on indictment with 14 years' imprisonment or more, a juvenile court may commit him for trial in the Crown Court. In the very rare event of a child being charged with homicide, the case is only triable on indictment at the Crown Court, but committal takes place in a juvenile court unless there is a joint charge against a person over 17 years of age.

Juvenile courts exercise their powers subject to the over-riding principle of the welfare of the child. They comprise not more than three magistrates—nearly always including at least one man and one woman drawn from a panel of those most suited to dealing with children—and must sit in a different place from other courts or at a different time. Proceedings are less formal than in an adult court, and the public is excluded. Accredited press representatives may be present, but they are not allowed to publish any details that might lead to the identification of the child unless the court or the Home Secretary expressly dispenses with this requirement in the interests of justice. The courts must explain the substance of the charge or application in language which the child can understand, and parents or guardians may be required to attend during all stages of the proceedings. Having determined the guilt of a young offender on the evidence, the court must, before deciding on a method of treatment, consider any information concerning school record, health, character and home conditions that may be provided by a probation officer or the local authority.

The Crown Court

The Crown Court is responsible for trials on indictment, the sentencing of offenders committed for sentence by magistrates' courts and appeals from magistrates' courts. It is served by judges of the High Court, full-time 'circuit judges' and recorders who sit on a part-time basis. At the Lord Chancellor's request, a Court of Appeal judge can sit in the Crown Court. All trials in the court take place before a jury.

The court has about 90 centres, each chosen as far as practicable to be within daily travelling distance of the whole population. There are six court circuits: south-eastern (with London as its administrative centre); midland and Oxford (Birmingham); north-eastern (Leeds); Wales and Chester (Cardiff); western (Bristol); and northern (Manchester). On each of these circuits the towns where the judges sit are classified in three types: *first-tier centres,* where High Court and circuit judges deal with criminal cases and High Court judges also take civil business; *second-tier centres*, dealing only with criminal business but again served by both High Court and circuit judges; and *third-tier centres*, served only by circuit judges and recorders, and dealing only with criminal cases.

The distribution of Crown Court business is determined by directions from the Lord Chief Justice, with the agreement of the Lord Chancellor. Offences always tried by a High Court judge include murder and treason, and offences normally tried by a High Court judge include manslaughter and rape; the vast majority of indictable offences can be tried by any judge of the Crown Court—a High Court judge, circuit judge or recorder. Offences such as wounding and theft may be tried either on indictment or summarily, but, in the more serious cases, are almost always tried before a circuit judge or recorder.

Lay magistrates have a role to play in the Crown Court. A circuit judge or recorder sits with between two and four magistrates for appeals and committals for sentence from magistrates' courts, and may sit with magistrates to try the less important cases on indictment. For the more serious cases a High Court judge sits alone. In the City of London, where the Crown Court is known as the Central Criminal Court (the Old Bailey), the Lord Mayor and aldermen can sit with any judge in any type of case.

Appeals

A person convicted by a magistrates' court may appeal to the Crown Court against either the conviction or the sentence imposed. The appeal takes the form of a rehearing without a jury, and sentences can be reduced or increased. A convicted offender who pleaded guilty can appeal only against sentence; and the prosecutor has no right of appeal against an acquittal. If an important legal ruling is sought, either the prosecutor or the defendant can appeal from a magistrates' court on a point of law 'by way of case stated'—that is, by requiring the court to state a case for the opinion of the Divisional Court of the Queen's Bench Division of the High Court. The court normally comprises three, and occasionally five, judges of that division. From the Divisional Court the prosecutor or the defendant can appeal directly to the House of Lords if a point of law of general public importance is involved.

From the Crown Court appeals by case stated may occasionally be made to the Divisional Court, but normally appeals, against either conviction or sentence, are made to the Court of Appeal (Criminal Division) which is normally composed of three judges—Lords Justices of Appeal and Queen's Bench Division judges of the High Court. The Lord Chief Justice or a Lord Justice of Appeal usually presides, and a single judgment is customary as a rule. Appeals against a conviction can be brought to the court by right on any point of law, and, with leave of the trial judge or the Court of Appeal, on any question of fact or mixed fact and law. In these cases the court can uphold the conviction: it can quash (reverse) it and order the defendant's acquittal; and it can vary the sentence. There is no general power to order a re-trial, although this can be done on the grounds of fresh evidence if the court considers that such a step would be in the interests of justice. An appeal against sentence (not being a sentence that is fixed by law, as, for instance, in the case of murder) lies only with the leave of the court. In such cases the court can alter the sentence but not so that the new sentence is more severe than the old one.

From the Court of Appeal a further appeal can be brought to the House of Lords if the court certifies that a point of law of general public importance is involved, and it appears to the court or the House that the point ought to be considered by the House. Nowadays, roughly 8–10 criminal appeals come before the House each year.

The Attorney General may seek the opinion of the Court of Appeal on a point of law which has arisen in a case where a person tried on indictment is acquitted; the court has power to refer the point to the House of Lords if necessary. The acquittal in the original case is not affected, nor is the identity of the acquitted person revealed without his or her consent. The Home Secretary has the power to refer to the Court of Appeal the case of any person convicted on indictment (this is effectively much the same as an appeal) and can refer any aspect of such a case for the court's opinion. The Home Secretary may exercise this power whether or not the case has already been before the Court of Appeal.

Proceedings of a magistrates' court or the Crown Court can be reviewed by the Divisional Court of the Queen's Bench Division if it is alleged that the court has acted outside its jurisdiction or in an irregular manner.

Criminal Injuries Compensation Scheme

The Criminal Injuries Compensation Scheme was established in 1964 on an experimental and non-statutory basis to provide *ex gratia* compensation to victims of crimes of violence and people hurt as a result of attempts to arrest offenders and prevent offences. It is administered by the Criminal Injuries Compensation Board which comprises eight members and a chairman, who are all legally qualified and appointed by the Home Secretary and the Secretary of State for Scotland. Compensation, which is assessed on the basis of common law damages and usually takes the form of a lump sum payment, has totalled over £24 million since the scheme began. A review of the scheme is in progress with a view to putting it on a statutory basis.

Special Courts

In addition to the courts which exercise ordinary civil and criminal jurisdiction, there are a number of courts in England and Wales with special functions of various kinds. Some of these—for instance, coroners' courts, courts martial and ecclesiastical courts—are ancient courts modified to meet the needs of modern society; but the greater number are comparatively new creations, set up by Act of Parliament to deal with the many problems arising from the State's regulation of the day-to-day affairs of the community.

Coroners' Courts

The earliest coroners were appointed in the twelfth century in each county to protect the fiscal rights of the Crown. From the beginning, coroners were concerned with violent and unexplained deaths, since in the past these sometimes brought revenue to the Sovereign through fines and forfeiture of a convicted person's goods.

Nowadays, investigations into violent and unnatural deaths or sudden deaths where the cause is unknown are the most substantial part of the work of coroners' courts.[1] Cases may be brought to the notice of the local coroner (a senior lawyer or doctor appointed by the local authority) by doctors, the police, various public authorities or members of the public, and it is his duty to inquire how, when or where the deceased died. If the death is merely a sudden death of which the cause is unknown, the coroner need not hold an inquest in court but may order a post-mortem examination to determine the cause of death. If, however, he has reason to believe that the deceased has died a violent or unnatural death or has died in prison or in other circumstances provided for by statute, he must hold an inquest. Moreover, if he has reason to suspect murder, suicide, manslaughter or infanticide, or that the death was caused by a road accident, he must summon a jury.

[1]Following the publication of the *Report of the Committee on Death Certification and Coroners* (Cmnd 4810, HMSO, 1971), the Home Secretary has announced proposals for the modernisation of the law on coroners' responsibilities.

Courts Martial

Courts martial have jurisdiction over members of the armed forces and, in certain circumstances, their dependants and civilians employed by the armed forces who accompany them outside the United Kingdom. The courts do not have power to deal with offences of treason, murder, manslaughter, treason felony or rape committed by servicemen in the United Kingdom, and other non-military criminal offences committed by servicemen in the United Kingdom are in practice normally dealt with in the ordinary courts.

A court martial (which consists of a president and a number of serving officers) may be convened by an authorised officer. A judge advocate is appointed to sit with the court in more serious Army and Air Force cases (and at every Navy trial) to advise on law and procedure and, in the former case, to sum up the evidence. The judge advocate in the case of the Army and the Air Force is normally a member of the judicial staff of the Judge Advocate General of the Forces, a civilian department responsible to the Lord Chancellor. Members of the staff must be barristers of at least five years' standing. In the case of the Navy, the judge advocate is a legally qualified serving officer.

A person convicted by court martial may petition the military authorities responsible for confirming or reviewing the finding and sentence of the court martial against the finding or sentence. Appeal also lies to the Courts Martial Appeal Court (and from there to the House of Lords if the court certifies that a point of general public importance is involved and it appears to the court or to the House that the point is one that ought to be considered by the House). Servicemen can appeal to the Courts Martial Appeal Court only against finding. Civilians, however, in addition to their general right to petition a confirming or reviewing authority, can also appeal to the Courts Martial Appeal Court against sentence.

Ecclesiastical Courts

Since the constitution and law of the established Church of England are part of the public law of the country, the ecclesiastical courts are the Queen's courts and have the status of public courts of limited but, within their own sphere, exclusive jurisdiction (see p 9). Their effective base is the court of the diocese, known as the consistory court, over which the Chancellor of the Diocese—who is a barrister appointed by the bishop, but possessing in his own right the authority of a judge of the Queen's court—usually presides. Above the consistory courts are the provincial courts of Canterbury and York,

which are presided over by the same judge who is appointed jointly by the two archbishops. At the head of the whole system is the Judicial Committee of the Privy Council, which is assisted in ecclesiastical matters by a number of bishops summoned to attend as assessors.

Administrative Tribunals

Administrative tribunals consist of persons or bodies exercising judicial or quasi-judicial functions throughout Great Britain outside the ordinary hierarchy of the courts. As a rule, they are set up by Act of Parliament or under powers conferred by statute or statutory instrument, which also govern their constitution, functions and procedure.

The continuing expansion of governmental activity and involvement in the economic and social affairs of the nation has greatly multiplied the occasions on which the individual may find himself at issue with the administration, or with a group of people or another individual. Consequently, there has been a substantial growth in the number of administrative tribunals with a regular or permanent existence and the function of deciding or adjudicating in disputes arising under regulatory or welfare legislation. There are now over 2,000 such tribunals, which hear over 200,000 cases a year. They include tribunals concerned with land and property; with national insurance and supplementary benefits; with the national health service; with industry and employment; with transport; with taxation; and many which do not fall into any specified group. There are also tribunals which enforce professional discipline, such as the General Medical Council and the Disciplinary Committee of The Law Society, but these are entirely different in constitution from the statutory tribunals described above and have no jurisdiction over the general public.

The constitution of administrative tribunals follows a fairly general pattern: nearly all, for instance, consist of an uneven number of persons so that a majority decision can be reached; members are usually appointed by the minister concerned with the subject, but other authorities (for instance, the Crown and the Lord Chancellor) have the power of appointment in appropriate cases where a lawyer chairman or member is required; and, with some exceptions, members of tribunals hold office for a period specified in the warrant or instrument by which they are appointed.

Although there is no general provision respecting appeals from statutory tribunals, the Tribunals and Inquiries Act 1971 (which requires tribunals covered by its provisions to give the reasons for their decisions) and other Acts provide for an appeal, at least on a point of law, from all the more important tribunals to the High Court. An appeal may also lie to a specially constituted appeal tribunal, to a Government minister, or to an independent referee. In addition, even where there is no right of appeal to a court of law, an aggrieved person may challenge the decision by proceedings for a declaration or a prerogative order (see pp 36–7).

An advisory body known as the Council on Tribunals (appointed jointly by the Lord Chancellor and the Lord Advocate) exercises general supervision over the condition and working of most administrative tribunals (but not the professional disciplinary tribunals), and reports on particular matters. It has a Scottish Committee (see p 50). The Parliamentary Commissioner for Administration is, by virtue of his office, a member of both the council and its Scottish Committee.

Restrictive Practices Court

One exception to the British system of courts of fairly general jurisdiction is the specialised Restrictive Practices Court, which deals with matters relating to monopolies, restrictive trade practices and resale price maintenance. It comprises five judges from the three law districts of the United Kingdom—three from the English High Court, one from the Scottish Court of Session and one from the Northern Ireland Supreme Court—and up to ten other people appointed, on the recommendation of the Lord Chancellor, because of their experience and expertise in industry, commerce or public life. The quorum of the court is three, of whom one must be a judge.

JUDICIAL PROCEDURE

Civil Proceedings

Civil proceedings are instituted by the aggrieved person; no preliminary inquiry into the authenticity of the grievance is required. The most common form of proceedings is an action commenced in the High Court by a writ served on the defendant by the plaintiff or his representative, or in the county court by a summons served on the defendant through the court. The writ or summons states the nature of the plaintiff's claim against the defendant and the remedy he seeks to obtain, which may be damages, or the recovery of a debt, or an injunction restraining the defendant from carrying out a course of conduct. If the defendant intends to contest the claim, he 'enters an appearance' by informing the court to this effect on the appropriate form. The next step is the delivery to the court of the 'pleadings'—documents setting out the precise question in dispute, which may be (and in the High Court normally are) drafted by counsel. Prior to the trial, either party may apply for an order that the other should clarify his pleadings or disclose additional documents relevant to the dispute.

Because civil proceedings are a private matter, they can usually be abandoned or compromised without the court's leave, and, in fact, in the great majority of cases, the parties to a dispute are able to settle their differences through their solicitors before the stage of actual trial is reached. Divorce proceedings are exceptional in that a decree of divorce (even if the case is undefended) can only be granted in court, either after a hearing or (in certain limited classes of case) on a certificate by the registrar that the grounds for divorce have been established. Actions that are brought to court are usually tried by a judge without a jury, except in cases involving claims for defamation, false imprisonment, or unlawful arrest, when either party may insist on trial by jury, or in cases of fraud, when the person charged may also claim this right.

Judgments in civil cases are enforceable through the authority of the court. Most of them are for payment of sums of money, and these may be enforced in cases of default by seizure of the debtor's goods. Under the Administration of Justice Act 1970 a judgment may also be enforced by attachment of earnings—that is to say, by an order of a court (usually the county court)

addressed to an employer to require him to make periodic payments to the court by deduction from the debtor's wages. A judgment for the possession of land is enforced by an officer of the court entering upon the land and putting the plaintiff in possession. Refusal to obey a judgment directing the defendant to do something or to abstain from doing something may result in imprisonment for contempt of court. Arrest under an order of committal may be effected only on warrant of the court.

The general rule is that the costs of an action (the barrister's fees, the solicitor's charges, court fees and other disbursements) are in the discretion of the court, but normally the court orders the costs to be paid by the party losing the action.

Criminal Proceedings

Prosecution

Prosecution is a discretionary matter which in practice normally rests with the police who have powers, especially in the case of young people, to issue cautions instead of prosecuting.

All criminal trials are accusatorial—that is to say, they take the form of a 'contest' between the Crown and the accused person. In most cases a private person may institute criminal proceedings, but they are usually initiated and conducted by the police.

Some offences, however, can only be prosecuted by or with the consent of the Attorney General or the Director of Public Prosecutions. Where the consent of the Attorney General is required—for example, under the official secrets legislation—such prosecutions are invariably in the hands of the Director.

The Director, a senior civil servant and prominent lawyer, appointed by the Home Secretary but responsible to the Attorney General, has the duty of prosecuting all serious offences, which must be reported to him by the police. In addition, he gives advice to the police and others concerned with the administration of the criminal law, and has the power, where necessary, to take over criminal proceedings instituted by another prosecutor.

The Director has other miscellaneous functions—for example, in connection with complaints of criminal offences by policemen, extradition and offences commited by foreign servicemen stationed in England and Wales.

Professional officers of the Director's department are either barristers or solicitors, and, although the former have a right of audience in the higher courts, they do not in practice appear other than in magistrates' courts where they and their solicitor colleagues conduct summary and committal proceedings. When cases go for trial, counsel in private practice are instructed to appear on the Director's behalf; at the Central Criminal Court in London these are drawn from a panel of 'Treasury Counsel' appointed by the Attorney General.

Each year the Director's department conducts between 5 and 10 per cent of the prosecutions brought on indictment in England and Wales; it also conducts some summary prosecutions. In 1974 over 4,000 people were prosecuted by the Director in nearly 3,400 cases.

Arrest

Arrest may be effected on a warrant issued by a judicial authority on sworn information laid before it, or, in certain cases, without a warrant. In the latter circumstances, a police officer may release the defendant on bail: that is to say, he may discharge him temporarily, subject to his entering into a recognisance, with or without sureties, for a reasonable sum of money to appear in court or at a police station at an appointed time. Unless the offence for which he is suspected is serious, an arrested person must be granted bail if he cannot be brought before a magistrates' court within a day. When bail is not granted, he must be brought to court as soon as practicable. Magistrates also have discretion to grant bail, and this discretion is liberally exercised according to well-defined principles. If bail is refused by the magistrates, the defendant is entitled to apply to the Crown Court or the High Court, and he mus- be informed of this right. The Government is proposing a statutory presumption in favour of the granting of bail.

Once a person has been charged with an offence, the Judges' Rules[1] require the police not to put any further questions, save, in exceptional circumstances, to prevent or minimise harm or loss to any person or the public, or to clear up an ambiguity in a previous answer or statement.

If anyone is detained in custody and thinks that the grounds for his detention are not lawful,[2] he (or if he is unable, someone acting on his behalf) may seek a writ of *habeus corpus* against the person who detained him, this person being required to appear in court on a day named to justify detention. An application for such a writ is normally made to a divisional court of the High Court, either by the person detained or by someone acting on his behalf. If no court is sitting, application may be made to a single judge, who may, and in some cases must, direct that it should come before a divisional court. An application on behalf of anyone under 18 is first made to a judge sitting in chambers or in private. A writ may be refused only by a divisional court.

Trial

Since criminal law in the United Kingdom presumes the innocence of an accused person until his guilt has been proved, the prosecution is not granted any advantage, apparent or real, over the defence. A defendant has the right to employ a legal adviser for his defence, and if he cannot afford to pay he may be granted legal aid wholly or partly at the public expense (see p 39); if remanded in custody he may be visited in prison by his legal adviser to ensure that his defence is properly prepared. During the preparation of the case, it is customary for the prosecution to inform the defence of any relevant documents which it is not proposed to put in evidence, and to disclose them if asked to do so. The prosecution must inform the defence of any witnesses whose evidence may assist the accused and whom the prosecution does not propose to call.

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[1]These rules, first formulated in 1912 and periodically revised, do not have the force of law, but they carry very great weight: *Judges' Rules and Administrative Directions to the Police*, HMSO, 1964, 14p, ISBN 0 11 340319 0.

[2]Lawful grounds are in pursuance of criminal justice; for contempt of court or of either House of Parliament; detention of persons found to be mentally disordered; detention of children by their parents or guardians; and detention expressly authorised by Act of Parliament. The writ *habeas corpus* applies in both civil and criminal cases.

Criminal trials in England and Wales are (with rare exceptions) held in open court, and the rules of evidence[1] are rigorously applied. For instance, although generally the evidence of one uncorroborated witness is, as a matter of English law, sufficient, where the evidence is that of an accomplice (or accomplices) the judge will warn the jury of the danger of convicting on such uncorroborated evidence, and a conviction made without any such warning would not be upheld on appeal.

During the trial the defendant has the right to hear and subsequently to cross-examine (normally through his lawyer) all the witnesses for the prosecution; to call his own witnesses who, if they will not attend the trial of their own free will, may be legally compelled to attend; and to address the court either in person or through his lawyer—the defence having the right to the last speech at the trial. Moreover, the defendant cannot himself be questioned unless he consents to be sworn as a witness in his own defence. The right to cross-examine him, even when he is so sworn, is limited by law, with the object of excluding inquiry into his character or into past offences not relevant to the particular charge on which he is being tried. Furthermore, although confessions made in the course of previous judicial proceedings are admissible as evidence if they have been made on oath, no confessions made in any other circumstance are admitted unless it can be proved that they were made voluntarily.

In criminal trials by jury (see p 27) the judge determines questions of law, sums up the evidence for the benefit of the jury, and acquits the accused or passes sentence according to the verdict of the jury. The jury alone, however, decides the issue of guilt or innocence. Verdicts need not necessarily be unanimous; in certain circumstances the jury may bring in a majority verdict provided that, in the normal jury of 12 people, there are not more than two dissentients.

If the jury returns a verdict of 'not guilty', the prosecution has no right of appeal and the defendant cannot be tried again for the same offence. From a verdict of 'guilty' there is a special right of appeal on the part of the defendant to the appropriate court. The defence or prosecution may suggest that the mental state of the defendant is such that he is unfit to be tried. A jury must decide whether this is so; if they find that it is, the defendant will be admitted to a hospital specified by the Home Secretary.

THE PERSONNEL OF THE LAW

The operation of the law requires the co-operation of judicial officers (ranging from the judges in the House of Lords and the superior courts to the stipendiary and lay magistrates) with whom, aided in certain cases by juries, the decision of disputed cases rests; of the officers of the court who have general or specialised functions of an administrative (and sometimes of a judicial) nature in the courts to which they are attached; and of the barristers and solicitors who are entrusted with representing the interests of the parties to a dispute.[1]

Lay Magistrates

Lay magistrates ('justices of the peace') are appointed on behalf of the Crown by the Lord Chancellor who is advised by committees in each county in England and Wales.[2] Magistrates are not required to have any legal qualification, but it is axiomatic that they should be personally suitable in character, integrity and understanding of the work that they have to do, and that their suitability in these respects should be generally recognised by those among whom they live and work. Advisory committees are also expected to ensure that the candidates whom they recommend to the Lord Chancellor for appointment are broadly representative of the community which they will have to serve. The political views of candidates are taken into consideration only as far as may be necessary to ensure that no Bench becomes unduly weighted in favour of any one political party. About 1,500 justices (men and women) are appointed each year to replace those who have retired or died. The total number of lay magistrates is about 28,500, nearly a third of them women.

On appointment, magistrates are required to undergo a basic training course to help them to understand the nature of their duties, to obtain a sufficient working knowledge of the law to follow normal cases, to acquire a broad knowledge of the rules of evidence, and to understand the nature and purpose of sentencing. A standing committee advises the Lord Chancellor on training policies.

Basic training is carried out in two stages: the first, which must be carried out before a newly appointed magistrate can sit to adjudicate, consists of attendance at court as an observer, and instruction on the magistrate and his office, on practice and procedure in the courts, and on methods of punishment and treatment; the second stage, which must be completed within 12 months of appointment, comprises further instructions and visits to certain penal institutions. Magistrates appointed to juvenile court panels receive additional obligatory special training.

Lay magistrates are expected to attend court on at least 26 occasions every year (unless this is impossible because their Bench does not sit frequently enough) and most attend more often. They receive no salary for their work, but they may be paid travelling and subsistence allowances and a financial loss allowance—that is to say a specified sum for actual loss of income or extra expenses incurred in attendance at court. There is no minimum age for the appointment of justices although in practice most are in their middle years. The statutory retiring age is 70.

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[1]These highly technical rules of law are concerned with the proof of facts. Broadly speaking, they are designed to determine four main problems: first, who is to assume the burden of proof; second, what facts must be proved; third, what facts must be excluded from the cognisance of the court; and fourth, how proof is to be effected.

[1]English law allows full liberty to the individual to conduct his own case, both in its initial and its final stages, if he wishes to. The more usual practice, however, is to be legally represented.

[2]In Lancashire, Greater Manchester and Merseyside lay magistrates are appointed by the Chancellor of the Duchy of Lancaster on the advice of local advisory committees.

Judges

Since the courts are the Queen's courts all appointments to the judiciary are made by the Crown acting on the advice of ministers. Recommendations for appointment to the highest positions—the Lords of Appeal in Ordinary, the Lord Chief Justice, the Master of the Rolls, the President of the Family Division, and the Lords Justices who are the judges of the Court of Appeal—are made by the Prime Minister, while the Lord Chancellor recommends the High Court and circuit judges, the recorders and the 50 metropolitan and other stipendiary magistrates.

Except in the case of the Lord Chancellor (who, as well as being head of the judiciary, is a Cabinet Minister and the Speaker of the House of Lords), political considerations play no part in the appointment of judges. Nor is it normal for legal civil servants to be appointed to judicial office, except occasionally to the office of stipendiary magistrate, registrar of the Family Division of the High Court or county court registrar. The full-time judges in England are appointed from among other judges or practising lawyers. For instance, to qualify as a Lord Justice of Appeal or for appointment to the office of Lord Chief Justice, Master of the Rolls or President of the Family Division a candidate must either be a High Court judge or have had at least 15 years' practice as a barrister; a High Court or circuit judge must have been a barrister for at least ten years or a recorder for at least five years; and a recorder a barrister or solicitor with the same length of service. The office of stipendiary magistrate is open only to barristers or solicitors of at least seven years' standing. There is no regular system of promotion in the judiciary: vacancies in the superior courts are filled more often by barristers than by judges in the lower courts.

In certain circumstances—for instance in cases of misconduct or proved incapacity—judges of the inferior courts may be removed from their position by the Lord Chancellor, but, in order to safeguard and perpetuate the independence of the judiciary from the executive, it is laid down by Act of Parliament[1] that all superior judges (other than the Lord Chancellor who, as a Cabinet Minister, changes with the Government) hold office during good behaviour, subject only to a power of removal by the Sovereign on an address presented by both Houses of Parliament.

Judges are immune from civil liability while acting in their judicial capacity, and they have power to punish litigants and members of the public for contempt of court.[2]

The number of judges that may be appointed in the superior courts is laid down in Acts of Parliament. Judicial salaries are charged upon the Consolidated Fund[3] so that, unlike other items of national expenditure, they do not have to be reviewed in Parliament each year. The salaries of superior judges are determined by Act of Parliament; those of circuit judges, recorders and metropolitan magistrates by the Lord Chancellor with the consent of the Minister for the Civil Service. Judges whose circuits include more than one court are paid travelling expenses and, in some cases, subsistence allowances.

The statutory retiring age for judges of the superior courts is 75. Circuit judges are subject to retirement at the age of 72, with a possible extension to 75. Retired judges receive a pension equal to half their salary if they have held office for 15 years, or a smaller pension for shorter service.

[1]The Judicature Consolidation Act 1925, which derives, through the Supreme Court of Judicature (Consolidation) Act 1875, from the Act of Settlement 1701.

[2]A number of recommendations for the amendment of the law of contempt of court are contained in the *Report of the Committee on Contempt of Court*, published in 1974: Cmnd 5794, HMSO, £1·00, ISBN 0 10 157940 3.

[3]A fund to meet expenditure specifically authorised by Parliament without limitation to any particular year.

Juries

The jury system has been an integral part of legal proceedings in England since the twelfth century or even earlier. Trial by jury is not, however, the form of trial used in most courts. It has never been used in magistrates' courts; it is nowadays extremely rare in county courts; and it is used less and less in civil cases in the High Court. Only in the more serious criminal cases has the principle of jury trial been continuously maintained.

A jury in England and Wales consists of 12 people, except in the county courts where it consists of eight.

A person is qualified for service if he or she is between the ages of 18 and 65, is included on the register of electors for parliamentary and local government elections, or has been resident in the United Kingdom, the Channel Islands or the Isle of Man for at least five years since the age of 13. Members of the judiciary, those concerned with the administration of justice, and the clergy are ineligible to serve as jurors. People suffering from mental illness are also ineligible. Anyone who has been sentenced to life imprisonment, or to a term of five years' imprisonment or more, and anyone who has served a sentence of three months or more in prison or borstal in the previous ten years is disqualified from service. People entitled to claim 'excusal as of right' if they are summoned include Members of Parliament, full-time serving members of the armed forces, and those in medical or similar professions. A court may also exclude anyone from jury service because physical disability or insufficient understanding of the English language makes his or her ability to act effectively as a juror doubtful.

Every person who is involved in jury service is entitled to receive his or her travelling expenses, together with a subsistence allowance. A financial loss allowance is payable to people who actually lose earnings or national insurance benefit by reason of jury service, up to a maximum of £8·00 a day for the first ten days' continuous service and up to £16·00 a day thereafter.

In criminal trials by jury it is, broadly speaking, the duty of the judge to determine questions of law and to discharge the defendant or pass sentence upon him, according to the verdict of the jury; but the jury has sole responsibility for deciding the issue of guilt or innocence. The judge presides over the court, exercises guidance by rulings on questions of procedure and evidence, and sums up the evidence, but the jury retires alone to consider its verdict, and it may, and sometimes does, bring in a verdict in apparent contradiction to the summing-up of the judge. In criminal proceedings verdicts need not necessarily be unanimous; in certain circumstances and subject to certain conditions, majority verdicts of ten to two are accepted by the court. In civil actions tried by jury, the jury is responsible not only for deciding questions of fact but also for fixing the amount of damages to be awarded to the injured party, and in this case unanimity is necessary.

A jury is completely independent of both the judiciary and the executive. Moreover, although both the prosecution and the defence in a criminal trial have the right to object for cause shown (for instance, lack of impartiality) to the entire jury or any individual member of it, and the defence may object to up to seven members without giving reasons, once members have been sworn in they are protected from interference of any kind.

In addition to serving at some criminal and civil trials, a jury may be required to be present at certain inquests at coroners' courts to return a verdict on how, when and where a deceased person died. In such cases, the jury consists of from seven to eleven jurors, and the coroner may accept the verdict of the majority of jurors, provided the minority consists of not more than two.

Officers of the Supreme Court

The officers of the Supreme Court include some who rank as judicial officers and are known as Masters and Registrars; others include the Official Solicitor to the Supreme Court.

Masters and Registrars

There were at the beginning of 1976 eight Masters of the Queen's Bench Division. In addition, the Registrar of Criminal Appeals, who heads the Criminal Appeal Office (which is responsible for processing all appeals to the Criminal Division of the Court of Appeal), also holds office as Master of the Crown Office, and ranks as a Queen's Bench Master. The Master appointed to be Senior Master of the Queen's Bench Division also holds the office of Queen's Remembrancer.

In general, the duties of the Queen's Bench Masters include exercising the authority of a Judge in Chambers, issuing directions on points of practice, and assessing the amount of damages in cases where judgment is obtained in default. One of the Masters (they sit in rotation) acts as 'Practice Master', dealing with particular points of practice and procedure which may arise during the course of litigation. The Central Office, the principal office of the Supreme Court in which all proceedings other than Family Division cases are initiated, is under the general control of the Senior Master of the Queen's Bench Division.

The Masters of the Chancery Division (six in January 1976) make interlocutory orders under the direction of the judges to whom they are assigned. They are assisted by Chancery Registrars whose duties are to take notes of the orders and judgments given and to draw up, settle and pass orders in court.

In the Family Division, duties similar to those which in other divisions are carried out by Masters are discharged by Registrars. The offices of the division are separate from the Central Office, the principal registry being in Somerset House, London. The Registrars (some 12 of them) deal with the ancillary (that is, out of court) work in divorce and other matrimonial matters and with adoption, guardianship and wardship cases.

There are also Bankruptcy Registrars and Registrars of the Companies Court, the Admiralty Registrar, the Master of the Court of Protection and the Taxing Masters, the latter being responsible for scrutinising and assessing solicitors' bills of costs. The Masters and Registrars of the Supreme Court

are appointed by the Lord Chancellor, with the concurrence of the Minister for the Civil Service as to numbers and salaries. Qualifications vary among the different offices, but most appointments are confined to established barristers and solicitors.

The Official Solicitor

The Official Solicitor is concerned with the interests of minors and people suffering from mental disability who are involved in proceedings in the High Court, who would otherwise be unrepresented. In addition, he protects the interests of people committed to prison for contempt of court, acts as Receiver for people suffering from a mental disability, and can be appointed a judicial trustee in complex and disputed trusts. He is sometimes called upon to help the court by instructing counsel to give it independent advice in cases where important legal issues are involved, as well as by carrying out investigations or assisting in seeing that justice is done between parties.

Other Supreme Court Departments

Other Supreme Court offices include the Court Funds Office, which is responsible for the control and management of funds in court, the receipt and payment of money into and out of court, and the investment of money on behalf of parties involved in litigation; and the Court of Protection, which deals with the management and protection of the property of those who are suffering from mental disorder and are consequently unable to manage their own affairs.

Unified Court Service

Administrative Staff

The courts in England and Wales above the level of magistrates' courts are administered by the staff of a Unified Court Service in the Lord Chancellor's Office. The Court Service is administered from a headquarters in London and from offices in the six circuits into which, for this purpose, England and Wales are divided. Each circuit is under the control of a senior official called the Circuit Administrator. The circuits are themselves divided into areas, each of which is the responsibility of a Courts Administrator. The responsibilities of these officials include the deployment of judges and recorders in accordance with the flow of work and the handling of all matters concerning the administrative staff of the courts. Each Circuit Administrator works closely with the 'presiding judges' of his circuit—judges of the High Court, two of whom are allocated to each circuit (three to the south-eastern circuit) to supervise and advise on the judicial aspects of the work.

There are also a number of advisory committees appointed by the Lord Chancellor in each circuit and consisting of lawyers, magistrates, police officers and representatives of the probation service, the local authorities and the press. They normally meet under the chairmanship of the circuit administrator, advising him on such matters as he may refer to them.

The Legal Profession

The legal profession in England and Wales is divided into two branches each performing distinct duties, though with a certain degree of overlap in

some aspects of their work. The two branches are barristers, known collectively as the 'Bar', and collectively and individually as 'counsel'; and solicitors, formerly known as 'attorneys'. Qualifications for entry differ, as do post-entry educational and training schemes, with each branch relying largely on apprenticeship within the particular profession, supplemented by courses in colleges established by separate professional organisations.

A royal commission is to consider the provision of legal services in England and Wales.

Barristers

The functions of barristers are to give expert legal opinions to solicitors and their clients (some spend most of their time on this type of work) and to conduct cases in court. With minor exceptions, barristers can act only on the instructions of a solicitor, to whom a lay client must go in the first instance. In all but the lowest civil and criminal courts they have a generally exclusive right of audience. They draft pleadings and other documents needed in the judicial process; they advise on the evidence needed to support a case; and, in particular, they are specialists in advocacy—under English legal procedure witnesses' oral evidence and the oral presentation of legal arguments play a larger part in trials than they do in most countries. Some barristers, perhaps after a number of years of private practice, work as legal advisers in, for instance, central or local government or a commercial organisation.

There are some 3,700 barristers practising in England and Wales; about 275 are women. Three-quarters practise in London. About one in ten practising barristers is a 'Queen's Counsel'. This title does not imply an association with the State; it is an appointment granted to certain senior barristers by the Queen on the recommendation of the Lord Chancellor. A Queen's Counsel is known as a 'silk' because he is entitled to a silk gown instead of a stuff (or woollen) one. Barristers who are not Queen's Counsel are known as 'juniors', whatever their age.

Every barrister—and every student wishing to become a barrister—must be a member of one of the four Inns of Court—Lincoln's Inn, Inner Temple, Middle Temple and Gray's Inn. A barrister's Inn is his professional home throughout his career. Each Inn is governed by Masters of the Bench ('Benchers') selected from its senior members. Every practising barrister normally occupies 'chambers' with perhaps a dozen colleagues, sharing the services of a clerk and junior staff.

To become a student member of an Inn of Court, an entrant must normally have a degree in law from a United Kingdom university or polytechnic. People with degrees in other subjects and people accepted as 'mature students' (over 25 years of age with experience in other fields) may also be permitted to become student members of an Inn. Such people have to pass a Common Professional Examination before proceeding to the vocational stage of training. Law graduates and people who have passed the Common Professional Examination take the year's vocational stage and the professional examinations run by the Council of Legal Education,[1] and must 'keep terms' by dining in the hall of the appropriate Inn a given number of times. Afterwards, the student is eligible to be 'called to the Bar', but may not practise until he has completed a year's 'pupillage' with an established barrister.

[1]Law lectures and tutorials for those studying to be barristers are provided by the Council of Legal Education at the Inns of Court School of Law at Gray's Inn. The cost of the lectures is covered by the fee a student pays to join and a small charge is made for tutorials.

The governing body of the profession is the Senate of the Inns of Court and the Bar which controls, among other things, the policy of the Council of Legal Education and deals with disciplinary matters. The Bar Council, which consists of those members of the Senate who are elected by the Bar, maintains the standards and independence of the Bar, promotes and improves its services, and represents it in relations with other organisations and in all matters affecting the administration of justice.

Solicitors

The function of a solicitor is to undertake all ordinary legal business for his client (with whom he is in direct contact), including the preliminary conduct of litigation and numerous non-litigious matters such as the conveyancing of land, the drawing up of wills and the giving of legal advice on a wide variety of questions, ranging from those of a purely domestic nature to those affecting public financial, commercial and industrial affairs. A solicitor may also appear on behalf of a client in magistrates' courts, the county courts and, in certain circumstances, the Crown Court.

A prospective solicitor in England and Wales must be considered suitable by the appropriate committee of The Law Society (a chartered corporation which occupies towards the solicitor's branch of the legal profession somewhat the same position as that of the Inns of Court towards the Bar). After acceptance by The Law Society, he must enter, as a student, into 'articles of clerkship' with a practising solicitor of not less than five years' standing—the term of articles lasting from two to four years, depending upon his educational qualifications. During the term of articles the clerk must pass the professional examination prescribed by The Law Society which is divided into two parts: Part I, in which exemption from all or some of the subjects is granted to law graduates, and Part II, which must be passed by all prospective solicitors. In preparation for Part I of the qualifying examination, those who are not law graduates must attend an instructional course at the College of Law in London or Guildford, Surrey, or at a college of commerce or similar college elsewhere.

After admission, a solicitor may be made a partner in, or obtain a position as a salaried assistant in, an established firm, or he may join the legal department of a central Government department, or other large organisation which employs a permanent legal staff. Solicitors may also join the local government service, and qualification as a solicitor is often required for appointment to the position of town clerk or chief executive. There are some 36,000 practising solicitors in England and Wales, of whom over 2,000 are women.

Unlike barristers, who have always enjoyed a completely detached position, solicitors are officers of the court, and in theory are amenable to the direct discipline of the judges. In practice, the regulation of the profession is divided between The Law Society and the Disciplinary Committee—an independent statutory body which consists of present and past members of the Council of The Law Society, and is appointed by the Master of the Rolls. The Disciplinary Committee investigates charges of misconduct and may

impose penalties. There is an appeal against its decisions to a Divisional Court of the Queen's Bench Division and, with leave of the court, to the Civil Division of the Court of Appeal and thereafter to the House of Lords. The Lord Chancellor has appointed a 'lay observer' to examine any written allegation made by or on behalf of a member of the public concerning The Law Society's treatment of a complaint about a solicitor or his employee.

ADMINISTRATION

The judiciary is independent of the executive and is therefore not subject to ministerial direction or control over court judgments. There is no minister of justice. Responsibility for administrative matters in England and Wales is divided among several Government ministers—notably the Lord Chancellor, the Home Secretary and the Law Officers of the Crown. The Prime Minister is concerned in that he recommends the highest judicial appointments to the Crown; the Secretary of State for the Environment is responsible for providing accommodation for all the superior courts, except the Central Criminal Court which is the responsibility of the City of London.

The Lord Chancellor

The Lord Chancellor is the head of the judiciary (and sometimes sits as a judge in the House of Lords), he is a senior Cabinet minister, changing with the Government, and he is the Speaker of the House of Lords in its legislative capacity as the upper chamber of the United Kingdom Parliament.

The Lord Chancellor's office dates back probably 1,400 years, and he is the minister primarily responsible for the courts and the operation of the law. He appoints, or recommends for appointment, magistrates and all but the most senior judges as well as the holders of many quasi-judicial offices such as the General Commissioners for Income Tax and members of many administrative tribunals—nearly 40,000 appointments in all. He is concerned with court procedure, and is responsible for the administration of all courts apart from the magistrates' courts (see below).

On the civil law side, law reform and the general supervision of the legal aid and advice scheme are matters for the Lord Chancellor.

The Lord Chancellor's Office is a Government department staffed by civil servants.

The Home Secretary

The Home Secretary, also a senior Cabinet minister, is concerned with the criminal law, including law reform. He is responsible for the prevention of crime, the apprehension of offenders and virtually the whole of the penal system. He also exercises a general supervision over magistrates' courts—although these are mainly administered by the magistrates themselves through magistrates' courts committees and paid for by the local authorities who are reimbursed by the Home Office up to about 80 per cent of the costs. His specific responsibilities in regard to magistrates' courts include giving his approval to the appointment of Clerks to the Justices and deciding disputes on financial matters.

The Home Secretary is also responsible for advising the Queen on the exercise of the royal prerogative of mercy to grant a free pardon in connection with a person's conviction, or to remit all or part of a penalty which may have been imposed on an offender by a court. These powers are normally used only where new facts or circumstances have come to light of which the courts were unable to take account when they dealt with the case.

Law Officers of the Crown

The Attorney General and the Solicitor General—known as the Law Officers of the Crown for England and Wales—are the Government's principal legal officers. They represent the Crown in domestic cases and in proceedings before international tribunals such as the International Court at The Hague and the European Court of Human Rights at Strasbourg. Appointed from among senior barristers, they are elected members of the House of Commons, hold ministerial posts, and change with the Government. The Attorney General who is the Government's chief legal adviser is also spokesman for the Lord Chancellor in the House of Commons on matters affecting the administration of the law, since the Lord Chancellor's Office has no minister in that House. He is also the Attorney General for Northern Ireland.

In civil law matters the Attorney General can institute proceedings in the High Court for the enforcement of public rights and on behalf of the interests of charity, and he may appear as an independent state officer before judicial tribunals of inquiry. The Queen's Proctor, who has certain duties connected with the operation of the divorce laws, exercises his functions under the direction of the Attorney General.

In criminal matters the Attorney General has ultimate responsibility for the enforcement of the law, and the Director of Public Prosecutions (see p 22) is subject to his superintendence. The Attorney General's consent is required for the institution and prosecution of certain types of criminal proceedings (see p 22). In carrying out these powers, he must by convention exercise an independent discretion, and must not be influenced by his Government colleagues (though he may consult them).

The Solicitor General is subject to the authority of the Attorney General with similar rights and duties.

Other Departments

The Treasury Solicitor provides a common legal service for a large number of Government departments in England and Wales. The duties of his department, the Department of the Procurator General and Treasury Solicitor, include instructing Parliamentary Counsel (see p 34) on Bills and drafting subordinate legislation, representing other departments in court, and giving general advice on the interpretation and application of the law. The department undertakes a considerable amount of conveyancing connected with the transfer of property, administers residuary estates (estates undisposed of by will) of certain deceased people, and deals with the outstanding property and rights of dissolved companies.

Some departments are wholly dependent on the Treasury Solicitor for their legal work. Some have their own legal staffs for a proportion of the work, and draw on the Treasury Solicitor for special advice and, often, for litigation and conveyancing. Others, whose administrative work is based on

or deals with a code of specialised law or involves a great deal of legal work, have their own independent legal sections.

The Treasury Solicitor is also the Queen's Proctor (an officer who has certain functions relating to the divorce laws).

The Office of the Parliamentary Counsel is responsible for the drafting of all Government Bills, except Bills or provision of Bills extending exclusively to Scotland, which are handled by the Lord Advocate's Department. The office drafts all financial and other parliamentary motions and amendments moved by the Government during the passage of legislation; advises departments on questions of parliamentary procedure; and attends sittings (and committees) of both Houses of Parliament. In addition, Parliamentary Counsel draft subordinate legislation when specially instructed, and advise the Government on legal, parliamentary and constitutional questions falling within their special experience.

The Statute Law Committee comprises members of the judiciary and the legal profession in England, Wales and Scotland appointed by, and under the chairmanship of, the Lord Chancellor. It exercises a general supervision of the form of statute law and of statutory instruments, and is responsible for the publication of amended editions of the statutes, including the current official revised edition of the statutes in force.

The Statutory Publications Office is staffed and controlled by the Treasury Solicitor who reports annually on its work to the Statute Law Committee. It produces tables of and indices to the statute law and subordinate legislation. The office issues a small leaflet, *Looking Up the Laws*, explaining how and where to look up statutes and subordinate legislation.

Law Reform

The duty of keeping the law under review in order to ensure that it meets the needs of modern society lies mainly with two standing, part-time advisory bodies, the Law Reform Committee and the Criminal Law Revision Committee, and with a permanent Law Commission.

The Law Reform Committee is appointed by the Lord Chancellor to examine such aspects of the civil law as he may refer to it. The Criminal Law Revision Committee is appointed by the Home Secretary to review such criminal law topics as he may select (on matters relating to the prevention of crime and the treatment of offenders the Home Secretary is advised by the Advisory Council on the Penal System).

The Law Commission, consisting of five lawyers of high standing appointed by the Lord Chancellor with a small legal staff to assist them, has the task of scrutinising the law with a view to its systematic development and reform. Programmes of reform are submitted by the Law Commission to the Lord Chancellor, and are laid before Parliament. Some of the projects for reform are undertaken by the commission; some are referred to the Law Reform Committee or the Criminal Law Revision Committee; and others, particularly those giving rise to important social questions, are dealt with, for example, by a departmental committee or a royal commission. Detailed recommendations for reform are published (usually with draft legislation appended). It is then open to the Government or a private member of Parliament to introduce proposals for reform as a parliamentary Bill. In addition to its

programme of law reform, the commission deals with the consolidation of the law (bringing together in a single statute all the enactments on a particular subject) and statute law revision (removing from the statute book dead and obsolete laws).

Since its inception in 1965 the Law Commission has published 70 reports on legal topics ranging from divorce law reform to exemption clauses in contracts. Its annual report to the Lord Chancellor is presented to Parliament.

From time to time royal commissions, departmental committees or working parties are appointed by ministers as temporary, part-time bodies to make proposals for the reform of particular branches of the law. Government departments may themselves publish tentative proposals (in Green Papers) or firm proposals (in White Papers) for law reform in order to consult interested bodies before the introduction of legislation.

THE COURTS AND THE EXECUTIVE

Generally speaking the courts use the same procedure in their dealings with public authorities as that which they employ towards private people. As judicial bodies, they cannot initiate proceedings, but, according to the rule of law which asserts that every citizen is entitled to claim his rights in an ordinary law court, they can and do intervene if requested to do so by a person who feels himself to have been injured by the act or omission of a public authority and wishes to seek a remedy at law.

Public authorities, including central Government departments (the Crown), are liable in ordinary civil action for torts (such as negligence or trespass), or breaches of contract, broadly as if they were private people. Actions for damages may be brought against public authorities or (in the case of the central Government) the Attorney General if the complainant is in doubt which is the proper department. Sometimes criminal proceedings can be brought against public authorities (for instance, for breaches of the public health legislation).

Parties in civil proceedings can generally require for the purposes of evidence the production of documents held by the Crown. The courts accept that the central Government has power to withhold documents when genuine state secrets are involved, but they do not refuse to order disclosure unless the public interest in secrecy outweighs the public interest in doing justice to the individual—a decision for the courts and not the Government.

Judicial Review

The wider powers of the courts to review governmental action start with the doctrine of *ultra vires*. Public authorities and officials must act within the powers the law allows them. If they take on unauthorised functions, they are acting beyond their powers (*ultra vires*), and the courts can intervene to stop the illegal action. (Sometimes a decision which is within an authority's powers can be challenged on the ground that it was based on some misinterpretation of the law.) Judicial review is thus first and foremost a matter of statutory interpretation to make sure that the authority given by Parliament to a public body is not exceeded. The courts have in addition, however,

applied to legislation further implied requirements, establishing a number of principles applicable to all public authorities unless expressly excluded by the relevant legislation. They have, for example, frequently applied the 'rules of natural justice' as minimum fair standards of decision-making. The concept does not require the technicalities usually associated with courts of law, but is based on two main rules: that the decision-maker must be free from bias—no one is to be a judge in his own cause—and that all parties to a dispute are to be given a fair hearing.

If an official body fails to carry out a duty, or exercises a power for an unauthorised purpose, or uses a power beyond the limits placed on it (although not for an illegal purpose), a wide range of remedies can be sought from the courts.

Prerogative Orders

The prerogative orders (almost all of which issue from the Queen's Bench Division of the High Court) are: *certiorari* and *prohibition*, and *mandamus*. The decision whether or not to make such an order rests with the court on the basis of the facts put before it by the parties to the dispute.

Certiorari may be used to quash a decision (whether or not it affects the enforceable rights of an individual) that has already been made. It is available where an inferior court or administrative tribunal or authority has acted in excess or abuse of jurisdiction or contrary to the rules of natural justice, or where there is an error of law apparent on the face of the record of its proceedings. *Prohibition* may be used to prevent such bodies from acting or continuing to act in excess or abuse of jurisdiction or contrary to the rules of natural justice. Both *certiorari* and *prohibition* are limited to the enforcement of judicial functions and are not concerned with legislative functions. Neither may be used to control the jurisdiction of non-statutory private or domestic tribunals.

A court may refuse leave to apply for an order of *certiorari* if the application has not been made within six months of the proceedings which it is sought to challenge, unless the delay can be satisfactorily explained to the court. It will also refuse to grant *certiorari* or *prohibition* if the matter in dispute is already the subject of appeal in an ordinary court of law. In addition, some administrative orders are statutorily excluded from judicial review and may be challenged only by means of the remedy expressly provided for in the Act concerned.

Mandamus may be granted to compel the performance of a public duty owed to an applicant with a sufficient legal interest in its performance; it may be used in respect of both legislative and judicial functions; and it is not subject to a time limit. As with the other prerogative orders, it lies only against public bodies, but it does not lie against the Crown nor against Crown servants, at least where they are acting as advisers to the Crown.

Injunctions

An injunction (which is an order of the court restraining a person from doing something injurious to another's interests or commanding something to be done for the protection of another's interest) is available in disputes between private individuals as well as between the subject and public authority. It does not lie against the Crown, nor against Crown servants, but it is the remedy most often used against local government authorities and chartered and statutory corporations. As regards duration, an injunction may be either provisional or interlocutory or perpetual.

Declarations

A court may issue a declaration to declare the invalidity of administrative orders and delegated legislation or to declare the applicant's rights without necessarily referring to any decision of an administrative authority. Unlike a prerogative order it can be granted in respect of domestic tribunals. Its availability does not depend on whether the applicant has an independent cause of action, but he must assert a real interest recognised in law. A declaration may be refused by the court on the grounds that the right or privilege in respect of which it is sought has been conferred on the applicant by a statute which also provides a remedy for the protection of that right or privilege; it may also be refused, at the discretion of the court, on a number of other grounds.

A declaration is applied for in the same way and subject to the same procedure as an ordinary civil action. There is full interlocutory process, and there is no time-limit within which proceedings must be instituted.

Statutory Remedies

Remedies against actions by public bodies are sometimes provided by statute. The nature of the remedy depends on the particular statute. In some cases a statute provides for an application to review and then annul an authority's action; in others it provides for an appeal to a court from an authority's decision, usually on a question of law. An important difference between review and appeal is that in the case of review the court simply annuls a decision and the authority is then free to reconsider the matter, whereas in the case of an appeal the court can usually substitute its own decision for that of the authority.

LEGAL AID, ADVICE AND ASSISTANCE

The aim of the legal aid, advice and assistance schemes in England and Wales is to help people with limited means and resources to meet the cost of any work normally done by a lawyer, whether or not it involves court proceedings. Under the schemes the lawyer's costs and expenses are paid out of a state legal aid fund drawn from three sources: a Government grant; contributions which legally aided people may be required to pay; and costs and damages recovered from legally aided people's opponents in litigation.

Advice and Assistance

Legal advice and assistance is available for people with limited means in connection with any work that a solicitor normally undertakes, except that it does not cover representation at a court hearing or taking any step in court proceedings (for which there are separate arrangements—see pp 38–9). The help may involve giving advice, writing letters, drafting wills, obtaining opinions from a barrister and visiting a client at a police station or prison. A

solicitor may act for a client until his costs and expenses reach a total of £25, but authority may be obtained for this limit to be exceeded. A person seeking help has to give the solicitor brief details about his income and savings to show that he comes within the financial limits laid down by the scheme. People whose disposable income does not exceed £30 a week or who are receiving supplementary benefit or family income supplement[1] and (in either case) whose disposable capital does not exceed £250 are within the financial limits. A contribution has to be paid if the disposable income exceeds £16 a week. The disposable income and disposable capital represent the applicant's earnings and savings after certain deductions and allowances have been made, and are therefore net, not gross, figures. The disposable income limit is reviewed at least annually in line with increases in supplementary benefit.

In parts of London and several other areas independent law centres exist to provide free legal services. All have at least one full-time, salaried lawyer attached to them, and most have community workers. The centres are financed by local authorities and through the Government's urban aid programme, which is designed to assist areas of special social need. In addition, a number of centres which were originally funded from voluntary sources have received additional financial assistance from the Lord Chancellor. There are also voluntary legal advice centres in many parts of the country, particularly linked with Citizens' Advice Bureaux.

Aid in Civil Proceedings

Where a person is involved in civil court proceedings, legal aid is available if his or her disposable capital does not exceed £1,200 and disposable income is not more than £1,790 a year. A contribution may have to be paid, according to the level of the applicant's income and capital.[2] If the case is likely to be expensive, the applicant may be eligible even though his disposable capital exceeds £1,200. If a person's disposable capital does not exceed £250 and his disposable income is not greater than £570 a year, legal aid is given free of any contribution. As in the case of legal advice and assistance, the qualifying income limits for aid in civil proceedings are reviewed at least once a year.

An applicant for legal aid must show that he has reasonable grounds for being a party to proceedings. The application is put before a local legal aid committee, which can also refuse aid if it appears unreasonable that help should be granted in the particular circumstances of the case. Once legal aid has been granted, the conduct of the case is undetaken by a solicitor nominated by the client in the ordinary way, except that no money passes between the assisted person and his solicitor—payments neing made in and out of the legal aid fund. For cases in the High Court, the solicitor instructs a barrister to represent the client at the hearing; in the lower courts, the solicitor himself is usually the advocate. Both solicitors and barristers have a duty to report if at any stage they consider that the case is being pursued unreasonably at the public expense.

When a legally aided person is successful in proceedings, the court usually orders the opponent to pay most of the costs; in that case it is normally possible to return any contribution that the assisted person has paid. Where, however, the assisted person obtains damages in the proceedings but the opponent does not pay the costs, it is necessary to recoup any money paid by the State, and not covered by his contribution, by a deduction from the damages. If the assisted person is unsuccessful, the opponent can in many cases apply to the court for his or her own costs to be paid from the legal aid fund.

Legal aid is available in all civil courts with certain exceptions, the most important of which are the Judicial Committee of the Privy Council and coroners' courts. Aid is not generally available for proceedings in administrative tribunals.

The civil legal aid scheme, like the advice and assistance scheme, is administered by The Law Society under the general guidance of the Lord Chancellor.

Aid in Criminal Proceedings

The criminal legal aid system in England and Wales is administered by the courts. The Home Secretary has overall responsibility for the scheme. The cost of aid in magistrates' courts is paid out of the state legal aid fund; in the higher courts payments are borne by the central Government out of funds provided by the Home Office.

Legal aid is available for the defence of criminal charges in all criminal courts. An aid order may be made by the court concerned if it appears to be in the interests of justice and that a defendant's means are such that he requires financial help in meeting the costs of the proceedings in which he is involved. An order must be made when a person is committed for trial on a charge of murder or applies for leave to appeal from the Court of Appeal (Criminal Division) or the Courts Martial Appeal Court to the House of Lords. No person can be sentenced for the first time to a term of imprisonment, borstal training or detention in a detention centre unless he is legally represented or has been refused, or has failed to apply for, legal aid after having been informed of his right to do so.

Generally speaking, legal aid in criminal cases consists of representation by a solicitor and a barrister, but in proceedings in magistrates' courts the recipient is normally entitled only to the services of a solicitor. Although legal representatives are assigned by the court, an applicant is entitled, subject to certain provisions, to select the solicitor of his choice. In the Crown Court the court may in urgent cases (when there is no time to instruct a solicitor) order that aid shall consist of representation by a barrister only.

More than 35 duty solicitor schemes are now in operation at magistrates' courts, established mainly at the instance of The Law Society and local Law Societies. The schemes are wholly voluntary, and are intended to provide assistance to unrepresented defendants appearing before the courts. The basis of payment varies from court to court, but solicitors may seek some payment under the '£25' legal advice scheme (see pp 37-8).

[1] Supplementary benefit is a social security payment for people not in full-time work with incomes below specified levels; family income supplement is a cash benefit payable to low wage earners with children to support.

[2] Assessments of disposable income and capital are made by the Supplementary Benefits Commission and are governed by regulations which allow for deductions from gross income for maintenance of dependants, interest on loans, income tax, rent and other matters for which a person may reasonably provide out of income, and deductions for the value of a person's house, furniture and other household effects from his capital.

SCOTLAND[1]

ORIGINS AND SOURCES OF SCOTS LAW

The main sources of Scots law are judge-made law, certain legal treatises having 'institutional' authority, legislation and European Community law (see p 2). The first two sources are sometimes referred to as the common law of Scotland. Legislation, as in the rest of the United Kingdom, consists of statutes (Acts of Parliament) or subordinate legislation authorised by Parliament. Subordinate legislation falls into two main groups. The first comprises Orders in Council (made by the Queen in Council) and orders, rules and regulations made by a Government minister. These almost invariably take the form of 'statutory instruments' which are published and are subject to parliamentary scrutiny and control, and they normally apply throughout Scotland. Many procedural rules of the Scottish courts are also contained in statutory instruments: 'acts of sederunt' made by the Court of Session to regulate civil procedure in that court or the sheriff court, and 'acts of adjournal' made by the High Court of Justiciary to regulate criminal procedure in that court, the sheriff court or the district courts. The second main type of subordinate legislation consists of by-laws which have local effect, and are made by local government or other public authorities by virtue of powers delegated by Parliament. Scots law is not codified.

Common Law

Scoto-Norman Law

In the eleventh and twelfth centuries Scotland became a feudal kingdom on the European pattern as a result of the royal policy of granting land to Anglo-Normans, and Celtic and other indigenous chiefs, in return for military and other feudal services. These feudal land grants carried the right to hold courts, and justice was mainly dispensed in local feudal courts. The sheriff, the King's local representative (whose office became hereditary), held a court manned by local landowners. The barony courts, consisting of the lord and his vassals, heard cases between vassal and vassal, or between the lord and his vassals, involving feudal obligations and other disputes. The burghs had their own courts. In medieval theory the King was the source of all secular justice, and his justiciars and chamberlain supervised the civil and criminal work of local courts and heard cases reserved by law to the King. The Church courts, applying the general canon law of western Christendom, possessed exclusive jurisdiction in family relations, succession to moveable property and certain other matters.

Much of the early law concerned procedure. By the end of the thirteenth century, archaic modes of proof, such as trial by battle or by ordeal, had been rejected in favour of more rational methods, in particular the civil jury. The English system was adopted whereby judicial proceedings before courts were initiated by a writ, called in Scotland a 'brieve', which was issued by the royal chancery and which usually instructed the local courts to convene a jury to

[1]For a general account of Scotland and its people, see COI reference pamphlet, *Scotland*. R5971.

hold an inquiry into the case. The Scottish system did not, however, copy in all its detail the enormous range of writs found in England. The system was rather a simplified version appropriate to a small and relatively poor country. Few judicial records of the period have survived, but the diverse origins of Scots law in this period are illustrated by the most important single source of medieval law, *Regiam Majestatem*, a commentary on judicial procedures dating from the thirteenth or early fourteenth century. About two-thirds of its contents derive from an older English treatise, some rules from Celtic law and the remaining rules from Roman and canon law.

A National System of Law

After the wars of independence against the English culminating in the Battle of Bannockburn (1314), Scotland's external ties were mainly with France and the Low Countries rather than England. The existing system of brieves and jury inquest continued to be developed with the creation of new types of brieve until the fifteenth century, but the period of direct borrowing from England had vanished. In the absence until the fifteenth century of universities in Scotland, and later of universities giving adequate training in law, many lawyers obtained their legal education at universities in France and Flanders and, after the Reformation, the Netherlands, all of which taught Roman Law. In the unstable conditions of the late Middle Ages, there was a constant demand for royal justice and, in response, a committee of Parliament (called the Lords Auditors of Causes and Complaints) and a committee of the King's Privy Council (called the Lords of Council and Session) supplemented the jurisdiction of the royal justiciars and eventually supplanted it in civil causes.

This period of experimentation ended in 1532 when the Lords of Council and Session were reorganised on a permanent basis as a College of Justice with a wide (though not universal) civil jurisdiction. The judges of 'the Session' became Senators of the College of Justice who sat as a collegiate court of 15 judges. At first, the president and half the judges were ecclesiastics but in time the number of ecclesiastics diminished, and after 1668 the judges were always laymen. In the course of the sixteenth century the Faculty of Advocates and the Society of Writers to the Signet evolved, and their members became members of the College of Justice with the exclusive privilege of acting as pleaders (advocates) and solicitors respectively. The evolution of a professional judiciary and bar was associated with the creation of a modern system of procedure, closely modelled on the Romano-canonical system. This system had been developed by the Church courts and strongly influenced secular procedure throughout Western Europe, except the English common law courts. These influences are clearly seen in the first vernacular treatises on Scottish judicial procedure, Sir John Skene's *Short Form of Proces* (1609) and Habakkuk Bisset's *Rolment of Courtis* (1622). These show that Scots law was set on a quite different course from English law in at least three ways. First, in England from the twelfth century to the 1870s the common law courts knew of specific forms of action initiated by a closed category of writs each of which was appropriate to a closely defined category of legal claims, and each of which had its own technical name and procedural peculiarities. Hence it is said that the establishment of a right depended on the existence of a remedy. By contrast in Scotland judicial procedure was

general in character. Proceedings in the Court of Session were initiated, not by brieves, but by a single form of summons which was readily adaptable to an infinite variety of different claims. Remedies depended on rights and there were few procedural barriers to litigation assuming the court had jurisdiction over the litigants or the subject matter in dispute. The second main difference was that Scots law was a unitary system and, while it recognised a distinction between strict law on the one hand and equitable judicial discretionary powers to mitigate the strict rigours of the law on the other, it did not follow English law in erecting Equity into a separate system of law supplementing the common law with its own rules, procedure and courts. Third, in the central courts proof was led before a judge, for the brieve and jury system were restricted to local courts, whereas the English common law courts used juries to decide issues of fact in all forms of civil action.

Despite advances in judicial procedure, the substantive law was for long too uncertain and ill-defined. To fill the many gaps left by feudal, customary and statute law, the judges and practitioners in the Court of Session turned to Roman law. In response to the need for a consistent application and development of the law, reports of the Court of Session's decisions were circulated among the few court practitioners in unofficial manuscript collections, but gave only the gist of the decisions, and did not provide any framework within which the law could develop.

A major advance in the creation of a system of civil law was made in 1681, when Lord Stair, Lord President of the Court of Session, published his *Institutions of the Law of Scotland*, setting out the whole of Scots law as a rational, comprehensive, and practical system of rules deduced from common-sense principles. So far as possible, Stair drew his law from Scottish decisions and statutes, and, where these were silent, he was guided by Roman or canon law or Romano-Germanic systems. Stair was followed by further 'institutional' restatements incorporating such new law as had been developed by tracts of judicial decisions or as had been enacted in statutes. In civil law, Erskine's *Institute* (1773) and Bell's *Commentaries* (1800) are of considerable importance. Baron Hume's *Commentaries* on criminal law set out systematically Scottish criminal law as it had been developed by the High Court of Justiciary, which had been founded in 1672. Following the Union of the Parliaments of Scotland and England and the formation of the United Kingdom of Great Britain in 1707, the House of Lords became the supreme court of appeal in civil but not criminal proceedings.

The Modern Law

At about the end of the eighteenth century, English law replaced Roman law as the main external source of Scots law for a variety of reasons. The practice of studying law on the Continent declined in the eighteenth century, and was finally terminated by the Napoleonic Wars. As Scotland moved towards English legal methods, the doctrine of 'judicial precedent' (namely, that a principle or rule applied by a court in one case must be followed by a court in another case) came to be more strictly applied, and its acceptance was further assisted by the introduction of procedures whereby, in written pleadings and judgments, questions of fact were separated clearly from questions of law so that the precise legal principle or rule applied by the court

could be more clearly discerned. Moreover, from about the 1820s onwards full reports of judicial decisions were published regularly. Other influences tending to bring Scots and English law together included decisions given in the House of Lords, the majority of whose judges have always been English lawyers untrained in Scots law; the common industrial and commercial experience of the United Kingdom which raised problems unknown to Roman law but to which English law had found solutions; and the common language and similarity of culture.

Nowadays, Roman law and continental civilian legal systems are very rarely referred to in the courts as living sources of Scots law, and in those many areas of Scots law which are uninfluenced by English law, the courts develop the law having regard only to existing Scottish sources. A decision of the House of Lords in an appeal from the English courts is not binding on the Scottish courts, but in practice a decision of the House in a civil appeal is usually regarded as of highly persuasive authority if the case concerns principles which apply in both legal systems. Decisions of other English and Scottish courts do not bind each other, although English decisions have persuasive authority in Scotland, and *vice versa*, especially decisions interpreting United Kingdom statutes where uniformity is desirable (for example, those dealing with taxation).

While Scottish legal methods are now influenced by the English legal system in Scotland, nevertheless civil law rests more on generalised rights than in England, the remedy depends on the right rather than as in the English tradition the right on the remedy, and Scots law retains to a considerable degree its traditional tendency to argue deductively from principles to cases rather than to abstract principles inductively from particular cases. There are, too, many differences between the contents of the principles and rules in civil law and procedure and, even more so, in criminal law and procedure.

The present structure of the judicial system dates largely from the period since the Union of 1707. As a result of statutory reforms in the early nineteenth century, the Court of Session absorbed the Commissary, Admiralty and Exchequer Courts and also the new Jury Court which had been formed in 1815 to introduce trial by jury on the English model in civil proceedings. The Court of Session thereby acquired an almost universal civil jurisdiction. Following the Rebellion of 1745, the heritable jurisdictions were abolished, and in due course the sheriff courts, presided over by full-time, legally qualified judges, became the pre-eminent local courts with a very wide civil and criminal jurisdiction. Nevertheless, the lay district summary courts retain a criminal jurisdiction over minor offences which is important by reason of the volume of cases involved.

Legislation

As an independent state before 1707, Scotland possessed a Parliament of its own which had developed in the late Middle Ages and became the most important central law-making institution. Certain Acts of the Scottish Parliament are still in force, though many are being repealed as the law is gradually modernised. In 1707, the United Kingdom of Great Britain was created by the Acts of Union; in law the Scottish and English Parliaments ceased to exist, and the Parliament of the United Kingdom, having English

and Scottish members and peers, was constituted as a new legal institution. The Acts include certain safeguards for, among other things, Scots law and the Scottish courts. Article XVIII provides that, while:

> 'the laws which concern public and civil government may be made the same throughout the whole United Kingdom . . . no alteration be made in the laws which concern private right, except for the evident utility of the subjects within Scotland.'

No procedure is laid down for determining how 'evident utility' should be ascertained, and the concept of 'private right' was not defined. Article XIX stipulates that the Court of Session and High Court of Justiciary are to continue and are not to be subject to the jurisdiction of the English courts.

Under the doctrine of the sovereignty of Parliament, Acts of Parliament are absolutely binding on all courts, taking precedence over other sources of law such as rights conferred by the common law. The doctrine also holds that any Act of the United Kingdom Parliament can repeal or amend former statutes whether of the United Kingdom Parliament, or of the Scottish or English Parliaments and that the courts cannot challenge Parliament's power of repeal or amendment. This view is accepted in Scotland as it is elsewhere in the United Kingdom, but there are differences concerning the difficult question whether the safeguards for, among other things, the Scottish courts and Scots law impose legal limitations upon parliamentary sovereignty. In England, there appears to be a consensus that the constitutional safeguards in Articles XVIII and XIX of the Acts of Union are as susceptible to repeal or amendment as is any other Act of Parliament. In Scotland, however, this consensus has been challenged upon a number of grounds associated with the view that it undervalues the true fundamental and constituted character of the Acts of Union. For example, while in England the continuity of English and British parliamentary traditions leads commentators to regard the Acts of Union as no different from any other Act, in Scotland the Faculty of Advocates pointed out in evidence to the Royal Commission on the Constitution:[1]

> 'In the Scottish mind, emphasis is placed on the origin of the United Kingdom Parliament in a freely negotiated Union between two equals, the sovereign legislatures of Scotland and England. Notwithstanding the numerical preponderance of English members in the Parliament of Great Britain, it was not created by the admission to the English Parliament of Scottish Members, but the establishment of a new legislature for Great Britain as a whole.'

There has been no case in which the judges have held a particular statute to be null as infringing the Acts of Union and the question has been rarely litigated perhaps because governments sponsoring legislation and Parliament have usually respected the spirit of the terms of Union, and statutes have infringed the fundamental terms only where a consensus of Scottish opinion has approved the infringement as in the case of nineteenth century legislation affecting the Scottish universities and courts. There have, however, been two

[1]The Royal Commission's reports were published in 1973: Vol. 1: *Report*, Cmnd 5460, HMSO, £3·35, ISBN 0 10 154600 9; Vol. 2: *Memorandum of Dissent*, Cmnd 5460–I HMSO, £1·30, ISBN 0 10 154601 7.

cases, decided in 1953 and 1975, in which Scottish judges have expressly 'reserved their opinion' about the legal validity of any Act of Parliament which purported to abolish the Court of Session or to substitute English law for the whole body of Scots private law.

The special position of Scotland and its legal system is recognised within the United Kingdom Parliament by the establishment of a Scottish Grand Committee and Scottish Standing Committees of the House of Commons for the more important stages of consideration of Bills applying only to Scotland.

A major change in the source of much future Scots legislation would be involved in the Government's proposals to set up an elected legislative assembly in Edinburgh (see footnote on p 1).

European Community Law

European Community law applies in Scotland as in other parts of the United Kingdom. The relationship between this type of law and the domestic legal systems in the United Kingdom is outlined on p 20.

BRANCHES OF THE LAW

The two most important branches of Scots law are civil law and criminal law. While the fields of application of specific rules are generally fixed by law, the boundaries of the larger categories of Scots law, though well enough understood, are not laid down authoritatively, for example in codes. Instead these boundaries tend to be drawn by the authors of legal text-books and by university teachers, having regard to tradition, practical convenience, ease of exposition and gradual changes in legal thought. Broadly speaking, Parliament and the courts make the specific principles and rules while the writers on law classify and organise these principles and rules in larger categories. To this broad generalisation, however, there are many exceptions. There has, for instance, been a considerable amount of statutory codification of branches of the law especially in the sphere of commercial law, where much of the law (concerning, for example, sale of goods, bills of exchange, consumer credit and partnership) has been codified on a United Kingdom basis. Again, in Scotland there have been statutes codifying large parts of the Scots law of civil and criminal procedure and bankruptcy. The British technique of statutory codification, however, results in codes which tend to be more detailed and narrower in scope than legal codes in other Western European countries.

Criminal Law

The formal distinction between criminal law and civil law turns on the general fact that criminal law deals with acts and omissions which the State may prosecute in the criminal courts while civil law concerns acts and omissions dealt with by the civil courts. This formal distinction says little about the contents of these two branches of the law. In criminal law the emphasis is less upon the wrong done to the individual, but rather upon the wrong against the community as a whole, its peace, order and well-being. Civil law deals more with the rights and obligations of individuals between them-

selves, and with the functions of the State and of public authorities.

Ignorance of the law is no defence in criminal proceedings, and, as a general rule, crimes are therefore defined by statute or the common law as clearly as possible so that people may have fair notice of the restrictions upon their liberty of action. The prosecution must prove that the accused intended to commit the act or default constituting the offence of which he is charged, but to this general rule there are a few exceptions.

Crimes may be categorised according to the method of trial, the more serious crimes being tried by a judge and jury on indictment, the less serious on summary complaint by the judge of an inferior court sitting without a jury. A familiar classification of a different kind concerns the type of interest infringed—such as offences against property (for instance, theft), non-sexual injury to person or animals, sexual offences, offences against the State (for example, treason), against public order and welfare (such as breach of the peace), and against the course of justice (for instance, perjury).

The law of criminal evidence and procedure governs the proof of facts alleged in criminal proceedings and the procedure between the arrest of an accused and the disposal of his case by the court at his trial or on appeal.

Civil Law: Private Law

Civil law may be divided into private law which concerns the rights and obligations of individuals among themselves, and public law dealing with the functions of the State (other than its duty of criminal prosecution) and with public authorities. The more important branches of private law include family law, which for example regulates marriage, divorce, and the guardianship and custody of children; the law of contract, which concerns such matters as sale of goods, hire-purchase, employment, loans, insurance and partnership; the law of delict, which deals mainly with civil wrongs for which the wrongdoer must pay compensation, such as defamation, damage to property or personal injury caused by negligence; and the law of property, whether corporeal or incorporeal, which concerns certain aspects of rights or enjoyment over property and of attaining, retaining or recovering ownership or possession of land or moveables, the creation and administration of trusts, and succession (the devolution of a person's property on his death). Other groupings are possible: frequently a number of categories are treated and taught under the head of mercantile law—for example, contract, companies and bankruptcy. International private law regulates the jurisdiction of the Scottish courts in cases where foreigners or foreign property are involved; it determines whether Scots law or foreign law is applicable to a legal question; and it provides for the recognition and enforcement in Scotland of the judgments of other legal systems.

Civil Law: Other Branches

'Public law' is a less well-accepted label than 'constitutional' or 'administrative' law. These two branches of law deal with the creation, regulation and control by law of political and administrative power within the State, and concern the relations, one to another, of Parliament, the courts, central and local government, public authorities and the individual citizen. The law of civil evidence and procedure govern respectively the proof of facts in civil proceedings and the various steps of procedure to be followed in civil litigation.[1]

Service Law

Service law for the Royal Navy, the Army and the Royal Air Force is contained in United Kingdom statutes based on English law (see p 9).

COURTS OF LAW

Civil Courts

The two main civil courts in Scotland are the Court of Session, the supreme central court (subject only to the House of Lords in London), and the sheriff court, the principal local court.

The Court of Session

The Court of Session, which sits in Edinburgh, comprises 20 judges, and is divided into an Inner House and an Outer House. The Inner House is sub-divided into two divisions, consisting of four judges each. The First Division is presided over by the Lord President of the Court of Session and the Second Division by the Lord Justice-Clerk. The main business of the Inner House is to hear appeals from the judges of the Outer House (who are called Lords Ordinary) and from the sheriff courts and other inferior courts and tribunals. The Lords Ordinary, who sit as single judges, hear cases when they are first brought into the court.

Despite its subdivisions and hierarchical structure, the Court of Session is still a collegiate court. Appeals from the Outer to the Inner House are called 'reclaiming motions'. A Lord Ordinary may report a case to the Inner House for guidance, and one division of the Inner House may consult the other. In cases of difficulty or importance, a fuller court (usually of five or seven judges) may be convened. On rare occasions the whole court sits together to decide a case.

The Inner House Divisions and Lords Ordinary are not required to specialise in specific categories of business. The officials of the General and Petition Departments of the Court of Session allocate cases to particular Lords Ordinary and the Divisions of the Inner House. It is, however, possible for parties, by agreement, to refer for summary trial a dispute not affecting status to a judge chosen by them.

The Court of Session may entertain cases arising in any part of Scotland. There are certain matters with which it alone can deal—for example, actions to alter or determine personal status, such as actions for divorce and actions for declarator of marriage, of nullity of marriage, and of legitimacy. The court has also exclusive jurisdiction in actions to 'reduce' (to set aside or annul) judicial decrees, and in petitions to vary private or public trusts or

[1] For a brief account of civil judicial procedure in Scotland see p 53. The law of evidence determines among other things what evidence is admissible to prove facts alleged in civil litigation (for example, whether oral or written evidence); whether particular evidence is sufficient to prove those facts or requires corroboration by other evidence; how a witness's credibility is to be assessed; the standard of proof of facts alleged (whether 'beyond reasonable doubt' or 'on balance of probabilities'); and which litigant must discharge the onus of proof.

to wind up companies having at least £10,000 paid-up capital. A wide range of actions may be brought either in the Court of Session or sheriff court: examples include actions of damages and actions for recovery of debt (exceeding £50 in value), actions relating to the interpretation and implementation of contracts and other writings, certain actions concerning family matters (for instance, aliment of wives or children, or custody of children), and possessory actions (to attain, retain or recover possession of land or moveable property). The bulk of litigation in the Court of Session concerns divorce and damages for personal injuries.

The court has an inherent equitable power, known as its 'noble office', to provide a remedy where none is available under legislation or rules of the common law, and to mitigate the rigours of the law where these would lead to injustice—for example, to allow a mistake in procedure to be rectified. This power is nowadays exercised on comparatively rare occasions, and then only where there is a precedent or analogy. In this way, powers to grant certain remedies—for example, the making of schemes for public trusts and the grant of directions to trustees—have come to be governed by precedents like other areas of the common law of Scotland.

The Sheriff Court

The sheriff court deals with the main bulk of civil litigation in Scotland. It is a local court, presided over by the sheriff who is a legally qualified judge and exercises a very wide jurisdiction. There are six sheriffdoms. The sheriffdoms are subdivided into 50 sheriff court districts. Every district has its own sheriff court.

The Secretary of State for Scotland (see p 61) is responsible for the organisation and administration of the courts. He may alter boundaries, create new ones, and fix the places where the courts are to be held.

The sheriff hears cases at first instance in the sheriff court of a district and an appeal may be taken from his decision to the sheriff principal, and thereafter to the Inner House of the Court of Session. Alternatively a litigant may appeal direct from the sheriff to the Inner House. An appellant must in certain cases obtain leave to make the appeal.

The sheriff court's jurisdiction is very wide, and many different types of action may be brought there. The value of the subject matter which the court can deal with has, with very few exceptions, no upper limit, and a wide range of remedies may be granted—for among other things debt, contract, reparation (damages), rent restriction, possession and the use of property, leases and tenancies, and the custody of children. The court deals with most actions for alimentary debt and for separation, and it can vary Court of Sessions decrees awarding custody, aliment, or financial provision on divorce.

The sheriff court has jurisdiction, to the exclusion of the Court of Session, in cases with a value below £50. Such cases are brought in the sheriff's small debt court which enables the action to be dealt with very quickly. Actions of a value between £50 and £250 are 'summary causes', originally intended to involve an abbreviated procedure but in fact almost indistinguishable from ordinary actions. Actions for more than £250, and most actions which involve a decision other than an award of money (for example, custody of children and matrimonial actions) are determined by ordinary procedure. The Sheriffs Courts (Scotland) Act 1971 and subordinate legislation made under that Act will in September 1976 replace the existing tripartite system of procedure with a bipartite system of (1) ordinary procedure, and (2) summary procedure for actions under £500 in value.

The House of Lords

Since 1712, appeals have been taken to the House of Lords sitting in the Palace of Westminster in London. When exercising its judicial function, the House of Lords consists of Lords of Appeal chosen by the Lord Chancellor, Lords of Appeal in Ordinary, and other peers who hold or have held high judicial office. Lay peers do not take part in appeals. Nowadays there are Lords of Appeal in Ordinary who are Scots lawyers in the House. Appeals are taken from the Inner House of the Court of Session on questions of law or fact, but appeals on fact are rare and are incompetent in cases originating in the sheriff court.

Courts of Special Jurisdiction

The Court of Session sits as the *Court of Exchequer* when it hears 'exchequer cases', which consist mainly of appeals from the Special Commissioners of Income Tax. An appeal lies to the House of Lords. Nine judges of the Court of Session are *ex officiis* judges of the *Court of Teinds*.[1]

There are three central courts exercising final appellate jurisdiction and staffed by judges of the Court of Session. The *Registration of Voters Appeal Court* hears appeals from the sheriff concerning registration of parliamentary electors, and the *Election Petition Court* hears petitions initiated in the courts to set aside the election of members of Parliament—for example, on the grounds of corruption, or illegality. The *Lands Valuation Appeal Court* hears appeals from the determination of local valuation appeal committees as to the rateable value of land and houses for local fiscal purposes. These three courts are serviced by officials of the Court of Session.

The *Restrictive Practices Court,* a United Kingdom court, consists of five judges (one is a judge of the Court of Session) and not more than ten laymen. It deals with monopolies, restrictive trade practices and resale price maintenance.

The *Scottish Land Court* is a central court consisting of a judge (ranking equally with the judges of the Court of Session) and four laymen who are specialists in agriculture. Its jurisdiction relates to agricultural tenancies, crofting tenancies and kindred matters. An appeal on a point of law lies to the Inner House of the Court of Session.

The *Court of the Lord Lyon King of Arms* possesses an historic jurisdiction in disputes as to the rights to bear coats-of-arms. The Lord Lyon may interdict the wrongful assumption or use of arms and the wrongdoer may be prosecuted in the Lyon Court by the Court's procurator-fiscal.

[1]'Teinds' are 'tithes' or tenth parts of harvests once paid by the laity to maintain the church. The Court of Teinds in theory has a separate existence and in practice its own clerk and its own procedure, with an appeal to the House of Lords. Teind law is now unimportant, and the court's business is almost wholly formal.

The *church courts* of the Church of Scotland, the established church, are technically civil courts of the realm but only possess jurisdiction over the members of the Church.

Two local courts exercise a jurisdiction which is administrative in character. The *Licensing Court* grants licences for public houses, and certain other premises selling excisable liquor, for betting offices, for bookmakers' premises, and the like. There are *Licensing Appeal Courts,* from which an appeal lies to the Court of Session on a point of law.

Administrative Functions

Both the Court of Session and the sheriff court have certain administrative functions. For example, in the Court of Session the Department of the Accountant of Court supervises company liquidations, bankruptcies and the management by judicial factors of the estates of children, or of persons who are incapable of managing their affairs—for instance, through mental disorder. In the sheriff court, the sheriff clerk is responsible for the 'confirmation' of executors to the estate of deceased persons.

Administrative Tribunals

Administrative tribunals are not technically courts of law but people or bodies exercising judicial or quasi-judicial functions. Their composition and functions are set out in an Act of Parliament, and their proceedings are usually informal, although often regulated by statutory rules.

They vary greatly in composition, function and method of operation. Some, such as the Lands Tribunal for Scotland, closely resemble courts, just as some courts resemble tribunals. Members of a tribunal are normally appointed by the Government minister responsible to Parliament for administering or keeping under review the statutory code under which the dispute arises. In appropriate cases members may be appointed by the Crown or the Lord President of the Court of Session.

The Council on Tribunals supervises the operation of the tribunals (but does not hear appeals). Appointed jointly by the Lord Chancellor and the Lord Advocate, it has a Scottish committee appointed by the Lord Advocate, some of whom are members of the council.

The following are among the more common types of tribunal in Scotland:

1. Those which have members sitting for a period of years, and a chairman who must be an experienced lawyer. Examples are the Lands Tribunal for Scotland and the Transport Tribunal.
2. Those which deal exclusively with matters of interest to one Government department or public authority—for instance, the Pensions Appeals Tribunals.
3. Those which consist of ordinary people appointed by a minister to arbitrate between private individuals—for example, the Rent Officers and Rent Assessment Committees.

Sometimes a dispute, such as one involving certain questions of income tax or certain disputes about national insurance, can be appealed through a hierarchy of administrative tribunals.

Appeals on points of law may be taken to the Court of Session from most

tribunals. Where there is no specific right of appeal, a challenge may still be possible on a number of grounds.

Tribunals also exist to enforce professional standards of conduct—over solicitors or doctors, for instance—but they have no jurisdiction over the general public and are not subject to the supervision of the Council on Tribunals.

Criminal Courts

Scotland has two main criminal courts. Broadly speaking, the sheriff court deals with the less serious offences, and the High Court of Justiciary with the more serious. In addition, lay summary 'district' courts deal summarily (without a jury) with minor offences.

There are two types of criminal procedure—solemn procedure and summary procedure. In solemn procedure the trial takes place before a judge sitting with a jury of 15 laymen, and the offence is set out in a document called an indictment. The judge determines questions of law; the jury decides questions of fact, and may reach a decision by a simple majority. In summary procedure, the judge sits without a jury and decides questions of both fact and law. The offence charged is set out in a writ called a summary complaint.

The High Court of Justiciary

The High Court is Scotland's supreme criminal court. There is no appeal from it to the House of Lords. The judges of the High Court are the same as the judges of the Court of Session, but in their former capacity they are called Lord Commissioners of Justiciary, and wear different robes. The head of the court is the Lord Justice-General (who in the Court of Session is the Lord President) and the judge next in seniority is the Lord Justice-Clerk. Unlike the Court of Session, the High Court sits in a number of towns though appeals are always heard in Edinburgh.

The jurisdiction of the High Court extends throughout Scotland and covers all categories of crime not specifically reserved to another court. It has concurrent jurisdiction with the sheriff court over most crimes, but its exclusive jurisdiction covers the most serious crimes, including treason, murder, rape and certain other offences.

The High Court is both a trial court and an appeal court. When it sits as a trial court, procedure is always solemn and usually only one of the judges takes the case. When it sits as the Court of Appeal, it consists of at least three judges. An appeal may be brought against sentence. The High Court cannot order a retrial if it sets aside a conviction on appeal. The Secretary of State for Scotland may refer a case, or a point arising from a case, to the High Court for its opinion, but this power is rarely used.

The Sheriff Court

The sheriff court has both solemn and summary procedure, although most prosecutions are brought as summary complaints. In contrast to civil proceedings, the sheriff principal does not hear appeals, and acts only as a trial judge. The sentencing powers of the sheriff court are more limited than those of the High Court. The maximum periods of imprisonment

which the sheriff can impose are two years in cases on indictment and three months in summary cases for a common law offence, and in the case of a statutory offence the period laid down in the statute.

Where the case merits more severe penalties in an indictment case, the sheriff can remit it to the High Court for sentence. An appeal lies from the sheriff court to the High Court in both indictment and summary cases.

District Courts

District courts in each of the 56 district and islands local government areas (one islands area does not have its own court) are manned by lay justices, and deal summarily with breaches of the peace and other minor offences. The maximum fine that a district court may impose for a common law offence is £100, and the maximum period of imprisonment is generally 60 days. When a district court is constituted by a stipendiary magistrate (in Glasgow, for instance), it has the same criminal jurisdiction and powers as a sheriff sitting summarily. An appeal lies from a district court to the High Court.

Courts Martial

The Courts Martial Appeal Court consists of at least three judges of the High Court of Justiciary. It deals with appeals by people convicted by the courts martial of the armed services of offences against the disciplinary codes, or offences against the services criminal code (which is based on English criminal law—see pp 9 and 19).

Children's Hearings

In April 1971, a new system of children's hearings took over from the courts most of the work of dealing with children under 16 (and in some cases persons between 16 and 18) who are considered to need compulsory measures of care.[1] Lay people, carefully selected and trained, make up children's panels in local areas; and from these panels groups of three panel members form individual hearings. This involves the community in helping to find solutions to problems within it. An official, called the Reporter, decides whether a child should come before a hearing. The hearing's main task is to decide, after the grounds for referral to the hearing have been accepted by the child and his parent, what measures of compulsory care (if any) are most appropriate for the child. If the grounds for referral are not accepted, the case must first go to the sheriff court for proof. Decisions of children's hearings may be appealed to the sheriff court and from there, on a point of law or irregularity, to the Court of Session.

Children may only be prosecuted in the courts on the instructions or at the instance of the Lord Advocate, and only in the sheriff court or the High Court of Justiciary. The Lord Advocate has instructed that procurators fiscal should have certain types of offence reported to them by the police for consideration of the question of prosecution. These include the most serious offences such as murder and assault to the danger of life; offences where children are accused jointly with an adult; offences where driving disqualification may be possible; offences where forfeiture of weapons may be

[1]For fuller information, see *Children's Hearings*, published in 1970 by the Social Work Services Group of the Scottish Education Department: HMSO, 25p, ISBN 0 11 490464 2.

necessary; and offences which the Chief Constable thinks so serious as to warrant the instruction of prosecution on indictment—for example, serious assault and robbery, wilful fire raising and malicious mischief causing or likely to cause grave damage to property or danger to life. All other reports from the police of offences by children are sent to the Reporter to the children's panel.

Criminal Injuries Compensation Board

The Criminal Injuries Compensation Board deals with applications for *ex gratia* payments of compensation, in certain circumstances, to victims of crimes of violence committed in Scotland (and in England and Wales). The board comprises a chairman and eight other members, all legally qualified, appointed by the Home Secretary and the Secretary of State for Scotland. Compensation is assessed on the basis of common law damages, and is usually paid in lump sums. In 1974–75 the board received 2,666 applications from Scotland, and paid nearly £1 million in compensation to victims there.

JUDICIAL PROCEDURE

Civil Procedure

Litigation in civil courts (and in criminal courts) in Scotland takes the form of adversary procedure, and the courts decide cases on the basis of the facts alleged and proved by the litigants or their lawyers and on their legal arguments. Court of Session proceedings are nearly all either actions or petitions. The object of an action is to enforce a legal right against a defender who resists it, or to protect a legal right which the defender is infringing. The object of a petition, on the other hand, is generally to obtain from the court power to do something or to require something to be done, which it is just and proper should be done, but which the petitioner has no legal right to do, or to require, in the absence of judicial authority.

Actions in the Court of Session

An action in the Court of Session is begun when one litigant, the pursuer, serves (usually by post) a signeted summons on the other litigant, the defender, and lodges a copy, together with other papers for the court's use, in the offices of court. The signet is a seal by which certain writs in the name of the Sovereign, including a Court of Session summons, are authenticated. The summons warns the defender that, if he does not appear before the court and defend the action, the court will grant a decree in his absence in favour of the pursuer. To the summons is attached a request to the court to grant the remedy sought by the pursuer, called the conclusion of the summons; a detailed statement of the facts upon which the pursuer relies, called the condescendence; and finally a brief statement of the legal grounds, called the pleas-in-law, which, if the facts are proved, would entitle the pursuer to the remedy he seeks. The defender has a chance to put forward his statement of the facts, either accepting or rejecting the pursuer's statement, together with the pleas-in-law in support of his argument. Thereafter both pursuer

and defender are given an opportunity of adjusting their own cases in the light of the statement and allegations put forward by the other side. The object of these written pleadings is to clarify the area of disagreement between the litigants and to give each party fair notice of the case he has to answer. Thereafter, the pleadings are made into a 'closed record' which sets out one against the other the numbered allegations, admissions and denials of each party. The matter then goes forward for determination by the Court. If the dispute concerns questions of law, the court hears a debate between counsel on those legal questions and, if the parties agree about the facts, thereafter issues its decision granting or refusing the remedy sought by the pursuer. Where there is a dispute over the facts, evidence is led before the judge sitting without a jury or in certain cases, usually damages actions, before the judge sitting with a jury. In civil matters the jury numbers 12.

Petitions in the Court of Session

A petition is strictly an *ex parte* application to the court. Petitions are often used where the petitioner and the respondents to the petition are not in dispute but where the court's approval to some matter is nevertheless required by law. Examples include petitions for the sequestration of an insolvent person, for the liquidation of a company, for an order enabling a person to adopt a child, for the appointment of a judicial factor to administer property, or for the variation of trust purposes. Some types of petition, however, are usually contentious—such as petitions for custody of children. A petition is presented to the court, and the court then decides which people should receive service or intimation of the petition. Any respondent to the petition may lodge answers in much the same way as any defender to a summons can lodge defences.

Sheriff Court Civil Procedure

Ordinary procedure in the sheriff court is modelled on Court of Session procedure. For small debt cases, a simplified form of procedure (available in the sheriff's small debt court) is used, of which the aims are speed, cheapness and finality of judgment. For this reason, the small debt court was at one time called 'the poor man's court' although it is now in fact extensively used by trading and commercial organisations to recover debts. Under the Sheriff Courts (Scotland) Act 1971, the small debt court will in due course be replaced by a new summary procedure.

Criminal Procedure

The Scottish system of criminal justice and procedure is very different from that in England and Wales.[1] This is partly a result of the Scottish system's distinctive historical background, of the absence of any right of appeal to the House of Lords, and of the fact that since the union of England (and Wales) and Scotland reforms have normally grown out of the Scottish legal and political systems and been enacted in separate Scottish legislation. The central feature of the system is the public prosecution of crimes under

[1] *Criminal Procedure in Scotland*, a report published in October 1975, deals with all stages of criminal procedure from pre-trial proceedings to the trial itself: Cmnd 6218, HMSO, £3·60, ISBN 0 10 162180 9. See also *Criminal Procedure in Scotland and France*, HMSO, 1976, £8·00, ISBN 0 11 491329 3.

the control of the Lord Advocate and the Crown Office in Edinburgh. The unwritten or administrative traditions regulating public prosecution are often as important as the formal rules of criminal law and procedure.

Criminal procedure in Scotland, like that of the rest of the United Kingdom, takes the form of adversary procedure (broadly speaking, the court reaches a decision on the basis of the facts alleged and proved by the prosecutor and defence lawyers, who examine the witnesses, and on their legal arguments) in contrast to inquisitorial procedure (where the judge conducts his own legal research and himself examines witnesses).

The System of Public Prosecution

The Lord Advocate, the principal Law Officer of the Crown in Scotland, is responsible for the prosecution of crime before all courts in Scotland. The Lord Advocate delegates most of the work of prosecution to the Solicitor-General (the other Law Officer) and six Advocates-Depute. The two law officers and the Advocates-Depute are known as 'Crown counsel'. Crown counsel work with a small staff of officials (full-time civil servants) headed by the Crown Agent. The whole central organisation is known as the Crown Office. As the headquarters of the administration of criminal prosecution, the Crown Office is concerned with the preparation of prosecutions in the High Court and the direction and control of the procurator-fiscal service.

The procurators-fiscal, full-time civil servants, are the public prosecutors in the sheriff courts and are taking over as prosecutors in the district courts. They must be either advocates or solicitors, and are usually solicitors. The police report the details of a crime to the procurator-fiscal, who has discretion whether to prosecute, subject to the direction and control of the Crown Office. The procurators-fiscal are also responsible for instituting fatal accident inquiries before the sheriff and similar inquiries concerning fires. There are no coroners in Scotland.

Private prosecutions in Scotland are extremely rare. The police never prosecute. A few officials or individuals have authority to bring prosecutions in connection with specific offences under statutes, but such cases are very unusual.

Pre-trial Procedure

The function of investigating crime is carried out by the police. They are allowed to question a suspect, but the questioning must be fair.

When a person is arrested he is charged with the crime and cautioned that he need say nothing but that, if he does make a statement, it may be used in evidence at his trial. Once a person is arrested, the control of the investigation passes to the procurator-fiscal, who also assumes control of investigations of those serious crimes which are notified to him by the police before an arrest has been made.

The police must take all precautions against the unreasonable and unnecessary detention of accused people. In many cases the police release an accused person after charging him. They then give the procurator-fiscal a report that the accused has been charged with a particular offence, and a summary of the evidence. If thereafter the fiscal decides to proceed with the prosecution, he cites the accused to appear at court. If the accused person

is arrested, he is detained in the police cells overnight, and is brought before the nearest sheriff court on the morning after his arrest (excluding Sundays and holidays). At about the same time, the procurator-fiscal (or his depute) sees the police file on the case and decides whether to charge the accused and, if so, whether to proceed by summary complaint or indictment, or whether to take no further proceedings and release him.

A person in custody has a statutory right to an interview with a solicitor before he appears in court. Under a scheme administered by The Law Society of Scotland prisoners in custody are helped to fill out applications for legal aid and 'duty solicitors' are available to represent them on their first appearance in court.

Proceedings on Indictment

If the fiscal decides provisionally that the offence is important enough to warrant prosecution on indictment, he brings a charge in a petition which is given to the accused. The accused goes before the sheriff for judicial examination in private. The role of the judicial examination has changed over the years. It is a survival from a time when pre-trial procedure was inquisitorial rather than adversary in character. At the judicial examination, the accused, with his solicitor, appears in private before the sheriff. It is very rare for the accused to make a statement at that stage. The procurator-fiscal then moves for committal for further examination or trial and, unless there is an application for bail, the sheriff grants the motion. Any application for bail will be determined. The accused has an opportunity to apply for bail at later stages, and to appeal to the High Court against refusal of bail.

In Scotland, bail is the deposit of money in court to secure the attendance of the accused at his trial. Recognisance and sureties on the English model are unknown. Factors considered by the court include the seriousness of the offence, the likelihood that the accused will abscond or attempt to intimidate witnesses, and previous convictions.

The fiscal continues his preparation of the case by taking statements (called 'precognitions') from all the witnesses and by reporting the case to the Crown Office which decides what the charge should be, whether it should be by indictment or summary complaint, and in what court, or whether indeed to drop the proceedings and instruct the freeing of the accused. There are very strict rules to prevent an accused person from remaining in custody for an unduly long period without trial. Where an accused has been committed to prison to await trial and his trial is not concluded within 110 days of the date of committal, he must be set free at once and declared immune from further prosecution for the crime charged.

If it is decided to prosecute on indictment, the indictment is served on the accused. It sets out the crimes charged, lists the Crown 'productions' (items to be produced in evidence and relied on by the Crown at the trial, such as medical reports or offensive weapons allegedly used by the accused) and particulars of Crown witnesses. Witnesses have a duty to give statements to both sides. The indictment cites the accused to appear at two 'diets' (meetings) of the court.

At the first or pleading 'diet' the accused states whether he intends to plead guilty or not guilty. The accused must also state certain pleas at this

stage if he wishes to rely on them. These include objections to the relevancy of the indictment (for example, that the facts stated in the indictment do not amount to a crime) and pleas in bar of trial (for instance that the accused is insane) and special defences (such as an alibi). A main reason for the pleading diet (which is always at least nine days before the trial in the sheriff court) is to avoid so far as possible the unnecessary expense involved in the citation and attendance of witnesses and jurors if the accused wishes to plead guilty. The accused has an opportunity to plead guilty at an earlier stage by serving a notice on the Crown Agent.

The principles of fairness to the accused, and indeed to the prosecution, and the need to avoid undue surprise at the trial are achieved, among other things, by the exchanging of lists of witnesses, by the fiscal's practice of making the strength of his case known to the accused and his lawyers before the trial, and by the duty imposed on the accused to give notice of special defences before the trial. It is also a safeguard for the accused that the proceedings until the first diet are in private and that the newspapers are only entitled to know the identity of the accused and the charges against him. This minimises any risk either that Crown evidence should be made known to potential members of the jury before the trial or that their impartiality should be affected by newspaper reports. At the second diet the trial takes place.

Procedure at Trial on Indictment

In solemn procedure, a jury of 15 is empanelled and sworn unless the accused changes his plea to guilty. The indictment is read and the prosecutor then examines his witnesses in turn, each of whom is cross-examined by defence counsel and, where appropriate, re-examined by the Crown. Thereafter, unless the judge withdraws the case from the jury, defence witnesses are examined by defence counsel, cross-examined by the prosecutor and, if appropriate, re-examined. The evidence is recorded by a shorthand writer. When all evidence has been led, the jury is addressed first by the prosecutor and then by defence counsel, and the judge then charges the jury, instructing them on the law and on the evaluation of the evidence and the discharge of their duties. He will, for example, tell the jury among other things that the onus of proof is on the prosecutor, that the jury can give a verdict of guilty only if they are satisfied beyond reasonable doubt, and he will instruct them as to any defence pleas which have been advanced such as insanity or alibi. The judge may also instruct the jury to return a verdict of not guilty in relation to a particular offence if sufficient evidence in law of that offence has not been led. Thereafter, the jury give their verdict either at once or after retiring to consider it. The verdict may be 'guilty', 'not guilty' or 'not proven'. It may be reached by a majority, though the size of the majority is not disclosed. If the verdict is not guilty or not proven, the accused is discharged.[1] If the verdict is guilty, then the prosecutor normally moves

[1]There is no difference in effect between a verdict of not guilty and one of not proven. Both are acquittals and have the effect that the accused cannot be tried again for the offence in question. Although there is no legal authority for this view, verdicts of not proven are said to be appropriate where the prosecutor has not proved his case beyond reasonable doubt but where the jury are not prepared to say that the accused is innocent. 'Not guilty' is appropriate where the jury are prepared to go further in the accused's favour and hold it positively established by the evidence that the accused did not commit the crime in question.

the judge to pass sentence and lays a note of any previous convictions before the judge. The note will have been intimated to the accused, and, if he objects to the note, the prosecutor must prove the convictions. Thereafter defending counsel advances a plea in mitigation on behalf of the accused and perhaps also a plea in bar of sentence as where there has been supervening insanity. The judge then pronounces his sentence either immediately or after a period of adjournment for social background or other inquiries.

Summary Criminal Procedure

In the second type of criminal procedure, summary procedure, the main difference is that trial is not by jury. In many summary cases, the police do not arrest the person charged with the crime, especially if he appears normally law-abiding and has a known residence. In such cases, he is cited to appear in the sheriff court (or other summary court) at a specified time. In certain summary cases, however, the accused may have been arrested—for instance, where he has been caught 'red-handed' committing an offence or where the court has, exceptionally, granted an arrest warrant on the procurator-fiscal's petition. In summary procedure, only one document, a summary complaint, has to be prepared. There is no petition by the procurator-fiscal for preliminary warrants and no procedure for judicial examination and commitment for trial except where, in the course of pre-trial solemn procedure, the prosecution decides instead to prosecute summarily. The complaint specifies, among other things, the court and the place and time of the court's sitting, and it contains particulars of the accused, of the offence charged and the facts inferring guilt. The procurator-fiscal usually gives the defence a list of Crown witnesses, normally in exchange for a list of the defence witnesses. In a case where the accused has been arrested, a summary complaint is served on him and he will appear in court as soon as possible, usually on the morning after his arrest. In other cases, the case comes to court on the date assigned in the complaint. Unless a plea of guilty has been tendered by letter, the accused or his representative is asked to plead guilty or not guilty. If he pleads guilty he may be sentenced there and then or, if the accused is absent, the case may be adjourned to a specified date at which he is ordered to appear personally. Sentences of detention cannot be pronounced in the absence of the accused. If the accused pleads not guilty, it is rare for the trial to proceed at once and a diet is assigned for the trial.

The proceedings at the trial broadly speaking follow the pattern of a trial by solemn procedure with the procurator-fiscal leading his witnesses first, followed by defence witnesses, all of whom are cross-examined and, if need be, re-examined. After the sheriff has been addressed by the fiscal and the defence counsel or solicitor, he normally gives his finding as to guilt at once. If the accused is found guilty, he or his representative may address the court before sentence is pronounced. In summary procedure, the sheriff cannot remit the case to the High Court for sentence, but either the fiscal or the accused may require him to state a case for the opinion of the High Court on a question of law. The accused may also appeal to the High Court by a procedure known as a Bill of Suspension.

THE PERSONNEL OF THE LAW

The personnel of the law most in the public eye are judges and members of the legal profession—advocates and solicitors. The administration of the legal system nevertheless depends on many others such as clerks of the courts and their subordinate officials.

Judges

The Scottish judiciary has two distinctive characteristics. First, far greater use is made of full-time legally qualified judges than in England and Wales, although many prosecutions for minor offences are dealt with by lay summary courts. Second, in contrast to general practice in Western Europe, professional judges in Scotland—like those in the rest of the United Kingdom—are drawn from legal practitioners rather than people specially trained to be judges throughout their careers.

Since the Court of Session and the sheriff courts are the Queen's courts, all judicial appointments in these courts are made by the Sovereign acting on the advice of Government ministers. The Prime Minister makes recommendations for the appointment of the Lord President and the Lord Justice-Clerk. The Secretary of State for Scotland makes recommendations for the other judges. Traditionally, these ministers consult the Lord Advocate before tendering their recommendations. The judges of the Court of Session are appointed from among senior advocates. Many have already gained judicial experience as sheriffs principal.

The sheriffs principal are next in the judicial hierarchy. They are all full-time judges resident in their sheriffdom. Only people who have been qualified as an advocate or solicitor for ten years are eligible for appointment as sheriff principal or as sheriff (the next rank in the hierarchy).

Tenure of judicial office is now limited by age. All Court of Session judges appointed since 1959 have a retiring age of 75 and all sheriffs principal and sheriffs first appointed since 1961 have a retiring age of 72. A sheriff principal or sheriff below the age of retirement can only be removed from office by the Secretary of State for Scotland, who acts on the advice of the Lord President and Lord Justice-Clerk following inquiry into his fitness for office. An order for removal must be made by statutory instrument which is laid before each House of Parliament for negative resolution. There is no comparable procedure for the removal of a judge of the Court of Session.

In the district courts ordinary citizens, rather than legally qualified full-time judges, sit on the bench. Provision is also made for local district or islands councils to appoint professional stipendiary magistrates (who must have been advocates or solicitors for at least five years). The lay judges of the district courts are all justices of the peace. Most are appointed by the Secretary of State acting on behalf of the Queen. Others are nominated by local authorities; district and islands councils may appoint up to a quarter of their members to be *ex officio* justices.

The Legal Profession

The legal profession in Scotland has two branches: advocates (who correspond to barristers elsewhere in the United Kingdom) and solicitors. A person can move from one branch to the other but nobody can simultaneously be a member of both.

All advocates are members of the Faculty of Advocates which is also the governing body of the Scottish Bar. The elected Dean of Faculty and his council control the discipline of advocates. Advocates have an exclusive right of audience in the High Court of Justiciary and the Court of Session, and can also appear in every other court in Scotland. They have the same right as English barristers to appear before the House of Lords, the Privy Council and parliamentary committees.

For their appearances in court, advocates are briefed by solicitors. They also give opinions on difficult or important legal problems referred to them by solicitors. They may supplement their court and chamber practice by appearing before certain administrative tribunals and inquiries. Advocates cannot form partnerships. After a period at the bar, an advocate may be appointed Queen's Counsel (QC) by the Queen on the recommendation of the Lord Justice-General. This is called 'taking silk' from the silk gowns worn by QCs in court. A QC (sometimes called 'senior counsel') does not normally appear in court without being accompanied by an advocate who has not 'taken silk' (called 'junior counsel').

Solicitors undertake most of the litigation in the sheriff courts but do not have a right of audience in the supreme civil or criminal courts. Solicitors alone have the exclusive right to act as agent in conveying land for clients and to brief advocates in litigation. They also discharge many kinds of business over which they have no statutory monopoly—such as negotiations for the sale or purchase of land, and advice on financial, commercial and fiscal problems—and generally they often act as their clients' man of business. Solicitors, unlike advocates, may form partnerships.

All practising solicitors must be members of The Law Society of Scotland, the statutory governing body of Scottish solicitors. The society has many functions. Among other things, it regulates solicitors' fees; it represents solicitors in their relations with Government, other bodies and the public; it administers the Scottish Legal Aid Fund; it makes representations for law reform; it enforces standards of professional conduct; and it maintains a guarantee fund out of which payments are made to people who suffer pecuniary loss by reason of dishonesty on the part of any solicitor in practice.

The Faculty of Advocates and The Law Society of Scotland have their own professional examinations. The prospective advocate or solicitor, however, may and almost invariably does obtain exemption from these by including the necessary professional subjects in a law degree of a Scottish University. The prospective advocate must thereafter undergo a period of training in a solicitor's office and this is followed by training under a practising advocate. This is called pupillage, or sometimes 'devilling', and the trainee advocate a 'devil'. To be admitted to the Roll of Solicitors kept by The Law Society of Scotland, a person must undergo a period of practical training as an apprentice to a practising solicitor, and, if he is to practise on his own account or in a partnership of solicitors, he must take out a practising certificate from The Law Society of Scotland every year.

Most solicitors are in private practice—that is, they are self-employed or partners in firms of solicitors acting for individuals and bodies who hire their services for fees prescribed by The Law Society of Scotland. Many solicitors, however, are employed as qualified assistants to solicitors in private practice.

A considerable minority are employed as local government officers by local authorities, as civil servants by central Government departments (including procurators-fiscal and officials of the Crown Office), as legal advisers and executives by industrial or commercial organisations, such as banks, or by public authorities, such as nationalised industries or the National Health Service. Many university teachers of law are advocates or solicitors.

A royal commission is to consider the provision of legal services in Scotland.

Messengers-at-Arms and Sheriff Officers

In contrast to the position in England and Wales, the functions of collecting sums due under decrees of the Scottish courts, and of enforcing debts due under court decrees in the event of the debtor's failure to pay, are not automatically discharged by the courts and their officials. After granting a decree, a Scottish court will leave the pursuer to obtain payment or performance from the obligant, and if that fails, the pursuer (or his solicitor) must instruct a messenger-at-arms or sheriff officer to enforce the decree. Sheriff court decrees are enforced by sheriff officers and Court of Session decrees by messenger-at-arms or, in a sheriffdom having no messengers, by a sheriff officer. Messengers-at-arms are appointed and disciplined by the Lord Lyon King of Arms. Sheriff officers are appointed and disciplined by the appropriate sheriff principal. Messengers and sheriff officers charge fees which are prescribed by rules made by the Court of Session. Like solicitors, they may be in business on their own account or in partnerships, but they cannot be in employment for a wage or salary.

ADMINISTRATION

The administration of the Scottish legal system has two main features: the efficient organisation and administration of the courts and ancillary services, and the oversight and review of the law by Government ministers and the promotion of law reform.

The Organisation and Administration of the Courts

The function of organising and administering the courts is carried out partly by the courts themselves and partly by the Secretary of State for Scotland who is a Government Cabinet minister. The supreme courts, the Court of Session and the High Court of Justiciary, enact their own procedural rules and the procedures of the sheriff and district courts. The Statutory Rules Council and the Sheriff Court Rules Council, consisting of judges and legal practitioners, advise the courts on amendments to the rules.

The Secretary of State for Scotland is responsible for the organisation and administration of the sheriff courts and, to a lesser extent, the supreme courts. The Scottish Courts Administration, a Government department, discharges this function on his behalf, seeing to non-legal, practical matters such as accommodation and staffing and the pay and conditions of service of the clerks of court and the other officers who assist the judges in the proper running of the courts.

District and islands councils, advised by justices' committees, administer the district courts, providing them, for example, with buildings and clerks

of court. The justices' committees approve the duty rota of justices and administer training schemes made by the Secretary of State.

Judges, whether lay or professional, are not in any way subject to ministerial control, and the independence of the courts is scrupulously observed. The Lord Advocate has limited functions in relation to some civil proceedings—for example, he makes procedural rules for the Lands Tribunal for Scotland.

Ministerial Supervision of Branches of Scots Law

Different ministers are responsible to Parliament for keeping under review the various branches of the law of Scotland and for sponsoring Bills for law reform. Some important branches are the responsibility of United Kingdom ministers. The Secretary of State for Trade, for instance, is answerable to Parliament for overseeing large parts of Scottish mercantile and commercial law. In general, however, most branches of the law are the responsibility of the Scottish Departments. Thus the Lord Advocate has ministerial responsibility for the law relating to the jurisdiction and procedure of Scottish courts in civil (but not criminal) proceedings and certain other matters,[1] and discharges this responsibility through the Scottish Courts Administration in Edinburgh. He is also in charge of the Lord Advocate's Department in London which drafts Scottish legislation sponsored by any Government department. The Secretary of State for Scotland is responsible generally for all branches of Scots law not allocated to other ministers, including, for instance, criminal law and procedure, family law and the laws of succession and land tenure.

Agencies of Law Reform

The Lord Advocate appoints the members of the Scottish Law Commission and approves their programmes of law reform. The commission is a permanent statutory body, consisting of five lawyers of high repute, which has the duty of keeping the whole law of Scotland under review with a view to its systematic development and reform. Proposals for law reform are made in the form of published reports, often with draft legislation annexed which may be introduced either by ministers or by private members of Parliament.

As in the rest of the United Kingdom, royal commissions, departmental groups and other inquiry bodies from time to time recommend changes in particular areas of the law, and Government departments themselves publish Green Papers and White Papers proposing legislative measures.

Other Public Offices

Apart from the departments of central Government directly under ministerial control, a number of minor autonomous public offices or departments, staffed by civil servants, provide essential services for the legal system.

[1]Currently, the law relating to (1) the enforcement of the judgments of Scottish courts in civil matters and the recognition and enforcement of judgments of courts outside Scotland (other than maintenance orders); (2) evidence; (3) prescription and limitation of actions; (4) arbitration; and (5) fatal accidents inquiries. These functions may be changed from time to time.

Some (such as the Crown Office, see p 55) are referred to elsewhere in this pamphlet. The Department of the Registrars of Scotland maintains a number of public registers including the General Register of Sasines (established in 1617) which is a register of title deeds relating to land transactions in Scotland. Other registries include the General Register Office (and local registrars' offices) of Births, Deaths and Marriages, controlled by Her Majesty's Registrar-General for Scotland; the Register of Friendly Societies for Scotland; and the Companies Department of the Exchequer Office which maintains a register of companies incorporated in Scotland under the companies legislation.

THE COURTS AND THE EXECUTIVE

All agencies of the State—Government departments, local authorities, statutory corporations, administrative tribunals and the like—exist to perform functions defined and limited in varying degrees of detail by legislation or rules of the common law.

The control exercised by the courts over these public authorities is primarily concerned to ensure that they keep within the limits of their powers; that is, that the authorities do not act *ultra vires*. If they act within those limits, then the courts will not intervene. A public authority acts *ultra vires* if it assumes a power which it does not by law possess, or if it uses its powers to defeat the objects for which the powers were conferred upon it or for purposes which differ from these prescribed by law; or if it fails to exercise its powers in accordance with the procedure laid down by law. Any person whose rights are injured, or threatened with injury, by an *ultra vires* or negligent act of a public authority, or by any failure of the authority to perform its statutory duties, may bring an action in the ordinary courts to obtain the appropriate remedy.

The more important remedies are decrees of declarator, reduction, interdict, specific implement and damages, all of which are also available in actions between private persons. The characteristic flexibility of Scottish civil procedure enables all or any of the remedies to be obtained in the one action.

Declarator

The object of a decree of declarator is to protect some legally enforceable right of the pursuer. The decree may protect this right either directly by declaring that the pursuer has the right, or indirectly—for example, by declaring that the defender has no competing right. Unlike other remedies, a declarator does not order something to be done or prevent something from being done; it is merely declaratory of a particular state of affairs. It may, however, be obtained before some action is taken by a public authority, to ensure that some right of the pursuer is taken into account by that authority, but it may be refused if an alternative remedy exists or if there is no actual dispute between the parties.

Reduction

Reduction is essentially a negative remedy by which the whole or any part of an act of a public authority may be reduced (that is, annulled or set

aside) on the grounds that the authority has acted *ultra vires*. An action of reduction may only be brought in the Court of Session, and must be commenced within 20 years after the *ultra vires* act has been taken, although the court may refuse the remedy if there was delay in bringing the action, and its availability may be restricted by the statute under which the public authority is acting. The remedy may also be refused if lesser remedies would suffice.

Interdict

An interdict is a preventive remedy by which a person may protect his rights when they are threatened by the proposed wrongful actions of a public authority. The decree prohibits the authority from infringing the rights in question. It may be refused where there is an alternative remedy, such as a statutory penalty. Interdict is not available against the Crown. Unlike reduction and declarator, however, the court may grant interim interdict to maintain the *status quo* pending the court's final decision. The court will grant or refuse interim interdict as the balance of fairness and convenience requires.

Specific Implement

The Court of Session has power to order a public authority, other than the Crown, to perform a statutory duty by making an order called an order for specific implement. The court may also prescribe such penalties (including fine and imprisonment) in the event of the order not being implemented as it considers to be appropriate. Generally a person may obtain a decree of specific implement only if the duty of the authority is judicially enforceable, and owed by the authority to that person. He cannot enforce the duty if it is owed to someone else or to the community as a whole.

Damages

A public authority is liable to make reparation (compensation) for any damage which it causes through the negligent exercise of its statutory powers and duties. A person injured in this way may bring an action of damages against the authority to determine the authority's liability and the amount of compensation due to him and to obtain an order for payment.

Pleading Illegality as a Defence

Where court proceedings are brought against a person to compel him, for example, to comply with an illegal decision of a public authority, or to prevent him from contravening some *ultra vires* regulation or bye-law, or to penalise the contravention, he may defend the proceedings by challenging the legality of the decision, regulation or bye-law.

Statutory Remedies

Sometimes a statute makes special provision for an appeal against, or judicial review of, the decisions and other acts of a public authority. Statutes have provided, for example, that an appeal on a question of law (as opposed to a question of fact) can be brought to the Court of Session against the decisions of most administrative tribunals, and a party may require such

tribunals, whether during their proceedings or after they have given their decision, to state a case on a question of law for the opinion of that Court. Again, in certain fields of legislation, such as the compulsory purchase of land by public authorities, town and country planning, housing and roads, statutes frequently provide that an aggrieved person may apply to the Court of Session to quash a ministerial decision either upon the ground that the decision was *ultra vires* or upon the ground that a statutory requirement of a procedural nature has not been complied with and that the person's interests have thereby been substantially prejudiced. These specific statutory remedies sometimes exclude the ordinary remedies outlined above and sometimes they may be accompanied by a statutory 'finality clause' excluding judicial challenge of the particular act of the public authority after a prescribed period.

LEGAL AID, ADVICE AND ASSISTANCE

The modern system of legal aid in Scotland is administered by committees of The Law Society of Scotland (the professional body for solicitors) acting in conjunction with the Supplementary Benefits Commission (which assesses the income and capital of applicants for civil legal aid). The committees maintain lists of lawyers willing to act in proceedings, including a rota of 'duty solicitors' to represent people in custody at the start of criminal proceedings, and decide applications for civil legal aid.

Advice and Assistance

Legal advice, written or oral, on any matter within the whole field of Scots law may be obtained from a solicitor by any person whose disposable income or capital do not exceed certain prescribed amounts.[1] Assistance of this kind can be given up to a normal total cost of £25. It does not cover actual respreentation before a court or tribunal, except in the limited circumstances where the sheriff, in criminal or civil proceedings, or the district court, considers that such assistance would benefit a person appearing before the court who is not legally represented.

Aid in Civil Proceedings

Legal aid is available in most civil proceedings in the House of Lords, the Court of Session, the sheriff court, the Lands Valuation Appeal Court, the Scottish Land Court and the Lands Tribunal for Scotland. It covers the cost of a solicitor and, where required, the services of counsel. To obtain such aid, an applicant must show 'probable cause' for the action and produce, in support of his or her application, a statement of the case corroborated according to the requirements of Scots law. Legal aid is available for people whose disposable annual income or disposable capital do not exceed certain prescribed amounts.[1] Assessments are governed by regulations which allow for deductions from gross figures for reasonable provision for such items as maintenance of dependants, interest on loans, income tax, rent, the value of

[1]The figures are the same in England, Wales and Scotland, and are given on pp 37–8.

housing, furniture and other household effects. Depending on his or her means, an assisted person may be required to contribute to the expenses of the action.

Aid in Criminal Proceedings

Legal aid in criminal proceedings is available to everyone in custody on his or her first appearance in the sheriff court and the district courts without inquiry into the person's means. Thereafter, or if the person has been cited to attend court and is not in custody, he or she must apply to the court for legal aid. No inquiry is made as to whether the person has a good defence, but the court has to decide whether the person cannot afford to pay for his or her defence. If the case involves only a summary complaint, the court has also to decide whether it is necessary in the interests of justice that legal aid should be granted. Where aid is granted to an accused person, he or she is not required to pay any contribution towards expenses.

NORTHERN IRELAND

THE NORTHERN IRELAND legal system is in many ways similar to that in England and Wales. The original Celtic laws of custom in Ireland remained uninfluenced by either English law or Roman law from continental Europe until quite late in the Middle Ages, but from the end of the twelfth century when King Henry II established a colony in the part of Ireland known as 'the Pale' English influence on Irish law and government became marked. By the year 1400 the pattern of the judicial system in Ireland was firmly established along English lines, although courts offered justice only to the Anglo-Irish and most native Irishmen remained under Celtic law. It was, in fact, not until the seventeenth century that law on the English model applied through Ireland. The subsequent parallel development of English law and the law enforced in Northern Ireland courts has been assisted by the existence of a common final court of appeal, the House of Lords in London.

Parliament and Government

In 1801 the Irish Parliament joined that of Great Britain, establishing the United Kingdom. The arrangement lasted for over a century but in 1922 Southern Ireland (now the Irish Republic) became a self-governing country outside the United Kingdom. Meanwhile the Government of Ireland Act 1920 had enacted a constitution for Northern Ireland which, while preserving the supreme authority of the United Kingdom Parliament in London and reserving certain matters to that Parliament, provided Northern Ireland with its own subordinate legislature and executive to deal with many domestic matters, such as agriculture, commerce, development, education, health and social services. In many aspects of home affairs, therefore, modern Northern Ireland legislation derives from a source different from that of corresponding English or Scottish statutes, and may differ in substance. The Northern Ireland Parliament had jurisdiction over all matters relating to the inferior courts, but all Supreme Court matters remained the responsibility of the United Kingdom Parliament.

This system continued for Northern Ireland law and government until 1972 when, following several years of political instability and violence in the province, a period of direct rule from London was introduced and the United Kingdom Parliament decided to take responsibility for the government of Northern Ireland and to bring the Northern Ireland Parliament to an end. In January 1974 a new type of constitution came into force providing, among other things, for the devolution of domestic powers to a legislative assembly and a power-sharing executive. Widespread opposition, however, led to the prorogation of the assembly in May 1974 and its dissolution in March 1975. In July 1974 the Northern Ireland Act was introduced, under the terms of which direct rule was re-introduced, while at the same time provision was made for the election of a constitutional convention to consider what arrangements for the government of Northern Ireland would be likely to command most widespread acceptance throughout the community. The convention met in 1975 and early 1976 but failed to agree on the central issue

of how, in a divided community, a system of government could be devised which would have sufficient support in both parts of that community to provide stable and effective government. It was dissolved in March 1976.

The United Kingdom Parliament and Government are responsible for law and order, electoral matters and business of national importance such as the Crown, foreign policy, defence and certain aspects of taxation. The Secretary of State for Northern Ireland, a senior United Kingdom Government minister, is responsible to the United Kingdom Parliament for the previously devolved services. Laws for Northern Ireland on matters formerly within the competence of the assembly are made by Order in Council. Northern Ireland departments, which have executive responsibility for the devolved matters, are the responsibility of ministers in the Northern Ireland Office.

This form of direct rule is to continue for the time being, and the Secretary of State is to bring before Parliament in due course proposals for its renewal, including any changes that may be desirable. The Government has stated that its aim remains a devolved system of government for Northern Ireland but that, in the belief that progress in that direction is not possible at present, it does not contemplate any major initiative for some time to come.

Superior Courts

The superior courts in Northern Ireland comprise the Supreme Court of Judicature and the Court of Criminal Appeal. All matters relating to these courts are under the jurisdiction of the United Kingdom Parliament. Judges are appointed by the Crown and can only be removed on an address from both Houses of Parliament.

The Supreme Court of Judicature consists of the Court of Appeal and the High Court of Justice (the superior court of first instance). The Court of Appeal is constituted of the Lord Chief Justice (as President) and two Lords Justices of Appeal. The High Court is constituted of the Lord Chief Justice and five other judges. The practice and procedure of the Court of Appeal and the High Court are virtually the same as in the corresponding courts in England and Wales. Both courts sit in the Royal Courts of Justice in Belfast.

The Court of Appeal has power to review the civil law decisions of the High Court, and may in certain cases review the decisions of county courts and magistrates' courts. Subject to certain restrictions, an appeal from a judgment of the Court of Appeal lies to the House of Lords.

The High Court is divided into a Queen's Bench Division, dealing with all criminal and many civil law matters, and a Chancery Division, dealing, for instance, with trusts and estates, title to land, mortgages and charges, wills and company matters. Spring and autumn assize courts are held in each part of Northern Ireland by Supreme Court judges, and can try any crime and hear common law actions, appeals from county courts and matters specially referred from the Queen's Bench and Chancery Divisions. The winter assize court, held in one selected centre for the whole of the province other than Belfast, has no civil jurisdiction. In Belfast the criminal jurisdiction of the assize court is exercised separately by judges of the Supreme Court.

For people convicted of crimes on indictment there may be an appeal to the Northern Ireland Court of Criminal Appeal in which any of the Supreme Court judges may sit. An appeal lies to the House of Lords from any decision of the court with the leave of the court or of the House, but leave is not granted unless a legal point of general public importance is involved and is one which ought to be considered by the House.

Inferior Courts

The inferior courts in Northern Ireland are the county courts and the magistrates' courts, both of which differ in a number of ways from their counterparts in England and Wales.

County courts are both criminal and civil law courts. They are presided over by one of ten county court judges, two of whom—in Belfast and Londonderry—have the title of recorder. Appeals lie from the county courts to the assize judge or High Court.

The courts have substantially the same jurisdiction in criminal matters as the courts of assize of the Supreme Court, and can try all indictable offences with the exception of treason, murder and certain other very serious offences. In practice most cases that are triable at either assizes or a county court are heard in the court where the speediest trial can be held.

The general civil jurisdiction of the courts includes the determination of most actions (not divorce cases) in which the amount or the value of specific articles claimed is not very large. The courts also deal with minor actions involving title to or the recovery of land, equity matters such as trusts and estates, mortgages, the sale of land and partnerships; contentious probate matters; criminal injury cases embracing both personal injuries (which in England, Wales and Scotland are dealt with by the Criminal Injuries Compensation Board—see p 18) and damage to property; certain rent matters; and adoption orders.

The day-to-day work of dealing summarily with minor local criminal, quasi-criminal and civil cases is carried out in each of the 61 'petty sessions' districts by magistrates' courts presided over by a resident magistrate, who is a paid judge with legal qualifications, similar to the stipendiary magistrate in England. In some cases, as when the magistrates' courts sit as juvenile courts on the English pattern (see p 16), the resident magistrate sits with two lay members, one of whom must be a woman. Appeals from the decisions of a magistrates' court may be made to a county court.

There are 17 resident magistrates in Northern Ireland, and also a small panel of deputy resident magistrates, members of which deputise for any resident who is unable to act—for example, because of illness. Resident magistrates are appointed by the Crown on the recommendation of the Lord Chancellor. They must be practising solicitors or barristers of not less than six years' standing.

Lands Tribunal

The Lands Tribunal for Northern Ireland determines questions relating to compensation for the compulsory purchase of land, and to other matters including appeals against valuation for 'rating' purposes ('rates' are a form

of local property tax). The tribunal has its own courthouse, and also sits throughout the province in the county courthouse most convenient to the land or premises in question.

Juries

Jury trials have the same place in the Northern Ireland legal system as in that of England and Wales (see p 27). Jury service is determined by a qualification based on the electoral register. Everyone between the ages of 18 and 70 whose name is on the register is liable for service; categories of exemptions and disqualifications are similar to those in England and Wales. A jury numbers 12 in ordinary criminal cases and seven in civil cases. People charged with crimes of a terrorist nature are tried by a single judge sitting without a jury.

Legal Profession

The course of litigation in Northern Ireland is the same as in England and Wales, and the legal profession has the same two branches—barristers and solicitors—as in England and Wales, with the same status and duties.

Members of the Bar have the exclusive right of audience in the superior courts and from their ranks appointments are made to the judiciary. Admissions to the Bar and the conduct of the profession are regulated by The Inn of Court of Northern Ireland.

The Incorporated Law Society of Northern Ireland regulates the conduct of solicitors, and supervises the education and training of apprentices. The society exercises regulatory and disciplinary powers over solicitors and their apprentices similar to those exercised by The Law Society in England and Wales.

The terms of reference of the royal commission which is to consider the provision of legal services in England and Wales enable it to include the legal profession in Northern Ireland.

APPENDIX

LIST OF ORGANISATIONS

ENGLAND AND WALES

Advisory Council on the Penal System, c/o the Home Office, Whitehall, London SW1A 2AP.
Council of Legal Education, Gray's Inn Place, London WC1R 5DX.
Criminal Injuries Compensation Board, 10–12 Russell Square, London WC1B 5EN.
Criminal Law Revision Committee, c/o the Home Office, Whitehall, London SW1A 2AP.
Department of the Director of Public Prosecutions, 4–12 Queen Anne's Gate, London SW1H 9AZ.
Department of the Procurator General and Treasury Solicitor, Matthew Parker Street, London SW1H 9NN.
Home Office, Whitehall, London SW1A 2AP.
Law Commission, Conquest House, 37–38 John Street, Theobalds Road, London WC1N 2BQ.
Law Officers' Department, Attorney General's Chambers, Royal Courts of Justice, Strand, London WC2A 2LL.
Law Reform Committee. c/o Lord Chancellor's Office, House of Lords, London SW1A 0PW.
The Law Society, 113 Chancery Lane, London WC2A 1PL.
Lord Chancellor's Office, House of Lords, London SW1A 0PW.
Parliamentary Counsel Office, 36 Whitehall, London SW1A 2AY.
The Senate of the Inns of Court and the Bar, Fountain Court, Temple, London EC4Y 9DQ.
Statute Law Committee, House of Lords, London SW1A 0PW.
Statutory Publications Office, 12 Buckingham Gate, London SW1E 6LJ.

SCOTLAND

Criminal Injuries Compensation Board—see under England and Wales.
Crown Office, 9 Parliament Square, Edinburgh EH1 1RH.
Faculty of Advocates, Parliament House, Parliament Square, Edinburgh EH1 1RF.
The Law Society of Scotland, 26 Drumsheugh Gardens, Edinburgh EH3 7YR.
Lord Advocate's Department, Fielden House, 10 Great College Street, London SW1P 3SL.
Scottish Courts Administration, P.O. Box 37, 28 North Bridge, Edinburgh EH1 1RA.
Scottish Law Commission, Old College, South Bridge, Edinburgh EH8 9BD.
Scottish Office, New St Andrew's House, St James' Centre, Edinburgh EH1 3SX.

NORTHERN IRELAND

Incorporated Law Society of Northern Ireland, Royal Courts of Justice, Belfast.
Inn of Court of Northern Ireland, Royal Courts of Justice, Belfast.
Northern Ireland Office, Stormont Castle, Belfast BT4 3ST.

READING LIST

Official Publications

(*published by Her Majesty's Stationery Office*)

			£
Annual Reports			
Civil Judicial Statistics (England and Wales).			
Civil Judicial Statistics (Scotland).			
Council on Tribunals.			
Criminal Injuries Compensation Board.			
Criminal Statistics (England and Wales).			
Criminal Statistics (Scotland).			
Law Commission.			
Legal Aid: Reports of The Law Society and the Lord Chancellor's Advisory Committee.			
Legal Aid: Report of The Law Society for Scotland.			
Scottish Law Commission.			
Chronological Table of the Statutes. *Annual.*			
Chronological Table of the Statutes, Northern Ireland. *Annual.*			
Criminal Justice in Britain (COI reference pamphlet). *ISBN 0 11 700763 3.*		1975	0·65
Index to Government Orders. *Annual.*			
Index to the Statutes. *Annual.*			
Index to the Statutes in Force, Northern Ireland. *Annual.*			
The Legal System of Scotland. (Scottish Office booklet.[1]) *ISBN 0 11 491332 3.*		1976	1·00
Statutes Revised.			63·00
Table of Government Orders. *Annual.*			

Other Publications

ABEL-SMITH, BRIAN. Legal Problems and the Citizen. *ISBN 0 435 82865 7.*	*Heinemann*	1973	3·50
ABEL-SMITH, BRIAN *and* STEVENS, ROBERT. Lawyers and the Courts. *ISBN 0 435 32003 3.*	*Heinemann*	1970	1·50
BAKER, J. H. Introduction to English Legal History. *ISBN 0 406 55500 1* (hardback).	*Butterworths*	1971	5·20
ISBN 0 406 55501 X (paperback).			3·80
BLOM-COOPER, LOUIS *and* DREWRY, GAVIN. Final Appeal: A Study of the House of Lords in its Judicial Capacity. *ISBN 0 19 825310 9.*	*Oxford*	1972	10·00
VAN CAENEGEM, R. C. The Birth of the English Common Law. *ISBN 0 521 20097 0.*	*Cambridge*	1973	2·90
COLLINS, LAWRENCE. European Community Law in the United Kingdom. *ISBN 0 406 26920 3.*	*Butterworths*	1975	7·80
COOPER OF CULROSS, *Lord.* The Scottish Legal Tradition. *ISBN 0 85411 006 2.*	*Saltire Society*	1969	0·15
COULL, JAMES W. *and* MERRY, ERIC W. Principles and Practice of Scots Law. *ISBN 0 406 56685 2* (hardback).	*Butterworths*	1971	5·00
ISBN 0 406 56686 0 (paperback).			3·50
CROSS OF CHELSEA, *Lord and* HAND, G. J. The English Legal System. *ISBN 0 406 64702 X.*	*Butterworths*	1972	3·60

[1]The booklet provided the basis for the text of the section of this pamphlet dealing with Scotland.

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EDDEY, K. J. The English Legal System. *ISBN 0 421 15490 X* (hardback).	*Sweet & Maxwell*	1971	2·50
ISBN 0 421 15500 0 (paperback).			1·30
GRIFFITH, J. A. G. *and* HARTLEY, T. C. Government and Law. *ISBN 0 297 76791 7* (hardback).	*Weidenfeld & Nicolson*	1975	8·00
ISBN 0 297 76792 5 (paperback).			3·25
JACKSON, R. M. Enforcing the Law. *ISBN 0 14 021146 2.*	*Penguin*	1972	0·60
———. The Machinery of Justice in England. *ISBN 0 521 086442.*	*Cambridge*	1972	5·90
JAMES, PHILIP S. Introduction to English Law. *ISBN 0 406 60494 0* (hardback).	*Butterworths*	1972	3·80
ISBN 0 406 60495 9 (paperback).			2·00
KIRALFY, A. K. F. The English Legal System. *ISBN 0 421 16220 1* (hardback).	*Sweet & Maxwell*	1971	3·00
ISBN 0 421 16230 9 (paperback).			2·00
LEIGH, L. H. Police Powers in England and Wales. *ISBN 0 406 84540 9.*	*Butterworths*	1975	5·60
MARSHALL, E. A. General Principles of Scots Law. *ISBN 0 414 00537 6* (hardback).	*W. Green*	1971	5·00
ISBN 0 414 00532 5 (paperback).			3·50
MITCHELL, J. D. B. Constitutional Law. *ISBN 0 414 00504 X.*	*W. Green*	1968	3·25
MORRIS, PAULINE, WHITE, RICHARD *and* LEWIS, PHILIP. Social Needs and Legal Action. *ISBN 0 85520 016 2.*	*Martin Robertson*	1973	0·95
OSBORN, P. G. Concise Law Dictionary. *ISBN 0 421 04110 2.*	*Sweet & Maxwell*	1964	1·60
PHILLIPS, O. HOOD. A First Book of English Law. *ISBN 0 421 13270 1* (hardback).	*Sweet & Maxwell*	1970	2·50
ISBN 0 421 13280 9 (paperback).			1·10
POLLOCK, SETON. Legal Aid: the first 25 years. *ISBN 0 8510 269 1* (hardback).	*Oyez*	1975	8·50
ISBN 0 8510 263 2 (paperback).			4·50
POTTER, H. Historical Introduction to English Law and its Institutions. *ISBN 0 421 02580 8* (hardback).	*Sweet & Maxwell*	1958	4·00
ISBN 0 421 13630 8 (paperback).			2·00
SAUNDERS, JOHN B. Mozley and Whiteley's Law Dictionary. *ISBN 0 406 62521 2* (hardback).	*Butterworths*	1972	3·00
ISBN 0 406 62522 0 (paperback).			1·60
SMITH, KENNETH *and* KEENAN, DENIS J. English Law. *ISBN 0 273 31743 1.*	*Pitman*	1972	1·90
DE SMITH, S. A. Constitutional and Administrative Law. *ISBN 0 14 080223 1.*	*Penguin*	1974	2·50
———. Judicial Review of Administrative Action. *ISBN 0 420 44030 5.*	*Stevens*	1973	9·50
STREET, HARRY. Freedom, the Individual and the Law. *ISBN 0 14 020646 9.*	*Penguin*	1972	0·50
WALKER, D. M. The Scottish Legal System. *ISBN 0 414 00508 2.*	*W. Green*	1969	3·75
WALKER, PETER N. The Courts of Law: A Guide to their History and Working. *ISBN 0 7153 6589 4.*	*David & Charles*	1974	1·05

				£
WALKER, R. J. *and* WALKER, M. G. The English Legal System.				
ISBN 0 406 67754 9 (hardback).		*Butterworths*	1972	6·00
ISBN 0 406 67755 7 (paperback).				4·20
WILLIAMS, GLANVILLE. Learning the Law.				
ISBN 0 420 44110 7 (hardback).		*Stevens*	1973	2·50
ISBN 0 420 44120 4 (paperback).				1·25
WILSON, GEOFFREY. Cases and Materials on the English Legal System.				
ISBN 0 421 14970 1 (hardback).		*Sweet & Maxwell*	1973	6·50
ISBN 0 421 15000 9 (paperback).				4·80
ZANDER, MICHAEL. Cases and Materials on the English Legal System.				
ISBN 0 297 99547 2 (hardback).		*Weidenfeld & Nicholson*	1973	7·50
ISBN 0 297 99548 0 (paperback).				2·95

About 70 periodicals dealing wholly or largely with legal topics are published in the United Kingdom. Titles are listed in the *Newspaper Press Directory* (published annually by Benn, London) and in *Willing's Press Guide* (published annually by Thomas Skinner Directories, Croydon).

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