

# Legal Systems

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# THE LEGAL SYSTEMS

Roman Law → Statute Law (Parliament 1st source) + Case Law (Supreme Court)

Common Law → Case Law (any Court) + Equity

**TORT**



PRIVATE WRONG

**CRIME**



PUBLIC WRONG

**TORT VS CRIME**

**CIVIL LAW**

**CRIMINAL LAW**

**INDIVIDUAL**

**PUBLIC**

## Main difference

In Spain, the case law are the verdicts ruled by the Supreme Court. In England, any court produces case law.

## Equity

system of law designed to furnish remedies for wrongs which were not legally recognised under the common law of England

## Tort

A civil, not criminal, wrong. An injury against a person or property, with the exception of breach of contract.

**Damages**

damage is injury or harm



**Remedies**

remedy is something that corrects or counteracts

# COMMON LAW SYSTEM

Main source → case law (justice + common sense)

Equity (general rules) + case law + acts → FACTS

In USA both systems co-exist (except in Louisiana)

Roman Law → Rules → PRINCIPLES

Statute Law → acts passed by the Parliament

In USA: Ordinances, Regulations, Federal Constitution, Federal Acts of Congress, Foreign Treaties

## SUMMARY: COMMON LAW VS. ROMAN LAW

Common Law

Statute Law

Judicial Review

Constitution



In the US, Equity Law and Common Law are unified except in Arkansas, Delaware, Mississippi and Tennessee.

State Courts are influenced by their own verdicts and federal decisions, but not by courts from other states. In 1923 they tried to unify the legal system in the USA, but they couldn't reach an agreement on divorce, marriage and the death penalty.

# UK SYSTEM

## ENGLAND & WALES:

Supreme Court of Judicature Act 1873

→ unifies Common Law and Equity Law

## SCOTLAND:

- Contemporary texts of Common Law
- Equity Law

## IRELAND:

- Same as UK+US (2 parallel systems)
- European Acts, directives and by-laws

ACTS OF PARLIAMENT

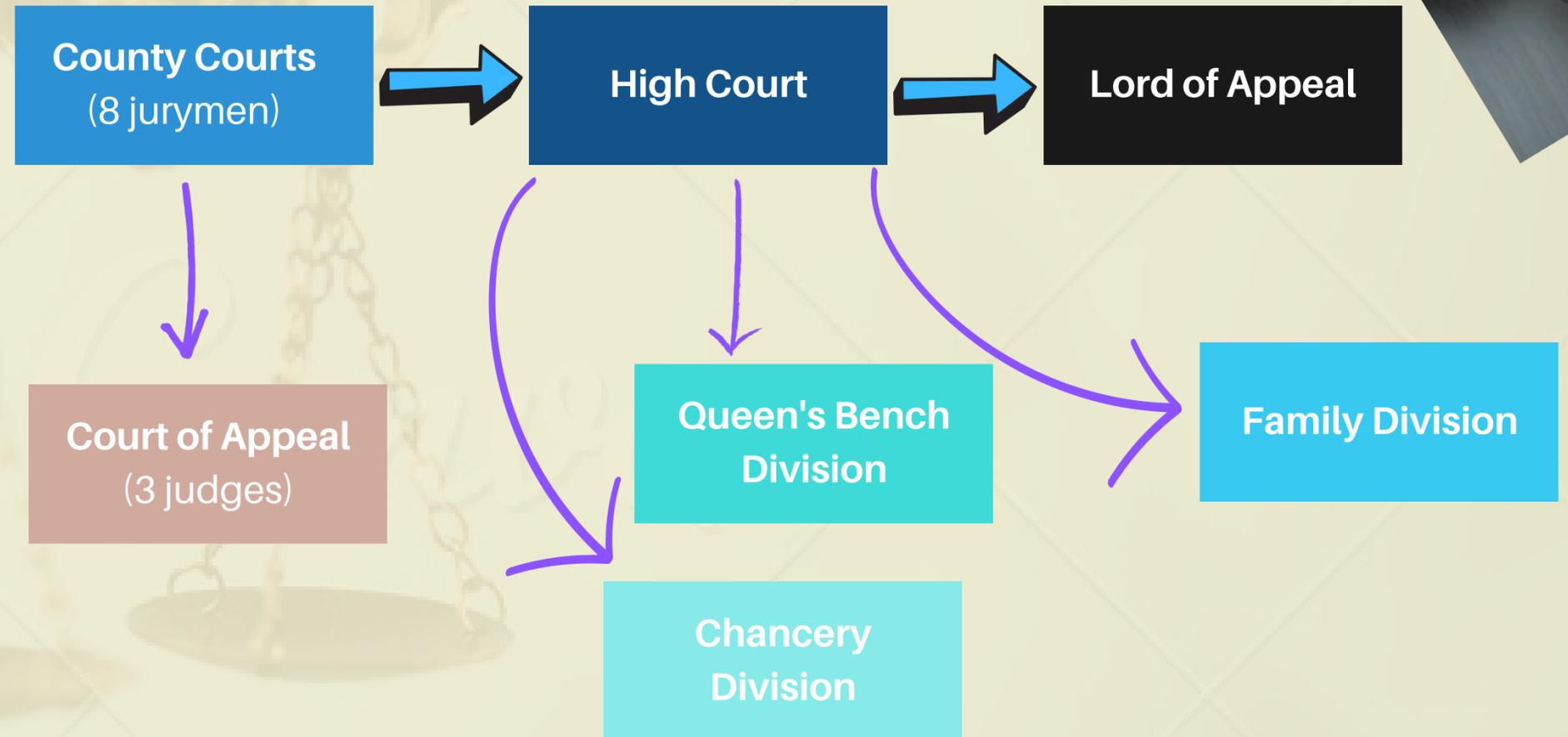
BY-LAWS

STATUTE LAWS

COMMON LAW

EQUITY

## The Main Civil Courts



The Queen's Bench Division includes a number of specialist courts: the Admiralty, Commercial, Mercantile, Technology & Construction, and Administrative Courts.

The Chancery Division deals with company law, partnership claims, conveyancing, land law, probate, patent and taxation cases.

The Family Division deals with situations involving families, such as divorce and disputes over children, property or money; adoption, wardship (guardianship over a child) and other matters involving children.

# JURY

**USA** → Only in criminal cases:

- Grand jury → they bring the process and charges (indictment). Maximum 23 civilians
- Petit jury or trial jury → guilty/not guilty/innocent
- 6 to 12 members

**UK** → 12 members, 8 in County Courts

**Scotland** → maximum 15 members

# COURTS

**USA** → Supreme Court (Federal Government)

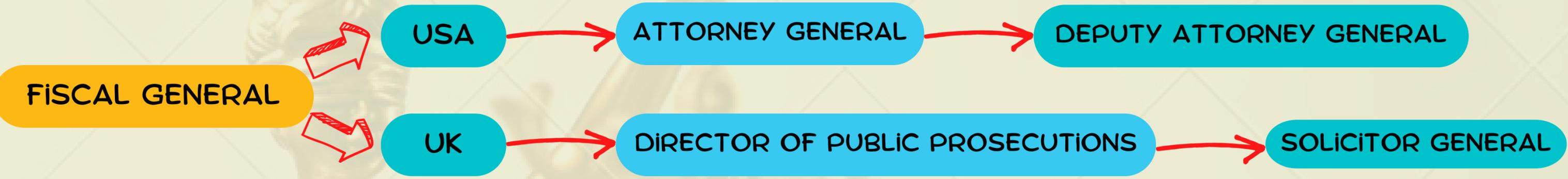
- Interpret laws
- Solve disputes between individuals, firms, states...
- Violation of federal laws
- Decide if the laws respect the constitution
- Ambassadors, consuls, ministers...
- Attorney decisions
- Last instance
- Does not bring cases, they accept the facts of previous courts
- Not all lawyers can bring cases to this court

**UK** → House of Lords (criminal cases mainly)

- 3rd Instance, 2 courts → Court of Appeal
  - Court of Appeal (civil)
  - Court of Criminal Appeal (criminal)



# THE LEGAL PROFESSION



DUTIES	USA	UK	SPAIN
REPRESENT	ATTORNEY AT LAW	SOLICITOR LAW AGENT (SCOTLAND BEFORE 1973)	PROCURADOR
COUNSEL	ATTORNEY AT LAW	SOLICITOR	ABOGADO
NEGOTIATE	ATTORNEY AT LAW	SOLICITOR	ABOGADO
ALLEGATIONS	ATTORNEY AT LAW	SOLICITOR	ABOGADO
SUE	ATTORNEY AT LAW	SOLICITOR	ABOGADO
DEFEND (LOWER COURT)	DEFENCE ATTORNEY	SOLICITOR	ABOGADO
DEFEND (HIGHER COURT)	ATTORNEY AT LAW	BARRISTER AT LAW / ADVOCATE (SCOTLAND) / COUNSELLOR (IRELAND)	ABOGADO
BEAR WITNESS	NOTARY PUBLIC: NOT PROFESSIONAL, THEY WORK FOR THE GOVERNMENT, BUT THERE ARE OTHER VALIDATION SERVICES	NOTARY PUBLIC (SOLICITORS) COMMISSIONER FOR OATHS	NOTARIO (FEDATARIO PÚBLICO)
JUDGE	JUDGE / MAGISTRATE* / JUSTICE OF THE PEACE	JUDGE / MAGISTRATE* / JUSTICE OF THE PEACE	JUEZ / JUEZ DE PAZ
PROSECUTE	PROSECUTOR	PROSECUTOR	FISCAL

# EXAMPLES OF FALSE FRIENDS

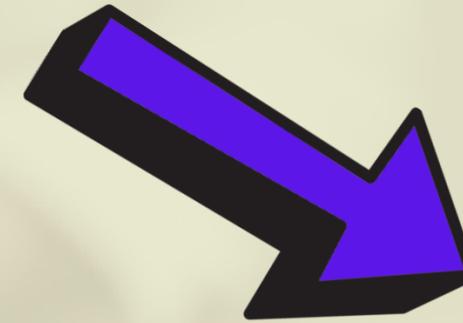
## JURISPRUDENCE

*'Jurisprudencia' is the Spanish term for "caselaw" (also called "decisional law"), that is, judgments rendered by courts of justice, while in its strictest sense "jurisprudence" is the science of law or legal theory (sharing some of the content of the disciplines of 'Teoría del Derecho' and 'Filosofía del Derecho' as traditionally taught in Spanish law schools). Despite the above, it should be noted that the term "jurisprudence" is sometimes used in English with the meaning of "caselaw," particularly in jurisdictions where French is or formerly was the official language.*

## MAGISTRATE

*A magistrate is a judicial officer. In common law systems a magistrate usually has limited authority to administer and enforce the law. In civil law systems a magistrate may be a judge of a superior court. In some jurisdictions, such as Australia, the term has become blurred as a Federal Magistrate has jurisdiction similar to a judge. A magistrate's court may have jurisdiction in civil cases, criminal cases, or both.*

**MORE FALSE FRIENDS**



# ENGLAND & WALES

In the courts of England and Wales, magistrates hear prosecutions for and dispose of summary offences, by making orders in regard to and placing additional requirements on offenders. Magistrates' sentencing powers are limited, but extend to shorter periods of custody (maximum of 6 months), fines, community orders which can include requirements to perform unpaid work up to 300 hours or supervision up to 3 years and or a miscellany of other options. Magistrates hear committal proceedings for certain offences, and establish whether sufficient evidence exists to pass the case to a higher court for trial and sentencing. Magistrates have power to pass summary offenders to higher courts for sentencing when, in the opinion of the magistrate, a penalty greater than can be given in magistrates court is warranted. A wide range of other legal matters are within the remit of magistrates. In the past, magistrates have been responsible for granting licences to sell alcohol, for instance, but this function is now exercised by local councils though there is a right of appeal to the magistrates court. Magistrates are also responsible for granting search warrants to the police, therefore it is usually a requirement that they live within a certain distance of the area they preside over in case they are needed to sign a warrant out of hours.

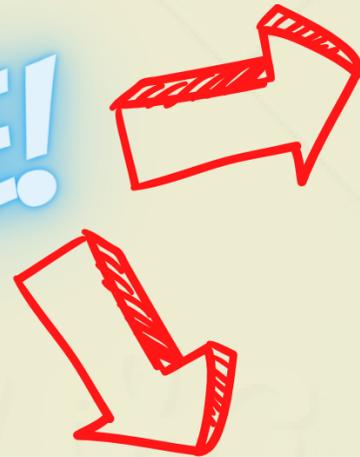
There are two types of magistrate in England and Wales: lay magistrates and legal professionals permanently employed by the Department for Constitutional Affairs. The first group, known as lay Justices of the Peace, sit voluntarily (though they may receive money for costs incurred) on local benches (a colloquial and legal term for the local court), hearing lesser matters, and are provided with advice, especially on sentencing, by a legally qualified Court Legal Adviser. However, before they can hear cases they must undergo a period of training.

The second group, professional magistrates, are nowadays known as District Judges, although hitherto they were known as Stipendiary Magistrates (which is to say, magistrates who received a stipend or payment). District Judges have the authority to sit in any magistrates' court (or, in legal parlance, on any bench). Under European legislation with force in England and Wales (by Act of Parliament), certain sentences may be passed only by paid magistrates and not by their lay colleagues.

In Scotland, the lowest level of law-court is presided over by a Justice of the Peace.

# VIDEO-CLIPS

CLICK HERE!



Crime &  
Criminals

Crime  
& Law

# EXERCISES & MORE

TYPES OF  
CRIME

MEDIATION  
SAMPLE

GLOSSARY

CRIME  
VOCABULARY

BOGUS CASES

TYPES OF  
CRIME

LEGAL TERMS

FORMAL OR  
INFORMAL?

LAWS  
WORLDWIDE

IN THE  
COURTROOM

LEGAL WRANGLES

LAW COLLOCATIONS

CRIME &  
PUNISHMENT

SONG

USING PAST  
MODALS

LAW TEST

DISCUSSION A

DISCUSSION B