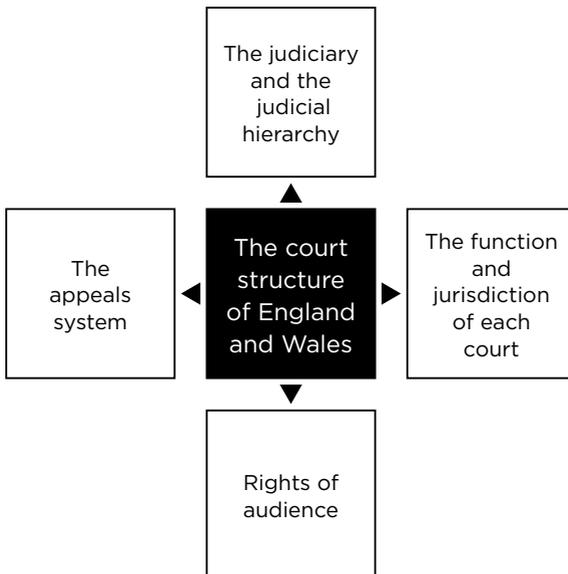


# 1

## The Court Structure of England and Wales

### ■ MAKE SURE YOU KNOW

This chapter provides an overview of the court hierarchy of England and Wales and examines the role and jurisdiction of the various courts that make up the English legal system. For the SQE 1 assessments you will need to understand the function and jurisdiction of each court within the court structure and the designated avenues of appeal available in different types of cases. You will also need to understand the judicial hierarchy, and the rules governing the exercise of rights of audience. Your understanding of these subjects will enable you to identify and apply the appropriate legal rules and principles to problem-based scenarios in the SQE.



## ■ SQE ASSESSMENT ADVICE

For the SQE, you are required to understand the legal system of England and Wales from a *practical* perspective. It is likely that you will be required to determine which court(s) or judge(s) have the power to hear particular types of cases. You may also be required to determine whether either party to a case has a legal basis to appeal a court's decision and to identify which court would consider such an appeal.

As you work through this chapter, remember to pay particular attention in your revision to:

- the judicial hierarchy
- the function and jurisdiction of each court
- the designated routes of appeal available in different types of cases
- the basis upon which an appeal can be made
- the rules surrounding the acquisition and exercise of rights of audience.

## ■ WHAT DO YOU KNOW ALREADY?

Have a go at these questions before reading this chapter. If you find some difficult or cannot remember the answers, make a note to look more closely at that subtopic during your revision.

- 1) What does the term 'jurisdiction' mean in the context of the English legal system? **[Subtopic: jurisdiction: overview; p. 6]**
- 2) True or false: appeals from the County Court are always considered by the High Court. **[Subtopic: the appeals system; p. 20]**
- 3) Which of the following statements is most accurate?
  - a) The magistrates' court deal with all summary offences and triable either way offences.
  - b) The magistrates' court deals with summary offences and some triable either way offences.
  - c) The magistrates' court deals with summary offences, triable either way offences and less serious indictable offences.

**[Subtopic: jurisdiction and role of each court in the court structure of England and Wales; p. 11]**

- 4) What is meant by the term 'judicial hierarchy' and how does this differ from 'court hierarchy'?

**[Subtopic: the judicial hierarchy; p. 4]**

- 5) True or false: solicitors are automatically granted higher rights of audience and can use these powers once they are admitted or registered to the roll of solicitors.

**[Subtopic: rights of audience; p. 27]**

## THE JUDICIAL HIERARCHY

For the SQE, you will be required to demonstrate that you understand how the English legal system operates. An area you will need to understand is the role that judges play in the administration of justice. Collectively the various judges who preside over cases constitute the **judiciary** of England and Wales.

### Key Term: Judiciary

The term 'judiciary' refers to the various types of judges that work within the English legal system.

It is important to understand that there is a **judicial hierarchy**. In basic terms, this means that some judges have greater powers and responsibilities than others. Unsurprisingly, the judges at the top of the judicial hierarchy have more extensive powers and responsibilities than those lower in the hierarchy. Judges tend to sit in the courts that correspond with their position in the judicial hierarchy. There are a number of 'senior' judges defined by statute (Constitutional Reform Act (CRA) 2005, s 60(1)). These senior judicial posts encompass both judicial *and* important administrative roles. Technically, all other judges are 'inferior'. Nevertheless, some inferior judges are more powerful than others and so are 'higher' in the judicial hierarchy. They are considered to be more powerful because the powers they can exercise are not limited by statute. Other inferior judges have powers that have been specifically defined by statute.

### Key Term: Judicial Hierarchy

The judicial hierarchy ranks the various members of the judiciary by virtue of the powers and responsibilities associated with each judicial office/post.

You will need a good understanding of the judicial hierarchy to properly understand the court hierarchy and appeals process. These topics are discussed later in this chapter. You should use **Table 1.1** to learn which judges typically sit in which courts, and where each type of judge 'sits' in the judicial hierarchy. We will then examine the concept of **jurisdiction** in detail.

Table 1.1: The judicial hierarchy

Judicial office	Typical court	Typical address in court	Status in judicial hierarchy
Lord Chief Justice	Court of Appeal	My Lord/ My Lady	Senior judicial office
President of the Supreme Court	Supreme Court and Privy Council	My Lord/ My Lady	Senior judicial office
Master of the Rolls	Court of Appeal	My Lord/ My Lady	Senior judicial office
Justice of the Supreme Court	Supreme Court and Privy Council	My Lord/ My Lady	Senior judicial office
President of the Queen's Bench Division/Chancery Division/Family Division	High Court	My Lord/ My Lady	Judicial powers not restricted by statute
Lord Justices of Appeal	Court of Appeal	My Lord/ My Lady	Judicial powers not restricted by statute
High Court Judge	High Court, Crown Court, Family Court	My Lord/ My Lady	Judicial powers not restricted by statute
Circuit Judge	County Court and Crown Court, Family Court	Your Honour	Judicial powers restricted by statute
District Judge	County Court, High Court, Family Court	Sir/ Madam	Judicial powers restricted by statute
District Judge (magistrates' court)	magistrates' court, Family Court	Sir/ Madam	Judicial powers restricted by statute
Recorder	County Court, Family Court	Sir/ Madam	Judicial powers restricted by statute

## JURISDICTION: OVERVIEW

Jurisdiction refers to the power that a court or a judge has to consider different types of cases.

### Key Term: Jurisdiction

Jurisdiction refers to the power that a court or judge has to hear a case.

Jurisdiction may refer to the *type* of law that the court typically deals with. For example, it is common to refer to courts as being either *criminal* courts or *civil* courts. The key differences between civil and criminal cases are outlined below.

### What is the difference between civil and criminal cases?

Criminal cases are cases where a prosecution has been brought against an individual (referred to as a *defendant*) who is believed to have committed a criminal offence. Prosecutions are typically brought against individuals by the Crown Prosecution Service (CPS) on behalf of the state (referred to as the *prosecution*). The core function of criminal courts is to determine the guilt or innocence of a defendant. If a defendant is found guilty of an offence, the court must also determine an appropriate sentence for the defendant.

Civil cases, on the other hand, primarily involve the resolution of private disputes between individuals. Typically, the person bringing the claim (referred to as the *claimant*) is seeking some sort of legal remedy. The other party to a civil case is usually referred to as *the defendant*. For example, Amy and Barry entered into a contractual agreement for the sale of a car. Amy believes that Barry has breached a term of their contract. Amy may bring a civil action against Barry. The purpose of the case would be to determine whether Barry has breached the term of the contract, and if he has, to determine an appropriate legal remedy for Amy.

The degree to which a party needs to prove their case varies depending on whether the case is a civil case or a criminal case. This is known as the **standard of proof**.

- In criminal cases the standard of proof is *beyond a reasonable doubt*. This is a high threshold to meet.
- In civil cases, the standard of proof is on *the balance of probabilities*. The standard of proof in a civil case is lower than in criminal cases.

The party who bears the responsibility for proving a civil claim must be able to show that what they claim to have occurred is *more likely than not true*.

### Key Term: Standard of Proof

The term 'standard of proof' refers to the degree to which a party must prove their case in order to succeed.

The party who bears the responsibility for proving a case is different in civil and criminal cases. The term **burden of proof** is used to identify which party to a case is responsible for proving the case. Generally, in a civil case the *claimant* bears responsibility for proving the case. The burden of proof rests with the claimant. In the example above, Amy is the claimant so she would need to prove, on the balance of probabilities, that Barry breached the term of the contract. In a criminal case, the burden of proof generally rests with the *prosecution*. This means that it is for the prosecution to prove that the defendant committed the offence; it is not for the defendant to prove their innocence.

### Key Term: Burden of Proof

The term 'burden of proof' refers to the party who bears responsibility for proving the case.

**Table 1.2** summarises the key features of civil and criminal cases. When you revise this topic for the SQE, ensure you can:

- identify whether a case is a civil or criminal matter
- identify the relevant standard of proof
- identify the relevant burden of proof.

*Table 1.2: The key differences between criminal and civil cases*

	<b>Criminal</b>	<b>Civil</b>
Parties to a case	Prosecution and defence	Claimant and defendant
Key purpose of the case	Determine guilt or innocence of defendant Determine appropriate sentence	Resolution of legal dispute Determine appropriate legal remedy
Burden of proof	Rests with prosecution	Rests with claimant
Standard of proof	Beyond a reasonable doubt	On the balance of probabilities

Table 1.2: Continued

	Criminal	Civil
Worked example	The CPS believe they have sufficient evidence to prove, beyond all reasonable doubt, that Cyril committed theft. Theft is a criminal offence contrary to the Theft Act 1968. The CPS may bring a prosecution against Cyril.	Duncan trips over an uneven paving slab on a public road. He falls and suffers various injuries and has to take time off work. Duncan may bring an action against the person/body responsible for the maintenance and upkeep of the pavement. Duncan may seek damages to compensate him for the pain and suffering he has endured and for lost earnings.

**Practice Example 1.1** gives you an example of how this topic might be assessed in the SQE.

### Practice Example 1.1

A case concerning a very complex commercial contract dispute has commenced in the High Court. The claimant and defendant disagree about whether a term has been incorporated into a contract. The claimant alleges that the parties verbally agreed to incorporate the term into their contract. The defendant alleges that no such verbal agreement was reached and, as such, the claimant cannot rely on the term in question.

What is the relevant standard of proof in this case, and with whom does the burden of proof rest?

**This case concerns a contract law dispute and is therefore a civil case. The standard of proof is the balance of probabilities. The burden of proof rests with the claimant.**

You should now understand the key features of both civil and criminal cases. Remember that some courts deal predominately with either civil or criminal cases and are therefore described as having civil or criminal jurisdiction (this is explored further on **p. 11**). Cases can also be categorised as cases of first instance *or* appeal cases:

- Courts that hear cases at first instance are said to have *trial jurisdiction*.
- Courts that hear appeals are described as having *appellate jurisdiction*.

## What is the difference between trial and appellate jurisdiction?

The key differences between trial and appellate cases are summarised as follows:

- When a case is considered for the first time, it is heard in a *court of first instance*.
- All cases will *always* commence in a court of first instance.
- If a court usually hears cases in the first instance, it is referred to as a 'court of first instance' or a 'trial court'. The key function of these courts is to determine the facts of the case and to reach a decision on how the relevant law ought to apply to those facts.
- If any party to a case disagrees with how the law has been interpreted or applied, they may be able to *appeal* the decision of the court of first instance.
- Appeals are considered by *appellate* courts. If a court has jurisdiction to hear appeal cases, it is referred to as having 'appellate jurisdiction'. The appellate courts consider questions of law, rather than questions of fact.

Finally, you should also be aware that some courts are described as 'senior' courts (Senior Courts Act (SCA) 1981, s1(1) and CRA 2005, s 40(1)). Unless a court is a senior court, it has limited powers and is subject to review by senior courts. The following courts are senior courts:

- Crown Court
- High Court
- Court of Appeal
- Supreme Court.

A good understanding of jurisdiction is essential because it underpins your understanding of the court structure, the appeals process and precedent. In the SQE, you may also be required to:

- identify whether a case is a civil or criminal case, and
  - identify the relevant standard and burden of proof, or
  - identify statements that accurately describe the nature of such cases, or
  - identify the court(s) that have jurisdiction to hear specific types of civil or criminal matters.
- identify whether a case is a trial case or an appeal case, and
  - identify statements that accurately describe the nature of such cases, or
  - identify the court(s) that have the relevant jurisdiction to hear different types of trial or appeal cases.
- accurately identify which courts are classified as senior courts.

To be able to identify the relevant court(s) that hear different types of cases, you need to ensure that you have a good knowledge and understanding of the court structure and the jurisdiction and function of each court within the court structure. These topics are explored in detail in the sections that follow.

## THE COURT STRUCTURE OF ENGLAND AND WALES

The court system is made up of various courts and each has a distinct role to play in the administration of justice. There is a **court hierarchy**, and this determines which courts bind or influence the decisions made by other courts in the hierarchy. When revising for the SQE, it is important that you know the role that each court plays and understand the relationships between different courts. A good understanding of court hierarchy is *essential* to understanding the concept of judicial precedent, which is examined in detail in **Chapter 4**.

**Key Term: Court Hierarchy**

The court hierarchy establishes which decisions must be followed by other courts in the system. Generally speaking, the higher up a court is in the hierarchy, the more authoritative its decisions.

**Figure 1.1** illustrates the overarching court structure. It will be useful to refer back to this diagram as you work through the overview of each court in the court system. The section that follows provides a concise overview of the function and jurisdiction of each court in the English legal system.

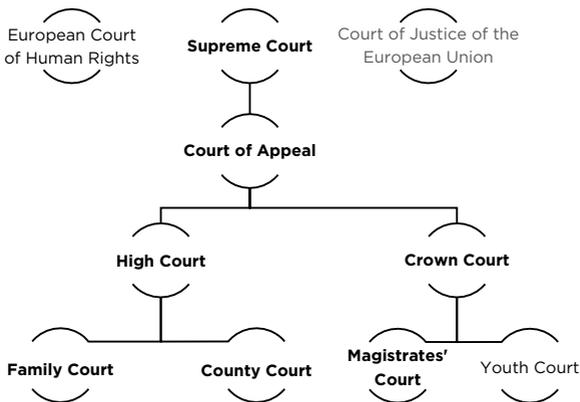


Figure 1.1: The court system

## JURISDICTION AND ROLE OF EACH COURT IN THE COURT STRUCTURE OF ENGLAND AND WALES

In the SQE, it is probable that you will be given case facts and asked to determine which court(s) (or judge) has the authority to hear the case. You should use this section of the guide to revise the key features of each court in the English legal system.

### Supreme Court

Apart from cases concerning European law or the European Convention on Human Rights, the Supreme Court is the highest appeal court on civil and criminal matters in the UK:

- The Court of Justice of the European Union deals with cases concerning the interpretation of/compliance with European law.
- The European Court of Human Rights has jurisdiction for cases involving the interpretation or application of the European Convention on Human Rights.

The Supreme Court only hears appeal cases that involve a point of law which is of public importance. It has appellate jurisdiction *only*. No cases, no matter how important, can start in the Supreme Court! The type of appeals that can be heard by the Supreme Court are discussed later in this chapter (see **p. 26**).

### Court of Appeal

The Court of Appeal is split into two divisions: the Civil Division and the Criminal Division. The Civil Division hears appeals on civil matters and the Criminal Division hears appeals on criminal matters. Like the Supreme Court, the Court of Appeal *only* hears appeal cases. It will only hear cases that involve a question of law. The type of appeals that can be heard by the Court of Appeal are discussed later in this chapter (see **p. 21**).

### High Court

The High Court is comprised of three distinct divisions as follows:

- Queen's Bench Division
- Chancery Division
- Family Division.

Collectively the three divisions of the High Court hear a wide range of civil cases. It is important to understand that in many cases, the High Court and the County Court have concurrent (parallel) jurisdiction to

hear civil cases. This means that both courts have jurisdiction to hear the same types of cases:

- Civil cases with a value of less than £100,000 (or less than £50,000 for personal injury cases) should be commenced in the County Court (Civil Procedure Rules (CPR) 1998, Practice Direction 7A, 2.1).
- Where cases have a value of more than £100,000 (more than £50,000 for personal injury cases) the claimant can *choose* to commence proceedings in the Queen's Bench Division, the Chancery Division or the County Court.
- A case should be commenced in the High Court where the case has complex facts, or the outcome of the case has an element of public interest, and the claimant believes the High Court is the suitable court. In all other cases, the case should be commenced in the County Court rather than the High Court (Practice Direction 7A, 2.4).

### Revision Tip

Remember that in many civil cases, the High Court and the County Court have concurrent jurisdiction. This means that the claimant can choose whether to commence their case in the High Court or the County Court. Generally speaking, cases should be heard in the County Court unless they are of high value or are complex. For example, a case may be considered to be complex because it is highly technical and is likely to involve multiple experts.

### *Queen's Bench Division*

The Queen's Bench Division has the most varied jurisdiction of the three divisions. Generally, the Queen's Bench Division hears contract and tort disputes that are complex and/or involve substantial sums of money. It also contains several specialist courts, including the following:

- Administrative Court
- Admiralty Court
- Commercial Court
- Circuit Commercial Courts
- Technology and Construction Court.

When the court sits as a Divisional Court of the Queen's Bench Division, it can hear criminal appeals from the magistrates' court and the Crown Court, and judicial review hearings. These types of appeals are discussed later in this chapter (see **p. 22**).

### *Chancery Division*

The Chancery Division also hears a wide range of civil cases. They typically hear business or property disputes that are complex and/or involve substantial sums of money. The Chancery Division also incorporates specialist courts, including the following:

- Business and Property Court
- Patents Court
- Intellectual Property Enterprise Court.

The Chancery Division can hear the following types of cases:

- land and property disputes
- mortgages
- trusts, administration of estates and probate matters
- bankruptcy
- partnerships and company matters
- intellectual property.

### *Family Division*

The Family Division has jurisdiction to hear complex family law cases. The Family Division have exclusive jurisdiction to hear international child abduction cases and cases that involve the inherent jurisdiction. It is important to note that the Family Division of the High Court and the Family Court are distinct courts. The Family Court is a separate court that hears most family law cases. Some cases that begin in the Family Court but are considered to be very complex can be transferred to the Family Division of the High Court. The Family Division can also hear some appeals from the Family Court.

### **Family Court**

The Family Court, formed in 2014, is the court of first instance for most family law cases. Family law cases typically involve the following matters:

- applications for divorce, dissolution or nullity
- cases concerning financial or childcare arrangements following relationship breakdown
- applications for adoption
- care proceedings.

Cases are allocated by gatekeepers, following the principles laid out in the Family Court Rules 2014. This process ensures that cases are considered by an appropriately experienced judge.

**Revision Tip**

When revising this topic, remember that family law matters will usually be considered by the Family Court in the first instance. Unless the Family Division of the High Court have special jurisdiction in respect of the case (eg it involves international family law or inherent jurisdiction) it is likely the case will be considered by the Family Court.

**County Court**

The County Court hears a wide range of civil cases. It is a court of first instance but can also hear appeals in some circumstances (see **p. 25**). As noted above, claimants in civil cases can *choose* to commence proceedings in the County Court. The County Court tends to hear cases that are less complex and of lower monetary value than those considered by the High Court. As a general rule of thumb, cases with a value of less than £100,000 should be commenced in the County Court. Personal injury cases with a value of less than £50,000 should also be commenced in the County Court.

**Procedural Link: Commencing Civil Claims**

There is a body of rules that govern the administration and management of civil cases. These are known as the Civil Procedure Rules 1998. In the SQE, your knowledge and understanding of these rules is assessed in the civil procedure and dispute resolution sections of the examinations.

**Tribunals**

Some civil cases are considered by tribunals. Tribunals are specialist judicial bodies that adjudicate disputes in specialist areas of law. Technically speaking, tribunals fall outside the formal court structure, but they play an important role in the administration of civil justice. The Tribunals, Courts and Enforcement Act 2007 introduced a two-tiered tribunal system. Generally, the first-tier tribunal acts as a court of first instance and the upper tribunal deals with appeals from the first-tier tribunals. There is also a separate employment tribunal system. Tribunals hear a wide range of cases ranging from employment law matters (Employment Tribunal) to appeals relating to immigration, asylum, tax, social entitlement and property matters.

### Exam Warning

You should *always* read the question carefully and make sure you understand what it requires you to do. In the SQE you may be asked to:

- *advise* on the most suitable venue for a case, or
- be required to *identify* which statement accurately identifies the court(s) that have jurisdiction to hear a specific type of case.

You may be thinking, what is the difference between these two questions? The former requires you to exercise your judgement. The latter requires you to accurately identify which of the statements most accurately identifies the court(s) that have the legal authority to hear that type of case.

If you need to *advise on the most appropriate venue*, ensure that you carefully analyse the facts to identify:

- the type of case (eg contract, tort, commercial, family, etc)
- the likely value of the case (if relevant)
- whether there are any factors that suggest the case will be complex.

You will then be able to identify the most suitable venue for the case.

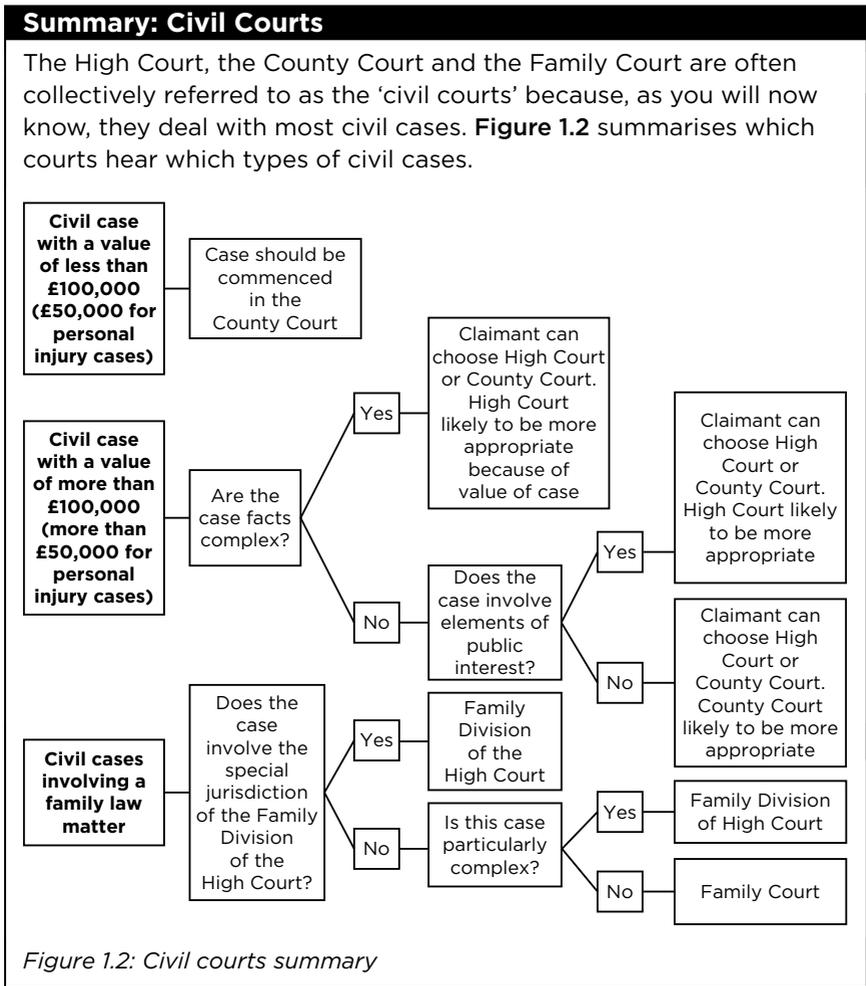
Now put your knowledge to the test and attempt **Practice Example 1.2**.

### Practice Example 1.2

Your client, Edwin, was involved in a road traffic accident last year. He suffered injuries to his neck and left arm that prevented him from being able to work for five months. The other driver has rejected liability for the accident. Edwin is a self-employed builder. As a result of his injuries, he lost around £12,500 of income over the five months he could not work. He wants to make a claim to recover his lost earnings and to claim compensation for the injuries he suffered. The estimated value of the compensation for his injuries is £8,000.

Which court do you think would consider Edwin's case?

**Edwin's claim relates to personal injury. Typically, personal injury claims worth less than £50,000 are considered by the County Court. Edwin's claim is estimated to be worth around £20,500. There are no factors to suggest that the case would be particularly complex; the court would simply be required to review the evidence and determine the facts and whether, on the balance of probabilities, the other driver is liable for the accident. The case would likely be considered by the County Court.**



### Crown Court

The Crown Court is typically a court of first instance. It considers criminal law cases. It deals with serious criminal offences and only hears cases where the defendant is accused of committing an indictable offence or a more serious triable either way offence:

- Indictable offences are very serious offences, such as robbery, rape and murder.
- Triable either way offences are offences that can either be considered by the Crown Court or by the magistrates’ court, depending on the seriousness of the offence.

A good example of a triable either way offence is theft. In some cases, theft will be considered a serious criminal offence because of the value of the property that was taken and/or because of the circumstances in which it was taken (eg the defendant abused a position of trust). These cases would be considered by the Crown Court. If a defendant appropriated a low-value item from a supermarket it is likely to be considered by the magistrates' court. The allocation of triable either way offences is discussed below. Because it hears serious criminal cases, trials in the Crown Court have juries.

## Magistrates' court

The magistrates' court is a court of first instance. It deals primarily with criminal cases, but it has some *limited* jurisdiction in respect of some civil matters. The magistrates' court also deals with the first appearance of any defendant charged with a criminal offence. They deal with procedural issues and hear initial bail applications.

### *Criminal jurisdiction of the magistrates' court*

- The magistrates' court deals with all cases involving summary offences. Summary offences tend to be less complex and less serious than other types of criminal offences so do not require trial by jury. For example, most motoring offences are summary offences.
- The magistrates' court also has jurisdiction to hear cases involving offences triable either way (eg theft, burglary). In these cases, defendants do *not* have the right to insist on being tried in a magistrates' court, *but the magistrates' court can accept jurisdiction for the case if they feel it is appropriate.*
- For triable either way offences, a defendant can insist on a trial by jury in the Crown Court.
- Where a triable either way case is too serious or too complex to be tried by magistrates, it *must* be sent to the Crown Court for trial.
- The magistrates' court has limited sentencing powers. In particular, the magistrates' court can only order a custodial sentence of up to 6 months (or up to 12 months in total if the defendant has committed multiple triable either way offences).
- When determining whether the magistrates' court has jurisdiction to hear a triable either way offence, the magistrates will consider:
  - the seriousness of the offence
  - any relevant prior convictions
  - whether the sentencing powers they have are likely to be sufficient to deal with the case.

- If the magistrates' court believe their sentencing powers are insufficient to deal with the case, they will reject jurisdiction for the case and the case will be sent to the Crown Court. This is known as the 'allocation' procedure.

**Revision Tip**

In the SQE assessment, you might be asked to determine which court would have jurisdiction to hear a criminal case. Remember *all* criminal cases are tried in either the magistrates' court or the Crown Court (save some very rare exceptions that you do not need to familiarise yourself with). **Figure 1.3** illustrates which of the two criminal trial courts have jurisdiction to hear different types of criminal cases. If you are asked to determine which court of first instance is appropriate in a criminal case, you should work through this flow chart.

```

graph LR
    A[Defendant prosecuted for summary offence] --> B[Magistrates' court has jurisdiction]
    C[Defendant prosecuted for either way offence] --> D[Allocation hearing to determine whether magistrates' court has appropriate powers to deal with the case]
    E[Defendant prosecuted for indictable offence] --> F[Crown Court has jurisdiction]
    D --> G[Magistrates' court accepts jurisdiction]
    D --> H[Magistrates' court rejects jurisdiction]
    G --> I[Defendant accepts offer]
    G --> J[Defendant rejects offer]
    I --> K[Case is tried by the magistrates' court]
    J --> L[Case is sent to Crown Court]
    H --> M[Case is sent to Crown Court]
    
```

*Figure 1.3: Determining the court of first instance in criminal cases*

**Procedural Link: Criminal Procedure**

Criminal procedure is an area of functioning legal knowledge assessed by the SQE. Criminal procedure examines the various procedural rules governing the administration of criminal justice.

*Civil jurisdiction of the magistrates' court*

As already noted, the magistrates' court also has a limited civil jurisdiction. Magistrates' courts typically deal with licensing applications and appeals regarding the issuing of pub and restaurant licences.

## Youth Court

The Youth Court deals with criminal cases where the defendant is aged between 10 and 17 years old. The Youth Court is designed to be less formal than an adult criminal court and the magistrates who preside over cases receive specialist training. As a general rule of thumb, all criminal cases involving youth defendants should be tried in the Youth Court. Only cases that are very serious and likely to attract a lengthy custodial sentence should be sent to the Crown Court. For example, cases where the defendant has been accused of homicide, manslaughter, rape or firearms offences will be sent to the Crown Court (Crime and Disorder Act 1998, s 51A).

### Procedural Link: Youth Justice

There are special procedures that apply during the trial and sentencing of children. These are outside the purvey of this book, but you should refer to a criminal procedure book to learn more about the administration of youth justice.

Now put your knowledge to the test and attempt **Practice Example 1.3**.

### Practice Example 1.3

Elliot has been charged with the offence of theft. He is accused of stealing around £7,000 from a safe at his place of employment. Elliot has several convictions for similar offences. He has entered a plea of 'not guilty' and wants to be tried by a jury in the Crown Court.

Which court would Elliot's case be heard by?

**Theft is a triable either way offence. In Elliot's case, the magistrates' court may reject jurisdiction because of the value of the goods stolen and because Elliot's prior convictions are likely to lead to a higher fine and/or longer sentence that may exceed the sentencing powers available in the magistrates' court. In any event, even if the magistrates' court accepted jurisdiction, the facts suggest that Elliot is likely to decline the offer to have his case tried in the magistrates' court. The case would, therefore, be considered by the Crown Court.**

You should now have a good idea of the types of cases that are considered by each court within the court structure. You should now be able to:

- differentiate between civil and criminal cases
- identify which courts hear civil cases in the first instance
- identify which courts hear criminal cases in the first instance
- identify which types of judges sit in each of the courts.

Remember that the parties to a case can, in some circumstances, appeal a court's decision. There are designated routes of appeals in different types of cases. These routes of appeal are outlined in the following section.

## THE APPEALS SYSTEM

There are two key functions of the appeals system:

- allow for the review of decisions that could be unjust or incorrect
- allow the higher courts to clarify or reiterate the correct interpretation of the law in a specific area.

The SQE assessment is likely to require you to identify whether an appeal is possible in particular circumstances/cases. It is important that you understand the basis upon which an appeal can be made, and which court(s) have the jurisdiction to hear different types of appeals. For ease, this section will examine appeals against first-instance decisions in criminal and civil cases separately. We will then move on to examine the avenues available for challenging decisions made on appeal.

### Routes of appeal: criminal cases

As you now know, *all* criminal cases begin in either the magistrates' court or the Crown Court. In criminal cases, appeals against first instance decisions are typically brought for three reasons:

- The appeal is against conviction and/or sentence.
- The appeal is brought on the basis that the trial court acted in excess of their powers and/or misapplied the law.
- The appeal is brought on the basis that there is a real possibility that a miscarriage of justice has occurred; there is a real possibility that a conviction, verdict, finding or sentence would not be upheld on appeal.

#### *Appeal against conviction and/or sentence*

If a case begins in the magistrates' court, the defendant may appeal against conviction and/or sentence. It is important to revise the following points:

- These appeals are considered by the Crown Court and involve an entire re-hearing of the case.
- If the defendant entered a plea of guilty, they may *only* appeal against sentence.
- The Crown Court either confirms the verdict and/or sentence of the magistrates' court, or it can substitute its own decision for that of the lower court.
- The Crown Court will review all the decisions of the magistrates' court and not just the points on which the appeal rests.
- It can increase the sentence of the offender, even if the sentence is not appealed. The prosecution cannot appeal to the Crown Court.

If a case is tried by the Crown Court, then the defendant may appeal against conviction and/or sentence. It is essential to remember the following points:

- The defendant *must* apply for leave to appeal.
- Such appeals will be considered by the Court of Appeal.
- If the appeal is dismissed, the original verdict and sentence will remain the same.
- If the appellant is successful, the verdict could be confirmed or overturned, or their sentence may be reduced.

It is important to remember that appeals against conviction are concerned with whether a conviction is 'safe' or 'unsafe' rather than whether the defendant was guilty or innocent (Criminal Appeal Act 1968, s 2(1)). A conviction could be considered 'unsafe' where there has been an error in the summing up, where there has been a procedural irregularity, where there have been errors made by the defence's legal representative or where fresh evidence is discovered after the trial.

The routes of appeal for the prosecution are much more limited. In your revision, remember the following:

- The prosecution has no right of appeal in respect of a defendant who has been acquitted by a jury following a Crown Court trial.
- The prosecutor does, however, have a right of appeal in respect of rulings made by a trial judge either before or during the trial if the ruling effectively terminated the trial (terminatory rulings) or significantly weakened the prosecution case (evidential rulings). For example, the prosecution could appeal if the judge refused an adjournment or ruled there was no case to answer.
- These appeals are considered by the Court of Appeal.
- Permission to appeal must be granted by the trial judge or the Court of Appeal.
- Appeals by the prosecution following conviction in the Crown Court are typically appeals against an unduly lenient sentence. These appeals are only available for serious offences and formal consent must be given by the government's chief legal officer, the Attorney General. These cases are brought in the name of the government and are termed 'Attorney General's Reference' cases.

### *Trial court acted in excess of their powers and/or misapplied the law*

There are two types of appeal to consider under this heading: appeals by way of case stated and judicial review proceedings.

### Appeal by way of case stated

Either party can make an **appeal by way of case stated**. These appeals are considered by the Divisional Court of the Queen's Bench Division of the High Court and are brought on the basis that an order, judgment or other decision may be wrong in law or made in excess of jurisdiction. The hearing consists of legal argument *only*. Either party may appeal against a magistrates' court decision by way of case stated (Magistrates' Courts Act 1980, s 111). The High Court may reverse, affirm or amend the determination, or it may send the matter back to the magistrates' court. An appeal by way of case stated can also be made following a Crown Court case. It is important to note that this route of appeal is *only* available if the Crown Court case is itself an appeal from the magistrates' court (SCA 1981, s 28).

#### Key Term: Appeal by Way of Case Stated

An appeal by way of case stated is an appeal on the basis that the lower court incorrectly interpreted or applied the law or acted in excess of their powers.

### Appeal for judicial review of proceedings

If a case is considered by the magistrates' court, either party can appeal to the High Court for a judicial review of the proceedings. Judicial review is treated as a civil matter and cases are heard by the Administrative Court of the Queen's Bench Division of the High Court. A party can make an appeal for judicial review where it is believed that the lower court has acted:

- a) unreasonably
- b) ultra vires (outside its legal powers)
- c) irrationally (it has applied the law in an impermissible manner).

The High Court has similar powers to those it has in relation to appeals by way of case stated (outlined above).

#### Revision Tip

As you can see, there is significant overlap between appeals by way of case stated and appeals for judicial review. In criminal cases, if an appeal by way of case stated is available, that is the *preferred* route of appeal.

### Exam Warning

For the purpose of this revision guide, you only need to understand that judicial review is a route of appeal available in criminal cases heard by the magistrates' court and that such appeals are considered by the Administrative Court of the Queen's Bench Division of the High Court. You will, however, need to demonstrate a detailed knowledge and understanding of judicial review in the SQE assessments. This is assessed as part of constitutional and administrative law, which is one of the areas of functioning legal knowledge for the SQE assessments.

### *Appeals referred by the Criminal Cases Review Commission*

The Criminal Cases Review Commission (CCRC), set up by the Criminal Appeal Act 1995, is a body that refers cases where there may have been a miscarriage of justice to the attention of the Crown Court (if the case was tried in the magistrates' court) or the Court of Appeal (if the case was tried in the Crown Court). In practice, the majority of referrals are from the Crown Court to the Court of Appeal; only a small number of cases that the CCRC review are against convictions from the magistrates' court. A person can request that the CCRC consider their case, or the CCRC can consider a case on their own initiative. Under section 13 of the Criminal Appeal Act 1995, the Commission should only refer cases where there is a *real possibility* that the conviction, verdict, finding or sentence would not be upheld were the reference to be made. This is known as the 'real possibility' test.

**Figure 1.4** over leaf summarises the routes of appeal available against a trial court decision in criminal law cases.

### **Routes of appeal: civil cases**

In civil cases, appeals may be made by either party to a dispute. Rule 52 of the CPR 1998 requires permission to appeal to be obtained for almost all civil appeals. This permission can be obtained from either the court of first instance or from the relevant appellate court. Permission can be given where there is a realistic prospect of success or where there is some compelling reason why the appeal should be heard. The general rule is that appeals will be considered by the next level of judge in the judicial hierarchy (so it is important to understand the judicial hierarchy outlined earlier in this chapter!).

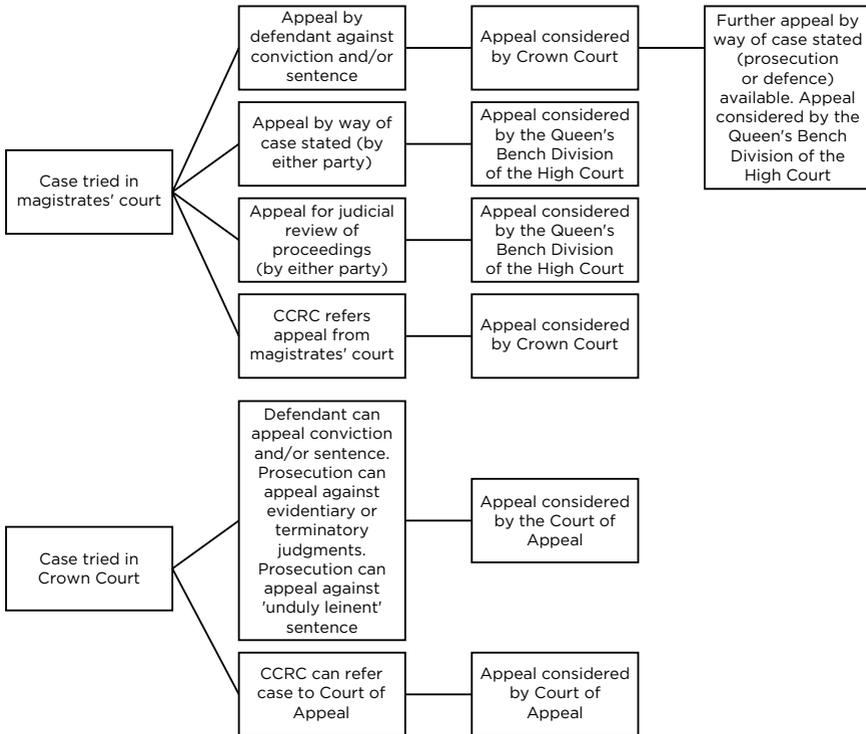


Figure 1.4: Appeals against first-instance decisions in criminal cases

**Revision Tip**

Students often make the mistake of presuming that all appeals are automatically considered by the next court in the court hierarchy. This is not correct. The following section outlines the designated routes of appeal in civil cases.

The general rule is that there will usually only be one level of appeal. This means that if a County Court or High Court has already reached a decision *on appeal*, there will usually be no further opportunity for appeal. Students often mistakenly assume that all cases can escalate from the lower courts to the Court of Appeal and Supreme Court. This is not so. *Only* cases that raise an important point of principle or practice can be considered by the Court of Appeal or Supreme Court. **Figure 1.5** shows the routes of appeal against a trial decision in civil cases.

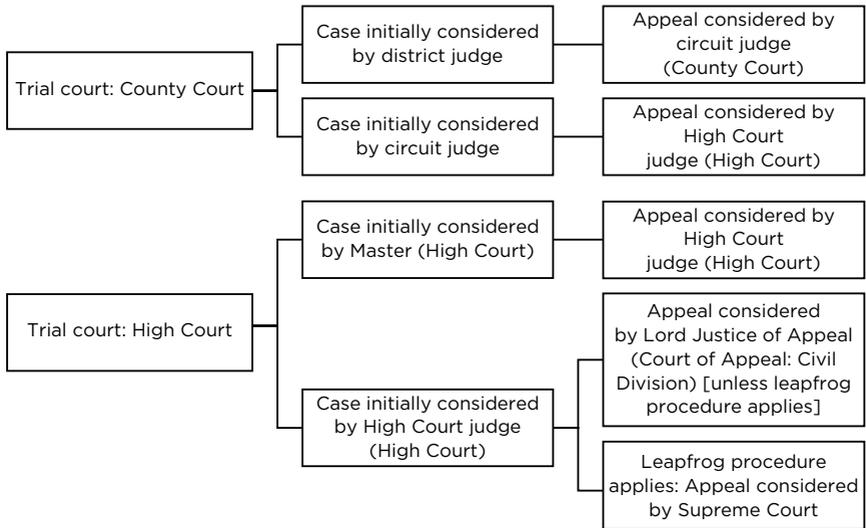


Figure 1.5 Summary of civil appeals against first-instance decisions

**Revision Tip**

Remember that the routes of appeal in civil cases are typically determined by two factors:

- which court considered the case at first instance, *and*
- the type of judge that heard the case at first instance.

In civil cases, appeals against first-instance decisions are considered by a more senior judge *or* a higher court. **Figure 1.5** summarises the routes of appeal available against a decision at first instance in civil cases.

**Further appeals to the appellate courts**

Once a first-instance decision has been appealed, there are some further routes of appeal to the Court of Appeal and/or the Supreme Court. Remember, both of these courts are appellate courts and they consider questions of law.

*Appeals from the High Court*

Section 18(1)(a) of the SCA 1981 states that there can be *no* appeal to the Court of Appeal from any decision of the High Court in *any criminal matter or cause*. This means that in criminal cases the only avenue of appeal against a High Court decision is to the Supreme Court. Remember that the Supreme Court only hears appeals on arguable points of law of general public importance. Leave to appeal will *only* be granted if the

High Court certifies that a point of law of general public importance is involved in the decision and it appears the point is one that ought to be considered by the Supreme Court.

In civil cases, appeals against High Court decisions are considered by the Court of Appeal. Permission to appeal must be granted by the Court of Appeal and the case must involve a matter of law of general importance. In civil cases, there is also something known as the 'leapfrog procedure'. This procedure allows an appeal from the High Court to go *directly* to the Supreme Court. Such appeals are rare and are *only* available in cases where the appeal involves a point of law of general public importance and *at least one* of the following is satisfied:

- The appeal raises issues of national importance
- The result is of particular significance
- The benefits of early consideration by the Supreme Court outweigh the benefits of consideration by the Court of Appeal.

### *Appeals from the Court of Appeal to the Supreme Court*

In both civil and criminal cases, either party can appeal against a decision of the Court of Appeal. These appeals are considered by the Supreme Court. The Court of Appeal must certify that the case raises an arguable point of law of general public importance that ought to be considered by the Supreme Court. Permission to appeal *must* be granted by the Court of Appeal or by the Supreme Court. The Supreme Court concentrates on cases of the greatest public and constitutional importance.

**Figure 1.6** summarises further routes of appeal available for both civil and criminal matters.

Now put your knowledge to the test and attempt **Practice Example 1.4**.

#### **Practice Example 1.4**

A very complex contract law case is considered on appeal by the Court of Appeal. The Court of Appeal find in favour of the claimant. The defendant wishes to appeal the Court of Appeal decision.

Which court or courts have the power to grant permission to appeal in this case?

**The case concerns a contract law issue and is therefore a civil case. The Supreme Court can hear appeals from the Court of Appeal (Civil Division) if the case concerns a point of law of general public importance. In such cases, the Court of Appeal or the Supreme Court can grant permission to appeal.**

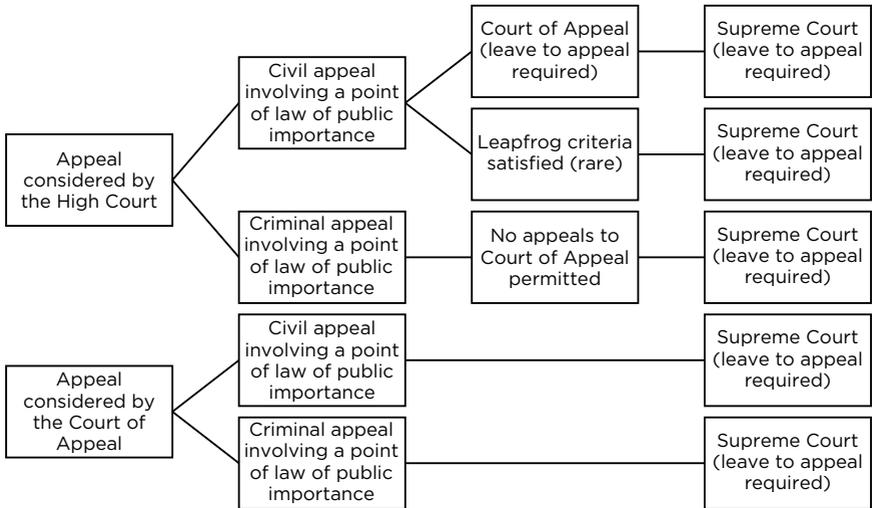


Figure 1.6 Further appeals summary

You should now have a good knowledge and understanding of:

- the different types of cases that each court typically deals with
- the judicial hierarchy and which judges sit in which courts
- which courts hear civil cases at first instance
- which courts hear criminal cases at first instance
- the basis upon which appeals can be made in both civil and criminal cases *and* which courts have jurisdiction to hear such appeals.

The final topic to discuss in this chapter is **rights of audience**.

### Key Term: Rights of Audience

The term 'rights of audience' refers to the right to exercise advocacy in court.

## RIGHTS OF AUDIENCE

Finally, it is necessary to understand when legal professionals are able to appear in court to represent their client. Advocacy rights refer to the ability of a person to appear in court and present the case of their client. The right to exercise advocacy in court is known as having rights of audience. Solicitors are granted rights of audience but must acquire **higher rights of audience** in order to exercise advocacy rights in the 'higher' senior courts. **Table 1.3** summarises the rights of audience for solicitors and barristers. Once you have revised this topic, test your knowledge by answering **Practice Example 1.5**.

### Key Term: Higher Rights of Audience

The term 'higher rights of audience' refers to the right to exercise advocacy in senior courts.

Table 1.3: Rights of audience

Legal professional	Brief description of role	Rights of audience
Solicitor	<p>Solicitors are typically the first point of contact for individuals seeking legal advice.</p> <p>They undertake a wide range of work. Typically, this involves advising clients, drafting legal documents and undertaking pre-trial case preparation. Nowadays, it often includes appearing in court as a trial advocate.</p> <p>Solicitors are regulated by the Solicitors Regulation Authority (SRA).</p>	<p>Solicitors are granted rights of audience in all courts when they are admitted to the Roll of solicitors. However, they cannot exercise those rights in the higher courts unless and until they have completed the required education and training (SRA Authorisation of Individuals Regulations, Regulation 9.10).</p> <p>In summary, there are separate awards for rights of audience for criminal and civil advocacy. As such, there are separate advocacy assessments for each. Higher rights of audience will only be awarded if the solicitor passes the appropriate advocacy assessment (based on the SRA's higher rights of audience competence standards) and successfully applies for higher rights of audience.</p>
Barrister	<p>Barristers are specialist legal advisers and court room advocates. They are regulated by the Bar Standards Board.</p>	<p>Barristers are granted rights of audience in all courts once they are called to the Bar. While they have rights of audience for all courts, they tend to work in the senior courts.</p>

### Exam Warning

In order to correctly identify whether a solicitor can exercise rights of audience in a specific case, you will need to ask yourself two questions:

- 1) Is the case being heard in a senior court?
- 2) Is the case a civil case or a criminal case?

If the answer to question 1 is yes, a solicitor must have acquired *higher* rights of audience. Your answer to question 2 will determine which advocacy assessment the solicitor must have undertaken. For example, if the case is a civil case, the solicitor must have undertaken civil advocacy assessments and been awarded corresponding higher rights of audience in the senior civil courts.

### Practice Example 1.5

Gerald, a newly qualified barrister, wants to represent his client in a hearing in the Crown Court.

Does Gerald have the relevant rights of audience to appear on behalf of his client?

**Gerald is a qualified barrister. Barristers are automatically granted rights of audience in all courts. This means that Gerald can appear in the Crown Court to represent his client.**

## ■ KEY POINT CHECKLIST

This chapter has covered the following key knowledge points. You can use these to structure your revision, ensuring you recall the key details for each point, as covered in this chapter.

- The judiciary of England and Wales is comprised of various types of judges. The judicial hierarchy ranks judges by virtue of the judicial post/office they hold. Typically, judges hear cases/sit in courts that correspond with their position within the judicial hierarchy. For example, the most senior members of the judiciary sit in the higher courts in the court structure (the Supreme Court and the Court of Appeal).
- Each court within the court structure serves an important but distinct role in the administration of justice. The High Court, the County Court and the Family Court tend to deal with most civil cases. The Crown Court and the magistrates' court deal with most criminal cases. The Court of Appeal and the Supreme Court only hear appeal cases.

- The parties to a case can appeal the decision of a court of first instance/trial court. There are designated routes of appeal from each of the trial courts. It is important to remember that in most cases permission to appeal is required. In civil cases, appeals do not need to be considered by a different court. Instead, appeals are often considered by a more senior judge. Further appeals are possible in both civil and criminal matters. Further appeals are only permitted where specific criteria are met and permission to appeal is granted.
- Solicitors and barristers assist and advise clients on legal matters. Typically, solicitors deal with a wide range of work and this includes advising clients, drafting legal documents and undertaking pre-trial case preparation. Barristers are specialist legal advisors and advocates. The term 'rights of audience' refers to the right to appear in court on behalf of a client. Barristers automatically acquire rights of audience in all courts. Solicitors automatically acquire rights of audience in the lower courts, but they must undertake specialist training to acquire higher rights of audience to appear in any of the senior courts.

## ■ KEY TERMS AND CONCEPTS

- Judiciary (p. 4)
- Judicial hierarchy (p. 4)
- Jurisdiction (p. 6)
- Standard of proof (p. 7)
- Burden of proof (p. 7)
- Court hierarchy (p. 10)
- Appeal by way of case stated (p. 22)
- Rights of audience (p. 27)
- Higher rights of audience (p. 28).

## ■ SQE-STYLE QUESTIONS

### QUESTION 1

A client wants to bring an action against an individual concerning a property dispute. The estimated value of the claim is £100,000.

**Which of the following courts have jurisdiction to hear the case?**

- A The Queen's Bench Division of the High Court and the County Court.
- B The County Court only.

- C The Chancery Division of the High Court only.
- D The Chancery Division of the High Court and the Queen's Bench Division of the High Court.
- E The Chancery Division of the High Court and the County Court.

## QUESTION 2

A man is accused of murder, an indictable-only offence. The trial is heard in the Crown Court. After hearing all the evidence, the man is found not guilty of the offence by the jury.

**Which of the following best describes the avenues of appeal open to the prosecution?**

- A An appeal against the verdict can be brought by the prosecution. The appeal would be considered by the Court of Appeal (Criminal Division).
- B An appeal can be brought by the prosecution on the basis that the sentence given was unduly lenient. The appeal would be considered by the Court of Appeal (Criminal Division).
- C An appeal can be brought by the prosecution by way of case stated and would be considered by the Queen's Bench Division of the High Court.
- D There is no route of appeal open to the prosecution in this case.
- E An appeal can be brought by the prosecution by way of case stated and would be considered by the Court of Appeal (Criminal Division).

## QUESTION 3

A claimant is bringing a case against a defendant, seeking damages for personal injury. The claimant alleges that the defendant caused a road traffic accident. The defendant denies this and refuses to accept responsibility for causing the accident.

**Which of the following best describes the burden of proof and standard of proof that the court will apply in deciding the issue?**

- A The burden of proof lies with the defendant to prove that they were not responsible for the accident. The standard of proof is the balance of probabilities.
- B The burden of proof lies with the claimant to prove the allegation. The standard of proof is the balance of probabilities.

- C The burden of proof lies with the claimant to prove the allegation beyond a reasonable doubt.
- D The burden of proof lies with the claimant to disprove the defendant's account. The standard of proof is beyond a reasonable doubt.
- E The burden of proof lies with both parties. The claimant must prove the allegation and the defendant must disprove the claimant's allegation. The standard of proof is the balance of probabilities.

#### **QUESTION 4**

A claimant's case was initially heard by a District Judge in the County Court. The case involved a low-value contract dispute. The decision of the District Judge was in favour of the defendant. The claimant wishes to appeal. They believe the judge did not apply the law correctly.

**Which of the following courts is likely to hear the appeal case?**

- A The case would be considered by a Circuit Judge in the County Court.
- B The case would be considered by a High Court Judge in the High Court.
- C The case would be considered by the Court of Appeal (Civil Division).
- D The case would be considered by the Supreme Court.
- E The case would be considered by a High Court Judge in the County Court.

#### **QUESTION 5**

A solicitor wants to appear in court on behalf of her client in a criminal matter. The case is likely to be considered by the Crown Court at first instance.

**Which of the following best describes the solicitor's right to exercise their rights of audience in this matter?**

- A The solicitor can appear in the Crown Court on behalf of their client as solicitors are automatically granted rights of audience when they are admitted.
- B The solicitor can appear in the Crown Court on behalf of their client if they have undertaken the relevant assessments in both civil and criminal advocacy and have successfully applied for higher rights of audience.

- C The solicitor can appear in the Crown Court on behalf of their client if they have permission from their client.
- D The solicitor can appear in the Crown Court on behalf of their client if they have undertaken the relevant assessments in criminal advocacy and have successfully applied for higher rights of audience.
- E The solicitor can appear in the Crown Court on behalf of their client as solicitors are automatically granted higher rights of audience when they are admitted.

## ■ ANSWERS TO QUESTIONS

### Answers to 'What do you know already?' questions at the start of the chapter

- 1) The term 'jurisdiction' means the power a court or judge has to hear a case.
- 2) False. Appeals from the County Court can be considered by the County Court or the High Court.
- 3) B. The magistrates' court deals with all summary offences and some triable either way offences (if the magistrates' court believes its powers are sufficient to deal with the case).
- 4) The judicial hierarchy ranks the various members of the judiciary by virtue of the powers and responsibilities associated with each judicial office/post.
- 5) False. Solicitors are automatically granted rights of audience, but they must *acquire* higher rights of audience to exercise those rights in senior courts.

### Answers to end-of-chapter SQE-style questions

- 1) The correct answer was E. The Chancery Division of the High Court and the County Court have jurisdiction to hear civil cases concerning property disputes. The claimant can choose whether to commence proceedings in the High Court or the County Court. The fact the case is worth £100,000 does not mean the case will automatically be sent to the High Court.
- 2) The correct answer is D. There is no route of appeal available to the prosecution. The prosecution cannot appeal against the sentence as no sentence has been imposed (therefore Option B is incorrect). Appeals by way of case stated are only available for cases that

started in the magistrates' court. The trial in this case is for an indictable-only offence so it is not possible for the case to have been heard in the magistrates' court at first instance. Furthermore, appeals by way of case stated are not heard in the Court of Appeal (Options C and E are therefore wrong). Option A is wrong because the prosecution has no right to appeal against a verdict; the right to appeal is restricted to terminating rulings.

- 3) The correct answer was B. In civil cases the burden of proof rests with the claimant. The standard of proof in civil cases is the balance of probabilities.
- 4) The correct answer was A, the case would be considered by a circuit judge in the County Court. Remember that in civil cases the appeal is usually heard by the next level of judge, rather than the next court in the court hierarchy.
- 5) The correct answer was D. In these scenarios, remember to ask yourself (1) Is the case being heard in a senior court? (2) Is the case civil or criminal? The Crown Court is a senior court. The case is a criminal case. This means that the solicitor can appear on behalf of their client only if they have undertaken the relevant assessments in *criminal* advocacy and have successfully applied for *higher* rights of audience.

## ■ KEY CASES, RULES, STATUTES AND INSTRUMENTS

The SRA has not identified any case names or statutory materials that you need to know for this topic. However, you are advised to familiarise yourself with the relevant provisions of the following statutes:

- Constitutional Reform Act 2005
- Senior Courts Act 1981.