

Unlocking the English Legal System

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1.1 Introduction

- The English Legal System
 - English
 - Legal
 - System
- The sources of law tell us what the law is
 - a rule from one of the sources is a ‘law’; a rule NOT from one of those sources in a non-legal rule, but it is not a law

1.2 The sources of law

- Two domestic sources of law

- Parliament



- The courts

- Decide common law and equity
 - Interpret and construe Acts of Parliament
 - Case law

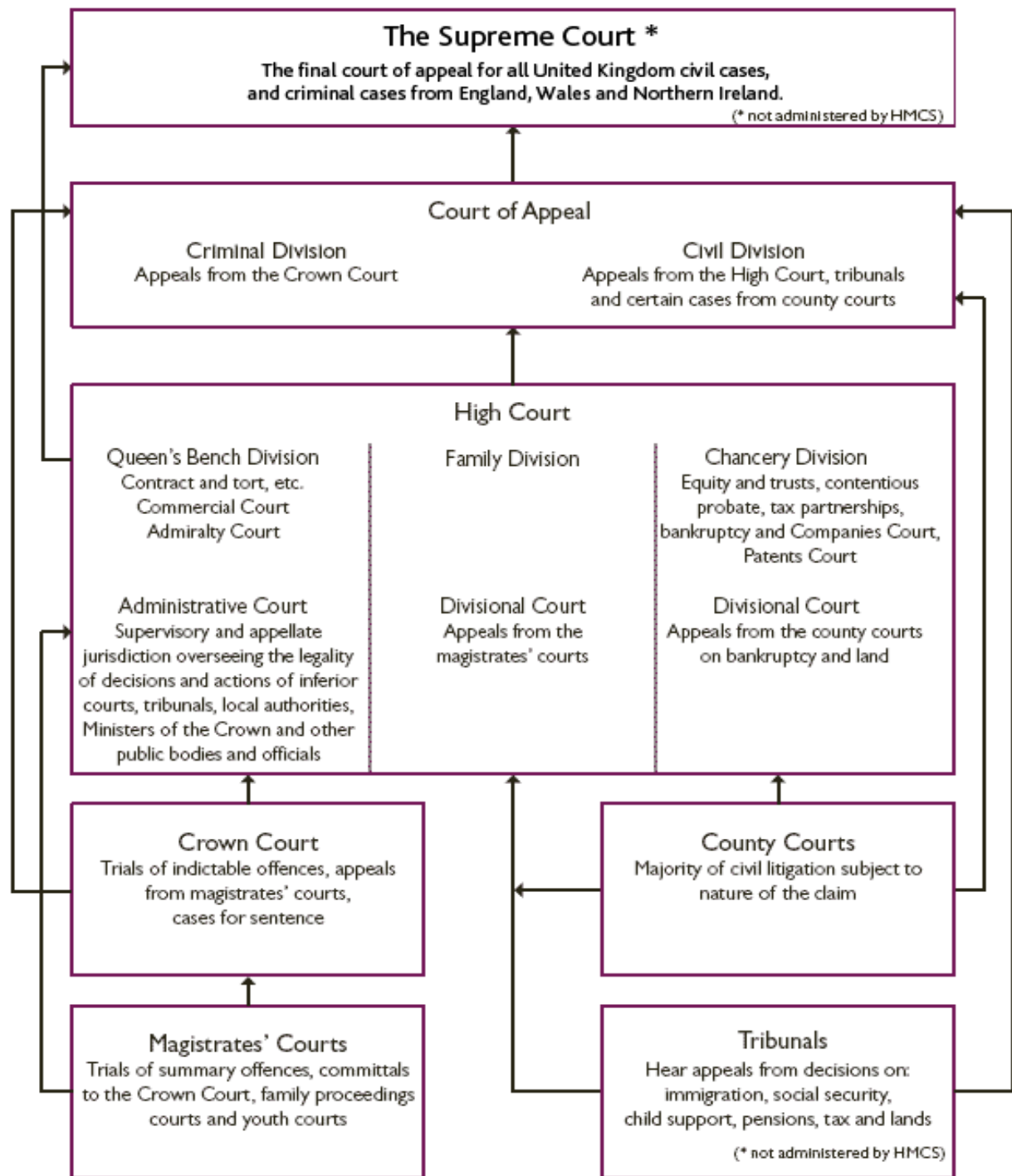
- Plus at least two international sources of law

- European Union
 - The European Convention on Human Rights



1.3

The court hierarchy



1.4 The common law tradition

- *Stare decisis* (the law is found in the cases)
 - Facts
 - What happened between the parties? Why the case was brought? What the judge found to have been decisive
 - Chronology
 - First instance and then on appeal
 - Held (what the final appeal court held in law)
 - *Ratio decidendi*
 - *Obiter dicta*

2. How cases develop

- 2.1 Case exercise 1 –
The common law
 - *Carlill v Carbolic Smoke Ball Company*
 - Facts
 - *Ratio decidendi*
 - *Obiter Dicta*
 - Moot point

CARBOLIC SMOKE BALL

WILL POSITIVELY CURE

COUGH	BRONCHITIS	INFLUENZA	FEVERALGIA
COLD	THROAT DEAFNESS	SORE THROAT	WHOOPING
CATARH	HOARSENESS	HAY FEVER	COUGH
ASTHMA	LOSS OF VOICE	CROUP	EARACHE

As all the Diseases mentioned above proceed from one cause, they can be CURED by one remedy, viz. the CARBOLIC SMOKE BALL. As prescribed by SIR ROBERT WAGLETON, M.D., and other eminent Physicians.

TESTIMONIALS.

The Duke of Portland writes: "I am much obliged for the Carbolic Smoke Ball which you have sent me, and which I find most efficacious."

The Bishop of London writes: "The Carbolic Smoke Ball has benefited my grandchild."

Lady Merton writes: "Lady Merton believes the Carbolic Smoke Ball to be a certain Good, and sends for it daily."

Lady Erskine writes: "The Carbolic Smoke Ball has given every satisfaction."

Lady Clive writes: "The Carbolic Smoke Ball has been invaluable to her daughter."

Lady Fenton writes: "Lady Fenton is always glad to recommend the Smoke Ball, as it is most efficacious."

Mrs. Childs writes: "She finds the Carbolic Smoke Ball has done her a great deal of good."

One CARBOLIC SMOKE BALL will last a family several months, making it the Cheapest Remedy in the world at the price—10s., Post Free.

The CARBOLIC SMOKE BALL can be ordered when empty at a cost of 5s., Post Free.

ADDRESS:
CARBOLIC SMOKE BALL CO., 27, PRINCES ST., HANOVER SQ., LONDON, W.

Two Trials of our Carbolic Smoke Ball

For Inhalation Use

C. A.

[IN THE COURT OF APPEAL.]

1892

CARLILL *v.* CARBOLIC SMOKE BALL COMPANY.

Dec. 6, 7.

Contract—Offer by Advertisement—Performance of Condition in Advertisement—Notification of Acceptance of Offer—Wager—Insurance—8 & 9 Vict. c. 109—14 Geo. 3, c. 48, s. 2.

The defendants, the proprietors of a medical preparation called "The Carbolic Smoke Ball," issued an advertisement in which they offered to pay 100*l.* to any person who contracted the influenza after having used one of their smoke balls in a specified manner and for a specified period. The plaintiff on the faith of the advertisement bought one of the balls, and used it in the manner and for the period specified, but nevertheless contracted the influenza:—

Held, affirming the decision of Hawkins, J., that the above facts established a contract by the defendants to pay the plaintiff 100*l.* in the event which had happened; that such contract was neither a contract by way of wagering within 8 & 9 Vict. c. 109, nor a policy within 14 Geo. 3, c. 48, s. 2; and that the plaintiff was entitled to recover.

APPEAL from a decision of Hawkins, J. (2)

The defendants, who were the proprietors and vendors of a medical preparation called "The Carbolic Smoke Ball." inserted

- Lord Justice Bowen
- “It was also said that the contract is made with all the world - that is, with everybody; and that you cannot contract with everybody. It is not a contract made with all the world. There is the fallacy of the argument. It is an offer made to all the world; and why should not an offer be made to all the world which is to ripen into a contract with anybody who comes forward and performs the condition? It is an offer to become liable to any one who, before it is retracted, performs the condition, and, although the offer is made to the world, the contract is made with that limited portion of the public who come forward and perform the condition on the faith of the advertisement. It is not like cases in which you offer to negotiate, or you issue advertisements that you have got a stock of books to sell, or houses to let, in which case there is no offer to be bound by any contract. Such advertisements are offers to negotiate - offers to receive offers - offers to chaffer, as, I think, some learned judge in one of the cases has said. If this is an offer to be bound, then it is a contract the moment the person fulfils the condition.”

- If I advertise to the world that my dog is lost, and that anybody who brings the dog to a particular place will be paid some money, are all the police or other persons whose business it is to find lost dogs to be expected to sit down and write me a note saying that they have accepted my proposal? Why, of course, they at once look after the dog, and as soon as they find the dog they have performed the condition. The essence of the transaction is that the dog should be found, and it is not necessary under such circumstances, as it seems to me, that in order to make the contract binding there should be any notification of acceptance. It follows from the nature of the thing that the performance of the condition is sufficient acceptance without the notification of it, and a person who makes an offer in an advertisement of that kind makes an offer which must be read by the light of that common sense reflection. He does, therefore, in his offer impliedly indicate that he does not require notification of the acceptance of the offer.

Moot point?

- Beryl Brown's prize winning donkey, Dolly, was stolen from her field. She informed the police immediately. Detective Constable (DC) Andrew Anderson said to Beryl that whilst he would do everything he could to find her donkey, it was important not to raise her hopes as it was the case that it was difficult to trace stolen animals as they were often taken out of country and sold 'to order' or turned into dog food.

- After considering what DC Anderson had said, Beryl decided to put an advertisement in the 'lost and found' column of the local newspaper. She stated in the advertisement that she would pay £500 reward for the supplying of information to Beryl, leading to the return of Dolly and that the offer would remain open until Friday 31st August. Whilst having his lunch in his local bar on Friday 31st August, DC Anderson received a tip-off from a 'mate' as to where Dolly could be found. DC Anderson immediately telephoned his station with the information he had received as to the whereabouts of Dolly, instructing his colleagues to recover Dolly and to arrest the farmer who had stolen the donkey.

- When DC Anderson had finished his lunch he returned to the police station where the desk sergeant asked DC Anderson if he had seen the advertisement for the £500 reward in the local newspaper placed by Beryl. DC Anderson said he had not, but now that he was aware of the reward, he would write to Beryl to claim the £500. He posted his letter on Friday 31st August and it arrived at Beryl's house on Monday 3rd September. Upon receipt of the letter, Beryl telephoned DC Anderson to inform him that she had no intention of paying him the reward as "he was only doing his job".

Moot point

- What point of law may be argued in respect of this case? Are there aspects of *Carlill* which remain ambiguous (i.e. mootable)?

2.2 Case exercise 2 –

- *DPP v Bull* 1995
- Facts
- Statutory Interpretation, statutory construction, the purpose of Acts of Parliament



DIRECTOR OF PUBLIC PROSECUTIONS v. BULL

1994 March 28;
May 5

Mann L.J. and Laws J.

Crime—Sexual offences—Soliciting—Man charged as common prostitute—Whether “common prostitute” applying exclusively to women—Street Offences Act 1959 (c. 57), ss. 1(1), 2(1)

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The term “common prostitute” in section 1(1) of the Street Offences Act 1959¹ applies exclusively to female prostitutes (post, pp. 94G, 95C).

Where, therefore, a stipendiary magistrate accepted a submission of no case to answer to a charge that a male respondent, being a common prostitute, loitered in a street or public place for the purpose of prostitution, contrary to section 1(1) of the Act of 1959, and the prosecution appealed:—

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Held, dismissing the appeal, that the submission of no case to answer had been rightly accepted (post, pp. 94H, 95C).

- (a) The respondent was a male person who on 3 December 1992 had been cautioned for a second time as a male prostitute.
- (b) On 4 December 1992 the respondent was seen walking around a well known "red-light" area of Soho, London. He appeared to be paying attention to elderly and middle-aged males. He did not pay attention to females. He spoke to two men, one aged about 60, the other about 50.
- (c) When arrested the respondent was found to be in possession of four condoms.
- At the conclusion of the prosecution case, the respondent submitted that there was no case to answer, on the basis that [section 1 of the Street Offences Act 1959](#) applied only to female prostitutes

- The prosecution argued that the Act of 1959 contained no definition of "common prostitute." The phrase had been considered in [Reg. v. De Munck \[1918\] 1 K.B. 635](#), which dealt with the scope of prostitution when the act in question was carried out by a woman. The prosecution argued that it was open to the magistrate to interpret the Act of 1959 so as to deal with the mischief at which the Act was directed, namely, activities associated with prostitution being conducted in the streets. At the time the Act was passed, homosexual activities were illegal. Acts of prostitution by females were not. Attitudes and the law had changed since 1959. It was argued that it was now in the interests of public policy that the Act should be interpreted to include acts of prostitution undertaken by men.

- The defence argued that it was necessary for the magistrate to give the legal meaning to the words of the 1959 legislation, that being what Parliament intended that legislation to mean at the time it was passed. In support of the argument that Parliament intended only to address the problem of female prostitution on the streets, the defence cited the previous legislative history including the Vagrancy Acts 1824 and 1898, the Interpretation Act 1889, the [Sexual Offences Act 1956](#) and the Report of the Committee on Homosexual Offences and Prostitution (1957) *90 (Cmnd. 247) ("the Wolfenden Report").

What would you do?

- The Divisional Court held:
- “It is plain that the "mischief" that the Act was intended to remedy was a mischief created by women.
- The assistance which I derive from the report confirms my strong impression that, notwithstanding the use of "a person" and "anyone" in subsections (2) and (3), section 1(1) of the Act of 1959 is confined to women. The term "common prostitute" is ordinarily regarded as applying to a woman and, importantly, it seems improbable that Parliament intended to create a new male offence which was but subtly different from the extant section 32 of the Sexual Offences Act 1956. Accordingly I would dismiss this appeal and answer the magistrate's question in the affirmative.”

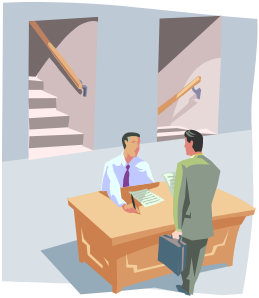
3. Workshop on cases

	<i>Constanza</i>	<i>Ireland</i>	<i>Yemshaw</i>
Facts			
Area of law			
Decision of law			

Dispute resolution



Arena	Comment
Negotiation	No third party. Informal, cheap, private, but risk of inequality of bargaining power. Good negotiation is a skill.
Mediation	Third party, independent, neutral, but non binding. Helps focus on the contentious matters, but may need to resort to court.
Arbitration	Arbitration Act 1996. Formal and binding. Can be expensive (but still cheaper than via the courts)
Courts	Expensive, slow, public, but binding.



Personnel involved in the legal system

- Paralegals
- Solicitors
- Barristers



- Composition
- Qualification routes
- Roles and work
- The future?



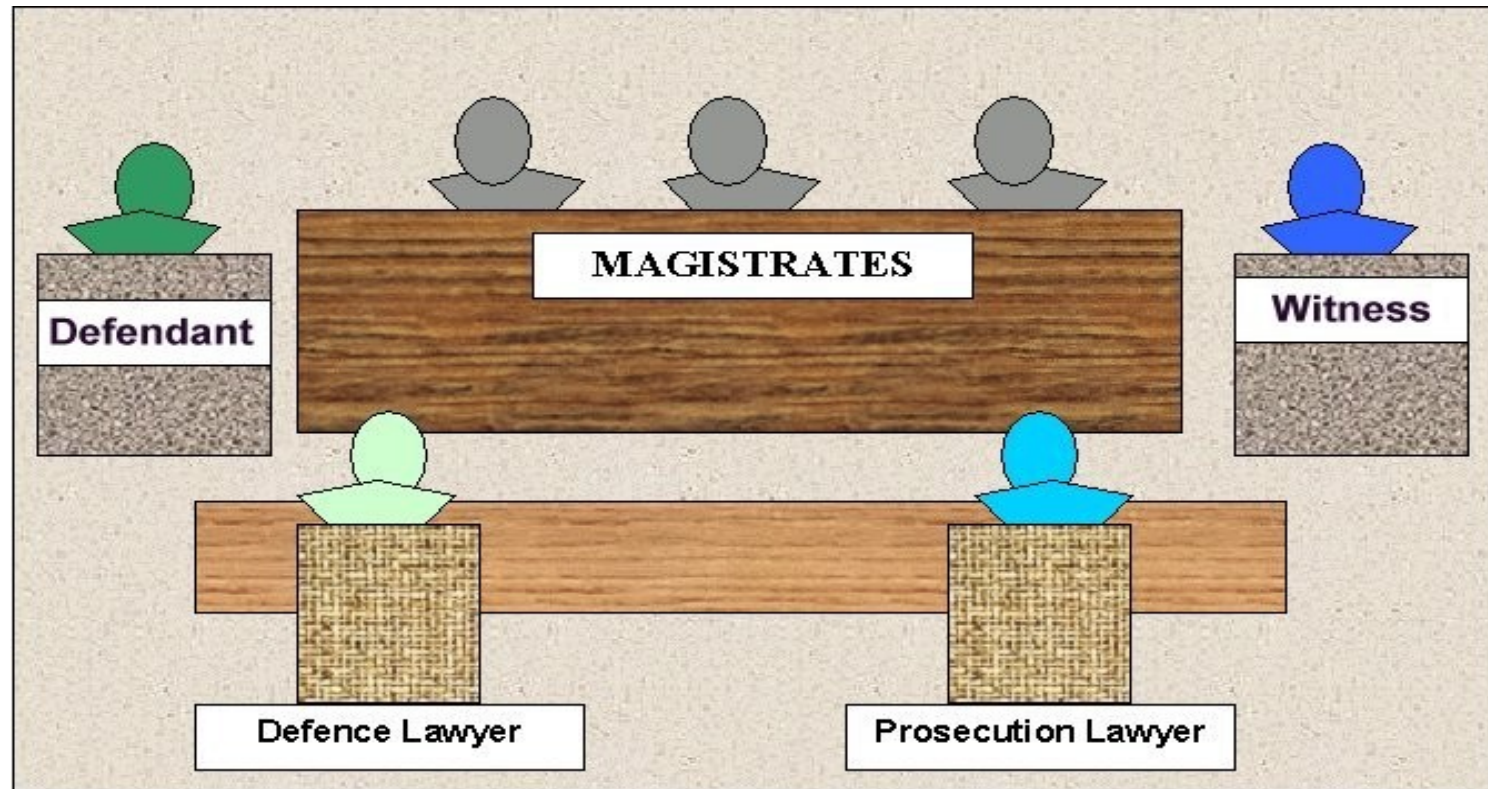
Juries

- Lay people. Use is very rare, but widely viewed as constitutionally guaranteed. Independent (Bushell's case) and private (s. 8 of the Contempt of Court Act 1981 ; note failed challenge under Act 6 on *R v Mirza* (2004))



Magistrates

- Lay
- Legally qualified
- Role and jurisdiction



Judges



- Hierarchy
- Historic role of Lord Chancellor
- Momentum for reform
- Constitutional Reform Act 2005
- Effect