



Prifysgol Cymru
Y Drindod Dewi Sant
University of Wales
Trinity Saint David

BMCX3000: LEGAL SYSTEM

UNIT 8:

JUDICIAL POWER AND CASE LAW

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KEY REMINDERS

- Book your exams(s) by Friday (only you can do this)
- Next week is the start of the Easter vacation
- Next class is on 30th April 2025

LEARNING OUTCOMES

- Explain the role of judges in court cases
- Distinguish case names in civil and criminal cases
- Explain the importance of citations of cases
- Understand the hierarchy of the civil and criminal courts
- Explain the significance of a case's ratio decidendi and obiter dicta, and
- Explain other key terminology used in relation to judicial precedent.
- Outline the key rules of statutory interpretation

SEPARATION OF POWERS

Legislature
(Parliament)

Executive
(Government)

Judiciary
(Courts)

ACTIVITY 1: JUDGES AND CASES

- What do Judges do, and why is case law important?

WHAT IS CASE LAW?

- Cases are decided by judges.
- Who wins! (mostly)
- What remedy, or punishment
- Produce a judgment: body of legal reasoning
 - Explain facts proven on evidence
 - How they applied law
 - How they interpreted law/developed common law
- Precedent: Common law: follow previous decisions: consistent outcome
- New issues to decide: clarify how law applies
 - Can you think of any cases?
- Cases can be identified by the party names...

CIVIL CASES

- **First instance:** *Claimant/Applicant v Defendant/Respondent - Lucas v Lewis* [2005] Citation
 - Lucas is the claimant/applicant; Lewis is the respondent/defendant.
- **Appeals:** Appellant v Respondent - *Scott v Jones* [2020] EWCA Civ XXX
 - Scott is the appellant; Jones is the respondent
- Re: in the matter of
- V is Versus, but we say 'and'
- May have a conjoined case where the points of law are the same.
- When appealed to the supreme or higher court.
- Cases may be anonymised, in which case a letter may be given to denote the parties, e.g. A v B

CRIMINAL CASES

- Cases brought by the crown
- Regina v Defendant; e.g. R v Williams [Year]
 - Rex – King; Regina – Queen
- Case examples- R v Ahluwalia – important case in criminal law- which set a motion in the law to change the law for women who kill their husbands due to domestic abuse.

JUDICIAL REVIEW

- Judicial review: R (name of the person) v the responding government department.
 - *R (Miller) v Secretary of State for Exiting the European Union [2017] OR*
 - *R (On the application of Miller) v Secretary of State for Exiting the European Union [2017]*
- Before 2001 cases will look like this; " *"R v Secretary of State for the Home Department ex p Brind"* ".

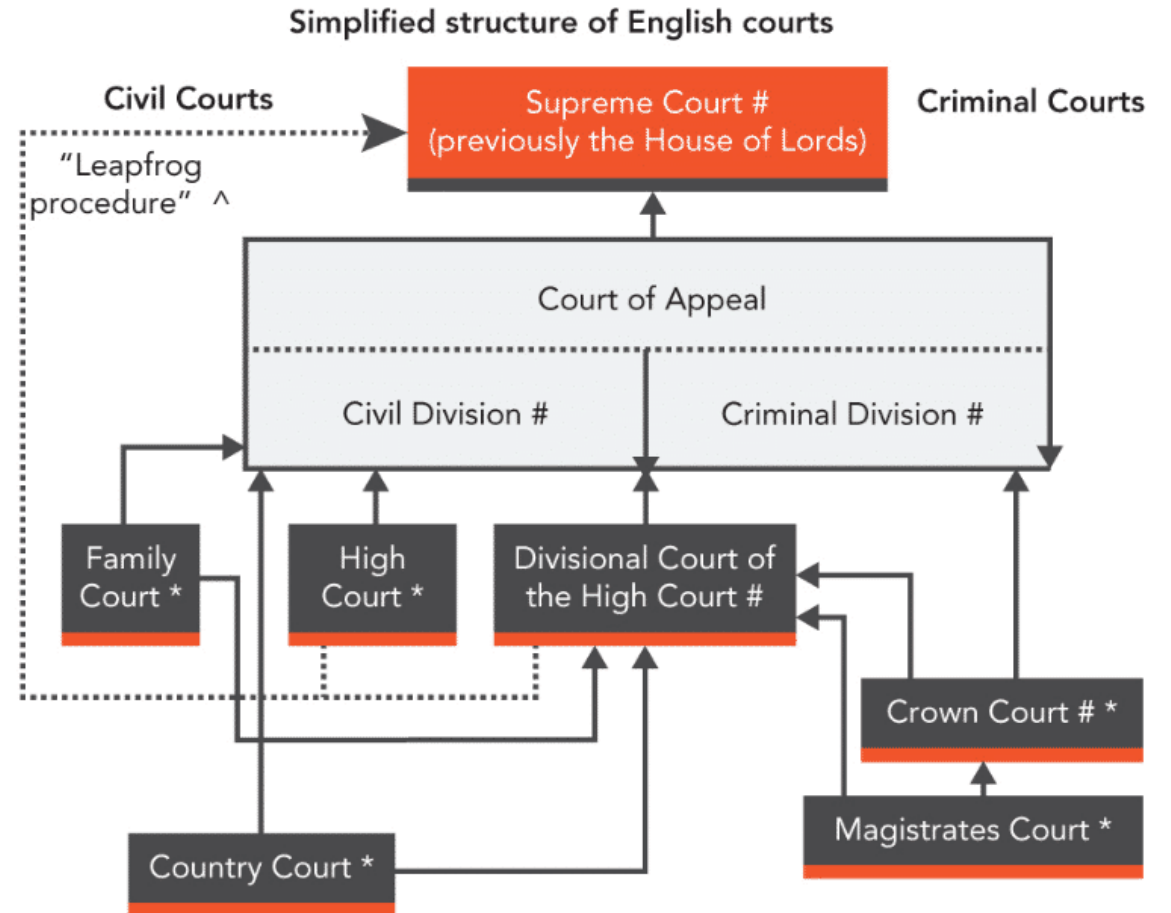
CASE CITATIONS

- Help distinguish between cases with the same name.
- Reference for where to find the case
- Case name – year - volume - page
 - *Ghaidan v Godin-Mendoza* [2004] 3 All ER 411
 - As reported year, the case year may vary between different publications
- Originally reported, increasingly courts publish: particularly since move from paper copies to online
- Year – court – case number
 - *Ghaidan v Godin-Mendoza* [2004] UKHL 30.
- [Cardiff Index to legal abbreviations](#)

ACTIVITY 2: MATCH THE CASE AND COURT

- | | |
|--|------------------------------|
| a. Boston Deep Sea Fishing & Ice Company v Ansell [1888] | 1. Family law case |
| b. R v Rafferty [1999] | 2. Wills and succession case |
| c. Re Booth [1926] | 3. Judicial review |
| d. S v R (Parental Responsibility) [1993] | 4. Civil Case |
| e. Higher Education Funding Council, ex parte Institute of Dental Surgery [1994] | 5. Criminal Case |

COURT HIERARCHY



* "Courts of first instance".

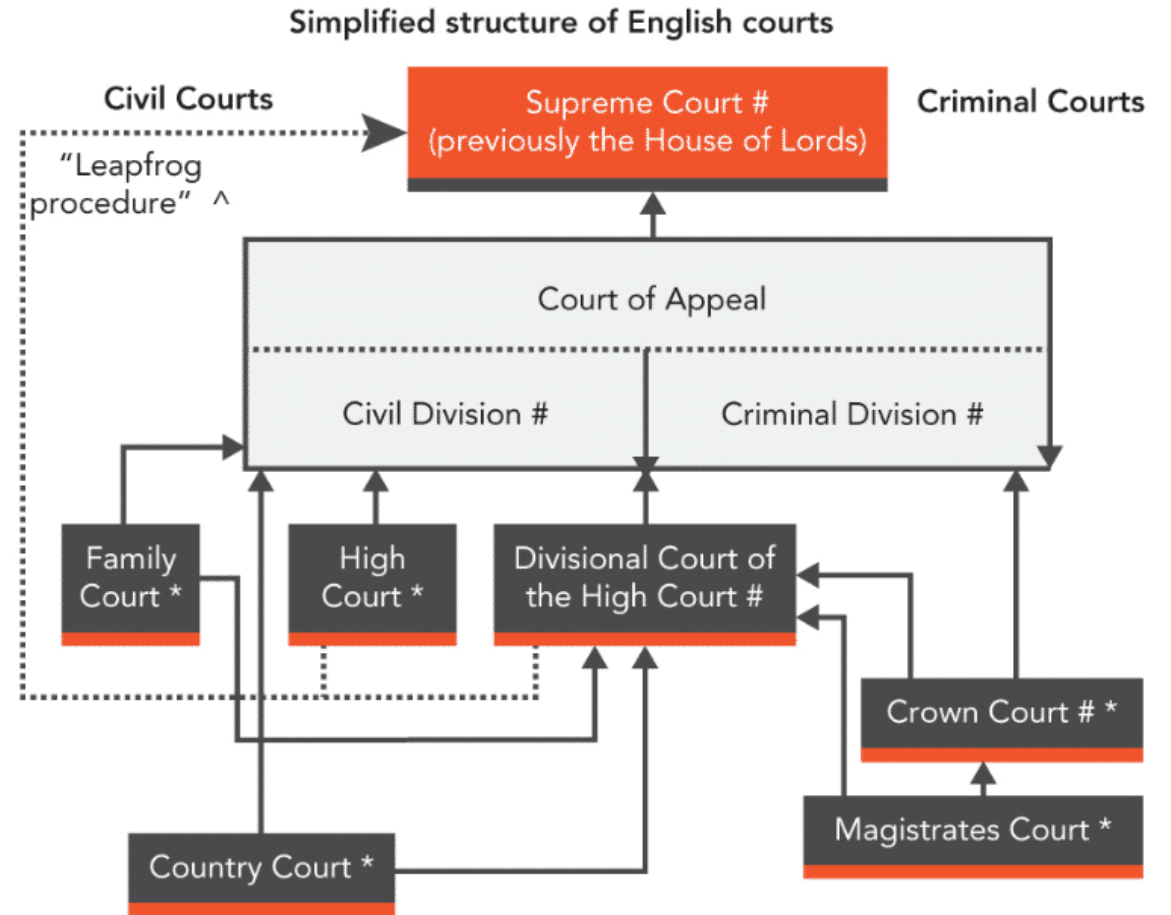
Courts which "hear" (consider) appeals

- ^ "Leapfrog procedure" - this is a rarely used procedure for High Court and Divisional Court of the High Court appeals to bypass the Court of Appeal and go directly to the Supreme Court.

PRECEDENT

- Stare decisis – Higher court decisions bind lower court decisions.
- Precedent.
- Lower court is required to ‘follow’ (bound) by earlier cases

WHO BINDS WHO?



* "Courts of first instance".

Courts which "hear" (consider) appeals

- ^ "Leapfrog procedure" - this is a rarely used procedure for High Court and Divisional Court of the High Court appeals to bypass the Court of Appeal and go directly to the Supreme Court.

WHAT ABOUT EUROPE?

- Two key courts:
 - European Court of Human Rights – Not binding persuasive.
 - **UK IS STILL A MEMBER OF ECtHR**
 - Court of Justice of the European Union- not binding on UK courts- UK has left the EU.
- Case law before withdrawal has stayed and has to be followed by all courts except the Supreme Court and the Court of Appeal.
- Exceptions.

JUDICIAL COMMITTEE FOR THE PRIVY COUNCIL

- Commonwealth countries.
- Supreme court judges (with guests)
- Not binding but persuasive.

ACTIVITY 3: PRECEDENT

- Imagine that you are a judge deciding a case in the High Court, Chancery division. The parties have presented the following case law. Which precedents do you need to follow? Are any persuasive? Do any have no effect?
 - a) County court judgment
 - b) Court of Appeal (Criminal Division) judgment
 - c) Court of Appeal (Civil Division) judgment
 - d) House of Lords judgment
 - e) High Court judgment
 - f) Supreme court case judgment
 - g) European Court of Human Rights judgment

JUDGMENT IN CASES

- Judges have a lot to say! But not everything they say is binding:
 - Ratio decidendi- Reason for the decision - Binding.
 - Obiter dicta- Persuasive- words said by the way - not needed legal discussion.

ALTERNATIVE APPROACHES

Beyond following cases, Judges in a case can rule in various ways.

- Distinguishing.
- Overruling.
- Disapproval.
- Reversing
- Upholding.

STATUTORY INTERPRETATION

- If law or regulations are not clear the courts can use statutory interpretation to decipher the meaning of the law.
- Includes;
 - 1. Literal rule.
 - 2. Golden Rule.
 - 3. Mischief Rule.
 - 4. Purposive approach.

ACTIVITY 4: INTERPRETATION

- In your groups, consider the interpretation of the word 'dwelling in the below offence.
- S9 Theft Act 1968: A person is guilty of burglary if... he enters any building or part of a building as a trespasser and with intent to... [stealing anything from within, or commit grievous bodily harm']
- The defendant before you is charged with burglary having entered a caravan inhabited by the victim as a holiday home.
- Drawing on the four different approaches to statutory interpretation, interpret whether the caravan in these circumstances constitutes a 'building'. How will the interpretation differ? What should your court decide?

JUDGES

- Independent.
- Must not be biased and has to give fair decisions,
- Independence improved because of the Constitutional Reform Act 2005.
- Lord Chancellor – role changed.
- Constitutional Reform Act 2005.
- Separate parliament and judiciary.
- Create Supreme court.
 - S.3 of the Constitutional Reform Act 2005 – important.

REMOVING JUDGES (TENURE)

- Cannot be removed by political government.
- S.11(2) Senior Courts Act 1981.
- House of parliament must ask the crown to remove.
- If incapacitated can be removed by the Lord chancellor.
- Retirement age is 70 cannot carry on after this age.



JUDICIAL DIVERSITY

- Lack of diversity.
- Out of 12 only 2 are Women. (Supreme court).
- High court – 4 % are BAME.
- Do we need more diversity with judges?

WHO APPOINTS JUDGES?

- Judicial appointments commission (JAC).
- Created by the Constitutional Reform Act 2005.
- Not part of the government.
- Includes a number of people.
- Supreme court different – S.27 Constitutional Reform Act 2005.

KNOWLEDGE CHECK (1)

Who appoints judges?

- a) The Judicial Appointments Commission
- b) The Crown
- c) Parliament

KNOWLEDGE CHECK (2)

- Within a case what does v mean?
 - a) Regina
 - b) Versus
 - c) And

KNOWLEDGE CHECK (3)

- Judges in the English and Welsh legal system lack diversity.
 - a) True
 - b) False

KNOWLEDGE CHECK (4)

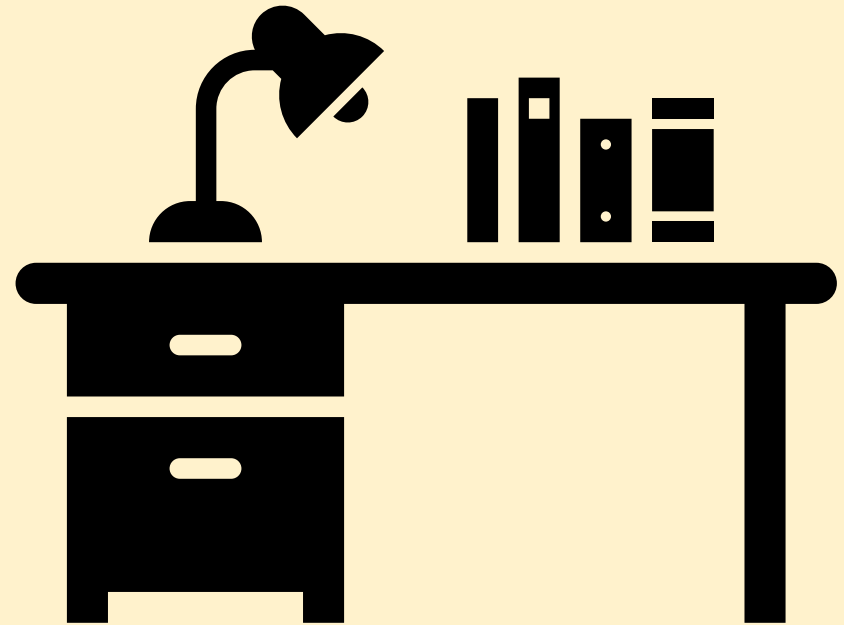
- Following *Young v Bristol Aeroplane Co* [1944], when will the Court of Appeal (Civil Division) not be bound by its own previous decision?
 - a) Where there is a later decision of the House of Lords.
 - b) It will not follow the earlier case when it appears “right to do so”.
 - c) Where there are two conflicting early decisions by the Court of Appeal (Civil Division).
 - d) When it considers the earlier decision was *per incuriam*.

KNOWLEDGE CHECK (5)

- Complete the following sentence
- Cases may include *ratio descidendi* and/or

Summary

- Cases Law
- Naming cases
- Recapped the courts
- Precedent: who binds who
- Statutory interpretation
- Judges: their role
- Judicial appointment



THANK YOU!

Any Questions?