

THE ENGLISH LEGAL SYSTEM



Introduction

The law does not exist or operate in a vacuum. It works within a system – the English legal system. Each country has its own system, although some systems are very similar to others. England, Wales and Northern Ireland follow Common Law. The other countries that follow Common Law are former colonies of England, such as the USA, Canada, Australia, India, Hong Kong and some parts of Africa. The systems that operate throughout Europe follow Roman Law, as does Scotland. If you were a French lawyer, you would feel quite comfortable in, say, Spain because the laws and the systems would be similar. In this unit, we will look at how the Common Law developed and how laws come into existence.

It is essential for anyone who works within the law to have a good understanding of how the English legal system functions. Legal Secretaries can work within different areas of law, such as a civil litigation department in a large law firm, or for a specialist in Matrimonial, Conveyancing or Criminal Law. They could also be working for a small firm which deals with many areas of law. Whatever they may be doing, however, no department or area of law is totally self-contained and at some point, they will come into contact with other areas of law and practice.

An understanding of how the legal system operates will make work in the legal profession so much more interesting and understandable, leading to far greater job satisfaction. Outside of the office it will also help you to follow current affairs much more easily. Law affects our lives, individually and collectively, on a daily basis.

To start with, we are going to have a look at “the law” itself. What, exactly, is it?

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The Nature and Function of the Law

A good working definition of *law* is

A set of rules within a State, enforceable by that State, designed to regulate human conduct within such State.

Law must not, however, be confused with *morals*, which is defined in the dictionary as:

Conventionally acceptable standards of conduct.

At first glance the two definitions appear to be very similar. Because the law is designed to regulate the outcomes of human conduct, it will necessarily reflect those standards of conduct which are either acceptable or unacceptable to society.

The law of this country has evolved over a considerable period of time and has been greatly influenced by moral concepts, especially from the Church and the principles of the Christian faith. In the Middle Ages, the Church was extremely powerful. The Chancellor (or Lord Chancellor, as he is now called) was the monarch's chief minister and closest aide. Whereas the Lord Chancellor is now a Lawyer, he was in those days a Cleric, holding high office in the Church. His influence over the development of Equity (an important ingredient of English Law as a whole, as we shall see later on in this unit) was immense, and this influence was more of a moral nature than a legal one. We can see, even today, a similarity between, for example, the Ten Commandments of the Bible and the basis of our laws. Furthermore, all the major social reforms and accompanying legislation of the 19th and early 20th centuries were influenced by the moral code of Christianity.

In order for law to be acceptable by society it must be capable of change, and any change in the law usually reflects changes in social conventions. For example, homosexuality was at one time considered to be immoral and the law reflected this, making it a criminal offence. As society came to consider sexual orientation as something other than a moral issue, homosexuality became more widely accepted; this was reflected in a change in the law decriminalising sexual acts between men. So, we can see that, basically, as conventionally acceptable standards of society (i.e. morals) change, so the rules that govern human conduct within that society (i.e. the law) should change with them. In this respect, therefore, the law depends on (or at least follows) moral values.

A difficulty arises, however, when the question is asked: "Who sets these conventionally acceptable standards?" There is no doubt that the standards (morals) of society are greatly influenced by forces which operate with motives other than altruistic ones, such as power and profit. The media, for example, has a significant effect upon what is and what is not acceptable behaviour. Scenes of a sexual, violent and self-indulgent nature are often portrayed in the media and so, with time, this behaviour has become accepted within society. Should not the law protect society by defining what is and what is not acceptable behaviour?

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Civil Law

The County Court

Traditionally the County Courts have been grouped into district circuits. In April 2014, the Crime and Courts Act 2013 created a single County Court by removing all geographical jurisdictional boundaries. The County Court now sits at various locations within England and Wales in a way similar to the High Court and has a single court seal and identity as “the County Court”. The courthouses, located in about 400 places around the country, are now called “hearing centres” rather than being identified as individual County Courts. However, in court forms, a particular hearing centre would be identified in the heading: “in the County Court at XYZ”, i.e. the district/area where the hearing centre is located. In practice, the hearing centres will be located where the old County Courts are.

Jurisdiction

In general terms the extent of County Court jurisdiction is as follows:

- **Contract and Tort Actions.** The jurisdiction includes these actions in respect of an unlimited amount. However, if the amount is for more than £100,000 and/or if the action is a complicated one, then it can be started in or (will be transferred to) the High Court.
- **Personal Injury Claims.** The County Court handles matters of personal injury unless the claim is worth over £50,000.

In addition, some courts outside London have bankruptcy jurisdiction, which is unlimited in amount.

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Some County Courts used to be designated as Divorce County Courts, having jurisdiction in undefended matrimonial matters. This jurisdiction has been transferred to the Family Court although it generally sits in the same building.

Composition

There are two types of Judges in the County Court: The Circuit Judge and the District Judge.

The Circuit Judge

A County Court is *presided* over by a Circuit Judge. In court he or she is called “Your Honour” and is formally addressed as His (or Her) Honour Judge Smith (or whatever his or her name is).

The Judge usually sits alone, without a Jury, although in some cases (fraud, for example) there is provision for trial by a Jury of eight. However, this is extremely uncommon.

The District Judge

Each County Court also has a District Judge who acts as an Assistant Judge and General Court Administrator. He or she must be a Solicitor or Barrister with at least seven years’ general advocacy experience. In his or her administrative capacity, the District Judge is in charge of the maintenance of the court records, the issue and service of summonses, deals with money paid into court, and a large number of similar functions. In practice much of the work is delegated to clerks and bailiffs. The District Judge’s function is narrower than that of the Circuit Judge. He or she may hear undefended cases, cases where the amount at stake does not exceed £10,000 or (if the Judge and parties agree) any other action. In most ordinary actions the District Judge will conduct a pre-trial review whose purpose is to encourage the parties to settle the claim, thus avoiding the time and expense involved in going to trial. If no compromise can be reached, the District Judge will fix a date for the trial.

The District Judge is the primary Judge that Legal Secretaries may come into contact with. District Judges hear what are called “interlocutory” matters – deciding issues that occur prior to a trial. If you are a Legal Secretary in a litigation department of a firm of Solicitors, and you have gained experience and shown responsibility, you might be asked by your boss to represent the firm on pre-trial matters in front of the District Judge.

The Small Claims Court

Each County Court has what is termed a “Small Claims Court” attached to it. Its main jurisdiction is to hear claims in contract and tort which do not exceed in total (excluding costs) the sum of £10,000, or £1,000 if it is a personal injury claim. However, the County Court’s jurisdiction has recently been extended and now includes intellectual property claims, where the amount claimed does not exceed £10,000, for infringement of copyright, infringement of trademark, or passing off and infringement of unregistered design rights.

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