Scottish courts and the law

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Welcome to this badged open course, *Scottish courts and the law*. 

The course lasts eight weeks, with approximately three hours of study each week. You can work through the course at your own pace, so if you have more time one week there is no problem with pushing on to complete another week’s study.

After completing this course you will be able to:

- understand the structure and jurisdiction of the Scottish court system
- understand the relationship between different types of court in Scotland
- understand the role of personnel within the court system
- understand why methods of adjudication such as courts exist.

Moving around the course

In the ‘Summary’ at the end of each week, you can find a link to the next week. If at any time you want to return to the start of the course, click on ‘Course content’. From here you can navigate to any part of the course. Alternatively, use the week links at the top of every page of the course.

It’s also good practice, if you access a link from within a course page (including links to the quizzes), to open it in a new window or tab. That way you can easily return to where you’ve come from without having to use the back button on your browser.
What is a badged course?

While studying *Scottish courts and the law* you have the option to work towards gaining a digital badge.

Badged courses are a key part of The Open University’s mission to *promote the educational well-being of the community*. The courses also provide another way of helping you to progress from informal to formal learning.

To complete a course you need to be able to find about 24 hours of study time, over a period of about 8 weeks. However, it is possible to study them at any time, and at a pace to suit you.

Badged courses are all available on The Open University’s [OpenLearn](https://openlearn.open.ac.uk) website and do not cost anything to study. They differ from Open University courses because you do not receive support from a tutor. But you do get useful feedback from the interactive quizzes.

What is a badge?

Digital badges are a new way of demonstrating online that you have gained a skill. Schools, colleges and universities are working with employers and other organisations to develop open badges that help learners gain recognition for their skills, and support employers to identify the right candidate for a job.

Badges demonstrate your work and achievement on the course. You can share your achievement with friends, family and employers, and on social media. Badges are a great motivation, helping you to reach the end of the course. Gaining a badge often boosts confidence in the skills and abilities that underpin successful study. So, completing this course should encourage you to think about taking other courses.
How to get a badge

Getting a badge is straightforward! Here’s what you have to do:

- read each week of the course
- score 50% or more in the two badge quizzes in Week 4 and Week 8.

For all the quizzes, you can have three attempts at most of the questions (for true or false type questions you usually only get one attempt). If you get the answer right first time you will get more marks than for a correct answer the second or third time. If one of your answers is incorrect you will often receive helpful feedback and suggestions about how to work out the correct answer.

For the badge quizzes, if you’re not successful in getting 50% the first time, after 24 hours you can attempt the whole quiz, and come back as many times as you like.

We hope that as many people as possible will gain an Open University badge – so you should see getting a badge as an opportunity to reflect on what you have learned rather than as a test.

If you need more guidance on getting a badge and what you can do with it, take a look at the OpenLearn FAQs. When you gain your badge you will receive an email to notify you and you will be able to view and manage all your badges in My OpenLearn within 24 hours of completing the criteria to gain a badge.

Get started with Week 1.
Acknowledgements

This free course was written by Carol Howells.

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Week 1: Why do courts exist and what do they do?

Introduction

During this week you consider what a court is and the role they perform in society. You explore perceptions of courts and think about how courts fit within the organs of the state. The rule of law is introduced and you are asked to think about its relevance to the justice system in which courts play an essential role.

By the end of this week you will be able to:

- explain what a court is
- describe the rule of law
- explain some of the principles underpinning the justice system in Scotland.

Before you start, The Open University would really appreciate a few minutes of your time to tell us about yourself and your expectations of the course. Your input will help to further improve the online learning experience. If you’d like to help, and if you haven’t done so already, please fill in this optional survey.

1 What are courts?

Law permeates every aspect of society and our daily lives whether we are at home, during leisure time, travelling, at work, viewing films, using social media, having a meal, shopping in the local supermarket, driving, going to school, attending university or going on holiday. Laws are created in different ways but to be effective, mechanisms for the enforcement of law and for resolving disputes involving law need to exist. This is why over the past 1000 years a system for resolving disputes, the courts, evolved. The role of the courts is now to enforce and declare the law.

Nowadays we tend to take the existence of the court system for granted. But while aspects of the court system such as judicial decisions (judgments made by the judges), court costs, the role and appointment of judges, reform of the justice system and televising proceedings are discussed in the media and in parliament it is rarer for questions to be asked about the function of courts, why they exist and their role in contemporary society.

Courts are formally constituted bodies through which legal disputes can be dealt with. They are an adjudication mechanism provided by the state. These legal disputes can be disputes between individuals or organisations such as companies, local authorities or
government bodies. They may be disputes between states or between a state and a member of the public. There will also be times when a member of the public is unable to take advantage of their legal rights, and requires the state to enforce them on their behalf.

Sometimes the actions of a member of the public or organisation create a situation where the state is required to prosecute. The most obvious example of this is when they are accused of committing criminal activity (an offence), for example, theft, criminal damage, environmental pollution or fraud. It is necessary for the state to determine whether the activity (offence) has been committed and, if so, to apply appropriate sanctions. The court is the independent body through which the state carries out this role.

You have probably encountered a range of fictional film or television representations of courts, have seen or heard media reports about particular court cases or heard reference to 'legal' terms such as pursuer, delict, custody, contempt of court, damages, litigation, prosecution, class actions, interdict and compensation. These will have created an impression of the work of courts and why they exist. Activity 1 asks you to consider what you may have already heard about the role and structure of courts.

**Activity 1 Thinking about courts**

Allow about 5 minutes

Take a few moments to think about what you have heard or seen about courts and court proceedings. Make a note of any key points you recall and then note down your thoughts on the following questions:

<table>
<thead>
<tr>
<th>Question</th>
<th>Answer</th>
</tr>
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<tbody>
<tr>
<td>Why do we have courts?</td>
<td>Provide your answer...</td>
</tr>
<tr>
<td>Why do you think courts are important?</td>
<td>Provide your answer...</td>
</tr>
<tr>
<td>Do you think courts are accessible?</td>
<td>Provide your answer...</td>
</tr>
<tr>
<td>Who would you expect to see in a court room?</td>
<td>Provide your answer...</td>
</tr>
</tbody>
</table>

**Discussion**

You may have thought about some of the portrayals of courtrooms you have seen in films or the appearance of a court building you may have walked past recently. Or you may have thought about a reporter discussing the fine imposed on someone, the damages awarded to someone injured in an accident, a prison sentence reported in the media, or the reported trial of an individual in an international court. Courts and the decisions of courts are frequently in the news but these news reports tend to focus on the outcomes of cases and rarely on the personnel, procedure, reasoning and role of the court.

There are no 'right' answers to this activity and its purpose was to get you to think about what existing knowledge you have and what your views and impressions may be. At the end of the course you will return to the notes you have made here to aid reflection on the course as a whole.
Week 1: Why do courts exist and what do they do?
1 What are courts?
2 Why have courts?

The statements in Box 1 help to highlight some of the reasons why courts are regarded as important, the role they play and functions they perform.

Box 1 Why do courts exist?

1. Courts are important because they help protect our constitutional rights to equal protection and due process under the law.
2. Both criminal and civil courts provide the opportunity for the parties to have their cases heard by neutral judges and/or juries. This process ensures that all cases are decided in a fair and consistent manner.
3. Courts provide a forum to resolve disputes and to test and enforce laws in a fair and rational manner.
4. Courts are an impartial forum, and judges are free to apply the law without regard to the states wishes or the weight of public opinion but in line with human rights.
5. Court decisions are based on what the law says and what the evidence proves; there is no place in the courts for suspicion, bias or favouritism. The procedures and decisions must be accessible and transparent and apply the rights found in the European Convention on Human Rights (ECHR). This is why justice is often symbolised as a blindfolded figure balancing a set of scales, oblivious to anything that could detract from the pursuit of an outcome that is just and fair.
6. Courts exist to do justice, to guarantee liberty, to enhance social order, to resolve disputes, to maintain the rule of law, to provide for equal protection to all regardless of background and to ensure the due process of law.
7. Courts exist so that the equality of individuals and the state is reality rather than empty rhetoric and to ensure that the rights enshrined in the ECHR are applied in its decisions and complied with by legislation.

From these statements it can be seen that courts are regarded as playing an important role in protecting and enforcing the rights of individuals. Those rights may come from (be derived from) statutes, treaties (for example, the ECHR) or common law.

The courts’ function is to adjudicate legal disputes between parties and carry out the administration of justice in accordance with the rule of law. The courts’ role is to determine disputes in the form of cases which are brought before them. As mentioned earlier these disputes may be between the state and individuals, between individuals, between individuals and organisations, between organisations, between organisations and governments etc. In order to resolve the dispute the courts hear the evidence presented by the parties in a case before making a decision based on what facts have been proved and the applicable law. A judgment is made on which party is liable, or not, and then a decision is made on the appropriate remedy or sanction and costs.

The parties to a case are those involved in either bringing the case or defending the case, or those who have been joined into the case by those bringing or defending the case.
2.1 Courts in Scotland

There are different types of courts in Scotland which, between them, cover a wide range of legal disputes, from individuals accused of crimes, individuals and companies in debt, children at risk of harm, businesses involved in commercial disputes or individuals asserting their contractual rights. Which particular court hears a legal dispute is determined by a number of factors. These factors can be categorised into either civil or criminal. This categorisation is important as it determines which court will hear the case, the procedure to be followed and the standard of proof. These will be explored in the next section.

Figure 1 The courts
3 Courts and the state in Scotland

You have learnt that courts are part of the apparatus of the state. They are formally constituted bodies and an adjudication mechanism that is provided by the state. But if the state provides courts as an adjudication mechanism and the state employs the judges that sit in the courts, what happens if the state becomes the party to a legal case? What is the position of courts and judiciary (judges) within the state?

Most states abide by constitutional arrangements (principles) which govern the behaviour of the organs of the state (such as courts, the judiciary, legislative and executive) and protect their citizens.

![Figure 2 Organs of the state](image)

**3.1 The rule of law**

The rule of law is regarded as underpinning the constitutional arrangements of any just and democratic society. It underpins the constitution of the UK and has been respected for many centuries in Scotland. It remains a cornerstone of the constitution and is often referred to by politicians who are proud of the respect shown for the rule of law in Scotland today.

Kenny, McAskill, in the foreword to the 2012 *The strategy for justice Scotland*:

> I care deeply about Scotland. It is a successful country where, for the most part, people lead good lives in safe and secure communities. We are a country with a long tradition of respect for the rule of law. We are a fair and just country. We show compassion for others and uphold the values of social justice.

*(The Scottish Government, 2012)*

There are a number of principles which help underpin the rule of law. Each of these has relevance to the law and legal system in Scotland. The principles and their definitions are shown in the interactive diagram below, click on each word to learn more.

> Interactive content is not available in this format.

Interactive 1 Underpinning the rule of law

The principle of impartiality is linked to the concept of separation of powers. The concept of separation of powers means that the organs of state, executive, legislature and judiciary, should be separate from each other. This separation enables a system of checks and balances on the use of power. These checks and balances are aimed at safeguarding against the abuse of power by the state and the protection of citizens. It effectively means
that the law-making bodies, the public services such as the Procurator Fiscal Service and the courts are independent of each other. It also ensures that although the government can be party to actions before the courts, the courts’ ability to consider such cases is not compromised. This means that within Scotland the legislative, executive and judicial functions of the state are exercised independently of each other.

3.2 The jurisdiction of the courts

Whilst the judiciary forms part of the organs of state, they operate independently within it. This independence is constitutionally enshrined. In Scotland judicial functions are carried out by a range of different courts. Each court can only decide on matters that are within its remit (that it has specific power to deal with). The power of a court to consider any particular matter is referred to as its jurisdiction.

This can refer to:

- the nature of the case, or
- the geographical location of the subject matter of the case, or
- the parties to the case.

You will explore the jurisdiction of the individual courts in Scotland in more detail later. All cases that are brought before a Scottish court must also be clearly identified as either civil or criminal. This categorisation is important. Courts hearing civil matters have different procedures from those hearing criminal matters. Those procedures are clearly specified and strictly adhered to in all court proceedings.

In Scotland however not all judicial business is within the jurisdiction of the courts. There are also tribunals which function as an alternative to courts informally resolving legal disputes and dispensing justice. The Scottish Courts and Tribunals Service (SCTS) provides administrative support to Scottish courts and tribunals, and to the judiciary of those courts. Its website states that ‘The SCTS supports justice by providing the people, buildings and services needed by the judiciary, courts, Office of the Public Guardian and devolved tribunals’ (SCTS, n.d).

Before moving on to consider the factors that need to be considered when bringing a case Activity 2 asks you to reflect on the features you would expect of a just legal system.

**Activity 2 A new justice system**

Allow about 10 minutes

From the list below identify the features you would include if you were tasked with designing a just legal system for a new state and drag them into the box. Please give reasons for your answers in the textbox below.

Interactive content is not available in this format.
Interactive 2 Features of a new legal system

Provide your answer...
Discussion
As you worked your way through the list and identified which you would include in the justice system for a new state you thought about the reasons for what you had chosen. You may have found some of the features on the list more relevant than others and you may have disagreed with some of the features on the list.

The features on the list can be found in the Scottish legal system. The rights outlined are regarded as fundamental to any democratic society. Overall these features ensure freedom of individuals, fairness, due process in the legal system, transparency, and a just legal system. They ensure that power is not abused by those who have the privilege of governing. However, within the UK the power not to apply statues which are contrary to human rights is unique in Scotland.

The one feature that could lead to conflicts of interest is enabling judges to hold a paid second job. This will be explored in the section on the legal profession.
4 This week’s quiz

Check what you’ve learned this week by taking the end-of-week quiz.

Week 1 quiz

Open the quiz in a new window or tab then come back here when you’ve finished.
Summary

During this week you considered courts. You thought about your own perceptions before looking at the role of courts and thinking about the rule of law. You learnt about the importance of this concept and the principles which underlie it before considering the features of a just legal system. You should now be familiar with the role of the courts in Scotland and their place in society.

You should now be able to:

- explain what a court is
- describe the rule of law
- explain some of the principles underpinning the justice system in Scotland.

Having learnt about why courts exist, the functions they perform and role they play in society, next week you will explore the difference between civil and criminal and the factors to be considered when bringing a case to court.

You can now go to Week 2.
Week 2: Bringing a case to court

Introduction

In this week you learn about the difference between civil and criminal unlawful conduct. This difference is important as it determines in which justice system a case will be heard. You then consider the factors to be considered when bringing a case to court.

By the end of this week you will be able to:

- explain the categorisation into civil or criminal
- explain the difference between burden and standard of proof
- describe the factors relevant to bringing a case to court.

1 Categories of unlawful conduct

Courts determine cases that are brought before them. Generally the matters they deal with relate to some form of unlawful conduct (conduct that is contrary to or forbidden by law). That conduct will be classified as either civil or criminal. This classification will determine which branch of the legal system (justice system) a case is heard in.

Criminal activity is one form of unlawful conduct and can occur at personal, business, and executive levels. Criminal activities by individuals include burglary, assault, trafficking, theft, environmental damage and murder. Criminal activities by businesses include fraud, industrial espionage, pollution and tax evasion.

Civil disputes are also a form of unlawful conduct. These disputes can occur at a personal level, for instance, when neighbours argue over late-night noise or access to a shared driveway, when parties to a marriage or relationship decide to separate or when there is a dispute as to who should have day-to-day care of a child or relative. Civil disputes can also arise between individuals and businesses, for example, when customers refuse to pay their bills or companies fail to deliver a service to an agreed level. They can occur between businesses over the right to use a brand name or trademark. They may also occur between individuals and local councils over matters such as parking restrictions, traffic calming and planning permission.
Activity 1 A crime or civil wrong?
(Allow about 10 minutes)

The ten examples below are all examples of unlawful conduct. Take a few moments to read through the examples and then indicate whether you think they should be categorised as civil or criminal unlawful conduct. As you make your decisions think about why you have categorised each example as either criminal or civil.

<table>
<thead>
<tr>
<th>Example</th>
<th>Civil or criminal unlawful conduct?</th>
</tr>
</thead>
<tbody>
<tr>
<td>Taking stationery from your place of work</td>
<td>Provide your answer...</td>
</tr>
<tr>
<td>Taking sugar from a supermarket café when you buy a takeaway cup of coffee</td>
<td>Provide your answer...</td>
</tr>
<tr>
<td>Keeping money if you receive too much in change</td>
<td>Provide your answer...</td>
</tr>
<tr>
<td>Keeping money you have found in the street</td>
<td>Provide your answer...</td>
</tr>
<tr>
<td>Being in possession of cannabis</td>
<td>Provide your answer...</td>
</tr>
<tr>
<td>Playing music so loudly in your home that it disturbs your neighbours</td>
<td>Provide your answer...</td>
</tr>
<tr>
<td>Downloading box sets and films from the internet without paying for them or without authorisation</td>
<td>Provide your answer...</td>
</tr>
<tr>
<td>Dropping litter in the street</td>
<td>Provide your answer...</td>
</tr>
<tr>
<td>Driving a car at 32 mph in a 30 mph zone</td>
<td>Provide your answer...</td>
</tr>
</tbody>
</table>

Discussion

When discussing unlawful conduct lawyers tend to use terms such as ‘civil matter’ or ‘criminal conduct’ rather than using the term ‘unlawful conduct’. In the following explanations the terms ‘civil matter’ and ‘criminal conduct’ are used.

Taking stationery from your place of work, keeping money you found in the street and keeping money if you receive too much change are all forms of theft. Theft is a form of criminal conduct.

Taking sugar from a supermarket café when you buy a take away coffee could be a civil matter because you form a contract when you buy a cup of coffee. As part of that contract sugar and milk are provided to meet individual tastes and preferences. If however you were to take more sugar than you needed then this could become criminal conduct because implied within the contract to purchase the coffee is a contractual term that you would use only the sugar you needed. If you took more than you needed, then this could be construed as theft and, as such, it would be an example of criminal conduct.
Possession of cannabis and dropping litter in the street are examples of criminal conduct.
Playing music in your home so loudly that it causes your neighbours discomfort may become criminal conduct if your behaviour is persistent. Also, your neighbours could sue you for civil compensation as you are interfering with their enjoyment of their property. The neighbours could ask the court to make an order prohibiting you from playing your music; this order is known as an interdict.
If you download box sets or films from the internet without paying for them or without authorisation, the entertainment company which owns the rights to the box set or film could sue you for compensation as you are depriving them of legitimate business. Likewise if you try to sell illegally downloaded music, this is a crime and you could be fined or even sent to prison.
Driving your car over the speed limit is a crime.
From these examples you can see that sometimes conduct can be both a civil and a criminal matter.

1.1 Classification of unlawful conduct

Classification of unlawful conduct into civil or criminal helps determine whether the case will be heard in the civil justice system or the criminal justice system. This is important as there are significant differences between these two systems. These include:

- the rules on who may bring a case
- the rules on who may sit in judgment in a case
- the time limits in which the case must be brought
- how the case may be funded (paid for)
- the procedure for bringing the case
- rules on the evidence that can be used and considered
- which court will hear/try the case and where any appeal can be made
- the remedy/punishment available
- what legal terminology is used.

Box 1 The distinct parts of the Scottish justice system

The justice system in Scotland is split into two distinct parts: the criminal justice system and the civil justice system.

The distinction between the two parts of the system is as follows: the criminal justice system exists to prosecute, or otherwise deal with, those who commit crimes. On the other hand, the civil justice system exists to give people and organisations a way to protect and enforce their legal rights and to regulate disputes in respect of those rights. Each part of the Scottish justice system has its own courts and processes for dealing with cases and appeals.

(Harvie-Clark, 2014)
One of the major differences between the systems of civil and criminal justice is the standard of proof. The standard of proof is the level to which a legal case must be proven. The standard of proof is a concept. It means that the pursuer or prosecution has to provide evidence to a certain standard before the case against the defendant can be proved. The standard of proof differs from the burden of proof. The burden of proof is a concept used to indicate which party to the legal case has to prove a factual point in support of their claim or defence.
2 Thinking about bringing a case

Bringing a legal case is rarely simple or straightforward. It can often be a lengthy and costly procedure. When thinking about the practicalities of bringing a legal case we tend to think about the cost of legal fees (for legal advice and representation) and how to get access to appropriate legal expertise. In reality these are only part of a much larger picture as consideration also needs to be given to aspects of the case such as court fees, gathering evidence, court procedure, time limits, the time and personal costs of those involved in a case, emotional costs in terms of the stress and uncertainties of the case outcome. These are all factors that can be important influences on a case. The purpose of this course is not to turn you into a legal practitioner but to raise awareness of the role and purpose of the justice system and the processes used. Within the Scottish justice system there are many rules and regulations and the rest of the course will consider key aspects which have relevance to the accessibility and transparency of law and legal proceedings.

What then are the matters which need to be considered in building a good legal case? As in constructing a building, it is important to ensure that any legal case is built upon sure foundations. First, you need to establish that a cause of action exists in law (there are recognised grounds on which to bring a claim or prosecution). There are many causes of action and ways in which a legal case can be built. Different rules and procedures will be followed depending on the nature or classification of the case brought. The scenario in Box 2 illustrates some of the matters which need considering. You are not expected to be able to identify the relevant areas of law but you should follow the discussion of the relevant matters.

Box 2 Blumen Lus Flowers

Floss, as an employee of a flower shop called Blumen Lus, is delivering flowers to a farm. She needs to drive her company van whilst on company business through a red traffic light.

Figure 2 Floss drives through a red light

What relevant matter can be identified here? Floss, as an individual, has driven through a red traffic light. Failing to stop at a red traffic light is a criminal offence. It falls within the classification of criminal offences known as driving offences. You may have also spotted that Floss did this in a company van whilst on company business. That factor is not immediately relevant.
Figure 3 Floss drives around the corner too fast

Floss has committed at least one further criminal offence by choosing to drive the wrong way down a one-way street. Has a speeding offence also been committed? A speeding offence is committed by a person driving over the speed limit on a particular road. Here the only information given is that Floss was driving ‘too fast’. This does not provide enough information. Was the ‘too fast’ judgement made by a measurement of the delivery van’s actual speed or by an eye-witness account of estimated speed?

Victoria was driving along the road in the correct manner. There is, however, no indication of the speed of Victoria’s vehicle. As Floss is clearly at fault (driving the wrong way down a one-way street), and the crash took place on a corner of the road, this is unlikely to be an issue.

Figure 4 Victoria breaks her arm

Floss has committed a number of driving offences. These are criminal offences and any prosecution for these offences will take place in the criminal justice system. As a result of Floss’s actions the delivery van has been damaged, Victoria’s car has been damaged and Victoria has suffered personal injury. What is Victoria’s position? Victoria may choose to pursue a claim for compensation for the damage to the car and the personal injury caused. These are claims that would normally be heard in the civil justice system. The likely basis for these claims would be in a law known as delict and, in particular, the delict of negligence. In simple terms, this states that a road user owes a duty of care to other road users. If that duty of care is breached (broken) and damage occurs, then compensation may be payable. Here Floss’s criminal acts would indicate that the duty of care owed to Victoria has been breached. As an alternative, Victoria may seek compensation through the insurance company.

Before any prosecutions or claims for compensation are made, evidence would be gathered to prove the facts. This is likely to include statements from Floss and Victoria, eye-witness accounts, police traffic collision reports, any photographic evidence from cameras positioned at the traffic lights, film from any local CCTV cameras, expert evidence from a garage about the damage to the car and company vehicle, medical reports on Victoria’s injuries, reports on any loss of property or loss of earnings suffered by Victoria, proof of ownership of the vehicles, proof of insurance, reports of any faults on the vehicle (for
example, were the brakes on the company van in good condition) and photographs from the scene of the accident. What may appear to be a simple accident with one party obviously at fault will require evidence to prove that fault. Floss may try to bring a counter-claim and allege that Victoria was at fault as Victoria failed to stop her vehicle in time.

2.1 Factors to consider when building a case

The Blumen Lus Flowers scenario illustrates how even an apparently simple scenario can involve both the criminal and the civil justice system. It also illustrates the need for careful collection of the facts and evidence, and to consider all possible outcomes. Don’t worry at this stage if you aren’t familiar with all the terminology that has been used or if you did not follow every step in Floss’s and Victoria’s story. The purpose of the scenario was to illustrate why a starting point is necessary when thinking about building a legal case and why it can be likened to constructing a building, as a legal case also needs solid foundations.

In summary, the following must be considered:

1. What event has happened?
2. Was there an applicable law?
3. What evidence is needed to prove breach of an applicable law?
4. Are there any complete, or partial, defences.

If answers can be found to those four questions, then the process of building a case can begin.

In the scenario above, the answers to the four questions are as follows:

1. What event has happened?
   Several identifiable events have happened.
   - Floss drove through a red traffic light.
   - Floss drove the wrong way up a one-way street.
   - Floss drove ‘too fast’.
   - Floss crashed into Victoria on a bend in the road.
   - Floss has no defence.

2. Was there an applicable law?
   There are applicable laws to each event:
   - a number of driving offences appear to have been committed – criminal unlawful conduct
   - delict (in particular negligence) – civil unlawful conduct.
3. What evidence is needed to prove breach of an applicable law?

Evidence will be needed to prove that Floss has committed the driving offences (criminal unlawful conduct) and to prove that there has been a breach of duty of care and proof of the damage caused as a result (to establish grounds for a case based on the law of negligence). This evidence will consist of some of the items already stated.

4. Are there any complete, or partial, defences?

A complete defence is one when its facts are proven completely absolves the defendant and ends the case. By raising a partial defence the defendant hopes to mitigate the outcome of the case against them. We are told Victoria is driving in the correct manner. There is, however, no indication of the speed of her vehicle. If the pursuer proves Floss was driving too fast and that this contributed in part to the severity of the accident the damages she receives may be reduced. In this sense Victoria has a partial defence.

Other procedural matters

An experienced lawyer will automatically consider a wealth of other procedural matters. These will include:

- Is it a civil or criminal matter?
- Who has the burden of proof?
- What rules of evidence apply?
- Who can bring the legal case (who is recognised by the court as having standing)?
- What laws apply and what procedures need to be followed?
- Is there an alternative to court action?
- What remedy/punishment/settlement is being sought?
- Is a courtroom the best place to resolve the matter?
- Against whom should a case be brought?

However, the emotional costs of bringing or participating in a case and the merits or otherwise of individual legal cases are not matters that are often discussed. Lawyers tend to make decisions based on the evidence with which they are presented, by remaining impartial and by applying the law. These decision-making skills are important and have been developed to ensure that all sides are considered and weighted up when making decisions, and that those decisions are based on evidence and not emotion.

Whilst established procedures for bringing and conducting cases (case management) and progression of a case through the courts - court judgments are based on the facts and evidence presented. Here the individual deciding a case (usually a judge) has some discretion in weighing up the facts and evidence presented.
3 This week’s quiz

Check what you’ve learned this week by taking the end-of-week quiz.

Week 2 quiz

Open the quiz in a new window or tab then come back here when you've finished.
Summary

In this week you learnt about the classification of civil and criminal unlawful conduct and the consequences that follow this. You also considered the factors to be considered when bringing a case to court.

If you want to find out more about bringing a case to court in Scotland there are a number of voluntary organisations whose websites contain information on how to bring a case, the things to think about, appealing parking tickets etc. These include the Citizens Advice Bureau Scotland website, the courts in Scotland website – their details can be found on the additional resources page at the end of the course.

You should now be able to:

- explain the categorisation into civil or criminal
- explain the difference between burden and standard of proof
- describe the factors relevant to bringing a case to court.

Having learnt that there are two separate justice systems, civil and criminal, next week explores the court structure in Scotland.

You can now go to [Week 3](#).
Introduction

In this week you explore the structure of the court system in Scotland. You learn about the courts, their functions, the types of cases they hear and any routes of appeal that exist. By the end of this week you will be able to:

- describe the court structure in Scotland
- explain the work of the courts in the civil justice system
- explain the work of the courts in the criminal justice system.

1 Categories of unlawful conduct

Courts determine cases that are brought before them. Generally the matters they deal with relate to some form of unlawful conduct (conduct that is contrary to or forbidden by law). That conduct will be classified as either civil or criminal. This classification will determine which branch of the legal system (justice system) a case is heard in.

Criminal activity is one form of unlawful conduct and can occur at personal, business, and executive levels. Criminal activities by individuals include burglary, assault, trafficking, theft, environmental damage and murder. Criminal activities by businesses include fraud, industrial espionage, pollution and tax evasion.

Civil disputes are also a form of unlawful conduct. These disputes can occur at a personal level, for instance, when neighbours argue over late-night noise or access to a shared driveway, when parties to a marriage or relationship decide to separate or when there is a dispute as to who should have day-to-day care of a child or relative. Civil disputes can also arise between individuals and businesses, for example, when customers refuse to pay their bills or companies fail to deliver a service to an agreed level. They can occur between businesses over the right to use a brand name or trademark. They may also occur between individuals and local councils over matters such as parking restrictions, traffic calming and planning permission.

**Activity 1 A crime or civil wrong?**

(Allow about 10 minutes)

The ten examples below are all examples of unlawful conduct. Take a few moments to read through the examples and then indicate whether you think they should be
categorised as civil or criminal unlawful conduct. As you make your decisions think about why you have categorised each example as either criminal or civil.

<table>
<thead>
<tr>
<th>Example</th>
<th>Civil or criminal unlawful conduct?</th>
</tr>
</thead>
<tbody>
<tr>
<td>Taking stationery from your place of work</td>
<td>Provide your answer...</td>
</tr>
<tr>
<td>Taking sugar from a supermarket café when you buy a takeaway cup of coffee</td>
<td>Provide your answer...</td>
</tr>
<tr>
<td>Keeping money if you receive too much in change</td>
<td>Provide your answer...</td>
</tr>
<tr>
<td>Keeping money you have found in the street</td>
<td>Provide your answer...</td>
</tr>
<tr>
<td>Using a tablet to watch catch up TV without buying a TV licence</td>
<td>Provide your answer...</td>
</tr>
<tr>
<td>Being in possession of cannabis</td>
<td>Provide your answer...</td>
</tr>
<tr>
<td>Playing music so loudly in your home that it disturbs your neighbours</td>
<td>Provide your answer...</td>
</tr>
<tr>
<td>Downloading box sets and films from the internet without paying for them or without authorisation</td>
<td>Provide your answer...</td>
</tr>
<tr>
<td>Dropping litter in the street</td>
<td>Provide your answer...</td>
</tr>
<tr>
<td>Driving a car at 32 mph in a 30 mph zone</td>
<td>Provide your answer...</td>
</tr>
</tbody>
</table>

Discussion
When discussing unlawful conduct lawyers tend to use terms such as ‘civil matter’ or ‘criminal conduct’ rather than using the term ‘unlawful conduct’. In the following explanations the terms ‘civil matter’ and ‘criminal conduct’ are used.

Taking stationery from your place of work, keeping money you found in the street and keeping money if you receive too much change are all forms of theft. Theft is a form of criminal conduct.

Taking sugar from a supermarket café when you buy a takeaway coffee could be a civil matter because you form a contract when you buy a cup of coffee. As part of that contract sugar and milk are provided to meet individual tastes and preferences. If however you were to take more sugar than you needed then this could become criminal conduct because implied within the contract to purchase the coffee is a contractual term that you would use only the sugar you needed. If you took more than you needed, then this could be construed as theft and, as such, it would be an example of criminal conduct.

Using a tablet to watch catch up TV without purchasing a TV licence, possession of cannabis and dropping litter in the street are all examples of criminal conduct.
Playing music in your home so loudly that it causes your neighbours discomfort may become criminal conduct if your behaviour is persistent. Also, your neighbours could sue you for civil compensation as you are interfering with their enjoyment of their property. The neighbours could ask the court to make an order prohibiting you from playing your music; this order is known as an injunction.

If you download box sets or films from the internet without paying for them or without authorisation, the entertainment company which owns the rights to the box set or film could sue you for compensation as you are depriving them of legitimate business. Likewise if you try to sell illegally downloaded music, this is a crime and you could be fined or even sent to prison.

Driving your car over the speed limit is a crime.

From these examples you can see that sometimes conduct can be both a civil and a criminal matter.

1.1 Classification of unlawful conduct

Classification of unlawful conduct into civil or criminal helps determine whether the case will be heard in the civil justice system or the criminal justice system. This is important as there are significant differences between these two systems. These include:

- the rules on who may bring a case
- the rules on who may sit in judgment in a case
- the time limits in which the case must be brought
- how the case may be funded (paid for)
- the procedure for bringing the case
- rules on the evidence that can be used and considered
- which court will hear/try the case and where any appeal can be made
- the remedy/punishment available
- what legal terminology is used.

Box 1 The distinct parts of the Scottish justice system

The justice system in Scotland is split into two distinct parts: the criminal justice system and the civil justice system.

The distinction between the two parts of the system is as follows: the criminal justice system exists to prosecute, or otherwise deal with, those who commit crimes. On the other hand, the civil justice system exists to give people and organisations a way to protect and enforce their legal rights and to regulate disputes in respect of those rights. Each part of the Scottish justice system has its own courts and processes for dealing with cases and appeals.

(Harvie-Clark, 2014)
Standard of proof

One of the major differences between the systems of civil and criminal justice is the standard of proof. The standard of proof is the level to which a legal case must be proven. The standard of proof is a concept. It means that the pursuer or prosecution has to provide evidence to a certain standard before the case against the defendant can be proved. The standard of proof differs from the burden of proof. The burden of proof is a concept used to indicate which party to the legal case has to prove a factual point in support of their claim or defence.
2 Thinking about bringing a case

Bringing a legal case is rarely simple or straightforward. It can often be a lengthy and costly procedure. When thinking about the practicalities of bringing a legal case we tend to think about the cost of legal fees (for legal advice and representation) and how to get access to appropriate legal expertise. In reality these are only part of a much larger picture as consideration also needs to be given to aspects of the case such as court fees, gathering evidence, court procedure, time limits, the time and personal costs of those involved in a case, emotional costs in terms of the stress and uncertainties of the case outcome. These are all factors that can be important influences on a case. The purpose of this course is not to turn you into a legal practitioner but to raise awareness of the role and purpose of the justice system and the processes used. Within the Scottish justice system there are many rules and regulations and the rest of the course will consider key aspects which have relevance to the accessibility and transparency of law and legal proceedings.

What then are the matters which need to be considered in building a good legal case? As in constructing a building, it is important to ensure that any legal case is built upon sure foundations. First, you need to establish that a cause of action exists in law (there are recognised grounds on which to bring a claim or prosecution). There are many causes of action and ways in which a legal case can be built. Different rules and procedures will be followed depending on the nature or classification of the case brought. The scenario in Box 2 illustrates some of the matters which need considering. You are not expected to be able to identify the relevant areas of law but you should follow the discussion of the relevant matters.

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What relevant matter can be identified here? Floss, as an individual, has driven through a red traffic light. Failing to stop at a red traffic light is a criminal offence. It falls within the classification of criminal offences known as driving offences. You may have also spotted that Floss did this in a company van whilst on company business. That factor is not immediately relevant.
Figure 3 Floss drives around the corner too fast

Floss has committed at least one further criminal offence by choosing to drive the wrong way down a one-way street. Has a speeding offence also been committed? A speeding offence is committed by a person driving over the speed limit on a particular road. Here the only information given is that Floss was driving ‘too fast’. This does not provide enough information. Was the ‘too fast’ judgement made by a measurement of the delivery van’s actual speed or by an eye-witness account of estimated speed?

Victoria was driving along the road in the correct manner. There is, however, no indication of the speed of Victoria’s vehicle. As Floss is clearly at fault (driving the wrong way down a one-way street), and the crash took place on a corner of the road, this is unlikely to be an issue.

Figure 4 Victoria breaks her arm

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The Blumen Lus Flowers scenario illustrates how even an apparently simple scenario can involve both the criminal and the civil justice system. It also illustrates the need for careful collection of the facts and evidence, and to consider all possible outcomes. Don’t worry at this stage if you aren’t familiar with all the terminology that has been used or if you did not follow every step in Floss’s and Victoria’s story. The purpose of the scenario was to illustrate why a starting point is necessary when thinking about building a legal case and why it can be likened to constructing a building, as a legal case also needs solid foundations.

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In the scenario above, the answers to the four questions are as follows:

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Other procedural matters

An experienced lawyer will automatically consider a wealth of other procedural matters. These will include:

- Is it a civil or criminal matter?
- Who has the burden of proof?
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However, the emotional costs of bringing or participating in a case and the merits or otherwise of individual legal cases are not matters that are often discussed. Lawyers tend to make decisions based on the evidence with which they are presented, by remaining impartial and by applying the law. These decision-making skills are important and have been developed to ensure that all sides are considered and weighted up when making decisions, and that those decisions are based on evidence and not emotion.

Whilst established procedures for bringing and conducting cases (case management) and progression of a case through the courts - court judgments are based on the facts and evidence presented. Here the individual deciding a case (usually a judge) has some discretion in weighing up the facts and evidence presented.
3 This week's quiz

Check what you've learned this week by taking the end-of-week quiz.

Week 3 quiz

Open the quiz in a new window or tab then come back here when you've finished.
In this week you learnt about the classification of civil and criminal unlawful conduct and the consequences that follow this. You also considered the factors to be considered when bringing a case to court.

If you want to find out more about bringing a case to court in Scotland there are a number of voluntary organisations whose websites contain information on how to bring a case, the things to think about, appealing parking tickets etc., These include the Citizens Advice Bureau Scotland website, the courts in Scotland website – their details can be found on the additional resources page at the end of the course.

You should now be able to:

- explain the categorisation into civil or criminal
- explain the difference between burden and standard of proof
- describe the factors relevant to bringing a case to court.

Having learnt that there are two separate justice systems, civil and criminal, next week explores the court structure in Scotland.

You can now go to [Week 4](#).
Week 4: Court proceedings in Scotland

Introduction

In this week you explore court proceedings in Scotland. You consider both civil and criminal court proceedings, explore what court proceedings involve and you are introduced to some of the personnel of the court system.

By the end of this week you will be able to:

- explain the role and function of the courts
- describe aspects of both civil and criminal court procedures
- explain some of the legal terminology associated with court proceedings.

1 The role and function of courts

There are certain important criteria that apply to all court proceedings. Courts are all presided over by at least one judge. A court must always uphold the rule of law and ensure justice is done. It is not only necessary to ensure justice is done but also that it is seen to be done. A court must follow procedure, act within its powers and make decisions that follow relevant laws and guidelines, such as the ECHR. The website of the judiciary in Scotland states that:

We believe it is vital in a democracy that justice is not only seen to be done, but that it operates in an open and transparent way and contributes to public understanding and awareness of what takes place in courts each day across Scotland.

(Judiciary of Scotland, n.d.).

Other than in very exceptional circumstances, court business must be open to public scrutiny.
Activity 1 Reflections about courts
Allow about 10 minutes

a. You have learnt about the role and structure of courts in Scotland. Take a few moments to reflect on what you have learnt and make a note of the main points you will remember from your studies of this course.

Provide your answer...

b. Revisit the notes you made for Week 1 Activity 1. Have your thoughts about the courts and their role changed?

Provide your answer...

Discussion
Through study of this course you have been introduced to a number of important aspects of the role and function of courts. These are some of the points the team who wrote this course noted:

- a court is the body through which the state prosecutes criminal conduct and which enables citizens to enforce their legal rights
- courts form part of the separation of powers
- an independent judiciary is essential to the rule of law
- as public bodies the courts are bound to proceed and make judgments in line with the fundamental rights and freedoms embodied in the ECHR
- courts perform an important role in providing checks and balances on the power of government and protecting the rights of individuals and citizens
- a court rules on disputes between members of society as to legal rights and obligations and dispenses justice in relation to individuals who have broken certain rules – i.e. committed a criminal offence
- we have courts because within the day-to-day business of any society there will be times when individuals are unable to exercise their legal rights alone and require the state to enforce them. The court is the body charged with this task
- in any state a mechanism to deal with individuals who breach its rules is required. This is the role of the court
- courts will always consist of at least one judge although there are various titles for this role. There may be a jury and there will be support from a clerk
- courts are important because they are the method by which we can enforce our legal rights and the state can dispense justice

Whether your thoughts have changed will depend on what you wrote in response to Activity 1 in Week 1.

Before moving on to consider procedures for hearing court cases in civil and criminal matters you should watch this video in which Elish Angiolini (former Lord Advocate) reflects on the work of Scottish courts.
Reflections on courts

Video content is not available in this format.

Reflections on courts
2 Civil court procedure

Court procedure will differ depending on which court will hear a case. It is usual for many civil claims to be settled before the case reaches trial in a court room. The parties often try to negotiate a settlement whilst bringing legal proceedings. Indeed, there is a drive within the justice system to encourage parties to a case to reach a settlement before coming to court through some form of alternative dispute mechanism or arbitration before coming to court.

There are many websites which now offer advice and guidance on going to court. The information in Box 1 is taken from the mygov.scot which is designed to provide access to public services in Scotland. It ‘is the place for people in Scotland to access public services that are easy to find and simple to use’.

Box 1 What happens at a civil court case

How a case is prepared

The lawyer representing the party bringing the action forward will:

- interview their client
- interview any other relevant witnesses
- make a decision on whether there’s enough evidence to proceed to a court case.

If a decision is taken to go ahead with the case a pre action letter will be sent. If the pre action letter fails the case will be started formally.

Civil court papers will be served on the party against whom the case is raised, and any other party who may have an interest in the case.

If the case is disputed, the court will fix a date for hearing evidence. This means witnesses will be expected to go to court and tell the court what they know.

Different ways of proving a case

In most civil cases, the party or parties bringing the case forward need to prove that it’s more likely than not, that whatever they are claiming is true.

This standard of proof is known as ‘on the balance of probabilities’ and is less rigorous than the standard of proof of ‘beyond reasonable doubt' that applies in criminal cases.

Sheriff Courts

Sheriff Courts deal with most civil court cases. They are located throughout Scotland and the sheriff is a qualified advocate or solicitor.

Examples of civil cases the sheriff court can deal with are:

- separation, divorce or dissolution of a civil partnership
- residence or aliment (another name for maintenance, where one family member pays regular sums of money to maintain another) disputes
- adoption
- tenant/landlord problems including evictions
- debt
- bankruptcy or liquidation
• claims for money.

The sheriff will hear the case and make the final decision alone.

**Court of Session**

The Court of Session in Edinburgh is the highest civil court in Scotland. It has two parts:

• the Outer House, which deals with more complex divorce or civil partnership cases, and cases when a large amount of money is being claimed for compensation in personal injury claims or broken agreements

• the Inner House, which deals with people who are appealing against decisions of either the Sheriff Court or the Outer House of the Court of Session

The case is normally heard and the final decision made by a judge sitting alone, although sometimes in the Court of Session, a jury is involved and makes the decision.

**UK Supreme Court**

If you are not satisfied with the decision of the Inner House of the Court of Session you may be able to appeal to the UK Supreme Court. This is the final court of appeal for all civil cases. Appealing a case to the UK Supreme Court can be very expensive.

**People in the courtroom**

*The judge or sheriff*

The judge or sheriff is an expert in the law and is in charge of everything that happens in the court room.

They’ll make sure everything is done fairly within the law and that the court rules and legal procedures are followed. They also have a duty to protect the interests of all people involved in the case, including the witnesses.

*The lawyers*

Normally there will be a lawyer representing each of the parties to a civil case, unless any of the parties are representing themselves.

They’ll ask questions in court so the witnesses can give their evidence in their answers. Lawyers appearing in court may be solicitors or advocates.

*Party litigants*

Some people in civil cases decide to represent themselves instead of using a lawyer.

*The clerk of court*

This person is responsible for assisting the judge or sheriff and keeping the court papers and records.

*The court officer*

This person assists the court and lets the witnesses know when it’s their turn to give evidence. In the courtroom they may show a witness different pieces of evidence, like photographs.

*The public and the press*

The public may sometimes be excluded from the courtroom. The press is usually allowed to remain. In some cases they may be prevented from publishing anything that may lead to the identification of the parties or witnesses involved. In exceptional cases the judge might order for the courtroom to be completely cleared.
The end of the case

Some cases last only a day, others can go on for several days or longer. This usually depends on how many witnesses there are and how long each witness takes to give their evidence.

When the evidence of all witnesses has been heard, the judge/sheriff (or jury) must make their decision.

If you’re not at court when the outcome is decided, you can speak to the person who cited you as a witness to see if you can get information.

(mygov.scot, n.d.)

Filming has been allowed in some civil cases. This has been described as:

‘Open Justice’: the principle that proceedings ought to be open to the public. It is central to commanding public confidence in the legal system. The useful and often quoted tenet is that “Justice should not only be done, but should manifestly and undoubtedly be seen to be done.” Along with the holding of trials in public and allowing access to court documents, this principle can be conceived as including public education on the legal system and the operation of the courts.

(Judicial of Scotland, 2013)

As the courts modernise, with arrangements for witnesses to give evidence by video link and for court proceedings to be held online the way in which cases are managed and dealt with is changing. The principle that ‘justice should not only be done, but should be seen to be done’ remains a fundamental one. By allowing some filming of the work of the courts the public can continue to be engaged with the work of the courts and with the courts’ role in society.
3 Criminal court procedure

Box 2 summarises the procedure that is generally followed in a Scottish criminal case. The verdicts reached at the end of a case are unique in the UK as there are three possible outcomes:

- **Guilty**, which means the evidence has been enough to prove 'beyond reasonable doubt' that the individual accused and charged with a criminal offence committed the crime or part of the crime. The judge may sentence the accused immediately or postpone sentencing for reports.
- **Not proven**, which means that there is evidence against the defendant but it is insufficient to convict. The accused is then free to leave the court.
- **Not guilty**, which means there wasn't enough evidence to prove the case 'beyond reasonable doubt' or there were other reasons why the accused wasn't found guilty. The accused is then free to leave the court.

There have been several attempts to change these verdicts, including the Criminal Verdicts (Scotland) Bill 2016 which failed to pass on 25 February 2016. There have also been reviews on the majority verdict. Scotland is one of the few jurisdictions to use a simple majority verdict. This simple majority has been questioned as to whether it can be reconciled with the burden of proof required in criminal cases and whether it leads to miscarriages of justice. Reviews are on-going.

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**Box 2 Criminal court procedures**

**Making a plea**

At the start of a case the accused is asked to plead to the charge or charges they face. If the plea is not guilty, a date will be fixed for a trial when evidence in the case will be heard. This date may be several weeks ahead. The accused can plead guilty to the charges at any stage in the proceedings. Where the accused pleads not guilty a hearing, in summary cases called an intermediate diet, is set down a couple of weeks before the trial. This is to confirm that the trial is ready to go ahead on the allocated date. If for any reason the trial cannot go ahead as planned, a new date may be fixed at this stage.

**The trial**

At the trial, where the accused still wishes to plead not guilty to the offence, both the prosecutor and the accused can call witnesses to give evidence. Sometimes the trial cannot go ahead on the arranged day. This can happen for a number of reasons, many of which are outwith the court's control, for example where a witness or the accused falls ill.

After all the evidence has been presented by both the prosecutor and the defence, a decision is taken on the guilt of the accused. In a jury trial, where 15 people hear the evidence, the jury makes this decision. This happens in High Court cases and in solemn cases in the sheriff court. In all other trials the sheriff or Justice of the Peace makes that decision on the basis of the evidence which has been presented.

**The sentence**

If the accused has pled guilty, or has been found guilty after the trial, the court will consider the question of sentence. This might not happen on the same day. The case might be continued for several weeks for a number of reasons, for example, so that the court can ask.
for background reports. These reports will provide the court with additional information on
the offender which will help when deciding on the most appropriate method of dealing with
the case. Where a case is continued, the court will decide whether the accused is to be
detained in custody, released on bail or allowed to remain at liberty with no conditions
attached.

Various sentences can be imposed by the court. These may include a sentence of
imprisonment, the imposition of a fine or the issue of a community payback order, a
restriction of liberty order or a drug treatment and testing order. More information about how
a judge decides a sentence, and what sentences can be given in Scotland, is available on
the Scottish Sentencing Council website.
(Scottish Courts and Tribunals n.d.)

You should now watch the following video which provides an example of criminal court
proceedings.

Video content is not available in this format.
Criminal court proceedings
4 This week’s quiz

It’s time to complete the Week 4 badged quiz. It is similar to previous quizzes, but this time instead of answering five questions there will be fifteen.

**Week 4 compulsory badge quiz**

Remember, this quiz counts towards your badge. If you’re not successful the first time, you can attempt the quiz again in 24 hours.

Open the quiz in a new window or tab then come back here when you’ve finished.
Summary

In this week you explored both civil and criminal court proceedings in Scotland. You considered what court proceedings involve and watched footage of criminal cases in which some of the personnel of the court system appeared.

You should now be able to:

- explain the role and function of the courts
- describe aspects of both civil and criminal court procedures
- explain some of the legal terminology associated with court proceedings.

Next week you will consider, in more detail, the personnel of the Scottish legal system.

You can now go to Week 5.
Introduction

This week you consider a typical courtroom and explore further the personnel working in the court system. You explore the layout of traditional courtrooms, both civil and criminal, before becoming introduced to the department which has responsibility for administering the courts.

By the end of this week you will be able to:
- describe the layout of a typical court room
- explain the key personnel and their role
- explain why change is taking place.

1 Seeking advice before going to court

When an individual has a potential legal problem or query they may try to find out the answer themselves through books or online material and information. They may also seek legal advice from an expert or try and resolve it amicably by some form of negotiation or arbitration. An individual can also make an appointment to see a solicitor or solicitor-advocate for advice on legal matters or visit their local Citizens Advice Bureau, Welfare Rights Office or Law Centre for advice. Charities and trade unions also give specialist legal advice, the charity Shelter, for example, will give advice on homelessness issues. Individuals can also represent themselves in court if they wish (as a litigant in person if they are a pursuer or as a defendant if they are defending a case). New court processes such as the Simple Procedure are designed to provide speedy, inexpensive and informal ways to resolve claims (for example, the Simple Procedure designed for claims up a maximum monetary value, currently £5,000) without the need for solicitors. Through these routes many legal problems or queries can be solved.

Ultimately if a legal problem or dispute cannot be resolved it will be heard in a court room. As you explored in Activity 1 of Week 1 there are many different images and perceptions of what a court room looks like and what role the individuals in the court room play. In the next two activities you will find out more about who works in a traditional court room and what they do.
1.1 The civil court room

In Activity 1 you explore the layout of a traditional civil court room.

Activity 1 The civil court room roles and responsibilities
Allow about 20 minutes

This activity is in two parts.

a. Click on each number in the diagram to find out who sits where.

Interactive content is not available in this format.

b.

1
2
3
4
5
6
7
8
9

Match each of the items above to an item below.

Judge
Court clerk
Witness
Defendant's legal representative
Pursuer's legal representative
Defendant
Pursuer
Court usher
General public

Discussion

1.2 The criminal court room

In Activity 2 you will explore the layout of a traditional criminal court room.
Activity 2 The criminal courtroom roles and responsibilities
Allow about 20 minutes

a. Click on each number in the diagram to find out who sits where.

Interactive content is not available in this format.

b. Now drag and drop the names of the different people next to the correct numbers below. The numbers relate to those numbers shown in the diagram above.

1
2
3
4
5
6
7
8
9
10

Match each of the items above to an item below.

- Judge
- Witness
- Court clerk
- Jury
- Procurator fiscal
- Legal representative for the defence
- Accused
- Press
- Court usher
- Public seating

1.3 Reflections on the courtroom

Having explored the roles and responsibilities of individuals within the courtroom you will now read first hand experiences of those who work in or have been involved with either the civil or criminal justice system.
1.3.1 The role of an Inner House Judge

An Inner House Judge writes:

‘Judges from other jurisdictions often find it odd that in Scotland we hear both civil and criminal cases, sitting as Senators of the College of Justice and Lords Commissioners of Justiciary respectively. Given the variety of work involved, it also means that there is really no such thing as a typical day in the life of a judge in Scotland’s supreme courts.

As a judge in the Inner House of the Court of Session, I hear mostly appeals from the court’s Outer House and the sheriff court. Every day effectively begins the night before, when the bag service delivers case papers and other business matters to judges’ homes, allowing time to prepare for the day ahead.

Although well briefed on the day’s cases, I catch the bus early enough to arrive at Parliament House in Edinburgh at least an hour before court business starts at 10am, which allows me to pick up any messages or emails in my chambers. In court, I usually sit with two other judges to deal with a wide range of civil appeals. A week might involve two or three contractual and commercial disputes, or a couple of appeals from the employment appeal tribunal and a judicial review. Alternatively, a single case could last the whole week, or even longer. Some of the work might seem a bit dry and dusty, but it is hugely important for those involved, for instance, in personal injury cases.

Occasionally, a case will be settled before the hearing, freeing up some time to catch up on writing judgments from the many notes I’ve taken in my red notebook. The database that allows us to cross-reference with previous judgments has revolutionized our work. However, it is likely I will have to do some writing at home in the evenings or on Mondays, when the court doesn’t normally sit. Equally, Mondays can be taken up with meetings or performing other public service responsibilities. It is also a good time to look after my own affairs, such as visiting the doctor or dentist, which is otherwise very difficult to fit in.

For every week hearing civil cases, I could spend two or three weeks in the Lawnmarket court building dealing with appeals against sentence and conviction in criminal cases from the High Court of Justiciary and the lower courts. Again, this generally involves sitting with two other judges. Appeals against conviction might last a number of days, whereas up to 15 appeals against sentence could be dealt with in a morning and afternoon. In both types of case, the trial judge will have prepared a report that summarises the evidence. As criminal work involves very serious cases, often with terrible consequences, it can be all-consuming.

The Court of Session in particular has changed beyond recognition since I started. Originally, cases involved mostly personal injury, divorce or planning disputes but there has been a real growth in public law in recent years. Perhaps people were more accepting of authority in the past. Now citizens are far more likely to seek a resolution in the courts.’

(Judicial Office for Scotland, n.d.)
1.3.2 The role of an Outer House judge

An Outer House judge writes:

‘Outer House judges sit at ‘first instance’, which means they hear cases that have not previously been to court – pre-trial hearings, civil proofs in the Court of Session and criminal trials in the High Court. The work involves presiding over a wide variety of cases and also sitting in different courts around Scotland.

Most of the time, I am based in Edinburgh, hearing two or three weeks of criminal cases for every one week of civil work in the Court of Session. On those days, each morning begins with the short cycle to Parliament House. Civil proofs are heard in the same building as my chambers and usually last up to four days. Criminal trials take place in the Lawnmarket courtroom, a short walk up the High Street. A brief trial can finish within a week but cases are more likely to last around 10 days. The most complex cases, for instance some of those involving fraud, can take several months.

Sitting on the Bench for criminal trials is rewarding, though it also brings challenges. Hearing a case with a jury is a discipline in itself – maintaining courtesy and formality in the court while ensuring that jurors are not given any inappropriate information. It can be very tiring for the jury – and the judge – to concentrate for long periods on evidence that is sometimes disturbing. But, in my experience, jurors show considerable attention to detail and produce common sense verdicts.

The atmosphere is often tense and emotional, particularly when supporters and family members of the accused and victims are in court. However, witnesses – along with those watching proceedings – deserve credit for remaining remarkably dignified during most trials.

As well as hearing cases in Edinburgh, High Court judges also go ‘on circuit’ around the country. Packing up your belongings and working elsewhere in the country for a week provides some variety, though it is also a solitary existence. To remain entirely detached from the cases they are hearing, judges are expected to stay in different accommodation even from the court officials who also travel on circuit.

Whether dealing with criminal or civil cases, in Edinburgh or elsewhere, sitting on the Bench is no nine-to-five job. Other responsibilities – usually carried out in the evenings or at weekends – include writing opinions, attending meetings and functions, giving presentations and completing training requirements. But that is not a complaint about the demands of the job – it is a huge privilege to be judge in the supreme courts of Scotland.’

(Judicial Office for Scotland, n.d.)

1.3.3 The role of a Sheriff Principal

A day in the life of a Sheriff Principal:
The work of a sheriff principal has changed considerably since I began practising as a lawyer more than 30 years ago in that the range and variety of functions has expanded considerably as a result of a number of legislative changes. As the head of one of Scotland’s six sheriffdoms my time is divided between preparing for and hearing appeals, presiding over inquiries and the considerable administrative challenges that are involved in ensuring the speedy and efficient disposal of business in my area.

There is no typical day for me but most days I arrive at the court building around 8.30 and start going through my emails. They are mostly from the various agencies, which play a part in the criminal justice system, about court business or appeals that I am dealing with. A sheriff principal does not usually deal with criminal cases so my primary function is to hear civil appeals from the sheriff courts in my sheriffdom. I deal with around 90 such appeals every year but I am also required to examine each case to determine whether the appeal is competent, how long it is likely to take and that all the appropriate procedures have been complied with. This morning I am meeting one of the clerks of court to discuss a number of appeals that are coming up as I need to confirm the availability of parties to the case and that the necessary courtrooms have been allocated. In some cases I will travel to the court from which the appeal originates as that helps to minimise expense for all those involved. Since 2003 sheriffs principal are obliged to hear appeals from the Mental Health Tribunal and in 2005 we took over responsibility for hearing appeals in licensing matters from sheriffs.

Sheriff principal also hear fatal accident inquiries where the circumstances of the case raise significant issues of public interest. At lunchtime today I am meeting the area procurator fiscal to discuss two forthcoming inquiries which will be held in my sheriffdom. As I will need to allocate these to sheriffs I want to firstly establish the likely duration and complexity of these cases before I decide on the location. One involves the death of an elderly woman in a care home and the other concerns a young man who died following an accident on a construction site. We will almost certainly fix a procedural hearing in advance of the Inquiry starting to hear evidence.

I work in a particularly busy sheriffdom so the responsibility for making sure that things operate efficiently and smoothly is a considerable challenge on a day to day basis. The unexpected can have a major impact on the work schedule. Today one sheriff has been taken into hospital for emergency surgery and another sheriff has to attend the funeral of a close family member later in the week. Two other sheriffs have scheduled annual leave so that reduces the resources I can call on considerably. This requires urgent attention so I have requested a meeting after court at 4.00pm with the clerk, the sheriffdom business manager and two senior sheriffs to discuss how we handle this. I was intending to complete a complex written judgment this afternoon but that will have to wait until later this evening as I do not want affected cases to be delayed unnecessarily this week.

As sheriff principal I maintain a general oversight of the administration of the sheriffdom. This includes court programming and the allocation of sheriffs to each court. While the bench work is considerable I also have to factor in some writing time for sheriffs to complete their written judgments. Everyone would like more time for this so I find myself doing a lot of juggling and negotiating to
make sure that there are no undue delays in getting these judgments issued. The decision of the court can have a major impact on parties to a case and I don't want to add to people's anxiety through delays at this end.

Keeping the courts running smoothly involves a lot of close liaison with different people who all contribute individually to the process. The procurator fiscal, social workers, police, court staff and the local bar association all play a key role in the day to day business of the courts. I have regular meetings with each of them and together we try to ensure that we anticipate problems in advance and keep on top of the demands of juggling so many competing issues. It is not only the flow of business in sheriff courts that I am responsible for but now I also manage the justice of the peace courts as well. Some days it feels like I am trying to draw up a very complicated bus timetable.

It is 5.00 and my secretary has just placed two large files on my desk and printed out a couple of urgent emails which require my attention before I leave tonight. One file contains the details of a complaint about a sheriff by a man who does not agree with the sheriff's decision in his case. As this relates to a judicial decision the only option is for the complainer to appeal the decision through the normal channel. However I have to investigate each complaint in detail and respond accordingly. It is time consuming but it's all part of the job. The other file contains the papers for tomorrow's meeting of the Local Criminal Justice Board which as sheriff principal I chair. One email concerns an accused who assaulted a Reliance security guard in one of my courts and the other one concerns an urgent request to reschedule an appeal hearing that I was due to start later in the week because the agent for the appellant is involved in a trial that has overrun. More juggling I am afraid.

I respond to the urgent emails and a few others that are waiting for a response. One is a request from the head of judicial communications for a joint meeting with the BBC to discuss a request to film in one of the courts. It is important that the public understand how the courts operate so I am happy to agree to this.

I manage to finish up about 6.00 and decide to walk home as it is a nice evening. The walk helps to clear my head before I get home and catch up with my family. That written judgment is still waiting, so once I have had dinner and relaxed for a bit I will do some work on it before reading over those papers for tomorrow’s meeting.

Being a sheriff principal is indeed challenging. Not only do you need extensive legal experience but you have to be a skilled negotiator, be able to respond to the unexpected and above all be as diplomatic as possible. But despite all that I do enjoy the job immensely and cannot imagine doing anything else now.

(Judicial Office for Scotland, n.d.)

1.3.4 The role of a Sheriff

A day in the life of a Sheriff:

'A typically busy day in the sheriff court lies ahead – three sentencing hearings in the first half-hour, followed by a full day of criminal trials. The tight scheduling
means I arrive at work early and read the social enquiry reports I previously called for in the three sentencing cases.

At 9.30am, only a handful of members of the public are in court – along with the lawyers, court officials, security guards and the man in his 20s who first appeared before me three weeks ago. Convicted of serious assault after slashing a stranger from ear to mouth, I was obliged to call for a report because he has not previously served a custodial sentence. Taking everything into account, I sentence him to 40 months’ imprisonment plus four months for bail aggravations. With a 25% reduction for pleading guilty and avoiding a trial, he will serve 33 months in prison.

The next case involves a 24-year-old man who was caught with cocaine valued at £5,000 and £1,800 in cash when police searched his house following a tip-off. Again, I called for a report because he has not previously served a jail sentence. Having read the report, I conclude that he should serve 18 months in prison. His girlfriend shouts her disapproval but I defer to judicial deafness.

With the clock approaching 10am, a shoplifter in her 20s, who stole £600 worth of goods from a high street shop, appears for sentencing. She doesn’t have a drug habit – as many do – and is clearly operating as a professional thief. She has previously had probation and community service. On this occasion, I imprison her for six months.

The summary trials – which involve the sheriff sitting without a jury to deal with less serious crimes – start on time. They involve a range of offences: three pub stewards facing charges of causing severe injury; a man who has breached his community service order; a couple who were drunk and caused a breach of the peace during hospital visiting time (unfortunately, an increasingly common occurrence); and, dangerous driving. All plead guilty, with sentence imposed in court or a date set for a further hearing.

Towards the end of the morning, I hear an unusual case brought under property misdescriptions legislation, which essentially prohibits estate agents making false or misleading statements about a property for sale. In this instance, the agent has failed to ensure that the description of a flat is correct – it has one room in total rather than a four-roomed flat – and so I impose a fine of £500.

“During lunch in the sheriffs’ dining room, I chat to colleagues about the morning’s business. We discuss the fact that it can be difficult to assess the correct level of fine in unusual cases such as the property misdescriptions one I have just heard.

Back in court in the afternoon, it quickly becomes clear that all the criminal trials have been resolved earlier than expected, not least because three were unable to go ahead: one because the accused did not turn up, and so a warrant was issued for his arrest; two because of the absence of witnesses, which happens when those involved live chaotic lifestyles.

Given that sheriffs in Scotland have such a wide jurisdiction – hearing criminal trials, civil proofs and some appeals – I am asked by the court liaison officer, who controls scheduling, if I can step in to hear a civil proof. Reading the papers, I find out that it involves a dispute over warranties given by the seller of a nursing home. The claim by the purchaser is for £500,000. The background to
the case is set out but I adjourn around 4.20pm because a witness giving lengthy evidence seems to be in need of a break.

Back in my chambers, I am faced with writing both a civil judgment and a report for an appeal to the High Court against a sentence I imposed. I always try to write appeal reports within 48 hours so it takes priority. I’m leaving around 5.30pm – earlier than usual because I’m going to the football tonight – but before doing so, I check my emails and look through my notes on the nursing home case, which is likely to last all day tomorrow and possibly the next day.

As a sheriff no two days are the same and you can never be sure what you will be faced with when you come to work. But in many ways that is what makes the job so interesting for me. I have never regretted becoming a sheriff and look forward to many more years on the bench’.

(Judicial Office for Scotland, n.d.)

1.3.5 The role of a Justice of the Peace

A day in the life of a Justice of the Peace:

‘Every second Tuesday, I leave home at around 8am and fight my way through the traffic to the nearby justice of the peace court – one of around 450 lay people who dispense criminal justice on a local basis. The matters we deal with are considered less serious than those prosecuted in other courts but they can all have serious consequences.

Although most justices around the country hear cases alone, there is always a Bench of three in our court, as happens in a number of similar rural areas. We meet in the justices’ room between 9am and 9.30am to go through the court list with our legal adviser. As the court only sits once a week, we will be dealing with both sentencing hearings and criminal trials. A social enquiry report has been received for a young man who previously pled guilty to six charges of vandalism to shop windows, causing several thousand pounds of damage. We read with interest, but not much surprise, that he has drug and alcohol problems.

We all put on our black gowns, though smart clothes are also acceptable, and the macer shows us into a courtroom packed with the accused, their supporters and family members. As ‘master of the instance’, the procurator fiscal decides the order to take the cases.

The vandalism case is first. His solicitor draws attention to the abuse problems identified in the social enquiry report, also explaining that the young man has slight learning difficulties and suffers from lack of a father figure. The offending will not stop unless his personal problems are sorted out. We give him 18 months’ probation, adding a condition that he must receive alcohol and drug counselling.

Next to be sentenced is a 45-year-old businessman who was caught driving at 112mph on the motorway. As is increasingly the case, he is not represented by a solicitor. He argues that his family and business would suffer if was disqualified from driving. We leave the bench to discuss it more freely, but all
agree that he has failed to make a convincing case. As a result, he is disqualified for four months and fined £600 which had been reduced from £900 because of his early plea.

Defence solicitors are in court for the next five cases – though this time their clients are not present – which are all speeding offences. They are dealt with by fines and penalty points. There are pleas of not guilty in six more cases and trial dates are set.

After a sandwich and breath of fresh air at lunchtime, we are back in court by 2pm, the public benches now almost clear. Six trials are listed but only two go ahead because of the absence of witnesses and the accused in the others. Warrants will be issued for the accused who have not turned up.

The first trial involves a young hairdresser who was caught driving without insurance during a routine police stop. Her mother takes the blame, admitting she changed insurer and forgot to include her daughter on the new policy. As a new driver, six penalty points is the threshold for removing her licence, which is done by DVLA. We agree that the girl should be admonished. Her relief is obvious, though she does still have a conviction, which could cause problems in certain occupations and also when renewing her insurance policy.

A man in his early 20s is next in the dock, charged with a nasty assault outside a nightclub. He pleads not guilty but three witnesses give good, clear evidence describing how he punched a man twice in the face and kicked him on the ground. We find him guilty and also see his four previous convictions, which are pretty horrendous, particularly for someone his age. We consider it the worst type of case that comes before us and so the only disposal available is 60 days’ imprisonment.

The court then clears but the justices remain on the Bench to deal with 40 or so letter pleas. As appropriate, we impose sentences, defer sentencing and set trial dates. As chairman of the Bench, I am then asked by the fiscal to sign a number of warrants calling people to court. We finish around 5.30pm, tired but satisfied, ready for some dinner and a relaxing cup of tea.’

(Judicial Office for Scotland, n.d.)

1.3.6 The role of a court officer

You prepare the courtroom before a case, escort the Sheriff or Justice to and from the court, and help them with their requirements.

You work closely with the clerk of court, police officers and security officers to ensure the work of the court is conducted in an orderly and efficient manner.

You’d be responsible for items, like evidence, that will be produced in court and collect witnesses from the witness rooms and bring them into court.

You would:

- Answer phone calls, and assist people visiting the court building
- Check in witnesses for court cases and direct them to the right places
• Do general duties in the courtroom, like calling witnesses, handling items of evidence that are produced in court, escorting the Sheriff to and from court, keeping witnesses and jurors informed of the proceedings and help with showing CCTV evidence
• Help to ensure security and appropriate standards of behaviour in the court building
• Do administration such as filing, photocopying and distributing internal court papers
• Collect letters and legal documents and prepare the mail to send out each day
• Deliver cash and cheques to the bank at the end of the day
• Get reference books from the library for the Sheriffs or officials during the court proceedings.
• Move documents or other light items to and from the court
• Update court reference guides
• Make sure the members of a jury have privacy to consider their verdict
• Set up audio/visual equipment and screens for cases with vulnerable witnesses
• Open and close the court building
• Report any repairs needed in the court building

You would need to be able to deal with people in what could be a difficult situation for them. They might be anxious and worried about being in court so it would be important to be calm and tactful in dealing with them.

Some of the cases may be very distressing but it would be important to not get emotionally involved. You’d also need to respect confidentiality.

(The Skills Development Scotland Co. Ltd., n.d.)

1.3.7 The role of a Procurator Fiscal

How does the process work?

The police (or other Specialist Reporting Agencies, e.g. Customs and Excise) carry out an initial crime investigation and submit a report to the local Procurator Fiscal.

The Procurator Fiscal considers this report and decides whether to take any action in relation to this case. This decision is taken in the public interest.

Where there is enough evidence in the case, the Procurator Fiscal will consider a number of additional factors when deciding whether criminal proceedings should take place. These are set out in full in our Prosecution Code, but include:

• seriousness of the offence
• length of previous time since the offence took place
• Interests of the victim and other witnesses
- age of the offender, any convictions and other relevant factors
- local community interests or general public concern
- any other factors at his discretion, according to the facts and circumstances of the case.

**Reasons for decisions:**

- **Victims** Where a Procurator Fiscal decides to take no criminal proceedings in a case or to accept an adjusted plea of guilty, the victim can ask for an explanation of the decision and this will be provided.

- **Accused persons** It is not the policy of the Crown Office and Procurator Fiscal Service to automatically inform accused persons where a decision is taken not to take court action.

  It is, however, open to an accused person who has been reported for alleged offences to contact the Procurator Fiscal's office, either directly or through their lawyer, to enquire as to the decision of the Procurator Fiscal.

  In taking this decision, the Procurator Fiscal will consider if there is sufficient evidence in the case.

  If there is sufficient evidence, the Procurator Fiscal will then decide what action is appropriate, eg. to prosecute, offer a direct measure (such as a fiscal fine) or to take no action in the case. The Procurator Fiscal considers a number of factors in coming to this decision. (As outlined above)

  In cases which will be considered by a jury, the Procurator Fiscal will interview witnesses and gather and review the forensic and other evidence before a decision to prosecute is taken. S/He will then make a report to Crown Counsel to take a decision on whether to prosecute.

**Alternatives to prosecution**

In some less serious cases, although the Procurator Fiscal may consider that it is in the public interest to take action, prosecution may not be the most appropriate course of action. In those cases there are a number of direct measures available.

**80/110/140 Day Rules**

Under Scots law, the Department must prepare the prosecution in the most serious custody cases under one of the strictest legal time limits in the world. The indictment, which details the charges which the accused will face, must be served on him within 80 days of the accused being fully committed in custody.

**Sheriff Court cases**

Where the proceedings are taken before a jury in the Sheriff Court, the trial must start within 110 days of full committal. A First Diet must take place not less than 10 days before the trial. That calling of the case gives the Sheriff an opportunity to ascertain the state of preparation of the parties generally, and he will only allow the matter to proceed to trial when the parties are ready.

**High Court cases**

The procedure and time limits which apply are slightly different in High Court cases. There, the next step after full committal is the preliminary hearing which must occur within 110 days from the point of full committal. This Hearing gives
the judge, among other things, a chance to ascertain the state of preparation of the parties, and he will only allow the matter to proceed to trial when the parties are ready. As with the time limits in Sheriff court cases, this helps to provide a degree of certainty as to when the trial will take place and avoids witnesses turning up at court only to find that the trial has been adjourned to another date. The trial in custody cases must begin within 140 days.

What is Crown Office and Procurator Fiscal Service’s (COPFS) relationship with the police?

The COPFS works closely with Police Scotland. The roles of COPFS and the police are complementary, and regular dialogue and co-operation enables problems and issues to be dealt with efficiently and effectively.

The Procurator Fiscal in Scotland has an investigative role and can provide instructions and directions to the police in connection with their investigations. This happens particularly in serious cases, where the police work very closely with the Procurator Fiscal. In cases of sudden, suspicious and unexplained deaths, the Procurator Fiscal has responsibility during the early stages of the investigation to arrange a post mortem examination by forensic pathologists.

(Crown Office & Procurator Fiscal Service, n.d.)

1.3.8 An example of a victim’s story

‘You never really imagine it happening to you. You see it on the television and read about it in the media – you take it on board for a few minutes, make a few comments about society, point fingers at what and who is responsible and then you get on with your life. I did all of this myself on so many occasions but then one night it did happen to me and my world and perspective of crime changed.

About 8 years ago I was the victim of a violent assault which resulted in me nearly dying from blood loss and being left with a significant facial scar. I tried to do what I believed to be the right thing and calm down a violent situation outside a pub and it all went wrong. I was hit over the head with a baseball bat and a vodka bottle. That night I changed, the world around me changed and my life changed.

When you become the victim of crime it’s not just the physical injuries that you are left to deal with. There may also be an impact psychologically. I had to deal with the trauma and the fact that I nearly died at 26. I questioned why it happened to me – had I done something to deserve it? Could I have done something differently to prevent it? Was it my own fault? After the attack my physical injuries were healing amazingly, it was the psychological ones that were the bigger issue. I suffered from a loss of self belief and self worth. My world became a place of staying safe and avoiding situations where I would be at risk. I cut myself off from my friends, family and the world. My confidence and belief was in tatters.

Thankfully I got help from a number of people, such as my GP and a psychologist called Laura who diagnosed me with a condition called Post-Traumatic Stress Disorder (PTSD). Laura told me I had to face my fears,
rebuild my self confidence and self worth and she gave me the skills to do this. It was a long process but as I went through this process I was supported by Victim Support Scotland.

I didn’t use Victim Support as much as I should have when the incident first happened. It was one of my friends who had a partner that worked with them that made me aware of the organisation. She told me that I might be entitled to compensation from the Criminal Injuries Compensation Authority, that Victim Support would be able to assist me with this and also provide me with practical and emotional support. She told me that it was a confidential organisation that would be there for me, that they wouldn’t judge me and that they are separate from the police. She said that they would understand what I was going through and could offer some kind of help. And they did. Victim Support took so much weight off of my shoulders. They handled my compensation claim, and they were an ear for me to voice my frustrations to. My case never went to trial but they assured me that if it did their Witness Service would support me through going to court. They provided so much emotional and practical support and I needed that so badly.

Once I had my PTSD under control, I decided I wanted to give a bit back to Victim Support as a thank you for all their help. I also wanted this negative experience to be used to do some good and my psychologist had told me that volunteering is good for self-esteem, and I can confirm that this is the case. I really enjoy the work I do with Victim Support. I am out and about in the community offering practical and emotional help to victims and witnesses of crimes and their families if they need it. I’ve had excellent training and continued support from everyone within the organisation. I’ve also been told that it will be really good experience to have for when I have completed my degree in Psychology. Victim Support has been brilliant for me both as a victim of crime and also as a volunteer. It is an amazing organisation to be involved with and it is so flexible in terms of working round my university course and my work.’

(Victim Support Scotland, n.d.)
2 Behind the scenes

A great deal of administrative work goes on behind the scenes of a court room to make sure that a case runs smoothly, for example, that all the evidence needed is available, and that witnesses will be present on the correct day. The administration of the Scottish courts is undertaken by The Scottish Courts and Tribunals Service (the Service). It is responsible for ensuring that court business is conducted effectively. It employs the administrative staff who deal with the day-to-day work of the courts and ensures appropriate accommodation is available for court business. This is a substantial undertaking and a costly one.
The Service generates some of its income through civil court fees but most of it comes from direct government funding i.e. from public funds. Figure 2 highlights the strategic priorities of the Service. These indicate how it will meet the needs of the justice system in Scotland ensuring fair and effective administration, and access to justice while also ensuring best financial value. The Service's annual reports measure how these priorities are being achieved and can be found on the Scottish Court and Tribunals website under the reports and data section.
Figure 5 Strategic priorities of the Scottish Courts and Tribunals Service

The workload of the Scottish Courts and Tribunals Service, judges and the other individuals involved in the legal system depends on the number of legal disputes that arise and whether they are classified as civil or criminal. Figure 6 shows the number of judge days (days on which judges sat in court to hear cases) from 2013 to 2016.

<table>
<thead>
<tr>
<th>Judge Days</th>
<th>2013-14</th>
<th>2014-15</th>
<th>2015-16</th>
</tr>
</thead>
<tbody>
<tr>
<td>High Court</td>
<td>3964</td>
<td>3881</td>
<td>3780</td>
</tr>
<tr>
<td>Court of Session</td>
<td>2071</td>
<td>1956</td>
<td>1968</td>
</tr>
<tr>
<td>Sheriff Court</td>
<td>28160</td>
<td>28946</td>
<td>28819</td>
</tr>
</tbody>
</table>

Figure 6 Judge days
3 This week’s quiz

Check what you’ve learned this week by taking the end-of-week quiz.

Week 5 quiz

Open the quiz in a new window or tab then come back here when you've finished.
Summary

During this week you considered the layout of a typical courtroom and explored the roles and responsibilities of those working within the court room. You learnt about the department administering the courts and considered some statistics on workload and cases heard.

You should now be able to:

- describe the layout of a typical court room
- explain the key personnel and their roles
- explain why change is taking place.

Next week you consider the role of the legal profession in Scotland and look at how change is shaping their future.

You can now go to Week 6.
Week 6: The legal profession in Scotland

Introduction

This week you consider the legal profession in Scotland and the changes they are facing to their traditional roles. The legal profession in Scotland consists of solicitors, advocates, judges and the Procurator Fiscal.

By the end of this week you will be able to:

- explain the roles of solicitors and advocates
- describe the role of a judge
- explain the personal qualities expected of those working in the legal profession.

You should now watch this video which provides an introduction to the legal profession before you begin your studies of this week.
1 Solicitors

The Law Society of Scotland is the professional body for solicitors. All solicitors must belong to the Law Society and hold a practising certificate, which they must renew annually.

Box 1 The Law Society of Scotland

The Law Society of Scotland is the professional body for over 11,000 Scottish solicitors and was established in 1949. We have an overarching objective of leading legal excellence, and strive to excel and to be a world-class professional body, understanding and serving the needs of our members and the public. We set and uphold standards to ensure the provision of excellent legal services and ensure the public can have confidence in Scotland’s legal profession.

The Law Society also has a statutory duty to work in the public interest, a duty which we are strongly committed to achieving through our work to promote a strong, varied and effective legal profession working in the interests of the public and protecting and promoting the rule of law. We seek to influence the creation of a fairer and more just society through active engagement with the Scottish and United Kingdom governments, parliaments, wider stakeholders and our membership.

(The Law Society of Scotland, n.d.)

Solicitors work either on their own (sole practitioners) or in partnerships. Solicitors can be found in most towns and cities, and anyone can approach a solicitor for advice. Some of the smaller solicitors’ firms advise on a wide range of legal issues and law; others specialise in a specific area of law, for example employment law (these are often referred to as ‘niche firms’). In larger solicitors’ firms the solicitors tend to specialise in particular areas of the law.

A solicitor has regular contact with their clients (the person who has approached them for advice) through face-to-face meetings, letters, emails and phone calls. If needed, a solicitor will instruct a solicitor advocate or advocate to give further specialist advice to their client or appear in court on their client’s behalf. Solicitors can represent their clients in the Sheriff Courts, Justice of the Peace Courts, tribunals and inquiries. If the case they are dealing with is in a higher court, solicitors will instruct a solicitor-advocate or an advocate to appear in court to represent their client. The solicitor will prepare the case.
Figure 1 The Law Society of Scotland

Watch this video in which Craig McKerracher explores the role and work of solicitors and considers legal change and the role of the legal system.

Video content is not available in this format.

Solicitors and their work

The training requirements to become a solicitor are set by the Law Society as are the standards they need to attain for professional practice. You can find out more about these on the Law Society of Scotland website.
2 Advocates

The Faculty of Advocates is the professional body for advocates (also referred to as counsel). Traditionally advocates have been called upon to provide written opinions and advice as specialists in their field. They were also called upon to represent their clients in courts.

Apart from limited exceptions, advocates are instructed by solicitors. They do not enter into a contract with a client but have rules of professional practice which they must follow. They operate under the cab rank rule which means that they should not refuse instructions if they are available and a reasonable fee has been agreed. Advocates can represent their clients in any court.

Advocates are not required in every case. Large firms of solicitors dealing with complex specialist commercial matters may have the necessary expertise within the firm.

Figure 2 Advocates in court, Figure 3 The Faculty of Advocates logo, Figure 4 Advocates taking part in an annual legal procession

Advocates are self-employed and, after becoming qualified, are called juniors. After 12-15 years they can choose to apply to the Lord President to be appointed to the Roll of Queen’s Counsel (QC) in Scotland by Her Majesty the Queen. Box 2 outlines the conduct expected of an advocate. Words such as confidence, trust, impartiality and personal integrity are used. An advocate is expected not only to have specialist knowledge but also to demonstrate these personal attributes.

**Box 2 The professional duties of an advocate**

The work of an Advocate is essentially the work of an individual practitioner whose conscience, guided by the advice of his seniors, is more likely to tell him how to behave than any book of rules.

[...] the ultimate test of an Advocate’s conduct is whether it is such as to impair the trust and the confidence which others place in him and his profession.

[...]

The many duties to which an Advocate is subject require his absolute independence, free from all other influence, especially such as may arise from his personal interests or external pressure. Such independence is as necessary to trust in the process of justice as is the impartiality of the judge.
An Advocate must therefore avoid any impairment of his independence and be careful not to compromise his professional standards in order to please his client, the Court or third parties.

[...]

This independence is necessary in non-contentious matters as well as in litigation.

Advice given by an Advocate to his client has no value if it is given only to ingratiate himself, to serve his personal interests or in response to outside pressure.

**Trust and personal integrity**

Relationships of trust can only exist if an Advocate’s personal honour, honesty and integrity are beyond doubt. For the Advocate, these traditional virtues are professional obligations.

**Confidentiality**

It is of the essence of an Advocate’s function that he should be told by his client things which the client would not tell to others, and that he should be the recipient of other information on a basis of confidence. Without the certainty of confidentiality there cannot be trust. Confidentiality is therefore a primary and fundamental right and duty of the Advocate.

An Advocate shall respect the confidentiality of all information that becomes known to him in the course of his professional activity.

(Faculty of Advocates, 2008)

You should now watch this video in which Scott Manson reflects on the role of advocates.

Video content is not available in this format.

The role of advocates
The roles of solicitors and advocates are likely to see some changes in coming years. These changes will be driven by modernisation of the justice system and reforms, such as the review of legal aid and move towards digital courtrooms.
3 Paying for legal advice

If an individual seeks advice from a legal professional, they usually have to pay for the service, although some legal professionals offer free half-hour interview services. It can be costly to instruct a solicitor and pay privately for their advice. Other methods of financing legal advice have therefore been developed. People who have limited savings and income may be eligible for one of the schemes run by the Scottish Legal Aid Board. The Citizens Advice Bureaux and Welfare Rights Offices may be able to help with appearances at tribunals or for small claims. Some people may have legal insurance, for example, as a specific addition to car insurance or house insurance policies. Some solicitors operate on a fixed basis with their client. This arrangement is often used in cases involving personal injury. The Simple Procedure mentioned earlier is intended and designed to make self-representation (as a litigant in person) easier.
4 Judges

A judge is the person who presides over a court. A judge is responsible for ensuring that
the court conducts its business properly and makes decisions in the cases brought before
the court. In some instances it will be for the judge alone to decide on the outcome of
proceedings and the appropriate remedy or sanction, and in others the outcome will be
decided by a jury with the appropriate sanction then determined by the judge. Given the
fundamental importance of courts, it is vital that particular arrangements are in place to
ensure that appropriate individuals are appointed to this important role.

You should now watch this video in which Scott Manson reflects on the role of judges.

Overview of the role of the judiciary in law making

Judges operate with the direct authority of the Crown, however, as you have seen in
accordance with the concept of separation of powers, it is a fundamental principle of
justice that they are independent. This is because judges have the responsibility for
ensuring that the law is enforced justly and consistently. The ability to do this impartially
would be prejudiced if they were subject to economic or political pressures. In order to
ensure this independence is not compromised, judges can only be removed from office in
exceptional circumstances.

In Scotland judges (who are salaried and full time) are appointed by the Queen on
recommendation of the First Minister. Applications and recommendations are made by
the Judicial Appointments Board for Scotland (JABS). The First Minister is required to
consult the Lord President on any recommendation for judicial appointment before
making their recommendation to the Queen.
### Box 3 Example of the skills a judge requires judicial qualities

#### Legal Knowledge Skills and Competence

**Knowledge of the Law**
- A comprehensive knowledge of the law of evidence
- Thorough knowledge of the procedural law appropriate to the Court of Session
- A high and expert level of knowledge of the substantive law in the main area of the applicant's practice
- A fully developed understanding of the areas of substantive law most commonly encountered in the Court of Session, along with the motivation and demonstrable desire to master new and unfamiliar areas of the law that emerge during the period of service as a judge.

**Skills and Competence in the Interpretation and Application of the Law**
- A thorough understanding of the theory and principles on which the law is based and an ability to analyse and explore legal problems creatively and imaginatively
- Excellent skills in the interpretation and analysis of case law and statute law
- Excellent skills in identifying and distinguishing issues of fact and law
- Excellent skills in applying the relevant law to relevant facts
- Demonstrable ability to interpret and apply the law in unfamiliar areas; in particular applicants from an exclusively civil practice will require to demonstrate an ability to adapt to operating in the High Court. Experience in both fields would be an advantage.

#### Judicial and Personal Qualities

**Personal characteristics**
- Integrity
- Independence of mind and moral courage
- Fairness and impartiality
- Common sense
- Understanding of people and society
- Responsible attitude and sound temperament
- Courtesy and consideration
- Ability to command respect
- Resilience.

**Case management skills and efficiency**
- Ability to manage individual cases efficiently and effectively
- Ability to manage caseload efficiently and effectively
- Resolution, conscientiousness and diligence.

**Communication skills**
- Ability to communicate clearly with all court users
ability to reach legally sound judgments and explain the reasoned basis for any decision.

Activity 1 What judges do
Allow about 10 minutes

Take a few moments to reflect on what you have learnt in this course about the role of judges and the importance of the principle of separation of powers. Make a note of what you think the key points are.

Provide your answer...

Discussion
There is no right answer to this activity – what you have chosen will depend on your own views. These are the notes that the team made and you may find it helpful to compare your notes with these and identify similarities and differences.

Judges have a number of characteristics and these are reflected in the role they undertake in the justice system.

- They are independent. This means that they should have no interest in the outcome of any case they hear and they should have no connection to anyone in the case.
- They listen to all the parties (whether pursuer, defendant or prosecutor) in a case with equal attention giving impartial decisions based on the law and facts.
- Judges have the responsibility to determine disputes. They must decide the outcome by application of the law to the facts and evidence before them.
- They have the power to impose a wide range of sanctions on those who break the law, from monetary compensation to taking away a person’s liberty by sending them to prison.

4.1 The judiciary

Judges play an important role in society and when they are appointed they swear an oath to ‘do right to all manner of persons without fear or favour, affection or ill will’. Read the information below on the role of judges taken from the judiciary of Scotland website.

Box 4 Judicial independence

Much has been written about judicial independence both in its institutional and individual aspects. Judicial independence is not the private right of judges, but the foundation of judicial impartiality and is for the benefit of the public. It is a cornerstone of our system of government in a democratic society and a safeguard of the freedom and rights of the citizen under the rule of law.
Independence of the judiciary refers to the necessary individual and collective or institutional independence required for impartial decisions and decision making. Judicial independence thus characterises both a state of mind and a set of institutional and operational arrangements. The former is concerned with the judge’s impartiality in fact; the latter with defining the relationships between the judiciary and others, particularly the other branches of government.

For centuries, the independence of judges has been protected in several ways:

- judges are independent of the executive and the legislature and do not get involved in political debate;
- full time salaried judges cannot be removed from office without a motion passed or approval by the Scottish Parliament; and
- judges are almost entirely immune from the risk of being sued or prosecuted for what they do in their capacity as a judge.

The essentials of judicial independence are impartiality, integrity and freedom from interference. Independence is secured in part by the restrictions on removal from office and the immunity from being sued or prosecuted.

**Principle of separation**

In order for the decisions of the judiciary to be respected and obeyed, the judiciary must be impartial. To be impartial, the judiciary must be independent. To be independent, the judiciary must be free from interference, influence or pressure. For that, it must be separate from the other branches of the State or any other body. As far back as 1599, the Lord President of the Court of Session declared to James VI that the judges were independent of the King “sworn to do justice according to our conscience”. The principle of the separation of powers of the State requires that the judiciary, whether viewed as an entity or in its individual membership, must be, and be seen to be, independent of the executive and legislative branches of government. The relationship between the judiciary and the other branches should be one of mutual respect, each recognising the proper role of the others. The Judiciary and Courts (Scotland (Act) 2008) enshrines judicial independence in law. It introduces a duty on Scottish Ministers, the Lord Advocate and members of the Scottish Parliament to uphold the continued independence of the judiciary, barring them from trying to influence the judiciary through any special access to judges.

Judicial independence is important for a fair trial, for adjudication of disputes, for respect for decisions and because the judges may have to decide disputes between the executive, the legislature and an individual or the public at large.

**Our legal system**

Our legal system is based on the principle that an independent, fair and competent judiciary will interpret and apply the laws that govern us. A judge’s role is to make a decision between parties in a legal dispute, based on the facts of the case and the law that applies to the facts. The parties
must accept the judge’s decision as final, unless one of them appeals the judge’s decision to a higher court.

**Judicial decision making**

Judicial independence is not only a matter of appropriate external and operational arrangements. It is also a matter of independent and impartial decision making by each and every judge. The judge’s duty is to apply the law as he or she understands it without fear or favour and without regard to whether the decision is popular or not. This is a cornerstone of the rule of law. Judges individually and collectively should protect, encourage and defend judicial independence. Judicial independence means that judges are not subject to pressure and influence, and are free to make good decisions based solely on fact and law.

**Judicial oath**

When judges are sworn in they take two oaths or affirmations. The first is the oath of allegiance and the second the judicial oath, these are collectively referred to as the judicial oath.

The judicial oath provides:

‘I will do right to all manner of people after the laws and usages of this Realm, without fear or favour, affection or ill-will.’

In taking that oath, the judge has acknowledged that he or she is primarily accountable to the law which he or she must administer. Judges themselves have to be vigilant to identify and resist any attack upon that independence, by whomever or by whatever means. The oath plainly involves a requirement to be alert to, and wary of, subtle and sometimes not so subtle attempts to influence judges or to curry favour. Moreover, a judge should be immune to the effects of publicity, whether favourable or unfavourable. That does not mean, however, being immune to an awareness of the profound effect that judicial decisions may have, not only upon the lives of people before the court, but sometimes upon issues of great concern to the public in general.

**How long can a judge remain a judge?**

Once a judge is appointed, he or she is eligible to be a judge until the age of retirement. The statutory retirement age is set by the Judicial Pensions and Retirement Act 1993, which came into force on 31 March 1995. All judges appointed to full-time judicial office after the Act came into force must retire from office at the age of 70.

A full time salaried judge may be removed from office only if unfit for office by reason of inability, neglect of duty or misbehaviour. A judge of the Supreme Courts of Scotland may be removed from office only by Her Majesty on a recommendation made by the First Minister. The First Minister may make such a recommendation if (and only if) the Scottish Parliament, on a motion made by the First Minister, resolves that such a recommendation should be made. The First Minister can make such a motion to the Scottish Parliament only if a tribunal, constituted in terms of section 35 of the Judiciary and Courts (Scotland) Act 2008, has provided the First Minister with a written report concluding that the judge in question is unfit and giving reasons for that conclusion. A sheriff may be removed from office only if a tribunal
constituted under section 12A of the Sheriff Courts (Scotland) Act 1971 has provided the First Minister with a written report concluding that the sheriff is unfit and giving reasons. The First Minister must lay the report before the Scottish Parliament and may lay a statutory instrument before Parliament for the removal of the sheriff. Parliament may resolve not to allow the removal to take effect.

(Judicial Office for Scotland, 2017.)

Figure 5 Scottish judges

As part of the principle of judicial independence judges are not able to hear cases where there is a potential conflict of interests. A judge must step down in circumstances where there appears to be bias or ‘apparent bias’. The test for determining apparent bias is this: if a fair-minded and informed observer, having considered the facts, would conclude that there was a real possibility that the judge was biased, the judge must recuse themselves. You may not have come across the verb ‘to recuse’ before. It is used solely in legal situations, and means that those with judicial authority remove themselves from a case or proceeding to avoid a potential conflict of interest.

The process of recusal is important as the judiciary must ensure that they remain independent and that they are also seen to be independent of any influence that might reasonably be perceived as compromising their ability to judge cases fairly and impartially. This is an integral part of the saying ‘justice must not only be done but be seen to be done’.

Judicial recusal is not a matter of discretion and in Scotland, since February 2014, a list of judicial recusals has been published on the website of the Judiciary of Scotland. These have included being personally known to a witness, a Sheriff previously presiding over a related case and a pursuer being known to the Sheriff.
### Table 1 Examples of judicial recusals

<table>
<thead>
<tr>
<th>Date</th>
<th>Court (type of action)</th>
<th>Name</th>
<th>Reason for Recusal</th>
</tr>
</thead>
<tbody>
<tr>
<td>26/01/2016</td>
<td>Court of Session</td>
<td>Lord Uist</td>
<td>Judge dealt with same issue and same witnesses in a case being appealed</td>
</tr>
<tr>
<td>27/01/2016</td>
<td>Dumbarton Sheriff Court (civil)</td>
<td>Gallacher</td>
<td>On the Pursuer's motion in relation to a decision in a preliminary hearing</td>
</tr>
<tr>
<td>09/02/2016</td>
<td>Elgin Sheriff Court (criminal)</td>
<td>Pasportnikov</td>
<td>Sheriff previously presided over related case</td>
</tr>
<tr>
<td>10/02/2016</td>
<td>Elgin Sheriff Court (criminal)</td>
<td>Pasportnikov</td>
<td>Sheriff previously presided over criminal matter involving complainter</td>
</tr>
<tr>
<td>24/02/2016</td>
<td>Glasgow Sheriff Court (civil)</td>
<td>Sheriff Reid</td>
<td>Sheriff personally known to a witness</td>
</tr>
<tr>
<td>18/03/2016</td>
<td>Edinburgh Sheriff Court (civil)</td>
<td>Sheriff Ross</td>
<td>Sheriff previously presided over criminal matter involving appellant</td>
</tr>
<tr>
<td>18/03/2016</td>
<td>Aberdeen Sheriff Court (criminal)</td>
<td>Sheriff Stirling</td>
<td>Sheriff previously presided over civil matter involving accused</td>
</tr>
<tr>
<td>25/04/2016</td>
<td>Ayr Sheriff Court (civil)</td>
<td>Sheriff Montgomery</td>
<td>Sheriff previously acted for defender as a solicitor</td>
</tr>
<tr>
<td>03/05/2016</td>
<td>Lanark Sheriff Court (criminal)</td>
<td>Sheriff Stewart</td>
<td>Complainer previously represented by Sheriff's husband</td>
</tr>
<tr>
<td>22/06/2016</td>
<td>Perth Sheriff Court (civil)</td>
<td>Sheriff Clapham</td>
<td>Pursuer known to Sheriff</td>
</tr>
<tr>
<td>09/08/2016</td>
<td>Dunoon Sheriff Court (civil)</td>
<td>Sheriff Ward</td>
<td>Sheriff personally known to a witness</td>
</tr>
<tr>
<td>19/08/2016</td>
<td>Greenock Sheriff Court (criminal)</td>
<td>Sheriff Ward</td>
<td>Accused known to Sheriff from Sheriff's time in private practice</td>
</tr>
</tbody>
</table>

(Judicial Office for Scotland, n.d.)
There is a long tradition of the public prosecutor in Scotland, which dates back many centuries. The Crown Office and Procurator Fiscal Service (COPFS) is the sole public prosecution service in Scotland. The police and over 50 other specialist agencies report criminal cases to them. The service is headed by the Lord Advocate who is assisted by the Solicitor General for Scotland. They are responsible for prosecuting the most serious criminal cases in the High Court of Justiciary but this is carried out by Advocates Depute who are Crown counsel. Both are appointed by the First Minister. The Lord Advocate is a member of the Scottish cabinet and also advises the Government on legal issues.

The COPFS is arranged into regions. Each region has an Area Procurator Fiscal who is in charge of the management of that region. Each region has a number of Procurators Fiscal working within it. They are responsible for the overall investigation of crimes. They direct police as to the reporting and investigation of offences. Usually the police will investigate, charge the individual and send a report to the Procurator Fiscal who makes the final decision about whether to prosecute and how it will be dealt with. There are strict time limits within which decisions must be taken. In suspicious deaths the Procurator Fiscal will attend the scene of the death. They will also arrange and attend the post-mortem examination.

Box 5 Role of the Procurator Fiscal

**How does the process work?**

The police (or other Specialist Reporting Agencies, e.g. Customs and Excise) carry out an initial crime investigation and submit a report to the local Procurator Fiscal.

The Procurator Fiscal considers this report and decides whether to take any action in relation to this case. This decision is taken in the public interest.

Where there is enough evidence in the case, the Procurator Fiscal will consider a number of additional factors when deciding whether criminal proceedings should take place. These are set out in full in the Prosecution Code, but include:

- seriousness of the offence
- length of time since the offence took place
- interests of the victim and other witnesses
- age of the offender, any previous convictions and other relevant factors
- local community interests or general public concern
- any other factors at his discretion, according to the facts and circumstances of the case.

**Reasons for decisions:**

- **Victims**
  
  Where a Procurator Fiscal decides to take no criminal proceedings in a case or to accept an adjusted plea of guilty, the victim can ask for an explanation of the decision and this will be provided.
Accused persons

It is not the policy of the Crown Office and Procurator Fiscal Service to automatically inform accused persons where a decision is taken not to take court action.

It is, however, open to an accused person who has been reported for alleged offences to contact the Procurator Fiscal's office, either directly or through their lawyer, to enquire as to the decision of the Procurator Fiscal.

In taking this decision, the Procurator Fiscal will consider if there is sufficient evidence in the case.

If there is sufficient evidence, the Procurator Fiscal will then decide what action is appropriate, e.g., to prosecute, offer a direct measure (such as a fiscal fine) or to take no action in the case. The Procurator Fiscal considers a number of factors in coming to this decision. (As outlined above).

In cases which will be considered by a jury, the Procurator Fiscal will interview witnesses and gather and review the forensic and other evidence before a decision to prosecute is taken. She or he will then make a report to Crown Counsel to take a decision on whether to prosecute.

Alternatives to prosecution

In some less serious cases, although the Procurator Fiscal may consider that it is in the public interest to take action, prosecution may not be the most appropriate course of action. In those cases there are a number of direct measures available.

(The Crown Office and Procurator Fiscal Service, n.d.)
6 A time of change

The legal system is undergoing a period of significant reform and this will impact on those working within the system. Often a balancing act is underway. Legal systems try to maintain accessibility in an environment of ever burgeoning costs and increasing pressure to be more efficient.

Recent reforms on access to legal aid and the greater use of alternative dispute mechanisms and the move towards digital courtrooms, all have an impact on the traditional role of the legal profession and the way in which legal disputes are resolved. Questions are also being asked as to whether an adversarial system is relevant in modern society. In the adversarial system, a case is argued by two opposing sides who present their version of events based on the facts and evidence they have gathered. Each side argues for their own case, for example, the Procurator Fiscal that the defendant is guilty and the defendant's lawyer argues for the defendant's acquittal. The judge (and in certain trials the jury who decide on the facts) does not investigate the facts but acts as a form of umpire, making a decision by applying the law to facts and evidence presented by the parties in the case. This is a time consuming and costly process.

The increasing volume and complexity of legislation have been criticised as preventing access to the law. Disputes involving complex debates around law and evidence on legal issue of significant public importance, will continue. Whatever the future of the system, the need for qualified legal professionals whether in giving advice, gathering evidence, advising on points of law, presenting a case in court or arbitrating or adjudicating disputes, will remain although the skills those professionals draw upon may change.
7 This week’s quiz

Check what you’ve learned this week by taking the end-of-week quiz.

Week 6 quiz

Open the quiz in a new window or tab then come back here when you’ve finished.
Summary

During this week you consider the legal profession in Scotland and the changes they are facing to their traditional roles.

You should now be able to:

- explain the roles of solicitors and advocates
- describe the role of a judge
- explain the personal qualities expected of those working in the legal profession.

In the next week you consider official court reports.

You can now go to Week 7.
Week 7: Reporting cases

Introduction

In this week you explore how decisions made in the court room are recorded so that they can be relied upon in future, similar cases. This week is based around one of the most well-known cases involving two friends who went to a local café for a drink. The consequences of what happened have had far reaching effects on a global scale, impacting on many common law systems.

By the end of this week you will be able to:

- explain how case names are constructed and cited
- describe skills involved in legal problem solving
- describe how lawyers use law reports.

1 Official law reports

If judges play an important role in society by deciding cases and providing a judgment which gives the reasons for their decision how can a member of the public find out what that decision is? With technology it has become relatively easy, as long as there is internet access, to find records of decisions made by a court. Lawyers rely on formal reports of cases – not newspaper reports – and these can be found in official law reports.

The Scottish Council of Law Reporting, a company limited by guarantee, has been established by the Scottish legal profession to manage publication of Session cases and other materials. This is designed to help promote the best practice of Scots law. The Council is a not for profit charitable company whose membership includes representatives of the Scottish judiciary, Scottish advocates and Scottish solicitors.

Watch this video clip which explores how lawyers use reports of session cases in court.

Video content is not available in this format.
Session Cases: Citing in Court
Week 7: Reporting cases
1 Official law reports

Lady Dorrian
Senator of the College of Justice
Case names are written in a particular style. For example, there is a case report on *Muir v Glasgow Corporation* 1943 SC (HL) 3, 1944 SLT 60 (HL stands for the House of Lords, then the highest appeal court for civil matters in Scotland). The ‘v’ in the middle stands for versus, which is Latin for ‘against’. Either side of it are the names of the parties. The first name is the person or organisation bringing the case. If the case is a civil case, that person is called the pursuer and the other party is called the defendant. In a criminal case, the person bringing the case is called the Procurator Fiscal, and the other person is called the defendant. If the case is *R v Smith*, the ‘R’ stands for Rex (Latin for King) or Regina (Latin for Queen) and shows that the case is a criminal prosecution being brought by the Crown, that is, the state. The date refers to the year the case was reported.

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**Figure 2** *Muir v Glasgow Corporation* 1943 SC (HL) 3, 1944 SLT 60
3 Reading case reports

Delict and in particular the law of negligence focuses upon the idea of a duty of care. In Activity 1 you will consider this idea by reading an extract from the judgment in a well-known case which explored to whom a duty of care may be owed.

Before attempting Activity 1 you should watch these two videos which provides some context and background.

Video content is not available in this format.
Session Cases: The History of Law Reporting

Video content is not available in this format.
Donoghue v Stevenson: The History of Law Reporting

Activity 1 The case of Donoghue v Stevenson
Allow about 30 minutes

This activity is in two parts.

1. Read the extract in Box 1, it is from the House of Lords, where the case was heard on appeal from the Court of Sessions.

Box 1 Extract from the judgments given in Donoghue v Stevenson [1932] SC (HL) 31

The facts of this case are simple. On 26 August 1928, the appellant drank a bottle of ginger beer, manufactured by the respondent, which a friend had bought from a retailer and given to her. The bottle contained the decomposed remains of a snail which were not and could not be detected until the greater part of the contents of the bottle had been consumed. As a result she alleged, and at this stage her allegations must be accepted
as true, that she suffered from shock and severe gastroenteritis. She, accordingly, instituted the proceedings against the manufacturer, which have given rise to this appeal. The foundation of her case is that the respondent, as the manufacturer of an article intended for consumption and contained in a receptacle which prevented inspection, owed a duty to her as consumer of the article to take care that there was no noxious element in the goods, that he neglected such duty, and that he is, consequently, liable for any damage caused by such neglect. [. . .] The law applicable is the common law, and, though its principles are capable of application to meet new conditions not contemplated when the law was laid down, yet themselves they cannot be changed nor can additions be made to them because any particular meritorious case seems outside their ambit. The common law must be sought in law books by writers of authority and in the judgments of judges entrusted with its administration. The law books give no assistance because the works of living authors, however deservedly eminent, cannot be used as authorities, though the opinions they express may demand attention, and the ancient books do not assist. I turn, therefore, to the decided cases to see if they can be construed so as to support the appellant's case. [. . .] The case has to be determined in accordance with Scots law, but it has been a matter of agreement between the experienced counsel who argued this case, and it appears to be the basis of the judgments of the learned judges of the Court of Session, that for the purposes of determining this problem the law of Scotland and the law of England are the same. [. . .] The liability for negligence, whether you style it such or treat it as in other systems as a species of culpa, is no doubt based upon a general public sentiment of moral wrongdoing for which the offender must pay. But acts or omissions which any moral code would censure cannot in a practical world be treated so as to give a right to every person injured by them to demand relief. In this way rules of law arise which limit the range of complainants and the extent of their remedy. The rule that you are to love your neighbour becomes in law: You must not injure your neighbour, and the lawyers' question: Who is my neighbour? receives a restricted reply. You must take reasonable care to avoid acts or omissions which you can reasonably foresee would be likely to injure your neighbour. Who then, in law, is my neighbour? The answer seems to be persons who are so closely and directly affected by my act that I ought reasonably to have them in contemplation as being so affected when I am directing my mind to the acts or omissions which are called in question. [. . .] The duties which the appellant accuses the respondent of having neglected may be summarised as follows: (a) that the ginger beer was manufactured by the respondent or his servants to be sold as an article of drink to members of the public (including the appellant) and that, accordingly, it was his duty to exercise the greatest care in order that snails should not get into the bottles, render the ginger beer dangerous and harmful, and be sold with the ginger beer; (b) a duty to provide a system of working his business which would not allow snails to get into the sealed bottles, and, in particular, would not allow the bottles when washed to stand in places to which snails had access; (c) a duty to provide an efficient system of inspection, which would prevent snails from getting into the sealed
bottles; and (d) a duty to provide clear bottles, so as to facilitate the said system of inspection.

Donoghue v Stevenson [1932] SC (HL) 31

2. Answer the questions that follow.
a. What were the facts in the case?

Provide your answer...

b. What law was applicable?

Provide your answer...

c. What sources can be used as authorities?

Provide your answer...

d. Why do laws arise?

Provide your answer...

e. What legal rule was outlined?

Provide your answer...

f. What law was applicable?

Provide your answer...

Discussion

a. From the extract you were given you could have identified the following facts.
   ○ The appellant had consumed a bottle of ginger beer.
   ○ It was manufactured by the respondent.
   ○ A friend had bought the bottle from a retailer and given to it the appellant.
   ○ The bottle contained the decomposed remains of a snail.
   ○ The decomposed remains could only be seen when most of the contents of the bottle had been consumed.
   ○ The appellant alleged that she suffered from shock and severe gastro-enteritis as a result.
You may be interested to know a little more about the background to the appeal. One Sunday evening Mrs Donoghue went to visit a friend in Paisley. They went to Well Meadow Café in Paisley. The café was owned by a Mr Minchella. Mrs Donoghue and her friend decided to have iced drinks (ice cream over which a drink was poured). Mrs Donoghue’s friend bought the ice cream and a bottle of ginger beer. The case proceeded on the presumption that Mrs Donoghue’s friend had in fact bought a bottle of ginger beer which was contained in an opaque bottle. The friend poured some of the ginger beer over Mrs Donoghue’s ice cream. Later in the evening when the friend poured the remainder of the contents of the ginger beer bottle over the melting ice cream out floated the decomposing remains of a snail. The sight of the snail and her consumption of the snail-tainted iced drink resulted in Mrs Donoghue becoming ill and she sued Stevenson (the manufacturers of the ginger beer) in delict. The courts had to decide whether the manufacturer was liable to Mrs Donoghue. There was no contractual relationship between Mrs Donoghue and Stevenson as she had not purchased the bottle of ginger beer. There was no contractual relationship between Mrs Donoghue and the café’s owner as she had not bought the drinks and ice cream. For these reasons Mrs Donoghue’s only option was an action in delict against the manufacturer on the basis of fault in not taking care in the production of the ginger beer.

b. The applicable law which was identified was common law. No legislation covered the legal principles which were being debated.

c. The extract considers law books by writers in authority and judgments of those entrusted with the administration of the law. It was decided that law books could not be used as the works of living authors, no matter how good, are not regarded as authority. Decided cases therefore had to be considered using the system of precedent. It was noted that the ancient books, did not assist.

d. Laws exist to determine the range of complaints that would be allowed and the remedies that will be awarded.

e. The case considered the duty of care which could be owed. A principle was stated: ‘You must take reasonable care to avoid acts or omissions which you can reasonably foresee would be likely to injure your neighbour.’ Neighbour was defined as any person who could be directly affected by the act or omission. The House of Lords held, by a majority, that Mrs Donoghue was entitled to sue Stevenson in delict because he owed her a duty of care; he had broken his duty towards her by his careless conduct and she had suffered loss. The majority was prepared to hold that Stevenson owed Mrs Donoghue a duty of care for the purpose of liability in delict. Stevenson was the manufacturer of a product consumed by Mrs Donoghue; their relationship was one of manufacturer and consumer.

You may have noticed that the extract in Box 1 made reference to the fact that whilst the case was to be determined by Scots law it was agreed that for the purposes of determining the case the same principle of law would be applicable in England.

To succeed in a claim the following must be proved: that a duty of care existed, that the standard required to meet that duty of care was breached and that damage was suffered as a result and that the damage was not too remote.
4 This week's quiz

Check what you've learned this week by taking the end-of-week quiz.

Week 7 quiz

Open the quiz in a new window or tab then come back here when you've finished.
Summary

During this week you explored how decisions made in the court room are recorded so that they can be relied upon in future, similar cases. You read extracts from a judgment in a case which has had far reaching consequences and which, despite being over 80 years ago still has relevance today.

You should now be able to:

- explain how case names are constructed and cited
- describe skills involved in legal problem solving
- describe how lawyers use law reports.

Next week you reflect on what you have learnt about the court system in Scotland and consider changes that are taking place within the system.

You can now go to Week 8.
Week 8: Reflections on the legal system in Scotland

Introduction

In this final week of your studies you explore change in the legal system and consider the role of law within society.

By the end of this week you will be able to:

- describe the changes taking place in justice system in Scotland
- reflect on the role of law
- identify and reflect on what you have learnt during your studies.

1 Change and the justice system

There have been a number of changes within the legal system over the past few years. Some have been aimed at making the process of bringing a case more streamlined and accessible utilising technological advances. Others have been targeted around cost reduction and promoting greater efficiency, for example digitised case management systems and fee increases. Further changes with the development of artificial intelligence and the possibility of using algorithms to create systems for managing aspects of specialised practice such as conveyancing are being discussed. These all have an impact on the work of lawyers, the courts and the role played by the justice system in society. In Scotland the justice system is seen as key to achieving a flourishing society which leads the way in the protection of rights and the resolution of disputes.

Our vision is of a justice system that helps Scotland flourish, creates an inclusive and respectful society where all people live in safety and security, where individual and collective rights are supported and disputes are resolved fairly and swiftly.

Upholding the law and protecting society are essential to help people lead productive lives in safe and secure communities and contribute to a flourishing economy in Scotland.

(Scottish Government, n.d.)
The Scottish government has put measures in place so that the public can access information on the success of strategies for justice in a number of areas. This is an interactive dashboard which can be accessed through the government in Scotland website.

You should now watch the following two videos. In the first Scott Manson reflects on the role of justice and the law in Scotland, in the second Craig McKerracher reflects on law and its role in society.

Video content is not available in this format.

Justice, law and society in Scotland

Video content is not available in this format.

Reflections on law and its role in society
Having worked your way through this course you should now be more familiar with both the civil and criminal justice systems in Scotland. In Activity 1 you will have the opportunity to reflect on what you have learnt.

**Images associated with the legal system**

*Figure 1 Judges*  
*Figure 2 Prison*
Activity 1 Thoughts about the legal justice system

Allow about 10 minutes

Reflect on your studies of this course and note down your own thoughts and perceptions as to what the justice system may look like in the future and the challenges it faces. Have these changed as a result of your studies?

Provide your answer...

Discussion

There have been a number of changes within the legal system over the past few years. Some of these have been aimed at making the process more streamlined and accessible, for example, new simplified procedures (Simple Procedure). Other such as the reduction in legal aid, case management systems and fee increases have been targeted at reducing costs in the system and efficiency in the process of obtaining justice.
2 Courts and the digital future

Courts and legal processes are set to look very different in future. The possibilities offered by digital technologies are being considered. They have already been utilised in some areas. For example, electronic submission of all civil and criminal legal aid applications has led to greater efficiency. Within the criminal justice system the Scottish Legal Aid Board, Police Scotland, Scottish Court Service and Scottish Prison Service have introduced live video conferencing TV links allowing legal firms to speak with clients without having to attend prison. The accused and offenders can also appear at court without having to be transported from police stations and prisons. The Scottish Court Service is also piloting electronic jury management, allowing people who have been cited for jury service to correspond in writing or digitally.

Box 1 Digital technologies and the justice system

To achieve our aims in a digital world, our justice systems need to embrace digital technology – we need to look beyond traditional methods and transform how we think; how we engage and how we deliver services to citizens and users.

Our strategy supports Scotland's Digital Future: Delivery of Public Services, Central Government Strategy and the justice sector will be early adopters of a number of the digital initiatives arising from this strategy. We will adopt a digital first approach to transform how we do business, improving ourselves and our services to create open, transparent, accessible justice systems which respond to changing circumstances. It will also allow us to serve and protect citizens in a more intelligent and proactive way.

We want to use digital technology wherever possible to broaden access to justice, improve quality of service and safeguard the rights of citizens and users. By digitising our justice systems and operating efficient processes, we can at the same time lower our costs.

Delivering these outcomes cannot be done in isolation. We will continue to take a collaborative approach. Justice organisations, the broader public, private and voluntary sectors will all need to work together to deliver our aims.

Our justice systems are changing and so is what can be done using digital technology. We want to be at the forefront of this innovation and use the opportunities that new digital solutions bring.

We will, then, continually review this strategy and revise the objectives and targets we have set and deliver with pace the changes which our users expect.

(Scottish Government, n.d.)

The Judicial Institute for Scotland (providing training and associated resources for the judiciary) was awarded the Crystal Scales of Justice Prize in 2015 in recognition of its innovative practices aimed at improving both quality and access to justice. The Judicial Hub is a ground-breaking custom-built platform designed to meet the information, learning, collaboration and communication needs of all judges, sheriffs, and justices of the peace in Scotland. It represents a significant step forward and has set the standard for judicial institutions in Europe.
Figure 5 Judicial institute accepts its award
3 The legal profession and the future

As the legal system changes the professionals who work within the system have adapted to change. Watch the following video which explores how the Law Society of Scotland draws on expertise to provide support for and responses to legal consultations both within Scotland and the wider UK.

Video content is not available in this format.

3.1 Plans for change

Plans for change continue. Listen to the following audio discussion in which lawyers discuss change, justice and the future of the legal system in Scotland.

This quotation from the Canadian Superior Judges association provides a helpful summary of the role of laws in society.

Laws reflect the values of our society. They impose limits on the conduct of individuals in order to promote the greater good and to make our communities safe places to live. It is against the law to steal, to injure another person, to drive recklessly or to pollute the environment, to name just a few of the countless ways the law is designed to protect us. We are said to be ruled by law, not by those who enforce the law or wield government power. No one is above the law. Everyone, no matter how wealthy or how powerful they are, must obey the law or face the consequences.

(Canadian Superior Courts Judges Association, n.d)

Before you attempt Activity 2 you should now listen to Elish Angiolini as she reflects on the traditions and future of law.

Video content is not available in this format.

The traditions and future of law
Activity 2 Reflection
Allow about 10 minutes

In Activity 1 of Week 1 you were asked to take a few moments to think about what you have heard or seen about courts and court proceedings and to make a note your thoughts in response to a series of questions. Look back at your answer to that activity and reflect on whether you would now change those answers. What have you learnt as you progressed through this course?

Provide your answer...

Discussion
There is no right answer to this question. Its purpose is to encourage you to reflect on the knowledge you have gained from this course. The role of courts, judges and individuals within our legal system is a crucial one. Processes and procedures change but the need for some form of adjudication provided by the state remains. The saying ‘Justice needs to be done and be seen to be done’ remains as important now as it was in previous centuries. The legal system in Scotland (the justice system) plays a role in shaping society, responding to society’s needs and helps create an inclusive fair and just society.
4 This week’s quiz

It’s time to complete the Week 8 badged quiz. It is similar to previous quizzes, but this time instead of answering five questions there will be fifteen.

**Week 8 compulsory badge quiz**

Remember, this quiz counts towards your badge. If you’re not successful the first time, you can attempt the quiz again in 24 hours.

Open the quiz in a new window or tab then come back here when you’ve finished.
Summary

In this final week of your studies you explored change in the legal system, considered the role of law within society and reflected on your studies, identifying what you have learnt and thinking about your perceptions of the justice system in Scotland system.

You should now be able to:

- describe the changes taking place in justice system in Scotland
- reflect on the role of law
- identify and reflect on what you have learnt during your studies.
Course summary

Having completed this course you should now have:

- an understanding of the structure and jurisdiction of the Scottish court system
- an understanding of the relationship between different types of court in Scotland
- an understanding of the role of the personnel within the court system.

You should also have an appreciation of the nature of some of the changes taking place in the Scottish legal system.

If you do not feel you have achieved all of these learning outcomes you may find it helpful to reread the relevant section of the course, review any notes you have taken and look again at the illustration of the Scottish court structure in Figure 2 of Week 3.

Court procedures and practice, whether criminal or civil, have been developed over many centuries and continue to evolve today, they are often subject to reform in response to changes in the society within which they operate. Reform in the Scottish legal system is increasingly driven by legislation aimed at creating a legal system which meets society’s twenty-first-century needs.

We hope this course has provided you with a helpful overview of the court system in Scotland.
Resource Page

You can find out more information about courts on the following websites:

Website of the judiciary in Scotland
http://www.scotland-judiciary.org.uk/1/0/Home

Website of Scottish Courts and Tribunals
https://www.scotcourts.gov.uk/

Citizens Advice Scotland
http://www.cas.org.uk/

Shelter Scotland
http://scotland.shelter.org.uk/get_advice

Scottish Government
http://www.gov.scot/

Law Society of Scotland
http://www.lawscot.org.uk/about-us/

Faculty of Advocates
http://www.advocates.org.uk/

Victims Code for Scotland
https://www.mygov.scot/victims-code-for-scotland/victims-code-for-scotland.pdf?inline=true

Victim Support Scotland
http://www.victimsupportsco.org.uk/help-for-witnesses-of-crime/

Justice and the law

The UK Supreme Court
https://www.youtube.com/watch?v=PZtYENfNa

Children’s hearing system
https://www.youtube.com/watch?v=sT5-GXOCrbs
https://www.youtube.com/watch?v=JRIzln1gaBA

Unrepresented litigants in the Scottish courts
https://www.youtube.com/watch?v=vmb9_prHFng

Justice Scotland
https://justice.org.uk/justice-scotland/

Glossary of Scottish Legal terms
http://www.scotland-judiciary.org.uk/29/0/Glossary

Information on sentencing
https://www.scottishsentencingcouncil.org.uk/about-sentencing/
Tell us what you think

Now you’ve completed the course we would again appreciate a few minutes of your time to tell us a bit about your experience of studying it and what you plan to do next. We will use this information to provide better online experiences for all our learners and to share our findings with others. If you’d like to help, please fill in this optional survey.

References


*Donoghue v Stevenson* [1932] SC (HL) 31


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**Acknowledgements**

This free course was written by Carol Howells.

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### Week 1

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Week 3


Excerpts from:
Video:

Week 4

Videos:

Week 5

Figure 1: from Scottish Courts and Tribunals Service Annual report and Accounts 2015-16 Map Annex 2 Published by The Scottish Courts and Tribunals Service, September 2016 ©
1.3.1 The role of an Inner House Judge: extracts from Judicial Office for Scotland (n.d.) Judiciary of Scotland [Online]. Available at www.scotland-judiciary.org.uk/20/0/A-day-in-the-life-of-a-
https://www.scotcourts.gov.uk/about-the-scottish-court-service/judicial-office-for-scotland
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1.3.2: The role of an Inner House Judge: extracts from Judicial Office for Scotland (n.d.) Judiciary of Scotland [Online]. Available at www.scotland-judiciary.org.uk/20/0/A-day-in-the-life-of-a-
https://www.scotcourts.gov.uk/about-the-scottish-court-service/judicial-office-for-scotland
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1.3.3: The role of a Sheriff Principal: extracts from Judicial Office for Scotland (n.d.) Judiciary of Scotland [Online]. Available at www.scotland-judiciary.org.uk/20/0/A-day-in-the-life-of-a-
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1.3.5: The role of the Justice of the Peace: extracts from Judicial Office for Scotland (n.d.) Judiciary of Scotland [Online]. Available at www.scotland-judiciary.org.uk/20/0/A-day-in-the-life-of-a-
https://www.scotcourts.gov.uk/about-the-scottish-court-service/judicial-office-for-scotland
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1.3.6: The role of a court officer: extracts from The Skills Development Scotland Co. Ltd (n.d.) My World of Work [Online]
https://www.myworldofwork.co.uk/my-career-options/court-officer


Week 6


Figure 2: from: http://scottishlaw.org.uk

Figure 3: logo: courtesy: The Law Society of Scotland www.lawscot.org.uk

Figure 4 from: http://www.scotsman.com

Figure 5: from: http://scottishlaw.org.uk

Week 7


Activity 1: (two videos) Donoghue v Stevenson (History of Law Reporting) From Scottish Council of Law Reporting https://www.youtube.com/watch?v=yLleV7XhkRI http://www.scottishlawreports.org © SCLR

Week 8


Figure 1 © Rex Features

Figure 2: © Michael Kelly/Getty Images

Figure 3: © Kim Traynor https://commons.wikimedia.org/w/index.php?curid=21335722 https://creativecommons.org/licenses/by-sa/3.0/

Figure 4: courtesy © Digital Justice Scotland Holyrood Communications Ltd http://www.holyrood.com/


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