

**Ebook   From The Open University**

**Scottish courts and the law**

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Head of Intellectual Property, The Open University

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**Introduction and guidance**

## Introduction and guidance

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.

**After completing Scottish courts and the law, you may like to enrol on these free OpenLearn courses:**

[The Scottish Parliament and law making](https://www.open.edu/openlearn/society-politics-law/politics/the-scottish-parliament-and-law-making/content-section-overview?active-tab=content-tab)

[Legal skills and debates in Scotland](https://www.open.edu/openlearn/society-politics-law/law/legal-skills-and-debates-scotland/content-section-overview?active-tab=description-tab)

[Law and change: Scottish legal heroes](https://www.open.edu/openlearn/society-politics-law/law/law-and-change-scottish-legal-heroes/content-section-overview?active-tab=description-tab)

And if you would like to take your study in this subject area further, sign up to the Open University course [*Law making in Scotland*](http://www.open.ac.uk/courses/modules/wxm151#registration).

## 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](http://www.open.edu/openlearn/about-openlearn/try) 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.

Start of Figure



[View alternative description - Uncaptioned Figure](" \l "Unit1_Session2_Alternative1)

End of Figure

## 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](http://www.open.edu/openlearn/about-openlearn/frequently-asked-questions-on-openlearn). 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](http://www.open.edu/openlearn/my-openlearn) within 24 hours of completing the criteria to gain a badge.

Get started with [Week 1](https://www.open.edu/openlearn/mod/oucontent/view.php?id=68089).

**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](https://www.surveymonkey.co.uk/r/TQ8JL2Y) .

## 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.

Start of Activity

**Activity 1 Thinking about courts**

Allow about 5 minutes

Start of Question

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:

Start of Table

|  |  |
| --- | --- |
|  |  |
| Why do we have courts? | *Provide your answer...* |
| Why do you think courts are important? | *Provide your answer...* |
| Do you think courts are accessible? | *Provide your answer...* |
| Who would you expect to see in a court room? | *Provide your answer...* |

End of Table

End of Question

[View discussion - Activity 1 Thinking about courts](" \l "Unit2_Session2_Discussion1)

End of Activity

## 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.

Start of Box

**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.

End of Box

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.

Start of Box

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.

End of Box

Start of Box

‘Judgment’ (rather than ‘judgement’) isn’t a misspelling; it refers to legal decisions or verdicts.

End of Box

## 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.

Start of Figure



**Figure 1** The courts

[View description - Figure 1 The courts](" \l "Unit2_Session3_Description1)

[View alternative description - Figure 1 The courts](" \l "Unit2_Session3_Alternative1)

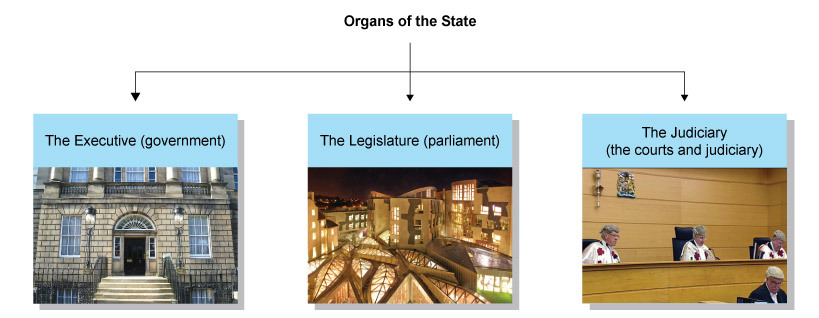
End of Figure

## 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.

Start of Figure



**Figure 2** Organs of the state

[View description - Figure 2 Organs of the state](" \l "Unit2_Session4_Description1)

[View alternative description - Figure 2 Organs of the state](" \l "Unit2_Session4_Alternative1)

End of Figure

## 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:

Start of Quote

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)

End of Quote

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.

Start of Media Content

Interactive content is not available in this format.

Interactive 1 Underpinning the rule of law

End of Media Content

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.

Start of Activity

**Activity 2 A new justice system**

Allow about 10 minutes

Start of Question

Start of Box

**Note:**

Please complete this activity on a Mac/PC browser, as this activity may not function correctly in a mobile/tablet browser.

End of Box

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.

Start of Media Content

Interactive content is not available in this format.

Interactive 2 Features of a new legal system

End of Media Content

End of Question

*Provide your answer...*

[View discussion - Activity 2 A new justice system](" \l "Unit2_Session4_Discussion1)

End of Activity

## 4 This week’s quiz

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

[Week 1 quiz](https://www.open.edu/openlearn/ocw/mod/quiz/view.php?id=68594)

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](http://www.open.edu/openlearn/ocw/mod/oucontent/view.php?id=68852).

**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 head. 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.

Start of Activity

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

(Allow about 10 minutes)

Start of Question

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.

Start of Table

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

End of Table

End of Question

[View discussion - Activity 1 A crime or civil wrong?](" \l "Unit3_Session2_Discussion1)

End of Activity

## 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.

Start of Box

**Box 1 The distinct parts of the Scottish justice system**

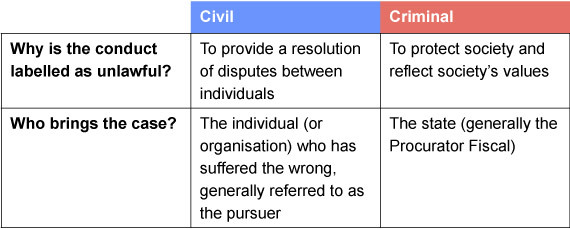
The justice system in Scotland is split into two distinct parts: the criminal justice system and the civil justice system.

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)

End of Box

Start of Figure



**Figure 1** Difference between civil and criminal cases

[View description - Figure 1 Difference between civil and criminal cases](" \l "Unit3_Session2_Description1)

[View alternative description - Figure 1 Difference between civil and criminal cases](" \l "Unit3_Session2_Alternative1)

End of Figure

### 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

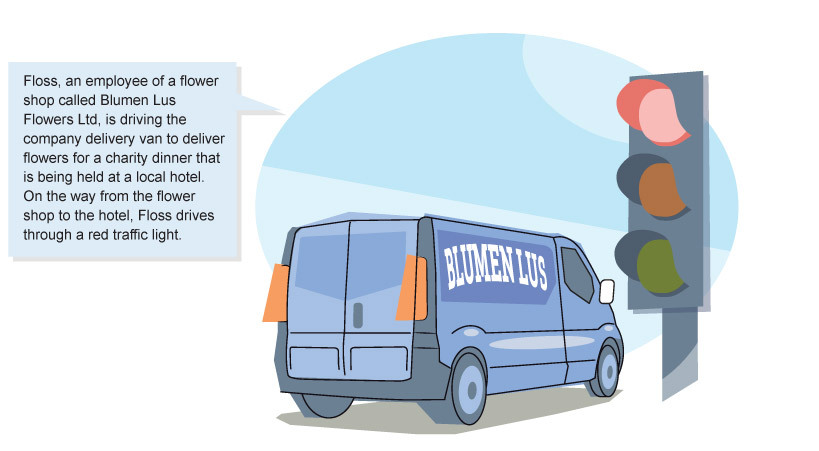
Bringing a legal case is rarely simple or straightforward. It can often be a lengthy and costly procedure. When thinking about the practicalities of bringing a legal case we tend to think about the cost of legal fees (for legal advice and representation) and how to get access to appropriate legal expertise. 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.

Start of Box

**Box 2 Blumen Lus Flowers**

Start of Figure



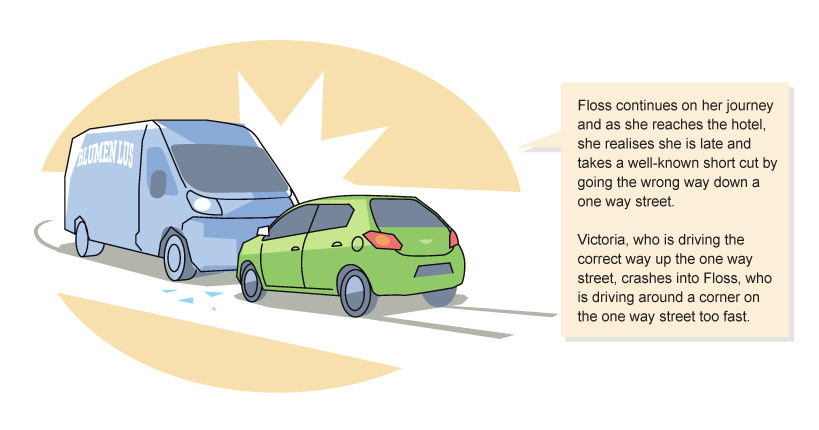
**Figure 2** Floss drives through a red light

[View alternative description - Figure 2 Floss drives through a red light](" \l "Unit3_Session3_Alternative1)

End of Figure

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.

Start of Figure



**Figure 3** Floss drives around the corner too fast

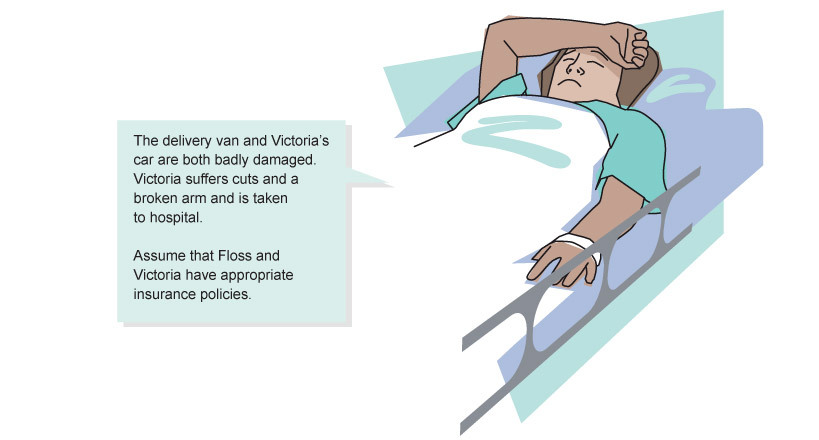
[View alternative description - Figure 3 Floss drives around the corner too fast](" \l "Unit3_Session3_Alternative2)

End of Figure

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.

Start of Figure



**Figure 4** Victoria breaks her arm

[View alternative description - Figure 4 Victoria breaks her arm](" \l "Unit3_Session3_Alternative3)

End of Figure

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.

End of Box

## 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 delict 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](https://www.open.edu/openlearn/mod/quiz/view.php?id=68600)

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](https://www.open.edu/openlearn/ocw/mod/oucontent/view.php?id=114271).

**Week 3: The court structure in Scotland**

## 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 An overview of the court system

As we have learnt, all court business in Scotland is classified as either criminal or civil. This classification is important as it determines a number of things such as the remedy or sanction which may be applied, the reasons for bringing a case and who may bring the case (have standing to bring a case). The court structure reflects this classification by structurally separating criminal from civil courts.

Criminal cases (sometimes referred to as matters or business) are heard in the criminal courts. These courts consider prosecutions brought by the Procurator Fiscal (you learn more about this later). The court structure and procedures and are known collectively as the criminal justice system. Civil cases are heard within the civil courts. In civil cases (sometimes referred to as matters or business) the court will determine disputes between the parties to the case. These courts also have their own structure and procedure, known as the civil justice system.

At the end of this course you will find a link to a glossary of Scottish legal terms which lists terms lawyers use together with an explanation.

Start of Figure



**Figure 1** The coat of arms of the Scottish courts

End of Figure

## 1.1 An overview of the court structure in Scotland

In this section you consider the court structure. Before exploring each of the courts and their role you should watch the following video.

In this video Eric McQueen, Head of the Scottish Courts Service, gives an overview of the court structure in Scotland.

Start of Media Content

Video content is not available in this format.

The criminal justice system (Eric McQueen, Scottish Court Service)

[View transcript - The criminal justice system (Eric McQueen, Scottish Court Service)](" \l "Unit4_Session2_Transcript1)

Start of Figure



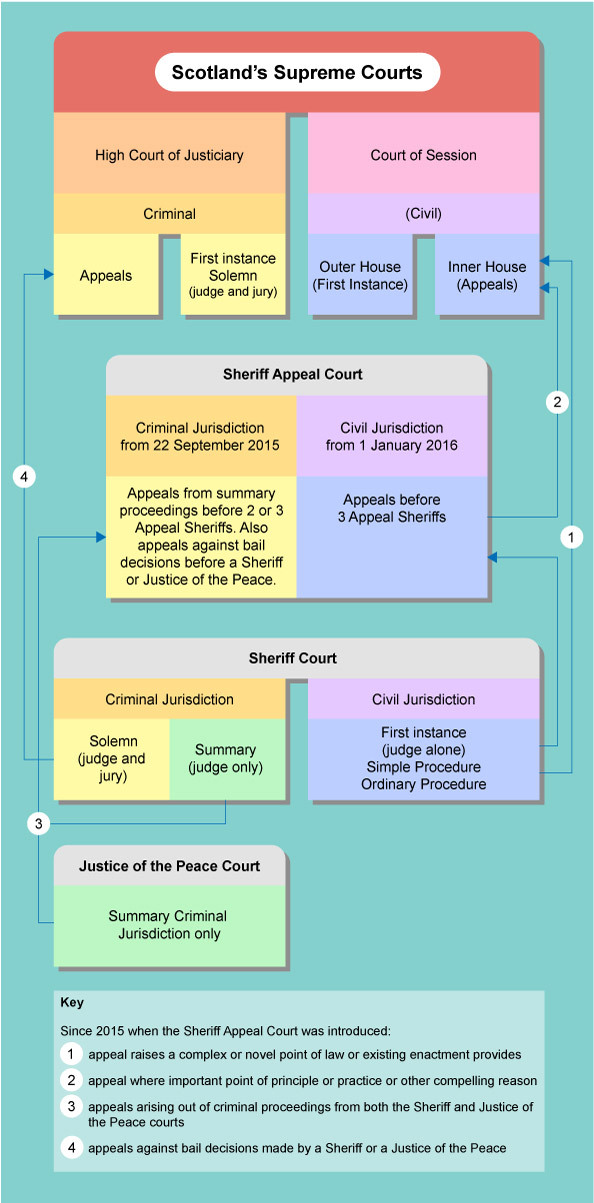
End of Figure

End of Media Content

## 1.2 Scottish civil court structure

Figure 2 illustrates the court structure in Scotland. The arrows indicate the routes of appeal which exist. If certain criteria are met it is sometimes possible to appeal the decision made in one court to another court.

Start of Figure



**Figure 2** Court structure in Scotland

[View description - Figure 2 Court structure in Scotland](" \l "Unit4_Session2_Description1)

End of Figure

Start of Quote

**1. The Court of Session**

The Court of Session, Scotland's supreme civil court, sits in Parliament House in Edinburgh as a court of first instance and a court of appeal.

The court is headed by the Lord President the second in rank being the Lord Justice Clerk.

The court is divided into the Outer House and the Inner House.

**Outer House**

The Outer House consists of 22 Lords Ordinary sitting alone or, in certain cases, with a civil jury. They hear cases at first instance on a wide range of civil matters, including cases based on delict (tort) and contract, commercial cases and judicial review. The judges cover a wide spectrum of work, but designated judges deal with intellectual property disputes. Special arrangements are made to deal with commercial cases. An appeal lies to the Supreme Court of the United Kingdom.

**Inner House**

The Inner House is in essence the appeal court, though it has a small range of first instance business. It is divided into the First and the Second Divisions, of equal authority, and presided over by the Lord President and the Lord Justice Clerk respectively. Each division is made up of six Judges, but the quorum is three. Due to pressure of business an Extra Division of three judges sits frequently nowadays. The Divisions hear cases on appeal from the Outer House, the Sheriff Court and certain tribunals and other bodies. On occasion, if a case is particularly important or difficult, or if it is necessary to overrule a previous binding authority, a larger court of five or more judges may be convened.

Cases can be presented by:

* An advocate - a member of the Faculty of Advocates whose status and function correspond to that of a barrister in England
* A solicitor-advocate - a. member of the Law Society of Scotland. Experienced solicitors who obtain an extension of their rights of audience by undergoing additional training in evidence and in the procedure of the Court of Session.
* An individual who is a party to a case , but a firm or a company must always be represented by counsel or by a solicitor-advocate.

The origins of the court can be traced to the early sixteenth century.

(Scottish Courts and Tribunals, n.d.)

End of Quote

Start of Quote

**2. Sheriff Court**

The sheriff courts are the local civil courts in Scotland, as there is a sheriff court in every city and a number of the towns. They have jurisdiction in respect of a wide range of civil (and criminal) matters.

The sheriff is the judge who hears cases at first instance. There are currently 142 sheriffs in post in Scotland. With some exceptions, sheriffs do not generally specialise in particular types of civil case (such as family cases or personal injury cases) or between civil and criminal cases.

Each sheriffdom also has a sheriff principal, whose duties include hearing appeals in civil cases from individual sheriffs and managing the sheriff courts in his or her sheriffdom. Each sheriff court also has a sheriff clerk, with responsibility for the day-to-day administration of the courts.

There are three types of court procedure used in the sheriff court:

* **ordinary cause procedure:** this type of procedure is mainly used in cases relating to divorce or dissolution of a civil partnership, children, property and claims for recovery of debt or damages exceeding £5,000.
* **summary cause procedure:** this type of procedure is one which, if it relates to the payment of money, is used where the value of the claim is over £3,000 and up to (and including) £5,000. It is mainly used for disputes involving rent arrears, delivery of goods and debts.
* **small claims procedure:** this is an informal type of procedure used where the value of the claim is up to (and including) £3,000. It is used for resolving minor disputes (mainly relating to debts and consumer issues).

From November 2016 a simple procedure has also existed. This can be used for very specific cases involving claims for less than £5,000. These include the payment of money, the recovery or delivery of movable property where there is an alternative claim for payment and an order to make someone do something specific and there is an alternative claim for payment of money. This procedure is designed to provide a speedy, inexpensive and informal way to resolve these types of disputes.

Before a claim is made a claimant should try and resolve the dispute. Following the submission of a claim form the sheriff may refer a case for Alternative Dispute Resolution (ADR). ADR is a term used to cover a variety of dispute mechanisms including mediation, conciliation, arbitration or an Ombudsman.

**Specialisation**

Under the Ordinary Cause Rules (OCR), the court rules applicable to the ordinary cause procedure, there are special rules applicable to certain types of court action. The main examples include commercial actions (OCR, chapter 40) and personal injuries actions (OCR, chapter 36), designed to allow the disposal of cases more quickly (and which are based on rules earlier introduced in the Court of Session). Another example is the special provision in the court rules for various types of family actions (OCR, chapters 33, 33a, 33AA and 33B).

In commercial actions there is a limited degree of specialisation amongst the judiciary, as commercial actions are dealt with by a nominated commercial sheriff (OCR, rule 40.2). However, the procedure for commercial actions is currently only available at seven sheriff courts.

In addition, Glasgow Sheriff Court and Edinburgh Sheriff Court, because they serve large population centres, provide the main examples of court business in particular geographical areas being of sufficient volume to be organised in such a way so that, in practice, sheriffs become specialists to some extent in other areas of legal practice. This applies to family actions (both courts), personal injuries actions (Edinburgh) and actions relating to adults with incapacity (Glasgow).

**Appeals**

In an ordinary cause action, appeal is either: a) to the sheriff principal, and then to the Inner House of the Court of Session (see further below); or b) from the sheriff directly to the Inner House of the Court of Session. Finally, an appeal can be made to the UK Supreme Court on a point of law only (as opposed to a question of fact) (Macphail 2006, para 18.99).

In summary cause actions, appeal is to the sheriff principal on a point of law only and then to the Inner House of the Court of Session on a point of law, if the sheriff certifies the cause as suitable for such an appeal, and then finally to the UK Supreme Court. In small claims, appeal is to the sheriff principal on a point of law only (Sheriff Courts Act 1971 (c 58), section 38; Court of Session Act (c 36), section 40; Macphail 2006, paras 31.333 and 32.137).

(Harvie-Clark, 2014)

End of Quote

Start of Quote

**Sheriff Appeal Court - Civil**

Civil appeals are heard by a bench of three appeal sheriffs sitting in Edinburgh, although procedural business, routine appeals and appeals from small claims and summary causes may be dealt with by a single appeal sheriff in the local sheriffdom.

End of Quote

## 1.3 Scottish Criminal Court Structure

Start of Figure

Displayed image

**Figure 2** Court structure in Scotland

[View description - Figure 2 Court structure in Scotland](" \l "Unit4_Session2_Description2)

End of Figure

Start of Quote

Criminal Justice is a power devolved to the Scottish Parliament. However, Scotland has long had a unique court and criminal justice system which is very different to that within the rest of the UK.

There are two types of criminal justice procedure in Scotland; Solemn procedure and Summary procedure.

The choice of whether to prosecute a case under solemn or summary procedure is made by the prosecution service, known as the Crown Office and Procurator Fiscal Service (COPFS). This affects the sentences available to the court on conviction. The vast majority of criminal court cases are dealt with under summary procedure – 59% of criminal court disposals during 2010-11 were in the summary sherriff courts, 4% in the solemn sheriff courts and 37% were heard by lay magistrates.

Solemn procedure involves the most serious of criminal cases and may ultimately lead to a trial either before a judge in the High Court or before a sheriff in one of the sheriff courts. Trials under solemn procedure are conducted with a jury.

Summary procedure is used for less serious offences (with the charges set out in a complaint) and may ultimately lead to a trial before a sheriff or, in justice of the peace courts. Trials under summary procedure are conducted without a jury.

A jury in a Scottish criminal case is made up of 15 people, with a simple majority (8 or more out of 15) sufficient to establish guilt.

Scottish courts can deliver one of three possible verdicts: guilty, not guilty, and not proven. The not proven verdict is unique to Scotland and has been controversial in the past. Essentially the not proven verdict means that the jury believes the accused may have committed the crime but does not have sufficient evidence to award a guilty verdict. On the other hand, it is not sufficiently convinced that the accused is not guilty. Note that there is not a verdict of innocence. An accused is innocent until proven guilty.

**1. High Court of Justiciary**

The High Court of Justiciary is Scotland's supreme criminal court. When sitting at first instance as a trial court, it hears the most serious criminal cases, such as murder and rape. A single judge hears cases with a jury of 15 people.

At first instance, it sits in cities and larger towns around Scotland and has a permanent base in Edinburgh (Lawnmarket), Glasgow (Saltmarket) and Aberdeen (Mercatgate). There are periodic sittings in Dumbarton, Lanark, Livingston, Paisley and Stirling. As an appeal court, it sits only in Edinburgh.

**Judiciary**

The High Court is presided over by the Lord Justice General and the Lord Justice Clerk. They usually sit as chairpersons in the courts of criminal appeal. The other full time judges, who are also Senators of the College of Justice, are known as Lords Commissioners of Justiciary when sitting in the High Court.

**Appeal Court**

When sitting as an appeal court, the court consists of at least three judges when hearing appeals against conviction and two when hearing sentence appeals. More judges may sit when the court is dealing with exceptionally difficult cases or those where important matters of law may be considered. Appeals are heard from the High Court. The High Court also hears appeals in cases referred to it by the Scottish Criminal Cases Review Commission.

The Lord Advocate may refer a point of law which arises in the course of a case to the High Court for an opinion. This allows the High Court to give directions which set out the law for future similar cases.

**Prosecution**

Cases in the High Court are prosecuted by advocate deputes, they are advocates or solicitor-advocates who are appointed by the Lord Advocate, in whose name all prosecutions are brought in the public interest. It is possible, although extremely rare, for a private prosecution to be brought.

**Defence**

The defence will usually be conducted by an advocate or solicitor-advocate. Advocates are members of the Faculty of Advocates and have a status and function corresponding to that of a barrister in England. Advocates once had an exclusive right of audience in the High Court but, since 1990, they share that right with solicitor-advocates. Solicitor-advocates are members of the Law Society of Scotland. They are experienced solicitors who obtain an extension of their rights of audience in the lower courts by undergoing additional training in evidence and in the procedure of the High Court. I

(Scottish Courts and Tribunals, n.d.)

End of Quote

Start of Quote

**2. Sheriff Court**

Criminal cases are heard by a sheriff and a jury (solemn procedure), but can be heard by a sheriff alone (summary procedure). Civil matters are also heard by a sheriff sitting alone.

**3.Sheriff Appeal Court Criminal**

The **Sheriff Appeal Court** hears appeals arising out of summary criminal cases from both the sheriff and justice of the peace courts. The Bench generally comprises two or three appeal sheriffs, depending on the type of appeal to be considered. The Court also hears appeals against bail decisions made by a sheriff or a justice of the peace. These hearings are presided over by a single appeal sheriff. The criminal court sits in the courthouse at Lawnmarket, Edinburgh, while the civil court sits in Parliament House, Edinburgh. Civil appeals are heard by a bench of three appeal sheriffs sitting in Edinburgh, although procedural business, routine appeals and appeals from small claims and summary causes may be dealt with by a single appeal sheriff in the local sheriffdom.

**4. Justice of the Peace Courts**

Less serious criminal matters are heard in **Justice of the Peace Courts**at first instance. The JP courts are located in the same cities as the Sheriff Courts, but there are additional JP courts in other locations throughout Scotland. From 2008 to early 2010, Justice of the Peace Courts gradually replaced the former District Courts which were operated by local authorities.

(Scottish Courts and Tribunals, n.d.)

End of Quote

## 1.4 The UK Supreme Court

The highest appeal court in civil matters is not shown in Figure 2. Appeals can be made from the Court of Session to the UK Supreme Court. This is a UK wide court which has the powers to hear certain appeals from courts in Northern Ireland, Scotland, Wales and England. To appeal to the UK Supreme Court, a Scottish appellant (person making the appeal) needs to obtain permission to appeal from the Court of Session. If this is refused then in certain cases the UK Supreme Court can grant permission.

The UK Supreme Court also hears cases that involve devolution issues. It can hear cases which consider whether the Scottish government (as a devolved executive) and Scottish Parliament (as the legislative in Scotland) are acting within their powers (this includes questions as to whether they are acting within their powers and responsibilities as set out in the Scotland Act 1998 as amended, whether they are acting in compliance with the ECHR). It can also hear cases which consider whether they have failed to fulfil their duties. While such cases are rare, they have far-reaching significance.

Devolution cases can reach the UK Supreme Court in three ways:

* through a reference from someone who can exercise relevant statutory powers such as the Advocate General, whether or not the issue is the subject of litigation
* through an appeal from certain higher courts in Scotland
* through a reference from certain appellate courts.

Scotland’s distinctive tradition of criminal law and procedure means that the final appeal court in criminal matters is the High Court of Justiciary. However, there is one exception to this rule as the UK Supreme Court can consider Scottish criminal cases where a ‘devolution issues’ arises. The UK Supreme Court cannot however review any other decisions of the High Court of Justiciary.

If you wish to know more about the UK Supreme Court’s role you will find more information in these documents:

* [‘The Jurisdiction of the Supreme Court of the United Kingdom in Scottish Appeals: Human rights, the Scotland Act 2012 and the Courts Reform (Scotland) Act 2014’](https://www.open.edu/openlearn/mod/resource/view.php?id=69050)
* [‘The Supreme court on Devolution’.](https://www.open.edu/openlearn/mod/resource/view.php?id=69049)

The following video explores the role of the Supreme Court.

Start of Media Content

Video content is not available in this format.

What is the Supreme Court

[View transcript - What is the Supreme Court](" \l "Unit4_Session2_Transcript2)

Start of Figure



End of Figure

End of Media Content

## 1.5 Other courts

There are a number of international courts which have some relevance within the Scottish legal system. They include:

* the European Court of Human Rights
* the Court of Justice of the European Union
* the International Court of Justice
* the International Criminal Court.

If you want to find out more about the work of these courts you can find further information in the resources section.

## 2 Consolidating your knowledge

In Activity 1 you consolidate the knowledge gained from the course so far by considering a range of scenarios and the challenges of televising court proceedings.

Start of Activity

**Activity 1 Testing your knowledge of the court system**

Allow about 25 minutes

Start of Question

Consider the following scenarios. Which court do you think would be likely to hear the cases and why? To assist you in reaching a decision in each scenario it may be helpful to refer back to the illustration of the court structure in Scotland.

Start of Table

|  |  |  |  |
| --- | --- | --- | --- |
|  |  | **Which court will hear the case?** | **Why?** |
| 1 | Alistair has been accused of driving at 45 mph in a 30 mph speed-restricted area. He has declined to accept a fixed penalty and has pleaded not guilty. | *Provide your answer...* | *Provide your answer...* |
| 2 | Brenda has been involved in a fight on her way home from a night out. She has been accused of assaulting Catherine and breaking her arm in two places. | *Provide your answer...* | *Provide your answer...* |
| 3 | David has also been involved in a fight. He is accused of stabbing Eric in the stomach. Eric later died in hospital and David has been accused of murder. | *Provide your answer...* | *Provide your answer...* |
| 4 | Freda has been accused of stealing £40 from the till in the shop where she works. | *Provide your answer...* | *Provide your answer...* |
| 5 | Gerald has been accused of embezzling £5000 from the bank where he works. | *Provide your answer...* | *Provide your answer...* |
| 6 | Harriet has borrowed £500 from Simple Loan Credit Company and agreed to pay it back at £50 per month. Three months later she has not repaid any of the money and according to the terms of her loan agreement she is now liable to repay the whole amount. Simple Loan has decided to sue her. | *Provide your answer...* | *Provide your answer...* |
| 7 | Ingrid and James have been married for 15 years. They are now seeking a divorce. | *Provide your answer...* | *Provide your answer...* |
| 8 | Katherine was arrested and placed in a police cell. She was later found dead and there is to be a fatal-accident inquiry. | *Provide your answer...* | *Provide your answer...* |
| 9 | Liam is unhappy with a decision made by his local council to make charges for certain services which were previously free. He wishes to have the decision of the council judicially reviewed. | *Provide your answer...* | *Provide your answer...* |
| 10 | Mary has sued Norman in the Sheriff Court for £50 but has been unsuccessful. She wishes to appeal. | *Provide your answer...* | *Provide your answer...* |

End of Table

End of Question

[View discussion - Activity 1 Testing your knowledge of the court system](" \l "Unit4_Session3_Discussion1)

End of Activity

## 3 This week’s quiz

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

[Week 3 quiz](https://www.open.edu/openlearn/mod/quiz/view.php?id=68859)

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

## Summary

In this week you explored the structure of the court system in Scotland and learnt about the function and powers of each court. You considered the routes of appeal and the role of the UK Supreme Court.

You should now 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.

In the next week you will explore some aspects of both civil and criminal court procedure.

You can now go to [Week 4](http://www.open.edu/openlearn/ocw/mod/oucontent/view.php?id=68102)..

**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:

Start of Quote

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.).

End of Quote

Other than in very exceptional circumstances, court business must be open to public scrutiny.

Start of Activity

**Activity 1 Reflections about courts**

Allow about 10 minutes

Start of Question

1. 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.

End of Question

*Provide your answer...*

Start of Question

1. Revisit the notes you made for [Week 1 Activity 1](https://www.open.edu/openlearn/mod/oucontent/view.php?id=68089). Have your thoughts about the courts and their role changed?

End of Question

*Provide your answer...*

[View discussion - Part](" \l "Unit5_Session2_Discussion1)

End of Activity

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.

Start of Media Content

Video content is not available in this format.

Reflections on courts

[View transcript - Reflections on courts](" \l "Unit5_Session2_Transcript1)

Start of Figure



End of Figure

End of Media Content

## 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 such as conciliation 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](https://www.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’.

Start of Box

**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.)

End of Box

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

Start of Quote

‘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)

End of Quote

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.

Start of Box

**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.)

End of Box

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

Start of Media Content

Video content is not available in this format.

Criminal court proceedings

[View transcript - Criminal court proceedings](" \l "Unit5_Session4_Transcript1)

Start of Figure



End of Figure

End of Media Content

## 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](https://www.open.edu/openlearn/mod/quiz/view.php?id=68863)

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](https://www.open.edu/openlearn/mod/oucontent/view.php?id=68104).

**Week 5: Who does what in the courtroom**

## 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.

Start of Activity

**Activity 1 The civil court room roles and responsibilities**

Allow about 20 minutes

Start of Question

This activity is in two parts.

End of Question

Start of Question

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

Start of Media Content

Interactive content is not available in this format.

End of Media Content

End of Question

Start of Question

End of Question

Judge

Court clerk

Witness

Defendant's legal representative

Pursuer's legal representative

Defendant

Pursuer

Court usher

General public

1

2

3

4

5

6

7

8

9

[View answer - Part](" \l "Unit6_Session2_Interaction1)

[View discussion - Part](" \l "Unit6_Session2_Discussion1)

End of Activity

## 1.2 The criminal court room

In Activity 2 you will explore the layout of a traditional criminal court room.

Start of Activity

**Activity 2 The criminal court room roles and responsibilities**

Allow about 20 minutes

Start of Question

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

Start of Media Content

Interactive content is not available in this format.

End of Media Content

End of Question

Start of Question

1. 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.

End of Question

Judge

Witness

Court clerk

Jury

Procurator fiscal

Legal representative for the defence

Accused

Press

Court usher

Public seating

1

2

3

4

5

6

7

8

9

10

[View answer - Part](" \l "Unit6_Session2_Interaction2)

End of Activity

## 1.3 Reflections on the courtroom

Having explored the roles and responsibilities of individuals within the court room 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

Start of Quote

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.)

End of Quote

## 1.3.2 The role of an Outer House judge

Start of Quote

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.)

End of Quote

## 1.3.3 The role of a Sheriff Principal

A day in the life of a Sheriff Principal:

Start of Quote

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.

Sheriffs 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.)

End of Quote

## 1.3.4 The role of a Sheriff

A day in the life of a Sheriff:

Start of Quote

‘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.)

End of Quote

## 1.3.5 The role of a Justice of the Peace

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

Start of Quote

‘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.)

End of Quote

## 1.3.6 The role of a court officer

Start of Quote

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 visting 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 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.)

End of Quote

## 1.3.7 The role of a Procurator Fiscal

Start of Quote

**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
* lnterests 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.)

End of Quote

## 1.3.8 An example of a victim’s story

Start of Quote

‘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.’

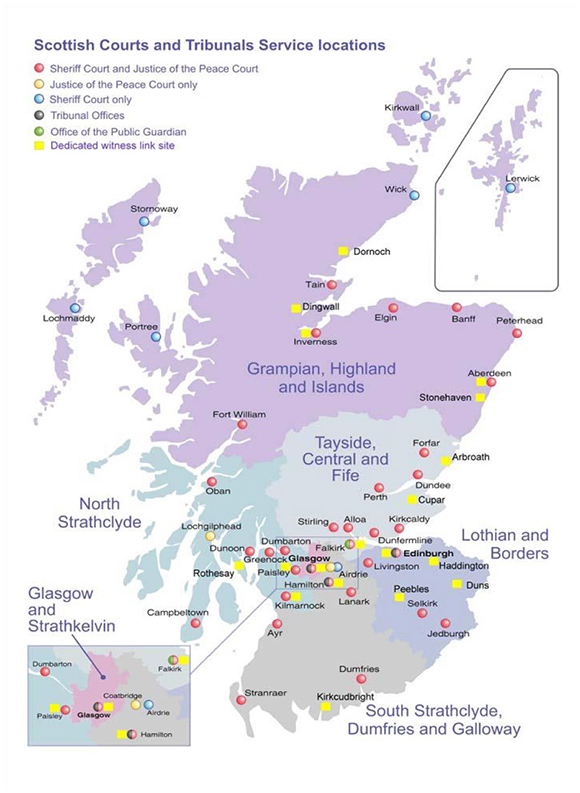
(Victim Support Scotland, n.d.)

End of Quote

## 2 Behind the scenes

A great deal of administrative work goes on behind the scenes of a court room to make surethat 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.

Start of Figure



**Figure 4** Locations of Scottish Courts and Tribunals

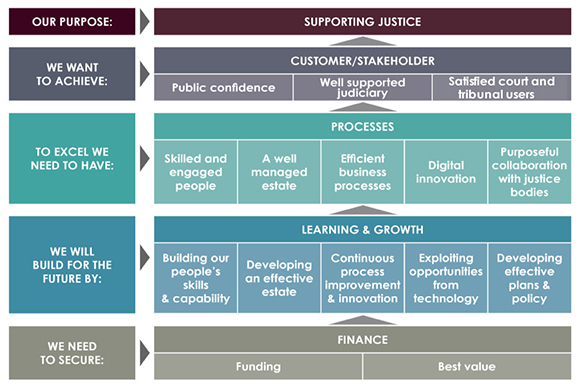
[View description - Figure 4 Locations of Scottish Courts and Tribunals](" \l "Unit6_Session3_Description1)

[View alternative description - Figure 4 Locations of Scottish Courts and Tribunals](" \l "Unit6_Session3_Alternative1)

End of Figure

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. Figures 2 and 3 highlights the strategic priorities of the Service and how they change with time. 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](http://www.scotcourts.gov.uk/) website under the reports and data section.

Start of Figure



**Figure 5** Strategic priorities of the Scottish Courts and Tribunals Service 2016-2017

[View description - Figure 5 Strategic priorities of the Scottish Courts and Tribunals Service 2016- ...](" \l "Unit6_Session3_Description2)

[View alternative description - Figure 5 Strategic priorities of the Scottish Courts and Tribunals Service 2016- ...](" \l "Unit6_Session3_Alternative2)

End of Figure

Start of Figure



**Figure 6** Strategic priorities of the Scottish Courts and Tribunals Service 2020-2023

[View description - Figure 6 Strategic priorities of the Scottish Courts and Tribunals Service 2020- ...](" \l "Unit6_Session3_Description3)

[View alternative description - Figure 6 Strategic priorities of the Scottish Courts and Tribunals Service 2020- ...](" \l "Unit6_Session3_Alternative3)

End of Figure

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 7 shows the number of judge days (days on which judges sat in court to hear cases) from 2013 to 2016.

Start of Figure



**Figure 7** Judge days

[View description - Figure 7 Judge days](" \l "Unit6_Session3_Description4)

[View alternative description - Figure 7 Judge days](" \l "Unit6_Session3_Alternative4)

End of Figure

## 3 This week’s quiz

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

[Week 5 quiz](https://www.open.edu/openlearn/mod/quiz/view.php?id=68667)

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](https://www.open.edu/openlearn/mod/quiz/view.php?id=68677).

**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.

Start of Media Content

Video content is not available in this format.

Introduction to the legal profession

[View transcript - Introduction to the legal profession](" \l "Unit7_Session1_Transcript1)

Start of Figure



End of Figure

End of Media Content

## 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.

Start of Box

**Box 1 The Law Society of Scotland**

Start of Quote

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.

End of Quote

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

End of Box

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.

Start of Figure



**Figure 1** The Law Society of Scotland

[View alternative description - Figure 1 The Law Society of Scotland](" \l "Unit7_Session2_Alternative1)

End of Figure

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.

Start of Media Content

Video content is not available in this format.

Solicitors and their work

[View transcript - Solicitors and their work](" \l "Unit7_Session2_Transcript1)

Start of Figure



End of Figure

End of Media Content

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](http://www.lawscot.org.uk/).

## 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.

Start of Figure



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

[View alternative description - Figure 2 Advocates in court, Figure 3 The Faculty of Advocates logo, Figure 4 Advocates ...](" \l "Unit7_Session3_Alternative1)

End of Figure

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.

Start of Box

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

Start of Quote

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.

End of Quote

(Faculty of Advocates, 2008)

End of Box

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

Start of Media Content

Video content is not available in this format.

The role of advocates

[View transcript - The role of advocates](" \l "Unit7_Session3_Transcript1)

Start of Figure



End of Figure

End of Media Content

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.

Start of Media Content

Video content is not available in this format.

Overview of the role of the judiciary in law making

[View transcript - Overview of the role of the judiciary in law making](" \l "Unit7_Session5_Transcript1)

Start of Figure



End of Figure

End of Media Content

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.

Start of Box

**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.

End of Box

Start of Activity

**Activity 1 What judges do**

Allow about 10 minutes

Start of Question

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.

End of Question

*Provide your answer...*

[View discussion - Activity 1 What judges do](" \l "Unit7_Session5_Discussion1)

End of Activity

## 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](http://www.scotland-judiciary.org.uk/1/0/Home).

Start of Box

**Box 4 Judicial independence**

Start of Quote

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 whomsoever 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.)

End of Quote

End of Box

Start of Figure



**Figure 5** Scottish judges

[View alternative description - Figure 5 Scottish judges](" \l "Unit7_Session5_Alternative1)

End of Figure

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](http://www.scotland-judiciary.org.uk/68/0/Judicial-Recusals). 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.

Start of Table

Table 1 Examples of judicial recusals

|  |  |  |  |
| --- | --- | --- | --- |
| **Date** | **Court (type of action)** | **Name** | **Reason for Recusal** |
| 26/01/2016 | Court of Session | Lord Uist | Judge dealt with same issue and same witnesses in a case being appealed |
| 27/01/2016 | Dumbarton Sheriff Court (civil) | Sheriff Gallacher | On the Pursuer's motion in relation to a decision in a preliminary hearing |
| 09/02/2016 | Elgin Sheriff Court (criminal) | Sheriff Pasportnikov | Sheriff previously presided over related case |
| 10/02/2016 | Elgin Sheriff Court (criminal) | Sheriff Pasportnikov | Sheriff previously presided over criminal matter involving complainter |
| 24/02/2016 | Glasgow Sheriff Court (civil) | Sheriff Reid | Sheriff personally known to a witness |
| 18/03/2106 | Edinburgh Sheriff Court (civil) | Sheriff Ross | Sheriff previously presided over criminal matter involving appellant |
| 18/03/2016 | Aberdeen Sherirff Court (criminal) | Sheriff Stirling | Sheriff previously presided over civil matter involving accused |
| 25/04/2016 | Ayr Sheriff Court (civil) | Sheriff Montgomery | Sheriff previously acted for defender as a solicitor |
| 03/05/2016 | Lanark Sheriff Court (criminal) | Sheriff Stewart | Complainer previously represented by Sheriff's husband |
| 22/06/2016 | Perth Sheriff Court (civil) | Sheriff Clapham | Pursuer known to Sheriff |
| 09/08/2016 | Dunoon Sheriff Court (civil) | Sheriff Ward | Sheriff personally known to a witness |
| 19/08/2016 | Greenock Sheriff Court (criminal) | Sheriff Ward | Accused known to Sheriff from Sheriff's time in private practice |

(Judicial Office for Scotland, n.d.)

End of Table

## 5 Procurator Fiscal

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.

Start of Box

**Box 5 Role of the Procurator Fiscal**

Start of Quote

**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.

End of Quote

(The Crown Office and Procurator Fiscal Service, n.d.)

End of Box

## 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](https://www.open.edu/openlearn/mod/quiz/view.php?id=68677)

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

## Summary

During this week you considerer 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](https://www.open.edu/openlearn/mod/oucontent/view.php?id=67961).

**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.

Start of Media Content

Video content is not available in this format.

Session Cases: Citing in Court

[View transcript - Session Cases: Citing in Court](" \l "Unit8_Session2_Transcript1)

Start of Figure

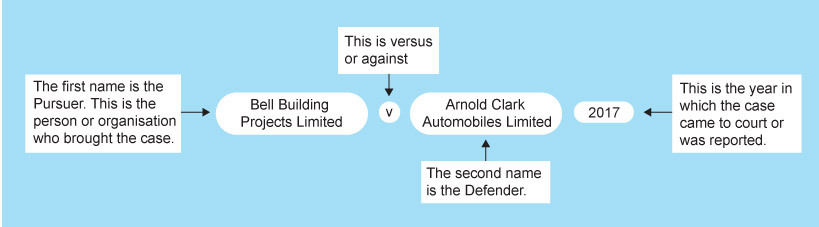


End of Figure

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## 2 Case names and citations

Start of Figure



**Figure 1** The way in which legal cases are presented

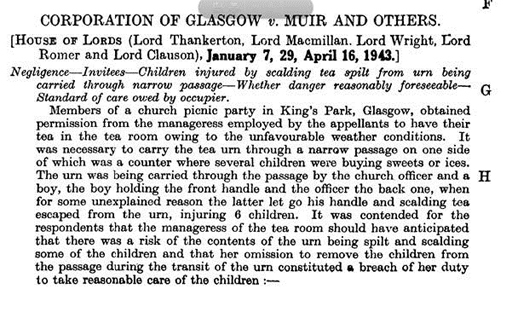
[View description - Figure 1 The way in which legal cases are presented](" \l "Unit8_Session3_Description1)

[View alternative description - Figure 1 The way in which legal cases are presented](" \l "Unit8_Session3_Alternative1)

End of Figure

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.

Start of Figure



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

End of Figure

## 3 Reading case reports

Delict and in particular the delict 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.

Start of Media Content

Video content is not available in this format.

Session Cases: The History of Law Reporting

[View transcript - Session Cases: The History of Law Reporting](" \l "Unit8_Session4_Transcript1)

End of Media Content

Start of Media Content

Video content is not available in this format.

Donoghue v Stevenson: The History of Law Reporting

[View transcript - Donoghue v Stevenson: The History of Law Reporting](" \l "Unit8_Session4_Transcript2)

Start of Figure



End of Figure

End of Media Content

Start of Activity

**Activity 1 The case of Donoghue v Stevenson**

Allow about 30 minutes

Start of Question

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.

Start of Box

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

Start of Quote

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.

End of Quote

Donoghue v Stevenson [1932] SC (HL) 31

End of Box

End of Question

Start of Question

1. Answer the questions that follow.

End of Question

Start of Question

1. What were the facts in the case?

End of Question

*Provide your answer...*

Start of Question

1. What law was applicable?

End of Question

*Provide your answer...*

Start of Question

1. What sources can be used as authorities?

End of Question

*Provide your answer...*

Start of Question

1. Why do laws arise?

End of Question

*Provide your answer...*

Start of Question

1. What legal rule was outlined?

End of Question

*Provide your answer...*

Start of Question

1. What law was applicable?

End of Question

*Provide your answer...*

[View discussion - Part](" \l "Unit8_Session4_Discussion1)

End of Activity

## 4 This week’s quiz

[Week 7 quiz](https://www.open.edu/openlearn/mod/quiz/view.php?id=68860)

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](https://www.open.edu/openlearn/mod/oucontent/view.php?id=68111).

**Week 8: Reflections on the legal system in Scotlan**

## 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.

Start of Box

Start of Quote

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.

End of Quote

(Scottish Government, n.d.)

End of Box

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.

Start of Media Content

Video content is not available in this format.

Justice, law and society in Scotland

[View transcript - Justice, law and society in Scotland](" \l "Unit9_Session2_Transcript1)

Start of Figure



End of Figure

End of Media Content

Start of Media Content

Video content is not available in this format.

Reflections on law and its role in society

[View transcript - Reflections on law and its role in society](" \l "Unit9_Session2_Transcript2)

Start of Figure



End of Figure

End of Media Content

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.

Start of Table

Images associated with the legal system

|  |  |
| --- | --- |
|  |  |
| Start of Figure  Judges  **Figure 1** Judges  [View alternative description - Figure 1 Judges](" \l "Unit9_Session2_Alternative1)  End of Figure | Start of Figure  Prison  **Figure 2** Prison  [View alternative description - Figure 2 Prison](" \l "Unit9_Session2_Alternative2)  End of Figure |

End of Table

Start of Table

|  |  |
| --- | --- |
|  |  |
| Start of Figure  Bute House, Edinburgh  **Figure 3** Bute House, Edinburgh  [View alternative description - Figure 3 Bute House, Edinburgh](" \l "Unit9_Session2_Alternative3)  End of Figure | Start of Figure  Front magazine titled Digital Justice Scotland. Back magazine titled Holyrood  **Figure 4** Digital justice in Scotland  [View alternative description - Figure 4 Digital justice in Scotland](" \l "Unit9_Session2_Alternative4)  End of Figure |

End of Table

Start of Activity

**Activity 1 Thoughts about the legal justice system**

Allow about 10 minutes

Start of Question

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?

End of Question

*Provide your answer...*

[View discussion - Activity 1 Thoughts about the legal justice system](" \l "Unit9_Session2_Discussion1)

End of Activity

## 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.

Start of Box

**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.)

End of Box

[The Judicial Institute for Scotland](http://www.gov.scot/Topics/Justice/justicestrategy/Justice-Dashboard) (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.

Start of Figure



**Figure 5** Judicial institute accepts its award

[View alternative description - Figure 5 Judicial institute accepts its award](" \l "Unit9_Session3_Alternative1)

End of Figure

## 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.

Start of Media Content

Video content is not available in this format.

[View transcript - Uncaptioned interactive content](" \l "Unit9_Session4_Transcript1)

Start of Figure



End of Figure

End of Media Content

## 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.

Start of Quote

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)

End of Quote

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

Start of Media Content

Video content is not available in this format.

The traditions and future of law

[View transcript - The traditions and future of law](" \l "Unit9_Session4_Transcript2)

Start of Figure



End of Figure

End of Media Content

Start of Activity

**Activity 2 Reflection**

Allow about 10 minutes

Start of Question

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?

End of Question

*Provide your answer...*

[View discussion - Activity 2 Reflection](" \l "Unit9_Session4_Discussion1)

End of Activity

## 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](https://www.open.edu/openlearn/mod/quiz/view.php?id=68864)

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.

**Now you’ve completed Scottish courts and the law, you may like to enrol on these free OpenLearn courses:**

[The Scottish Parliament and law making](https://www.open.edu/openlearn/society-politics-law/politics/the-scottish-parliament-and-law-making/content-section-overview?active-tab=content-tab)

[Legal skills and debates in Scotland](https://www.open.edu/openlearn/society-politics-law/law/legal-skills-and-debates-scotland/content-section-overview?active-tab=description-tab)

[Law and change: Scottish legal heroes](https://www.open.edu/openlearn/society-politics-law/law/law-and-change-scottish-legal-heroes/content-section-overview?active-tab=description-tab)

And if you would like to take your study in this subject area further, sign up to the Open University course [*Law making in Scotland*](http://www.open.ac.uk/courses/modules/wxm151#registration).

## 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

<https://www.mygov.scot/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=JRlzIn1gaBA>

Unrepresented litigants in the Scottish courts

<https://www.youtube.com/watch?v=vmb9_prHFng>

Justice Scotland

<https://justice.org.uk/justice-scotland/>

Glossary of Sottish 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](https://www.surveymonkey.co.uk/r/MW7WZQK).

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Harvie-Clark, S. (2014) SPICe Briefing The Scottish Civil Court System [Online]. http://www.parliament.scot/ResearchBriefingsAndFactsheets/S4/SB\_14-15.pdf http://www.parliament.scot/Fol/Scottish\_Parliament\_Licence.pdf

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1.3.3: The role of a Sheriff Principal: extracts from 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-](http://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> © Crown Copyright <http://www.nationalarchives.gov.uk/doc/open-government-licence/version/3/>

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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>

1.3.7: The role of a Procurator Fiscal: extracts from Crown Office & Procurator Fiscal Service (n.d.) COPFS [Online]. Available at http://www.copfs.gov.uk/about-us/what-we-do/our-role-in-detail <http://www.nationalarchives.gov.uk/doc/open-government-licence/version/3/>

1.3.8: An example of a victim’s story: extract from: Victim Support Scotland (n.d.) Who has Victim Support Scotland helped? [Online] Available at [www.victimsupportsco.org.uk/help-for-victims/who-has-victim-support-scotland-helped](http://www.victimsupportsco.org.uk/help-for-victims/who-has-victim-support-scotland-helped).

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Box Two: extracts from: Faculty of Advocates (2008) Guide to the professional conduct of advocates [Online] [www.advocates.org.uk/media/1417/guide-to-conduct-fifth-edition.pdf](http://www.advocates.org.uk/media/1417/guide-to-conduct-fifth-edition.pdf) (c) Faculty of Advocates 2008

Box 4: Judicial Office for Scotland (2017) About the judiciary [Online] <http://www.scotland-judiciary.org.uk/4/0/About-the-Judiciary> <http://www.nationalarchives.gov.uk/doc/open-government-licence/version/3/>

Box 5: extracts from: The Crown Office and Procurator Fiscal Service What we do [Online] [www.copfs.gov.uk/about-us/what-we-do/our-role-in-detail](http://www.copfs.gov.uk/about-us/what-we-do/our-role-in-detail)<http://www.copfs.gov.uk/> <http://www.nationalarchives.gov.uk/doc/open-government-licence/version/3/>

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Video: 3.0 The Legal Profession and the Future

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## Acknowledgements

This free course was written by Carol Howells.

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## Solutions

## Activity 1 Thinking about courts

#### 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.

[Back to - Activity 1 Thinking about courts](" \l "Unit2_Session2_Activity1)

## Activity 2 A new justice system

#### 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.

[Back to - Activity 2 A new justice system](" \l "Unit2_Session4_Activity1)

## Activity 1 A crime or civil wrong?

#### 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.

[Back to - Activity 1 A crime or civil wrong?](" \l "Unit3_Session2_Activity1)

## Activity 1 Testing your knowledge of the court system

#### Discussion

Compare your answers with the ones here. If there were points you missed or were not sure of you may find it helpful to reread the relevant part of this course.

Start of Table

|  |  |  |
| --- | --- | --- |
|  |  | **Which court will hear the case?** |
| 1 | Alistair has been accused of driving at 45 mph in a 30 mph speed-restricted area. He has declined to accept a fixed penalty and has pleaded not guilty. | Alistair has been accused of a criminal offence and as such could be brought to any of the courts with criminal jurisdiction – i.e. the Justice of the Peace Court, the Sheriff Court, the Court of the Sheriff Principal or the High Court of Justiciary. However, in practice a minor offence such as this would be heard by the Justice of the Peace Court. Remember that it is the Procurator Fiscal’s decision as to which cases are heard by which court. |
| 2 | Brenda has been involved in a fight on her way home from a night out. She has been accused of assaulting Catherine and breaking her arm in two places. | Brenda has also been accused of a criminal offence – assault. However, the crime she has allegedly committed involves the victim having sustained broken bones. Therefore it cannot be heard by the Justice of the Peace Court (unless in Glasgow before a Stipendiary Magistrate). Elsewhere the case would be within the jurisdiction of the Sheriff Court, the Court of the Sheriff Principal or the High Court. It is likely an assault of this nature would be brought before the Sheriff Court. In addition, and separately, Catherine may wish to make a civil claim in delict (of assault) against Brenda. As the total claim for such injury is likely to be less than £3,000, this would be a civil claim using the simple procedure in the local Sheriff’s Court at first instance. Note, though, that it could be sent to alternative dispute resolution then, if not resolved informally through this type of negotiation, be heard in the local Sheriff’s Court (a claim such as this can be heard without legal representation). |
| 3 | David has also been involved in a fight. He is accused of stabbing Eric in the stomach. Eric later died in hospital and David has been accused of murder. | David has been accused of murder – another criminal offence. You will recall that the High Court has exclusive jurisdiction in respect of murder and therefore David’s case would be heard there. |
| 4 | Freda has been accused of stealing £40 from the till in the shop where she works. | Freda has been accused of theft – a criminal offence. Again, any of the courts with criminal jurisdiction would have the power to hear the case, but in view of the small amount of money concerned it is likely the matter would be dealt with by the Justice of the Peace Court. |
| 5 | Gerald has been accused of embezzling £5000 from the bank where he works. | Gerald has also been accused of a criminal offence. However, in view of the amount involved it is likely this would be heard by the Sheriff Court. Gerald’s employing bank may also wish to commence a civil claim against Gerald. Such a claim would be on the grounds of breach of contract and under the delict of conversion. As the claim exceeds £3,000 this would be a civil claim filed in the Outer House of the Court of Sessions. |
| 6 | Harriet has borrowed £500 from Simple Loan Credit Company and agreed to pay it back at £50 per month. Three months later she has not repaid any of the money and according to the terms of her loan agreement she is now liable to repay the whole amount. Simple Loan has decided to sue her. | Harriet is being sued for £500. This is a civil matter and is not therefore within the jurisdiction of the Justice of the Peace Court. The Sheriff Court has exclusive jurisdiction of civil claims for money under £3,000 and therefore her case will be heard there. |
| 7 | Ingrid and James have been married for 15 years. They are now seeking a divorce. | Divorce is also a civil matter and therefore cannot be heard in the Justice of the Peace Court. The Sheriff Principal cannot hear civil matters at first instance, only on appeal – neither can the UK Supreme Court. That leaves the Sheriff Court and the Outer House of the Court of Session; either would be able to consider the case. In practice it is likely to be heard at the Sheriff Court. |
| 8 | Katherine was arrested and placed in a police cell. She was later found dead and there is to be a fatal-accident inquiry. | Fatal accident inquiries are civil proceedings. The Sheriff Principal will often hear major inquiries. The case could be heard by the Sheriff, Sheriff Principal or the Court of Session. In practice, an inquiry into a single death is likely to be heard in the Sheriff Court. Therefore the inquiry into Katherine’s death will probably be heard in the Sheriff Court. |
| 9 | Liam is unhappy with a decision made by his local council to make charges for certain services which were previously free. He wishes to have the decision of the council judicially reviewed. | A judicial review is a civil action. It is within the exclusive jurisdiction of the Court of Session and Liam’s action would in the first instance be heard in the Outer House. |
| 10 | Mary has sued Norman in the Sheriiff Court for £50 but has been unsuccessful. She wishes to appeal. | Mary wishes to appeal the decision of the Sheriff Court in respect of a civil matter. She can do so in either the Court of the Sheriff Principal or the Court of Session. |

End of Table

[Back to - Activity 1 Testing your knowledge of the court system](" \l "Unit4_Session3_Activity1)

## Activity 1 Reflections about courts

### Part

#### 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.

[Back to - Part](" \l "Unit5_Session2_Part2)

## Activity 1 The civil court room roles and responsibilities

### Part

#### Answer

**The correct matches are:**

Judge

1

Court clerk

2

Witness

3

Defendant's legal representative

4

Pursuer's legal representative

5

Defendant

6

Pursuer

7

Court usher

8

General public

9

[Back to - Part](" \l "Unit6_Session2_Part3)

#### Discussion

[Back to - Part](#Unit6_Session2_Part3)

## Activity 2 The criminal court room roles and responsibilities

### Part

#### Answer

**The correct matches are:**

Judge

1

Witness

2

Court clerk

3

Jury

4

Procurator fiscal

5

Legal representative for the defence

6

Accused

7

Press

8

Court usher

9

Public seating

10

[Back to - Part](" \l "Unit6_Session2_Part5)

## Activity 1 What judges do

#### 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.

[Back to - Activity 1 What judges do](" \l "Unit7_Session5_Activity1)

## Activity 1 The case of Donoghue v Stevenson

### Part

#### Discussion

1. 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 gastroenteritis 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.

1. The applicable law which was identified was common law. No legislation covered the legal principles which were being debated.
2. 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.
3. Laws exist to determine the range of complaints that would be allowed and the remedies that will be awarded.
4. 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.

[Back to - Part](" \l "Unit8_Session4_Part8)

## Activity 1 Thoughts about the legal justice system

#### 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.

[Back to - Activity 1 Thoughts about the legal justice system](" \l "Unit9_Session2_Activity1)

## Activity 2 Reflection

#### 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.

[Back to - Activity 2 Reflection](" \l "Unit9_Session4_Activity1)

## Descriptions

### Uncaptioned Figure

'Scottish courts and the law' digital badge

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### Figure 1 The courts

The courts in Scotland

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### Figure 1 The courts

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### Figure 2 Organs of the state

Organs of the state (such as courts, the judiciary, legislative and executive)

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### Figure 2 Organs of the state

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### Figure 1 Difference between civil and criminal cases

A table showing the difference between civil and criminal cases.

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### Figure 1 Difference between civil and criminal cases

This figure shows a table. It explains the differences between civil and criminal using two questions – Why is the conduct labelled as unlawful? and Who brings the case? The answers are as follows. Civil conduct labelled as unlawful to provide a resolution of disputes between individuals. The individual (or organisation) who has suffered the wrong. Generally referred to as the pursuer) brings the case. Criminal conduct is labelled unlawful to protect society and reflect society’s values. The case is brought by the state (generally the Procurator Fiscal).

[Back to - Figure 1 Difference between civil and criminal cases](#Unit3_Session2_Figure1)

### Figure 2 Floss drives through a red light

Floss drives through a red light

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### Figure 3 Floss drives around the corner too fast

Floss drives around the corner too fast

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### Figure 4 Victoria breaks her arm

Victoria breaks her arm

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### Figure 2 Court structure in Scotland

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### Figure 2 Court structure in Scotland

[Back to - Figure 2 Court structure in Scotland](" \l "Unit4_Session2_Figure4)

### Figure 4 Locations of Scottish Courts and Tribunals

The locations of all the Scottish courts and tribunals across Scotland.

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### Figure 4 Locations of Scottish Courts and Tribunals

This figure shows the locations of all the Scottish courts and tribunals across Scotland.

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### Figure 5 Strategic priorities of the Scottish Courts and Tribunals Service 2016-2017

The strategic priorities of the Scottish Courts and Tribunals Service from 2016 to 2017.

[Back to - Figure 5 Strategic priorities of the Scottish Courts and Tribunals Service 2016-2017](" \l "Unit6_Session3_Figure2)

### Figure 5 Strategic priorities of the Scottish Courts and Tribunals Service 2016-2017

This figure shows the strategic priorities of the Scottish Courts and Tribunals Service. Their purpose is to support justice and they are seeking to achieve this through a number of steps. This diagram summarises what they want to achieve, what they need to be able to excel, how they will develop for the future and that this needs to be underpinned by funding and best value.

[Back to - Figure 5 Strategic priorities of the Scottish Courts and Tribunals Service 2016-2017](#Unit6_Session3_Figure2)

### Figure 6 Strategic priorities of the Scottish Courts and Tribunals Service 2020-2023

The strategic priorities of the Scottish Courts and Tribunal Service from 2020 to 2023.

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### Figure 6 Strategic priorities of the Scottish Courts and Tribunals Service 2020-2023

Figure 6 shows the strategic priorities of the Scottish Courts and Tribunal Service from 2020 to 2023. The strategic is represented in a series of boxes. On the left-hand side are boxes which summarise the priority. For each priority there are a number of boxes containing more detail. The priorities and how they will be achieved are: that they will support justice through ‘1. a well-supported judiciary’ and ‘2. satisfied service users’; to achieve this there will be ‘3. Skilled and motivated people’ and ‘4. sustainable building and business’ and ‘5. digital services’; then that in all they do they will aim to build ‘6. Efficiency and best value’ and ‘7. Purposeful collaboration’. Finally, in the last line of boxes they note that the priorities will be underpinned by; strong leadership, governance and planning; stable and sustainable funding.

[Back to - Figure 6 Strategic priorities of the Scottish Courts and Tribunals Service 2020-2023](#Unit6_Session3_Figure3)

### Figure 7 Judge days

Judge days for the High Court, Court of Session and Sheriff Court.

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### Figure 7 Judge days

Figure 7 shows judge days for the High Court, Court of Session and Sheriff Court. It shows the annual figures for 2013-2014, 2015-2051, 2015-2016, 2016-2017, 2017-2018m 2018-2019 and 2019-2020. The High Court figures have shown an overall decline from 2013-2014 to 2019-2020 from 3964 to 3881 to 3780 to 3865 to 3585 to 3676 to 3486. The Court of Session figures have also shown an overall decline from 2013-2014 to 2019-2020 from 2017 to 1956 to 1968 to 1836 to 1557 to 1424 to 1328. The Sheriff Court figures have also shown an overall decline from 2013-2014 to 2019-2020 from 28,160 to 28,946, to 28,819 to 28,097 to 28,238 to 26,884 to 26,981.

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### Figure 1 The Law Society of Scotland

The Law Society of Scotland

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

Figure 2 Advocates in court

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### Figure 5 Scottish judges

Scottish judges

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### Figure 1 The way in which legal cases are presented

The way in which legal cases are presented

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### Figure 1 The way in which legal cases are presented

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### Figure 1 Judges

Judges

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### Figure 2 Prison

Prison

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### Figure 3 Bute House, Edinburgh

Bute House, Edinburgh

[Back to - Figure 3 Bute House, Edinburgh](" \l "Unit9_Session2_Figure5)

### Figure 4 Digital justice in Scotland

Front magazine titled Digital Justice Scotland. Back magazine titled Holyrood

[Back to - Figure 4 Digital justice in Scotland](" \l "Unit9_Session2_Figure6)

### Figure 5 Judicial institute accepts its award

Judicial institute accepts its award

[Back to - Figure 5 Judicial institute accepts its award](" \l "Unit9_Session3_Figure1)

# The criminal justice system (Eric McQueen, Scottish Court Service)

## Transcript

ERIC MCQUEEN

: Good morning, I'm Eric McQueen. I'm Chief Executive of the Scottish Court Service, and my primary role is to set the direction for the Court Service and provide leadership to the staff that work within the Court Service. The court structure works in very much a pyramid-type structure. At the top, we have the Supreme Courts, which contains the High Court of Justiciary and the Court of Session, the High Court dealing with criminal business, the Court of Session dealing with civil business. We then have a range of six sheriffdoms across Scotland where we have both Sheriff and JP Courts located within them.

In terms of specifically on criminal business, we've got four different types of courts in Scotland that can hear criminal cases, and the Procurator Fiscal makes decisions on where those cases will be prosecuted. The High Court deals with the most serious cases in Scotland, and that includes cases like rape and murder, for example. And In all High Court cases, decisions and verdicts are made by a jury. There's no limits on the length of prison service that can be imposed by the High Court, and equally there's no limits on financial penalties that can be put in place.

Within the Sheriff Courts, we have two different procedures, one called solemn procedure with cases are decided by a jury and one called summary procedure where cases are decided by the Sheriff sitting alone. In solemn procedure, which is the more serious type kind that comes in Sheriff Courts, the court can impose a period on the accused of up to five years imprisonment and can impose any amount of fine. In summary procedure, the courts can impose a prison service up to a year, with a maximum fine value of 10,000 pound.

Supporting that, we also have what we call Justice of the Peace Courts, and these are administered by the Justices who are members of the judiciary without a legal background. They're drawn from the community and have a wide range of background and experiences and a wide range of ages. Justices of the Peace can serve sentences on accused of up to 60 days imprisonment and fines up to a maximum value of 1,000 pound.

[Back to - The criminal justice system (Eric McQueen, Scottish Court Service)](" \l "Unit4_Session2_MediaContent1)

# What is the Supreme Court

## Transcript

[MUSIC PLAYING]

HOST:

The Supreme Court is the highest court of appeal for all civil cases in the whole of the UK, and for all criminal ones, except for those in Scotland. It used to sit in the Houses of Parliament. And the country's top judges, known as law lords, not only presided over cases there, but were also members of the House of Lords.

But why was it necessary to move everything over here? To find out why, I'm going to ask one of the Supreme Court justices, Lord Kerr.

So why was the Supreme Court established as a separate entity?

LORD KERR:

A fundamental principle of separation of powers is a cornerstone of our constitution. And what that means is that there should be a division of responsibility between those who make the laws and those who are responsible, like me, for adjudicating on difficult points of law. And the Constitutional Reform Act of 2005, by establishing the Supreme Court, made that expressly clear.

HOST:

The old Middlesex guild hall building was chosen for the new site, and eventually, the new Supreme Court of the UK opened in October 2009.

[APPLAUSE]

As a result, the law lords became Supreme Court justices.

LAW LORD:

And I will do right to all manner of people after the laws and usages of this realm.

HOST:

When the law lords sat in the House of Lords, it wasn't accessible to the public. It was pretty difficult to help people get their heads around what actually went on there. And as a result, very few people ever sat in the public galleries. I wonder if things have changed with the move here.

LORD KERR:

Working in the House of Lords was super in many ways. But here, the working conditions are much better. We have much more space for our staff. Perhaps more importantly even than that is that we're much more accessible to the public. We have lots of visitors. We have a very good exhibition centre. We have extraordinarily good reception staff. They explain to the visitors what's happening in the court that day. They conduct tours. And generally, we find we're a very popular tourist attraction.

HOST:

I don't know what I expected before I came here-- probably that it was all going to feel a bit unfriendly and imposing. But being here, you really don't get that feeling at all. What you do notice, though, is that the courts here don't look anything like the courts we're used to seeing on the telly. So how does it all work here?

For a case to be heard here, it needs to have gone through a whole load of different stages before it reaches the Supreme Court-- as will cases from Scotland, although criminal cases from Scotland can only reach this court in certain circumstances. The high court of the justiciary is usually Scotland's highest for criminal matters.

[MUSIC PLAYING]

The judges HERE also serve as the highest court of appeal for a whole load of other countries in the Commonwealth, and for British overseas territories, when they sit as something called the Judicial Committee of the Privy Council.

Only certain cases make it as far as the Supreme Court. To do so, they must address a wider issue of importance to society. This can be clearly seen in some of the most high profile cases to find their way to the House of Lords, or more recently, to the Supreme Court.

I've come to me Lady Hale, another of the Supreme Court justices, and the first woman to be appointed to the role, to find out a bit more about how the court works.

LADY HALE:

Well, we're an appeal court. That means that we don't hear the witnesses. We don't decide who's telling the truth. We don't decide what the facts are. The parties come to us with a set of facts. And they ask us what the law is. We only choose to have the cases which involve general points of law, which are important to a large number of the population.

For example, we were hearing a case which is all about what responsibilities the Ministry of Defence owes to the soldiers fighting in Iraq for the equipment that they sent them out to fight with. What could be more important than that?

HOST:

And why are these points of law so, so important?

LADY HALE:

Well, once we have decided what the law is, then everybody else has to follow it. So the case about the army, it comes up to us. We decide what the responsibilities of the government, if any, are. It then goes back to the trial judge, who will apply what we have said when he comes to decide the case. But not only that case-- every other case that raises the same point, the judges in the courts below us have to do what we have said the law is. It's called the doctrine of precedent.

HOST:

I wonder if how the Supreme Court works affects the layout of the courtrooms, which looks very different from what you might expect them to.

LADY HALE:

You'll see there isn't a witness box. There isn't a jury box. There isn't even a press box, because anybody can come in and sit at the back and listen to what we're doing. We're all round a table. So the justices are in a curve on one side, and the barristers and the other lawyers and the parties they represent are in a curve on the other side. And we try and make it feel like a general discussion of these very important issues.

[Back to - What is the Supreme Court](" \l "Unit4_Session2_MediaContent2)

# Reflections on courts

## Transcript

Elish Angiolini:

The work of the courts is important because the court is the forum in which the problems which people have in society can be resolved, where they can seek a remedy.

Openness and accessibility, if I deal first of all with openness, it is important that what takes place in our justice system is something which is understood and conveyed to the public at large in order that they can understand that the laws are being applied and how they're being applied and that justice is operating, and to have an understanding of what is at the heart of our constitution and our society.

So far as accessibility is concerned, there is no justice, justice is denied, if you can't have access to the courts. And indeed, the European Convention on Human Rights requires countries to provide accessibility. That it shouldn't be something that is an illusory right, a right that's not practicable. And therefore, given that it's so expensive if you want to go to court to sue someone or to achieve a remedy, it's very important that there is funding that supports that for individuals.

And in Scotland, legal aid does provide it to support people who wish to go to court in certain circumstances. However, sometimes it can still be very difficult to achieve that. And I think we have to as a community ensure that what we do provide by way of support, financial support, to individuals is adequate to ensure that that right, that openness and accessibility is something that is real and not an illusory notion that we talk about, but in fact that people can go to court to seek the remedies that they wish.

The Rebuttable presumption is that justice will always take place in an open atmosphere. The courts are public, and people can come in. And on occasion, the cameras are now being allowed into the court. Our Supreme Court, for instance, is televised. The video recordings are available to the public to watch thereafter.

The reality, however, is that court proceedings are not terribly exciting to most people. What you see in television, television drama, you will have a whole case taking place in 30 minutes, when in fact the reality is that will have taken place perhaps over two weeks. So it doesn't move at the pace of an interesting justice drama, and therefore there are not always courtrooms populated with packed benches of people wanting to hear the outcome of a trial. Occasionally that happens when it's a dramatic outcome. But having the public understand what's taking place in the courts is a really important part of our democracy.

There are occasions, however, where you need to modify that. So if a very vulnerable witness is giving evidence, for instance in a sexual case, the courts will be clear to the public, and representatives of the press can be present and the lawyers will be present while the individual gives her evidence. And there may be cases where, for instance, the evidence is so sensitive you have a member of the security services giving evidence, and there identity has to be protected. And they may give evidence from behind screens in order that their identity is protected.

So there are occasions where there is an exception to that rule, but that's one which is very closely guarded to ensure that it doesn't expand and that the presumption will always be that justice will be open.

[Back to - Reflections on courts](" \l "Unit5_Session2_MediaContent1)

# Criminal court proceedings

## Transcript

Instructor:

Cameras are not allowed inside courtrooms. And so what happens inside one is, to most of us, a complete mystery. But many of us may at some point have to attend court. We might be there as a witness, or a victim of crime, perhaps to serve on a jury. You may even find yourself in court on trial as the accused.

A courtroom is a very formal and traditional place which can at first appear frightening and very complicated, filled with people wearing strange wigs and gowns, and using words and language which most of us don't know or understand. Well, this programme will unravel some of the mysteries, explain the procedures, and reveal what happens behind these doors as we follow the progress of the case through the Scottish criminal justice system.

A case typically goes through four main stages-- Stage 1, the arrest and court appearance, Stage 2, preparing for court appearance, Stage 3, attending court, the trial, Stage 4, sentencing.

In Scotland, criminal cases can be prosecuted either summarily or in solemn procedure. Summary trials are conducted before a judge. The judge decides on all questions of fact and law. And they alone decide on guilt. There is no jury. Summary trials are the most common form of trial in Scotland and are a quick and efficient means of administering justice.

Solemn trials involve a jury of 15 people, randomly selected from the community, and are conducted for more serious crimes such as robbery or murder. Darren's trial will be conducted on solemn procedure with a jury and will take place in a sheriff court.

Many people are involved in a solemn trial. A sheriff will be appointed to preside over the case. A procurator fiscal will lead the case for the prosecution, a defence solicitor, who will represent the accused. Witnesses are required, and members of the public, who may become members of the jury.

With only a few exceptions, everyone in Scotland aged between 18 to 65 may be asked to sit in a jury. Jury service is an interesting and important public duty. It gives ordinary members of the public the opportunity to make a vital contribution to the administration of justice in Scotland.

The Scottish court system provides courts at three levels to administer criminal justice. The district court deals with the most minor cases such as traffic offences or shoplifting. All cases at the district court are conducted on summary procedure. No jury trials are possible at the district court. Most large towns in Scotland will have a district court, which are run by local councils.

The sheriff court deals with more serious crimes such as drug offences and housebreaking. The sheriff court can hear criminal cases, either with or without a jury. The judge who presides over cases is known as a sheriff. We'll tell you a little more about the sheriff and their duties a little later on.

The most serious of criminal cases, such as murders, are held in the high court. All trials in the high court are heard with a jury.

This programme has looked at the first two stages of the criminal justice system in Scotland, the arrest and preparing for trial. In the next programme, we'll take a look at what actually happens inside the court as Darren's trial begins.

Come in.

JOHN:

Good morning, Sheriff.

SHERIFF:

Morning, John.

JOHN:

How are you this morning?

SHERIFF:

I'm very well. Did you have a good weekend?

JOHN:

Not bad at all.

SHERIFF:

You ready for me?

JOHN:

Yes.

NARRATOR:

The people waiting in the courtroom and the sheriff are currently fairly relaxed and able to chat informally.

SHERIFF:

--at 4 o'clock in the morning.

NARRATOR

This will all change as soon as the sheriff enters the courtroom.

SHERIFF:

There we are. Could you get these for me right here?

JOHN:

Sure. All rise.

NARRATOR:

As acknowledgement of the important position that the sheriff represents, everyone must stand when the sheriff enters or leaves the courtroom. As a mutual mark of respect, the sheriff bows to the court, and the court officials bow in return.

The clerk of the court will now officially call the case. And Darren will tender a plea.

CLERK:

Call [INAUDIBLE] advocate against Darren Ballantine. Can you come forward please, Mr. Ballantine?

NARRATOR:

An accused person may decide to change their plea from not guilty to guilty, even at this late stage. If they do, no jury or trial will be needed.

CLERK:

Have you filed a complaint?

DARREN:

Yes.

CLERK:

Have a seat.

NARRATOR:

The process would proceed to the sentencing stage.

DEFENCE SOLICITOR:

Yes, Milady. I appear for Darren Ballantine, who pleads not guilty to the charge on the indictment.

PROCURATOR FISCAL

Milady, I'd be advised if the court could proceed to trial.

SHERIFF:

Yes.

CLERK:

[INAUDIBLE] Milady. OK, ladies and gentlemen, when I call your name, if I could ask you to come forward and take a seat in the jury box. Number 12 on the list, David Wilson. Number two, Christine Nox.

NARRATOR:

In Scotland, 15 people are required to serve on a jury. Some people are exempt or disqualified from jury duty, including those involved in the administration of justice, such as police officers or lawyers, and those who have been convicted of a serious criminal offence.

CLERK:

Number 21, Suzanne Senior. Number 27, Duncan Robertson.

NARRATOR:

Once all 50 members of the jury have been chosen, or impanelled, the clerk of the court will read out the indictment, or charges against Darren, and the sheriff will address the jury.

CLERK:

Ladies and gentlemen, I'll now read the indictment to you. And after that, I'll ask you to stand and raise your right hand. And at that stage, I'll administer the oath to you. And I'll look for you to say, I do, once I've done that.

"The charge against the accused is Darren Ballantine of 4 Main Street, Edinburgh, indicted at the instance of Colin Boyd, Lord Advocate. The charge against him is that he did on 13th of June, on the premises at the High Street, Edinburgh, occupied by Superstore Groceries, you did assault Mary Jenkins, shop assistant, by slapping her in the face and rob her of 250 pounds."

Can I ask you to stand please and raise your right hand? Do you swear by Almighty God that you will well and truly try the accused and give a true verdict according to the evidence?

JURY:

I do.

CLERK:

Have a seat, please.

SHERIFF:

Mr. Gilmore, would you hand copies of the indictment out to the members of the jury please?

NARRATOR:

Each member of the jury will now receive a copy of the indictment. Throughout the trial, the jurors may receive further copies of important documents, such as witness statements or pieces of evidence. The sheriff will also receive a copy. The copies are often on colour paper to distinguish the copies from the original.

SHERIFF:

Now, ladies and gentlemen, you may not be familiar with the practises in this court. And it may be of some assistance if I outline the procedure that will be followed. Now, the case for the Crown is presented by the procurator fiscal. And that's the lady sitting on my right, facing you. The case for the defence is presented by Mr. Scott, who is the gentleman at the desk on my left, sitting with his back to you.

NARRATOR:

In Scotland, there are no opening speeches. The trial officially begins when the first witness for the prosecution takes their place in the witness box and takes the oath. As the procurator fiscal, or Crown, has brought the case to court, the whole of the prosecution case is heard first.

The witness box is where each of the witnesses will stand to give their evidence. It directly faces the jury to allow them to see the witness clearly. Although a chair is provided, most witnesses are required to give their evidence standing up to allow the jury to see the whole of the witness's body.

The procurator fiscal will prosecute the case, or present the case for the Crown. The accused is considered to be innocent until proven guilty. The prosecution has the burden of proof, which means that they need to present enough strong evidence to convince the jury that the accused is guilty of the crime.

The defence solicitor sits on the right. It's the job of the defence team to test the prosecution case. The defence does not need to prove anything. Remember, it is the prosecution who has to prove guilt. The defence does not need to prove innocence. The defence may choose to present evidence to the court to support the defence case, but they don't need to.

The clerk of the court is responsible for writing up procedural steps in each case and advising the sheriff on procedure. Other duties include tape recording the proceedings, safeguarding the tapes, and ensuring whenever possible that the court runs smoothly.

The court officer is responsible for bringing people in and out of the courtroom. He brings pieces of evidence to witnesses and generally helps the courtroom run smoothly.

The sheriff is the master of the law. It is the sheriff's function to regulate the procedure of the case and to explain the law to the jury.

You will notice that all these people are dressed in black gowns and that the sheriff is wearing a wig. This is a tradition that dates back many hundreds of years.

The purpose of the jury is to judge the facts of the case. It is said that the jury is the master of the facts. They must decide if they find witnesses reliable and believable and whether they think the Crown has provided enough evidence to prove that the crime was committed by the accused beyond reasonable doubt.

It is extremely important that each member of the jury pays careful attention to all the evidence. Their verdict must be based on the evidence presented in court and nothing else. They are provided with pens and paper to allow them to take notes.

Jurors must not talk about the case to anyone except their fellow jurors, and only then in the privacy of the jury room. No juror should have any contact with an accused person. And it is a serious offence for anyone to try to obtain information from a juror about any of the matters discussed by the jury, even long after the trial has ended.

Trials can often last many days, perhaps weeks, and in very complex cases, even months. Jurors are paid travelling expenses and an allowance for any money they might lose whilst not at work.

Members of the public, family, and those interested in the case sit here in the gallery. Some courtrooms have special areas for the press to sit.

The accused sits here in the dock. The dock is directly connected to the cells underneath. For security reasons, police officers sit either side of Darren. No one is allowed to touch him or give him anything unless they've had permission from the sheriff.

In the next programme, we will look more closely at the role of the witness and the juror and watch as the trial reaches its conclusion.

SHERIFF:

This was a very serious matter, Mr. Ballantine. But as you are a first offender, I will require to call for a social inquiry report and a community service report.

NARRATOR:

The sheriff cannot impose a gaol sentence on a person who has never been in gaol before without requesting background reports. These reports help the sheriff decide what would be the best and most appropriate sentence for the public and for the offender.

Darren may be given bail, which means he's free to leave, but must return to the court to be sentenced. Or he may be held in custody, which means he will be kept in prison until the date of the sentencing hearing.

SHERIFF:

Sentence will require to be adjourned. Therefore, for a period of three weeks in order that these reports can be obtained, bail is continued.

CLERK:

Mr. Ballantine, [INAUDIBLE] adjourned in your case till the 18th of December for the purpose of obtaining social inquiry and community service records. Bail will be continued as previously granted. That's all. Thank you.

SHERIFF:

Mr. Scott.

PROCURATOR FISCAL:

Yes, Milady. I appear again for Darren Ballantine. There is a report now available. And the factors I would simply wish to emphasise is that he is only 19. He's in full-time employment. He comes from an extremely supportive family, and they've attended again today, as they did during the course of the trial. He has never been in trouble at all before, apart from this matter. And the terms of the social inquiry report are extremely favourable. Community service is available at a direct alternative to custody. And on the strict understanding that it is as an alternative to custody, I would invite your ladyship to place him on a period of community service.

SHERIFF:

Stand up, Darren Ballantine. As you now know, assault and robbery is a serious crime. And your appalling behaviour on the 13th of June clearly has had a very distressing and frightening effect on the victim, Mrs. Jenkins, and also on the child.

Normally, you could expect to be sentenced to a lengthy period of detention for a crime such as this. However, I've read the terms of the social inquiry report. I've taken account of your previous good record. And I've taken account too of your genuine remorse as well as the other factors referred to by Mr. Scott in mitigation.

I am therefore prepared on this occasion to impose a non-custodial sentence. I propose to make a community service order requiring you to perform 300 hours of community service. This means that you are required to carry out 300 hours of unpaid work in the community. This work will be carried out under the supervision of the local authority. And you must carry this work home at such times as your supervising officer instructs. You must report to that officer when required to do so, inform him or her of any change in your address or times of employment. You'll have 12 months from today's date within which to carry out the 300 hours of community service.

If you fail to comply with this order, you may be brought back to court. The community service order will then be revoked and you may be dealt with as no such order had been made. Accordingly, it will be open to the court to imprison you. And you should bear in mind that community service is an alternative to a prison sentence.

Now, do you understand what's been said to you?

DARREN:

Yes.

SHERIFF

And do you agree to comply with all these conditions?

DARREN:

Yes.

SHERIFF:

Very well, 300 hours community service.

CLERK:

Darren Ballantine, 300 hours community service order is imposed. A copy of the order will be sent to you. And a social worker will be in touch with you in due course. That's all. Thank you.

NARRATOR:

Throughout these programmes, we have tried to explain the procedures and traditions of the courts. And hopefully, you now have a better understanding of how a court operates, who's involved, and the roles we all play in the Scottish criminal justice system. Without members of the public coming forward as witnesses or to serve on a jury, it would not be possible for the Scottish legal system to maintain the high standards which have been achieved for hundreds of years.

[MUSIC PLAYING]

[Back to - Criminal court proceedings](" \l "Unit5_Session4_MediaContent1)

# Introduction to the legal profession

## Transcript

INSTRUCTOR

There are two types of lawyers generally practising day to day in Scotland. Those are solicitors and advocates. There are many more solicitors than there are advocates, and they have slightly different functions. Advocates, however, are charged with representing clients in the Supreme Court of Scotland and have a right of audience at every level in the Scottish court system, whereas solicitors-- unless they've sat additional exams, which a few of them do-- have only rights of audience in the lower courts.

Advocates, when they're appearing in court, dress differently from solicitors. Advocates, when we appear in court, have to wear a wig. This is my wig here, which I keep in this tin with my name on it. And we have to wear a white bow tie when we're in court and a white stuff collar. We have to wear black tailcoat and a black gown. And if we don't wear those things, we're not dressed appropriately. And they are called our badges of office, and that is how people are able to distinguish between an advocate and a solicitor.

[Back to - Introduction to the legal profession](" \l "Unit7_Session1_MediaContent1)

# Solicitors and their work

## Transcript

Craig McKerracher

Solicitors in Scotland perform a variety of roles. Most people will think initially around the role in criminal law, but there is a variety of other roles So people will typically use solicitors when it comes to buying and selling property, if there's a matrimonial dispute-- whether it's a divorce or if there is adoption issues or anything like that-- right through the way to business matters involving corporate and commercial mergers and acquisitions, and setting up of businesses and commercial contracts.

The work of solicitors in Scotland and wider UK and around the world is changing all the time, and a lot of it is changing due to technology. So there's a lot more scope for creation of legal software, which will do a lot of the work which we would call commoditised. So it's volume. It's things that involves a repetitive nature.

Also, the legal landscape is changing. There's a lot more firms who were previously based in England and Wales who are now merging with firms in Scotland. So the requirement for a lot of UK businesses and UK clients is the need for a national presence.

The general concept for law and legal system in Scotland is there needs to be a separation of powers. So on one hand, you have Parliament is there to create the law and enact that into force. And then the secondary role is for law enforcement agencies, such as the police but then also the courts, to play that rule in enforcing the law.

So judges play quite an important role because the requirement for separation of powers ensures that the judiciary is independent. So they shouldn't be swayed by the legislature and what Parliament does. They should take that role in ensuring that they interpret the law and apply it appropriately. Parliament may not at times like what the courts say, but that's what their role is, is to play that policing role alongside law enforcement agencies. And that will apply to private citizens as well, if there is a dispute between private citizens. The courts are there as an independent, if you like, mediator of sorts, to hear both sides' arguments and ultimately make a ruling to decide the outcome.

[Back to - Solicitors and their work](" \l "Unit7_Session2_MediaContent1)

# The role of advocates

## Transcript

Scott Manson

I can be acting on behalf of an international company who's facing a damages claim for 50 million pounds. Equally, I have represented a dog on death row in Irvine. I've represented footballers who've been naughty. I have dealt with cases concerned with people who've suffered really bad, life-changing injuries.

And what I will say is that cases can be tragic, but you can find humour in them. And cases can seem extremely interesting on a superficial level but soon become very boring when you drill into the detail.

Advocates-- and that's the branch of the profession that I am a member of and represent-- have to be objective and find it easier to be objective sometimes than solicitors. That is because advocates do not act directly for the client. Advocates are instructed by the solicitor, who in turn acts directly for the client. So the solicitor has the day-to-day business relationship with the client. The advocate advises the client through the solicitor as to what to do or how to do something in a particular context or situation, usually court.

And because of that, advocates are able to be objective by saying, a judge is not going to accept this argument, therefore I am not going to make that argument even if you want me to. Equally, you can make arguments you know are going to lose provided you've told your client that you think they're going to fail. But being objective is extremely important because, if you tell clients what they want to hear, they will be extremely disappointed when the judge or anyone else tells them that they're not entitled to the things you've been telling them about. So I would say it's essential that all types of lawyers remain objective. Even if you need to try extremely hard for your client to get the best possible result for them, you should always remain objective, and the client ought to respect you more by remaining objective because they will get a better product and more certainty out of what can be a very difficult situation.

[Back to - The role of advocates](" \l "Unit7_Session3_MediaContent1)

# Overview of the role of the judiciary in law making

## Transcript

Scott Manson

Judges play a central role in the Scottish legal system. Not only do judges administer justice in Scotland, the constitutional explanation for that is that the judges administer the Queen's justice throughout the country. And that justice includes not only criminal justice and bringing wrongdoers to heel, but also delivering justice between people who have disputes with one another. So judges play that central role.

But another critical role that judges play that the general public perhaps don't understand until they begin to study law is that judges themselves make and shape the law by deciding cases in a particular way. We only in this country get so much of our law from what Parliament tells us when they pass legislation in the House of Commons and the House of Lords or in the Scottish Parliament.

But judges have to interpret that legislation, and a judge's decision as to what a particular piece of legislation means then becomes itself law that is applied by other judges and lawyers.

Equally, there is a whole body of law in Scotland that doesn't come from Parliament at all and is simply handed down from generation to generation by court judgments. So I can be in court tomorrow. I could be arguing a point of law that I say exists only because a judge 100 years ago said it existed in a case. And because that judge did it, and that judge is a more senior judge than the judge I'm in front of tomorrow, the judge I'm in front of tomorrow has to do what the judge 100 years ago tells him to do.

[Back to - Overview of the role of the judiciary in law making](" \l "Unit7_Session5_MediaContent1)

# Session Cases: Citing in Court

## Transcript

NARRATOR:

It is all very well, knowing what law reports are and what each part of a law report looks like. But that is only the beginning of the story. The purpose of law reporting-- and why law reports have been written for hundreds of years-- is to provide lawyers with a record of decided cases. A record which lawyers can use when arguing cases in court.

KENNETH CAMPBELL:

The purpose of a legal argument is to persuade a decision maker to give you a particular result, the result which you want to get for your client. And in order to do that, you have to have the support of legal principle, legal precedent. And in order to satisfy the court that the precedent and the principle favour your argument, you've got to explain that by reference to the case.

NARRATOR:

So how does one use them? How does a lawyer site session cases, or any cases for that matter, in court?

LORD EASSIE:

Recently had a counsel who started to read this particular paragraph, in the middle of which was a sentence in Latin. And on reaching it, she said, I'll leave the Latin to Your Lordship. And I said, Miss, what does the Latin mean? And she said, I have no idea.

LADY DORRIAN:

Latin is often used to encapsulate a legal principle. It's not just thrown in for the sake of it. If they haven't understood what the Latin is that they're using, then they might not have understood what the legal principle is that they're seeking to take from the case.

JAMES WOLFFE:

As an advocate, it's absolutely essential that you understand what a case that you're citing is all about and why you're citing it to the judge.

JULIUS KOMOROWSKI:

You give the name of the case in full clearly to the court. And then you gave a citation. By that, I don't mean just roll off, 2010 SC 112.

LORD EASSIE:

It's very tempting, of course, for people to lapse into initials, into the SC and SLT. And I think nowadays judges don't mind too much about that. When I was young, that would be frowned upon.

JULIUS KOMOROWSKI:

You go through it with care and explain, this decision was reported in session cases for the year 2010. Let's have a page number.

COUNSEL:

My Lord, my learned friend referred to the case of Sutherland against Campbell, which is to be found at 2004 Session cases, page 179.

LORD EASSIE:

That's the easy bit. The more difficult bit is knowing whether you should cite the case.

LADY DORRIAN

Sometimes authorities are cited when they don't need to be cited at all. And sometimes a raft of authorities may be cited when one or two cases would actually suffice.

LORD KINCLAVEN:

It's not helpful to the judge or to the litigant to have someone simply come in with spadefuls of irrelevant material.

JUSTICE CROMWELL:

The skill, of course-- as it's always been-- is in using the authorities that most thoughtfully deal with the issue.

LORD EASSIE:

But also important, I think, is that when counsel come to cite a case that they should know why they are citing it.

DOROTHY BAIN:

You make sure you know the case inside out. But you identify, from the case, a particular part of the case that you're relying on. And then you explain why you're relying on it.

LORD EASSIE:

There's nothing more frustrating to the court to be taken to a case and bits to be read out. And say, yes, Mr. So-and-so, but why are you citing this case to us? And then, to get no coherent answer to that question.

KENNETH CAMPBELL

That's the sort of thing that's calculated to annoy judges. And one of the jobs of counsel is to annoy the judge as little as possible, because persuasion generally involves not annoying people.

[Back to - Session Cases: Citing in Court](" \l "Unit8_Session2_MediaContent1)

# Session Cases: The History of Law Reporting

## Transcript

NARRATOR:

In August of 1928, May Donoghue and a friend decided to visit the Wellmeadow Cafe in Paisley for a pear and ice, and in the case of May Donoghue, an ice cream and a bottle of ginger beer.

WAITER:

Table for two, yes?

NARRATOR:

Everything was paid for by May Donoghue's friend.

WAITER:

Ladies, what would you like?

WOMAN:

Can I have--

NARRATOR:

Now, the act of buying a bottle of ginger beer for a friend would not be unusual now, and it wasn't then. It was a transaction that occurred hundreds of times each day in countless cafes across the country.

WAITER:

And an ice cream for you.

NARRATOR:

But when her friend bought May Donoghue that bottle of ginger beer, the transaction and its aftermath formed the basis of one of the most celebrated and important Scottish cases in world legal history.

WOMAN:

Thank you. Thank you.

NARRATOR:

For in her Stevenson manufactured bottle of ginger beer, May Donoghue didn't just get ginger beer. She discovered something else as well.

JOHN CAIRNS:

It's got, you know, Paisley, a cafe, a friend, ice cream, ginger beer, and this decomposed snail. It's just kind of perfect.

NARRATOR:

The decisions of courts in cases such as Donoghue against Stevenson are hugely important and have a significant impact on the development of the law, and as such, need to be recorded.

[Back to - Session Cases: The History of Law Reporting](" \l "Unit8_Session4_MediaContent1)

# Donoghue v Stevenson: The History of Law Reporting

## Transcript

[Back to - Donoghue v Stevenson: The History of Law Reporting](" \l "Unit8_Session4_MediaContent2)

# Justice, law and society in Scotland

## Transcript

INSTRUCTOR

'Justice must be seen to be done' is still a principle that is important. I would suggest it is more important today because we have now an enshrined system of human rights law in Scotland and have had done since around 1998, 1999. And that requires as part of that body of law that justice is not only done but seen to be done.

But we have always had open courts in Scotland. It's only in very particular circumstances that the doors of the court will be closed. That is when particularly difficult evidence is being given, say of a sexual nature or evidence involving children and so on, or occasionally in terrorism cases where there are security concerns.

But openness is extremely important, and court judgements, important and sometimes unimportant, are published online. So anybody has access to the judgments of the court, applying the law, and deciding on cases that have been argued. And increasingly, cameras are being allowed into court when sentencing is being affected, but only focusing on the judge.

And there is still a debate going on as to whether we should have televised legal proceedings. Different people have different views about that. But I would suggest that justice generally can be seen to be done in Scotland, and that is an important principle that is respected.

Law plays an extremely important role in society because law reflects society, and then society has to reflect the law. So the law adapts to changing attitudes and problems and issues that arise in society, and then society has to react to whatever laws are made that regulate what goes on.

So if a particular event happens, there is usually a clamour for an inquiry. There is usually an expectation that lawmakers in Parliament will change the law to do something about it. And often, lawyers hold their heads in their hands when that happens because law isn't always the answer to things. Many situations arise where we have perfectly satisfactory laws that could be used to address particular problems, but politicians want to be seen to be doing things and then make more law. And we end up with more complicated situations than we had before.

We have a system of law right to the top of the chain that regulates government, that regulates what the prime minister is allowed to do and not allowed to do. We saw that recently in relation to the questions over Britain leaving the European Union, when it was the courts that had to say that as a matter of law-- as a matter of constitutional law in this country-- Parliament had to make the decision to sever ties with the European Union and not the prime minister.

So parking tickets, the decision to leave the European Union, and everything in between, the law touches upon and regulates.

[Back to - Justice, law and society in Scotland](" \l "Unit9_Session2_MediaContent1)

# Reflections on law and its role in society

## Transcript

INSTRUCTOR:

Openness and accessibility to the legal system in Scotland is still very important. Access to justice is a very big issue, particularly with recent press coverage around cuts in legal aid. There are quite a lot of people out there who quite simply wouldn't be able to afford access to solicitors without the support of legal aid.

So openness and accessibility is very, very important. There has to be a number of different routes available to people that can ensure that, if you like, they get their day in court, that they get the chance to be heard And if ultimately the court agrees with them, then great. But the fact that they should be able to put their case forward and put their position forward is definitely very important.

Quite a lot of times now in media there is a lot of scrutiny around the courts, around judges and decision making, particularly around high-profile criminal cases. If the sentence isn't sufficiently long enough, people feel that justice is not being done. If there is a sufficiently harsh sentence, then people see that as the right call.

Law permeates every aspect of society, so yes there is criminal law to ensure that people who commit wrongs are suitably punished. But every other aspect of society is regulated by law. So you go and buy something out of a shop, it's governed by terms and conditions. So there's a contract there. You've also got the Sale of Goods Act, which is a statutory provision which protects you in relation to the purchasing of those goods. If you want to go to university, there will be a contract you would sign with the university agreeing to adhere to a code of conduct.

Every aspect of society is covered by law. What it does is it allows us to go about our day-to-day lives. And as long as the law is complied with, then there will be no issue. If it's not complied with, then the law enforcement agencies and the courts are there to ensure that there are solutions in order to deal with any breach of law.

[Back to - Reflections on law and its role in society](" \l "Unit9_Session2_MediaContent2)

# Uncaptioned interactive content

## Transcript

[MUSIC PLAYING]

NARRATOR:

The law plays an important role in the lives of Scottish people, whether it relates to how we drive on the road, our social and our working lives, or how our children are protected. As part of the work we do in the public interest, the Law Society of Scotland helps to make sure that new laws being introduced are fit for purpose and workable.

We are a non-partisan organisation, which means that we act independently of government and political parties. Our focus instead is on whether or not proposed new laws are legally sound. Will they work in practice, and will they deliver what they set out to? So how do you do this?

We have a network of expert groups, each of them specialising in a specific area of Law, from employment and family law through consumer, property and inheritance law. These experts volunteer their time and are mainly solicitors. But we also work with other professionals like accountants, surveyors, clinicians and academics. They meet regularly to scrutinise, debate and respond to government proposals for new laws.

Our expert groups work alongside our small highly skilled staff team, who shape their comments and discussions into written responses and briefings, which are sent to members of both the Scottish and UK parliaments. They may also propose specific amendments to legislation to help to improve the law. We submit these amendments to MSPs, MPs and peers and explain to them why we think they're necessary.

Parliamentarians will often ask to meet us to discuss our proposed amendments in more detail. This helps them to explain to Parliament why we think they're necessary, which improves the chances of the amendments being agreed and adopted.

GRAEME PEARSON:

It's probably not apparent to the public, but the movement of issues through the Parliament is extremely fast. So we have a very limited period to understand the depths of a problem before it's debated in the chamber and a law is made. So briefings from the law society at key moments are invaluable, because they get to the heart of some of the legal issues. And although I'm not obliged to agree with the position that the society takes, I can always trust the integrity of the briefing and know that in legal terms, they've researched it.

NARRATOR:

We are regularly invited to give oral evidence to parliamentary committees at both Holyrood and Westminster. This gives us an opportunity to expand on and explain our written briefings. A member of one of our expert groups will attend to give evidence on our behalf.

PETE WISHART:

I think the Law Society has got amongst the most effective when it comes to having a look at legislation, particularly as it goes through the House of Commons. And there is a number of organisations that do get in touch with members of parliament, just to give their view about the various legislation that goes through. But you could always count on the Law Society of Scotland to be there to make sure that we have got their view about things as they go through.

And I think it's just something that we now come to rely on when it comes to the legislation that goes through. And something that is obviously quite a nice feature is you regularly see members of the Law Society down in the House of Commons observing some of our proceedings and helpfully directing us towards some of the things that they've presented to us.

[Back to - Uncaptioned interactive content](" \l "Unit9_Session4_MediaContent1)

# The traditions and future of law

## Transcript

Elish Angiolini:

The digital future challenges people of my generation. Computers came into my life in my basically early 30s, and before that I had no knowledge of working, and therefore I've had to acquire that. But I think for the current generation of lawyers who are coming through, they are much more comfortable with the reality of digital courts.

And this is happening already where you have evidence being transmitted using technology. We don't have huge piles of papers around in the courtroom any longer. Most of them have been scanned or automated, and information is transmitted. And witnesses can give evidence remotely from other parts of the world into the courtrooms. And we have virtual courtrooms where all of the participants may be in different parts of the country coming together in a conference scenario.

The use of digital information in future I think can only get greater. Already, most of our law books have become redundant because most of our books have been transcribed onto digital format. And indeed the case law is there too. So artificial intelligence I think is the next step. It's whether or not we lawyers will be made redundant, because there will be such sophisticated artificial intelligence that will be able to give remedies and solutions because of their enormous power to retrieve information.

I think that the idea that, however, you will have courts devoid of judges and lawyers is unlikely because of the human element of empathy and understanding of the emotional side of the law, which is not just about a problem, it's someone who usually is quite traumatised and upset with a problem, which means that despite the advance of artificial intelligence and the digital age, there might still be a role for human beings.

The rituals and the traditions which surround the operation of the law vary from one country to another. And in Scotland, like in England, in the higher courts, gowns and wigs may be worn and there may be processions. Much of that is just at a celebration of the beginning of the year. And they're pretty harmless, except if the impact of them is to alienate people and make people think that that's what it's like in the courtroom.

And in some courts we still wear wigs and gowns. And in many others, you'll find now that no uniform is worn at all. Indeed, if you go to our highest court in the country, the Supreme Court, the judges do not wear gowns. They wear suits. And it doesn't diminish the respect and solemnity of that court remotely.

I am not a fan of the uniform or of the wig. I think those were aspects of dress from many centuries ago and that they have less relevance. I have also been in courtrooms in America where there is no dress code such other than smart dress, and again the judges command precisely the same degree of respect as those of ours who are dressed up in red gowns or wigs and all of council dressed in black gowns and wigs.

Arguments are made that these traditions provide anonymity to the participants, but I'm not convinced about that argument. Most people recognise you with the wig on or off. And I think it can create something of a cultural barrier in a sense because people who come from other countries come into a courtroom, it's a very, very frightening experience. It can be really one which can be very disconcerting. And I think that anything that's a barrier to that, including court dress, is something which I think we have to consider and review as to just how relevant that is to 21st century justice.

[Back to - The traditions and future of law](" \l "Unit9_Session4_MediaContent2)