

CHAPTER 1: LAW AND THE LEGAL SYSTEM

LEARNING OUTCOME

At the end of the chapter, you should be able to:

- TLO A1a** : Define law and distinguish types of law.
- TLO A1b** : Explain the structure and operation of the courts.



1.1 Law and Distinguish Types of Law

Learning Outcome (ACCA Study Guide Area A)

A1a: **Define** law and distinguish types of law.

What is 'Law'?

It is possible to describe law as the **body of official rules and regulations**, generally found in constitutions, legislation, judicial opinions, and the like, that is used **to govern a society and to control the behaviour of its members**, so law is a formal mechanism of social control. Legal systems have particular ways of establishing and maintaining social order.

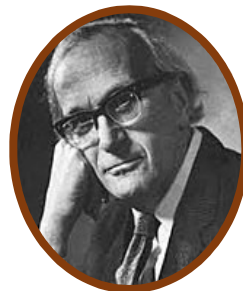
1.1.1 Definitions by Famous Jurists

There is no all-encompassing definition of law. Different scholars and philosophers have defined law in various ways. The **OXFORD ENGLISH DICTIONARY** defines law as **'THE BODY OF ENACTED OR CUSTOMARY RULES RECOGNISED BY A COMMUNITY AS BINDING'**. Basically, law refers to the rules and regulations which govern human conduct. Failure to adhere to such rules may result in adverse consequences upon the person who is in breach.



John Austin

John Austin, an English jurist defined law as 'A rule laid down for the guidance of an intelligent being by an intelligent being having power over him'; 'A body of rules fixed and enforced by a sovereign political authority' Province of Jurisprudence Determined (1832)



Prof. Herbert Hart

Prof. Herbert L. A. Hart, an Oxford Professor of Jurisprudence defined law as 'a system of rules, a union or primary and secondary rules' and views that 'laws are rules made by humans and that there is no inherent or necessary connection between law and morality' The Concept of Law (1961)



Prof. Glanville

Prof. Glanville Williams defined law as 'the cement of society and also an essential medium of change. Knowledge of law increases ones' understanding of public affairs. Its study promotes accuracy of expression, facility in argument and skill in interpreting the written word, as well as some understanding of social values' Learning the Law (1945-1982)

1.1.2 Types of Law

The name United Kingdom (the UK) refers to the union of four separate countries, namely England, Wales, Scotland and Northern Ireland. Each region has its historical origins and hence UK has 3 legal systems consisting of:

- **England and Wales:** English Legal System
- **Northern Ireland:** Northern Ireland Law
- **Scotland:** Scots Law



The descriptions from 1.1.3 to 1.1.6 deal primarily with the **English Legal System** of England and Wales.

Diagram 1.1.2: Types of law



1.1.3 Common law

Common law is the body of law developed in England primarily from judicial decisions based on custom and precedent, unwritten in statute or code, and constituting the basis of the **English legal system**. Judge-made law also known as **common law is law that has developed from judgments handed down in court**. It is most often used to make decisions about areas that are not included in Acts of Parliament. When using common law judges decide cases along the lines of earlier decisions made in similar cases ('precedents'). These decisions set a precedent that must be applied to future cases on the same subject. While the term common law is used to refer to principles applied to court decisions, a common law system refers to a legal system that places great weight on judicial decisions made in prior similar cases.

Equity

The Courts of Chancery introduced **the law of equity** in order to fill in the gaps of law that common law failed to address (to mitigate the harshness of the common law system). In addition, equity sought to avail a kind of flexibility in the law because the common law presented a rigid system where writs governed the system of judgment. Equity is fair and just rule and looked into availing fair judgment to individuals based on the rules that governed equity and the particular circumstances of the case. In addition, the law of equity in itself was not a fully established system of law because it only acted as a remedy when the common law failed to address certain legal issues.



There is a relationship between the common law and equity. **It was ruled that, where there is a conflict between the common law and equity, equity will prevail.** The conflict was finally put to rest by the setting up of Judicature Acts in 1873-75 where the Supreme Court could now administer both rules of common law and equity. The merger incorporated the principles of both common law and equity in order to avail a more wholesome system of judgment.

The **common law** availed **only monetary remedies** when addressing grievances brought forward by the parties of a case in order to determine which party can claim victory of a case. This limited the ability of the courts of law to address other issues that fell outside the scope of monetary compensation.



The **law of equity** brought about a system where the judges weighed the particulars of the case to determine whether to avail a remedy in terms of damages or **provide a remedy that did not border on financial grounds**, such as an injunction, thus boosting the remedies available to the parties.

1.1.4 Statutory Law

Statutory law or statute law is written law set down by a body of legislature or by a singular legislator. This is as opposed to oral or customary law; or regulatory law promulgated by the executive or common law of the judiciary. Statutes may originate with national, state legislatures or local municipalities. This is law passed by Parliament which is the highest authority of law in England.



1.1.5 Public and Private Law

Public law affects society as a whole, while private law affects individuals, families, businesses and small groups. The simple difference between public and private law is in those that each affect, as found in the following examples:

Public Law Violation

Affects society as a whole



If you saw a man run from a convenience store with a few pilfered products under his arm, he is violating public law. He committed the crime of theft, and that affects everyone.

Private Law Violation

Issues between two or more people



If your neighbour filed a suit against you because your barbecue smoke travelled to his yard, you may be violating private law. You infringed on your neighbour's right to peaceful enjoyment of his property.



Public law

Deals with issues that affect the general public or state society as a whole.

Public law is important in today's society as there exists an **unequal relationship** of power between the state and individuals. Public law provides **checks and balances**, and to regulate such imbalances. This also means that the government does not abuse its power over individuals and that they use their power in a fair and proper manner. Some of the laws that its wide scope covers are:

- Administrative law - laws that govern government agencies, like the Department of Education.
- Constitutional law - laws that protect citizens' rights as afforded in the Constitution.
- Criminal laws - laws that relate to crime.
- Municipal laws - ordinances, regulations and by-laws that govern a city or town.
- International laws - laws that oversee relations between nations.



Private law

Help citizens resolve issues between themselves

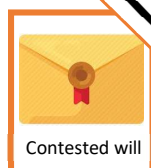
Private law affects the rights and obligations of individuals, families, businesses and small groups and exists to assist citizens in disputes that involve private matters. Its scope is more specific than public law and covers:

- Contract law - governs the rights and obligations of those entering into contracts.
- Tort law - rights, obligations and remedies provided to someone who has been wronged by another individual.
- Property law - governs forms of property ownership, transfer and tenant issues.
- Succession law - governs the transfer of an estate between parties.
- Family law - governs family-related and domestic-related issues.

1.1.6 Civil Law

Covers areas:

- Contracts
- Family matters
- Negligence
- Employment
- Probate
- Land Law



Criminal Law

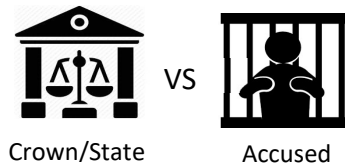
Is a branch of Public Law, deals with:

Non-acceptable conduct against society:

- Theft
- Mischief
- Robbery
- Drugs
- Riots



1.1.7 Distinction between civil and criminal law



Crown/State

Accused

Criminal law

Deals with acts of intentional harm to individuals but which, in a larger sense, are **offences against society**.

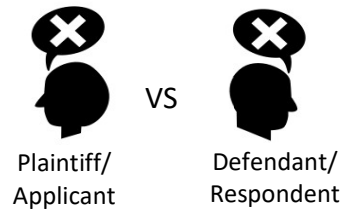
Examples:

- Deliberate or reckless act that causes harm to another person or another person's property
- Neglect a duty to protect others from such harm.
- Violation of privacy and safety of home's occupants

Since crimes are an offences against society, normally the State or Crown investigates and prosecutes criminal allegations on the victim's behalf.

The police gather evidence and, in court, public prosecutors present the case against the person accused of the crime.

It must be proven that a crime was committed and, for most offences, that the person meant to commit the crime. For instance, striking another person is the crime of assault but it is only a crime if the blow was intentional.



Plaintiff/
Applicant

Defendant/
Respondent

Civil law

Deals with disputes between **private parties**, or negligent acts that cause harm to others.

Examples:

Disputes between individuals or companies:

- Over the terms of an agreement
- Who owns land or buildings
- Whether a person was wrongfully dismissed from their employment
- Challenges to decisions of administrative tribunals
- Allegations of medical malpractice
- Applications for distribution of the estates of deceased persons

Family law cases involving:

- divorce, parental responsibility for children and/or spousal support
- division of property between spouses or common law couples

Depending on the circumstances, parties may file a lawsuit asking the courts to decide who is right.

- The courts may dismiss a case, or if it is found to have merit, the courts may order the losing party to take corrective action, although the usual outcome is an order to pay damages - a monetary award designed to make up for the harm inflicted.
- Parties retain a lawyer; or may choose to represent themselves; gather evidence and present the case in court.

1.1.8 Differing standards of proof

Criminal Cases:

- More evidence is needed to find the accused at fault in criminal cases than to find the defendant at fault in civil ones.
- To convict someone of a crime, the prosecution must show there is proof beyond reasonable doubt that the person committed the crime and, in most cases that they intended to commit it.
- Judges and juries cannot convict someone they believe probably committed the crime or likely is guilty. This gives the accused the benefit of any reasonable doubt and makes it less likely for an innocent person to be wrongfully convicted and imprisoned.

Civil Cases:

- In contrast, evidences must be proven on a balance of probabilities - if it is more likely than not that the defendant caused harm or loss, a court can uphold a civil claim.



Check Understanding

Topic 1.1: Law and Distinguish Types of Law
Learning Outcome (ACCA Study Guide Area A)
A1a: Define law and distinguish types of law.

Question 1

What is the definition of law?

1.2 The Structure and Operation of the Courts

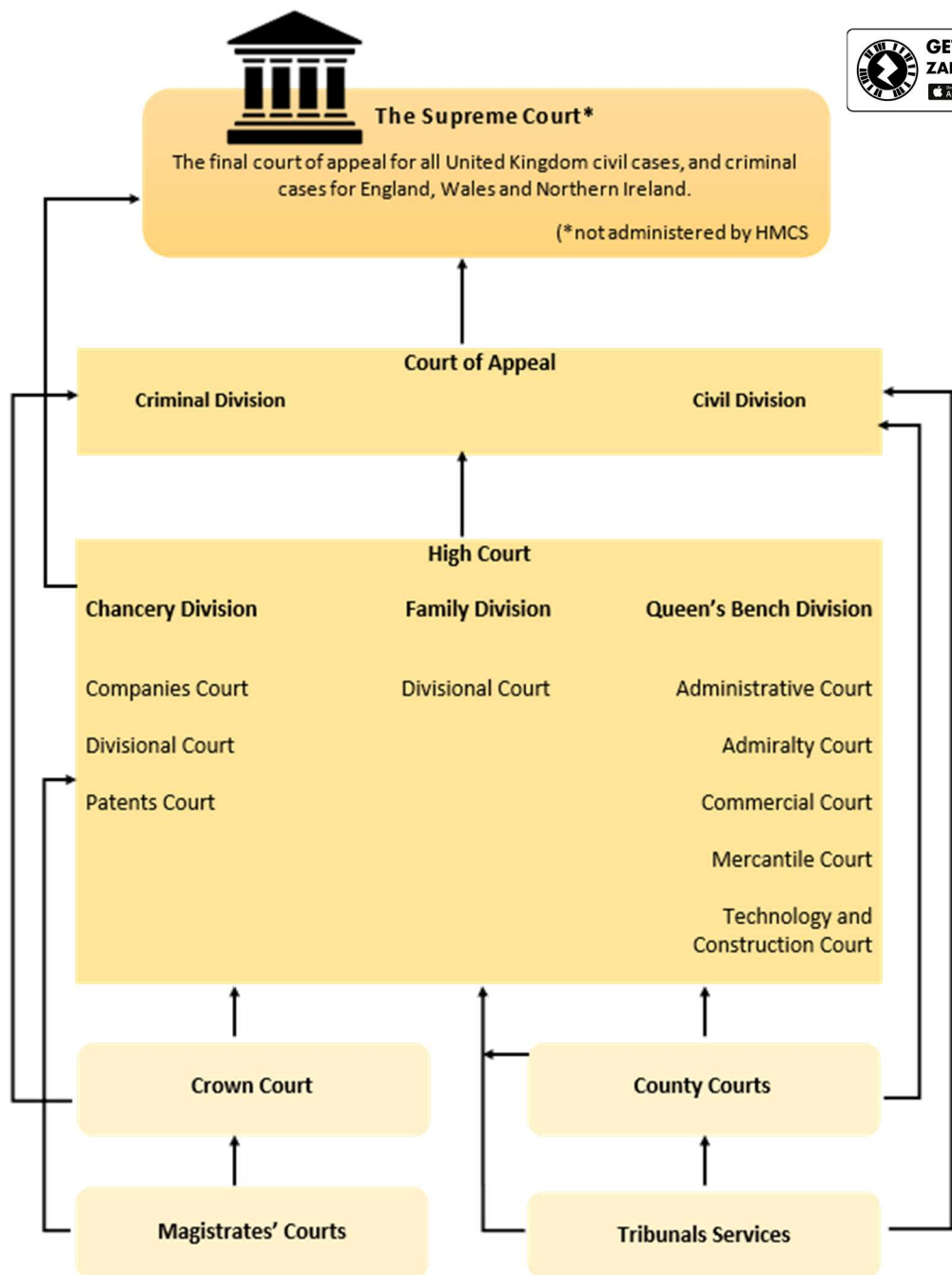
Learning Outcome (ACCA Study Guide Area A)

A1b: Explain the structure and operation of the courts.

1.2.1 The Hierarchy of UK Courts

The court system in England and Wales consists of the following courts:

Diagram 1.2: Structure of the UK Court System



1.2.2 Judicial Committee of the Privy Council

The Judicial Committee of the Privy Council is the court of final appeal for Commonwealth countries that have retained appeals to either Her Majesty in Council or to the Judicial Committee. It is also the court of final appeal for the High Court of Justiciary in Scotland for issues

related to devolution. Some functions of the Judicial Committee were taken over by the new Supreme Court in 2009. The decisions from the Judicial Committee of the Privy Council are highly persuasive but not binding on English courts.

1.2.3 Supreme Court (Formerly known as the House of Lords)

In 2009 the Supreme Court replaced the House of Lords as the highest court in England, Wales and Northern Ireland. As with the House of Lords, the Supreme Court hears appeals from the Court of Appeal and the High Court (only in exceptional circumstances). It also hears appeals from the Inner House of the Court of Session in Scotland. Appeals are normally heard by 5 Justices (formerly Lords of Appeal in Ordinary, or Law Lords), but there can be as many as 9.



At the top of the hierarchy is the Supreme Court, formally the House of Lords. Decisions made in this court are binding on all other courts. Until 1966 it was bound by its own previous decisions however, this changed when the Lord Chancellor issued Practice Statement (Judicial Precedent) [1966] 1 WLR 1234 which stated the intention to depart from previous decisions when it appeared right to do so. Although the Supreme Court is recognised as the highest English court, decisions made in the European Court of Justice bind all UK courts by virtue of SS 2 and 3 of the European Communities Act 1972.

Decisions of the European Court of Human Rights are not binding on UK domestic courts, however, they are persuasive and a UK court can choose to follow a decision if it considers it just to do so.

1.2.4 Court of Appeal

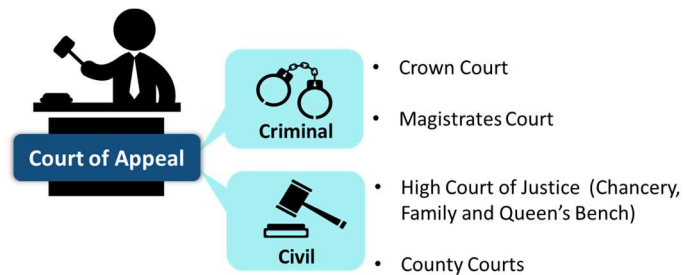
The Court of Appeal consists of 2 divisions, the Criminal Division and the Civil Division. Decisions of the Court of Appeal may be appealed to the Supreme Court (formerly the House of Lords).

1. Criminal Division

The Criminal Division of the Court of Appeal hears appeals from the Crown Court.

2. Civil Division

The Civil Division of the Court of Appeal hears appeals concerning civil law and family justice from the High Court, from Tribunals, and certain cases from the County Courts.



The Court of Appeal is below the Supreme Court in the hierarchical structure and is split between the Civil and Criminal divisions. Decisions in both divisions bind lower courts and normally themselves but the Civil division is subject to exceptions to this rule as defined in *Young v Bristol Aeroplane Co. Ltd.*

These exceptions are:

- Where there is a conflict between two previous decisions. The court must decide which decision to follow and which to overrule.
- Where a previous decision has been overruled by the House of Lords (Supreme Court), the Court of Appeal must follow the decision of the superior court.
- Where its previous decision was made in per 'incuriam' meaning 'through carelessness' i.e. that a previous decision was made in ignorance of some authority which would have led to a different conclusion.

It is acknowledged that in practise the Criminal division has more discretion in its obligation to follow precedent, as the liberty of an individual is at stake. If it is apparent that a previous decision has been based on either a misunderstanding or misapplication of the law, a court in the criminal division is not bound to follow a previous decision.

1.2.5 High Court

The High Court consists of 3 divisions, the Chancery Division, the Family Division, and the Queen's Bench Division. Decisions of the High Court may be appealed to the Civil Division of the Court of Appeal.

Types of Divisions	Explanation
Chancery Division	<ul style="list-style-type: none"> • Companies Court - deals with cases concerning commercial fraud, business disputes, insolvency, company management, and disqualification of directors. • Divisional Court - deals with cases concerning equity, trusts, contentious probate, tax partnerships, bankruptcy and land. • Patents Court - deals with cases concerning intellectual property, copyright, patents and trademarks, including passing off.
Family Division	<ul style="list-style-type: none"> • Divisional Court - deals with all matrimonial matters, including custody of children, parentage, adoption, family homes, domestic violence, separation, annulment, divorce and medical treatment declarations, and with uncontested probate matters.
Queen's Bench Division	<ul style="list-style-type: none"> • Administrative Court - hears judicial reviews, statutory appeals and application, application for habeas corpus, and applications under the Drug Trafficking Act 1984 and the Criminal Justice Act 1988. It also oversees the legality of decisions and actions of inferior courts and tribunals, local authorities, Ministers of the Crown, and other public bodies and officials. • Admiralty Court - deals with shipping and maritime disputes, including collisions, salvage, carriage of cargo, limitation, and mortgage disputes. The Court can arrest vessels and cargoes and sell them within the jurisdiction of England and Wales. • Commercial Court - deals with cases arising from national and international business disputes, including international trade, banking, commodities, and arbitration disputes. • Mercantile Court - deals with national and international business disputes that involve claims of lesser value and complexity than those heard by the Commercial Court. • Technology and Construction Court (TCC) - is a specialist court that deals principally with technology and construction disputes that involve issues or questions which are technically complex, and with cases where a trial by a specialist TCC judge is desirable.

The **Divisional Courts** are located within the three divisions of the High Court, the jurisdiction of which is mainly appellate. They are bound by the doctrine of stare decisis following decisions from the Supreme Court and the Court of Appeal. Divisional courts are above the High Court in the hierarchy and as such the decisions of these courts bind the ordinary cases of the High Court and also themselves with the exceptions in civil cases as cited in Young. In criminal appeal cases, the Queen's Bench divisional court may refuse to follow previous decisions if they are judged to have been made wrongly as in **R v Greater Manchester Coroner**.

The **High Court** is bound by decisions of those courts' superior to it. Although decisions by individual high court judges have a strong persuasive authority on other high court judges, they are not binding on them. If two individual previous decisions are at variance, it is generally accepted that the latter decision should be followed, if the latter decision considered and provided grounds for not following the prior decision. This was established in **Colchester Estates v Carlton Industries plc (1984)**.

1.2.6 Crown Court

The Crown Court deals with indictable criminal cases that have been transferred from the Magistrates' Courts, including hearing of serious criminal cases (such as murder, rape and robbery), cases sent for sentencing, and appeals. Cases are heard by a judge and a jury. Decisions of the Crown Court may be appealed to the Criminal Division of the Court of Appeal.

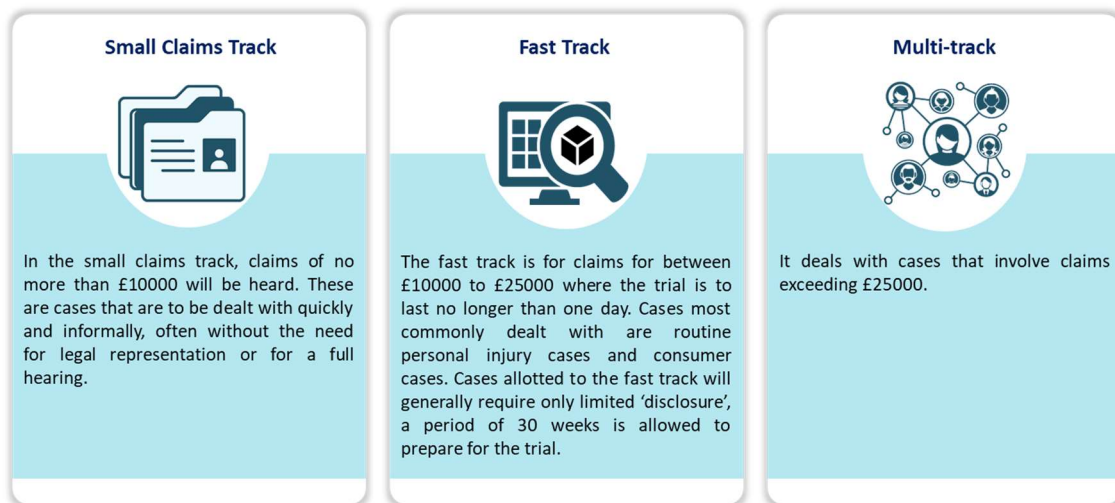
Crown Courts are subject to binding precedent from superior courts but do not create precedents themselves and are not bound by their own previous decisions although their decisions are considered persuasive authority. County courts do not bind any other courts and are not bound by their own decisions.

1.2.7 County Courts

County courts have civil jurisdiction only but deal with almost every kind of civil case. The county court is involved in the following matters:

- Contract and Tort claims
- Equitable matters concerning trusts, mortgages and partnership dissolution
- Disputes concerning land
- Probate matters
- Miscellaneous matters – e.g. consumer cases
- Some bankruptcy, company winding-up

The court upon receipt of a case allocates the case either to the small claims track, the fact track or the multi-track for hearing.



1.2.8 Magistrates' Courts

The Magistrates' Courts deal with summary criminal cases and committals to the Crown Court, with simple civil cases including family proceedings courts and youth courts, and with licensing of betting, gaming and liquor. Cases are normally heard by either a panel of 3 magistrates or by a District Judge, without a jury. Criminal decisions of the Magistrates' Courts may be appealed to the Crown Court. Civil decisions may be appealed to the County Courts. Magistrates courts do not bind any other courts and are not bound by their own decisions.

1.2.9 Tribunals Service

The Tribunals Service makes decisions on matters including asylum, immigration, criminal injuries compensation, social security, education, employment, child support, pensions, tax and lands. Decisions of the Tribunals Service may be appealed to the appropriate Division of the High Court.

1.2.10 Advantages of having a hierarchy in the court system

The advantages of having a court system with a hierarchy can be summarised as follows:



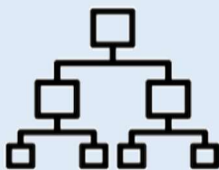
- It facilitates a system of appeals. The court hierarchy distinguishes between higher and lower courts so that persons who are dissatisfied with the decision of a lower court have an avenue to have the decision to be reviewed by a higher court.



- It facilitates the application of the doctrine of binding judicial precedent, which requires the lower courts to follow the decisions of the higher courts, thus achieving greater uniformity in the application of the law.



- It facilitates specialisation in the judicial process. The higher courts which are presided by more senior and experienced judges handle the more serious criminal offences such as murder, and kidnapping and more serious civil matters where larger sums of monetary value are involved. The lower courts are left to handle the less serious offences and civil disputes involving smaller amounts of monetary value.



- It results in greater administrative convenience, efficiency and cost effectiveness. The practical effect of a court hierarchy is that it provides for an extensive system of lower courts dispensing justice inexpensively in local areas and superior courts in the main centres.



Check Understanding

Topic 1.2: The Structure and Operation of the Courts

Learning Outcome (ACCA Study Guide Area A)

A1b: Explain the structure and operation of the courts.

Question 1

The Queen's Bench Division deals mainly with common law. Which of the following statement is not true?

- A. Actions based on criminal law and constitutional law
- B. Appeals from the county court
- C. Appeals by way of case stated from the Magistrates' Courts
- D. Some appeals from the Crown Court

Question 2

Please state type of law for these situations below.

Situation A

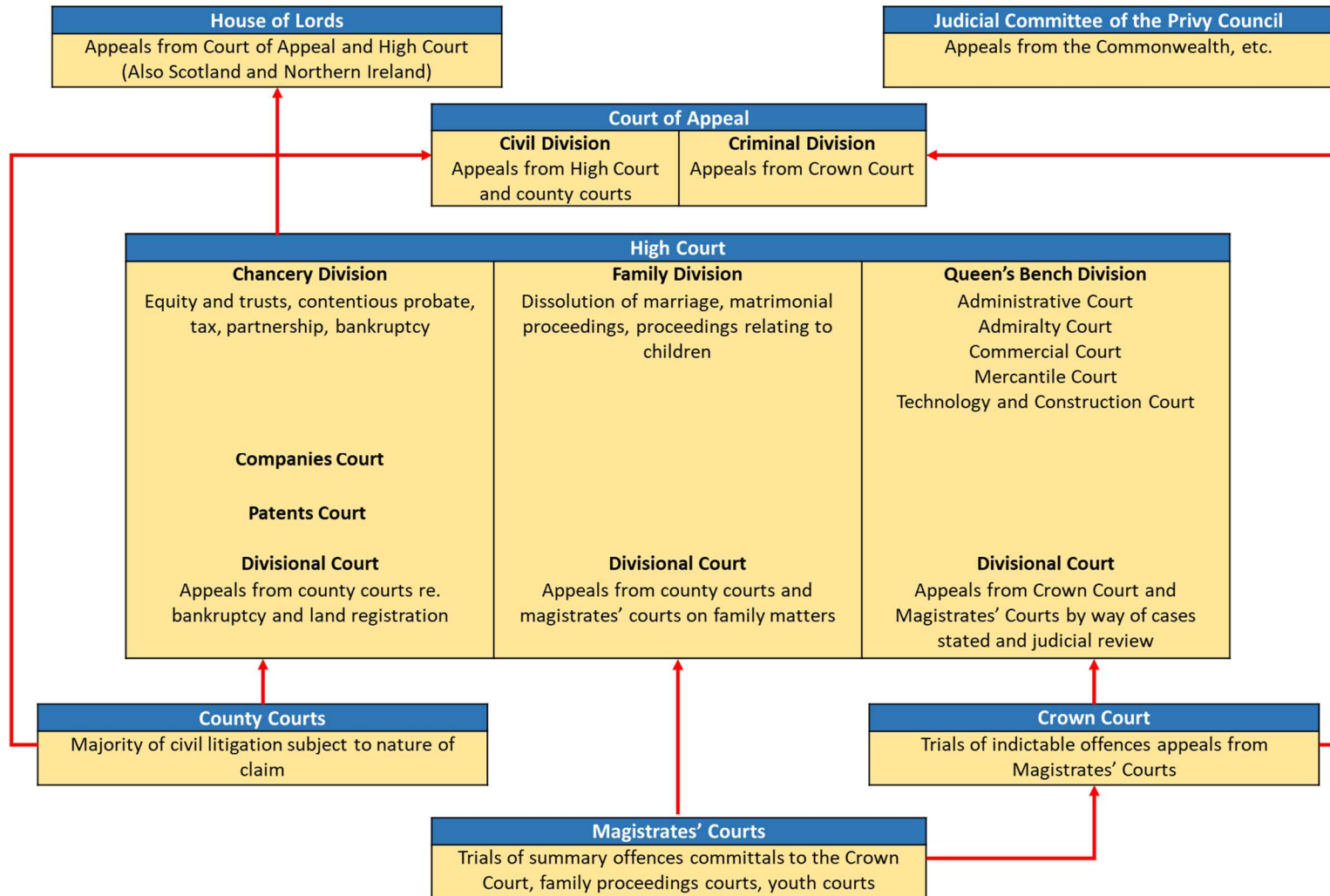
I was arrested for drinking and driving. My case involves which type of law?

Situation B

I am suing the company I worked for, for violating their contract with me. My case involves which type of law?

1.3 Chapter 1: Summary

Diagram 1.3: Summary of law and the legal system



1.4 Chapter 1 Check Understanding: Answer

Topic 1.1: Law and Distinguish Types of Law

Answer: The Oxford English Dictionary defines law as 'The Body of Enacted or Customary Rules Recognised by a Community as Binding'. Basically, law refers to the rules and regulations which govern human conduct. Failure to adhere to such rules may result in adverse consequences upon the person who is in breach.

Topic 1.2: The Structure and Operation of the Courts

Answer 1: A

Answer 2:

Situation A: Criminal law

Situation B: Civil law