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FRANK FELGENTRÄGER

## **THE ENGLISH LEGAL SYSTEM**

*Das folgende Skript ist als Mitschrift im Rahmen der Fachfremdsprachenausbildung (FFA) zur Englischen Rechtssprache an der Universität Bielefeld entstanden. Es erhebt keinen Anspruch auf Vollständigkeit, sondern soll als Anregung dienen, was zur Prüfung über das Englische Rechtssystem gelernt werden kann.*

## THE ENGLISH LEGAL SYSTEM

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## A. Sources of English Law

### I. General Information:

- England (+)
- Wales (+)
  
- Scotland (-)
- Northern Ireland (-)

4 sources of English law:

- Legislation
- Judicial Precedent
- Custom
- Books of Authority

### II. Sources of Law

#### 1. Legislation

##### a) Sovereignty of Parliament

- Parliament is legislatively supreme (or: “legislative omnipotent”)
  - can make and unmake laws to any extent (**no limits, no rival**)

##### b) 2 Types of Legislation

- Statutes (**acts of Parliament**)
- Statutory Instruments (**delegated legislation**)
  
- Britain = Constitutional Monarchy
  - monarch is nominally head of the state, but has practically lost all power
    - convention: monarch acts in accordance with the will of the government
- Government is headed by the Prime Minister (and his cabinet)
  - Government is responsible to the Parliament
    - Parliament is composed of the elected representatives of the people
- Parliament enacts law (statutes) or grants the power to do so to another person or body (Delegated Legislation)
- Parliament is omnipotent and can therefore abolish any rule of common law or any criminal offence at common law

##### c) Interpretation of Law by the Courts:

- court is bound to imply the law
  - but still has influence on the law
    - limits to the interpretation of law
      - **statutory definitions:**
        - Interpretation Act, 1978
      - **common law rules:**
        - Literal Rule
          - words must be given their literal, grammatical meaning
        - Golden Rule

- interpret the statute in its grammatical and ordinary sense
- judge's decision consists of two parts:
  - **ratio decedendi**
    - the principle or reason for the decision
      - binding part of the case
  - **obiter dicta**
    - words which are not essential to the judge's decision
      - things said "by the way"

#### d) Statutes

"an express and formal laying-down of a rule or rules of conduct to be observed in the future by persons to whom the statute is expressly, or by implication, made applicable"

- creates new law
- lays down general rules for the guidance of future conduct
- is imperative

#### e) Delegated Legislation

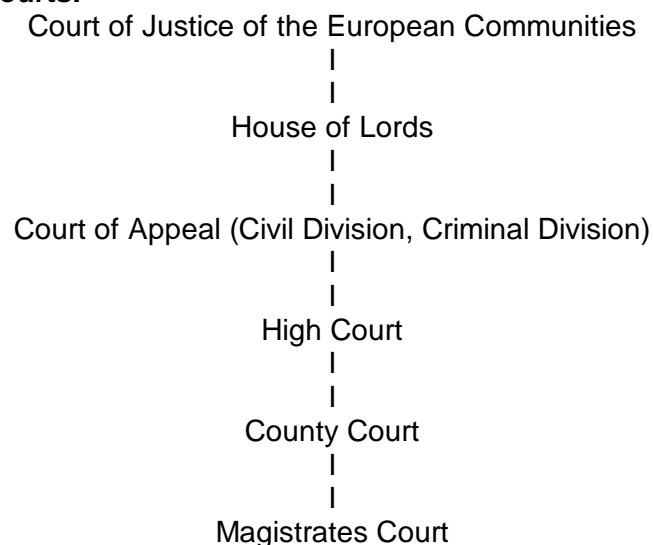
- Parliament has all legislative power and can therefore decide to give away some of its power, when it does not have the time to fulfil all of its duties
  - reasons for the growth of delegated legislation:
    - Lack of Parliamentary time
    - Urgency
    - Flexibility
    - Technicality of subject-matter
    - Future needs
  - i.e.: Home Secretary may make some regulations under the Police Act 1964

## 2. Judicial Precedent

the established practice that judges are bound to follow the decisions of higher courts in similar cases

> can be found in law reports

#### Hierarchy of courts:



### 3. Custom

- ...is a usage or rule which has gathered the force of law and is binding within a defined area upon the persons affected thereby
- social habits
  - i.e.: the term “merchantable quality” in the Sale of Goods Act 1893
    - what it is – answered by custom
  - time immemorial: 1189 (= date of legal memory)

### 4. Books of Authority

- certain ancient textbooks written in the 12<sup>th</sup> to 18<sup>th</sup> century are accepted as sources of law

## B. English Constitution

### I. General Information

- British Constitution is not written – opposite to US-Constitution
  - it has never been wholly reduced to writing
  - there are **no guaranteed rights** in England/Wales (Parliament is sovereign and can alter any law) – opposite to US-Law
    - but: Parliament cannot bind its successors

### II. Constitutional Documents

- but: there are important constitutional documents (so the constitution just is not embodied in **one single** document)
  - these documents contain essential constitutional law
- *by the way :*
  - *the only constitution England ever possessed was the one established by Cromwell (was into power from 1653-1660)*

#### 1. Magna Carta Libertatum (1215)

- the Great Charter, granted by King John in 1215, which gave his subjects certain political and personal freedoms

#### 2. Petition of Rights (1627)

- various rights and liberties of the individual

#### 3. Habeas Corpus Act (1679)

- *lat.* = “may you have the body”
- content: legal remedies against being wrongly imprisoned

#### 4. Bill of Rights (1688)

- the first ten amendments of the constitution of the United States which refer to the rights and privileges of the individual
  - sets out the principal rights gained by Parliament and the nation as the result of the seventeenth century constitutional struggles (Parliament became sovereign)



## 5. Act of Settlement (1701) – Rule of the oldest Son

- the act that ensured that the one who takes over the crown is protestant
- “Rule of the oldest Son”: He takes over the **throne** and has to be **protestant**

## 6. The Parliament Acts 1911 and 1949

### III. Conventions of the Constitution

- many constitutional rules are “laws” in the ordinary sense (i.e.: Act of Settlement)
  - but: there are also rules which govern which are **conventional**:
    - they arise from **usage** or **agreement, tacit** or **express**
    - i.e. in the following fields:
      - the functioning of the central government and
      - the relationship of the executive to the legislature
  - they are adhered (*befolgen*), too, once they have been developed, b/c of:
    - political expedience
    - respect for tradition demands their observance
  - examples for conventions:
    - **Cabinet** (was not created by a statute, but came into being by convention)
    - **Monarch’s practice** of **abstaining** from attending **cabinet meetings**
    - the person to become Prime Minister is invited by the queen
      - Queen has to invite the leader of the party/group which has the majority in the House of Commons – Queen has to tell him to form the government
        - legally she could invite anybody else, but convention: Queen invites the leader of the majority!
    - Queen can refuse her assent to an Act of Parliament, but long established convention that she **will not do so**
    - by convention **Parliament** must be summoned **at least once a year** (Meeting of Parliament Act 1964 (“Triennial Act”): once in **three** years)
    - doctrine of **judicial precedence** is conventional

### C. Barristers/Solicitors

- there are two branches of the legal profession in Britain:
  - barristers
  - solicitors

#### I. Solicitors

##### 1. History

- today’s solicitor is the successor of three former ancient professions
  - these carried out the less skilled work in ecclesiastical and Admiralty courts
    - attorney (*or* representative)
    - solicitor
    - proctor
- Solicitors Acts (1939 and 1974)
  - profession has been unified and regulated

## 2. How to become a Solicitor

- in order to have your name enrolled (to be admitted a solicitor):
  - serve articles to a solicitor (2-4 years)
  - pass examination of the Law Society

## 3. Duties

- most are employed in private practice
  - either alone or in partnership firms
- some are employed in public service, industry, commerce
- criminal and civil matters
  - i.e.:
    - making of wills
    - administration of estates
    - family matters
    - formation of companies

## II. Barristers

### 1. How to become a Barrister

- to become a barrister you have to be a member of one of the four Inns of Court
  - these Inns are owned and controlled by the senior members (“Masters of the Bench”)

#### a) Join one of the Inns of Court

- Gray’s Inn
- Lincoln’s Inn
- Middle Temple
- Inner Temple

#### b) Attendances at the Inn

- intending barristers must make a certain number of attendances at their Inn

#### c) Pass the Examination

- intending barristers must pass the examinations conducted by the Council of Legal Education

#### d) One Year of Pupillage in Chambers

- after six months barristers have the right of audience in any court of law in England and Wales

## 2. Differences to Solicitors

- barristers are advocates, solicitors not necessarily
- barristers have the right of audience in all courts, solicitors: limited
- barristers specialize in certain branches of law
- barristers only deal with **legal** matters
- barristers may take instructions only from a solicitor, not from a lay client

- barristers are not allowed to sue for their fees
- barristers are not liable in negligence in the conduct of a case
- control:
  - solicitors are controlled under the Solicitors Acts (1839-1974)
  - barristers are controlled by their Inns of Court and the recently established Senate, non statutory bodies

### 3. Duties

- specialize in a part of the law
- to present his case effectively in court
- to draft opinions on difficult points of law
- to settle pleadings
- to advice on evidence and procedural matters

## D. Parliament (House of Commons, House of Lords)

- Parliament in UK:
  - elected group of representatives who form the legislative body which votes the laws of a country
  - formed of:
    - **Queen**
    - **House of Lords**
    - **House of Commons**

### I. House of Commons

- “lower House”

#### 1. Composition

- contains some 635 members
  - representing geographical areas of the country (“**constituencies**”)
  - elected every five years

#### 2. Government

- government is formed by that party gaining a majority of seats in the House of Commons
  - since 2<sup>nd</sup> World War: **Labour Party** or **Conservatives**
- Prime Minister is appointed to lead the government
- Prime Minister forms his Cabinet from the important members of his party
- when no party has a sufficient majority or when a national emergency occurs:
  - coalition government may be formed by two or more parties (temporarily uniting)
- government ministers = “**front benchers**”

#### 3. Opposition

- the largest political party which opposes the government

### a) **Vote of Confidence**

- parliament is the supreme authority
  - can limit the power of government in special situations

### b) **Party Discipline**

- “whips” (*Art Fraktionszwang*):
  - MP (Member of Parliament) who controls the attendance of other MPs of his party at the House of Commons
    - MP who makes sure that all MPs vote

## II. **House of Lords**

### 1. **Composition**

- hereditary lords, life peers, leading judges and bishops

### 2. **Upper House of the British Parliament**

### 3. **Judicial Committee of the House of Lords**

- stands at the apex of the judicial system
  - final court of appeal in civil and criminal matters, unless a matter of European Union Law exists
    - European Court of Justice

### a) **Composition**

- Lord Chancellor
- Lords of Appeal in Ordinary (“**Law Lord**”)
- Other peers who have held high judicial office
  
- quorum of **three** is necessary
  - often **five** members sit
  
- every member may deliver a separate speech

### b) **Jurisdiction**

- court of appeal in criminal and civil law
  - but: matters of European Law can go to ECJ

## E. **Judges and Law Officers**

### I. **General Information**

- until 1987: judges were not allowed to say anything to the media (press)
  - **Lord MacKay** changed this
  
- most senior judge: **Lord Chancellor**
  - minister in the government
  - chief spokesman in legal affairs in the House of Lords
  - barrister

## II. Judiciary, Law Officers

### 1. Lord Chancellor

- full name: "Lord High Chancellor of Great Britain"
- ranks eighth in order of precedence in England after the Queen

#### a) Appointment

- appointed by the Queen on the advice of the Prime Minister

#### b) Duties

- legislative, executive, judicial
  - therefore Lord Chancellor is an exception to the constitutional doctrine of the "separation of powers"

#### (1) Legislative

- LC presides over (*den Vorsitz führen*) the House of Lords
  - LC may take part in debates of House of Lords
  - LC may vote in all of its divisions

#### (2) Executive

- Member of Cabinet
  - there LC is a chief legal and constitutional adviser
  - one of the representatives of the House of Lords
- responsible for the custody (*Verwahrung*) and the use of the Great Seal (which authenticates important legal documents)

#### (3) Judiciary

- head of the judiciary
  - presides over the House of Lords
  - member of the Judicial Committee of the Privy Council
  - head of the Chancery Division of the High Court
  - member of the Court of Appeal
- but: LC never sits as a judge other than in the House of Lords and the Judicial Committee of the Privy Council
- LC advises the Queen on the appointment of:
  - puisne judges of the High Court
  - circuit judges
  - recorders
- LC appoints:
  - magistrates
  - chairmen of certain administrative tribunals

## 2. Judges

### a) General Information

- all of the judges (**from b) to g)**):
  - hold office “during good behaviour”
    - may be removed by the Crown on an address presented by both Houses of Parliament
  - their salaries are fixed by statute (to ensure judicial independence)
- judges of the High Court retire at the age of 75

### b) Lord Chief Justice

- appointed by the Queen (on the advice of the Prime Minister)
- head of:
  - the **Court of Appeal (Criminal Division)**
  - the **Queen’s Bench Division**
- member of the **House of Lords**

### c) Master of the Rolls

- appointed by the Queen (on the advice of the Prime Minister)
- head of:
  - the **Court of Appeal (Civil Division)**
- supervises the admission of solicitors to the Rolls of the Supreme Court

### d) President of the Family Division of the High Court

- appointed by the Queen (on the advice of the Prime Minister)
- responsible for the work of the **Family Division of the High Court**

### e) Lords of Appeal in Ordinary (“Law Lords”)

- known as “**Law Lords**”
- appointed by the Queen (on the advice of the Prime Minister)
  - from among existing judges or barristers of at least **fifteen years’** standing
  - there are **nine** Law Lords
- members of:
  - the **House of Lords (life peers** (peer: member of the House of Lords, life... = appointed for life))
  - the **Judicial Committee of the Privy Council**

### f) Lords Justice of Appeal

- appointed by the Queen (on the advice of the Prime Minister)
  - from among existing judges or barristers of at least **fifteen years’** standing
  - there are **twenty-three** Lords Justice of Appeal
- judges of the **Court of Appeal**

### g) Judges of the High Court (Puisne Judges)

- known as “**puisne judges**”
- appointed by the Queen on the recommendation of the Lord Chancellor
  - from among barristers or solicitors of at least ten years' standing *or*
  - circuit judges of at least two years' standing
  - there are:
    - **12** judges assigned to the **Chancery Division**
    - **45** judges assigned to the **Queen's Bench Division**
    - **16** judges assigned to the **Family Division of the High Court**

### h) Circuit Judges

- appointed by the Queen on the advice of the Lord chancellor
  - to serve in:
    - the **Crown Court** *and*
    - the **County Court**
- must be
  - a barrister or solicitor of **ten years'** standing *or*
  - a person who holds the office of a recorder
- retiring age: 72 (possibility to extend to 75)

### i) Recorders

- Courts Act (1971): part-time judges of the **Crown Court**
- appointed by the Queen on the recommendation of the Lord chancellor
  - to men or women of standing who are prepared to commit themselves to **not less than one month's work** on the bench **each year**
  - barristers or solicitors of at least **ten years'** standing are eligible for appointment to this office
    - if a solicitor holds the appointment for five years: he or she may then be appointed a circuit judge (*see above*)

## F. Jury

- usually in **criminal** trials
  - possible in civil cases, too – but a rarity (*Seltenheit*)
    - defamation
    - malicious prosecution
    - false imprisonment
    - fraud
- usually found in Crown Courts – **not** in Magistrates' Courts

## I. Composition, Qualification, Payment

- consists of **12** persons
  - of either sex
- qualification:
  - citizenship
  - age: 18-65
    - registered as electors (*wahlberechtigt*)

- **no:**
  - anyone who has been imprisoned in the past ten years (disqualified!)
  - police officers
  - mentally ill people
- payment
  - only for travelling, financial loss (*Aufwandsentschädigungen*)

## II. Duties

- to faithfully try the defendant and give a true verdict according to the evidence
- jurors may be objected to (by the defendant or the Crown)
- majority verdict is allowed (since Criminal Justice Act (1967) – before that: unanimous)

## III. Advantages

- finding of fact is better left to several persons
- jury represents the verdict of **ordinary persons**
- public confidence in jury trials

## IV. Disadvantages

- jurors of 18: too inexperienced for jury service
- there is no physical or educational test for the task of jurors
- jurors may be too easily impressed by experienced lawyers
- jurors are too easily prejudiced in case of rape, manslaughter etc.

## G. Courts

### I. Civil Courts

#### 1. House of Lords

- stands at the apex of the judicial system
  - final court of appeal in civil and criminal matters, unless a matter of European Union Law exists
    - European Court of Justice

#### a) Composition

- Lord Chancellor
- Lords of Appeal in Ordinary ("**Law Lord**")
- Other peers who have held high judicial office
- quorum of **three** is necessary
  - often **five** members sit
- every member may deliver a separate speech

#### b) Jurisdiction

- court of appeal in criminal and civil law
  - but: matters of European Law can go to ECJ



- there is no general right to appeal
- appeals from
  - the Court of Session in Scotland
  - the Court of Appeal in Northern Ireland
  - the Court of Appeal (Civil Division) in England
- since 1969 (Administration of Justice Act (1969)): appeal from the High Court direct to the House of Lords possible
  - “leap-frogging” the Court of Appeal

## 2. Judicial Committee of the Privy Council

- appeal court for appeals from courts outside the UK
  - such as the courts of some **Commonwealth countries**

### a) Composition

- Privy Councillors who have held high judicial office in the UK
  - Lord Chancellor
  - Law Lords
  - other Commonwealth judges

### b) Jurisdiction

- appeals from Commonwealth countries
- appeals from
  - ecclesiastical courts
  - Courts of the Isle of Man, the Channel Islands
  - etc.

## 3. Court of Appeal (Civil Division)

- court to which a person may go to ask for an award or a sentence to be changed

### a) Composition

- Lord Chancellor
  - Lord Chief Justice
  - Master of the Rolls
  - President of Family Division
  - 28 Lords Justice of Appeal
- 
- the quorum is three
  - the court may sit in five divisions at the same time
- 
- the court may:
    - uphold, amend, reverse the decision of a lower court *or*
    - order a new trial

### b) Jurisdiction

- civil appeals from:
  - the High Court
  - the County Courts

- the Restrictive Practices Court
- the Employment Appeal Tribunal and other tribunals
- gives legal advice (to other judges) on preliminary matters
  - directions on procedure etc.

#### **4. High Court of Justice**

##### **a) Composition**

- three division which have equal competence
  - but for administrative purposes and convenience specific matters are allocated to each division

##### **(1) Queen's Bench Division**

###### **(a) Composition**

- Lord Chief Justice
- 60 puisne judges

###### **(b) Jurisdiction**

- financial cases > £ 10,000 *or*
- complicated cases
- breach of contract, personal injury
- libel

##### **(2) Chancery Division**

###### **(a) Composition**

- Lord Chancellor
- Vice-Chancellor
- at least four other puisne judges

###### **(b) Jurisdiction**

- deals with wills, partnerships, companies, taxation, bankruptcy etc.

##### **(3) Family Division**

###### **(a) Composition**

- President
- 16 puisne judges

###### **(b) Jurisdiction**

- divorce

#### **5. County Courts**

- first established by the County Courts Act (1846)
  - to provide cheap, speedy and local justice

**a) Composition**

- one judge sits alone
- circuit judges
  - barristers or solicitors of at least ten years' standing
  - appointed by the Lord Chancellor

**b) Jurisdiction**

- actions founded on contract or tort (except defamation) up to £ 50,000, equity matters up to £ 30,000 etc. (*too many number, p.45 of "Law", but not so important to know these figures!*)

**II. Criminal Courts****1. House of Lords****a) Composition**

- Lord Chancellor
- Lords of Appeal in Ordinary (Law Lords)
- other peers who have held high judicial office
  
- quorum: three
  - each judge delivers a separate speech
  - the verdict being a majority

**b) Jurisdiction**

- appeals from:
  - Court of Appeal (Criminal Division)
  - Divisional Court of Queen's Bench Division
  
- appeals only if:
  - these courts (see above):
    - certify that a point of law of general public importance is involved in its decision
    - either the Court of Appeal or the Divisional Court or the House of Lords gives leave to appeal on the ground that the point is one which ought to be considered by the House of Lords

**2. Court of Appeal (Criminal Division)****a) Composition**

- Lord Chief Justice
- Lords Justice of Appeal
- judges of Queen's Bench Division
  
- quorum: three
  
- two courts sit full time, third sits as required

**b) Jurisdiction**

- court may dismiss or allow the appeal

- any order in lower court may be quashed (*für nichtig erklären*)
- increase/decrease sentence

### 3. Divisional Court of the Queen's Bench Division

#### 4. Crown Court

##### a) Composition

- High Court Judges
  - puisne judges of the Queen's Bench Division
- Circuit Judge
- Recorder
  - part-time judge

##### b) Jurisdiction

- 90 centres (courts)
- all trials take place before a jury
- always:
  - murder
  - treason
- usually:
  - manslaughter
  - rape
- vast majority of indictable offences
- offences triable either way

#### 5. Magistrates' Court

- 900 magistrates' courts in England/Wales
- 98% of all criminal prosecutions in England and Wales are dealt with by magistrates

##### a) Composition

- there are two kinds of magistrates:
  - Justices of the Peace (**lay persons**)
  - Stipendiary Magistrates

##### (1) Justices of the Peace

- 30,000 in England/Wales
- appointed by the Lord Chancellor on recommendation of the Lord Lieutenant of the county/advisory committee
  - local people
    - prepared to give up at least **one day every two weeks**
    - unpaid (*may receive out-of-pocket-expenses*)
- aim: to have a good cross-section of people of good character on the bench
  - all social classes
  - male or female

## (2) Stipendiary Magistrates

- full-time paid magistrates
  - found in larger cities or towns
  - appointed by the Lord Chancellor
    - barristers or solicitors of at least **seven years'** standing

### b) Jurisdiction

#### (1) As a Court of Trial

- 2-7 judges try a case
  - sometime one single judge can try a case
    - i.e.: simple drunkenness
- maximum punishment for any offence
  - six months' imprisonment
  - fine of £ 5,000
- criminal offences can be divided into three classes:
  - offences triable only **on indictment** (document used in jury trials which states the offences and gives particulars = *formelle Anklageschrift*)
    - triable by a judge and jury in the **Crown Court**
  - offences triable only **summarily** (*summarisch, beschleunigt*)
    - triable i.e. in a magistrates' court
  - offences triable **either way**
    - i.e. summarily or on indictment
    - over sixty of them in schedule 3 of Criminal Law Act (1977)
    - the magistrates must offer the defendant the choice of trial either in the Crown Court or in the magistrates' court
      - if defendant chooses the Crown Court, the magistrates' court will only act as a court of preliminary investigation
- usually dealt with in magistrates' court:
  - i.e.:
    - petty theft
    - criminal damage
    - common assault
    - drunkenness
    - driving a motor-car without a driving licence

#### (2) As a Court of Preliminary Investigation

- the magistrates' court is called to determine:
  - whether the accused person, who is brought before the court, shall be committed to stand trial at the Crown Court
- magistrates decide whether the prosecution has made out a **prima facie** case (case which appears at first sight to be an offence) – if yes: then case goes to the Crown Court; if not: then accused has to be released
  - prosecution calls witnesses, produces exhibits (*Beweisstücke*)
  - accused can also call witnesses in support, but often he will reserve this for the actual trial
- accused may be either remanded
  - in custody (i.e. prison) *or*

- in bail

### (3) Miscellaneous

- liquor licensing
- making matrimonial orders for separation
- guardianship of minors
- etc.
  
- Juvenile Court (small division of magistrates' court)

## H. Criminal Procedure

### Scene:

- John Smith
  - 36, marriage, two children
  - sells furniture – needs his car
- on his way to his job:
  - he tries to overtake a lorry – but there is a motorbike
    - as he tries not to hit the motorbike he gets on the pedestrians and hits a woman who is killed

## I. Before Case goes to Court

### 1. Police Decision: Law broken?

- Police has to decide if law has been broken by John Smith
  
- John Smith might have been driving dangerously

### 2. Caution the Suspect

- (If police thinks so) they must caution the suspect:  
"You don't have to say anything. It may harm your defence if you fail to mention something which you later rely on in court."
  
- if police does not tell this, they cannot give the answers they have received to the court

### 3. Crown Prosecution Service: Case Goes to the Court!?

- **Crown Prosecution Service** decides whether or not something goes to court after a person was arrested by the police/whether or not a person should be prosecuted
- there are **two tests** in order to decide this question:

#### a) Evidential Sufficiency Test

- whether or not there is a prospect (chance) of more than 50% that the person is guilty

#### b) Public Interest

- is there any public interest in prosecuting the person (the person may die in two months so there is no use of spending the money for trial)
  
- John Smith is convicted of causing death by dangerous driving

#### 4. At Magistrates' Court: Question of Bail

- the question of bail is decided at the Magistrates' Court
- John Smith will probably get bail

### II. Types of Offences

#### 1. Indictable Offences

- the case is an indictable (strafrechtlich verfolgbar) offence (schweres Vergehen)
- it can only be tried in a Crown Court (b/c one can get up to **10 years** of imprisonment)

#### 2. Summary Offences

- ...minor crime which can only be tried in Magistrates' Court (*Ordnungswidrigkeit, Bagatellsache*)

### III. At Court

#### 1. Adversarial Court System and Criminal Procedure

- it is only important what happens at court
  - it is very important how the lawyer performs (and the witness)
- at court the accused has to stand up
- the court clerk reads out the accuse
- the accused is asked how he pleads
  - the plea is taken: guilty or not guilty
- the court is public (**normally** public is not excluded)

#### 2. Opening Speech: Prosecuting Lawyer

- outline of circumstances of what has happened and what witnesses will be called for the prosecution
- he talks about **burden + standard of proof**
  - **standard of proof:**
    - the amount of evidence which a plaintiff (or prosecuting attorney, in a criminal case) must present in a trial in order to win
    - different cases require different standards of proof depending on what is at stake
    - the common standard in criminal cases is:
      - beyond a reasonable doubt
        - for a criminal defendant to be convicted of a crime, the prosecutor must prove her case to the point that the jurors have no reasonable doubts in their minds that the defendant did whatever he is charged with having done.#
  - **burden of proof:**
    - the obligation of a party to prove his allegations during a trial
    - typically, the plaintiff must prove whatever allegations he included in his complaint in order to win his case
      - in criminal cases, as every man is presumed to be innocent until the contrary is proved, the burden of proof rests on the **prosecutor**, unless a different provision is expressly made by statute

- the defendant is given the opportunity to submit evidence to rebut the plaintiff's case
  - to rebut generally means to contest (*anfechten, bestreiten*) a statement or evidence presented by another

### 3. Examination of Witnesses

#### a) Prosecution Witnesses

##### (1) Prosecution Lawyer: Examination in Chief

- prosecution: Witnesses are called – “examination in chief”
- examination in chief:
  - ...to ask a witness questions (**by counsel for his side**) to give oral evidence in court
  - the prosecuting lawyer asks questions
    - you must **not** ask a question which can be answered with “**yes or no**”
      - no “**leading questions**”
        - b/c the witness shall give the answer and in a leading question the answer is in the question
    - the prosecution lawyer has not seen his witnesses before

##### (2) Defence Lawyer: Cross Examination

- the defence lawyer asks the questions – “cross examination”
- cross examination:
  - ...to question witnesses called by the other side in a case (*Kreuzverhör*)
- the defence lawyer is allowed to ask any question they want
- **aim:** destroy, discredit the proof given by the witness
  - at least cause **doubt**

#### b) Defence Witnesses

##### (1) Defence Lawyer: Examination in Chief

- by the defence lawyer

##### (2) Prosecution Lawyer: Cross Examination

- by the prosecution lawyer

### 4. Closing speeches (simple summary)

#### a) Prosecution

#### b) Defence

- **great advantage**, as they can adjust to what the prosecution said

### 5. Judge sums up (Impartial Summary)

- he decides/makes clear legal issues

### 6. Jury retires to consider Verdict



## 7. Sentence or not

- sentence has to be given
- it is either given the same day *or*
- there will be another hearing (b/c you need (i.e.) a medical report to find the right sentence)
- before judges make the sentence:
  - prosecution will tell him about the other crimes the accused was sentenced for before
  - defence gives the **plea in mitigation** (things said in court on behalf of a guilty party to persuade the court to impose a lenient sentence (*Plädoyer auf Strafmilderung*)
    - so defence gives reasons for a lower sentence

## I. Rules of Evidence

- very important for conducting crime
- admissibility: whether an evidence is allowed to be brought in court or not

## I. Competence and Compellability

- **competence**
  - ...most people are **able** to give evidence,
    - but: **compellability**
      - not all can be **forced** to do so
- i.e.:
  - the accused is not competent (and so not compellable) to give evidence for the prosecution
  - the accused is competent to give evidence for the defence but he cannot be forced (not compellable)
- married people:
  - husband/wife are both competent, but not compellable
    - only some **exceptions**:
      - attack or assault on a person...
        - under 16 years *or*
        - who is the husband/wife
      - sexual assault on a person under 16 years
- ex-wife/husband: competent and compellable (of course!)
- people who cannot communicate their evidence in court:
  - not competent and compellable
  - i.e. people who are:
    - very young
    - insane
    - deaf and cannot speak

## II. Identification Evidence

- case: “**R. v. Turnbull**” (1977)
  - the case is about mistaken identity

- the admissibility of ID evidence is decided by considering the circumstances of the identification
  - this admissibility test is called “**Turnbull-Test**”
    - One has to consider:
      - the duration of the observation (how long did the witness see the accused?)
      - the distance (between the witness and the accused)
      - quality of light
      - was their view impeded? (was there anything in the way?)
      - length of time between observation and the report being given to the police
      - material differences between the accused person and the witnesses’ description
- if the judge thinks the ID evidence is poor (referring to this test) he can rule the evidence inadmissible
- if the judge allows the evidence (rules it admissible) he will nevertheless warn the jury:
  - “Honest witness can sound convincing, but can be mistaken!”

### III. Opinion evidence

#### 1. General Rule

- evidence of opinion is not admissible
  - b/c the court deals with **facts**

#### 2. Exceptions

- experts’/specialists’ opinions
  - i.e.:
    - medical experts
    - ballistics experts
  - but the **judge decides** whether the opinion is allowed
- case: “**R. v. Clegg**”
  - very important case concerning opinion evidence

### IV. Legal Professional Privilege

- ...you cannot ask questions about what a lawyer told the accused or the other way around/you cannot bring in the evidence about what was heard about this conversation

### V. Hearsay Rule

#### 1. General Information

- ...a statement (oral or written) is only admissible in legal proceedings as evidence of the truth of what is (already) said
  - if made by a witness testifying (giving evidence) in those proceedings
- **legal proceeding** in court:
  - witness comes to court and says:

- “I knew he did it b/c my mother told me.”
  - inadmissible b/c it is hearsay
  - the mother has to come and testify
  - reason: otherwise cross-examination is not possible
  - witnesses can only testify what they saw/heard/etc.

## 2. Exceptions

- photographs
- computer printouts
- video recordings
- confessions
- defence of duress
- dying declaration
  - ...a statement made by a person who has died – said by them when they are dying and they knew that they were going to

## VI. Confessions

- ...a statement (oral or written) wholly or partly adverse (against the interest of a person) to the person who made it whether made to a person in authority or not
  - the judge decides whether it is admissible or not
    - **two factors** are important for the decision
      - oppression (was the confession a result of pressure or not?)
        - if yes, evidence is inadmissible
      - was anything done by the person who took the confession which would make the confession unreliable?
        - if yes, evidence is inadmissible

## J. Civil Procedure

## K. Divorce

## L. Inheritance Law