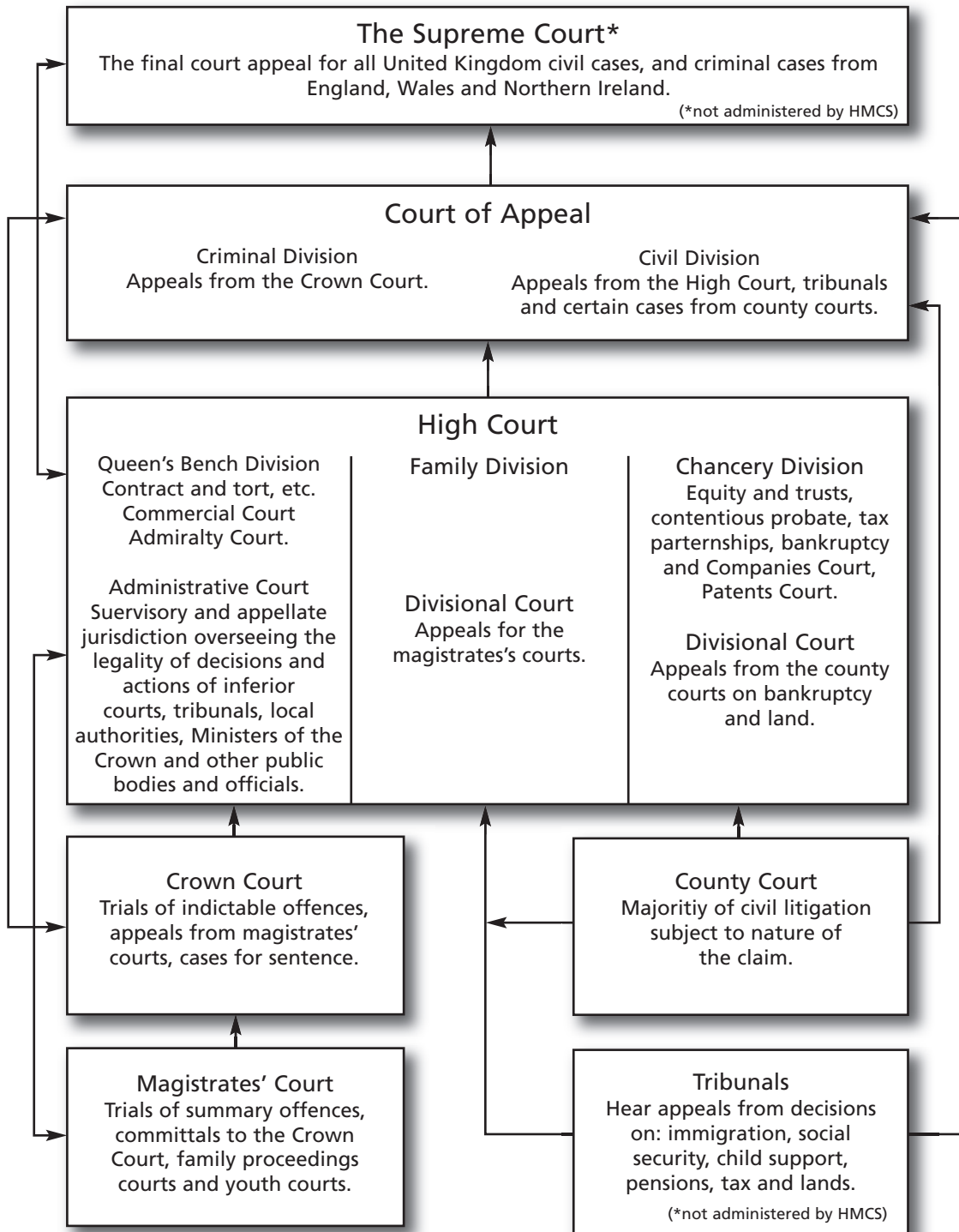


# Court system in the UK and Republic of Ireland

See below this diagram for differences in Scotland and Northern Ireland for lower courts. Also diagram showing court system in the Republic of Ireland.



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The court system in **England and Wales** can be considered as consisting of 5 levels:

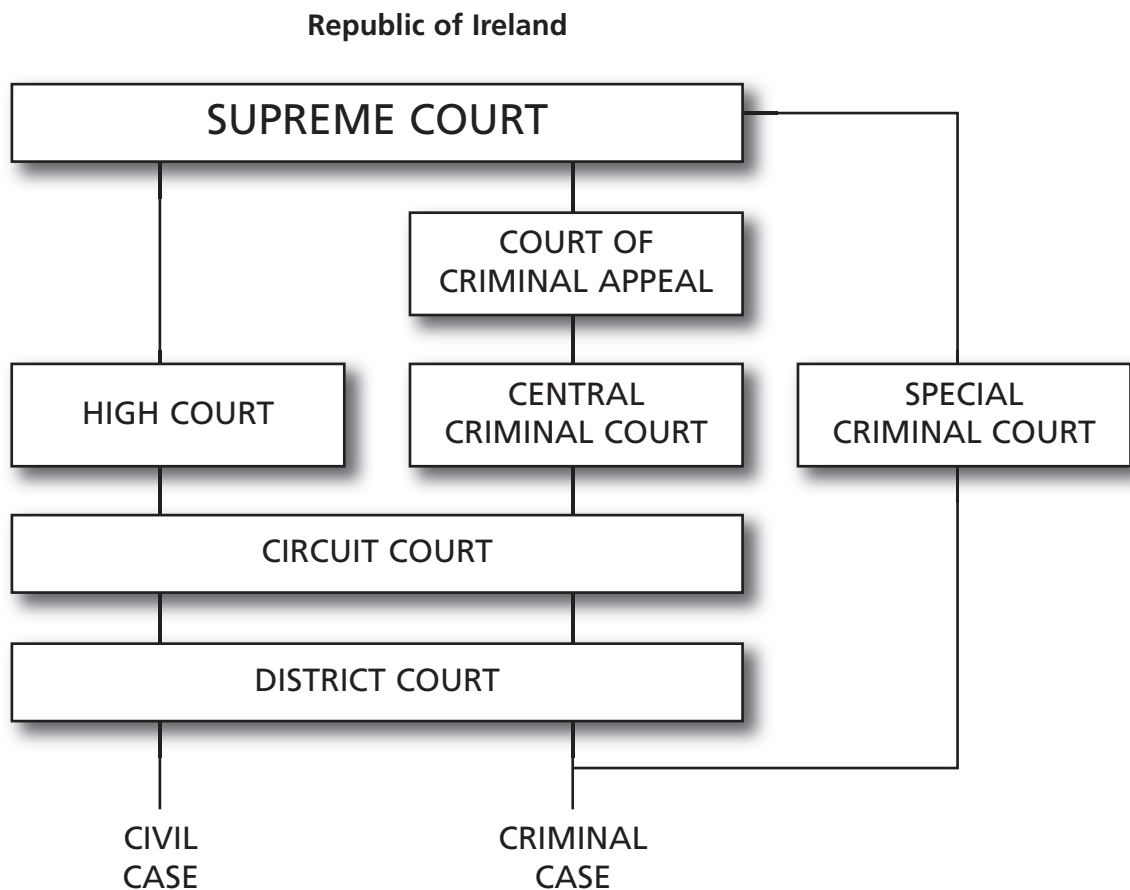
- Supreme Court (formerly the House of Lords) .
- Court of Appeal.
- High Court.
- Crown Court: County Courts.
- Magistrates' Courts: Tribunals Service.

The court system in **Scotland** can be considered as consisting of 4 levels:

- Supreme Court (formerly the House of Lords).
- Court of Session and the High Court of Justiciary.
- Sheriff Courts.
- District Courts.

The court system in **Northern Ireland** can be considered as consisting of 5 levels:

- Supreme Court (formerly the House of Lords).
- Court of Appeal.
- High Court.
- Crown Court and County Courts.
- Magistrates' Courts.



## Civil Law and Common Law Duties



Civil law mostly involves disputes between people, companies or other organisations. If you sue another person or a corporation, or if somebody files a lawsuit against you, your case will end up in a civil court.

Civil justice in England and Wales is usually dealt with by the county courts and the High Court. The High Court handles bigger and more complicated cases, while most county court cases are between people or companies who believe that someone owes them money. County courts also handle cases involving family issues, such as divorce, custody, and adoption.

### Civil justice in Scotland

Most civil cases in Scotland are handled in the Sheriff Courts. These cases can include debt, claims for compensation, divorce, eviction and anti-social behaviour. The Court of Session is the highest civil court in Scotland and is the court of appeal for most civil matters.

### Civil justice in Northern Ireland

The Northçeland Court Service is responsible for the Northern Ireland Supreme Court, county courts, magistrates' courts, coroners' courts and for certain tribunals. County courts and magistrates' courts are different from those in England and Wales, because they also deal with appeals from the magistrates courts in both criminal and civil cases.

### Republic of Ireland

The Courts of the Republic of Ireland consist of the Supreme Court, the Court of Criminal Appeal, the High Court, the Circuit Court and the District Court. The courts apply the laws of Ireland. Ireland is a common law jurisdiction and trials for serious offences must usually be held before a jury. The High Court and the Supreme Court have authority, by means of judicial review, to determine the compatibility of laws and activities of other institutions of the state with the constitution and the law. Except in exceptional circumstances, court hearings must occur in public.

### Common law general legal concept

Common law', also known as case law, or precedent, is law developed by judges through decisions of courts and similar tribunals rather than through legislative statutes or executive branch action. A "common law system" is a legal system that gives great precedential weight to common law on the principle that it is unfair to treat similar facts differently on different occasions. The body of precedent is called "common law" and it binds future decisions. In cases where the parties disagree on what the law is, an idealized common law court looks to past precedential decisions of relevant courts. If a similar dispute has been resolved in the past, the court is bound to follow the reasoning used in the prior decision (this principle is known as

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stare decisis). If, however, the court finds that the current dispute is fundamentally distinct from all previous cases (called a "matter of first impression"), judges have the authority and duty to make law by creating precedent. Thereafter, the new decision becomes precedent, and will bind future courts.

In practice, common law systems are considerably more complicated than the idealized system described above. The decisions of a court are binding only in a particular jurisdiction, and even within a given jurisdiction, some courts have more power than others. For example, in most jurisdictions, decisions by appellate courts are binding on lower courts in the same jurisdiction and on future decisions of the same appellate court, but decisions of lower courts are only nonbinding persuasive authority. Interactions between common law, constitutional law, statutory law and regulatory law also give rise to considerable complexity. However stare decisis, the principle that similar cases should be decided according to consistent principled rules so that they will reach similar results, lies at the heart of all common law systems.

## **Tort (Delict in Scotland)**

Following is some guidance as it applies in England and Wales. Tort Concerns civil wrongs, as distinguished from criminal wrongs, in the law of England and Wales. Some wrongs are the concern of the state, and so the police can enforce the law on the wrongdoers in court - in a criminal case. A tort is not enforced by the police, and it is a civil action taken by one citizen against another, and tried in a court in front of a judge. Tort derives from middle English for "injury".

## **Negligence**



A decomposed snail in Scotland was the humble beginning of the modern law of negligence. Negligence is a tort which targets a breach of duty by one person to another. The famous landmark case of *Donoghue v Stevenson*, in which Mrs Donoghue, the claimant, consumed part of a drink containing a decomposed snail while in a public house in Paisley, Scotland. The snail was not visible, as the bottle of ginger beer in which it was contained was opaque. Neither her friend, who bought it for her, nor the shopkeeper who sold it were aware of its presence. Donoghue sued the manufacturer, Mr Stevenson for her consequent illness, using negligence as, not having purchased the drink herself, the little consumer protection legislation available in 1932 was inapplicable. The members of the House of Lords agreed that Mrs. Donoghue had a valid claim, but disagreed as to why such a claim should exist. Lord MacMillan, as above, thought this should be treated as a new product liability case. Lord Atkin argued that the law should recognise a unifying principle that we owe a duty of reasonable care to our neighbour. He quoted the Bible in support of his argument, specifically the general, biblical principle that "love thy neighbour."

"The liability for negligence... is no doubt based upon a general public sentiment of moral wrongdoing for which the offender must pay... The rule that you are to love your neighbour becomes in law, you must not injure your neighbour; and the lawyer's 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."

Thus, in the world of law, he created the doctrine that we should not harm our neighbours. The elements of negligence are:

- 1 A duty of care.
- 2 Breach of that duty.
- 3 Breach causing harm in fact.
- 4 The harm must be not too remote a consequence of the breach.

### **Duty of care**

The establishment of a duty of care is, like negligence itself, broken up into further elements, a three step test (or in some cases more). *Donoghue v Stevenson* laid the groundwork for subsequent developments, and from the words of Lord Atkin's speech, he can be seen to refer to firstly, the concept of reasonable foreseeability of harm; secondly, the claimant and the defendant being in a relationship of proximity; and thirdly, and more loosely, it being fair, just and reasonable to impose liability on the defendant for his careless actions.

### **Breach of duty**

Once a duty of care has been established, it must be shown that a duty has been breached. The question the courts ask is whether the behaviour exhibited by the defendant fell below the threshold of a "reasonable man" (the objective test). In some cases where the defendant was in a special profession, e.g. being a doctor, the court will ask what standard of care a "reasonable doctor" or the like might have done. Allowance is usually made for the defendant's age and a lower standard of a "reasonable child of a certain age" is applied to children. On the other hand, no allowance is made for other personal circumstances, such as the fact that the defendant was inexperienced in the task he set out to perform. He is expected to perform this task as a reasonably skilled and competent person.

### **Causation**

Causation is complex, and is usually discussed in two parts. Simple causation is a question of whether "but for" the action by the defendant harm would have resulted. There has been some deal of discussion over whether a contributory cause is enough.

### **Remoteness**

After the complexities under the "but for" test have been addressed, the courts may still deny compensation if the harm was a very remote consequence of the initial wrong. So long as a type of damage is foreseeable, however, the manner in which it occurred – however remote – is of no concern to the courts.

### **Negligence defences**

Finding a successful defence absolves the defendant from full or partial liability for damages, which makes them valuable commodities in the court. There are three main defences to tortious liability.

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## **Volenti non fit injuria**

This is Latin for "to the willing, no injury is done". It operates when the claimant either expressly or implicitly consents to the risk of loss or damage. For example, if a regular spectator at an ice hockey match is injured when a player strikes the puck in the ordinary course of play, causing it to fly out of the rink and hit him or her, this is a foreseeable event and regular spectators are assumed to accept that risk of injury when buying a ticket. A slightly more limited defence may arise where the defendant has been given a warning, whether expressly to the plaintiff/claimant or by a public notice, sign or otherwise, that there is a danger of injury. The extent to which defendants can rely on notices to exclude or limit liability varies from country to country. This is an issue of policy as to whether defendants should not only warn of a known danger, but also take active steps to fence the site and take other reasonable precautions to prevent the known danger from befalling those foreseen to be at risk.

## **Contributory negligence**

This is a mitigatory defence, whereby a claimant's damages are reduced in accordance with the percentage of contribution made by the claimant to the loss or damage suffered. Thus, in, for example, evaluating a collision between two vehicles, if the wronged driver were not wearing a seatbelt, he would, most likely, be contributively negligent. The court will then quantify the damages for the actual loss or damage sustained, and then reduce the amount paid to the claimant by 20%. Contributory negligence can also function as a full defence, when it is assessed at 100%.

## **Illegality**

Ex turpi causa non oritur actio is the illegality defence, the Latin for "no right of action arises from a despicable cause". If the claimant is involved in wrongdoing at the time the alleged negligence occurred, this may extinguish or reduce the defendant's liability. Thus, if a burglar is verbally challenged by the property owner and sustains injury when jumping from a second story window to escape apprehension, there is no cause of action against the property owner even though that injury would not have been sustained "but for" the property owner's intervention. However, a trespasser may be able to recover damages due to the unsafe state of the premises.