

BTEC Law Level 3

Unit 1 Examined Unit

Dispute Solving in Civil Law

Booklet 1

Civil Law and the Civil Courts

Name:

Learning Objectives

- Demonstrate knowledge and understanding of the civil justice system

Success Criteria

- Identify the purpose of civil law and the courts used for first instance trials
- Explain the court system for civil cases including the appeals process and the role of the judge
- Evaluate the appeals process in civil law and the role of the Supreme Court in our Justice System

A case in Civil Law

Daisy De la Demornay had just passed her driving test. After the test, she drove home alone. While trying to change the radio station on her car stereo, she went round a sharp corner too quickly and lost control. Her car careered into Ichabod Monroe's house causing extensive damage to the wall and window.

As Daisy was uninsured, Ichabod wants to sue her for negligence for the money for the repairs to his house. Daisy has argued that as a newly qualified driver, the standards expected of her should be lower than for an experienced driver, and therefore she did not act negligently as it should be expected a newly qualified driver will not possess the same level of skill as an experienced driver.

Ichabod estimates the damage to be £15 000, but has other expenses amounting to £1 000 as he had to move into temporary accommodation as the house was unsafe until repairs had been carried out. Ichabod is also claiming that the incident has caused stress and depression leading to illness and loss of earnings amounting to £3 000 as a self-employed tree surgeon.

We will revisit this case throughout the unit and use it as a reference point to illustrate understanding.

A1. Aim and Purpose of Civil Law

Civil Law

The aim of Civil law is to deal with disagreements between two parties, where one individual can bring a court case against another if they feel they have been wronged. The idea of civil law is to put right a situation and to award an injured party for their losses and injuries. It puts them back to the position they were in before they were wronged. The civil law exists to protect individuals against one another and the state. The civil law sets out the rights and duties of individuals

Civil law is not about punishing anyone. In civil law a defendant may be liable (not the term liable, a defendant is not guilty in civil law) meaning they are responsible for another's injuries and should therefore pay accordingly.

How does it work?

The party who has been wronged (the claimant) takes a case to court in order to gain compensation or damages (money) from the party responsible for their damage or loss (the defendant). They might also want the court to order an injunction against the defendant which is a court order to force the defendant to do something, or more often, to stop doing something will order them to do something or stop them from doing something.

Burden of Proof

This is a key concept underpinning our justice system. Basically it means who has to prove what, and to what degree, to win their case.

In a civil court, the claimant has to prove that it is likely on the balance of probabilities that the defendant breached the rights of the claimant. This means the judge has to think that it is more than likely (51% likely) that what the defendant did breached the rights of the claimant and led to their injury or loss.

Civil law Summary

Purpose of the law	To uphold an individual's rights, to resolve disagreements
Purpose of the court case	To decide if someone has had their rights breached
Person starting the case	The individual whose rights have been affected
Legal name for person starting the case	Claimant
Other person involved	The party the claimant feels has breached their rights – known as the defendant
Courts used to hear first instance trials	County Court or High Court
People who make a decision	Judge, or very rarely, in only a few circumstances, a jury
Burden (standard) of proof	On the balance of probabilities (it is likely)
Decision	Claimant wins or loses the case, the defendant is liable or not liable
Powers of the court	Award of damages (money) injunction to stop the defendant doing something
How the cases are named	Jones v Smith – the case is referred to by the name of the two parties

Glossary I

Term	Meaning
Civil law	
Claimant	
Defendant	
Burden of Proof	
Liable	
Damages	
Injunction	

A2. Types of Civil Case

The Track System in Civil Courts

Cases in the Civil Court are allocated a 'track' depending on how much the claim is worth

Small claims track – for cases involving less than £10,000 – small amounts are dealt with in the small claims court (an informal and quick process in the county courts). People are encouraged to take action themselves and not use solicitors as this will reduce costs. Cases are heard by a District Judge. Often heard in private

Fast track – for cases between £10,000 and £25,000 – also dealt with by the county court, but the process and hearing can be longer. The case will usually be heard by a Circuit Judge and have a more formal procedure than the small claims court. Court sets very strict timetable for the pre-trial matters. Hearing takes place in open court with more formality than small claims cases. Hearing length is limited to one day, hence the name fast track.

Multi track – for very complex cases or ones over £25,000 – can be heard in the county court or the High Court when claims of over £50,000 are made for personal injury or claims over £100,000 when personal injury is not being claimed for. If in the county court, they will be heard by a Circuit Judge, and in the High Court, by a High Court Judge. The judge 'manages' the case from the moment it is allocated to him. He can order the parties to solve the dispute out of court before the trial date

Exercise

In our example case, which track would the case be allocated on – Explain why.

Civil Courts used for first instance trials

When a case goes to court, what type of court used, and the type of judge presiding over it will depend on the track the case was allocated. There are two first instance trial courts used for civil law cases:

County Court – This is the ‘lower’ civil court for all small claims and most fast track cases as well as some multi track cases (for example personal injury claims of up to £50,000). There are 200 County courts in the country. District judges will hear the lower value cases here whereas Circuit judges hear the higher value cases. .

High Court – The High Court has 3 divisions dealing with higher value cases (over £50,000 for personal injury or £100,000 otherwise) from the multi-track, or sometimes from the fast track if the case is particularly complex. The three divisions each specialise in different types of cases.

The Queen’s Bench Division (QBD) is the biggest of the 3 divisions and has the most varied jurisdiction. It deals with personal injury, negligence, libel, slander and breaches of: contract; statutory duty and the Human Rights Act. Currently has 71 judges

The Family Division – will deal with divorce, including disputes over children, property or money; adoption, wardship and other matters involving children; and judgments on behalf of those who are unable to make decisions for themselves, such as persistent vegetative state victims. The family division currently has 19 judges

The Chancery Division will deal with the resolution of disputes involving company law, partnership claims, conveyancing, land law, patent, mortgages, insolvency and professional negligence. There are 18 judges in the Division which also includes 4 specialist courts: Companies Court, Patents Court, Bankruptcy Court and the Intellectual Property Enterprise Court.

The Supreme Court is the highest court in the English Legal system. It exists to hear appeals from the Court of Appeal. It does not hear any first instance trials. The main job of the court is to rule on the interpretation of laws. It does not have the power to create new laws; just interpret those that already exist. There are 12 Justices of the Supreme Court. There are very strict rules controlled by statute laying down the terms under which a case can be appealed in the Supreme Court – therefore only around 80-90 cases are dealt with each year. They only deal with appeals on a point of law which is of general public importance.

Civil Appeal Courts

Original trial in	Appeal heard in
Small Claim (heard in county court by a District Judge)	County Court (heard by a Circuit Judge)
Fast track case heard by a District Judge	County Court (heard by a Circuit Judge)
Fast track case heard by a Circuit Judge	High Court (heard by a High Court Judge)
Multi Track case from High Court	Court of Appeal (heard by a Lord Justice of Appeal)

A further appeal can be made from the Court of Appeal to the Supreme Court if the matter involves a point of law of general public and constitutional importance and significance. As with criminal law, cases very rarely get referred this far and the Supreme Court will only review about 80 cases a year.

In the civil court, the appeals pass up through the judges hierarchy rather than passing up through the courts. Therefore the County Court has a two tier system.

In order to appeal you need a judge's permission. This will only be given if your appeal has a real prospect of being successful. You will need to submit your grounds for appeal. Each ground of appeal must show why the decision of the lower court was wrong or unjust because of a serious procedural or other irregularity in the proceedings in the lower court. In order to gain permission to appeal there must have been an error of law, an error of fact or procedural unfairness in your initial case.

<http://www.johnantell.co.uk/can-i-appeal> - This website explains the rights of appeal quite nicely.

Types and hierarchy of Judges

- **District Judge**
 - Lowest level of full time judge
 - **Sit in Magistrates' Court or County Court**
 - Must be a qualified barrister or solicitor
 - Gained experience for at least 5 years
 - In both courts they will decide the law and the facts and pass sentence or decide liability and set remedies in civil cases
 - An "Inferior" judge who cannot create binding precedent
- **Circuit Judge**
 - **Sits in crown court or county court**
 - In civil cases will decide the law and the facts and decide who should win the case and set remedies
 - In criminal cases they decide the law but the jury decide the facts and decide on guilt. Judge will pass sentence
 - Must be qualified solicitor or barrister
 - Gained 7 years' experience or been a district judge
 - A similarly qualified part time judge is called a recorder who is appointed for a 5 year period
 - An "inferior" judge who cannot create binding precedent
- **High Court Judge**
 - **Sit in High Court to hear civil first instance or appeals**
 - **Also hear most serious cases in crown court (murder etc.)**
 - In high court assigned to a division (72 in Queen's Bench, 17 in chancery and 18 in family division)
 - The high court and court of appeal is in a building in London called the Royal Courts of Justice
 - In high court decide the law and fact on first instance cases and decide liability and remedy
 - Also hear appeals as a panel of 2 or 3 judges
 - In criminal cases, judge decides the law and jury decides the fact
 - Will pass sentence on those found guilty
 - Must be qualified solicitor or barrister
 - Gained at least 7 years' experience
 - Circuit judges can also be promoted after serving for 2 years
 - A "Superior" judge, meaning they have the power to create precedent which means their ruling must be followed by judges dealing with cases with similar facts.

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- **Lord Justice of Appeal**
 - **Hear appeals in the Court of Appeal**
 - Deal with civil and criminal appeals
 - Currently 37 serving
 - Hear 7000 applications for appeal on criminal cases of which 1,800 are granted
 - Hear 3000 applications for appeal for civil cases
 - Decisions on points of law become precedent which lower courts then have to follow
 - Must be a qualified solicitor or barrister and gained 7 years' experience
 - Or must be an existing High Court Judge
 - A "Superior Judge" who can create binding precedent

- **Justices of the Supreme Court**
 - Only 12 of them
 - **Sit in the Supreme Court**
 - Hear appeals on important points of law
 - Must have held high judicial office in England, Wales, Scotland or Northern Ireland
 - Must have been able to act as an advocate in higher courts for 15 years
 - "Superior judges" who's decisions bind all other judges in England

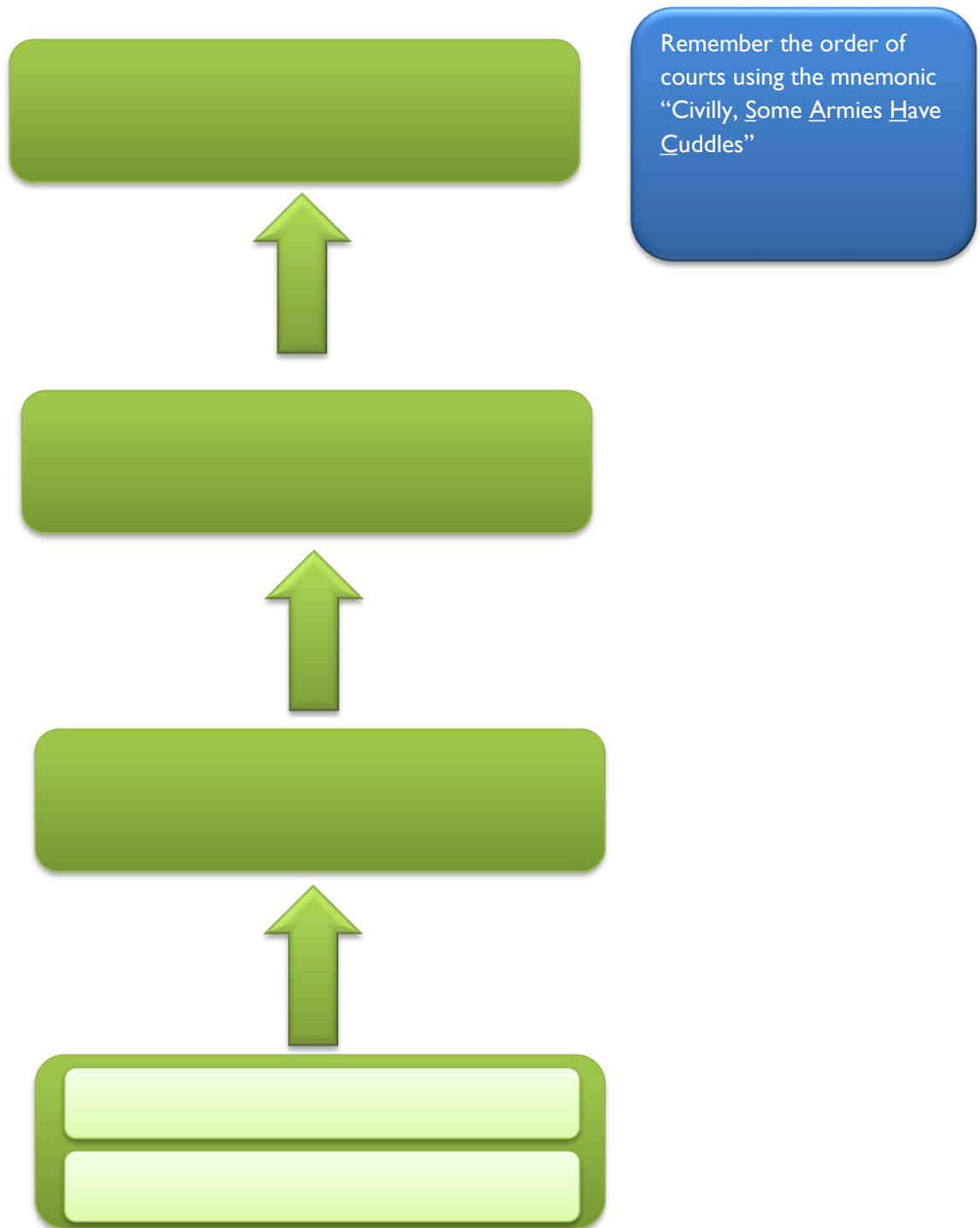
- **Selection of Judges**
 - Selected by the Judicial Appointments Commission
 - Application form filled in and between 3 and 6 references taken
 - Interview then takes place.
 - Recommendations passed the Lord Chancellor for appointment
 - Official appointment of all judges made by the Queen



The Role of Judges in a Civil Case

First Instance Trial Judge - Civil	In a civil trial , the judge will hear evidence from the claimant and the defendant and will act as “tribunal of fact and law”. This means they make a decision in favour of one party or other having considered the law and the way it applies to their case. If they find in favour of the claimant, they will then decide what remedy is suitable. This will be the award of damages (compensation) an injunction, or both. Before the case comes to court they will encourage the parties to reach their own agreement to save the case having to be heard in court. As in a criminal trial, it is also the Judge’s responsibility to ensure that both the defendant’s and claimant’s legal teams abide by the rules of the trial and that the laws the defendant has been accused of breaching actually apply to the facts.
Appeal Judge	When a case goes to appeal, this is very different to a retrial. Judges will often work in a panel to go through the facts of a case to ensure a fair process has been followed. They have the power to overturn a decision of a lower court or order a re-trial. Appeal judges in a court of appeal and supreme court have a large role to play in interpreting the laws and setting precedents for all similar cases in the future to follow. Much of what they do involves clarifying points of law and interpreting what a law made in parliament actually means. They also consider the impact of new evidence which was not available at the initial trial. Their other main role is regarding an appeal made against the length or type of award of damages imposed. In such appeals they will ensure that the original trial judge followed the guidelines set down for the relevant award.

Civil Court Structure & Judges



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The Civil Courts

Complete the following table to show an understanding of the civil courts.

Case details	Track	Court heard in	Judge overseeing the trial	Appeal Court
A dispute of £300 over a broken fence	Small claims			
A libel case seeking damages of £500 000			High Court Judge	
A complex multimillion £ divorce case				Court of Appeal
A straightforward negligence case with damages of £30 000 being sought				High Court (Queen's Bench Division)
A complex negligence case with damages of £50 000 for personal injury being sought	Multi Track			
A case involving a claim for damage worth £6 000			District Judge	
A complex dispute over land worth £1 million		High Court (Chancery Division)		
A contract dispute where damages of £2 million are being sought				Court of Appeal
A case over a disputed will worth £23 000		County Court		
A dispute over personal injury claim for £40,000			Circuit Judge	

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Revision Exercise

You have been given the details of four clients: For each, you need to write notes for their file outlining the following:

1. Which court the case will have its first instance hearing
2. The track the case will follow
3. The type of judge likely to hear the case
4. The role of the judge in the case
5. The requirements for an appeal
6. The court and judge likely to hear an appeal should it be granted
7. The role of the judges at the appeal

Miss Annabella Augustine

Miss Augustine had her fence damaged by her next door neighbour during a party. Although Annabella had the fence fixed immediately in order to keep the neighbour's Alsatian from entering her garden and possibly attacking her own Jack Russell, the neighbour has refused to pay her back for the damage he caused. Miss Augustine is seeking £300 for the cost of the repairs

Mr David Morrison

David Morrison, a Premiership footballer wishes to sue a national daily newspaper who printed a story which implicated him in a match fixing scandal and which he claims is untrue. He claims a transfer to a top team collapsed as a result of the story, and he is seeking damages totalling £1,000,000.

Albert Arbuthnot

Albert paid £20,000 for a car from a local dealer. The dealer sold him the car claiming it had done 30,000 and assured him that it was in good condition and had just passed its MoT. After having the car a week the car broke down. The mechanic who looked at the car said from the state of the engine it was more likely that the car had done closer to 70,000 miles. He also told Albert the car was in a bad condition and would never pass an MoT. Albert demanded his money back from the dealer who has refused.

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Glossary

Term	Meaning
First Instance Trial	
Appeal	
County Court	
District Judge	
Circuit Judge	
High Court Judge	
Small Claims Track	
Fast Track	
Multi Track	
Inferior Judge	
Superior Judge	
Precedent	

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Further Reading

The following websites are useful sources of information and good reference points for your further reading

Website	Content
http://www.inbrief.co.uk/legal-system/difference-between-civil-criminal-law/	What is civil law
https://www.judiciary.gov.uk/you-and-the-judiciary/going-to-court/county-court/	What is the county Court?
https://www.judiciary.gov.uk/you-and-the-judiciary/going-to-court/high-court/	What is the High Court? High Court Structure
https://www.supremecourt.uk/	Details of the Supreme Court
https://www.judiciary.gov.uk/about-the-judiciary/who-are-the-judiciary/judicial-roles/judges/district-judge-role/	Role of a District Judge
https://www.judiciary.gov.uk/about-the-judiciary/who-are-the-judiciary/judicial-roles/judges/circuit-judge/	Role of a Circuit Judge
https://www.judiciary.gov.uk/about-the-judiciary/who-are-the-judiciary/judicial-roles/judges/high-court-judges/	Role of a High Court Judge
https://www.judiciary.gov.uk/about-the-judiciary/who-are-the-judiciary/judicial-roles/judges/coa-judges/	Court of Appeal Judges
https://www.judiciary.gov.uk/wp-content/uploads/2012/08/courts-structure-0715.pdf	Court structure
https://www.supremecourt.uk/docs/a-guide-to-bringing-a-case-to-the-supreme-court.pdf	How to appeal in the Supreme Court
http://www.johnantell.co.uk/can-i-appeal	Appealing in a civil court
https://www.judiciary.gov.uk/you-and-the-judiciary/appeals-process/	The appeals process