Which jurisdiction would you like to know more about?

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The British Empire may have ended but its common law traditions live on.

Much like the English language the influence and application of specific British laws have changed over time.

But, peculiar as they may seem, the principles of common law are as robust as ever. The variations of court structure and the interrelated legal niceties that evolved across a diverse collection of jurisdictions are as fascinating as they are esoteric; and this evolution is the subject of this book.

It doesn’t seek to provide a comprehensive overview, rather it provides an insight into countries within the common law world through case studies complemented by diagrams. Through this we hope to provide you with a rich flavour of our common law world.

And it’s vast. What we now consider to be the common law world comprises a multitude of countries drawn from both previous and current member states of the Commonwealth of Nations (formerly the British Commonwealth), crown dependencies and British Overseas Territories (amongst other jurisdictional entities).

Countries like Jamaica, Trinidad and Tobago and New Zealand inevitably drew inspiration from the UK’s court structure, with many having the Judicial Committee of the Privy Council (JCPC) as the final and highest court of civil and criminal appeal.

The JCPC, created under the Judicial Committee Act 1833, aimed to rectify some of the problems identified in relation to how it functioned as the final court of colonial appeal.

The existence of the JCPC brought and still brings some degree of uniformity in the common law throughout the Commonwealth and other foreign territories, without, in theory, compromising individual countries’ freedoms in developing their own laws.

It is interesting to note that the judgments handed down in cases before the JCPC take the form of advice to the Monarch, her colonial subjects approaching the “throne” for justice.

Over time, and with the separation of some former states from the United Kingdom, constitutional changes evolved in these countries that marked a gradual separation from the UK’s judicial system.

With the introduction of the Statute of Westminster in 1931, Australia, Canada, New Zealand, the Republic of Ireland (then the Irish Free State), South Africa and Newfoundland were given legislative powers equal to Britain.

Its provisions laid out that laws passed by the British Parliament following its enactment did not extend to the...
laws of the Dominions unless with their consent and at their request.

This therefore enabled these countries to design and implement their own extra-territorial laws. This has left us with the legal systems we see today, injected with differing influences, to create hybrid systems.

Examining these judicial institutions, it becomes clear that the organisation of some do not follow the “logical” format of the UK system; that is, to have the Supreme Court as the final appellate court, succeeded by the Court of Appeal and then the High Court, for example.

One particular country of note in this respect is Australia, with its somewhat inverted hierarchy.

This eBook is organised by jurisdictional case study according to geographic area, within these sections there being an overview of each country’s court hierarchy as well as constitutional and historical background to explain its current structure — how it has changed and how changes in the British system have provided an influence.

It is intended to serve as a resource for students, academics and professionals, to complement studies of the case studies’ court structures or to serve as an introduction into these areas.

**An Introduction to the Judicial Committee of the Privy Council**

The JCPC is the judicial arm of the Privy Council, the latter being a collection of Ministers who sit as Privy Counsellors formally advising the sovereign on the exercise of the Royal Prerogative and together (as Queen-in-Council) issue Orders in Council and Royal Charters.

The Privy Council as a single entity originated at the Norman Conquest, and the council or court—known as the Curia Regis —was where the King exercised his jurisdiction over petitions submitted to him by subjects who had grievances against the administration of justice.

It faced a major challenge in 1641 with the introduction of the Habeas Corpus Act 1640. This removed the Privy Council’s judicial powers in the Court of Star Chamber.

This court gained particular popularity during the Tudor period as a venue for proceedings concerning serious crimes such as perjury, slander and riot, as well as those involving the rich and powerful of the kingdom.

It came to its fore when common law courts were either unable or unwilling to enforce the law because of corruption and influences of power.

In 1707 with the Act of Union, the Privy Councils of England and Scotland were merged into a single body.

A distinct judicial arm was added following the passing of the Judicial Committee Act 1833, at the insistence of Lord Chancellor Henry Brougham, who sought to rewrite the deficiencies in the Privy Council as a final court of appeal.

The new body assumed some of its power from the Privy Council Appeals Act 1832, which abolished the High Court of Delegates and therefore subsumed ecclesiastical and other routes of appeal within the mandate of the JCPC.

The (now repealed) Appellate Jurisdiction Act 1876 that followed reaffirmed the jurisdiction of the JCPC over colonial appeals in section 14.

The modern day entity sits in Middlesex Guildhall,
Westminster, and presides over cases of British dominions, Commonwealth nations and other countries with statuses such as British Overseas Territory.

It also hears questions on devolution, such as the functions and powers of the legislative and executive authorities in Scotland, Wales and Northern Ireland.

Domestically it has a narrow jurisdiction, which will be discussed in the next section.

The Counsellors sit in Court Room Three (pictured) of the UK’s Supreme Court when giving advice on cases.

Typically they are drawn from Justices of the Supreme Court, including Lady Hale and Lord Neuberger, acting impartially for the jurisdiction of the case in question.

They are jurisdictionally and institutionally detached from England and Wales or the UK in their function.

In many of these countries the JCPC sits as the highest appeal court in either civil and/or criminal cases, although in the UK it is limited to particular disciplinary proceedings and questions of devolution.

• Precedent and the JCPC

The nature of precedent for cases heard by the Committee is a rather confused affair.

It seems somewhat anomalous, given that it sits in London and that Supreme Court judges hear the cases, that decisions of the JCPC do not bind the domestic courts of the United Kingdom.

Instead they have a persuasive force in proceedings; see *Sinclair Investments (U.K.) Ltd v Versailles Trade Finance Ltd (in administrative receivership)* [2011] 3 WLR 1153.

In *Sinclair* a general rule was established that the Court of Appeal should follow its own decisions in preference to those of the JCPC, unless it could be shown that its decisions had been decided *per incuriam* or were of doubtful reliability.

Before *Sinclair* came the case of *Attorney General for Jersey v Holley* [2005] 3 WLR 29 in which the defendant was convicted of murder of his girlfriend after a long and stormy relationship, at the end of which she boasted while they were both drunk about her sexual infidelity.

The crux of the case was the defence of provocation (which he plead at his first trial), found in section 3 of the Homicide Act 1957 and correspondingly its counterpart, the Homicide (Jersey) Law 1986.

The main hindrance for the judges was the differing approaches taken in the JCPC case of *Luc Thiet Thuan v The Queen* [1997] AC 131 and the House of Lords judgment in *R v Smith (Morgan)* [2001] 1 AC 146, specifically as to the application of the objective standard.

Should the standard be solely that of the reasonable man as the JCPC decided or that of the House of Lords decision, referring to the subjective individual? It is interesting and
Perhaps significant to note that Lord Hoffmann presided over *R v Smith (Morgan)* before sitting on the Judicial Committee's case dealing with a similar area of law.

This, alongside the fact that nine of the 12 Law Lords (also hearing cases in the House of Lords) were to hear the case, can indicate that the case set out to reconcile issues that had been faced in domestic court of appeal cases.

Those where there was a conflict between the system of precedent in English law binding them to decisions of the House of Lords, and judgments of JCPC cases which contradicted those of the House.

In his judgment Lord Phillips, Chief Justice, even contemplated the possibility that Committee cases could take precedence over those from the House of Lords in domestic cases.

Where that is the case, he suggested, the decision of the JCPC would be superior to that of the Law Lords sitting in the House.

The decisions in the above cases are particularly interesting when considering that judgments handed down by the Justices in their role as Counsellors are officially only binding on those countries that retain the Committee as their final court of appeal.

In other words, binding precedents are created, as opposed to the persuasive precedent of JCPC cases in the United Kingdom.

Similar to other superior courts of record, the Committee is also not strictly bound by its own precedents.

It can depart from its decisions if it concludes that a previous decision of the body was incorrect, as with *Sinclair*.

**What is the future of the Committee?**

In its current formation the Committee is facing challenges from Jamaica as well as Trinidad and Tobago, the leaders of both countries suggesting a break from the court in due course.

Timings as to this intended abortion is not clear at the moment, and indeed it may be that it is little more than political rhetoric, but these rumblings shouldn't be discounted.

For now it appears that the JCPC is safe from becoming obsolete given there remains a large number of jurisdictions, some of which are not covered in this book, for which this Committee is the final court of appeal.

**Key Case: Cushing v Dupuy (1880) 5 App Cas 409**

At the crux of this case was whether a sale of plant and effects from the insolvent brewing company McLeod's to the notary Cushing was valid within the meaning of sections 1027 and 1472 of the Civil Code of Lower Canada.

The decision is considered across the Commonwealth for its dicta on the status of the royal prerogative, leave to appeal and binding precedents in jurisprudence of the JCPC.

A key principle derived from the case is that the JCPC is not bound by its own decisions, in contrast to the established principle of *stare decisis* (“to stand by decisions”) followed by other British courts.
The role of the Judicial Committee of the Privy Council (JCPC) is limited in its application.

Whilst it retains prominence in civil, criminal and constitutional matters in many countries, its national jurisdiction in devolution matters concerning Scotland, Northern Ireland and Wales has been passed to the Supreme Court of the United Kingdom.

This lack of prominence in domestic matters derives from the fact that originally the JCPC was established as a final court of appeal for Great Britain/the United Kingdom’s overseas territories.
In Tudor and Stuart times, the judicial functions of what is now the JCPC were undertaken by the Court of Star Chamber. During the reign of Elizabeth I, for example, it sat on Wednesdays and Fridays to consider the cases of the most powerful of the country, whom the “normal” judiciary may have been too afraid to pass judgment on.

Away from the Court itself, Privy Counsellors were despatched to localities across the countries, serving as Justices of the Peace hearing cases, which if necessary could be appealed to the Privy Council.

In 1907 the CAA was introduced, creating the Criminal Appeal Act creating the Court of Criminal Appeal. It was superseded by the Criminal Division of the Court of Appeal for England and Wales which we are familiar with today.

Records suggest that the JCPC has never been the final court of appeal for civil and criminal cases heard in England and Wales. While, in its earlier formation as the Star Chamber, it gave decisions on cases, its distinction from the common law courts of the time indicates its lack of presence as a domestic court handing down judgments on the common law.

There is one anomaly worth mentioning—the JCPC can hear domestic appeals from the Disciplinary Committee of the Royal College of Veterinary Surgeons and under the Pastoral Measure 1983 (solely applicable to England) on certain schemes of the Church Commissioners.

It was recognised in *Samuel McKee Lawther v The Council of the Royal College of Veterinary Surgeons* [1968] 1 W.L.R. 1441, that an appeal from the Disciplinary Committee of the Royal College of Veterinary Surgeons “under the Veterinary Surgeons Act 1966, was by way of a rehearing in the same sense as an appeal to the Court of Appeal from a judge alone”.

**Key Case:** *Thomas Bonham v College of Physicians* (1572-1616) 8 Co Rep 107 or “Dr Bonham’s Case”

An antiquated case with fascinating appeal, it was first brought when Bonham (a qualified doctor in physic medicine) was found to be practising medicine in London without a license.

Having been summoned to the London College of Physicians and deemed unfit to practise, he chose to ignore the order against him, resulting in his arrest and being kept in the custody of the College censors.
Sir Edward Coke, then Lord Chief Justice, delivered the judgment in which he declared that the censors had no authority to imprison or fine him.

At a time when Crown sovereignty was at a pinnacle it held much importance for declaring that legislation passed by the English Parliament was deemed subordinate to the common law created by the judiciary. Contemporary scholars have even debated as to its influence on the judicial review system of the United States.

The Court Structure of England and Wales

- **The Supreme Court** — The superior court for the United Kingdom, it hears appeals on civil and criminal matters from England, Wales and Northern Ireland, as well as civil cases from Scottish courts.

Cases are brought when they are deemed to be of significant public importance.

- **Court of Appeal** — Receiving appeals from the High Court, the Court of Appeal of England and Wales sits in the Royal Courts of Justice along the Strand in London.

It is comprised of a Criminal and a Civil Division, led by the Lord Chief Justice and Master of the Rolls respectively. Appeals are heard from the High Court.

Permission to appeal is required from either the Court of Appeal itself or the subordinate court from which the case is being appealed.

- **High Court** — Sitting in the Royal Courts of Justice and a few provincial centres, it features the Queen’s Bench (QBD), Chancery and Family Divisions, hearing appeals from subordinate courts and first instance cases. The Chancellor of the High Court is president of the Chancery Division, hearing civil issues such as insolvency disputes, enforcement of mortgages and intellectual property matters. The Division also contains the Patents and Companies Court.

The QBD on the other hand has both civil and criminal jurisdiction, including applications for judicial review, cases being heard by the President of the Division.

Civil QBD cases are heard on most contractual issues, unless allocated to Chancery, and those concerning tort. The Division also consists of various courts such as the Commercial Court.

In the Family Division cases will be appealed from Family Proceedings Court and those transferred from County or Family Proceedings courts.

- **County Court** — A subordinate court like the Crown Court, the County Court deals with civil matters, the vast majority of which do not leave this court. If they do, they are appealed to the High Court’s relevant division.

Their jurisdiction ranges from businesses seeking to recover money they are owed, to bankruptcy, wills and trusts. Typically circuit judges hear those cases worth over £15,000 but may hear those of lower value.

District judges hear most of the cases. Its business also includes family matters, which are heard by a specialist family circuit judge.

- **Crown Court** — Dealing with serious criminal cases including: those sent for trial by magistrates’ courts involving indictable only offences, sentencing hearings and appeals against the decisions of a magistrates’ court, Crown
Courts are staffed by circuit judges and recorders. In some instances High Court judges will sit on those cases deemed the most serious, such as murder. All Crown Court cases start in the magistrates’ court. Cases are appealed to the High Court.

- **Magistrates’ Courts** — The lowest court in this system, more than 90% of its caseload will be disposed of there. Cases heard may be for the less serious summary offences, either-way offences which can be heard in a magistrates’ or crown court, or indictable-only offences which must be heard in a crown court. Often magistrates’ courts will have a youth court within it, hearing cases for children aged 10 to 18. Cases from the Youth Court may be sent to Crown Court when they concern serious crimes like murder or rape.

- **Tribunals** — A different system to the standard courts, tribunals offer a more informal means by which to resolve disputes. In Immigration and Asylum Cases the room is more court-like, whereas appeals regarding Social Security or Mental Health are more likely to be centred around a single table in a side room. Cases from the Upper Tribunal and Employment Appeal Tribunal are appealed to the Court of Appeal.

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* On judicial review
† Where, for example, an appeal against conviction or the Attorney General refers points of law following the defendant’s acquittal by the Crown Court
‡ Tribunals have their own superior court of record called The Upper Tribuna. It consists of four chambers from which appeals go to the Court of Appeal
§ In certain cases only, can a “leapfrog appeal” occur, but only in civil cases. According to strict conditions laid out in sections 12 to 16 of the Administration of Justice Act 1969
SCOTLAND

Following the Union with England and Wales in 1707, the laws of the jurisdictions remained separate, even though the Scottish parliament was abolished in favour of a UK Parliament at Westminster.

Scots law is a mixed-law, or hybrid, system that draws influences from the English and Welsh common law and its civil Roman law origins.

It was around the late thirteenth century that the Church of Rome exerted its influence on the Scottish state, with its role in the administration of law, such as the establishment of ecclesiastical courts.

This influence of canon law, and therefore civil Roman law, permeated the Scottish legal system and left a lasting impression – a system based on duties and obligations.

Its hybrid nature was brought even more to bear when considering its ties with France in the fourteenth century.

The establishment of the Court of Session in 1532 provided Scotland with a supreme court staffed by professional judges, determining matters previously administered by the ecclesiastical tribunals.

This Reformation led to the decline of Roman canon law influence.

With the Act of Union 1707, however, influence from English law grew with Scotland sharing a legislature with its English and Welsh counterparts.

In the Scotland Act 1998, provision was made for the establishment of a new Supreme Court for the United Kingdom, assuming the previous role of the JCPC in the resolution of legal issues arising from devolution. This is contained in section 32.

The Supreme Court became the highest court of appeal in civil cases, but in criminal matters the High Court of Justiciary remained the final appellate court.

The Scottish devolution case law of the Judicial Committee, prior to the UK Supreme Court assuming this function, developed the court’s jurisdiction so it could hear devolution appeals, even where the lower courts refused to hear and determine the devolution issue which the parties had sought to raise before it.

In McDonald (John) v HM Advocate [2008] SCCR 154 the Judicial Committee held that it had jurisdiction to hear a devolution issue appeal, even where the appeal court refused to allow a devolution minute to be received.

Special leave to appeal may be granted if the case raises a point of general public importance warranting the Board’s consideration.

In circumstances where the Scottish appeal court refuses leave to appeal a devolution issue to London, the UK Supreme Court has power to overrule this refusal and itself grant the applicant special leave to appeal to the court under paragraph 13 of Schedule 6 to the Scotland Act.

The English published copy of the Articles of Union 1707
The Court Structure of Scotland for civil cases

- **Supreme Court of the United Kingdom** — Established in 2009 to replace the House of Lords, the Supreme Court has jurisdiction over civil cases before the Scottish courts.

  In this capacity it sits as the highest appellate court.

- **Court of Session** — As Scotland’s supreme domestic civil court, the Court of Session is subdivided into the Inner and Outer House.

  The former is primarily the appeal court, hearing cases which originate from the subordinate Outer House and Sheriff Courts. It assumes some degree of first instance business, but this is more the exception than the rule.

  As for the Outer House, this court is staffed by 22 Lords Ordinary, sitting alone or in some cases with a civil jury.

  The Lords hear first instance cases spanning a plethora of civil matters such as tort and commercial cases, as well as judicial review.

  In this respect it can be likened to being the lower house of the Court of Session.

- **Sheriff Courts** — These local courts of civil jurisdiction in Scotland are the inferior civil law courts in Scotland, as well as having jurisdiction in criminal law cases (as will be discussed).

  The Sheriff Principal hears appeals in civil matters, and in summary and ordinary case appeals the Chief Sheriff may hear an appeal.

  Its jurisdiction is limited to all claims under £5,000 but is otherwise similar in terms to the Court of Session.

  Cases range from the more ordinary to highly complex bankruptcy cases, and it is some of the latter which may be appealed to the Court of Session.
The Court Structure of Scotland for criminal cases

• High Court of Justiciary — Unlike the civil system, criminal Scots law cases find their last resort in this court.

Largely, it sits as an appeal court, akin to the Supreme Court of the United Kingdom. It hears appeals from the High Court itself, Sheriff Courts and Justice of the Peace Courts. In certain instances, the High Court can sit as a court of first instance for the most serious cases.

• Sheriff Courts — They operate akin to the Crown Courts of England and Wales, given the role of Sheriffs to sit as trial judges.

The Sheriffs’ jurisdiction mirrors that of judges in the Crown Court, hearing both summary and solemn (where a jury of 15 men and women will be assembled) procedure offences.

In cases that fall under the latter, however, there is a departure from the Crown Courts we know in England and Wales.

In such instances the maximum penalty available to impose is five years imprisonment or an unlimited fine, or alternatively various methods of disposal such as probation or community service.

• Justice of the Peace Courts — A relatively new model of court in Scotland, the Justice of the Peace Courts have gradually replaced the former District Courts, which had been operated by the relevant local authorities.

They provide a service that is unique to the Scots law system, yet in part replicates the English and Welsh Magistrates’ Courts. The lay Justice can either sit alone or in a bench of three when hearing cases on less serious summary crimes, such as speeding or breach of the peace.

Alternatively, a stipendiary magistrate, legally qualified as a solicitor or advocate, can preside over the case sitting alone. Akin to the British tradition, Clerks of the Court provide legal advice on the law and procedures at hand in each case.
The country that is Northern Ireland was created on 3rd May 1921 following the Government of Ireland Act 1920, when it opted out of the Irish Free State dominion. The latter, which was created on 6th December 1922 by way of the State Constitution Act 1922, encompassed the whole island of Ireland.

This change came following a fractious relationship with Great Britain on the matter of Home Rule and rule by the UK.

Like with matters on devolution regarding Wales and Scotland, Northern Ireland has recourse to the Supreme Court on questions concerning the validity of Acts of Parliament.

With the introduction of the Constitutional Reform Act 2005 which provided for the establishment of the new Supreme Court of the United Kingdom, the (as it then was) Supreme Court of Judicature of Northern Ireland was renamed the Court of Judicature of Northern Ireland.

This Court consists of the separate Court of Appeal, the High Court and the Crown Court.

The Court of Appeal and High Court sit at the Royal Courts of Justice in Belfast (its entrance pictured).

The former hears appeals on criminal matters from the Crown Court and civil matters from the High Court, as well as on points of law from the subordinate courts.

In contrast, the High Court is comprised of the Chancery, Queen’s Bench and Family Divisions.

The placard above the entrance to the Royal Courts of Justice in Belfast

The Court Structure of Northern Ireland

- **The Supreme Court** — Northern Ireland, like England and Wales, assumes the UK Supreme Court as its court of final instance in civil and criminal matters.

  The Law Lords hear appeals on points of law in cases which are deemed to be of significant public importance.

- **The Court of Appeal in Northern Ireland** — Hearing appeals on points of law in criminal and civil cases from all subordinate courts, the Court of Appeal is the highest domestic court in the country itself.

  Its arrangement mirrors that of its British counterpart which sits in the Royal Courts of Justice in the Strand, London.

- **The High Court of Justice in Northern Ireland** — In a similar vein to its English equivalent, the Court is split into three divisions: Queen’s Bench, Family and Chancery. These focus on the administration of justice in civil law cases.

  Cases of greater importance, substance and
complexity are referred to the High Court from the County Court.

- **Crown Court** — The Crown Court hears serious criminal cases.

  Indictable offences, and those triable “either way”, are committed for trials in the Crown rather than Magistrates’ Court.

  This exclusive jurisdiction over offences charged on indictment means that the Court’s docket is occupied by cases of a more serious nature than those disposed of at Magistrates’ level.

- **County Court** — As the main civil court in Northern Ireland, it hears a wide range of cases within non-criminal law.

  Some of the cases that are commenced at this level are suitable for trial and therefore would be committed to the High Court, while others will be disposed of without going any further than the County level. Some cases will have previously been appealed from the Magistrates’ Court.

- **Magistrates’ Court** — Magistrates’ Courts encompass their namesake, as well as youth, family proceedings and domestic proceedings courts. Their docket features less serious criminal cases, as well as preliminary hearings into those that are more serious.

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*In certain cases only, a “leapfrog appeal” can occur, but only in civil cases. According to strict conditions laid out in sections 12 to 16 of the Administration of Justice Act 1969*
THE BRITISH ISLES AND IRELAND

REPUBLIC OF IRELAND

The whole of Ireland united with Great Britain in 1801 following the Irish Rebellion of 1798. The then British Prime Minister, William Pitt the Younger, believed that a union was the necessary solution to strengthen the connection between the United Kingdom and Ireland – a move that was met with little enthusiasm from the Irish.

It was at this time that the Irish state had the right of appeal to the House of Lords, as its final court of appeal, conferred upon it. It was not until its separation from the United Kingdom that it referred to the JCPC between the years of 1922 and 1933.

With the divide of Ireland in 1921, it was laid out in articles 1 and 2 of the Anglo-Irish Treaty, that the (now) Republic would have the same constitutional status as Canada and a few of the UK’s other dominions, creating the Irish Free State (IFS) and thereby be a member of the British Commonwealth. Northern Ireland chose to opt out of this agreement to become the IFS, as provided for in the Treaty.

Rights of appeal to the JCPC were not abrogated however, as Article 66 of the Irish Free State Constitution 1922 laid out. With its new status as the Irish Free State, Irish Parliamentarians were made to swear an oath to be faithful to “H.M. King George”.

During the 1920s and 30s feelings of discontent intensified toward the Privy Council, for it represented a serious affront to Irish sovereignty. At the Imperial Conference of 1930 for example, the Irish delegation’s request to abolish appeal was refused leading them to doubt the utility of attending future conferences.

In time the Irish government under WT Cosgrave prepared legislation aimed at unilaterally abolishing the appeal, introducing legislation in 1931.

Even on falling from power in 1932, the new de Valera (pictured) government carried on with this campaign. In 1933 an Act of the Oireachtas (Irish legislature) finally abolished this right of appeal.

This marked a momentous occasion, for it was the first British dominion to abolish appeals to the JCPC.

In Moore v AG of the Irish Free State [1935] 1 I.R. 472, this Act was challenged on the grounds of its violating the Articles of Agreement for a Treaty between Great Britain and Ireland 1921 (Anglo-Irish Treaty). The Privy Counsellors held that the Statute of Westminster had the effect of removing the restraints of the Colonial Laws Validity Act 1865, which prevented a Dominion passing a law “repugnant to an Imperial Act”.

The Irish legislature was therefore able to pass “repugnant” Acts, repudiating the jurisdiction of the Judicial Committee.

In so doing it could end the referral of appeals to the JCPC.

Left to Right – Harry Boland (Republican politician and member of the First Dáil), Michael Collins (revolutionary leader and Irish delegation member during the negotiations of the Anglo-Irish Treaty) and Éamon de Valera (founder of Fianna Fáil, Head of Government and President of Ireland).
The Court Structure of Ireland

- **The Supreme Court of Ireland** — The Supreme Court hears appeals from High Court decisions commenced in the latter or by way of case stated from a judge of the Circuit Court or High Court, or a court of criminal appeal in special circumstances.

- **High Court** — It has full jurisdiction in criminal and civil matters, whether of law or fact, and can hear cases on the validity of any law regarding the constitution. In its criminal court incarnation it is known as the Central Criminal Court.

In civil and family law matters, it is an appeal court from the Circuit Court as well as giving rulings on questions submitted by the District Court.

- **Circuit Court** — Limited jurisdiction in civil law matters unless all parties consent to it being unlimited.

In criminal matters it has the same jurisdiction as the Central Criminal Court in all indictable offences bar the most severe such as murder, rape and treason. Such cases begin in the District Court and go to the Circuit Court for trial or sentencing.

- **District Court** — In judicial review cases this court has the final decision, except where a point of law is at issue when the High Court would be seized of the case. In criminal matters it deals with all criminal offences including those tried summarily and not, which in some cases require appeal to the Circuit Court or Central Criminal Court for trial.
Appeals from the Channel Islands became the first regular appellate business of the King’s Council (now the JCPC) and subsist as one element of the Judicial Committee’s domestic jurisdiction.

These appeals are dealt with under the same rules as Commonwealth appeals.

While Jersey, like Guernsey, has its own independent government, it continues to pledge allegiance to the English Crown and has done since 1066, with the crowning of King William I of England. It is worth noting that they have been subject to other outside influence over the years, particularly during World War Two, when the British effectively surrendered the islands to German forces, as they were deemed to be of no strategic importance to them at the time. The British government did engage in the evacuation of some of the residents beforehand.

Originally, special leave had to be given by the Judicial Committee, as appeals were not as of right. In Renouf v Attorney General for Jersey [1936] 1 A.C. 445 the judges examined the historic Ordinances of Pyne and Napper of 1591 in a bid to discover whether appeal as of right existed in criminal matters.

While it was held that “[t]here is no appeal as of right to His Majesty in Council from the decision of the Royal Court of Jersey in a criminal case”, the Counsellors stressed that there remained a prerogative right to grant special leave to appeal, and allow such.

In essence there is a right to appeal when the Crown so decides. In 1949, however, King George VI created the Channel Islands Court of Appeal (pictured) to deal with appeals from the two main islands, even though it never sat and eventually each island had its own Court as of 1961.

Further appeals are made from these courts to the JCPC.

The Court Structure of Jersey

- **The Judicial Committee of the Privy Council** — As the court of final instance for Jersey, leave for appeal is required to be granted by the lower court, whose decisions are being appealed, or at the granting of the Board.

- **Court of Appeal** — Its jurisdiction extends to both civil and criminal cases appealed to the Court from the Royal Court.

  In criminal cases the Court may hear appeals as to conviction on any ground involving a question of law alone, question of fact or any other ground.

  In the latter two situations leave to appeal must be granted or alternatively a certificate obtained from the presiding judge at the defendant’s trial stating that the case is fit for appeal.

- **The Royal Court of Jersey** — The principal court on the island, the Royal Court hears civil cases predominantly across the following divisions: Héritage concerning land and immovable
property, Family and Probate. In all other civil cases and criminal cases, the Samedi division (so-called for it used to sit on a Saturday) is the forum for hearings.

**The Magistrates’ Court** — First established in 1853, it is a key component of the island’s justice system.

While a Magistrate cannot impose sentences of imprisonment exceeding 12 months and/or fines above £5000, it is obliged to commit a criminal case to the Royal Court if it is beyond their sentencing powers.

**Petty Debts Court** — The civil arm of the subordinate courts, it has adjudicated upon civil claims since 1853. The claims in question must not exceed £10,000 and since 2004 they can be resolved by mediation.

**Youth Court** — With the same powers as those vested in the Magistrates’ Court, it hears charges against persons aged under 18, subject to statutory exceptions.

Where they are under 18 at the date of conviction, the Magistrate can remand the defendant to the Youth Court for sentencing.
GUERNSEY

Much like the neighbouring island of Jersey, Guernsey’s law draws on French and English traditions, beginning with its annexation to the English Crown in 1066 under the Duke of Normandy (William the Conqueror) and King Philippe Auguste’s decision not to reclaim the country to France in 1204.

This influence is noticeable in areas such as criminal law where we can see the similarities its legislation has with that passed by the English Parliament and its retention of appeal to the Judicial Committee. One important difference is its use of Jurats (elected community elders) in place of trial by jury.

The Court Structure of Guernsey

• The Judicial Committee of the Privy Council — In order for appeals to be entertained, the value of the matter has to be above £500 for civil law cases, unless special leave is given. For criminal cases, special leave is a necessity rather than appeal as of right.

• Guernsey Court of Appeal — Created under the Court of Appeal (Guernsey) Law 1961, its judges are appointed by warrant of the sovereign, sitting in both civil and criminal divisions. Its appeals will come from the Royal Courts or Magistrates’ Court in those areas where a right of appeal has been provided. It sits as an Ordinary court in most civil cases including trusts.

• The Royal Court — A primary court of record that sits in three divisions—the Full or Ordinary Court and the Matrimonial Causes Division.

The former has original jurisdiction over those more serious criminal indictable offences as well as in civil cases beyond the Magistrates’ Court with the amount in dispute being £10,000 or above and other contentious issues.

Criminal appeals from the Magistrates’ are also heard here. An Ordinary hearing comprises fewer jurats and a single judge of law in its civil business.

• Magistrates Court — With jurisdiction over numerous areas, including civil, criminal and family law, it essentially exercises summary jurisdiction in criminal cases liable for a maximum two-year sentence or £20,000 fine.

It establishes whether there is a case to answer before committing it to the Royal Court for trial. The juvenile court also falls under this remit.

• Contracts Court — This “conveyancing” court is convened to witness conveyances of legal issues including real property, associated agreements and marriage contracts prior to their entrance on the official public record.

Key Case: The Queen (ex parte Sir David Barclay and Sir Fredrick Barclay) v Secretary of State for Justice and Lord Chancellor, The Committee for the Affairs of Jersey and Guernsey and Her Majesty’s Privy Council [2013] EWHC 1183 (Admin)

The two claimants sought judicial review of the Order in Council which approved the new provisions under the Reform (Sark) (Amendment) (No. 2) Law 2010.

They claimed it was incompatible with the European Convention on Human Rights extended to Sark as part of the Bailiwick of Guernsey.

Prior to the 2008 law, the legislature and executive of Sark (the Chief Pleas) comprised an unelected Seigneur and the Seneschal.

The latter was appointed by the Seigneur,
acting as President of the Chief Pleas and judge of the island. This joint role brought doubts to the requirement of establishing an independent and impartial judiciary, as per Article 6.

Regard was had to the particularities of the judicial appointment such as the duration of the term of office and personal qualifications, the latter of which were not set out in section 6(1) of the 2010 law.

This absence of qualifications for appointment highlighted the lack of guarantees in the proposed law.

Nothing was in place to prevent the Seigneur appointing anyone he chose to the Appointments Committee – it risked breaching impartiality.

Judicial review was essential to establishing and maintaining an independent judiciary.

The process in place concerning the appointments process did not inherently breach Article 6.

The provision of the law giving due to alter the Seneschal’s terms of office did however violate Article 6.

A declaration laid out that the committee’s decision was unlawful for this reason.
CHAPTER TWO

- Canada
- The United States of America
A constitutional monarchy with Queen Elizabeth II as head of state, Canada has strong common law foundations traceable to the Battle of Quebec (1759), when the country was said to have assumed this model of law.

We can see in the preamble to the British North America Act 1867 (BNAA) that Canada was to have a constitution “similar in Principle to that of the United Kingdom”.

An anomaly is found in Quebec, however, a civil law jurisdiction based on the French Code Napoléon, exemplifying the country’s bijuralist system, which is akin to that of South Africa and Scotland.

The Judicial Committee’s role as final appellate court was the subject of much debate in the late nineteenth and early twentieth Centuries.

It is well known that Justice Minister Edward Blake (pictured) attempted to abolish appeals to the body when the Supreme Court was established in 1875, only to have such intention resisted by the Lord Chancellor, Lord Cairns.

Not long after, Canada banned criminal law appeals to the Council in 1888.

While the Council reinstated them in 1926, having ruled that the Canadian law conflicted with its jurisdiction in Canada, it was only six years later that criminal appeals were banned for good.

This was followed by the cessation of its civil appellate jurisdiction in 1949.

Further change came toward the close of the century when the BNAA 1867 was renamed the Constitution Act 1867 in 1982, transferring the British Parliament’s authority to the independent Canadian Parliament.

Key Case: Henrietta Muir Edwards and Others v Attorney-General for Canada and Others [1930] 1 A.C. 124

Central to this case was the question of whether women were also “persons” for the purposes of section 24 of the BNAA.

While on the face of it the need for such interpretation may seem absurd, clarification proved to be crucial.

This section concerned admitting persons to the Senate and one of the litigants who brought the case, Emily Murphy, had sought candidacy for a seat in the federal body but was turned down on the grounds that she was not considered a person under the Act.

Then Prime Minister, Sir Robert Borden, claimed that the BNAA using “persons” as the plural, with “he” referring to the singular, restricted its meaning to members of the male sex only.

In essence, the language of the Act was masculinised, perhaps to “accommodate” the societal norms of bygone eras where women occupied a subordinate status to men and were deemed incapable of exercising public functions in common law.

This is supported by a British court ruling of 1876 that “women are persons in matters of...”
“Persons” it was held by the Supreme Court of Canada in a previous case “…prima facie includes women” when standing alone in a provision of the Act.

In the Judicial Committee hearing, the Counsellors decided that the Act’s provisions had to be given a liberal interpretation, reversing the judgment of the Supreme Court.

The section could not be treated as a stand-alone but rather the Act was to be considered as a whole in light of developments within the Canadian legislature.

Lord Sankey L.C. raised the important point that women had not been expressly excluded from public office. The custom of excluding women from public office could become tradition, remaining unchallenged long after it had lost its original purpose, but it did not have to.

To quote Lord Sankey, “[T]o those who ask why the word [persons] should include females the obvious answer is why should it not?” (138).

This case marked a huge victory for women’s rights in Canada, after a legal and political battle of unparalleled proportions.

The Federal Court Structure of Canada

- **Supreme Court of Canada** — As with the provincial/territorial system, the Supreme Court is the superior court for all federal appeals.

- **Federal Court of Appeal** — Has civil jurisdiction, only hearing cases on matters outlined in federal statutes including appeals by way of judicial review and direct appeals. Its decisions are subject only to review by the Supreme Court of Canada, and this is a rare occurrence happening in approximately five per cent of the cases litigants bring before the Court of Appeal.

- **Federal Court** — Has civil jurisdiction like that of the Court of Appeal, but is the court at which trials take place.

Its jurisdiction is defined by statute and only encompasses matters which fall within the competence of the federal government.

### The Federal Court Structure of Canada

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Supreme Court of Canada

Federal Court of Appeal

Federal Court
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The Provincial/State Court Structure of Canada

- **Supreme Court** — The final court of appeal from all other Canadian courts, with jurisdiction over disputes in all areas of law, bar those specifically excluded by a statute.

  In order to bring a case before this Court leave to appeal has to be granted, and the case has to raise either: a question of public importance, or an important issue of law or fact.

- **Provincial/Territorial Courts of Appeal** — Typically composed of a three-judge panel, the Chief Justice may extend this if the case requires more judges’ consideration in dealing with the appeal.

- **Provincial/Territorial Superior Courts** — Found in every territory or province, but not necessarily under the same name, these courts have no inherent jurisdiction which means they are limited to hearing those matters permitted by statute.

This means that civil cases involving large monetary sums, divorce or serious criminal offences are often dealt with here, in addition to those appeals from its lower court.

It is common practice to find special divisions such as family, within these courts.

- **Provincial/Territorial Courts** — The lowest courts in the hierarchy.

  They hear cases concerning matters provided for under provincial or territorial statute as well as any other matters which the federal government has granted them jurisdiction over, such as criminal offences.

  Their powers also extend to conducting pre-trial hearings in criminal cases to be committed for trial in a superior court.

  All provinces bar the Nunavut Territories have a provincial or territorial court whereas in Nunavut cases are heard by the Nunavut Court of Justice, their superior court.
The country we now know as the United States of America can trace its history to the thirteen British colonies situated along the Atlantic seaboard, which were the centre of the American Revolution.

The country as it then was broke relations with its British colonial master in 1776, to be officially recognised as a united nation following the Treaty of Paris in 1783.

In so doing, British "common law" traditions such as the monarchy were rejected and appeals to the Privy Council (in place since 1696) were abolished, while the likes of habeas corpus and jury trials were retained.

These memories of its British past can be found in its present day constitution, which stems from 1787.

Since then the country acquired other territories from its indigenous population and foreign countries, to form the United States we see today.

As a body of laws, the common law's continued existence was made possible through the passing of "reception statutes", which declared that the common law would be followed in so far as it was not inconsistent with the Constitution, federal laws of the US or those of the state in question.

Each state has its own common law yet there is no such a thing as federal general common law, a notion associated with Swift v Tyson 41 U.S. 1 (1842) and Erie Railroad Co v Tompkins 304 U.S. 64 (1938).

In the latter it was held that the federal courts did not have the judicial power to create general federal common law, when it chose not to apply the common law of New York (where the company was incorporated) or Pennsylvania (where Tompkins was a citizen). The court was due to apply the law of the state in which it was sitting.

It is important to recognise that Louisiana did not incorporate the common law, having inherited a civil law system from its French colonisers before the Louisiana Purchase, upon which it would model its civil code of 1804 (drawing similarities with the Code Napoléon).

Edward Livingstone (pictured), a prominent New York lawyer at the time, opposed the US's assumption of power over the state and championed the civil law system.

He was influential in the drafting of the Louisiana Civil Code of 1825.

In 1803 the United States bought France's claim to the territory of the (now) state, as well as all or part of fifteen other states and two Canadian provinces.

As an aside, criminal prosecutions can only be brought by states in state courts, whilst the federal government can only bring prosecutions in federal courts.

This means that, in essence, the principle of double jeopardy does not apply between the two court systems.

Furthermore, there is no determinate number of courts in each state's hierarchy, nor are the titles given to each court the same.

Edward Livingstone: the American jurist and statesman who sat as Secretary of State from 1831 to 1833, amongst other political offices.
The State Court structure of the USA

For these reasons the diagram below will set out a basic outline of the structures, with examples provided to elucidate.

• **US Supreme Court** — From the state level, supreme courts’ decisions can be appealed to the United States Supreme Court as the final court of instance.

  In Texas its Supreme Court hears appeals in civil and juvenile cases, whereas it has a Court of Criminal Appeals as its final appellate (supreme) court for criminal appeals.

• **Appellate Courts** — As with all appellate courts, these review the decisions and procedures of trial courts.

  In some states there will be multiple courts of appeal, as in Delaware where it would be the intermediate appellate court, whereas in others such as New Hampshire it has its Supreme Court as its sole appellate court.

• **Courts of General Jurisdiction** — These courts may be known by various names including Circuit (Hawaii), Superior (New Hampshire) or Courts of Common Pleas (Delaware).

  They hear cases involving large amounts of money or crimes that are more serious than those dealt with by the trial courts.

  At county level, such courts would have a limited jurisdiction, whereas at state level these could be trial courts of general and special jurisdiction such as in Maryland and New Hampshire.

• **Trial Courts** — Taking the title District Court in Maryland, Justice of the Peace Court in Delaware and Municipal Courts in Texas, these are the lowest courts in the state hierarchies.

  They are the court of first instance in civil and criminal cases, Maryland being an exception given that it does not conduct jury trials.

  The jurisdiction of such courts is limited to hear some civil disputes and minor criminal offences.

_N.B. In the US, as with Canada, this diagram denotes the levels of courts, rather than specific names e.g. Maryland’s Districts courts, the latter being in brief explanation._
The Federal Court structure of the USA

There is at least one federal district in every state, but in those bigger and more populous states such as Texas this number is likely to increase.

At least one or more district will make up a federal circuit, the latter being home to the Court of Appeal.

Cases brought before federal courts are likely to focus on such areas as constitutional law and disputes between residents of different states or US citizens and foreigners.

Cases brought may concern state, in addition to federal, law.

• **US Supreme Court** — As the final word on the law of the United States, cases brought before the Supreme Court will have had to have made their way up through the intricate court hierarchy.

Appeals will be heard by the Justices where the case at hand has implications for Americans in general or a certain group within society, e.g. *Brown v Board of Education of Topeka* (ending racial segregation in America’s public schools).

• **US Courts of Appeal** – Akin to the state appellate court, there are 12 regional Courts of Appeal and one US Court of Appeal for the Federal Circuit.

Their origins lie in the late nineteenth century when the numbers of those seeking appeal to the Supreme Court rose dramatically, the creation of the courts being a response to this.

Nowadays most appeals come from District Courts within their circuits or federal regulatory agencies in rare cases.

• **District (Trial) Courts** – Typically these courts hear civil as opposed to criminal law cases, as these issues, including bankruptcy and tax, fall within the jurisdiction of the federal government.

Within the country there are 94 District Courts staffed by over 600 judges. They have a very narrow appellate function where a constitutional question arises from a state court.
AUSTRAL ASIA

CHAPTER THREE

• Australia

• New Zealand
Now a federal monarchy, Australia has a fascinating history from its original habitation by its indigenous population to its relationship with the English Crown, from the seventeenth century onwards.

The country was first discovered by Dutch explorers in 1606, becoming known as New Holland. Come 1770, the newly-created Great Britain claimed Australia’s eastern quarter, more recently named New South Wales by James Cook, with the intention of establishing a penal colony.

After this came the founding of Tasmania, South Australia, Victoria and Queensland in the 1800s. During these times Australia became the destination of choice for convict transportation, with many colonies being established there solely for the purpose of housing re-offending criminals.

In 1901 the six self-governing Crown Colonies federated to form the Commonwealth of Australia that we know today.

This came after a declaration by Governor Bourke of New South Wales implementing the doctrine of *terra nullius* (“land that belongs to no-one”), which restricted how the indigenous population disposed of and acquired land, other than through distribution by the Crown.

The case of *Mabo v Queensland (No. 2)* (1992) 175 CLR overturned this tradition when it recognised “native title” to the land, because of the pre-existing system of indigenous law in place on settlement by the British.

During the twentieth century the laws governing the country were largely an extension of British law, with the Constitution laying out the powers of the Commonwealth Government within section 51.

In 1931 with the passing of the Statute of Westminster however, the laws created by the United Kingdom parliament were no longer automatically binding upon the country, but rather only on request and to the extent consent was given.

In spite of this, the laws of Great Britain retained a pervasive effect.

As a founder member state of the then British Commonwealth in 1931, the JCPC was for a long time the country’s final appellate court.

In section 74 of the 1923 Constitution it was
provided for that there were two possibilities of appeal from the High Court (pictured) to the Judicial Committee.

This effectively enabled litigants to bypass the High Court, taking cases directly to the JCPC from state supreme courts and even single judges.

The discontent this aroused within the High Court led to calls for the removal of the Committee as the final appellate court for Australia.

In 1968 and 1975 the Commonwealth Parliament legislated to limit appeals involving Commonwealth Law and those from the High Court.

Finally in 1986, with the passing of the Australia Acts (by both the UK and Australian parliaments, out of confusion as to the correct legislature for such a defining moment), appeals to this body were abolished. This coincides with an increasing use by the judiciary of foreign authorities and comparative law in the reaching of its decisions during the 1980s and 90s.

As the Honourable Sir Anthony Mason AC KBE remarked, “[t]his use of foreign precedents was associated with the demise of the Privy Council appeal and the Court’s recognition of its responsibility to declare the law for Australia.”

Key Case: The Amalgamated Society of Engineers v Adelaide Steamship Co Ltd (1920) 28 CLR 129 or “Engineers Case”

Decided by the High Court of Australia in 1920, the Engineers Case established the modern basis for our understanding of federalism in Australian law.

The Court was seized with the questions of whether the parliament of the commonwealth had the power to make laws binding on the states as to arbitration for the prevention of industrial disputes extending beyond state limits, and whether the dispute fell within section 51 of the Constitution.

As to the important first point, it held that States (as the Crown) and persons representing them are subject to applicable Commonwealth legislation made by the Imperial Parliament.

For example the Commonwealth of Australia Constitution Act regulated the royal exercise of legislative, executive and judicial power.

In the opinion of the judges this meant they were bound by the Australian Constitution and its section 51. Commonwealth powers should not be interpreted as though a degree of power has been reserved for states to regulate their internal affairs.

The Australian Coat of Arms are the property of the Commonwealth of Australia, used to authenticate official documents such as deeds to property, as well as for other identification purposes. The design recognises its federated status, containing the badges of the six states. These are (left to right, then top to bottom): New South Wales, Victoria, Queensland, South Australia, Western Australia and Tasmania. The kangaroo and emu flanking the Coat are its “supporters”.

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The court structure of Australia

Australia’s federation in 1901 necessitated the establishment of a federal court system, distinct from the state and territory hierarchies in place.

In the same year the High Court was set up under section 71 of the Constitution to act as a court of appeal for the country as a whole, even though its first case was not heard until 1903.

Since its founding, which was followed by that of the Federal Court and Federal Circuit Court, it has confirmed itself to be a powerful judicial body pronouncing upon internationally notable cases.

The federal court structure

- **The High Court of Australia** — The highest court of Australia, in spite of what its name suggests, decides cases of special federal significance such as challenges to the constitutional validity of laws once special leave to appeal has been sought.

  Decisions of this court are binding on all Australian courts, including state and territory supreme courts.

- **The Federal Court of Australia** — Beginning life in 1977, the court is a superior court of record and a court of law and equity which hears appeals from the Federal Circuit Court.

  It hears cases in the Industrial and General Divisions, the latter hearing bankruptcy proceedings and enforcing specific federal legislation.

- **Federal Circuit Court** — Formerly the Federal Magistrates’ Court, it was established at the end of 1999 having assumed jurisdiction over a variety of legal areas such as administrative law, bankruptcy, human rights and migration.

  These jurisdictions are also shared with the Family Court of Australia (the superior court in family law). It sits at various locations throughout Australia for pre-destined times. These are: Australian Capital Territory, New South Wales, Northern Territory, Queensland, South Australia, Tasmania, Victoria, Western Australia.

The federal court structure of Australia

![Diagram](https://www.justcite.com/trial)
The state courts of Australia

In Australia each of the six states and the two territories have their own court system, within which they adjudicate civil and criminal matters of all sorts.

Like their federal counterpart, these are arranged in a hierarchical fashion comprising first instance and appeal courts.

Individuals who have exhausted all avenues of appeal intra-state and -territory can lodge an appeal from the respective Supreme Court at the High Court.

The states (courts listed in order of authority for each)

- **New South Wales**
  Court of Appeal and the Court of Criminal Appeal (N.B. the final courts when cases are appealed by special leave to the High Court of Australia, in all other circumstances the Supreme Court of New South Wales is the highest appellate court)
  Supreme Court
  District Court
  Local Court (akin to a Magistrates’)

- **Victoria**
  Supreme Court
  County Court
  Magistrates’ Court

- **Western Australia**
  Supreme Court
  District Court
  Magistrates’ Court

- **Southern Australia**
  Supreme Court
  District Court
  Magistrates’ Court

- **Tasmania**
  Supreme Court
  Magistrates’ Court

- **Queensland**
  Supreme Court
  Court of Appeal (N.B. when the Court of Appeal hears appeals from the trial division of the Supreme Court, it becomes, in effect the highest court within the state)
  District Court
  Magistrates’ court

The territories (courts listed in order of authority for each)

- **Northern Territory**
  Supreme Court
  Magistrates’ Court

- **Australian Central Territory**
  Supreme Court
  Magistrates’ Court

www.justcite.com/trial
New Zealand’s break from the Judicial Committee’s appellate jurisdiction marked the end of a long and hotly contested issue of the Commonwealth’s infraction into national cases.

Sir Robert Stout, the then Chief Justice, mooted the possibility of removing the Judicial Committee during his period of tenure following the former’s attack on the Appeal Court in April 1903.

This was raised again in the Honourable Sir David Beattie’s 1978 “Report of the Royal Commission on the Courts” and again in 1989 in “The Structure of the Courts NZLC R7 Report”.

Eventually in 1994 New Zealand’s Cabinet requested that the Solicitor-General report to their Strategy Committee on the constitutional, historical, jurisprudential and structural issues relating to the availability of appeals to the Judicial Committee.

The final report of this consultation was released in May 1995, leading to the introduction of the New Zealand Courts Structures Bill 1996 which was subsequently withdrawn that year with the coalition between the National and New Zealand First parties.

The millennium marked a new wave in this movement against the Judicial Committee, as public opinion called for a replacement to a court with national grounding. After all it was recognised in Strathmore Group Ltd v Fraser [1992] 2 A.C. 172, that “[i]t is of course open to the Government and Parliament of New Zealand at any time to abolish or restrict the classification of decisions which are appealable as of right”.

It was not held to be a matter which the Board had competence over or was authorised to comment on. Eventually the Supreme Court Bill was passed by Parliament on 14th October 2003, coming into force on 1st January 2004.

Appeals to the Committee in relation to all decisions of New Zealand’s courts heard after 31st December 2003, ceased to be possible. Instead jurisdiction passed to the new Supreme Court that was empowered to hear appeals from 1st July 2004.

This move marked, according to sections 3(i) and (ii) respectively of the New Zealand Supreme Court Act 2003, an opportunity “…to recognise that New Zealand is an independent nation with its own history and traditions” and a chance “to improve access to justice”.

Furthermore it meant that in areas of employment, environment and family law the new Supreme Court could adjudicate on such matters, unlike the Judicial Committee.

The court structure of New Zealand

- The Supreme Court — As New Zealand’s final appellate court, the Supreme Court came into being through the passing of the Supreme Court Act 2003.

This marked a symbolic
as well as important constitutional moment, for it recognised New Zealand’s independence as a nation with its own traditions and provided a forum in which legal matters could be resolved with an understanding of the above.

Another reason, commonly cited by other Commonwealth or dominion countries, is to improve access to justice. It is important to recognise that appeals to the Supreme Court can only be heard if the parties to the case have been granted leave to appeal. Its decisions are binding on all subordinate courts.

- **Court of Appeal** — Established in 1862 with the intention of preventing inconvenience and the expense of taking appeals to the Privy Council, the Court of Appeal is New Zealand’s intermediate appellate court.

  It was permanently established in 1957, being staffed by specially appointed judges as opposed to the periodic sittings by Supreme Court judges, which had predominated beforehand. Its caseload is made up of civil and criminal appeals from proceedings of the High Court, as well as indictable criminal proceedings in District Courts. Leave is required to be granted for cases which had previously been appealed from one subordinate court to another.

- **High Court** — The High Court, much like Australia’s federal counterpart, originally sat as the Supreme Court of New Zealand, from where cases were taken to the JCPC in London.

  With the change in the judicial hierarchy in 1980, the court now hears the more serious jury trials, complex civil cases where the monetary value at question is above $200,000, administrative law and appeals from subordinate courts.

  Another point of interest is the Court’s inherent jurisdiction under section 16 of the Judicature Act 1908. The court may draw on this, as reserved powers, when just or equitable to resolve disputes which cannot be dealt with satisfactorily using powers conferred by statute or the rules of court.

- **District Courts** — In existence in some form since the mid-1840s, these low-level courts hear minor criminal offences and civil claims as per the District Courts Act 1947.

  In limited circumstances it may conduct trials for some serious offences. Until 1980 these courts were officially known as the Magistrates Courts, the name change being attributable to recommendations made by the Honourable Sir David Beattie in his 1978 “Royal Commission on the Courts’ Report”.

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**The court structure of New Zealand**

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Supreme Court

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| District Courts |
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35 • Court Structures of the Common Law World
CHAPTER THREE

South Africa
South Africa has had a troubled history with the British Commonwealth. It withdrew from the group on 31st May 1961, having been made a republic and therefore abandoning the Queen as head of state.

From 1948, when the Nationalist Party seized power, until 1994 the country saw a period of Apartheid that contradicted the need for respect for racial equality as a constitutional principle of the Commonwealth.

With the election of Nelson Mandela the country was invited to re-join the Commonwealth, marking “the end of [A]partheid and the dawn of freedom in South Africa.”

In the beginning, South Africa’s constitutional law was merely a part of the British Empire’s system, based on the sovereignty of the British parliament.

As self-determination and self-government increased, its own Constitution took greater precedence in the structuring of its constitutional laws.

In particular it is not a federation like Canada or the United States, but is a unified republic, where regional or subordinate courts are subject to the authority of the highest courts and authority (that of the executive capable of exercising the royal prerogative) as illustrated in Fellner v. Minister of the Interior, 1954 (4) S.A. 523 (A.D.).

The Privy Council Appeals Act 1950 amended the South Africa Act 1909 so as to abolish appeals to the Committee, and in this time only 10 appeals were heard.

The right of appeal from South Africa became a dead letter. It had been the case, until 1950, that Judicial Committee decisions based on South African or Roman-Dutch law bound the domestic courts.

The Court structure of South Africa

- Constitutional Court — The highest court in the country established in 1994, the Constitutional Court has the final decision on all matters relating to the constitution and any issues connected with decisions on constitutional matters.

It can be petitioned by direct application to...
sit as a court of first instance, as well as by appeal from the Supreme Court or High Court.

- **Supreme Court of Appeal** — The highest court in respect of all non-constitutional matters. Its judgments have binding force on lower courts, and cannot be changed unless by itself or the Constitutional Court.

- **High Courts** — Located across the country in 10 courts and three local divisions. The previous “Supreme Courts” listen to more complex cases that may have been committed to the Court on appeal. They have jurisdiction over defined provincial areas in which they are situated.

- **Magistrates’ Courts** — Divided into regional and district courts, these low courts hear the less serious criminal and civil cases. Regional courts are solely for criminal hearings in more serious matters such as murder. District courts entertain both civil and criminal cases of a lesser seriousness.

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The court structure of South Africa

![Diagram of court structure](chart.png)
• Hong Kong
• Malaysia
• Singapore
Appeals from Hong Kong ended in 1997 when it became a Special Administrative Region of the People’s Republic of China (PRC), an autonomous territory within the sovereignty of the mainland, following the signing of the Sino-British Joint Declaration by the Prime Minister of the UK and the Premier of the PRC on 19th December 1984, with effect from 1st July 1997.

Prior to this it had been a British Dependent Territory (BDT) from 1981 and a Crown colony for much of the period between 1843 and 1981.

This political development came when China decided to re-exercise its sovereignty over the area.

Historically, the JCPC was Hong Kong’s appeal court in those cases when it granted special leave to appeal or it was as of right from any final judgment of the Court of Appeal (CA) where the matter in dispute amounted to more than a specific monetary amount or at the discretion of the CA.

As of 1997 there was concern about the common law system being replaced by a civil law one, aside from concerns as to corruption and Chinese laws, which marked a great potential to infringe upon many civil liberties in Hong Kong, including press freedom.

One of the most famous Judicial Committee cases concerning Hong Kong is The Attorney General for Hong Kong v Reid [1994] 1 AC 324 (which was appealed from the Court of Appeal of New Zealand).

The main defendant in question was a solicitor and New Zealand national who joined Hong Kong’s government legal service, eventually becoming Crown Counsel, Deputy Crown Prosecutor and Acting Director of Public Prosecutions.

While serving in these positions, it was discovered that he was accepting bribes to obstruct the prosecution of certain criminals in breach of his fiduciary duty toward the Crown.

The advice submitted to the Crown was that the appeal should be allowed, requiring Mr and Mrs Reid to pay the costs of the Attorney General (AG) before the Board and in the lower courts.

Three properties in which it was believed the money had been invested were held to have been held in constructive trust for the Crown, the AG having registered caveats against their titles preventing any dealing with the property pending proceedings.
The court structure of Hong Kong

- **Court of Final Appeal** — The highest appellate court with jurisdiction by virtue of laws, it hears appeals on civil and criminal matters from the High Court. These appeals may be as of right from any final judgment if the matter amounts to above HK$1 million or at the Court’s discretion in any other civil or criminal matter.

- **High Court** — Housing the Court of Appeal and Court of First Instance, the former hears appeals on all civil and criminal matters from the Court of First Instance and District Court, as well as from various tribunals.

  The Court of First Instance has original jurisdiction for hearing serious criminal cases and any civil matter at first instance, and appellate for criminal cases heard in the Magistrates’ Courts. If a judge of the Court of First Instance refuses to grant leave to appeal, the decision is final.

- **District Court** — Civil disputes over HK$50,000 but not above HK$1 million are heard in this court, as are criminal matters. In the case of the latter however the powers of the judges are limited to sentences up to seven years of imprisonment.

- **Magistrates’ Courts** — In Hong Kong there are seven Magistrates’ Courts which exercise criminal jurisdiction over a wide range of indictable and summary offences. In such cases, sentences can be handed down that are up to two years of imprisonment, or in criminal and civil cases a fine of HK$100,000.
As a Commonwealth nation, the Malaysian legal system has its foundations in English common law, beginning with the acquisition of Penang in 1786, followed by the introduction of Charters of Justice in 1807, 1826 and 1855.

It became formalised in 1927 with the Civil Enactment. Prior to 1985, when Judicial Committee appeals were abandoned for all cases, decisions of the Federal Court could be appealed to this body.

In 1978 however, appeals in constitutional and criminal matters were abolished.

It is interesting to note that in 1993 the Special Court was established to hear cases relating to offences committed by the ruling monarchical states of the Federation.

Since the abolition of the JCPC’s appellate functions, the Federal Court (previously Supreme Court) of Malaysia is the country’s highest judicial authority, supported by other senior courts (High Courts and Court of Appeal) and the subordinate Magistrates’ and Sessions courts.

The Federal Court and Court of Appeal sit in the Palace of Justice (pictured), located in the city of Putrajaya.

The court structure of Malaysia

- **Federal Court** — All civil appeals from the Court of Appeal are heard by the Federal Court once leave is granted by the latter. It also hears criminal appeals from the former for matters heard by the High Court in its original jurisdiction.

- **Court of Appeal** — Hearing all civil appeals against decisions of the High Courts, except where against judgment or orders made by consent, it also hears criminal appeals against decisions of the High Courts.

- **High Courts** — Assuming general revisionary and supervisory jurisdiction over all subordinate courts, the High Courts hear appeals from subordinate courts in civil and criminal matters. The two High Courts are “of Malaya” and “of Sabah and Sarawak”.

- **Sessions Courts** — The Sessions Courts hear all civil matters where the claim exceeds RM25,000 but does not amount to more than RM250,000, except in matters relating to motor vehicle accidents, landlord and tenant disputes, and distress, as these are matters of unlimited jurisdiction.

In criminal matters, they have jurisdiction over all offences bar those punishable with death.
• **Magistrates’ Court** — It hears all civil matters not exceeding RM25,000. Its jurisdiction is wider in criminal matters, generally having the power to try all offences where the maximum sentence does not exceed 10 years. In other cases it hears appeals from the Penghulu’s Courts.

• **Penghulu’s Courts** — Generally civil matters not exceeding RM50, involving parties of “the Asian race” and who speak/understand the Malay language, or criminal offences of a minor nature for which the defendant is of “Asian race”. The latter is punishable with a fine not exceeding RM25. N.B. This court was abolished under the Subordinate Courts (Amendment) Act 2010 on 1 March 2013.

• **Small Claims** — Hears civil claims not exceeding RM5,000 pursued by an individual who cannot be represented by a lawyer at the hearing.
The city-state of the Republic of Singapore was founded in 1819 by the British statesman Sir Thomas Stamford Raffles (pictured). It joined the British Commonwealth in 1965, having gained independence from the British who had, in various forms, administered the country since the Anglo-Dutch Treaty of 1824, before being transferred to the East India Company in the 1820s.

Its court system has seen considerable change over the years. In particular, as part of the Straits Settlements, detachment from India to become a separate Crown Colony in 1867 led to the establishment of a Supreme Court of the Straits Settlements. Over time this Court was impugned with jurisdiction to sit as the Court of Appeal with a full three-judge quorum, transferring this power from the King-in-Council.

In time the 1907 Ordinance was passed, replacing the Magistrates’ Courts with the new District Courts and Police Courts, while expanding the Court’s jurisdiction to general, “original” (first-instance) and appellate.

There are numerous other subordinate courts in existence including the juvenile, coroner’s, community and Syariah court.

It wasn’t until the end of the Japanese occupation in 1946 that the Straits Settlements were disbanded and Singapore became an independent Crown Colony with its own constitution.

Further change abounded as the Police courts reverted back to Magistrates’ courts under the 1955 Courts Ordinance.

Even though the country briefly merged with the Federation of Malaya in 1963, this was short-lived and within two years it was once again an independent country.

Eventually in 1989 a constitutional amendment was made to restrict appeals to the Judicial Committee. In 1994 the Judicial Committee (Repeal) Act marked the abolition of them once and for all.

This came a year after the Supreme Court of Judicature Act created the Supreme Court, consisting of a permanent Court of Appeal for both civil and criminal appeals, and at High Court exercising original and appellate civil and criminal jurisdiction.
The court structure of Singapore

- Supreme Court — Hears both civil and criminal law matters in its two chambers, the Court of Appeal and High Court.

In the former it has been hearing appeals against decisions of the latter since 1995 when referrals to the Committee were abolished.

The High Court can sit as a court of first instance, unless cases have been appealed to it from the District or Magistrates’ Courts.

- State Courts — Previously known as the Subordinate Courts, the state courts are comprised of District and Magistrates’ Courts, hearing civil and criminal cases not within the jurisdiction of the superior courts.

In the District court civil claims greater than SG$60,000 and not exceeding SG$250,000 are heard.

As a criminal court, its jurisdiction covers offences with a maximum sentence of 10 years or those punishable with a fine.

It can impose a sentence of up to seven years, or maximum fine SG$10,000. Lesser offences, such as civil cases involving amounts not exceeding SG$60,000, or criminal offences with a maximum three-year sentence or punishable by a fine, are be dealt with in the Magistrates’ Courts.
CHAPTER FIVE

- The Bahamas
- Bermuda
- British Virgin Islands
- The Cayman Islands
- Jamaica
- Trinidad and Tobago
AN INTRODUCTION TO THE REGIONAL COURTS OF THE CARIBBEAN

• The Caribbean Court of Justice (CCJ) — Lord Phillips once wrote that the time spent on appeals from the JCPC, particularly those from Caribbean countries, was disproportionate.

In a bid to counter this, he suggested former Commonwealth colonies set up their own appeal courts.

This suggestion was first discussed in 1970 in Jamaica at the Sixth Meeting of Heads of Government of the Caribbean Community. Eventually this was decided on at the Tenth Meeting held in 1989, when it was agreed that a Caribbean court (now the Caribbean Court of Justice or CCJ) would be established with original and appellate jurisdictions and sit in Trinidad and Tobago.

On the one hand it assumes the role of highest municipal court in the region, yet on the other in the exercise of its original jurisdiction it functions akin to an international tribunal.

On 16th April 2005, the inauguration of the CCJ was held at the seat of the Court in Trinidad and Tobago, following its formal establishment by the Agreement Establishing the Caribbean Court of Justice in 2001.

At present the contracting parties include the Bahamas, Jamaica, and Trinidad and Tobago. Associate members are listed as including the British Virgin Islands and Cayman Islands.

It hears cases on a range of matters.

The mandate of the Court is to settle disputes between CARICOM members, as well as to provide the final court of appeal for Barbados, Belize and Guyana in civil and criminal matters — thereby replacing the previous competence of the Judicial Committee in these areas.

As with the European Union, its original jurisdiction extends to the application and interpretation of the Treaty, as opposed to human rights more generally as in Doreen Johnson v CARICAD [2009] CCJ 3 (OJ).

Matters of fundamental rights are contestable only when sitting as an appellate body in civil and criminal matters.

• The Eastern Caribbean Supreme Court (ECSC) — Established in 1967 by the West Indies Associated States Supreme Court Order No. 223 of 1967, the ECSC, or West Indies Associated States Court of Appeal as it then was, is the superior court of record for nine member states of the Organisation of Eastern Caribbean States (OECS).

Of the nine states Montserrat, Anguilla and the BVI are non-independent, classified as UK Overseas Territories.

The court has unlimited jurisdiction in its member states, as directed by the relevant Supreme Court acts. Rules of the Court are drawn from the English Civil Procedure Rules (CPR), with some differences on matters including the Commercial Court. It is comprised of two divisions — a Court of Appeal and a High Court of Justice.

The former moves between member states, sitting at various locations on specified dates, possessed of the mandate to hear appeals from its High Court decisions, as well as member states’ High and Magistrates’ Courts.

In contrast the High Court permanently sits in each member state with resident judges appointed by the OECS.

A range of legal issues will be heard at both levels of the Court, with judges presiding over these cases while sitting in various divisions such as civil and criminal law.

More recently, in 2009, a decision was taken to establish a Commercial Division of the High Court in the British Virgin Islands.
THE BAHAMAS

The Bahamas was established as a British Crown colony in 1718, becoming an independent self-governing Commonwealth realm over 250 years later in 1973, with Queen Elizabeth remaining as monarch.

Since first forging its links with Britain so many years ago it has retained the JCPC as its highest appeal court. Debate exists surrounding whether the Bahamas should sever its association with the Judicial Committee in favour of the CCJ which is gradually becoming the final appeal court for many Caribbean nations.

The court structure of The Bahamas

- **The Judicial Committee of the Privy Council** — The highest court of appeal for cases originating from the island, it requires leave to appeal to have been granted by the court whose decision you are appealing or the Board, unless in those limited circumstances where it is as of right.

- **Court of Appeal** — The most superior domestic court of the Bahamas, the Court has jurisdiction to hear appeals on constitutional, criminal and civil matters.

Examples include questions on fundamental rights and freedoms, and on any order or judgment made or given in civil proceedings.

- **Supreme Court** — A reincarnation of the Court first established by the Supreme Court Act 1986, criminal proceedings at this level are instituted in the name of the Queen.

In its civil strand, appeals from final judgments of this court are as of right to the Court of Appeal.

- **Magistrates’ Court** — In its criminal remit, it hears summary or indictable matters which may be heard summarily, for which the maximum imposable sentence is five years. Magistrates may also commit a *prima facie* case to the Supreme Court for the defendant to stand trial. In civil cases, claims up to the ceiling amount of BS$5,000 can be heard.
Bermuda is a British Overseas Territory situated in the North Atlantic that is run by a Governor on behalf of Queen Elizabeth II, as their head of state.

It is the oldest British colony, having been established in the early 1600s by colonists seeking to settle on the island following their encountering of the island on their way to Virginia.

Following the revocation of the Charter permitting the Somers Island Company (the successor to the private Virginia and Bermuda Companies that had previously administered the island) in 1684 to administer Bermuda, it gained a degree of self-rule.

It was not until 1707 with the Act of Settlement creating the United Kingdom of Great Britain, that it became a British colony.

Its long-standing relationship with the English (later British) Crown has led to English cases of the Supreme Court and Court of Appeal holding much persuasive authority in its courtrooms. This perhaps shouldn’t be surprising given that its law is drawn from English common and statute law, as well as principles of equity.

The legal profession retains some English traditions such as the wig and gown, and the appeals to the Judicial Committee from its Court of Appeal in the final instance.

Much like Canada and other Commonwealth countries, it has forged a strong sense of patriotism as a self-governing country, in spite of its close links with Britain and its common law traditions.

This can clearly be seen on examination of their citizenship laws and what it means to be Bermudan.

One particular case of note is *Minister of Home Affairs v Collins Macdonald Fisher and Another* [1980] 1 A.C. 319, concerning the deportation of four “illegitimate” children born in Jamaica but residing in Bermuda with their Jamaican mother and Bermudan step-father.

It was held by the Counsellors that there was no presumption that the term “child” in section 11 of the Bermudan Constitution was to be read as “legitimate child” and further that this section being within the context of fundamental rights and freedoms, promoting the unity of the family, necessarily implied that the word should not be restricted in its meaning.

In essence its generality and inference that it applies to everyone in Bermuda supported a wider reading.
The court structure of Bermuda

• The Judicial Committee of the Privy Council — Like with many other countries with British ties, Bermuda’s final court of appeal is the Judicial Committee located in Westminster.

• Court of Appeal — Established with the passing of the Court of Appeal Act 1964, it entertains appeals from the Supreme Court.

• Supreme Court — This court’s composition and constitution is defined by the national constitution, with its jurisdiction governed by the Supreme Court Act 1905 and other laws.

Cases heard include the most serious criminal cases, civil matters where the claim amounts to more than BD$25,000, business matters and appeals from the Magistrates’ Court.

• Magistrates’ Court — Adjudicating on civil, criminal and family matters within the dedicated specialist courts, all cases are heard without jury trial by a magistrate sitting alone (except in the family court where two lay members are present).
Having been colonised by the British in 1672 at the outbreak of the Third Anglo-Dutch War, the British Virgin Islands (BVI) has found its law influenced by the common law and statute traditions of the British, the former declared in the Common Law (Declaration of Application) Act (Cap 13).

As of 28th September 2009 it was declared by the Council of Europe that the United Kingdom had accepted the competence of the European Court of Human Rights on a permanent basis for the country, to receive applications from individuals, non-governmental organisations or groups of individuals.

When accepted, this extension was the limited period of five years.

The Islands are recognised as a dependent territory of the UK, albeit that they have an independent judiciary, with appeals being sent to the JCPC in the final instance.

Unlike the other Caribbean case studies, however, its Superior Court of Record is the Eastern Caribbean Supreme Court (ECSC) by virtue of its belonging to the Organisation of Eastern Caribbean States (OECS).

The ECSC comprises three divisions, one of which, the Commercial Division, was opened in the country in 2009 and sits there permanently hearing appeals from all OECS states.

The “Supreme Court” of the British Virgin Islands, situated in the old Legislative Council’s building — it now houses the High Court

The court structure of the British Virgin Islands

- The Judicial Committee of the Privy Council — The final court of appeal in the Islands, like with many other countries in the region, it hears appeals from the ECSC.

- Eastern Caribbean Supreme Court — The ECSC is, for all intents and purposes, the Supreme Court of the BVI.

It has a two-tier structure, comprising the Court of Appeal and the High Court of Justice.

The latter sits permanently in the country, in contrast to the itinerant Court of Appeal.

In its appellate function, it hears appeals from the
High Court and Magistrates’ Court on both civil and criminal matters.

- **Magistrates’ Court** — The subordinate “domestic court” of the BVI, it is the lowest court in the hierarchy sitting in Road Town, on the island of Tortola. As with its equivalents in the British Isles and other jurisdictions, it largely deals with criminal matters with summary jurisdiction, minor civil claims and particular family law matters.

In criminal cases which are triable either way, the defendant may elect to be tried before a jury in the High Court, as opposed to the Magistrates’ Court which does not provide for trial by jury. On appeal, cases are committed to the Court of Appeal.
An official dependency of Jamaica between 1863 and 1962, when the former achieved independence, the Islands have long had a link with the British system of laws.

On Jamaica gaining independence, the Islands chose to remain under the Crown.

Its law therefore finds its basis in English common law, complemented by the implementation of local laws and English statutes incorporated into its law by Orders in Council.

Unlike some other countries previously colonised by the British, which have since broken away from the Judicial Committee as their final appellate body, the Cayman Islands retains this organisation as their court of final instance.

This is governed by the rules laid out in the Cayman Islands (Appeal to Privy Council) 1984 UK Statutory Instrument 1984/1151.

**Key Case:** Chief Justice of the Cayman Islands v Governor of the Cayman Islands and another [2012] UKPC 39

Two issues were at the heart of this petition brought by the Chief Justice of the Cayman Islands, Anthony Smellie, against the Islands’ Governor and the Judicial Legal Services Commission.

After much deliberation as to whether the Judicial Committee could decline to rule on issues raised in such a petition referred to it by the monarch, the Counsellors got down to the crux of the issues at hand: the basis upon which the Commission declined to extend Smellie’s appointment, and also judicial disciplinary regulations contained in paragraph seven of the Code of the Conduct for the Cayman Islands judiciary, interpreting section 106(1) of the Constitution.

Ultimately the decision was reached that “if an issue relating to the Cayman Islands can properly be determined by the Grand Court, with a right (qualified or not) of appeal to the Court of Appeal and then to the Privy Council, it would be wrong as a matter of principle, in the absence of special factors, for the Judicial Committee to consider that issue”.

In essence, the Chief Justice should have petitioned the domestic courts in the first instance given that they are better placed to adjudge on such domestic matters.

**The court structure of the Cayman Islands**

- **The Judicial Committee of the Privy Council** — The final appellate body for the British Overseas Territory, its appeals are governed by the rules laid out in the Cayman Islands (Appeals to Privy Council) 1984 U.K. Statutory Instrument 1984/1151.

- **Court of Appeal** — A superior court of record of the Islands sitting in Grand Cayman, the Court of Appeal’s jurisdiction was previously exercised by
the Court of Appeal of Jamaica 1984 on its behalf until 1984.

Its jurisdiction is derived from statute and the constitution, covering civil and criminal law cases.

- **Grand Court** — As an appeal court from lower courts or other tribunals, and alternatively a superior court of record of first instance with unlimited jurisdiction in both criminal and civil matters, it has similar jurisdicitional capacity as the High Court of Justice of England and Wales.

The Cayman Islands’ status as a leading international offshore banking and financial centre often generates actions before the Grand Court involving complex issues and substantial assets.

Those cases which are more serious may be committed to the Grand Chamber from the Summary Court for trial on indictment.

- **Summary Court** — The venue for minor criminal and civil cases, a single Stipendiary magistrate presides over cases in this court. Civil claims are limited to a monetary value below CI$20,000, while serious criminal cases are committed to the Grand Court for trial on indictment.

The court structure of the Cayman Islands
Under British rule for 200 years until independence in 1962, Jamaica is one of the few countries which retain (for now) the JCPC sitting in London as their court of final appeal, as well as the Queen as their reigning monarch.

However, in 2012 the newly-elected Prime Minister Portia Simpson-Miller promised to remove the body as the final court of appeal in favour of the CCJ.

There is suggestion that this desire for change is fuelled by concerns over the Committee’s adjudication of appeals concerning the death sentence.

The fact that the jurisprudence of the UK prohibits this fate has led to accusations of this influencing the Privy Counsellors adjudicating on the case, encouraging them to allow appeals by defendants contesting this method of disposal.

An attempt at this, through passing the Caribbean Court of Justice Act 2004 and the Judicature (Appellate Jurisdiction) (Amendment) Act 2004, was condemned by the Committee and voided for reasons of unconstitutionality; see case below.


At hand was whether the procedure adopted when enacting three bills seeking to abolish the right of appeal to the Privy Council in favour of the Caribbean Court of Justice complied with the requirements of the Constitution.

At the time the case was being heard the bills had received the Governor-General’s assent, but enactment was contingent on determination of the appeal.

It was held that the Acts on the CCJ had the effect of “undermining the protection given to the people of Jamaica” under section 106(1) of the Constitution.

The court structure of Jamaica

- The Judicial Committee of the Privy Council — Like with other Commonwealth countries, the JCPC currently sits as Jamaica’s most senior court.

- Court of Appeal — It has jurisdiction to
hear appeals from the Supreme Court in civil proceedings and appeals from persons convicted on indictment, or appeals from the Magistrates’ Court in relation to a judgment in civil proceedings or cases tried on indictment.

• **Supreme Court** — Created in 1880 in an attempt to consolidate the multitude of courts before reform, it has unlimited jurisdiction in civil, criminal and constitutional law cases. Furthermore it can exercise its jurisdiction in its appellate or supervisory functions.

• **Resident Magistrates’ Courts** — Situated in locations across Jamaica, these courts have jurisdiction over criminal and civil law matters.
Independent since 1962 and a republic from 1976, the country was ruled by the British — whose system of law it inherited for over 160 years, following cessation from Spain. It remains in the commonwealth.

In mid-2012 it was reported that the Prime Minister, Mrs Kamla Persad-Bissesar, commenced the process to abolish criminal appeals to the JCPC in favour of taking cases to the Caribbean Court of Justice, retaining the former’s jurisdiction in civil matters.

This came following a Caricom conference in Suriname.

Mrs Persad-Bissesar claimed that the process of referral to the Committee adversely affected the dispensation of justice at a time when crime rates were high in the country. This desire for simplifying the court system was in part fed by concern over the influence of British jurisprudence when the Judicial Committee is adjudicating on such issues as the death penalty, often upholding appeals against it.

Fast-forward to 2014 and she is still talking about its eventual accession, noting that the ultimate decision is in the hands of the citizens through a referendum.

The court structure of Trinidad and Tobago

- The Judicial Committee of the Privy Council — At present the final court of appeal for Trinidad and Tobago, but there are indications that it may be replaced in the near future.
• **Supreme Court** — The Supreme Court is divided into the Court of Appeal and the High Court. The Appeal Court division has jurisdiction over both Magistracy and High Court cases.

If appellants wish to, they may appeal to the Judicial Committee, an appeal in this circumstance being as of right or with the leave of that court. In contrast the High Court exercises original jurisdiction over indictable criminal matters, family law and civil law disputes.

• **Magistracy** — Within this tier lies the Court of Summary Criminal Jurisdiction and Petty Civil Courts. In the former, original jurisdiction is exercised over summary criminal offences.

A preliminary enquiry can also be undertaken into more serious offences to establish whether a *prima facie* case has been made out.

In contrast, the Petty Court handles civil matters involving monetary claims of less than TT$15,000.
FEEDBACK AND IMAGE SOURCES

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Melanie Davidson works in the Marketing Team at Justis, writing legal content for our blog. She completed her Masters degree in Public International Law, writing her dissertation on the persecution of minorities. Her predominant legal interest lies in the areas of state crime and international human rights.

You can read more of Melanie’s work by clicking here.

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