

Chapter 1: The legal system in England and Wales

Like many of the chapters of the book, there is scope for an infinite variety of topics and themes for a lecture. What we have chosen to do here is to present an overview of the system, and to raise some questions about it. We have also included a slide on the growth of virtual justice as a result of the pandemic which may stimulate discussion. You may choose to do more about the magistrates' court, as this is most likely to be the court where social workers will have to give evidence. However, we think that an overview at this point is most useful. We give more information about going to court as a social worker in the videos we have put on the website, and in the toolbox feature at the end of part 1 in the book.

The starting point may well be to find out what students know about the legal system. They will know far more than they think. Ask them what the burden of proof is in a criminal case? Ask them who magistrates are? What we want to do is for them to develop some confidence in learning law – and their pre-existing knowledge of the legal system is a good place to start. The other thing is for you as lecturer to build in references to some topical stories about courts, judges etc. There is always something going on that they will have heard about.

If you have time, you might like to generate some discussion on the Rule of Law itself. What makes law legitimate? Can laws be disobeyed? Can/must public servants of the state disobey unjust laws? What is the source of a legitimate law? Are some laws not legitimate? If the discussion flags, questions about torture, deportation of people to countries where they will be abused, etc, may get it going again quickly. This may sound like a digression, but in the book – and presumably in your course – you are presenting the law as something legitimate, even if in much of the detail it can be improved. Students need to gain ownership of the part they will play in this system, which is to uphold in a fair way democratically decided laws, and if they arrive at that point through their own analysis, your task gets easier.

One useful source for reflection on the rule of law is the Supreme Court decision in *R (on the application of UNISON) v Lord Chancellor* [2017] UKSC 51. This is the case where the Supreme Court, following a judicial review by UNIOSON, decided that the recent steep rise in tribunal fees was unlawful because of its effects on access to justice. Two particular paragraphs from Lord Reid's judgement may be helpful.

Paragraph 68. At the heart of the concept of the rule of law is the idea that society is governed by law. Parliament exists primarily in order to make laws for society in this country. Democratic procedures exist primarily in order to ensure that the Parliament which makes those laws includes Members of Parliament who are chosen by the people of this country and are accountable to them. Courts exist in order to ensure that the laws made by Parliament, and the common law created by the courts themselves, are applied and enforced. That role includes ensuring that the executive branch of government carries out its functions in accordance with the law. In order for the courts to perform that role, people must in principle have unimpeded access to them. Without such access, laws are liable to become a dead letter, the work done by Parliament may be rendered nugatory, and the democratic election of Members of Parliament may become a meaningless charade. That is why the courts do not merely provide a public service like any other.

69. Access to the courts is not, therefore, of value only to the particular individuals involved. That is most obviously true of cases which establish principles of general importance. When, for example, Mrs Donoghue won her appeal to the House of Lords (*Donoghue v Stevenson* [1932] AC 562), the decision established that producers of consumer goods are under a duty to take care for the health and safety of the consumers of those goods: one of the most important developments in the law of this country in the 20th century. To say that it was of no value to anyone other than Mrs Donoghue and the lawyers and judges involved in the case would be absurd. The same is true of cases before ETs. For example, the case of *Dumfries and Galloway Council v North* [2013] UKSC 45; [2013] ICR 993, concerned with the comparability for equal pay purposes of classroom assistants and nursery nurses with male manual workers such as road workers and refuse collectors, had implications well beyond the particular claimants and the respondent local authority. The case also illustrates the fact that it is not always desirable that claims should be settled: it resolved a point of genuine uncertainty as to the interpretation of the legislation governing equal pay, which was of general importance, and on which an authoritative ruling was required.

Slide 5 allows you to give an overview of the legal system. You might want to show the diagram of the court system from the Ministry of Justice website, or link to it during the lecture. In fact slide 5 gives you an opportunity to talk about all the standard features of the court system that the students need to know at this point. Slide 6 provides some other functions that might not necessarily leap to mind. It gives you an opportunity to talk about why adoption, even when not opposed, must go to court.

Slides 7 and 8 let you criticize the legal system – always goes down well with students we find. It is easy to get them to talk about whether victims get a fair deal.

Slide 9 - once you have got them criticizing, you can get students to think about their own ideas of justice. There is no reason why the lawyers should have it all their own way.

Slide 10 gets them to realise that everything keeps changing. You could use this as an opportunity to reflect upon the different way we treat public children act cases now, with parents involved for instance. This also lets you refer to human rights and devolution.

Slides 11-13 explain the civil court structure. You can make this more interesting by talking about children's cases, or perhaps judicial review in connection with community care resource allocation.

Slides 14 and 15 explain the criminal court structure. Equally relevant for social workers.

Slides 16 and 17 deal with the Supreme Court (formerly House of Lords).

Slide 18 raises some questions about virtual justice which may prompt some discussion. The general conclusion is that virtual justice is highly problematic for users of social work services.

Slide 19 concludes on the note that everything keeps changing. Students should always be alert to considering whose interests are served by the system.