**Faculty of Letters and Languages – M’sila**

**Department of English**

**Level:** Master 01

**Course:** British Civilization.

**Lecture**: The Legal System.

**Lecture number**: 05

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**INTRODUCTION:**

The legal system is among the oldest and most traditional of British institutions. Its authority and influence are due to its independence from the executive and legislative branches of government. It is supposed to serve citizens; control unlawful activities against them and the state; protect civil liberties; and support legitimate government.

10111But it has historically been accused of harshness; of supporting vested and political interests; favoring property rather than human rights; maintaining the isolation and mystique of the law; encouraging the delay and expense of legal actions; and showing a bias against the poor and disadvantaged. It has been criticized for its resistance to reform and the maintenance of professional privileges which can conflict with the public interest. It is felt that the law today has still not adapted to changing conditions, nor understood the needs of contemporary society. Recent miscarriages of justice have embarrassed the police, government and judiciary and increased public concern about the quality of criminal justice. Similar misgivings are also felt about the expense and operation of the civil law.

But the legal system has changed over the centuries in response to changing structures and social philosophies. Today, consumer demands, professional pressures and government reforms are forcing it to develop, sometimes rapidly and sometimes slowly. Most people in the past were unaffected by the law. But it now involves citizens more directly and to a greater extent than before. Increased demands are made upon it by individuals, the state and corporate bodies. Concern about crime has emphasized the control role of the criminal law, while increased divorce, family break-down and a more litigious society have led to a heavier workload for the civil law.

In order to simplify matters, this lecture concentrates on the largest element – that of England and Wales – with comparative references to Scotland and Northern Ireland. The Northern Irish legal system is similar to that of England and Wales. But Scotland has historically maintained its independent legal apparatus despite being part of the UK.

British court cases are divided into civil and criminal law.

1-**Civil law**: It involves private rights and settles disputes between individuals or organizations. It deals with claims for compensation (financial or otherwise) by a person (plaintiff) who has suffered loss or damage (such as a breach of contract or a negligent act) at the hands of another (defendant). Civil cases may be decided by settlement before trial or by a judge (and sometimes a jury) after trial.

**2-Criminal law:** It protects society by punishing those (the accused or defendants) who commit crimes against the state, such as theft or murder. The state usually prosecutes an individual or group at a trial in order to establish guilt. The result may be a fine or imprisonment. Such punishment is supposed to act as a deterrent to potential offenders, as well as stating society’s attitudes on a range of matters.

**Sources of British Law**

The three main sources of *English/Welsh* law are the common law, statute law and European Union law. The oldest is the *common law*, based on the customs of early settlers and invaders. After the Norman Conquest, it became a body of rules and principles which was decided and written down by judges in court cases. These judgments were the law of the land. The same rules still guide judges in their interpretation of statutes and in the expansion of the common law.

**Common law** decisions form precedents from which judges can find the principles of law to be applied to new cases. Normally today, the creation of new precedents in England and Wales lies with the House of Lords, as the supreme court of appeal. Its rulings state the current law to be applied by all courts. The tradition of following precedent maintains consistency and continuity. But it can create conservative law and fail to take account of changing social conditions.

**Statute law**was originally made by the monarch. But the Westminster Parliament gradually became the legislating authority because of its growing power against the monarch. Statutes (Acts of Parliament which create new law) multiplied in the nineteenth and twentieth centuries because rules were needed for a changing society. Much British law today is in statute form and shows the influence of the state in citizens’ lives. Acts of the Westminster Parliament are applicable to England, Wales and often the UK as a whole and are supreme over most other forms of law (except for some EU law).

**European Union law**became part of English (British) law following Britain’s entry into the European Economic Community in 1973. EU law takes precedence over British domestic law in certain areas and judges must apply EU law when there is a conflict with Acts of Parliament. EU law and British domestic law now coexist and Britain plays its part in creating EU law. But after “Brexit” the EU laws are no longer part of British laws.

**The Court System in England and Wales**

The principal court system is divided into **criminal** and **civil courts** at various levels

**I-CRIMINAL COURTS**

There are two levels of criminal courts. The lower and busiest is the **magistrates’ court**, which deals with summary (less serious) cases and handles over 95 per cent of all criminal matters. The more serious (indictable) criminal offences, such as murder, are tried by the higher court, **the crown court**.

**I-1-Magistrates’ courts:**

Theyserve urban and rural local areas in England and Wales. Two types of magistrates sit in the courts: Justices of the Peace (JPs) and stipendiary magistrates. Most magistrates’ courts are presided over by thirty thousand magistrates (JPs). They are part-time judicial officials chosen from the general public; hear cases without a jury; receive no salary for their services (only expenses); and have some legal training before they sit in court. Magistrates may be motivated by the desire to perform a public service or the supposed prestige of the position. They sit daily in big cities and less frequently in rural areas. They date from 1327 and illustrate a legal system in which the ordinary person is judged by other citizens, rather than by professionals.

Magistrates are appointed by the Crown on the advice of the Lord Chancellor, who receives suitable names from county committees. This procedure has been criticized for its secrecy and exclusivity. Magistrates in the past were white middle- or upper-class males who were prominent in the local community, such as landowners, doctors, retired military officers and businessmen. But they are now recruited from wider and more representative social, ethnic and gender backgrounds.

**I-2-The Crown Courts**

Such as the Central Criminal Court in London (popularly known as the Old Bailey), are situated in about ninety cities in England and Wales and are administered by the Lord Chancellor’s Department in London. The crown court has jurisdiction over all indictable criminal offences, and innocence or guilt after a trial is decided by a jury of **twelve citizens**. After it has reached its decision on the facts of the case, sentence is passed by the judge who is in charge of proceedings throughout the trial.

**I-\*Criminal Appeal Courts**

The appeal structure is supposed to be a safeguard against mistakes and miscarriages of justice. But the number of such cases has increased, resulting in much publicity and concern. They have been caused by police tampering with or withholding evidence; police pressure to induce confessions; and the unreliability of forensic evidence. Appeal courts are criticized for their handling of some appeals, and an independent authority (the Criminal Cases Review Commission) was created (1995). It reviews alleged miscarriages of justice and now receives many applications. The crown courts hear appeals from the magistrates’ courts and both may appeal on matters of law to a divisional court of the Queen’s Bench Division. Appeals from the crown court are made to the Criminal Division of the Court of Appeal. Appeals may then go to the House of Lords as the highest court in England and Wales.

**II-CIVIL COURTS**

Civil law proceedings are brought either in the county court (which deals with 90 per cent of civil cases) or in the High Court. Less expensive and complex actions are dealt with in the county court, rather than the High Court, and most civil disputes do not reach court at all. **II-1-The County Court**:

England and Wales are divided into 250 districts with a County Court for each district. The county court handles a range of money, property,contract, divorce and family matters and a district judge usually sits alone when hearing cases.

**II-2-The High Court:**

 Ithas its main centre in London, with branches throughout England and Wales. It is divided into three divisions which specialize in specific matters. The *Queen’s Bench Division* has a wide jurisdiction, including contract and negligence cases; the *Chancery Court Division* is concerned with commercial, financial and succession matters; and the *Family Division* deals with domestic issues such as marriage, divorce, property and the custody of children.

**II-\*-Civil Appeal Courts in England and Wales**

The High Court hears appeals from magistrates’ courts and county courts. But the main avenue of appeal is to the Court of Appeal (Civil Division), which deals with appeals from all lower civil courts on questions of law and fact. It can reverse or amend decisions, or sometimes order a new trial. Appeals from the Court of Appeal may be made to the House of Lords. The appellant must normally have obtained permission either from the Court of Appeal or the House of Lords. Appeals are usually restricted to points of law where an important legal issue is at stake.

**EXERCISES**

**1-**Explain and examine the following terms

Magistrates- Appeal Courts-Common Law- Appeal Courts- Miscarriages of Justice

**2-**In a short essay explain the structure of the English Criminal Courts.

**REFERENCES**

Oakland, John. 2002. *British Civilization: an Introduction.* London: London University Publication Office.

Mcdowall, David. 2008. *An Illustrated History of Britain*. New York: The McGraw-Hill Companies, Inc.

**Appendix:** Civil and Criminal Courts in England and Wales.

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