Divisional courts

Each of the three divisions of the High Court has divisional courts. These are constituted by not less than two judges.

(a) Divisional Court of Queen's Bench. This court has a supervisory jurisdiction under which it exercises the power of the High Court to discipline inferior courts and to put right their mistakes by means of judicial review through mandatory orders, prohibiting orders and quashing orders (formerly the orders of *mandamus*, prohibition and *certiorari*). When dealing with applications for these orders, the court is designated the Administrative Court.

Under s 28A of the Supreme Court Act 1981, the court has jurisdiction in cases stated and *habeas corpus* applications to the High Court and in some cases these functions may be carried out by a single judge of that court.

(b) Divisional Court of the Chancery Division. This court hears appeals in bankruptcy cases from county courts outside London, the Bankruptcy Court of the Chancery Division hearing bankruptcy appeals from London.

(c) The Divisional Court of the Family Division. This court hears appeals from magistrates' courts in family proceedings.

The Commercial Court

Since 1964 the High Court has operated a Commercial Court. Section 6 of the Supreme Court Act 1981 now constitutes, as part of the Queen's Bench Division, a Commercial Court for the trial of causes of a commercial nature, e.g. insurance matters. The judges of the Commercial Court are such High Court judges as the Lord Chief Justice may, after consulting the Lord Chancellor, from time to time nominate to be Commercial judges. They are, in practice, drawn from those who have spent their working lives in the commercial field.

They combine the general work of a Queen's Bench Judge with priority for commercial cases. The Act merely continues formal independence to the Commercial Court. Commercial litigation has since 1895 been dealt with in the Queen's Bench Division on a simplified procedure and before a specialist judge, the intention being to overcome the reluctance of those in business, who prefer the privacy of arbitration, to resort to the machinery of the courts.

Two specific steps were proposed in the Administration of Justice Bill 1970 to attract such customers: first a power was to be taken to allow the court to sit in private and to receive evidence which would not normally be admissible in an ordinary court, and second, High Court judges were to be allowed to sit as arbitrators. The first of these proposals was rejected by the House of Commons at the Report Stage but the second was passed into law and is now to be found in s 93 of the Arbitration Act 1996 which enables a judge of the Commercial Court to take arbitrations. Before doing so he must obtain clearance from the Lord Chief Justice. However, given their court commitments it is unlikely that a commercial judge would be made available. Arbitrators are most often experts familiar with the industry or commercial area in which the dispute has arisen.

Thus, although in theory the court has no wider power than other courts of the Queen's Bench Division, there is, in practice, a general discretion for departures in procedure and admission of evidence where the parties consent or where the interests of justice demand it or where it is necessary to expedite business. The power to hold hearings in private is restricted, but s 12 of the Administration of Justice Act 1960 gives a power which could be

used if, for example, trade secrets were involved. Commercial cases may be tried by a judge alone, or by a judge and a jury. It was once a special jury in that it consisted of persons who had knowledge of commercial matters. An ordinary jury is now used since s 40 of the Courts Act 1971 abolished special juries.

Where a judge of the Commercial Court is acting perhaps rarely as an arbitrator, he sits in private and in any place convenient to the parties. There is no requirement for such arbitrations to take place in the law courts. The conduct of the hearing should be as informal as any other arbitration. In addition, the award is made privately to the parties and not published like a judgment.

The Commercial Court sits in London and there are separate mercantile lists in Bristol, Birmingham, Cardiff, Leeds, Manchester, Liverpool and Newcastle for cases involving commercial transactions. The Commercial Court publishes a 'Guide to Commercial Court Practice' which gives guidance on matters of practice in that court.

Practice Statements encourage the use of alternative dispute resolution in commercial cases, particularly where the costs of conventional litigation are likely to be wholly disproportionate to the amount at stake. The Clerk to the Commercial Court keeps a list of individuals and bodies that offer mediation, conciliation and other ADR services (see further Chapter 5).

Additionally, of course, the Civil Procedure Rules 1998 encourage the use of ADR in all civil disputes.

The Companies' Court

This is really a court of the Chancery Division where company matters are tried before a single judge whose special concern is with company work. The work of the court is divided into company liquidation proceedings, and other company matters.

The Bankruptcy Court

The bulk of the bankruptcy work of the Chancery Division is performed by Registrars in Bankruptcy who deal with cases arising in the London insolvency district, provincial bankruptcies being dealt with by those county courts with bankruptcy jurisdiction.

The Court of Protection

The present Court of Protection is concerned to protect and administer the property and effects of those who are by reason of mental disorder not able to manage these matters for themselves. In practice, the Public Trustee's Office carries out the administrative functions of the Court of Protection.

Part VII of the Mental Health Act 1983 deals with Court of Protection matters. The judges of the Chancery Division are nominated under s 93(1) to act. There is also a Master and two Assistant Masters nominated under s 93(4) who carry out the work of protection matters. Very little work is in practice referred to a nominated judge.

The usual remedy is to appoint a receiver to look after the patient's property and affairs. It is usual for a near relative, e.g. a spouse, to apply and be appointed.

Reform

Section 45 of the Mental Capacity Act 2005 will, as it comes into force, set up a new superior court also called the Court of Protection. It has been given a comprehensive jurisdiction over the health, welfare and financial affairs of those who lack capacity. The new court has been given the same powers, rights, privileges and authority as the High Court. The existing Court of Protection, which dealt only with the patient's property and affairs, is abolished by the 2005 Act. The new court may make decisions on behalf of the patient and where a more general supervision of a patient's affairs is required may appoint persons called deputies. The appointment of receivers is abolished by the 2005 Act.

The jurisdiction of the court will be exercised by one judge who is either:

- the President of the Family Division;
- the Chancellor of the High Court;
- a *puisne* judge of the High Court; or
- a circuit judge or district judge.

There will be a President of the Court of Protection and a Senior Judge of the Court of Protection, the latter having administrative responsibilities.

Technology and Construction Court

This court was formerly known as the Official Referees' Court. A claim before the court is one which involves matters that are technically complex, e.g. cases involving civil or mechanical engineering, building, other construction work and professional negligence claims in those fields. Allocation to this court is equivalent to allocation to the multi-track and there is no need for normal allocation procedures (see further Chapter 5). The judges are circuit judges who sit as judges of the High Court. It is comparable in importance with the Commercial Court.

Restrictive practices

The Restrictive Practices Court was abolished by the Competition Act 1998 which came into force on 1 March 2000. Further details of enforcement of the current competition laws contained in the Competition Act 1998 and the Enterprise Act 2002 appear in Chapter 16. However, for enforcement of domestic (UK law) infringements the Office of Fair Trading and trading standards departments of local authorities have power to ask the High Court or county court for an enforcement order against the trader to stop the infringement. If the trader fails to do so, he or she is in contempt of court and can be fined or imprisoned for up to two years. Those suffering loss from a prohibited practice can make a claim to the Competition Appeals Tribunal (CAT) for damages. Claims by way of class actions can be brought on behalf of two or more consumers by, e.g., consumers' associations. Appeal from the CAT is to the Court of Appeal (Civil Division).

A new s 58A of the Competition Act 1998 (inserted by the Enterprise Act 2002 s 20) makes clear that there may also be proceedings before a civil court in which damages may be claimed, e.g. in relation to a breach of the prohibitions in the 1998 Act.

The Court of Appeal – generally

The Court of Appeal consists of two divisions:

(a) the Civil Division which exercises the jurisdiction formerly exercised by the former Court of Appeal; and

(b) the Criminal Division which exercises the jurisdiction formerly exercised by the Court of Criminal Appeal.

Appeals up to the Civil Division

Consideration has already been given to the route of appeal in small claims cases. It is convenient to consider the route of appeal in fast-track and multi-track and specialist cases in terms of the track and the judiciary involved bearing in mind that what are referred to as 'second appeals' are much restricted.

Appeals from fast-track claims

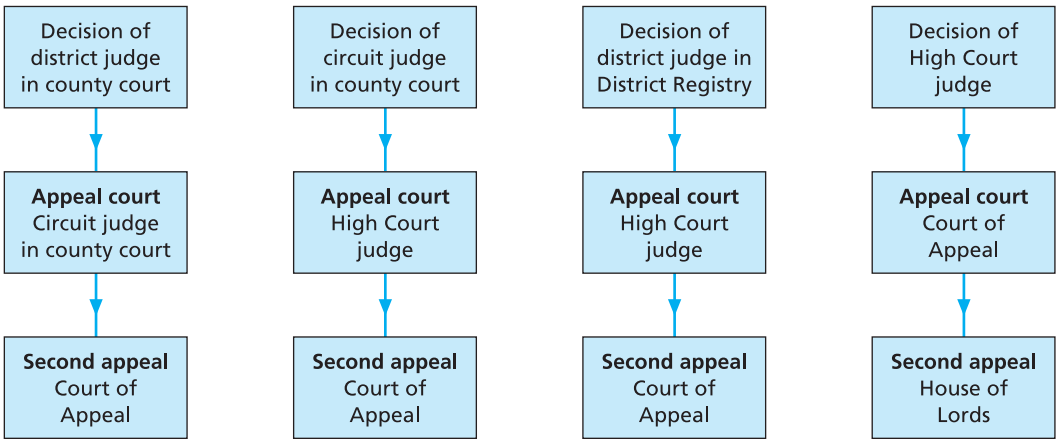
- Where the decision is made by a district judge the circuit judge is the appeal court. Permission to appeal is required for such an appeal. It should be noted that when permission to appeal is used in this text it means that permission may be given by the court against whose decision the appeal is to be made or to the court to which the appeal will be made. Permission of the court making the decision should be asked for first, and if there is failure to do this or that court refuses permission, the permission of the court to which the appeal will be made should be sought.
- Where a circuit judge dismisses an appeal at a hearing the Court of Appeal is the appeal court. Such an appeal is a 'second appeal'. Where a circuit judge refuses permission to appeal to him without a hearing, a request may be made for an oral hearing. It at the oral hearing the circuit judge refuses permission to appeal to himself, no further right of appeal exists.
- Where a circuit judge hears a fast-track appeal from a district judge, an appeal from the circuit judge is to the Court of Appeal. Permission is required and such an appeal is a 'second appeal'.
- Where a circuit judge himself hears a fast-track claim, appeal is to a High Court judge. Permission is required for such an appeal. Where the High Court refuses permission without a hearing, a request may be made for an oral hearing. If at the oral hearing permission is refused, no further right of appeal exists.
- Where a High Court judge hears a fast-track appeal from a circuit judge, the Court of Appeal is the appeal court. Permission is required but such an appeal is a 'second appeal'.

Appeal in multi-track claims and specialist proceedings, e.g. patents court business

- Where a district judge or circuit judge in a county court or a master (see Chapter 3) or a High Court judge in the High Court gives a final decision in a multi-track claim, the Court of Appeal is the appeal court. A final decision is one that disposes of the issue in the case

or part of it, e.g. as by deciding liability or the assessment of damages or both of these matters. The same route of appeal applies in specialist proceedings such as patents, commercial court business, Technology and Construction Court business and proceedings under legislation relating to registered companies. Permission is required for these appeals.

- Where the decision is not final as where e.g. it relates to costs or a case management decision or a claim to strike out an action so that a trial will not take place the route of appeal depends upon the judge whose decision is being appealed as follows:



Note: under the CRA 2005, as it comes into force, the second appeal from a decision of a High Court judge will be to the Supreme Court.

Permission is required for the above appeals. Furthermore, if the appeal court refuses permission without a hearing, a request may be made for an oral hearing. If there is refusal at that hearing, no further right of appeal exists. Where the appeal is to the Court of Appeal, permission to appeal is *only* from the Court of Appeal itself. A strict test must be satisfied, i.e. that the Court of Appeal considers that the second appeal raises an important point of legal principle or practice or that there is some other compelling reason for the Court of Appeal to hear it.

Family proceedings

The circuit judge is the appeal court where the decision was made by a district judge sitting in a county court. The Court of Appeal is the appeal court where the decision is that of a circuit judge sitting in the county court. The same is true where the decision is that of a High Court judge or a circuit judge or High Court judge on appeal from a district judge.

Insolvency proceedings

A single High Court judge is the appeal court from a bankruptcy or other insolvency decision by a district judge or a circuit judge in a county court and permission is not required. Appeal from the single judge lies to the Court of Appeal with the permission *only* of the Court of Appeal. Where the decision is by a High Court judge but not on appeal, the Court of Appeal is the appeal court. Permission is required either from the High Court judge or the Court of Appeal.

Leapfrog appeals

Under ss 12 and 13 of the Administration of Justice Act 1969 an appeal from a High Court judge may be made to the House of Lords (under the CRA 2005, as it comes into force, the Supreme Court), if all the parties consent and the judge gives a certificate to the effect that the case raises a point of law of public importance relating wholly or mainly to a statute or statutory instrument. The House of Lords (going forward the Supreme Court), must also give leave. This procedure is most often used in tax and patent appeals where the meaning of statutes is often very involved.

Appeals from tribunals

The Court of Appeal hears appeals from a number of tribunals, e.g. the Employment Appeal Tribunal and the Lands Tribunal (see further Chapter 3). It also hears appeals from the Competition Appeal Tribunal in matters arising from competition law (see further Chapter 16).

Permission to appeal

As we have seen, the main test for granting permission to appeal is whether the appeal has any real prospect of success. This would not necessarily apply to leapfrog appeals where matters of public importance are involved.

What the Court of Appeal may do

The court may, on appeal, uphold or reverse the judge below or substitute a new judgment. Exceptionally, it may order a new trial as it did, e.g. in *Gilberthorpe* v *News Group Newspapers* [1995] 2 CLY 3885 where fresh evidence had become available. A retrial was also ordered in *Gabriel* v *Kirklees Metropolitan Council* (2004) *The Times*, 12 April, where on appeal from the county court in a case of alleged negligence it appeared that the judge had not made thorough findings of fact, so that her judgment for the defendants was flawed.

Hearing the appeal

Under the provisions of the Access to Justice Act 1999 the Court of Appeal (Civil Division) may consist of any number of judges depending on the importance and complexity of the case. Where there are two judges and they cannot agree, the case may have to be re-argued before a new court of three or the original two plus a third. Some appeals are heard by a single judge.

Reopening a final judgment

The Court of Appeal ruled in *Taylor* v *Lawrence (Appeal: Jurisdiction to Reopen)* (2002) *The Times*, 8 February that it had a power to re-open appeal proceedings in order to avoid real injustice in exceptional circumstances. Lawrence asked the Court of Appeal to re-open an appeal relating to a boundary dispute which he had brought and which had been dismissed. He alleged bias in a judge where the solicitor for the claimant Taylor had, it later appeared, been engaged to amend a will for the judge the day before judgment was announced. The court ruled that it had jurisdiction to re-open the appeal but declined to do so in this case because it did not accept that the judge would have been influenced by this.

Comment We are here considering the rehearing of the appeal and not the ordering of a fresh trial.

The judiciary

The work of the Civil (and Criminal) Division is currently carried out by a maximum of 37 Lords or Lady Justices of Appeal (SI 2002/2837). This number can be increased by statutory instrument. The court is presided over by the Master of the Rolls, who is appointed by the Prime Minister, who is in turn advised by the Lord Chancellor. The qualification for a Lord or Lady Justice of Appeal is a 10-year High Court qualification, i.e. having had a right of audience in relation to all proceedings in the High Court for at least 10 years or having been a *puisne* judge (which is the normal route) (Supreme Court Act 1981 (going forward the Senior Courts Act 1981), s 10(3)(b), as amended). It should be noted that also included in the judiciary in the Civil Division are, under s 2 of the Supreme Court Act 1981 (going forward the Senior Courts Act 1981) (as amended by the CRA 2005), any person who was Lord Chancellor before 12 June 2003, the Lord Chief Justice, the Master of the Rolls, the Presidents of the Queen's Bench Division and the Family Division and Chancellor of the High Court. Currently, the Law Lords are included (going forward Judges of the Supreme Court). The Lord Chief Justice may also request judges of the High Court to sit. However, under s 56 of the Supreme Court Act 1981 (to be renamed (see above)) a judge may not sit on an appeal to the Court of Appeal if he sat at the hearing of the case in the lower court. This applies to both civil and criminal cases.

The Criminal Division

The work of the Criminal Division is carried out by the Lord Chief Justice and the same Lord and Lady Justices of Appeal, who also sit in the Civil Division. It should also be noted that the Lord Chief Justice may ask any judge of the High Court to sit in the Criminal Division. The normal court consists of three judges but sometimes, though rarely, a full court of five will sit if the case is a difficult one. Under s 55 of the Supreme Court Act 1981 (to be renamed (see above)) a court of two may sit to deal with appeals against sentence. A single judge may carry out some functions, e.g. grant leave to appeal against conviction or sentence (Criminal Procedure Rules 2005, rule 68). The success rate in terms of the ordinary prisoner seeking leave to appeal against *conviction* is negligible, though thousands of appeals against *sentence* are heard annually.

As regards the Criminal Division, it should be noted that following the bringing into force of s 52 of the Criminal Justice and Public Order Act 1994 senior circuit judges may sit as judges of that division but not of the Civil Division. Only one circuit judge can sit as part of a full court. Circuit judges cannot act as single judges and could not sit as part of a court reviewing a case tried by a High Court judge in terms of conviction or sentence. This restriction is removed by Sch 10 to the Courts Act 2003. The request to sit is made by the Lord Chief Justice.

Jurisdiction – generally

The Criminal Division hears appeals from the Crown Court against conviction and sentence and may dismiss or allow the appeal or order a new trial. Further details appear in the section on the Crown Court. In addition, the Home Secretary could refer a case to the Criminal Division under s 17(1)(a) of the Criminal Appeal Act 1968. An example is to be found in *R* v *Maguire* [1992] 2 All ER 433. All the appellants had, following an IRA bomb attack on a Birmingham pub, been convicted of knowingly having in their possession or under their

control an explosive substance namely nitro-glycerine, under such circumstances as to give rise to a reasonable suspicion that it was in their possession or control for an unlawful object. Following a reference to the Court of Appeal by the Home Secretary, the convictions were quashed, on the ground that they were unsafe and unsatisfactory because the possibility of innocent contamination of the appellants' hands could not be excluded. An expert prosecution witness had failed to disclose this at the trial.

Now that the Criminal Cases Review Commission (see below) has been set up, s 17 of the 1968 Act is repealed by s 3 of the Criminal Appeal Act 1995 and this abolishes the Home Secretary's power to refer cases to the Court of Appeal. Instead, under s 5 of the 1995 Act, the Court of Appeal is enabled to commission investigations to be carried out by the Commission, which will report its findings to the court. Under s 14 of the 1995 Act (and rule 68.25 of the Criminal Procedure Rules 2005), a reference regarding a conviction, verdict finding or sentence may be made to the Commission with or without an application by the person to whom it relates.

Furthermore, the Attorney-General may refer for an opinion on a point of law arising from a charge which resulted in an acquittal (Criminal Justice Act 1972, s 36(1) and rules 69.1 and 69.5 of the 2005 Rules). An example is to be found in *Attorney-General's Reference (No 2 of 1982)* [1984] 2 WLR 447, where two directors, A and B, were alleged to have committed theft of the company's property leaving it without funds to pay its creditors. They were also the only shareholders. Since theft requires a taking from some other person without that person's consent, the trial judge held that the offence of theft had not been committed and A and B were acquitted. On the reference of the Attorney-General, the Court of Appeal held that since a company was a separate person at law (see further Chapter 8), A and B could steal from it. Furthermore, although the consent of the directors would often be imputed to the company, it was irrational to do so here when A and B were alleged to be acting dishonestly in relation to the company. The Court of Appeal was of the opinion that A and B could be legally charged with theft. It should be noted that the Court of Appeal's opinion has no effect upon the outcome of the original trial. The acquittal stands.

Jurisdiction – retrial for serious offences

The Criminal Justice Act 2003 sets out the cases that may be retried under the *evidence* exception in the Act to the *normal rule against double jeopardy*. The procedure is contained in Part 10 of the Act. There is provision for retrial of 'qualifying offences'. These include murder, rape, armed robbery and causing explosions, drugs offences and a variety of terrorist offences and conspiracy. The provisions apply where *new evidence* comes to light after a first acquittal which strongly indicates that the person acquitted is guilty and it is right in all the circumstances to hold a second trial.

The Director of Public Prosecutions must consent to a suspect being re-investigated. The prosecution must then apply to the Court of Appeal Criminal Division for the original acquittal to be quashed. Only one application in regard to a particular person can be made and therefore only one retrial is possible.

The problem presented by this removal of the double jeopardy rule is in the main that a person whose original acquittal is overturned may find that the presumption of his innocence in the retrial is affected so that it may well be difficult for the alleged offender to get a fair trial.

The government made a declaration under Art 55 of the Schengen Convention which allows an exception to the normal rule against double jeopardy within member states of the EU where the offence took place in the home state. This will ensure that the Act is compatible with the Convention. The above provisions will assist further trials now that DNA evidence is available.

Appeals in cases of death

Section 7 of the Criminal Appeal Act 1995 inserts a new s 44A into the Criminal Appeal Act 1968 under which the Court of Appeal may approve an application to conduct an appeal on behalf of a convicted person who has died. This is particularly important where the deceased has been fined and has died before an appeal could be heard. Before the enactment of this section his estate would have had to pay the fine even though if there had been an appeal the court may have quashed the conviction and the fine.

Power to increase sentence

Section 36 of the Criminal Justice Act 1988 allows the Attorney-General to refer a case for increased sentence if it appears that the judge in the Crown Court has been too lenient. The section applies only to trials on indictment. The Court of Appeal must give leave before the reference can be heard and has power on hearing the reference to give any sentence which the original court could have given. Thus the sentence may be increased or reduced. The section is an attempt to deal with public disquiet over lenient sentences.

It should be noted that the Court of Appeal is not bound to give leave to refer and did refuse leave in *Attorney-General's Reference (No 14 of 2003), R* v *Sheppard* (2003) *The Times*, 18 April, where Nicola Sheppard had pleaded guilty in Bristol Crown Court to a charge of laundering the proceeds of criminal conduct. She was sentenced by the recorder to a community punishment order of 120 hours. The Court of Appeal refused the Attorney's reference because it did not take into account mitigating circumstances pleaded before the recorder on Ms Sheppard's behalf.

New trials

The court may order a new trial under s 7 of the Criminal Appeal Act 1968 as amended by s 54 of the Criminal Justice Act 1988. The power is quite extensive and a retrial can be ordered if the Court of Appeal is satisfied that it is in the interests of justice to do so. It is intended in the main to prevent unmeritorious defendants from escaping justice because of some technical mistake at the original trial. It does not cover retrials on new evidence (see above).

There is also a power to order a new trial at common law where there has been a fundamental defect in the trial so that it was a nullity. Thus, in *R* v *Ishmael* [1970] Crim LR 399, the accused had been sentenced to life imprisonment having pleaded guilty at his trial to an offence under s 3 of the Malicious Damage Act 1861 (arson of buildings, punishable by life imprisonment) thinking he was charged with an offence under s 7 of the 1861 Act (arson of goods, punishable by 14 years' imprisonment). The Court of Appeal held that he must be tried again.

These provisions survive the provisions of the Criminal Justice Act 2003. The power is not restricted to the qualifying offences of the 2003 Act. It is a procedure that the court can perhaps adopt instead of dismissing an appeal. *Retrial is ordered when an appeal is made to the court* which may allow the appeal but because of the circumstances order also a retrial. The Criminal Justice Act 2003 applies even when all appeal procedures have been exhausted.

Criminal Cases Review Commission

Sections 8 to 25 of the Criminal Appeal Act 1995 provide for a body to investigate and report on cases of possible wrongful conviction or sentence. The Commission consists of not less than 11 persons one-third of whom must be legally qualified. The other two-thirds must have knowledge or experience of some aspect of the criminal justice system. Cases are referred to

the Commission by the Court of Appeal and it is to that court that the Commission's report is made. In addition the Commission may, with or without an application by the person to whom it relates, investigate and refer to the Court of Appeal any conviction or sentence in any case which has been tried summarily or on indictment in England and Wales.

Where the Criminal Cases Review Commission refers a case to the Court of Appeal, the Criminal Appeal Act 1968, s 23 allows the court to receive fresh evidence, e.g. DNA evidence that was not adduced at the trial. Although DNA evidence may be adduced *by the offender* to point to another person as guilty, it may be brought in by the Crown as showing the guilt of the offender.

The Crown is not restricted to adducing fresh evidence under s 23 only in order the rebut fresh evidence adduced by the defendant on appeal. Thus in *R* v *Hanratty* [2002] 3 All ER 534 the prosecution, i.e. the Crown, was allowed to adduce DNA evidence proving conclusively that H was guilty of the crime of murder for which he had been convicted and hanged, on an appeal brought in an attempt to clear his name, even though the DNA evidence did not address the grounds of the appeal that there were alleged procedural defects in the investigation and at the trial. The court did not accept that the investigation or trial was flawed or that the conviction was unsafe.

Vice-presidents

Under s 3(3) of the Supreme Court Act 1981 (Senior Courts Act 1981 going forward) (as amended) the Lord Chief Justice may, after consulting the Lord Chancellor, appoint one of the ordinary judges of the Court of Appeal as Vice-President of both Divisions of that court, or one of those judges as Vice-President of the Criminal Division and another of them as Vice-President of the Civil Division. The Vice-President will preside in the absence, for example, of the Lord Chief Justice (Criminal Division) or the Master of the Rolls (Civil Division).

Assistance for transaction of judicial business in the Supreme Court

Section 9 of the Supreme Court Act 1981 (becomes Senior Courts Act 1981) brings together a number of provisions enabling assistance to be given by judges, former judges and deputy judges in terms of the business of the Supreme Court at the request of the Lord Chief Justice.

A judge of the Court of Appeal is competent to act on request in the High Court and the Crown Court. A person who has been a judge of the Court of Appeal is competent to act in the Court of Appeal, the High Court and the Crown Court. A *puisne* judge of the High Court is competent to act in the Court of Appeal. A person who has been a *puisne* judge of the High Court is competent to act in the Court of Appeal, the High Court and the Crown Court. A circuit judge is competent to act in the High Court.

By reason of s 58 of the Administration of Justice Act 1982, a recorder is competent to act in the High Court.

Under s 9(4) of the Supreme Court Act 1981, if it appears to the Lord Chief Justice that it is expedient as a temporary measure to make an appointment in order to facilitate the disposal of business in the High Court or the Crown Court, he may appoint a person qualified for appointment as a *puisne* judge of the High Court to be a deputy judge of the High Court during such period or on such occasions as the Lord Chief Justice thinks fit.

Where there is a vacancy in the office of Lord Chief Justice or he or she is unable for any reason to fulfil the above roles, they will be carried out by the Master of the Rolls.

The House of Lords

Current constitution

The court is constituted by the Lords of Appeal in Ordinary (or Law Lords). There are at any one time between nine and 12 Law Lords, two of whom normally come from the Scottish judiciary. The Law Lords are life peers and each of them is appointed by the Queen on the Prime Minister's advice, who is in turn advised by the Lord Chancellor, from among persons who have a Supreme Court qualification, i.e. a right of audience in relation to all proceedings in the Supreme Court. No number of years is stated. (See Appellate Jurisdiction Act 1876, s 6, as amended by the Courts and Legal Services Act 1990, Sch 10.) Normally the appointments are made from the Lords Justices of Appeal. A minimum of three law lords is required to constitute a court, but in practice five normally sit to hear an appeal. The decision is by majority judgment.

Jurisdiction

(a) Civil. On the civil side the House of Lords hears appeals from the Court of Appeal (Civil Division), the Court of Session in Scotland, when one or two Scottish Law Lords sit, and the Supreme Court of Northern Ireland when a Law Lord from Northern Ireland sits. In all cases the lower court must certify that a point of law of general public importance is involved and either the lower court or the Appeal Committee of the House of Lords consisting of three Law Lords must give leave. In addition, there is a direct appeal from the High Court to the House of Lords by what is referred to as the 'leapfrogging method'. This phrase is used because the appeal goes straight to the House of Lords and not through the Court of Appeal. As we have seen all parties must consent and the appeal must raise a point of law of public importance relating wholly or mainly to a statute or statutory instrument. The trial judge must certify the importance of the case and the House of Lords must give leave. This 'leapfrogging' procedure is most likely to be used in revenue appeals and patent matters where construction of statutes is often very involved.

(b) Criminal. On the criminal side the court hears appeals from the Court of Appeal (Criminal Division) and the Queen's Bench Division of the High Court under the case stated procedure. In both cases the lower court must certify that a point of law of general public importance is involved and either the lower court or the Appeal Committee of the House of Lords must give leave. The House of Lords is not a final appellate tribunal for Scotland in criminal matters, but the Scottish Court of Criminal Appeal is.

Attorney-General's references, including those on sentence, may reach the House of Lords. The proceedings in the House of Lords are surprisingly informal. The Law Lords are not robed but sit in dark suits generally in panels of five at a table in one of the committee rooms in the Houses of Parliament at Westminster.

Effect of the Human Rights Act 1998

The House of Lords has played a vital part in the development of UK law on human rights (see further Chapter 3) where, as the final appeal court in the UK, it may sometimes clash with government by ruling that an Act of Parliament operates contrary to the Act and requires amendment. The former Lord Chief Justice, Lord Bingham, was appointed to head the 12 Law Lords. As senior Law Lord, the person involved is influential in deciding the composition of the panels of judges who hear appeals. This could be helpful in dealing with the