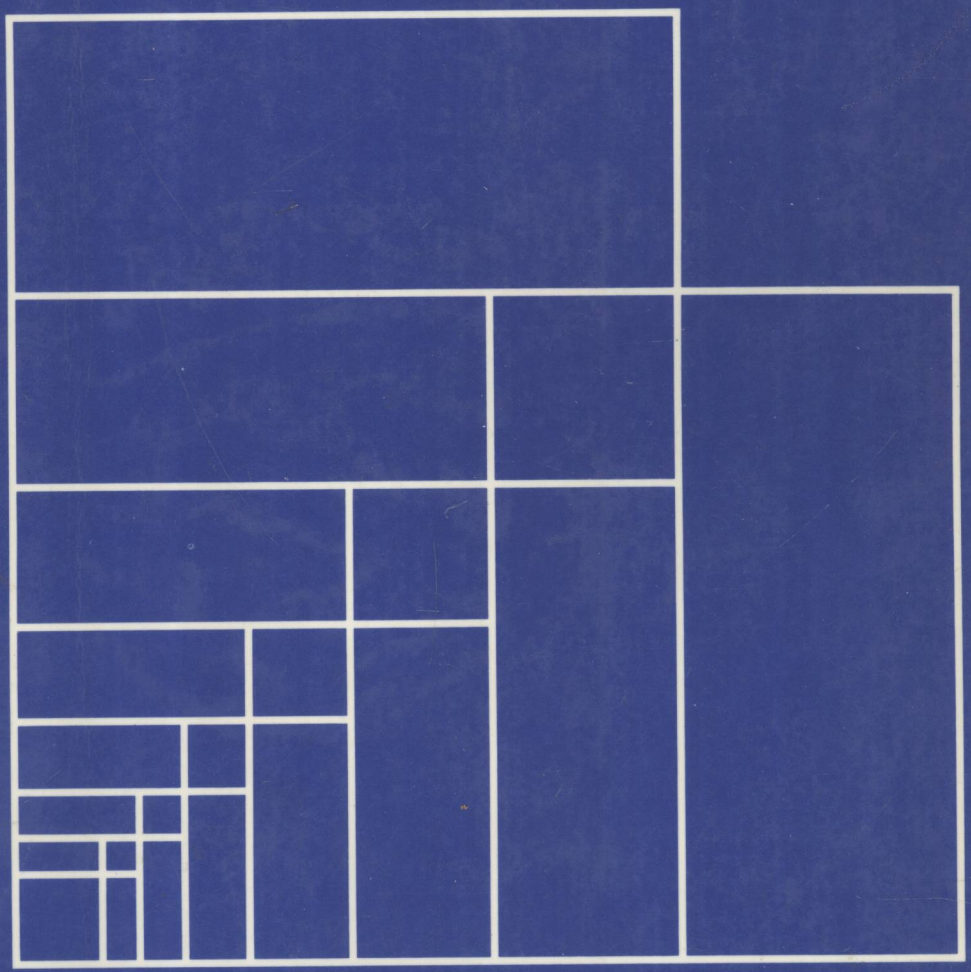
J. J. Scott

Architectural Practice



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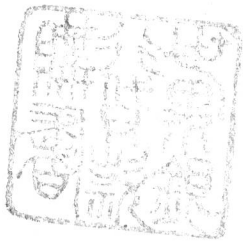

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Preface

This book is intended primarily for those preparing for the RIBA Final Examination, the format of which is under review at the time of writing. This book is based upon the present syllabuses for the Part 3, Subject G Examination.

Architectural practice in the United Kingdom is varied, not merely the broad division between the private and public sectors, but also variations in office size, structure, work loads, etc. It follows, therefore, that the experience of candidates for the Examination is also varied, being further complicated by the differences in building legislation between one area and another which make a comprehensive knowledge difficult to achieve.

The introduction of new Building Regulations in 1985 is proposed, which will also affect the present Inner London building control system, which together with the proposed demise of the Greater London Council, will have a profound effect upon the long-established District Surveyors' authority and supervision of works. Presumably, as exists at the present time outside the Inner London boroughs of the Greater London Council, building regulation control and enforcement will pass to the local authorities, and some 'phasing-out' period for the existing system will ensue, but this is conjecture.

No one book can attempt to cover all the material of the Subject G syllabuses, and there will be areas where readers will not find information on a particular subject or point of practice. Furthermore, the book is intended to supplement courses in the subject and provide information for further study.

J.J.S.

Introduction

In 1962 the Royal Institute of British Architects (RIBA) published a report titled *The Architect and His Office* which was based upon a survey of architectural practices in the United Kingdom. Its chief concern was the alleged criticism that many Architects were unable to manage properly not only their own affairs but, due to a lack of proper management training, also those of their clients.

The report caused the RIBA to look closely at management and professional practice education and training of architectural students, in some cases non-existent, relying upon 'intuitive' rather than 'conscious' management techniques and procedures, and to provide direction and guidance for the future study of the subject in recognized schools of architecture.

Also in 1962 Mrs Elizabeth Layton, then Under-Secretary for Education at the RIBA, wrote a book *The Practical Training of Architects*; Appendix 5 of that book quotes interesting comments on the subject from the leading full-time architectural schools at that time.

In 1965 the RIBA set up a Management Advisory Group who, in 1966, produced a document titled *Current Concepts of Management Training in Architectural Education*, the purpose of which was stated to be

(a) To define the role of management in architectural education,
(b) To outline the field of management studies and indicate the scope of the subject,
(c) To outline possible methods of implementation,
(d) To indicate further fields of research and study,
(e) To list sources of reference.

Quoting from the RIBA *Handbook of Architectural Practice and Management*, it defined 'management' as 'the creation of conditions to bring about the optimum use of all resources available in an undertaking, in men, methods, and materials'.

The document also distinguished between 'management' and 'professional practice', and stated 'the subject as a whole must not be confused with one of its familiar components, professional practice, which is largely concerned with legislative and ethical matters'. (a) and (b) above were seen as being the central theme of management studies.

The original report was reviewed in 1972, but very few schools of architecture had adopted the original suggestions; indeed, to this day, attitudes in schools towards management and professional practice studies varies. Some regard the subject as vocational and non-academic, even a hindrance to the development of creational ability, whilst others see it as an inherent part of the overall education of the Architect.

In post-war years most schools gradually introduced some form of professional practice study, together with supportive periods of experience in offices, using the RIBA *Practical Training Record* (the former RIBA *Practical Training Log Book PTI*) for recording experience gained by the student, or using where appropriate, for the more experienced student, the Certificate of Exemption from Keeping a Log Book.

The original *Practical Training Index* contained lists of offices on a regional basis, who at the time, were willing to participate in the training of architectural students, as opposed to merely employing them, and it was a large list. Since the recession of the late nineteen seventies and up to the present time, the list has been reduced to a mere

handful of offices, even with assistance from a limited number of government-sponsored grants through the RIBA Training Services Agency which pay to employers a proportion of the salary for six months of the requisite 'year out' of training.

Though the situation is still very difficult for Practical Training Advisers in the schools, they are now well established in recognized schools where their duties include the curriculum of study for management and professional practice, organization of the G1, G2 and G3 Examinations, arranging for the presentation of case studies, office visiting, checking Practical Training Records, etc. Their overall supervision is monitored by the RIBA Practical Training Co-ordinator, who each year organizes a conference of Practical Training Advisers, and invites students and other interested parties to attend and take part in the discussions. There is also an RIBA Standing Committee whose task is to monitor and review as required the procedure for the Final Examination in Architecture, part 3, Subject G, and through the Education and Professional Development Department of the RIBA keep the Council informed. There is also an annual meeting of the RIBA Part 3 Examiners, and the Review Board.

In 1976 the RIBA produced the present *Guide to Good Practice at Part 3 Examinations in Professional Practice and Experience held at Recognized Schools of Architecture*. This document included the broad syllabuses for the four subject headings, and also a guide for the Case Study. It also attempted to attain parity among recognized schools or architecture in terms of the Part 3, Subject G, Examination; the RIBA Visiting Board (with ARCUK representation) on a quinquenial basis, being the monitoring body for the two parties concerned with the examination.

This book is concerned with the syllabuses for the G2, and G3 Examinations, but in part may also be helpful for those sitting the G1 Examination.

The four broad divisions of the areas of study previously mentioned are

(1) Legislation and architecture,
(2) The profession and the industry,
(3) Management and administration,
(4) Project management.

Some 20 years on from the publication of the RIBA report, the discussions, not to say misgivings, about the Architect's competence in controlling and managing effectively is still being voiced, and the Institute's attitude to 'freedom of choice' for recognized schools, as expressed in the Guidance Notes, has perceptively hardened.

No system of education and examination is ever perfect, but seven years of study and training should culminate in a level of competence in all aspects of architecture, of which management and professional practice are integral parts of the 'whole'.

There is little sense in designing a magnificent edifice for your client if in the process you both end up in the Bankruptcy Court!

Contents

1

A synopsis of the United Kingdom legal system

1.1.1 Historical outline

The law of England has developed over a thousand years, and some of its early rulings are still in force today. The legal system established by the Romans all but disappeared with their own departure, although derivations of Roman law still survive in many countries today. Because Scottish law, unlike that of the remainder of Great Britain, identifies with Roman law to some extent, its legal system and structure are therefore different. After the Treaty of Union in 1707 the Scottish law and courts system were preserved, but appeals from the Scottish Court of Sessions (civil court) are permitted to the House of Lords without the necessity of leave to appeal, and there has been a Scottish Law Lord since 1876.

Modern English law emanates from Anglo-Saxon times, and before the Norman conquest in 1066, courts in various parts of the country applied both written law and the law of custom. Changes were gradual after the Normal Conquest, the early Norman Kings using existing courts, but with the assistance of the Curia Regis (King's Court) they gradually replaced these with their own judges to hear cases locally, offering better trial methods and procedures, and with the development of the common law courts, eventually all courts came under royal control.

King Henry II (1154–1189) instituted 'circuits' presided over by Judges who, over the course of time, selected the best of local customary laws and applied them to the whole of England; from this is derived the 'common law of England'. In his reign there emerged the Court of the Exchequer, whose principal concern was tax matters, and the Court of Common Pleas.

Many law reforms were made in the reign of Edward I (1272–1307) and another important court was instituted, namely the Court of King's Bench which accompanied the King on his travels, and this was the only court to have criminal jurisdiction.

In the Middle Ages justice, in certain circumstances, was difficult, if not impossible, to obtain, e.g. trusts were not recognized by the courts. A plaintiff bringing an action was obliged to choose a writ from a Register of Writs, and if the wrong writ was chosen then the action would fail, and if the action was not covered by a writ the Court of Common Law would not help the plaintiff. This was not satisfactory since justice was not 'seen to be done', and the plaintiffs turned for help to the King as being the Fountain of Justice. The King referred these pleas to the Lord High Chancellor as 'Keeper of the King's Conscience', and as applications for help increased, there emerged in the fifteenth century the Court of Chancery from which developed the 'law of equity' as opposed to 'common law', 'equity' placing parties on the same footing and considering justice, natural law, fairness, law of conscience, or equality.

The Office of Lord Chancellor had been held mostly by Bishops, but after the Reformation it came to be filled by professional lawers, of whom Sir Thomas More was the first. The laws of equity became almost as inflexible as those of common law. For centuries two sets of courts had existed, the common law administered in the common law courts, and equitable law in the chancery courts, and conflict between them had grown. The former courts were concerned with the plaintiffs 'legal interests', and the latter courts with his 'equitable interests', and this conflict was resolved in the reign of James I (1603–1625) when the King decided that where there was a conflict between common law and equity, equity would prevail, and this decision increased the importance of equity in English law.

The problem of overlapping jurisdiction, outdated procedures and other factors, culminated in the reign of Queen Victoria in the Judicature Acts

1873–1875, which abolished several courts and set up the Supreme Court of Judicature which comprised the High Court of Justice and the Court of Appeal. The High Court was divided into five Divisions, these being the Chancery, the Queen's Bench, the Common Pleas, the Exchequer, and the Probate, Divorce, and Admiralty Divisions. There was now only one court administering common law and equity. In 1880 the Common Pleas Division and the Exchequer Division merged with the Queen's Bench Division.

The Administration of Justice Act 1970 reorganized the High Court of Justice into three Divisions, namely the Queen's Bench (including the Admiralty and Commercial Court), the Chancery and the Family Divisions (*see* page 7).

In 1907, in the reign of King George V, the Court of Criminal Appeal was introduced, and the reform of land law culminated in 1925 in the Law of Property Act, the Land Registration Act and the Land Charges Act all of which affected ownership and tenure of land and the rights of adjoining owners, etc. The Law of Property Act 1925 was amended in 1969.

1.1.2 The process of English law

Law is of two kinds, public law and private law. The first concerns the whole community, being divided into constitutional and administrative law, e.g. (planning law), and criminal law. Constitutional law deals, *inter alia*, with the functions of Parliamentary Ministers and their respective powers, also civil liberties, voting rights, local government, and relationships with Commonwealth countries.

Criminal law is concerned with containing any behaviour that disturbs the peace and well-being of the community, its object being to deter people from wrongdoing and to punish those who transgress the law, and is derived from statutes and judicial decisions applied in the criminal courts (*see* page 7).

Private, or civil law, covers a very wide field and is concerned mainly with the rights and duties of persons towards each other. It is applied in the civil courts (*see* page 7). Some of the more important branches of civil law are the law of contract, the law of tort, family law, the law of succession, the law of trusts. A person may be subject to the rigours of both public and private law at the same time, depending upon the misconduct alleged to have been committed; the outcome of this is that the offender has to appear before two courts.

The greater part of English law, both common law and equity, consists of rules and principles emanating from previous judicial decisions made over centuries, termed 'case law', past decisions of the courts being used as guides to future decisions and termed 'judicial precedents'.

The English common law doctrine is that precedents are binding, this being termed *stare decisis*, i.e. 'let the decision stand', judgements being based upon authoritative summation of the law, including *ratio decidendi*, or grounds for the decision based on facts, and *obiter dicta* being remarks by the way. These decisions are followed by Judges in subsequent cases. Generally, lower courts are bound by the decisions of higher courts, the Court of Appeal being bound by its own decisions, but the House of Lords may rescind its previous decisions.

Case law depends upon accurate and reliable reporting of cases (*see* page 5), and since 1865 official law reporting has come under the jurisdiction of the Council of Law Reporting.

To define 'law' is almost impossible; philosophers centuries before Christ and throughout the ages since have attempted to define it, from the philosophy of 'natural justice' to the more modern concepts among which is 'the body of principles recognized and applied by the State in the administration of justice', this last definition being attributed to Sir John Salmond. This branch of knowledge is known as 'jurisprudence'.

The Courts

Courts have two levels of seniority:

Superior Courts:		House of Lords Court of Appeal High Court of Justice
Inferior Courts:		County Court Magistrate's Court Coroner's Court
and either:	Civil	County Court High Court
	Criminal	Magistrate's Court Crown Court

The House of Lords

There are two divisions of this Court, civil and criminal, and appeal from the Court of Appeal to the House of Lords is available only if the Court of Appeal certifies that a point of law of general public importance exists. Leave to appeal is granted by either of the Courts.

The House of Lords deals only with points of law; the proceedings are not a re-hearing of the case, as they are in the Court of Appeal.

The Court comprises the 'Law Lords', or 'Lords of Appeal in Ordinary', who are salaried life peers appointed to hear appeals. Normally the number is five, or may be more, but a quorum may be three.

House of Lords Judges must be Barristers of at least 15 years' standing or those who have held high office for two years.

The House of Lords is no longer the highest court of law in England, since Great Britain is a member of the European Economic Community. The Court of Justice of the European Communities (CJEC) sitting in Luxembourg adjudicates upon the law of the EEC, and its decisions bind British Courts by reason of the European Communities Act 1972.

The Court of Appeal

There are two Divisions of this Court, civil and criminal, the Criminal Division hears appeals from persons convicted on indictment in the crown Court either against conviction or sentence. The Court of Appeal has the power to quash the conviction or amend the sentence or, in rare circumstances, order a re-trial. The Court comprises the Lord High Chancellor, the Lord Chief Justice, the Master of the Rolls, President of the Family Division, the Law Lords, the Justices of Appeal. In practice, of the *ex-officio* Judges only the Master of the Rolls and the Lord Chief Justice sit, a quorum of three being usual.

The Civil Division of the Court hears appeals from the County Court, all Divisions of the High Court, and various tribunals. The appeal is the re-hearing of the case and the Court may make any award outside the jurisdiction of the original court.

The High Court of Justice

This Court comprises the Queen's Bench Division and the Chancery Division.

The Queen's Bench Division

This Division has civil and criminal functions.

Civil

(1) Original: most major civil actions, e.g. contract and tort.
(2) Appellate: adjudicial views, administrative tribunals and certain civil proceedings in Magistrates' Courts.

Criminal

(1) Original: except perhaps when trying a case of contempt of the High Court, the trial of cases by the QBD is now obsolete.
(2) Appellate: hearing a point of law from a Magistrate's Court.
(3) Supervisory: writs of Habeus Corpus. There may also be a civil remedy, e.g. in immigration cases.

The jurisdiction in Probate, Divorce, etc, now comes within the Family Division of the High Court. There is also an Admiralty Court and a Commercial Court within the Queen's Bench Division.

The Chancery Division

There are three main areas of jurisdiction within this Court.

(1) Original: contentious probate of wills, trusts, mortgages, partnerships, winding-up of companies.
(2) Appellate: from the Commissioners of Inland Revenue.
(3) Family Division: matrimonial cases, guardianship, adoption, divorce, family property, etc.

County Courts

Established in the nineteenth century to deal with small claims, these try some 1½ million cases each year, or about 85 per cent of all civil cases.

Claims may be made in contract or tort up to a prescribed maximum, hire purchase actions, landlord-and-tenant matters, adoption of children, and undefended divorce cases. Judges sitting in Crown Courts also sit in the County Courts as part of their function. They are Barristers of at least seven years' standing.

Each Court has an office and a Registrar who is legally qualified and may try small cases within prescribed limits, and if these sums are smaller than the prescribed limits then leave to appeal is required.

Magistrates' Courts

These are presided over mainly by lay Justices of the Peace (JPs or Magistrates) who normally sit three to a bench, two being the minimum allowed. Some Magistrates' Courts are presided over by Stipendiary Magistrates who are full-time salaried Magistrates recruited from the ranks of Barristers or Solicitors.

Coroners' Courts

These Courts come within the Coroners' Act 1887, and the Coroners' (Amendment) Act 1926, but do not apply to Scotland and Northern Ireland.

Coroners are usually Barristers, Solicitors, and/or Doctors who are empowered to enquire into deaths of a violent or unusual nature in their areas. In certain cases a Coroner may summon a jury to attend the Court. If the members of the jury decide that a death was caused by murder or other crime, they have to say that the deceased was 'unlawfully killed'. The Coroner must then refer the case to the Director of Public Prosecutions.

Crown Courts

These Courts were established by the Courts Act 1971 to replace the former Assize Courts, and they are to be found in most centres of population. They are presided over by either full-time Judges called 'Circuit Judges', or 'Recorders' recruited from Barristers or Solicitors of at least 10 years' standing. The Central Criminal Court, the Old Bailey, is the Crown Court for the City of London. Crown Courts hear all cases on indictment, i.e. serious criminal cases. Trial is by jury of twelve lay persons drawn from the Register of Electors between the ages of 18 and 65 who have been resident in this country for a minimum of five years. Various persons are either excluded or excused for jury service including policemen, lawyers, doctors, nurses, MPs, etc.

1.1.3 The legal profession

The term 'lawyer' may be applied to a Barrister or Solicitor, a custom which may be unique to this country and the Commonwealth.

Barristers are primarily Advocates, but some may be engaged in the drafting of reports, papers, etc, in which pursuits they may be subject to actions for negligence. Barristers have a right of audience in all Courts, but a Solicitor's right is confined to Crown Courts, County Courts, and Magistrates' Courts. Solicitors deal with the preparatory stages of an action before litigation. Barristers may not form partnerships with each other, but Solicitors may. Solicitors may sue a client for fees, but a Barrister who looks to the Solicitor for payment of his fees cannot sue a Solicitor for default of payment.

Solicitors are Officers of the Supreme Court and they may be committed for contempt if they disobey an Order of the Court. Barristers are not Officers of the Supreme Court, and their duties depend upon professional etiquette; they cannot be either committed for contempt of court or sued for professional negligence arising from their work in court. They take their instructions from Solicitors (clients may not approach them directly), and they cannot interview witnesses.

Solicitors are governed in their professional life by the Law Society, this being a statutory body which makes rules governing qualifications, conduct, practice, handling of clients' money, administration of legal aid, compensation funding, etc. All communications between a client and a Solicitor are subject to privilege.

Barristers are members of one of the four Inns of Court, i.e. the Middle Temple, Inner Temple, Gray's Inn, Lincoln's Inn, each of which has three classes of membership, Benchers (the Governors of the Inn), Barristers (called to the Bar by Benchers), and Students.

A Queen's Counsel is a Senior Barrister of at least 10 years' standing who has been called upon to 'take silk', i.e. a silk gown as court apparel instead of other material. He must appear in court accompanied by a Junior Barrister.

In Scotland Solicitors belong to the Law Society of Scotland and may also be members of the ancient association of Writers to the Signet, and Solicitors to the Supreme Court. Scottish Solicitors have the right to conduct first instance stages of important cases, and may also defend in serious criminal charges.

Scottish Barristers are members of the Faculty of Advocates, and only they have right of audience in the Court of Sessions and the House of Lords.

In Northern Ireland Solicitors are members of the Incorporated Law Society of Northern Ireland. Barristers are members of the Honourable Society of the Inn of Court of Northern Ireland.

Law Officers

The Attorney General

Is Head of the English Bar assisted by junior Counsel to the Treasury. His political appointment is vacated with the outgoing Government. He is the Crown's representative in proceedings involving a political or constitutional matter. In Scotland the Lord Advocate corresponds to the Attorney General.

The Solicitor General

Is the Attorney General's deputy; there is a Solicitor General for Scotland.

The Director of Public Prosecutions

Is an eminent Barrister or Solicitor of ten years standing; though appointment is by the Home Secretary, this is not a political appointment. He is Head of the department responsible for dealing with the most important criminal proceedings. In Scotland there is no equivalent as prosecutions are not brought by the police but by the Procurators Fiscal. There is a Director of Public Prosecutions for Northern Ireland.

Master of the Rolls

This title is derived from the days when the holder of the title was concerned with the preservation of Court records. He is still Head of the Records Office, and also presides over the Court of Appeal, Civil Division.

The Lord Chancellor

This appointment is both judicial and political, and it is made on the recommendation of the Prime Minister and he is a member of the Government. He

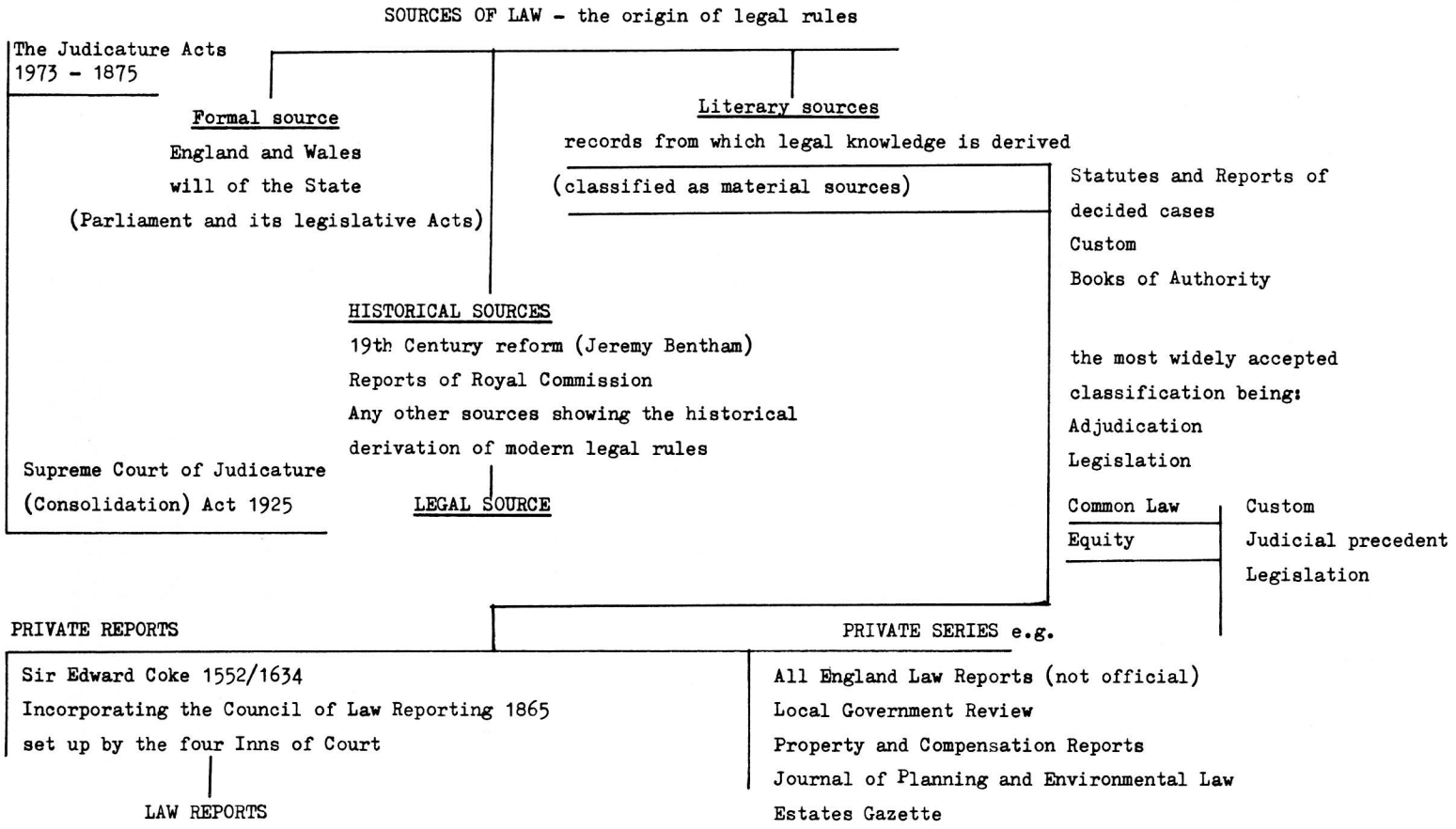

Diagram 1: Sources of law in England and Wales

is Speaker of the House of Lords and ranks highest among all Judges. When the House of Lords sits as a court of law, the Lord Chancellor presides. The incumbent changes with a change of Government.

The Vice Chancellor

This office was revised by the Administration of Justice Act 1970, he acts as Head of the Chancery Division in place of the Lord Chancellor.

Judges

The Lord Chief Justice is Head of the Queen's Bench Division and he presides over the Court of Appeal (Criminal Division) and the Divisional Court of the Queen's Bench Division.

High Court Judges may be dismissed only by direct application to the Sovereign by both Houses of Parliament, though this has not happened in Great Britain since the Act of Settlement in 1701. Circuit Judges may be removed by the Lord Chancellor by reason of infirmity or misconduct. Judges normally retire at the age of 75, and circuit Judges at the age of 72.

Appointments

High Court, Crown Court, and County Court Judges, Recorders, and Stipendary Magistrates are appointed by the Crown on the advice of the Prime Minister or Lord Chancellor.

1.1.4 The United Kingdom

England and Wales, Scotland, and Northern Ireland together constitute the United Kingdom which is a single, independent, legal State administered and governed under the rules of the British Constitution. Since the UK is also a member of the European Community it is subject, through the European Communities Act 1972, to the Treaty of Rome and its laws, rules, and directives.

There is no single document containing all the rules of the British Constitution, and it is said therefore to be 'unwritten'.

By the will of the people, supreme power in the State is at present vested in HM 'The Queen in Parliament', i.e. the Queen, the House of Lords, the House of Commons, acting in unison and being free to make, change, or repeal any law.

HM The Queen ascended the throne by virtue of the Act of Settlement 1701, being in direct line of succession to her late father King George VI. The House of Lords is an entity in itself, its members being raised to the peerage either by the Sovereign or by inheritance.

The House of Commons consists of members elected by vote of the people following a general election or a by-election, the majority party forming the Government, the minority party the Opposition. The elected Government usually governs for a period of five years, but this may be less. In Great Britain the principle is 'one man/woman, one vote'.

Following a general election the Sovereign selects the Leader of the majority party to be Prime Minister; although there is nothing written down to say that this shall be so, it is a convention of the Constitution to do so.

The Prime Minister chooses members of the majority party to be Ministers of the various government departments, which in turn are administered by the Civil Service irrespective of the current government. About 20 of the more important Ministers are invited to become Cabinet Ministers who will attend meetings in the Cabinet Room at Number 10, Downing Street.

The Cabinet will make such govermental decisions and propose such changes in the law as they think desirable.

The Sovereign, who is consulted by the Prime Minister on all major political issues, must give Royal Assent to all changes in existing statute law and to new statute law passed by the two Houses of Parliament, but not to Statutory Instruments or other forms of 'delegated legislation', unless the legislative power has been delegated to 'the Queen (or King) in Council'.

A statute is a law that has passed through both Houses of Parliament and received the assent of the Sovereign, having passed through the following stages:

(1) A bill originated either by the Cabinet or a Member of Parliament and drafted in 'clauses' is introduced into Parliament.
(2) Except for money bills (which must first go to the House of Commons) the bill must be passed by both Houses of Parliament.
(3) *First Reading*: the title of the bill is read out together with the name of the Member introducing it. Printing is then ordered.
(4) *Second Reading*: the principle of the bill is debated. If it is unopposed, or there is a majority vote for it, it passes to the Committee stage.
(5) *Committee stage*: an appointed Committee considers the bill in detail. The whole House may sit as a Committee if the importance of the bill warrants it.
(6) *Report stage*: the Committee reports to the House on its assessment of the bill with any proposed amendments.
(7) *Third Reading*: the general principles of the bill are debated and a vote taken. If the majority vote is in favour of the bill, it is passed to the House of Lords where a similar procedure is followed.

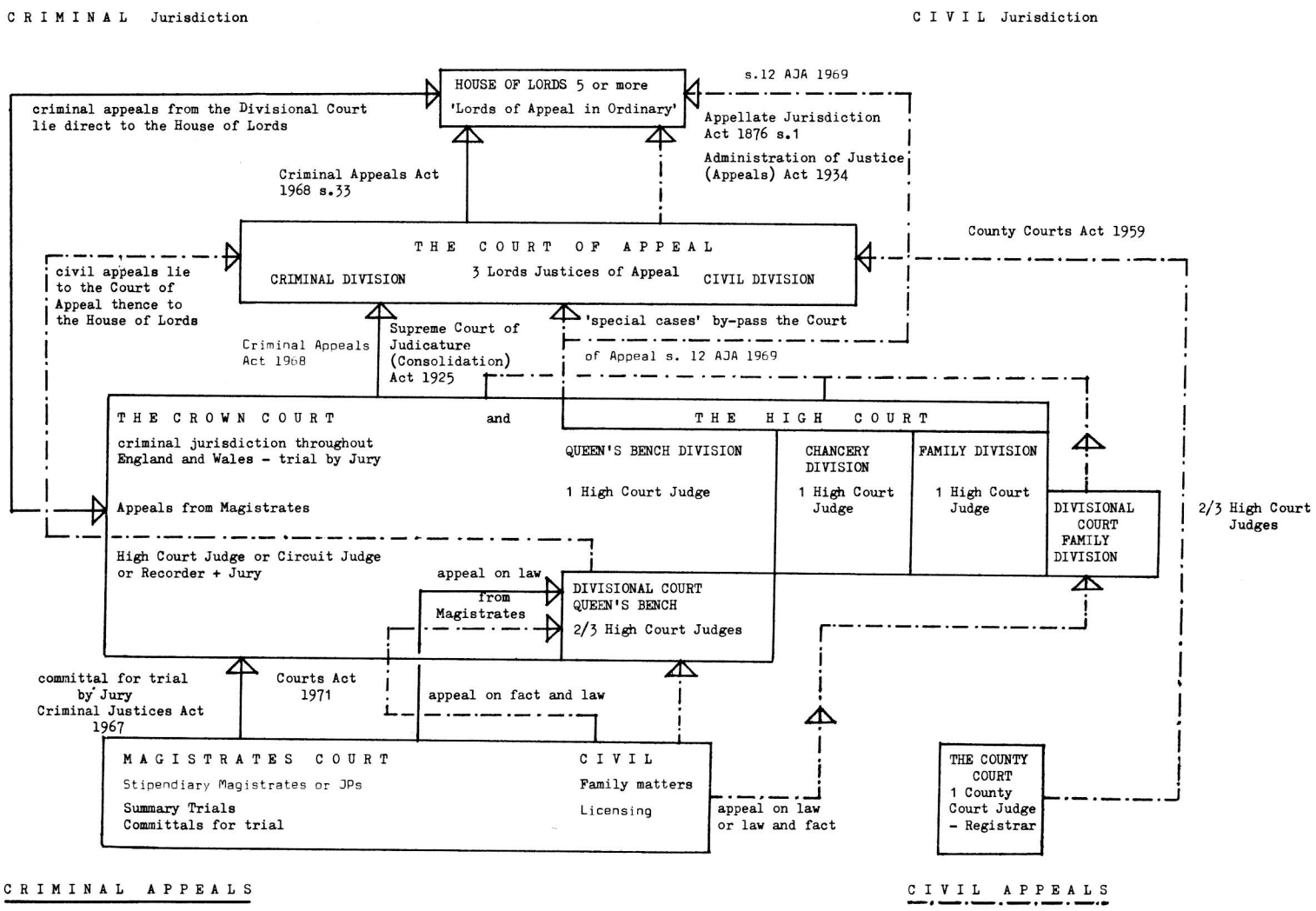

Diagram 2: The structure of the legal system in the UK