

# THE TRIAL

(First steps into the English legal system)



Common law, statute law, equity...Not so easy to distinguish one from the other and explain them clearly...But maybe you already know some elements of the English legal system. Here is a short text about a trial. Check how many legal words you know; Can you put them in the right space? And then try to answer the questions below; Now learn about them in the following units.

Word list: **Old Bailey / recalled to the court / gown / clerk / dock / usher / white wigs / Crown Prosecution Service / judge / press bench / legal argument / Crown Court / address the court / evidence / custody officer / jury box / Royal Coat of Arms / black gowns / courtroom / are sworn in / prosecuting / defendant / proceedings / defending barristers / Witnesses / public / instructing solicitors**

A. The trial begins when the judge enters the Court from a door at the side of the ..... The court ..... or ....., who sits below and in front of the judge's bench, then calls out "court rise". Upon this call, all persons present in the courtroom must stand up as the judge enters, in order to show their subjection to the Court. If you have ever been in the ....., you might have noticed that a ..... is placed on the wall above the judge's bench, but that there is no national flag and that the judge does not have a gavel.

B. During a trial, the ..... sits on a bench, which is a raised platform at the front of the court. The colour of the ..... that a judge wears, as well as the way in which he/she is addressed in relation to rank ("your honour" being most commonly used), determines the judges' position within the hierarchy of judges. The ..... and ..... sit behind the usher facing the judge and are seen wearing ..... and ..... Usually, the defending barrister sits closer to the jury. The barristers always stand to ....., whereas the judge will always remain seated. The ..... sit behind the barristers. This will usually be a representative of the ..... in the case of the prosecution.

C. Behind the barristers at the back of the courtroom is the ".....". This is a semi-partitioned area where the ..... is placed, accompanied by the presence of a ..... Members of the ..... who wish to follow court ..... sit next to the dock. In the ..... and some other courts, this is found above the defendant. The ..... is the area where members of the press may sit. .... stand in the witness box which is found opposite the jury box.

D. The jury system started in 1168. The jury box is positioned next to the defending barrister. Jury members ..... to the ..... from the jury waiting area and this is where the jury observes the case. In moments where the jury is not supposed to be present, such as ..... about the admissibility of ....., the usher will escort the members outside the courtroom. They are placed behind the dock, a space that only jurors and ushers can enter. The usher also escorts the jury to a small suite when it is time to consider the verdict. Only limited contact with the outside world is permitted during deliberations. The jury may be ..... by the judge at any time if the jury needs to be addressed by the court.



**A. DIVISION OF LAW:** Is this a civil or a criminal trial? Do you understand this division? Have you heard about the various possible divisions of law? Explain.

**B. THE JUDGE WEARS A GOWN:** Can you explain the various clothes worn by judges/lawyers? What do you know about these professions?

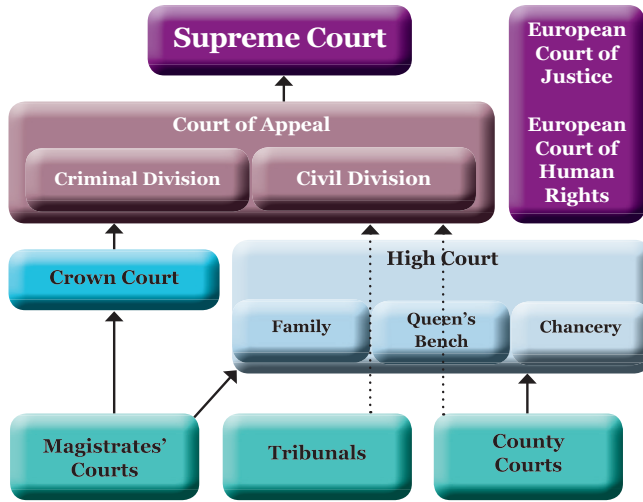
**C. THE OLD BAILEY AND OTHER COURTS:** Which English courts do you know? How is the system of courts organised? What is the hierarchy of courts?

**D. THE JURY STARTED IN 1168:** Would you be able to place the major events related to the evolution of the English legal system on a timeline? And what about the development of the various legal systems?

The first answers are to be found on the next page: a table of the hierarchy of the courts, a dress code and a timeline.

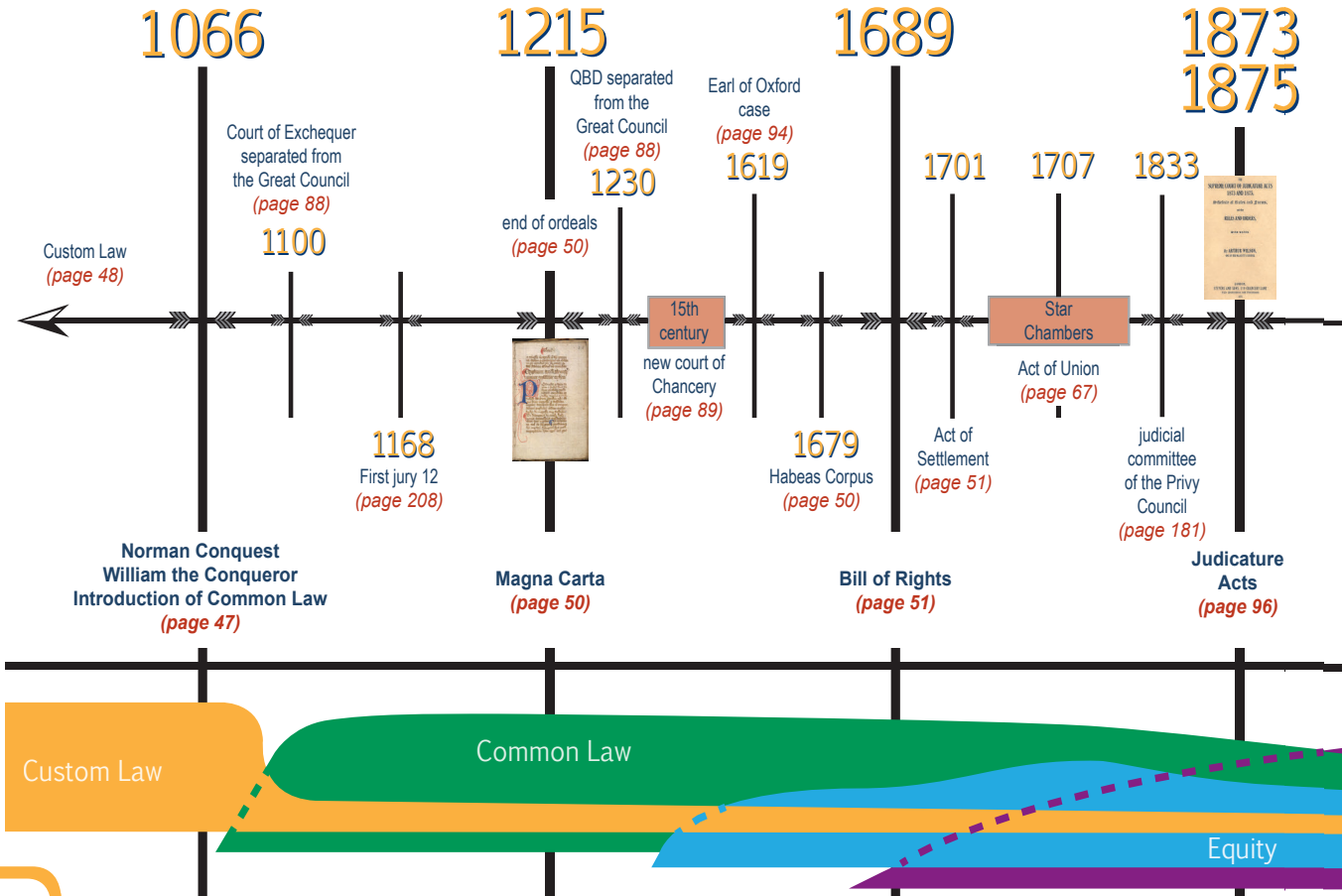
# DOCUMENT 1

English Courts and the hierarchy:



# DOCUMENT 3

Timeline of the English Legal System:



# DOCUMENT 2

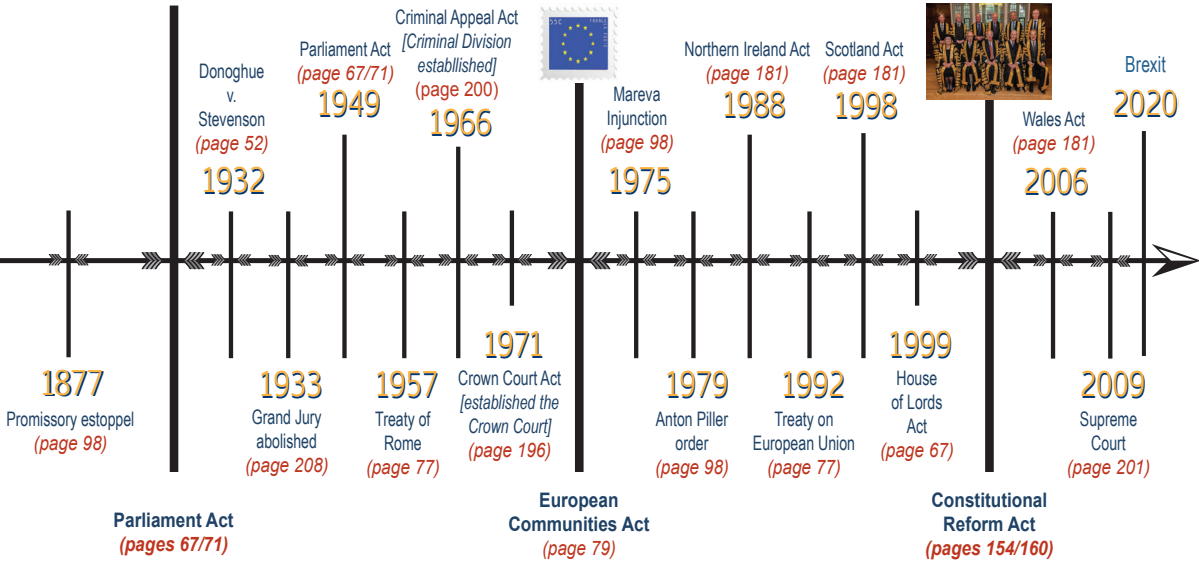
Examples of court dress worn, and below – possible alternative dress. From left: High Court Judge, Circuit Judge, District Judge, Barrister or advocate, Court Clerk,



1911

1972

2005



Statute Law

# Did you say law?

part 1

LAW

Document - The Judgement of Solomon

part 2

MORALITY

Document - Morality and Law

part 3

JUSTICE

Document - Justice and Art

part 4

RULE OF LAW

Document - Rule of Law in Action

## What is law?

*Laws seem to exist to protect us. Nevertheless, attitudes to crimes change over the years or according to location. In the 19th century, it was possible to be put in prison for stealing bread. Today, the punishment would probably be a fine. And what is a crime in Britain may not be a crime somewhere else. In Holland or in many places in the United States, smoking cannabis in public is allowed, whereas it is not in Britain. So what is law?*

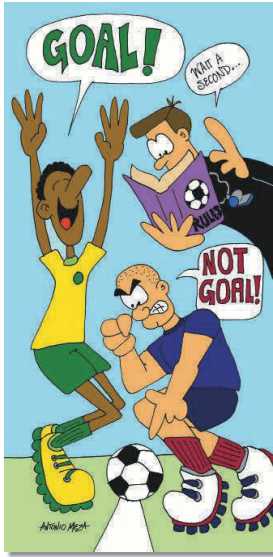
# 1



## JUST WHAT EXACTLY IS THIS THING CALLED LAW?

How would you define the word ‘**law**’? That’s probably the first question you should be asking yourself when thinking about what the law is in society, since there is not one generally agreed upon definition. It is like trying to define a concept or a feeling, like love or sadness; everyone knows what it is but nobody will describe it in exactly the same way.

Lots of people have tried to define the word, ranging from legal writers to philosophers and politicians. According to some, the law determines the way in which people behave in relation to rules made by those in charge of nations. Laws are enforced by the **courts** or the **police**, unlike the rules of morality, meaning that if you break one or more laws, you could face a fine or end up spending time in prison. So you must respect laws, and although you may not like a law, if you break it you may be fined or sent to jail.



#### DEFINITION NATURAL LAW

'A system of law purportedly determined by nature and thus universal'.

(Leo Strauss, 1968)

If you find this definition too broad, or not relevant enough to your daily considerations, you might think about replacing the word 'law' with another one to make things clearer - like the word '**rule**'. We follow rules in many different situations; when playing board games, for example, or practicing sports, or at the workplace. In basic terms, laws are rules made by a government and exist to control or change our behaviour. Unlike the laws of morality, which tell us what's right or wrong, and which are generally enforced by social censure, laws are enforced by the courts.

In attempting to find a more precise definition of what law is, academics have developed categories of definition, which can make things a little trickier to understand.

The ancient Greeks, such as Aristotle and Plato, first discussed a concept called **Natural Law**. More recently, John Austin (1790-1859) spoke of... "*A rule laid down for the guidance of an intelligent being by an intelligent being having power over him. A body of rules fixed and enforced by a sovereign political authority.*" This was known as **Legal Positivism**.

An American judge named Oliver Wendell Holmes, born in 1841, came up with the concept of **Legal Realism**, in which "*the prophecies of what the courts will do... are what I mean by the law*". **Marxism** then appeared in the 20th century, where law was viewed as a tool used by capitalists to control and oppress the proletariat, or working classes.

There are certainly as many definitions as the number of thinkers we could refer to...

A definition of the law can, of course, be reduced down to a common idea. The English legal writer, Sir John Salmond, for example, defined law as '***the principles recognised and***

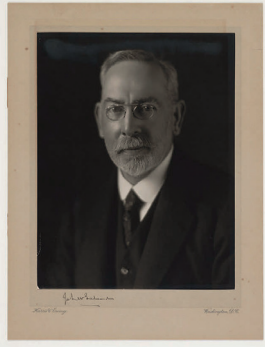
**Law can be defined as 'the body' of principles recognised and applied by the state and the administration of justice.**

Sir John Salmond

***applied by the state in the administration of justice'***.

In an organised society, law exists in order to resolve problems and disagreements in a peaceful way. If two people say that they own the same object, laws have been set in place which decide who the actual owner is. Irrespective of the defi-

Sir John William Salmond (1862–1924) was a legal scholar and judge in New Zealand (born in England)



dition we decide on, laws are adopted by many organisations. And what about the rules of morality? Can we consider these as laws?

In most countries, rules become laws when the majority of people in a country recognise them and when a government decides to enforce them on a national scale. When society was born, so too was the need for laws, because even in peaceful, well-ordered societies, disputes inevitably arise. Laws help to resolve disputes in a peaceful and amicable way so that society may continue to function.

When rules apply within the context of private organisations, however, they don't necessarily concern society as a whole. When talking about the rules of morality, one difference we can make is that a moral rule decided by a person is not always enforced by the government and is therefore more a matter of his or her personal conscience.

In the United Kingdom there is a complicated legal system to ensure that laws are obeyed and respected. This is the system that is concerned with the administration of justice and described in the following units.

## ACTIVITY

**A. Are laws absolutely necessary in our society?**

*Discuss and give examples*

.....  
.....

**B. Do you think that lawless societies could exist?**

.....  
.....



## THE JUDGMENT OF SOLOMON

## DOCUMENT 1

*This is the story of two young women both of whom had recently given birth to a son while in the same house. After the death of one of the children, during the night a dispute arose between the two mothers, each claiming that the surviving boy was hers. The two women presented themselves before King Solomon in order to have the dispute resolved. One of the women claimed that the other, after inadvertently suffocating her own child while sleeping; then had the two children swapped to make it look as if the surviving infant was hers. The second woman denied this vigorously. And so both women claimed maternity of the living child and denied maternity of the dead child.*

*Solomon heard both of their accounts, and after some deliberation, called for a sword. "There can only be one fair solution," he said and made clear his intention to cut the living boy in two and to give half to each mother. This solution suited one of the women who in her bitterness shouted, "It shall neither be yours nor mine, cut the child in half!"*

## 1 Kings 3:16-28

## King James Version (KJV)

16 Then came there two women, that were harlots, unto the king, and stood before him.

17 And the one woman said, O my lord, I and this woman dwell in one house; and I was delivered of a child with her in the house.

18 And it came to pass the third day after that I was delivered, that this woman was delivered also: and we were together; there was no stranger with us in the house, save we two in the house.

19 And this woman's child died in the night; because she overlaid it.

20 And she arose at midnight, and took my son from beside me, while thine handmaid slept, and laid it in her bosom, and laid her dead child in my bosom.

21 And when I rose in the morning to give my child suck, behold, it was dead: but when I had considered it in the morning, behold, it was not my son, which I did bear.

22 And the other woman said, Nay; but the living is my son, and the dead is thy son. And this said, No; but the dead is thy son, and the living is my son. Thus they spake before the king.

23 Then said the king, The one saith, This is my son that liveth, and thy son is the dead: and the other saith, Nay; but thy son is the dead, and my son is the living.

24 And the king said, Bring me a sword. And they brought a sword before the king.

25 And the king said, Divide the living child in two, and give half to the one, and half to the other.

26 Then spake the woman whose the living child was unto the king, for her bowels yearned upon her son, and she said, O my lord, give her the living child, and in no wise slay it. But the other said, Let it be neither mine nor thine, but divide it.