

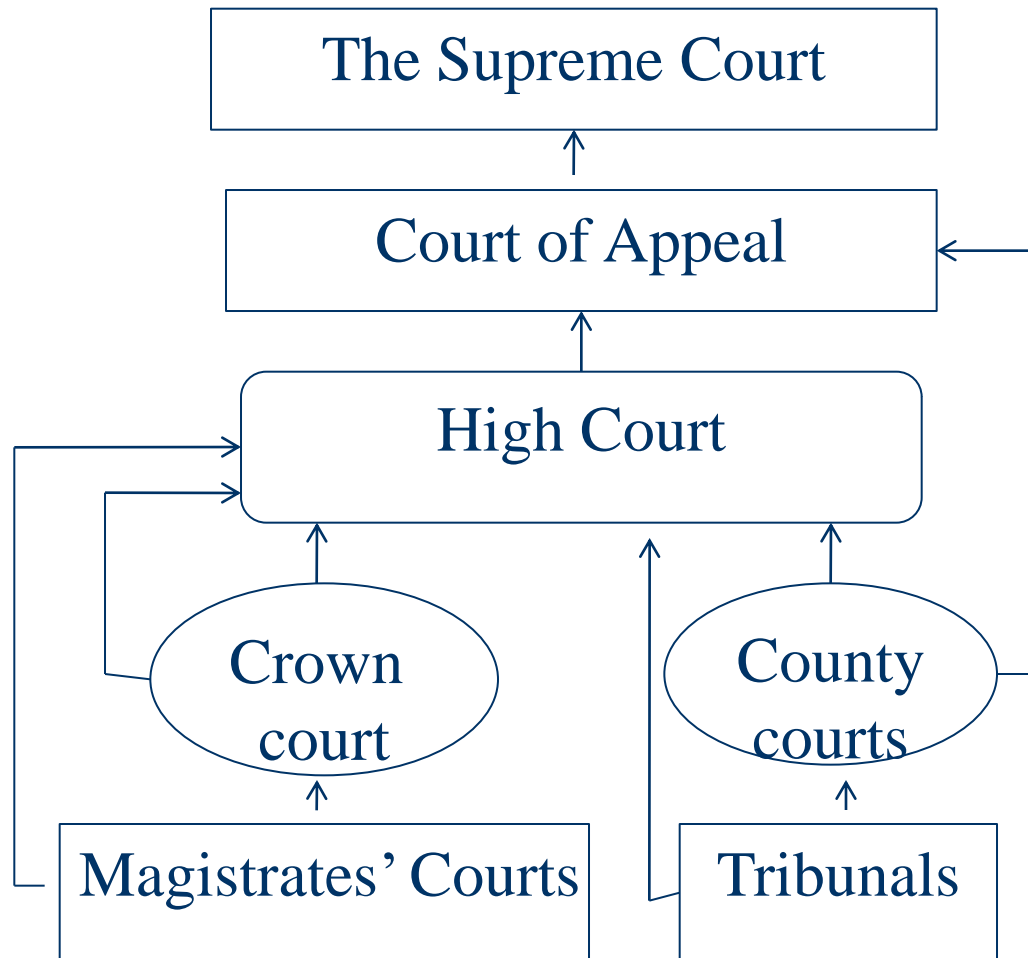


# INTENSIVE LEGAL ENGLISH COURSE

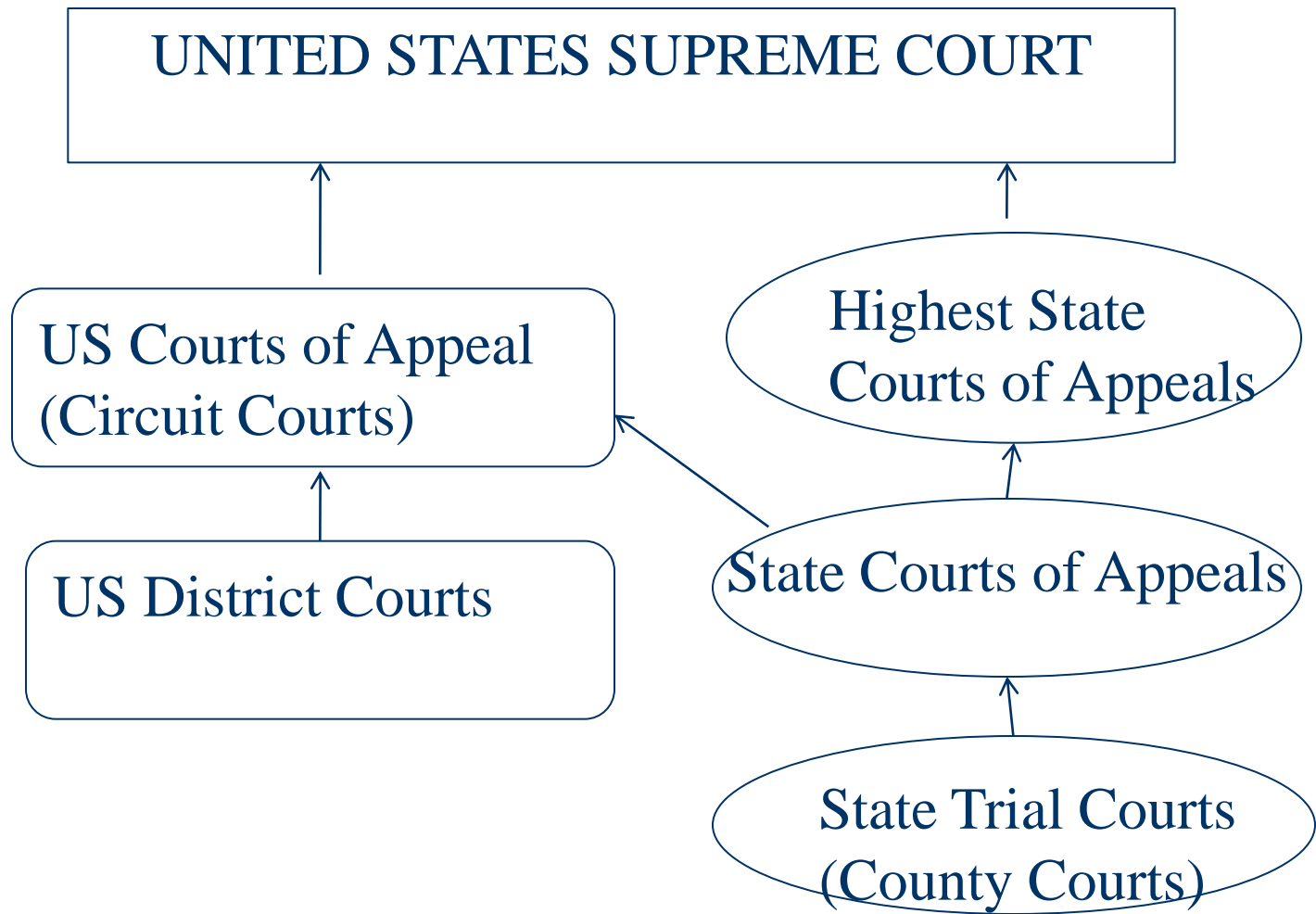
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## Claims and Litigation

# The Court Structure (UK)



# The Court Structure (US)



# Civil Procedure Rules

## UK

- The Civil Procedure Rules 1998

<http://www.justice.gov.uk/courts/procedure-rules/civil>

## US

- Federal Rules of Civil Procedure

<http://www.uscourts.gov/RulesAndPolicies/rules.aspx>

# GLOSSARY

**Proceedings** → settling a legal matter in court

Ex. *“Our client has instructed us to commence proceedings”*

**Procedure** → rules to be followed in court proceedings

Ex. *“The Rules of Civil Procedure set out how civil proceedings in civil courts are run”*

# GLOSSARY

**Process** → (i) a series of actions through which a particular result is achieved, (ii) legal action

Ex. “*Litigation can be a long process*”

Can these terms be used interchangeably?

- *Lawsuit, civil proceedings, civil/legal action*
- *Litigation*
- *Dispute, controversy, claim*

# GLOSSARY

Which term will I use?

- **Court** or **Judge**?
- **Judge** or **Justice**?
- **Tribunal** or **Court**?
- **Judgment** or **Sentence**?

**Jurisdiction** = the same term for both *giurisdizione*  
and *competenza*

# GLOSSARY

**Case law, jurisprudence, doctrine** = false friends?

- Ex: “**Case law** is also referred to as judge-made law”
- Ex: “According to the **doctrine** on penalties, an unfair penalty clause can be declared void by the court”
- Ex: “**Jurisprudence** is the study, knowledge or science of law”



# GLOSSARY

**To appeal, appeal** = *impugnazione, appello*

**To appeal** and **to challenge**: are they synonyms?

- *to appeal a judgment/ to file an appeal with the court*

**Court of Appeal, appeal court, appellate court:**

are they synonyms?

# Actions before starting proceedings

In most common law countries, before filing a claim with the court:

- the prospective claimant may send a **letter before claim/action** to the prospective defendant
- the parties are encouraged to cooperate in **ADR (Alternative Dispute Resolution)** to settle their case

# Alternative Dispute Resolution

## ADR (Alternative Dispute Resolution)

- **Mediation** – a mediator helps the parties negotiate and settle the dispute
- **Conciliation** – the process is very similar to mediation, the conciliator may offer a non-binding opinion which may lead to a settlement

# Alternative Dispute Resolution

Other types of ADR such as early neutral evaluation, expert determination, etc. are available.

Generally, the outcome of ADR is not binding, except where the parties sign a **mediated agreement**, which can be enforced by the court, should the parties not comply with its terms.

# GLOSSARY

The abbreviation **ADR** is often used to refer to the alternatives to civil courts, including **arbitration!**

Which is the subject in these phrases?

- ✓ *To use ADR*
- ✓ *To refer a dispute to ADR*
- ✓ *To encourage ADR*
- ✓ *To settle through ADR*

# Pre-action Conduct

**Disclosure (UK)/ Discovery (US):** a pre-trial fact-finding process, where each party must provide the other party with a list of all the documents on which the party wishes to rely in support of its claim or which adversely affect or support the other party's case. Many disputes are settled at this stage.

# GLOSSARY

## **To give disclosure**

Ex: *“The party was ordered by the court to give disclosure in the case”*

## **To disclose documents**

Ex: *“The parties may agree in writing to disclose documents without making a list”*

**Privileged documents** → *not subject to disclosure*

# Starting a lawsuit

Parties to a civil proceedings:

➤ **plaintiff** (US), **claimant** (UK) (or **petitioner**)

is the person commencing a civil proceedings

➤ **defendant** (or **respondent**)

is the person summoned to appear and defend a civil proceedings



# Starting a Lawsuit

The claimant/plaintiff starts a lawsuit by filing

a

- (UK) **Claim Form & Particulars of Claim**
- (US) **Complaint** and **Summons**

# Starting a Lawsuit

The defendant appears by filing a/an

- (U.K.) **acknowledgement of service / defence**
- (U.S.) **answer / statement of defense**  
and a **counterclaim for** legal claims  
against the claimant/plaintiff

# GLOSSARY

## **Starting a lawsuit:**

- ✓ *To file a claim/ complaint with the court*
- ✓ *To commence/ to start a legal proceedings*
- ✓ *To bring a dispute before a court*

## **Documents filed by the parties in the course of action:**

- ✓ *pleadings, submissions*
- ✓ *motions*

# GLOSSARY

**Petition** (for certain types of proceedings, such as divorce, bankruptcy, etc.)

**Petitioner** and **respondent**

**Petition** and **response**

**To file a petition for**

Ex: “*A petition can be filed to apply to a court for a divorce*”

# GLOSSARY

**To appear (v), appearance (n)**

Ex: *“The plaintiff’s witness is due to appear in court tomorrow”*

Ex: *“To appear and defend a case, the defendant must file an answer within the terms set out in the Rules of Civil Procedure”*

**Default judgment** → defendant does not file a defence within the statutory terms

# GLOSSARY

**To serve** a document **on** someone

Ex: *“The complaint was served on the defendant”*

**Service of process**

Ex: *“The defendant may challenge the sufficiency of service of process”*

**Proof of service/return of service/certificate of service**

Ex: *“The court officer filled in the return of service”*

# Arbitration

**Arbitration** is most commonly used for resolution of disputes in international commercial transactions and is aimed at **settling** a **dispute** outside the ordinary jurisdiction. The parties refer to one or more **arbitrator(s)** - **arbitral tribunal**, which will issue a **final** and **binding award**.

# Sample clause

Standard **arbitration clause** issued by the International Chamber of Commerce (I.C.C.):

*“All disputes arising out of or in connection with the present contract shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with the said Rules.”*



# Drafting Tips

An **arbitration clause** should always provide:

- ◆ that *all* disputes “*arising under or in connection with*” the contract are to be resolved **exclusively** by arbitration;
- ◆ the **substantive law** to be applied by the arbitral tribunal;
- ◆ the **venue** of the arbitration;
- ◆ the **language** of the proceedings.



# ICC Arbitration



The proceedings are commenced by one or more **claimant(s)** against one or more **respondent(s)** by filing a **Request for Arbitration** - the introductory instrument of the proceedings – to be submitted to the Secretariat.

# ICC Arbitration: Request for Arbitration

General contents of a **Request for Arbitration**:

- description of the facts of the dispute;
- relief sought;
- arbitration details (e.g. number of arbitrators, venue/seat, language, applicable law, etc.)

# ICC Arbitration: Answer and Counterclaim

The **respondent** files an **Answer** to the request for arbitration. General contents:

- defences and any counterclaims
- response to the relief sought
- observations concerning the arbitration details

# ICC Arbitration: the proceedings

The Arbitral Tribunal draws up

- **Terms of Reference**, a summary of the parties' respective claims and particulars of the procedural rules and substantive law, and
- **Procedural Timetable**, terms for exchange of briefs, filing written submissions, hearings, etc.

# ICC Arbitration: the proceedings

**Establishing the facts of the case** (by the  
Arbitral Tribunal:

- studying the written submissions of the parties,
- hearing the parties, any witnesses or experts if need be.

# ICC Arbitration: the Award

- **Final submissions** of the parties and **closing** of the proceedings
- Issuance of the **award, final** and **binding** on the parties
- **Enforcement** of the award

# Settlement of disputes

A **dispute** is a disagreement between two or more parties having opposing interests or claims in a given situation. It might be settled **out-of court** or by means of an **alternative dispute resolution** procedure (**ADR**), or it might be brought before a court.



# Settlement of disputes

In the event the dispute is settled by the parties, it is advisable to sign a **settlement agreement**, where each party waives partially or in full its rights and claims, providing that terms and conditions of the agreement will be considered as a **full and final settlement** of the claim.

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