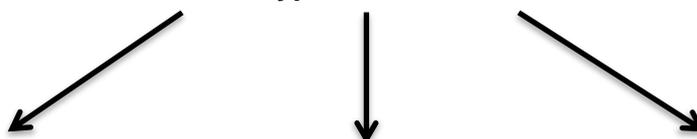


## Civil Courts and Alternative Dispute Resolution (ADR)

### Civil Courts

The standard of proof is 'beyond all reasonable doubt' and the burden of proof falls on the claimant.

#### Types of claims

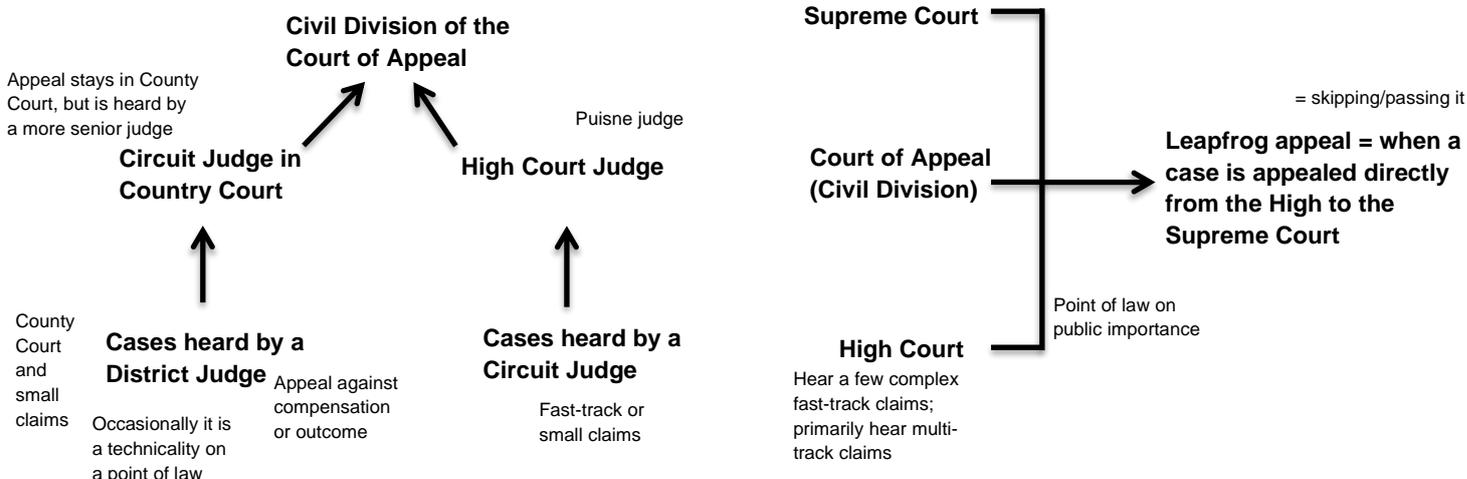


**Small claims** – usually heard in private (but can also be heard in an ordinary court); heard by District Judges in the County Court; Judges can award up to £1,000 for a personal injury (p.i.) an up to £10,000 for other claims (o.c.); example: a damaged TV

**Fast-track claims** – heard in the County Court, but if the claim is too complex it can be referred to the High Court; takes up to 30 weeks to solve it, but it is up to 50 weeks in practice; heard by Circuit Judges; judges can award £1,000-£25,000 for p.i. and £10,000-£25,000 for o.c.; example: a faulty car

**Multi-track claims** – include claims for up to £25,000 for p.i. an o.c.; can be tried in both the County Court and the High Court; the judge identifies the issue at an early stage + encourages the parties to use ADR if appropriate + deals with procedural steps without the need for the parties to attend court + fixes timetables for doing the different case stages = this is called 'managing' the case; example: divorce

### Appeal routes



### Lord Woolf's reforms from the 1996 Woolf report on the Civil Justice System (CJS) resulting leading to the Access to Justice Act (1999)

- The CJS ought to be just in the results it delivers
- The CJS ought to be fair in the way it treats litigants
- The CJS ought to offer appropriate procedures at a reasonable cost
- The CJS ought to deal with cases at a reasonable level
- The CJS ought to be understandable to those who use it

**Lord Briggs' 2016 proposal for the creation of 'an Online Court for claims up to £25,000'**

- This would allow litigants to effectively access justice without having to pay costs to use lawyers
- The following can achieve the creation of the Online Court:
  - A largely automated, interactive online process for the identification of the issues and the provision of documentary evidence
  - Conciliation and case management carried out by case managers
  - Unless the case is resolved by the previous stage there will be a resolution by a judge
- The Online Court would use documents on screen, telephone video or face-to-face meetings according to the needs of each case
- Intention is to deal with cases more quickly and less costly
- Hopefully the Court will start operating by 2020

<b>Advantages</b>	<b>Disadvantages</b>
Impartial judge and an equal treatment result in a fair process	Costs are too high (costs for smaller claims are higher than the compensation)
Trial is conducted by a legal expert; decision is made by a judge who is an experienced and qualified lawyer	Cases are usually delayed (e.g. usually by a year due to the number of preliminary stages) => the longer it gets = the costlier
Any decision made by a court can easily be enforced through other courts	Process is complicated due to the number of compulsory steps to be taken before the case is heard e.g. In some cases parties set pre-action protocols and give the other party certain information
(A rare) possibility to get legal aid (governmental help in funding a case)	Uncertainty of winning a case (loser pays costs of both sides)
Specific appeal routes exist so that the claimant can appeal	Individuals may be exposed to a traumatic experience
	Outcome may be unsatisfactory
	The press may publicise the dispute

**\*Alternative dispute resolution may be more appropriate for certain cases (e.g. divorce) instead of using courts**

## Alternative Dispute Resolution (ADR)

**Alternative (methods of) Dispute Resolution** –  
using one of the following methods to resolve a  
dispute without resorting to court:

- Negotiation
- Arbitration
- Tribunals
- Mediation
- Conciliation

**\*We only look at negotiation, mediation and tribunals**

### Negotiation

- Private settlement negotiation with another person
- Parties communicate in writing or email and discuss solutions to a problem
- Usually the parties do not want to meet face to face
- (Paid) solicitors can negotiate on behalf of the parties if no agreement is reached
- Can take years to resolve a dispute; most are settled out in court, but solicitors can also negotiate on behalf of their client, e.g. in family disputes
- Ironically many disputes are literally resolved 'at the door of the court'
- Examples of disputes: neighbour disputes, marriage, divorce, parenting

Advantages	Disadvantages
It is completely private	If prolonged, the process can become very expensive
Quickest method of ADR	
Cheapest method of ADR	

### Mediation

- The two parties use a neutral third person (a mediator) to help them reach a compromised solution
- The mediator disputes their solutions back and forth
- The mediator offers solution to the parties until the problem is resolved
- The mediator acts as a 'facilitator': the mediator does not offer their own opinion, but guides the two parties to reaching an agreement
- Parties need to be able to co-operate for mediation to happen
- Parties are in control and make the decisions
- Mediation approaches:
  - Formalised settlement contract – a formal process of a 'mini trial'; each sides presents a case to a panel of decisions making executives representing each side

and a neutral mediator; the executives and the mediator will try to evaluate the two sides and reach an agreement

- Mediation services offered by the Centre for Dispute Resolution set up in London in 1991; online mediation services
- Examples of disputes: family cases (Mediation Information and Assessment Meeting); family-based disputes on property/finance/children; commercial (Centre for Effective Dispute Resolution) and business disputes
- Another example: in 2002 organic farmers entered a mediation with Sainsbury's, Asda, Tesco and Safeway to resolve a dispute over milk prices

<b>Advantages</b>	<b>Disadvantages</b>
Decision need not be a strictly legal one sticking to the letter of law	No guarantee matter will be resolved => necessary to go to court
Makes it easier for companies to continue working together in the future	Could become costly
Avoids conflicts of the court room and the winner/loser court proceedings	

**\*Find information on 'Tribunals' below.**



**Tribunals** – similar to the courts, but act outside of the court system (cases do not and cannot go to courts = tribunals are used instead); established after the development of the welfare state after 1945; set up to give people a method of enforcing their entitlement to certain social rights (e.g. right to work free from discrimination); encourage not using lawyers; Employment and Asylum Tribunals are the most formal type; limited legal aid; create binding decisions



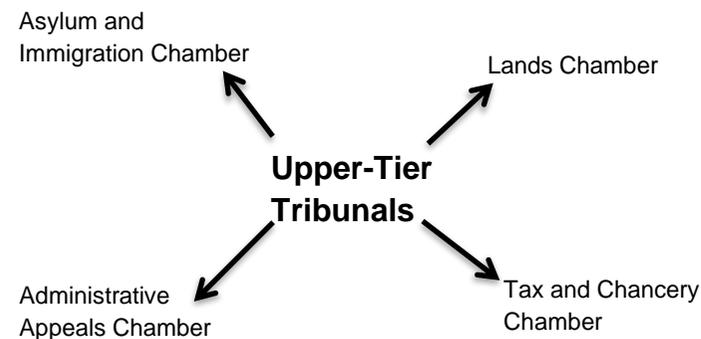
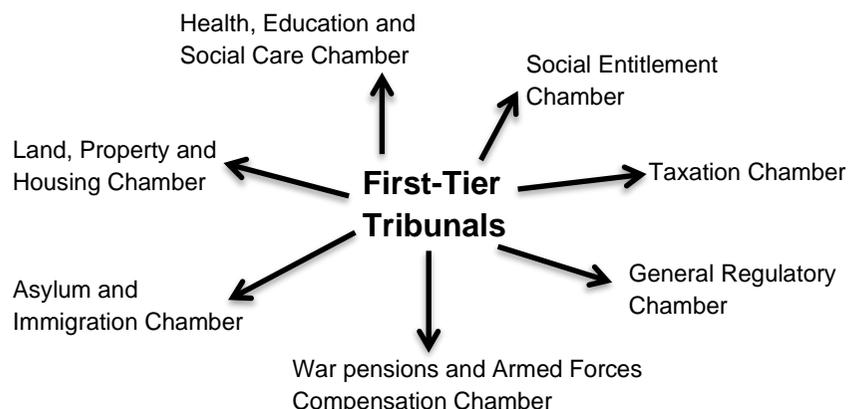
## Types of tribunals

### Administrative

- Set up to enforce social rights (e.g. the right to a payment if one is made redundant)
- System was more complicated until 2007
- Tribunals, Courts and Enforcement Act 2007 created a unified structure with two main tiers for all tribunals
  - First-tier Tribunals – cases are heard by a legally qualified Tribunal Judge and/or two lay members with particular experience in the work of the Tribunal; hear most social welfare cases in first instance e.g. mobility allowance cases use medically qualified people
  - Upper-tier Tribunals – hear appeals for their first-tier
- Employment Tribunals – operate separately from the first-tier; originally set up under the Industrial Training Act 1964; cover all aspects of work-related disputes e.g. unfair dismissal; have their own Employment Appeal Tribunal that deals with appeals from first-instance (first-tier) Tribunals

### Domestic

- 'In-house' tribunals often set up by professional bodies to resolve disputes within their organisations; e.g. The Bar Council; The General Medical Council of the Football Association



The Tribunals Council was replaced by the Administrative Justice and Tribunals Council in 2007. It:

- Ensures the work of tribunals is reviewed and monitored
- Reports on the workings of tribunals and the rules governing them
- Considers any other matter relating to tribunals

### Ladele v Islington Country Council (2008)

- Ladele was a Registrar for the Council
- Ladele refused to carry out a civil partnership ceremony on the grounds of her religious beliefs
- Ladele was found to have been discriminated against and harassed in the workplace
- Dispute taken to an Employment tribunal

Advantages	Disadvantages
Speed of case resolutions – many cases are solved within a day	Lack of openness – some Tribunals are held in private => suspicion about decision fairness
Tribunals usually do not charge fees; each party pays for their own costs	Reasons for decisions are not always given
Informality of process(e.g. wigs are not worn) ensures an unthreatening atmosphere	Tribunal procedures are too complex
Specialisation – Tribunal members are well-specialised in their relevant subject area	Little availability of legal aid
Privacy – Tribunals under certain circumstances may meet in private	

\*Further appeals can be made to the CA and SC

In some cases two lay magistrates with experience try the case

People are encouraged not to use lawyers

The Employment and Asylum Tribunals are most formal

Tribunal decisions are legally binding

### How do we make a claim?

- 1) Fill in a form
- 2) Include your personal details – name, address, date of birth
- 3) Fill in what you are claiming for and the value of the claim
- 4) Fill in who the claim is against and include their name and address
  - **Osman v Ferguson (1993)**
    - A teacher was obsessed with one of his pupil boys
    - D started stalking the boy
    - Police didn't do anything about that
    - Later the teacher killed the boy's father and injured the boy
    - D was convicted of manslaughter on the grounds of diminished responsibility and appealed
- 5) Post/email the claim to the court services
- 6) An email will be sent to D
- 7) D has 2 weeks to respond
- 8) D can either accept the claim and pay the compensation, which would avoid attending court; partially accept the claim; reject the claim or counter claim; the last 3 outcomes all go to court, unless the dispute is resolved before

END.