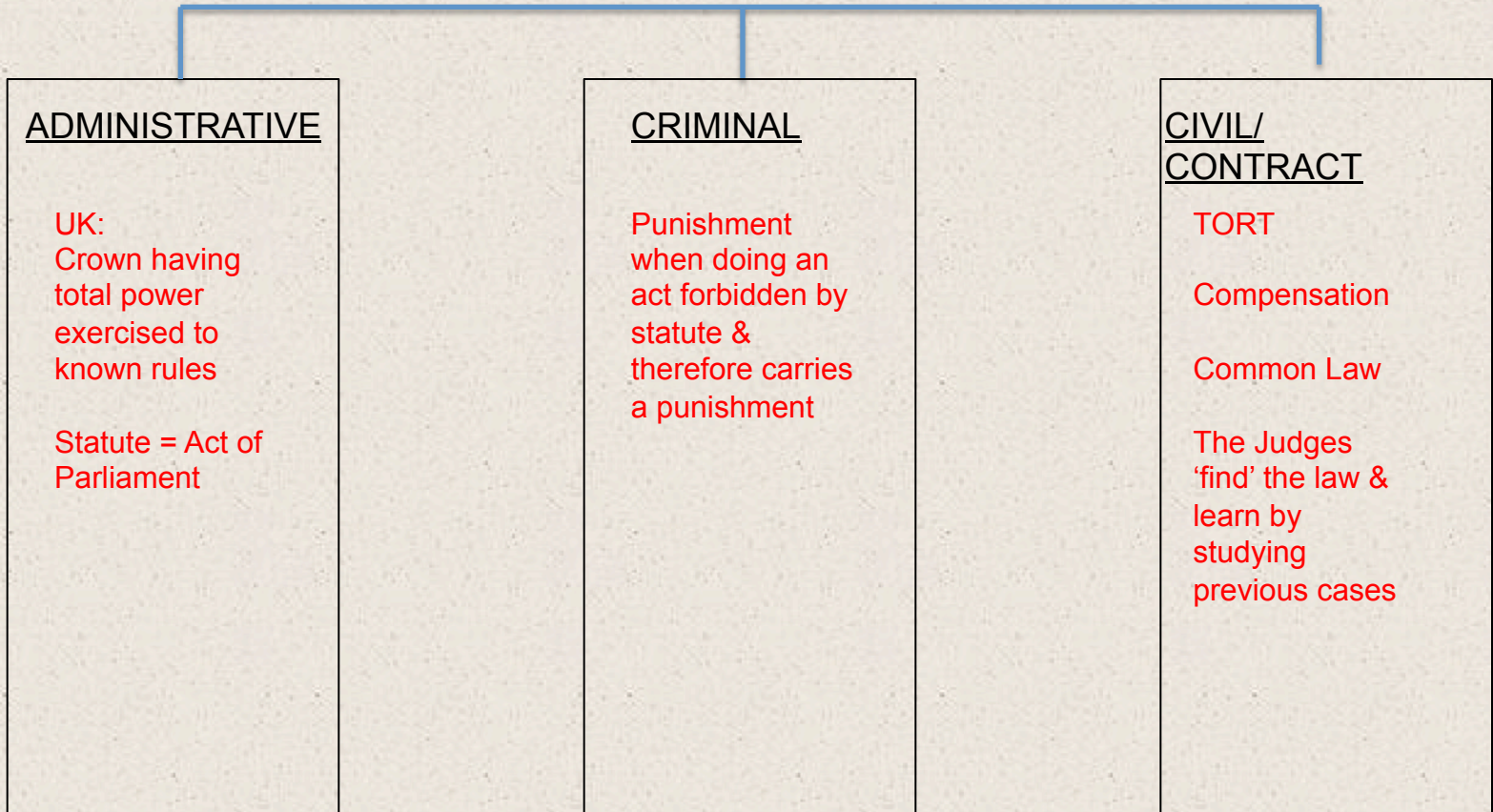


# Law!

14<sup>th</sup> November 2019

Mark Stephens RIBA MRIAI

# Law!





# Common Law

noun: **common law**

The part of English law that is derived from custom and judicial precedent rather than statutes.

···is that body of law derived from judicial decisions of courts and similar tribunals.

# Common Law

A decision having been made by a superior court is binding on a lower court:

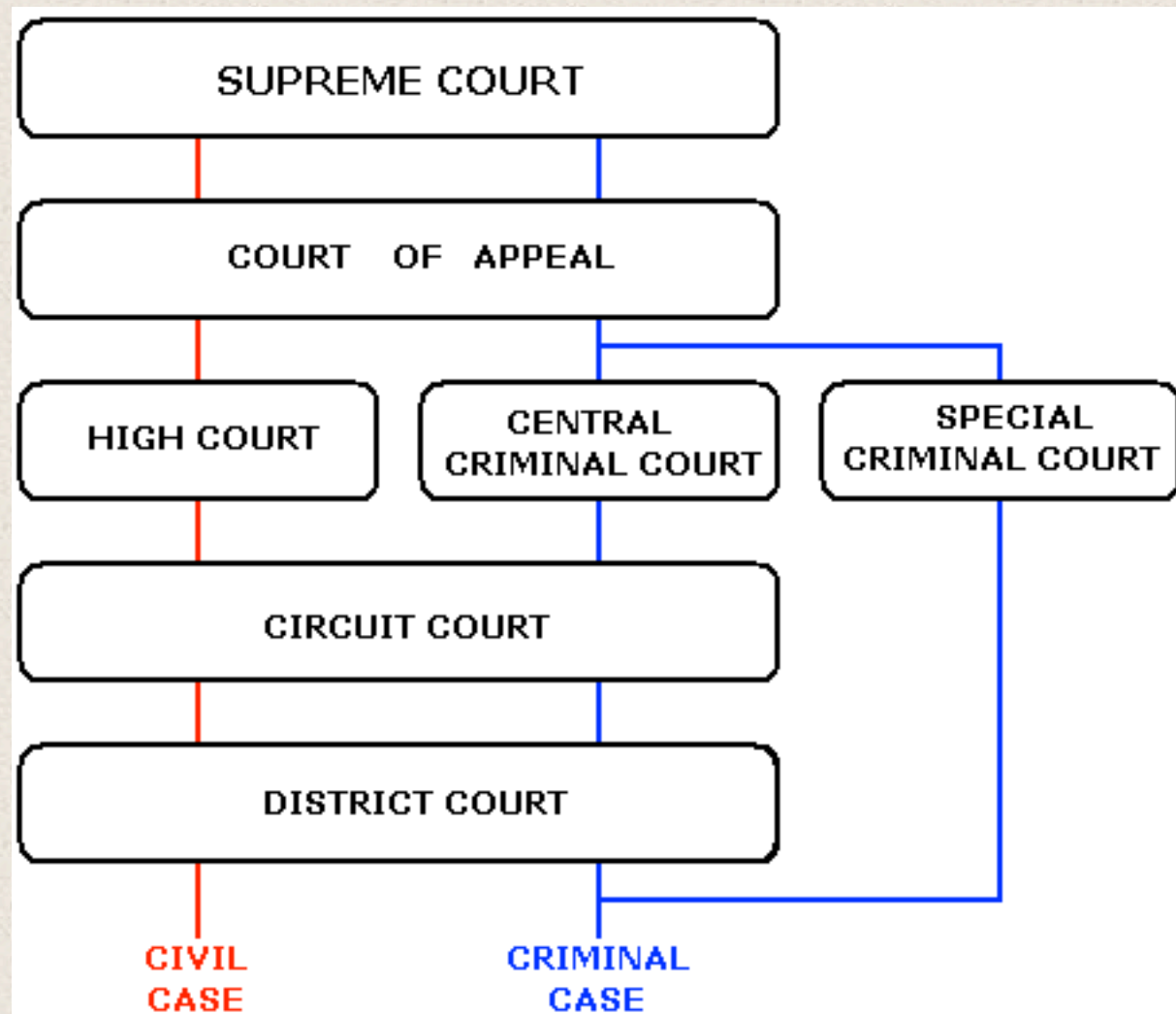
Currently in the UK:

1. European Court of Justice
2. Supreme Court of UK (formerly House of Lords)
3. Court of Appeal
4. Divisional Courts
5. High Court
6. Crown Courts
7. County Courts & Magistrates Courts



# Common Law

Ireland



# Civil Law

*Civil Law is more common across the world:*

*Common law gives judges an active role in developing rules; civil law is based on fixed codes and statutes*



# Law!

## LAW OF CONTRACT

A contract occurs when:

1. An offer is made (the customer)
2. The acceptance is made (the trader)
3. Some 'consideration' is required – gives something (even in the future) in return for the received benefit

# Tort

# TORTE





# TORT

Tort

*A Norman French Word*

*Noun* LAW

noun: **tort**; plural noun: **torts**

a wrongful act or an infringement of a right (other than under contract) leading to legal liability.

# TORT

A tort is when one person or entity inflicts an injury upon another in which the injured party can sue for damages.

NOW and in the FUTURE!.

i.e. harm to property, health, or well-being



TORT

4 Elements are required:

4 Elements are required:

1. Duty



4 Elements are required:

1. Duty
2. Breach of Duty

4 Elements are required:

1. Duty
2. Breach of Duty
3. Causation



4 Elements are required:

1. Duty
2. Breach of Duty
3. Causation
4. Injury

TORT

## 3 Main Types of Tort cases:



## 3 Main Types of Tort cases:

### A. Intentional

Assault

Battery

False imprisonment

Intentional infliction of emotional distress

Fraud/deceit

Trespass (to land and property)

Defamation

## 3 Main Types of Tort cases:

### B. Negligence

Slip and fall accidents

Car accidents

Truck accidents

Motorcycle accidents

Pedestrian accidents

Bicycle accidents

Medical/Architectural malpractice



## 3 Main Types of Tort cases:

### C. Strict Liability

Where responsibility for an injury can be imposed on the wrongdoer without proof of negligence or direct fault.

- Defective products (Product Liability)
- Animal attacks (dog bite lawsuits)
- Abnormally dangerous activities

Example:

A car accident.

- A duty to drive well & not negligently
- Accident = Breach of duty
- Causation = damages



# TORT

Ireland:

A professional man owes a duty both in contract and in tort to his/her clients

A professional man owes a duty both in contract and in tort to his/her clients

Did the professional act in a manner accepted as proper by a competent body of professional opinion?

This is the Bolam Test



The knowledge required of an architect will generally be judged by the standard of the ordinary competent architect.

*“A fair, reasonable and competent degree of skill”*

However if an architect carries out the job of quantity surveyor he or she will be judged by the standards of a reasonably competent quantity surveyor.



## Typical Examples of Negligence in Tort:

- Inadequate examination of sites
- Errors in Design
- Providing a misleading estimate
- Errors in preparation of Bill of Quantities
- Failing to take reasonable steps in selecting contractors
- Insufficient knowledge & non-compliance with planning & Building Regulations legislation
- Incorrect certification

### Ireland:

The jurisdiction of the Circuit Court is for claims under €38,092.14 and the jurisdiction of the Commercial Court is for any claims over €1,000,000. All other claims fall within the remit of the High Court.

# Statute of Limitations:



## Statute of Limitations:

The general limitation period for actions in contract and tort is six years

In relation to both contract and tort, the relevant provisions of the Statute of Limitations, 1957 provide for a limitation period of *“six years from the date on which the cause of action accrued”*.

*In Tort there are 3 categories:*

- 1. Actionable – at the moment of the ‘wrong’ eg defamation*
- 2. Continuing – eg trespassing*
- 3. Single – eg negligence where a cause of action accrues upon the plaintiff suffering damage*

## Statute of Limitations:

***“it is not the latent defect which needs to be capable of discovery: it is the subsequent physical damage caused by that latent defect”***

**Damage is “manifest” when it is capable of being discovered, regardless of whether it has or has not been discovered or ought to have been discovered.**

The 6 years therefore runs from the manifestation of damage, rather than of the underlying defect.

**The manifestation of damage requirement may extend their liability period well beyond 6 years post completion of a project.**



# TORT

Cases:

History of Tort:

Donohue v Stevenson (1932)

Duty of care of architects:

The 'Bolam' test:

Bolam v Friern Hospital Management Committee (1957)

Statute of Limitations:

*Brandley and WJB Developments Limited v Deane and Lohan – The Brandley Case*

Inspections:

Dutton v Bognor Regis

Murphy v Brentwood DC

Budget:

Riva Properties v Foster & Partners