

Scotland and England were separate kingdoms from mediaeval times, with frequently hostile relations and occasional wars. Scottish law students travelled to learn the civil law which applied in continental Europe, based upon versions of Roman or Civil Law (civil derives from the title of the code proclaimed by the Emperor Justinian, the *Corpus Iuris Civilis*). English law developed through the decisions and practices of the King's Justices, more pragmatic and not affected by continental doctrines. So by 1600 the two legal systems were significantly different. In 1603 King James VI of Scotland succeeded his cousin Queen Elizabeth (who died with no children) as King James I of England and VI of Scotland. During the next hundred years, the two kingdoms were governed separately, and Scotland was considerably poorer than England. After tense negotiations, the Treaty of Union was signed in 1707 and obtained the support of both parliaments. It provided that there would be a single parliament for the United Kingdom. It also provided that in the fields of education, religion and law Scotland would retain its pre Union practices. So Scottish law remained distinct in terms of sources, civil and criminal law, family law and to some degree constitutional doctrine. Scotland is one of the "mixed jurisdictions" along with Louisiana, Quebec, South Africa and Israel, which rely on a combination of civil and common law. While Scots lawyers correctly note the different ancestors of modern law, the actual outcomes of particular controversies will often be very similar in Scotland and in England.

The Scottish courts are separate from English courts, although the ultimate appellate body in both nations is the UK Supreme Court. Judges are appointed after a successful career in practising law, not at the moment of entry into the legal profession. Thus most judges have been appointed Queen's Counsel after 15 to 20 years of practice, and are then appointed to be Senator of the College of Justice. They handle both criminal and civil cases. There are two appellate courts of equal standing one presided over by the Lord President and the other by the Lord Justice Clerk. The Lord Justice Clerk by tradition supervises criminal cases mainly but not exclusively. The number of sitting judges depends on the difficulty and importance of an appeal and for example where the court plans to consider overturning a previous ruling.

Scottish legal tradition like England's, values oral argument. It is common for judges and counsel to debate vigorously, in a manner which is more intense than in the continental tradition. There are two colleges of practitioners, solicitors in the Law Society of Scotland and advocates in the Faculty of Advocates. Traditionally, solicitors prepare the early stages of a case and the pleading of the case is entrusted to the Bar, the advocates. In recent years, solicitors have got rights of audience in the higher courts so the distinction is less than it used

to be.

This seminar will involve the most senior members of the profession. Lord President Carloway will describe the structure of the appellate courts briefly and will describe how the Scottish courts adapted to the challenges of Covid and the need to reconcile on the one hand the need for disputes to be decided promptly and the need to avoid face to face contact for Covid purposes. Lady Dorrian, the Lord Justice Clerk will describe the use of cinemas where jurors could sit and observe on the large screen the judge, the prosecutor and the accused. The Lord Advocate is both the head of the prosecution service and a source of legal advice to the Scottish government and the First Minister. She will describe some of the problems of respecting the need for swift justice and the need to respect rules on avoiding infection. She will also mention the particular problems of domestic violence during the confinement period. Then we will hear from the Dean of the Faculty of Advocates, Roddy Dunlop QC, who considers that remote hearings have drawbacks and should not become routine. Finally we will hear from the president of one of the specialised tribunals which have to take a wide range of decisions on highly regulated fields like immigration and in her case mental health, where persons may seek to challenge their physical detention and must be heard swiftly.

Ian Forrester