

## **JERSEY'S JUDICIAL SYSTEM:**

### **THE ROYAL COURT**

The Royal Court, which is often claimed to be the oldest land Court in Europe, can trace its origins to the 13th century and, more specifically, to the time when King John of England lost continental Normandy to the French in 1204. Jersey had been part of the Duchy of Normandy since 933 and the Islanders shared the same culture, language and customs as their Norman cousins. In order to retain the loyalty of Islanders to the English Crown and to minimise the traumatic effects of severance from the Duchy, King John founded a separate administration for the Island and decreed that it might continue to be governed by its own laws which were based, essentially, upon the customary law of Normandy.

The King appointed a Warden (later known as the Governor) who, in turn, appointed a Bailiff, the Islanders themselves being permitted to elect twelve sworn coroners, or Jurats, to keep the King's peace. Together the Bailiff and Jurats constituted the court which came to be known as the Royal Court of Jersey.

Originally, the Royal Court was not only a law-enforcing but also a law-making body, however, by the end of the 15th century a formal legislative assembly (now known as the States of Jersey) had emerged and the Royal Court retained jurisdiction in all causes, civil and criminal, arising within the Island, with the exception of treason.

Despite their absence of legal training, Jurats were for centuries judges of both fact and law. The position remained largely unchanged until 1948 when changes in practice resulted in the Bailiff becoming the sole judge of law and the Jurats judges of fact only. Today, the Royal Court is still constituted by the Bailiff (and/or the Deputy Bailiff) and twelve elected Jurats.

In *Jersey and Guernsey*, there are (separate) Royal Courts which hear all except minor cases, both criminal and civil. The presiding Judges of law are the Bailiff or Deputy Bailiff, both appointed by the British Crown after consultation with the Island authorities, or occasionally another Judge appointed by the Bailiff and sworn by the Court for a specific case. In addition, there are twelve judges of fact, called Jurats,

elected by an Electoral College. Jurats are somewhat similar to Justices of the Peace in England.

In Jersey, the Royal Court consists of the Bailiff or Deputy Bailiff with a jury in some cases and with Jurats in others. In civil cases, the Court consists of the Bailiff or Deputy Bailiff and two Jurats. The Bailiff serves as Speaker of the Island's Parliament and as First Citizen and spokesman of the Island as well as being the Island's Chief Judge.

Each of the Islands has an Attorney General who acts as public prosecutor. In Jersey and Guernsey Deputies known as the Solicitor General and HM Comptroller support the Attorneys General. They are also supported by Crown Advocates. In 1585, the law of continental Normandy was reduced to writing in the compilation known as the Coutume Reformée. The Coutume Reformée has been considered at length by the Privy Council as evidence of the customary law of Jersey before the separation of the Channel Islands from the Duchy of Normandy. Amongst those French commentators on the Coutume Reformée, the works of such luminaries as Terrien and Basnage are regularly referred to by local practitioners researching the finer and more esoteric points of Jersey law.

Jersey's own legal commentators include Le Geyt who wrote his works in the 1700s and Poingdestre who wrote on "Les Lois et Coutumes" of Jersey. Although there is debate in regard to the extent to which French Law influences the law of Jersey today, it is clear that the local judiciary are influenced by French commentators such as Pothier who is regularly cited in judgements given by the Royal Court.

Naturally, in light of our relationship with England, it is inevitable that English law should have played a large part in the development of Jersey law, particularly over the last 50 years. Nonetheless, there would appear to be a degree of apprehension amongst the local judiciary which resists wholesale adoption of English law principles. In the recent case of *Selby -v- Romeril*, the current Bailiff, Sir Phillip Bailhache Q.C., has made clear his view that Jersey Contract Law has its roots in French Contract Law.

Jersey law is, therefore, a curious amalgam of Norman, French and English law forming a unique and separate jurisprudence. Jersey was formally part of the ancient Duchy of Normandy and, hence, the principal source of Jersey civil Law is the customary Law of Normandy as stated before the Napoleonic Code Civil.

Notwithstanding this civil Law tradition, much of Jersey Law has, in modern times, developed along similar lines to modern English Law. In addition to the body of Norman customary Law, statutes are passed in Jersey by Jersey's own Parliament, the States of Jersey, on the giving of Royal assent. There is also a significant body of judicial authority. The Jersey Law in relation to land, succession and contracts has its roots deep in pre-Napoleonic French Law.

## **THE COURTS OF JERSEY**

The Royal Court is Jersey's Court of unlimited original jurisdiction. The Heritage Division of the Royal Court is reputed to be the oldest land Court in Europe.

### **The Divisions of the Royal Court**

The Royal Court is divided into divisions. The Heritage division deals with land disputes. The Family division deals with matrimonial causes and matters involving minors. The Probate division deals with Wills and matters involving succession. All other matters are dealt with by the Samedi division which, as its name suggests, formerly sat on Saturday mornings.

Despite these divisions, Jersey has no specialist Judges sitting in a particular division and therefore the divisions have no real significance. Although Judges in Jersey are drawn from the local legal profession it is not unknown for eminent Barristers from the United Kingdom to be appointed as temporary Judges or Commissioners in Jersey to deal with cases which are particularly specialised or complex.

### **The Judiciary**

The Royal Court is presided over by the Bailiff who is also the civil head of the Island and sits as the equivalent of the Speaker in Jersey's Parliament, the States of

Jersey. In his judicial function, the Bailiff, is assisted by the Deputy Bailiff and at least two Commissioners.

In addition, Jersey has twelve full-time Jurats who are appointed by an Electoral College of parliamentarians and lawyers. Jurats are lay members of the Royal Court and their appointment endures similarly to lay Magistrates in the United Kingdom. Two Jurats sit with the Judge in civil cases and determine issues of fact and damages. The Judge determines questions of Law and costs.

## **THE LEGAL PROFESSION IN JERSEY**

The Jersey legal profession has two branches which differ markedly from the professions in the United Kingdom.

In Jersey there are Advocates and Ecrivains (Solicitors). These professional qualifications are unique to Jersey. Advocates are the only lawyers in Jersey with a right of audience in the Courts above the Petty Debts Court. In general, lawyers must have qualified either as Solicitors or Barristers in the United Kingdom or the Commonwealth before studying for local Law exams and qualifying in Jersey.

Until the 1850s, there was a maximum of only six Advocates at the Jersey Bar, all of whom were nominated by the Bailiff at his discretion. Shortly before the 1860 Commissioner's Report into Jersey's legal system, the States of Jersey decided to allow the admission of an unlimited number of Advocates, requiring (for the first time) the attainment of certain qualifications. At this time, the chief function of the Ecrivains, or Scriveners, was to draw up and pass contracts of real property and also to take down evidence in civil and criminal cases. They were admitted by the Bailiff and did not need to have served articles or have any specific qualifications. Historically, both Advocates and Ecrivains acted as Solicitors and general men of business (*hommes d'affaires*) and the function of Advocates in Jersey has never been limited merely to representing clients in Court.

Today, Ecrivains are more commonly known as Solicitors and the scope and type of work carried out by Advocates and Solicitors is very much the same, only Advocates may appear before the Magistrate's Court, the Royal Court and the Court of Appeal. Both branches of the profession may, however, appear before the Petty Debts Court and also before other statutory tribunals, such as the Licensing Assembly.



In order to learn more about Jersey's Judicial System, visit or contact Jersey Archive:

Jersey Archive

Clarence Road

St Helier

Jersey

JE2 4JY

Tel: +44 (0)1534 833300

Jersey Archive is open to the public on Tuesdays, Wednesdays and Thursdays only (late night last Thursday in month and third Saturday of month). Further details are available from our website.

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