

**Caribbean Maritime Institute**

**The Jamaican Legal System**

 Main sources of Law

 The Courts

 Tribunals and Arbitrations

The Jamaican Legal System is known as a “Common Law” system. The Common Law

system is one of the three major types of legal systems in the world. The other two are

Civil Law (based on Codes) and Religious Law (based on Religious Texts). Some legal

systems involve a combination of two or in a few instances all three of these types.

The Common Law System originated in England and in its earliest form was based on

societal customs and norms recognised and enforced by the judgments and decrees of

the courts. Over time, used in a broad sense, the term “Common Law” came to include

these early customs as well as legislative enactments and the judicial decisions

interpreting their application. The Common Law system became therefore the law

(custom, statutes and judicial decisions) common to all of England. Jamaica, as does the

rest of the Commonwealth Caribbean, has a Common Law legal system inherited from

England.

In the Common Law system court decisions are heavily reliant on prior judicial

pronouncements. Where a statute governs the dispute, judicial interpretation of that

statute determines how the law applies. Under the doctrine of [Stare Decisis](http://legal-dictionary.thefreedictionary.com/Stare+Decisis) (latin for

“let the decision stand”) courts in our Common Law system are obliged to follow the

decisions and rulings in previously decided cases, or precedents, where the facts and

issues are substantially the same. In Jamaica therefore, a court's decision is binding

authority for similar cases decided by the same court or by lower courts within the

[Court Structure.](http://supremecourt.gov.jm/content/court-structure-and-hierarchy) The decision is not binding on courts of higher rank but it may be

considered as persuasive authority. Decisions from courts outside of Jamaica are not

binding, but may also be referred to as persuasive authority if there is no local case

which has settled the point in issue

Cases that come before the courts deal with myriad everyday situations. Additionally,

disputes involving new discoveries, technologies, social changes or global developments,

often raise novel legal issues which are previously undetermined in Jamaica, and for

which no binding precedent exists. Our Common Law system allows our judges to look

to other jurisdictions or to draw upon past or present judicial experience for analogies,

to help in making decisions in those situations. This flexibility enables the courts to

address new situations so that no worthy litigant is left without a remedy. At the same

time the doctrine of stare decisis provides certainty, uniformity, and predictability

which promotes a stable legal environment.

In the Common Law system, disputes are settled through an adversarial exchange of

evidence and argument. Opposing parties present their cases before a neutral fact

finder. Depending on the type of case, the fact finder may be either a jury or a judge.

Where a Judge sits with a jury, the jury are the fact finders. Where the Judge sits alone,

the judge has the dual responsibility of determining the appropriate law to apply, as well

as the facts proved. Where the Judge sits with a jury, the Judge directs the jury on the

relevant law to be applied to the facts the jury finds proved. The jury or the judge, as the

case may be, evaluates the evidence, applies the appropriate law to the facts, and

thereby arrives at a decision. Following the decision, the party against whom the

*decision is made, (with the exception of the prosecution in a criminal case on a verdict*

of acquittal), may appeal the decision to a higher court.

Under our Common Law system, all citizens of whatever rank or status are subject to the

same set of laws, and the exercise of governmental power is limited by those laws. The

Supreme Court is empowered to review legislation, but only to determine whether it

conforms to constitutional requirements.i

**The Court Structure and Hierarchy**

The structure of the Jamaican Judicial System is based on five basic tiers. The lowest

tier is the Petty Sessions Court. This court is presided over by Justices of the Peace. The

Petty Sessions Court requires a minimum of two justices to be properly constituted.

Sometimes Magistrates exercise jurisdiction in these courts and the presiding

magistrate exercises the jurisdiction of two Justices of the Peace.

Appeals from this court are to the Circuit Court of the parish in which the Petty Sessions

Court sits or by way of case stated to the Court of Appeal

The next tier of court is the Resident Magistrates’ Court. This court is an inferior court

of record and, as is the case with the Justices of the Peace jurisdiction, is governed

entirely by statute. Resident Magistrates have the jurisdiction to try cases summarily as

well as on indictment. The level of sanction, in terms of fines and imprisonment, are

lower than that which may be imposed in the Supreme Court.

Resident Magistrates preside over a range of courts at this level. Apart from exercising

jurisdiction in criminal cases, Resident Magistrates preside over the Coroner’s Court,

Traffic Court, Drug Court, Tax Court, Family Court, Juvenile Court and Civil Court. The

jurisdiction of the Civil Court is limited to claims not exceeding $250,000.00.

Appeals from the Resident Magistrates’ Court are also to the Court of Appeal.

At the third tier, the Supreme Court is the highest first instance court. It is a superior

court of record and has unlimited jurisdiction. It has both inherent and statutory

jurisdiction. Courts of equivalent jurisdiction in other countries are sometimes called

“High Courts”.

The Supreme Court has jurisdiction in Civil, Criminal, Family, Commercial, Succession

and Admiralty cases. There are also specialised courts which also exercise superior

jurisdiction which are presided over by Supreme Court Judges. These are the High and

Circuit Court Divisions of the Gun Court and the Revenue Court

Appeals from the Supreme Court are also made to the Court of Appeal.

The Court of Appeal is the court to which all appeals are first referred. The Court of

Appeal is the fourth tier of the court structure. Its procedure is governed by statute. It

may confirm, overturn or vary judgments in any cases in which there are appeals from

any of the first-instance courts.

In the majority of cases the decisions of the Court of Appeal may be subject to appeal to

the Judicial Committee of the Privy Council (The Privy Council). Technically, the appeal

is to the Head of State which is the Sovereign. The Privy Council hears the appeal and

makes a recommendation to the Sovereign as to the manner in which the appeal is to be

resolved. It may recommend confirmation, overturn or variation of the judgment of the

Court of Appeal. The Privy Council is the fifth and highest tier of the Jamaican Court

System. Appeals to the Privy Council are restricted to cases of a certain monetary value

or where they are of exceptional public importance.

**Arbitration and Tribunals**

In recent times, methods of alternate dispute resolution have become a popular

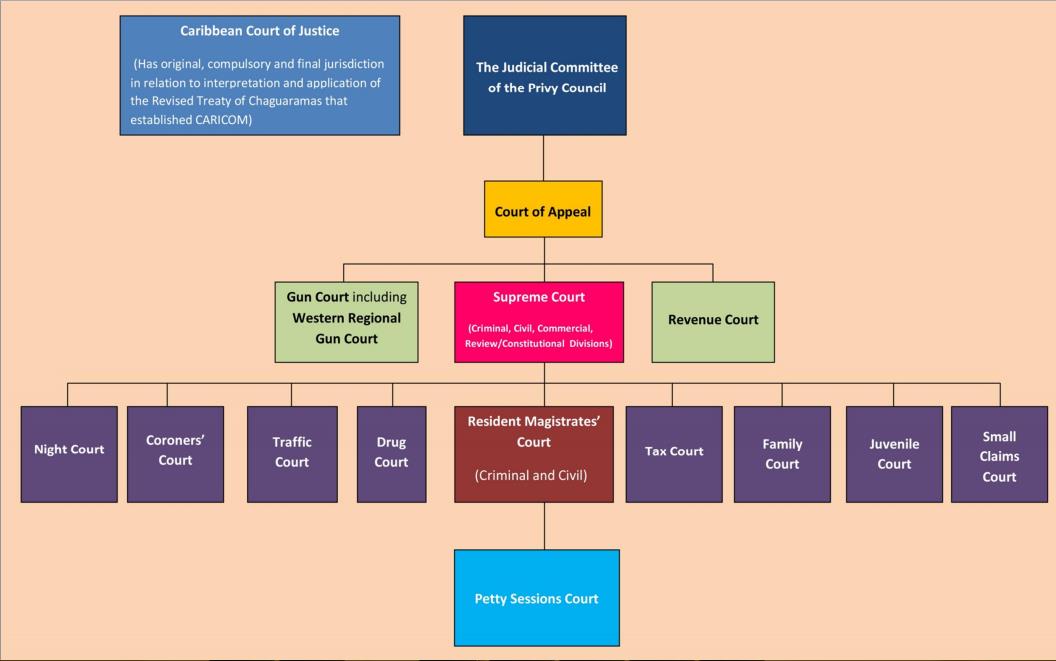
alternative to court. These methods are less costly, more confidential and tend to cater

to the interest of all the parties of the dispute a bit more than the court system.

In Jamaica, the main body that deals with arbitration and mediation of disputes is the

Dispute Resolution Foundation and one of the most active tribunals is the Industrial

Disputes Tribunal, which deals specifically with labour matters.



i http://supremecourt.gov.jm/content/legal-system

ii http://supremecourt.gov.jm/content/court-structure-and-hierarchy