

# NUTSHELLS

## English Legal System

EIGHTH EDITION

by  
**PENNY DARBYSHIRE**  
Reader in Law  
Kingston University

**SWEET & MAXWELL**

**THOMSON REUTERS**

# Contents

Using the book	ix
Table of Cases	xiii
Table of Statutes	xix
<b>1 Introduction</b>	<b>1</b>
What is the English legal system?	1
What is special about the ELS?	1
The worldwide spread of common law	2
Characteristics shared by common law countries	3
<b>2 Sources of Law</b>	<b>4</b>
Introduction	4
Domestic legislation	4
European Union legislation	6
The European Convention on Human Rights 1950	9
Statutory interpretation	11
Case law (precedent)	16
Prerogative power	20
Custom	20
Books of authority	20
International law	20
<b>3 The Court Structure</b>	<b>27</b>
Introduction	27
Criminal courts	27
Civil courts	32
Court management	33
Open courts	34
Court restructuring	34
<b>4 Civil Procedure</b>	<b>38</b>
Introduction	38
Civil litigation from 1999, following the Woolf reforms	39
Background to the “Woolf Reforms”	45

	Are the Woolf Reforms working? Evaluative comments and research	46
	Civil appeals	49
	References to the European Court of Justice (in civil and criminal cases)	51
<b>5</b>	<b>Alternatives to the Civil Courts</b>	<b>57</b>
	Introduction	57
	Tribunals	57
	Arbitration	60
	Alternative Dispute Resolution (ADR)	63
<b>6</b>	<b>Criminal Procedure</b>	<b>68</b>
	Introduction	68
	Background: reform bodies	68
	Legal framework	69
	The pre-trial criminal process	72
	The criminal and civil trial process	87
	The criminal trial	90
	Young offenders	91
	Criminal appeals	92
	The post-appeal stage: re-examining alleged miscarriages of justice	99
<b>7</b>	<b>Lawyers</b>	<b>111</b>
	Introduction	111
	Legal Services Act 2007	111
	Solicitors	112
	Barristers	114
	Legal executives	117
	Legal education	117
	The gradual abolition of lawyers' monopolies and restrictive practices	118
	The Clementi Report on restructuring the legal professions and the Legal Services Act 2007 ("Tesco Law")	122
	Impact of the LSA 2007 on lawyers' business structures	123
	Clementi on complaints	123
	Fusion	124
<b>8</b>	<b>Judges</b>	<b>128</b>
	Introduction	128
	Types of judge	128

	The heads of division	130
	Independence	130
	Neutrality	132
	Qualifications	132
	New appointments system from 2006	133
	Promotion	138
	Social background and diversity	138
	Training	139
	Removal	140
	Complaints	140
<b>9</b>	<b>Magistrates</b>	<b>143</b>
	Introduction	143
	Lay justices	143
	District judges (magistrates' courts), formerly known as stipendiary magistrates	146
	Comparing lay justices and district judges (magistrates' courts) and suggestions for a mixed bench	146
	Magistrates' clerks	148
<b>10</b>	<b>The Jury</b>	<b>152</b>
	Introduction	152
	Eligibility	152
	Controversies surrounding the jury	156
<b>11</b>	<b>Legal Services</b>	<b>163</b>
	Introduction	163
	Legal services from 2000	164
	Modernising justice: the policy behind the Act	166
	Developing the new legal services model in practice	167
	More background: why was the old legal aid scheme scrapped?	171
	Developments since 2000 and evaluation of the current legal services scheme.	173
<b>12</b>	<b>Handy Hints and Useful Websites</b>	<b>181</b>
	Essays	181
	Exam checklist	185
	English legal system websites	187
	<b>Index</b>	<b>189</b>